

CANADA / JUDGMENT

A.G. v. R.J.G.

2025 BCSC 583

COURT

Supreme Court of British Columbia

DECIDED

31 March 2025

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2025 BCSC 583 A.G. v. R.J.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.G. v. R.J.G.,

2025 BCSC 583

Date: 20250331

Docket: E12239

Registry: Chilliwack

Between:

A.G.

Claimant

And

R.J.G.

Respondent

Before: The Honourable Justice Sukstorf

Reasons for Judgment

The Claimant, appearing on own behalf:

A.G.

The Respondent, appearing on own behalf:

R.J.G.

Amicus Curiae:

J. Kahan

Place and Date of Trial/Hearing:

Chilliwack, B.C.

August 6, 2024

Place and Date of Judgment:

Chilliwack, B.C.

March 31, 2025

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Background

- [1] This matter arises from an interprovincial application brought under the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29, [ISOA] and s. 17 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The applicant, R.J.G., resides in Saskatchewan and seeks to vary child and spousal support orders issued in British Columbia.
- [2] R.J.G.'s application requests:
- a) The retroactive termination of child support for T.G. (age 23) and M.G. (age 21);
 - b) A recalculation of child support for H.G. (age 18) and N.G. (age 13), the remaining dependent children, based on his reduced income;
 - c) A recalculation of special and extraordinary expenses;
 - d) A reduction of arrears currently totaling \$125,186.02; and
 - e) The cancellation of penalties and interest on arrears.
- [3] The respondent, A.G., opposes the application and seeks to uphold the existing orders while arguing for additional retroactive spousal support based on changes in R.J.G.'s finances.
- [4] This is a highly acrimonious family law case. The arguments and submissions the parties presented highlight a history of conflict.

Facts

- [5] The parties were married in 1996, separated in 2014, and divorced in 2019, following a long-term marriage. They have five children, but this application pertains only to the youngest four, as the eldest, R.G., is not subject to any court orders. The four other children are:
- a) T.G. (born 2001): Now 23 years old, employed as a teacher, and financially independent.
 - b) M.G. (born 2003): Now 21 years old, employed part-time and residing independently;
 - c) H.G. (born 2007): A 17-year-old high school student residing with A.G who just recently turned 18 years old; and

- d) N.G. (born 2011): A 13-year-old middle school student residing with A.G.
- [6] After their separation, the parties' oldest son, R.G., chose to live with R.J.G., while the four younger children primarily resided with A.G. Evidence presented indicates that the G. family has benefited from a Family Trust established by R.J.G.'s parents to support their children and grandchildren. Notably, the children's grandmother has made substantial contributions toward T.G. and M.G.'s education and living expenses since they left the family home. However, court records suggest that while R.J.G.'s mother has been extremely generous with her grandchildren, she has been unwilling to fund R.J.G.'s financial obligations or be drawn into the ongoing family conflict.
- [7] The children have experienced considerable success, with the three eldest progressing in their careers and education. Their educational and living expenses have been funded through a combination of the Family Trust, a shared Registered Education Savings Plan (RESP), and their own earnings from part-time work or apprenticeships. At present, only the two youngest children remain at home. I note that H.G. is now 18 years of age.
- [8] In an earlier decision related to these parties, *Greenwood v. Greenwood*, 2019 BCSC 382, the Court resolved matters arising from the breakdown in the marriage. The decision by Justice Sewell (the "Sewell Decision") addressed key issues related to child support, spousal support, and the division of family property, emphasizing the importance of financial disclosure, the imputation of income, and the financial responsibilities for the couple's four youngest children.
- [9] On the issues relevant to the matter before me, Justice Sewell imputed an income of \$75,000 to R.J.G., finding in part that he failed to properly disclose the assets and income available to him, and that his lifestyle was supported by members of his family and funds from a Family Trust: *Greenwood* at paras. 77-78. Based on this imputed income, the court confirmed child support of \$1,815 per month retroactively to June 1, 2015, and awarded \$45,975 in arrears: *Greenwood* at paras. 125 and 158. The court also ordered spousal support of \$316 per month, recognizing A.G.'s compensatory and need-based entitlement, given her role as the children's primary caregiver and home-school educator, which significantly limited her earning capacity: *Greenwood* at paras. 80-86, 125.
- [10] R.J.G. claims his financial circumstances have changed materially, requiring him to rely on his RRSP as his primary income source. He seeks a variation of support obligations to reflect his current earnings, which he reports as significantly lower than the imputed amount.
- [11] He also requests that the proportionate share of s. 7 expenses be adjusted retroactively. He states that A.G. has not contributed to the children's post secondary expenses, which have been primarily funded by his mother.

- [12] R.J.G.'s evidence, both at the initial trial and in an affidavit before me, indicates that he has struggled to earn an income in recent years. He explained that he left his higher-paying position at Quality Move Management Inc., where he worked as a mover, because the job required out-of-town travel, which he could not sustain while parenting R.G. Limited to local moving jobs, he reported that his income was effectively halved, and the physical demands of the work became increasingly challenging.
- [13] R.J.G. now reports an annual income of \$48,000, which he claims is derived solely from drawing \$4,000 per month from his RRSP. He argues that his skill set is limited to manual labour, and while he has worked intermittently on his brother's farm and assisted with his brother's pickleball court centre, he asserts that he is physically incapable of taking on more demanding work. He also submitted a medical note indicating that he is experiencing cognitive decline, which further limits his ability to work.
- [14] R.J.G. states that he receives some support from family members for his day-to-day expenses but does not possess any personal wealth apart from his RRSPs. He claimed at one point that his mother removed him from her will.
- [15] There is no evidence before the court that R.J.G. owns or holds any shares in the Family Trust, which was established by his mother, S.J.G, and her late husband. R.J.G. has simply been a benefactor of the trust's past distributions, which the evidence suggests were properly declared for income tax purposes. However, at this stage, other than the significant benefits the children have received from their paternal grandmother, there is no evidence that R.J.G. has received any substantial payments from the trust.

History of Proceedings

- [16] On May 25, 2015, the parties attended a Judicial Case Conference where Master Keighley issued a consent order for joint guardianship, stipulating that the children would have their primary residence with A.G., and R.J.G. would pay interim child support in the amount of \$1,551 per month for the four youngest children.
- [17] On March 2, 2017, the parties attended a Trial Management Conference in an attempt to settle the matter before trial. This was unsuccessful.
- [18] The original trial date, set for April 3, 2017, was adjourned because there was no judge available. A new trial date was set for July 24, 2017, and then reset again for five days, starting January 29, 2018. The trial had to be extended for additional days and finally ended on June 22, 2018. The Reasons for Judgment were pronounced on March 19, 2019, and the final order, dated July 16, 2019, was filed with the Chilliwack registry and stamped on July 23, 2019.
- [19] In the final order, Justice Sewell made a number of orders (collectively, the "Sewell Order"), with the following being relevant to this proceeding:

- An income of \$75,000 per year is imputed to R.J.G. for the purposes of determining child and spousal support in any year in which he reports less than that amount on his tax return.
 - No employment income is imputed to the claimant for the purposes of determining spousal support.
 - R.J.G. will pay child support and spousal support to the claimant at the high range set out in Spousal Support Advisory Guidelines ("SSAG") from June 1, 2015.
 - The amounts payable for child and spousal support shall be adjusted annually in accordance with the Federal Child Support Guidelines, SOR/97-175 [Guidelines] and the SSAG.
 - Spousal support will continue for an indefinite period.
 - R.J.G. will roll over \$21,075 from the Odlum Brown RRSP to A.G. to equalize the values held in each RRSP.
 - R.J.G. will pay A.G. the sum of \$45,975 for arrears of child and spousal support due on December 31, 2018.
- [20] The child support owing was determined to be \$1,815 per month and spousal support was determined to be \$316 per month.
- [21] From the list of debts owed to A.G., R.J.G. has only complied with the \$21,075 transfer from Odium Brown RRSP.
- [22] A.G. attests that the debts from the final order are outside of the enforcement jurisdiction of the BC Family Maintenance Agency ("BCFMA") and have not yet been paid. These debts include outstanding court costs awards of \$77,922.75, and \$27,000 for a total of \$104,922.75, which Justice Sewell ordered to be repaid to A.G. after R.J.G. took monies held in trust to pay legal fees.
- [23] A.G. attests that, at the time she executed her affidavit, she still she had not received any payment towards the outstanding amount owing of \$104,922.75. She states that she has not taken any additional steps to recover the sum as she cannot afford to do so.
- [24] On October 21, 2019, enforcement of the child and spousal support amounts owing was established under the BCFMA.
- [25] In July 2021, R.J.G. moved to Saskatchewan and the BCFMA file was transferred to the agency's client office in Victoria, BC, where they specialize in case files where one party resides outside of the Province. The BCFMA also registered the Order with the Saskatchewan Maintenance Enforcement Office ("SMEO") as the reciprocating jurisdiction responsible for collecting payments on behalf of A.G.
- [26] On September 3, 2021, the file became active with SMEO.

- [27] After A.G.'s file became active with BCFMA and SMEO, R.J.G. had not paid down his arrears for child and spousal support and there is no evidence before me that he tried to set up a reasonable repayment plan.
- [28] Consequently, with respect to the amount owing to A.G., on May 8, 2023, R.J.G. was served with a default hearing summons to appear at the Court of King's Bench on June 26, 2023.
- [29] At the default hearing on June 26, 2023, R.J.G. entered into a consent order agreeing to pay \$1,838 per month from July 2023 to April 2024 while he prepared an Interjurisdictional Support Order ("ISO") application to seek a variation in his spousal and child support. Since this time, he has been paying \$1,838 per month.
- [30] In June 2023, A.G. received a payment of \$12,716.61 from three federal attachments garnished from R.J.G. Of this amount, \$11,466.25 represented R.J.G.'s tax refunds for 2021 and 2022, which were \$5,560.51 and \$5,905.74, respectively.
- [31] R.J.G. filed his ISO Application on September 15, 2023.
- [32] R.J.G. attests that he has been making consistent payments towards the court-ordered ongoing child and spousal support payments (totalling \$1,838 per month) with the help of financial loans from family members and, at the time he attested to his Affidavit, he had not missed a payment for almost a year.
- [33] R.J.G.'s primary job from 2015 to 2019 was on his brother's farm in Saskatchewan.
- [34] On this application, both parties were self-represented, and the Court received minimal assistance regarding the applicable legal tests. J. Kahan appeared as amicus curiae to provide procedural context and summarize the background of R.J.G.'s request.

Legal Authority

- [35] R.J.G. brings his application under the ISOA and the Divorce Act.
- [36] However, the ISOA, which is provincial legislation, does not apply to vary support orders under the Divorce Act, which is federal: *Warren v. Warren*, 2018 BCSC 1285 at para. 19; *Walberg v. Walberg*, 2020 BCSC 1720 at paras. 14 and 23. Applications to vary orders made pursuant to the Divorce Act must follow the procedures set out in that legislation: *Walberg* at para. 23.
- [37] Therefore, it is first necessary to address which statute governed the Sewell Order, before then considering whether this Court has the authority to hear the application before it.
- [38] I find that the Sewell Order that R.J.G. seeks to vary was made under the Divorce Act. Although the Order does not explicitly state that the child support, extraordinary expenses, and spousal support provisions were granted pursuant to the Divorce Act, the Court relied on the relevant provisions of that statute in reaching its decision and determining the terms of the Order. Furthermore, where no statute is expressly designated, the reviewing Court should presume the Order was made under the Divorce Act, in accordance with the

principle of paramountcy: *Hodgson v. Hodgson*, 2014 BCSC 1372 at para. 18, citing *Yu v. Jordan*, 2012 BCCA 367.

[39] The next question is whether the Court has the authority under the Divorce Act to consider and grant the relief R.J.G. seeks.

[40] Under s. 5(1) of the Divorce Act, this Court has the jurisdiction to determine proceedings regarding variation of support orders if a former spouse is a habitual resident in BC:

5 (1) A court in a province has jurisdiction to hear and determine a variation proceeding if

- (a) either former spouse is habitually resident in the province at the commencement of the proceeding; or
- (b) both former spouses accept the jurisdiction of the court.

[41] Section 18.1(1) of the Divorce Act provides that, when former spouses reside in different provinces in Canada, either one may commence a proceeding to vary a support order:

18.1 (1) If the former spouses are resident in different provinces, either of them may, without notice to the other,

- (a) commence a proceeding to obtain, vary, rescind or suspend, retroactively or prospectively, a support order; or
- (b) request to have the amount of child support calculated or recalculated, if the provincial child support service in the province in which the other former spouse habitually resides provides such a service.

[42] Sections 18.1(1) - 18.3 of the Divorce Act set out procedures for proceedings to vary support orders, including retroactively, when the former spouses live in different provinces.

[43] A.G. resides in British Columbia.

[44] Upon reviewing R.J.G.'s ISOA, Form A.4, I note that his application has been properly made pursuant to the Divorce Act. Accordingly, I confirm that this Court has jurisdiction to hear R.J.G.'s application for variation under the Divorce Act.

[45] The statutory authority to vary child support retroactively is found in s. 17 of the Divorce Act, which provides in part as follows:

17(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

- (a) a support order or any provision of one, on application by either or both former spouses .

[46] Section 17(4) of the Divorce Act sets out the factors to consider on an application to vary a child support order:

(4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

[47] The Supreme Court of Canada ("SCC") has held that s. 17 gives the court "wide discretion" to grant retroactive relief in response to "the multiplicity of factual situations produced by human behaviour": *Colucci v. Colucci*, 2021 SCC 24 at para. 29.

