

CANADA / JUDGMENT

A.V. v. L.A.M.S.M.

2022 BCSC 1840

COURT

Supreme Court of British Columbia

DECIDED

20 October 2022

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2022 BCSC 1840 A.V. v. L.A.M.S.M. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: A.V. v. L.A.M.S.M., 2022 BCSC 1840 Date: 20221020 Docket: E212492 Registry: Vancouver Between: A.V. Claimant And L. A.M.S.M. Respondent Before: Master Bilawich Reasons for Judgment Counsel for the Claimant: J. Broadhurst Counsel for the Respondent: J. Cudmore Place and Date of Hearing: Vancouver, B.C. September 7, 2022 Place and Date of Judgment: Vancouver, B.C. October 20, 2022

Introduction

- [1] By application filed August 23, 2022, the claimant seeks an order that the respondent pay him retroactive child support in the sum of \$63,123 for the period January 1, 2015 to July 2022. The claimant alleges the respondent misrepresented (understated) her Guideline income during informal annual reviews conducted during the relevant period. This resulted in the respondent paying him less in off-set child support than she should have, based on her Guideline income.
- [2] The respondent opposes the application. At the hearing, she raised as a preliminary issue whether a master has jurisdiction to decide this application, saying the claimant was seeking final relief. The respondent did not raise this objection in her application response. She also raises numerous substantive issues, including:
- a) She denies the claimant achieved the 40% parenting time threshold necessary to constitute "shared custody" for calendar years 2015 and 2016 due to informal adjustments the parties made to their shared parenting schedule.
 - b) She says if retroactive support is granted, the start date should be either July 1, 2021 or alternately January 1, 2019, based on the date that the claimant gave effective notice he was seeking to vary support.
 - c) She says the claimant failed to initiate timely annual reviews and the terms of their separation agreement state that the parties are deemed to have agreed to continue support at existing levels. The agreement also contemplates prospective adjustments, not retroactive ones.

- d) She says that any retroactive child support she may be ordered to pay the claimant should be set-off against the claimant's share of special and extraordinary expenses she incurred during the relevant periods.
- e) She claims the parties informally agreed to suspend off-set child support payments during relevant periods, based on the claimant's work travel obligations.
- f) Further and in the alternative, she says she is entitled to retroactive child support from the claimant for calendar years 2015 and 2016, based on the claimant not having reached the 40% parenting time threshold necessary for shared custody.
- [3] The respondent has filed a counterclaim and says she will be seeking variation of the current parenting time and child support arrangements. She says the parties' daughter asked to live primarily with her for part of this past summer and also wishes to make changes to the shared parenting arrangements during the school year. The parties previously agreed to have a Views of the Child report prepared. These issues are not before me on this application.
- [4] I note that the claimant does not seek a prospective child support order as part of this application.

Background

- [5] The parties married on September 7, 2002 and separated on May 1, 2011. They have one child of their marriage, "L.", who is 15 years old.
- [6] The parties entered into a separation agreement (the "Separation Agreement") dated February 28, 2012, which provided they would co-parent L. on an alternating week schedule. For purposes of determining child support, they agreed they had "shared custody" as defined in the Federal Child Support Guidelines (the "Guidelines"). The respondent's annual salary was \$92,500 and they would account for any additional monetary bonus she received at an annual review the following June. The claimant's annual income was \$50,000. They agreed to share s. 7 expenses in proportion to their incomes, which at the time was 64.9% to the respondent and 34.1% to the claimant.
- [7] The Separation Agreement provided for annual reviews of child support:
 - 31. (1) The parties will review the Child Support annually by June 1 of each year, commencing June 1, 2013, to adjust the Child Support to take into account any changes in:
 - (a) The parties' respective Guideline Incomes;
 - (b) The amount required to be paid under the [Guidelines], and
 - (c) [L.'s] needs and expenses.

