

CANADA / JUDGMENT

Bradford v. Bradford

2023 BCSC 877

COURT

Supreme Court of British Columbia

DECIDED

24 May 2023

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

2023 BCSC 877 Bradford v. Bradford

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bradford v. Bradford,

2023 BCSC 877

Date: 20230524

Docket: 20090

Registry: Terrace

Between:

Felicity Louisa Jane Bradford a.k.a. Felicity Louisa Jane Keenlyside

Claimant

And:

Benjamin Arthur Bradford

Respondent

Before: The Honourable Mr. Justice Punnett

Reasons for Judgment

Counsel for the Claimant:

A. Lax

Counsel for the Respondent:

J. Maxwell

Place and Date of Trial/Hearing:

Terrace, B.C.

January 31 - February 3, 2023

Place and Date of Judgment:

Terrace, B.C.

May 24, 2023

Introduction

- [1] The parties entered into a consent order dated October 10, 2018, addressing guardianship and parenting, child and spousal support, division of the respondent's pension and division of property and debt (the "Consent Order").
- [2] The respondent now applies to terminate spousal support. The claimant opposes termination of her spousal support and seeks a review of both it and child support.

Background

- [3] The parties began living together in a marriage-like relationship in December 2005 and were married on October 7, 2006. They separated in 2016. On October 10, 2018 the parties were divorced. There is one child of the marriage, G., born July 20, 2013. Parenting is shared equally.
- [4] The claimant is 47 years of age, and the respondent is 54.
- [5] The parties first met when both were working in the cruise ship industry in 2002. They met again in 2004 and began dating and then cohabited in 2005. When they met the claimant was a Norwegian citizen. She was employed as a purser on the Queen Mary II. After beginning a relationship with the respondent, she came to Canada on a visitor's visa and lived with the respondent beginning in December 2005. The respondent is a Canadian citizen.
- [6] The parties lived together in Burnaby, British Columbia. The respondent ran his own company with a partner. However, the business faltered due to actions of his business partner and changes in the law respecting taxation of their business, making it unprofitable.
- [7] The respondent sought other employment and secured a position with the federal government providing information technology ("IT") services to the Royal Canadian Mounted Police ("RCMP") in Terrace, B.C. starting January 3, 2007. The parties moved to Terrace where they have remained.

- [8] They first resided in a rental apartment and saved money to buy land and build what became the family home. As well, before separation the respondent had made an offer on a duplex that required substantial renovations and was the subject of a foreclosure. Approval of the sale apparently took months and once the respondent's offer was accepted the parties had separated, but the respondent was bound to complete the purchase and did so in his name.
- [9] They were living in the family home when they separated. The parties discussed separation in February 2016; however, they remained in the former matrimonial home until they renovated one of the duplex units to make it suitable for the claimant to live there. Once the renovations were complete the claimant moved into the unit on August 26, 2016.
- [10] Instead of paying spousal and child support, the respondent agreed that while the claimant lived in the duplex he would pay the mortgage, taxes and all other expenses relating to the duplex except for B.C. Hydro. The claimant remained in the duplex until April 2019 when, because of the settlement of the parties' family property claims, she received \$122,000 and bought a mobile home in a trailer park where she now lives.

Pattern of Childcare

- [11] Their son G. was born July 20, 2013. The claimant remained at home with the child for 15 months while the respondent took paternity leave for the first nine of those months. He acknowledged that during that period the claimant did much of the childcare.
- [12] The claimant returned to work initially with B.C. Hydro reading remote electrical meters and then obtained employment with B.C. Parks. The work with B.C. Hydro involved time away from home including overnight trips throughout the northwest of B.C. which left childcare responsibilities with the respondent. The claimant's employment with B.C. Parks, although seasonal, required long hours of work into the late evening, again leaving childcare to the respondent and when he was working, to day care.
- [13] After their separation in the summer of 2016 the child remained with the respondent. The respondent testified the claimant would visit G. in the former family home. He stated the claimant felt he was preventing her from seeing their son. The claimant testified the respondent was restricting her access by only letting her see G. in his home or when he brought him over to the duplex. He would not permit the child to stay with her overnight.
- [14] The claimant testified that because of the issue of parenting time with their son she had contacted the Family Justice Centre, although the respondent states he had contacted the Family Justice Centre initially. In any event, in October 2016, with assistance from the Family Justice Centre, the parties reached an agreement regarding guardianship and parenting responsibilities and parenting that was a 4/3 split in favour of the respondent.
- [15] The October 10, 2018 Consent Order also had the following consented to terms:
 - 1. Felicity Bradford ("Felicity") and Benjamin Bradford ("Benjamin") are joint guardians of [G.].

2. Felicity shall have parenting time with [G.] from Wednesdays at 3pm until Saturdays at 1pm.
3. Benjamin shall have parenting time with [G.] from Saturdays at 1pm until Wednesdays at 3:00pm.
4. If either party needs care for [G.] during their parenting time, they shall first contact the other party and offer that party the first opportunity to care for [G.].
5. The parenting time in this Order may be reviewed on any date after January 2, 2021, or such earlier date as agreed to between the parties.
6. The parties shall alternate years for claiming [G.] as a dependent on their tax returns. Benjamin shall claim [G.] for 2018 and Felicity shall claim [G.] for 2019.
7. Benjamin shall pay support in the amount \$556 per month to Felicity for the support of [G.] commencing on November 5, 2018, and continuing on the first day of each and every month thereafter for so long as [G.] is a Child of the Marriage under the Divorce Act.
8. Both parties shall exchange their income tax returns, including all attachments, for the previous year on or before June 1 of each year, and any notices of assessment or reassessment within 30 days of receipt. Any adjustments to child support shall commence on July 1 of the current year.
9. Each party shall pay their proportionate share of [G.]'s special or extraordinary expenses. Benjamin's current proportionate share is 63% and Felicity's current proportionate share is 37%.
10. Benjamin shall pay support in the amount \$1090 per month to Felicity commencing on November 5, 2018, and continuing on the first day of each and every month thereafter until further order of the court or the agreement of the parties.
11. For so long as Felicity resides at Unit 2 2426 Thornhill Street, Terrace, BC, she shall pay no rent in lieu of spousal support.
12. Felicity shall provide 60 days' notice of when she is moving out of the Duplex to Benjamin.
13. For the purpose of calculating support duration, the parties agree that Benjamin commenced paying spousal support on September 1, 2016.
14. Either party may apply to the court to review spousal support on or after March 9, 2022, or such earlier date as agreed to between the parties.
15. As long as Benjamin's employer permits him to keep Felicity on his extended medical or dental benefits, he shall keep Felicity on those benefits. If there is a cost to Benjamin, he shall notify Felicity of that cost and she shall be responsible for that cost.

