

CANADA / JUDGMENT

D.D.M. v. J.M.M.

2023 BCSC 1834

COURT

Supreme Court of British Columbia

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2023 BCSC 1834 D.D.M. v. J.M.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.D.M. v. J.M.M.,

2023 BCSC 1834

Date: 20231019

Docket: E162096

Registry: Vancouver

Between:

D.D.M.

Claimant

And

J.M.M. also known as J.M.K.

Respondent

In Chambers

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Claimant:

E. Witzman

G. Dyer

Counsel for the Respondent:

R. Ingram

Place and Date of Hearing:

Vancouver, B.C.

September 21-22, 2023

Place and Date of Judgment:

Vancouver, B.C.

October 19, 2023

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Introduction

[1] The parties were divorced in 2017. At that time, they entered into a consent order with respect to parenting arrangements and child support. However, significant conflicts have continued. The parties filed four applications - two by the father and two by the mother - seeking a multitude of orders, all to be heard in a two-day chambers hearing. Due to time constraints, at the outset of the hearing and after discussion with counsel, this Court decided that only the following issues will be determined at this hearing: basic child support, location for exchanges of the child and counselling for the child. All other matters were adjourned generally. I have used initials in these reasons to protect the privacy of the child.

[2] D.M., (the "Father"), seeks the following orders:

1. an order to retroactively decrease child support payments from 2018 to present, to reflect the Father's income during those years;
2. an order that past overpayments of child support be credited to the Father for future child support payments; and
3. an order to vary the location of exchanges of the child and who may attend the exchanges.

[3] J.M., (the "Mother"), seeks the following orders:

1. an order that the Father pay arrears of child support from December 1, 2021 to August 31, 2022, in the amount of \$2,529.08;
2. an order that the Father's income be imputed to \$96,000 per year, pursuant to s. 19(1) of the Federal Child Support Guidelines, SOR/97-175 [Guidelines];
3. an order that commencing October 1, 2023, the Father shall pay to the Mother monthly child support of \$917 per month, based on an imputed income of \$96,000 per year to the Father;
4. an order that the Father pay the Mother retroactive child support for the period September 1, 2022 to present, in the amount of \$6,987.25, based on an imputed income of \$96,000 per year to the Father; and
5. an order that the Mother is authorized to engage mental health services for the child without the requirement of obtaining the consent of the Father, with the cost of such services to be included as a s. 7 expense shared in proportion to the parties' Guidelines incomes.

[4] Both parties filed affidavits. The Court inquired if either party was seeking to cross-examine on the affidavits. Both parties indicated they were content to proceed on the affidavits without cross-examination.

Factual Background

- [5] I take the following facts from the affidavits of the Father and the Mother. The parties both entered numerous affidavits, each containing multiple exhibits. I have reviewed all the materials. I have only referred to the evidence necessary for the determination of the issues.
- [6] The parties were married in July 2013 and separated in January 2016. They have one child, D., born February 13, 2015.
- [7] The Father filed a notice of family claim on June 2, 2016. The Mother filed a response and a counter-claim on August 30, 2016.
- [8] The parties with the assistance of counsel negotiated a final settlement of all issues arising out of their separation, which was incorporated into a Final Order dated September 13, 2017 (the "Final Order").

Child Support

The Evidence

- [9] The Final Order contained the following provisions dealing with child support:

BASED UPON the Claimant's Guideline income for child support purposes being \$44,000.00 and the Respondent's Guideline income for child support purposes being \$33,000.00;

- 11. BY CONSENT, on an interim basis, the Claimant shall continue to pay monthly child support to the Respondent for in the amount of \$402.00 pursuant to the Divorce Act (Canada), payable on the 1st of each and every month until further Order .
- 13. BY CONSENT, child support shall be reviewable each year and for the purposes of the review, the parties shall exchange all income disclosure set out in the Federal Child Support Guidelines by June 1st of each review year

- [10] The Father is currently 45 years old and has had financial challenges since the Final Order. He deposed that since 2017, he has been living at the poverty level. He lost his job as a tow truck operator due to a shoulder injury and a degenerative disc in his neck in 2017. He was homeless for a period of time in 2018, until a friend offered him a trailer to live in near Squamish. The Father retrained for a job as a film security officer near the end of 2018; however, when the Covid pandemic hit the industry, the Father's position was no longer available. Throughout the pandemic, the Father collected employment insurance benefits which ran out in October 2021. The Father then tried to start a woodworking business which was not successful.
- [11] In February 2022, the Father through WorkBC retrained as a heavy equipment operator. He had a job for six weeks with a construction company in July 2022 before he was laid off. The Father then obtained a job with another construction company in Alberta in September 2022; however, after two weeks of work, that too dried up. Since December 2022, the Father has been employed full time with a company in Alberta, working in the oilsands. A pay stub

shows he earns approximately \$3,716.96 gross every two weeks. The Father has to pay for four flights a month to Alberta for his job which cost approximately \$700 to \$1000 a month.