- (2) In any review of Child Support pursuant to this clause or clause 32 herein, as long as the Regular Parenting Schedule is within the definition of "shared custody" pursuant to the [Guidelines], the parties will determine the monthly Child Support by using the Set-Off Formula.
32. Either party may request, by delivering a written notice to the other, a review of Child Support or the payment of s. 7 expenses if:
- (a) there are material change of circumstances, such as a change in the percentage of time that [L.] lives with each of the parties or other changes in the condition, means, needs or other circumstances of either party or [L.]
33. (1) In any review of Child Support, [the respondent] and [the claimant] will each provide the other with:
- (a) a photocopy of the most recent income tax return;
 - (b) the most recent notice of assessment, if received;
 - (c) details of Child Benefits or other similar benefits received in the previous year and anticipated for the coming year, if known;
 - (d) particulars of [L.'s] s. 7 Expenses, anticipated for the coming year; and
 - (e) any other information required by the [Guidelines], or any other relevant information require to facilitate determination of the adjustment, if any, required to Child Support.
- (2) Any information a party must provide to the other party that is not available by the required date must be delivered to the other party within 14 days of the information being received.
34. If on any review of Child Support and [L.'s] s. 7 Expenses herein, the parties are unable to reach agreement through negotiation within 30 days after the commencement of negotiations, the issue will be resolved pursuant to the Dispute Resolution Clause herein.
35. If the parties do not review Child Support and [L.'s] s. 7 Expenses or review them and do not vary it in writing, both parties are deemed to accept the existing Child Support and it will remain in effect.
36. Any adjustment to Child Support pursuant to clauses 31 and 32 herein will not apply retroactively, but will take effect from the date of notice of review. If [the respondent] is required to make a further payment to [the claimant] based on [the respondent's] monetary bonus pursuant to clause 24(2) herein, then the said payment will be payable within 7 days from the date of the review.
- [8] Clause 55 of the agreement addresses dispute resolution. It provides that the parties use best efforts to resolve disputes through negotiation and mediation before taking court proceedings.

- [9] The Separation Agreement was filed with this court on September 20, 2012, in Vancouver action E122876.
- [10] The claimant says the parties conducted informal annual reviews. They each told the other their previous year's income via email or text, and they modified child support based on those figures. He says he trusted the respondent and did not insist she produce income tax returns or notices of assessment to verify her Guideline income.
- [11] The respondent acknowledges the parties annually reviewed child support without exchanging income tax returns and notices of assessment. During argument, her counsel argued that reviews had not taken place within the timeframe contemplated by the Separation Agreement. If so, it appears both parties did not insist on strict compliance with timelines indicated in the agreement.
- [12] The respondent admits the parties had a shared parenting schedule for the period 2017 and 2021. For 2015-2016, she offers a calculation based on parenting calendars she maintained at the relevant time. She estimates she had at least 60% of the parenting time with L. during those two years and the claimant fell below 40%. She says this was because the claimant had a demanding travel schedule for his work, which made him miss a significant amount of his scheduled parenting time. There is a minor shortfall when the respondent's figures are added, which represents "neutral hours". The respondent's calculation is roughly as follows:
- | Year | Claimant | Respondent |
|------|----------|------------|
| 2015 | 37.6% | 60.0% |
| 2016 | 36.4% | 61.3% |
- [13] The claimant disputes the respondent's calculation for 2015-2016. He identifies several errors in the respondent's calendars, some of which the respondent acknowledged. He says his ability offer a more comprehensive analysis is hampered by his inability to access emails the parties exchanged during the relevant period.
- [14] In June 2021, the respondent stopped making child support payments to the claimant. He retained legal counsel, who demanded the respondent provide proper financial disclosure dating back to 2012. The respondent declined to do so.
- [15] On September 29, 2021, the claimant started this action. He seeks an order for child support, including basic table support and s. 7 expenses. Under "other orders", he seeks disclosure of the respondent's financial information relevant to calculation of child support for the period 2012 to present, and an order setting aside any agreements made between the parties with respect to child support from 2012 to present.
- [16] On November 18, 2021, the respondent filed a response to family claim and counterclaim. In her response, she says she only has access to financial information dating back to 2015 and that the disclosure sought is not appropriate or warranted. In her counterclaim, she seeks to vary the shared parenting arrangement based on L.'s wishes and an order for child support, commencing on the date that the parenting schedule is no longer shared. She does not clearly plead a claim in the alternative for retroactive child support for 2015-2016.

