

CANADA / JUDGMENT

Caillier v. Viray

2021 BCSC 2512

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Supreme Court of British Columbia

DECIDED

30 December 2021

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2021 BCSC 2512 Caillier v. Viray

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Caillier v. Viray,

2021 BCSC 2512

Date: 20211230

Docket: E1139049

Registry: Prince George

Between:

Leon Albert William Caillier

Claimant

And

Rhoda Gavini Viray

Respondent

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

The Claimant, Leon Caillier:

In Person

The Respondent, Rhoda Viray:

In Person

Place and Date of Hearing:

Prince George, B.C.

October 18, 2021

Place and Date of Judgment:

Prince George, B.C.

December 30, 2021

Background

- [1] The parties were married to each other on March 28, 1998. The parties separated on October 1, 2009 and have been living apart since. They have three children together: Gabrielle Caillier, born March 19, 1999; Gavin Leon Caillier, born January 25, 2002; and Grace Caillier, born September 18, 2003 ("Children of the Marriage").
- [2] On November 20, 2013, the parties entered into a separation agreement addressing family assets, property, debts, spousal maintenance, guardianship, custody, and maintenance for their children. The agreement included a parenting schedule and an acknowledgment that the parties had been fully advised as to their respective entitlements.
- [3] The parties were divorced by order dated September 22, 2016, effective 31 days thereafter. That order incorporated the terms of their separation agreement.
- [4] The agreement included the following terms:
16. This Agreement is to be binding upon both the Husband and the Wife before and after any decree or judgment for divorce, a judicial separation or a declaration pursuant to Section 57 of the Family Relations Act.
25. The Husband and Wife covenant and agree that they shall share joint custody of the Children of the Marriage.
28. The Husband and the Wife covenant and agree that the Children of the Marriage shall reside with the Parties during the following periods, subject to the Children's wishes:
- a. In week 1 from Monday through Sunday, with the Wife;
 - b. In week 2 from Sunday through Wednesday, with the Wife;
 - c. In week 2 from Wednesday through Monday, with the Husband
- and continuing on this 14 day schedule, unless agreed otherwise between the Parties.
30. The Husband's income for the purposes of calculating Child Maintenance has been agreed between the Parties at \$77,000.00 per year.

31. The Wife's income for the purposes of calculating contributions to special and extraordinary expenses has been agreed between the Parties at \$77,000.00 per year.
32. The Husband shall pay to the Wife, Child Maintenance in the amount of \$1,770.00 per month, paid in two equal installments of \$885.00 commencing on the 1st day of August, 2012 and continuing in two equal installments each month thereafter for so long as the Children remain Children of the Marriage.
33. The Parties covenant and agree that all special and extraordinary expenses for the Children of the Marriage shall be equally divided between them, with all such expenses to be either as agreed upon between the Parties or as determined by the Court.
34. The Husband shall maintain his Sunlife life insurance policy that is currently in place (hereinafter called the "Insurance Policy").
35. So long as he is obligated at law to pay maintenance and support for the Children of the Marriage, the Husband shall maintain, and pay all premiums on the Insurance Policy.
36. The Husband shall designate the Wife as the irrevocable beneficiary, as Trustee for the Children of the Marriage, of the Insurance Policy under the Insurance Act of British Columbia.
38. The Husband and the Wife each acknowledge that they have been advised of the provisions of the Family Law Act, and the Divorce Act (Canada) pertaining to the objectives of spousal support or maintenance and each hereby acknowledges that their present and future needs have been adequately provided for by the terms and conditions of this Agreement and each spouse expressly acknowledges that the payments and other provisions set forth in this Agreement constitute a full and final settlement of all of his or her rights against the other with respect to any claims for support or maintenance brought or that may be brought against the other and each hereby renounces all right, title or interest to seek spousal maintenance or support from the other at any time.
39. The Husband and Wife covenant and agree that:
 - a) Neither party is in need of alimony or spousal maintenance;
 - b) Each spouse acknowledges that they are able to pay all their current and reasonably foreseeable living expenses, debts and liabilities from the income and assets remaining in their possession after this Agreement is implemented
- [5] While the parties agreed to share time with the children 60% to the respondent and 40% to the claimant, Gabrielle elected to live full time with the respondent by 2011, and her brothers made the same election in 2013.