16. Felicity is entitled to a 50% share or division of Benjamin's PUBLIC SERVICE SUPERANNUATION. The period of eligibility for Felicity's entitlement is from December 1, 2005, until August 26, 2016.
17. Benjamin and Felicity shall walk through the Family Home 5219 Mountain Vista Drive, Terrace, BC, ("Family Home") together and divide any remaining personal property, not covered in this order, to their mutual satisfaction.
18. Benjamin shall pay compensation in the amount of \$122,000 to Felicity for the purpose of dividing property.
19. Title to the Family Home shall be transferred to Benjamin upon the payment of the \$122,000. Benjamin shall use his best efforts to ensure that Felicity is removed from the mortgage at the time of transfer. The cost of the transfer shall be paid by Benjamin.
20. Benjamin shall transfer to Felicity by way of a spousal rollover \$18,000 from the Tangerine RRSP account ending in 0269.
21. Benjamin and Felicity agree that Benjamin shall be solely responsible for the following family debts:
 - a. The mortgage granted to Tangerine on the Family Home;
 - b. The mortgage granted to Scotiabank on 2426 Thornhill Street, Terrace, BC;
 - c. The CRA Homebuyer's Plan Repayment debt.
22. Under section 5 of the Name Act the Claimant shall bear the name of "Felicity Jane Louisa Keenleyside" to take effect on the 31st day after the day of this order.
- [16] The order was based on the claimant's 2017 income of \$31,130 and the respondent's of \$88,519.
- [17] Parenting time was revisited when the claimant applied to vary the Consent Order to provide for equal parenting time, which was granted on March 22, 2021. The order also provided for each party to have parenting time with their son on Wednesdays from 3:00 p.m. to 7:30 p.m. on the week when he was with the other parent.
- [18] On October 31, 2022, this application was referred to the trial list.

Preliminary Issue: Contents of Claimant's Cell Phone

- [19] The respondent tendered evidence he obtained from the claimant's cell phone. It was objected to and a ruling on its admissibility was addressed in final submissions. It is not disputed it was the claimant's old cell phone, that it was left at the matrimonial home and that they each regarded their respective cell phone contents as private.

- [20] In 2017, the claimant had asked the respondent to have her cell phone fixed. He gave it to a friend to fix it. While still together, the claimant asked for it back, but the respondent informed her it was with a friend, and it could not be fixed. He received it back some months later after they separated but did not ask her if she wanted it returned to her. The respondent testified that after separation he asked her to retrieve her belongings. She did not.
- [21] The respondent stated that he wanted to see if the phone could be fixed to give to his son and sent it to a firm in Langley, B.C. some months before this trial. They could not fix it but successfully retrieved its contents. The respondent did not know if it was password protected nor did the Langley firm advise him if it was. He had them provide the contents to him. On cross-examination he stated he expected there would be a 50 percent chance or possibility there would be information relating to their separation that he could use in court and that was part of his reason for obtaining the extracted data. When asked if he had access to her phone when they were together, he testified: "she would never give me access to her phones, her stuff was hers and mine was mine".
- [22] The material extracted included text messages the respondent sought to have put into evidence. Those messages consisted of emails allegedly between the claimant and a friend including comments of a confidential, personal and private nature and were not intended to be shared other than with the friend. She submits the respondent deliberately accessed them seeking evidence for this litigation. The respondent submits the claimant abandoned the phone and chose not to retrieve it and implicitly waived any claim to control over its contents.
- [23] The claimant refers to *Dixon v. Lindsay*, 2021 ONSC 1360 where the Court stated:
- 40 In his initial affidavit sworn September 13, 2020, the Respondent had sorted the emails into the following categories: (1) solicitor client communications between him and his lawyers; (2) "house" referring to the former matrimonial home, some of which are protected by solicitor client privilege but some are not; (3) communications between him and his own clients that he asserted were covered by solicitor client privilege of those clients; (4) "stuff about my office"; (5) emails involving his girlfriend; and (6) "personal family stuff" including emails with his children. In my endorsement dated October 8, I directed the Respondent to re-categorize using three labels: solicitor client privilege of his clients; his solicitor client privilege; and everything else.
- 41 Category C is [sic] contains everything else and, in particular, those listed as (4), (5) and (6).
- 42 It is not necessary for me to review the emails that the Respondent has included in Category C because the Applicant has not challenged his evidence as to the content of those emails including the intimate nature of some of them. I accept and rely on the evidence of the Respondent that, while these emails are not protected by a privilege, they constitute communications that are confidential, personal and private and which he did not intend to share except with the addressee. I find that they are protected by privacy rights in civil proceedings. As Quigley J. held in *Autosurvey Inc. v. Prevost* it "should be a self-evident principle" that individuals have the right

to be free and secure from encroachment upon their reasonable expectations of confidentiality and privacy in a free and democratic society, whether at the instance of government, or at the instance of non-governmental parties or a litigation adversary

[24] Ontario does not have a statute establishing an individual's right to privacy, hence privacy rights in civil proceedings are addressed at common law. British Columbia, however, does: Privacy Act, R.S.B.C. 1996, c. 373. Consequently, there is no common law tort for breach of privacy in British Columbia, and courts in this province have rejected extraprovincial jurisprudence on this point: *Mohl v. University of British Columbia*, 2009 BCCA 249; *Turkson v. TD Direct Investing, A Division of TD Waterhouse Canada Inc.*, 2016 BCSC 732 at para. 180, *aff'd* 2017 BCCA 147.

[25] In *Nesbitt v. Neufeld*, 2010 BCSC 1605 the claimant had released private communications between the parties to third parties and the public that he had obtained off the respondent's old computer covering the years 2001 to 2002. The respondent claimed damages on the grounds of defamation and breach of privacy.

[26] In addressing the claims under the Privacy Act, Justice Crawford stated:

[87] Section 1 of the Privacy Act codifies the tort of invasion of privacy as follows:

1(1) It is a tort, actionable without proof of damage, for a person to wilfully and without a claim of right, to violate the privacy of another.

(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.

(3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.

(4) Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

[88] I note also Dean William L. Prosser's classification of interests protected by the law of privacy as developed in the United States (48 Cal. L. Rev. 383, 1960, p. 389):

The law of privacy comprises four distinct kinds of invasion for four different interests of the plaintiff, which are tied together by a common name, but otherwise have almost nothing in common except that each represents an interference with the right of the plaintiff... 'to be left alone'. Without any attempt to [write an] exact a definition, those four torts may be described as follows:

1. Intrusion upon the plaintiff's seclusion or solitude, or into his [or her] private affairs;
2. Public disclosure of embarrassing private facts about the plaintiff;

3. Publicity which places the plaintiff in a false light in the public eye;
4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

[89] The B.C. Court of Appeal in *Davis v. McArthur* (1970), 17 D.L.R. (3d) 760, [1970] B.C.J. No. 664 (QL) (C.A.), said this in the course of its judgment at para. 9 of QL:

To constitute the tort [of violation of privacy] the violation must be committed "wilfully and without a claim of right". The nature and degree of privacy to which the person is entitled in any situation or in relation to any matter is fully set out in s-s (2) [now ss. 1(2) and 1(3)] and, in my opinion, no useful purpose would be served in attempting to elaborate upon the words contained therein. Regard must be had to the provisions of the subsection as a whole. It is plain that whether there has been a violation of privacy of another must be decided on the particular facts of each case. As the learned Judge below said in his reasons for judgment [10 D.L.R. (3d) 250 at p. 255, 72 W.W.R. 69]: "It is necessary to consider all of the circumstances before determining 'The nature and degree of privacy to which a person is entitled,' s. 2(2) [now ss. 1(2) and 1(3)].

