
CANADA / JUDGMENT

Holmstrom v. Holmstrom

2014 BCSC 545

COURT

Supreme Court of British Columbia

DECIDED

31 March 2014

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2014 BCSC 545 Holmstrom v. Holmstrom

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Holmstrom v. Holmstrom,

2014 BCSC 545

Date: 20140401

Docket: E053982

Registry: Vancouver

Between:

Donald Leonard Holmstrom

Claimant

And

Molly Maria Holmstrom

Respondent

Before: The Honourable Mr. Justice S.R. Romilly

Reasons for Judgment

Counsel for the Claimant:

Clara A.K. Richardson

Counsel for the Respondent:

Glenn A. Laughlin

Place and Date of Hearing:

Vancouver, B.C.

February 6, 2014

Place and Date of Judgment:

Vancouver, B.C.

April 1, 2014

I. INTRODUCTION

- [1] These reasons address a summary trial application by the claimant pursuant to Rule 11-3 of the Supreme Court Family Rules.
- [2] The claimant seeks the following relief in his Notice of Application filed October 21, 2013:
1. that the order of Mr. Justice Johnston, made November 20, 2006, be varied retroactively to January 1, 2009, and that all arrears, interest, penalties and fees flowing therefrom be cancelled;
 2. that the order of Mr. Justice Johnston, made November 20, 2006, be varied prospectively, based on the incomes of the parties and pursuant to s. 9 of the Federal Child Support Guidelines, SOR/97-175 [Guidelines];
 3. that the parties' son, Adam Marcus Holmstrom, born May 6, 1992, is no longer a child of the marriage as defined by the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), as of April 30, 2012;
 4. that the respondent pay compensation to the claimant in the amount of \$5,800 for unpaid special and extraordinary expenses; and
 5. costs to the claimant.
- [3] The claimant also sought the following additional relief at the hearing of the application on February 6, 2014:
1. that while the parties' daughter, Hannah Maria Holmstrom, born July 1, 1996, is matriculating full-time in post-secondary school, the claimant will pay 100% of her tuition, fees, books and on or off campus housing. During this time, he will cease to pay child support, regardless of where Hannah is living.
- [4] The respondent opposes the claimant's application for retroactive variation of child support and cancellation of arrears. She also opposes the application for retroactive variation of the claimant's obligation in respect of special expenses and the cancellation of arrears of special expenses. The respondent claims her costs for this application.
- [5] The respondent opposes certain of the relief sought by the claimant on the following grounds:

1. it would not be grossly unfair to decline to retroactively vary the claimant's child support obligations or cancel the accumulated arrears;
 2. there has not been a material change in circumstances to warrant a change in the child support order;
 3. the claimant has the present ability to pay the accumulated arrears;
 4. the reduction in the claimant's income was voluntary;
 5. the retroactive variation of child support would result in the claimant avoiding his obligations by deferring his income to a later date;
 6. the claimant wilfully disobeyed the existing order and deliberately allowed the arrears to accumulate; and
 7. with respect to the claim for special expenses, the claimant has not fully disclosed his financial means.
- [6] For the reasons that follow, the application is dismissed, except for the declaration that the parties' son Adam is no longer a child of the marriage as of April 30, 2012. There will also be a variation of the ongoing quantum of child support.
- [7] I will discuss the issues after setting out the relevant background information.

II. BACKGROUND

- [8] The parties were married on October 7, 1989, separated on August 1, 2002, and divorced by the order of Mr. Justice Johnston pronounced November 20, 2006 (the "Divorce Order").
- [9] The claimant is a chartered accountant. He is the president and sole owner of his consulting company, Value Drivers Inc.
- [10] The respondent is a medical office assistant.
- [11] The parties have two children together: Adam Marcus Holmstrom, born May 6, 1992, age 21, and Hannah Maria Holmstrom, born July 1, 1996, age 17. At the time of the Divorce Order, the children were 14 and 10 years old, respectively.
- [12] Pursuant to the parties' separation agreement dated November 25, 2002 (the "Separation Agreement"), the parties share joint custody and joint guardianship of the children. The Separation Agreement also set out a parenting schedule whereby the children would live with each of the parties for an equal amount of time.
- [13] The Divorce Order ordered the claimant to pay \$1,697 per month in child support commencing May 1, 2006. The court found that the annual income of the claimant was \$151,365 and the annual income of the respondent was \$24,237. The quantum of child support was calculated by way of a set-off pursuant to s. 9 of the Guidelines. The amount of monthly child support payable from the claimant to the respondent was \$2,078 and the

amount of monthly child support payable from the respondent to the claimant was \$381. This produced a net difference of \$1,697 per month. The child support amounts were calculated according to the 2006 Tables.

