

CANADA / JUDGMENT

C.F. v. G.O.

2021 BCSC 789

COURT

Supreme Court of British Columbia

DECIDED

28 April 2021

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2021 BCSC 789 C.F. v. G.O.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.F. v. G.O.,

2021 BCSC 789

Date: 20210428

Docket: E110023

Registry: Vancouver

Between:

C.F.

Claimant

And

G.O.

Respondent

Before: The Honourable Mr. Justice Mayer

Reasons for Judgment

The Claimant, appearing in person:

C.F.

Counsel for the Respondent:

I. Hayward

Place and Date of Trial/Hearing:

Vancouver, B.C.

April 6 - 7, 2021

Place and Date of Judgment:

Vancouver, B.C.

April 28, 2021

Table of Contents

Introduction. 3

Background. 3

Issues. 6

Relevant Law.. 7

Analysis. 9

What is G.O.'s 2017-2020 Guideline Income?. 9

Should G.O. be entitled to set off child support overpayments for 2017 and 2018 against child support underpayments for 2019 and 2020?. 11

What income should be imputed to G.O. from 2021 forward and how should adjustments to child support arising from future earnings from the TFN Development be dealt with?. 13

Should the current 50-50% allocation of special and extraordinary expenses be disturbed and are there any arrears?. 15

Conclusion. 17

Introduction

- [1] The claimant C.F. and the respondent G.O. were in a relationship between 2001 and 2010. They have one child together, R.A.O., who is now 18.
- [2] Pursuant to a Notice of Application filed December 23, 2020 C.F. brings an application to vary the August 31, 2016 order of Justice Leask with respect to payment of child support. In particular, C.F. seeks an order retroactively imputing a higher guideline income to G.O. for 2019 and 2020, and a resulting payment of additional child support for this period. In addition, C.F. seeks increased child support going forward. Finally, C.F. seeks an order with respect to payment of R.A.O.'s special and extraordinary childcare expenses, both past and prospective.

- [3] Pursuant to a Notice of Application filed January 18, 2021 G.O. cross-applies for a retroactive variation of the order of Justice Leask with respect to child support for the years 2017 and 2018, which he says is required as he earned less in those years than was contemplated in Justice Leask's 2016 order. He seeks an order that any overpayment of child support by him in 2017 and 2018 be set off against any increased child support ordered payable for 2019 and 2020. Finally, he seeks an adjustment to his guideline income a corresponding reduction in his monthly child support obligations going forward. He says that the order of Justice Leask that the parties share R.A.O.'s special and extraordinary expenses on a 50-50% basis should not be disturbed and disputes that there are any outstanding payments for these expenses incurred between 2017 and 2020.

Background

- [4] C.F. is 41 years old and lives in the United Kingdom with her spouse and two children - including R.A.O. G.O. is 50 years old, lives in British Columbia and is retired.
- [5] C.F. and G.O. began a relationship in September 2001 and separated in April 2010. The nature of their relationship is disputed but this dispute is not relevant to the applications before me.
- [6] Pursuant to a verbal agreement made in 2010, after the parties separated G.O. paid C.F. \$6,500 per month for child support and R.A.O.'s special and extraordinary childcare expenses and certain travel costs and private school fees. In 2011 the parties concluded a written agreement under which G.O. paid \$5,500 per month for child support and all of R.A.O.'s special and extraordinary expenses.
- [7] C.F. and G.O. settled their family law proceeding in 2014, with the terms of settlement set out in the consent final order pronounced by Justice Voith, as he then was, on September 19, 2014 (the "Final Order"). At the time that the Final Order was entered G.O. was believed to be terminally ill with just a few years to live.
- [8] Pursuant to para. 5 of the Final Order C.F. and G.O. agreed that commencing October 1, 2014 and until G.O.'s death, or when R.A.O. no longer met the definition of a child under the Family Law Act, S.B.C. 2011, c. 25 [FLA], that G.O. would continue to pay monthly child support in the amount of \$3,500, inclusive of R.A.O.'s special and extraordinary expenses for schooling and extracurricular activities. Further, pursuant to para. 11 of the Final Order C.F. was provided real property located in Vancouver, British Columbia, valued at approximately \$2 million, in full and final satisfaction of G.O.'s obligation to pay child support following his death.
- [9] In April 2016 G.O., who had by that time recovered from his terminal illness, made an application to vary the Final Order. On August 31, 2016 Justice Leask amended the Final Order as follows:

