

CANADA / JUDGMENT

## G.A.Q. v. C.L.L.

2025 BCSC 2424

### COURT

Supreme Court of British Columbia

### DECIDED

5 December 2025

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2025 BCSC 2424 G.A.Q. v. C.L.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

G.A.Q. v. C.L.L.,

2025 BCSC 2424

Date: 20251205

Docket: E052793

Registry: Victoria

Between:

G.A.Q.

Claimant

And:

C.L.L.

Respondent

Corrected Judgment: The text of the judgment was corrected

at paragraphs 112 and 185(e)(ii) on December 16, 2025

Before: The Honourable Justice K. Wolfe

Reasons for Judgment

Counsel for the Claimant:

M. Butterfield

The Respondent appearing in person:

C.L.L.

Place and Date of Trial:

Victoria, B.C.

April 7-11, 2025

Place and Date of Judgment:

Victoria, B.C.

December 5, 2025

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## Introduction

- [1] This trial concerns issues of child support and special or extraordinary expenses for the parties' child, born in May 2004 (the "child"). At the time of the trial, the child was about a month shy of his 21st birthday. The parties never married or lived together. In practical terms, the claimant mother has raised the child, with some assistance from her family. At the time of the trial, the respondent father did not have a significant relationship with the child though he expressed his desire to build one.
- [2] Between the child's birth and the middle of October 2008, the father paid child support to the mother. At first, he paid a voluntary amount, and after the parties signed an agreement dated May 30, 2005 (the "Agreement"), the father paid the amount set out in the Agreement. The father stopped paying after mid-October 2008; that timing coincided with the father's honourable discharge from the United States Navy. He effectively moved to Canada in late 2008 but did not obtain his permanent residency until mid-2021.
- [3] The father did not resume paying child support until September 2019, when he was contacted by what is now the British Columbia Family Maintenance Agency ("BCFMA"). I will refer to the BCFMA throughout. At that point, the father became aware the mother had filed the Agreement with the British Columbia Supreme Court in June 2005 and registered with the BCFMA in December 2009. As of March 31, 2025, the father owed arrears, interest and penalties of \$102,487.57 - an amount he contends he will never be able to pay.
- [4] The father seeks orders under s. 148(3) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] to set aside the terms of the Agreement governing child support and special expenses and to cancel accumulated arrears. Among other things, the father says he was pressured to sign the Agreement and its terms were unfair. Further, he says his departure from the Navy in late 2008 and his inability to work legally in Canada until mid-2021 constitute a material change in circumstances warranting retroactive variation of child support. In the alternative, the father seeks an order under s. 174 of the FLA to reduce or cancel the arrears, including interest and fees.
- [5] The father concedes he should pay some amount of child support but proposes that his payments between November 2008 and November 2021 (when he first obtained legal employment in Canada) should be based on the British Columbia minimum wage. Finally, the father seeks a declaration that the child ceased to be entitled to support, including special expenses, when the child turned 19 years old. He also seeks relief from specific special and extraordinary expenses claimed by the mother.
- [6] The mother opposes the relief sought on several grounds. Among others, she says the father has failed to provide sufficient financial evidence to allow the Court to properly decide whether to retroactively vary child support. She maintains the Agreement is valid and should govern the amount of child support owed at least until the father became legally

entitled to work in Canada in mid-2021. From that point forward, the mother says child support should be payable based on the father's reported income and should remain payable until the child completes his undergraduate degree in mid-2027.

- [7] The mother accepts the arrears in this case have gotten out of hand but maintains the father has not met the threshold of gross unfairness required for the Court to cancel or reduce some or all the arrears. Should the Court find a basis on which to exercise its discretion, the mother suggests the arrears for the period before mid-2021 ought not to be reduced below \$50,000, and interest should be payable on that amount.
- [8] At the start of the trial, the mother contended the father should pay half of all special and extraordinary expenses as contemplated by the Agreement. However, during the trial, the mother admitted she did not provide notice of certain expenses as required under the Agreement. In closing submissions, the mother submitted the father should pay half of all expenses incurred after 2019, but for the pre-2019 period, the father should only pay half of the expenses for which notice was not required.
- [9] The father represented himself during the trial, having advised the Court that he was financially unable to continue the retainer for his previous counsel. The mother had counsel throughout. On the first day of trial, I allowed the father's application to have his current spouse support and assist him at counsel's table. As I indicated at the close of trial, I am grateful to the mother's counsel, the father and the father's spouse for the collegial way they communicated and conducted themselves throughout the trial to ensure it moved forward and completed on time.
- [10] Despite the child's current age, to safeguard his privacy and well-being, I will refer to him as the child throughout these reasons. For the same reason, I have initialized the parties' names in the style of cause and have anonymized potentially identifying details.

## Issues

- [11] I frame the issues for determination by the Court as follows:
- a) Should the Agreement be set aside due to pressure when it was entered into or unfairness in its terms?
  - b) Is the child still a "child" for support purposes despite having turned 19?
  - c) What special or extraordinary expenses, if any, must the father pay?
  - d) What child support is the father required to pay? Specifically:
    - i. Should the father's child support obligations under the Agreement be varied retroactively under s. 148(3) of the FLA?
    - ii. Should any portion of the father's child support arrears, including interest and fees, be reduced or cancelled under s. 174 of the FLA?

iii. What are the father's child support obligations from May 2021 forward?

[12] The parties claim costs of the trial from each other. The mother also raised the issue of costs of two interim applications filed by the father that were struck off the list because he did not properly file the materials. Both parties suggested further submissions on costs may be required. I will address costs at the end.

## Background

[13] The parties provided significant evidence concerning their interactions before and after the child's birth, almost up to the point of trial. While I appreciate the history is important to the parties, not all of the information provided is relevant to the issues I must decide. I will only canvass those details that are relevant in these reasons.

[14] In this section, I will outline the general background common to all issues and make a few comments about the procedural history of this file. I will provide further factual details as required for my analysis of each specific issue below. Some conflicts in the parties' evidence do not require resolution for me to decide the issues; I will address any that do.

## The parties and the child

[15] The parties originally met in 2000 in Surrey, British Columbia, outside a nightclub. They became involved but have different interpretations of the nature of their relationship at that time. That dispute is not one I must resolve. It is agreed that they parted company after a time. The parties reconnected in 2003, when they again encountered each other at a nightclub in the lower mainland. Their second involvement resulted in the mother becoming pregnant with the child, who was eventually born in May 2004. The father raised a concern about the child's paternity in the months leading up to trial. He filed an application to address those concerns, but the application did not proceed. Instead, a paternity test was completed by agreement in February 2025. It confirmed, and the father acknowledged, that the child is the father's biological son.

[16] The father and mother never lived together. Throughout both periods when the parties were actively involved, the father resided in the United States, where he served with the United States Navy. He would periodically visit Canada. The mother was living in the lower mainland, but after she became pregnant and the relationship with the father deteriorated, she moved back to Vancouver Island where her family lived, so that she would have the benefit of their support with the child. She resided with her parents at various times.

- [17] The father was not present for the child's birth but did come to Canada the next weekend, as well as multiple times during the child's first year. The mother also took the child to the United States to visit the father once during his first year, but she found the solo journey with a young child difficult. The mother also had concerns that the father had not made sufficient preparations for the child, so the mother did not take the child to the United States again after that.
- [18] The father contends he provided the mother with cash child support from May to September 2004, including every time he came to visit, but the mother disputes this and in any event, there are no records that would allow me to find amounts. As detailed further below, I accept that in September 2004, the father began regularly paying the mother child support each month, but there were disagreements about the amount to be paid. Those disagreements culminated in the parties signing the Agreement in or around May 2005, when the father visited for the child's first birthday. I say more about what led to the Agreement, and about its terms, below.
- [19] The Agreement addressed custody, access and support for the child, including special expenses. Under the Agreement, the father was to pay the mother \$400 USD each month in child support, in two equal payments on the 15th and last day of each month. The Agreement also required the father to pay half of all special and extraordinary expenses, although some categories of expenses required the mother to provide the father advanced notice. The Agreement contained provisions for review and adjustment.
- [20] From June 2005 to mid-October 2008, the father paid child support under the Agreement. The parties agree that while generally reliable during this time, the father occasionally missed a payment. The parties did not review the support obligations or exchange financial disclosure as provided for under the Agreement. The father also did not ask or apply to vary the Agreement during this time, and the parties did not discuss special expenses. The parties agree the father travelled to Vancouver Island at least once to visit the child between his first birthday and the end of 2008, but there was otherwise very little contact.
- [21] During this same timeframe of mid-2005 to late 2008, the father was deployed overseas twice with the Navy: first to Afghanistan in 2006 and then to Iraq in 2007. In late 2005, the father began dating D.W., who lived in the lower mainland and who had a young son of her own, as well as two older daughters. The father became a father-figure to D.W.'s son, a relationship that continues to this day. D.W. and the father also welcomed a daughter in fall 2007; she was born while the father was deployed to Iraq.
- [22] In November 2008, seven months after returning from Iraq, the father was honourably discharged from the United States Navy. He testified that his plan at the time was to secure employment with border patrol services, but he was ultimately unsuccessful in obtaining that position. The father received unemployment benefits for a time after his discharge; the evidence is inconsistent about whether it was for one or two years.