- [14] The Divorce Order also required the parties to share any special expenses for the children in proportion to their respective incomes. The Divorce Order stipulated that the claimant's percentage was 66.5% and the respondent's percentage was 33.5%. The parties' respective proportions were to be reviewed on June 1 of each year. The Divorce Order included a list of the children's expenses that qualified as special expenses.
- [15] The Divorce Order included a review clause, whereby the parties shall exchange their financial documents by May 15 of each year and shall review child support on June 1 of each year.
- [16] At the time of the Divorce Order, the claimant was employed as president and CEO of Eaglequest Golf. He had worked there since 1996.
- [17] The claimant left his job there in October 2007. He began working for The Silver Recycling Company Inc. ("Silver Recycling"). Silver Recycling was a start-up company with "three potential acquisition targets that it had done extensive work on". He became president in May 2008. His salary was on par with his former job. He did not take any time off work between switching companies.
- [18] On January 1, 2009, the claimant increased his child support payments to \$1,800 per month.
- [19] Silver Recycling eventually failed due to financial reasons. The claimant was terminated by the board of directors on January 30, 2009. The company could not pay the claimant any of the monies it owed him. The last paycheck he received was in December 2008.
- [20] On February 16, 2009, the claimant advised the respondent of his termination and requested a review of child support payments pursuant to the Divorce Order. He also advised the respondent that he was looking for work, but would not be able to continue making the child support payment much longer due to the loss of his job. He says he requested the respondent's income information at this time so that a review of child support could be completed, but that did not occur.
- [21] Over the next eight months, the claimant communicated with the respondent and her counsel in order to review and revise the child support amount. During this time, the claimant continued to pay \$1,800 in child support and \$2,000 in spousal support, a total of \$3,800 per month. He says he had to borrow money from his line of credit to make these payments.
- [22] The claimant began to grow his consulting business during this time. He incorporated Value Drivers Inc. in April 2009.

- [23] During May and June 2009, the claimant communicated with the respondent's counsel and supplied his income information as well as confirmation of his efforts to find employment. The claimant did not hear back from the respondent or her counsel regarding a suggested reduction in child support payments.
- [24] On October 1, 2009, the claimant began paying \$865 per month in child support. He says this amount was calculated based on his financial circumstances at the time. He continued to pay spousal support of \$2,000 in accordance with the Divorce Order. His obligation to pay spousal support terminated on December 31, 2010. The claimant did not hear from the respondent or her counsel again regarding the child support amount.
- [25] In or around September 2013, the respondent enrolled with the Family Maintenance Enforcement Program ("FMEP"). FMEP advised the claimant that he owed over \$40,000 in arrears. The claimant immediately wrote back to FMEP and retained legal counsel.
- [26] Before turning to the remainder of the issues on this application, I wish to summarily address the claim that Adam ceased to be a child of the marriage when he began working in May 2012. The claimant seeks an order that Adam is no longer a child of the marriage as of April 30, 2012.
- [27] The children have lived approximately equally with the parties, except for the following times, during which the claimant says that Adam lived primarily with him:
- from mid-February 2008 to August 2009 (during Adam's last half of grade 10 and most of his grade 11 year); and
 - from September 2011 (when Adam began his second year at Douglas College) to the present.
- [28] In May 2012, Adam began working at a coffee shop. He continues to live primarily with the claimant.
- [29] The respondent concedes that Adam has lived with the claimant since July 2012; however, the respondent alleges that Adam lived with her until July 2012. The claimant denies this.
- [30] While the claimant recognizes that he could claim child support from the respondent for the times when Adam was living with him, he chooses not to do so.
- [31] There will be a declaration that the parties' son Adam is no longer a child of the marriage as of April 30, 2012.

