

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Marianne Rivoalen  
Madam Justice Janice L. leMaistre  
Madam Justice Anne M. E. Turner

***BETWEEN:***

	)	<b><i>R. Pollock</i></b>
	)	<i>for the Appellant</i>
	)	
	)	<b><i>H. J. Slobodzian and</i></b>
	)	<b><i>B. Yarish</i></b>
<b><i>KELLY RAE BOUCHER</i></b>	)	<i>for the Respondent</i>
	)	
(Petitioner) Appellant	)	<b><i>R. J. Nolan</i></b>
	)	<i>for the Interested Parties</i>
- and -	)	<i>Marrbeck Construction</i>
	)	<i>Ltd. and MBK Enterprises</i>
<b><i>KEITH VINCENT JOSEPH BOUCHER</i></b>	)	<i>Ltd.</i>
	)	
(Respondent) Respondent	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
	)	<b><i>January 17, 2025</i></b>
	)	
	)	<i>Written reasons:</i>
	)	<b><i>May 1, 2025</i></b>

**RIVOALEN CJM** (for the Court):

**Introduction**

[1] This appeal addresses the obligation of a payor parent to provide corporate financial disclosure under sections 18 and 21 of the *Manitoba Child Support Guidelines Regulation*, Man Reg 52/2023 [the *Guidelines*] and rule 30 of the MB, *King's Bench Rules*, Man Reg 553/88 [the *KB Rules*].

[2] The petitioner (the wife) appealed an order of a Court of King's Bench judge (the motion judge) pronounced on May 29, 2024 and signed on July 15, 2024 (the order). In the order, the motion judge dismissed the wife's motion in which she sought corporate financial disclosure from Marrbeck Construction Ltd. (Marrbeck) and MBK Enterprises Ltd. (MBK).

[3] A trial of four days was set to proceed in the Court of King's Bench in February 2025. Child support is the only issue before the Court and is the only outstanding issue between the respondent (the husband) and wife. All other matters were resolved by their separation agreement dated August 31, 2015.

[4] At the hearing, we allowed the appeal and set aside the order in its entirety with reasons to follow. These are those reasons.

[5] In addition to setting aside the order in its entirety, we also ordered corporate financial disclosure and details regarding the disclosure, with other orders and conditions to be provided at a later date. Costs were ordered in accordance with the tariff in favour of the wife. We explained that we were pronouncing our judgment from the Bench, notwithstanding its jurisprudential value, because trial dates were a few weeks away and our written reasons would not be available before the trial was set to commence.

### Background

[6] The following background facts are not in dispute.

[7] The parties were married on September 13, 1997 and separated on November 15, 2013.

[8] The parties entered into the terms of a comprehensive separation agreement on August 31, 2015, at which time the two children of the marriage were under the age of majority. All matters were resolved save for the issue of the husband's obligation to provide corporate financial disclosure.

[9] The provisions of the separation agreement relevant to this appeal are:

- i) The husband is employed by Marrbeck as a general contractor, receives an annual salary of \$150,000 with certain vehicle benefits included, and has a total annual income of \$158,184.
- ii) The husband owns 24.5 per cent of the Class B common shares in MBK. He has not received dividends from MBK since the date of separation but he may be entitled to receive dividends in the future.
- iii) The children would remain in the joint custody of the parties and they would equally share periods of care and control.
- iv) The husband would pay child support to the wife in a specific amount on a monthly basis that takes into account the wife's income.
- v) The parties would share all special or extraordinary expenses of the children as set out in their parenting plan attached to the separation agreement.
- vi) The amount of child support is subject to variation.

- vii) The parties acknowledged receiving from the other full financial disclosure of the other's income, expenses, assets and liabilities as of the date of separation. Each party released the other from any obligation to make further disclosure of assets, liabilities and income except as it relates to the determination of appropriate support for the children.
- viii) For so long as the parties share the care of the children, they shall provide the other with the following financial information by June 1st of each year: a copy of their full income tax returns with all attachments and a copy of their notices of assessment and/or reassessment.
- ix) The parties were unable to agree whether the husband has an obligation under the *Guidelines* to provide copies of the annual financial statements of MBK for the purposes of determining his annual income for child support. The issue was considered extensively but no resolution was agreed upon. It is acknowledged that the wife may bring an application in court to compel the husband to produce the said documents and that the husband may oppose such an application.

[10] In 2016 and thereafter, the wife complied with the financial disclosure requirements set out in the separation agreement but the husband did not. The wife made requests for financial disclosure from the husband but he did not provide any income tax returns or attachments to her. In May 2018, the wife retained legal counsel to write to the husband to request that he

provide his 2016 and 2017 complete income tax returns and notices of assessment but nothing was provided.

[11] In August 2022, the wife once again retained legal counsel and filed a petition, financial statement and demand for financial information. The demand for financial information specified that, within thirty days, the husband was to provide his personal income tax returns and notices of assessment or reassessment for the years 2016 to 2021, along with the corporate financial statements, corporate income tax returns and a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation does not deal at arm's length for the years 2016 to 2021.

[12] On November 22, 2022, these documents were served on the husband by way of a substitutional service order.

[13] In December 2022, the husband retained counsel and provided copies of his personal income tax returns for 2016 to 2021 and a financial statement sworn on December 19, 2022. He declared an average annual employment income for those years of \$150,000. In addition, the husband disclosed that he had received dividends from MBK in the following amounts: (a) \$117,000 in 2016, (b) \$126,787.50 in 2019, (c) \$169,050 in 2020, and (d) \$202,860 in 2021.

[14] Despite the specific requests for corporate financial information, none was ever provided.