- [23] Despite receiving unemployment benefits, the father effectively ceased paying regular child support to the mother in or around November 2008. The father admits he did not communicate with the mother when he stopped paying support and did not ask or apply to vary his support obligations under the Agreement at that point. The father asserts the mother was aware he was out of the military; the mother counters she did not know that until much later.
- [24] After his discharge in fall 2008, the father resided part-time in the lower mainland with D.W. and her children, and part-time with his brother in Texas. By early 2010, he was living full-time in Canada; he has continued to reside in Canada since then. The father did not work when in the United States part-time and was not legally permitted to work in Canada until he obtained his permanent residency in mid-2021. The father admits that between 2009 and mid-2021, he occasionally worked "under the table" in security positions, doing odd jobs, landscaping and as a labourer. The father testified that this work was sporadic, not regular.
- [25] The sporadic nature of the father's work was corroborated by D.W., and the father's subsequent partner, C.B., both of whom testified at trial. Unsurprisingly, the father does not have records of his "under the table" earnings. He says the amount "wasn't much", suggesting it was less than minimum wage. He estimated he probably earned in the range of \$600 per month if he was working, but there were many months he did not work at all. The father testified that when the COVID-19 pandemic shut down the hospitality industry, he barely worked at all. I accept the father's evidence that his under the table work was not consistent. The father admits he is unable to estimate his earnings between early 2009 and late 2021 with any accuracy.
- [26] The father's relationship with D.W. ended in or around late 2010, but the father continued to see D.W.'s children. The father also occasionally provided support to D.W. and her children, including sending money for back-to-school and money or gifts for Christmas and birthdays. D.W. testified that there has never been a formal or written agreement for the father to pay child support for his daughter. Rather, for the first several years after 2010, D.W. understood the father would assist as and when he could. If she needed funds, D.W. would specifically request money and the father would provide it if he was able. At some point before 2013, D.W. requested the father make more regular payments and he complied. By about mid-2022, the father was regularly paying \$300 per month for his daughter.
- [27] The father testified that he lived with friends and on couches for about six months until he began a relationship with C.B. in or around 2011 or 2012 and moved in with her and her family in the lower mainland. Consistent with the father's evidence, C.B. testified that she ran her own business and would occasionally ask the father to help her. In exchange, C.B. testified she would assist the father with meeting his "minimum requirements". This would include assisting him to make support payments to D.W. and to provide birthday or Christmas gifts for D.W.'s children. C.B. testified that she did not pay the father in direct funds; she considered herself to be the father's sole support while they were together, despite admitting he occasionally worked security jobs under the table. The father and C.B.

ended their relationship in or around 2016.

- [28] The father began dating his current spouse in 2016 and they moved in together in 2017. They live in the lower mainland and were married in 2019. They have a child together, born in 2021, who has required some additional supports. In or around 2019, the father began the process of applying for permanent residency in Canada. He testified that while he had considered doing so previously, he did not have the funds to do so and struggled with the application process. The father's current spouse was able to support him in that process.
- [29] As part of the application process, the father opened a bank account in 2019. He testified the bank subsequently put a hold on the account and garnished the funds. It is not controversial that when he called to inquire why, the father was advised it was because of child support arrears. The father says he contacted D.W. to ask if she had started a family maintenance case against him. When D.W. said no, the father says he contacted the mother.
- [30] The parties agree that when they spoke in September 2019, the mother advised the father for the first time that she had registered her child support claims with the BCFMA in 2009. The mother testified she believed the BCFMA had contacted the father earlier, after she sent the BCFMA information about one of the father's under the table jobs, but she did not know for sure. In any event, the father says he then began trying to address the issue of the arrears both with the BCFMA and initially directly with the mother. The father says it was through his discussions with BCFMA that he learned the Agreement had been filed with this Court. In September 2019, the father's arrears totalled more than \$75,000.
- [31] Although he remained ineligible to legally work in Canada, in or around September 2019, the father began making bi-weekly child support payments through the BCFMA, totalling approximately \$500 CDN per month. He testified, and I accept, that he relied on his spouse and his spouse's family to make the payments until he was legally employed in November 2021. I accept his evidence that he has paid about \$500 CDN per month based on his understanding of advice from the BCFMA that he should pay consistent with the Agreement.
- [32] The BCFMA payment record shows the father made fairly regular payments between September 2019 and March 2020, when the COVID-19 pandemic began. He explained his current spouse lost her job at that time. The father resumed making some payments in September 2020, but continued to miss occasional payments until mid-2022. From mid-2022 to April 1, 2025, the BCMFA payment record shows the father has generally made regular payments about every two weeks totalling approximately \$500 CDN per month.
- [33] By letter dated April 30, 2021, the father received confirmation of his permanent residency status in Canada. He obtained his first legal employment in Canada in or around November 2021, working for a landscaping company. He transitioned to two other jobs between June 2022 and June 2024, at which point he obtained the position he held at the time of trial, as a labourer for a civil construction company. At trial, the father expressed some concerns about the stability of the company and his future employment prospects with them.

- [34] The father contends he suffered trauma as a result of his military service, with effects that continue to this day. There is some lay evidence before the Court to support the notion that the father's military service led to certain physical and mental challenges, but the father concedes he did not provide any expert evidence or medical records to confirm any particular diagnosis. Both D.W. and C.B. testified to their lived experiences with the father, including nightmares, difficulty regulating emotions and behaviours consistent with a lay-person's understanding of anxiety and depression. The father and D.W. also testified about the counselling the father attended through the veterans' affairs office in Bellingham, Washington, to attempt to deal with his asserted trauma. Records from three counselling sessions in 2010 were in evidence at trial but it is not controversial they do not contain a diagnosis or significant detail.
- [35] Based on the evidence before me, I am unable to make any definitive findings about what the father may have suffered, or may still suffer, as a result of his military service. I am equally unable to make definitive findings about the impacts of any such conditions, including on the father's ability to work. However, I accept the evidence that since at least 2008, the father has had periods where he struggled with his well-being. My impression from the trial is that the stability and support of his current family situation, including the support he has received from his current spouse since 2016, has assisted him to get back on his feet to a certain extent.
- [36] There are conflicts in the evidence with respect to how often the father saw or contacted the child after 2008. The father testified he recalled a visit in 2009, several in 2012, one in 2014, one in 2016 or 2017, and one in 2020 (when the mother and child went to visit the father and his current spouse on the mainland). In contrast, the mother says there was only one visit in 2012, one in 2016 or 2017, and then the visit on the mainland in 2020. She contends the father has never sent the child a card or a gift for his birthday or Christmas; the father says he sent messages by text, but does not know if they were passed on. The parties agree that between 2020 and 2025 when the child was subpoenaed by the father to testify at trial, the father and the child had only seen each other briefly at the paternity testing in February 2025. It is not necessary for me to resolve the exact number of visits; it is clear the father and child have not spent any regular time together.
- [37] The father submits the mother did not do enough to facilitate his relationship with the child, going so far as to suggest she tried to alienate the father. For example, the father says the mother refused to bring the child to the mainland to see the father, despite the child confirming he travelled to the mainland a few times a year for sports or to see the mother's family. The mother counters the father prioritized his relationship with his other children and did not take proactive steps to build an independent relationship with the child. The mother expressed frustration that the father did not appear to appreciate his responsibility to establish an independent connection with the child; instead, she says the father insisted the child should get to know his half-siblings.

- [38] It is clear there is significant hurt on the part of both parties, as well as that of the child. The unfortunate reality is that, at least at the time of the trial, there was no meaningful relationship between the father and the child. When testifying, the child referred to the father by his first name or as "Mr. [last name]". The child candidly expressed feeling resentful that the father was not "there for" him, especially in light of the child's belief that the father was actively engaged with his other children.
- [39] Given the issues I must decide, it is neither necessary nor helpful for me to ascribe blame for the past actions of the parties. In my view, at certain points in their testimony, each party conceded there were occasions when they could have made different choices. I would strongly encourage the parties to look forward and to focus on supporting the child in his future. There is little to be gained from looking backwards at this point, as the past cannot be altered.

### Procedural history

- [40] Before turning to my analysis of the specific issues, I wish to make a few comments about the procedural history of this file.
- [41] The Agreement was attached to a requisition that was filed with the Court on June 2, 2005. At the time, s. 122 of the now repealed Family Relations Act, R.S.B.C. 1998, c. 128 and R. 60(44) of the former Supreme Court Civil Rules, permitted agreements to be filed with the Supreme Court for enforcement purposes. The court file reflects that the Court Registry opened a new family law case when the Agreement was filed.
- [42] The current R. 3-1(4.1) of the Supreme Court Family Rules expressly provides that if a requisition is filed with an agreement attached without there being an existing family law case, the filing of the agreement alone will start a family law case. In *Halliday v. Halliday*, 2015 BCCA 82, the Court of Appeal confirmed that where a family law case has been started by the filing of a requisition with an agreement attached, there is no need to issue a notice of family claim, as doing so would amount to commencing parallel proceedings.
- [43] In the present case, after the Agreement was filed on June 2, 2005, there was no further action in the family law case until the father filed a notice of intention to proceed on April 11, 2023. As is now required in all family law matters, the parties attended a judicial case conference on February 5, 2024. The Court made certain orders requiring the father to provide an updated financial statement and other documentary disclosure. The Court also ordered the matter to be set for a five-day trial in Victoria. In May 2024, the mother applied for orders requiring the father to pay security for costs and precluding the hearing of any application by the father to vary child support or cancel arrears until security had been paid. That application was denied in June 2024, with costs of the application awarded as costs in the cause.

[44] The parties attended a case planning conference in October 2024. In the mother's case plan proposal, her counsel raised the procedural history and the lack of "pleadings". At the case planning conference, Associate Judge Scarth made an order requiring the father to file a counterclaim and the mother to file a response to counterclaim, to delineate both the father's claims and the mother's response to them. The father filed his counterclaim on November 25, 2024. The mother filed her response to counterclaim on December 12, 2024. The counterclaim and response to counterclaim are the "pleadings" upon which the trial before me was argued.

## Analysis

[45] As noted, the parties were never married and never lived together in a marriage-like relationship. As there are no property claims, the parties accept, and I agree, that the issues to be determined regarding the Agreement, child support and special expenses are governed by the provisions of the FLA.

Issue 1: Should the Agreement be set aside due to pressure when it was entered into or unfairness in its terms?

[46] At trial, the father sought to challenge the Agreement on the basis that he was pressured to enter into it and one of its terms was significantly unfair. The father characterizes the term in question as requiring his access to be supervised. He says this requirement was unwarranted and designed to prevent him from forming a relationship with the child. The father initially suggested he was not given an opportunity to seek legal advice, but after being taken through correspondence about the Agreement in cross-examination, he resiled from that position.