- [17] In or about April 2022, the respondent produced her financial records dating back to 2015. The claimant learned the respondent understated her Guideline income during their informal annual reviews. He calculates the resulting under-payment of offset support as follows: Year R claimed R actual C income Amt Paid Correct Bal. Due 2015 \$137,128 \$190,826 \$100,622 \$4,562 \$8,388 \$3,826 2016 149,588 181,292 110,247 0 6,588 6,588 2017 160,993 212,392 140,099 0 6,768 6,768 2018 163,856 226,530 * 95,000 ** 4,600 12,600 8,000 2019 172,300 222,721 * 95,000 1,150 12,240 11,090 2020 NA 304,970 84,749 * 7,200 21,060 13,860 2021 NA 288,288 143,750 5m *3,135 7m 2,653 13,536 7,748 2022 (7m) NA TBD TBD 2,653 7,896 5,243 Total \$63,123 * respondent unilaterally deducted claimant's share of section 7 expenses from this ** paid in 2019 *** imputed income (agreed by parties)
- [18] The respondent says she provided the claimant the wrong Guideline income figures by mistake. A portion of her bonus is allocated to her RRSP and an employee stock purchase plan. She deducted those amounts from the income figure she disclosed to the claimant. She only learned this was an error after this action was started.
- [19] The respondent says she has paid the claimant support in the following amounts since 2018: Year Amount Paid 2018 \$0 2019 6,759.03 2020 4,941.03 2021 4,373.43 2022 (Aug) 4,350.46 Total \$20,423.93
- [20] The respondent says the parties informally agreed to suspend support payments during 2016 - 2018 due to the amount of travelling the claimant was doing for work at the time. The claimant denies this. In or around October 2014, the parties were negotiating a possible amending agreement, but it was never finalized or executed.
- [21] The claimant says his work pattern changed in 2018-2019, resulting in dramatically lower income. He sold his home and was using sale proceeds to help pay living expenses. He also pursued several side projects which did not work out for him. At the time, the parties agreed to attribute income of \$95,000 per annum to him. He says he went along with this to help keep peaceful relations with the respondent.
- [22] The claimant does not appear to address special and extraordinary expenses in detail in his materials or what he says his proportionate share of those was or ought to have been during the relevant years in his calculation. He does say that he paid for L.'s cell phone at a cost of about \$60 per month.
- [23] The respondent says she paid numerous special and extraordinary expenses and provides details for the period June 2021 to August 2022. These include orthodontic expenses, various competitive volleyball, track, snowboarding and horseback riding, among others.
- [24] It appears special and extraordinary expenses were not being closely tracked through much of the relevant period. The respondent says generally that she deducted what she calculated as the claimant's share of such expenses from amounts she direct-deposited to his account. She alleges the claimant stopped contributing to s. 7 expenses in about June 2021 and she has been paying them solo since then.

- [25] The claimant disputes whether many of the expenses identified by the respondent are properly characterized as special or extraordinary in nature. It appears neither party was particularly careful about keeping detailed records at the relevant time. Each side suggests there are deficiencies in financial document disclosure which have hampered efforts to reconstruct retrospectively.
- [26] On August 23, 2022, the claimant filed this application. Applicable Law Master's Jurisdiction
- [27] Section 11.3(2) of the Supreme Court Act, R.S.B.C. 1996, c. 443 deals with master's jurisdiction: Duties and powers of master 11.3
- (2) Subject to the limitations of section 96 of the Constitution Act, 1867, a master has the same jurisdiction under any enactment or the Rules of Court as a judge in chambers unless, in respect of any matter, the Chief Justice has given a direction that a master is not to exercise that jurisdiction.
- [28] Hinkson CJSJ issued Practice Direction 50, which addresses master's jurisdiction. The relevant portions for purposes of this application are: Interim Orders in Family Law Cases
6. Subject to constitutional limitations and to the direction set out in paragraph 3, a master has jurisdiction in family law cases a. to make interim orders under the Family Law Act, including those respecting: iv. financial disclosure, child and spousal support and extraordinary expenses; Final Orders
8. Subject to constitutional limitations and to the direction set out in paragraph 3, a master has jurisdiction to make the following final orders:
- a. orders by consent;
 - b. orders under Supreme Court Civil Rule 22-7 and Supreme Court Family Rule 21-5;
 - c. orders for summary judgment under Rule 9-6 where there is no triable issue;
 - d. orders striking out pleadings under Rule 9-5(1) provided there is no determination of a question of law relating to issues in the action;
 - e. orders granting judgment in default;
 - f. orders under Rule 21-7(5) where no matter is contested or where there is no triable issue; and
 - g. uncontested final orders in respect of the Administration of Estates under Part 25 of the Supreme Court Civil Rules.
- [29] In *Jevon v. Jevon*, 2007 BCSC 576 [Jevon] at para. 28-29, Master Caldwell, as he then was, concluded that a master has jurisdiction to deal with retroactive support on an interim application: 28 Defendant's counsel submits that the issue of retroactive child support should not be dealt with in chambers, but rather should be reserved for trial. No authority for such proposition was cited. On the contrary, in the recent case of *D.B.S. v. S.R.G.; L.J.W. v.*