[48] In making a variation order respecting child support, the Court must do so in accordance with the applicable guidelines: *Divorce Act*, s. 17(6.1). Regarding variation of child support, the Guidelines provide, in part, as follows:

Circumstances for variation

14 For the purposes of subsection 17(4) of the [Divorce Act], any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:

- (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;
- (b) in the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support;

[49] The SCC clarified the approach to retroactively decreasing child support and rescinding arrears in *Colucci*. In that decision, the Court established a framework under which the "child's interest in a fair standard of support commensurate with income" is the core interest to which all rules and principles must yield: *Colucci* at para. 46. It also emphasized the need to balance the following key considerations:

- a) The child's right to a fair standard of support, as recognized in s. 1 of the Guidelines;
- b) The need to maintain certainty and predictability in existing court orders; and
- c) The need for flexibility in response to fluctuating payor incomes (*Colucci*, at paras. 4, 46).

[50] Writing for the Court, Justice Martin emphasized that any framework for reducing child support must also account for the informational imbalance between the parties and the resulting need for full and frank disclosure of the payor's income: *Colucci* at para. 47.

Issues

[51] In assessing the application before the court, I considered the following questions:

- a) Are T.G. and M.G. still "children of the marriage"?

- b) Does the Court have jurisdiction to retroactively vary child support for T.G. and/or M.G.?
- c) Has there been a material change in R.J.G.'s financial circumstances?
- d) What is the presumptive date for retroactive variation?
- e) Should child support be varied?
- f) Should s. 7 expenses be adjusted?
- g) Should spousal support be varied?
- h) Should arrears be rescinded?
- i) Should penalties and interest on arrears be cancelled?

Positions of the Parties

Position of the Applicant

[52] R.J.G. seeks the following relief:

- a) Termination of child support:
 - i. For T.G., retroactively effective January 1, 2019, when R.J.G. submits T.G. became financially independent and was living on his own; and
 - ii. For M.G., retroactively effective May 1, 2021, when she moved out of the recipient's home and R.J.G. submits she became self-sufficient through employment and trust income.
- b) Reduction of arrears:
 - i. A request to recalculate child support retroactively to January 1, 2019, to reflect what he says is his actual income and to account for T.G. and M.G. withdrawing from parental charge;
 - ii. A request to cancel arrears; and
 - iii. A recalculation of any child support owing based on an income of \$48,000 per year.
- c) Cessation of spousal support:
 - i. R.J.G. seeks to terminate ongoing spousal support payments, citing financial hardship and a decline in income since the Sewell Order.
- d) Adjustment to current support obligations:
 - i. A recalculation of child support obligations for H.G. and N.G. based on his current annual income of \$48,000, which is derived from RRSP withdrawals.

Position of the Respondent

[53] The respondent, A.G. opposes the application and seeks the following:

- a) Continuation of support obligations:

- i. She requests that the court deny R.J.G.'s request for a variation and asks the court to uphold the child support obligations for T.G. and M.G. during their post-secondary education and periods of partial dependency. She asserts that she was proactive and transparent about their unique circumstances and that BCFMA consistently approved the continued collection of support on their behalf;
 - ii. A.G. asks that all child support continue to be calculated based on R.J.G.'s imputed income of \$75,000 per year; and
 - iii. She requests that the court deny R.J.G.'s request to terminate spousal support, arguing that it contradicts the Sewell Decision and Sewell Order. She seeks continued spousal support in accordance with the Sewell Order, in which Justice Sewell imputed an income of \$75,000 to R.J.G. while imputing no employment income to her. She further asserts that R.J.G.'s financial situation has improved rather than declined.
- b) Enforcement of arrears:
- i. She asks the court to deny R.J.G.'s request to "fix" his arrears at \$51,989.19 as of September 30, 2023, arguing that his calculations are false and neglect the court ordered arrears and ongoing support ordered in the Sewell Order.
 - ii. She seeks the enforcement of the current arrears, calculated at \$125,186.02 as of September 15, 2023, without retroactive adjustments.
- c) Dismissal of R.J.G.'s application; and
- d) The following relief:
- i. A lump sum payment to cover all outstanding court-ordered debts;
 - ii. Payment of BCFMA arrears;
 - iii. Fulfillment of R.J.G.'s court-ordered child and spousal support obligations;
 - iv. An allowance for Section 7 expenses, based on an imputed income of \$75,000 for R.J.G. and no imputed income for her;
 - v. Alternative relief if a lump sum is unavailable;
 - vi. Seizure of R.J.G.'s remaining RRSPs to pay down his arrears;
 - vii. A subpoena of Family Financials to obtain full financial disclosure;
 - viii. Resolution of all outstanding financial matters at a Subpoena to Debtor hearing;
 - ix. Accountability for Non-Compliance: She seeks to hold R.J.G. responsible for evading his court-ordered obligations, emphasizing that five years of enforcement actions have failed to secure his compliance;
 - x. Costs and punitive damages, including:

- (1) Reimbursement for enforcement expenses incurred since the Sewell Order.
 - (2) Compensation for ISO Application preparation costs.
 - (3) Punitive damages for R.J.G.'s failure to comply with court orders.
- [54] In summary, A.G. disputes R.J.G.'s financial hardship claims, asserting his circumstances have not materially changed since the original order and that his obligations should remain as set out in 2019.

Analysis of Issues

- [55] In conducting my analysis of the issues raised by the parties, based on the evidence on the record and in response to the ISO application brought by R.J.G., I limited my consideration to matters relevant to determining the amounts currently owing by him in relation to the ISO application itself and the ongoing BCFMA matter currently before the court in Saskatchewan.
- [56] A child's withdrawal from parental charge is a material change that may warrant terminating or reducing child support obligations under s. 2(1) of the Guidelines and s. 17 of the Divorce Act.
- [57] Before determining whether the court should vary the child support order as requested by R.J.G., it is first necessary to assess whether T.G. and M.G. are still "children of the marriage" and, if their status has changed, to establish when this change occurred.

Issue 1: Are T.G. and M.G. still "Children of the Marriage"?

- [58] At the time of the hearing, both T.G. and M.G. had reached the age of majority. The evidence establishes that, at the time R.J.G. filed his application, T.G. had completed his education, secured full-time employment, and was no longer a "child of the marriage." This fact is not in dispute. However, R.J.G. seeks a retroactive variation of his child support obligations for T.G., dating back to before he reached the age of majority.
- [59] R.J.G. also seeks a retroactive variation of his child support obligations to M.G., for whom A.G. continues to receive child support. M.G. remains enrolled in full-time university studies but does not reside with her mother.
- [60] R.J.G. argues that his financial responsibilities should be adjusted to reflect the dates on which T.G. and M.G. no longer resided with A.G., which is when he submits the children ceased to be in her "charge". For part of the period R.J.G. asks the court to review, both T.G. and M.G. were under the age of majority but living independently.
- [61] Regarding T.G., R.J.G. asserts that his son became financially independent as of January 1, 2019, when T.G. was 18 years old and had been living on his own for some time. He argues that because T.G. was no longer residing in A.G.'s household nor receiving any financial support from her, R.J.G.'s child support obligations should have ceased as of that date.

- [62] A.G. disputes this assertion, maintaining that she proactively informed the BCFMA of T.G.'s living arrangements. She contends that T.G.'s various relocations were tied to his post-secondary education, rather than a complete withdrawal from parental support.
- [63] A.G. further argues that T.G. remained a "child of the marriage" until June 1, 2021, at which point she formally notified the Enforcement Office that he was no longer under her charge.
- [64] Additionally, she asserts that despite T.G.'s independent living arrangements, her family home remained his primary base of support throughout his post-secondary years. She maintains that she continued to provide administrative, physical, emotional, and some financial support, and that he remained covered under her medical benefits.
- [65] Regarding M.G., R.J.G. asserts that she moved out of the family home shortly before her high school graduation in May 2021 and that A.G. has not provided M.G. with either a home or financial support since that time.
- [66] A.G. maintains that M.G. remains a "child of the marriage." However, A.G. has not provided substantive evidence demonstrating that she has continued to make any financial contributions to M.G.'s support. She does, however, assert that she continues to provide emotional and other non-financial support, including access to medical benefits, which she argues remain particularly significant in light of the fact that M.G. was involved in a "serious" car accident in 2022.

Legal Framework

- [67] In *Willick v. Willick*, [1994] 3 S.C.R. 670 at 689-690, 1994 CanLII 28, the SCC underscored that child support orders: 1) are child-centered, not parent-centered; 2) require consideration of the children's needs as the priority, including the relative ability of each parent to pay; and 3) reinforce the joint obligations of parents to financially support their children.
- [68] In *Kerr v. Baranow*, 2011 SCC 10 at para. 208. Justice Cromwell affirmed that child support is the right of the child, not of the parent seeking support on the child's behalf.
- [69] The child support regime under the Divorce Act and the Guidelines operates differently, depending on whether the child is under or over the age of majority.
- [70] The Divorce Act defines "child of the marriage" at s. 2(1) as follows:
- "child of the marriage" means a child of two spouses or former spouses who, at the material time,
- (a) is under the age of majority and who has not withdrawn from their charge, or
 - (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;
- [71] Sections 3(1)-(2) of the Guidelines say:

Presumptive rule

3 (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

Child the age of majority or over

- (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is
 - (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[72] The age of majority in British Columbia is 19 years old: Age of Majority Act, R.S.B.C. 1996, c. 7.

[73] The SCC in Colucci, confirmed that when a past material change is proven, there is a presumption that the support order should be varied retroactively to the date of effective notice, up to three years before formal notice: at para. 6.

[74] Applying these principles to the facts, the first question I must address is whether T.G. and/or M.G. withdrew from parental charge before reaching the age of majority, such that R.J.G.'s child support obligations should be terminated and retroactively adjusted.

Under the Age of Majority

[75] When it comes to children under the age of majority, the obligation to pay child support turns on whether the child has "withdrawn" from the "charge" of their parents.

[76] It is well-established law that children under the age of majority are presumptively entitled to child support. However, like any presumption, this can be rebutted. The burden falls on R.J.G., as the applicant seeking to vary child support, to prove on a balance of probabilities that T.G. and M.G. withdrew from the charge of the payee parent at the relevant time: Bockhold v. Bockhold, 2006 BCCA 472 at para. 35.

[77] Whether a child has withdrawn from parental charge is a question of fact, and physically living apart from both parents is not, on its own, determinative. While residence is an important factor, the key issue is whether the parents still bear a financial obligation for the child's support. In Pound v. Pound (1987), 6 R.F.L. (3d) 231, 1987 CanLII 2899 (B.C.C.A.), the British Columbia Court of Appeal rejected the argument that a child who voluntarily leaves

home is no longer under parental charge, emphasizing that children may live away for various reasons while still remaining financially dependent on their parents.

- [78] The term "withdrawn" depends entirely on the child's actions, not those of the parents: *Thompson v. Ducharme*, 2004 MBCA 42. Additionally, the Manitoba Court of Appeal in *Thompson* clarified that the word "charge" is an economic term, referring specifically to financial care.
- [79] In the case of *Bachynski v. Cale*, 2019 SKQB 176, Justice Brown surveyed the relevant law and circumstances that courts have considered with respect to the obligation on parents to pay child support for a minor child. I have condensed some of the quotations for length:
- [10] In *Chaulk v Avery*, 2009 NLTD 185, 291 Nfld & PEIR 257, the daughter of the parties had moved out with her boyfriend at 16. At the time of the application they had cohabited for 17 months and planned to purchase a home. Both the daughter and her boyfriend were employed and had a surplus of income over expenses. Justice Goodridge concluded that the daughter had withdrawn from parental care.
- [11] In *Wouters v Wouters*, 2013 NWTSC 9, a matter involving the Divorce Act, RSC 1985, c 3 (2d Supp), Justice Shaner faced a similar situation. He concluded:
20. Both J. and K. are under the age of majority, but the facts leave little doubt that they have chosen to withdraw from their parents' support for food, shelter and other necessities. They have been self-supporting since leaving their mother's home. They have indicated that they have no intention to return to the care of either parent. Thus, neither child is a "child of the marriage" as that term is used in the Divorce Act, *supra*, and child support should no longer be payable to Ms. Mailloux. *Thompson v Ducharme*, [2004] M.J. No. 129, 2004 MBCA 42 (Man. C.A.)
- [12] In *Thompson v Ducharme*, 2004 MBCA 42, 237 DLR (4th) 596, also a matter involving the Divorce Act, the Court of Appeal for Manitoba noted:
14. ... The word "charge" may be somewhat ambiguous, but I am quite sure that as used in s. 2. (1) of the Act [Divorce Act], it is intended to be an economic term. To be in the charge of a parent means, as s. 15.1 says, that a parent pays for the support of the child. That means financial care.
18. The health, the capacity, the academic pursuits and the income of the child have to be carefully considered so that the court will be able to make an assessment as to whether the child has capacity to withdraw from the charge of the parents or to otherwise obtain the necessities of life.

[Emphasis in original.]

