

CANADA / JUDGMENT

Atwal v. Huber

2024 BCSC 2241

COURT

Supreme Court of British Columbia

DECIDED

11 December 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2241 Atwal v. Huber IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Atwal v. Huber, 2024 BCSC 2241 Date: 20241211 Docket: E153521 Registry: Vancouver Between: Kedy Kaur Atwal also known as Kedy Atwal Claimant And Christopher John Huber also known as Chris Huber Respondent Before: The Honourable Justice Thomas Reasons for Judgment Counsel for the Claimant: M.R. Ellis Counsel for the Respondent: G.E. Edwards Place and Date of Trial/Hearing: Vancouver, B.C. November 28, 2024 Place and Date of Judgment: Vancouver, B.C. December 11, 2024 Table of Contents Calculation of Income for Spousal Support Purposes. 3 Circumstances of the Respondent. 3 Circumstances of the Claimant. 5 Principles Governing the Review.. 5 Entitlement to Spousal Support. 6 Extent of Obligation to Provide for Spousal Support. 10 Retirement. 12 Retroactive Deduction in Spousal Support. 12 Costs. 13

[1] This is an application by the respondent for a review of spousal support pursuant to the October 17, 2017 consent order of Justice Burke (the "Order").

[2] The Order states that:

- a) Guideline income of the parties attributed at the time of the Order is \$51,211 for the claimant and \$454,000 for the respondent;
- b) Spousal support shall be reviewable on the retirement of the respondent; and
- c) Spousal support, as to quantum only, shall be reviewable in the event that the respondent's gross revenue of \$480,000 is reduced by 10 percent or more in any fiscal year. Calculation of Income for Spousal Support Purposes

[3] The respondent receives payment for his services to his professional corporation. His corporation does not receive revenue from other sources nor does it have expenditures for other purposes. In my view, his corporate revenue, adjusted for appropriate corporate expenses and with the addition of personal income through investments, forms the appropriate basis to calculate his income for spousal support purposes.

[4] Using this approach, the respondent's gross revenue in 2022 exceeded \$480,000. Therefore there was no right to review spousal support in 2023. Circumstances of the Respondent

- [5] By the fall of 2022, the respondent:
- received an inheritance,
 - desired to retire and only continues to work due to his obligation to pay spousal support;
 - purchased and moved to a winery in Penticton;
 - retired from his full-time practice in Richmond; and
 - began working part-time on-call at the Penticton hospital and out of town on locums.
- [6] Although the respondent is 71 years old, I do not find that he suffers from a medical condition that would prevent him from working full-time.
- [7] The parties agree that the respondent's gross revenue was reduced by more than 10 percent in the fiscal year ending 2023. This triggers a right to review spousal support.
- [8] The respondent notes his 2024 income in his affidavit as follows: January: 4 days \$9,071 net of insurance, college fees and bank charges February: 4 days \$1,563 March: 4 days \$17,854 April: 15 days - \$43,788 May: 3 days \$10,133 June: 2 days \$7,506 July: 5 days \$23,478 August: 11 days \$24,247 September: 7 days \$51,848 TOTAL \$189,488
9. My income changes radically dependant on whether I work up north, work is on-call, time of day and length of surgery. It is unpredictable. I have done more days than expected this year because I fill in as needed. I have 15 days scheduled in October including 11 in the Northern Territories, two in November and five in December. There is little offered to me henceforward as new staff have been hired in Penticton. I am travelling to remote communities far from home to meet the heavy demands for support payments.
- [9] There is no compelling evidence about the availability of locum work. Based on all of the respondent's evidence and the circumstances, in my view, the limitations on the respondent's ability to work in Penticton are based on his desire to minimize his on-call work and travel due to his desire to voluntarily restrict his work hours; as opposed to the availability of high paying locum work.
- [10] The respondent has re-partnered. No evidence was provided about the impact that this has on his financial circumstances. Circumstances of the Claimant
- [11] The claimant is 67 years old and works full-time as a CCU nurse. She earned the following income:
- 2020 T4 of \$109,000;
 - 2021 T4 of \$145,181;
 - 2022 T4 of \$140,400; and
 - 2023 T4 of \$142,844.