[47] The father used the terms duress and coercion in his testimony and oral submissions but did not frame the substance of his challenge in terms of the applicable legal tests for setting aside or voiding an agreement. I do not mean this as a criticism; it is an observation about the submissions I received. I understood the thrust of the father's arguments to be that there was unfairness or pressure around his execution of the Agreement, and unfairness in its effect. The father also says there was no financial disclosure before the Agreement was entered into, and he was not advised it had been filed with the Court; he did not learn the latter fact until fall 2019. The mother disputes these allegations and says the Agreement is valid.

## The circumstances leading to the Agreement

[48] It is helpful to briefly set out the facts leading to the signing of the Agreement before assessing the father's claims. There is some documentary evidence around the negotiation of the Agreement and the parties each testified about this issue.

- [49] As noted above, the father says he made irregular cash payments to the mother for child support between May and September 2004. The mother says in July 2004, she retained a lawyer (not trial counsel) to assist her in formalizing custody, guardianship and support for the child. The lawyer's file closing letter to the mother, dated June 1, 2006 (the "File Closing Letter"), corroborates this. The mother says her counsel contacted the father about child support by letter in August 2004 and by phone in September 2004. Although a draft of a letter from the lawyer to the father dated August 12, 2004 was in evidence at trial, the File Closing Letter does not specifically reference that letter.
- [50] The father recalls receiving documents and having communications with the mother's then counsel leading up to the signing of the Agreement, but he does not recall the dates or many details of those communications. Based on the documents before me, I accept there were communications between the father and then counsel for the mother beginning in fall 2004 and continuing through spring 2005. I find that through her then counsel, the mother initially proposed to the father that:
- a) she have sole custody and guardianship of the child;
  - b) the father have liberal and generous access to the child on providing 72 hours' notice and with the mother or another person present until the child had matured or was familiar with the father; and
  - c) the father pay \$500 USD per month in support.
- [51] The mother says the father paid her \$500 USD in September 2004, but the amount was decreased to \$400 USD per month beginning in October 2004 because the father advised he could not afford the higher amount. The father does not recall the amounts paid or any specific reduction but does recall advising the mother's counsel he could not afford \$500 USD per month. The father does not disagree things transpired as the mother asserts; he simply does not remember the details. I accept the mother's evidence on this point and find the father paid \$500 USD for September 2004, and then \$400 USD per month beginning in October 2004.
- [52] The mother says that in mid to late January 2005, she and the father reached an agreement on custody, guardianship and support consistent with her original proposal above, except that the father would pay \$400 USD per month in support. The File Closing Letter confirms the mother instructed counsel to prepare an agreement on those terms. The mother says she provided copies of the draft agreement to the father when she saw him in February 2005. However, the draft contained a term concerning the father's life insurance beneficiary, and the father did not wish to change the beneficiary from his mother to the child.
- [53] The father recalls discussing the issue of the life insurance beneficiary with the mother's then counsel, but not when he did that. He testified that as he was preparing to be deployed to Afghanistan, he wished to retain his mother as beneficiary. The evidence at trial includes a letter from the mother's then counsel to the father dated March 21, 2005, forwarding a

revised agreement in those terms for his review. The letter suggests counsel had previously provided an earlier draft to the father; the father recalls receiving at least one earlier version before the version he signed.

- [54] The parties agree the father made plans to visit the mother and the child in or around early May 2005, to celebrate the child's first birthday. The mother says she and the father agreed he would sign the Agreement when he came for the child's birthday celebrations. The File Closing Letter indicates the mother requested copies of the most recent version of the Agreement in or around late April 2005 for that purpose. The mother says the father signed the Agreement when he was visiting for the celebration, as had been discussed. She does not recall the father suggesting he felt pressured or uncomfortable with signing the Agreement. Instead, she testified that if the father had expressed concerns about signing the Agreement when he came to visit, the Agreement could simply have been concluded via mail. She testified no one made any threats towards the father in relation to him signing.
- [55] The father denies he agreed or intended to sign the Agreement when he came for the child's first birthday. He initially suggested he was "ambushed" with the Agreement at the birthday celebration but subsequently admitted there had been discussions about the Agreement, and revisions were negotiated to it, in advance of May 2005. While the father maintained there were things in the Agreement he did not understand and that were still being "worked on", on cross-examination and in his closing submissions, he fairly admitted he had an opportunity to seek legal advice in the months leading up to the signing of the Agreement.
- [56] The father asserts that at the birthday celebration, he was confronted by the mother's brother-in-law and pressured to sign the Agreement. He says he was embarrassed and feared conflict with the mother's family. Because he did not wish to make a scene, the father says he did not feel like he had a choice other than to sign, even though he was not comfortable doing so. The mother disputes she would have asked the father to sign with everyone present. She says it was signed at another time that weekend. The mother subsequently signed the Agreement with her counsel, who filed it with the Court.
- [57] The father also says the Agreement unfairly required that his access to the child be supervised. He points to s. 2(2) of the Agreement which provides:
- 2 (2) [the father] shall have liberal and generous access to [the child], as follows:
- (a) upon providing to [the mother] SEVENTY-TWO (72) hours notice of his intention to exercise access; and
  - (b) in the presence of [the mother] or another person with whom [the child] is familiar until [the child] matures or becomes familiar with [the father].

[Emphasis added.]

[58] The father maintains that term unfairly restricted his time with the child, preventing him from establishing a relationship with the child by requiring his access to be carefully controlled and monitored. The father admits that he only saw the child three or four times in that first year but says that each time, the mother was present. The father says that situation has persisted throughout the child's life; even for the visit in 2020, the child's mother and grandmother accompanied the child to the father's house. The mother says that term reflected the reality that the child did not know the father, and that has never changed. In the circumstances, she says it was not unreasonable to require someone the child was familiar with to be present for the father's access until the child developed a relationship or familiarity with the father.

## Discussion

[59] A family law agreement is a form of contract, which is subject to common law principles that may render all or part of an agreement void or voidable. This includes principles like duress, where one party's actions compel the other party to act to their disadvantage in a way that vitiates the latter's consent: *G.C.G. v. M.J.T.*, 2016 BCSC 1277 at para. 104. Traditional indicia of duress include physical compulsion or threats to the person or a close relative: *G.C.G.* at para. 103, citing *Saxon v. Saxon*, 1976 CanLII 1540 at para. 16. While the law also recognizes claims of economic duress, they require urgent and compelling evidence of economic pressures that similarly serve to vitiate consent: *Young v. Sherk*, 2019 BCSC 312 at para. 86, citing *Stein v. Schommer*, 2006 BCSC 1551 at paras. 15-21.

[60] In *Babijowski v. Wolanicki*, 2022 BCSC 2126, the Court held at para. 61 that:

To constitute duress, there must be coercion of will so as to vitiate consent. Whether coercion of will vitiating consent has occurred depends on whether the person alleged to have been coerced protested, whether they had an alternative course available, whether they received independent advice, and whether they took steps to avoid the contract after entering into it [citations omitted].

[61] The father bears the onus of proving his allegation of duress. On the evidence before me, I am not persuaded the father was acting under duress when he signed the Agreement in or around May 2005.

[62] I accept the father was embarrassed and likely felt some pressure when presented with the Agreement to sign around the time of the child's first birthday celebration. He testified that his relationship with the mother's family was not positive. Regardless of what may or may not have been discussed before, I accept his evidence that he did not wish to "make a scene" during that visit. However, pressure or emotional distress alone is not sufficient to establish a claim of duress: *Ferguson v. Ferguson*, 2008 BCSC 151 at para. 55. There is no evidence of threats or physical compulsion in this case.

[63] Even if I were to accept that the father did not protest at the time because of the discomfort he felt, the father admits the Agreement was negotiated over a period of more than six months. He admits he had seen an earlier draft of the Agreement at least several months

before he signed it. He admits the Agreement was then revised to reflect his input and he had an opportunity to seek legal advice. I accept the mother's evidence that if the father did not wish to sign the Agreement that weekend, he had the option to connect further with the mother's then counsel, including to request additional changes.

- [64] Further, the father was already making support payments in an amount consistent with the Agreement when he signed it, and he continued to do so until mid-October 2008. The father did not raise the issue of his desire to vary or set aside the Agreement until after he was contacted by the BCFMA in fall 2019. The suggestion of duress was not raised for almost 20 years after the Agreement was signed.
- [65] I reject the father's contention that there was insufficient financial disclosure before the Agreement was entered into. Section 7 of the Agreement contains an express acknowledgment that neither party requested financial disclosure and that each party was satisfied with the financial disclosure provided. Under s. 7(3), both parties also waived their rights to further disclosure until the Agreement was reviewed. Recital D to the Agreement states the father had not disclosed his annual income. On the plain wording of the Agreement, the status of financial disclosure was known to both parties. At no time during the negotiations for the Agreement did either party request financial disclosure or suggest the lack of it was a deficiency. This is not a basis on which to set aside the Agreement.
- [66] I agree with the mother that there is no requirement at law for a party to notify the other party when they file an agreement with the Court. In any event, the File Closing Letter confirms the mother's evidence that her then counsel attempted to send the father a letter dated June 7, 2005, which enclosed a copy of the filed requisition. The letter was returned because the father had moved without providing a forwarding address to the mother or her then counsel. This is also not a basis on which to set aside the Agreement.
- [67] Finally, I do not agree that the effect of s. 2(2)(b) of the Agreement was unfair in a manner or to a degree that could render the Agreement invalid. The consistent evidence at trial was that, by spring 2005, the father had not spent sufficient time with the child for the child to be familiar with him. While the father says the mother's move back to Vancouver Island created a barrier to him visiting more often, the mother provided cogent reasons for her decision and had relocated more than a year before the Agreement was signed. There is no suggestion the father requested revisions to that term of the Agreement during the negotiations.
- [68] In the circumstances, I am not satisfied it was unreasonable or unfair to include a requirement that someone familiar to the child be present until the father and the child had built a relationship or familiarity with each other. While the case law around supervised parenting time has evolved since 2005, the focus on the child's best interests remains constant. There is no evidence the mother took advantage of a vulnerability on the part of the father to impose an "unacceptable" term that this Court could find either unfair or unconscionable.

