
CANADA / JUDGMENT

Healey v. Healey

2015 BCSC 2196

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Supreme Court of British Columbia

DECIDED

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2015 BCSC 2196 Healey v. Healey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Healey v. Healey,

2015 BCSC 2196

Date: 20151127

Docket: E0097

Registry: Powell River

Between:

Evelyn Dean Healey

Claimant

And

Todd Ronald Healey

Respondent

Before: The Honourable Madam Justice Harris

Reasons for Judgment

Counsel for the Claimant:

F.G. Reif

Counsel for the Respondent:

No appearance

Place and Date of Trial/Hearing:

Powell River, B.C.

August 17, 2015

Place and Date of Judgment:

Powell River, B.C.

November 27, 2015

Overview

- [1] The claimant, Ms. Healey, has brought two applications.
- [2] In an application filed May 1, 2015, the claimant seeks an order imputing the respondent's income at \$150,000 a year, a fine, and a compliance order in relation to previous disclosure orders. The claimant's application for an order that the respondent be imprisoned for contempt was adjourned.
- [3] In an amended application filed July 15, 2015, the claimant seeks:
- i. an order varying the support order made September 11, 2000 by increasing the amount of child support payable by the respondent to the claimant in relation to one of the children of marriage, Sydney Healey ("Sydney"), retroactively from January 1, 2009;
 - ii. an order that the respondent contribute to post-secondary expenses of Sydney effective September 1, 2013; and
 - iii. an order requiring the respondent to prepare and file a sworn Form F8 Financial Statement, along with his 2011, 2012 and 2013 income tax returns and notices of assessment, as well as his most recent pay statement.
- [4] The respondent did not appear at the hearing of this application, although he was given notice of the hearing. The respondent had previously been represented by legal counsel.
- [5] Prior to the hearing of this application, there were a number of applications and interim orders of the court in respect of child support and financial disclosure by the respondent, including orders of Chief Justice Hinkson dated July 7, 2014, Mr. Justice Power dated May 26, 2014, Mr. Justice Myers dated August 18, 2014, and Madam Justice Ross dated January 13, 2015.

Background

- [6] The parties began living together in 1990; married in 1992; separated in 1999 and divorced in 2000. The claimant was a baker and the respondent worked in aircraft maintenance. He is currently employed as a sales manager in that industry.

- [7] There are two children of the marriage: Shelby Healey ("Shelby"), born August 21, 1993, and Sydney born December 23, 1995. The family lived in Powell River during the marriage.
- [8] The parties entered into a separation agreement, which is dated July 7, 2000. The agreement was filed in court and, therefore, has the effect of a court order.
- [9] The separation agreement provides, among other things, that the claimant would have sole custody of the children and the parties would have joint guardianship. The respondent would have liberal access to the children. Child support was set at \$667 per month "commencing on June 1, 2000, and on the first day of each month until the Children are no longer children as defined by the Family Relations Act, R.S.B.C. 1996, c. 128". The respondent's gross annual income was stated to be \$47,800. The claimant did not claim spousal support.
- [10] Both children lived with the claimant until they graduated from high school. The respondent paid child support but, according to the claimant, did not contribute to the children's special and extraordinary expenses.
- [11] The claimant's income was \$14,000 per year until December of 2013 when she lost her position as a baker. Subsequently, she received employment insurance benefits of \$1,062 per month.

Shelby

- [12] Shelby graduated from high school in June of 2011. In 2011/12 school year she worked part-time and attended college part-time. In April of 2012, she expressed an interest in going to live with her father in Penticton and attending college there. At that time, the parties discussed a variation of child support. The claimant deposed that the respondent informed her that his income at that time was \$88,000.
- [13] The parties subsequently agreed to vary the amount of support payable to \$500 per month to account for Shelby living with the respondent and his paying the college tuition, supplies, books and fees. This agreement was to be in effect for a period of at least one year from June 1, 2012 to June 1, 2013.
- [14] Shelby went to live in Penticton but ultimately did not continue with her education and began to work full time. The parties agree that she is no longer a child of the marriage, although the date that she ceased to be child of the marriage is disputed. The claimant deposed that Shelby did not complete her 2012/2013 school year. The respondent deposed that she did.
- [15] The claimant is not claiming child support for Shelby after she left Powell River in June of 2012 to live in Penticton.