T.A.R.; *Henry v. Henry*; *Hiemstra v. Hiemstra*, [2006] S.C.J. No. 37 (S.C.C.), three of the four files before the court involved decisions originally made by a chambers judge. In British Columbia masters routinely hear and decide matters of interim child support. No authority was cited which would indicate that the issue of retroactivity was, or is, beyond the jurisdiction of a master sitting in chambers. Accordingly, I am of the view that the matter may be dealt with as it has been presented in masters chambers, as an interim application.

Retroactive Adjustment of Child Support

- [30] The claimant seeks a retroactive adjustment or correction of child support to conform to the Guidelines. The Separation Agreement contemplated there be annual adjustments based on the Guidelines. In *Worsfold v. Worsfold*, 2018 BCSC 45 at paras. 35-38, Justice Hyslop found that an action to adjust child support pursuant to the terms of a separation agreement was an original application for support and it was not necessary to demonstrate a material change in circumstances. The separation agreement is not considered equivalent to a court order: 35 In adjusting child support pursuant to a separation agreement, it does not require the applicant to provide a material change of circumstances as there is no previous court order determining child support: *Kopp v. Kopp*, 2012 BCCA 140 at paras. 16, 39 and 41; *Fung-Sunter v. Fabian*, 1999 BCCA 346 at paras. 6, 27 and 28; and *E.M. v. M.S.*, 2016 BCPC 242 at para. 27. *E.M.* was dealing with parenting arrangements. 36 What I am required to do is make an order pursuant to ss. 149 and 150 of the FLA. 37 In *Kopp*, the Appeal Court found that deference to a separation agreement for child support and spousal support is different as:
- [37] ...courts have a separate responsibility to children to ensure their interests are upheld. Thus, the appropriate weight to be accorded an agreement for child support will be less than that accorded to an agreement for spousal support.
- [38] That is not to say that the separation agreement was not relevant to the chambers judge's consideration of the issues before her. In my view, she considered those terms as the reflection of the parties' intentions at every stage of her analysis, giving the agreement appropriate weight in the context of those issues. While I do not agree with all of her conclusions, in my opinion she did not err by not giving appropriate consideration and weight to the separation agreement as a whole. 38 As my reasons reflect, I have deferred to the separation agreement as the parties correctly made Andrew's support based on the Guidelines. Depending on the respondent's income, I will determine the amount of child support that the respondent must pay for Andrew's support. The claimant's income for special or extraordinary expenses is not in dispute.
- [31] In *Michel v. Graydon*, 2020 SCC 24 at para. 10, the Supreme Court restated principles governing orders for child support: 10 In *D.B.S.*, this Court endorsed certain important principles governing orders for child support (including retroactive child support) that merit restating here:

- Child support is the right of the child, which right cannot be bargained away by the parents, and survives the breakdown of the relationship of the child's parents (para. 38);
- Child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together (para. 38);
- The child support owed will vary based upon the income of the payor parent, and is not confined to furnishing the "necessities of life" (paras. 38-45).
- Retroactive awards are not truly "retroactive", since they merely hold payors to the legal obligation they always had to pay support commensurate with their income (para. 2);
- Retroactive awards are not confined to "exceptional circumstances" or "rare cases" (para. 5); and
- In determining whether to make a retroactive award, the payor parent's interest in certainty in his/her obligations must be balanced with the need for "fairness and ... flexibility". A court should consider whether the recipient parent's delay in seeking retroactive support was reasonable in the circumstances, the conduct of the payor parent, the circumstances of the child, and the hardship the retroactive award might entail (para. 133).

