

CANADA / JUDGMENT

Hosseini v. Kazemi

2022 BCSC 476

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 476 Hosseini v. Kazemi IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hosseini v. Kazemi, 2022 BCSC 476 Date: 20220323 Docket: E051202 Registry: Vancouver Between: Mahshid Sadat Al Hosseini Claimant And Kamyar Kazemi Respondent Before: The Honourable Madam Justice Ahmad Reasons for Judgment Claimant, appearing in person via videoconference M. Hosseini Respondent, appearing in person via videoconference: K. Kazemi Place and Date of Hearing: Vancouver, B.C. January 14, 28 and February 18, 2022 Place and Date of Judgment: Vancouver, B.C. March 23, 2022 Table of Contents I. Introduction.. 3 II. Discussion and Analysis. 3

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- [1] The claimant, Mahshid Sadat Al Hosseini, and the respondent, Kamyar Kazemi, were married on May 5, 1995 and separated on January 1, 2005. They have two children, K., born January 15, 1998, and M., born July 20, 2003.
- [2] Despite the 17 years since their separation, the parties remain determined to litigate issues between them as they arise, including issues relating to their children, now 24 and 18 years old. Both children remain children of the marriage while they live at home and/or are enrolled in post-secondary studies: Hosseini v. Kazemi, 2021 BCSC 1938.
- [3] On this application, Ms. Hosseini seeks an order imputing income to Dr. Kazemi and for a determination of the parties' incomes for 2018, 2019, and 2020. She seeks orders for the payment of retroactive child support from July 2019 to December 31, 2021 and for the retroactive adjustment of the parties' proportionate share of special and extraordinary expenses based on those incomes.

- [4] She also seeks an order for prospective child support and confirmation of a previous order requiring Dr. Kazemi to pay for M.'s transportation costs. II. Discussion and Analysis
1. Application for retroactive child support
- [5] By order dated January 24, 2018 (the "Young Order"), Justice Young found that:
- a) Dr. Kazemi's 2016 Guidelines income was \$494,713; and
- b) Ms. Hosseini's 2016 Guidelines income was \$102,134.
- [6] Those Guidelines incomes have been used to calculate: (a) the amount of child support payable by Dr. Kazemi to Ms. Hosseini; and (b) the parties' proportionate share of special and extraordinary expenses from August 1, 2017.
- [7] As noted, Ms. Hosseini seeks an order assessing the incomes for 2018, 2019, and 2020, for retroactive child support dating back to July 1, 2019, and for an adjustment to the parties' proportionate share of special and extraordinary expenses based on the assessed income for those years.
- [8] The first question to be determined is whether she is entitled the retroactive support and apportionment.
- [9] In *D.B.S. v. S.R.G.*, 2006 SCC 37, the Supreme Court of Canada set out four factors for the Court to consider when assessing a claim for retroactive child support. They are: (a) whether there is a reasonable excuse why support was not sought earlier, (b) conduct of the payor parent, (c) circumstances of the child, and (d) hardship that may occasioned by a retroactive award.
- [10] I will assess each of those factors.
- [11] The Young Order was based on the parties' financial information for 2016. Dr. Kazemi provided Ms. Hosseini with income tax returns for 2017 and 2018 in September 2019. On November 22, 2019, Ms. Hosseini emailed Dr. Kazemi about that information. Noting that his gross income had "increased significantly" since Justice Young had set their Guidelines incomes in 2017, she calculated child support based on his new reported income and advised that "the increase should be retroactive to July 2019". She suggested that they resolve the issue of increased child support "by agreement to avoid further court hearings".
- [12] Ms. Hosseini followed up that email with an email on November 24, 2019 in which she advised Dr. Kazemi, "If you don't increase child support, I would have to take legal actions I hope we can resolve this outside [the] court system".
- [13] The parties did not resolve the issue. Although Ms. Hosseini took steps to set the application for hearing in December 2019, she did not proceed with it until December 15, 2021 when she filed this application. She explained that the stress of having to make the application in 2019 prevented her from proceeding then.