- [13] In *Garinger v Thompson*, 2006 SKQB 41, 276 Sask R 109, also a proceeding pursuant to the Divorce Act, Justice McIntyre had a somewhat similar situation. He found that relevant considerations therein included the underlying reason why the child had left the parents' homes and whether continued support and provision for the child nonetheless carried on even with such absence.
13. The age of majority in Saskatchewan is 18. I am satisfied Chloe remained a child of the marriage throughout. She did not, of her own accord, choose to withdraw from her mother's financial support. A decision was made in her best interests, to remove her from discord in the family home and to live with her grandparents. While they obviously provided food and lodging Chloe remained financially dependant upon her mother who paid the \$200.00 in child support she received for Chloe to her parents. She paid Chloe's school and clothing expenses.
- [14] In *Pittroff v Pittroff*, 2005 SKQB 425, 270 Sask R 275, Justice Dawson concluded that when a child moved out of his parents' house and into his girlfriend's family home he had withdrawn from his parents' charge. In that case the expenses paid by his mother were occasional and ancillary. His status as a child of the marriage did not meet the Divorce Act criteria. However, once he returned to the home with his mother his status as a child of the marriage also returned.
- [80] Dependency is assessed based on the child's actual reliance on parental support. As explained earlier, courts have consistently held that child support is a legal obligation designed to benefit the child, not the recipient parent, and funds must directly or indirectly benefit the child. The recipient parent has a duty to use these funds to support the child's housing, education, food, and other essential expenses. If the recipient parent does not provide meaningful financial or practical support, courts may terminate payments or redirect them to the child. This principle ensures that the funds fulfill their intended purpose: securing the well-being of the dependent child.

Over the Age of Majority

- [81] Once a child has reached the age of majority, the onus of proving that the adult child remains a child of the marriage is on the party asserting that to be the case: see *Hutchinson v. Taraviras*, 2022 BCSC 1982 at para. 57, relying on *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406, 1997 CanLII 3893 (B.C.C.A.) at para. 15 and *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, 1993 CanLII 2570 (B.C.S.C.).
- [82] A child will remain a child of the marriage if they are unable to withdraw from their parents' charge, because of illness, disability, or "other cause": Divorce Act, s. 2(1). Post-secondary education may constitute an "other cause" under this provision: *Nordeen v. Nordeen*, 2013 BCCA 178.

[83] Additionally, in Farden, the Court outlined a non-exhaustive list of factors to determine if an adult child who attends a post-secondary institution remains a "child of the marriage", including:

- a) Whether the child is enrolled in part-time or full-time post-secondary program;
- b) Whether the child has applied for or is eligible for student loans or other financial assistance, including loans, RESP funds, or trust distributions;
- c) The child's career plans and whether their education aligns with those plans;
- d) The child's ability to support themselves, including part-time or full-time work;
- e) The child's age;
- f) The child's past academic performance;
- g) The parents' plans for their children's education; and
- h) The child's relationship with the parents and whether they continue to receive support, guidance, and influence from them

[84] I will deal first with the evidence related to each of T.G. and M.G.'s circumstances and then consider whether either of them is no longer a child of the marriage and, if they are not, when that change occurred. Much of the evidence in this case is in dispute.

T.G.

[85] On September 25, 2017, at the age of 16, T.G. began an apprenticeship with Pinnacle Custom Cabinets.

[86] In June 2018, T.G. graduated from Grade 12 with honours at the age of 16.

[87] Beginning November 4, 2018, when T.G. was 17, he moved out of his mother's home and lived in a co-worker's cabin near his family home for 14 months.

[88] T.G. completed his Level 1 and Level 2 Joinery/Cabinetmaking Apprenticeship Training at the British Columbia Institute of Technology ("BCIT") in February 2018 and November 2019, respectively. The parties paid for the cost of this training, totaling \$10,000, from a shared RESP.

[89] R.J.G. states that in August 2019, T.G. reached out to him, seeking financial support. T.G. expressed a desire to become a teacher. However, T.G. said he was unable to afford both living expenses and school fees while living independently with little income. According to R.J.G., after a discussion with his own mother (T.G.'s grandmother), she agreed to fund T.G.'s education.

[90] In August 2019, T.G. resigned from Pinnacle Custom Cabinets and enrolled full-time at the University of the Fraser Valley ("UFV") to pursue a Bachelor's degree.

- [91] From September 2019 to August 2020, T. G. attended the University of Fraser Valley Bachelor of Arts Qualifying courses. His tuition and living expenses were funded by his paternal grandmother.
- [92] In October 2019, T.G. received a bequeath in the amount of \$12,500 from J.G., his paternal grandfather.
- [93] In February 2020, T.G. briefly returned to A.G.'s home to begin his studies at UFV Chilliwack. During this time, in her evidence A.G. recorded that T.G. paid her \$330.00 per month in rent. In April 2020, T.G. moved in with his girlfriend's family, where he paid \$400.00 per month in rent.
- [94] On September 8, 2020, T.G. turned 19 years old.
- [95] In September 2020, T.G. enrolled full-time in the Technology Teacher Education Diploma Program at BCIT. He resided in BCIT student housing during his studies. He graduated in July 2022.
- [96] On May 10, 2021, A.G. advised BCFMA that she was no longer in need of support for T.G.
- [97] On June 1, 2021, T.G. moved into his own apartment in Burnaby.
- [98] In September 2022, T.G. enrolled full-time at the University of British Columbia ("UBC") to complete his Bachelor of Education degree. He graduated from UBC with his Bachelor of Education in July 2023.
- [99] In September 2023, T.G. began working full-time as a Technology Trades Teacher at Howe Sound Secondary School.
- [100] R.J.G. maintains that T.G.'s educational and living expenses were entirely financed by his grandmother, who had created a family RESP (Family RESP) intended to benefit her grandchildren. He specifies that more than \$75,000 was disbursed from this Family RESP to support T.G.'s post-secondary education. In addition, T.G. received approximately \$17,000, which stemmed from the returns on a \$10,000 investment his grandmother had originally made on behalf of each grandchild. He further notes that T.G. was also the recipient of annual monetary distributions from the Family Trust managed by the grandmother. Moreover, R.J.G. and A.G. made supplementary contributions of several thousand dollars from a RESP they had independently established when their children were younger.

M.G.

- [101] R.J.G. seeks a retroactive adjustment of child support for M.G., effective May 1, 2021, when she moved out of A.G.'s home.

- [102] M.G. left A.G.'s residence on May 6, 2021, at the age of 17, following conflicts over COVID-19 protocols within the household. She moved to her grandmother's home in Victoria, where she completed her Grade 12 coursework online, visited family, and worked as a babysitter. She remained there for approximately one month before returning to A.G.'s home for her high school graduation on June 24, 2021.
- [103] After graduating, M.G. traveled to Regina, Saskatchewan, for the summer, where she spent time with her dad, R.J.G., lived in her uncle's apartment and worked at the Queen City Pickleball Hub.
- [104] In September 2021, M.G. enrolled full-time in the Quest program at Columbia Bible College ("CBC"), where she lived in residence. She successfully completed the program and graduated on April 23, 2022.
- [105] M.G. turned 19 years old on August 20, 2022.
- [106] In September 2022, M.G. enrolled in the Bachelor of Arts in Counselling program at CBC and moved into shared housing with friends in Abbotsford.
- [107] During this same month, M.G. was involved in a serious car accident. A.G. states that she provided emotional and physical support, assisted M.G. with her ICBC claim, arranged therapy, and worked with CBC faculty to help M.G. adjust her academic workload during her recovery. However, it is notable that M.G. did not return to live at home at any time after her accident.
- [108] M.G. continues to live in Abbotsford, BC, in an off-campus house with multiple roommates. She anticipates graduating from CBC in 2026 and pursuing a master's degree afterward.
- [109] According to R.J.G.'s sworn evidence, M.G. has also received significant financial support from her paternal grandmother and has not been financially dependent on either parent since moving out.
- [110] M.G.'s tuition and school-related expenses have been fully covered by the Family RESP managed by her paternal grandmother.
- [111] She receives \$7,500 at the beginning of each term from the RESP.
- [112] M.G. is also beneficiary of the discretionary Family Trust, receiving varying amounts each year. She has received a few thousand dollars annually from the Family Trust since turning 19 years old.
- [113] Similarly, the children's paternal grandmother also invested \$10,000 on M.G.'s behalf, which has nearly doubled in value. These funds are available to M.G. whenever she has a financial need.
- [114] M.G. works full-time during the summers as a camp counsellor and in horse therapy for special needs children.

- [115] During the school year, she works part-time assisting special needs children, earning approximately \$20 per hour.
- [116] A.G. did not provide any evidence of any financial support she has provided to M.G. since September 2022. The evidence suggests that M.G.'s living expenses have been covered through her employment earnings, student aid, and financial support from her grandmother.

Analysis on when T.G. and M.G. withdrew from their parents' charge

- [117] Although public policy strongly supports ongoing child support for minor children, even when they are not living with either parent, this case presents unique circumstances.
- [118] T.G. and M.G. graduated high school and moved out of their mother's home before turning 19, the age of majority in British Columbia. R.J.G. claimed that while he was unable to provide direct financial assistance, he arranged for their paternal grandmother to fully cover T.G.'s education and living expenses, which she did. M.G. initially lived with the grandmother before relocating to Saskatchewan for the summer, where she secured employment. During that time, R.J.G.'s brother provided M.G. and a friend with free housing. By the next September, M.G. had begun post-secondary education, supporting herself through part-time earnings and trust support.
- [119] R.J.G.'s position is that he should not be responsible for child support payments to A.G. for T.G. and M.G. once they became independent, no longer lived with her, and ceased receiving any financial support from her.
- [120] R.J.G. submits that even though T.G. and M.G. were under the age of majority, this does not automatically mean they were "children of the marriage" at the relevant times.
- [121] The Farden factors apply only to the assessment of adult children and are not relevant when determining whether a minor remains a "child of the marriage" under s. 2(1) of the Divorce Act: *Boisvert v. Boisvert*, 2000 ABQB 853 at para. 17. For children under the age of majority, the key question is not whether they are pursuing post-secondary education or meeting other Farden criteria, but rather whether they have withdrawn from their parents' charge--which is fundamentally a question of financial dependence. A child who has withdrawn from parental charge--i.e., ceased to be financially dependent--is no longer considered a "child of the marriage" under the Divorce Act. Accordingly, the Court focussed first on whether, at the relevant times and while still under the age of majority, T.G. and M.G. remained financially dependent on A.G., rather than presuming their status as "children of the marriage" based solely on their age.

- [122] The uncontested evidence establishes that, after moving out, neither T.G. nor M.G. returned to live with A.G. for any appreciable time. While A.G. asserts that T.G. briefly moved back home before moving in to live with his girlfriend's family in early 2020, the evidence filed by A.G. shows that during that brief period, T.G. paid A.G. rent in the amount of \$330 per month, at the same time she was claiming child support on his behalf.
- [123] The SCC, in Colucci, reaffirmed that child support is the right of the child and is intended to ensure their well-being. While the court does not have specific details regarding the arrangement between A.G. and T.G., charging rent to a child--depending on the nature of that agreement--may be inconsistent with the purpose of child support, which is meant to provide for the child's needs without imposing additional financial burdens on them. The Guidelines table amount is intended to assist the recipient parent with basic costs for children in their care, such as food, shelter, and clothing.
- [124] Nonetheless, although T.G. initially lived on his own and worked before beginning post-secondary studies, I find that this period does not necessarily establish that he had withdrawn from parental charge. Courts have recognized that a child taking time off before university may still be financially dependent children of the marriage: *D.R.B. v. J.L.B.*, 2024 BCSC 962 at para. 38.
- [125] However, the critical factor in this case is that when T.G. resumed full-time education in September 2019, he did so without any financial reliance on either parent. This transition, combined with the absence of financial support from either parent, supports a finding that he was no longer under parental charge from that date forward.
- [126] Section 7(1)(f) of the Guidelines provides that post-secondary education expenses are to be shared between the parties in proportion to their respective incomes. When a child attends post-secondary education while living away from home, their overall expenses increase due to residence and living costs. However, in such circumstances, the custodial parent is no longer required to maintain a household for the child in the same way, thereby reducing the basic expenses contemplated by the Guidelines table amount.
- [127] When a child begins post-secondary education, they incur additional costs, including tuition, books, and, if studying away from home, expenses for room and board. In *L.H.M.K. v. B.P.K.*, 2012 BCSC 435, at paras. 174 and 176, Justice Brown accepted the proposition that when an adult child attends university away from home, base child support payments to the recipient parent are typically suspended. Instead, parents share post-secondary costs--including tuition, housing, and living expenses--proportionally under section 7(1)(f) of the Guidelines. However, in this case, when T.G. began university, his grandmother assumed full responsibility for his tuition and living expenses, and there is no evidence that he received any financial support from A.G.

- [128] A.G. argued that she is always available to support T.G. and M.G.; however, merely maintaining a "home base" or offering emotional support does not meet the legal threshold for financial dependency.
- [129] Despite moving out in 2018, T.G. briefly returned to A.G.'s home from February 2020 until April 2020, while he was still 18. This raises the question of whether this short stay reinstated parental dependency.
- [130] The evidence in this case supports that:
- a) His tuition, books, and living expenses were entirely covered by his paternal grandmother, through RESP withdrawals, trust distributions, and financial gifts.
 - b) By September 2019, T.G. had transitioned into full-time post-secondary education without parental financial support.
 - c) His return home was very brief and transitional, and while there he paid rent in the amount of \$330 per month before he moved out again in April 2020 to live with his girlfriend's family, which was closer to his university.
- [131] Given that T.G.'s education and living expenses were fully covered by non-parental sources, and his return home was temporary rather than indicative of renewed long-term dependency, I find that the brief stay at his mother's residence does not warrant an extension of child support.
- [132] While T.G. began living independently in late 2018, the determinative issue is not merely the source of his income at that time, but whether he continued to rely on either parent for financial support. Given his young age, a presumption of dependency still applies during this transitional period. However, the evidence shows that in August 2019, T.G. contacted his father to discuss returning to post-secondary education and sought financial assistance, which was provided not by either parent but by his paternal grandmother. She fully covered his tuition and living expenses through Family RESP withdrawals, trust distributions, and financial gifts.
- [133] When T.G. commenced full-time studies in September 2019, he did so without any financial reliance on either parent. This marks a significant shift in his dependency status. His brief return to A.G.'s residence in early 2020, during which he paid rent, does not alter this conclusion. That stay was transitional, not indicative of renewed dependency. In light of the absence of parental financial support and the assumption of full financial responsibility by his grandmother, I find that T.G. ceased to be a "child of the marriage" as of September 1, 2019.
- [134] With respect to M.G., while she moved out of A.G.'s home at 17, the relevant question is not when she moved out, but when she withdrew from parental charge. After leaving A.G.'s home in May 2021, M.G. did not receive any financial support from her mother. The following year can best be described as a transitional period--a 'gap year' during which she

lived in residence and completed the Quest program at CBC before transitioning to her future educational and career path. Given M.G.'s young age and the fact that it was her first year living away from home, the court finds it would not have been reasonable to consider her withdrawn from parental charge at that stage, particularly as there remained a realistic possibility that she might return home. The fact that a child moves out of the family home is not, in itself, conclusive of withdrawal from parental charge. The test remains one of financial dependence and the realistic possibility of return.

