
CANADA / JUDGMENT

Collier v. Campbell

2013 BCSC 825

COURT

Supreme Court of British Columbia

DECIDED

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2013 BCSC 825 Collier v. Campbell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Collier v. Campbell,

2013 BCSC 825

Date: 20130510

Docket: E5493

Registry: Chilliwack

Between:

Paulette Leona-Mae Collier

Claimant

And

Kenneth Darcy Campbell

Respondent

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Appearing on her own behalf:

P.L.-M. Collier

Appearing on his own behalf:

K.D. Campbell

Place and Date of Trial/Hearing:

New Westminster, B.C.

April 19, 2013

Place and Date of Judgment:

Chilliwack, B.C.

May 10, 2013

Introduction

- [1] The claimant, Paulette Leona-Mae Collier, and the respondent, Kenneth Darcy Campbell, were married for approximately three years before separating in August 2005. They have a child, Brooklynn Ada-Mae Collier-Campbell, who is now almost nine years old.
- [2] The parties were divorced in August 2006. At that time, the parties obtained a consent order dated August 9, 2006 (the "Order"), which addressed the custody of and access to Brooklynn, then aged two, and the child support payable by Mr. Campbell. Pursuant to the Order, Ms. Collier has custody of Brooklynn and Mr. Campbell has specified access. In addition, the Order provided for the payment of both regular child support and extraordinary expenses by Mr. Campbell.
- [3] Approximately two years ago, ongoing disputes between the parties concerning custody, access and child support came to a head, resulting in various court applications to address the issues. For reasons that are not particularly clear, the issues were not addressed in a timely fashion at that time.
- [4] Accordingly, at this time, Ms. Collier brings an application to determine child support payable by Mr. Campbell in respect of regular child support and Section 7 expenses, both retroactively and prospectively. She seeks to have income imputed to Mr. Campbell. Mr. Campbell applies to vary the custody and access provisions under the Order and to cancel child support payable by him pursuant to the Order.

Custody and Access

- [5] The Order provides that Ms. Collier has full custody of Brooklynn. The Order also provides that Ms. Collier and Mr. Campbell share joint guardianship of Brooklynn under the Joyce model. Accordingly, Ms. Collier retains the right to make significant decisions relating to Brooklynn, subject to Mr. Campbell seeking a review of that decision. The Order also provides that Mr. Campbell is to have the following access to Brooklynn: during Week 1, from Thursday at 7:15 a.m. to Friday at 5 p.m.; during Week 2, from Saturday at 9 a.m. to Sunday at 5 p.m.

- [6] Ms. Collier is an elementary school principal. She lives with Brooklynn in White Rock, where Brooklynn goes to school. Mr. Campbell is a businessman who operates a horseback riding business in South Surrey. Mr. Campbell also resides in South Surrey with his common-law partner, Cindy Schinkel.
- [7] Mr. Campbell's initial application to increase his access to Brooklynn was filed in early 2011. Those efforts were opposed by Ms. Collier, who in turn sought an order that Mr. Campbell's access be supervised by a third party. Ms. Collier asserted that Mr. Campbell inadequately supervised Brooklynn during his access time, thereby exposing the child to substantial risk. As a result of these concerns, a court order was granted by consent on May 2, 2011 that the matter be referred to Dr. Michael Elterman for a Section 15 Custody/Access Report.
- [8] Dr. Elterman completed his written report on September 30, 2011. Dr. Elterman's overarching observation was that Ms. Collier and Mr. Campbell approach the parenting of Brooklynn from entirely different ends of the spectrum. Ms. Collier provides a very structured environment for Brooklynn; needless to say, she is highly critical of the loose or unstructured environment that Mr. Campbell appears to provide during his access times. Dr. Elterman found that Ms. Collier was justified in expressing concern about the lack of supervision in various circumstances, such as when Brooklynn plays in the park and swims in the pool. In addition, Dr. Elterman supported Ms. Collier's concerns about Mr. Campbell's inappropriate consumption of alcohol during his access time with Brooklynn.
- [9] Dr. Elterman recommended that the parties have joint custody and joint guardianship of Brooklynn. He rejected Mr. Campbell's request for a week on/week off sharing arrangement. Instead, he stated that a small expansion of access was in order such that during Week 2, Mr. Campbell would see Brooklynn from Thursday after school until Sunday at 5 p.m. Dr. Elterman also recommended specified access during the summer months, which was not addressed in the Order and, unfortunately, was not a matter upon which the parties could agree.
- [10] Despite Dr. Elterman's first report, Ms. Collier refused to amend the custody and access provisions under the Order. The matter was scheduled to proceed to trial in July 2012, but was ultimately adjourned. At a later court appearance on November 19, 2012, Madam Justice Gerow ordered that Dr. Elterman provide an updated report on the matter.
- [11] Dr. Elterman's updated report is dated April 7, 2013. Again, Dr. Elterman recommended the expansion of access: during Week 1, Mr. Campbell would see Brooklynn from Thursday morning until Friday afternoon and during Week 2, Mr. Campbell would have access from Thursday morning until Sunday at 6 p.m. Dr. Elterman also recommended that the parties agree to a schedule for the summer months, Christmas, and Spring Break. This incremental approach to increasing Mr. Campbell's access was, in Dr. Elterman's view, consistent with the views of Brooklynn herself.

[12] The relevant sections of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) relating to a variation of custody and access orders are:

Order for variation, rescission or suspension

17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,
 - (b) a custody order or any provision thereof on application by either or both former spouses or by any other person.
 - (5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.
 - (9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.
- [13] Consistent with s. 17(5) of the Divorce Act, the new Family Law Act, S.B.C. 2011, c. 25 provides a similar test for changing an order respecting what is now defined as "parenting arrangements":

Changing, suspending or terminating orders respecting parenting arrangements

47 On application, a court may change, suspend or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.

[14] Neither party disputes that there has been a "change in the condition, means, needs and other circumstances" of Brooklynn. The Order was granted when Brooklynn was two years old. She is now almost nine years old and has been seeing her father under the terms of the Order for almost seven years, without major incident. Despite her continuing concerns about supervision, Ms. Collier does not seriously contest that Mr. Campbell should continue to exercise access to Brooklynn and that such contact is in Brooklynn's best interest in accordance with s. 17(9) of the Divorce Act.