- [14] Regarding delay, Dr. Kazemi argues that Ms. Hosseini's motivation in seeking retroactive child support is tied to an order (the "October 2021 Order") made on October 5, 2021 that decreased the amount of child support payable during the period in which their now 24-year old son is earning an income and residing with Ms. Hosseini and in which their daughter M. is over the age of majority and resides in residence at a post-secondary institution. Dr. Kazemi argues that if it was Ms. Hosseini's intention to proceed with an application for retroactive child support, she should have done so when she received his updated tax information in September 2019.
- [15] I do not accept that argument. First, to the extent that motivation is a relevant consideration, Ms. Hosseini's emails to Dr. Kazemi in November 2019 belie his view of her motivation in bringing this application. Those emails also undermine any suggestion that Ms. Hosseini waived the entitlement to child support on the basis of Dr. Kazemi's increased income. In any event, as noted in D.B.S., child support cannot be waived by a recipient parent in any case: D.B.S. at para. 104. In my view, there is a reasonable excuse why increased support was not sought sooner. Delay does not preclude Ms. Hosseini from bringing this application now.
- [16] Regarding his conduct as the payor, Dr. Kazemi argues that, in addition to paying child support and his share of special and extraordinary expenses, in the period for which retroactive support is sought, he has given additional monies and gifts to the children, including an allowance of \$200 a month each, a vehicle for K., and two payments of \$3,000 to K.
- [17] He also argues that that to the extent that he was late in providing financial information, Ms. Hosseini was late as well.
- [18] I cannot conclude that Dr. Kazemi's delay in providing Ms. Hosseini with his 2017 and 2018 income tax returns until September 2019 was a deliberate attempt to avoid his obligation to pay a commensurate amount of child support. However, his delay allowed him to avoid an increase in his obligation, despite Ms. Hosseini's clear communication and invitation to revisit child support in light of his increased income.
- [19] On the other hand, I have also considered Dr. Kazemi's payments directly to the adult children and his contribution to expenses that are beyond his statutory obligations. However, while those gifts and payments are to Dr. Kazemi's credit, the court notes in D.B.S. "it is not for the payor parent to decide that his/her support obligation can be acquitted by buying his/her child a new bicycle": para. 109, referring to *Haisman v. Haisman*, 1994 ABCA 249 at paras. 79-80.
- [20] While the payments and gifts Dr. Kazemi made are more significant than the hypothetical bicycle in D.B.S., they are "extras". Those extras do not assist in paying for the infrastructure costs Ms. Hosseini continues to incur to house, feed, and otherwise support the children.

- [21] When considered in light of the amount of child support payable, I am not satisfied that the extra gifts and payments to the children are sufficient to offset his support obligations such that no retroactive support award should be ordered.
- [22] The third D.B.S. factor is the circumstances of the children. Ms. Hosseini asserts that during the time that Dr. Kazemi's income increased, she was unable to provide the children with the same standard of living they enjoyed with Dr. Kazemi. She cites having to forego ski racks and vacations as examples. She also says she had to use borrowed funds to repair or renovate her kitchen.
- [23] Dr. Kazemi argues otherwise. He argues that her financial information discloses that in the period for which retroactive support is sought (2019-2021), Ms. Hosseini was able to pay down her mortgage by \$335,000 and contribute \$130,000 to her RRSP. He also notes that the \$6,227 per month he currently pays for child support (less \$1,500 when K. is employed in the co-op program) is more than enough to pay for accommodation and food even once her stated expenses are paid. Essentially, he says, she is doing well financially and not in need of further child support.
- [24] I am unable to conclude that either of the children's circumstances have been unduly burdensome because the child support payments were not increased when Dr. Kazemi's income increased. However, a payor parent's obligation does not disappear when the children do not "need" support: D.B.S. at para. 113. If that were the case, retroactive awards would be limited to amounts that allow for a decent and fair standard of living. That minimum standard is not consistent with the Guidelines, whose objectives are meant 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": Guidelines, s. 1(a).
- [25] At most, this factor is neutral.
- [26] Finally, I do not accept that a retroactive order for child support will cause undue hardship to Dr. Kazemi. As I set out below, his income in the period for which retroactive support is sought is imputed to be \$628,771 and \$581,094 annually. Even noting that his income decreased in 2020 due to the COVID-19 pandemic, there is no evidence to support a conclusion that a retroactive payment would impose any hardship on him. Indeed, other than the fact of the decrease in his 2020 income, he did not provide any evidence of the hardship he would endure if a retroactive payment award is made.
- [27] Having considered the D.B.S. factors, it is appropriate to make a retroactive award for child support for the period of July 1, 2019 forward. It is also appropriate to adjust the proportionate share of special and extraordinary expenses for the period of January 1, 2021 to December 31, 2021.
- [28] I will now consider the parties' Guidelines incomes for that purpose.

