

CANADA / JUDGMENT

Hutchinson v. Taraviras

2022 BCSC 1982

COURT

Supreme Court of British Columbia

DECIDED

14 November 2022

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2022 BCSC 1982 Hutchinson v. Taraviras

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hutchinson v. Taraviras,

2022 BCSC 1982

Date: 20221114

Docket: E022145

Registry: Vancouver

Between:

Allyson Braddell Hutchinson also known as

Allyson Taraviras

Claimant

And

Alkiviadis Taraviras also known as

Alkis Viras

Respondent

Before: The Honourable Mr. Justice Crossin

Reasons for Judgment

The Claimant, appearing in person:

A. Hutchinson

Counsel for the Respondent:

S. Anderson

(June 28 and October 1, 2021)

The Respondent appearing on his own behalf:

A. Taraviras

(March 4, 2022)

Place and Dates of Hearing:

Vancouver, B.C.

June 28 and October 1, 2021 and

March 4, 2022

Place and Date of Judgment:

Vancouver, B.C.

November 14, 2022

Introduction

- [1] The parties were married January 14, 2001. They separated in 2004.
- [2] There are two children of the marriage; Nicolas, now 24 years of age - born September 23, 1998; and Alexander, now 21 years of age - born June 29, 2001.
- [3] In 2006 the parties were granted a divorce. The order, dated February 9, 2006 (the "Divorce Order"), contains a number of orders and obligations relating to child support and the sharing of certain expenses relating to the children.
- [4] The Divorce Order includes the following:

AND UPON the Defendant having been found to have a Guideline income of less than \$21,800.00 and the Plaintiff having been found to have a Guideline income of \$23,500.00;

THIS COURT ORDERS that:

- 2. The Defendant shall pay to the Plaintiff for the support of the Children the sum of \$350.00 per month
- 4. The Defendant shall provide to the Plaintiff on or before October 30, 2005 information necessary to determine his income and specifically if he is an employee, pay stubs, and if he is self-employed, a breakdown of his income and expenses.

5. Commencing in the year 2006, each party shall provide to the other copies of their income tax returns with all attachments, and Notices of Assessment for the previous taxation year, by June 30 each year for so long as the Children are "children of the marriage" and eligible for child support.
7. The parties shall each pay one-half (1/2) of all medical and dental costs for the Children for so long as each child is entitled to child support.

[Emphasis added.]

- [5] The parties have brought cross applications in relation to the Divorce Order. The claimant has been self-represented throughout. The respondent had counsel, except on the last day of the hearing of the applications.
- [6] On July 17, 2020 the claimant, Ms. Hutchinson, brought an application seeking the following relief:
 1. That paragraph 2 of the divorce order pronounced February 9, 2006 by A Judge of the Court (the "2006 Divorce Order"), be varied so as to increase on-going child support to be commensurate with the Respondent's income earning capacity, retroactive to January 1, 2008;
 2. That paragraph 7 of the 2006 Divorce Order be varied to include all of the children's medical and dental expenses including, but not limited to, their schooling tuition and fees whether pre or post-secondary and extra-curricular activities, retroactive to January 1, 2008.
 3. That the Respondent pay to the Claimant by January 22, 2021 in the amount of \$43,136 being one-half (1/2) of the Children's medical, dental expenses, elementary and high school tuitions, as well as their Psych Ed Assessments.

[Emphasis added.]

- [7] The focus of the claimant's application is:
 - 1) to increase child support for what the claimant believes it ought to have been for some years; and then seeking a retroactive variation; and
 - 2) to vary the provisions of the Divorce Order in three ways:
 - a) the respondent be responsible for [his share, namely one half, of] all medical and dental expenses;
 - b) the respondent be responsible for [his share, namely one half, of] all educational expenses; and
 - c) that this change in the sharing of expenses be retroactive to 2008.

- [8] As it happens, the children both required special education costs over the years. The cost of this was arranged by the claimant. Over the last decade or so, these costs have totalled approximately \$58,000. Education costs were not, however, part of the Divorce Order. Consequently, the claimant seeks to vary the Divorce Order accordingly.
- [9] Finally, the claimant seeks:
- 3) an order that the respondent pay not the whole of the incurred expenses since 2008; but, one half of those expenses; namely, approximately \$43,000. The amount of \$43,000 not only includes one half of the unpaid medical and dental expenses, but as well, one half of the incurred educational expenses since 2008.
- [10] In response, the respondent countered with the following application (as amended in January 2021) seeking the following:
1. That paragraph 2 of the divorce order pronounced February 9, 2006 by a Judge of the Court (the "2006 Divorce Order"), be varied retroactively and prospectively, and that the amount of child support payable by the Respondent for Nicolas Keith Braddell born September 23, 1998 and Alexander Constantine Taraviras born June 29, 2001 be reduced to reflect the child support guidelines amount commensurate with the Respondent's actual income in each year since the 2006 Divorce Order was pronounced, that any arrears of child support payable by the Respondent be cancelled, and any overpayment of child support by the Respondent be repaid to the Respondent by the Claimant or, alternatively, credited to the Respondent for future ongoing child support.
 2. That paragraph 2 of the 2006 Divorce Order, be varied and cancelled so as to terminate ongoing child support payable by the Respondent for Nicolas Keith Braddell born September 23, 1998 and Alexander Constantine Taraviras born June 29, 2001.
 3. In the alternative, that paragraph 2 of the 2006 Divorce Order, be varied so that any child support order payable for Nicolas Keith Braddell born September 23, 1998 and/or Alexander Constantine Taraviras born June 29, 2001, by the Respondent be reduced and paid directly to the child eligible for the child support and not to the Claimant.
 4. That paragraph 2 of the 2006 Divorce Order, be varied and provide that the Claimant pay child support to the Respondent or, alternatively, to the child directly, for Nicolas Keith Braddell born September 23, 1998 and/or Alexander Constantine Taraviras born June 29, 2001.
 5. That the Claimant be ordered to reimburse the Respondent in the amount of overpayment of child support paid by the Respondent for Nicolas Keith Braddell born September 23, 1998 and/or Alexander Constantine Taraviras born June 29, 2001.