[15] Accordingly, I am satisfied that a variation of the Order regarding custody, primary residency and access is justified on the basis of the principles discussed in *Gordon v. Goertz*, [1996] 2 S.C.R. 27.

- [16] In my view, substantial weight should be placed on Dr. Elterman's views and recommendations concerning changes to custody and the current access regime. He completed extensive interviews of the parties and Brooklynn with a view to addressing Ms. Collier's supervision concerns, which continue to this time. In addition to ongoing concerns about Mr. Campbell's alcohol consumption and his driving without proper restraints and insurance, Ms. Collier is now concerned that Brooklynn is being inappropriately exposed to certain conduct by Ms. Schinkel's children. Nevertheless, I am satisfied that Mr. Campbell is aware of those issues. He acknowledges that supervision may be required in certain circumstances.
- [17] During argument, it became apparent that the parties were essentially in agreement on the changes to the access provisions arising from Dr. Elterman's recommendations. I am similarly convinced that an incremental increase in Mr. Campbell's access is appropriate. Accordingly, I order that paragraphs 2 through 7 of the Order be deleted and that the following paragraphs 2 through 7C stand in their place. Although many of the earlier provisions will remain as before, I have sought to amend and/or restate the entirety of the custody and access provisions in these reasons for the parties for consistency and ease of reference.
- [18] The new provisions are as follows:
2. The Claimant and the Respondent shall have joint custody of the Child, namely Brooklynn Ada-Mae Campbell, born August 1, 2004, with primary residence of the Child to remain with the Claimant.
 3. The Claimant and the Respondent will share joint guardianship of the Child on the following terms:
 - (a) the parties are to be the joint guardians of the estate of the Child;
 - (b) in the event of the death of either party, the remaining party will be the sole guardian of the person of the Child;
 - (c) the Claimant, who has the primary responsibility for the day-to-day care of the Child, will have the obligation to advise the Respondent of any matters of a significant nature affecting the Child. The Respondent will have the obligation to advise the Claimant of any matters of a significant nature affecting the Child during his access times;
 - (d) the Claimant shall discuss with the Respondent any significant decisions which have to be made concerning the Child, including significant decisions concerning the health (except emergency decisions), education, religious instruction, and general welfare of the Child;
 - (e) the Respondent shall have the obligation to discuss the foregoing issues with the Claimant, and each party shall have the obligation to try to reach agreement on those major decisions;

- (f) in the event that the parties cannot, despite their best efforts, reach agreement with respect to any major decision, the Claimant shall have the right to make such decision. The Respondent will have the right to seek a review of any decision that he considers contrary to the best interests of the Child, including under s. 49 of the Family Law Act; and
- (g) each party will have the right to obtain information concerning the Child directly from third parties, including, without limitation, teachers, counsellors, medical professionals, and third party caregivers.

4. The Respondent shall have access to the Child as follows:

- (a) Week 1: 7:15 a.m. Thursday to 5:00 p.m. Friday;
- (b) Week 2: 2:30 p.m. Friday to 8:30 a.m. Monday;
- (c) on those Friday or Monday access days that are Professional Days when school is not in session, access will be from Friday at 7:15 a.m. or until Monday at 5 p.m., as the case may be; and
- (d) such other reasonable access as may be mutually agreed upon by the parties.

4A. The Respondent shall be responsible for picking Brooklynn up from her primary residence for access, or from the school on school days, and dropping her off at the school on school days prepared for school. The Claimant shall be responsible for picking Brooklynn up from the Respondent's home after access, or from the school on school days, and dropping her off at the school on school days prepared for school.

4B. The Claimant and the Respondent shall not remove the Child from school for more than two days to attend any weddings, funerals, graduations, or any other family functions, unless agreed upon in writing by the parties.

4C. The Respondent shall be responsible for making the necessary arrangements for the Child to attend any scheduled activities during his access time.

4D. The parties have the option that Brooklynn spend Mother's Day with the Claimant and Father's Day with the Respondent if these days do not coincide with regular access. Brooklynn shall be permitted to spend the day with the applicable parent from 9:00 a.m. until 5:00 p.m., with pick-up and drop-off to be done by that parent.

4E. Access during the summer months and holidays will be as follows:

- (a) Summer: The Claimant and the Respondent will each be entitled to a week of uninterrupted access in each of July and August. The Respondent is to advise of his choice of non-consecutive weeks on or before June 1, 2013, with the Claimant to advise of her choice by June 15, 2013. The parties will alternate in the following years in terms of which party will choose their preferred dates first such that the Claimant will choose first in 2014.

- (b) Christmas: To be equally shared between the parties such that for the first half (from the first day after school ends until 12:00 noon on December 25, 2013) the Child will be with the Claimant, and for the second half (from 12:00 noon on December 25, 2013 until 8:00 p.m. on the day before school commences in January 2014) the Child will be with the Respondent. The parties will alternate yearly in terms of having the first or second half of the Christmas holidays.
 - (c) Spring Break: To be equally shared between the parties such that the Child will be with the Claimant for the first half of Spring Break 2014 and with the Respondent for the second half of Spring Break 2014, with the parties alternating this sharing arrangement in subsequent years.
 - (d) Easter: Where the Easter long weekend (including Good Friday, Easter Sunday, and Easter Monday) does not fall within the Spring Break access period, the parties will alternate having the Child over this weekend, with the Respondent to commence his access during this period in 2014.
 - (e) Statutory Holidays: The parties will alternate the following statutory holidays each year: Family Day, Victoria Day, Canada Day, British Columbia Day, Labour Day, Thanksgiving Day, and Remembrance Day. For 2013, the Respondent shall have access to the Child for Victoria Day, British Columbia Day and Thanksgiving Day. For 2014, the Respondent shall have access to the Child for Canada Day, Labour Day and Remembrance Day.
5. The Respondent's access to the Child shall be on the following conditions:
- (a) There will be no consumption of alcohol by the Respondent at least 8 hours prior to access and during access;
 - (b) Upon request by the Claimant, the Respondent shall provide evidence of a valid B.C. driver's licence and valid automobile insurance; and
 - (c) For a period of 1 year, the Respondent shall submit to random alcohol testing from time to time at the written request of the Claimant, at the Respondent's expense, but not more often than once every three months and provided that such testing is conducted by a mutually approved professional organization.
6. The Child's ordinary residence shall not be changed from the Lower Mainland of British Columbia without the written consent of the parties or Order of the British Columbia Supreme Court.
7. Neither party shall remove the Child from the Province of British Columbia to another province or territory in Canada for a period of more than 72 hours without the other party's written consent, such consent not to be unreasonably withheld. Notwithstanding, the Respondent may remove the Child to Alberta during his access time provided that he provides written notice to the Claimant at least 2 weeks prior to departure, together with a complete and detailed itinerary of travel plans and points of destination and contact