2. Imputation of income A. Background facts

- [29] Dr. Kazemi is a thoracic surgeon and Ms. Hosseini is a pediatric occupational therapist. Each of the parties is employed by and operate their practice through a closely held corporate entity. Dr. Kazemi operates through Dr. K. Kazemi Inc. and Ms. Hosseini through Skilled Kids Occupational Therapy Inc.
- [30] Prior to pronouncing the Young Order, Justice Young directed a reference to the Registrar's Office for an assessment of the parties' 2016 incomes as defined in ss. 15-20 of the Guidelines. As part of that reference, the registrar was asked to consider, among other things, whether and what amounts should be added to their line 150 income, including all or part of their corporations' pre-tax incomes and other amounts that should be imputed to each of their incomes.
- [31] Having heard the parties' evidence over three days in August and November 2017, on November 7, 2017, District Registrar Nielsen certified each of the parties' Guidelines incomes for 2016, based on their personal tax returns and their corporations' 2016 financial statements. His unpublished reasons contain a detailed explanation of the amounts he imputed as income, being certain expenses that had been deducted from the pre-tax income of each of the parties' corporations.
- [32] With the exception of some corrections to account for unintended double counting and the addition of a tax credit, in her unpublished reasons, Justice Young adopted the Registrar's assessment of income. She found:
- a) Dr. Kazemi's 2016 Guidelines income was \$494,713; and
 - b) Ms. Hosseini's 2016 Guidelines income was \$102,134. B. Legal framework
- [33] Pursuant to s. 16 of the Guidelines, a spouse's income is determined using the "total income" in that spouse's T1 general form, as may be adjusted in accordance with Schedule III and as further provided in ss. 17 to 20.
- [34] Section 18 to 20 of the Guidelines allow the court to adjust a spouse's income where it is of the opinion that the s. 16 "total income" does not fairly reflect all of the money available for the payment of child support.
- [35] Pursuant to s. 18(1), where a spouse is a shareholder, director or officer of a corporation, the court may determine the spouse's annual income to include, among other things, "all or part of the pre-tax income of the corporation for the most recent taxation year".
- [36] Pursuant to section 18(2): In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances. C. Analysis: Dr. Kazemi's income

- [37] Usually, where payment amounts are assessed on an annual basis, it is typical to base the amount of the payments on the previous year's income information. In this case, where a retroactive award is being made, and the income information for the years claimed is known, it is appropriate to calculate payments on the income for the year to which the payment is attributed: Guidelines, s. 2(3).
- [38] On this application, Ms. Hosseini's claim for retroactive support is for the period July 1, 2019 to December 31, 2021. She seeks to adjust the proportionate share of expenses for 2021. As the incomes for 2019 and 2020 are known, it is appropriate to base the child support claims for those years on the corresponding income for those years. As the incomes for 2021 have not yet been determined, the claims for 2021 will be based on the parties' 2020 incomes.
- [39] The respondent reported employment income and corporate income for the years 2019 and 2020 as follows: 2019 2020 Line 150 personal income Less: dividend income[1] \$314,893 (80,500) \$234,393 \$263,766 (28,750) \$235,016 Pre-tax corporate income 286,527 200,903 Base Income \$520,920 \$435,919
- [40] In addition to those totals, Ms. Hosseini seeks to impute to Dr. Kazemi certain items that were deducted as expenses on his corporate financial statements but that, she says, are not reasonable or legitimate business expenses.
- [41] There are a number of expenses claimed by Dr. Kazemi that Ms. Hosseini does not dispute. They are the expenses claimed for insurance, subscriptions, permits and licences, interest and bank charges, advertising and promotion and professional fees. No amounts will be added back to Dr. Kazemi's income for those items.
- [42] In addition, relying on the Registrar's assessment for 2016, Dr. Kazemi conceded that it is appropriate to impute to him amounts relating to salary paid to his current spouse, Kara McKenzie and amortization. Ms. McKenzie's salary
- [43] Dr. Kazemi accepts that \$55,000 is a reasonable amount to allocate to salary paid to Ms. McKenzie. He concedes that salary paid to Ms. McKenzie in excess of \$55,000 should be added back and form part of his income for 2019 and 2020. Ms. Hosseini agrees.
- [44] In 2019 and 2020, the company deducted \$71,731 and \$71,899 as an expense for Ms. McKenzie's salary. The amount in excess of \$55,000, being \$16,731 and \$16,899, will be imputed to Dr. Kazemi as income for 2019 and 2020, respectively. Amortization
- [45] Noting that Dr. Kazemi did not provide any particulars or expert evidence with respect to the \$15,351 in amortization costs claimed in 2016, the Registrar imputed the full amount of amortization to Dr. Kazemi's 2017 Guidelines income. Dr. Kazemi does not dispute that it is appropriate to do the same for 2019 and 2020. As such, I impute the full amounts of this expense, being \$30,138 and \$39,283, to Dr. Kazemi's income for 2019 and 2020, respectively.
- [46] The remaining expenses claimed on Dr. Kazemi's corporate financial statements in 2019 and 2020 are in dispute.