Commencing on September 1, 2016 and continuing on the first day of each month thereafter, for so long as [R.A.O.] meets the definition of child under the Family Law Act, the Respondent shall pay child support to the Claimant for [R.A.O.] in the amount of \$2,600 per month, which will include basic support and the Respondent's contribution toward all special and extraordinary expenses

- [10] Although not specified in Justice Leask's order, the transcript of proceedings before him indicates that the \$2,600 monthly child support payment was comprised of \$1,500 as base child support and \$1,100 as G.O.'s 50% share of R.A.O.'s special and extraordinary expenses. This is not disputed by the parties.
- [11] In his August 2016 order Justice Leask ordered that commencing in 2017, each party provide, on an annual basis, documents setting out their income for the proceeding year and that child support would be reviewed annually commencing on July 1, 2017. Finally, Justice Leask ordered that in the event that G.O. received any income, capital or funds in excess of \$10,000 he shall disclose the same to C.F. within 30 days of receipt. The order stipulates that G.O. had a guideline income of \$188,000 comprised of \$175,000 from investment income (based on a rate of return of 6-7%) and \$13,000 from rental income.
- [12] Pursuant to Justice Leask's order, C.F. made requests for financial disclosure from G.O. in 2017 and 2018 but did not receive a response. She made several further requests for financial disclosure in 2019 and did not receive a response until August 14, 2019 when G.O.'s counsel advised that G.O. was in the process of refinancing his two rental properties. A few days later, on August 22, 2019, G.O. requested that child support be reduced to \$1,000 per month based on his 2018 investment income of \$27,674.93. C.F. did not respond to this request.
- [13] In 2014, 2019 and 2020 G.O. and C.F. received payments arising from a business arrangement with the owners of a prominent development company involving a multi-unit residential development on First Nations' reserve lands in Tsawwassen, British Columbia (the "TFN Development"). Pursuant to this arrangement G.O. and C.F. each receive 2.5% of the net profits payable to the Tsawwassen First Nation earned from the TFN Development.
- [14] In 2014, G.O. received a \$180,000 advance on his share of the profits from the TFN Development. In 2019 he received \$166,629.44. In 2020 he received three payments totalling \$137,523.68. None of these payments were taxable as the amounts were earned by G.O., who is First Nations, on reserve land.
- [15] C.F., who is also First Nations, received the same non-taxable amounts as G.O. arising from the TFN Development including an advance of \$109,375 in 2014 and further payments of \$237,254.44 and \$137,523.68 in 2019 and 2020, respectively.
- [16] Since August 2019, G.O. and C.F. have attempted to negotiate, unsuccessfully, a variation of the 2016 child support order of Justice Leask. In February 2021, G.O. made a voluntary peremptory payment of approximately \$30,000 to account for additional child support payable as a result of his earnings from the TFN Development in 2019 and 2020.