[69] As the father has not established duress or unfairness that would warrant the Agreement being set aside on those bases, I find the Agreement is valid.

Issue 2: Is the child still a "child" for support purposes?

[70] The child turned 19 in May 2023. The father seeks a declaration that, having attained the age of majority, the child is no longer a "child" entitled to child support or special expenses. The father says the mother's actions severely restricted his ability to have a meaningful relationship with the child, there were no discussions about the child's plans for post-secondary education, and the child did not apply for student loans or grants to help fund his educational costs. The mother says the child remains a "child" under s. 146 of the FLA, and therefore entitled to support, because the child cannot support himself while pursuing his undergraduate degree.

[71] Section 146 of the FLA defines a "child", for child support purposes, as including "a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of the person's parents or guardians". The language in s. 146 of the FLA is similar, but not identical, to the definition of "child of the marriage" in s. 2(1) of the Divorce Act, R.S.C. 1985, c. 3, however, the case authorities confirm the analysis is not substantively different.

[72] Where the pursuit of post-secondary education is cited as "another reason" the child continues to be dependent, the Court must consider more than simple attendance in an educational program. Instead, the Court must look to all the surrounding circumstances to determine, first, if the child's educational pursuits are reasonable and if yes, if it is appropriate that those pursuits be financed by the parents: *Oleksiewicz v. Oleksiewicz*, 2017 BCSC 228 at para. 27, citing *Nordeen v. Nordeen*, 2013 BCCA 178 at paras. 15-17; see also *D.C.A. v. R.D.M.*, 2021 BCSC 385 at paras. 53, 57-62.

[73] To answer those two questions, the courts have found it useful to consider the following factors set out in *Farden v. Farden*, [1993] B.C.J. No. 1315, 1993 CanLII 2570:

- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
- (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
- (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
- (4) the ability of the child to contribute to his own support through part-time employment;
- (5) the age of the child;
- (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;

- (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
- (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.
- [74] I have considered the above factors in the context of this case. The child graduated from high school in June 2022. He testified that he applied for scholarships while in high school but only obtained a \$500 bursary for sports. In September 2022, the child began the criminal justice program at Camosun College in September 2022. He testified he was required to drive almost two hours each day to attend the program (more if traffic was bad). While the criminal justice program is billed as a two-year program, the child testified that he took a bit longer to complete it, finishing in December 2024. The child testified he reduced his course load a bit to ensure he could continue to succeed. The child also worked part-time (one shift a week) while attending Camosun. In my view, there is nothing unreasonable in the child having extended his course of study at Camosun in the manner he did.
- [75] Although I do not have evidence of how the child performed in that program, his results were successful enough for him to earn a place in a full-time, two-year program with the Justice Institute of British Columbia. He was set to begin that program in July 2025 and expected to complete it in July 2027, by which point he will be 23 years old. When combined with his Camosun studies, the two-year program at the Justice Institute will allow the child to obtain a bachelor's degree. From there, the child hopes to pursue a career in law enforcement. I accept that to be a reasonable plan for his future and agree with his observation that having a bachelor's degree will assist him with his goals.
- [76] While the child testified that he has not applied for student loans, he did make some attempts to apply for scholarships in high school and attained a bursary. It may be that he could make additional efforts to apply, but I do not find this factor alone sufficient to disentitle the child from support. Further, the child testified that he intends to keep working part-time through his next educational program. He spoke about the flexibility and support of the dedicated program at his workplace for retaining post-secondary students as employees.
- [77] The mother testified that she was able to contribute to a modest RESP for the child over the years. There was no evidence as to whether those funds have already been exhausted. I accept the child's evidence that while he uses his own earnings for recreation, time with friends and hobbies, the vast majority of his everyday expenses, such as accommodations, food, gas and insurance for his vehicle, and his cell phone, are paid by the mother. I also accept the mother has paid for all the child's tuition fees, books and other expenses associated with his post-secondary education to date. With respect to discussions about the child's educational plans, given the gaps in communication between the parties, and the lack of a real connection between the father and the child, it is unsurprising that the parties did

not discuss that issue.

- [78] I have considered the father's arguments that the state of his relationship with the child means the child is no longer entitled to support. I cannot agree.
- [79] The final factor identified in Farden addresses the situation where a mature child has unilaterally terminated a relationship with the parent from whom support is sought. There is no evidence the child has done anything of the sort. While it is clear the father and the child do not have a substantive relationship, unlike in Oleksiewicz, this is not a case where they previously enjoyed a relationship and the child unilaterally decided to cut off contact with the father. Here, the child and the father have never been part of each other's lives enough to develop a relationship. I am not persuaded that is the fault of the child, and in any event, he testified to his openness to building a relationship with the father. I am equally unpersuaded, in circumstances where each side blames the other for alleged failures to facilitate the father-child relationship, that it would be appropriate to further deny the child the benefit of support while he completes his undergraduate degree.
- [80] Accordingly, I find the child remains a child under s. 146 of the FLA for support purposes while he continues to pursue his undergraduate degree. His educational pursuits are reasonable, and it is appropriate for his parents to finance them. To provide the parties with some certainty, I find the child entitled to child support until the end of July 2027, when the evidence suggests his current course of study is expected to conclude.

Issue 3: What special expenses, if any, must the father pay?

- [81] The father disputes his obligation to pay the mother special or extraordinary expenses for the child under the Agreement and seeks a declaration that no money is owed to the mother in that regard. He says that, with the exception of one instance in or around 2014, the mother did not discuss special or extraordinary expenses with him or request that he contribute. The father says no information regarding the alleged special or extraordinary expenses was provided until 2023, after the mother retained trial counsel.
- [82] As noted above, the mother initially took the position the father should pay half of all special and extraordinary expenses pursuant to the Agreement. However, in closing submissions, the mother agreed to withdraw her claim for special or extraordinary expenses between 2007 and 2018 where the Agreement required the mother to provide the father advanced notice of the estimated costs. She admitted notice was not provided before 2019, but maintained notice was provided beginning in 2019, including through her counsel. She says the father should pay half of any special or extraordinary expenses incurred from that point forward. The mother asks the Court to fix the arrears of special or extraordinary expenses, and to make a new order that the parties equally divide such expenses beginning April 10, 2025, without any requirements for advanced notice.
- [83] Section 3(3) of the Agreement provides that the father and mother will share equally three categories of special or extraordinary expenses:

- a) any medical or dental, or orthodontic costs for [the child] not covered by insurance;
- b) daycare expenses incurred to permit [the mother] to work; and
- c) special or extraordinary expenses arising from [the child's] education or extracurricular activities.

[84] The catch-all category under s. 3(3)(c) of the Agreement does not define what types of expenses are included and there was no evidence the parties specifically discussed what expenses would fall within that category. After the three categories of expenses, the Agreement contains the following qualification:

provided that, with respect to non-emergency medical, dental or orthodontic expenses, or special or extraordinary expenses of [the child's] education or extracurricular activities, [the father] receives advanced notice of the estimated cost.

[85] The plain meaning of this term of the Agreement is that the mother is not required to provide the father advanced notice of estimated costs for daycare expenses but is required to provide advanced notice for the other two categories of expenses before the father's obligation to pay half is triggered. The parties did not suggest any other interpretation in their evidence or submissions.

[86] At trial, the mother adduced into evidence two packages of receipts, each with a total sheet, detailing certain expenses incurred for the child. The first package contains receipts between 2007 and 2018, totalling expenses of \$13,699.90. The second package contains receipts from 2019 to 2025, totalling expenses of \$22,577.88. The expenses in second package include expenses associated with the child's high school attendance, studies at Camosun College and the application fee for his Justice Institute program. The mother testified the two packages are not an exhaustive accounting of all the child's expenses during those timeframes; rather, they represent the expenses for which she was able to locate receipts.

[87] I have reviewed the evidence at trial against the parties' obligations under the Agreement and cases dealing with special and extraordinary expenses. Since the catch-all category in the Agreement is not further defined, I have considered how the Federal Child Support Guidelines [Guidelines] define "special or extraordinary expenses", and how the cases have interpreted such expenses.

[88] Section 7 of the Guidelines allows the Court to order payment of an amount in addition to regular child support to cover all or a portion of the following listed "special" or "extraordinary" expenses:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b) that portion of the medical and dental insurance premiums attributable to the child;

- (c) 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;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

[89] The notion that such expenses must be "special" or "extraordinary" arises because basic table amounts of child support are designed to cover all the "ordinary" costs of raising a child. Ordinary costs include items such as food, clothing, shelter and other necessities, as well as many educational, extracurricular and recreational expenses: *Clarke v. Clarke*, 2014 BCSC 824 at para. 49, citing *McLaughlin v. McLaughlin*, 1998 CanLII 5558 (B.C.C.A.), 167 D.L.R. (4th) 39.

[90] In addition to fitting into one of the above categories of "special" or "extraordinary" expenses, the expense must also be necessary in light of the child's best interests and reasonable in light of the parties' (and sometimes the child's) means and financial circumstances. To claim an extraordinary expense (one falling into categories "d", "e" or "f" above), the party must prove the expense is "extraordinary". For example, in *Clarke*, the Court held that expenses such as regular school fees, school supplies, and clothing do not qualify as "s. 7 expenses". Similarly, costs for recreational and extracurricular activities only qualify if the child's participation is at a level beyond that of an average child: *Clarke*, at paras. 53-56.