[90] In *Hollinsworth v. BCTV*, a division of Westcom T.V. Group Ltd. (1999), 59 B.C.L.R. (3d) 121, 113 B.C.A.C. 304, the Court of Appeal defined the term "wilfully" to mean "an intention to do an act which the person doing the act knew or should have known would violate the privacy of another person" (at para. 29 of B.C.L.R.).

[91] Dr. Nesbitt's use of the private correspondence between Ms. Neufeld and Ms. X was a deliberate act that violated Ms. Neufeld's privacy. The communications were extremely personal.

[92] It is no answer for Dr. Nesbitt to say that the correspondence was in the computer that Ms. Neufeld gave him. A brief scan of Ms. Neufeld's correspondence would soon show their personal nature, and ordinarily, one would return them to the author and/or owner. To hold onto the communications for some five years and then purport to use them allegedly because of Ms. X's possible interest in a young male or alternatively to show Ms. X's abuse of her employee's email system is as hollow an excuse as one can imagine. There can be no doubt as to Dr. Nesbitt's intent and that was to embarrass and scandalize the email writers - Ms. Neufeld and Ms. X.

[27] As noted, it is not in issue that the phone was the property of the claimant. Its contents were private, and the respondent deliberately expended considerable efforts to access and retrieve its contents. His argument that the phone was abandoned lacks merit. The claimant testified she did not recall he had the phone and never did he specifically advise her he had it and ask her if she wanted it. Nor did the respondent advise her he had it back and had had its contents extracted. Further, she stated her phones are always password protected.

[28] The actions of the respondent violated the Privacy Act and were a wilful breach of the claimant's privacy rights. The material is not admissible. Such actions are to be deprecated and discouraged.

- [29] Even if I am incorrect in this finding, the contents introduced into evidence were selective and not a complete disclosure of the phone's contents, and in any event subject to interpretation such that they were of little if any relevance.
- [30] I find that the respondent deliberately accessed the personal and private text messages and records of the claimant from her cell phone to use them in this family law litigation.

Position of the Respondent

- [31] The respondent characterized the contributions of the claimant to the marriage as more limited than those of the respondent, arguing that she did not have primary care of the child and, contrary to the wishes of the respondent, worked for short periods of time and deliberately brought such periods of employment to an end once she had the right to employment insurance ("EI"). Hence, he submits her entitlement to compensatory support is not significant and she has been adequately compensated by the Consent Order. He also argues she has not sought employment commensurate with her education and experience.
- [32] He testified that she would collect EI "assiduously" saying she was "entitled" to it hence she collected it. In his opinion this pattern gave her a poor employment record. He stated they had several discussions over the years with her about her practice of collecting EI and that she should seek work rather than remaining on EI. He was of the view that after separation, her efforts to obtain employment were done simply to comply with EI requirements which required her to seek work in order maximize her entitlement to such benefits.

Position of the Claimant

- [33] The claimant submits this was a medium-length marriage. She notes this is a review of spousal support and not a variation. She seeks spousal support on both a compensatory and non-compensatory basis noting that it is only recently that she has secured long-term stable employment. She seeks spousal support for another four years given her standard of living has suffered because of the marriage breakdown and she has not yet re-established a standard of living similar to that enjoyed during the marriage.

Credibility of the Parties

- [34] The oft-quoted summary of Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013), addresses the assessment of credibility:

186 Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been

accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis* (1926), 31 O.W.N. 202 (Ont. H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [Farnya]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

187 It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

- [35] The respondent challenges the credibility of the claimant saying her answers were rehearsed, noting specifically her positive admiring responses relating to the respondent and his relationship with their son. Further, he notes that her evidence regarding dates and inconsistencies with earlier answers in her direct examination indicate fabrication of her evidence.
- [36] As for her inaccurate dates I am satisfied they relate to reliability and not credibility. She clearly is an individual whose sense of time and dates in the past is poor. There is no evidence it was deliberate. The alleged inconsistencies with earlier answers in her direct examination related to dates, times and chronologies.
- [37] I accept her evidence subject to these weaknesses. As for dates the exhibits such as employment information and her resume more accurately reflect the dates and times involved.
- [38] The respondent on the other hand sought to place the claimant in a poor light by referring to her failure to repay student loans owed in Norway and her briefly working "under the table", as well as suggesting her changes of employment were motivated by a desire to obtain EI benefits and not legitimate work-related reasons. His unsupported view that her desire for increased parenting time was motivated by the "60/40" threshold relating to child support was likewise advanced for the same purpose. His retrieval of her private phone data and attempt to rely on it is consistent with his apparent motive to undermine her role in the marriage. As a result, I approach his evidence with some degree of caution.

Education, Employment History and Income of the Claimant

- [39] The claimant was born and educated in England until she was 11 and a half years of age. Her parents separated and she and her brother found themselves in foster care. Their father obtained custody of them and moved them to Norway where they lived with his partner. The claimant became fluent in Norwegian and graduated from high school in Norway. She had retained her UK citizenship. She took a two-year university program in tourism and marketing in Bergen, Norway. She then sought to study tourism management in the UK, however to be eligible for student loans available from Norway she had to renounce her UK citizenship and become solely a citizen of Norway which she did.
- [40] She then attended the University of Sheffield in the UK and completed a four-year bachelor's degree in tourism management. She obtained employment as a front desk person working on Fjord Line ferries travelling between England and Norway. She then worked for the summer of 2000 on the Seabourn Pride. Her next employer was the Carnival Cruise Line, with whom she worked on four ships over the next few years, operating out of Bergen. She then was employed by the Fjord Line on the ferry again during an employee's maternity leave. In 2003 or 2004 she commenced working on the Queen Mary II for Cunard as a purser. She typically worked six months on and two months off. Bergen was her base. She ceased that employment when her father was very ill with cancer, and she returned to Norway to support him. By then she was romantically involved with the respondent. She had come to Canada to visit him. They agreed she should move to Canada. At her father's encouragement she came to Canada in December 2005 to start a life with the respondent. She began living with him in his apartment in Burnaby where they lived for a year.
- [41] The claimant's income on the Queen Mary II was approximately \$1,400 per month payable in US dollars.
- [42] When she came to Canada, she did so on a visitor's visa, hence she could not work or go to school. She was permitted to work starting in 2007 when she obtained a work permit. The respondent sponsored her immigration, but permanent residence was not approved until August 26, 2009.
- [43] The claimant's work history in Canada has been varied. Before she was permitted to work in Canada, she obtained work at a restaurant in Terrace. She worked "under the table" for less than minimum wage but left once she had secured a work permit.
- [44] Once she was permitted to work in 2008, she commenced employment with Wightman & Smith Insurance Agency in Terrace as an entry level insurance broker. She was so employed from February 2008 to May 2008. She ceased that employment because of the office environment and issues with a new worker. Shortly thereafter she found employment with Bell 2 Lodge, a heli-skiing resort, working at the front desk from 2008 to 2009.