[32] At para. 17, it states that courts should avoid creating any incentive for payor parents to avoid meeting their child support obligations: 17 Moreover, courts should not be hasty to recognize jurisdictional impediments that bar applications for retroactive child support. This is because jurisdictional constraints are "inimical to the principles and policy objectives articulated in [D.B.S.]" (Brear, at para. 60), and may be imposed only where the legislature has clearly intended that they be imposed. Such constraints must therefore be apparent in the statutory scheme, bearing in mind that preventing courts from even considering an award for retroactive child support would prevent enforcement of an unfulfilled legal obligation even in the most appropriate of circumstances. As Sharpe J.A. explained in Colucci: I can see no reason why the court should be deprived of jurisdiction to consider the request of a recipient parent who struggled to support the children and to shift part of that burden to the payor parent if there was a change in circumstance that would have justified a variation while the children were still children of the marriage [A] regime that gave payor parents immunity after the children ceased to be children of the marriage would create a perverse incentive. If the payor parent is to be absolved from responsibility once the children cease to be "children of the marriage", the payor whose income increases might be encouraged not to respond to his or her increased obligations in the hope that the reciprocal spouse will delay making an application for a variation increasing support until the children lose their status to avoid opening the door to an increased obligation [para. 26] Unless compelled by the applicable legislative scheme, courts should avoid creating any incentive whatsoever for payor parents to avoid meeting their child support obligations (D.B.S., at para. 4). Permitting retroactive child support awards, as this Court recognized in D.B.S., is perfectly consistent with the child support system (para. 60).

- [33] At paras. 32-34, the court addresses retroactive child support in the context of a payor parent's failure to disclose increases in their income: 32 Retroactive child support awards will commonly be appropriate where payor parents fail to disclose increases in their income. Again, D.B.S. is instructive: "a payor parent who knowingly avoids or diminishes his/her support obligation to his/her children should not be allowed to profit from such conduct" (para. 107). And where the strategy for avoiding child support obligations takes the form of inadequate or delayed disclosure of income, the effect on the child support regime is especially pernicious. This is because the methodology adopted by the Federal Child Support Guidelines, SOR/97-175, which are expressly incorporated in the FLA, results in information asymmetry. Apart from shared parenting arrangements, the Guidelines calculate child support payments solely from the payor parent's income. At any given point in time, therefore, the payor parent has the information required to determine the appropriate amount of child support owing, while the recipient parent may not. Quite simply, the payor parent is the one who holds the cards. While an application-based regime places responsibility on both parents in relation to child support (D.B.S., at para. 56), the practical reality is that, without adequate disclosure, the recipient parent will not be well-positioned to marshal the case for variation. 33 Failure to disclose material information is the cancer of family law litigation (*Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), at para. 9, quoted in *Leskun v. Leskun*, 2006 SCC 25, [2006] 1 S.C.R. 920, at para. 34). And yet, payor parents are typically well aware of their obligation as a parent to support their children, and are subject to a duty of full and honest disclosure -- a duty comparable to that arising in matrimonial negotiations (*Brandsema*, at paras. 47-49). The payor parent's obligation to disclose changes in income protects the integrity and certainty afforded by an existing order or agreement respecting child support. Absent full and honest disclosure, the recipient parent -- and the child -- are vulnerable to the payor parent's non-disclosure. 34 It follows that I agree with the hearing judge that Mr. Graydon's failure to accurately disclose his income at the time of the March 29, 2001 order, and failure to disclose material changes in his income for the 11 years that followed, constituted blameworthy conduct, which justifies an order for retroactive child support (and which also eliminates any need to protect Mr. Graydon's interest in the certainty of his child support obligations (D.B.S., at para. 125)). As I have explained, failure to disclose material changes in income undermines the child support regime imposed by the Guidelines. The record here also indicates that Mr. Graydon knew about his daughter's financial circumstances and made disparaging remarks about her standard of living instead of modifying his child support payments to assist her.
- [34] At para. 36, the court noted that the date of effective notice is not relevant when a payor parent has engaged in blameworthy conduct, irrespective of the degree of blameworthiness: 36 Finally, Mr. Graydon contests the effective date of retroactive child support adopted in the hearing judge's award. The hearing judge awarded retroactive child support dating back to the March 29, 2001 consent order of child support (which he treated as taking effect on April 1, 2001). The hearing judge's conclusion was based on his finding that the date when Ms. Michel presented a settlement agreement to Mr. Graydon was the date of effective notice

given to him. Mr. Graydon argues that merely presenting a draft settlement agreement could not serve as effective notice. His argument on this point is immaterial, however, because the date of effective notice is not relevant when a payor parent has engaged in blameworthy conduct (irrespective of the degree of blameworthiness). Again, in light of such conduct, there is no need to protect Mr. Graydon's interest in the certainty of his obligations beyond the date when circumstances changed materially (D.B.S., at para. 125). Having furnished an inaccurate picture of his income from the start of his child support payments, it does not lie in his mouth to now insist that it was inappropriate for the hearing judge to award support dating back to the March 29, 2001 consent order. Indeed, in the circumstances of this case it was clearly appropriate for the hearing judge to do so.

