

CANADA / JUDGMENT

## Armstrong v. Abramowicz

2025 BCCA 318

### COURT

British Columbia Court of Appeal

### DECIDED

12 September 2025

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2025 BCCA 318 Armstrong v. Abramowicz

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Armstrong v. Abramowicz,

2025 BCCA 318

Date: 20250912

Docket: CA50193

Between:

Cole Garrett Armstrong

Appellant

(Respondent)

And

Julia Agnieszka Abramowicz

Respondent

(Claimant)

Before:

The Honourable Mr. Justice Willcock

The Honourable Madam Justice Fisher

The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated

October 3, 2024 (J.A.A. v. C.G.A., 2024 BCSC 1817, Kamloops Docket E56382).

Counsel for the Appellant:

J.L. Ball

Counsel for the Respondent:

A.N. Soll

Place and Date of Hearing:

Kamloops, British Columbia

June 16, 2025

Place and Date of Judgment:

Vancouver, British Columbia

September 12, 2025

Written Reasons by:

The Honourable Justice Iyer

Concurred in by:

The Honourable Mr. Justice Willcock

The Honourable Madam Justice Fisher

Summary:

The appellant appeals orders relating to a family law dispute. He argues the trial judge did not apply the correct test in awarding lump sum spousal support and failed to apply all relevant factors to assess retroactive child and spousal support. He also argues the judge erred in fact in quantifying spousal support and in imposing a fine for non-disclosure.

Held: Appeal allowed in part. The judge erred by failing to find a commencement date and the duration for spousal support and in prioritizing spousal support over child support. The judge did not err in assessing retroactive child or spousal support, or in ordering a fine for non-disclosure.

Reasons for Judgment of the Honourable Justice Iyer:

## Overview

- [1] The appellant and respondent were in a family relationship for just under four years, from January 2013 to September 2016. Their child was born in May 2013. The appellant is a pipefitter. While he initially worked for others, he incorporated a company in April 2014 through which he provided pipefitting services. His work took him away from home for long periods. The respondent ran the home, managed all childcare and domestic responsibilities, and did some invoicing and bookkeeping for the appellant's company.
- [2] Between their separation on September 29, 2016 and January 2018, the parties attempted to reconcile. The respondent filed a notice of family claim commencing the present proceeding on August 9, 2018. The parties settled their disputes over property division and parenting issues after mediation. At a judicial case conference ("JCC") in 2019, the court made an interim child support order requiring the appellant to pay the respondent \$600 per month.
- [3] The main issues at trial were the insufficiency of the appellant's financial disclosure and ongoing and retroactive child support and spousal support. In his decision, indexed as 2024 BCSC 1817 ("Decision"), the trial judge found the appellant failed to meet his financial disclosure obligations and the evidence of his income was unsatisfactory. The judge therefore imputed income to the appellant and awarded retroactive and ongoing child support based on that income. He awarded lump sum spousal support of \$74,207 as the respondent proposed, characterizing the award as retroactive. He also ordered the appellant to pay the respondent \$3,500 under s. 213 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] for failing to comply with disclosure requirements.
- [4] On appeal, the appellant submits the trial judge made two errors of law: first, by awarding a lump sum for spousal support and second, by not considering all the factors in the legal test governing retroactive child and spousal support awards. The appellant also submits the judge made two palpable and overriding errors of fact: first, in determining the amount of spousal support and second, in imposing a penalty for financial non-disclosure. The appellant does not challenge the judge's findings on imputation of income or his award of ongoing child support.

## Trial decision

- [5] After setting out the background facts, the trial judge addressed credibility and reliability. He found the appellant was not a credible witness, particularly on financial matters, and did not accept his evidence on those topics unless independently corroborated. The judge also found the appellant's financial disclosure was slow and inadequate.