information at the destination(s).

7A. In the event that either party requests a written letter of consent or statutory declaration to be signed to facilitate travel with the Child outside of Canada:

- (a) a minimum of 2 weeks' notification must be given with a complete and detailed itinerary of travel plans and points of destination, with this information to also be included in the letter or statutory declaration;
- (b) all costs for such legal papers to be prepared, signed and witnessed shall be the responsibility of the party arranging the travel plans;
- (c) the meeting with the notary or lawyer used to draw up said documents shall be at a location and time convenient for the party who is not arranging the travel plans; and
- (d) such letter or statutory declaration shall not be unreasonably withheld or delayed by the other party.

7B. The Claimant shall have possession of the Child's passport and birth certificate. She will provide the passport and birth certificate to the Respondent within a reasonable time after receiving the detailed itinerary and, if applicable, the signing of the consent or statutory declaration, for the purpose of travel with the Child and after providing her written consent for the travel.

7C. Any peace officer, including any R.C.M.P. officer, having jurisdiction in the province of British Columbia, who on reasonable and probable grounds believes that the Respondent, Kenneth Darcy Campbell, born July 1, 1956, is in breach of paragraphs 2 to 7B of this order, may immediately arrest that person and bring him before a judge of the Supreme Court promptly after the arrest, to be dealt with on an inquiry to determine whether he has committed a breach of this Order or the remaining terms of the Order made of this date.

Child Support

[19] Pursuant to the Order, Ms. Collier was found to have Guideline income of \$85,000 and Mr. Campbell was found to have Guideline income of \$45,000. Paragraph 8 of the Order provided that Mr. Campbell was to pay child support to Ms. Collier in the amount of \$385 per month commencing March 1, 2006. Paragraph 9 of the Order provided that extraordinary expenses were to be shared by the parties in proportion to their incomes, with Ms. Collier paying 65% and Mr. Campbell paying 35%. Finally, paragraph 10 of the Order provided:

The parties shall exchange tax returns and other financial information required by the Guidelines by May 31 of each year and child support will be adjusted accordingly June 1 to comply with the Child Support Guidelines, the first such adjustment to take place June 1, 2007.

- [20] Accordingly, it is clear that the parties intended to obtain financial disclosure by May 2007, with the first adjustment of child support payments, for both regular and the sharing of Section 7 expenses, to take place by June 2007.
- [21] Despite the fact that the Order was granted by consent and after receipt of legal advice, Mr. Campbell was very quickly in default of its provisions.
- [22] Mr. Campbell paid \$385 in regular child support from March 2006 until late 2008, at which time he stopped paying any child support, including the regular monthly amount of \$385. When Ms. Collier specifically asked him to meet his obligations, Mr. Campbell refused and threatened that he would request more access time if she forced him to pay. Ms. Collier enrolled with the Family Maintenance Enforcement Program in March 2009, which resulted in them securing payment of the arrears in 2010. I understand that Mr. Campbell continues to pay \$385 per month at this time and that there are no arrears of regular child support.
- [23] The Order also provided that Ms. Collier recover judgment against Mr. Campbell in the amount of \$38,000, which was to be payable by monthly payments of \$500 commencing in May 2006. He also stopped paying these monthly amounts in late 2008. Mr. Campbell only paid the amount outstanding in March 2012 after Ms. Collier indicated that she would be seeking an order holding him in contempt of court.
- [24] Mr. Campbell is also in default in paying his share of Section 7 expenses payable under the Order for the period of March to July 2006 and from August 2008 to the present. He has refused to pay his share of these expenses (35% per the Order) over these periods of time. As noted above, he indicated in late 2008 that he was simply refusing to pay any child support; however, I understand his present position to be that his income has declined since August 2006 and that he has accordingly overpaid for regular child support. As such, he considers that he has notionally set off this "overpayment" against any amounts payable for the Section 7 expenses. The total of the Section 7 expenses paid by Ms. Collier is now \$28,326.95 to March 2013.
- [25] The parties do not disagree as to what items are included within the Section 7 expenses, save for certain minor skating expenses that Mr. Campbell disputed. I am satisfied, however, that those skating lessons were expenses properly included within the Section 7 expenses that were incurred by Ms. Collier some time ago.
- [26] The fourth and final default by Mr. Campbell under the Order relates to financial disclosure, a matter that I will discuss in more detail below.
- [27] There is, of course, no doubt here that Ms. Collier and Mr. Campbell, as the parents of Brooklynn, have a duty to provide support for her in accordance with the Divorce Act and s. 147 of the Family Law Act.

[28] Presumptively, the tables under the Guidelines are the basis upon which regular child support obligations are quantified or later varied: see Divorce Act, ss. 15.1 and 17(6.1). The calculation of the amount required to be paid to satisfy the duty to provide child support, either initially or by variation, is also addressed in the Family Law Act, which also requires reference to the amounts arising from the Guidelines:

Determining child support

150 (1) If a court makes an order respecting child support, the amount of child support must be determined in accordance with the child support guidelines.