III. CANCELLATION OR REDUCTION OF CHILD SUPPORT ARREARS

A. Legal Principles

- [32] Section 17 of the Divorce Act states that a court may make an order varying child support prospectively or retroactively, if there is a satisfactory "change in circumstances" since the child support order was made:

Order for variation, rescission or suspension

17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,
- (a) a support order or any provision thereof on application by either or both former spouses;
- ...

Factors for child support order

- (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

Guidelines apply

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

[33] The Guidelines provide, in relevant part:

Circumstances for variation

14. For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:
- (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;
- (b) in the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support;

[34] The court may reduce or cancel arrears and interest under s. 174 of the Family Law Act, S.B.C. 2011, c. 25:

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.

[35] The test for cancelling or reducing child support arrears was cited by Madam Justice Fenlon in her recent decision in *Beavis v. Beavis*, 2014 BCSC 422 (released March 13, 2014). Although it could not have been referred to by counsel in this proceeding, the principles contained therein were adequately canvassed and addressed by both parties. Sitting on an appeal from a Provincial Court judgment, Fenlon J. succinctly summarized the applicable law:

[14] In *Semancik v. Saunders*, 2011 BCCA 264 at para. 25, the Court of Appeal states that when applying for the cancellation or reduction of child support arrears:

[25] The applicant must prove a material (defined as a "significant and long lasting") change in circumstances and that it would be grossly unfair not to cancel the arrears.

[Emphasis in original.]

[15] Grounds A (Gross Unfairness) and B (Change in Circumstances) relate to the two main elements of this test. Grounds C (Financial Disclosure) and D (Obligation to Earn to Capacity) fall within ground B: they are two factors to consider when assessing whether the applicant has proven a significant and long-lasting change in circumstances due to a reduction in income. Accordingly, I address the four grounds of appeal within the structure of this two-part test.

[36] In other words, there are two criteria for determining whether a cancellation or reduction of child support arrears is appropriate: (1) a material change in circumstances; and (2) that it would be grossly unfair not to reduce or cancel the arrears.

[37] In *P.L. v. J.D.L.*, 2013 BCSC 1492, Fleming J. reviewed some of the principles that should be applied on an application for the reduction or cancellation of child support arrears. She wrote, in relevant part:

[21] The legal principles applicable to any application regarding child support and cancellation or reduction of child support arrears were discussed by Madam Justice Martinson in *Earle v. Earle*, 1999 BCSC 283 ("Earle"). With respect to child support generally, those principles are:

parents have a joint and ongoing legal obligation to support their children; it is the child, not the parent, who has the right to support; and the payment of child support is based on the ability of the parent to pay, not only what the parent earns. The result of this last principle is that parents have a legal obligation to earn as much as they are reasonably capable of earning to meet their obligation to support their children (Earle and G.(S.) v. W.(G.), 2006 BCSC 991).

- [22] With respect to variation applications, the applicant must establish a material change of circumstances since the original order was made. The change must be significant and long lasting. A change to the Guidelines amount is not automatic: Earle.
- [23] The cancellation or reduction of arrears is a form of variation. Madam Justice Martinson in Earle found the test under the Family Relations Act, R.S.B.C. 1996, c. 128, which required that arrears not be reduced or cancelled unless it would be grossly unfair not to do so, is similar to the one to be applied under the Divorce Act. The "grossly unfair test" has been found appropriate for consideration on a variation application under the Divorce Act: S.A.R. v. L.G.R., 2011 BCSC 712, at para. 45; and Lewis v. Lewis, [1999] B.C.J. 2537 (S.C.), at para. 16.
- [38] In Earle v. Earle, 1999 BCSC 283 at paras. 25-43, Madam Justice Martinson clarified the criteria for a cancellation or reduction of arrears. In relation to a change in financial circumstances, she said:
- [25] I will now consider a number of specific arguments that are often made to the courts on applications to cancel or reduce arrears and give the legal rules that apply to those arguments.
- a. "I cannot afford to pay now"
- [26] Not being able to pay now is not a valid legal reason to cancel or reduce arrears. They will only be cancelled if the person is unable to pay now and will be unable to pay in the future.
- b. "I could not pay when I was supposed to because my financial circumstances changed"
- [27] People making this argument have a heavy onus. It is not good enough just to say that they could not pay because they earned less. They can only get a reduction or a cancellation of arrears if they present detailed and full financial disclosure, under oath (usually in the form of an affidavit) that:
- i. the change was significant and long lasting and
- ii. the change was real and not one of choice and
- iii. every effort was made to earn money (or more money) during the time in question, and those efforts were not successful.