[91] Section 3(3) of the Agreement specifically lists medical and dental expenses (including orthodontics) that exceed insurance coverage, as well as daycare expenses incurred to permit the mother to work. Both kinds of expenses are reflected in the mother's packages of receipts. Leaving aside the post-secondary expenses, the other expenses reflected in the receipts relate primarily to the child's recreational and extracurricular activities (within and outside of school), as well as miscellaneous school fees and supplies.

[92] Given the jurisprudence, in my view, most of those expenses are unlikely to qualify as "extraordinary expenses". For example, while I accept that there was a compelling rationale for the child to enrol in karate initially, there is no evidence the child's participation in karate or kickboxing was at a level beyond that of a normal child staying active and engaged.

[93] The mother suggested that if the Court wished, she could provide additional submissions regarding the justification for some of the expenses in the pre-2019 period. She also submitted, and I accept, that in deciding whether certain expenses qualify as "special or extraordinary expenses", rather than expenses that ought to be addressed through the provision of regular child support, the Court can consider the child support actually

provided. I accept that, for the period from November 2008 to September 2019, there is no evidence the father provided any child support at all. However, the mother's primary position at trial was that the father ought to be required to provide support for those years pursuant to the Agreement, and existing arrears ought not to be reduced. If her position succeeds in whole or in part, the mother will receive at least some payment of child support for the relevant period, albeit well after the fact.

- [94] More fundamental, in my view, is the mother's admission that she did not provide advanced notice of the estimated costs of the pre-2019 expenses to the father. The Agreement is clear that, with the exception of daycare expenses, the father's obligation to share the child's expenses equally is contingent on him being provided advanced notice of the estimated costs. I accept the mother's evidence that there were large gaps in the parties' communications over the years, sometimes spanning multiple years at a time. I also accept the father changed his phone number multiple times and the mother did not always have the ability to contact him. The father does not deny either fact.
- [95] I accept this reality would have made it challenging for the mother to provide advanced notice of the estimated costs contemplated by the Agreement, especially when the evidence demonstrates the mother incurred expenses for items that could not realistically wait months or even years if the parties were not communicating. However, the mother cannot rely on the father's obligation to share equally in the child's expenses while ignoring her own responsibility to provide advanced notice of certain expenses.
- [96] Accordingly, for the pre-2019 period, and consistent with the concession the mother made in closing submissions, I find the father is only required to pay half of the daycare expenses incurred by the mother so that she could work. The Agreement did not require the mother to provide advanced notice of the estimated costs of those expenses.
- [97] I have reviewed the list and receipts for pre-2019 expenses. In my view, expenses for pre-school, before-and-after school care, and summer camps for the child all fit with the "daycare expenses" category under s. 3(3)(b) of the Agreement. I accept the mother's evidence that, as a single mother, she was required to have paid child care so she could continue to work. I am conscious that at one point, the lack of child care required the mother to quit a better-paying job for which she had trained in favour of securing a position with more flexibility. While I acknowledge the mother's family assisted where and when possible, it is not reasonable to expect the mother's family to provide full-time child care, nor did the evidence demonstrate they had capacity to do so.
- [98] The following table sets out the amounts the mother paid each year for daycare expenses, as I have defined them, based on the total sheet and receipts provided for the pre-2019 time frame:

Year

Daycare expenses incurred

2007

43.60

2009

939.00

2010

900.00

2011

3,004.00

2012

1,764.44

2013

476.00

2014

306.00

2015

519.50

Total:

7,952.54

[99] To the above total, I would add the \$300 expense the mother incurred in 2013 for orthodontic costs above what was covered by insurance. The father admits that the mother contacted him in or around 2014 about such an expense, so I find advanced notice was provided as required for that expense. While the father testified he did not have the ability to contribute at the time, his obligation to pay under the Agreement was not dependent on his financial capacity. Accordingly, for the pre-2019 period, I find the father owes the mother half of the \$8,252.54 she incurred for special and extraordinary expenses for the child, which amounts to \$4,126.27.

[100] From 2019 forward, many of the child's expenses are associated with his post-secondary studies at Camosun College between 2022 and 2024. As noted above, while the father says the parties did not specifically discuss post-secondary education for the child, this is not surprising in the circumstances. The father admits he was aware the child was attending Camosun College and would be enrolling with the Justice Institute. I took his admission to include an implicit admission that there are costs associated with those studies. In my view, those costs are appropriately considered to be extraordinary expenses. While the father

maintains he was not provided with an estimate of associated costs, the mother asserts she provided notice of those expenses, including through counsel. I accept the mother's evidence on this point.

- [101] When asked directly by the Court, the father accepted he would be obliged to contribute to the child's post-secondary expenses if the child remains entitled to support after turning 19 years old. I took the father's response to be a genuine recognition and acceptance of his obligations towards the child in this regard.
- [102] Given my findings above that the child remains entitled to child support until the end of July 2027, and the father's admission that support includes certain special and extraordinary expenses, I find the father must pay half of the post-secondary expenses for the child incurred to the point of trial. Based on the total sheet and receipts provided in evidence, I calculate those expenses (which include tuition, books and the Justice Institute application fee) to total \$12,955.79; the father's half share is \$6,477.90.
- [103] The mother has claimed some additional expenses in the post-2019 period, including various fees for the child's high school requirements, sports and activities, and certain extracurricular or recreational activities like karate and kickboxing. With limited exceptions, for the reasons set out above, I do not consider those expenses to qualify as "extraordinary" expenses. The exceptions are as follows.
- [104] There are two expenses associated with the child's graduation (the ceremony fee and his grad wear), which total \$107.65. There is evidence both that the father had advanced notice of the child's graduation, and that the father provided financial support to D.W. for graduation expenses for one or more of her children. In the circumstances, I find it appropriate to require the father to pay for half of those expenses; his share is \$53.85. Given the evidence before me, I also consider the child's tutoring expense of \$554 in 2023 (during his Camosun College studies) and the \$1628.39 cost of a laptop for him to use for school to qualify as extraordinary expenses. I find the father must pay for half of those expenses as well; his share is \$1,091.20.
- [105] The post-2019 expense package includes a claim for \$3,201 in orthodontic expenses; the receipt in evidence includes a handwritten notation that it was for the child's braces. I do not have evidence about what, if any, portion of this expense was able to be reimbursed through the mother's insurance. The mother is employed with the provincial government and has health and dental benefits. Unlike with the expenses associated with post-secondary school and graduation, there is no evidence the father had advanced notice of this expense. In the circumstances, I do not consider it appropriate to require him to pay half of that cost.
- [106] As a result, for the post-2019 period, I find the father owes the mother a total of \$7,622.95 for special and extraordinary expenses.

[107] Taking both the pre- and post-2019 periods into account, I fix the amount of arrears the father must pay the mother for the child's special and extraordinary expenses at a cumulative total of \$11,749.22.

[108] On a prospective basis, I agree with the mother that the parties would benefit from appropriate certainty and guidance, especially in light of the child's age and my above findings about his continued entitlement to child support. I agree I should replace the terms of the Agreement regarding special expenses with an order that from April 10, 2025 forward, the parties are to share special and extraordinary expenses equally, unless the parties agree in writing otherwise or the court otherwise orders. I will not impose a requirement for advanced notice. However, I will add a further term that the parties are to advise each other within 15 days of incurring such an expense for the child. Either party is at liberty to dispute, in writing, that a particular expense qualifies as a special or extraordinary expense or that it is a necessary and reasonable expense in the circumstances; the claiming party may respond to justify the expense. The parties are to use best efforts to reach agreement on disputed expenses, failing which they may apply to the Court for a determination.

[109] The detailed terms of these orders are set out below.

Issue 4: What child support is the father required to pay?

[110] There are several sub-issues to be determined in relation to the father's child support obligations, with multiple timeframes to be considered. Above, I framed the sub-issues as follows:

- i. Should the father's child support obligations under the Agreement be varied retroactively under s. 148(3) of the FLA?
- ii. Should any portion of the father's child support arrears, including interest and fees, be reduced or cancelled under s. 174 of the FLA?
- iii. What are the father's child support obligations from May 2021 forward?

[111] The father's counterclaim contains language about cancelling or setting aside the Agreement. In his closing submissions, the father accepted he has an obligation to pay some form of child support throughout. He asks the Court to adjust the amount of support payable based on an alleged change in circumstances that decreased his income between November 2008 and November 2021. At times the father appeared to suggest the support he paid between September 2004 and mid-October 2008 exceeded the amount that ought to have been payable based on his Guidelines income. However, because I understood his primary focus to be adjusting the amounts payable from November 2008 forward, I have not addressed the pre-2008 timeframe.

[112] I consider May 2021, when the father became legally entitled to work in Canada, to be the dividing point between the father's historical support obligations and his more recent and ongoing obligations. The first two sub-issues relate to the father's historical support obligations, including arrears, penalties and interest arising from them. The last sub-issue relates to the father's obligations after May 2021, when he became legally entitled to work in Canada. In that regard, I must decide how to calculate the father's support obligations for the periods of May to December 2021, 2022 and 2023, and then 2024 to mid-2027. Both parties agree the Court should replace the child support terms of the Agreement with an order that establishes the father's child support obligations beginning in either May or November 2021.

### Sub-issue 1: Retroactive variation of child support

[113] The father's child support obligations are set out in the Agreement, rather than a pre-existing court order. While s. 148(2) of the FLA provides that an agreement filed with the Court may be enforced as if it were a court order, filing does not convert an agreement into a court order: see for example, *Cominetti v. Cominetti*, [1993] B.C.J. No. 1486 (S.C.) at para. 36, in the context of s. 148(2)'s predecessor under the Family Relations Act. The father's application to retroactively vary the Agreement and adjust child support for the period from November 2008 to April 2021 is therefore properly brought under s. 148(3) of the FLA.

[114] Before setting out the legal principles on an application for retroactive variation under s. 148(3) of the FLA, it is first helpful to briefly review some of the fundamental principles of child support.

