

CANADA / JUDGMENT

Hamilton v. Brownsword

2025 BCSC 1360

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1360 Hamilton v. Brownsword

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hamilton v. Brownsword,

2025 BCSC 1360

Date: 20250717

Docket: E102072

Registry: Vancouver

Between:

Anne Hamilton

Claimant

And

Andrew Edward Brownsword

Respondent

Corrected Judgment: The text of the judgment was corrected at the front page on August 22, 2025.

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for Claimant:

F. Robin

Counsel for Respondent:

B. Ingram

Place and Date of Hearing:

Port Coquitlam, B.C.

June 18, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 17, 2025

Introduction

- [1] In this application, the respondent, Mr. Brownsword, seeks to review and reduce his child and spousal support obligations. The parties have one child, M.B., who turned 19 in 2023. M.B. is disabled and now receives a disability benefit from the government, which Mr. Brownsword submits needs to be taken into account in determining his child support obligations. He also seeks a termination date for his spousal support obligations to the claimant, Ms. Hamilton, given the length of time he has made spousal support payments relative to the length of the relationship. The orders sought by Mr. Brownsword are opposed by Ms. Hamilton, who relies on the parties' final order made in 2012 which, she submits, is a complete answer to Mr. Brownsword's application.

Background

- [2] The parties were in a marriage like relationship from 1998 to 2009, a period of just less than 11 years.
- [3] M.B. was born on February 10, 2004. M.B. has been diagnosed with global developmental delays, motor movement coordination disorder, neuro-developmental challenges, and autism spectrum disorder. She has a very low IQ, and is sensitive to many environmental stimuli which cause her to have extreme reactions. While the parents disagree with the extent of M.B.'s disability (Ms. Hamilton deposes that M.B. operates at the level of a grade 2 student, while Mr. Brownsword deposes that her abilities are considerably higher), I accept the evidence of Ms. Hamilton that M.B. will continue to require care and supervision throughout her life.
- [4] M.B. is enrolled at Douglas College, attending an adapted class three days a week, for 3.5 hours a day. She attends online from her mother's home. The classes she takes are in support of her entering the workforce. If she does enter the workforce, which is not assured, it is expected to be at a very low level. Her current assessment of hireability is 2/5.

- [5] M.B. has a disability support designation of GS4, which Ms. Hamilton deposes reflects the second highest level of care. Since May 2022, M.B. has received provincial disability benefits in the amount of approximately \$1,500/month.
- [6] On May 2, 2012 a final order respecting support, and all family matters in issue, was entered. The parties have governed themselves in accordance with this order since it was made.
- [7] At the time of this hearing, Ms. Hamilton. was on the cusp of turning 64 years old, and Mr. Brownsword was 57 years old.
- [8] Since separation, M.B. has lived primarily with her mother, and her mother has devoted her time to the care of her daughter. M.B. visits her father and his spouse on Bowen Island every other weekend and on holidays. There is no dispute that Ms. Hamilton is the primary caregiver for M.B., and that M.B. remains a child of the marriage, entitled to support.

Issues

- [9] The issues before me are:
- a) Should an adjustment to Mr. Brownsword's child support obligations be made to reflect the fact M.B. is now in receipt of disability benefits?
 - b) Does the final order for spousal support permit a review and adjustment to either the quantum or duration of spousal support payable to Ms. Hamilton.?
 - c) Should Mr. Brownsword's obligation to maintain life insurance to secure his support obligations be reduced?

Should an adjustment to Mr. Brownsword's child support obligations be made to reflect the fact M.B. is now in receipt of disability benefits?

- [10] In the 2012 Order, the parties agreed that, beginning in May 2013, they would annually review child support and adjust it up or down in accordance with the Federal Child Support Guidelines [Guidelines] and Mr. Brownsword's income. Section 32(d) of the 2012 Order sets out the circumstances under which a party may seek a review of child support or spousal support. Of the seven circumstances set out, the only one which may support Mr. Brownsword's application is (vi), which reads, "M.B.'s need for support changes by reason of reaching the age of majority".
- [11] Child support is a right of the child, and is governed by the Family Law Act, S.B.C. 2011, c. 25 and the Guidelines. One of the objectives of the Guidelines is to "establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation": (s. 1(a)).
- [12] The amount of child support to which a child is entitled is determined pursuant to s. 3 of the Guidelines. For children over the age of majority, like M.B., s. 3(2) governs:

Child the age of majority or over

- (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is
- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.
- [13] In *Kollmuss v. Kollmuss*, 2015 BCSC 1101 Voith, J (as he was then) applied the four part framework for a s. 3(2) analysis, as set out by Martinson, J. in *Wesemann v Wesemann*, [1999] B.C.J. No. 1387:
- [25] In *Wesemann v. Wesemann*, [1999] B.C.J. No. 1387 at para. 6 (S.C.), Martinson J. set out a four-part framework for determining the amount of child support payable under s. 3(2) of the Guidelines. This framework has since been applied widely; see e.g. *Neufeld v. Neufeld*, 2005 BCCA 7 at para. 38. The four-part framework gives rise to the following inquiries:

Step One

Decide whether the child is a "child of the marriage" as defined in the Divorce Act? If s/he is not, that ends the matter.

Step Two

Determine whether the approach of applying the Guidelines as if the child were under the age of majority ("the usual Guidelines approach") is challenged. If that approach is not challenged, determine the amount payable based on the usual Guidelines approach.

Step Three

If the usual Guidelines approach is challenged, decide whether the challenger has proven that the usual Guidelines approach is inappropriate. If not, the usual Guidelines amount applies.

Step Four

If the usual Guidelines approach is inappropriate, decide what amount is appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child?

- [14] Voith, J. summarized the law where adult children receive disability benefits:
- [38] In summary, these five cases establish that the receipt of PWD benefits is often considered sufficient to trigger a s. 3(2)(b) analysis. This will particularly be so where, as in this case, the incomes of the parties are modest. Further, these cases apply the *Wesemann* approach: the

court must ask itself (1) whether the claimant has proven that the usual Guidelines approach is inappropriate, and (2), if not, what amount is appropriate, "having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child".

- [39] The party requesting the change has the onus of establishing that the usual Guidelines approach is inappropriate. It may be inappropriate where the child's circumstances differ from the circumstances upon which the usual Guidelines approach is based. Some disability benefit cases have held that the receipt of the benefit itself renders the usual Guidelines approach inappropriate; Briard at para. 22; Poehlke at para. 51; Ross at para. 25. Others engage in an initial consideration of the financial significance of the benefit amount in the context of the case; C.L.C. at para. 62; Carten at para. 21.
- [40] In considering an appropriate amount or level of support, the court engages in the usual condition, means, needs and other circumstances analysis; however, in these cases, the reasonable ability of the child to contribute to those needs is also incorporated, or factored, into the analysis. Ultimately, a court will calculate a child's reasonable costs and deduct the amount of the disability benefit in order to quantify the relevant shortfall. The court will then consider the parents' incomes and the usual table amount. The child's shortfall is then often divided in proportion to the parents' respective incomes.
- [15] In addition to the factors described by Voith, J., courts may include in a child support order some financial recognition for the caregiving work of the parent with primary responsibility.
- [16] In *Martin v Martin*, 2021 BCSC 2015, Mr. Justice Kirchner reviewed the law as applied to cases with disabled adult children, using Voith, J.'s reasons in *Kollmuss* as the starting point:
- [47] I agree with Gouge Prov. Ct. J. that when one parent continues to be the primary caregiver for a disabled adult child in need of constant care, a proper and just approach to child support must make some account for the value of the care provided by the party with primary parenting responsibility. I accept that a consensus has grown around addressing these cases under s. 3(2)(b) of the Guidelines, which is the approach I will take, but in my view, a full consideration of the factors in s. 3(2)(b), as well as the broader objectives of the Child Support Guidelines, is required. Considering what is in Alicia's best interests, and doing justice between the parties, requires recognition and consideration of the care Ms. Martin is providing.
- [52] Child support orders are ordinarily based on the payor's ability to pay rather than the needs of the recipient: *Saby v. MacIntosh*, 2002 BCSC 1144 at para. 15. I see no reason why that principle would not continue to inform the analysis in respect of an adult child who is in need of constant care and supervision because of a disability.