- [12] She continues to work full-time and is dependent on spousal support payments to support her standard of living.
- [13] It appears that the claimant and respondent have similar expenditures in support of their standard of living; although the respondent lives in a winery with acreage.
- [14] It is difficult to determine the relative financial circumstances of the parties. There are concerns about the respondent's disclosure in this regard. However, based on my review of the evidence it appears that the respondent has more than \$1,000,000 in assets in comparison to the claimant at present. Principles Governing the Review
- [15] In *Morck v. Morck*, 2013 BCCA 186, Neilson J.A., for the court explained the correct approach to an application to review an earlier order for spousal support:
- [17] By contrast, on an application to review an earlier order of spousal support, the applicant need not establish a material change in circumstances. Instead, the review is a hearing *de novo*, and treated as an initial application for support under s. 15.2 of the Divorce Act. This permits the court to adjust support in a manner that takes into account changes that may have been contemplated by the parties at the time the order was made, but were nevertheless uncertain. Because the issues on review are similar to those on an initial application, the Spousal Support Advisory Guidelines may be used for guidance: *Domirti v. Domirti*, 2010 BCCA 472 at paras. 32-36, 10 B.C.L.R. (5th) 281; and *Tedham v. Tedham*, 2005 BCCA 502 at paras. 22, 47 B.C.L.R. (4th) 254.
- [18] Sections 15.2(4) and (6) of the Divorce Act address the factors to be considered on a review:
- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse. ...
- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time. Entitlement to Spousal Support
- [16] The significant facts underlying the claimant's right to spousal support were not disputed and in my view, the underlying facts are fairly summarized in her affidavit as follows:
2. I was born in 1956 and will be 68 on December 1, 2024.
 3. I was raised in Hong Kong and moved to England in 1977. I studied at a secretarial college for a year and then went into nursing training. I qualified as a registered nurse in 1982 and lived and worked in England until 1987.
 4. The Respondent and I met while working at Royal Hampshire County Hospital, in Winchester, England, in or about 1985. He was a resident anesthesiologist in the hospital. We started dating soon after. He then moved to Jamaica for work. He was there for about two years, during which I visited him 5 or 6 times.
 5. In 1987 we decided to move to Toronto, prior to which he came to England and we travelled around Scandinavia for about three months. Once in Canada I got a job right away, having been sponsored by Riverdale Hospital in Toronto. He did not have a license and so could not work for the first months. We lived together in a rental apartment in Toronto from about September 1987 until 1989 when he moved out of our apartment and about two months after that he moved to Vancouver.
 6. At his request I visited Vancouver and moved there in April 1990. I found employment right away working as a casual. I moved into his apartment. In March 1991, we split up again and I moved to Australia where my parents lived. However, I didn't like Australia and after about six months I moved back to Vancouver from Australia. I rented my own apartment. He stayed there most nights instead of at the apartment he shared with his brother. Very shortly after my return to Vancouver, I became pregnant. In the summer of 1992, we purchased an apartment in Richmond.
 7. We had two children, a daughter born on August 1, 1992 and a son born on March 16, 1995, for whom I was the primary caregiver. I carried on working two to three shifts a month at the Richmond General Hospital. My status was casual. As a result, I did not receive benefit or pension. Nor was I eligible for promotions.
 8. I had virtually sole responsibility for taking care of the home, including grocery shopping, cleaning, and driving the kids to activities. In the beginning I had someone come in about once a month to help with housework. That lasted about a year. I did not have a nanny or any other help.
 9. The Respondent is an anesthesiologist and was on call once or twice a week throughout his career, so he could not be relied on to be available to take care of the children. During the marriage, the Respondent repeatedly told me that he would never retire because his job was very easy and didn't require him to provide aftercare to the patients.

10. The family home was 3200 square feet and had 7 bedrooms. Our children went to a private school staffing in 2003 when our daughter was in grade 6 and our son was in grade 3. We would spend two weeks each summer at the Respondent's family's cottage in Ontario and would go to Europe most years, doing things like camping in Spain. We would usually also go away at Spring Break, one time to Costa Rica and other times skiing. Most of my earnings were used for family spending money during vacations.
11. Both children did four-year university degrees in Ontario which were funded from our savings.
12. The Respondent paid the household bills, including the mortgage, and vacations, and gave me \$2500 a month for all other expenses.
13. After we separated in January 2014, I continued living in the family home. The children were away at university but would come home for holidays and in the summer, during which time they lived with me. The Respondent simply continued his practice of paying "the bills" and giving me \$2504) a month for expenses.
14. I commenced these proceedings in December 2015. I realized that we would not reconcile and I had no money of my own. After the commencement of the proceedings the Respondent carried on paying the same expenses and allowance.
15. Following mediation with Morag MacLeod KC, we entered into a Consent Order on October 16, 2017. The Respondent has complied with the terms of the consent order.
16. At that time of the mediation my income was agreed to be \$51,211 and his income was agreed to be \$454,000.
17. Spousal support was calculated at the high end of the range, with provisions for a review if he retired, his salary decreased by more than 10% (review of quantum only), or there was a material change in circumstances.
18. After we separated the Respondent's mother died and, as he had expected for many years, he received a large inheritance. Despite requests no documents have been produced to show the precise amount or how it was used. Attached hereto and marked Exhibit "A" are two letters requesting disclosure of this information dated August 12 and October 31, 2024.
19. I became a permanent part-time employee in nearly 2018. I now work .6 of full-time and pick up extra shifts when I am able. I work primarily in the intensive care ward, which is very high-stress. As a result of Covid-19, I worked a lot of extra shifts in 2Q20, 2021, 2022 and 2023, because the hospital lost many staff. Despite serious issues with my back I have continued to work as much as I can, as I have been very concerned about my difficult financial situation in the face of the Respondent trying to terminate my spousal support.
20. I have not re-partnered.