- [47] Based on the Registrar's assessment in respect of 2016 income, I am satisfied that there are grounds to review those expenses. The onus shifts to Dr. Kazemi to prove that the expenses claimed are reasonable and made for legitimate business purposes: *C.M. v. V.M.*, 2016 BCSC 2144 at paras. 39-40 [C.M.]; *Ursel v. Ursel*, 2014 BCSC 1219 at paras 25-26, citing *Hausmann v. Klukas*, 2009 BCCA 32 at paras. 51-52 and *K.S.F. v. S.M.F.*, 2011 BCSC 1563 at para. 55`.
- [48] To satisfy this onus, Dr. Kazemi has the obligation to disclose all relevant information required to properly assess their income. In the absence of full and frank disclosure, the court is at liberty to draw a negative inference against the payor: *Guidelines*, ss. 21(1)(f) and 23; *C.M.* at para. 39, citing *Sobiegraj v. Sobiegraj*, 2014 ONSC 2030 at paras. 62-65.
- [49] The authority regarding the shifting onus is particularly relevant in this case in which Dr. Kazemi provided very little evidence, and no documentary evidence, regarding the expenses that were deducted from his corporation's pre-tax income in 2019 and 2020.
- [50] Ms. Hosseini has requested general ledger reports from Dr. Kazemi to verify the expenses claimed. Dr. Kazemi did not comply with that request, and with limited exceptions, he has not otherwise provided any information or evidence regarding the specific expenses claimed, even when served with this application. His failure to do so has left Ms. Hosseini with limited ability to challenge his blanket assertion regarding the legitimacy of those expenses.
- [51] Ms. Hosseini argues that in the absence of evidence regarding the nature of the expenses claimed, the amounts in excess of the amounts that the Registrar allowed as reasonable business expenses for the 2016 income should be added back to Dr. Kazemi's income for 2019 and 2020.
- [52] Dr. Kazemi disagrees. He asserts that since Registrar Nielsen's assessment in 2017, he has modified the business expenses claimed to correspond more closely with the amounts that Registrar determined were reasonable. On that basis, he submits that the business expenses claimed are reasonable and should not be added back to his *Guidelines* income.
- [53] However, that argument is not entirely borne out by the financial statements which, on their face, disclose that the expenses claimed for vehicles, telephone, and meals and entertainment in both or either of 2019 and 2020 exceed the amounts that Registrar Nielsen found to be reasonable in 2017, in some cases by a significant amount.
- [54] In addition, Registrar Nielsen only considered those expenses that Ms. Hosseini disputed as being reasonable for the 2016 income. He did not expressly consider expenses claimed for supplies, rent, computer expenses, and repairs and maintenance, all of which Ms. Hosseini disputes for 2019 and 2020, and all of which significantly exceed the amounts claimed in 2016.

