

CANADA / JUDGMENT

C.R.D. v. A.A.D.

2025 BCSC 725

COURT

Supreme Court of British Columbia

DECIDED

17 April 2025

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2025 BCSC 725 C.R.D. v. A.A.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.R.D. v. A.A.D.,

2025 BCSC 725

Date: 20250417

Docket: E45620

Registry: New Westminster

Between:

C.R.D.

Claimant

And

A.A.D.

Respondent

Before: The Honourable Justice E. McDonald

Reasons for Judgment

Counsel for the Claimant:

J. Dreyer

Counsel for the Respondent:

S. Glanzberg

Place and Date of Trial:

New Westminster, B.C.

January 23-25 and

September 18-20, 2024

Place and Date of Judgment:

Vancouver, B.C.

April 17, 2025

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Overview

- [1] The respondent and claimant are former spouses who have three children together. The parties separated in 2012. Following a mediation, the parties consented to a final order on October 23, 2014 (the "Final Order") resolving the issues in their family law proceeding. Among other things, the Final Order determined the parties' income and provided for the payment of child and spousal support.
- [2] Not long after the Final Order was made, the respondent began falling behind on his support obligations. Over the years, the arrears have continued to accumulate and the total is now well over \$400,000.
- [3] In his August 2, 2022 notice of application (the "Application"), the respondent seeks the following relief:
- a) to vary the Final Order by:
 - i. retroactively and prospectively adjust the child support payable in the Final Order from January 1, 2015 onwards;
 - ii. departing from the Federal Child Support Guidelines, SOR/97-175 [Guidelines] due to undue hardship the respondent alleges he experienced when exercising parenting time from 2016 to 2019;
 - iii. retroactively adjust the spousal support payable in the Final Order and terminating spousal support as of January 1, 2016;
 - iv. varying the parenting time by providing the parties equal parenting time;
 - b) an order for compensatory parenting time;
 - c) an order for the preparation of a views of the child report pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]; and
 - d) an order that the claimant's spouse produce income tax documentation for 2016 to 2019.
- [4] During submissions, the respondent's counsel stated that he would not pursue the parenting time relief, but he does seek a views of the child report. Therefore, the main issue raised by the respondent concerns what child and spousal support should be paid by him, both retroactively and prospectively.
- [5] Each party submits that they have suffered serious consequences as a result of either the quantum or the non-payment of support. The respondent says he has suffered under the weight of an obligation to pay support that was based on a significant overestimation of his income. The claimant says that she and the children suffered financially from not receiving the required support and while the respondent claims past decreases in income, he failed to disclose the kind of information that would have allowed her to meaningfully assess the

situation.

- [6] As if often the case between former spouses, there were many communications over the years about the payment, or non-payment, of support. The respondent submits these communications show him giving notice to the claimant as early as 2016 about his decreased income. In these communications, the respondent told the claimant he was experiencing financial problems and that he could not afford to pay support, while the claimant asked to be paid something at least.
- [7] Ultimately, the claimant registered with the provincial authority for assistance with administering and collecting the child and spousal support provided in the Final Order. Not unusually, the respondent submits that the collection action taken by the authority worsened his financial situation and impaired his ability to work.
- [8] I will begin with the issue of retroactively varying child support, followed by retroactively varying, and/or terminating, spousal support. Finally, I will address the remaining issue of whether to appoint a person to prepare a report respecting the views of the children for future use should the respondent proceed to request relief on the issue of parenting time.

Background

The Parties

- [9] The parties separated in 2012 following a six or seven-year relationship. They divorced in 2014. The respondent is presently in his early 50s and the claimant is in her late 40s.
- [10] The respondent has long worked in the area of IT, including by working as a contractor for a large telecommunications company. He has also pursued opportunities as an entrepreneur starting and operating his own business ventures.
- [11] During the relationship, the claimant was a stay-at-home parent who was mainly responsible for caring for the parties' three children, plus a child from her previous relationship. The claimant's evidence is that two of the parties' children have special needs. The claimant has long-held an insurance license and she worked as an insurance agent selling auto insurance. The claimant also worked in a business marketing registered education savings plans. Both parties are presently employed and earning employment income.
- [12] As mentioned, the parties have three children together:
 - a) G., born April X, 2006, who is presently 17 years old; and
 - b) M. and J., born November X, 2010, who are presently 14 years old.

- [13] In July 2016, the claimant and the children relocated from the Lower Mainland to live in another British Columbia town located approximately three to four hours away by car (the "New Town"). The respondent also eventually moved to the New Town sometime in 2017, although he later returned to the Lower Mainland.
- [14] The claimant and the children continue to reside in the New Town. In 2018, the claimant re-partnered with Mr. Z and they live together, with the children, in Mr. Z's house located in the New Town.
- [15] In May 2017, the claimant sustained serious physical injuries while driving an ATV vehicle. After the accident, the claimant was hospitalized and unable to drive a vehicle. It took a considerable amount of time before the claimant recovered from her injuries and she was able to drive again.
- [16] At some point after the Final Order was made, the claimant registered with the BC Family Maintenance Enforcement Agency ("FMEA"). Both parties testified that after the first two months of support payments made pursuant to the Final Order, support payments were not made by the respondent regularly or at all.

The Court Proceedings

- [17] Following a mediation in 2014, the parties reached an agreement resolving all of the issues in their family law litigation and they entered into the Final Order setting out their agreement.
- [18] For purposes of determining spousal and child support, the Final Order states that the parties agreed that the respondent's income was \$175,000 per annum and the claimant's income was \$45,000 per annum. The Final Order's determination of the parties' income reduced the respondent's income and increased the claimant's income from the amounts provided by an earlier interim consent order.
- [19] The Final Order provides that after the sale of the matrimonial home, the respondent is to pay the claimant monthly child support of \$3,123.00 and spousal support of \$1,772.00 for a total monthly support obligation of \$4,895.00.
- [20] The Final Order specifically provides for a review of the respondent's spousal support obligation as follows:
23. Due to the uncertainty associated with both parties' incomes, the Respondent's spousal support obligation will be reviewed on May 1, 2015, in light of the parties' incomes, with a view to:
 - a. either increasing and decreasing the quantum of spousal support payable by the Respondent to the Claimant within available ranges; and
 - b. fixing the duration period of the Respondent's spousal support obligations

and, on the May 1, 2015 review date, the Claimant's entitlement to receive spousal support will be presumed in favour of the Claimant.