[6] Family Maintenance Enforcement Program (FMEP) records show that the claimant made full child support payments as required by the divorce order and terms of the agreement up until July 15, 2014. Since that date the claimant has failed to make the full payment of child support that he owed pursuant to the separation agreement and the order for divorce. FMEP records for 2021 show:

Feb 15, 2021 -- \$1,200 received

Mar 1, 2021 -- \$600 received

Mar 29, 2021 -- \$1,200 received

Apr 12, 2021 -- \$400 received

Apr 15, 2021 -- \$1,408.16 payment from federal government

May 3, 2021 -- \$400 received

May 11, 2021 -- \$200 received

Jun 9, 2021 -- \$250 received

Jun 25, 2021 -- \$250 received.

The Claimant's Application

[7] The claimant seeks the following orders:

1. Canceling or reducing any arrears of child support that are found to be owed and that are not based on the Federal Child Support Guidelines, SOR/97-175 in 2011 and 2017;
2. Changing the original monthly child support payments based on the separation agreement to reflect the Federal Child Support Guidelines in 2011 and 2017;
3. Removing the respondent from any and all life insurance policies in the name of the claimant;
4. Canceling or reducing any and all interest payable on any arrears of child support that are found to be owed by the claimant;
5. Canceling or reducing any default fees and penalties imposed by the Director of Maintenance Enforcement under the Family Maintenance Enforcement Act, RSBC 1996, c. 127;
6. Withdrawing, suspending, or staying all enforcement measures by the Director of Maintenance Enforcement under the Family Maintenance Enforcement Act against the claimant;

7. Calculating the federal and provincial child benefits paid to the respondent while the Children of the Marriage were under shared custody of both parents and deducting any amount of monies owed by the respondent to the claimant from any child support arrears, as the claimant received no amount of monies towards the care of the children;
8. Basing any and all special or extraordinary child care expenses on each party's ability to pay and the common good of each child;
9. Requiring that, for as long as the Children of the Marriage are eligible to receive child support, each party exchange income information pursuant to s. 25 of the Federal Child Support Guidelines, commencing in June 2021, and every June thereafter, and if necessary, a recalculated amount of child support based on the Federal Child Support Guidelines shall commence on July 1, 2021, and on every July 1 thereafter. In the event of a dispute regarding the proper amount of child support owed, the parties have leave to apply for direction;
10. Requiring that every year by July 1, the parties inform the Director of Maintenance Enforcement under the Family Maintenance Enforcement Act and the FMEP of their incomes, their Notice of Assessments, and the amount being paid according to the Federal Child Support Guidelines;
11. Granting that the claimant may pay any future child support monies directly to the Children instead of the respondent, as this will provide the Children with a realistic understanding of their support monies;
12. Changing the original amount for child support of \$885 every two weeks, as agreed upon in the separation agreement, to reflect the actual yearly payor Notice of Assessment based on the Federal Child Support Guidelines;
13. Stating that the parties should be responsible as parents to pay child support for children that do not reside with them based on the Family Maintenance Enforcement Act and related legislation; and
14. Stating that all child support payments for the Children of the Marriage will end by the children's 25th birthdays.

The Application Response

- [8] In her application response, the respondent opposed the orders sought numbered 1, 4, 5, 6, 7, 8, 9, 10, 11, and 13, and took no position with respect to the other orders sought by the claimant, but at the hearing of the application did not oppose the order numbered 14.
- [9] The respondent noted that as of August 18, 2021, the claimant was \$93,609.59 in arrears for child support payment through the FMEP.

Legislative Provisions

[10] The Family Law Act, S.B.C. 2011, c. 25 provides authority for changing, suspending, or terminating child support:

152(1) On application, a court may change, suspend or terminate an order respecting child support, and may do so prospectively or retroactively.

- (2) Before making an order under subsection (1), the court must be satisfied that at least one of the following exists, and take it into consideration:
 - (a) a change in circumstances, as provided for in the child support guidelines, has occurred since the order respecting child support was made;
 - (b) evidence of a substantial nature that was not available during the previous hearing has become available;
 - (c) evidence of a lack of financial disclosure by a party was discovered after the last order was made.

174(1) On application, a court may reduce or cancel arrears owing under an agreement or order respecting child support or spousal support if satisfied that it would be grossly unfair not to reduce or cancel the arrears.