[Underlining in original.]

- [11] In essence, the respondent also seeks a variation of the Divorce Order. He asks that child support be terminated going forward, or alternatively, reduced. He also seeks that the Order be varied to reflect that any such reduction be commensurate with the actual income of the respondent since the Divorce Order; and any overpayment in child support be repaid by the claimant. Finally, he seeks that any arrears in child support be cancelled.
- [12] For the reasons that follow, I dismiss the applications of the respondent and make five orders relating to the claimant's application.

The Position of the Parties

- [13] There has been a good deal of material filed in this matter but the factual landscape concerning these applications is not complicated.
- [14] Generally speaking, the claimant has provided evidence concerning her life raising the two children, and in particular, dealing with their educational needs. She has provided evidence relating to her frustrations over the years of trying to engage with the respondent, who she says, is feigning poverty and should be properly held accountable.
- [15] The respondent has offered little information concerning the details of his life circumstances over the past decade or so.
- [16] His overarching approach in his evidence is that he continues to struggle financially but nevertheless does his best for his children. His evidence focuses on his recent epiphany that perhaps, over the years, he has paid too much for the benefit of his children, and now seeks the return of some of those funds.

Summary of the Evidence

- [17] The age of the parties is not before me, nor are the circumstances of the separation and divorce. The claimant currently resides in Langley, BC. She has generally been employed since the divorce. Her earnings over the years were modest, averaging approximately \$24,000 per annum. It is only in the past year (2021) that her income is somewhat higher; being reported at approximately \$41,000 per annum.
- [18] It is clear on the evidence, as the claimant states, that since the divorce she has shouldered the responsibilities in raising the two children. Both children lived with the claimant during their childhood years. The respondent has had minimal contact with the children, notwithstanding there was an arrangement for him to parent the children every second weekend.
- [19] The evidence reveals the claimant has had certain financial assistance from her mother over the years, particularly related to the special educational expenses required for the children. The educational needs of the children, and the claimant's evidence in this regard, will be referenced in the particular in due course.

- [20] The circumstances of the life of the respondent since the divorce remain murky.
- [21] He swears in his affidavit he has lived with his parents for the last 16 years. His parents reside on Beresford Street in Burnaby, BC. The parents reside in a one bedroom and den apartment.
- [22] The assertion of the respondent in this regard seems, to be charitable, somewhat overstating matters. There is a good deal of circumstantial evidence the respondent lives in Greece for lengthy stretches of time. There is evidence he has other family in Greece and as well there are family businesses in Greece; including, on his own admission, an Airbnb owned by his parents.
- [23] In any event, generally speaking, the respondent has provided evidence that his life since the divorce appears to have been somewhat of a struggle. This is captured in the following paragraph from his affidavit, dated December 3, 2020:
2. I am currently unemployed and in receipt of social assistance. I have suffered from a substance abuse disorder that has made it difficult to obtain regular and full-time employment. Currently I have no driver's licence and having a difficult time securing employment. My educational training requires me to have a current driver's licence. I am prohibited from driving until July 9, 2021. Due to my substance abuse disorder I have made some bad decisions in my past and as a result have a criminal record. Obtaining employment with a criminal record has proved to be challenging.
- [24] There are no other material details provided concerning the nature of the addiction, the circumstances of the criminal record, the search for employment, or how his substance abuse disorder and/or criminal record has impacted efforts concerning the search for employment.
- [25] What is clear, is that notwithstanding the Divorce Order to pay \$350 per month in child support, the respondent paid nothing following the Divorce Order for many years. This complete failure to abide by the Divorce Order was not remedied until 2013.
- [26] The uncontradicted evidence is that the respondent returned from Greece in 2013. It was at that time the director of the Family Maintenance Enforcement Program brought an application on behalf of the claimant to pursue arrears in the child support payments. In the face of the application, the respondent consented to increase payments, to a total of \$450 per month, towards arrears and going forward. The payments, again by consent, reverted to \$350 per month in child support after some period of time. The respondent says that he has had to borrow funds from his parents over the last several years in order to comply with his support obligations.