[Emphasis in original.]

- [39] In *L.B. v. J.K.*, 2012 BCPC 231, Hamilton P.C.J. outlined some of the principles to consider in determining the meaning of "grossly unfair":
- [50] What is clear from these cases is that a determination of gross unfairness is a factual determination. As well, it is clear that the gross unfairness test applies to applications to reduce or cancel arrears of both child and spousal maintenance.
- [51] So, what does "grossly unfair" mean?
- [52] I was unable to find any helpful authority that sets out what the phrase "grossly unfair" means. Obviously to meet the grossly unfair test the applicant must establish more than it would be unfair to maintain the maintenance arrears. Establishing gross unfair is clearly a more onerous test than proving simple unfairness.
- [53] I am of the view that gross unfairness means more than something that is a significant financial burden.
- [54] In order to meet the gross unfairness test, I am of the opinion that the applicant must establish that maintaining the maintenance arrears is so unfair that to enforce payment of the arrears would serve an injustice on the payor that the court cannot countenance. If enforcing payment of the arrears leaves a payor in strained financial circumstances, that is not enough.
- [55] Circumstances in which a court might conclude that an applicant has met the gross unfairness test might include situations where child maintenance arrears have accumulated during a time when the child was living with the payor and not the recipient, or where the child was removed from the recipient's care by child welfare authorities, or was living with other extended family members. Gross unfairness might be established in circumstances where enforcing the payment of the maintenance arrears would force the payor into bankruptcy. A determination of gross unfairness in these examples would depend on the facts of each individual case. However, what is clear from the authorities is that cases in which maintenance arrears will be reduced or cancelled are rare: see [*Luney v. Luney*, 2007 BCCA 567] at para. 43.
- [56] There is a reason for the test being as onerous as it is. The test is onerous because parents have a duty to their children to financially support those children throughout their childhood. This duty imposes an obligation on both parents to financially support their children commensurate with the parents' financial circumstances - *Earle*, *supra*, at para. 16. This duty exists whether or not a court order is in place.
- [57] When a parent fails to fulfil their duty, the children are deprived of the financial support they are entitled to receive, but which they cannot enforce. The children cannot go to court to secure the payment of the support they are due. The children suffer a deprivation, an injustice.

[58] When the parent's duty is secured by a court order, the failure to fulfil that duty not only serves an injustice to the child, but the parent is disobeying a court order. Our courts cannot, and will not, tolerate such conduct except in the rarest of cases.

[59] So, when a parent comes to court having failed in their duty to their child, deprived the child of that which the child is entitled to receive but cannot enforce, and disobeyed a court order, our courts will not condone that parent's behaviour unless, and only unless, to insist that the parent fulfil his or her duty would be grossly unfair. For these reasons, the grossly unfair test is not an easy test to meet.

[Emphasis added.]

[40] In *Longstaff v. Longstaff* (1993), 86 B.C.L.R. (2d) 1 (C.A.), Rowles J.A., writing for the Court of Appeal, said:

[54] In *Victory v. Victory* [[1988] B.C.J. No. 564 (C.A.)], this Court quoted with approval a passage from the judgment of Huddart Co. Ct. J. (as she then was) in *Barton v. Barton*, [[1985] B.C.J. No. 776 (Co. Ct)], at p. 10:

To cancel arrears on a child maintenance order merely because that order, never sought to be varied, cannot at a moment in time be enforced, encourages a lack of diligent effort to pay in the hope that the more diligent parent will give up any attempt to enforce the order at whatever cost in lost savings and extra effort.