- [55] In that context, and with the paucity of evidence before me, I will consider each of the business expenses in dispute, starting with those expenses that Registrar Nielsen expressly considered and assessed for 2016. Vehicle expenses
- [56] In 2017, Registrar Nielsen noted that there was a dearth of documentary evidence to support Dr. Kazemi's claim that the expenses claimed were business related. However, accepting Dr. Kazemi's evidence that he is often on call and has to travel to hospitals where he is needed, Registrar Nielsen allowed 50% of the \$25,555 claimed as a reasonable vehicle expense. Half of that expense claimed was imputed as income.
- [57] On this application, Dr. Kazemi has also failed to provide any documentary evidence to substantiate this business expense, nor has he provided any explanation for how the vehicle expenses is required for his work.
- [58] In 2019 and 2020, Dr. Kazemi claimed vehicle expense of \$31,648 and \$14,713, respectively. Dr. Kazemi did not explain how the 2020 expense was consistent with the Registrar's determination of what constituted a reasonable vehicle expense for 2016. However, on the basis of the percentage of claimed expense allowed for the 2016 income, I will allow 50% of the vehicle expense claimed in 2019, the balance of which, \$15,824, is to be added back to his income for that year.
- [59] The \$14,713 claimed in 2020 does appear to reflect some restraint in the amount of vehicle expenses attributed to the business. I will allow the full amount of that expense for 2020. No add-back should be made for 2020. Telephone expenses
- [60] In 2016, Registrar Nielsen allowed the full \$8,426.53 claimed for telephone expenses as a reasonable business expense.
- [61] By contrast, in 2019 and 2020, Dr. Kazemi deducted \$11,961 and \$14,496 for telephone expense. He offered no explanation and provided no evidence to substantiate the increases in the telephone expense. Without any evidence, I cannot conclude that the telephone expense in excess of the \$8,426.53 allowed by Registrar Nielsen in 2016 is reasonable. The amount in excess of \$8,426.53 for each of 2019 and 2020 should be added back to his income.
- [62] I add back income of \$3,534.47 in 2019 and \$6,069.47 for 2020. Meals and entertainment
- [63] In 2016, Dr. Kazemi claimed \$3,585.52 for meals and entertainment. He conceded \$1,200 should be added to his income. Ms. Hossieni agreed. In 2019 and 2020, Dr. Kazemi claimed \$6,290 and \$13,474 respectively for this expense.
- [64] In allowing \$2,366 (\$3,585.52 - \$1,200) as a reasonable business expense, the Registrar appeared to have an itemized list of the meals and entertainment expenses that made up the claim. Dr. Kazemi did not provide any such itemized list on this application. Without that evidence, there is no basis for me to conclude that the amounts claimed in 2019 and 2020, which are significantly in excess of \$2,366, are properly attributable to Dr. Kazemi's business. That is especially true for the \$13,474 claimed for meals and entertainment in

2020, a year in which dining out and entertainment was limited due to the COVID-10 pandemic.

- [65] I impute to Dr. Kazemi's 2019 and 2020 income \$3,924 and \$11,108, respectively, being the amount of this expenses in excess of the \$2,366 allowed by the Registrar in 2016. Legal and accounting expenses
- [66] The Registrar accepted \$5,000 of the \$31,866.71 claimed as a reasonable business expense for legal fees in 2016. There was no reference to accounting fees.
- [67] In 2019 and 2020, Dr. Kazemi deducted \$4,039 and \$13,086, respectively for combined accounting and legal expense. Although higher than the \$5,000 that the Registrar allowed in 2019, Ms. Hosseini does not dispute the reasonableness of these expenses.
- [68] No amounts will be imputed to his income for this expense. Security
- [69] Of the \$1,622.20 claimed for security in 2016, the Registrar agreed with Ms. Hosseini that \$1,160 was reasonably attributable to work. He imputed the balance (\$462) to Dr. Kazemi's income.
- [70] In 2019 and 2020, Dr. Kazemi deducted \$1,007 and \$1,138 for security expense. This was one of the expense items for which Dr. Kazemi provided any information, explaining that there had been break-in at his house where he has a home office. No amount will be imputed to his income for this expense.
- [71] Ms. Hosseini did not dispute the following 2016 expenses and, as such, Registrar Nielsen did not expressly consider or assess the reasonableness of the amounts claimed for 2016. I will assess them now. Repairs and maintenance
- [72] In 2016, Dr. Kazemi claimed \$6,254 for building repair and maintenance. In 2019 and 2020, he claimed \$806 and \$36,761 respectively for "repairs and maintenance". Ms. Hosseini does not dispute that the 2019 expense claim. She does dispute the amount deducted in 2020.
- [73] Dr. Kazemi has provided absolutely no evidence regarding this expense. Without that evidence, there is no basis on which to assess this claim. Based on the amount that the Registrar allowed for 2016, I allow \$6,254 as a reasonable amount for this expense item.
- [74] I impute \$30,507 ($\$36,761 - \$6,254 = \$30,507$) to Dr. Kazemi's income for 2020. No amount is to be imputed for 2019. Donations
- [75] In 2016, Dr. Kazemi deducted \$402 for donation expenses. That expense increased in 2019 and 2020, in which Dr. Kazemi claimed \$15,000 and \$15,200, respectively.
- [76] With no evidence, it is difficult to assess the business purpose for the donations. However, in recognition of the merit of charitable pursuits, I will allow these expenses. Supplies