- [27] The respondent says in his affidavit that since the Divorce Order in 2006 he has made diligent efforts to pay \$350 per month in child support. Again, given the evidence of his failure to pay child support for many years, as referenced above, this statement seems somewhat disconnected from reality.
- [28] Concerning the medical and dental expenses that are included in the subject matter of the application of the claimant, the claimant has sent certain receipts to the respondent over the years concerning ongoing medical and dental expenses of the children. These receipts have been paid by the respondent. It is common ground however, that due to certain frustrations encountered by the claimant, the claimant did not send all of the receipts for dental and medical expenses to the respondent. These expenses incurred by the claimant, but not sent to the respondent, are now attached to the material filed by the claimant. There is no evidence these expenses are other than reasonable and properly incurred. The claimant seeks, effectively, an enforcement of the Divorce Order relating to these particular outstanding expenses.
- [29] The claimant is also seeking a variation of the Divorce Order to direct that the respondent be retroactively responsible for an appropriate share of the educational expenses incurred by the claimant throughout the life of the children.
- [30] I conclude on the evidence that the respondent was not consulted over the years concerning the educational needs of the children nor did he receive any receipts or invoices for such expenses. He points out in his evidence that his expense obligations pursuant to the Divorce Order did not include educational expenses. The respondent nevertheless did contribute a modest amount, relatively speaking, to the children's university expenses.
- [31] The parties filed certain financial information concerning their incomes over the years.
- [32] It is to be observed that neither party abided by the requirement of the Divorce Order that they annually exchange respective income tax returns and notices of assessment. Both parties essentially ignored the Divorce Order for years. This information was only produced by the parties for the purposes of these applications.
- [33] In this regard, the income tax returns and the notices of assessment that have been filed in these proceedings on behalf of the respondent reveal the following reported annual income:

Year

Reported Income (Notice of Assessment)

2008

\$3,147

2009

\$7,925

2010

\$14,574

2011

\$1

2012

\$2,315

2013

\$38,869

2014

\$20,282

2015

\$12,578

2016

\$6,171

2017

\$60

2018

\$1

2019

\$1,550

[34] The financial statements filed by the respondent record reported income of \$9,120 as of December 3, 2020.

[35] In 2003, prior to the separation of the parties, the respondent was working as a bar manager and reported income for that year of \$59,094.

[36] The claimant has also now filed income tax returns and notices of assessment for 2017, 2018, and 2019. It is agreed the average income over these years on behalf of the claimant is approximately \$25,600 per annum. The claimant has advised her salary at the time of the application was approximately \$41,000 per annum.

[37] The claimant has provided evidence that the \$350 she received over the years has not had any real consequence in adequately contributing to the children's expenses over the years.

- [38] The claimant has offered evidence stating she believes the respondent is purposely remaining unemployed or unemployable and, as well, earning income from activity in Greece and not reporting that income.
- [39] On this point the claimant has attached copies of advertisements from material originating in Greece. One such advertisement is for an Airbnb associated with the residence in Greece. Another advertisement is what is described as a fiberglass business. The advertisement for the fiberglass business is accompanied by the name of the respondent. While there is no direct evidence the respondent participates in these businesses nor evidence he earns income from these businesses, the suggestion of the claimant is that the only rational conclusion from these circumstances is that he is earning income from these businesses.
- [40] The response by the respondent in this regard is tepid. He states he doesn't own a residence that rents as an Airbnb. He states that his parents own the residence. The respondent does not address the submissions of the claimant concerning the various business enterprises, including the fiberglass business.

The Children and their Education

- [41] Nicolas, the oldest, was diagnosed with tics in 2011. A report from the Department of Psychiatry/Neuropsychiatric Clinic at Children's Hospital is before the Court. He has also been diagnosed with anxiety.
- [42] The public school system was not working for Nicolas. Beginning in grade ten the claimant enrolled him in Whytecliff Agile Learning Center ("Whytecliff"), an independent school. This school managed to cater to his unique educational needs.
- [43] Nicolas was just short of his twentieth birthday when he graduated from high school in June 2018 and then began education at Langley Educational Centre on or about September 18, 2018 in order to take preparatory courses for university entrance. He completed those courses by June 2019 and began studying at Kwantlen Polytech University ("Kwantlen") in September 2019. He completed two semesters ending in the spring of 2020.
- [44] It does not appear on the evidence that Nicolas attended Kwantlen in the summer of 2020 but resumed his studies in the fall of 2020. He was still attending Kwantlen in June 2021. As of March 2022, he had transferred and was continuing his studies at the University of British Columbia ("UBC"). The evidence is that he will be continuing his studies for the next three years at UBC.
- [45] While attending UBC, Nicolas resides part-time with the claimant and part-time with the parents of the respondent. The claimant continues to contribute financially to his schooling and certain expenses.
- [46] The youngest, Alexander, was diagnosed with a severe learning disability in 2009. The report outlining this disability is before the Court. Consequently, he was enrolled at the James Cameron School between 2010 and 2014 - a school focused on addressing the kinds of

disabilities suffered by Alexander. Following 2014, the claimant attempted to reintegrate Alexander into the public school system for grades seven and eight. This attempt was unsuccessful and Alexander, like Nicolas, was then enrolled at Whytecliff. He did well and graduated.