- [53] I accept there is a consensus that child support in this difficult area should be assessed through s. 3(2)(b) of the Guidelines and that I am to account for the PWD benefits that Alicia receives (or, in reality, that Ms. Martin receives on Alicia's behalf). However, I also agree with Gouge Prov. Ct. J. that the Guidelines' objectives and the need to do justice between the parties cannot be met without some accounting for value of the extraordinary care a custodial parent provides to an adult disabled child who needs constant attention.
- [54] I will therefore approach this analysis on the basis of s. 3(2)(b), consistent with the emerging consensus, but I do so considering the factors set out in s. 3(2)(b) that focus not only on Alicia's means and needs, but also on her condition and other circumstances. I also have regard to the Guidelines' objectives, including that a child is to benefit from the financial means of both spouses.
- [17] Mr. Brownsword submits that s. 3(2)(b) is applicable in a case where the adult child is receiving disability benefits. He argues that the caselaw has established that in such a case, the court ought to look to the adult child's budget and determine an appropriate net payment after deducting any amounts received as disability benefits.
- [18] I agree that M.B.'s receipt of disability payments does change her circumstances from the usual circumstances upon which the Guidelines table approach is based. Unlike minor, dependent children with no source of income, M.B. does have a small income and that should be taken into account in determining appropriate child support. As such, I agree that child support should be determined under s. 3(2)(b) of the Guidelines.
- [19] However, I do not agree that M.B.'s receipt of a disability benefits means necessarily that child support will be calculated solely with reference to a budget prepared on her behalf by Ms. Hamilton. Section 3(2)(b) requires the court to consider the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.
- [20] In the case before me, M.B. has required a full time caregiver since she was born. That primary and, essentially, full time caregiver has been her mother. This is not to say her father is not a loving and involved parent, who exercises parenting time alternating weekends. However, it is a recognition that the vast majority of the care for M.B. has been provided by Ms. Hamilton, and Ms. Hamilton expects M.B. will continue to require full time care throughout her life.
- [21] Mr. Brownsword brings this application at a time where he has had a significant increase in income since the 2012 Order. From 2012 to 2016, Mr. Brownsword's income ranged between \$209,940 and \$244,489. The income figure went up and down within the range for those four years. In 2017, his income increased to \$281,957, in 2018 it increased to \$300,254, and after 2019 his income generally exceeded \$500,000. His 2024 income was \$710,000. As a result of the application of the table calculations under s. 3(1) of the Guidelines, Mr. Brownsword's monthly child support payments have increased from \$970 in 2010 to \$3,686 in 2025.

- [22] Mr. Brownsword asked Ms. Hamilton to prepare a budget of M.B.'s expenses. She did so, and the monthly budget was \$4,228. Mr. Brownsword takes issue with some of the expenses, in particular home repairs and maintenance, and "tech" within the category of household expenses. Ms. Hamilton claims M.B.'s expenses as 50% of these categories of expenses set out in her F8 financial statement.
- [23] On her F8, Ms. Hamilton claims home repairs and maintenance of \$2,957/month, which includes costs for repairs of a retaining wall, drainage and driveway on the house in the amount of \$2,252/month. Mr. Brownsword argues these are Ms. Hamilton's capital expenses and should not be considered as part M.B.'s monthly expenses. I agree, and reduce M.B.'s expenses under this heading to \$352, representing 50% of Ms. Hamilton's remaining monthly expenses in this category.
- [24] On her F8, Ms. Hamilton claims \$3,003 for household expenses including "tech hardware" of \$440/month. Mr. Brownsword argues tech hardware represents the cost of the purchase of a \$5,000 computer (\$2,500 of which is allocated as an expense to M.B.). Mr. Brownsword argues this is not a monthly expense but rather a one-off s. 7 expense. I agree that the purchase of a new computer should not form part of the monthly expenses for M.B., and is more appropriately addressed as a s. 7 expense.
- [25] Mr. Brownsword submits that the caselaw supports the inclusion in the child's expense calculation an amount in recognition of the care provided by the primary care giving parent. The range in such cases is \$500-\$700/month. I agree that \$500 ought to be added to M.B.'s expenses to represent the services provided by her mother, recognizing that this is a fraction of the what it would cost to hire a caregiver in place of Ms. Hamilton.
- [26] After the reductions I have determined for household repair costs and the computer purchase price, and the inclusion of \$500 for Ms. Hamilton's services, I find that the reasonable expenses for M.B. are \$3,360/month.
- [27] Up to the date of hearing, Mr. Brownsword was paying guideline child support of \$3,686 per month, based on his 2023 income of \$448,776. At the time of the hearing, his child support obligation had not yet been adjusted to take into account his 2024 income. Mr. Brownsword's 2024 income was over \$700,000, which would result in a significant increase in guideline child support. With no adjustments, Mr. Brownsword's child support obligation would be in the range of \$5,690 per month based on his 2024 income.
- [28] If Mr. Brownsword's income continued at or about the same level as he received in 2023, the difference between the two methods of calculating child support (expense based v. table based) would result in more or less the same outcome for M.B., before accounting for her disability benefits. M.B.'s support under either method would meet the objective under s. 1(a) of the Guidelines.