- (2) For the purposes of this section, the court may consider
 - (a) the efforts of the person responsible for paying support to comply with the agreement or order respecting support,
 - (b) the reasons why the person responsible for paying support cannot pay the arrears owing, and
 - (c) any circumstances that the court considers relevant.
- (3) If a court reduces arrears under this section, the court may order that interest does not accrue on the reduced arrears if satisfied that it would be grossly unfair not to make such an order.
- (4) If a court cancels arrears under this section, the court may cancel interest that has accrued, under section 11.1 of the Family Maintenance Enforcement Act, on the cancelled arrears if satisfied that it would be grossly unfair not to cancel the accrued interest.

[11] The Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) also includes provisions allowing for variation, suspension, or rescission of child support:

17(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, retroactively or prospectively,

- (a) a support order or any provision of one, on application by either or both former spouses;
- (b) a parenting order or any provision of one, on application by

- (i) either or both former spouses, or
- (ii) a person, other than a former spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent; or
- (c) a contact order or any provision of one, on application by a person to whom the order relates.
- (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

[12] The Federal Child Support Guidelines, include the following provisions:

1 The objectives of these Guidelines are

- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

14 For the purposes of subsection 17(4) of the [Divorce] Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:

- (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;
- (b) in the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support; and
- (c) in the case of an order made before May 1, 1997, the coming into force of section 15.1 of the Act, enacted by section 2 of chapter 1 of the Statutes of Canada, (1997).

Jurisprudence

- [13] In *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.], the Court considered the principles and competing interests underlying recipients' applications for a retroactive increase in child support. Ultimately, the payor parent's interest in certainty must be balanced with the need for flexibility and fairness to the child. The Court identified four factors to consider when

deciding on a retroactive award. Once it is determined that a retroactive award should be ordered, the general rule is that it should not extend more than three years prior to the date of effective notice. At para. 123, Justice Bastarache explained the three-year limit when retroactively increasing child support:

- [123] Once the recipient parent raises the issue of child support, his/her responsibility is not automatically fulfilled. Discussions should move forward. If they do not, legal action should be contemplated. While the date of effective notice will usually signal an effort on the part of the recipient parent to alter the child support situation, a prolonged period of inactivity after effective notice may indicate that the payor parent's reasonable interest in certainty has returned. Thus, even if effective notice has already been given, it will usually be inappropriate to delve too far into the past. The federal regime appears to have contemplated this issue by limiting a recipient parent's request for historical income information to a three-year period: see s. 25(1)(a) of the Guidelines. In general, I believe the same rough guideline can be followed for retroactive awards: it will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice was given to the payor parent.
- [14] D.B.S. was adapted and applied in *Colucci v. Colucci*, 2021 SCC 24 [Colucci] for the context of a payor seeking a retroactive decrease in child support and rescission of arrears.
- [15] Colucci clarifies the appropriate framework for determining when child support under s. 17 of the Divorce Act can be retroactively decreased, and how that framework applies where the payor also seeks a rescission of the arrears based on a current inability to pay, rather than past changes in circumstances.
- [16] At para. 55, Justice Martin, for the unanimous Court stated:
- [55] In building a framework for the variation of child support and the rescission of arrears, judicial discretion must be structured to safeguard the child's interest in receiving the appropriate amount of support to which they are entitled. Alongside this paramount interest, there must be a fair balancing of certainty and flexibility to reach a just result in light of fluctuations in payor income and the particular circumstances of each case. In addition, the framework under s. 17 must promote the timely disclosure of accurate information, which in turn encourages equal bargaining and fair settlements, as the payor parent "holds the cards" when it comes to child support (*Michel [v. Graydon]*, 2020 SCC 24], at para. 32, per Brown J.). Above all, "the ultimate goal must be to ensure that children benefit from the support they are owed at the time when they are owed it. Any incentives for payor parents to be deficient in meeting their obligations should be eliminated" (D.B.S., at para. 4). Payors should not be better off from a legal standpoint if they do not pay the child support the law says they owe. Nor should payors receive any sort of benefit or advantage from failing to disclose their real financial situation or providing disclosure on the eve of the hearing.