Sydney

- [16] Sydney graduated from high school in June of 2013. She started studying at Camosun College in Victoria in September of 2013. The respondent continued to pay the claimant \$500 per month in child support. The respondent also contributed \$1,200 for Sydney's books and tuition for her first term but did not pay for her expenses in the second term. The claimant paid, in respect of the 2013/14 school year, for Sydney's monthly rent (\$500) and living expenses (\$400) and for her second term tuition (\$1,500) and books (\$360). Sydney returned to live with the claimant in the summer of 2014. She returned to school in the fall of 2014.
- [17] On November 13, 2013, the claimant wrote to the respondent asking him to contribute to Sydney's post-secondary school and living expenses. The respondent offered to pay for these expenses directly to Sydney. The claimant responded that she and Sydney wished the claimant to continue to coordinate support for Sydney. At that time the claimant "formally" asked for copies of his income tax returns for 2010, 2011 and 2012. As the claimant did not receive them from the respondent, she retained legal counsel who requested, by letter dated January 13, 2014, the respondent's 2011 and 2012 tax returns and notices of assessment and statements of income from all sources for 2013.
- [18] Sydney has access to a family educational trust established by the respondent's grandparents on certain terms, including a requirement that she be in full time attendance at college or university. The claimant deposed that she was attending Camosun on a full time basis commencing in 2013. The respondent stated that he did not continue to pay for Sydney's education for the second term in 2013/14 school year as she declined assistance from him, he was not aware of her educational plans, and she was not in full time attendance during that school year.
- [19] The respondent did not provide the financial information requested by the claimant or her counsel. She, therefore, brought a number of court applications to obtain the information.
- [20] As a result of these applications, the respondent was ordered by Madam Justice Power on May 26, 2014 to provide a sworn financial statement along with copies of his 2011, 2012, and 2013 personal income tax returns and notices of assessment within 30 days. Mr. Justice Myers ordered the respondent to file a Form F8 Financial Statement by September 15, 2014. Madam Justice Ross ordered the respondent to comply with the orders of Justices Power and Myers within 30 days.
- [21] The respondent did not provide the income information which he had been ordered to produce. On an interim and without prejudice basis, the parties consented to an order before Chief Justice Hinkson on July 7, 2014 that increased child support based upon an income for the respondent of \$96,000 per year. At that time the respondent represented that he earned an income for 2009 of \$97,930 and an income for 2012 of \$73,621, based upon his T4 statement of remuneration. His counsel stated by letter of July 3, 2014 that the respondent's income for 2013 was \$96,000 and he expected to earn the same amount in 2014.

- [22] By requisition filed February 13, 2015, the respondent attached his income tax returns for 2012 and 2013. His line 150 income is stated to be \$94,921 for 2012 and \$96,600 for 2013.
- [23] In an affidavit filed January 8, 2015, the respondent deposed that he had not filed his income tax returns for 4 years and that his annual income for the last two years was approximately \$96,000. He attached a Form F8 Financial Statement.
- [24] The claimant is not seeking any child support from the respondent for Sydney after January 1, 2015. She is also not seeking any expenses for Sydney from the respondent for the period from January to May of 2014, even though she deposed she paid for 100% of them. The respondent has agreed to support Sydney while she is obtaining her bachelor's degree.

Issues

[25] The following issues arise in this case:

1. Should the court order retroactive increases in child support for Sydney?
2. What should be the respondent's income for determining his obligation for child support? Should the respondent's income be imputed for any period?
3. Are there special and extraordinary expenses owed by the respondent to the claimant?
4. Should a fine be imposed on the respondent under s. 213 of the Family Law Act?

Legal Framework

Child Support

- [26] The core principles underlying child support obligations were set out in *D.B.S. v. S.R.G.*, 2006 SCC 37 at para 38:
1. Child support is the right of the child;
 2. The right of support survives the breakdown of the child's parents' marriage;
 3. Child support should, as much as possible, provide the children with the same standard of living they enjoyed when their parents were together; and
 4. The specific amounts of child support owed will vary based on the income of the payor parent.
- [27] Where the court makes a child support order, it must do so in accordance with the Federal Child Support Guidelines, SOR/97-175 [the "Guidelines"]. This principle is enumerated in the Family Law Act, S.B.C. 2011, c. 25 at s. 150(1), as well as in the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).