Issues

- [17] C.F. contends that as a result of G.O.'s income from the TFN Development in 2019 and in consideration of the average rate of return earned from his investments and his rental income, that a guideline income of \$470,817 should be applied retroactively for 2019. She contends that a guideline income of \$432,010 should be applied for 2020. C.F. has also included the \$180,000 advance payment made in 2014 to his income for these years, although it is not clear how she divided this amount between 2019 and 2020.
- [18] C.F. seeks a retroactive award for 2019 and 2020 to reflect the difference between child support that was paid by G.O. pursuant to the order of Justice Leask and what would have been payable under the Federal Child Support Guidelines with an imputed income of \$470,817 for 2019 and \$432,010 for 2020. Going forward she seeks child support based on an imputed income for G.O. of \$432,010, with this amount also comprised of his rental income, the average of his investment earnings and the average of his forecasted earnings from the TFN Development through to 2026.
- [19] G.O. contends that for the years 2017 and 2018 his earnings were less than the imputed income applied by Justice Leask in 2016, which he contends justifies a retroactive reduction in child support for those years. Although he concedes that additional child support is payable for 2019 and 2020 as a result of earnings from the TFN development, he says that the overpayment for 2017 and 2018 should be set off against this amount.
- [20] Going forward, G.O. says that only his investment and rental income should be used to determine "base" child support. In addition, he proposes that he make lump sum payments to reflect any amounts he receives from the TFN Development in future years.
- [21] G.O. is not opposed to paying 50% of R.A.O.'s special and extraordinary expenses but disputes that all of the items claimed by C.F. are recoverable.
- [22] In summary, the issues to be decided in respect of the two applications before me include the following:
- a) What was G.O.'s guideline income for each of the years 2017 to 2020?
 - b) What amount of retroactive child support should G.O. be required to pay for 2019 and 2020 based on the increase to his guideline income during those years?
 - c) Should G.O. be entitled to set off overpayment of child support for 2017 and 2018 against a retroactive child support award for 2019 and 2020?
 - d) What income should be imputed to G.O. from 2021 forward and how should his potential earnings from the TFN Development be dealt with?
 - e) What amounts are payable by G.O. for special and extraordinary expenses to date and going forward?

Relevant Law

- [23] Section 152 of the FLA sets out the test for varying child support orders. The Court must be satisfied that:
- (a) There has been a change in circumstances, as provided for in the child support guidelines, since the order respecting child support was made;
 - (b) There is new evidence of a substantial nature that was not available during the previous hearing; or
 - (c) Evidence of lack of financial disclosure by a party was discovered after the last order was made.
- [24] A change in a payor's income is sufficient to warrant consideration of a variation of child support: *C.A.O. v. S.J.O.*, 2012 BCSC 378 at para. 34.
- [25] The court exercises discretion in making a retroactive child support order and although "[i]t will not always be appropriate for a retroactive award to be ordered" such orders should not be seen as "exceptional": *D.B.S. v. S.R.G.*, 2006 SCC 37 at paras. 95 and 97 [*D.B.S.*]; *Michel v. Graydon*, 2020 SCC 24 at para. 31 [*Michel*].
- [26] The factors to be considered in awarding retroactive child support, as set out in paras. 99-116 of *D.B.S.*, include the following:
- a) whether reasons for delay in bringing an application to vary are reasonable;
 - b) the conduct of the payor parent including a failure to accurately disclose income;
 - c) the circumstances of the child - although it is not necessary to demonstrate hardship as a necessary antecedent to an award for retroactive child support; and
 - d) any hardship caused to the payor by the retroactive award.
- [27] Not all factors need to be present for a retroactive award to be granted: *Michel* at para. 113; *D.B.S.* at para. 99
- [28] With respect to how far back a retroactive adjustment to child support can be sought, generally retroactive support will not be ordered more than three years before effective notice. Effective notice is the date on which the topic of a retroactive adjustment to child support is broached: *D.B.S.*, at paras. 121 and 123.
- [29] The *D.B.S.* factors apply to both an application for a retroactive increase in child support and an application for a retroactive decrease: *G.M.W. v. D.P.W.*, 2014 BCCA 282 at paras. 40 - 49.

Analysis

What is G.O.'s 2017-2020 Guideline Income?