- [6] The judge imputed income to the appellant to determine ongoing and retroactive child support. For the purposes of ongoing child support, which he calculated from January 1, 2022, onwards, the judge imputed an annual income to the appellant of \$150,000 and ordered him to pay \$1,356 per month. The judge declined to reduce that amount because he found the appellant had not established undue hardship: Decision at paras. 86-87.
- [7] The judge exercised his discretion to award retroactive child support, varying the 2019 interim child support order of \$600/month. He stated the test for the exercise of discretion to award retroactive child support, as established by the Supreme Court in *D.B.S. v. S.R.G.*, 2006 SCC 37. Applying the D.B.S. factors, he held the date of retroactivity was September 29, 2016: Decision at paras. 114-115.
- [8] To determine the amount of retroactive child support, the judge imputed income to the appellant of \$60,000 for the months of 2016 following separation, of \$100,000 for each of 2017 and 2018, of \$125,000 for each of 2019, 2020 and 2021, and of \$150,000 for 2022 and 2023: Decision at paras. 116-137. He awarded retroactive child support of \$38,038.75 plus interest for the period from separation through December 2021, payable in monthly installments of \$644: Decision at paras. 139-145, 224. However, that order was subsequently amended under the "slip rule" to a total award of \$63,115.74 in retroactive child support, payable in the same monthly installments.
- [9] With respect to spousal support, the judge rejected the appellant's arguments challenging the respondent's spousal support claim. He found that she was a "spouse" within the meaning of the FLA, had applied for support within the limitation period, and had established both compensatory and non-compensatory entitlement. He then determined a retroactive award was suitable and held it should be awarded in a lump sum: Decision at paras. 200-201.
- [10] The respondent proposed the appellant pay lump sum spousal support of \$74,207, based on an imputed income of \$100,000. The judge found this proposal reasonable because the Spousal Support Advisory Guidelines ("SSAG") "with child support" formula yielded a higher range for lump sum spousal support of \$140,364 to \$206,331 by using an income of \$150,000 for the appellant and \$20,000 for the respondent, and monthly child support of \$1,356: Decision at paras. 204-206.
- [11] The judge imposed a charge on the appellant's home to secure his child and spousal support obligations and made orders for ongoing financial disclosure: Decision at paras. 208-214. He ordered the appellant to pay the lump sum spousal support award immediately but did not give reasons for this order: Decision at para. 224(13).
- [12] The respondent sought special costs under Rule 16-1(1)(b)(i) or a payment under s. 213(2)(d) (ii) of the FLA based on the appellant's non-disclosure. The judge declined to order special costs but ordered the appellant to pay the respondent \$3,500 under the FLA: Decision at paras. 220-222.

## Issues

[13] The appellant raises four issues on appeal:

- a) Did the judge err in law by awarding lump sum spousal support without applying the balancing test established in *Parton v. Parton*, 2018 BCCA 273?
- b) Did the judge err in law in failing to apply all the D.B.S. factors to assess retroactive child and retroactive spousal support?
- c) Did the judge err in fact in determining the amount of spousal support?
- d) Did the judge err in fact in finding the appellant's financial disclosure inadequate?

[14] The standard of review in family law appeals was recently summarized by this Court in *Mills v. O'Connor*, 2025 BCCA 34:

[32] The standard of review in family law matters is of a "strict and limited scope": *Naimi v. Yunusova*, 2023 BCCA 124 at para. 29. This deferential approach flows from the generally "fact-based and discretionary" nature of family law decisions (*Van de Perre v. Edwards*, 2001 SCC 60 at para. 11, citing *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at para. 10) as well as the elevated importance of final resolutions in family matters: *Naimi* at para. 29; *Barendregt v. Grebliunas*, 2022 SCC 22 at paras. 100-104. As such, an appellate court will interfere with a family law decision only where there has been a material error, a serious misapprehension of the evidence, or an error of law: *Hickey* at para. 12; *Barendregt* at para. 103.

## Discussion

Did the judge err in law by awarding lump sum spousal support without applying the balancing test in *Parton*?

[15] The appellant argues the trial judge erred in law because he did not weigh the advantages against the disadvantages of making a lump sum award, a test this Court established in *Parton*. There, the Court adopted the balancing approach taken by the Ontario Court of Appeal in *Davis v. Crawford*, 2011 ONCA 294 at paras. 66-69 (*Parton* at para. 47):

[66] Most importantly, a court considering an award of lump sum spousal support must weigh the perceived advantages of making a lump sum award in the particular case against any presenting disadvantages of making such an order.