- [77] In 2016, Dr. Kazemi deducted \$12,688 for "supplies". Ms. Hosseini did not dispute that expense. He claimed \$37,523 and \$52,879 for the same expense item in 2019 and 2020. There is no explanation of what the "supplies" are, nor is there any explanation for the significant increase in this item over the \$12,688 claimed in 2016.
- [78] It reasonable to assume that his office requires "supplies". However, without any evidence, it is not apparent why those supplies would cost three times more in 2019, and four times more in 2020, than in 2016. The increase in 2020 is particularly difficult to understand given Dr. Kazemi's evidence that he worked less in the first year of the COVID-19 pandemic.
- [79] Using the \$12,688 that was not disputed in 2016 as a base, I will allow \$15,000 as a reasonable expense for supplies in 2019 and 2020. The rounded amounts claimed in excess of that amount, being \$22,500 and \$38,000, respectively are to be imputed to Dr. Kazemi's income.
- Rent
- [80] In 2016, Dr. Kazemi deducted rent of \$40,040. That expense was more specifically recorded on the corporate income tax return as "real estate rental". There is no evidence about the premises that were rented. Ms. Kazemi did not dispute the 2016 expense.
- [81] Dr. Kazemi claimed \$56,937, \$54,925 and \$50,050 in 2018, 2019 and 2020, respectively. Although a significant increase over 2016, those rent expenses are consistent with the \$54,538 deducted in in 2015 and amount to rounded monthly rental rates of \$4,745, \$4,575, and \$4,120, respectively. Given the consistency with the rent claimed as a deduction in 2015, I will not add any amount attributed to rent to Dr. Kazemi's income. Courses and education
- [82] In 2016, Dr. Kazemi deducted \$7,039 for courses and education. Ms. Hosseini did not dispute that expense.
- [83] He deducted \$31,928 and \$7,569 in 2019 and 2020, respectively. Ms. Hosseini only disputes the amount deducted in 2019 in excess of \$7,039 ($\$31,928 - \$7,039 = \$24,359$), which she argues should be imputed to Dr. Kazemi's Guidelines income.
- [84] Like most of the expense items claimed, Dr. Kazemi has failed to provide any explanation for this expenses, even failing to note the course or courses that he took in 2019. However, given the nature of his work, it is reasonable to expect that Dr. Kazemi would require ongoing training and education. I will allow \$20,000 for this expense in 2019 and the full amount claimed in 2020.
- [85] \$11,928 should be added back to his income for 2019. No amount will be imputed to him for 2020. Computer expenses
- [86] In 2016, Dr. Kazemi deducted \$4,405 for computer expenses. Ms. Hosseini did not dispute that amount. In 2019 and 2020, he deducted \$8,272 and \$8,309 for the same expense.

- [87] It is reasonable to assume that Dr. Kazemi would have incurred some expense for this item for business purposes. However, with no specifics being provided, Dr. Kazemi has, once again, failed to discharge the evidentiary burden on him to justify the full amount claimed. I will allow \$5,000 for computer expenses for 2019 and 2020.
- [88] The amount of excess of that amount, being \$3,272 and \$3,309, will be added back to his income for 2019 and 2020, respectively. Summary of Dr. Kazemi's Guidelines income
- [89] As summarized below:
- a) Dr. Kazemi's imputed Guidelines income for 2019 is \$628,771; and
- b) Dr. Kazemi's imputed Guidelines income for 2020 is \$581,094. Category 2019 2019 subtotals 2020 2020 subtotals Line 150 personal income Less: dividend income [2] \$314,893 (80,500) \$234,393 \$263,766 (28,750) \$235,016 Pre-tax corporate income 286,527 200,903 Base Income \$520,920 \$435,919 Expense items to add back (conceded) Ms. McKenzie's salary \$16,731 \$16,899 Amortization 30,138 39,283 Expense items to add back (per above analysis) Vehicle \$15,824 nil Telephone 3,534 6,069 Meals and entertainment 3,924 11,108 Legal and accounting nil nil Security nil nil Repairs & maintenance nil 30,507 Donations nil nil Supplies 22,500 38,000 Rent nil nil Courses and education 11,928 nil Computer expenses 3,272 \$3,309 Total expenses to add back to income \$107,851 \$145,175 Imputed Guidelines income \$628,771 \$581,094 D. Analysis: Ms. Hosseini's income
- [90] As the recipient parent, Ms. Hosseini's income does not factor in the assessment of child support payable. However, her income is relevant to the assessment of the parties' proportionate share of s. 7 expenses for which she seeks to readjust for 2021 forward.
- [91] As the parties' incomes for 2021 are not yet known, the proportionate share for that year will be based on the most current information known, being their 2020 incomes.
- [92] The claimant's reported employment income and corporate income for the 2020 as follows: 2020 Personal income \$88,912 Corporate pre-tax income \$14,528 Total: \$103,440
- [93] Dr. Kazemi does not seek to impute any additional income to Ms. Hosseini's corporate income on the basis of the amounts deducted as expenses or otherwise.
- [94] Of the expenses claimed for the year, the most notable expenses are for the direct cost of materials and supplies (\$3,447), legal and accounting (\$2,636), meals and entertainment (\$1,281), rent (\$12,050), vehicle (\$2,317), and wages and benefits (\$98,092).
- [95] In 2016, Registrar Nielsen expressly considered similar deductions for meals and entertainment, rent, and vehicle and allowed similar amounts for those expenses. There is nothing to suggest those deductions are inappropriate.