- [135] After completing the Quest program, M.G. did not return to live with either parent during the summer. Instead, she moved into a shared residence with friends. She turned 19 in August 2022 and commenced full-time studies the following month, having secured stable financial support through RESP withdrawals, trust distributions, and her own employment income. This transition marks a clear withdrawal from her parents' charge, as she was no longer financially dependent on either of them. Given that she was now over the age of majority, the Court considered her circumstances under the Farden framework to assess whether she remained a "child of the marriage".
- [136] As per Farden, once a child turns 19, the onus shifts to the parent seeking continued support to establish that the child remains dependent due to education or other qualifying factors. Applying the Farden analysis, M.G.'s financial independence is clear. She fully supported her education and living expenses through RESP withdrawals, trust distributions, and employment income. As the party asserting continued dependency, A.G. bore the onus of proving that M.G. remained a "child of the marriage" beyond age 19. However, the evidence does not support this. M.G. did not receive financial assistance from A.G., and her continued post-secondary studies were entirely self-funded. The combination of her financial self-sufficiency and independent living arrangements supports a finding that she ceased to be a "child of the marriage" as of September 1, 2022.
- [137] Although there was a brief transitional period following her departure from A.G.'s home, M.G.'s move into shared housing and commencement of self-funded post-secondary education after turning 19 demonstrate a clear break from parental financial dependence. While A.G. continues to offer emotional support, there is no evidence that M.G. has sought or received financial assistance since leaving home.
- [138] Given these circumstances, I find that M.G. ceased to be a child of the marriage as of September 1, 2022, marking her transition to independence in accordance with the Farden factors.

Issue 2: Does the Court Have Jurisdiction to Retroactively Vary Child Support for T.G. and M.G.?

- [139] I have determined that T.G. ceased to be a child of the marriage as of September 1, 2019, and M.G. as of September 1, 2022. However, the question remains whether this Court has jurisdiction to retroactively vary child support and cancel arrears for T.G. and M.G.

[140] While Colucci confirmed that courts have broad discretion to reduce arrears, the specific issue of jurisdiction under section 17 of the Divorce Act when the child beneficiary has reached adulthood remains unsettled: *Kennedy v. Kennedy*, 2022 BCSC 256 at para. 27.

[141] In *Dring v. Gheyle*, 2018 BCCA 435, the majority of the Court of Appeal for British Columbia held at para. 97 that:

the court does not have jurisdiction to make a statutory retroactive award unless at the date of the application the child retains the status of a child, or there has been a prior application that brings the matter under the "Henry exception"

[142] While *Dring* concerned the Family Law Act, S.B.C. 2011, c. 25 [FLA], Justice Goepel found that the "language of s. 152 of the FLA closely aligns with that in s. 17(1) of the Divorce Act" and "they should be interpreted in the same way": at para. 98.

[143] In *Michel v. Graydon*, 2020 SCC 24, however, the SCC noted that the language of s. 17 of the Divorce Act does not limit its application to "children of the marriage": at para. 15. This differs from s. 15.1 of the Divorce Act, which applies to "original" child support orders, as opposed to variation orders.

[144] In *Michel*, at para. 17, the SCC stated that courts should be cautious before recognizing jurisdictional barriers that prevent applications for retroactive child support.

[145] In subsequent decisions, this court went on to describe the SCC's ruling in *Michel* as "implicitly" overturning *Dring*: *Segura v. Segura*, 2020 BCSC 650. In *L.L.M. v. D.R.M.*, 2022 BCSC 143, Justice Lyster found that, to the extent *Michel* overrules *Dring*, it is only regarding variation of support orders and not whether the Court has jurisdiction to consider an original application for child support under the FLA when the child has become an adult: at para. 66.

[146] In *Hutchinson*, Justice Crossin reviewed *Dring*, *Michel*, and *Kennedy* and concluded that "the Court does have jurisdiction under s. 17(1)(a) of the Divorce Act to order variation to support orders, even when the relevant party was not a 'child of the marriage' at the time of the application": at para. 75. While Justice Crossin found the court had the authority to make such an order, he cautioned that it must "exercise this jurisdiction with regard to the particular circumstances of each case": *Hutchinson* at para. 75.

[147] More recently, in *S.A.M. v. J.A.B.*, 2023 BCSC 2110, this Court found that jurisdiction to make a retroactive award exists only if, at the time of the application, the child still had the status of a child: at para. 55. In reaching this conclusion, the Court relied on *Deng v. Zhang*, 2022 BCCA 271, which in turn relied on *Dring*. The Court further suggested that this principle applies regardless of whether the child support issue arises under the Divorce Act or the FLA: *S.A.M.* at para. 56.

- [148] While S.A.M. is a recent decision, its discussion of jurisdiction does not reference Michel, Kennedy, Segura, L.L.M., or Hutchinson. Additionally, its reliance on Deng is notable because Deng analyzed s. 146 of the FLA, rather than s. 17 of the Divorce Act.
- [149] In summary, recent B.C. decisions have interpreted applications for retroactive child support differently, depending on the applicable legislation--whether the FLA or the Divorce Act--and the specific facts of each case. In this case, the SCC has provided clear and binding guidance in Michel, confirming that jurisdictional constraints under s. 17 of the Divorce Act must be explicitly stated in the legislation. The SCC cautioned against inferring limitations that Parliament has not expressly articulated.
- [150] Justice Crossin, in Hutchinson, recognized and adhered to this authoritative statement from the SCC. In my view, the reasoning set out in Michel and followed in Hutchinson accurately reflects the current state of the law with respect to the Divorce Act. I therefore expressly adopt this reasoning and conclude that this Court retains jurisdiction under s. 17 of the Divorce Act to retroactively vary child support orders, even when the children were no longer dependent at the time the application was commenced.
- [151] Accordingly, I have the discretion to amend the child support order for T.G., including reducing or canceling arrears, provided that the Colucci legal test is met. The key limitation on R.J.G.'s ability to seek retroactive relief is the strict standard established in Colucci, as elaborated within this decision.

Issue 3: Has There Been a Material Change in R.J.G.'s Financial Circumstances?

Relevant Legal Framework

- [152] A judge only has legal authority to vary a child support order where they are satisfied there has been a change in circumstances as defined by the Guidelines: Divorce Act, s. 17(4). Section 14 of the Guidelines identifies three cases that constitute a change in circumstances:
- a) If the existing child support order is based on the Guidelines tables, any change that would result in a different amount (for example, the number of children, the payor's income, the payor's province of residence): Guidelines, s. 14(a);
 - b) If child support in the existing order isn't based on the tables (for example, if there is undue hardship, an adult child, or shared parenting), any change in the condition, means, needs or other circumstances of either spouse or of any child entitled to support: Guidelines, s. 14(b); and
 - c) If the existing child support order was made before May 1, 1997, the coming into force of the Guidelines: Guidelines, s. 14(c).

- [153] A material change is one that, if known when the existing order was made, would likely have resulted in different terms: Willick at 688. The change can be in either the former spouse's circumstances or the child's: Willick at 689. Material change has been described as "substantial, unforeseen and continuing": Carter v. Carter (1991), 58 B.C.L.R. (3d) 45 at para. 21, 1991 CanLII 819 (B.C.C.A.). The burden of proving a material change in circumstances is on the party seeking the variation: L.M.P. v. L.S., 2011 SCC 64 at para. 31.
- [154] The circumstances of each case will determine whether a change is material: L.M.P. at para. 34. What is a material change in one case may not be in another.
- [155] Common considerations include:
- a) If the parties actually contemplated the change at the time of the order. If they did, it will not constitute a material change: Dedes v. Dedes, 2015 BCCA 194 at para. 25.
 - b) Short-term income reductions do not generally merit a reduction in child support: Pritchard v. Christensson, 2018 ABCA 302 at para. 4.
- [156] In Colucci, the SCC set out the framework for how the court should exercise its discretion on an application for a retroactive decrease in support under s. 17 of the Divorce Act.
- [157] As the payor parent, R.J.G. has the onus of showing a material change in income by proving that his decrease in income is significant, real and not by choice and has some degree of continuity: Colucci at para. 113. To justify a retroactive decrease in support, there must be "reliable, accurate and complete information": Colucci at para. 62.
- [158] Pragmatically, if a "past material change" in the payor's income is proven, Martin J. explained in Colucci, the existing support order no longer reflects the payor's legal obligation: at para. 74. When this is established, then there is a presumption that the order should be varied retroactively to the date of effective notice, up to three years before formal notice, to ensure an appropriate remedy: Colucci at para. 74.
- [159] In a case where the payor is seeking a retroactive reduction in child support, judges should adopt a "flexible and discretionary approach" to such requests: a decrease in income does not necessarily mean there will be a retroactive reduction in support: Colucci at para. 5. The SCC in Colucci put forth the following framework at para. 113 for approaching applications for retroactive decreases in child support on the basis of a past material change:
- (1) The payor must meet the threshold of establishing a past material change in circumstances. The onus is on the payor to show a material decrease in income that has some degree of continuity, and that is real and not one of choice.

- (2) Once a material change in circumstances is established, a presumption arises in favour of retroactively decreasing child support to the date the payor gave the recipient effective notice, up to three years before formal notice of the application to vary. In the decrease context, effective notice requires clear communication of the change in circumstances accompanied by the disclosure of any available documentation necessary to substantiate the change and allow the recipient parent to meaningfully assess the situation.
- (3) Where no effective notice is given by the payor parent, child support should generally be varied back to the date of formal notice, or a later date where the payor has delayed making complete disclosure in the course of the proceedings.
- (4) The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The DBS factors (adapted to the decrease context) guide this exercise of discretion. Those factors are: (i) whether the payor had an understandable reason for the delay in seeking a decrease; (ii) the payor's conduct; (iii) the child's circumstances; and (iv) hardship to the payor if support is not decreased (viewed in context of hardship to the child and the recipient if support is decreased). The payor's efforts to pay what they can and to communicate and disclose income information on an ongoing basis will often be a key consideration under the factor of payor's conduct.
- (5) Finally, once the court has determined that support should be retroactively decreased to a particular date, the decrease must be quantified. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the Guidelines.

[160] Full, frank, and timely disclosure of income is the "linchpin" on which fair child support depends, and the "first step towards ensuring that child support obligations are tied to payor income as it fluctuates": Colucci at paras. 48 and 54. If parties do not provide income information when an existing order is granted, and then later file for variation based on the information they failed to disclose, the late disclosure cannot satisfy the requirement of a material change: Colucci at para. 63, citing *Gray v. Rizzi*, 2016 ONCA 152 at paras. 33-34.

[161] The parties' later conduct can indicate whether the change is material: *L.M.P.* at para. 35.

Analysis on whether there has been a material change in circumstances.

[162] The central issue is whether R.J.G. has demonstrated a material change in circumstances sufficient to justify a retroactive reduction in his imputed income and corresponding child support obligations. Under *D.B.S. v. S.R.G.*, 2006 SCC 37 and *Colucci*, the court must balance certainty and predictability for the recipient parent and child against the need for flexibility to ensure that child support reflects R.J.G.'s actual income. The court must also consider whether R.J.G. provided effective notice and acted diligently in seeking a variation.

R.J.G.'s Financial Situation

- [163] R.J.G. seeks a reduction in his imputed income, asserting that his actual earnings since 2019 have ranged between \$36,745 and \$48,000, significantly lower than the \$75,000 figure set in the Sewell Order. He disputes the imputation, arguing that the previous court relied on a one-time payment from the Family Trust, which he contends does not reflect his ongoing financial reality.
- [164] R.J.G. attests that he has always worked as a general labourer. He holds a high school diploma, and prior to having his driver's license cancelled, he possessed a Class 3 driver's license and lacks computer or technical skills. He states that he has never earned more than \$21.25 per hour in his lifetime.
- [165] R.J.G. was employed by Quality Management until June 2015, when he says he left to care for his eldest son, R.G. He then worked seasonally on his brother's farm but saw his role reduced due to health concerns. He explains that his physical limitations, including a back injury, prevent him from safely operating heavy machinery, particularly equipment requiring multitasking and spatial awareness. He argues that it would be dangerous and negligent for him to do so, given his condition.
- [166] In December 2019, following the Sewell Decision, R.J.G. said he was laid off from his brother's farm due to financial setbacks affecting the business. He collected employment insurance until spring 2020, when he was called back to work. Upon returning in April 2020, he resumed employment but experienced multiple safety incidents, including backing into machines and people, forgetting to replace fuel caps, and overflowing fuel tanks. As a result, his brother reassigned him to lighter duties, such as running errands for fieldwork, and reduced his wage to approximately \$2,000 per month.
- [167] Before encountering employment difficulties, R.J.G. had been paying \$1,551 per month in child support to A.G. To meet these obligations, he says he borrowed money from his brother. However, as the farm struggled financially, he could no longer rely on his brother's assistance. The Sewell Decision later increased his child support obligations to over \$2,100 per month, excluding section 7 expenses--a sum he contends was entirely unrealistic given his financial limitations.
- [168] To stay compliant, R.J.G. said he made payments of \$800 per month (\$400 every two weeks). However, he still received a default notice, leading to enforcement actions by the Family Maintenance Enforcement Program, which has since become the BCFMA. On March 2, 2020, his BC driver's license was cancelled, and on April 7, 2020, his passport was suspended. A credit report was also filed against him.
- [169] Following the cancellation of his driver's license, he says he was unable to continue working on his brother's farm and had no choice but to rely on RRSP withdrawals for financial survival.