- [28] The Guidelines contain a presumption in favour of the table amount of support stipulated in the Guidelines for children who are under the age of majority. The court has a discretion to determine the amount of support for dependent children who are over the age of majority:
3. (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is
 - (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
 - (b) the amount, if any, determined under section 7.
 - (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.
- [29] In *Neufeld v. Neufeld*, 2005 BCCA 7, the Court of Appeal addressed the obligations for child support where children are attending post-secondary educational institutions. Madam Justice Levine wrote, at para. 42, that "in principle, support for an adult child who is entitled to child support because of his or her attendance at a post-secondary institution generally should be determined under s. 3(2)(b)." In that decision, the Court of Appeal also approved the four-step test set out in *Wesemann v. Wesemann* (1999), 88 A.C.W.S. (3d) 1209 (B.C.S.C.) for determining the "appropriate" amount of child support under s. 3(2) at para. 38:

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?

[30] Other relevant sections of the Guidelines include: s. 2(3) Most current information; s. 9 Shared custody; s. 10 Undue hardship; s. 16 Calculation of annual income; s. 17 Pattern of income; s. 19 Imputing income; and s. 21 Income Information.

Retroactive Child Support

[31] The principles governing retroactive awards of child support were outlined by the Supreme Court of Canada in *D.B.S.*, *supra* and recently summarized by Mr. Justice Abrioux in *S.K.R. v. K.S.R.*, 2015 BCSC 914 at para. 26:

- (a) no child support analysis should ever lose sight of the fact that support is the right of the child: paras. 60, 104, 158;
- (b) '[i]n most circumstances... agreements reached by the parents should be given considerable weight. In so doing, courts should recognize that these agreements were likely considered holistically by the parents, such that a smaller amount of child support may be explained by a larger amount of spousal support for the custodial parent. Therefore, it is often unwise for courts to disrupt the equilibrium achieved by parents. However, as is the case with court orders, where circumstances have changed (or were never as they first appeared), and the actual support obligations of the payor parent have not been met, courts may order a retroactive award so long as the applicable statutory regime permits it': para. 78;
- (c) 'a payor parent who adheres to a separation agreement that has not been endorsed by a court should not have the same expectation that (s)he is fulfilling his/her legal obligations as does a payor parent acting pursuant to a court order': para. 77;
- (d) '[i]t will not always be appropriate for a retroactive award to be ordered. Retroactive awards will not always resonate with the purposes behind the child support regime; this will be so where the child would get no discernible benefit from the award. Retroactive awards may also cause hardship to a payor parent in ways that a prospective award would not. In short, while a free-standing obligation to support one's children must be recognized, it will not always be appropriate for a court to enforce this obligation once the relevant time period has passed': para. 95;

- (e) retroactive awards 'need not be seen as exceptional. It cannot only be exceptional that children are returned the support they were rightly due. Retroactive awards may result in unpredictability, but this unpredictability is often justified by the fact that the payor parent chose to bring that unpredictability upon him/herself. A retroactive award can always be avoided by appropriate action at the time the obligation to pay the increased amounts of support first arose': para. 97;
- (f) 'it is entirely conceivable that retroactive support could be ordered where a payor parent engages in no blameworthy conduct.' In fact, retroactive support has been ordered where an interim support award was based on incorrect financial information, even though the initial underestimate was honestly made. "At all times, a court should strive for a holistic view of the matter and decide each case on the basis of its particular factual matrix': para. 99;
- (g) '[d]elay in seeking child support is not presumptively justifiable. At the same time, courts must be sensitive to the practical concerns associated with a child support application': para. 101;
- (h) '[a] payor parent who informs the recipient parent of income increases in a timely manner, and who does not pressure or intimidate him/her, will have gone a long way towards ensuring that any subsequent delay is characterized as unreasonable... [A] recipient parent who accepts child support payments without raising any problem invites the payor parent to feel that his/her obligations have been met': para. 102;
- (i) 'unreasonable delay by the recipient parent is merely a factor to consider in deciding whether a court should exercise its discretion in ordering a retroactive award. This factor gives judges the opportunity to examine the balance between the payor parent's interest in certainty and fairness to his/her children, and to determine the most appropriate course of action on the facts': para. 104;
- (j) courts should not hesitate to take into account a payor parent's blameworthy conduct in considering the propriety of a retroactive award. They should take an expansive view of what constitutes blameworthy conduct which is anything that privileges the payor parent's own interests over his/her children's right to an appropriate amount of support: para. 106;
- (k) '[n]o level of blameworthy behaviour by payor parents should be encouraged. Even where a payor parent does nothing active to avoid his/her obligations, (s)he might still be acting in a blameworthy manner if (s)he consciously chooses to ignore them. Put simply, a payor parent who knowingly avoids or diminishes his/her support obligation to his/her children should not be allowed to profit from such conduct': para. 107;