[47] Alexander graduated from high school on June 16, 2020. This was 13 days prior to his 19th birthday. It should be noted that the application of Ms. Hutchinson was filed July 17, 2020 - 18 days after his 19th birthday. In October 2020, he enrolled in school to receive training at the Piping Foundation Program at UA Piping Industry College of BC. This education commenced on or about October 26, 2020 and he graduated from this program on or about April 2, 2021.

[48] Alexander is currently employed as an apprentice; he is seeking additional training over the next few years to obtain his Red Seal. At the time of the application he resided with the claimant who still contributes to some of his expenses.

[49] It is unclear on the evidence who has paid for the bulk of the post-secondary education. There is some evidence the respondent contributed approximately \$4,100 in 2019 and 2020. This is a small fraction of the overall educational costs however. There is some evidence it was the claimant's mother that has taken on the bulk of this expense.

Analysis

The Claimant's Application

A Preliminary Position

[50] The respondent has raised a preliminary point. The respondent submits the Court has no jurisdiction to entertain the claimant's application for a variation of child support. The basis for this submission is the respondent's view that at the time of the filing of the claimant's application, July 17, 2020, neither of the children were "children of the marriage".

[51] The respondent submits that it remains the law in British Columbia that the Court does not have jurisdiction to vary a child support order, or make a statutory retroactive order, under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [Divorce Act] if, at the time of the filing of the application, the child no longer retains the status of a child of the marriage.

[52] Both of these positions attempt to interpret s. 17(1)(a) of the Divorce Act which reads:

17 (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, retroactively or prospectively,

(a) a support order or any provision of one, on application by either or both former spouses;

[53] The matter of the court's jurisdiction shall be addressed in due course.

Are Nicolas and Alexander "Children of the Marriage"?

[54] Before turning to the question of whether the court has jurisdiction to vary a child support order, I consider whether the children are "children of the marriage".

[55] Firstly, the definition of "child of the marriage" must be considered. The relevant definition is found in s. 2(1) of the Divorce Act which provides:

2.(1) In this Act,

"age of majority", in respect of a child, means the age of majority as determined by the laws of the province where the child habitually resides, or, if the child habitually resides outside of Canada, eighteen years of age;

"child of the marriage" means a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or
- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

[56] In British Columbia, the age of majority is 19, pursuant to the Age of Majority Act, R.S.B.C. 1979, c. 5, s. 1(1).

[57] Once a child has reached the age of majority, the onus of proving that the adult child remains a child of the marriage is on the party asserting that to be the case: *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406 at para. 15, 1997 CanLII 3893 (B.C.C.A.) and *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, 1993 CanLII 2570 (B.C.S.C.).

[58] A recent case involving the determination of whether an adult child is considered a "child of the marriage" is *L.L.M. v. D.R.M.*, 2022 BCSC 143. In *L.L.M.* at para. 34, Justice Lyster cites *M.J.L. v. G.H.*, 2015 BCPC 208 for a summary of the principles used for determining whether an adult is considered a "child of the marriage". *L.L.M.* and *M.J.L.* involved applications under the Family Law Act, S.B.C. 2011, c. 25 [FLA] which uses the term "child" rather than "child of the marriage". In the FLA, the definition of "child" includes a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians", which is, in essence, the same as "child of the marriage" under the Divorce Act. At para. 29 of *M.J.L.*, Judge Marchand, as he was then of that Court, stated:

There are many cases which deal with the question of when a child who reaches the age of majority remains a child eligible for child support. Though most of the leading cases deal with the question in the context of proceedings under the Divorce Act, R.S.C. 1985, c. 3, the language is similar and the principles remain the same under the FLA. These principles include:

1. The party seeking child support for a child who has reached 19 years of age bears the onus of proving that the child is a "child" as defined by s. 146 of the FLA: *Nitchie v. Nitchie*, 2014 BCSC 468 at para. 17 and *T.A.P. v. J.T.P.*, 2014 BCSC 2265 at para. 21);

2. The definition of a "child" who is over 19 years of age in s. 146 of the FLA is disjunctive and, therefore, captures persons who are unable to withdraw from their parents' charge or obtain the necessities of life "because of illness, disability or another reason": *Briard v. Briard*, 2010 BCSC 65, *aff'd* at 2010 BCCA 431;
3. The receipt of PWD benefits by an adult child does not absolve a family from providing financially for that child. The obligation to provide the necessities of life is case specific and should not be based on "poverty level necessities": *Lougheed v. Lougheed*, 2007 BCCA 396 at paras 23, 25, 30 and 31;
4. Two important factors to consider in determining whether an adult child with disabilities is unable to obtain the necessities of life are the child's employability and the extent of the child's disability: *H.M.R. v. D.G.R.*, 2010 BCSC 647 at para. 33 and *T.A.P.* at para. 27;
5. The concept of being within a parent's "charge" means being in the "care", "custody" or "responsible possession" of that parent: *Briard* which may include being in the financial care of that parent: *Nitchie* at para. 17;
6. The pursuit of education qualifies as "another reason" which may cause a child who has reached 19 years of age to be unable to withdraw from the charge of his or her parents: *Nitchie* at para. 17;
7. In considering whether a child's educational pursuits justify an adult child remaining a child for purposes of child support, the following factors from *Farden v. Farden* (1993), 1993 CanLII 2570 (BC SC), 48 R.F.L. (3d) 60 (BCSC) may be helpful:
 - (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
 - (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
 - (4) the ability of the child to contribute to his own support through part-time employment;
 - (5) the age of the child;
 - (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
 - (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
 - (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