Analysis

- [35] The first question is whether a master has jurisdiction to grant the relief sought on this application. Respondent's counsel raised the jurisdiction issue prior to the start of the hearing, but initially withdrew the objection at the outset of the hearing. This appears to have been based on Master Caldwell's analysis in Jevon. After claimant's counsel completed submissions, respondent's counsel renewed the jurisdictional objection, saying claimant's counsel had not framed the relief sought as interim in nature during argument.
- [36] Jevon provides that a master has jurisdiction to grant retroactive child support on an interim application. At issue is whether the claimant's application is interim in nature. The relief sought in the application is as follows:
1. The respondent will pay to [claimant's] counsel in trust for [the claimant] the sum of \$63,123 as retroactive child support for the child of the relationship, [L.] born [date redacted], 2007 within 30 days from the date of this Order or such other date as this Honourable Court deems appropriate, with interest as determined by this Honourable Court.
- [37] In part 2, factual basis, the sum of \$63,123 is said to represent underpaid child support for the period 2015 to July 2022. The claimant does not expressly characterize the relief sought as "interim".
- [38] In his notice of family claim, the claimant refers to the Separation Agreement, indicates the current parenting arrangement is shared parenting on a week on / week off basis and says he seeks an order for child support. In schedule 2, item 5 it states that child support is set out in the Separation Agreement, however, no child support has been paid to the claimant since May 2021. He asks for support in the amount set out in the Guidelines table for L., plus special and extraordinary expenses in accordance with s. 7. In schedule 5, other orders, he seeks disclosure of the respondent's financial information relevant to the calculation of child support for the period 2012 to date, and an order setting aside any agreements made between the parties with respect to child support from 2012 to date.

- [39] It is not uncommon on interim applications to see requests that support be ordered retroactive to the parties' date of separation, the date the action was started or the date the application was filed. This request is normally made in conjunction with a request for ongoing interim support pending trial. The relief that the claimant seeks on this application focuses exclusively historical support.
- [40] While it may theoretically be possible to make an interim retroactive child support order which covers all or part of this relevant historical period, I am not persuaded that it is appropriate to do so in this case. There are simply too many direct conflicts in the relevant affidavit evidence, as well as significant evidentiary gaps.
- [41] The respondent undoubtedly understated her Guideline income during the informal annual reviews since 2015. She raises several arguments regarding by how much, whether and when certain portions of her bonus ought to be included in her income and argues that her mis-statements were due to a misunderstanding on her part.
- [42] The respondent has tendered evidence which puts in issue whether the claimant achieved the 40 percent shared custody threshold in 2015 and 2016. The claimant has identified several errors in the respondent's parenting calendars. He also refers to *Franke v. Franke*, 2008 BCSC 1145 at para. 24 for the proposition that determining whether s. 9 of the Guidelines applies is not simply a time accounting exercise.
- [43] The respondent also argues the parties informally agreed to suspend support payments for a significant period around 2016 - 2017 due to the extent of the claimant's travel for work, and says this carried over into 2018. The claimant disputes this. I am not able to resolve these conflicts based on the evidence before me.
- [44] The respondent also raises concerns about the claimant's income, based on him operating through a corporation which has not yet produced some of its relevant financial records and relating to possible imputation of some additional income for 2020.
- [45] Both parties express uncertainty regarding amounts of support that the respondent paid to the claimant during the earlier years and what deductions the respondent made for the claimant's share of s. 7 expenses. The claimant disputes whether some expenses claimed are appropriately classified as special or extraordinary. The evidence not sufficiently developed to allow me to decide those issues.
- [46] I have concluded that it is not appropriate to try to address retroactive support issues based on the affidavit evidence currently before me. In view of the factual and legal issues highlighted, it appears it will be necessary to resolve them at trial, with the benefit of a more fulsome evidentiary record, including cross-examination of both parties.

Conclusion

[47] The claimant's application is dismissed. This is without prejudice to his ability to seek retroactive child support at trial.

[48] The respondent is entitled to costs of this application from the claimant, in the cause.
"Master Bilawich"

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