- [45] In 2009 and 2010 she worked for the summer season on B.C. Ferries out of Prince Rupert as a catering service attendant. The work involved being away for two weeks at a time followed by one week off from April to October for two seasons.
- [46] In January 2011 she began working at Best Western Terrace Inn as a front desk agent. She had requested and was granted time off to travel to Norway, however on her return her pay level was reduced so she left that employment.
- [47] From April 2012 to October 2013, she was employed by First Response First Aid as a day shift attendant providing first aid to employees on the job site at the Kitimat smelter modernization project. The work ceased when her employer lost the contract they had for the project and laid off all six employees.
- [48] She next obtained work for a company under contract to B.C. Hydro as a field meter analyst, reading meters in the northwest of the province from October 2014 until 2016 when she and others were laid off.
- [49] Beginning in April 2015 she started working for Northwest Escapes Ltd. as a Park Operator at Lakelse Lake Provincial Park from April to October for two years. At first the work overlapped with her work as a meter analyst as her shifts were being reduced and she expected to eventually be laid off.
- [50] In the fall of 2018, she enrolled in Coast Mountain College in Terrace in the social service worker program. However, she only completed three out of six courses in the first semester because of stress in part arising from the parties' separation.
- [51] In 2019 she worked as a residential support worker for the Terrace and District Community Services Society.
- [52] From October 2020 to October 2021, she worked at Dulux Paints in Terrace but left that position to accept a position with Northern Savings Credit Union ("NSCU"). She anticipates her employment with NSCU being long term. It is a full-time position with benefits, holidays and better pay than her previous employment with Dulux Paints and has the potential for wage increases and advancement.

Education, Employment History and Income of Respondent

- [53] The respondent completed first year at the University of Alberta in engineering and later, second year in science however he left because of low grades. He has several certificates relating to IT but no degrees or diplomas. He initially had a business in Burnaby, B.C. doing tax processing and then worked on cruise ships with Carnival Cruise Line. He was initially employed in IT on a cruise ship out of Helsinki. He remained with Carnival Cruise Lines for several years. He then started a small business in New Westminster, B.C. for about three years. He closed that business when he obtained employment with the Government of Canada beginning January 3, 2007 doing IT for the RCMP in Terrace. He agreed the move to Terrace was for his career. He remains in that position in Terrace.

Law Regarding Review of Spousal Support

[54] For convenience I repeat paragraph 14 of the Consent Order:

Either party may apply to the court to review spousal support on or after March 9, 2022, or such earlier date as agreed to between the parties.

[55] This is a review application, not a variation application. As noted in *McClaughry v. McLaughry*, 2017 BCSC 966, rev'd in part on other grounds, 2018 BCCA 146, quoting from the Spousal Support Advisory Guidelines: The Revised User's Guide (Ottawa, Department of Justice, 2016), the distinction is important:

37 The distinction between a review of spousal support and a variation of spousal support is summarized in the Spousal Support Advisory Guidelines: The Revised User's Guide, authored by Rollie Thompson and Carol Rogerson. At page 73 they describe the distinction as follows:

A variation involves the threshold requirement of a material change in circumstances, whereas a review is more like an initial application; courts often mistakenly confuse the tests...*Marche v. Marche*, 2014 NLCA 28; *Morck v. Morck*, 2013 BCCA 186; and *Domirti v. Domirti*, 2010 BCCA 472.

A review is often described as a hearing de novo, but this is somewhat misleading because, following *Leskun v. Leskun*, 2006 SCC 25, the issues to be reviewed may, and indeed should be, delineated by the terms of the review...*Westergard v. Buttress*, 2012 BCCA 38 and *McCarthy v. MacCarthy*, 2015 BCCA 496.

[56] The review provision in the Consent Order does not impose limitations on the spousal support issue. In *Domirti v. Domirti*, 2010 BCCA 472 the Court stated:

[33] The nature of a review hearing was described by Madam Justice Prowse in *Schmidt v. Schmidt*, 1999 BCCA 701:

[9] ... [Review orders] are considered particularly useful in circumstances where there is some doubt as to whether spousal maintenance should be continued and, if so, in what amount. Rather than force the parties to go through a variation proceeding with its strict threshold test of change in circumstances, the court provides that proceedings will be conducted and the nature of the evidence to be called. Pending review, the order remains in effect.

[41] In my view, these comments are apposite to review applications of the type that was ordered in this case. Reviews that are broad in scope in regard to the issues to be reconsidered are similar to an initial application for support. Once the issue of the respondent's continued entitlement to support was determined, the quantum (both amount and duration) of that support would properly be reconsidered with the guidance of SSAG, even though the order being reviewed was pre-SSAG. That is what I understand the chambers judge had attempted to do in this instance.

[57] Hence, what is being reviewed in this instance is the entitlement of the claimant to continued maintenance, and if entitlement is established, the amount.

[58] The statutory criteria for spousal support are set out in s. 15.2(4) of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3:

- (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.

[59] The objective of spousal support is addressed in s. 15.2(6):

- (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.

[60] Here, compensatory and non-compensatory support are claimed. In *Chutter v. Chutter*, 2008 BCCA 507, leave to appeal to SCC ref'd, 33002 (28 May 2009) the Court addressed the principles to be applied when considering entitlement to compensatory and non-compensatory support:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (Bracklow, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success

[51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse" (emphasis added).

[52] The Court in *Moge* discussed the relevance of the parties' standards of living in the context of compensatory support at 870:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement... As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution.

[Emphasis added, internal citations omitted.]

[53] In *W. v. W.*, 2005 BCSC 1010, 19 R.F.L. (6th) 453, a frequently cited decision in trial decisions in British Columbia, Justice Martinson made the following helpful observation about the interpretation in this province of the emphasized portion in *Moge*:

[11] In British Columbia this comment in *Moge* has been interpreted to mean that in long marriages the result will likely be a rough equivalency of standards of living. Doing so recognizes that the longer a marriage lasts, the more intertwined the economic and non-economic lives of the spouses become.

[12] Throughout the marriage, each spouse makes decisions that accommodate the economic and non-economic needs of the other. The decisions include the way in which child care and other family responsibilities will be handled and the way careers will develop. These decisions can have a significant impact upon the income earning ability of each at the time of separation. Yet it is not easy to determine exactly the relationship between these decisions and the consequent benefits and detriments to each spouse. The rough equivalency of standard of living approach has operated as a workable substitute to assess compensatory claims.

[Emphasis in original.]

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap

between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

- [55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

- [56] The Ontario Court of Appeal in *Allaire v. Allaire* (2003), 170 O.A.C. 72, 35 R.F.L. (5th) 256, held that self-sufficiency, a spousal support objective primarily related to non-compensatory support (Bracklow, at paras. 41-42), was a relative concept informed by the standard of living previously enjoyed by the parties:
- [57] In *Yemchuk v. Yemchuk*, 2005 BCCA 406 at paras. 41, 48-49, 16 R.F.L. (6th) 430, Prowse J.A. referred to *Myers* and further held that in the context of a long-term marriage involving a sharing of resources, the concept of "need" should take into account the relative standards of living of the spouses following the marriage breakdown. In *Yemchuk*, the husband had appealed the decision of the trial judge dismissing his claim for spousal support on the basis that he had not established any need. While Prowse J.A. found that the husband was entitled to spousal support on compensatory grounds, she also went on to state that the trial judge's treatment of the husband's need for support had been "unduly restrictive":
- [61] Finally, I note that in *Fisher v. Fisher*, 2008 ONCA 11, 88 O.R. (3d) 241, the Ontario Court of Appeal recently reiterated the principle that self-sufficiency is a relative concept encompassing more than the ability to meet basic expenses:

53 Self-sufficiency, with its connotation of economic independence, is a relative concept. It is not achieved simply because a former spouse can meet basic expenses on a particular amount of income; rather, self-sufficiency relates to the ability to support a reasonable standard of living. It is to be assessed in relation to the economic partnership the parties enjoyed and could sustain during cohabitation, and that they can reasonably anticipate after separation...