If the Courts are to respect the principle that parents share equally the responsibility for the care of their children, no result should be permitted that gives any appearance of favouring a parent whose efforts to fulfil that responsibility have been less than those of the other who shoulders it by dint of energetic and sustained application of his or her resources.

[41] The Court of Appeal in *Longstaff* also addressed the "grossly unfair test":

[45] The onus was on the respondent to show that it would be "grossly unfair" not to reduce or cancel the arrears. If that onus was not met, the arrears could not be cancelled.

[42] The following factors are generally not relevant in deciding whether to reduce or cancel child support arrears:

- delay in coming to court to enforce payment (Earle at para. 34);
- the children have not suffered because others provided assistance (Earle at para. 38);
- the children do not need the money now (Earle at para. 39); and
- even though it is less than the full amount, payments were made that contributed to the children's expenses (Earle at para. 42).

I note that some of these arguments are advanced by the claimant in this case.

[43] A trial judge can assess the appropriate magnitude of any reduction in arrears by considering the difference between the income on which the order or agreement is based and the payor's actual income during the same period. However, it is important to note that recalculating arrears is not appropriate until after it has been determined that a cancellation or reduction of child support arrears has met the two-part test, i.e. a material change in circumstances and that it would be grossly unfair not to cancel or reduce the arrears. This is true even where the court order pursuant to which arrears have accumulated provides for a review of the parties' respective incomes. See: L.B. at para. 42; P.L. at paras. 41-42; and Beavis at paras. 40-45.

[44] The policy underlying this reasoning was laid out by Fleming J. at para. 42 of P.L.:

[42] I note in addition the respondent provided no authority to establish that the court can retroactively calculate child support payments based upon the payor's line 150 income, and then set the arrears based upon the difference between what was paid and what should have been paid according to the line 150 income. In similar circumstances, the Provincial Court in L.B. v. J.K., 2012 BCPC 0231, refused to adopt this approach in part because to do so encourages payors to do nothing in the face of a reduction in income and disobey a court order over an extended period of time, allowing significant arrears to accumulate. Then, when it suits the payor, he or she may bring an application for an order that deprives the children in question of child support that they were entitled to receive and relied upon receiving (para. 42).

[Emphasis added.]

B. Parties' Positions

Claimant

[45] The claimant submits that there have been two changes in circumstances:

- the claimant was terminated from his employment on January 30, 2009, causing his income to decrease dramatically; and
- the parties' son Adam ceased to be a child of the marriage on April 30, 2012.

[46] The claimant's incomes since 2009 have been as follows: \$60,055 in 2009; \$52,500 in 2010; \$152,500 in 2011; and \$81,000 in 2012. He estimates his income for 2013 will be \$149,250.

[47] The claimant believed he was making a wise financial decision for the support and future education of his children when he switched jobs. He says his termination from Silver Recycling was a direct result of the market crash in the fall of 2008. He says he could not have predicted the economic downturn or that Silver Recycling would cease operations. He never sought any of the monies that Silver Recycling owed him because his efforts were unlikely to be successful.

- [48] The claimant says he worked hard and made reasonable efforts to find employment during the time he was unemployed. He was not deliberately unemployed or underemployed and provided notice of his termination to the respondent immediately.
- [49] The claimant says that he began paying the revised amount because he did not receive any indication from either the respondent or her counsel that the suggested reduction in child support was not agreed to. He says this was reasonable under these circumstances and that he should not be at fault for not applying to the court when neither the respondent nor her counsel ever responded to him. He submits the fact that nothing happened for close to four years before the respondent claimed the child support arrears should be taken into consideration.
- [50] The claimant argues that he has overpaid by approximately \$16,000 in child support if payments were based upon his actual income. In support of the claimant's position, counsel drew my attention to the following authorities: *Reis v. Bucholtz*, 2012 BCSC 50; and *C.A.O. v. S.J.O.*, 2012 BCSC 378.