...

Changing, suspending or terminating orders respecting 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.

[29] Ms. Collier and Mr. Campbell do not suggest that child support either should have been or in the future should be calculated other than in accordance with the Guidelines.

[30] Ms. Collier's position is that the court should impute income to Mr. Campbell for the years following the date of the Order because he has failed to produce documentation and information in accordance with the Order and the Guidelines. She says that payment of retroactive child support should be ordered based on such imputed income. Further, Ms. Collier seeks an order to readjust the Section 7 expenses on the basis of that imputed income, again giving rise to payment of retroactive child support for those expenses. Finally, Ms. Collier seeks an order to determine the Guideline income of Mr. Campbell in respect of ongoing child support, including Section 7 expenses.

[31] Mr. Campbell's position in respect of child support has varied over the last two years. I take his current position to be as set out in his Notice of Application filed September 7, 2012 whereby he sought an order that no child support shall be payable on the basis of what he considers to be a shared custody and access arrangement between the parties. In addition, he seeks an order that the parties now share the Section 7 expenses, as may be mutually

agreed upon in advance, on a 50/50 basis, upon receipt of satisfactory proof of payment. He does not seek any cancellation of child support arrears relating to the Section 7 expenses despite his contention that his income fell below his previous Guideline income as set out in the Order. Again, I take his position to arise by some general offset of his alleged overpayment of regular child support against any amounts owing for the Section 7 expenses.

(a) Imputing Income to Mr. Campbell

[32] As stated earlier, the Order provided that the parties were to exchange income tax information by May 31, 2007, with the clear intention that the parties would adjust both regular child support and Section 7 expense sharing for the ensuing years on June 1, beginning June 1, 2007.

[33] The specific provision in paragraph 10 of the Order requiring that income tax returns be exchanged is also supplemented by the continuing financial disclosure requirements found in s. 25 of the Guidelines:

Continuing obligation to provide income information

25. (1) Every spouse against whom a child support order has been made must, on the written request of the other spouse or the order assignee, not more than once a year after the making of the order and as long as the child is a child within the meaning of these Guidelines, provide that other spouse or the order assignee with

- (a) the documents referred to in subsection 21(1) for any of the three most recent taxation years for which the spouse has not previously provided the documents;
- (b) as applicable, any current information, in writing, about the status of any expenses included in the order pursuant to subsection 7(1); and
- (c) as applicable, any current information, in writing, about the circumstances relied on by the court in a determination of undue hardship.

...

Time limit

(5) A spouse who receives a request made under any of subsections (1) to (3) must provide the required documents within 30 days after the request's receipt if the spouse resides in Canada or the United States and within 60 days after the request's receipt if the spouse resides elsewhere.

...

Failure to comply

- (7) A court may, on application by either spouse or an order assignee, where the other spouse has failed to comply with any of subsections (1) to (3)
- (a) consider the other spouse to be in contempt of court and award costs in favour of the applicant up to an amount that fully compensates the applicant for all costs incurred in the proceedings; or
- (b) make an order requiring the other spouse to provide the required documents to the court, as well as to the spouse or order assignee, as the case may be.
- [34] I will state at the outset that no issues were raised regarding Ms. Collier's financial disclosure, either under the Order or the Guidelines.
- [35] Section 21 of the Guidelines sets out in detail the level of financial disclosure and timeliness of disclosure required of Mr. Campbell, as applicable in this case:

Obligation of applicant

21. (1) A spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order must include the following with the application:
- (a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years;
- (b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;
- ...
- (d) where the spouse is self-employed, for the three most recent taxation years
- (i) the financial statements of the spouse's business or professional practice, other than a partnership, and
- (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;
- ...

Obligation of respondent

- (2) A spouse who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, must, within 30 days after the application is served if the spouse resides in Canada provide the court, as well as the other spouse or the order assignee, as the case may be, with the documents referred to in subsection (1).
- [36] Ms. Collier indicates that she has, since 2007, been requesting that Mr. Campbell produce his income tax returns. Mr. Campbell does not deny this. Specifically, Ms. Collier says that she advised Mr. Campbell in May 2007 that the Guideline amount payable by him based on his income, even as determined in accordance with the Order, had increased. Mr. Campbell advised that he did not file any income tax return for 2006 and that he had no documents to provide at that time.
- [37] I accept Ms. Collier's evidence and find that she has made the appropriate requests that Mr. Campbell provide the necessary information and documentation under the Order and the Guidelines since 2007 and ongoing to this time.
- [38] Despite her initial and ongoing requests for financial disclosure, for almost four more years Mr. Campbell continued to disregard the terms of the Order and his obligations under the Guidelines. Even after Mr. Campbell provided some financial disclosure, substantial issues remain that put its accuracy into question.
- [39] Furthermore, at no time has Mr. Campbell provided his income tax returns for 2006 and 2007. These were required by the Order for the purpose of setting the amounts payable for the May to June periods for 2007/08 and 2008/09 respectively.
- [40] In fact, Mr. Campbell did not provide any meaningful financial disclosure until the filing of his Form F8 financial statement on February 11, 2011. Given that he was also applying to increase his access to Brooklynn at that time, it does not take much of a leap of logic to conclude that he did so to avoid any disinclination on the part of the court to grant him relief in the face of his non-compliance with, and contempt of, the Order. This disclosure was also made in light of Ms. Collier's own application filed in late 2010 to impute income to him in the face of his non-compliance.
- [41] The need to provide some financial disclosure in his Form F8 appears to have prompted Mr. Campbell to prepare tax returns for the three previous years (2008 to 2010), all on February 9, 2011. Consistent with his earlier affidavits, he indicated that he operated a horseback riding business called "Back in the Saddle Again". He indicated Guideline income of \$12,547.58. He also reported total annual living expenses of \$54,720. No details of business assets were provided, although various business debts were referenced. His 2008 return indicates gross business income of \$72,190, with net income of \$14,935, although neither figure is supported by any further details or documentation. The same can be said for his 2009 return, which indicates gross business income of \$77,395, with net income of \$13,880.