- [61] The respondent submits the claimant firstly had the opportunity to develop and enhance her career during their marriage but deliberately failed to do so, choosing instead to work only long enough to qualify for EI benefits and then ending her employment and relying on those benefits and the income of the respondent. Secondly, he submits she has had an opportunity to re-establish herself since they separated some seven years ago while receiving spousal support. Finally, he submits that she has in fact re-established herself with her secure employment with NSCU.

[62] The claimant argues she had an established career in the cruise ship industry when they met having reached the position of steward on the Queen Mary II. She left that position because of her father's illness. Returning to such a position however required that she be away for months at a time. The marriage to the respondent and their desire to be together made that unfeasible. While she had a degree in tourism the move to Terrace limited her opportunities for a career in that field as evidenced by the employment she was able to secure. The move to Terrace was to improve the respondent's employment prospects and security and it did so. She was never able to earn an income commensurate with his. The move improved their standard of living. The separation significantly affected her standard of living. The respondent's income however permitted him to retain the family assets and benefit from them accordingly.

Compensatory Support Claim

- [63] The parties' marriage was of medium length as they began cohabitation in 2005 and separated in 2016, a period between 10-11 years. In moving to Canada to be with the respondent the claimant left the cruise and ferry employment she was previously engaged in. Due to immigration requirements, she was prevented from working from 2005 to 2007. The move to Terrace in late 2006 was a joint decision however it did restrict the employment available to the claimant using her degree in tourism and finding employment similar to what she had before coming to Terrace. On the other hand, the employment of the respondent was enhanced by the move to Terrace. As he put it in direct, he had understood that a government job would be "lucrative".
- [64] During the marriage the claimant received EI benefits which were also received after the birth of their son.
- [65] After separation her standard of living has been significantly lower than that of the respondent. While she was compensated for her interest in the former matrimonial home, the respondent, because of his income, was financially able to retain the home and his acquisition of the duplex improved his economic situation substantially since separation. His possession of the home also provided him with the ability to have R., a disabled adult, reside with him, providing him with additional income. Counsel for the respondent suggested the claimant could have done the same however she is living in a three-bedroom mobile home with limited space and a child, not the three-story home occupied by the respondent. I do not accept that suggestion as realistic.
- [66] The respondent submits the claimant chose during the relationship to not advance her career but rather to take various types of employment interspersed with periods of reliance on EI benefits. He submits her employment history in Terrace reveals no career plan but instead a series of ad hoc arrangements motivated by a desire to rely on EI and avoid enforcement of her student debt to Norway. Overall, the respondent submits the claimant has not suffered a loss or disadvantage due to the relationship and that it was her choice to not advance her career. He submits any entitlement to spousal support has been satisfied as

her entitlement to spousal support has been shortened by such choices by her.

- [67] He also submits the claimant was only 40 when the marriage ended, such being a factor in favour of more limited spousal support. Further, the respondent claims that her employment took her away such that he took on much of the childcare before it became 50/50. While she helped with the construction of the family home and the renovation of the rental, she has been compensated by the value created given the property division. As a result, he argues this is not a case of the respondent benefiting from the claimant's role in the marriage. He submits it was not a traditional marriage where she sacrificed for the benefit of both of them. The respondent also submits the claimant failed to take reasonable steps after separation to advance her earning potential such as not completing the social worker program.
- [68] Her entitlement to compensatory support, while not the same as, for example, a stay-at-home mother, exists. The strength of such a claim however is to be reflected in the support payable and its duration.

Non-Compensatory Support

- [69] In 2018, as a result of the property division, she acquired a mobile home but no land. It is in a trailer park on Braun Island, outside of Terrace. Her financial circumstances were clearly negatively affected by the breakdown of the marriage. Her assets consist of her mobile home valued at \$174,000 subject to a mortgage of \$61,000, as well as a spousal RRSP of \$18,000 and a pension rollover of \$122,000 both from the property division with the respondent. Her income and expenses are equal.
- [70] The test as noted earlier is not that she meets her basic needs. In the context of a spousal support claim needs are relative.

Entitlement, Quantum and Duration of Spousal Support

Income of the Respondent

- [71] The income of the respondent is complicated by the fact it consists of earned income from his employment, rental income from the suite in the former family home and the duplex units, income for the housing of R. and the government payments for his rent and care. The claimant accepts his employment income as declared and his net rental income as reported in his tax returns are accurate. She takes no issue with the expenses for the rental income and accepts the net income figures reported. The only contentious issue is what portion of the funds received for R. goes not to his care but is income to the respondent over and above R.'s care expenses.

[72] In July 2019, the respondent entered into an adult home share contract with the Terrace and District Community Services Society ("TDCSS") to provide residential care and supervision to a developmentally disabled adult known in these reasons as R. Under the Agreement the respondent provides the necessities of life including R's food, lodging in the respondent's home, personal expenses, excursions and vacations. In 2022 he received for R's care:

- a) A monthly allowance of \$1,795 from TDCSS; and
- b) A monthly allowance of \$716 from the British Columbia Provincial Government.

Total: \$30,132 per year (the "Support Funds").

[73] Those allowances are not reported as income on the respondent's personal tax returns pursuant to s. 81(1) of the Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.).

[74] On March 21, 2022, the respondent brought an application before Justice C. Ross in this court seeking a declaration that such funds are not income for the purposes of spousal and child support: *Bradford v. Bradford*, 2022 BCSC 595.

[75] Section 19 of the Federal Child Support Guidelines, SOR/97-175 [Guidelines] provides:

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

- (b) the spouse is exempt from paying federal or provincial income tax;

...

- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and ...

[76] Justice C. Ross, after reviewing *Cole v. Cole*, 2010 BCSC 1330, *Fraser-Tabak v. Tabak*, 2016 ABCA 79, *Gould v. Julian*, 2010 NSSC 123, *Kovich v. Kreut*, [1998] B.C.J. No. 2586, 1998 CanLII 5307 (S.C.), *C.Z. v. K.M.*, 2008 BCPC 298 and *Fielding v. Fielding*, 2018 ONSC 5659 concluded:

22 Mr. Bradford's taxable income for 2020 is \$88,727, based on an acceptance of his deductions from gross rental property incomes, which might form the subject of a future application. The Support Funds amount to a total amount of tax-free payments of \$30,132 before any gross up to reflect the fact that the payments are tax free and without deduction.

23 Counsel for Ms. Bradford urged the Court to undertake a calculation of appropriate deductions for expenses to arrive at a figure to be imputed as income. Mr. Bradford provided some material in support of a submission that R's expenses were inextricably entwined with those of Mr. Bradford and the household such that the exercise suggested by counsel Ms. Bradford could not realistically be undertaken. In the alternative, counsel submitted that the Court should not undertake such an analysis in the absence of an application seeking such relief, arguing that additional submissions and evidence would have been provided had he been aware that such an

exercise would be undertaken.