[115] Child support is the right of the child. That right imposes a legal obligation on both parents to support their children in a way that is commensurate to their income. As a result, when a parent's income increases, a child generally has a right to increased support payments: *D.B.S. v. S.R.G.*, 2006 SCC 37 at paras. 48, 131. Conversely, when a parent's income decreases, that parent may seek to decrease the amount of support payable, but the overall decision about whether to decrease support remains discretionary: *Colucci v. Colucci*, 2021 SCC 24 at para. 5. Since neither the child nor the recipient parent can waive the child's right to support, delay in enforcing the child's right to support is generally irrelevant: *Boyko v. Fitzgerald*, 2022 BCSC 614 at para. 84, citing *D.B.S.* at para. 38.

[116] The Court has jurisdiction and a duty to ensure the child's best interests are met and adequate provision is made for support. This jurisdiction continues despite any agreement between the parties: *Kneale v. Yausie*, 2022 BCSC 1038 at para. 34, citing *D.B.S.* at paras. 60, 77-78.

[117] Section 148(3) of the FLA provides the Court with both prospective and retroactive authority to set aside all or part of an agreement respecting child support or to replace it with an order if the Court would have made a different order after considering the matters in s. 150. Section 150 presumes child support is payable based on the amount set out in the

Guidelines, subject to the Court's discretion to order otherwise: *Hinz v. Davey*, 2022 BCCA 232 at paras. 51-52. Accordingly, the first step on any s. 148(3) application is to determine what support would have been payable under the Guidelines, in order to decide if I would have made a different order: *G.J.L. v. M.J.L.*, 2017 BCSC 688 at para. 122.

- [118] If the Court concludes it would have made a different order, the Court must next consider if a retroactive variation is appropriate. Among other things, this involves consideration of the four analytical factors established in *D.B.S.* (discussed further below) and modified by *Colucci* for the retroactive decrease context. If a retroactive award is appropriate, the Court must quantify the change.
- [119] Several decisions have concluded the applicant need not establish a "material change in circumstances" as a pre-requisite to a court revisiting the terms of a written agreement. Where there is no pre-existing court order, an application to replace an agreement with an order is essentially an original application to establish support at a particular level: *Worsfold v. Worsfold*, 2018 BCSC 45 at paras. 35-38; *A.V. v. L.A.M.S.M.*, 2022 BCSC 1840 at para. 30. It is clear, however, that a material change in circumstances since entering into an agreement, such as a significant change in the payor's employment situation, can be a basis for the Court to reconsider child support obligations: *Hinz* at paras. 53-62.

## Analysis

- [120] The father seeks a retroactive decrease in child support based on an asserted material change in circumstances. He says his discharge from the United States Navy in 2008, and his subsequent inability to work legally in Canada until 2021, resulted in a material change in income.
- [121] The father does not dispute that his Guidelines' income is the starting point for any analysis under s. 148(3). The difficulty is that there is very little financial information on which to determine the father's Guidelines income before November 2021. There is very little financial information about the period from November 2008 to mid-2021, for which the father seeks to retroactively vary his support obligations. There is also very little financial information about the father's Guidelines income before November 2008, which is needed to assess if there was a material change. I note that as the mother has sole custody and guardianship of the child, and the child is 100% in her care, the mother's Guidelines income is not relevant.
- [122] The evidence confirms the father was honourably discharged from the United States Navy on October 22, 2008. The father testified he was entitled to a brief period of leave after his discharge and he then received unemployment benefits for a period of either one or two years. The father testified he was unable to obtain income tax records from the United States before 2012. As a result, I have no information about what the father received in the first one or two years after he was discharged. That said, in my view, it is uncontroversial that unemployment benefits are not equivalent to full-time wages.

- [123] With respect to the father's military earnings before November 2008, the father provided publicly available pay grids showing the monthly earnings for various classifications of U.S. military personnel for the years 2004 to 2008. He accepts that the pay grids only reflect base pay and not any additional pay or benefits he may have received during that timeframe, such as hazard pay during deployments.
- [124] For the period between November 2008 and the end of the 2020 calendar year, I effectively have no evidence respecting the father's income. I accept the father worked illegally in Canada during this time period. But as indicated above, he is candid that he has no way to accurately estimate what he earned and there are no records he can produce. He did not have a bank account in Canada until 2019.
- [125] To address this challenge, the father submits the Court should impute to him annual earnings consistent with the British Columbia minimum wage for the years 2009 to 2021. He obtained the figures online and provided them in a table of calculations that formed part of his closing submissions. While the father maintains he earned less than minimum wage working under the table, he is content to have the Court impute minimum wage earnings to him.
- [126] The first question is whether I am satisfied I would make a different order for support, having regard to the factors in s. 150 of the FLA. Based on the publicly available pay grids and the father's classification in the Navy, it appears that the father's 2008 salary was at least \$2,722.20 USD per month, or \$32,666.40 USD annually. The parties agree the father ceased his military employment as of November 2008 and was not legally employed again until November 2021.
- [127] Whether I treat the father as having received some amount of unemployment benefits or the 2009 British Columbia minimum wage, I have little difficulty concluding that his income for 2009 would have decreased from his previous military earnings in 2008. As the amount of child support payable under the Guidelines would be based on the father's income, I am satisfied that, beginning in 2009, I would have made a different order for child support than what was provided for in the Agreement.
- [128] The next step is to determine if the father is entitled to a retroactive decrease in support. The seminal authority is Colucci. Although Colucci was decided in the context of the Divorce Act, the principles are not materially different where, as here, the matter arises under the FLA.
- [129] In Colucci, the Supreme Court of Canada attempted to simplify the analytical framework previously established in D.B.S. In particular, the Supreme Court of Canada held that where a payor parent establishes a material change in circumstances, there is a presumption that support will be varied back to either the date of effective notice (as long as it is not more than three years prior to formal notice), or the date of formal notice if no effective notice is given: Colucci at para. 71.

[130] Where a payor establishes a material change in circumstances, the Court must then consider whether to exercise its discretion to depart from the presumptive date of retroactivity to achieve a fair result. The Court may extend or shorten the period for retroactive variation. To assess whether and how to exercise that discretion, Colucci (at para. 71) says the Court should consider the four factors set out at paras. 94-116 of D.B.S. In the context of a request to retroactively decrease support, Colucci frames those factors as follows (see paras. 97-103):

- a) whether the payor has an understandable reason for the delay in giving effective notice or seeking relief from the courts;
- b) the payor's conduct, including any positive or blameworthy conduct;
- c) the child(ren)'s circumstances; and
- d) any hardship to the payor if the support is not decreased.

[131] Colucci is clear that despite the presumption of retroactive variation, the Court retains discretion not to award a retroactive decrease to a payor who has established a material change in circumstances - at all or back to the presumptive date of retroactivity - if the result would be unfair: Colucci at paras. 5, 71, 74.

[132] Applying the above principles to the facts of this case, I am not satisfied the father has met the threshold of establishing a material change in circumstances as defined in the case law. If I am wrong in that finding, I would still not retroactively vary the father's child support obligations between November 2008 and mid-2021. My reasons are as follows.

### Material change of circumstances

[133] To establish an income-related material change of circumstances that justifies retroactively decreasing the amount of child support payable, a payor must establish a change in income that is significant, has some degree of continuity, and is real and not one of choice: Colucci at para. 61. The payor must disclose sufficient reliable evidence for the Court to determine when and how far their income fell, the degree and duration of the change, and whether it was one of choice: Colucci at para. 62. In short, a decision to retroactively decrease support "can only be made based on 'reliable, accurate and complete information'": Colucci at para. 62, citing *Earle v. Earle*, [1999] B.C.J. No. 383 at para. 28, CanLII 6914 (S.C.)

[134] The father's assertion of a material change of circumstances here presents two problems.

[135] First, the evidence of the father's financial circumstances is deficient. While the father obtained some documentation and has provided more complete financial information from 2021 forward, overall, he has provided very little financial or other disclosure to help the Court understand his circumstances during the period of time for which he seeks variation. I accept there are challenges in attempting to obtain complete financial records going back almost 20 years; such challenges underlie the courts' concerns about delays in bringing

variation applications. I also accept those challenges are amplified when a person is unable to work legally in Canada. However, Colucci is clear that a payor has a significant obligation to provide adequate, accurate and timely financial disclosure (paras. 48-54).

- [136] The evidence before me indicates that before the father attempted to address child support through the Provincial Court in 2022, he had provided very little information to the mother about his circumstances, financial or otherwise. While he says he never refused to answer the mother's questions, the father did not voluntarily update her about his situation.
- [137] The father did not advise the mother when he left the military and chose to stop making any child support payments. The father knew he had obligations under the Agreement but made no effort to address them until he was contacted by the BCFMA in 2019. During this same timeframe, he admits he had sporadic work and was able to provide some child support to D.W. for his daughter. Within the child support regime, there is an inherent informational asymmetry because the payor holds all the relevant information (Colucci at paras. 47, 49). Given that context, I cannot accept the father's suggestion that the mother was obliged to seek out financial and other information about him.
- [138] Second, while I accept the father experienced a change in income which was not temporary (and which cannot be accurately quantified on the available evidence), in my view, that change, and the length of time it lasted, was the result of multiple choices made by the father beginning in late 2008.
- [139] The father chose to leave the Navy in late 2008 before he had secured other employment. In saying this, I acknowledge his evidence that he did not wish to be deployed for a third time. However, the father then chose to split his time between Canada, where he could not work, and the United States, where he testified he could not obtain work on a half-time basis. I accept that he took steps to secure a position with border patrol services that did not pan out. However, there is no evidence of other efforts by the father to obtain alternate employment in the United States when that happened. The father did not reside that far from the U.S. border.
- [140] The father then chose to remain in Canada for more than ten years without applying for permanent residency or any other permission that might enable him to work legally. The father says he was struggling; I have accepted there were periods of time when his well-being was not optimal. But I do not have expert or medical evidence establishing the father's challenges precluded him from remedying his legal employment situation. In cross-examination, the father admitted his earning capacity in the years 2008 to 2021 was limited by his immigration status, and it was his choice to be in Canada without applying to change that status before 2019.