[15] In April 2023, the wife brought a motion requesting an order that the husband comply with the demand for financial information (the 2023 motion).

[16] After examinations for discovery of the husband were completed in November 2023, the wife was directed by a case conference judge (the same judge as the motion judge) to serve Marrbeck and MBK with a separate notice of motion for corporate disclosure, such that both motions could be heard at the same time.

[17] On January 17, 2024, the wife filed and served a notice of motion on Marrbeck and MBK requesting specific corporate financial disclosure (the 2024 motion).

[18] Kenneth Dalton (Dalton), corporate counsel for Marrbeck and MBK, swore an affidavit on the corporations' behalf outlining the corporate structure of Marrbeck and MBK. Dalton deposed that he is the director, president, secretary and treasurer of MBK and the sole shareholder of 6404902 Manitoba Ltd. (640), which is a registered owner of Marrbeck. He confirmed that the husband is a minority shareholder of MBK and an officer and director of Marrbeck as its secretary and treasurer. The other director and officer of Marrbeck is Terry Hanstead (Hanstead). Hanstead is not related to the husband.

[19] Further, Dalton confirmed that MBK wholly owns Marrbeck and that 640 is a registered owner of fifty per cent of MBK.

[20] Dalton deposed that the privacy interests of the three corporations and their shareholders are of paramount importance as an integral business

concern completely independent of the family proceeding. The three corporations have substantial concerns that the production of the documentation requested by the wife and the information contained therein holds the potential to give rise to considerable detrimental impacts on their business operations.

[21] Dalton confirmed that the husband made a request to the other shareholders of MBK on the issue of producing the confidential financial and corporate documentation requested by the wife but this request was denied. The position taken by the controlling shareholders of MBK “is that no confidential corporate or financial documentation concerning either [MBK] or [Marrbeck] will be released or provided to the [wife] or to anyone else, ever.”

[22] Dalton was not cross-examined on his affidavit.

[23] As no corporate financial information was provided to the wife, she proceeded with the two motions for specific financial disclosure. On April 12, 2024, the motion judge heard the motions.

[24] Counsel for the wife filed a motion brief in support of the request for corporate financial disclosure. In the written motion brief and during oral submissions before the motion judge, counsel for the wife relied on sections 18(1)-(2) and 21(1)(e)-(f) of the *Guidelines*, as well as rule 30.02(4) of the *KB Rules*.

[25] The motion judge pronounced his oral reasons for judgment on May 29, 2024 and signed the order on July 15, 2024. The motion judge dismissed the wife’s 2024 motion for disclosure and ordered costs against her

in favour of the husband and the corporations. The order is silent with respect to the wife's 2023 motion.

### Motion Judge's Reasons

[26] In his reasons, the motion judge noted that the financial disclosure requested by the wife included Marrbeck and MBK's corporate financial statements and income tax returns for the years 2016 to 2023, copies of the corporate minute books for the same period, and statements showing a breakdown of all salaries, wages and management fees for both MBK and Marrbeck, as well as a complete shareholder's registry for both corporations.

[27] The motion judge stated that the motion was brought under section 21(1)(f) of the *Guidelines*. He made no reference to sections 18(1) or 18(2) of the *Guidelines* in his reasons.

[28] The motion judge found that the husband is an employee of Marrbeck and "is responsible for day-to-day operations, including but not limited to hiring decisions, pricing, project selection and budgeting." He made no reference to the husband being a director, secretary and treasurer, and officer of Marrbeck.

[29] The motion judge also found that the husband is a minority shareholder of MBK. Further, he found that there was "no evidence to suggest that the [husband] is related to or has influence of any of the other controlling minds in any of the other corporations or that he has anything other than a business relationship with these individuals."



[30] The motion judge accepted the unchallenged evidence of Dalton that the husband does not control dividends issued by MBK and, further, that the husband is not a majority shareholder of MBK or a shareholder of 640. He accepted “that the controlling minds of MBK and [640] feel that their operations may be compromised if the motion is successful and that they wish for their privacy to be respected.”

[31] The motion judge primarily focused on the subject of corporate control and the specific wording of section 21(1)(f) of the *Guidelines*. He stated that “[m]uch of the dispute centre[d] around what constitute[d] control of Marrbeck and MBK for the purpose of interpreting the [*Guidelines*].”

[32] The motion judge considered the decision of this Court in *Bates v Welcher*, 2001 MBCA 33 at para 63 [*Bates*] and relied on the following:

However, financial disclosure is by its nature an invasive process. There must be a balancing of the interests of all parties and that balancing is accomplished by requiring the applicant to satisfy the court that the information requested is relevant and reasonably necessary to the facts as opposed to a fishing expedition.

[33] The motion judge rejected all of the wife’s four arguments on the following basis:

- i) The husband being a minority shareholder is not indicative of control.
- ii) The husband is an integral operational mind of Marrbeck but that is not evidence of control of the corporation.

- iii) While MBK has not issued dividends for 2022 and 2023, no dividends were issued in either 2017 or 2018 and, therefore, the husband has not influenced the failure to issue dividends in 2022 or 2023.
- iv) An adverse inference was suggested by the wife that it is easy for the husband to produce the corporate disclosure and failing to do so is deceptive. The motion judge did not accept that, if no order for disclosure is made, it will encourage parties to hide behind a corporate veil in child support cases. Relying on *Bates*, he stated that “[c]ontrol, legal or actual, must be established before the privacy interests of third parties may be affected.”

[34] In the end, the motion judge declared that there was no evidence that the husband controlled Marrbeck or MBK.

[35] The motion judge then considered the wife’s submissions regarding rule 30.02(4) of the *KB Rules*. He stated as follows: “This Rule requires a finding of control which is similar to Section 21(1)(f) of the [*Guidelines*]. I have already found that control does not exist and therefore a claim based on that Rule must fail.”