24 The notice of application sought a declaration that the Support Funds do not constitute income for the purposes of spousal and child support. I am satisfied that it is not appropriate to make the declaration sought. I find that it is appropriate to treat some portion of the Support Funds as income for purposes of the calculation of the Guidelines income for child and spousal support where it is significant in the sense that it would be likely to have an influence or effect on the amount of support available.

25 On the present state of the record, it is not appropriate to determine what portion of the Support Funds should be treated as income in Mr. Bradford's hands or to make a final determination as to whether this amount is significant within the meaning of s. 19 (1)(h) of the Guidelines.

26 In order to grant the declaratory relief sought I would have to conclude either:

- a) the Support Funds could not be imputed as income pursuant to s. 19(1)(h) of the Guidelines; or
- b) that the Support Funds in the circumstances do not form a significant portion of Mr. Bradford's income.

27 With respect to the first alternative, I have reached the opposite conclusion; namely, that the Support Funds do fall within the group of funds for which the Court "may impute such amount of income to a spouse as it considers appropriate in the circumstances". With respect to the second, given the amounts involved and their relation to Mr. Bradford's other sources of income, it cannot be said that the amounts at issue are not significant within the meaning of the section.

28 Accordingly, I dismiss the application for a declaration. There will need to be a further hearing to determine what portion of the Support Funds should be treated as income and whether this amount is significant within the meaning of s. 19 of the Guidelines in that it would have an influence or effect on the support available.

[77] As a result, the matter came before this Court to determine what portion of the Support Funds should be treated as income and whether that amount is significant within the meaning of s. 19 of the Guidelines.

[78] I turn then to what portion of the Support Funds are to be included in the respondent's income and thereafter whether it is significant "in that it would have an influence or effect on the support available".

Disposition of the Support Funds

[79] The respondent receives \$30,132 per year for the care of R., the disabled adult. Those funds consist of rent of \$750 per month and a \$1,700 per month subsidy for the support of R. The respondent occasionally takes R. out for dinner as well. He estimates he spends about \$700 a month for food including meals outside the home with R. He has also taken R. on vacation

with him, including on several trips to Edmonton. He occasionally provides spending money to R. which is sometimes but not always paid back. He does not pay for R.'s clothing and personal items. The expenses paid by the respondent were mainly for R.'s meals, his accommodation in the home and his share of house expenses.

- [80] The Court must determine what portion of the Support Funds are for the expenses of R. and what are not, with the latter to be imputed as income to the respondent.
- [81] While providing a home to an individual such as R. is commendable, it is clear it is also done to provide income to the respondent given his suggestion that the claimant do the same to supplement her income and the evidence of expenses related to R. The claimant submits a portion of such funds be credited to the income of the respondent for Guidelines purposes.
- [82] The respondent in his direct examination said of the funds provided for R. "a lot" is spent on R.'s care. R. also receives his own cash additional to the funding provided to the respondent. The respondent believes R. receives \$30 per day for his daily out-of-pocket expenses.
- [83] In *Cole*, Justice Butler (as he then was) addressed the issue where the respondent provided foster care for which he received "substantial monthly allowances from the provincial government": para. 1. It was not reported for tax purposes. He reviewed several authorities and reached certain conclusions:

17 In situations where the payor parent's only source of income is the foster allowance, courts have, without exception, found that some portion should be imputed in income:

20 This case summary shows that most courts have been willing to impute portions of foster allowances as income in the hands of a payor parent for child support purposes. This is not surprising. A parent's obligation to provide support for his or her children must take precedence over a contractual obligation undertaken for foster children. To the extent that an allowance provides some form of compensation to the foster parent over and above expenses, some portion of it should be treated as income for child support purposes. If this is not done, a foster parent would effectively be able to prefer the interests of foster children to his or her own children.

21 This conclusion is easy to arrive at in the circumstances of this case. The description of the foster parent services provided by Mr. Cole is consistent with the operation of a business. He personally entered into the agreement with the Ministry of Children and Family Development to provide the required services. However, he subcontracts the actual provision of the services to qualified workers who provide the required 24 hour care for the foster children. He rents suitable premises for the provision of the services for the foster children. He is reimbursed for those expenses and is left with a significant amount of net revenue. By operating the foster home in this way, Mr. Cole has been able to maintain his job as a school teacher. He has also effectively used the operation of the foster home services for income splitting; his wife provides administrative services for the operation for which she receives revenue but pays no taxes. The scheme has all of the hallmarks of a small business, including the provision of a substantial stream of revenue to Mr. Cole.

22 In summary, even if the Foster Allowances are not taxable income, they should be included in income for child support purposes under s. 19(1)(b) and (h) of the Guidelines. The existing jurisprudence supports the conclusion that income can be imputed to a recipient of a foster care allowance. In the circumstances of this case, Mr. Cole appears to be running a business such that there is no reason not to impute some portion of the net revenues from the Foster Allowances as income for child support purposes.

Policy Arguments

23 As I have indicated above, I am of the view that the provisions of the Income Tax Act do not apply to the Foster Allowances received by Mr. Cole. However, even if they do, the Guidelines specifically permit the imputation of income where an individual receives income from a source that is exempt from tax. The real question is whether the income figure for a payor spouse fairly reflects all the money available for the payment of child support. This is a question of fact in each case, rather than a policy issue. There is no doubt that as a matter of policy each parent has the obligation to provide support to his or her children.

[84] The issue then becomes how to assess what portion of the \$30,132 should be included in the income available to the respondent for support purposes.

Discussion of Funds for R.

[85] As for how the funds provided are used, the respondent testified that he provides accommodation and pays more for utilities such as electricity, heating, garbage pick-up, food, entertainment and internet for the adult. He does not pay for R.'s clothing, transportation or vehicle expenses nor any specialized equipment or any of R.'s out-of-pocket expenses.

[86] In support of his use of the funds received from the government for R. the respondent provides two spreadsheets listing all of his household transactions for 2021, one listing all of his bill payments and the other all his Mastercard transactions. He identified those Mastercard transactions were for the most part groceries from Walmart, Wholesale Club and Amazon while the charges from Canadian Tire were for household repairs. He could not separate the expenses belonging to R. and the expenses for himself given the purchases were intertwined as he treats R. as if he were a member of his family.

[87] The claimant submits the respondent should not be entitled to deduct from the bills that he has to pay in any event for static charges such as property taxes, mortgage payments, property insurance, gas and garbage. Those are expenses the respondent is responsible for to provide a home for himself and his son. In addition, such should not be deducted from the funds received for R. because the respondent rents out the basement suite in his home and deducts portions of such expenses related to the rental suite. As a result, he has already benefited by the tax deductions for a portion of the static expenses. Hence, such expenses are not expenses of R.