- [170] R.J.G. contends that regaining his driver's license would allow him to secure stable employment and make structured payments toward his arrears. However, due to his current unemployment and financial constraints, he argues that he is unable to do so at this time.
- [171] Since 2020, R.J.G. says he has been forced to withdraw from his RRSP to cover his living expenses. Initially, he withdrew \$3,000 per month, yielding a net income of \$2,100 after tax holdbacks. His current monthly withdrawals have increased to \$4,000 per month, leaving him with \$2,800 net. At the time of his affidavit, he reported an RRSP balance of \$175,000, which he describes as his only remaining asset. He estimates that these funds will sustain him for no more than three to four years.
- [172] R.J.G. further explains that his mother has independently provided financial gifts to his other children since the Sewell Decision. She has covered T.G.'s tuition in full, made RESP and RDSP contributions for H.G. and N.G., and continues to pay M.G.'s tuition. He asserts that these funds come directly from his mother, are intended solely for the children's benefit, and that he has no access to or interest in them. He produced copies of cheques as evidence of these direct payments.
- [173] Additionally, in April 2019, R.J.G.'s mother compelled him to resign as an administrator of the Family Trust, and he was informed that he would receive no further cash gifts from the trust.
- [174] R.J.G. maintains that his child support obligations should be based on his actual, current income rather than the imputed \$75,000 set in the Sewell Order. He states that he attempted to communicate with the enforcement office over the years, unaware that such correspondence did not constitute a formal variation request. Due to financial constraints, he was unable to afford legal representation and instead just paid what he could toward his arrears. However, he ultimately had to borrow funds from family to retain counsel and file this application for a formal adjustment of his child support obligations and arrears.
- [175] The original Sewell Order, issued in 2019, imputed \$75,000 in annual income to R.J.G. based on the following findings at para. 78 of the Sewell Decision:
- a) He had previously earned close to that amount over a prolonged period.
 - b) His lifestyle was supported by family members and distributions from the Family Trust.
 - c) Distributions from the Family Trust--ostensibly made to Ryan--had been used by R.J.G. to meet his own expenses.
 - d) He had not provided a satisfactory explanation as to why assets in G. Trucking Ltd. were sitting unproductively.
- [176] The court further ordered that his imputed income would be the greater of \$75,000 or his actual Line 150 income: Sewell Decision at para. 79.

[177] However, since 2019, the factual foundation for this imputed income has fundamentally changed:

- a) His actual annual earnings have ranged between \$36,745 and \$48,000, well below the imputed figure.
- b) He was laid off in December 2019 due to financial setbacks on his brother's farm. When he returned in April 2020, his role was significantly reduced, and his wage dropped to \$2,000 per month due to safety concerns arising from his physical limitations.
- c) He no longer has access to financial support from the Family Trust. In April 2019, his mother compelled him to resign as an administrator, and he was told he would no longer receive cash gifts from the trust.
- d) He has been relying on RRSP withdrawals to meet basic expenses and estimates that his only remaining asset, his \$175,000 RRSP, will last no more than three to four years.

[178] I note that the Sewell Decision was based on the following:

- a) In 2014 each party received a distribution of \$65,000 from the S.G. and J.G. Trust (the Family Trust).
- b) In 2016 R.J.G. earned \$60,000 in employment income and \$45,168 from the Family Trust.
- c) In 2017 he earned only \$42,500 in employment income and received no distributions from the Family Trust.

[179] These facts demonstrate that the key assumptions underpinning the 2019 imputed income assessment are no longer valid. It is also clear that R.J.G.'s prior earning capacity is no longer attainable, his gifts from his family have been cut off, and his access to trust distributions has ceased.

[180] I find that R.J.G. no longer earns the income imputed to him in the Sewell Decision. His current annual income of approximately \$48,000 is significantly below the imputed figure of \$75,000. This reduction is substantial, unforeseen, and has shown a degree of continuity over several years. The financial assumptions underpinning the original imputation--namely, consistent past earnings, access to Family Trust distributions, and lifestyle support from family--have fundamentally changed. Since 2019, R.J.G.'s mother has redirected her financial support away from him and toward the grandchildren directly, primarily in the form of tuition payments and RESP contributions. Accordingly, I find that a material change in circumstances has occurred within the meaning of s. 17(4) of the Divorce Act and s. 14 of the Guidelines.

[181] The Court will now consider whether, and to what extent, this change justifies a retroactive adjustment to his child support obligations

Issue 4: What is the Presumptive Date of Retroactive Variation?

- [182] When a payor's income has undergone a past material change, the existing support order no longer reflects their legal obligation: Colucci at para. 74. Under Colucci, the presumptive retroactive support variation presumptively dates back to the date of effective notice, limited to a maximum of three years before formal notice: Colucci at para. 80.

Legal Framework

- [183] As set out in Colucci, the first step in determining the date of retroactive support is to determine the presumptive date for retroactive support variation. Generally, support can be varied retroactively to the date of effective notice, up to three years before formal notice. This presumption helps guide the court in deciding the appropriate remedy. If the payor seeks a reduction, as in this case, the presumptive date is the date of effective notice-- provided it is not more than three years before formal notice: Colucci at para. 80.
- [184] Effective notice occurs when the payor provides reasonable proof of a material change in circumstances, allowing the recipient to independently assess the situation: Colucci at para. 88.
- [185] Unlike applications seeking retroactive increases, where it is sufficient for the recipient to raise the issue, a retroactive decrease requires the payor to provide clear and substantive proof of the change: Colucci at para. 88.
- [186] Additionally, as recognized in *Hildebrand v. Hildebrand*, 2024 BCCA 395, courts must weigh the certainty and predictability of existing orders against the need for flexibility considering changing circumstances: at para. 29, citing Colucci at para. 4. Thus, the starting point for the analysis is focused on a single presumption regarding the date of retroactivity. Factors such as the reason for any delay in seeking retroactive relief, the payor's conduct, the child's circumstances, and hardship are only relevant to whether to depart from the presumptive date: Colucci at para. 71.
- [187] The second step is to assess whether there are reasons to depart from this presumptive date: Colucci at para. 96. Courts have discretion to depart from the presumptive date if enforcing that date would be unfair in the circumstances of the case: Colucci at para. 96. In exercising this discretion, the court should consider factors such as whether there was a reason for the delay in seeking retroactive variation, the payor's conduct, the child's circumstances, and any resulting hardship: Colucci at paras. 96-108.
- [188] The court retains discretion to depart from the presumptive date where fairness requires it: Colucci, at para. 96. In making this determination, the court considers:
- a) Whether the payor had an understandable reason for any delay in seeking a decrease: Colucci at paras. 97-100;
 - b) The payor's conduct in communicating the change and continuing payments: Colucci at paras. 101-103;

- c) The child's circumstances and ongoing dependency: Colucci at paras. 104-106; and
- d) The hardship to the payor if the period of retroactivity is not lengthened (viewed in the context of the hardship to the recipient and the child if the period of retroactivity were extended): Colucci at paras. 107-108.

[189] If the court grants a retroactive decrease, it determines the appropriate support amount for each year based on the Guidelines. Under s. 17(6.1) of the Divorce Act, "A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines".

[190] The BCFMA is solely an enforcement agency responsible for administering court-ordered or agreement-based child support obligations. It does not have the authority to unilaterally modify, cancel, or interpret disputed requests regarding child support. If a disagreement arises over whether support should continue, BCFMA cannot make an independent determination--it must enforce the existing order unless both parties consent to a change or a new court order is issued. In the absence of such consent or a court ruling, FMEP is legally required to continue collecting and enforcing payments as set out in the original support order.

Analysis of Effective Dates of Notice

A. Notice of Change: Children of the Marriage

[191] R.J.G. seeks a retroactive reduction in child support dating back to January 1, 2019. His claims focus on two key changes in circumstances:

- a) The status of T.G. and M.G. as children of the marriage; and
- b) His alleged change in income.

The Status of T.G. and M.G. as Children of the Marriage

[192] R.J.G. asserts that T.G. and M.G. ceased to be children of the marriage several years ago and seeks a retroactive reduction in his support obligations. Accordingly, the court must determine when he provided sufficient evidence to allow A.G. to meaningfully evaluate whether continued child support was justified.

[193] In her affidavit and representations, A.G. argues that she had raised the background facts concerning the children with BCFMA and was informed that she was still entitled to receive support. However, it is important to reiterate that BCFMA has no discretion to modify a child support order absent A.G.'s consent or a new court order. Despite this, her position appeared to rely on BCFMA's response as justification for her continued entitlement to child support payments.

[194] The relevant correspondence with BCFMA demonstrates that there was active communication engaging both R.J.G. and A.G. about T.G. and M.G.'s status as children of the marriage and whether child support obligations should continue:

- a) In August 2020, R.J.G. wrote to BCFMA, seeking clarification regarding T.G.'s status.
- b) On August 10, 2020, BCFMA advised R.J.G. that they had requested information from A.G. regarding T.G.'s status.
- c) On August 21, 2020, BCFMA informed R.J.G. that they would continue collecting support for T.G. based on A.G.'s response, in which she asserted that she was contributing to T.G.'s rent, food, and medical/dental expenses.
- d) On February 1, 2021, BCFMA again asked A.G. for an update on T.G.'s dependency.
- e) On February 11, 2021, BCFMA advised R.J.G. that A.G. had confirmed that she continued to support T.G. financially including contributing to his rent and other expenses and that he resided with her during non-school periods.
- f) On May 11, 2021, R.J.G. responded to BCFMA, asserting that:
 - i. T.G. had been financially independent of A.G., with tuition and living expenses paid by his grandmother.
 - ii. T.G. was living full time in an apartment in New Westminster.
 - iii. M.G. had moved out of the family home in May 2021.
- g) Shortly after May 2021, A.G. consented to BCFMA stopping the collection of child support for T.G., indicating her acceptance that T.G. was no longer dependent.
- h) In May 2021, R.J.G. advised BCFMA that M.G. was no longer living at home.
- i) In August, 2023, A.G. claimed that:
 - i. M.G. was receiving local support from her.
 - ii. M.G. planned to return home, but no date was provided.
 - iii. M.G. was working part-time and had other financial resources (S.G. Family RESP and Student Aid).

[195] The documentation before me shows that A.G. was aware of the evolving status of both T.G. and M.G. from the earliest dates.

Analysis: Determining the Effective Date of Notice - TG

- [196] For T.G., I find that R.J.G. first contacted BCFMA seeking clarification about T.G.'s status. This inquiry prompted a formal review by BCFMA, in which A.G. was asked on August 10, 2020 to provide information and respond. By August 21, 2020, BCFMA had determined that support would continue based on A.G.'s assertion that she was financially supporting T.G.
- [197] However, this BCFMA assessment was based only on A.G.'s continued request for child support pursuant to the Sewell Order and not on independent adjudication.
- [198] It was not until May 11, 2021, that R.J.G. provided clear and substantive evidence that:
- a) T.G. was financially independent, with tuition and rent covered by his grandmother.
 - b) A.G. was not providing financial support, contrary to her earlier claims.
- [199] Shortly thereafter, A.G. requested that BCFMA stop collecting support for T.G., suggesting that she now accepted that he was no longer dependent.
- [200] In assessing the retroactive variation of child support obligations in this case, I must determine whether R.J.G.'s communication through the BCFMA constituted effective notice to A.G. regarding the changed circumstances of their children, T.G. and M.G. As established by the SCC in *Colucci*, effective notice requires clear and substantiated communication of changes that materially affect child support obligations: at para. 113.
- [201] Ordinarily, providing notice to the BCFMA alone would not constitute sufficient notice of a change in circumstances unless it was clear that the information was both adequate and effectively communicated to the recipient. However, when a child's living arrangements and financial support are in question, the determination must be fact-driven and consider not only what the recipient parent knew but also what they could not reasonably ignore. Unlike a material change in circumstances due to a fluctuation in the payor's income--something the recipient might not be immediately aware of and for which the law requires proper notice--the fact that the children were no longer residing with A.G. was plainly evident to her. She had two fewer children living in her home, a fundamental shift that she could not reasonably overlook.
- [202] A.G. was not only informed by the BCFMA that R.J.G. had raised concerns about T.G.'s status, but she also had a moral obligation to remain attentive to whether she was, in fact, financially supporting her children. She could not simply ignore the reality that the children were no longer living with her and were not returning to her care during the summers. Furthermore, aside from allowing them access to her medical benefits and similar resources, there is no evidence that she contributed to their financial needs in any meaningful way after they left her home.
- [203] The evidence includes a series of communications involving R.J.G., A.G., and BCFMA. Starting in August 2020, R.J.G. proactively reached out to BCFMA to clarify T.G.'s status as a child of the marriage. Subsequently, BCFMA communicated directly with A.G., who

responded by asserting that she was providing ongoing financial support for T.G. However, by May 11, 2021, R.J.G. provided specific details to BCFMA indicating T.G.'s independent living arrangements and financial self-sufficiency, as well as further clarifying that the child's grandmother was providing financial support rather than A.G. Shortly thereafter, A.G. acknowledged these facts by consenting to cease the collection of support for T.G., thereby recognizing T.G.'s independent status.