[36] The motion judge then stated: “To go a step further, the [wife] must prove relevance which cannot exist without evidence of control.”

[37] In conclusion, the motion judge said that “the [wife] ha[d] the burden to prove on a balance of probabilities that the [husband] controls Marrbeck and/or MBK in order to make this information sought relevant. The

[wife] ha[d] failed to discharge that burden and the motion [was] therefore dismissed.”

### Issues and Standard of Review

[38] We would frame the legal issues before this Court as whether the motion judge:

- i) erred in law when he concluded that corporate financial disclosure, when determining income for the purpose of calculating child support, only becomes relevant when the payor parent’s control of the corporation is established;
- ii) erred in law by failing to consider and apply the principles set out in sections 18 and 21(1)(e) of the *Guidelines*;
- iii) erred in fact when he found that the husband is a director and officer of MBK rather than Marrbeck; and
- iv) erred in fact and law when he determined that the husband did not have de facto control without any evidence available to determine who, if not the husband, controls the corporations.

[39] The parties agree on the standard of review. The standard of review on a question of law is correctness. Findings of fact can only be reversed if it can be established that the motion judge made a palpable and overriding error. Questions of mixed fact and law are also to be examined on the standard of palpable and overriding error unless a question of law can be extricated (see *Housen v Nikolaisen*, 2002 SCC 33 at paras 6-37). Discretionary decisions are not subject to appellate intervention in the absence of a misdirection or a

decision that is so wrong as to amount to an injustice (see *Elsom v Elsom*, [1989] 1 SCR 1367 at 1375, 1989 CanLII 100 (SCC)).

[40] The first two issues in this appeal are questions of law subject to the standard of correctness. On such a standard, no deference is owed to the motion judge.

[41] The next issues advanced by the wife involve a question of fact or findings of mixed fact and law. An error of fact or mixed fact and law can only be reversed if the judge made a palpable and overriding error.

[42] Palpable and overriding error is a difficult standard to meet. In one case, the Court explained that, “[w]hen arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall” (*Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46, cited with approval in *Benhaim v St-Germain*, 2016 SCC 48 at para 38).

### Analysis

[43] This appeal deals with the disclosure of corporate financial information to be provided by the payor husband to the wife on the eve of trial. The sole issue before the Court of King’s Bench trial judge is the calculation, in accordance with section 15(1) of the *Guidelines*, of the husband’s annual income from 2016 to 2024 for the purpose of determining child support on a final basis.

[44] Our analysis is guided by this backdrop and we are mindful that the parties are at the final stage of their proceedings. The wife has done

everything she could to obtain disclosure from the husband since the parties signed their separation agreement in 2015. She provided her income tax returns on an annual basis as required. Her requests for disclosure from the husband were left unanswered.

[45] The wife then retained counsel to write to the husband but he once again ignored her requests for disclosure in breach of his obligation under the separation agreement. It was only when she retained counsel a second time and filed and served a petition, financial statement and demand for financial disclosure that the husband provided his personal income tax returns for 2016 to 2021. He was over six years late in providing his basic personal disclosure.

[46] Once the husband's personal income tax returns were provided, the wife became aware of the husband earning dividends from MBK. As mentioned earlier: (a) \$117,000 in 2016, (b) \$126,787.50 in 2019, (c) \$169,050 in 2020, and (d) \$202,860 in 2021. These amounts were all collected by the husband in addition to his average annual employment income of \$150,000. At no time prior to 2021 did the husband disclose his dividend earnings to the wife although it is obvious that he had the information available to him.

[47] It is useful to remind ourselves of the academic comments of Julien Payne made in Julien D Payne & Marilyn A Payne, *Child Support Guidelines in Canada, 2022* (Toronto: Irwin Law, 2022) at 247 on a fundamental and basic principle:

As child support is the right of the child, who is typically not a party in child support proceedings, it is incumbent upon the court to err on the side of more extensive disclosure if this is necessary

to ensure that the child receives the full protection of the law and the most fulsome benefit of support from their parents.

[48] More financial disclosure, not less, is necessary to ensure that children receive the appropriate amount of child support from their parents. We will now turn to our analysis of each issue under appeal.

*The Motion Judge Erred in Law When He Concluded That Corporate Financial Disclosure, When Determining Income for the Purpose of Calculating Child Support, Only Becomes Relevant When the Payor Parent's Control of the Corporation Is Established*

[49] In our view, the motion judge erred in law when he found that corporate financial disclosure is relevant only when it has been established that the payor parent has control of the corporation. No deference is owed to the motion judge on this legal finding.

[50] Evidence, such as corporate financial disclosure, is clearly relevant to the determination of the husband's income in this case. The threshold for establishing relevance is not whether the payor parent controls a corporation; rather, the facts at issue are the husband's income for the purpose of paying child support on a final basis. The legal test for relevance on a disclosure motion, such as the one before this Court, was recently set out by Forgeron J in *Anthony v Anthony*, 2024 NSSC 100 at paras 17-18:

In *R v Grant*, 2015 SCC 9, the Supreme Court of Canada held that "[e]vidence is logically relevant where it has any tendency to prove or disprove a fact in issue": para 18. In SN Lederman, MK Fuerst and HC Stewart, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 6th ed (Toronto: LexisNexis Canada, 2022), the authors note that "[a] fact will be relevant not only where it relates directly to the fact in issue, but also where it proves

or renders probable the past, present or future existence (or non-existence) of any fact in issue”: para §2.57.