- [88] The claimant does not dispute that the actual expenses of R., including R.'s use of a portion of the home's B.C. Hydro charges and internet charges, are legitimate expenses incurred because of him. Nor is it disputed that a portion of food and restaurant expenses, entertainment expenses and trips are also actual expenses of R.
- [89] The claimant argues that by excluding the static household bills, and accepting the expenses that include actual costs arising from R.'s presence, an exact calculation cannot be made since they cannot be broken down specifically to each resident of the home. Hence the claimant submits they should be divided based on the percentage of time each occupant is resident in the home. As the parties' child, G., is present half of the time the claimant submits the allotment of such expenses should be 40 percent to the respondent, 40 percent to R. and 20 percent to G.
- [90] The respondent submits as noted earlier that the claimant could generate similar income for the care of a disabled individual hence any portion of such that may be added back to a parties' income should be applied to both of their incomes. As previously stated, I do not accept that submission given the respondent provides such in a three-story home (the two top stories occupied by him, R. and G. half the time) while the claimant resides in a small mobile home.
- [91] What then is "significant" under s. 19(1)(h) of the Guidelines? In *Fielding v. Fielding*, 2018 ONSC 5649, Justice Monahan stated:
- [121] The ITA definitions of "significant" referenced by Ranot arise in rather different contexts, where the concern is to identify non-arm's length relationships or situations where one party or entity is in a position to exercise influence or control over another entity. I certainly agree that in instances where a support payor derives more than 10% of his or her total income from sources that are taxed at a lower rate, such income would necessarily constitute "significant" income for the purposes of s. 19(1)(h) of the Guidelines. But, even in instances where lower-taxed income represents less than 10% of total income, it may still be significant.
- [122] In my view, "significant" in this context should be interpreted having regard to the purposes of the Guidelines enumerated at s. 1, which include "to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation". The Merriam-Webster dictionary defines "significant" as "having or likely to have influence or effect". Thus, to the extent that the lower-taxed income is such that it "would have influence or effect" on the standard of support available to the children, such income should be regarded as "significant" and subject to an income tax gross up pursuant to s. 19(1)(h).

- [92] Justice C. Ross had previously determined in this matter that the "significant" test was met. The household expenses including the mortgage, house insurance, home renovations and maintenance, WorkSafeBC coverage required by R.'s presence, phone and internet total \$40,265 per year. A one-time paving of the driveway falls outside ordinary home maintenance and so was excluded. Of the \$40,265, the part that includes expenses incurred by R.'s presence is \$9,979.47.
- [93] Forty percent of \$9,979.47 is \$3,991.60. To that is to be added the Mastercard expenses identified as consisting of primarily groceries from Walmart, Wholesale Club and Amazon while the charges from Canadian Tire were for household repairs. The 40 percent share of R. for those expenses is \$5,629.29, resulting in total expenses related to R. of \$9,620.89.
- [94] The tax-free amount received by the respondent for the care of R. is \$30,132. The \$9,620.89 is be deducted from that total leaving \$20,511 to be imputed to the respondent's income. The claimant suggests the Court should err on the side of caution in conducting this exercise to account for increases in costs hence suggesting \$18,000 be added to the respondent's income to account for any inflationary increases.
- [95] The respondent's income for tax purposes which consists of employment and rental income was \$92,982.65 (including \$1,060 in RRSP funds) in 2019, \$88,480.27 (including \$248 in capital gains) in 2020 and \$111,566.38 (including \$1,326 in capital gains) in 2021. Those amounts do not include the payments received relating to R.

Income of the Claimant

- [96] The claimant's 2018 financial statement reveals income of \$13,000 and employment insurance of \$15,000. In 2020 she had employment income of \$19,786.56 plus \$11,656 in employment benefits and \$13,080 in spousal support for a total of \$44,522.56. In 2021 she earned \$38,903.17 and received \$13,080 in spousal support for a total taxable income of \$51,983.17. Her 2022 financial statement reveals expenses equal to her income.

Discussion of Child Support

- [97] The claimant seeks an order that child support from January 1, 2021 be adjusted to reflect the claimant's Guidelines income of \$38,903.17 and respondent's Guidelines income of \$142,579 (employment income of \$96,279.38 plus rental income of \$13,961 and imputed \$18,000 non-taxable income) for that year. The set-off amounts payable based on those incomes result in a difference of \$932 payable by the respondent.

Discussion of Spousal Support

- [98] Spousal support is sought to continue for four years from November 1, 2022 up to and including November 1, 2026, for a total duration of 10.3 years from August 2016.

[99] The claimant's move to British Columbia to marry the respondent restricted her ability to work until she obtained a work permit. The move to Terrace also, given her work experience and academic background, limited her continued employment in the cruise industry. This move was made to facilitate the respondent's career, which it did. While the respondent is critical of the claimant's periods of unemployment, I am not satisfied such periods were the claimant's fault nor has it been established she was significantly dilatory in finding other employment. After the birth of their son, any period of unemployment made her available for the care of their son.

[100] The respondent relies on *W.R.M. v. D.K.M.*, 2020 BCSC 322 to support his submission that the claimant's employment pattern shows a desire to work less than she could rather than making reasonable efforts to become self-supporting. Factually *W.R.M.* is distinguishable as the respondent seeking support in that case made unrealistic efforts to do so, pursuing instead various unrealistic endeavours. After a career as a teacher the respondent in *W.R.M.* became a stay-at-home mother to care for their two children. She did not teach again until after the parties separated. Justice G.P. Weatherill described her post-separation efforts to become self-supporting:

19 Since the Date of Separation, the respondent has attempted several different career paths including attempting in September 2013 to become a Federal Liberal Party candidate. She began researching politics and attending various Liberal party conventions. Her nomination bid was unsuccessful.

21 In 2017, she decided that instead of teaching, she would try her hand at midwifery and enrolled in Thomson Rivers University to study anatomy. In April 2018, she interviewed to be admitted to the UBC School of Midwifery, but was unsuccessful.

22 In 2018, she applied for and was offered full-time employment as an English as a second language teacher in Kelowna. She declined to accept that position because she thought it did not pay enough and because she had received a \$300 scholarship for Orff Training in Vancouver which she thought might help her obtain employment as a Fine Arts teacher. Using the \$300 scholarship, she attempted to upgrade her musical theory skills to better market herself as a Fine Arts teacher. That idea was also unsuccessful because she did not have the requisite knowledge of music theory.

23 Throughout this timeframe, she also took various online and other courses to learn various forms of music and dance. She took guitar lessons, violin lessons, drum lessons, singing lessons and music lessons all, she says, to strengthen her resume in Fine Arts so that she would be more attractive to local school districts. She also took French and Spanish lessons, hired tutors for both, and went on a six-week excursion to Costa Rica to learn Spanish at a Spanish-speaking school.

24 In the summer of 2018, she tried working as a "busker" in Vernon, Kelowna and Salmon Arm, through which she earned virtually nothing, indeed less than what she had to pay each City for licencing fees.

25 She is currently attempting to launch a new career in "professional advocacy and public speaking".

26 To date, save for teaching at the Okanagan Indian Band Reserve School and the St. James Catholic School, all of the respondent's efforts at a new career have failed to provide her a reliable and steady stream of income. Despite her unsuccessful track record, she asserts strongly that within a year or so, she will have success with her new endeavour as a professional advocate. She is confident that she will soon be earning income in the \$60,000 per annum range and will then be self-supporting. She spends her time focussing on researching various global issues in pursuit of this new goal. As part of this career plan, she wants to obtain an online masters degree in communications from Gonzaga University at a cost of \$30,000 USD.