Similarly, for 2010 the gross business income was \$76,395, with net income of \$12,547.

- [42] Various documents were also attached to Mr. Campbell's February 2011 Form F8. A 2009 document refers to another business that Mr. Campbell runs called "D&B Hay and Horse Sales", which had a loan outstanding from at least 2007. A Letter of Intent dated May 4, 2010 indicates that Mr. Campbell obtained financing for a truck from Ms. Schinkel. A document dated February 11, 2011 (the same date the Form F8 was sworn) refers to the "Back in the Saddle Again" business obtaining another loan from Ms. Schinkel. However, since no details of expenses are provided, it is uncertain whether these were actually claimed as expenses.
- [43] None of the three tax returns attached to the February 2011 Form F8 are signed. In addition, none of the materials included notices of assessment from Canada Revenue Agency (CRA) (understandably, given their preparation just days before) or financial statements, as required by the Guidelines.
- [44] The financial disclosure becomes more curious by reason of a further Form F8 filed by Mr. Campbell on June 27, 2012. At that time, he indicated again that he was operating the "Back in the Saddle Again" business. By this time, his tax return for 2011 was also provided, along with newer versions of his returns for 2009 and 2010, all having been prepared sometime in June 2012. He now indicated that his Guideline income for child support purposes was \$12,451, somewhat consistent with his earlier Form F8. He also indicated that he had annual living expenses of \$51,060, somewhat less than the earlier figure provided. Again, no details of any business assets were included, although he was able to set out in some detail various debts related to his business, including the two loans from Ms. Schinkel.
- [45] What is somewhat extraordinary is that the 2009 and 2010 income tax returns prepared in June 2012 are materially different than the ones prepared in February 2011 and attached to his previous Form F8.
- [46] For the 2009 tax year, this second version of the return indicates the same gross income, but a different (and lower) net income figure. This new return is also substantially more detailed than the one he attached to his 2011 Form F8. In particular, there are CRA forms called "Statements of Business or Professional Activities", as one would have expected. Moreover, in the new 2009 return, Mr. Campbell indicates that his "Back in the Saddle Again" business had a net loss of \$5,120 and that the D&B business had a net income of \$16,000, for combined net income of \$10,880. Despite the D&B business having outstanding debts in 2009 (as confirmed in the earlier Form F8), no interest expense is claimed.
- [47] The same discrepancies arise in relation to the 2010 return. In that return, Mr. Campbell indicates the same gross business income, but a lower net business income of \$9,547, arising from Statements of Business or Professional Activities relating to both the "Back in the Saddle Again" and the D&B businesses.

- [48] Many of the business expenses set out in the various income tax returns also have a personal component such that it is difficult, if not impossible, to determine whether only proper business expenses have been claimed. Ms. Collier submits that she has asked for details relating to the business income and expenses, but they have not been forthcoming. Expenses claimed in relation to the "Back in the Saddle Again" business bear little consistency from year to year, as set out in the tax returns.
- [49] As before, the tax returns provided in June 2012 have not been signed. Nor did Mr. Campbell attach any CRA notices of assessment for the years 2009 to 2011, which suggests that the returns previously provided in February 2011 for 2008 to 2010 were not likely filed with CRA. It has not been shown that even these newly disclosed returns have been filed.
- [50] During submissions, Mr. Campbell suggested to the court that his gross earnings from his "Back in the Saddle Again" business have never exceeded \$65,000-\$70,000. This is far in excess of his reported earnings in his returns and it also fails to recognize the earnings from his D&B business. Indeed, Mr. Campbell has been less than truthful in fully describing his business activities. For example, he swore affidavits in March and again in December 2011 stating that he operated "Back in the Saddle Again", but he failed to mention in either that he was also operating the D&B business selling hay and horses at that time (which was recently admitted to and now confirmed by his own 2011 tax return).
- [51] Mr. Campbell also stated during submissions (without any evidence) that he did not operate the D&B business after 2011. Yet his most recent Form F8 from June 2012 included a letter dated May 2012 from a lending institution addressed to D&B with respect to outstanding loans.
- [52] Despite this application being heard toward the end of April 2013, when most people would be preparing their income tax returns due on April 30, absolutely no further financial information was provided by Mr. Campbell to update the rather stale disclosure, such as it is, from June 2012. Again, no notices of assessment from CRA have been provided. And no financial statements for his businesses have been provided except a March 2007 statement (discussed below) obtained by Ms. Collier from a third party.
- [53] Mr. Campbell states in his evidence that he operated the "Back in the Saddle Again" business from 1998 until the fall of 2004. He says that he decided to sell the business in 2004 and that he only restarted the business in 2007 after his separation and divorce from Ms. Collier. This is denied by Ms. Collier, who indicates that, in fact, she was helping him with "Back in the Saddle Again" until the time of their separation in 2005.