In *Laushway v Messervey*, 2014 NSCA 7, Saunders JA observed that deciding whether something is relevant “involves an inquiry into the connection or link between people, events or things”; it does not occur in a “pristine, sealed vacuum”: para 61.

[51] It is well-established that the *Guidelines* “set out a minimum standard for financial disclosure with residual discretion in the court to order further and better disclosure of relevant information” (*Bates* at para 47). Further, Steel JA noted that, “[w]here a gap exists, further recourse may be had to the Q.B. Rules. . . . [A] broad definition of relevance should be adopted but relevance, not speculation, must still be proven before disclosure can be ordered” (*Bates* at para 47). It should also be noted that Steel JA was commenting on the specific facts before her, including that a family business was involved and that the wife had not exercised procedures available to her. That is not the case here.

[52] More recently, the Supreme Court of Canada offered broad comments on the need for frank disclosure in cases involving child support. In *Colucci v Colucci*, 2021 SCC 24 at para 49, it stated as follows:

The pivotal role of disclosure comes as no surprise since the premise underlying the *Guidelines* “is that the support obligation itself should fluctuate with the payor parent’s income” (*D.B.S.*, at para. 45). The structure of the *Guidelines* thus creates an informational asymmetry between the parties. In a system that ties support to payor income, it is the payor who knows and controls the information needed to calculate the appropriate amount of support. The recipient does not have access to this information, except to the extent that the payor chooses or is made to share it. It would thus be illogical, unfair and contrary to the child’s best interests to make the recipient solely responsible for policing the payor’s ongoing compliance with their support obligation.

[53] In the present case, the husband, through his conduct and in breach of the separation agreement, has required the wife to go through legal hoops in order to get the most basic income information. Adopting a broad definition of relevance, it is clear that the corporate information from MBK is relevant because the husband is a minority shareholder and pre-tax income of the corporation may be directly relevant to the determination of his available income for child support purposes. MBK is the sole owner of Marrbeck and the husband is one of two directors of Marrbeck. He is its secretary and treasurer. This close link between MBK and Marrbeck, and the husband's important role in its day-to-day operations, satisfies us that corporate disclosure from Marrbeck is also relevant here.

[54] We are also persuaded that this is not speculation on the wife's part. Nor is this a fishing expedition. It is entirely appropriate for the wife to request corporate financial disclosure to assist the trial judge in their determination of the husband's annual income for the purpose of calculating child support. At this stage, the corporate documents of both MBK and Marrbeck are relevant and should be disclosed to the wife.

*The Motion Judge Erred in Law by Failing to Consider and Apply the Principles Set Out in Sections 18 and 21(1)(e) of the Guidelines*

[55] The motion judge erred in law when he failed to consider section 18(1) of the *Guidelines*. The relevant sections of the *Guidelines* were argued before him and are attached as Appendix A to these reasons.

[56] The question of whether, as a partner in a partnership, the husband is required to disclose further information as set out in section 21(1)(e) of the



*Guidelines* may have to be fleshed out at the trial as we are not satisfied that this issue can be resolved on the available record.

[57] As previously mentioned, the motion judge spent considerable time focusing on the subject of corporate control as set out in section 21(1)(f) of the *Guidelines*. That provision makes it clear that, where the payor parent controls a corporation, they must provide “the financial statements of the corporation and its subsidiaries” and “a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm’s length”.

[58] That said, the motion judge should not have stopped his analysis at section 21(1)(f). In our view, he should have also considered section 18 of the *Guidelines*. The purpose behind sections 18 and 21 of the *Guidelines* is to allow the Court to lift the corporate veil to ensure that money received as annual income by the payor parent fairly reflects all of the money available for the payment of child support. For the purpose of determining a payor parent’s income in child support cases, attention should also be brought to the legal right of a shareholder of a corporation to receive certain corporate financial information.

The Shareholder’s Right to Financial Information Under *The Corporations Act*

[59] In the case of *MMV v GNV*, 2006 MBQB 149, aff’d *Verwey v Verwey*, 2007 MBCA 102 [*Verwey CA*], this Court commented on the ability of a minority shareholder to obtain basic corporate disclosure in cases

involving the determination of child support. In that case, the Court was faced with a family corporation in which the husband was a minority shareholder.

[60] In rejecting the husband's appeal of an order requiring corporate financial disclosure, Monnin JA opined as follows (*Verwey CA* at paras 12-13):

The fact situation facing the judge was not one that was similar to the fact situations in either *Welcher* or *Bates*. In the present case there is a deliberate non-disclosure by the husband of *even basic information* without even considering the financial information from the two corporations in which he is a shareholder. *Furthermore, as a shareholder he is entitled to receive annual financial statements from the companies which he could have provided, but for reasons of his own has declined to do so.*

The financial information which the husband provided was inadequate and failed to meet the prescribed minimums required by the legislation.

[emphasis added]

[61] *Verwey CA* underscores the rights of a minority shareholder to obtain corporate financial disclosure and, as a result, that corporate information ought to be disclosed in cases involving child support.

[62] A review of sections 149 and 153 of *The Corporations Act*, CCSM c C225 sheds light on what corporate financial disclosure a shareholder (minority or majority) is entitled to receive from the corporation on an annual basis. Those sections are attached as Appendix B to these reasons.

[63] These sections make clear the husband's right to receive from MBK, and on an annual basis, copies of the corporate financial statements, auditor reports and any unanimous shareholder agreements. This right to financial

information has been called “a core obligation of a corporation to its shareholders” (*Packall Packaging Inc v Ciszewski*, 2016 ONCA 6 at para 28). Should MBK deny the husband’s request, it could be guilty of an offence and liable to a fine on summary conviction.