- [21] The parties are in agreement that no review occurred.
- [22] The Final Order provided the respondent with regular parenting time consisting of: (a) alternating weekends starting on Friday at 5:00 p.m. to 6:30 p.m. on Sundays and where applicable, to include holiday Fridays or Mondays where applicable; and (b) alternating Mondays, from 5:00 p.m. to 7:00 p.m.
- [23] The Final Order provides that for so long as support is payable by the respondent, he is to provide the claimant with copies of the financial statements and T2 income tax returns for his company, Das Solutions Inc., along with copies of the business bank accounts and billing account statements. The parties were also ordered to exchange their personal income tax returns by May 1st of each year and notices of assessment or reassessment within 15 days of receiving them from the Canada Revenue Agency. The parties did not exchange financial information as required by the Final Order.
- [24] On February 23, 2015, the parties added a term to the Final Order by consent requiring the respondent to pay the claimant \$4,886.56 for his one-half share of the respondent's Capital One Mastercard. The claimant submits that she has never received these funds from the respondent.
- [25] On August 2, 2022, the respondent filed an application to vary spousal and child support. The Application was served on the claimant on August , 2022. On September 8, 2022, the court adjourned the Application to the trial list. The court provided that the Application would proceed as a hybrid trial, with the evidence in chief in the form of affidavits and with the affiants subject to cross-examination on their affidavits, if requested, at trial. The Application was reset on the trial list to commence on May 29, 2023.
- [26] On May 17, 2023, on the hearing of the claimant's application to dismiss the Application for failure to produce documents, the parties agreed to a consent interim, without prejudice, order, providing, among other things, that: (a) the Application was adjourned; (b) the respondent's annual income is \$120,000 and child support payable by the respondent as of May 1, 2023 is \$2,316; (c) the spousal support obligation of the respondent is suspended as of May 1, 2023; and, (d) the respondent would have certain parenting time.
- [27] The May 17, 2023 interim order also required the parties to file updated F8 financial statements and the respondent was ordered to disclose a variety of financial information to the claimant, including related to the respondent's companies, by a specified date.

The Arrears

- [28] The FMEA records indicate that the respondent currently owes \$464,504.39. The breakdown of the amount owing as recorded by FMEA is as follows:

Arrears from ongoing support:

\$387,623.75

Interest on arrears:

\$73,680.64

Arrears subtotal:

\$461,304.39

Default Fees:

\$3,200.00

Total owing:

\$464,504.39

[29] The claimant calculates that, exclusive of interest, the respondent was required by the Final Order and the May 17, 2023 interim order to pay child support of \$361,041 and spousal support of \$182,516 for a total support obligation of \$543,447 for the relevant period from October 2014 to September 2024. The claimant's submission is that when the arrears recorded in the current FMEA statement are deducted, the evidence indicates that the respondent has paid her support of \$155,933.25 since the Final Order was made.

[30] In other words, the claimant submits that the respondent has effectively paid nothing towards his spousal support obligation and less than half of his child support obligation. Given that payments are applied first towards child support before spousal support, I agree with the claimant's assessment of how payments have been applied and that spousal support is virtually completely unpaid (except for the first two months after the Final Order).

[31] The respondent submits that when support is calculated based on his actual income from 2015 onwards, there are no arrears. The respondent submits he has overpaid support from 2015 to 2022 by approximately \$78,000. The respondent further submits that on his calculations, if his child support obligation is reduced, he will have overpaid support by over \$110,000.

Issue 1: Should Child Support be Varied?

The Legal Principles

[32] In the Application, the respondent seeks a variation pursuant to s. 152 of the FLA and s. 17(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA]. More specifically, he seeks to downwardly adjust the quantum of child support both prospectively and retrospectively, going back to January 2015. As such, the respondent must establish a material change of circumstances.

- [33] Where a support order does not specify the statute under which it is made, the court is to presume it is made pursuant to the DA: *Hodgson v. Hodgson*, 2014 BCSC 1372 at para. 18. Therefore, it is the DA provisions that apply to the determination of when the court may vary, rescind or suspend, either retroactively or prospectively, a support order, or any provision in it.
- [34] The principles governing retroactive child support are set out in *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.], as restated in *Michel v. Graydon*, 2020 SCC 24 at para. 10, and in *Colucci v. Colucci*, 2021 SCC 24, where the court reiterates that the D.B.S. factors apply, with some minor variations, to an application by a payor to retroactively decrease child support obligations.
- [35] In *Colucci*, at paras. 5-7, the court explains that just because a payor establishes a past decrease in income, that does not automatically entitle the payor to a retroactive decrease in support back to the date of the decrease because the overall decision is a discretionary one:
- [6] As I will explain further, the court's discretion is structured by a presumption in favour of retroactively decreasing support to the date the payor gave the recipient effective notice of an intention to seek a downward adjustment of the child support obligation, up to three years before formal notice is given of an application to vary under s. 17. This presumption is triggered as soon as a past material change in circumstances is established -- it is no longer necessary to first ask whether retroactive relief is generally appropriate before moving to the question of how far back retroactive relief should extend. Discretionary factors parallel to those considered in *D.B.S.* may justify departing from the presumptive date in favour of a longer or shorter period of retroactivity.
- [7] Given the informational asymmetry between the parties, a payor's success in obtaining a retroactive decrease will depend largely on the payor's financial disclosure and communication. Indeed, effective notice in this context is only "effective" when there has been disclosure of the changed financial circumstances. At the stage of considering the D.B.S. factors, disclosure will once again be a key consideration in assessing whether the payor's conduct operates to shorten or lengthen the presumptive period of retroactivity. [Emphasis added.]
- [36] At para. 30 of *Colucci*, the court explains that there are three main categories of claims for retroactive relief under s. 17 of the DA. The relevant category to this Application is the one where the payor seeks to rely on a retroactive decrease in support because of past changes in the payor's ability to make payment when they are due. In other words, the payor submits the Final Order overestimates his income.
- [37] The court summarizes the analysis applicable when a payor applies to retroactively decrease child support:
- a) The payor must show a past material change in circumstances such as a material change in income that is real, not a matter of choice and has "some degree of continuity";

- b) Once a material change in circumstances is established, "a presumption arises in favour of retroactively decreasing child support to the date the payor gave the recipient effective notice, up to three years before formal notice of the application to vary". Effective notice requires clear communication of the change along with disclosure of any available documentation to substantiate the change and to let the recipient parent meaningfully assess.
- c) Where no effective notice is given by the payor, child support is generally varied back to the date of formal notice or a later date where the payor delays in making the necessary disclosure;
- d) There remains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair and the D.B.S. factors, as adapted, shall guide the exercise of discretion;
- e) Once the court determines that support should be retroactively decreased to a particular date, the decrease is quantified and the yearly support from that date is calculated pursuant to the Guidelines.