- [54] Ms. Collier also confirmed in her evidence that Mr. Campbell bragged to her in past years about not paying any taxes and that his *modus operandi* was to "stay below the radar" with CRA. His history of filing--or rather, not filing--tax returns supports Ms. Collier's evidence. His utter failure to provide any tax returns or any financial information for 2006 and 2007 is evidence enough that he has little regard for the requirement to do so, particularly in light of his child support obligations.
- [55] In the face of this completely inadequate financial reporting by Mr. Campbell, Ms. Collier also presented various documents obtained from third parties relating to Mr. Campbell's businesses, which suggest a completely different picture than what he represents:
- a) In March 2011, Mr. Campbell applied for financing from BC Capital for the "Back in the Saddle Again" business. On a form signed by both him and Ms. Schinkel, they indicated that his gross income was \$100,000 per year;
 - b) Documentation prepared by Mr. Campbell indicates that the D&B business was started by at least September 2006. As indicated, Mr. Campbell failed to disclose this business in his affidavits sworn before this Court in both March and December 2011. Those documents also indicate that in March 2007, Mr. Campbell was applying for further financing for this business. His application for the loan indicates that his current monthly gross income (after hay and delivery costs) was \$8,000, for a total gross income of \$96,000 before operating expenses;
 - c) It is evident from a review of the "Back in the Saddle Again" website that Mr. Campbell's business is a "cash only" business. This is consistent with Ms. Collier's knowledge of the business and is the basis for her suspicions about why Mr. Campbell has this rather relaxed attitude toward filing tax returns and paying taxes;
 - d) When preparing his two Form F8s, Mr. Campbell described his various loans, but he indicated that his business assets were "unknown". Yet a further document produced from January 2011 indicated that Mr. Campbell had no difficulty at all preparing a detailed net worth statement for the "Back in the Saddle Again" business, listing \$80,000 worth of assets;
 - e) Ms. Schinkel's evidence was sought in connection with Ms. Collier's attempts to obtain financial disclosure. In June 2012, she was asked a series of questions concerning Mr. Campbell's D&B business. She denies that she had any involvement in respect of that business, but she did not state that Mr. Campbell was no longer involved in that business. This is contrary to, or at least inconsistent with, Mr. Campbell's suggestion during his submissions that he no longer operated that business in 2012.
- [56] Mr. Campbell did not file any evidence to rebut the inferences arising from these third-party documents provided by Ms. Collier. He continues to deny that his income is anything other than what is disclosed in his tax returns. Mr. Campbell attempted to suggest that the inconsistencies and gaps in his income tax reporting can be laid at the feet of his accountant. I do not accept such an explanation. Mr. Campbell has known since August 2006

when the Order was granted that he has an ongoing obligation to provide accurate financial information and documentation for the purpose of calculating child support. He has failed to do so. Even when he did provide some information and documentation, it is inconsistent and contains serious omissions.

- [57] In addition, no excuse was advanced to the effect that the failures in the financial disclosure arose because Mr. Campbell was self-represented on this application. It appears that he had retained counsel throughout most of these proceedings, beginning in 2005. Only recently this year did he decide to act on his own behalf. I can only presume that he was fully and adequately advised as to his obligations relating to financial disclosure over the course of these proceedings.
- [58] Again, it should be noted that Ms. Collier has been requesting for many years now that Mr. Campbell provide further details and supporting documentation in respect of his business activities. This included documentation relating to gross income figures, expenses, accounts, assets, insurance papers, credit card statements, and loan documentation. He has failed to provide any information other than what little is attached to his Form F8s.
- [59] Overall, I consider the income tax returns provided by Mr. Campbell to essentially be a work of fiction prepared for the purpose of attempting to persuade this Court, and perhaps the tax authorities, that his income is far less than what it actually is. Based on the inadequate disclosure by Mr. Campbell, and in the face of the unchallenged inferences arising from the documentation provided by Ms. Collier, I conclude that Mr. Campbell's income from 2008 to 2011 in respect of both of the businesses far exceeds what he has stated on the income tax returns. I place no weight on the income tax returns provided by Mr. Campbell. There is, of course, no information as to his income for 2006, 2007 and 2012.
- [60] Under s. 19 of the Guidelines, the court may impute income in the face of inadequate disclosure:

Imputing income

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

...

- (f) the spouse has failed to provide income information when under a legal obligation to do so;

Failure to comply

22. (1) Where a spouse fails to comply with section 21, the other spouse may apply
- (a) to have the application for a child support order set down for a hearing, or move for judgment; or

- (b) for an order requiring the spouse who failed to comply to provide the court, as well as the other spouse or order assignee, as the case may be, with the required documents.

Costs of the proceedings

- (2) Where a court makes an order under paragraph (1)(a) or (b), the court may award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

Adverse inference

- 23. Where the court proceeds to a hearing on the basis of an application under paragraph 22(1)(a), the court may draw an adverse inference against the spouse who failed to comply and impute income to that spouse in such amount as it considers appropriate.

Failure to comply with court order

- 24. Where a spouse fails to comply with an order issued on the basis of an application under paragraph 22(1)(b), the court may
 - (a) strike out any of the spouse's pleadings;
 - (b) make a contempt order against the spouse;
 - (c) proceed to a hearing, in the course of which it may draw an adverse inference against the spouse and impute income to that spouse in such amount as it considers appropriate; and
 - (d) award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

[Emphasis added.]

[61] Ms. Collier relies on three authorities in support of her argument that the court should impute income to Mr. Campbell.

[62] In *Raikou v. Kokkinis*, 2000 BCSC 1261, the court imputed income from the respondent's business, which resulted in cash earnings to some extent, while rejecting the amounts indicated on income tax returns: see paras. 13-21.

[63] In *Lessard v. Mahoney*, 2007 BCSC 562, the court imputed income where there had been a failure to provide information under the Guidelines. The court stated at para. 59:

[t]his amount may appear to be arbitrary, but that is the risk the defendant assumes when income is imputed in the circumstances.

[64] Finally, in *Goodnough v. Goodnough*, 2008 CarswellOnt 3107 (S.C.J.), the court also imputed income to the respondent where there was a failure in respect of disclosure obligations under s. 19 of the Guidelines.

[65] Given the complete lack of reporting for some years and the utter unreliability of the reporting that Mr. Campbell has provided, the court is in a difficult position to determine what Mr. Campbell's true income has been since the first time he was required to provide information in May 2007. Ms. Collier asserts that this Court should impute income to him of \$150,000 per year since that time.

[66] Even accepting that Mr. Campbell's true gross income is approximately \$196,000 as between his two business operations, as the documentation suggests was the case in the past, there would be substantial costs associated with those operations. I have attempted to glean from the income tax returns filed for 2010 and 2011 what those expenses would be. As best can be determined, those would include rent, interest, insurance, supplies for the horses, accounting fees, utilities, and motor vehicle expenses.

[67] In all of the circumstances, I find and impute to Mr. Campbell an annual net income of \$80,000 for the period commencing in June 2007 and continuing to this time.