[64] As noted earlier, having regard to the close ties between MBK and Marrbeck and the husband’s important role in Marrbeck, it is appropriate that the husband be required to provide the wife with the same corporate disclosure referenced in the preceding paragraph save for the shareholder agreements.

#### The Discovery Provisions of the *KB Rules*

[65] A word about the interplay between the discovery provisions of rule 30 of the *KB Rules* and the *Guidelines* is necessary. The motion judge erred when he stated that rule 30 did not apply because control had not been established.

[66] In *Bates* at para 43, Steel JA recognized that the *Guidelines* had a gap in them. In referring to sections 18(3) and 18(4) (now sections 18(1) and 18(2)), she opined:

The situation in s. 18(3) applies in circumstances where a parent may not control the corporation, but may merely be one of several shareholders, directors or officers. Consequently, how is a court to fulfill its obligation under s. 18(3) if it does not have disclosure of the necessary corporate records? The only reasonable interpretation is that these provisions operate in conjunction with the provisions in the Q.B. Rules relating to financial disclosure from a non-party. The court must be able to order disclosure of financial statements in order to make this determination. (See *Fielding*, para. 6.)

[67] The *KB Rules* complement and enhance the disclosure requirements found in the *Guidelines*. The *Guidelines* are the starting point. When examining whether the “Q.B. Rules” applied to the facts before her, Steel JA commented as follows in *Bates* at para 57:

Third, the petitioner argues that Q.B. Rule 30.02(4) applies in this situation and that the respondent indirectly controls the corporation as evidenced by the familial relationship. Without deciding the meaning of “control” as used in that section, *there is no evidence whatsoever that the familial relationship between the father and son is such that the respondent in this case controls the corporation either directly or indirectly. We do agree with the petitioner that the Q.B. Rules with respect to financial disclosure are available to supplement the Manitoba guidelines so long as they do not conflict with those guidelines.*

[emphasis added]

[68] Turning now to the wording of rule 30.02(1) of the *KB Rules*, it provides:

**Disclosure**

**30.02(1)** Every relevant document in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in this Rule, whether or not privilege is claimed in respect of the document.

**Divulgence**

**30.02(1)** Un document pertinent qui se trouve ou s’est trouvé en la possession d’une partie, sous son contrôle ou sous sa garde est divulgué conformément à la présente règle, que l’on revendique ou non un privilège à l’égard de ce document.

[69] In the appeal before us, it is clear that the husband has power over MBK’s annual financial statements, auditor reports and unanimous shareholder agreements because, as mentioned previously, he is legally

entitled to receive copies of these documents in accordance with *The Corporations Act* (see also *Hedley v Konecny*, 2024 MBKB 174 at para 5; *WGJ v EMM*, 2006 MBQB 155 at paras 10-11, 55). Consequently, the husband must disclose those documents to the wife in accordance with rule 30.02(1).

[70] It should be noted that, while MBK and Marrbeck are not parties in the Court below or in this Court, they were required to participate in the proceedings before the motion judge pursuant to the directions given to the wife at the case conference. The corporations were served with a motion requesting specific financial disclosure and filed material in opposition in response. In this Court, corporate counsel filed a factum and confirmed during oral submissions that MBK and Marrbeck would comply with whatever order this Court might pronounce regarding corporate financial disclosure. Accordingly, corporate counsel is expected to cooperate with the husband so that the corporate financial disclosure ordered herein is provided on a timely basis, without cost to the husband.

[71] We recognize the legitimate privacy concerns expressed by corporate counsel. However, these privacy concerns should not bar the wife from receiving the corporate information before trial. The deemed undertaking outlined in rule 30.1(3) of the *KB Rules* addresses the privacy concerns raised by corporate counsel while documents are exchanged between counsel and not filed in court. We will leave it to counsel whether they wish to enter into a confidentiality agreement.

[72] Rule 4.10(1) of the *KB Rules* deals with access by the public to the contents of a court file in a family proceeding. Along with the parties and

their lawyers, it provides for restricted access to the file to a select group of people. A person who is not listed in the select group must apply to the Court of King's Bench for an order authorizing them access to the court file. The privacy concerns can be further addressed by a sealing order should the documents and financial expert reports be filed with the Court. It will be up to counsel for the husband to apply for such an order should the matter proceed to trial.

[73] It is understood that counsel for the husband and the wife shall each be entitled to retain a financial expert to review the corporate financial disclosure and prepare a report outlining their opinion as to the determination of the husband's annual income from 2016 to 2024 for the purpose of calculating child support.

[74] In sum, the corporate financial disclosure from MBK and Marrbeck requested by the wife is relevant to the issue of the determination of the husband's income and it would be unfair for her to present her case for final child support to the trial judge without that information.

### *The Third and Fourth Issues on Appeal*

[75] Turning now to the third issue on appeal, the motion judge clearly misspoke when he said that the husband is a director and officer of MBK rather than Marrbeck. Nothing material turns on this misstatement of the facts.

[76] Finally, there will be no need to analyse the fourth issue on appeal in light of our previous findings.

Conclusion

[77] The appeal was allowed and the order was set aside in its entirety.

[78] Copies of the following financial disclosure shall be provided by the husband to the wife within fourteen days of the signing of this judgment:

- i) For MBK, for the years 2016 to 2024:
  - a) the financial statements of the corporation and its subsidiaries;
  - b) the auditor reports;
  - c) copies of any unanimous shareholder agreements; and
  - d) statements showing the breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length.
- i) For Marrbeck, for the years 2016 to 2024:
  - a) the financial statements of the corporation and its subsidiaries;
  - b) the auditor reports; and
  - c) statements showing the breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the

corporation, and every related corporation, does not deal at arm's length.