- [30] C.F. submits that guideline income of \$470,000 should be imputed to G.O. for 2019 and that guideline income of \$432,010 should be imputed to G.O. for 2020 and forward.
- [31] I have done my best to understand how C.F. calculated G.O.'s guideline income for 2019 and the years 2020 and forward - but it is not entirely clear how she has done so.
- [32] It is my understanding, with respect to G.O.'s 2019 guideline income, that C.F. submits that a guideline income of \$470,000 should be applied, comprised of G.O.'s rental income, income from the TFN Development grossed up to reflect the tax free nature of this income, some of the \$180,000 advance G.O. received in 2014 and his average annual investment income.
- [33] With respect to his guideline income for 2020, it is my understanding that C.F. submits that a guideline income of \$432,010 should be applied, comprised of the same categories of earnings described in the preceding paragraph.
- [34] With respect to G.O.'s income from his investments, which are taxable, C.F. estimates that his average rate of return, net of investment management fees, has been 4.64%, and without deduction of investment management fees, 6.85%. C.F. calculates (based on the principle investment amount of \$2.7 million plus an assumed investment of an additional \$300,000 in profits earned from the TFN Development) that his average investment earnings per year on \$3 million in investments will be, approximately, \$139,200 net (that is, with management fees deducted) and \$205,500 gross (that is, without management fees deducted).
- [35] C.F. submits that the average gross investment income should be applied on the basis that G.O. is, in essence, paying too much in management fees.
- [36] G.O. contends that contrary to the submission of C.F. that it is not appropriate to, in effect, add back investment management fees for the purpose of calculating his guideline income for this or any year as he required assistance to manage his investments. G.O. refers to s. 8, of Schedule 3 of the Federal Child Support Guidelines which provides that carrying charges and interest expense paid by a spouse, that are deductible under the Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.), should be deducted from a calculation of guideline income. I agree with G.O.'s submission and therefore conclude that his net investment income is to be applied.
- [37] G.O. contends that his net rental income has never achieved the \$13,000 per year amount applied by Justice Leask in 2016. His rental properties are financed and he uses a property management company. I am satisfied that G.O.'s rental profit, net of costs, has been between \$4,500 and \$10,800 per year between 2017 and 2020.
- [38] G.O. concedes that he has received payments for the TFN Development of \$166,629 in 2019 and \$137,524 in 2020. He submits that the \$180,000 payment received in 2014 should not be included in determining his guideline income for 2019 or 2020. I agree with this submission. First, the evidence establishes that Justice Leask was aware that G.O. had earned of at least \$100,000 of this income prior to making his order in 2016. Second, given that the remaining \$80,000 was paid in 2014 it is simply too late to apply for a retroactive child support

adjustment for this amount.

[39] G.O. says that actual income from the years 2017 - 2020 is as follows:

Investments

Interest and other

Rental income (net of mortgage costs)

Capital gains

TFN

(non-taxable income)

TOTAL

2017

\$24,332

\$3,696

\$4,596

-\$866

\$31,758

2018

\$23,194

\$472

\$10,498

\$4,009

\$38,173

2019

\$22,787

\$263

\$10,802

\$60,406

\$166,629

\$260,866

2020

\$22,787*

\$263*

\$10,802*

\$60,406*

\$137,524

\$272,248

\$304,153

\$603,045

*G.O. submits that given that he has not yet filed his 2020 income tax return and therefore has not received a notice of assessment that the 2019 income under these categories should be applied for 2020.

[40] The documentary evidence establishes, and I accept, that G.O.'s income for the years 2017 to 2019 is as set out in the above table. Although G.O. is only able to provide an estimate of some of his earnings in 2020 I find it reasonable, for the purposes of this application, to apply the comparable figures from 2019, with the exception of his 2020 earnings from the TFN Development which are known at this time. Given that C.F. has the ability to seek updated financial disclosure every July and thereafter to apply to vary child support, it is open to her to seek a retroactive adjustment to child support paid in 2020 after G.O. has produced his 2020 tax return and notice of assessment.