8. The "Farden factors" are of less importance when assessing an adult child with disabilities: S.M.W. v. R.E.W., 2013 BCSC 2362 at para. 19 and T.A.P. at para. 26; and
 9. An adult child's severance of a relationship with the payor parent has reduced significance when the severance is due to the child's disability: T.A.P. at para. 34.
- [59] There are no statutorily mandated criteria for what constitutes "other cause". However, the words are to be interpreted liberally, and whether a cause is sufficient to bring a person of the age of majority into the definition of "child of the marriage" will depend on the circumstances: Pound v. Pound (1987), 6 R.F.L. (3d) 231, 1987 CanLII 2899 (B.C.C.A.). This liberal interpretation must also be informed by the relatively recent decision in Dring v. Gheyle, 2018 BCCA 435 at para. 50 where it is said that this wording "signifies something more than a mere lifestyle choice to remain dependant." The court considers whether post-secondary education is a valid reason for continued support by considering whether the educational pursuits are reasonable, and if so, whether it is appropriate for the parents to finance the child's education. Factors to be used in considering these inquiries are found in Farden.
- [60] The Farden factors specifically contemplate the pursuit of post-secondary education as impacting whether an adult will be considered a "child of the marriage".

Nicolas

- [61] I am satisfied that Nicolas currently retains status as a "child of the marriage" given his educational status. For greater certainty, I am of the view that Nicolas was a "child of the marriage" at the time of the claimant's application.
- [62] As I have previously stated, Nicolas is currently enrolled in courses and it is anticipated that he will continue to be enrolled over the next number of years. Given his diagnosis with a tics disorder, I do not consider the length of time that he has spent on his studies to be unreasonable. Although his career plans are unclear on the evidence before me, I do not consider this to be unusual nor have I heard any suggestion of concern with regard to direction or lack thereof. At the time of the application, Nicolas was over the age of majority which militates slightly against a finding that he was a "child of the marriage" but is not determinative according to the Farden factors. Additionally, there is no evidence that Nicolas has sought to unilaterally terminate his relationship with the respondent.

Alexander

- [63] At the time of the application, Alexander was 18 days past his 19th birthday. Additionally, his post-secondary education was less usual than Nicolas' in that he attended educational classes between roughly October 2020 and April 2021. Following a Farden analysis, I determine that Alexander was also a "child of the marriage" at the time of the application. My reasoning used in making this determination is outlined below.

- [64] I have little evidence before me regarding when exactly Alexander enrolled in his studies that were completed between October 2020 and April 2021. In the absence of clear evidence regarding the timing of his enrolment, I find that it is reasonable to assume that he would have been enrolled for his studies at the time of the application. The basis for this is that the application was made shortly after Alexander graduated from high school and I find it reasonable to assume that his plans following graduation from high school would have been made in and around the timeframe of the application being made, if not earlier. I do not consider it appropriate to be unduly restrictive in my findings based on the matter of Alexander switching from educational status at a high school to educational status at a post-secondary institution.
- [65] Assuming Alexander was appropriately enrolled at UA Piping Industry College of BC at the time of the application, it is unclear on the evidence before me whether Alexander applied for or was eligible for student loans or financial assistance, although I believe it is reasonable to assume that he would have been eligible given the financial information before me. As far as career plans are concerned, it is clear that Alexander's education was directly concerned with advancing his employment prospects. Again, there is no evidence that Alexander has sought to unilaterally terminate his relationship with the respondent.
- [66] It is worth noting that the claimant concedes that Alexander ceased to be a child of the marriage as of May 1, 2021 since he graduated from his post-secondary education partway through April 2021.

Does this Court have Jurisdiction to Vary the Child Support Order?

- [67] The proposition that this Court does not have jurisdiction to vary the child support order relies on the authority of our Court of Appeal in *Dring*. *Dring*, in turn, relies upon this reasoning in *D.B.S. v. S.R.G.*, 2006 SCC 37.
- [68] *Dring* dealt with this issue in the context of provincial legislation, but in the course of the analysis, clearly expressed the view that the result in *Dring* is driven by the reasoning in the Supreme Court of Canada in *D.B.S.*
- [69] Justice Goepel in *Dring*, for the majority, stated as follows:
- [97] In my respectful opinion the court does not have jurisdiction to make a statutory retroactive award unless at the date of the application the child retains the status of a child, or there has been a prior application which brings the matter under the "Henry exception". The answer to the jurisdiction question is the same regardless of whether the application is an original application or for a variation of an existing order. There is no juridical or rational reason to distinguish the two situations. Parties are encouraged to settle their disputes outside the court process. When parties have reached an agreement concerning child support it is often pure happenstance whether they take the additional step of having their agreement embodied in a court order. I would suggest this is particularly so in the case of unmarried parents when child support is the only issue they need resolve. This conclusion is consistent

with D.B.S. and Hartshorne. While a five judge division is not bound to follow Hartshorne, D.B.S. is binding on this Court.