[79] Costs in the Court below and this Court were ordered in accordance with the tariff in favour of the wife.

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Rivoalen CJM

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leMaistre JA

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Turner JA



## APPENDIX A

Pertinent provisions under the *Manitoba Child Support Guidelines Regulation*, Man Reg 52/2023:

**Shareholder, director or officer**

**18(1)** Where a parent is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the parent's annual income for taxation purposes does not fairly reflect all the money available to the parent for the payment of child support, the court may determine the parent's annual income to include:

- (a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or
- (b) an amount commensurate with the services that the parent provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

**18(2)** In determining the pre-tax income of a corporation for the purpose of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other

**Actionnaires, administrateurs ou dirigeants**

**18(1)** Si le parent qui est concerné est actionnaire, administrateur ou dirigeant d'une personne morale, le tribunal peut, s'il est d'avis que son revenu annuel à des fins fiscales ne correspond pas fidèlement aux sommes disponibles pour payer une pension alimentaire pour enfants, inclure dans le revenu annuel:

- a) soit tout ou partie du montant de profit avant impôt de la personne morale et de toutes les autres personnes morales avec lesquelles elle est liée, pour la dernière année d'imposition;
- b) soit un montant correspondant à la valeur des services qu'il fournit à la personne morale, jusqu'à concurrence du montant de profit avant impôt de celle-ci.

**18(2)** Aux fins de détermination du profit avant impôt d'une personne morale pour l'application du paragraphe (1), les montants que la personne morale paie, au

payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income unless the parent establishes that the payments were reasonable in the circumstances.

titre notamment des salaires, rémunérations, frais de gestion ou avantages, aux personnes avec lesquelles elle a un lien de dépendance, ou au nom de celles-ci, sont ajoutés à son profit avant impôt, à moins que le parent concerné n'établisse qu'ils étaient raisonnables dans les circonstances.

### **Imputing income**

**19(1)** The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child or by the reasonable educational or health needs of the parent;
- (b) the parent is exempt from paying federal or provincial income tax;
- (c) the parent lives in a country that has effective rates of income tax that are significantly lower than those in Manitoba;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these guidelines;

### **Attribution de revenu**

**19(1)** Le tribunal peut attribuer au parent concerné le montant de revenu qu'il juge indiqué, notamment dans les cas suivants:

- a) le parent en question a choisi de ne pas travailler ou d'être sous-employé, sauf s'il a fait un tel choix lorsque l'exigent les besoins d'un enfant ou des circonstances raisonnables liées à sa santé ou à la poursuite d'études;
- b) il est exempté de l'impôt fédéral ou provincial;
- c) il vit dans un pays où les taux d'imposition effectifs sont considérablement inférieurs à ceux en vigueur au Manitoba
- d) des revenus semblent avoir été détournés, ce qui aurait pour effet d'influer sur le montant de l'ordonnance alimentaire au profit d'un enfant à déterminer en

- |  |  |
|--|--|
| (e) the parent's property is not reasonably utilized to generate income;   | application des présentes lignes directrices;  |
| (f) the parent has failed to provide income information when under a legal obligation to do so;  | e) les biens du parent en question ne sont pas raisonnablement utilisés pour gagner un revenu;   |
| (g) the parent unreasonably deducts expenses from income;  | f) il n'a pas fourni les renseignements sur le revenu qu'il est légalement tenu de fournir;  |
| (h) the parent derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; | g) il déduit de façon déraisonnable des dépenses de son revenu;  |
| (i) the parent is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.   | h) il tire une portion considérable de son revenu de dividendes, de gains en capital ou d'autres sources qui sont imposés à un taux moindre que le revenu d'emploi ou d'entreprise ou qui sont exonérés d'impôt; |
|  | i) il reçoit ou recevra un revenu ou d'autres avantages à titre de bénéficiaire d'une fiducie.   |

**19(2)** For the purpose of clause (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the *Income Tax Act* (Canada).

**19(2)** Pour l'application de l'alinéa (1)g), une déduction n'est pas nécessairement considérée comme raisonnable du seul fait qu'elle est permise en vertu de la *Loi de l'impôt sur le revenu* (Canada).

**Non-resident**

**20(1)** Subject to subsection (2), if a parent is a non-resident of Canada, the parent's annual

**Non-résident**

**20(1)** Sous réserve du paragraphe (2), le revenu annuel du parent concerné qui

income is determined as if the parent were a resident of Canada. ne réside pas au Canada est déterminé comme s'il y résidait.

**20(2)** If a parent who is a non-resident of Canada resides in a country that has effective rates of income tax significantly higher than those in Manitoba, the parent's annual income is the amount the court considers appropriate taking those rates into consideration. **20(2)** Le revenu annuel du parent concerné qui ne réside pas au Canada mais dans un pays où les taux d'imposition effectifs sont considérablement plus élevés qu'au Manitoba correspond au montant que le tribunal juge indiqué compte tenu des taux en question.