Colucci, at para. 113.

- [38] The authorities of D.B.S. and Colucci also address the requirements for seeking retroactive variation of child support and the presumptive date of retroactivity. The presumption in cases where decreased child support is sought is that "support will be reduced back to the date of effective notice": Colucci, at para. 82.
- [39] Absent effective notice of a drop in the payor's income, "certainty and predictability for the child are to be prioritized over the payor's interest in flexibility": Colucci, at para. 84. As the payor is aware of their own financial situation and able to decide when to disclose that information, the payor controls the date of notice and the date of retroactivity. Once effective notice is given, the payor's interest in flexibility comes to the forefront of the analysis: "As such, by making the date of effective notice the presumptive date of retroactivity, the framework preserves ample flexibility for the payor": Colucci, at para. 85.
- [40] In Colucci, at para. 87, the court addresses what qualifies as "effective notice" in the decrease context. A payor must do more than broach the topic of reduction of support with the recipient because the payor has an informational advantage over the recipient. As such, the timing and extent of disclosure is a critical consideration to ascertain whether and when effective notice has been given and whether to depart from the presumptive date of retroactivity: Colucci para. 87.
- [41] The proof that must accompany effective notice in decreased cases is described by the court in Colucci as follows:

- [88] In decrease cases, therefore, courts have recognized that effective notice must be accompanied by "reasonable proof" that is sufficient to allow the recipient to "independently assess the situation in a meaningful way and respond appropriately" (Gray, at para. 62, citing Corcios, at para. 55; Templeton, at para. 51). This ensures that effective notice provides a realistic starting point for negotiations and allows the recipient to adjust expectations, make necessary changes to lifestyle and expenditures, and make informed decisions (Hrynkow v. Gosse, 2017 ABQB 675, at para. 13 (CanLII); Hodges v. Hodges, 2018 ABCA 197, at para. 10 (CanLII)).
- [89] In some cases, such as where the payor is incarcerated or suffers a serious health setback, clear communication may be sufficient to meet the requirements of effective notice. In other cases, the payor may not have access to full income information at the time notice is given, but should provide proof of the change in circumstances by promptly obtaining and disclosing available documents, such as those demonstrating new employment, reduction of salary or termination of employment. Even where a diligent payor believes in good faith that a decrease in income will be temporary, the most prudent course of action is nevertheless to communicate the change to the recipient and provide information which substantiates the claimed change in circumstance.
- [90] After communicating a change and providing available documents, a payor maintains "an ongoing obligation to engage in meaningful dialogue with the recipient, advise the recipient of changes in their circumstances that may impact their ability to pay support and voluntarily disclose pertinent information so that the recipient can continue to independently assess the situation and react appropriately" (Templeton, at para. 52). Failure to do so may impact the period of retroactivity when the court applies the discretionary D.B.S. factors. Further, effective notice of an initial change in income will not amount to effective notice of subsequent changes (Corcios, at para. 55).
- [42] Even when effective notice has been given by the payor, the period of retroactivity is presumed to be no more than three years before the date of the formal notice. However, the court may depart from that presumption according to the factors in D.B.S. which may be summarized as: (1) whether there is an understandable reason for the delay in giving notice or seeking relief in court; (2) the payor's conduct; and (3) the circumstances of the children.
- [43] The objectives of the Guidelines are set out in s. 1 and they include: (a) establishing a fair standard of support that ensures that a child benefits from the financial means of their parents; (b) reducing conflict and tension between spouses by making the calculation of support more objective; (c) improving the efficiency of the legal process by giving courts and spouses guidance in setting the level of support; and (d) ensuring consistent treatment of spouses and children who are in similar circumstances.

The Position of the Parties

- [44] The respondent submits that there has been a material change in circumstances arising from the fact that since 2014, his income has been far less than the \$175,000 per annum amount that was stated in the Final Order. He asks the court to accept his reported income in each year since the Final Order as his income for support purposes.
- [45] The respondent does not deny failing to make required support payments following both the Final Order and the May 17, 2023 interim order. The respondent was often late paying the support and he often paid less than, or nothing, towards the required amount. For example, after the May 17, 2023, interim order that reduced the respondent's child support obligation to \$2,316 per month and eliminated spousal support, the respondent went months without making the reduced monthly support payment. The respondent testified that sometimes there were delays in receiving contract payments from his customers and he would try to catch up with the support payments when he could. The respondent also testified that he kept the claimant informed of his financial issues.
- [46] The claimant submits that the respondent has not demonstrated a material change in circumstances because neither party's income has changed significantly from the amount determined in the Final Order. The claimant also submits that the respondent failed to provide timely financial disclosure which would have enabled her to know the true state of his financial circumstances.
- [47] I will now consider whether the respondent has demonstrated that there has been a material change in circumstances.

Is There a Material Change in Circumstances?

- [48] The authorities are clear that to retroactively decrease support, a payor must show must show a past material change in circumstances, such as a material change in income, that is real, not a matter of choice, and has "some degree of continuity": Colucci, at para. 113.
- [49] The court in Colucci repeatedly emphasizes the importance of financial disclosure and the payor's duties, especially when seeking to change the payor's support obligation, to provide the recipient with full and honest disclosure that is "reliable, accurate and complete": Colucci, at para. 62.
- [50] At para. 110 of Colucci, the court describes the potential negative consequences that may arise respecting the determination of the amount of support when the payor has failed to satisfy the duty to disclose:

Full and complete disclosure is required to quantify the appropriate amount of support for the period of retroactivity. The onus is on the payor to show the extent to which their income has decreased during the period of retroactivity. If the payor fails to provide all relevant evidence required for the court to fully appreciate their true income during any part of the period of retroactivity, the court may draw an adverse inference against the payor.