Should G.O. be entitled to set off child support overpayments for 2017 and 2018 against child support underpayments for 2019 and 2020?

[41] G.O. has completed DivorceMate calculations in respect of child support based on his actual earnings for the years 2017-2019, which I understand includes grossing up his non-taxable TFN Development earnings, and estimated earnings in 2020. He submits that based on his actual earnings in the years 2017 and 2018 and his 50% share of R.A.O.'s special and extraordinary expenses paid for those years that he overpaid child support by \$13,356 in 2017 and by \$10,920 in 2018, for a total overpayment of \$24,276. He submits that based on his actual earnings in 2019 and estimated earnings in 2020 (including, in particular, his grossed up TFN Development income), that he underpaid child support by \$29,484 in 2019 and by approximately \$31,536 in 2020 - for a total underpayment for those years of \$61,020.

[42] G.O. submits that deducting the 2017/18 overpayment from the 2019/20 underpayment results in retroactive child support payable for the years 2017 to 2020 of \$36,744. Therefore, after deducting his \$30,000 peremptory payment made in February 2021, he says that to the extent retroactive child support is payable for this period, he owes only \$6,744.

- [43] There is no suggestion that C.F. does not satisfy the D.B.S. factors justifying a retroactive adjustment to child support.
- [44] C.F. contends that it would be inappropriate for G.O. to obtain a retroactive adjustment to child support paid in 2017 and 2018. She says that G.O. did not respond to her requests made in 2017, 2018 and 2019 for financial disclosure. In addition, she says that G.O. first raised the issue of a prospective child support adjustment, downwards, in August 2019.
- [45] I accept that G.O. failed to disclose relevant financial information prior to 2019 or perhaps 2020. Although failure to disclose relevant financial information is one of the D.B.S. factors militating against a retroactive adjustment to child support, this is not a decisive factor. All D.B.S. factors need to be considered in determining whether to order a retroactive adjustment to child support.
- [46] I also consider the factor of hardship. I note that the Final Order granted C.F. title to a valuable real property located in Vancouver, British Columbia, (valued at that time at approximately \$2 million) in full and final satisfaction of G.O.'s obligation to pay child support following his death. G.O. does not suggest that this order justifies the cessation of child support payments for R.A.O., but rather, should be considered as part of the context of his submission that the 2017/18 child support overpayment be set off against the 2019/20 underpayment.
- [47] I consider in all of the circumstances that it appropriate to set off the 2017/18 child support overpayment, as calculated by G.O., against the 2019/20 underpayment, also as calculated by G.O. Accordingly, accounting for his peremptory payment of \$30,000 in February 2021, there will be an order that G.O. pay to C.F. the additional amount of \$6,744 in full and final satisfaction of retroactive child support payable from 2017 to 2020, inclusive.

What income should be imputed to G.O. from 2021 forward and how should adjustments to child support arising from future earnings from the TFN Development be dealt with?

- [48] With respect to future earnings, C.F. has provided a forecast, prepared by the developer, estimating potential profits from the TFN Development in 2021. C.F. calculates based on this forecast that G.O. may earn, approximately, an additional \$284,000 in non-taxable income from this project in 2021. In addition, C.F. has provided a proforma for the entire TFN Development through to its completion in 2026 which she has used to calculate additional potential non-taxable income to G.O. of \$874,000 for the years 2022 to 2026. In my calculation, this equates to average earnings of \$174,800 per year from this project over a five-year period.
- [49] G.O. concedes that he will receive future payments from the TFN Development but says that the frequency and amount of these payments is uncertain. He acknowledges that as this income is earned additional child support will be required. He submits that an appropriate procedure would be to require him to pay C.F. a lump sum amount for additional child support, calculated pursuant to the Federal Child Support Guidelines, if and when he

receives further payments arising from the TFN Development. He notes that C.F., who is also receiving substantial payments as a result of this project, will have notice when such payments are received. G.O. refers to the decisions in *Olson v. Olson*, 2020 BCSC 618, at para. 61, citing the decision in *Walker v. Maxwell*, 2014 BCSC 2357, at para. 141 where such an order was made.