[67] The advantages of making such an award will be highly variable and case-specific. They can include but are not limited to: terminating ongoing contact or ties between the spouses for any number of reasons (for example, short-term marriage; domestic violence; second marriage with no children, etc.); providing capital to meet an immediate need on the part of a dependant spouse; ensuring adequate support will be paid in circumstances where there is a real risk of non-payment of periodic support, a lack of proper financial disclosure or where the payor has the ability to pay lump sum but not periodic support; and satisfying immediately an award of retroactive spousal support.

- [68] Similarly, the disadvantages of such an award can include the real possibility that the means and needs of the parties will change over time, leading to the need for a variation; the fact that the parties will be effectively deprived of the right to apply for a variation of the lump sum award; and the difficulties inherent in calculating an appropriate award of lump sum spousal support where lump sum support is awarded in place of ongoing indefinite periodic support.
- [69] In the end, it is for the presiding judge to consider the factors relevant to making a spousal support award on the facts of the particular case and to exercise his or her discretion in determining whether a lump sum award is appropriate and the appropriate quantum of such an award.
- [16] The judge's reasons on spousal support are relatively brief:

### **A retroactive lump sum award is appropriate**

- [200] I find a retroactive award is appropriate, because my analysis of the factors I must take into account in determining the appropriateness of a retroactive award yields the same result as for retroactive child support, and I have no concerns about notice, delay and misconduct.

The lump sum award - \$74,207

- [201] Recognizing that lump sum spousal awards are exceptional, I find that in the circumstances a lump sum award of \$74,207 is appropriate.
- [202] The mother seeks an order for a lump sum award. The father contests the mother's eligibility for spousal support, but he does not otherwise oppose a lump sum award.
- [203] Under the SSAG, there are two basic income-sharing formulas for determining the amount and duration of support: the "with child support" formula, which applies when there is a concurrent child support obligation; and the "without child support" formula, which applies where there are no dependant children: Chutter, at para. 108. In this case, the "with child support" formula applies.
- [204] Application of the SSAG "with child support" formula, using a child support payment of \$1,356 a month, with income of \$150,000 for the father and \$20,000 for the mother (as suggested by the mother), provides a SSAG range for monthly spousal support from \$2,105 (low) to \$2,629 (mid) to \$3,117 (high). These monthly amounts correspond to a lump sum range for spousal support from \$140,364 (low) to \$173,371 (mid) to \$206,331 (high).
- [205] The mother says the court should make a mid-range lump sum spousal support award in the amount of \$74,207, based on income of only \$100,000 for the father.
- [206] I find the mother's submission for a lump sum spousal support award of \$74,207 is reasonable, because I have imputed income of \$150,000 to the father and the SSAG ranges corresponding to that amount indicate a potential lump sum award much greater than \$74,207. Additionally, although I have not found the father's hardship claims persuasive,

making a lump sum award based on income of only \$100,000 for the father is a fair way to also account for the father's financial responsibilities towards M.R. and his two children with her.

- [17] These reasons show the judge did not weigh the advantages and disadvantages of a lump sum award. It may be, as suggested in para. 202, that the judge did not consider it was necessary to do so because he understood the appellant to have conceded that spousal support should be awarded in a lump sum. If so, he was mistaken. The appellant submitted, in answer to a question from the court, that he could pay up to \$10,000 if spousal support was awarded. He did not concede a lump sum award should be made.
- [18] However, in my respectful opinion, the judge made a more fundamental error in his assessment of spousal support because he did not determine the range of duration for a spousal support order or its commencement date. Both findings are necessary to assess the suitability of a retroactive award and, if a lump sum award is under consideration, to determine its amount: *Kerr v. Baranow*, 2011 SCC 10 at para. 211; *Spousal Support Advisory Guidelines: The Revised User's Guide* (April 2016), Ch. 10(c). While the SSAG are advisory, the court should follow the steps in the SSAG or explain why doing so is not appropriate in a particular case: *Beninger v. Beninger*, 2007 BCCA 619 at para. 51; *McEachern v. McEachern*, 2006 BCCA 508 at para. 64.
- [19] The trial judge's acceptance of the respondent's proposal that she be awarded lump sum spousal support of \$74,207 raises further questions. The software calculation provided to the judge identified a duration of spousal support between two to 15 years from the date of separation, which could mean that part of the award was ongoing. The calculation also applied a net present value discount, which cannot apply to a retroactive award.
- [20] In order to assess the reasonableness of the respondent's proposed lump sum award, the judge was required to determine the duration of spousal support and to fix an amount based on the parties' incomes for the applicable years. The hypothetical scenario in para. 204 of the judge's reasons did not provide an adequate foundation for comparison.
- [21] For these reasons, I would set aside the spousal support order.