21. I take one or two foreign holidays a year. I was going to see my mom every other year in Australia, but she passed away in 2023. I go to our Maui condo for two weeks each year. I visit my sister in Ontario and other relatives in Australia. I went to Europe for three weeks this year. While in Europe I stayed in hostels and shared a car rental with my friend. I go skiing at Whistler several times a year.
22. In 2021 the Respondent voluntarily left his long-term employment at Richmond General Hospital to move to Penticton with his new partner, who was a booking clerk at Richmond General. He has not disclosed her present income or what contributions she makes to the household expenses. Attached hereto and masked Exhibit "B" are advertisements on Indeed.com showing that there are positions available for anesthesiologists, including as locums, in Kamloops and Vernon.
23. Our son has been working as a sales rep for the past 6 months. He was living with me up until July 1, 2024. He was not paying anything toward his expenses, other than his own food. He wasn't earning that much and I was hoping he would save up to get his own apartment. He told me recently that he now has his own credit card and is paying for his own gas.
24. Our daughter has been working remotely from various locations around the world. Each summer she would come back and stay with me for two to three months. She paid for her own food but did not otherwise contribute to living expenses. She moved back to Vancouver in the beginning of October, 2024 and has told me she intends to stay in Vancouver. I expect that she will stay with me until she gets her own apartment in the spring, and will then hopefully relieve me of the costs of storing her possessions. She has said that she will be away for two to three weeks during that time to attend a wedding in India.
- [17] The claimant says that the marriage lasted 26 years, and the respondent says it lasted 21.5 years.
- [18] Section 83(1) of the Family Law Act, S.B.C. 2011, c. 25 notes: 83(1) For the purposes of this Part, spouses are not considered to have separated if, within one year after separation,
- (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
 - (b) they continue to live together for one or more periods, totalling at least 90 days.
- [19] In considering whether parties were in a marriage-like relationship, the court does not adopt a "checklist approach" to whether or not parties qualify as spouses within a marriage-like relationship, but instead takes a holistic approach: *Weber v. Leclerc*, 2015 BCCA 492 at paras. 22 and 25. As set out in *McDowell v. Andrews*, 2018 BCSC 2216 at para. 23, relevant factors may include:
- a) the parties' intentions, particularly that the relationship will be of lengthy, indeterminate duration;
 - b) whether there is financial interdependence;

- c) whether the parties resided together and if so, whether they did so in the nature of roommates or in the nature of a couple;
- d) objective evidence of the parties' lifestyle and interactions; and
- e) whether the parties engaged in sexual relations and were intimate in the sense of fidelity and sharing personal information.

[20] In my view, the factual evidence, which is essentially uncontested by the respondent, establishes that the parties were never separated for more than a year and promptly resumed sexual relations and intimacy and cohabitation. In my view, they were in a marriage-like relationship for 26 years.

[21] In my view, based on the claimant sacrificing her career and supporting the respondent's career over the course of the marriage she is entitled to long-term spousal support on a compensatory and non-compensatory basis. Her claim for spousal support is strong.

[22] The claimant remains at a disadvantage career-wise from the impact of the marriage. She missed substantial time from work while raising the children and supporting the respondent. This time off work translates to a lower wage rate than she would have earned but for the marriage.