- [50] I consider the procedure suggested by G.O. to be fair. I order that if and when he receives a payment from the TFN Development that he will immediately advise C.F. of the same and will provide supporting documentation. Within 30 days of receiving any payments from the TFN Development he shall pay C.F. an amount equal to the increase in child support payable for the relevant calendar year as a result of such payment, calculated in accordance with the Federal Child Support Guidelines - and will provide C.F. with the supporting DivorceMate calculation.
- [51] With respect to what base income should be imputed to G.O. for 2021 and forward I consider it appropriate to apply an average of G.O.'s earnings over the past three years, not including amounts received from the TFN Development. This average is, by my calculation, \$89,044.67. This imputed base income consists primarily of G.O.'s rental income and earnings on investments, which for the relevant years was approximately 4.6% of the principle investment. I accept the submissions of G.O. that imputing income based on a higher rate of return would not be appropriate given that he is unable to work as a result of on-going health issues and will rely upon a consistent source of income from his investments for the rest of his life. That is, that it is not appropriate to require him to encroach upon his capital.
- [52] I order that Justice Leask's August 31, 2016 order is varied as follows: commencing May 1, 2021 and continuing every month thereafter, for so long as R.A.O. meets the definition of child under the FLA that G.O. will pay base monthly child support based on an imputed income of \$89,044.67, with monthly child support payments calculated in accordance with the Federal Child Support Guidelines. I calculate that the required payment will therefore be, \$851. Counsel are at liberty to make further submissions in writing if they disagree with this calculation.
- [53] As set out above, in addition to this on-going base child support payment, G.O. will pay lump sum adjustments to child support if and when he receives further payments from the TFN Development project.
- [54] The provisions at paras. 2, 3 and 4 of Justice Leask's order with respect to on-going financial disclosure and potential adjustments to child support payments remain in force.

Should the current 50-50% allocation of special and extraordinary expenses be disturbed and are there any arrears?

- [55] C.F. seeks an order for payment of \$8,116 payable by G.O. for his 50% share of special and extraordinary expenses for the years 2019 to 2021. Going forward, C.F. seeks an order that G.O. pay his share of such expenses based on the parties' respective guideline incomes, in advance in a fixed monthly amount, with a reconciliation of actual costs at the end of each year.
- [56] C.F.'s evidence is that at this time R.A.O. is enrolled at a private girls' school in the United Kingdom but expects to attend at university next year. Her private school costs were \$29,622 in 2019 and \$32,905 in 2020. C.F. expects that the costs of attendance at university will be similar.
- [57] C.F. submits that her portion of special and extraordinary expenses going forward should be based on the amount of dividend earnings she pays herself on income from the TFN Development, which income she pays to a company which she controls. She submits that her average annual earnings from this source since 2011 is \$25,624.
- [58] G.O. contends that there has been no material change in circumstances justifying a prospective change in the division of special and extraordinary expenses on a 50-50% basis - as was ordered by Justice Leask in 2016. Further, G.O. submits that even the court orders that such expenses be shared proportionate to the parties' guideline incomes, that C.F.'s submission that her income be set at around \$25,000 per year is unreasonable. In this respect, he says that her income should include all payments received from the TFN Development and not simply the amount she chooses to dividend to herself.
- [59] G.O. contends that C.F.'s claim for special and extraordinary expenses, including the cost of purchasing a car for R.A.O. and insurance and fuel costs are not appropriate.
- [60] It is unclear to me what 50% share of expenses have not been paid by G.O., resulting in what C.F. submits are arrears of approximately \$8,000 for 2019 to 2021 and therefore, I am unable to determine the basis for this retroactive claim. If this amount relates to the cost of purchasing a car for R.A.O. and paying on-going fuel and insurance costs I do not consider that such costs fall within the definition of special and extraordinary expenses set out in s. 7 of the Federal Child Support Guidelines
- [61] I note again that the 2014 Final Order granted C.F. title to a home on the west side of Vancouver in full and final settlement of G.O.'s obligations to pay child support, which would include special and extraordinary expenses, after his death. Again, at that time, his death was considered to be imminent. In other words, a significant advance payment towards child support and expenses was made in 2014. In my view this can be considered in determining whether the allocation of special and extraordinary expenses ordered by Justice Leask should be disturbed.