- [96] Based on their amounts, I am also satisfied that the other notable expenses are reasonable. In particular, of the \$98,092 deducted for wages, \$88,912 is attributable to Ms. Hosseini and included in her personal income. I am satisfied that the additional \$9,180 paid in wages is reasonable.
- [97] Ms. Hosseini's Guidelines income for 2020 is \$103,440.
3. Retroactive child support: Guidelines support and section 7 expenses
- [98] Sections 3 and 7 of the Guidelines set out the obligation to pay child support and special and extraordinary expenses. As a guiding principle, s. 7 expenses are to be shared by the spouses in proportion to their respective incomes: Guidelines, s. 7(2).
- [99] As noted, pursuant to the terms of the October 2021 Order, the amount of child support payable by Dr. Kazemi was reduced for certain periods, including (but not limited to) periods in which their son K. is earning an income and residing with Ms. Hosseini and in which their daughter M. is over the age of majority and resides in residence at a post-secondary institution for which Dr. Kazemi pays his proportionate share. Retroactive child support
- [100] Ms. Hosseini's claim for retroactive child support is for the period July 1, 2019 to December 31, 2021. Child support for those years will be determined on the actual Guidelines income for 2019 and 2020. As there is no evidence regarding Dr. Kazemi's 2021 income, retroactive child support for that year will be based on his 2020 income.
- [101] Total child support payable for the period July 1, 2019 to December 31, 2021, is as follows:[3]
- | Period | Guidelines income | Monthly child support |
|------------------------------|-------------------|-----------------------|
| July 1, 2019 - Dec. 31, 2019 | \$628,771 | \$7,808.50 |
| Jan. 1, 2020 - Dec. 31, 2020 | \$581,094 | \$7,245.91 |
| Jan. 1, 2021 - Dec. 31, 2021 | \$581,094 | \$7,245.91 |
- [102] Those amounts are inclusive of all amounts paid to date and are subject to the deductions set out in the order of October 2021 Order. Proportionate share of s. 7 expenses
- [103] Ms. Hosseini's claim for the retroactive adjustment for the proportionate share of s. 7 expenses is for the period January 1, 2021 to December 31, 2021. Based on the parties' most current Guidelines incomes, being \$581,094 for Dr. Kazemi and \$103,440 for Ms. Hosseini, the parties' proportionate share of special and extraordinary expenses for 2021 is 85% and 15%, respectively.
- [104] The parties are to re-calculate the special and extraordinary expenses for 2021 on that basis. Payment of re-adjusted amounts payable
- [105] The October 2021 Order resulted in the overpayment of child support to Ms. Hosseini. As a result of the orders made on this application, Dr. Kazemi will owe Ms. Hosseini additional amounts for child support for the period July 1, 2019 to December 31, 2021 and for s. 7 expenses for the period January 1 to December 31, 2021.