[17] At para. 113, Martin J. summarized the framework to be applied where a retroactive decrease in child support and/or the rescission of arrears of child support are sought:

113 where the payor applies under s. 17 of the Divorce Act to retroactively decrease child support, the following analysis applies:

- (1) The payor must meet the threshold of establishing a past material change in circumstances. The onus is on the payor to show a material decrease in income that has some degree of continuity, and that is real and not one of choice.
- (2) 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. In the decrease context, effective notice requires clear communication of the change in circumstances accompanied by the disclosure of any available documentation necessary to substantiate the change and allow the recipient parent to meaningfully assess the situation.
- (3) Where no effective notice is given by the payor parent, child support should generally be varied back to the date of formal notice, or a later date where the payor has delayed making complete disclosure in the course of the proceedings.
- (4) The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The D.B.S. factors (adapted to the decrease context) guide this exercise of discretion. Those factors are: (i) whether the payor had an understandable reason for the delay in seeking a decrease; (ii) the payor's conduct; (iii) the child's circumstances; and (iv) hardship to the payor if support is not decreased (viewed in context of hardship to the child and recipient if support is decreased). The payor's efforts to pay what they can and to communicate and disclose income information on an ongoing basis will often be a key consideration under the factor of payor conduct.
- (5) Finally, once the court has determined that support should be retroactively decreased to a particular date, the decrease must be quantified. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the Guidelines.

Discussion

[18] Notwithstanding the terms of the separation agreement, and the order for divorce, the claimant seeks a retroactive decrease in his child support obligations and a reduction or cancellation of his arrears. He also seeks the application of the Federal Child Support Guidelines when they are to his advantage, but not when they would result in greater payments than those to which he agreed.

[19] In applying the Colucci framework, as outlined above, I must consider the following (see Colucci at paras. 4 and 46):

1. The objectives and provisions of the Federal Child Support Guidelines, particularly the child's right to a "fair standard of support";
2. The interests of both parents and children in certainty and predictability; and
3. The need for flexibility to ensure fairness and a just result when addressing fluctuations in a payor's income.

Retroactive Decrease in Child Support

Past Material Change

- [20] The payor has the onus of showing a material change in income by proving that his decrease in income is significant, continuous, real, and not out of choice: Colucci at para. 61. To prove these four characteristics of a decrease in income, the payor must provide "reliable, accurate and complete information": Colucci at para. 62; Earle v. Earle, [1999] B.C.J. No. 383, [1999] CanLII 6914 (B.C.S.C.) at para. 28.
- [21] The claimant asserts that his circumstances changed dramatically in 2014 when he purchased the respondent's shares in their business ("the business") and became the sole owner of that enterprise. He did not raise that alleged change when the order for divorce was granted, but now seeks to effectively rewrite the settlement agreement.
- [22] He asserts that due to the debt load of the business, he sold it in May 2019 and was declared personally insolvent on July 3, 2019. He was discharged from bankruptcy on May 25, 2021.
- [23] The claimant says he paid some of the costs of the children's sporting activities and school expenses, but the respondent says that the vast majority of the extraordinary expenses of the children were paid by her.
- [24] The Canada Revenue Agency notices of assessments produced by the claimant disclose his declared income as follows:
- a) 2013 \$69,664;
 - b) 2014 \$99,700;
 - c) 2015 \$106,799;
 - d) 2016 \$34,999;
 - e) 2017 \$34,999;
 - f) 2018 \$34,999; and
 - g) 2019 \$68,075.
- [25] The claimant advised me that he earned about \$55,000 in 2020, and that he expects to earn a similar amount this year.

- [26] I find that the claimant has met the threshold of showing a material decrease in his income during 2016, 2017 and 2018 that was not of his choice.

Presumptive Date of Retroactivity

- [27] Once the payor has met the threshold of showing a material decrease in income, a presumption is triggered in favour of retroactively varying support: Colucci para. 58. The presumptive date of retroactivity is the date of effective notice, up to three years before formal notice: Colucci at para. 74. If no effective notice was given, the date of retroactivity will generally be the date of formal notice: Colucci at para. 95.
- [28] A payor seeking retroactive decrease in child support has the information advantage: Colucci at para. 87. Therefore, effective notice must be accompanied by "reasonable proof" that allows the recipient to respond and adjust accordingly: Colucci at para. 88.
- [29] In this case, not only was timely notice not given by the claimant that he wished to reduce his child support obligations; he allowed the separation agreement to be incorporated into the divorce order after his circumstances had allegedly changed.
- [30] The claimant provided the respondent with formal notice that he wished to retroactively decrease his child support payments and cancel or reduce his arrears of child support on August 12, 2021, when the respondent was served with the notice of application.
- [31] Applying the three-year rule, the presumptive date of retroactivity for the claimant can be extended back to August 2018.