Respondent

- [51] It is the respondent's position that there has not been a material change in circumstances to warrant a change in the child support order. She submits that the arrears should not be cancelled or reduced.
- [52] The respondent does not argue that the claimant's income was other than as he stated. However, the respondent submits that the claimant voluntarily left secure employment and changed careers to pursue an entrepreneurial path. She submits he earned less than he was capable of doing for reasons of personal fulfillment and in long-term expectation of gain. She says this was a deliberate decision on the claimant's part and his financial situation was to a large extent self-induced. The respondent does not object to the claimant's pursuit of his personal goals and aspirations; she only objects to his attempt to force his children to bear the cost of his personal career decisions. She says the claimant cannot avoid his responsibilities by blaming the failure of a risky and speculative venture on poor economic conditions.
- [53] The respondent points to the fact that the claimant could have applied to the court in 2009 for a review of his child support obligations, but he chose not to do so. Instead, he reduced his payments to a figure he felt was appropriate. He now seeks to have the court retroactively vary his child support arrears and, in essence, condone the career choices he made at the expense of his children and in deliberate disobedience of a court order. She also notes that the claimant has not claimed that he is unable to pay the approximately \$40,000 in arrears outstanding from September 2009 to the present.

- [54] In support of the respondent's position, counsel drew my attention to the following authorities: *L.B. v. J.K.*, 2012 BCPC 231; *M.T. v. C.W.*, 2007 BCSC 1110; and *Jones v. Jones*, 2012 BCSC 1231.

C. Application of the Law to the Facts

- [55] In the case at bar, it is obvious that the claimant, a very sophisticated businessman and chartered accountant, gambled and lost. He chose to leave secure employment to try something new.
- [56] The comments of McEwan J. in *V.A.P. v. L.W.P.*, 2004 BCSC 245 (sub nom *Pierce v. Pierce*), are apposite. Notwithstanding any factual distinctions between that case and the case at bar, I agree with his remarks at para. 23:
- [23] The respondent's position on the economic consequences of this move is that "it is not appropriate to criticize the [respondent] for trying to improve himself. A diminution of income is an unfortunate consequence of his new endeavour". These endeavours have apparently not paid anything significant until 2003. The respondent suggests that certain "expenses" ought to be deducted from the amount he earned in 2003, although he is quite unclear as to what that really means. The respondent's plan to improve himself has so far left him with a deficit of over \$60,000 over the years 2001-2003 compared to what he could have made in the job he left. While it may be that the respondent's change of occupation will, in the long run, prove to be to his advantage, the timing of it has meant that one "unfortunate consequence of his new endeavour" is that the petitioner has had to support the children largely on her own. Given his options and his responsibilities, the respondent cannot be permitted to foist all of the consequences of his leap from an economic precipice on the petitioner. In other words, I do not think the respondent should be allowed to load the costs of his career adjustment on the petitioner, now, while he reaps the benefits in years to come.

[Emphasis added.]

- [57] This is exactly what the claimant did in this case.
- [58] In *M.T.* at para. 76, Goepel J. (as he then was) quoted a relevant passage from Madam Justice Steel in *Donovan v. Donovan*, 2000 MBCA 80:
- [76] In *Donovan v. Donovan* (2000), 190 D.L.R. (4th) 696, 2000 MBCA 80, Madam Justice Steel gave the judgment of the court and wrote at para. 21:

The following guidelines may be considered when determining whether to impute income.

5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.