- (l) '[n]ot disclosing a material change in circumstances -- including an increase in income that one would expect to alter the amount of child support payable -- is itself blameworthy conduct. The presence of such blameworthy conduct will move the presumptive date of retroactivity back to the time when circumstances changed materially. A payor parent cannot use his/her informational advantage to justify his/her deficient child support payments': para. 124;
- (m) '[i]n this context, a court could compare how much the payor parent should have been paying and how much (s) he actually did pay; generally, the closer the two amounts, the more reasonable the payor parent's belief that his/her obligations were being met. Equally, where applicable, a court should consider the previous court order or agreement that the payor parent was following': para. 108;
- (n) 'courts should consider the present circumstances of the child -- as well as the past circumstances of the child -- in deciding whether [a retroactive] award is justified': para. 110;
- (o) 'the quantum of retroactive awards is usually based on past income rather than present income; in other words, unlike prospective awards, the calculation of retroactive awards is not intrinsically linked to what the payor parent can currently afford': para. 115;
- (q) courts ordering a retroactive award must ensure that the quantum of the award fits the circumstances. Blind adherence to the amounts set out in the applicable tables is not required, nor is it recommended: para. 128; and
- (r) the general rule insofar as the date of retroactivity is concerned is that of effective notice: para. 118.

[Emphasis added.]

Discussion

Child Support until 19 Years

- [32] Sydney attended college immediately after high school and has remained enrolled in college. She attained the age of 19 years on December 23, 2014. Until she reached the age of 19 years, she was presumptively entitled to child support in accordance with the Guidelines.
- [33] After she attained the age of 19 and continued studying in school, the court has a discretion to continue to apply the Guidelines or determine an appropriate amount of support having regard to the factors in s. 3(2)(b). In this case, the claimant is not seeking support for Sydney after January 2015. Given the short period of time from her 19th birthday on December 23, 2014 to January 1, 2015, it is unnecessary to determine whether child support should be determined by an amount other than the Guidelines amount for this period.

Retroactive Increase in Child Support

- [34] In the notice of application the claimant seeks retroactive child support from 2009 to 2014 on the basis that the respondent failed to disclose increases in his income, which the claimant submits constituted a material change in circumstance. The claimant asserts that the respondent engaged in blameworthy conduct by not disclosing his actual income to the claimant.
- [35] In considering whether a retroactive increase is justified on the basis of the principles outline in D.B.S., I note, first of all, that s. 25 of the Guidelines places a continuing obligation on every spouse, on written request of the other spouse, to provide income information set out in s. 21(1) of the Guidelines. When the claimant requested this information in November 2013, the respondent failed to provide the information to her. Not only did he not provide this information to her in response to her request, he did not provide the information in response to her counsel's request on January 13, 2014. While his counsel ultimately did respond to counsel for the claimant, by letter of July 3, 2014, this was six months after counsel's request and only after the claimant had brought a court application. Further, the information provided by the respondent was rudimentary, at best. He did not provide the financial disclosure required under the Guidelines.
- [36] I have also considered the agreement between the parties which limited child support to \$500 per month from June 1, 2012 to June 1, 2013. While agreements between the parties should be given considerable weight, in this case the uncontested evidence before me is that at the time the agreement was being negotiated between the parties, the respondent represented that his income was \$88,000, when in fact it was \$94,900. I accept that the claimant relied upon the respondent's information in agreeing to child support in the amount of \$500 per month for the period from June 1, 2012 to June 1, 2013.
- [37] I have also considered the fact that the respondent continued to fail to meet his duty to disclose financial information regarding his income despite being ordered by Madam Justice Powers on May 26, 2014 to provide a sworn financial statement along with copies of his 2011, 2012 and 2013 personal income tax returns, notices of assessment, and his most recent pay statement showing his 2014 year to date income, within 30 days.
- [38] While the respondent deposed in January of 2015 that he had not filed his income tax returns for four years, there was no reasonable explanation from him as to why he failed to file his income tax returns or why he was unable to attend to their filing after the order of Madam Justice Power. I note that his counsel stated in his July 3, 2014 letter that the respondent's income is "complicated" as his company was sold and he was working "on contract". I do not accept that this is a sufficient reason for failing to file his tax returns and providing copies to the claimant.