[141] I do not suggest a payor parent is precluded from changing their employment and I accept that in some circumstances, that choice may legitimately result in a material change of circumstances. But here, the father not only chose to change his employment, but then made a series of further choices that prevented him from remedying the change in income for more than ten years. He asks this Court to order a variation in child support for that entire period of time. I find the father's circumstances were "one of choice".

[142] The father has therefore not established a material change of circumstances.

### **Retroactive variation is not warranted**

[143] In the event I am wrong, and the father has established a material change in circumstances sufficient to trigger the presumption of retroactive variation, I would still decline to retroactively decrease the father's child support.

[144] The father did not provide effective notice. A payor seeking a retroactive decrease in child support must do more than simply broach the topic of a potential decrease. To constitute "effective notice", the payor must also provide the recipient "reasonable proof" of the asserted basis for seeking the retroactive decrease; only then can the recipient "independently assess the situation in a meaningful way and respond appropriately": Colucci at paras. 87-88.

[145] In other words, effective notice requires "clear communication as well as disclosure to substantiate the material change in circumstances" on which variation is sought: *Kingsbury v. Kingsbury*, 2025 BCSC 212 at para. 55, citing Colucci at para. 113. If effective notice is not provided, the date of retroactivity is generally the date of formal notice, i.e. when the payor files their application to vary: Colucci at para. 113.

[146] The mother admits that when the father contacted her in September 2019 (after the BCFMA found him), he raised the issue of changing the amount of child support. However, the father did not - at that time, or thereafter - provide disclosure that would have allowed the mother to assess his request. There is evidence the mother subsequently asked for more information, including about the financial situation of the father's current spouse, but it was not provided.

[147] I am aware the father tried to apply to the Provincial Court in 2022 to address child support. The parties did not address the Provincial Court proceedings in a way that would allow me to determine if that step might constitute either "effective notice" or "formal notice". If not, then the father did not provide formal notice until he filed his counterclaim on November 25, 2024. That is after the period for which the father seeks retroactive variation. Even if the earlier Provincial Court proceedings could be taken as the date of formal notice, 2022 is also after the date for which the father seeks retroactive variation.

- [148] Although the Court may depart from the presumptive date of retroactivity (which here, would be the date of formal notice) to achieve a fair result, I am not persuaded that is warranted on consideration of the four D.B.S. factors here.
- [149] The father does not have an understandable reason for the delay of between 14 and 16 years in seeking relief. I accept the father did not receive notice in June 2005 that the Agreement had been filed with the Court and was not aware the mother had registered with the BCFMA in 2009. But the father's ability to seek a variation of child support based on leaving the Navy and moving to Canada where he could not work was not dependent on being aware of either of those things. He was aware there was an Agreement under which he was obliged to pay child support, and he admits he knew it contained provisions for review and adjustment. The father took no steps to address the situation until the BCFMA contacted him in September 2019. The significant unexplained delay weighs against his request for a retroactive decrease.
- [150] The father's conduct also weighs against an order for a retroactive decrease. His unilateral decision to cease paying child support around November 2008, and his failure to resume payments until September 2019 (despite making child support payments for his daughter during this same timeframe), privileges the father's interests over the child's right to support in a manner that is blameworthy: Colucci at para. 101. I acknowledge the father's efforts, since September 2019, to make support payments in accordance with his abilities, but those efforts do not sufficiently redeem the father's earlier conduct.
- [151] In my view, the current circumstances of the child are a neutral factor. The child is not in current need and a retroactive decrease would not require the mother to repay support. But there is evidence the mother experienced financial difficulties and made sacrifices over the years, including in respect of her career and living situation, that impacted her ability to provide for the child.
- [152] The final factor of hardship to the payor must be viewed in the context of hardship to the recipient and the child, who in this case did not have the benefit of any child support between late 2008 and September 2019. Hardship carries much less weight when it arises because of the payor's own failures: Colucci at para. 108. I accept the father will likely suffer some hardship if the period of retroactivity is not extended significantly back into the 2008-2021 period, but that fact alone is not sufficient to warrant departing from the presumptive retroactivity date.
- [153] On the whole, I conclude the father's child support obligations under the Agreement should not be retroactively varied. I dismiss the father's request for an order for a retroactive decrease of child support between November 2008 and mid-2021.

## Sub-issue 2: Cancellation or reduction of child support arrears

[154] As an alternative to his primary request for an order retroactively decreasing his child support obligations, the father seeks an order under s. 174 of the FLA to reduce or cancel the arrears of child support owing under the Agreement, as well as the interest and fees that have accumulated on those arrears. Applications to reduce or cancel arrears are often brought at the same time as requests for retroactive decreases in support.

[155] Section 174 of the FLA provides as follows:

### Reducing or cancelling arrears

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

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

[156] A payor seeking a reduction or cancellation of child support arrears under this provision must establish that it would be "grossly unfair" not to reduce or cancel the arrears. This is a high threshold. There is a presumption against rescinding any part of child support arrears, because it wipes out a legally recognized debt: Colucci, at paras. 8, 138.

[157] A payor must demonstrate, on a balance of probabilities and with reliable evidence, that their ongoing financial capacity means they are unable to pay the arrears now and will be unable to pay them in future, even with a flexible payment plan: Colucci at paras. 8, 135, 138. This is a form of hardship application, not based on a past material change of circumstances: Colucci at para. 134. An order reducing or cancelling child support arrears is a last resort; it will only be appropriate in exceptional circumstances: Colucci at paras. 8, 141.

- [158] As of March 31, 2025, the father owed \$102,487.57, consisting of \$69,859.38 in arrears, \$28,228.19 in interest and default fees of \$4,400.
- [159] The father did not comply with his obligations to pay child support under the Agreement between November 2008 and September 2019. The father says he was unable to work legally and struggled with his well-being at points. While his thinking was misguided (as child support obligations are not dependent on need), I accept the father genuinely believed that because the mother did not reach out for help the way D.W. did, he thought the mother and the child were "doing just fine" and did not need his financial assistance.
- [160] The BCFMA payment records demonstrate that when the father was contacted by BCFMA in fall 2019, he owed more than \$75,000. The father began making payments at that time, but the COVID-19 pandemic halted his ability to make payments from March to August 2020. While he resumed paying in September 2020 to the best of his ability, it was not until early 2022 that the father's payments became more regular. This essentially coincided with the father obtaining his first legal employment in Canada in November 2021. However, by early 2022, the father owed more than \$87,000, despite his efforts to comply. The significant economic impacts of the pandemic are well-documented; I do not fault the father's inability to make regular payments during the period from March 2020 to early 2022.
- [161] After that point, and despite making what I would characterize as consistent efforts to pay, the amount owing by the father has increased by more than \$15,000. The BCFMA payment records indicate that between summer 2022 and the end of 2024, significant interest accumulated each month. From mid 2023 to the end of 2024, the father's account accrued more than \$400 each month in interest. As the father testified, none of the payments he made have helped to reduce the arrears or interest - they have only been put towards ongoing support.
- [162] The father provided multiple financial statements at trial largely documenting his financial circumstances after obtaining permanent residency in mid-2021. The latest financial statement was dated February 27, 2025. It shows the father's Guidelines income as \$71,407.84, with annual expenses of \$73,374.24. The father does not have any significant assets; he and his spouse do not own a home. They have about \$7,000 in joint credit card debt. The father testified that he and his spouse "run paycheque to paycheque", paying their bills while leaving a little bit left in their accounts. He testified he does not have a military pension. There is no evidence of hidden finances or accounts, nor is there evidence of lavish spending.
- [163] The father has been successfully employed since November 2021, earning between \$64,000 and \$72,000 a year. At trial, he testified he may be able to increase his payments a small amount. However, I am conscious, based on my findings above, that the father's support obligations will continue to the end of July 2027. This includes an obligation to pay half of all special and extraordinary expenses, which will encompass the child's post-secondary tuition. In addition, I have found the father must pay the mother \$11,749.22 in arrears for

special and extraordinary expenses. I anticipate these findings will make it considerably more difficult for the father to address the arrears and interest in any meaningful way.

- [164] With respect to other relevant circumstances, in my view, it is relevant that the father was unaware until September 2019 that the arrears and interest had been accumulating. I accept the father's evidence that if he had been aware, he would have taken steps earlier to address the situation. The mother did not provide a satisfactory reason for not telling the father directly that she had registered with the BCFMA. She suggested that she avoided discussions about money to keep the father from cutting off communications; this is not borne out by the communications that were in evidence before me.
- [165] I also consider it relevant that the mother expressly acknowledged at trial that the child support arrears in this case have "gotten out of hand". In her response to counterclaim, the mother pleaded that she was "agreeable" to reducing the father's arrears to "\$50,000 as of May 1, 2021" "to take in to [sic] account his challenges after leaving the US military". She also pleaded she was agreeable to calculating the interest owing based on \$50,000 as of May 2021". I agree with the observation of the mother's counsel in his opening statement that the mother's position in this regard is unusual, but something to be encouraged. I commend the mother for putting forward a reasonable compromise position for the Court's consideration.
- [166] I recognize that the test for cancellation or reduction of arrears is a stringent one and child support obligations must be taken seriously. I am not persuaded that the father's child support arrears should be cancelled entirely. However, taking into account the additional payment obligations set out above and the father's ongoing financial circumstances, I do not see a realistic possibility that the father can pay the arrears and interest in full, now or into the future. On the whole, I find it would be grossly unfair not to reduce the arrears owed by the father to some extent.
- [167] I therefore order that the father's arrears owing as of May 1, 2021 are fixed at \$45,000, including interest. In setting that amount, I have considered the mother's proposal and the fact that I must still calculate the father's support obligations after May 1, 2021. I have also considered that as of May 1, 2021, the father owed \$83,681.52, which amount included arrears, interest and \$4,000 in default fees. My order therefore represents a cancellation of \$38,681.52 in arrears, interest and the \$4,000 in fees owed at that point in time.
- [168] I also order that further accrual of interest on the sum of \$45,000 is suspended until August 1, 2027, at which point interest may be charged on any remaining balance. This will allow the father some time to address his support obligations after May 1, 2021 and to begin paying down some of the arrears.