Did the judge err in law in failing to apply all the D.B.S. factors to assess retroactive child and retroactive spousal support?

### **Retroactive child support**

- [22] The judge correctly stated the D.B.S. factors governing retroactive child support and expressly considered the first three: reasonable excuse for why support was not sought earlier, conduct of the payor parent, and the circumstances of the child: *Decision* at para. 92. He did not expressly consider the fourth factor, the hardship occasioned by a retroactive award, before concluding that a retroactive child support order was appropriate. The appellant submits that his failure to do so was an error of law.

[23] This Court has affirmed that a judge need not explicitly consider the D.B.S. factors. Most recently, Chief Justice Marchand wrote in *Bradley v. Callahan*, 2025 BCCA 69:

[153] A court considering a claim for retroactive support is not required to refer to D.B.S. explicitly nor discuss each of the factors it highlights, but some discussion of the reasons for or against a retroactive award is expected: *Reis v. Bucholtz*, 2010 BCCA 115 at para. 67; *Ducharme* at para. 19. Even in the absence of any analysis, the trial judge's omission will not be fatal so long as the principles in D.B.S. and *Kerr*, applied to the findings of fact, support the judge's conclusion: *Hallgren v. Fry*, 2013 BCCA 15 at para. 27.

[Emphasis added.]

[24] The judge considered hardship to the appellant elsewhere in his reasons. He rejected the appellant's submission under s. 10 of the Federal Child Support Guidelines, SOR/97-175 ("Guidelines") that the amount of child support payable should be reduced. He found the appellant had failed to establish undue hardship because his responsibility for most of the post-separation family debt was settled before support issues were resolved and there was a lack of evidence that his travel expenses for parenting time and his obligations to his second family were "unusually high": Decision at paras 82-86. The judge also declined to cancel or reduce the appellant's arrears of child support on the basis of significant hardship. He found the appellant had not established a material change of circumstances because he "chose to embark on a new relationship and incur the obligations he has to [his new spouse] and their two children" and he also chose "to incur significant tax liability": Decision at paras. 146-149.

[25] However, the assessments of hardship under s. 10 of the Guidelines and for reduction or cancellation of child support arrears are markedly different from the assessment of hardship for the purposes of retroactive child support. To establish hardship under s. 10, the payor must demonstrate undue hardship; the fact the payor is responsible for other children is not sufficient: *Van Gool v. Van Gool*, 166 D.L.R. (4th) 528, 1998 CanLII 5650 (B.C.C.A.) at para. 51. The test for cancellation or reduction of arrears of child support requires the payor to establish "prejudice by delay, serious hardship or unfairness in the circumstances": *Anderson v. Anderson*, 1999 BCCA 147 at para. 10.

[26] By contrast, the fourth D.B.S. factor requires "a broad consideration of hardship" that includes consideration of hardship to the payor parent's other children: D.B.S. at paras. 114-115.

[27] The fact that the judge rejected the appellant's hardship claims in relation to reducing the amount of child support and reducing or cancelling child support arrears does not support an inference that he would not have found hardship under the D.B.S. analysis. In particular, he was required to consider the impact of a retroactive award on the children in his current family.

[28] That said, I consider the D.B.S. analysis supports a retroactive child support award in this case. The judge found that the first three D.B.S. factors favoured a retroactive award: the respondent had a reasonable excuse for not having sought support earlier than she did, the appellant's conduct was blameworthy, and the child was adversely affected because the appellant did not pay an appropriate amount of child support. With respect to hardship, Bastarache J.'s application of the D.B.S. factors to the four appeals that were before the Court is instructive. In particular, the adverse impact on a second family may be mitigated by providing that the retroactive award is paid off relatively slowly: D.B.S. at para. 149. In light of the absence of credible evidence about the appellant's current financial circumstances, his imputed income of \$150,000, a retroactive award requiring him to pay \$644 each month for a total ongoing and retroactive monthly child support obligation of \$2,000 does not amount to hardship. Accordingly, I would not set aside the retroactive child support order.