- [51] Therefore, the main question respecting the issue of whether child support should be retroactively decreased is whether the respondent has shown a past material change in circumstances. As already mentioned, the respondent's position is that since the Final Order was made, his annual income has been consistently less than \$175,000.
- [52] The respondent submits that he consented to a Guideline income of \$175,000 in the Final Order because prior to that, in 2013, he had an unusually good year and he was trying to facilitate a settlement of the family law litigation. In fact, the interim order in place prior to the Final Order set his annual income at \$200,000, so the Final Order further decreased his income. The respondent also submits that in agreeing to the Final Order, both parties foresaw uncertainty surrounding their incomes so they agree to include a review of support on May 1, 2015.
- [53] I agree with the respondent that at the time of the Final Order, the parties understood their incomes were uncertain and they might change. To address that uncertainty, they agreed to a review. Importantly, they also agreed to specific disclosure obligations, especially for the respondent. The documents the respondent specifically agreed to disclose included not just his personal and corporate tax filings, but also copies of his corporate financial, bank and billing statements.
- [54] The review did not occur and the respondent also failed to meet his obligation to provide that financial information to the claimant in a timely way. The claimant also failed to meet her financial disclosure obligations as provided in the Final Order. The claimant explained that she did not supply her taxation information promptly in part because she sustained a physical injury and her financial records were held by her mother, who was her accountant and also off the job due to ill-health.
- [55] The respondent submits that the parties' reported total income in the relevant years was as follows:

Year

Respondent

Claimant

2015

\$98,634

\$58,781

2016

\$60,139

\$94,607

2017

\$70,341

\$61,875

2018

\$73,245

\$39,938

2019

\$28,156

\$27,419

2020

\$17,300

\$48,577

2021

\$23,100

\$63,698

2022

\$116,889

\$13,244

2023

\$105,000*

*estimated - no income tax return available

no income tax return available

[56] The respondent gave extensive evidence about the reasons for his past change in income. For example, he said his 2013 income was unusually high because he had a lucrative contract with Telus requiring him to work long hours. After the Final Order, he said the Telus contract began winding up and his work hours dwindled, especially in 2015. In cross-examination, the respondent characterized work throughout that period as busy and that he worked at least 40 hours per week until 2016. His hourly billing rate was \$88.50, which the claimant submits would result in a net income of over \$175,000 per year.

- [57] The respondent was questioned at length about his reasons for not seeking additional work after 2015 when he knew the contract was ending. The respondent's evidence was that in 2017, he began looking for work that would allow him to work remotely. The respondent testified that at the time, he had made a choice to relocate from the Lower Mainland to the New Town because he was concerned about missing his parenting time.
- [58] In the respondent's view, he could work remotely and increase his parenting time by moving to the New Town. He also understood that he and the claimant had agreed to increase his parenting time when he moved. There was evidence, including from the claimant's new partner, that initially upon the respondent relocating to the New Town, the respondent had more parenting time with the children. As no relief is sought respecting parenting time, the evidence about how much parenting time the respondent had or, whether the parties agreed to a new parenting time regime, is not particularly relevant.
- [59] While the respondent was living in the New Town, his reported income continued to decline and his arrears of support grew. By 2020, the respondent testified that he had lost all of his IT clients and he described telling the claimant about that. While living in the New Town, the respondent decided to start up various business ventures but he also continued to look for IT contract work.
- [60] The respondent's start-up business ventures were not profitable. The ventures involved areas that were different from the respondent's previous work experience in information technology. For example, one new venture included starting a lab to develop soil substrate using imported natural material. It was unclear exactly how much capital or time the respondent invested into these start-up ventures during this period but the respondent's evidence is that these were exciting business opportunities
- [61] The respondent was questioned about why, during the COVID-19 pandemic, he failed to use his considerable IT experience to obtain contracts. He said that he did not manage to obtain IT work because remote work was not popular back in 2019 to 2021 and a large portion of the IT work had to be performed on-site. Because his driver's license was cancelled as a result of support collection action, he had no way to get to potential IT job sites.
- [62] I found the respondent's evidence about his inability to obtain additional IT contract work in the period from 2015 to 2021, and especially during the pandemic, to lack credibility. While the respondent worked for Telus until approximately 2016, he provided little, if any, information to demonstrate his search for IT work including from 2019 to 2021. He testified that he did not supply information about his search for work because he was not asked to do so.

- [63] After considering all of the evidence, I find that the respondent made a conscious choice to allow his income and work hours to dwindle by not actively pursuing work or contracts once his Telus contract came to an end. During the COVID-19 pandemic, the respondent chose to rely on government assistance and focus on start-up business ventures rather than trying to find IT work in his area of experience.
- [64] I disbelieved the respondent's evidence that demand for IT services dwindled, especially around the COVID-19 pandemic. The effects of the pandemic, which include an increase in remote work and IT services around that mode of work, is a widely recognized development. In any event, I find the respondent's evidence about his efforts to obtain employment and maintain his income in the years after the Final Order to be insufficient.
- [65] In general, the respondent attributed his diminished income to the extreme stress from ongoing conflict with the claimant over support and parenting, including the relocation of the children. He said once the claimant and children relocated, he devoted a great deal of time, attention and money to exercising his parenting time including by moving to the New Town. The respondent described the claimant as non-cooperative with his goals of increasing his parenting time and decreasing his support obligation.
- [66] All of the evidence considered together, including the absence of evidence, leads me to conclude that the respondent's reduced earnings from the Final Order until 2021, do not constitute a past material change in circumstances. I reach that conclusion including because the respondent's reported income was a product of his conscious choice not to seek out work and because he has not shown that there is some degree of continuity attributable to something other than his decision not to vigorously pursue IT work.
- [67] I am aware that the respondent cites the loss of his driver's license for up to three years as another explanation for his lack of earnings. However, I do not accept that this represents a valid explanation given that it resulted from attempts to collect support arrears. As well, there is evidence that his new partner at the time could drive and that the respondent could have made payment arrangements to recover his driver's license. In my view, there is no evidence explain how the respondent lost employment or business due to the respondent not having a driver's license.
- [68] In 2021, the respondent described the end of his relationship with his partner at the time and how he ended up moving back from the New Town to live with family in the Lower Mainland. At that time, the respondent's income consisted of government COVID-19 assistance, i.e. Canada Emergency Response Benefit ("CERB") and he reported an income of just over \$23,000 in 2021. Once the respondent paid the claimant a lump sum of \$5,000 towards outstanding support payments, he was eligible to regain his driver's license in that year.