[101] He then concluded:

32 Since the Date of Separation, the respondent has behaved in an unorthodox and irresponsible manner. As earlier mentioned, with no prior political experience of any kind, she attempted to secure the Federal Liberal party nomination for the North Okanagan/Shuswap riding by bizarrely purchasing wigs and costumes (101 of them all told) and wearing them to various Liberal party conventions and events and in the general public. She explained that she thought the wigs and costumes made her stand out among the other candidates. She made other unrealistic attempts at careers including midwifery and busking. She now spends her days researching various world issues, such as climate change, pollution, social credit, and education, and puts her views on social media hoping to get noticed, gain some traction and launch her new career as a professional public speaker and advocate. She believes that once it takes off, she could earn upwards of \$5,000 per engagement or social media posting.

97 The test for imputing income for unemployment or intentional under-employment is one of reasonableness having regard to that spouse's income earning capacity in light of his or her age, education, health, work history and work ability: *Marquez v. Zapiola*, 2013 BCCA 433 paras. 36-37.

98 The picture that emerges is that the respondent is capable of earning far more than she has since the parties separated. She has simply chosen fanciful and unrealistic alternatives. While I acknowledge she needed a period of perhaps two years to establish herself, I conclude that by September 2015 she would have been able to earn at least \$30,000 per year had she focussed her attention on supporting herself.

- [102] W.R.M. is clearly factually distinguishable. The respondent there was found to have behaved unreasonably, her conduct described as "unorthodox and irresponsible". That is not the situation of the claimant here who has sought out employment, lost good positions due to layoffs or found certain positions unsuitable given a young child at home, and has now found secure employment with a positive future. The claimant has made reasonable efforts to become financially self-sufficient.
- [103] Based on the respondent's 2021 income of \$96,279, the \$18,000 non-taxable income, rental net income of \$13,961 and taxable capital gains of \$1,326 his total Guidelines income is \$142,579 and the claimant's Guidelines income is \$38,903.17. The Spousal Support Advisory Guidelines indicate a range for spousal support of \$1,756 at the low end, \$2,214 at the mid-range and \$2,663 at the high end for an indefinite (unspecified) duration, subject to variation and possibly review, with a minimum duration of 5.38 years and a maximum duration of 10.75 years from the date of separation.
- [104] Factors relevant to the duration of spousal support include the age of the child (he is now nine years of age), the equally shared parenting, the length of the marriage, the move to Terrace and its effect on the claimant's career, their roles in the marriage and the post-separation efforts of the claimant to become self-sufficient.
- [105] While not a situation of the claimant having a strong compensatory claim nor a situation where the claimant is solely responsible for ongoing childcare, there is still a compensatory claim.
- [106] The provisions in the Consent Order providing for review were consented to. It is not in evidence what factors were accounted for in that 2018 order nor what the parties' respective positions were before reaching the agreed upon term for a review of spousal support on or after March 9, 2022. However, what was agreed to was a review but that does not presume a change in support will be warranted. A review provides the parties with the ability to have the post-separation actions and events considered and any resulting changes required in support.
- [107] The respondent is of the view the respondent failed both during the marriage and after to take reasonable steps to become self-sufficient. He has failed to establish that is what has occurred.
- [108] I am satisfied the claimant is entitled to compensatory support although to a more limited degree than a traditional marriage and also such must recognize her efforts to advance her career both during the marriage and after separation.

- [109] While there is no indication the property division was not an equal division, the income earning capacity of the respondent including renting out a suite in the former matrimonial home and then entering into a support agreement for R. exceeded that of the claimant. While the respondent refers to his strained finances after separation, I note that he takes six weeks off annually of unpaid leave. He could work those six weeks if he chose to. He does so to have time with his son rather than pay for full-time day care.
- [110] He has had and continues to have the ability to pay spousal support.
- [111] The respondent submits that receipt of spousal support as of September 1, 2016 (by his providing of accommodation to the claimant) pursuant to the Consent Order addresses the claimant's entitlement to any compensatory support and as for non-compensatory support, that is payable for a transitional period which has passed. Indeed, he submits he has overpaid spousal support. He takes the position that, because she has received a share of his pension and is six years younger than the respondent, she has a longer potential working career than he does, and such is also relevant.
- [112] Taking into consideration the factors discussed, in my view a duration of nine years of support is appropriate. Support has been paid for 6.4 years as of the filing of this application leaving 2.6 years to be paid in the sum of \$2,214 from November 1, 2022.
- [113] The Consent Order provides for disclosure of financial information on or before June 1 of each year and for any adjustments of child support to commence on July 1 of the current year. That procedure shall continue.

Orders

- [114] The respondent shall immediately return to the claimant her cell phone and all retrieved contents of the cell phone.
- [115] The respondent shall immediately delete or destroy all copies, written or electronic, of all text messages, emails or other communication records retrieved from the claimant's cell phone in his possession.
- [116] The respondent shall within 10 days of publication of these reasons file with the court registry a sworn affidavit in this proceeding that he has carried out the deletions and returned the phone to the claimant.
- [117] The tax-free home share payments relating to R. of \$30,132 per year are found to consist of \$9,608 for the benefit of R. and \$20,524 for the benefit of the respondent. Income will be imputed to the respondent in the sum of \$18,000 as suggested by the claimant to allow for increases in the cost of living. The latter tax-free figure shall be grossed up for taxes and shall be added to the income of the respondent for 2021 and 2022 and thereafter.
- [118] No income shall be imputed to the claimant.

- [119] As result the income of the respondent for Guidelines purposes for the year 2021 is found to be \$142,579.
- [120] Child support is payable for 2021 of \$932 per month.
- [121] The 2021 payments made for child support are found to be \$731 per month, a total of \$8,772 for the year. There remains due as a result of the adjusted income of the respondent \$2,412 to the claimant. A similar adjustment is to be made for 2022 once the parties' 2022 tax information is available.
- [122] The spousal support pursuant to the Divorce Act shall be payable by the respondent to the claimant in the sum of \$2,214 monthly and shall commence on November 1, 2022 and continue on the first of each month until the last payment on August 1, 2025 (9 years from Consent Order payments commencing September 1, 2016) at which time spousal support shall be terminated.

Section 7 expenses

- [123] The existing order does not address s. 7 expenses. The parties shall share agreed upon special or extraordinary expenses proportionate to their incomes. The party seeking reimbursement for such expenses they have incurred shall provide the other party with a copy of the expense and confirmation it has been paid.
- [124] The s. 7 expenses shall be shared, based on the parties' 2021 Guidelines incomes on a 21.4%/78.5% basis.

Costs

- [125] The claimant has been successful on this review. My preliminary view is she is entitled to her costs unless there are matters of which I am unaware. In any event, the parties have requested leave to make submissions on costs once this decision is released. The parties have liberty to make submissions as to costs if they cannot agree. They are to arrange through scheduling a date and time for such submissions.

"The Honourable Mr. Justice Punnett"

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/23/08/2023BCSC0877.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bradford-v-bradford-2023>

Prepared on 27 October 2026 · Esheria