### Retroactive spousal support

[29] In my view, the judge effectively considered hardship to the appellant in his assessment of spousal support because he reasoned that reducing his imputed income to \$100,000 from \$150,000 was a way to recognize his financial obligations to his second family: Decision at para. 206.

[30] Although not raised by the appellant, I think it is necessary to address the judge's order that the lump sum spousal support award be paid immediately: Decision at para. 224(13). Ordering immediate payment of what is characterized as retroactive spousal support in circumstances where the court has also ordered a lower retroactive award of child support to be paid periodically is inconsistent with s. 173 of the FLA, which provides that child support takes priority over spousal support. The judge erred by ordering the appellant to pay the greater amount of lump sum retroactive spousal support immediately.

Did the judge err in fact in determining the quantum of spousal support?

[31] The appellant accepts the highly deferential standard of review that applies to spousal support orders, but says intervention is warranted because the judge misapprehended two aspects of the evidence about the respondent's circumstances: first, in finding she was self-supporting when the relationship began and second, in not appreciating that the respondent had re-partnered and had been in her current relationship for longer than the duration of her relationship with the appellant.

[32] With respect to the first point, even assuming the dubious proposition that misapprehensions about this evidence could be sufficiently significant to invite appellate intervention under *Mills*, the judge did not misapprehend the evidence. The judge's finding that the respondent was self-supporting was grounded in her evidence that she had worked in Kamloops for several years but recently quit and moved to Fort St. John to find work as a rock truck driver to finance further educational studies: Decision at para. 185. The fact that she met the appellant while looking for work did not mean she was not self-supporting.

- [33] With respect to the second point, I agree with the appellant that re-partnering is a significant consideration in determining the amount of a needs-based spousal support claim; however, it is much less relevant where entitlement to support is compensatory: *Rozen v. Rozen*, 2016 BCCA 303 at paras. 55-56. That is because re-partnering is likely to reduce a former spouse's needs but is unlikely to affect the economic disadvantages the spouse sustained because of the role assumed during the relationship. Compensatory support continues "until the economic consequences flowing from the marriage are redressed, even if the spousal support payee has, in the interim, achieved a measure of self-sufficiency": *Morigeau v. Moorey*, 2015 BCCA 160 at para. 37, citing *Tedham v. Tedham*, 2005 BCCA 502 at paras. 58-60.
- [34] The judge found the respondent entitled to support on both compensatory and non-compensatory grounds. He considered the impact of the respondent's re-partnering:
- [185] Before the relationship, the mother supported herself financially, had her own accommodation, and no restrictions on her plans to work to finance her further education. After the relationship, she relied heavily on the support of her parents, financially, and for accommodation. Her obligations as primary caregiver for the child necessarily restricted her work plans, and she took on low paying part-time work as a residential cleaner. Her plans for further education remained on hold. She has since re-partnered and has another child. Since she re-partnered, her prospects for achieving self-sufficiency have improved.
- [Emphasis added.]
- [35] Applying the deferential standard of review, I see no basis for appellate intervention on these grounds.

### **Fine for non-disclosure**

- [36] The appellant also submits the judge erred in ordering him to pay the respondent \$3,500 under s. 213(2)(d)(ii) of the FLA. That section provides:

Enforcing orders respecting disclosure

213 (1) This section applies if a person

(a) fails to comply with

(i) an order for disclosure made under section 212 [orders respecting disclosure], or

(ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court Family Rules,

within the time or in the manner required by the order or Rules, or

(b) provides information that is incomplete, false or misleading.

- (2) In the circumstances set out in subsection (1), the court may do one or more of the following:
- (a) make an order under section 212;
  - (b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference;
  - (c) require a party to give security in any form that the court directs;
  - (d) make an order requiring the person described in subsection (1) to pay
    - (i) a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution,
    - (ii) an amount not exceeding \$5 000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or
    - (iii) a fine not exceeding \$5 000;
  - (e) make any other order the court considers appropriate.

[Emphasis added.]