[204] Given these facts, I find that R.J.G.'s communication through BCFMA, coupled with BCFMA's direct communications to A.G., satisfies the requirement of effective notice as outlined in Colucci. A.G.'s documented knowledge and subsequent actions or acknowledgments further support this conclusion. To ignore A.G.'s awareness and her subsequent acknowledgment would result in unjust enrichment, contrary to the fairness principles underlying family support obligations.

[205] I previously found that T.G. ceased to qualify as a child of the marriage as of September 1, 2019. However, R.J.G. did not provide effective notice of this change until August 10, 2020, when BCFMA informed A.G. of the inquiry into T.G.'s dependency. As such, applying the framework set out in Colucci, I conclude that child support for T.G. should be retroactively adjusted from August 10, 2020, the date on which effective notice was provided.

Analysis: Determining the Effective Date of Notice - M.G.

[206] While R.J.G. provided notice to BCFMA in May 2021 that M.G. had moved out of A.G.'s home, the court has determined the M.G. did not cease to be a child of the marriage until September 1, 2022.

[207] With respect to M.G., R.J.G. advised BCFMA in May 2021 that M.G. had moved out of the family home. By August 2023, A.G. herself confirmed M.G.'s partial financial independence and external sources of support. Importantly, the documentation clearly indicates A.G.'s early and continuous awareness of the evolving circumstances affecting both children.

[208] While R.J.G. provided notice to BCFMA in May 2021 that M.G. had moved out of the family home, the court finds that M.G. did not cease to be a child of the marriage until September 1, 2022. Although effective notice was arguably given earlier, a legal basis for varying child support only arose once she became financially independent. The evidence supports that this occurred when M.G. commenced full-time post-secondary studies, began living independently with friends, and covered her education and living expenses through Family RESP withdrawals, trust distributions, and employment income. Accordingly, September 1, 2022 is the appropriate date for retroactive variation.

Conclusion on Effective Date of Notice for T.G. and M.G.

[209] Applying Colucci, I find that:

- a) T.G. ceased to be a child of the marriage beginning on September 1, 2019. However, R.J.G. did not provide sufficient notice and proof until he queried T.G.'s status and A.G. was informed by BCFMA on August 10, 2020, so retroactive support variation should be applied from this point forward.
- b) M.G.'s status remained uncertain until September 2022 when she moved into her own place, with friends while attending school. Given A.G.'s continued claims of financial support and BCFMA's delayed review, this is the appropriate effective notice date for M.G.

[210] Since both dates fall within the three-year presumptive period, there is no need for further deviation, unless fairness dictates otherwise. I consider this later in these reasons.

B. Notice of Change: R.J.G.'s Alleged Change in Income or Financial Circumstances

[211] While R.J.G. asserts that he experienced financial hardship, I find his communication with BCFMA regarding this issue was limited.

[212] In his affidavit, he provided examples of the letters he wrote and communication he had with BCFMA.

- a) On October 31, 2019, R.J.G. wrote to the BCFMA and explained that he had a take home pay of \$897.47 every two weeks. Of this pay, he told BCFMA he sent A.G. \$400.00, amounting to 45% of his take home pay.
- b) On December 11, 2020, BCFMA responded to R.J.G.'s letter and advised him that they have no authority to change the amount of maintenance he was required to pay under the court order. BCFMA advised that, that if he was having trouble making payments, he would need to obtain a new court order;
- c) On February 12, 2020, R.J.G. wrote to the BCFMA responding to their letter dated January 23, 2020, pleading that he is unable to make the support payments set out. He explained his background as an unskilled labourer and pleaded that if he lost his driver's license and his passport, he would be unable to visit his children or pursue the work that he was attempting to secure.

[213] Although he made repeated efforts to notify BCFMA of his financial struggles, as well as writing to A.G.'s former lawyer, from the evidence presented, it does not appear that he consistently provided either BCFMA or A.G. with his income tax returns or other documentation to substantiate his alleged change in income.

[214] The Sewell Decision was issued in March 2019 and required the parties to review both spousal and child support annually. The earliest opportunity for such a review would have been in June 2020.

[215] When R.J.G. filed his 2020 tax return, his refund was redirected to A.G.

- [216] R.J.G. did not file his 2021 and 2022 tax returns until May 23, 2023, when he submitted them electronically. This timing appears to coincide with a Notice to File Financial Statement served on him on May 8, 2023, which required him to comply within seven days of service.
- [217] Where a party fails to provide effective notice of a material change in circumstances, the date of formal notice will generally serve as the start date for variation: Colucci at para. 95.
- [218] R.J.G. filed this application on September 15, 2023. That is the date of formal notice and the presumptive start date for any variation due to a reduction in income.

Analysis: Effective Notice Date on Change of Financial Circumstances

- [219] As noted above, the Court may adjust the presumptive date of retroactivity when fairness demands it: Colucci at para. 96. To balance the interests of the payor parent, the recipient parent, and the child, Justice Martin in Colucci at paras. 96-108 adapted the four factors from D.B.S., to apply specifically to retroactive decrease applications based on a payor's change in income.
- [220] However, after an assessment of the relevant factors, R.J.G. has failed to persuade me that a deviation from the presumptive retroactivity date of September 15, 2023, is warranted with respect to his claim of reduced income. I will briefly examine each of the modified D.B.S. factors as they relate to his financial circumstances.
- [221] The D.B.S. factors, as adapted in Colucci for circumstances when a retroactive decrease in support is sought, are:
- a) Whether the payor had an understandable reason for any delay in seeking a decrease: Colucci at paras. 97-100;
 - b) The payor's conduct in communicating the change and continuing payments: Colucci at paras. 101-103;
 - c) The child's circumstances and ongoing dependency: Colucci at paras. 104-106; and
 - d) The hardship to the payor if the period of retroactivity is not lengthened (viewed in the context of the hardship to the recipient and the child if the period of retroactivity were extended): Colucci at paras. 107-108.
- [222] On the first factor, R.J.G.'s delay in applying to vary child support appears to stem from his unfamiliarity with the legal process.
- [223] On the second factor, while R.J.G. did contact BCFMA multiple times regarding his financial struggles, these communications were primarily responses to enforcement actions rather than a proactive request for a support reduction.
- [224] Per Colucci at paras. 88-90, effective notice of an income-based change in circumstances requires:

- a) Clear communication of the change to the recipient parent, and
- b) Supporting documentation that allows the recipient to meaningfully assess the situation.

[225] Here, there is no evidence before me that R.J.G. provided effective notice of his alleged income reduction with supporting documentation, such as income tax returns, employment records, or proof of salary reduction, until he filed his variation application in September 2023.

[226] Given R.J.G.'s failure to provide earlier financial disclosure, there is no basis to extend retroactivity beyond his filing date.

[227] A key consideration under this factor is whether the payor has made reasonable efforts to pay what they can and has consistently disclosed income changes.

[228] While R.J.G. initially made \$800 monthly payments, which he claims reflected what he could afford, his overall payment history shows inconsistencies:

- a) From June 2019 to the end of 2020, he paid \$400 every two weeks.
- b) In January 2021, he began missing payments.
- c) On December 2, 2022, John J. Billesberger, a lawyer representing R.J.G.'s brother, sent a letter to A.G.'s lawyer, Tonia Grace, proposing a settlement of the outstanding matters on behalf of R.J.G. In the letter, he stated that R.J.G. was not in a position to comply with the existing court order and put forward the proposed settlement on his behalf. He also noted that R.J.G. had been diagnosed with diabetes and was experiencing declining eyesight.
- d) In 2022, R.J.G. made no payments at all.

[229] R.J.G. only resumed payments in June 2023, following the Saskatchewan Provincial Court's adjournment of a default hearing to allow him time to file his Interjurisdictional Support Order Application ("ISOA") to address arrears.

[230] In compliance with a consent order, he began making the required \$1,838 monthly payments--but only after attending a default hearing.

[231] Additionally, despite repeated notices from BCFMA informing him that he was in arrears, he did not attempt to contribute even partial payments toward the outstanding amount.

[232] Most significantly, R.J.G. failed to disclose meaningful updated income information to A.G. until filing his application in September 2023. A payor has an ongoing duty to engage in meaningful dialogue about income changes and provide reliable financial documentation: Colucci at para. 90. Given his lack of timely financial disclosure, this factor does not support extending the retroactive period.

- [233] On the third factor, the children's circumstances and ongoing dependency, two of the parties' children remain children of the marriage and in need of support. A.G. alone does not have significant means to support the younger children. There is little question that H.G. and N.G. continue to need support from R.J.G.
- [234] While I have found that T.G. and M.G. are no longer children of the marriage, they needed support until September 1, 2019 and September 1, 2022, respectively. For M.G., the need for support continued until approximately two years before R.J.G. gave formal notice on September 15, 2023. Deviating from this presumptive date could impact the arrears R.J.G. owes in support to M.G. for a period when she remained a child of the marriage.
- [235] On the fourth factor, hardship to R.J.G., I accept that he has struggled to find or maintain employment and is reliant on his savings, and that this make it more difficult for him to pay arrears and sustain himself.
- [236] While I recognize that R.J.G. is experiencing significant financial hardship, the children's right to stable and predictable support must take precedence. This principle is firmly rooted in both the statutory scheme and the jurisprudence. Financial challenges, in the absence of full and timely disclosure, do not justify extending retroactive relief.

Conclusion on Effective Notice Date

- [237] Given R.J.G.'s failure to provide timely financial disclosure and his inconsistent payment history, his financial hardship does not outweigh the children's right to continued support. The appropriate retroactive adjustment date remains September 15, 2023, the date he formally filed his variation application.
- [238] Fairness also does not dictate that I deviate from the presumptive dates of effective notice for when child support ceased for T.G. and M.G.

C. Summary Table of Effective Notice and Retroactive Dates

[239] Here is a summary table of retroactive dates:

Child / Claim

Cessation Date

Effective Notice Date

Retroactive Start Date

T.G. - child of marriage

Sept 1, 2019

Aug 10, 2020

Aug 10, 2020

M.G. - child of marriage

Sept 1, 2022

May 2021 (notice), Sept 2022 (cessation)

Sept 1, 2022

R.J.G. - income change

Ongoing since 2019

Sept 15, 2023 (formal notice)

Sept 15, 2023

Issue 5: Should Child Support be Varied?

[240] Once the court determines that a material change in circumstances has occurred, it must then decide how the support order should be varied in light of those changes: Willick at 691.

[241] When making a variation order, judges are required to apply the Guidelines: Divorce Act, s. 17(6.1). Additionally, courts should presume that the existing order is correct and approach the variation application with deference to its terms, whether or not the order incorporates a prior agreement: L.M.P. at para. 33.

[242] The incomes of the parties filed in evidence are as follows:

Table: Income of A.G. and R.J.G. (2019-2023)

Year

A.G.'s Taxable Income (Line 150)

Breakdown of A.G.'s Income

R.J.G.'s Taxable Income (Line 150)

Breakdown of R.J.G.'s Income

2023

\$24,268.60

- \$268.59 in interest

- \$24,000.00 from RRSP

- \$0.01 in other income

\$48,000

- \$48,000 from RRSP

2022

\$28,237.31

- \$6.31 in dividends
- \$214.66 in interest
- \$28,000.00 from RRSP
- \$16.34 in other income

\$48,000

- \$48,000 from RRSP

2021

\$1,558.36

- \$25.79 in dividends
- \$1,276.68 in interest
- \$164.68 in capital gains
- \$91.22 in other income

\$45,000

- \$45,000 from RRSP

2020

\$491.00

- \$58.64 in dividends
- \$145.86 in interest
- \$184.10 in capital gains
- \$101.50 in other income

\$46,680

- \$1,680 from employment (farm)
- \$33,000 from RRSP
- \$12,000 from CERB

2019

\$1,911.00

- \$67.43 in dividends
- \$886.51 in interest (incl. 50% in trust)
- \$568.49 in capital gains
- \$410.19 in other income

\$36,745

- \$29,780 from employment (farm)
- \$6,454 from Employment Insurance (EI)
- \$511.02 in trust interest

Income of R.J.G.

[243] R.J.G. submits that his actual income, as reported in his tax returns, should form the basis for calculating child support. The starting point for income determination under the Guidelines is s. 16, which provides that a spouse's annual income is to be calculated based on the "Total income" reported on line 15000 of the Canada Revenue Agency's T1 General, subject to any adjustments under Schedule III.

[244] Where the court is not satisfied that the s. 16 amount accurately reflects the payor's financial situation, s. 17 of the Guidelines permits the court to consider the party's income over the past three years and to determine a fair and reasonable income. This assessment may account for income fluctuations, non-recurring gains, and overall financial patterns. A fair income determination is not necessarily based on a three-year average; the court retains discretion to exclude income that is non-recurring or otherwise atypical (*Ewing v. Ewing*, 2009 ABCA 227 at para. 37).

[245] A.G. alleges that R.J.G. has access to undisclosed income, specifically pointing to his involvement with a local pickleball club. She argues that his active participation in competitions is inconsistent with his claim of being unable to engage in gainful employment.

[246] R.J.G. denies having any ownership interest in the club, stating that the facility is owned by his brother and that he volunteers his time. I accept R.J.G.'s explanation. There is no evidence before me to suggest that he holds an ownership stake in the business, and his description of his limited administrative skills and inability to perform front desk duties is consistent with his overall financial and occupational profile. R.J.G. also credibly explains that his participation in pickleball is limited and recreational in nature, and that his lack of a driver's licence has constrained his ability to perform the general labour jobs he previously held.