- [12] The Father has been paying \$402 for child support monthly since the date of the Final Order to December 2021. He borrowed money from family to make the payments. In December 2021, he paid \$222. The Father sent an email to the Mother in late December 2021 indicating that starting in January 2022, he would not make any further child support payments due to his view that he has been overpaying. The Mother sought assistance from the Family Maintenance Enforcement Program ("FMEP"). The Father in May 2022 negotiated a new rate of \$189.55 a month with FMEP due to his decreased income, and he has been paying that amount in child support up to the present. The Father submits he has made the following amounts in overpayment of child support from January 2018 to August 2023:

Table A

Year

Income

Amount ought to have paid for child support

Amount paid by the Father for child support

Amount of overpayment

2018

\$25,666

\$2,604

\$4,862

\$2,258

2019

\$6278

Nil

\$5,466

\$5,466

2020

\$19,643.40

\$1,908

\$5,328

\$3,420

2021

\$25,652

\$2,604

\$5,106

\$2,502

2022

\$19,500

\$1,872

\$2,973

\$1,101

2023 (January to August)

\$21,467

\$1,440

\$3,094

\$1,654

Total Amount of Overpayment from January 2018 to August 2023

\$16,401

[13] The Father seeks a finding that he has overpaid his child support in the amount of \$16,401. He is not seeking a repayment from the Mother but that he be credited with that amount moving forward. He also seeks to continue paying \$189.55 a month until his income tax return for 2023 has been filed and assessed. He argues his income from his current job is not fixed, as the amount he has to spend on flights per month is unknown. The parties have been basing support payments on the previous year's income, so he argues this method ought to continue until his income tax return for 2023 has been filed and assessed.

[14] The Mother disagrees with this approach. The Mother is opposed to the Father's application to retroactively decrease his child support payments. She argues instead of a retroactive decrease, there should be a retroactive increase in child support payments which ought to be continued prospectively as well. She has filed a cross application seeking the Father pay arrears of \$2,529.08 in child support from December 2021 to August 2022 (based on \$402 a month as stated in the Final Order); that the Father pay a retroactive amount of \$6,987.25 from September 1, 2022 to present (based on an imputed income of \$96,000); that the Father's income be imputed to be \$96,000 as of September 1, 2022; and based on that

imputed income, the Father pays \$917 per month in child support starting October 1, 2023.

Legal Principles

- [15] Section 17(1)(a) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) provides that on application, the court "may make an order varying, rescinding or suspending, retroactively or prospectively, a support order or any provision of one".
- [16] The framework for applications for a retroactive decrease in child support payments pursuant to s. 17 of the Divorce Act is set out in *Colucci v. Colucci*, 2021 SCC 24. The payor applicant has to show a material change in circumstances, such as a significant decrease in income: paras. 60-61 of *Colucci*. If the applicant meets the onus of showing a change in circumstances, then a presumption arises that support will be varied back to the date of effective notice. The Court at para. 88 in *Colucci* explained that effective notice in the decrease context is notice accompanied by "reasonable proof" that is sufficient to allow the recipient to "independently assess the situation in a meaningful way and respond appropriately".
- [17] Even where the payor has given proper effective notice, the period of retroactivity is presumed to extend no further than three years before the date of formal notice: para. 91 of *Colucci*. However, the court has a discretion to depart from the presumptive date, as explained in *Colucci*:
- [96] The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair in the circumstances of a particular case. In this section, I explore how the D.B.S. [v. S.R.G., 2006 SCC 37 [D.B.S.]] factors -- adapted to suit the retroactive decrease context -- help the court reach a fair balancing of the three interests at play, namely the child's interest in a fair standard of support, the payor's interest in flexibility, and the interest of the child and recipient in certainty. There is no fixed formula; none of the factors is determinative and they must be viewed holistically (D.B.S., at para. 99).
- [18] To depart from this presumptive date of retroactivity, the court has to assess the factors of delay, conduct of the payor, the child's circumstances and potential hardship: paras. 97-108 of *Colucci*.