- [39] Despite the further orders of Mr. Justice Myers and Madam Justice Ross, the respondent did not provide notices of assessment or pay statements. Further, despite the order of Mr. Justice Myers to provide a Form F8 Financial Statement within 30 days of August 18, 2014, it was not provided until January 6, 2015. The respondent only partially complied with the order of Madam Justice Ross.
- [40] Additionally, the respondent has not filed the information with respect to his 2014 income, which is required under s. 21 of the Guidelines by virtue of the claimant's current application.
- [41] Having regard to all of these circumstances, I conclude that I should exercise my discretion to award a retroactive increase in child support.
- [42] In considering the effective date of retroactive award, I note that in D.B.S., the court has a discretion as to when the retroactive support should be payable.
- [43] In this case, the amended notice of application of July 15, 2015, states that the claimant seeks retroactive arrears dating from January 1, 2009. However, in the claimant's affidavit of July 3, 2015, which was filed in support of the application, she deposed that: "At this time, I am seeking a retroactive increase in child support for Sydney for the period from June 1, 2012 to December 1, 2014 inclusive. I am asking the Court to impute a higher income to Mr. Healey due to his financial disclosure." In this circumstance, I decline to exercise my discretion to order a retroactive increase in child support earlier the period sought by the claimant.
- [44] I, therefore, order that the respondent pay a retroactive increase in child support for the period from June 1, 2012 to December 1, 2014 for Sydney.

Imputing Income

- [45] In determining the respondent's income for child support for 2012, I note that his T4 Statement of Remuneration states that his income from TransCanada Turbines in that year was \$73,621. A typed income statement which purports to report his income from Turbo Power states that it was \$21,300. The total income of \$94,921 is reflected in his income tax return for that year.
- [46] For 2013, there is no T4 Statement of Remuneration and no income tax return. There is his former counsel's statement that he was instructed that the respondent earned \$96,000 in 2013 and the respondent's own statement that his income was \$96,600. In the calculations submitted by counsel for the claimant, Mr. Reif suggested using this amount as the respondent's guideline income for 2013.
- [47] For 2014, there is no T4 Statement of Remuneration and no income tax return. There is simply his former counsel's statement that he was instructed the respondent expected to earn \$96,000 for that year.

- [48] Based on the above, I am prepared to accept that the respondent's income for the purposes of the Guidelines in 2012 was \$94,921 and \$96,600 in 2013. With respect to his income for 2014, I consider that this is a proper case to impute his income at a higher amount.
- [49] As noted by Mr. Justice Pearlman in *E.D.A. v. M.A.A.*, 2014 BCSC 1084, s. 19 of the Guidelines confers a broad discretion on the court to impute income to a spouse and provides a non-exhaustive list of circumstances where income may be imputed. One of the circumstances is where a spouse has failed to provide income information when under a legal obligation to do so.
- [50] Under s. 21 of the Guidelines, the payor spouse has the obligation to file income tax returns and notices of assessment and reassessment for the three most recent taxation years, as well as a current statement of earnings where the payor is an employee. Where the payor controls a corporation, the payor is obliged to file financial statements of the corporation for the three most recent taxation years.
- [51] Further, s. 23 of the Guidelines permits the court to draw an adverse inference against a payor spouse if he or she fails to provide income information required by s. 21 of the Guidelines, and to impute income to that spouse in such amount as the court considers appropriate.
- [52] In this case, given the respondent's conduct in failing to provide the information required to assess his income, I consider that it is appropriate to include an increase in his income for 2014, which reflects that his income has generally increased over the last number of years. I impute an income to the respondent of \$100,000 commencing January 1, 2014, until varied by agreement or order of the court. Prior to any application to vary this amount the respondent must provide the claimant with full disclosure of his personal, and any corporate, financial circumstances 30 days prior to bringing any application.