## FINANCIAL INFORMATION

## RENSEIGNEMENTS FINANCIERS

### **Obligation to provide financial information**

**21(1)** Subject to subsection (2), a parent who is a party to an application for a child support order or a variation order and whose income information is necessary to determine an amount of child support must file with the court a sworn Financial Statement in the form required by the court and the following information at the same time as the parent files their application, answer or reply, as the case may be:

- (a) a copy of every personal income tax return filed by the parent for each of the three most recent taxation years;
- (b) a copy of every notice of assessment and reassessment issued to the parent for each of

### **Obligation de fournir des renseignements financiers**

**21(1)** Sous réserve du paragraphe (2), le parent qui est partie à une demande d'ordonnance alimentaire ou modificative au profit d'un enfant et dont les renseignements sur le revenu sont nécessaires pour en déterminer le montant dépose auprès du tribunal, en même temps que sa demande, sa défense ou sa réponse, une déclaration financière sous serment en la forme que prévoit la Cour du Banc du Roi, ainsi que les renseignements suivants:

- a) une copie de ses déclarations de revenus personnelles, pour les trois dernières années d'imposition;

the three most recent taxation years;

(c) where the parent is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the parent's employer setting out that information, including the parent's rate of annual salary or remuneration;

(d) where the parent is self-employed, for the three most recent taxation years

(i) the financial statements of the parent's business or professional practice, other than a partnership, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the parent does not deal at arm's length;

(e) where the parent is a partner in a partnership, confirmation of the parent's income and draw from, and capital in, the partnership for its three most recent taxation years;

b) une copie de ses avis de cotisation et de nouvelle cotisation, pour les trois dernières années d'imposition;

c) s'il est un employé, le relevé de paie le plus récent faisant état des gains cumulatifs pour l'année en cours, y compris les paies de temps supplémentaire, ou si un tel relevé n'est pas fourni par l'employeur, une lettre de celui-ci précisant ces renseignements et le salaire ou la rémunération annuel de l'employé;

d) s'il est un travailleur indépendant, pour les trois dernières années d'imposition:

(i) les états financiers de son entreprise ou de sa pratique professionnelle, sauf s'il s'agit d'une société en nom collectif,

(ii) un relevé de la répartition des montants payés, au titre notamment des salaires, rémunérations, frais de gestion ou avantages, à des particuliers ou personnes morales avec qui il a un lien de dépendance, ou au nom de ceux-ci;

e) s'il est membre d'une société en nom collectif, une

(f) where the parent controls a corporation, for its three most recent taxation years

(i) the financial statements of the corporation and its subsidiaries, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;

(g) where the parent is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements;

h) in addition to any income information that must be included under clauses (c) to (g), where the parent receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year or, if such a statement is not provided, a letter from the appropriate authority stating the required information.

attestation du revenu qu'il en a tiré, des prélèvements qu'il en a faits et des fonds qu'il y a investis, pour les trois dernières années d'imposition de la société en nom collectif;

f) s'il contrôle une personne morale, pour les trois dernières années d'imposition de celle-ci:

(i) les états financiers de celle-ci et de ses filiales,

(ii) un relevé de la répartition des montants payés, au titre notamment des salaires, rémunérations, frais de gestion ou avantages, à des particuliers ou personnes morales avec qui la personne morale ou toute personne morale liée a un lien de dépendance, ou au nom de ceux-ci;

g) s'il est bénéficiaire d'une fiducie, une copie de l'acte constitutif de celle-ci et de ses trois derniers états financiers;

h) en plus des renseignements sur le revenu qu'il fournit en vertu des alinéas d) à h), s'il a reçu un revenu au titre de l'assurance-emploi, de l'assistance sociale, d'une pension, d'indemnités

d'accident du travail, de prestations d'invalidité ou un revenu de toute autre source, le dernier relevé indiquant la somme totale versée durant l'année en cours à l'égard de la source applicable ou, si un tel relevé n'est pas fourni, une lettre de l'autorité en cause indiquant cette somme.

**21(2)** If a parent is unable to file information required under clauses (1)(a) to (h), the parent must file with the court an affidavit that explains why the parent is unable to file the information.

**21(2)** Le parent qui ne peut déposer auprès du tribunal les renseignements que prévoient les alinéas (1)a) à h) dépose auprès du tribunal un affidavit expliquant les raisons pour lesquelles il n'a pas pu les déposer.

**21(3)** A parent whose income information is necessary to determine an amount of child support must provide to the other parent, or their authorized representative or an order assignee, after receiving a written request from the other parent, or their authorized representative or the order assignee, the documents referred to in subsection (1) and the following:

**21(3)** Le parent dont les renseignements sur le revenu sont nécessaires pour la détermination du montant de l'ordonnance alimentaire au profit d'un enfant fournit les renseignements visés au paragraphe (1) ainsi que les renseignements qui suivent à l'autre parent, à son représentant autorisé ou au cessionnaire de la créance alimentaire, après réception d'une demande écrite en ce sens:

(a) where a child support order or variation order is in effect which includes an order for special expenses under subsection 7(1), any current information, in writing, about the status of any expenses included in the order pursuant to subsection 7(1);

a) si une ordonnance alimentaire ou modificative au profit d'un enfant est en vigueur et comporte une ordonnance couvrant les dépenses spéciales visées par le paragraphe 7(1), des

(b) where a child support order or variation order is in effect which was made by the court on a determination of undue hardship under section 10, any current information, in writing, about the circumstances relied on by the court in the determination of undue hardship.

renseignements à jour, par écrit, au sujet de l'état des dépenses qui sont prévues dans l'ordonnance rendue en vertu de ce paragraphe;

b) si une ordonnance alimentaire ou modificative au profit d'un enfant est en vigueur et a été rendue par le tribunal en vertu de l'article 10, des renseignements à jour, par écrit, au sujet des circonstances sur lesquelles s'est fondé le tribunal pour établir l'existence de difficultés excessives.

**21(4)** The financial information required under subsection (3) must be provided within

**21(4)** Les renseignements financiers que vise le paragraphe (3) sont fournis:

(a) 30 days after receipt of the request if the parent resides in Canada; and

a) dans les 30 jours suivant la réception de la demande si le parent concerné réside au Canada;

(b) 60 days after receipt of the request if the parent resides outside Canada.

b) dans les 60 jours suivant la réception de la demande si le parent en question réside à l'extérieur du Canada

**21(5)** A request made under subsection (3) is deemed to have been received on the day it is received or 10 days after it is sent, whichever is earlier.