- [29] However, with the higher income received by Mr. Brownsword beginning in 2024, using the usual Guidelines approach, M.B. would receive approximately \$2,330 more than she would using the expenses approach. Using the expenses approach would result in M.B. being deprived of support which takes into account the financial means of her father, a factor expressly referenced in s. 1(a) of the Guidelines.
- [30] In the result, I agree that s. 3(2)(b) of the Guidelines is applicable, and find that an appropriate order for child support which is fair to all the parties, ensures that M.B. will continue to benefit from her father's means, and takes into account the disability benefits M.B. receives, is one in which an initial monthly child support figure is determined using the usual Guidelines approach, from which the monthly disability amount received by M.B. will be deducted. In other words, Mr. Brownsword's child support obligation will be the net amount of the usual Guidelines calculation based on his income, less the disability benefit received by M.B.
- [31] In May 2024, counsel for Mr. Brownsword advised he would be seeking a review of support retroactive to June 1, 2023, to account for the fact that M.B. had turned 19 and was receiving disability benefits. I agree that Mr. Brownsword satisfied the requirement for notice of a retroactive adjustment. As such, I order that this adjustment to child support will be made retroactive to June 1, 2023. Any overpayment of child support resulting from this order will be repaid to Mr. Brownsword within 12 months of this order.

Does the final order for spousal support permit a review and adjustment to either the quantum or duration of spousal support payable to Ms. Hamilton.?

- [32] In the 2012 Order, the parties agreed that Mr. Brownsword would pay Ms. Hamilton monthly spousal support in an amount at the low end of the SSAG range, based on his income from time to time. The final order provided for a review on certain terms as defined in the order, after August 31, 2021.
- [33] In April 2022, Mr. Brownsword brought an application to review the 2012 Order. The court rendered its decision on April 26, 2022 (2022 BCSC 843). In deciding that application, the court held:
- [13] I accept that Ms. Hamilton had both a compensatory and non-compensatory entitlement [to spousal support] which resulted in the 2012 Order, which order now provides her with a contractual basis of entitlement.
- [34] The court also held:
- [18] I am satisfied that Ms. Hamilton has established that at the time of separation and the time the agreement was reached, she suffered from chronic illness, which included diagnoses of Ankylosing Spondylitis (an autoimmune disease), Crohn's disease (another autoimmune inflammatory condition), Enthesitis (an inflammatory condition), Papilledema (a compression of the optic nerves leading to vision loss) and Intracranial Hypertension, that she had not been working since March 2001, and that she had primary responsibility for the

parties' special needs child. At the time of the 2012 Order, Ms. Hamilton had been out of the workforce for 11 years. Further, the 2012 Order clearly provides for Mr. Brownsword to be able to retire at the age of 55, or reduce his employment, with no imputation of income to him. It is notable the 2012 Order clearly sets out in paragraph 30 any additional variable income received by Mr. Brownsword was to be included in his income in the taxation year in which they are received, and so were to be included for the purpose of review of the quantum of both child and spousal support. However, there was no expectation that Ms. Hamilton become gainfully employed nor for any income to be imputed to her should she fail to do so. Rather, the agreement provides that she will be the primary caregiver for M.B., which she has been and continues to be.

- [19] I accept that the terms setting out the payment of spousal support, and the potential review of the same, were agreed to in recognition of Ms. Hamilton's illness and her role as primary caregiver of M.B. I find that the 2012 Order provided that without another source of income (such as pension income), or another marriage or marriage-like relationship, it was agreed that there would be no entitlement to a review in August 2021. The 2012 Order tightly circumscribes the circumstances in which Mr. Brownsword was entitled to seek a review at that time.
- [35] Section 32(f) of the 2012 Order is also relevant, in that it specifies that Mr. Brownsword is at liberty to change employment or retire after the age of 55, and his obligation to pay support following a change of employment or retirement will be based on his actual income from all sources, with no imputation of a higher income based on his previous employment. This section demonstrates that the parties turned their minds to the duration of spousal support. The parties clearly understood that Mr. Brownsword would continue to pay support until his retirement and beyond. The parties did not agree that Mr. Brownsword's obligation would be limited to a specific duration relative to the length of the relationship.
- [36] The application before me to set an end date for spousal support is contrary to the contractual obligation for permanent support, subject only to the specified circumstances, as set out in the 2012 Order. A termination date for spousal support is contrary to the 2012 Order, and I decline to make such an order.
- [37] The 2012 Order provides for spousal support obligations to be reset each year in accordance with Mr. Brownsword's income and the SSAG at the low end of the range. Spousal support obligations are impacted by the payment of child support. As I have ordered an adjustment in Mr. Brownsword's child support obligations, the spousal support obligations of Mr. Brownsword to Ms. Hamilton must also be adjusted back to June 1, 2023.