Special and Extraordinary Expenses

- [53] The respondent has accepted paying Sydney's tuition, books, fees and other educational expenses as well as rent and living expenses while she is attending college or university to obtain her bachelor's degree, effective January 1, 2015. As noted above, in the claimant's July 3, 2015 affidavit she stated that she is "not seeking a retroactive contribution to Sydney's post-secondary education expenses or her college living expenses for the period January to May 2014 even though [the claimant] paid 100% of them".
- [54] With respect to the period prior to post-secondary expenses from September 1, 2014 to January 1, 2015, the guiding principle underlying s. 7 of the Guidelines is that the expense is to be shared by the spouses in proportion to their respective incomes after deducting from the expense any contribution made by the child.

- [55] In this case, the respondent paid his share of Sydney's post-secondary educational tuition and books for the first term of the 2013/14 school year, but not for related living and school expenses. In my view, there was no reasonable basis for the respondent not to pay his proportionate share.
- [56] I order the respondent to pay his proportionate share of expenses incurred in relation to Sydney's post-secondary education for the first term of the 2013/14 school year including for food (\$150 x 4 months) and living expenses (\$250 x 4 months).
- [57] Post-secondary expenses for Sydney should also be paid on a proportionate basis for the remaining undergraduate school years, unless Sydney receives such expenses from the family trust or the respondent. The respondent has entered into Education Contract with Sydney for her education costs and living allowance while pursuing her bachelor's degree.

Fine

- [58] Mr. Justice Punnett in *J.D.G. v. J.J.V.*, 2013 BCSC 1274 reviewed s. 213 of the Family Law Act. He noted that a remedy for non-disclosure is now available under a wide range of circumstances and that the range of remedies is broader than under the previous legislative scheme. In considering how s. 213 should be applied, he outlined a number of guiding principles at paras. 21 to 30, which I summarize as follows:
- i. Section 213 recognizes that non-disclosure is a barrier to the speedy and inexpensive determination of cases.
 - ii. Section 213 should be read in the context of the Act's regime of encouraging earlier disclosure, including s. 5 of the Act which requires a party to a family law dispute to provide to the other party full and true information for the purpose of resolving a family law dispute.
 - iii. The goal of proper disclosure is to enable the parties to resolve their dispute. Section 213 is to be used to secure proper disclosure in a timely and cost efficient way.
 - iv. Section 213 requires a robust application to accomplish that end. It should be used creatively in a manner sensitive to the issues of a particular case.
 - v. While an application to hold a party in contempt is still available, in all but the most egregious cases an application under s. 213 should be made initially.
- [59] In *J.D.G.*, Mr. Justice Punnett imposed a \$500 fine for the failure to provide timely disclosure of a financial statement. The financial statement was provided two days before the hearing of the application. He held that it was important to bring home the significance of timely disclosure: that proper and timely disclosure will be enforced.

[60] The conduct of the respondent in this case warrants a greater penalty given the length of his delay in proving any documentation confirming his income and his repeated failure to fully comply with orders of the court. I order a fine of \$2,000 to be paid by the respondent to the claimant within 30 days of this decision.

Summary

[61] In summary, I conclude as follows:

1. The claimant is entitled to a retroactive increase in child support from January 1, 2012 to December 1, 2014. The respondent's retroactive arrears will be based upon the respondent's income of \$94,921 for 2012; \$96,600 for 2013; and an imputed income of \$100,000 for 2014.
2. The respondent is required to pay his proportionate share of special and extraordinary expenses associated with Sydney's attendance at college/university to obtain her bachelor's degree, unless Sydney receives such expenses from the respondent's family's educational trust or the Education Contract.
3. The respondent is fined in the amount of \$2,000 under s. 213 of the Family Law Act for failure to fully comply with the requests of the claimant and court orders for disclosure of financial information related to the respondent's income.

[62] The claimant shall have her costs of this application.

"Madam Justice Harris"

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