- [98] The language of s. 152 of the FLA closely aligns with that in s. 17(1) of the Divorce Act. They are both application-based and are captured by the ratio in D.B.S. In my respectful opinion, they should be interpreted in the same way.
- [70] The respondent says at the time of the application the children were over the age of majority and not dependent (i.e. pursuing timely education with some financial support from the claimant); and as such, are not children of the marriage at the material time: D.B.S. at para. 89. I have dealt with the central point of this argument above, concluding that each of them were children of the marriage at the material time.
- [71] The claimant submits the more recent decision in *Michel v. Graydon*, 2020 SCC 24, cast doubt on the authority of *Dring* and D.B.S. concerning this issue.
- [72] In *Michel* the Court was considering a court's jurisdiction to order retroactive variation of child support where the child no longer qualified as a child for support purposes. This analysis however, was in the context of provincial legislation. The Court did not rely on D.B.S. However, in concluding the Court does have jurisdiction, the Court in *Michel* pointedly noted at para. 14 that the decision in D.B.S. might merit reconsideration.
- [73] Given my above findings in relation to both Nicolas and Alexander and my confirmation that they both retained status as children of the marriage at the time of the application, a full canvassing of the arguments advanced regarding jurisdiction of the court is unnecessary.
- [74] However, I will note for a certain completeness, the recent decision of Justice Walkem in *Kennedy v. Kennedy*, 2022 BCSC 256 in which she concluded that the law remains unsettled on the matter of whether a court has the jurisdiction to order the variation of support under s. 17 of the Divorce Act. She notes:
- [27] For variation applications, the law is unsettled on whether a court has the jurisdiction to order the variation of support under s. 17 of the Divorce Act for children who are now adults. The Court of Appeal in *Dring* found that courts have no jurisdiction to make a statutory retroactive award unless the child is still a child or the child remains otherwise dependent because they are unable to withdraw from their parent's care: *Dring*, at para. 97. This reasoning was relied on in *Michel v. Graydon*, 2019 BCCA 115, which was overturned by the Supreme Court of Canada in *Michel v. Graydon*, 2020 SCC 24 [*Michel*].
- [28] The Court in *Michel*, noted that the "child of the marriage" limitation does not exist under s. 17 of the Divorce Act, and, therefore, it was not decided in D.B.S. whether retroactive variation can only be made while a child is still a dependent: *Michel*, at para. 15. In *Michel*, the Court, per s. 152 of the FLA, allowed a retroactive variation after the child was no longer a child of the marriage. At para. 9, the majority opined that s. 152 of the FLA "authorizes a court to retroactively vary a child support order, irrespective of whether the beneficiary is a "child" at the time of the application, and irrespective of whether the order has expired".

[29] Mr. Justice Schultes notes in *Segura v. Segura*, 2020 BCSC 650, that the Supreme Court of Canada in *Michel* implicitly overturns the rule in *Dring*.

[75] My reading of this passage, and the decision in *Kennedy*, is that the Court does have jurisdiction under s. 17(1)(a) of the Divorce Act to order variation to support orders, even when the relevant party was not a "child of the marriage" at the time of the application. The Court must, however, exercise this jurisdiction with regard to the particular circumstances of each case.

Material Change in Circumstances

[76] Section 17(4) of the Divorce Act reads as follows:

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.

[77] Having found Nicolas and Alexander children of the marriage at the time of the application, there nevertheless remains an onus upon the claimant of establishing there has been a material change of circumstances entitling the claimant to pursue the application for variation: *Bockhold v. Bockhold*, 2006 BCCA 472 at para. 34.

[78] Whether or not there has been a material change of circumstances was not a point that was seriously pressed by the respondent. The evidence is overwhelming that in the context of the Federal Child Support Guidelines, SOR/97-175 [Guidelines] there have been material changes in the circumstances of the parties over the past 16 years. These changes include (but are not limited to) substantial amounts of time being spent in Greece by the respondent, the respondent's return from Greece in 2013, and the diagnoses of both Nicolas and Alexander along with their subsequent educational arrangements.

The Exercise of Discretion regarding Retroactive Support

[79] Justice Bastarache in *D.B.S.*, for the majority, set out four primary factors in determining whether a judge considering a retroactive child support order, either as an original order or variation order, should make a retroactive order. The four factors are to be considered in determining whether the applicant has met the threshold of exercising judicial discretion to make a retroactive variation order. These four factors are as follows:

1. reasonable excuse for why support was not sought earlier: *D.B.S.* at paras. 100-104;
2. conduct of the payor parent: *D.B.S.* at paras. 105-109;
3. circumstances of the child: *D.B.S.* at paras. 110-113; and
4. hardship occasioned by a retroactive award: *D.B.S.* at paras. 114-117.