- [62] I note that Justice Leask chose to divide special and extraordinary expenses on a 50-50% basis after considering the evidence which at that time indicated that G.O. earned significantly more per year than C.F. It is apparent from the transcript of proceedings that Justice Leask considered all of the circumstances, including the nature of these expenses, the parties' relative income and their assets at the time. Justice Leask was aware that a home had been transferred to C.F. in 2014.
- [63] I agree with the submission of G.O. that for the purposes of determination of the allocation of special and extraordinary expenses all of C.F.'s income received from the TFN Development, rather than simply the amount she chooses to dividend herself, should be considered and I have done so.
- [64] For the reasons set out above I find that it is appropriate that the parties continue to share R.A.O.'s special and extraordinary expenses on a 50-50% basis. I order that G.O. shall continue to pay 50% of the costs of R.A.O.'s private school tuition and expenses directly related to her attendance at school and agreed upon extra-curricular activities. Further, I order that G.O. shall pay 50% of the cost of R.A.O.'s university tuition, books, residence fees and other university expenses.
- [65] I decline to order that G.O. pay his share of these expenses in advance. I order that G.O. pay his 50% share of the relevant expenses within 30 days of receiving written proof from C.F. that such expenses have been paid, or will be payable within a reasonable period.

Conclusion

- [66] I find that G.O. is entitled to a retroactive downward adjustment to child support payable for the years 2017 and 2018 which results in an overpayment of child support for those years of \$24,276. In addition, I find that C.F. is entitled to a retroactive upward adjustment to child support paid for the years 2019 and 2020 in the amount of \$61,020.
- [67] I find that it is appropriate that the 2017 and 2018 overpayment is set off against the 2019 and 2020 underpayment, resulting in a retroactive award of child support payable by G.O. to C.F., after deducting his peremptory payment of \$30,000, in the amount of \$6,744 for the years 2017 to 2020 inclusive. I order that he pay this amount.
- [68] I order that para. 1 of Justice Leask's August 31, 2016 order is varied as follows: commencing May 1, 2021 and continuing every month thereafter, for so long as R.A.O. meets the definition of child under the Family Law Act, that G.O. will pay base monthly child support, based on an imputed income of \$89,044.67, with monthly child support payments calculated in accordance with the Federal Child Support Guidelines.

- [69] In addition to the amount payable for base child support, I order that if and when G.O. receives a payment from the TFN Development that he will immediately advise C.F. of the same and will provide supporting documentation. Within 30 days of receiving this amount he shall pay C.F. an amount equal to the increase in child support payable for the relevant calendar year as a result of such payment, calculated in accordance with the Federal Child Support Guidelines - and will provide the supporting DivorceMate calculation.
- [70] C.F.'s application for retroactive payment of R.A.O.'s special and extraordinary expenses for the years 2019 to 2021 is dismissed. In addition, C.F.'s application to vary the order of Justice Leask that the parties share the cost of R.A.O.'s special and extraordinary expenses on a 50-50% basis, such that the parties will share these expense going forward proportionate to their guideline incomes, with G.O. paying such expenses in advance in fixed monthly amounts, is dismissed.
- [71] Given that G.O. has been substantially successful in respect of the application of C.F. and his cross-application I award costs for both to him.

Mayer J.

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