6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.
- [59] Mr. Justice Goepel went on to state at para. 77, "A party cannot impose the costs of a career adjustment onto the recipient parent."
- [60] Relying on Reis at para. 18, the claimant submits that where the court order for child support contains a provision requiring annual reviews of child support, there does not need to be a demonstrated material change in circumstances before the quantum of child support may be adjusted to reflect a change in income.
- [61] In Reis, the trial judge recognized that Mr. Bucholtz's income was likely to vary from year to year and specifically provided for annual adjustments. While the trial judge undoubtedly hoped that court applications for such a limited purpose could be obviated, Bernard J. was satisfied that either party may resort to the court if the quantum of child support could not otherwise be resolved.
- [62] But that is not the case here. The claimant's income was not likely to vary from year to year. It was not expected that he would leave a steady job and, for whatever reason, choose to switch careers and take up high risk employment. In this case, it was expected for the parties to review their financial information every year, but that does not amount to an automatic variation of child support based solely on the parties' actual incomes. As Fleming J. stated in P.L. at para. 41:
- [41] The 2010 Order, and paragraph 19 of the 2008 Order which it incorporates, contemplate an exchange of tax and other financial information as required by the Guidelines for the purpose of reviewing the quantum and making changes to quantum. The requirement for proper financial disclosure prior to a review of quantum is far from a requirement that quantum be subject to automatic annual variation based solely upon the respondent's line 150 income. In the absence of agreement of the parties or further order of the court, the 2010 Order continues.
- [Emphasis added.]
- [63] The decision in C.A.O. was primarily concerned with whether the particular facts of that case constituted the requisite "change in circumstances" in order to allow for a cancellation or reduction of child support arrears. This case was decided under the very similar predecessor provision to s. 174 of the Family Law Act, that is, s. 96 of the Family Relations Act, R.S.B.C. 1996, c. 128. After an extensive review of the case law, Mr. Justice Johnston held:
- [34] From all of these authorities, I conclude that what is required to warrant consideration of variation of child support under s. 17(4) of the Divorce Act and s. 14 of the Guidelines is a sufficient change in the payor's Guidelines income.

- [35] What will be sufficient will depend on the circumstances: an apparently small change can assume great importance if the income is itself modest, whereas a high-income payor may be able to sustain larger fluctuations in annual earnings.
- [64] However, the issue of gross unfairness was not discussed in that case. The question of whether it would be grossly unfair not to reduce or cancel the arrears must be addressed: *Semancik v. Saunders*, 2011 BCCA 264 at paras. 24-25; Longstaff at paras. 45, 48-49; P.L. at para. 23; and *Jensen v. Jensen*, 2013 BCSC 1373 at para. 29. As Hamilton P.C.J. noted in *L.B.*, this test is an onerous one.
- [65] The claimant says he is able to show good reasons why his income dropped and why he did not pay the court ordered amount of child support, unlike the payors in many of the unsuccessful cases. However, every case is dependent on its own specific facts. Applying the law as enunciated above to the facts before me, regardless of whether or not there has been a change in the claimant's financial circumstances, I am not satisfied that the claimant has met the onus of the "grossly unfair test". In my view, it would not be grossly unfair to leave the arrears in place.
- [66] Accordingly, the application for a cancellation or reduction of child support arrears is dismissed.

IV. ONGOING QUANTUM OF CHILD SUPPORT

- [67] The claimant estimates that his 2013 income will be \$149,250. The respondent's employment income for 2013 was \$39,365.
- [68] The parties agree that their daughter Hannah resides equally with both of them. The parties also agree that their son Adam resides with the claimant.
- [69] I agree with the claimant that the ongoing amount of child support should be set at \$960 per month, based on a set-off pursuant to s. 9 of the Guidelines. It is so ordered.

V. COMPENSATION ORDER FOR SPECIAL AND EXTRAORDINARY EXPENSES

- [70] This application is in the nature of a summary trial. Pursuant to Rule 11-3(15), I may grant judgment, either on an issue or generally, unless:
- (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application
- [71] With respect to the application by the claimant for a compensation order in the amount of \$5,800 for unpaid special and extraordinary expenses by the respondent, because of the dispute between the parties as to their various lists of expenses, I am unable to adjudicate this matter. The evidence is too far in dispute to proceed on this issue.

VI. EDUCATIONAL FEES FOR HANNAH

[72] I agree with the respondent that since the application for the payment of Hannah's fees was not a part of the claimant's original Notice of Application, I should refuse to deal with that matter. This portion of the application is therefore dismissed.

VII. CONCLUSION

[73] The claimant's application is dismissed, except for the declaration that Adam is no longer a child of the marriage as of April 30, 2012. The ongoing amount of child support pursuant to a set-off under s. 9 of the Guidelines will be \$960 per month, payable by the claimant.

[74] Each party shall bear their own costs.

"Romilly J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/14/05/2014BCSC0545.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/holmstrom-v-holmstrom-2014>

Prepared on 28 October 2026 · Esheria