1. Reasonable excuse for why support was not sought earlier

[80] The Court in D.B.S. was in part concerned with the notion of laches and prejudice. A weighing of this factor occasions an assessment of the circumstances of the applicant's choice to delay applying for child support. As the Court stated in D.B.S. at para. 101: "delay in seeking child support is not presumptively justifiable". That said, the Court went on to make clear that there may be an array of circumstances that give rise to a reasonable and justifiable excuse on the part of the claimant in not applying for support where there was clearly an opportunity to so apply for support: D.B.S. at paras. 100-101.

[81] In the case at bar, the evidence of the claimant is that the application was brought after a time when she appreciated the respondent would be in the jurisdiction and remain in the jurisdiction. The claimant's evidence is that it was most difficult and frustrating to locate the respondent and when communication did take place, it was non-productive. In the course of attempting to communicate with the respondent concerning the children's financial needs, the respondent, according to the claimant, would invariably plead poverty and direct the claimant to speak with his mother. The discussions with his mother over the years also, according to the claimant, proved fruitless.

[82] I have no difficulty inferring from the evidence that from the claimant's perspective, her unproductive dealings with the respondent simply became emotionally exhausting. In addition, for most of her post-divorce life, the claimant was far from a person of means. I have no hesitation concluding she did not have the financial circumstances to retain counsel to pursue the respondent in the context of legal proceedings or otherwise. In my view, this factor weighs in the claimant's favour.

2. The conduct of the payor parent

[83] This feature is linked to the previous factor in the sense that it requires a reciprocal assessment of the conduct and behaviour of the payor parent. The contours of the analysis should focus on the conduct and how the conduct, if at all, may demonstrate that the payor gave priority to his interests while ignoring or overshadowing the interests of the children concerning appropriate support: D.B.S. at paras. 105-106.

[84] As previously referenced, the conduct of the respondent has been far removed from conduct expected of a parent doing his utmost to ensure the well-being of his children. The respondent went for years without paying any support. At the time of this application he was once again in substantial arrears. There is a complete absence of any particulars concerning his efforts to secure employment so as to stop foisting the responsibilities of support for his children onto his parents and the claimant.

[85] I have no hesitation in concluding this factor weighs in favour of the claimant.

3. Circumstances of the child

- [86] The evidence here establishes the claimant struggled financially to provide for the children. She was virtually left on her own to cope. She has received some financial assistance from her mother. The children are now apparently both doing well as a result of these efforts, although are still in need of some financial support from the claimant.
- [87] The propriety of an award that would have, and would continue, to properly enhance the circumstances of the children is apparent on the evidence: D.B.S. at paras. 110-111.
4. The hardship occasioned by a retroactive award
- [88] It is difficult to assess this factor. The dearth of information concerning the respondent over the years, and now, make it so.
- [89] Certainly on the face of some of the evidence, it appears the respondent is hardly able to cope with a retroactive award of increased child support payments. In this sense, any increase in child support may be pyrrhic. While I am skeptical of accepting the reliability of some of the evidence of the respondent on its face, I cannot conclude a retroactive award would not create hardship for the respondent. That said, in my view, any hardship is a product of his own making: D.B.S. at para. 116.
- [90] The respondent submitted that the facts at bar are analogous to the facts in *Postma v. Postma*, 2016 BCSC 1807. As such, submits the respondent, the application should be dismissed. In particular, the respondent relies on the following conclusions of Justice Pearlman:
- [213] Taking all of these factors into account, I conclude that the claimant is not entitled to an award of retroactive child support. In reaching that conclusion, I have considered the claimant's unreasonable delay in pursuing her claim between 2010-2012. I have taken into account Mr. Postma's conduct in failing to adjust child support after 2007 and I have also considered the significant financial contributions the respondent provided for the children in addition to his payments of child support. The respondent ensured that the children's reasonable needs were met throughout the time they remained children of the marriage. While they remained children of the marriage, Kayleigh, Nickolas and Tylan suffered no hardship or deprivation. On the evidence before the Court, the claimant has not established she incurred debt or encroached on her capital in order to meet the children's needs. In these circumstances, there is no basis for a retroactive order that would redistribute capital from the respondent to the claimant. Further, none of the children would benefit from a retroactive award. In all of the circumstances of this case, I find that a retroactive award is not warranted.
- [91] With all due respect, in my view the circumstances before me do not align at all with the facts before Pearlman J. in *Postma*.

- [92] I conclude the weight of the evidence, taking into account all of these factors, favours the exercise of discretion on behalf of the claimant. An assessment of a retroactive award in these circumstances is justified.
- [93] This of course is not the end of the analysis. The issue now becomes, in the circumstances before the Court, what, if any, award can and should be awarded.
- [94] In this regard, once again, the commentary of Bastarache J. in D.B.S. is apt:
- [117] Once a court determines that a retroactive child support award should be ordered, it must decide the amount of that award. There are two elements to this decision: first, the court must decide the date to which the award should be retrospective, and second, the court must decide the amount of support that would adequately quantify the payor parent's deficient obligations during that time.