The Parties' Positions

- [19] The Father submits he has met the threshold of showing a material change in circumstances such that the child support payments ought to be recalculated. His tax returns for the years 2018 to 2022 show his income. The Father argues he has not been intentionally underemployed. The evidence is he struggled financially for a period of time, but has very recently got back on his feet.

- [20] The Father argues there was no delay on his part in seeking an adjustment to his child support payments. He submits he tried many times since 2018 to ask the Mother to exchange financial information, as the Final Order directed the parties to do so on June 1 of every year. The Mother refused to provide her financial information to the Father, and instead directed him to use counsel to facilitate the disclosure. The Father deposed he could not afford legal representation during this period of time. The Father provided some of his financial information to the Mother in December 2022, and filed a formal notice to vary child support in January 2023.
- [21] The Mother argues there ought not to be any retroactive decrease in child support. She argues while the Father provided some financial information such as his Notices of Assessments in December 2022, he did not provide his tax returns until September 15, 2023. She argues the date of effective notice is September 2023, and at most the Father should only be able to obtain retroactive decrease from September 2020, three years prior. Further, she argues the Father ought to have an income of \$96,000 imputed to him starting from September 2022, as he had completed retraining by that time. The Mother applies to retroactively increase the child support payments based on the increased earnings of the Father.

Analysis

Retroactive decrease

- [22] In my view, there is evidence since the Final Order of a material change in circumstances. The Father's income has decreased, as shown by his tax returns. The decrease in income was significant, ongoing and not one of choice.
- [23] In December 2022, the Father by email provided his Notices of Assessments from 2018 to 2021 to the Mother, showing his decreased income. The formal application to vary child support was filed by the Father in January 2023. The Mother received the Father's tax returns on September 15, 2023. I find the date of effective notice to be December 2022, as by that date the Mother had "reasonable proof" of the Father's decreased income.
- [24] The issue is whether the date of retroactivity should be varied from December 2022 to January 2018. The Court has a discretion to depart from the date of effective notice, considering the factors of delay, payor conduct, the child's circumstances and potential hardship.
- [25] In this case, I find the Court ought to exercise its discretion to vary the date of effective notice to January 2018. In terms of delay, the Father tried many times to exchange financial information with the Mother. The Father deposed to the following:

" Between 2018 and 2022, I repeatedly asked the Respondent via text message and email to accept my income tax returns and recalculate support based on my true income. The Respondent refused to do so repeatedly, insisting that she did not have to exchange or accept my financial information".

[26] His affidavits show on June 1, 2020, he sent an email to her which reads in part:

we are due to sit down anyways to review our 2017 settlement agreement as per that agreement. We were supposed to annually and we haven't. So why not just do that, we can discuss it all together at that time. That's neutral ground and we can put all cards face up on the table, and reach a smooth road rather than the current bumpy one

[27] Her response a few minutes later:

You must not be reading it properly. There was never an agreement on annual meetings. Just another lie I will not be meeting with you until I see truth come out of your mouth and space from all your emails. If it's a problem you can email your lawyer

[28] The affidavits show the Father made additional requests to exchange financial information. These requests were made by the Father to the Mother, as well as to her previous counsel. These requests were made in June 2020; February, May, August, September, December 2021; and March and December 2022. I will highlight one such email from the Father dated September 20, 2021, where he wrote in part:

As we have requested several times in writing via email, text message and handwritten letter to yourself as well as requesting via your former lawyer . and your current lawyer , you are in breach as well as contempt of this order having refused consistently to disclose this information yearly unless I have a lawyer initiate (in your own words and writing) knowing full well that I did not have money to throw on a lawyer to enforce your following of Line items 12 and 13 of The Supreme Court Order dated 2017 stating that we are to exchange financials each year to review child support based on EACH OTHERS' incomes. Your refusal to do so, places you in contempt of this court order. My taxes are and always have been up to date with the Canadian Revenue Agency and I have requested a multitude of times for you to exchange this information to review child support as you earn more income per year than I have for the last 6 years

[29] Included in the Mother's affidavit is a text message chain regarding the topic from June 2, 2018, where the Father wrote in part:

Secondly, it is now June 2nd, and as per the supreme court order, as of June 1st we should have had our meeting to exchange all our yearly financial information.

[30] Her text in response read:

We are meant to submit our taxes to each other. I'm happy to do that through our legal counsel. Have your lawyer initiate Taxes must be up to date and completed just fyi.