(b) Retroactive Child Support

[68] The discretion to make an order of retroactive child support is found in ss. 17 and 18 of the Divorce Act. The circumstances in which retroactive child support may be awarded were addressed in *D.B.S. v. S.R.G.*; *L.J.W. v. T.A.R.*; *Henry v. Henry*; *Hiemstra v. Hiemstra*, 2006 SCC 37. In that case, the Supreme Court of Canada directed trial judges to adopt a broad and holistic approach in the application of four factors, summarized at para. 133, none of which alone is determinative:

1. Is there a reasonable excuse for why support was not sought earlier?
2. Was there any blameworthy conduct on the part of the payor parent?
3. Is a retroactive award appropriate in light of the child's past and present circumstances?
4. Will a retroactive award cause hardship to the payor parent or to his or her other children?

[69] At paragraphs 120-125, the Court stated that the commencement date for an award of retroactive child support should not be restricted to the date upon which an application to a court is made or formal notice is given, but rather should be the date of effective notice by the recipient parent to the payor parent. Effective notice was defined as "any indication by the recipient parent that child support should be paid": para. 121. The Court suggested that this is generally when the topic is broached.

[70] In this case, the uncontroverted evidence is that Ms. Collier has continuously sought to enforce Mr. Campbell's financial obligations under the Order. This included seeking payment of his 35% contribution toward the Section 7 expenses from 2006. Importantly, she also began seeking production of Mr. Campbell's financial disclosure on the first available date, namely May 2007. It was thus only after making substantial efforts to enforce payment of basic child support and to collect the other amounts owing under the Order that her original motion to determine his Guideline income and to fix the Section 7 expenses was

filed in December 2010.

- [71] I see no basis upon which to fault Ms. Collier in these circumstances for the fact that the matter is only just being addressed at this time. Mr. Campbell does not suggest that anything arises from the delay. He chooses to simply rest on his submissions, now rejected, concerning his income.
- [72] As the court noted in D.B.S. at para. 106, the expansive view of blameworthy conduct includes efforts by a payor parent to hide his income increases in the hopes of avoiding larger support payments. In fact, even where a payor parent does nothing active to avoid his obligations, it may still be blameworthy to consciously ignore them: D.B.S. at para. 107. I think it is quite evident that much of the delay in terms of dealing with this issue arises from the nonexistent or late and inadequate financial reporting, which is attributable to Mr. Campbell's blameworthy conduct.
- [73] Unfortunately, there was no direct evidence from Ms. Collier on how the increased payments would have affected her care of Brooklynn. However, it cannot be doubted that the cost of raising a child as between 2007 and the present time would have increased substantially: see *Burchill v. Roberts*, 2013 BCCA 39 at para. 46. Although Ms. Collier presently makes a generous income of \$95,520 working as a school principal, with the exception of the monthly contribution of \$385 from Mr. Campbell, she has been the sole financial resource for Brooklynn's expenses since that time. This includes the substantial Section 7 expenses to date of \$28,326.95 and which now total approximately \$6,495 per year. In the meantime, Mr. Campbell has had the resources to take various vacations, something that Ms. Collier has not done.
- [74] In the circumstances, I presume that had Mr. Campbell been paying the appropriate amount of child support, Brooklynn's circumstances would have been improved: *Burchill* at para. 49.
- [75] Accordingly, I find that retroactive child support is payable by Mr. Campbell based on the imputed income amount. The amounts that should have been paid by Mr. Campbell in respect of regular child support are as follows: (a) from June 2007 to December 2011 at \$739/month times 55 months = \$40,645; (b) from January 2012 to May 2013 at \$748/month times 17 months = \$12,716. After deducting the amounts paid during those 71 months (\$385 per month for a total of \$27,720), the net amount is \$25,641.
- [76] Ms. Collier has also sought a recalculation of the Section 7 expenses if income is imputed to Mr. Campbell. The calculation of Ms. Collier's reported line 150 income (after deducting \$769 in professional dues) is unchallenged on this application, as follows: 2007 - \$72,579; 2008 - \$79,729; 2009 - \$78,655; 2010 - \$84,617; 2011 - \$94,751. For the purposes of 2012 and 2013, I am prepared to assume that her line 150 income will be the same as it was in 2011.
- [77] I have completed the detailed calculations of the Section 7 expenses to March 2013 in Schedule A attached. The total amount payable by Mr. Campbell is \$13,661. Accordingly, the total amount payable by Mr. Campbell for retroactive child support is \$39,302.

[78] I acknowledge that payment of this lump sum may pose some hardship for Mr. Campbell. In my view, any such hardship can be addressed by requiring payment of the monthly sum of \$600 towards this total. This amount is to be in addition to the ongoing child support, including his share of Section 7 expenses.

(c) Shared Custody Issue

[79] I will briefly address an argument that was obliquely raised by Mr. Campbell on this application. This arises from his application that based on a "shared custody access arrangement", there should be no child support payable by him.

[80] The Guidelines provide the court with discretion to order amounts other than the table amount if custody is "shared", or beyond a 40% threshold:

Shared custody

9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared custody arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[81] Mr. Campbell submitted that if I increased his access, he would be beyond the 40% threshold. He bears the onus of establishing that such is the case: *Crofton v. Sturko*, [1998] B.C.J. No. 38 at para. 17 (Master).

[82] I am mindful of the comments of the Court of Appeal in *Berry v. Hart*, 2003 BCCA 659 that this is not simply an exercise of accounting for time. Rather, due regard must be taken as to whether the time spent with the paying parent can reasonably be said to equal or exceed the 40% level:

[10] In my view the issue is a matter of judgment not amenable to simply a time accounting exercise. I consider that in determining whether the threshold level for application of s. 9 is met the question is whether the paying parent spends such a sizeable percentage of time with a child or children that, on any reasonable view of the evidence and considering the advantage that may accrue to a child in spending the occasional additional day, part day or hour with a parent, one can say reasonably that the 40 percent or more level is achieved. It follows, in my view, that a court may assess child-parent time as meeting the s. 9 criteria without a tight accounting. That assessment should be made by considering the broader context of the parenting arrangement.