Departure from the Presumptive Date of Retroactivity

- [32] The court has the jurisdiction to depart from the presumptive date of retroactivity where the result would otherwise be unfair: Colucci at para 96. In determining a fair retroactive award, the four D.B.S. factors are considered: (1) the reason for the delay in seeking retroactive variation; (2) the payor's conduct; (3) the circumstances of the child; and (4) hardship to the payor if the retroactive period is not lengthened beyond the presumptive date: Colucci paras. 97-108.
- [33] The claimant has offered no understandable reason for his delay in seeking a decrease.
- [34] His conduct has been cavalier, in that, as I have already said, he unilaterally reduced his biweekly payments below the amounts that he agreed to, and now seeks the application of the Child Support Guidelines when they are to his advantage, but not when they would result in greater payments.
- [35] I also find that he failed to communicate and disclose income information to the respondent on any basis.

- [36] I was given very little information about the circumstances of the three children. Without evidence of whether the children experience hardship or need, I am unable to give this factor much weight.
- [37] Although the claimant asserts that he will experience hardship if support is not decreased, there is little substance to that assertion, with the exception of the years 2016, 2017, and 2018, during which he had an annual income of \$34,999 according to his tax assessments.
- [38] Considering the factors set out above, I nonetheless find that the circumstances warrant a departure from the presumptive date of retroactivity.

Quantum and Terms of Variation Order

- [39] Despite the limited basis upon which the Colucci framework justifies any reduction in the claimant's past child support payment obligations, given the respondent's response to the claimant's application, I will vary the claimant's child support obligations beginning in 2016.
- [40] Gabrielle remained a child of the marriage as defined in s. 2(1) of the Divorce Act until her 19th birthday on March 28, 2018, and Gavin remained a child of the marriage until his 19th birthday on January 25, 2020. Grace remains a child of the marriage.
- [41] Assuming, for the sake of my analysis, that neither Gabrielle nor Gavin remained children of the marriage after their respective 19th birthdays, and that the Federal Child Support Guidelines were applied to the claimant's income for the years 2013 to 2020, his required monthly child support payments would have been:
- a) 2013 \$1,382
 - b) 2014 \$1,918
 - c) 2015 \$2,035
 - d) 2016 \$717
 - e) 2017 \$717
 - f) 2018 \$562 after March, 2018
 - g) 2019 \$1,056
 - h) 2020 \$517 beginning February 1, 2020
- [42] As can be seen, the claimant would have been obliged to pay more than he did in 2014-2015 and in 2019, had the Federal Child Support Guidelines been applied. In addition, he unilaterally decreased the payments that he agreed to on July 31, 2014, and even further on January 31, 2015, creating the arrears that he now seeks to reduce or cancel.

- [43] For 2016, 2017, and the first three months of 2018, I will reduce the claimant's child support amounts to \$717 per month. For April through December of 2018, they are reduced to \$562 per month. Against these amounts, the claimant is entitled to credit for the payments he actually made during those three years.
- [44] For 2019 the claimant's child support payments will remain at \$1,056, but are reduced to \$517 per month for 2020 and 2021. Against these amounts, the claimant is entitled to credit for the payments he actually made during these three years.

Reduction or Cancellation of the Claimant's Remaining Arrears

- [45] Courts take a highly restrictive approach when considering the question of whether to rescind any child support arrears. There is a presumption against rescinding any part of arrears, as child support obligations are prioritized as serious legal obligations: Colucci at paras. 136-139.
- [46] In this case, the claimant has failed to rebut the presumption. He has not demonstrated on a balance of probabilities that he cannot and will not ever be able to pay the arrears: Colucci at para. 138.
- [47] After the adjustments that flow from the decreases in the claimant's child support obligations, he will remain responsible for the arrears of his child support obligations under the separation agreement. I decline to reduce or cancel the remaining arrears in any way, and the claimant is required to pay back those debts.