- [106] If, as the result of this order for retroactive payment of child support and the retroactive re-adjustment of s. 7 expenses, Dr. Kazemi has underpaid Ms. Hosseini to December 31, 2021, Dr. Kazemi shall pay the amount of the underpayment to Ms. Hosseini in eighteen equal monthly instalments commencing on the 1st day of April, 2022.
- [107] If, as the result of this order for retroactive payment of child support and the retroactive re-adjustment of s. 7 expenses, Dr. Kazemi has overpaid Ms. Hosseini to December 31, 2021, commencing on the 1st day of April, the next twelve monthly payments to be paid to Ms. Hosseini shall be decreased by 1/12th of the amount of the overpayment.
4. Prospective child support: Guidelines support and section 7 expenses
- [108] I have determined that that, based on the most current information available, Dr. Kazemi's Guidelines income for 2020 is \$581,094.
- [109] For the period commencing on January 1, 2022, and for as long as K. and M. are "children of the marriage", Dr. Kazemi shall pay child support to Ms. Hosseini in the amount of \$7,245.91 per month, and continuing on the first day of each and every subsequent month until further order of the court or agreement between the parties.
- [110] Prospective child support payments shall be subject to the deductions contemplated by the October 2021 Order.
- [111] Based on the parties' most current Guidelines incomes, being \$581,094 for Dr. Kazemi and \$103,440 for Ms. Hosseini, for the period commencing on January 1, 2022, the parties' proportionate share of special and extraordinary expenses is 85% and 15%, respectively. Payment of re-adjusted child support payable between January 1, 2022 to the date of this order
- [112] If, as the result of this order, Dr. Kazemi has overpaid Ms. Hosseini for the period of January 1, 2022 to the date of this order, the amount owing to Ms. Hosseini on April 1, 2022 shall be decreased by the amount of the overpayment.
- [113] If, as the result of this order, Dr. Kazemi has underpaid Ms. Hosseini for the period January 1, 2022 to the date of this order, the amount of the underpayment shall be paid to Ms. Hosseini within 30 days from the date of this order.
5. Exchange of financial information
- [114] Given the ongoing obligation to pay child support, it is appropriate to require the parties continue to exchange financial information, both for their personal incomes and for the corporations through which they conduct their businesses.
- [115] Personal tax returns are due to be filed by April 30 of each year. Corporate tax returns must be filed within six months of the corporation's year end. Dr. Kazemi's corporation's year end is December 31; Ms. Hosseini's is September 30.

- [116] For as long as the children are eligible to receive child support, the parties will exchange:
- a) copies of their personal income tax returns for the previous year, including all attachments, no later than July 31 each year;
 - b) copies of their corporate tax returns, together with corporate financial statements, for the previous year, no later than July 31 each year;
 - c) copies of any notice of assessment or reassessment provided to them by Canada Revenue Agency in respect of their personal and corporate income tax returns, immediately upon receipt.
- [117] In the event that either party files an application to vary child support or to adjust their share of s. 7 expenses, the parties shall provide the other with their corporation's general ledger reports within 30 days of the request.
6. Order for the payment of transportation costs
- [118] In the Young Order, Justice Young ordered that effective August 1, 2018, Dr. Kazemi was to pay to Ms. Hosseini \$3,000 toward M.'s transportation budget.
- [119] Dr. Kazemi has not paid the transportation cost since August 2021 noting that at the time the order was made, M. was attended high school in West Vancouver and required transportation to and from school on a daily basis. Since then, M. has graduated from high school and now lives in residence at UBC, although she returns to Ms. Hosseini's home most, if not all, weekends.
- [120] There may be merit to Dr. Kazemi's argument that the 2018 arrangement may need adjusting. However, it is not for him to unilaterally decide when and if court ordered payments are to cease. If the parties are unable to agree, the appropriate course is to make an application to the court to vary the order.
- [121] There being no such application before me, I decline to make any order with respect to this matter. The Young Order in respect of transportation costs remains in effect until it is varied by agreement between the parties or further court order. III. Costs
- [122] As the conclusion of the hearing of this application, Ms. Hosseini requested the opportunity to speak to costs on the outcome of these reasons. The parties may make arrangements with Supreme Court Scheduling to do so at 9 am on a day that is convenient for both.
"Ahmad J."
- [1] At para. 21 of her reasons for judgment, Justice Young notes that Registrar Nielsen deducted Dr. Kazemi's dividend income from his line 150 personal income on the basis that 100% of his pre-tax corporate income was added to his Guidelines income. The dividend income was paid from the pre-tax corporate income. As Justice Young notes at para. 21, "If the dividend was not subtracted from his personal income, then it would be accounted for twice." As neither party argued the matter on this application, I will follow the same reasoning here.

- [2] See footnote 1 regarding the deduction of dividend income from personal income.
- [3] Section 4 of the Guidelines provides that where income of a payor spouse is over \$150,000, if the court considers the amount payable under s. 3 to be inappropriate, it may take into account other considerations. No argument was made regarding the application of s. 4. As such, child support payable is based on s. 3 of the Guidelines.
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