- [69] In early 2022, the respondent started a full-time job working in IT for a company involved in the cannabis industry. He testified that he earned \$120,000 per year from work with that cannabis company.
- [70] In 2023, the respondent obtained a contract to provide IT services for another company. He estimated that his total income for 2023 would be \$105,000 but he conceded that there was no information produced respecting the last three months of 2023. The claimant submitted that based on review of the respondent's financial records for 2023, that if the billing rate continued for the remainder of 2023, the total amount billed by the respondent would be almost \$149,000, before accounting for reasonable business expenses.
- [71] The claimant submits that the respondent did not bring an application to oppose her plan to relocate with the children and he was hardly in a position to do so, given that he stopped paying support within months of the Final Order. The claimant states that due to not receiving support payments, she was unable to meet her expenses and moving was the only viable option available to her. The claimant submits that for years, the respondent failed to meet his support obligations and she rejects his submissions that he is unable to do so due to lack of income.
- [72] The claimant submits the respondent failed to provide timely and complete financial disclosure which would enable her and the court to know the true state of his financial circumstances. In my view, the claimant's concerns about disclosure of financial information from the respondent is well-founded on the evidence.
- [73] The claimant submits that the respondent has never provided her with effective, or even formal notice, because he failed to provide clear communication of his change of circumstances and the documentation that would have allowed the claimant to meaningfully assess the situation.
- [74] In 2016, the respondent began asking the respondent to adjust the support payable and parenting time.
- [75] On August 21, 2019, the respondent's counsel requested financial disclosure from the claimant. Not long after this request, the claimant retained counsel and her counsel responded with a request for the respondent's financial disclosure.
- [76] The claimant's evidence is that when this information was requested, she had fallen behind in her income tax filings including because she had been injured in an accident. The claimant got her income tax returns filed and in early 2020, her counsel provided the respondent with the claimant's 2015 to 2019 income tax information.
- [77] Also in 2019, the claimant began asking for the respondent's financial information, including his notices of assessment, general ledgers and banking records for both his personal and business accounts. The claimant also asked that the respondent provide her with an updated F8 financial statement.

- [78] In late February 2020, the respondent served his list of documents. However, the claimant submits that many records that were required by the terms of the Final Order were missing or incomplete, such as the corporate tax returns, general ledgers and banking records.
- [79] The parties' respective counsel had ongoing discussions about hearing dates for the respondent's anticipated application on September 17, 2020 and then on March 31, 2021; however, the respondent's application materials were not served, even in draft form, during this year-long period. On July 12, 2022, the parties' counsel once again began discussing hearing dates for an anticipated application on September 8, 2022.
- [80] In late July 2022, the respondent served a first amended list of documents. The claimant's view was that the respondent served a large volume of financial information too close to the proposed September 8, 2022 hearing date of the Application, so the Application was adjourned to be reset as a three-day hybrid trial.
- [81] Each of the parties filed and served F8 financial statements in the summer of 2022. The respondent and claimant filed and served an updated F8 financial statement in November 2023 and early 2024, respectively. The respondent agreed during his cross-examination during the hybrid trial that he still has not produced all of his financial records for 2023.
- [82] In addition to issues respecting disclosure of financial information, the claimant also raised concerns about the type and amount of business expenses that the respondent has claimed over the years. The claimant's counsel took the respondent through some of the concerning business expense claims during his cross-examination. For example, when asked about claims for liquor purchases, he described that as an expense to buy liquor to serve his accountant when they had meetings to go over the tax filings. He testified that he took a very conservative approach to claiming business expenses over the years.
- [83] I find the claimant has legitimate concerns about the business expenses claimed by the respondent being personal expenses. The respondent's financial records, including the multi-year general ledger, are of limited assistance in resolving these concerns. Perhaps to address the claimant's concerns, the respondent submitted in closing that it would be appropriate to add back five or 10 percent of his annual total business expenses claimed to his income.
- [84] For 2023, as I mentioned, the respondent has not provided complete records for the final months of that year and so his income is likely higher than the \$105,000 amount that he estimates. However, in submissions, he submitted that his 2023 income and for ongoing support purposes should be increased from \$105,000 to \$110,000 to account for expenses claimed as business expenses.
- [85] I agree that an increase to account for business expenses is appropriate and, in my view, considering the additional billing that was anticipated for the final months of 2023 and the quantum of business expense deductions, the respondent's 2023 income is \$120,000.

- [86] I also note that in submissions, the respondent agreed that his income ought to be increased because he intends to increase his work hours and earning capacity. More specifically, the respondent submitted that he plans to increase his income once he is able to fully reconnect with the children and after the pressure of the ongoing litigation over arrears is over.
- [87] In my view, the respondent's income for 2022 and 2023 for Guideline purposes is \$120,000 per year. That conclusion is consistent with the preponderance of the evidence about the respondent's income and business expenses since 2022.
- [88] Therefore, based on the evidence that I accept respecting the respondent's income in 2022 and 2023, I conclude that he has met the onus of showing a past material change in circumstances in those years, namely a material decrease in income from \$175,000 to \$120,000 that has some degree of continuity, that is real and not one of choice.
- [89] When I consider the case authorities and all of the evidence, and in particular applying the principles from Colucci, I conclude that the respondent has tendered sufficient evidence to show that there is a past material change of circumstances arising from his decreased income in the 2022 and 2023 taxation year.
- [90] For all years prior to 2022, I am not satisfied that the respondent has tendered reliable, accurate and complete information to show that a past material change of circumstances due to a decrease in income that has some degree of continuity, that is real and not one of choice. As mentioned, I am not satisfied that the lower income reported by the respondent was real and enduring, rather than being due to the respondent's deliberate choice not to pursue additional IT contract work and instead to start new business ventures and to collect CERB.

What is the Period of Retroactivity?

- [91] As explained in Colucci, at para. 113, once a material change in circumstances is established, there is a presumption of retroactively decreasing child support to the date of effective notice up to three years before formal notice.
- [92] There is no dispute that the date of formal notice is August 4, 2020, which is the date when the respondent served the Application on the claimant. However, as mentioned, the respondent seeks to retroactively adjust child support going back to January 1, 2015.
- [93] The respondent submits that the date of effective notice on the claimant is June 20, 2016. That is the date when the respondent wrote a letter to the claimant responding negatively to her proposal to relocate with the children. That letter does broach the topic of reducing support and it confirms that he has completed his 2014 tax return. However, it does not supply that return or any other reliable information to allow the claimant to assess the situation. As the authorities make clear, merely broaching the topic is not sufficient.