- [247] A.G. also relies on Sewell Decision, in which Justice Sewell found that R.J.G. had previously benefited from financial support through the Family Trust. In that decision, the Court concluded that R.J.G.'s lifestyle had been subsidized by his family, including his mother and brother, and this support was relevant to the income determination at that time.
- [248] R.J.G. submits that income should not be imputed based on past discretionary trust payments, asserting that he no longer receives funds from the Family Trust and has no ongoing access to those resources.
- [249] The treatment of gifts or discretionary family support as income for child support purposes has been considered in multiple cases. In *K.A.F. v. J.L.F.*, 2017 ONSC 4279, the Court emphasized that caution must be exercised in imputing income based on family gifts, and that only those gifts that are regular, reliable, and substantial may be considered part of a party's financial resources (paras. 20-21). Similarly, in *Bak v. Dobell*, 2007 ONCA 304, the Court of Appeal confirmed that while gifts are not presumptively included as income, they may be imputed in exceptional circumstances where they are entrenched, recurring, and form part of a party's standard of living. Relevant factors include:
- a) the regularity and duration of the gifts,
 - b) whether they formed part of the family's income during cohabitation,
 - c) whether they entrenched a particular lifestyle,
 - d) whether they were intended as temporary assistance, and
 - e) whether they are likely to continue.
- [250] Upon review of R.J.G.'s financial records, I make the following observations:
- a) He has properly reported past income from the Family Trust in his tax filings, including the 2016 payment of \$45,168;
 - b) There is no evidence before me--whether affidavit, financial, or tax documentation--to support the claim that R.J.G. continues to receive gifts or redirected funds through the Trust or through the parties' children;
- [251] While there was evidence in Sewell that R.J.G.'s older son Ryan may have been used as a conduit for funds, Ryan is now fully employed, no longer a dependent, and there is no evidence to suggest that any such arrangement is ongoing.
- [252] The parties agree that R.J.G.'s mother has paid for the full cost of tuition and related post-secondary expenses for T.G. and M.G. Although the precise amounts and disbursement details were not provided, the evidence, including cheques, supports this assertion. These contributions are substantial and appear to be comparable to the trust payments received by R.J.G. in the past and considered in the Sewell Decision.

[253] However, there is no evidence that either party has a legal entitlement to these funds or that R.J.G.'s mother is under any obligation to continue providing financial assistance. Her decision to direct resources toward her grandchildren lies entirely within her discretion. I also note that both parties have indirectly benefited from this redirection of family wealth, as it has covered significant educational costs that would otherwise have been borne by them. Due to this assistance, the children's post-secondary educational opportunities have not been compromised.

[254] While it is possible that R.J.G. occasionally receives small gifts from family members, there is no evidence before me to suggest that any such support is regular, sustained, or substantial enough to be treated as income for child support purposes.

[255] Although evidence concerning family support may have been presented in prior proceedings, I do not have the benefit of that record in this matter. I must base my findings on the evidence before me. In the absence of reliable documentation or corroborating material, I am not satisfied that additional income should be imputed to R.J.G. on the basis of past or speculative family gifts.

[256] Accordingly, I find that imputing income to R.J.G. at a level of \$75,000, as previously done, would not be fair or realistic in the present circumstances. In reaching this conclusion, I consider the following:

- a) R.J.G.'s actual reported earnings have been significantly lower since 2019;
- b) His employment and financial circumstances have deteriorated for reasons largely outside his control;
- c) He no longer has regular access to financial support from the Family Trust or his family;
- d) Enforcement actions, including the suspension of his driver's licence, have further reduced his capacity to obtain and maintain employment.

[257] For these reasons, I decline to impute additional income to R.J.G. His income for child support purposes shall be based on his most recent tax return, subject to any adjustments under Schedule III of the Guidelines.

Income From RRSPs

[258] In his submissions, R.J.G. indicated that he had few remaining assets from the division of property following the breakdown of the marriage and that he has only a few years' worth of RRSPs left to sustain himself. Although he did not specifically address whether these RRSPs should be included as income for the purpose of calculating child or spousal support, he was self-represented, and no legal argument on this issue or any other were presented during the hearing.

- [259] The inclusion of RRSP withdrawals in Guidelines income calculations is a fact-specific determination. As stated in *McKenzie v. Perestrelo*, 2014 BCCA 161 at para. 82, "[t]here is no clear rule about the inclusion of RRSP withdrawals in a payor's Guidelines income; this is left to the discretion of the judge hearing the case."
- [260] RRSP income is presumptively part of a spouse's income for child support purposes, as it forms part of total income on a tax return and is not listed as an exemption in Schedule III of the Guidelines. The burden falls on the party seeking to exclude RRSP withdrawals from income to demonstrate that doing so would lead to a fairer determination of income: *Fraser v. Fraser*, 2013 ONCA 715 at paras. 97-99. Neither party has asked the court to exclude R.J.G.'s RRSP withdrawals.
- [261] However, several cases have found that income derived from marital property already divided should not be included as income for child support purposes: *Brown v. Brown*, 2012 NBCA 11 at para. 16.
- [262] I note that A.G.'s income, which will be discussed below was also comprised of RRSP withdrawals which she told the court she had to do because she had no other income and withdrew money specifically to support herself and the children.
- [263] Where RRSP withdrawals are regular and a spouse's primary or sole source of income, they are more likely to be included in income calculations for support purposes: *Edgar v. Edgar*, 2012 ONCA 646.
- [264] Although both parties' RRSP withdrawals stem from the division of marital assets, they have relied on these funds as their primary or sole income source. Accordingly, it would be inconsistent and unfair to exclude RRSP income for one party while including it for the other. In the absence of evidence showing these withdrawals are temporary or exceptional, I conclude that RRSP income should be included in each party's Guidelines income for the relevant years.
- [265] In assessing their RRSP withdrawals, I considered them in relation to what each party could reasonably earn through employment or other available income sources. Given the limited documentary evidence before me, I evaluated each party's earning capacity based on their skills, experience, and available opportunities to determine their reasonable earning potential.

Summary on Income for R.J.G. and Child Support Obligations

- [266] Based on his education and work history, I accept that R.J.G. has primarily been employed in manual labour roles. A full-time income of \$48,000 per year is consistent with his reported earnings prior to separation and reflects slightly more than entry-level wage employment. This amount also aligns with the type of work he has performed historically and represents a fair approximation of his reasonable earning capacity under the circumstances. In other words, if he was to work full time at his brother's pickle ball facility

and to be paid for his work based on \$23.08 per hour, which is possible, he would earn a comparable income.

[267] This income would position him notably above Saskatchewan's minimum wage of \$15.00 per hour, resulting in an annual income of approximately \$31,200, and above the federal minimum wage set to increase to \$17.75 per hour in April 2025, equating to an annual income of \$36,920. Therefore, an annual income of \$48,000 reflects a reasonable earning capacity for R.J.G. consistent with slightly more than entry-level or minimum-wage employment which is somewhat comparable to what he told this court he earned prior to the couple's separation and divorce.

[268] I find that R.J.G.'s child support obligations should be retroactively varied as follows:

- a) T.G. - Child support ceased as of August 10, 2020, the date of effective notice that he was no longer a child of the marriage.
- b) M.G. - Child support ceased as of September 1, 2022, the date she became financially independent.
- c) N.G. and H.G. - Support for the remaining children should be retroactively varied to reflect R.J.G.'s reduced income of \$48,000 per year, effective September 15, 2023, the date of formal notice of his material change in income.

Income of A.G.

[269] When the Sewell Order was issued, the court imputed a Guidelines income of nil to A.G. However, since that decision, she has earned income exceeding nil. This change in her Guidelines income constitutes a material change in circumstances for the purpose of assessing extraordinary expenses.

[270] In 2022 and 2023, A.G. reported incomes of \$28,237.31 and \$24,268.60, respectively, with most of these amounts resulting from withdrawals from her RRSPs. She is in the same position as R.J.G. in terms of relying on RRSP funds for income.

[271] The evidence before me indicates that at the time of their marriage, A.G. was the higher income earner, having worked in the information technology industry as a capable network engineer. The evidence also establishes that she is an intelligent and highly resourceful individual who should be able to re-enter the workforce, at least on a part-time basis, to contribute financially. While Justice Sewell did not impute income to A.G. at the time of trial, she was then homeschooling four children. Currently, only one child remains under the age of 18, although I note there is no dispute that she remains entitled to receive child support for the two younger children.

[272] Based on A.G.'s income history, as well as her education, experience, and current caregiving responsibilities, I find it reasonable to impute income to her in the amount of \$24,268.60 per year. This reflects the lower of her two most recent annual incomes and corresponds to part-time work at minimum wage, consistent with her demonstrated ability to contribute financially.

Issue 6: Should Section 7 Expenses Be Adjusted?

[273] Under s. 7(2) of the Guidelines, extraordinary expenses are allocated between parents in proportion to their respective incomes.

[274] In the Sewell Decision, the court determined that R.J.G. was responsible for 94.9% of special and extraordinary expenses, while A.G. was responsible for 5.1%. This allocation was based on the income findings at the time of that decision and reflects each parent's relative financial responsibility for these expenses.

[275] In his application, R.J.G. seeks to reduce or eliminate arrears of s. 7 expenses, arguing that his financial circumstances have changed significantly. He contends that his actual income, rather than an imputed amount, should be used to determine his proportionate share of expenses and that A.G.'s income should be imputed to reflect her earning capacity. He further asserts that, despite his efforts to meet his support obligations, the arrears do not accurately reflect his current financial situation. Given his declining income and reliance on savings, he requests a retroactive adjustment and a reassessment of their respective contributions to s. 7 expenses moving forward.

[276] A.G. opposes any reduction in arrears and argues that:

- a) The Sewell Decision sets out the percentage that each parent is responsible for paying;
- b) The Sewell Order lists extraordinary expenses "[f]or clarity" but that the list should not be treated as exhaustive because the children's needs and interests change over time.
- c) Prior to the Sewell Decision, R.J.G. made an effort to cover some of the expenses. However, following the Sewell Decision, R.J.G. stopped paying for s. 7 expenses.
- d) R.J.G. is currently in default of the following particular extraordinary expenses:
 - i. Trust repayment for the Children's activities in the amount of \$2,206.90 which has been added to his BCFMA arrears;
 - ii. Repayment of his portion of \$5,521 of the April 2019 Refine Orthodontics Bill. She says that H.G. was in the middle of her treatment and he left her to complete the monthly payments of \$176.98 until May 10, 2021. She states that the \$5,521.28 has been added to his BCFMA arrears; and
 - iii. \$374.13 for H.D.'s violin in May 2019, which was added to BCFMA arrears.

[277] Under s. 7 of the Guidelines, the court may consider the reasonableness of the expense in relation to the spouse's means. Courts have found that "means" has a broader meaning than "income": *Bodine-Shah v. Shah*, 2014 BCCA 191 at para. 66; *Delichte v. Rogers*, 2013 MBCA 106 at para. 38. In *Delichte*, the Manitoba Court of Appeal explained that "means" should be broadly interpreted "to include consideration of all financial resources, including capital assets, income distribution, debt load, third-party resources which upon the parties' means, access costs, obligations to pay spousal or other child support orders, spousal support received, and any other relevant factors": at para. 38.

[278] Nonetheless, based on my above assessment, for the purposes of the s. 7 expenses from September 2023 onwards, I have imputed income to R.J.G. in the amount of \$48,000 per year and \$24,268.60 for A.G.

Conclusion on s. 7 Expenses

[279] Based on the updated income findings: \$48,000 for R.J.G. and \$24,268.60 for A.G., their combined annual income is \$72,268.60. Accordingly, effective September 15, 2023, section 7 extraordinary expenses are to be shared as follows:

- a) R.J.G.: 66.4%
- b) A.G.: 33.6%

[280] Prior to that date, the existing proportions--94.9% (R.J.G.) and 5.1% (A.G.)--remain applicable.

[281] In summary, I find that R.J.G.'s share of s. 7 expenses should be adjusted from 94.9% to 66.4%, effective September 15, 2023, based on the updated proportional incomes. However, for all s. 7 expenses incurred prior to that date, including the outstanding amount of \$8,102.31, the original allocation remains in effect. R.J.G. is responsible for the full amount of s.7 expenses included in these arrears as calculated under the Sewell Order.

Issue 7: Should Spousal Support Be Varied?

Positions of the Parties

[282] R.J.G. seeks to terminate spousal support and argues that:

- a) If A.G.'s income is imputed at \$32,000 and his actual income from 2019 onward is used, ChildView calculations indicate that spousal support should be \$0.00. Therefore, he requests that spousal support be terminated retroactively to January 1, 2019.
- b) The original spousal support order was based on an imputed income of \$75,000, whereas his actual income has been significantly lower since 2019.
- c) He has been drawing from his RRSPs to meet support obligations, which is unsustainable.
- d) His declining health limits his ability to work.