**21(5)** La demande de renseignements financiers est réputée avoir été reçue le jour où elle est effectivement reçue ou 10 jours après son envoi, selon l'événement qui se produit le premier.

**21(6)** A parent may request financial information from the other parent pursuant to

**21(6)** Il est permis à un parent de demander des renseignements financiers de



subsection (3) not more than once a year after a child support order or variation order has been made unless an application for a child support order or a variation order has been filed with the court and is pending.

l'autre parent en vertu du paragraphe (3) au plus une fois par année après qu'une ordonnance alimentaire ou modificative au profit d'un enfant a été rendue, à moins qu'une demande d'ordonnance alimentaire ou modificative au profit d'un enfant n'ait été déposée auprès du tribunal et ne soit en cours d'instruction.

**21(7)** A parent is not obliged to provide any documents the parent has previously provided in response to a request by the other parent under this section unless a court orders otherwise.

**21(7)** Sauf ordonnance contraire d'un tribunal, celui des parents qui a déjà fourni des documents en réponse à une demande qu'a faite l'autre parent sous le régime du présent article n'est pas tenu de les fournir de nouveau.

**21(8)** Where the court is of the opinion that the financial information filed by the parents is insufficient, the court may order a parent to file and serve the income information required under subsection (3) and any other financial information that the court deems relevant.

**21(8)** S'il est d'avis que les renseignements financiers fournis par les parents sont insuffisants, le tribunal peut ordonner à l'un ou l'autre des parents de déposer et de signifier les renseignements sur le revenu que prévoit le paragraphe (3) ainsi que les autres renseignements financiers qu'il juge utiles.

**21(9)** Nothing in these guidelines shall be construed as limiting the obligation of a parent whose financial information is necessary to determine the amount of the order to provide all relevant current financial information to the other parent and the court at the time of the hearing of the application.

**21(9)** Les présentes lignes directrices n'ont pas pour effet de limiter l'obligation pour le parent dont les renseignements financiers sont nécessaires à la détermination du montant de l'ordonnance de fournir tous les renseignements financiers pertinents à jour à l'autre parent

et au tribunal au moment de  
l'audition de la demande.

## APPENDIX B

Sections 149 and 153 of *The Corporations Act*, CCSM c C225:

### Annual financial statements

**149(1)** The directors of a corporation shall place before the shareholders at every annual meeting

(a) comparative financial statements as prescribed relating separately to

(i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and

(ii) the immediately preceding financial year;

(b) the report of the auditor, if any; and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

### États financiers annuels

**149(1)** Les administrateurs doivent, à l'assemblée annuelle, présenter aux actionnaires:

a) les états financiers comparatifs prescrits couvrant séparément:

(i) la période se terminant six mois au plus avant l'assemblée et ayant commencé à la date soit de création de la corporation, soit, si elle a déjà fonctionné durant un exercice financier complet, de la fin dudit exercice,

(ii) l'exercice financier précédent;

b) le rapport du vérificateur, s'il a été établi;

c) tout renseignement sur la situation financière de la corporation et le résultat de ses activités qu'exigent les statuts, les règlements administratifs ou toute convention unanime des actionnaires.

**Exception**

**149(2)** Notwithstanding clause (1)(a), the financial statements referred to in subclause (1)(a)(ii) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting, but a corporation which has made a distribution to the public shall not omit those statements without the consent of the commission.

**Exception**

**149(2)** Par dérogation à l'alinéa (1)a), il n'est pas nécessaire de présenter les états financiers visés au sous-alinéa (1)a)(ii) si le motif en est donné dans les états financiers, ou dans une note y annexée, à présenter aux actionnaires à l'assemblée annuelle. Toutefois, la corporation qui a fait un placement auprès du public doit présenter ces états à moins que la Commission ne l'autorise à ne pas les présenter.

**Interim financial statement**

**149(3)** A corporation which has made a distribution to the public shall send to each shareholder a comparative interim financial statement as prescribed.

**État financier périodique**

**149(3)** La corporation qui a fait un placement auprès du public doit envoyer à chaque actionnaire un état financier périodique comparatif prescrit.

**Copies to shareholders**

**153(1)** A corporation which has made a distribution to the public shall not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under clause 136(1)(b) in lieu of the annual meeting, send a copy of the documents referred to in subsection 149(1) to each shareholder, except to a shareholder who has informed the corporation in writing that he does not want a copy of those documents.

**Exemplaires aux actionnaires**

**153(1)** La corporation qui a fait un placement auprès du public doit, 21 jours au moins avant chaque assemblée annuelle ou avant la signature de la résolution qui en tient lieu en vertu de l'alinéa 136(1)b), envoyer un exemplaire des documents visés au paragraphe 149(1) à chaque actionnaire, sauf à ceux qui l'ont informée par écrit de leur désir de ne pas les recevoir.

<b>Copies supplied on demand</b>	<b>Exemplaire fourni sur demande</b>
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<b>153(2)</b> A corporation that has not made a distribution to the public shall, upon demand being made therefor by a shareholder, furnish the shareholder with a copy of the documents referred to in subsection 149(1).	<b>153(2)</b> La corporation qui n'a pas fait de placement auprès du public doit, sur demande d'un actionnaire, lui fournir un exemplaire des documents visés au paragraphe 149(1).
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**Offence**

**153(3)** A corporation that, without reasonable cause, fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000.

**Infraction**

**153(3)** La corporation qui, sans motif légitime, enfreint le paragraphe (1) commet une infraction et se rend passible, sur déclaration sommaire de culpabilité, d'une amende d'au plus 5 000 \$.