- [94] In my view, the date of effective notice is February 24, 2020. That is the date when the respondent served his first list of documents on the claimant, which is the first date on which she was provided with at least some reasonable documentation to substantiate the alleged change of circumstances.
- [95] I recognize that the first list of documents did not contain all of the information the respondent was required to produce pursuant to the Final Order. However, the respondent did eventually supply more information by serving a supplemental list of documents on July 27, 2022 and filing a financial statement.
- [96] Therefore, the presumptive period of retroactivity in the present case is to the date of effective notice, i.e. February 24, 2020, unless the adapted D.B.S. factors are capable of justifying departing from that presumptive date.
- [97] The question that I must now address is whether I should depart from the presumptive date retroactivity because the result would otherwise be unfair.
- [98] The respondent submits that an application of the adapted D.B.S. factors support a longer period of retroactivity. More specifically, the respondent submits that there are understandable reasons for his delay in giving effective notice or seeking relief in court. The respondent's evidence was that he lacked the financial means to get his financial records to the claimant and the claimant was not cooperative with his efforts to reduce support and she wrongfully withheld the children because he was not paying her support.
- [99] In my view, this factor does not assist the respondent as nothing in D.B.S. or the subsequent authorities suggest that a payor's obligation to supply reasonable information disclosing their financial information is excused by lack of funds to retain accounting services. The respondent could have sent the claimant whatever relevant financial documents that he had, such as bank statements, copies of cheques and invoices or other source documents, but he did not even do that.
- [100] What is clear is that from the time of the Final Order, the respondent was not meeting his ongoing financial disclosure obligations in a timely or consistent fashion. That is evidenced by the May 17, 2023 order, which post-dated his 2020 and 2022 lists of documents, that required him to produce a variety of personal and corporate financial information for 2021 onwards.
- [101] I am aware the claimant conceded that she did not supply her income information to the respondent in a timely fashion either. The claimant has provided an explanation for why her information was not supplied, which I accept. However, even though both parties carry some blame, in a retroactive variation application to decrease support, the focus is on the payor because the payor holds the relevant information and knows when there has been an income decrease.

- [102] Respecting the respondent's submission that his conduct in trying to negotiate and communicate to pay the claimant the amount of support he deemed he could afford, I disagree that his factor assists him with departing from the presumptive date of retroactivity. A payor cannot expect a recipient to meaningfully negotiate on the basis of information that she is entitled to but has not received.
- [103] The fact that the claimant acknowledged the respondent's financial circumstances while she was asking him to pay her something is not a factor that assists the respondent. The claimant was facing an obvious informational disadvantage and the fact that she tried to at least some amount of support, is not in my view, an indication she accepted the respondent's lower income and the lower support amount.
- [104] In fact, banking records from 2023 that were put to the respondent in cross-examination, and his answers about the funds in his account, demonstrate that he had substantial funds on deposit in his TD account at the same time that he was under, or late paying, the reduced support amount. In my view, that undermines his submission that he always tried to pay all of the support that he could.
- [105] When I consider all of the evidence, I find none of the factors provide a basis for departing from the presumptive date of retroactivity because the result would otherwise be substantially unfair.
- [106] Having found that support should be retroactively decreased as of January 1, 2022 as it is the first year in which there is a material change in circumstances during the period of retroactivity, the decrease in child support must be quantified. Using the respondent's Guideline income as of 2022, which I have already determined to be \$120,000 per annum, for three children, the monthly child support from and after January 1, 2022, is \$2,316.00.
- [107] The respondent also requests, in addition to retroactive variation of child support, that due to hardship, the Guidelines should be departed from. I will now consider whether hardship justifies a departure from the Guidelines.

Should the Court Depart from the Guidelines due to Hardship?

- [108] The respondent also requests a departure from the Guidelines for the years 2016 to 2019 because of undue hardship.
- [109] The respondent submits that the relocation had an extremely negative effect on his finances and his ability to exercise parenting time including by increasing his costs.
- [110] Pursuant to s. 10(1) of the Guidelines, the court may award an amount of child support that is different from the amount determined under ss. 3-5, 8 or 9 if the spouse requesting the different amount "would otherwise suffer undue hardship". The circumstances that may give rise to undue hardship include that the spouse "has unusually high expenses in relation to exercising parenting time with a child": s. 10(2)(b), Guidelines.

- [111] Relying on s. 10.1 of the Guidelines, the respondent seeks to have the court award an amount of child support that is different from what is provided by the Guidelines on the basis that he would otherwise suffer undue hardship. As mentioned, the respondent submits that the hardship is due to his having to pay in excess of \$38,000, to exercise his parenting time over a three-year period. However, I was not provided with the information required to complete the Guidelines calculation for comparing standards of living in the respective households.
- [112] The respondent says he had to pay unusually high costs to exercise his parenting time because the claimant and the children relocated. The respondent's evidence is that in 2017, 2018 and 2019, he incurred expenses of \$6,852, \$18,686 and \$10,000, respectively, to exercise his parenting time.
- [113] I heard a great deal of evidence concerning the circumstances surrounding the claimant and the children moving from the Lower Mainland to the New Town and whether or not the claimant gave the requisite notice and whether the respondent took steps to oppose the relocation. Beyond submitting that he faced increased costs to exercise his parenting time, which he submits is undue hardship, the respondent seeks no relief respecting the relocation of the children. Therefore, I do not propose to reproduce the evidence about the relocation because it is not particularly relevant to what I am required to decide.
- [114] However, in my view, it is relevant to the undue hardship issue raised by the respondent to consider the claimant's evidence respecting her reasons for relocating.
- [115] The claimant submits she decided to relocate in the summer of 2016 because the respondent was not paying her support and she could not afford to continue to live in the Lower Mainland without receiving support. At the time of the relocation, she had both a job offer in the New Town and an offer to live rent-free in a home owned by Mr. Z., who later became her new partner. The claimant testified that at the time, she was unable to meet her expenses and moving was the only viable option available to her.
- [116] I also note that the claimant solely bore the cost of transporting the children to the Lower Mainland prior to her May 2017 accident. At the time that the claimant was covering the travel expenses, she was doing so while the respondent was not paying her the support that he was required to pay.
- [117] The claimant testified about her reasons for relocating and I accept that due to non-payment of support, she found herself in a dire financial situation. I accept that her relocation was partly motivated by the need to find financial security for herself and the children. In my view, the increased costs for the respondent exercising parenting time after the relocation are not wholly attributable to the claimant's actions.

[118] When I consider the factors in s. 10(1) of the Guidelines, I am not convinced the respondent would otherwise face undue hardship. Section 10(1)(b) refers to the spouse incurring "unusually" high expenses to exercise parenting time. I find that the expenses associated with travelling between the New Town and the Lower Mainland represented an additional expense to both parties. However, I do not find that those expenses rise to the level of an "usually high expense".

[119] Therefore, I do not find a basis to depart from the Guidelines by reason of hardship.

Conclusion on Child Support

[120] For the reasons explained, I have concluded that the monthly child support payable from and after January 1, 2022, is \$2,316.00 for three children based on the children residing with the claimant.