[23] The claimant has received seven years of spousal support and four years of retroactive spousal support. Extent of Obligation to Provide for Spousal Support

[24] The respondent relies on *Hague v. Hague*, 2022 BCCA 325 for the proposition that his spousal obligations have been met and he is in a position to voluntarily reduce his income or retire. Specifically, he notes:

[10] The judge acknowledged that Mr. Hague's decision to retire was voluntary: he was not ill or disabled and had not been dismissed or laid off. But, the judge concluded, Mr. Hague's retirement was not "early". He was over 65 when he retired, he had worked for 45 years and his pension was fully vested. There was no evidence that Mr. Hague decided to retire to stop paying support to Ms. Hague or that he would return to work if his obligation to pay support was terminated.

[11] The judge could not distinguish Mr. Hague's situation from the situation of the applicant husband whose decision to retire was found to be voluntary and reasonable in *Peters v. MacLean*, 2014 BCSC 990. Like the applicant in *Peters*, Mr. Hague had: worked consistently since a young age; been in a long-term spousal relationship; divided family property equally with his former spouse; paid substantial spousal support; was not in arrears; and had reached an age when many people retire.

[12] The judge next addressed the economic consequences of the marriage and its breakdown. In his view, they had been shared equitably:

- [12] In the present case, the economic consequences of the marriage and its breakdown have been equitably shared. Both parties are at an acceptable age for retirement. They have divided their assets equally. The claimant is in good shape financially. The respondent has paid a significant sum in support since separation. The parties' future incomes will be the same. Their liquid assets are of a similar value. The only difference is that the respondent owns a home and the claimant does not. It was her choice not to use her matrimonial settlement money for that purpose. The respondent is not liable to compensate her for this.
- [13] The judge concluded that Mr. Hague's decision to retire was reasonable and constituted a material change in circumstances. Since the parties were in "equivalent positions" financially and the economic consequences of the marriage and its breakdown had been shared equitably, the judge terminated Mr. Hague's obligation to pay spousal support.
- [25] In my view, the respondent's decision to reduce his income and hours working was driven by his inheritance, re-partnering, re-location to a winery in Penticton and overall desire to reduce his hours of work.
- [26] The claimant requires spousal support to maintain her standard of living, continues to work full time in a job that pays far less than the respondent and continues to suffer from a lower income than those earned by her peers performing the same work due to her time away from the workforce due to the marriage.
- [27] The respondent has voluntarily reduced his income and the hours that he works. I am satisfied based on his materials that he could earn his previous level of income if he chose to do so.
- [28] In my view, based on the claimant's:
- a) continued dependency on the respondent for spousal support to maintain her standard of living,
 - b) continued disadvantage at work due to her prolonged absence from the workforce,
 - c) the relative financial inequity of their current situations; and
 - d) the strong claims for both compensatory and non-compensatory support over a 26-year marriage.
- [29] It can not be said that the parties are in an "equivalent position" financially and that the "economic consequences of the marriage and its breakdown have been shared equitably."
- [30] In these circumstances, I will attribute an annual income to the respondent of \$475,000. This number reflects the respondent's evidence that 2022 was an unusually high-income earning year. Given the respondent's increase in earnings over the years, it is clear in my view that an increase in income from the 2017 consent order is appropriate.
- [31] The claimant's income for 2023 was \$142,844.

- [32] The spousal support owed to the claimant will be calculated using \$475,000 for the respondent and \$142,844 for the claimant going forward beginning on January 1, 2025.
Retirement
- [33] The respondent says that he wishes to retire and will retire. He asks that his intention to retire form the basis for a review under the consent order, or alternatively as a material change in circumstance.
- [34] In my view, there is an insufficient factual basis to assess the respondent's retirement. He remains eligible to work at his discretion indefinitely. He can earn over \$50,000 in a week. In my view, in these circumstances, determining support on the basis of the respondent's stated desire to retire, or his age, would require the court to determine support on the basis of speculative future events. See *Eldrige v. Eldridge*, 2024 BCCA 21 at para. 61. Retroactive Deduction in Spousal Support
- [35] The respondent applies for a retroactive deduction in spousal support. This is based on his assertion that he has overpaid spousal support based on annual calculations of spousal support.
- [36] I reject this assertion for the following reasons:
- a) I do not accept the respondent's position that income should be based on what he is paid from his professional corporation. As stated previously, in my view the appropriate income would be the revenue paid to the professional corporation, minus appropriate deductions, plus any personal income;
 - b) Such a retroactive claim would be inconsistent with the terms of the consent order which clearly set out the formula used to calculate spousal support; and
 - c) I have determined that the claimant has not yet been fully compensated for the breakdown in the marriage. Costs The claimant, respondent in this application, is entitled to her costs for this application. "Thomas J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/22/2024BCSC2241.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/atwal-v-huber-2024>

Prepared on 29 October 2026 · Esheria