- [31] The Mother continually refused to provide her financial information, taking the position that she was not required to as she did not have child support payment obligations. However, I note the Final Order places the requirement to exchange financial information on June 1 of every year on both parties. The Mother did not provide any of her financial information until August 15, 2023.
- [32] In my view, the evidence shows there was no delay on the part of the Father to provide effective notice. Since the Final Order, he continually sought to exchange financial information so his child support payments can be recalculated. The evidence shows the Father brought this up multiple times, but the Mother did not engage. The Mother's responses consisted of her position that she was not required to exchange financial information and that this exchange could only occur through counsel. I note neither of those positions are accurate.
- [33] In terms of conduct of the payor, I do not find blameworthy conduct on the part of the Father. He continued to pay the stipulated amount of child support in the Final Order until December 2021. FMEP then became involved, and the Father negotiated a lower payment based on his decreased income. The Father started paying this lower amount in May 2022. There is no evidence the Father tried to evade his legal obligations to his child. He paid child support throughout. While the Father's unilateral decision to stop child support payments in December 2021 thereby forcing the Mother to seek the assistance of FMEP may be blameworthy, I balance that against the Father's conduct in continuing to pay an amount of child support for the four years that he could no longer afford.
- [34] As for the circumstances of the child, I find there is no evidence the child is currently in financial need. The Father is not seeking repayment; he seeks a credit towards future child support payments. As those future child support payments will increase due to the Father's new job, the effect of the retroactive payments is ameliorated. The credits (deductions) will be applied to a larger child support payment.
- [35] In terms of potential hardship, I find if the retroactive date is not varied to January 2018, the Father will suffer hardship. Not only will he have paid child support, but he will owe arrears calculated on income he did not earn. He owns no assets and does not own a vehicle; he drives a vehicle owned by his mother. In terms of hardship to the Mother and the child, the evidence is the Mother expects to earn approximately \$22,000 in 2023 from disability benefits. She has listed assets of approximately \$283,000 in her F8 Financial Statement. She currently resides with her parents and owns a vehicle. Balancing all factors, I find decreased payments should be retroactive to January 2018.
- [36] I find the retroactive decrease should apply from January 2018 to December 2022. The amount of overpayment of child support from January 2018 to December 2022 is \$14,747. Starting January 2023, the Father gained new employment with an increase in earnings. The Mother applies for a retroactive increase in child support payments due to his greater income. I will discuss this next.

Retroactive increase

- [37] The Mother applies to retroactively impute an income of \$96,000 to the Father from September 2022, and seeks retroactive increase in child support payments from September 2022.
- [38] For the period of September to December 2022, the application for increased child support is dismissed as the Father's 2022 income is \$21,467.00, as stated in his income tax return. There is no evidence the Father was intentionally underemployed from September to December 2022.
- [39] I find an income of \$96,000 ought to be imputed to the Father as of January 1, 2023. The evidence is the Father has been working full time in the oilsands since December 2022. While the Father argues his flight expenses ought to be deducted, he has not put forth any evidence that they are an allowable deduction. To be an allowable deduction, the flight expenses must be required under the contract of employment: s. 8(1)(h) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.). The Father has not put in evidence his contract of employment.
- [40] For the period of January 2023 to present, the Mother seeks retroactive increase in child support payments. The Mother argues there has been a change in circumstances due to the Father's new job. She argues she has provided effective notice of her application for an increase in payments when she filed her application in August 2023. The Mother argues based on the D.B.S. factors, the date of effective notice should be varied from August 2023 to January 2023.
- [41] In my view, applying the D.B.S. factors, the date of effective notice should be varied to January 2023. While the Father advised in December 2022 that he had a new job, he did not disclose his new salary until June 2023, when he sent a pay stub. Until the Mother received information on his pay, the Mother could not have known if the Father's pay had increased. In the meantime, the Mother's counsel sent numerous letters to the Father and later to his counsel, requesting financial information. The evidence is the Mother's counsel sent requests starting in February 2023 for the Father's financial information, including his employment contract. I find there was no delay on the part of the Mother in applying for a retroactive increase. Considering the factors of delay, the conduct of the Father, the circumstances of the child and potential hardship, I find the retroactive increase ought to occur as of January 2023, the date of increased earnings.

Prospective increase

- [42] I agree with the Mother that moving forward, the Father's child support payments ought to be calculated based on an imputed Guidelines income of \$96,000. Child support payments should be \$917 per month.