[121] For the reasons explained, the respondent's request to retroactively vary child support prior to January 1, 2022 is denied.

Issue 2: Should Spousal Support be Retroactively Adjusted and Terminated?

The Position of the Parties

[122] The respondent seeks to retroactively adjust spousal support and to reduce the quantum by calculating the support payable using his actual reported income and not the \$175,000 annual income determined in the Final Order. He also seeks to terminate spousal support as of January 1, 2016.

[123] The claimant submits that when the Final Order was made, it recognized her entitlement to compensatory spousal support notwithstanding that it does not explicitly state the basis for entitlement. The claimant agrees with the respondent that spousal support should be terminated but she opposes reducing the quantum of spousal support before the termination date that she proposes.

The Legal Principles

[124] As mentioned, the Final Order provided that the respondent was to pay spousal support and it provided a review on May 1, 2015. Specifically the Final Order provided for a review of quantum and duration of spousal support. The Final Order states that upon a review, the claimant's entitlement to receive spousal support was to be presumed in favour of the claimant.

[125] In *Helle v. Helle*, 2019 BCCA 97, the court sets out the statutory provisions and approach that applies to reviews of spousal support:

[14] The Divorce Act provides:

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

(3) The court may make an order under subsection (1) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

[15] In *Domitri v. Domitri*, 2010 BCCA 472, Smith J.A. described reviews conducted pursuant to such orders as follows:

[39] [T]he focus of the review hearing before the chambers judge should [be] a "reconsideration" of the respondent's entitlement and quantum (amount and duration) of spousal support. The chambers judge [is] required to consider both these issues having in mind the guidance offered by SSAG (see *Yemchuk v. Yemchuk*, 2005 BCCA 406, 44 B.C.L.R. (4th) 77; *Tedham v. Tedham*, 2005 BCCA 502, 47 B.C.L.R. (4th) 254; *Redpath v. Redpath*, 2006 BCCA 338, 62 B.C.L.R. (4th) 233; and *McEachern v. McEachern*, 2006 BCCA 508, 62 B.C.L.R. (4th) 95).

[16] The distinction between reviews and variation applications was canvassed in *Jordan v. Jordan*, 2011 BCCA 518:

[33] By comparison, the right to a review of a support order is created by a term or condition of an agreement (see *Scott v. Scott*, 2008 BCCA 457 at para. 24, *McEachern v. McEachern*, 2006 BCCA 508 at para. 32) or court order (see *Schmidt v. Schmidt*, 1999 BCCA 701 at paras. 8-9, *Domirti v. Domirti*, 2010 BCCA 472 at paras. 32-34). A review hearing does not require a preliminary threshold finding of a change of circumstances, but the agreement or order will usually define a period of time that must pass or an event or condition that must occur before the right to a review is triggered. If the condition is met, the court moves directly into a consideration of the issue(s) to be reviewed and whether the evidence supports a change in the earlier order.

[17] The injunction to specify in s. 15.2(3) orders the criteria that will determine the outcome of the review is clearly stated *Leskun v. Leskun*, 2006 SCC 25 where the court wrote:

36. Review orders under s. 15.2 have a useful but very limited role. As the amicus curiae pointed out, one or both parties at the time of trial may not, as yet, have the economic wherewithal even to commence recovering from the disadvantages arising from the marriage and its breakdown. Common examples are the need to establish a new residence, start a program of education, train or upgrade skills, or obtain employment. In such circumstances, judges may be tempted to attach to s. 15.2 orders a condition pursuant to s. 15.2(3) of the Divorce Act, that entitles one or other or both of the parties to return to court for a reconsideration of a specified aspect of the original order. This will properly occur when the judge does not think it appropriate that at the subsequent hearing one or other of the parties need show that a change in the condition, means, needs or other circumstances of either former spouse

has occurred, as required by s. 17(4.1) of the Divorce Act.

[126] As the Final Order provided for a review as to the quantum and duration of spousal support, I will address each issue starting with duration. In this case, where the parties agree that the spousal support should be terminated, the issue concerns identifying the appropriate date to terminate spousal support.

On What Date Should Spousal Support Terminate?

[127] I agree with the claimant that her entitlement to spousal support is both compensatory and non-compensatory even though the basis for entitlement is not specifically stated. I reach that conclusion because at the time of the Final Order, the claimant had always been the stay-at-home primary care parent for the parties' three children, while the respondent concentrated on pursuing his busy and well-paid career working as an IT contractor. The claimant had long been out of the workforce, unlike the respondent, and without access to the respondent's income, she had a clear non-compensatory need, for example, to establish a new home and career.

[128] Where the spousal support award is compensatory, the fact that the recipient spouse has re-partnered is not a factor due to the focus being on whether compensation has been achieved: *Rozen v. Rozen*, 2014 BCSC 2426, aff'd 2016 BCCA 303. However, re-partnering may be a relevant factor where the spousal support award was based on need: *Kelly v. Kelly*, 2007 BCSC 227.

[129] The respondent seeks to terminate spousal support as of January 1, 2016 or the date when the claimant relocated with the children to live rent-free at the home of Mr. Z., who eventually became her new partner. The difficulty with the respondent's submission about terminating spousal support at the time of the relocation relates to the claimant's evidence about her motives for relocating. The claimant testified, and I have accepted her evidence, that she relocated because she was not receiving support from the respondent and while she and the children faced dire financial circumstances, relocating offered her an opportunity to pursue a new career selling registered education plans and to save on housing costs.

[130] In my view, it would be inconsistent with the objectives and purpose of the Spousal Support Guidelines to effectively reward the respondent by terminating spousal support when the claimant's reasons for relocating to improve her financial situation was mainly due to the respondent's failure to pay the support he was obligated to pay.

[131] Mr. Z's evidence, which I accept, is that when the claimant moved into his home in 2016, he and the claimant were friends. In 2016, Mr. Z. was employed full-time in the Lower Mainland. Eventually, his relationship with the claimant developed into a long-distance romantic relationship. Mr. Z. testified that when he could, he would visit the claimant and the children on weekends in the New Town. Mr. Z also testified that he and the claimant solidified their relationship into a spousal one after 2018, when he retired and they started

living together full-time in the New Town.