[83] I do not consider that Mr. Campbell has met the 40% threshold. He has Brooklynn approximately one and a half days during Week 1 and two and a half days during Week 2, for a total of four days every 2 weeks (or 28% of the time). This is so even without factoring in the allocation of the time to Ms. Collier while Brooklynn is in school during the two days in Week 1. Allocating this time to her would be consistent with the comments of the court in Crofton at para. 15, since she is clearly the parent having care and control of Brooklynn while Brooklynn is in school. There is no question that Ms. Collier is the person who exercises overall care and control of Brooklynn, who organizes Brooklynn's life and the one who maintains constant contact with Brooklynn's school and teachers.

[84] Accordingly, Mr. Campbell has not met the threshold in s. 9 of the Guidelines.

(d) Ongoing Child Support

[85] Ms. Collier seeks to vary the Order regarding child support, including imputing income to Mr. Campbell, to reflect the current circumstances of the parties.

[86] Applications to vary child support orders are governed by the Divorce Act:

Factors for child support order

17. (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.

Guidelines apply

(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

[87] The Guidelines also provide:

Circumstances for variation

14. For the purposes of subsection 17(4) of the 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

[88] The Family Law Act provides:

Changing, suspending or terminating orders respecting 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.

[89] Given my decision to impute income to Mr. Campbell, it follows that I find that there has been a material change of circumstances, since the Guideline amounts were set in the Order. Mr. Campbell's income will be set at \$80,000 for Guideline purposes for the ensuing year. Accordingly, he will be required to pay the monthly amount of \$748 for regular child support commencing June 1, 2013. In addition, he will be required to pay 45.7% of all Section 7 expenses commencing that date for the next year.

[90] In order to address all child support issues arising from the Order, the preamble to and paragraphs 8, 9, and 10 of the Order are deleted and the following provisions are substituted in their place:

AND UPON the Claimant and the Respondent having been found to have Guideline income for the following years:

Ms. Collier

(all dates from June to May)

Mr. Campbell

(all dates from June to May)

2007 - 2008

\$72,579

2007 - 2008

\$80,000

2008 - 2009

\$79,729

2008 - 2009

\$80,000

2009 - 2010

\$78,655

2009 - 2010

\$80,000

2010 - 2011

\$84,617

2010 - 2011

\$80,000

2011 - 2012

\$94,751

2011 - 2012

\$80,000

2012 - 2013

\$94,751

2012 - 2013

\$80,000

2013 - 2014

\$94,751

2013 - 2014

\$80,000

8. Retroactive child support payable by the Respondent to the Claimant, for both regular child support (to May 2013) and Section 7 expenses (to March 2013), is fixed in the amount of \$39,302. Payment of this amount is to be repaid by the Respondent to the Claimant by monthly payments of \$600 commencing June 1, 2013 and continuing until all amounts are repaid.

8A. The Respondent shall pay child support to the Claimant in the amount of \$748 per month commencing June 1, 2013 and continuing on the first day of each month thereafter until the Child is no longer a child of the marriage, as defined by the Divorce Act, or further order of the Court.

9. Section 7 special and extraordinary expenses of the Child will include:
- (a) all costs of education, with the exception of the following: all customary and recurring expenses, such as for clothing, food, education, gym kit, and transportation to and from school;
 - (b) all medical and dental expenses, including:
 - (i) that portion of the medical or dental insurance premiums attributable to the Child; and
 - (ii) any other health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment; professional counselling provided by a psychologist, social worker, psychiatrist, or any other person; physiotherapy; occupational therapy; speech therapy; and prescription drugs, hearing aids, glasses, and contact lenses;
 - (c) child care expenses, including the cost of daycare;
 - (d) the reasonable cost of the Child's ballet, piano, skating and swimming instruction (including registration fees, clothing and equipment); the reasonable cost of such other sporting, recreational, and social activities, lessons, and events; and any such related expenses as may be discussed in advance and mutually agreed upon in writing by the parties; and
 - (e) such other expenses as may be agreed upon by the parties.

9A. The Section 7 expenses will be shared by the parties in proportion to their Guideline incomes, with the Claimant paying 54.3% and the Respondent paying 45.7% from April 2013 to May 31, 2014. The Claimant shall be required to provide to the Respondent written confirmation of such expenses, and the Respondent shall pay his proportionate share to the Claimant within two weeks of receiving such information.

10. The parties shall exchange tax returns and other financial information required by the Guidelines by May 31 of each year. Child support, including the sharing of Section 7 expenses, will be adjusted every June 1 of each year to comply with the Guidelines, with the next adjustment to take place effective June 1, 2014, based on information and documentation to be received by May 31, 2014.

Costs

- [91] In light of the divided success of the parties, each party will bear their own costs.
- [92] By way of postscript, I wish to note that on May 7, 2013, while preparation of these reasons was underway, I received further written submissions from Ms. Collier. In addition to further argument, these submissions made reference to various matters that were not in evidence. I am not aware as to whether Mr. Campbell received this document or whether he intended to respond to them. In any event, for both reasons, I have not relied on these further submissions in reaching the conclusions in these reasons.

"Fitzpatrick J".

Schedule A

Calculation of Sharing of Special Expenses

Ms. Collier

Guideline Income

Section 7 Expenses

Mr. Campbell

Guideline Income

Share of Section 7 Expenses

Mr. Campbell's Proportionate Share

March - June 2006

\$2,245

\$785

35% (per Order)

Aug 1 2008 -May 31 2009

\$72,579

\$6,060

Aug 1 2008 - May 1 2009

\$80,000

\$3,177

52.4%

June 1 2009 -May 31 2010

\$79,729

\$5,057

June 1 2009 - May 1 2010

\$80,000

\$2,532

50.0%

June 1 2010 -May 31 2011

\$78,655

\$3,077

June 1 2010 - May 1 2011

\$80,000

\$1,551

50.4%

June 1 2011 -May 31 2012

\$84,617

\$6,285

June 1 2011 -May 1 2012

\$80,000

\$3,053

48.5%

June 1 2012 --March 2013

\$94,751

\$5,601

June 1 2012 - March 2013

\$80,000

\$2,563

45.7%

TOTAL:

\$28,325

\$13,661

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