[43] The Father argues his income for support purposes ought to be based on the prior year's tax return. However, the Final Order does not specify this method of calculating child support. While it may be a common method used by parties to recalculate on an annual basis, where there is an application to vary child support, I do not find it applies. Child support ought not be calculated on incomes that we know have changed significantly. Child support ought to be paid based on incomes earned in the year the support is paid: *Lewis v. Lewis*, 2021 BCSC 2099 at para. 55.

Conclusions on child support

- [44] The Father's child support payments from January 2018 to December 2022 are reduced retroactively. The amount of \$14,747 is the overpayment and it is to be credited to the Father against future child support payments. The arrears noted by FMEP are cancelled.
- [45] The amount of child support starting from January 2023 is \$917 a month. From the period of January to August 2023, the total amount of child support payments is \$7,336 (\$917 x 8 months). The Father has paid \$3,094 in this period, so he owes an additional \$4,242.
- [46] Starting in September 2023, the amount of child support is \$917 a month.

Location for Exchanges

- [47] The Father applies to vary the location of where the child is to be exchanged, and who may attend at these exchanges.
- [48] Pursuant to a consent order dated June 17, 2020, the child is to be exchanged at the gate of the Mother's residence:

The pick up and drop off of D. for the Claimant's parenting time shall always occur at the gate of the property where the Respondent lives, unless otherwise mutually agreed

- [49] The Mother lives with her parents at a residence inside a gated community in West Vancouver. As such, when the Father exercises his parenting time, he is sometimes required to pick up or drop off at the gate. The Father usually has parenting time from Wednesdays to Fridays. When school is in session, the Father picks up the child from the school, and on Fridays at 6:00 pm, returns him to the Mother's residence at the gate. I understand it is usually the Mother's parents who facilitate the exchanges.
- [50] There has been a history of conflict between not only the Father and the Mother, but between the Father and the grandparents. The Father is seeking all exchanges to occur at the lobby of the North Vancouver RCMP station, and for an order that the grandparents are not allowed to attend at these exchanges.
- [51] The Mother opposes this change. She argues it is traumatic for the child to be exchanged at a police station. She argues attending at a police station will send a message to the child that these exchanges are to be feared.

- [52] The Father played a number of audio recordings which were attached as an exhibit to his affidavits. The audio recordings were of the Mother and Father from 2015 or 2016, recorded by the Father without the Mother's knowledge. The Father argued these audio recordings bring context to their relationship. As the Mother did not object to the admissibility of the audio recordings, they were played in court.
- [53] I place minimal weight on these recordings. They were snippets of interactions between the parties, difficult to hear in parts. There is no context provided for the partial conversations heard. I draw no conclusions from these recordings and will say no more about them.
- [54] There have been several high conflict exchanges. The parties offer different accounts of the altercations; however, they agree the police were called at least twice. On October 8, 2021, after an exchange at the gate involving the Father and the grandmother, the grandmother called the police. On September 14, 2022, the Father attended at the school to pick up the child. The grandfather was there, as he was not advised by the Mother there had been a change in plans and the Father would be picking up the child. The grandfather called the police as he did not know if he should allow the Father to pick up the child. After the police arrived, the parties and the police met with the principal for about 15 minutes. The Father then left with the child.
- [55] There was an incident on January 27, 2023, when the Father arrived to pick up the child at the gate. The grandfather was there, and took some photos of the Father's new truck. There was a verbal exchange between the Father and the grandfather.
- [56] Starting in February 2023, the Father insisted that exchanges occur at the RCMP station, and not at the gate.
- [57] On February 24, 2023, the exchange occurred at the North Vancouver RCMP station. The grandparents deposited on the way home after the pickup the child was upset and it took more than an hour to calm the child down.
- [58] The parties offer different accounts of what transpired at each of these exchanges. I am not able to make any findings as to what happened, as there was no cross-examination. However, it is clear these exchanges at the gate are not in the best interest of the child, who witnessed the altercations.
- [59] Pursuant to s .47 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], on application, a court can vary an order with respect to parenting arrangement if there has been a change in circumstances. I find there has been a material change in circumstances since the consent order of June 2020 with respect to the exchanges of the child. These altercations escalating to police attendance are not in the best interest of the child. The child ought to know he will be picked up and dropped off between the parties in a peaceful manner.
- [60] While the Mother argues a neutral location that is not a police station will be best, I find based on the history of the parties, the best location is the police station. I note both the grandparents have in the past sought the assistance of the police in relation to their

interactions with the Father. The Father deposed that the Mother in the past has also called the police on him, and he had been arrested. In these circumstances, exchanges at the lobby of the North Vancouver RCMP station would be best. The exchanges will be recorded by the cameras inside the police station. Neither party will need to make any recordings of the exchanges.