Other Orders Sought

- [48] As far more than three years have elapsed since the respondent had sole de facto custody of the children, I decline the claimant's application for an order calculating the federal and provincial child benefits paid on behalf of the children while the children resided in shared custody of both parents.
- [49] I find that there is no basis for an order removing the respondent from any and all life insurance policies in the name of the claimant, and I dismiss that part of his application.
- [50] On the evidence before me, the claimant paid little if any of the special or extraordinary child care expenses. They were largely paid by the respondent. I expect that will be the reality for the parties going forward and therefore find it inappropriate to grant an order stating that any and all special or extra ordinary child care expenses be based on each parties' ability to pay and for the common good of each child.
- [51] I order that commencing in June 2021, and in June of each year thereafter, for as long as the children are eligible to receive child support, the claimant and the respondent shall provide copies of all materials required to be exchanged pursuant to section 25 of the Federal Child Support Guidelines.

- [52] I see no benefit in an order that every year by July 1, the respondent shall inform the Director of Maintenance Enforcement under the Family Maintenance Enforcement Act, FMEP program regarding her income, notice of assessment of what her income is and the amount being paid according to the Federal Child Support Guidelines 2011, 2017, and decline that part of the relief sought by the claimant, but I order that the claimant shall so inform the Director of Maintenance Enforcement.
- [53] I dismiss as unnecessary and inappropriate the claimant's application for an order stating that he and the respondent should be responsible as parents to pay child support for children that do not reside with them based on the Family Maintenance Enforcement Act and related legislation, and decline that part of his application.

Conclusion

[54] I grant the following orders:

- Variation of the original monthly child support payments in the original separation agreement to reflect the Federal Child Support Guidelines in 2011 and 2017, in part;
- The claimant's application for an order changing the original agreement amount for child support monies of \$885 twice each month, in part;
- The claimant's application for an order that commencing in June 2021, and in June of each year thereafter, for as long as the children are eligible to receive child support the parties shall exchange copies of all materials required to be exchanged pursuant to section 25 of the Federal Child Support Guidelines commencing July 1, 2021 and on July 1, each year thereafter, child support will be varied to the amount set out in the Federal Child Support Guidelines applicable for each parties respective line 150 incomes on their tax returns and according to the parenting time of the parties. The parties have leave to apply for directions in the event of dispute regarding the proper amount of child support to be paid.

[55] I decline to grant the following relief:

- The claimant's application for an order removing the respondent from any and all life insurance policies in his name;
- The claimant's application for an order that all enforcement measures by the Director of Maintenance Enforcement, under the Family Maintenance Enforcement Act, and against him be withdrawn, suspended, or stayed;
- The claimant's application for an order calculating the federal and provincial child benefits paid to the respondent, while the children resided in shared custody of the parties and be deducted from any child support arrears;
- The claimant's application for an order that any and all special or extra ordinary child care expenses be based on each party's ability to pay and agree for the common good of each child;

- the claimant's application for an order stating that all child support monies will end by the children's 25th birthday;
 - The claimant's application for an order that he and the respondent should be responsible as parents to pay child support for children that do not reside with them based on the Family Maintenance Enforcement Act and related legislation; and
 - the claimant's application for an order stating that he may pay any future child support monies directly to his children instead of to the respondent. The children of the marriage continue to live with the respondent, and she has been responsible for their needs since at least 2013. There is no suggestion that she has been in any way inattentive to their needs, and I am satisfied that she knows those needs best, and will continue to see that they are met, to the extent that her finances permit.
- [56] The claimant's application for an order that any arrears of child support be canceled or reduced is allowed in part.
- [57] Pursuant to s. 14.4(6) of the Family Maintenance Enforcement Act, I order that the amount owing by the claimant as annual default fees is reduced by the amount that is proportionate to the reduction in the arrears under this order.
- [58] The claimant's application for an order that any interest payable or any arrears of child support that are found to be owed by him be canceled or reduced is allowed, in part.
- [59] The claimant's application for an order that any default fees and penalties imposed by the Director of Maintenance Enforcement, under the Family Maintenance Enforcement Act, and against him be canceled or reduced is allowed, in part.
- [60] The claimant's application for an order that every year by July 1, the claimant and the respondent shall inform the Director of Maintenance Enforcement regarding their income, notice of assessment of what their income is and the amount being paid according to the Federal Child Support Guidelines 2011, 2017 is dismissed.

"The Honourable Chief Justice Hinkson"

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Prepared on 27 October 2026 · Esheria