[38] In an article from March 2022 entitled "SSAG FAQs 2022: Your frequently (or occasionally) asked questions about the SSAG, and some 'answers'", Professor Rollie Thompson, QC, one of the drafters of the SSAG, addressed how disability benefits for a disabled child should be accounted for in the DivorceMate program, to produce a fair calculation of spousal support. He states that a child's disability income should not be treated as income for the recipient parent. Rather, he suggests the following methodology:

The [disability benefit] received for the disabled adult child should be treated in DivorceMate as a "cash flow adjustment - increase NDI". Thus, the [disability benefit] will not be treated as part of the parent's income for spousal support purposes, but will affect their NDI, their net disposable income position.

[39] I accept that the inclusion of M.B.'s disability benefit in Ms. Hamilton's net disposable income, as suggested by Prof. Rollie is the appropriate way to determine her spousal support benefit. In addition, the DivorceMate program should receive as an input for child support the actual amount to be paid by Mr. Brownsword, after deducting M.B.'s disability from the Guidelines child support amount.

[40] I was not provided with DivorceMate calculations in accordance with the directions I have made above and, as such, cannot make an order as to a precise amount of spousal support payable to Ms. Hamilton retroactively or in the future. I trust that counsel will be able to perform the required calculations to determine the actual amounts required to be paid to Ms. Hamilton. If they find themselves unable to reach agreement, they may schedule an appearance before me on this limited issue.

[41] If the recalculation of spousal support for Ms. Hamilton results in a past over payment of spousal support, such amounts shall be repaid to Mr. Brownsword within 12 months of this decision.

Should Mr. Brownsword's obligation to maintain life insurance to secure his support obligations be reduced?

[42] Pursuant to the 2012 Order, Mr. Brownsword is required to maintain life insurance, with benefits payable of not less than \$300,000 for the benefit of M.B., and \$700,000 for the benefit of Ms. Hamilton. Mr. Brownsword is permitted to change or cancel the beneficiary designation once he is no longer obliged to pay support for M.B. or Ms. Hamilton. Mr. Brownsword seeks to relax the obligation to maintain life insurance as security for support.

[43] The 2012 Order provides for a review every two years, as follows:

35. Every two years, commencing May 2013, the level of life insurance benefits required to secure the Basic Child and Monthly Spousal Support shall be reviewed and adjusted to ensure that the Respondent is not paying premiums for coverage in excess of the amount required to secure his support obligations.

- [44] Mr. Brownsword argues that he has been paying support for 14 years, and it can be assumed that his obligations have reduced somewhat. He seeks to have the life insurance proceeds be distributed 50% to his estate, and the remainder split between M.B. and Ms. Hamilton. In addition, he says M.B. is the 50% beneficiary of his estate, so she will receive through his estate as well as pursuant to the 2012 Order. I note that Mr. Brownsword's submission must be understood in the context of his request to terminate spousal support in two years, which I have denied.
- [45] I am not satisfied that Mr. Brownsword has established, pursuant to s. 35 of the 2012 Order, that a 50% reduction in benefits payable to Ms. Hamilton is adequate security for his ongoing support obligations. Mr. Brownsword's proposal would result in security for Ms. Hamilton of \$350,000. Subject to the relevant calculation still to be done, I accept that it is likely that Ms. Hamilton will receive annual spousal support of at least \$90,000, and likely over \$100,000. Ms. Hamilton is 63 years old. Mr. Brownsword is 57 years old. Ms. Hamilton is entitled to permanent support, in accordance with the 2012 Order. While Mr. Brownsword's obligations will likely be reduced once he retires, he has no present intention to retire.
- [46] I am not satisfied that Mr. Brownsword's request to reduce the security by 50% will adequately secure his ongoing support obligations to Ms. Hamilton, and I therefore decline to make this order.

Costs

- [47] If the parties cannot reach agreement on costs, they may make submissions to me in writing, with all submissions sent to me through the registry within 45 days of this decision.

"W.A. Baker J."

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