- [37] The judge described the appellant's non-compliance with his disclosure obligations as a "major issue" in the case: Decision at para. 38. He found that the appellant did not comply with his disclosure obligations prior to the JCC, resulting in an interim child support order based on incomplete information. He also found the appellant did not comply with the disclosure timelines in the JCC order, or with the respondent's multiple pre-trial requests for disclosure, such that documents remained outstanding when the trial started: Decision at para. 39.
- [38] The judge emphasized the importance of adequate, accurate, and timely disclosure, referring to legislative and case authority. He found that the appellant had failed to comply with his disclosure obligations but declined to find that he did so to mislead the court: Decision at paras. 46-50.
- [39] There is no question that the appellant failed to comply with the disclosure deadlines set in the JCC order, or that this is a contravention of s. 213(1)(a)(i) of the FLA. The respondent says that, by not responding to her demands for documents within the time limits established in Rule 9-1(9) of the Supreme Court Family Rules, he also failed to comply with s. 213(1)(a)(ii). I agree. If the appellant considered the respondent's disclosure demands excessive, he was required to say so. The disagreement could then have been resolved consensually or by an application to court under Rule 9-1(10).

- [40] The appellant says the judge did not identify what documents he failed to provide but does not refer to any authority for the proposition that, before making an order under s. 213, the court must specify what documents have not been disclosed. I do not see any principled reason for requiring a trial judge to do so, particularly when one of the grounds is non-compliance with the time limits set out in a court order.
- [41] Bearing in mind the importance of appellate deference to the highly discretionary decisions made under s. 213, I would not interfere with the judge's determination that a payment of \$3,500 was appropriate in the circumstances.

## Conclusion and remedy

- [42] For these reasons, I would allow the appeal to the extent of setting aside the order requiring the appellant to pay retroactive spousal support of \$74,207 immediately and replace it with the order set out below.
- [43] Turning to remedy, it has been some nine years since the respondent commenced this claim. Considering the amount of money involved and the parties' limited resources, it is appropriate that this Court make an order that meets the statutory objectives and considers the parties' circumstances: *Legge v. Legge*, 2021 BCCA 365 at para. 50.
- [44] The appellant proposes that we set aside the lump sum award of \$74,207 and replace it with "an order that the appellant will pay monthly spousal support to the respondent, in the mid-range amount of \$973 per month, for a period of 2 years, after which time spousal support may be reviewed".
- [45] As the award is wholly retroactive, and a duration of two years falls within that period entirely, a review provision makes no sense.
- [46] The commencement date should be August 9, 2018, the date of the notice of family claim, as is usual for spousal support claims: *Kerr* at para. 211. Using the incomes the judge imputed to the parties, I consider an award of spousal support for two and one-half years appropriate. Particularly relevant factors in this case include:
- The respondent would have worked in paid employment had she not become pregnant, and her compensatory claim was strong;
  - The respondent was at a relatively young age at separation, had limited education and employment experience, and worked part-time from 2016 to 2018 to accommodate the appellant's parenting time; and
  - Each party had re-partnered, had a child or children with their current partner, and those new relationships had an economic impact on the parties.

- [47] With respect to amount, this was a relatively short relationship; the immediate impact of separation on the respondent was significant; however, the date of commencement of the claim was August 2018, some two years after the date of separation. In my view, the midpoint of the range is a useful guide in this case.
- [48] I find the appellant's monthly spousal support obligation for five months of 2018 (August-December) was \$1,449; for 2019, it was \$2,212; for 2020, it was \$2,078; and for the month of January 2021, it was \$2,042. This totals \$60,767 over a 30-month period, plus interest.
- [49] As the whole award is retroactive, I must consider the Kerr factors. I agree with the trial judge's reasons that a retroactive award is suitable.
- [50] I do not consider it open to this Court to order payment of the retroactive spousal support award in a lump sum because the order for retroactive child support is periodic and that order has not been appealed. As I have said, in my view, ordering lump sum retroactive spousal support payable in priority to retroactive child support would give primacy to spousal support, contrary to s. 173 of the FLA.
- [51] I would fix the payment of the retroactive spousal support award at \$1,000 per month.

## Disposition

- [52] In summary, I would allow the appeal to the extent of setting aside the spousal support order and substituting an order that the appellant pay the respondent retroactive spousal support a total of \$60,767 plus interest in monthly payments of \$1,000.
- [53] As success has been divided, I would order each party to bear its own costs.

"The Honourable Justice Iyer"

I AGREE:

"The Honourable Mr. Justice Willcock"

I AGREE:

"The Honourable Madam Justice Fisher"

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