[169] Given that the father's child support obligations will be recalculated as of May 1, 2021 in the section below, my intention is that the father's child support obligations from May 1, 2021 forwards should start afresh. In practical terms, that means I am cancelling all interest, fees and penalties that accrued after May 1, 2021 on his BCFMA account as of the date of this judgment.

### **Sub-issue 3: Child support obligations from May 2021 forward**

[170] The parties agree that from 2022 forward, the father's child support obligations should be adjusted based on his Guidelines income and the corresponding table amount. As noted, the parties also agree the terms of the Agreement respecting child support should be replaced with an order, pursuant to s. 148(3) of the FLA. The parties disagree about what the father should pay from May 1, 2021 to the end of 2021.

[171] The mother says as soon as the father obtained his permanent residency on April 30, 2021, he was eligible to work legally in Canada. She says, for the purposes of child support payable from May 1, 2021 to December 31, 2021, the father should be imputed an income of \$64,294, based on his line 15000 income from his 2022 notice of assessment.

[172] The father says while he was eligible to work on May 1, 2021, he did not find employment until November 2021. He suggested his child support payments should be based on the British Columbia minimum wage for 2021 (recorded as \$30,368 on his calculation table), to recognize that he did earn some money "under the table" before becoming eligible to work and securing employment for the last two months of the year.

[173] The father's 2021 notice of assessment shows he reported a line 15000 income of \$6,420 for that tax year. His pay stubs suggest he was receiving about \$1,750 every two weeks, meaning he would have worked around 7 weeks in 2021. Using his reported income would be underinclusive of the father's actual earnings; it would ignore his under the table employment. However, I do not consider the mother's approach to be appropriate either. Hers effectively assumes that, despite having been out of the legal workforce for more than 12 years, the father should have been immediately able to obtain work, at the level of income he achieved by the end of 2022.

[174] In my view, it is more reasonable to allow some time between the father becoming eligible to work in May 2021 and securing employment, particularly as the pandemic was still negatively affecting many parts of the economy at that time. Based on the father's testimony, it would also be reasonable to assume it would take some time for the father to work up to the wage he was earning in 2022.

[175] In the circumstances, I consider it appropriate to impute an annual Guidelines income of \$35,000 to the father for 2021. I arrive at this figure by using the father's end of 2021 bi-weekly wages of \$1,750, and subtracting 12 weeks of job search time. The Guidelines table amount of support based on an income of \$35,000 is \$329 per month. The father will therefore be required to pay \$329 per month for the months of May 1, 2021 to December 31, 2021.

[176] For 2022 and 2023, I calculate the child support payable by the father to be:

Year

Father's Guidelines income (line 15000)

Monthly table amount

2022

\$64,294

\$610

2023

\$72,478

\$691

[177] I order the father to pay child support to the mother for 2022 and 2023 based on the above amounts.

[178] The father's 2024 Guidelines income was not known at the time of trial as he had not yet filed his 2024 income tax. However, it is common in family law matters for child support to be based on the previous year's income. Accordingly, for 2024, I will again use the father's 2023 Guidelines income of \$72,478, to order that he pay the mother \$691 per month in child support from January 1, 2024 to December 31, 2024.

[179] For January 1, 2025 to September 30, 2025, I order the father to pay the mother \$691 per month in child support, based on the father's 2023 Guidelines income of \$72,478, subject to adjustment based on changes in the father's Guidelines income for 2024, agreement of the parties or further court order. If the father's Guidelines income for 2024 is different than \$72,478, the monthly support payable is to be adjusted. The monthly table amounts for this period are to be based on the Guidelines table amounts that were in force prior to October 1, 2025.

[180] As of October 1, 2025, the Guidelines table amounts were updated. Child support orders from October 1, 2025 forward must use the new table amounts. Accordingly, for October 1, 2025 to July 31, 2026, I order the father to pay the mother Guidelines table support based on the father's 2024 Guidelines income, using the table amounts in force as of October 1, 2025.

[181] For August 1, 2026 to July 31, 2027, I order the father to pay the mother Guidelines table support based on the father's 2025 Guidelines income, using the table amounts in force as of October 1, 2025. The father's obligation to pay child support on an ongoing basis will terminate as of July 31, 2027. The father will, of course, remain responsible for payment of any outstanding arrears.

[182] To facilitate the adjustment of the child support amounts the father must pay, I order the parties to exchange their T1 tax returns and notices of assessment for the 2025 tax year on or before June 1, 2026. To the extent the parties have not already exchanged their T1 tax returns and notices of assessment for the 2024 tax year, they must be provided within 30 days of the date of this decision.

[183] Pursuant to s. 148(3) of the FLA, the above child support orders replace the child support terms of the Agreement. These orders are addressed in more detail at the end of this judgment.

#### Summary of orders and costs

[184] In conclusion, I declare that the child remains a "child" under s. 146 of the FLA for support purposes until the end of July 2027.

[185] I also grant the following orders:

- a) For special and extraordinary expenses for the child from 2007 to April 10, 2025, the father must pay the mother arrears fixed in the amount of \$11,749.22;
- b) Pursuant to s. 148(3) of the FLA, in the Agreement between the parties, dated for reference May 30, 2005, the terms regarding special expenses for the child are replaced by the following order:
  - i. From April 10, 2025 to July 31, 2027, the parties will share special and extraordinary expenses equally, unless the parties agree in writing or the court otherwise orders.
  - ii. Within 15 days of incurring a special or extraordinary expense for the child, the party who incurred the expense is to advise the other party.
  - iii. A party may, in writing, dispute that a particular expense qualifies as a special or extraordinary expense or that a particular expense is a necessary and reasonable expense in the circumstances. The claiming party may respond to justify the expense.
  - iv. The parties are to use best efforts to reach agreement on disputed expenses, failing which they may apply to the Court for a determination.
- c) The father's request for an order granting a retroactive decrease of child support between November 2008 and mid-2021 is dismissed.
- d) Pursuant to s. 174 of the FLA:

- i. the arrears of child support owing by the father as of May 1, 2021 are fixed at \$45,000, including interest. For clarity, this order cancels the remaining \$38,861.52 previously owing as of May 1, 2021, which amount was comprised of arrears, interest and \$4,000 in default fees.
- ii. Accrual of interest on the fixed sum of \$45,000 is suspended until August 1, 2027, at which point, interest may again be charged on any remaining balance.
- iii. All interest and default fees previously accrued on the father's child support arrears from May 1, 2021 to the date of this decision are cancelled.
- e) Pursuant to s. 148(3) of the FLA, in the Agreement between the parties, dated for reference May 30, 2005, the terms regarding child support are replaced by the following order:
  - i. For purposes of child support, the father is found to be a resident of British Columbia and is found to have the following Guidelines income:
    - (1) For the calendar year 2021, an imputed Guidelines income of \$35,000;
    - (2) For the calendar year 2022, a Guidelines income of \$64,294; and
    - (3) For the calendar year 2023, a Guidelines income of \$72,478.
  - ii. For the period of May 1, 2021 to December 31, 2021, the father is required to pay the mother the sum of \$329 per month for the support of the child.
  - iii. For the calendar year of 2022, the father is required to pay the mother the sum of \$610 per month for the support of the child.
  - iv. For the calendar year of 2023, the father is required to pay the mother the sum of \$691 per month for the support of the child.
  - v. For the calendar year of 2024, the father is required to pay the mother the sum of \$691 per month for the support of the child, based on the father's 2023 Guidelines income.
  - vi. For the period of January 1, 2025 to September 30, 2025, the father is required to pay the mother the sum of \$691 per month for the support of the child, based on the father's 2023 Guidelines income; the monthly support amount must be adjusted if the father's 2024 Guidelines income differs from the father's 2023 Guidelines income; and the monthly support amount is subject to further adjustment based on the agreement of the parties or court order.
  - vii. For the period of October 1, 2025 to July 31, 2026, the father is required to pay the mother monthly Guidelines table support based on the father's 2024 Guidelines income, and using the table amounts in force as of October 1, 2025.
  - viii. For the period of August 1, 2026 to July 31, 2027, the father is required to pay the mother monthly Guidelines table support based on the father's 2025 Guidelines income, and using the table amounts in force as of October 1, 2025.

ix. The father's obligation to pay child support on an ongoing basis will terminate as of July 31, 2027, but the father remains responsible for payment of any arrears outstanding as of that date.

x. To facilitate adjustment to child support amounts, the parties are to exchange their T1 tax returns and notices of assessment for the 2025 tax year on or before June 1, 2026. If the parties have not already exchanged their T1 tax returns and notices of assessment for the 2024 tax year, they must do so within 30 days of the date of this decision.

[186] With respect to costs, each party seeks costs of the trial from the other. In addition to trial costs, the mother seeks costs of two interim applications filed by the father in the months leading up to trial. The applications required responses to be filed but did not ultimately proceed. Each party also suggested further submissions on costs may be required.

[187] In the event it assists the parties with their considerations, my preliminary view is that there was mixed success at trial, such that I would be inclined to order each party to bear their own trial costs.

[188] If the parties are unable to agree on the issue of costs by January 9, 2026, the parties may make additional submissions on costs in writing. Costs submissions will be limited to five written pages each, and must be filed and exchanged on a schedule to be agreed between the parties, with the first submission to be filed with the Supreme Court Registry no later than February 6, 2026. If further costs submissions will be made, the parties must inform Supreme Court Scheduling no later than January 16, 2026, setting out the agreed schedule for the exchange of costs submissions.

"K. Wolfe J."

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