- [132] Therefore, because I find the award of spousal support consented to in the Final Order was both compensatory and non-compensatory, the fact of the claimant re-partnering in 2018 is only somewhat relevant. The re-partnering is a consideration for the needs based support award because, due to the social obligation model, that burden shifted to her new partner. The claimant admitted that her new partner assisted her financially by allowing her and the children to live rent-free in his home. This was critical assistance for the claimant at the time of the relocation and the re-partnering, the respondent was not paying the support required by the Final Order.
- [133] The claimant's counsel provided calculations supporting her submissions respecting spousal support and those calculations provided amounts for a low to high range of spousal support for an indefinite period subject to variation with a minimum duration of four years and a maximum duration of 17 years from the date of separation, i.e. September 12, 2012.
- [134] In my view, on a consideration of all of the evidence, the spousal support award should terminate on September 1, 2020. I find that by that date, the spousal support was payable for nearly eight years since separation and the evidence has established that: (a) the claimant sometimes managed to increase her annual income beyond the \$45,000 imputed to her; (b) the claimant had been re-partnered for a couple of years with the burden of need shifting to her new spouse; and, (c) the goal of compensation had been fulfilled.

Should Spousal Support be Retroactively Adjusted Prior to Termination Date?

- [135] Again, the review provided, where the claimant's entitlement "was to be presumed in favour of the claimant", also concerns the quantum of spousal support, which I will now address.
- [136] In *Helle*, at para. 16, the court makes clear that a review involves moving directly to a consideration of the issue to be reviewed, which in the present case is quantum, and whether the evidence supports a change in the earlier order. Here, the earlier Final Order calculates support based on the claimant's and respondent's annual incomes of \$45,000 and \$175,000, respectively.
- [137] Clearly, when the Final Order was consented to, the parties foresaw uncertainty in their income and for that reason, they included a review. According to the claimant's evidence, the Final Order included the parties' negotiated concessions about their incomes by reducing the respondent's income from \$200,000 to \$175,000 and by increasing her income to include imputed amount for a total of \$45,000.
- [138] I have already discussed earlier in these reasons the respondent's evidence about his past reported income. I have concluded, for the reasons explained, that the respondent failed to supply timely disclosure of financial information as required by the Final Order. I have also concluded that the respondent failed to demonstrate for years prior to 2021, a past change of income that was real, ongoing and not the result of deliberate choices that the

respondent made to reduce his income. In light of these findings, I do not find that the evidence, when taken as a whole, supports a change in the Final Order for the quantum of support that is payable by the respondent to the claimant up to the termination date on September 1, 2020.

Conclusions on Spousal Support

[139] The respondent's obligation to pay spousal support is terminated effective September 1, 2020.

[140] The respondent's request to retroactively adjust the spousal support payable under the Final Order until the termination date of September 1, 2020 is denied.

Issue 3: Should a Person be Appointed to Assess the Views of the Children?

[141] The respondent requests that the court order a views of the child report be prepared pursuant to s. 211 of the FLA. The respondent seeks this report for use when he resets his application seeking to vary the Final Order to provide that the parties have shared parenting time. The respondent plans to move to the area where the children now live to facilitate a shared parenting time schedule.

[142] The respondent's request is that this report be prepared without cost to the parties by a Family Justice Counsellor through the British Columbia Family Justice Centres.

[143] The claimant submits that it is premature to seek the appointment of someone to prepare a s. 211 report when this is not a situation where there is a high level of conflict respecting parenting time. The children are now teenagers, and the respondent says he intends to move closer to the children to facilitate his parenting time. If the parties cannot agree about changing the parenting time regime, he will reset his application for equal parenting time.

[144] The evidentiary threshold for making an order pursuant to s. 211 is relatively low. However, the intrusiveness of having the children undergo an interview by a person appointed to provide their views about their parents' family law proceeding must also be recognized and taken into account. Focusing on the best interests of the children, the key question is whether the court needs expert evidence to determine issues such as parenting time: *B.K. v. J.B.*, 2015 BCSC 1481.

[145] Keeping the best interests of the children in focus, I am not satisfied on the evidence before me that there is an issue, such as a parenting issue, that the court would have difficulty resolving without the assistance of a views of the child report. The respondent does not seek the appointment of a person to assess, for example, whether the parties are able to meet the needs of the children or whether there is alienation.

[146] As mentioned, the parties' children are currently between the ages of 14 and 18 years old and in my view, the parties have not explained why they are unable to provide the court with information about their views on issues such as parenting time. I am not convinced

that there is a meaningful obstacle to the parties providing the court with such information, nor am I convinced that there is some reason it would be in the best interests of these teenaged children to participate in the process of providing their views to a person appointed to report their views to the court.

- [147] However, while I deny the application to appoint a person to assess the views of the children, I grant the respondent leave to reapply should the circumstances of the children change in the future.

Miscellaneous Issues

- [148] The respondent provided evidence that in 2015 he paid certain amounts to the claimant as support that total \$11,100. The respondent submitted that these additional payments are not reflected in the FMEA's records of support payments he made in 2015. The respondent provided bank statements showing that the payments at issue were e-transferred directly to the claimant during 2015. The claimant submitted that these payments were possibly related to other expenses but they were not support payments.
- [149] In my view, the respondent has demonstrated that, on balance by the end of 2015, he had paid a total of \$11,100 directly to the claimant on account of his support obligations. The parties shall take into account that by December 30, 2015, the respondent paid the claimant an additional amount totalling \$11,100 towards his outstanding support obligation.
- [150] During closing submissions, the respondent requested an order cancelling or reducing interest on the arrears and any penalties applied. I decline to grant such an order where there is no request to cancel or reduce interest and penalties in the Application.
- [151] Once the order is entered, the maintenance enforcement authority is likely to update its calculations, including on standard matters such as interest and penalties, to reflect the outcome of this Application. The respondent has not explained why the authority should not simply update their calculations in the normal course.

Costs

- [152] Unless there are matters concerning costs that I am unaware of, I am of the view that the claimant has been substantially successful in opposing the respondent's Application and she reasonably agreed that it is appropriate to terminate spousal support, albeit on a later date than was proposed by the respondent. Subject to the parties bringing information relevant to the issue of costs to my attention, I am of the preliminary view that the claimant is entitled to costs.
- [153] If there are circumstances relating to costs that the parties wish to bring to my attention, they have to leave to provide SC Scheduling with their written submissions respecting costs for my attention. Any party wishing to bring a matter concerning costs to my attention may deliver the party's written submissions on the other party within 14 days of today's date.

The other party may deliver the party's responding submissions within 7 days of receiving the submission. Any reply submissions must be delivered within 4 days of receiving the responding submission. The parties shall also deliver copies of their submissions to SC Scheduling for my attention at the time they are delivered to the other side.

"E. McDonald J."

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Prepared on 26 October 2026 · Esheria