- [61] As the location of the exchanges will be at the school when it is in session, or otherwise at the police station, I find there is no need to bar the grandparents from attending the exchanges. I acknowledge it would be a hardship to the Mother if she cannot rely on her parents to facilitate the exchanges if she is not available.

Counselling for the Child

- [62] Both parties agree the child needs counselling. The child is eight years old and was recently diagnosed with ADHD and Oppositional Defiant Disorder. The Mother is seeking an order that she be able to enroll the child in mental health treatment programs without the consent of the Father, with the cost of such services to be included as a s. 7 expense shared in proportion to the parties' Guidelines incomes. The Mother deposed that she would like the child to attend counselling through Alyson Jones and Associates in West Vancouver, at a cost of \$125 to \$200 per session.
- [63] The Father opposes such an order. He argues the parties cannot afford paid counselling, and that free counselling support programs are available. His position is the parties ought to exhaust all options for free counselling before resorting to paid counselling.
- [64] The evidence is the child attended a counselling program called the PEACE program in Squamish in 2020, a program affiliated with the Ministry of Child and Family Development ("MCFD"). The child was referred in July 2021 to more long-term counselling supports such as the Child and Youth Mental Health Program ("CYMH"). However, the CYMH is located in the same building where the Mother has worked for the past 15 years. The Father did not wish the child to receive counselling there, as he feared the workers at CYMH knew the Mother personally and would be biased. The Father deposed that there are other free counselling options available both in the area of North Vancouver, where the child lives, and in Squamish, where the Father resides. The Father has also been in communication with the principal about accessing counselling services through the school. The Father deposed that he is available to take the child to counselling on the alternate weeks when he is not working.
- [65] The parties agree the Court has jurisdiction to make an order with respect to counselling for the child pursuant to s. 224 of the FLA. As the parties have not been able to come to an agreement on this issue, they have asked the Court to decide how the child is to receive counselling support.

- [66] In my view, it is clear the parties ought to pursue the free counselling options first. There is no evidence before the Court that anyone has suggested the child requires private, paid counselling support. The Mother has not referred me to any documentation from any provider which concludes private, paid counselling is required for the child. The available information from the MCFD and the school all refer to longer term outside counselling, but does not specify it needs to be private paid counselling. The only reference to paid counselling in the materials is from the Mother.
- [67] The parties are not in a financial position to afford private counselling on a long-term basis. There are options available for free or at least subsidized counselling support. In my view, the parties ought to pursue those options first. If after one year, there is a need for private counselling, then the parties can engage a counsellor at a cost of no more than \$400 a month, to be shared by the parties as a s. 7 expense.
- [68] Further, in my view, if the parties cannot agree on counselling, the Father has authority to make decisions about counselling for the child. The evidence shows the Father has been proactive in trying to obtain counselling for the child. The Father provided details of various attempts he made since 2021 to obtain counselling support. He has also deposed he is willing to take the child to counselling on his weeks off work. The Court finds the Father is better suited to ensure the best interest of the child with respect to decisions about counselling. The Father ought to have the ability to make decisions on counselling without the consent of the Mother.

Conclusion

- [69] The Court makes the following orders:

Child Support

1. The Father's child support payments from January 2018 to December 2022 are reduced retroactively.
2. The amount of \$14,747 is the overpayment and it is to be credited to the Father against future child support payments.
3. The arrears noted by FMEP are cancelled.
4. The Father's Guidelines income is imputed to be \$96,000 a year starting in January 2023.
5. The amount of child support starting from January 2023 is \$917 a month.

Location of Exchanges

6. Unless the parties come to a different agreement, the exchanges of the child will occur at his school when he is attending school. For all other times, the exchanges will occur at the lobby of the North Vancouver RCMP station.

Counselling for the Child

7. The parties will pursue free counselling for the child. If after one year, there is a need for private counselling, then the parties can engage a counsellor at a cost of no more than \$400 a month, to be shared by the parties as a s. 7 expense.
8. Both parties are to be consulted on decisions with respect to counselling for the child. If the parties cannot agree, the Father has authority to make decisions about counselling for the child without the consent of the Mother.

[70] As success has been divided, in my view, each party should bear its own costs in this application.

"Chan, J."

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