- e) A.G.'s financial position has improved, and she no longer requires spousal support.
- [283] A.G., conversely, seeks continued spousal support and potentially a lump sum payment to address arrears and secure her financial stability.
- [284] I have determined that R.J.G.'s income is \$48,000 per year, based on his RRSP withdrawals over the past two years, as this amount reasonably reflects his earning potential.
- [285] Similarly, I have calculated A.G.'s income to be \$24,268.60, which I find to be a fair representation of her current earning capacity while working part-time. However, this figure does not include supplementary benefits or credits she receives, a matter I will address shortly.
- [286] Once again, the Court must presume that the existing order is correct and approach any application for variation with deference to its original terms. A variation is warranted only if the applicant demonstrates a material change in circumstances that justifies modifying the existing support obligations
- [287] In the Sewell Decision, Justice Sewell found that:
- [111] A.G. has a strong claim for spousal support based both on compensatory grounds and because she is in need, given the circumstances of her children. An important object of spousal support is to allow the party receiving support to maintain a lifestyle that approximates his or her circumstances prior to the breakdown of the marriage.
- [112] I find that that A.G. gave up her career to provide child care and later home schooling for the five children of the marriage. I reject R.J.G.'s evidence that home schooling the children was not a prudent step taken in the best interests of the children.
- [288] Further, the Court acknowledged at that time that the two youngest children had special needs. H.G. had been diagnosed with epilepsy, and N.G. had been diagnosed with ADHD. Although H.G. is now 18 years of age and may be pursuing post-secondary education, there is no dispute between the parties that A.G. is entitled to receive child support for both H.G. and N.G.
- [289] The Court previously found that spousal support under the SSAG was insufficient to provide A.G. and her children with a reasonable standard of living, particularly given the disparity in financial support that R.J.G. received from his family.
- [290] Based on the SSAG, R.J.G. was ordered to pay \$316 per month in spousal support on an indefinite basis, in addition to \$1,815 per month in child support, resulting in A.G. and the four children receiving 60% of the Net Disposable Income (NDI). However, the Court determined that the above amount was inadequate to meet the objectives of spousal support, particularly in maintaining A.G.'s pre-separation standard of living and then determined that an unequal division of the matrimonial home was necessary, given A.G.'s significant caregiving and homeschooling responsibilities, which had severely impacted her income-earning capacity.

[291] The Court further noted that R.J.G.'s underemployment and the cessation of family trust distributions made it impractical to rely solely on increased spousal support. As a result, the Court awarded A.G. the remaining net proceeds from the sale of the matrimonial home, which, according to the Agreed Statement of Facts before the Court, amounted to \$237,321.72. Although she did not receive the full amount due to legal fees and other deductions, the funds were allocated in her favor to provide stable housing for the children and enhance her financial stability.

Relevant Legal Framework

[292] Under s. 17(4.1) of the Divorce Act, a court may vary a spousal support order only if there has been a material change in the condition, means, needs, or other circumstances of either former spouse. This principle was affirmed in L.M.P. at paras. 32-33, citing Willick at 687-688.

[293] In assessing the recipient's financial circumstances under the with child support formula of the SSAG, courts must consider child-related government benefits such as the Canada Child Benefit (CCB) and the B.C. Family Benefit (BCFB). While these benefits are non-taxable and do not appear on a recipient's tax return, they increase Net Disposable Income (NDI) and reduce financial need. See SSAG s. 6.3; see also Note 6 to Schedule I of the Guidelines.

[294] It is unclear whether A.G. provided the earlier proceedings with confirmation of the benefits and credits she was receiving at the time. However, given her circumstances as a single parent with four children at home, these amounts would have been substantial and could have played a significant role in the NDI calculations.

[295] That said, I do not have visibility into what evidence was before Justice Sewell at the time he rendered his decision, nor do I have visibility into what the benefit amounts would have been.

[296] A.G.'s most recent tax return reports an income of \$24,268.60, which I have accepted for the purposes of this analysis. Based on that income and the ages of H.G. and N.G., DivorceMate generated calculations that included estimated amounts received through the CCB and the BCFB. When these benefit amounts are incorporated into the NDI analysis, R.J.G. no longer has a spousal support obligation to A.G.

Conclusion on Variation of Spousal Support

[297] Given the nature of this proceeding, I do not have sufficient evidence to impute the requested salary of \$32,000 to A.G. as R.J.G. requested.

[298] I find that a material change in circumstances has occurred, and that ongoing spousal support is no longer appropriate. Based on the parties' revised incomes, R.J.G.'s financial limitations, and A.G.'s increased capacity and benefit entitlements, there is no longer a sufficient disparity in means to justify continued support. As stated in s. 14.2 of the SSAG, "As the disparity between the spouses' net incomes is reduced, so too is the amount of spousal support required."

[299] Accordingly, I order that spousal support be terminated retroactively, effective September 15, 2023, the date on which R.J.G. provided formal notice of his change in income. This variation ensures a fair and timely adjustment in accordance with the principles set out in L.M.P., Willick, and the SSAG.

[300] In assessing whether spousal support remains necessary, I note the following:

- a) The Sewell Decision awarded A.G. 80% of the matrimonial home proceeds in recognition of her caregiving role, which has contributed to her financial security.
- b) A.G.'s financial position is expected to improve over time, given her reduced caregiving responsibilities. She now has only one child under the age of 18, which affords her greater flexibility to pursue part-time employment. Prior to her decision to home-school the children, the evidence suggests that A.G. was in fact the higher income earner between herself and R.J.G., reflecting strong earning potential. In addition, she will continue to receive child support for at least two children, which will further contribute to her financial stability.
- c) R.J.G. has spent his career primarily in manual labor, but his ability to continue in this field has become increasingly limited due to his advanced age and declining health. His ongoing reliance on RRSP withdrawals to meet his obligations further highlights his financial difficulties. While he is actively involved in pickleball, this is primarily a recreational activity and volunteer-driven, and there is no evidence before me to suggest that it generates any significant income. Additionally, there is no indication that he is maintaining a lifestyle inconsistent with that of his family. Although his mother possesses significant family assets, there is no evidence to suggest that he has any regular entitlement to these assets or an independent income stream from them.

[301] Given these factors, and based on DivorceMate calculations, I find that ongoing spousal support is no longer appropriate. Accordingly, I order that R.J.G.'s obligation to pay spousal support be retroactively varied to the date he gave formal notice of his change in income, September 15, 2023. This date aligns with established legal principles regarding retroactive variation and ensures fairness to both parties.

Summary on Variations of Support Obligations

[302] Here is a summary of the variation in total support payments owed by R.J.G. to A.G.

Effective Date

Child Support

Spousal Support

Notes

March 2019

\$1,815/month (for 4 children, based on imputed income of \$75,000)

\$316/month

Original court-ordered support amounts

August 10, 2020

\$1,522/month (for 3 children, based on \$75,000)

\$316/month

T.G. no longer eligible for child support

September 1, 2022

\$1,046.00 /month (for 2 children, based on \$75,000)

\$316/month

· M.G. no longer eligible for child support.

· Payor residing in Saskatchewan

September 15, 2023

\$664/month (2 children, based on income of \$48,000);

\$0/month

· Child support recalculated per Guidelines;

· Spousal support terminated.

· Payor residing in Saskatchewan.

Issue 8: Should Arrears Be Rescinded

[303] The respondent applies for an order cancelling the child support arrears that have accrued with respect to T.G. and M.G.

[304] R.J.G. asserts that following the Sewell Order, he experienced significant mental health challenges, including depression, which affected his ability to work and contribute to child support as ordered. While he seeks rescission of the arrears, he does not dispute the existence or the amount of arrears currently owing, which he states total \$51,982.19.

Relevant Legal Framework

- [305] As noted earlier, the SCC in *Colucci* set out two frameworks for how the court should exercise its discretion on an application for a retroactive decrease in support. The applicable framework at this stage of analysis is the framework for when the payor seeks to rescind arrears because they are unable to pay the arrears now and in the future.
- [306] Where a payor seeks relief from accumulated arrears based on a current and ongoing inability to pay, the payor's ongoing financial capacity is the only relevant factor: *Colucci* at para 135. The payor must provide sufficient evidence to allow the court to assess their current and future financial circumstances: *Colucci* at para 135.
- [307] There is a presumption against rescission in these situations because the arrears represent sums that should have, and could have, been paid as they came due: there was no past change in circumstances that would justify a retroactive decrease in child support: *Colucci* at para. 138.
- [308] To overcome this presumption, R.J.G. must show on a balance of probabilities that he will never be able to pay the arrears, even on a flexible payment plan: *Colucci* at para. 138. A simple present inability to pay may only justify a temporary suspension of arrears: *Colucci* at para. 138. Payors should not be encouraged to allow arrears to accumulate in hopes they will be forgiven: *Colucci* at para. 138.
- [309] When a court cancels arrears, it rescinds them and, effectively, extinguishes the payor's debt: *Beninger v. Beninger*, 2009 BCCA 145 at para. 32.

Analysis on whether Arrears should be Rescinded

- [310] In his affidavit, R.J.G. gave evidence that his tax credits have been garnished, that his RRSP funds will only last an estimated three years, and that his cognitive abilities are declining. He also provided a note from a clinic in Regina, stating that he "is not able to operate large equipment due to his declining cognitive ability."
- [311] I accept that R.J.G. has struggled to find appropriate employment and that he has supported himself by making withdrawals from his RRSP in recent years. However, I do not find that the testimony and evidence R.J.G. provided meet the threshold to overcome the presumption against rescission.
- [312] R.J.G. bears the burden of demonstrating that he will never be able to repay the arrears, even under a flexible payment arrangement. While I accept that he is currently experiencing financial difficulty and health concerns, I am not satisfied that these circumstances are permanent or that he has exhausted all reasonable options to meet his obligations. He has not rebutted the presumption against rescission. Accordingly, I decline to cancel the arrears, but they may be subject to a structured payment schedule through the enforcement agency.

Issue 9: Should Penalties and Interest on Arrears be Cancelled?

- [313] Section 18.1(1) of the Divorce Act provides jurisdiction for the court to address applications to obtain, vary, rescind, or suspend a support order, retroactively or prospectively, or to request the calculation or recalculation of child support through a provincial child support service where available, when former spouses are resident in different provinces. However, this jurisdiction is limited to matters specifically related to support orders under the Divorce Act and does not extend to the cancellation of penalties or interest levied against the payor under provincial enforcement legislation.
- [314] Penalties and interest accrued on child support arrears are not considered part of the support order itself but are implemented under provincial enforcement mechanisms. These measures, such as those under British Columbia's Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127 or equivalent legislation in other provinces, operate independently of the support order. In this case, the applicant and payor resides in Saskatchewan and is subject to the authority of Saskatchewan's enforcement framework with respect to the penalties and interest that have accrued.
- [315] Consequently, the court does not have jurisdiction under s. 18.1(1) of the Divorce Act to cancel or modify such penalties or interest. Instead, such issues must be addressed through the relevant provincial enforcement agency or the applicable provincial court processes.
- [316] The Family Maintenance Act, 1997, SS 1997, c. F-6.2, [FMA] provides the authority to forgive arrears or penalties under certain circumstances through s. 10(1)(b), which empowers the court to "relieve the respondent from the payment of part or all of the arrears." This includes both child and spousal maintenance orders. The provision reads:
- s. 10(1): Where an order for maintenance has been made pursuant to this Act, the court, on application, may:
- a) discharge, vary or suspend any term of the order, prospectively or retroactively;
 - b) relieve the respondent from the payment of part or all of the arrears;
 - c) order that an irrevocable designation of a beneficiary under a life insurance policy, pension plan or other benefit plan be revoked; or
 - d) make any other order pursuant to section 9 that the court considers appropriate in the circumstances.
- [317] While this provision directly applies to arrears, forgiveness of interest is not explicitly addressed under this section. However, the cancellation or reduction of interest and penalties may be handled under administrative rules or regulations related to enforcement actions, such as adjustments managed by the Maintenance Enforcement Office.

[318] Section 2 of the FMA defines maintenance as including support and alimony. Under s. 1(1) of B.C.'s Family Maintenance Enforcement Act, "maintenance" also means maintenance, support or alimony, including interest payable on maintenance.

[319] Further, per s. 174(4) of the FLA interest on arrears under s. 11.1 of B.C.'s Family Maintenance Enforcement Act may be cancelled if the court determines that enforcement would be grossly unfair. However, in *S.E.S. v. K.E.H.*, 2024 BCSC 1282, the court found that, in B.C., cancellation of interest is only available if the court has also cancelled the underlying arrears: at para. 67. I have already found it inappropriate to do so here.

Conclusion on Arrears

[320] In conclusion, R.J.G. has not met the high threshold for rescission of arrears as set out in *Colucci*. While he may be experiencing genuine financial hardship, he has not demonstrated that repayment is impossible, even on a structured schedule. Additionally, this Court does not have jurisdiction under the Divorce Act to vary or cancel penalties or interest on arrears, which are administered under provincial enforcement legislation. In British Columbia, such relief is only available where the underlying arrears are also rescinded, which is not the case here. Accordingly, the application to cancel arrears and interest is dismissed.

Disposition and Orders

[321] I therefore make the following variation orders under the Divorce Act, effective as specified:

a) Child Support:

- i. T.G. - Child support obligations are retroactively terminated effective August 10, 2020.
- ii. M.G. - Child support obligations are retroactively terminated effective September 1, 2022.
- iii. H.G. and N.G. - As of September 15, 2023, ongoing child support shall be recalculated in accordance with the Guidelines, based on R.J.G.'s income of \$48,000.

b) Spousal Support:

- i. As of September 15, 2023, R.J.G. no longer owes spousal support to A.G. Spousal support is hereby terminated retroactively to that date.

c) Arrears:

- i. I decline to make any order rescinding the remaining child or spousal support arrears or cancelling interest on those arrears. Arrears shall remain payable as determined by the appropriate enforcement agency.

- d) A copy of this decision shall be provided to the Director of the Maintenance Enforcement Office in Saskatchewan for enforcement and recalculation of arrears in accordance with this decision. This relates to proceedings under Court of King's Bench File No. 104883-010 (Regina, Saskatchewan).
- e) Costs: Given the mixed success of both parties in this matter, no order as to costs is made. Should either party wish to address costs or any other outstanding matter, they may do so by scheduling a hearing through Supreme Court Scheduling.

"Sukstorf J."

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