[Emphasis added.]

Date of Retroactivity

- [95] Justice Bastarache in D.B.S. again has articulated a succinct general proposition at para. 125:

The proper approach can therefore be summarized in the following way: payor parents will have their interest in certainty protected only up to the point when that interest becomes unreasonable. In the majority of circumstances, that interest will be reasonable up to the point when the recipient parent broaches the subject, up to three years in the past. However, in order to avoid having the presumptive date of retroactivity set prior to the date of effective notice, the payor parent must act responsibly: (s)he must disclose the material change in circumstances to the recipient parent. Where the payor parent does not do so, and thus engages in blameworthy behaviour, I see no reason to continue to protect his/her interest in certainty beyond the date when circumstances changed materially. A payor parent should not be permitted to profit from his/her wrongdoing.

- [96] In addition, "effective notice" refers to any indication by the recipient parent that child support should be paid, or if it already is, that the current amount of child support needs to be renegotiated. Consequently, Bastarache J. concluded effective notice does not require the recipient parent to necessarily take legal action. What is required is that the topic be broached such as to give the payor parent notice that the status quo is not necessarily acceptable.
- [97] There is evidence that exchanges took place between the claimant and respondent at some point that generally concerned financial responsibility. The evidence on the whole is somewhat vague concerning particulars. In my view the award ought to reach back three years, but I cannot conclude that any further is justified on the evidence.

Imputing Income

- [98] Ms. Hutchinson asks in determining any amount of child support, that income be imputed to the respondent in an amount in excess of his reported income in 2003; namely, approximately \$59,000 per annum.
- [99] The onus is on Ms. Hutchinson in this case to prove that the respondent have imputed income ordered against him. In *Barry v. Davis*, 2021 BCSC 546, Justice Forth set out the legal principles for imputing income. The pith and substance of those grounds as set forth by Forth J. includes the issue of intentional unemployment and/or underemployment.
- [100] Justice Forth states as follows in *Barry* at paras. 41-42:
- [41] Section 19(1)(a) of the Guidelines allows for imputing income where a party is intentionally underemployed or unemployed. Under s. 19(1)(a), the court considers a party's capacity to earn income, and whether the party is not earning to capacity: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37; *Koch v. Koch*, 2012 BCCA 378.
- [42] The party seeking to impute income bears the onus of showing, on a balance of probabilities and a rational and evidentiary basis, that income should be imputed: *D.M.B. v. D.W.A.L.*, 2018 BCSC 1254 at para. 140.
- [101] The issue becomes whether on the evidence presented, the Court is able to find the respondent has, at least from time to time, purposely avoided employment; or there is evidence to suggest on the balance of probabilities that the respondent is deriving income that remains unreported in Canada.
- [102] The claimant submits that while the respondent indicates that he has a substance abuse disorder and a criminal record, there is a lack of evidence from the respondent as to efforts he has made concerning employment and indeed why, in the particular, these issues necessarily foreclose steady and remunerative employment.
- [103] The claimant submits that the respondent runs several businesses out of the family home in Greece where he has resided on and off since the separation. This includes, according to the claimant, an Airbnb out of the home in Greece and a fiberglass repair shop run out of the same address under Mr. Taraviras' name. The ads in relation to these businesses, and in particular the fiberglass repair shop indicating the connection to Mr. Taraviras' name, have been attached to the claimant's affidavit.
- [104] In response, the respondent says he does not own the rental suite in Greece used for the Airbnb. His evidence is that his parents own the suite. The respondent does not address the fiberglass repair shop.

- [105] The respondent has effectively remained silent when implicitly challenged to add substance to his position that, for the last 16 years, he has been able to do no better than generating the income as reflected in his income tax material. It appears it is this broad proposition of his own dysfunction that has frustrated the claimant for these many years.
- [106] In my view, on the whole of the evidence, the claimant has established on the balance of probabilities that there ought to be income imputed to the respondent. I am persuaded that, on the balance of probabilities, the respondent has not put forward genuine efforts to obtain employment coinciding with his capacity to work.
- [107] That said, on the evidence, it is entirely unrealistic to impute income to the respondent in an amount he earned almost 20 years ago. I find that certainly the respondent ought to be capable of earning a modest amount above minimum wage in this province. Based on the current minimum wage of \$15.65 per hour in BC, and assuming full-time employment over the course of a year, a person would earn pre-tax income of \$32,552. Therefore, for the purpose of fixing retroactive child support I impute the respondent's annual income at \$40,000 per year.
- [108] The Guidelines determine the monthly amount as follows, in accordance with s. 3(2)(a) of the Guidelines:

Year

of months per year

Amount/month

Total/Year

2017

2 (Oct. 30 - Dec. 31)

612/635

1,247

2018

12

635

7,620

2019

12

635

7,620

2020

12

635

7,620

2021 (with 2 children)

5 (Jan - May)

635

3,175

2021 (with 1 child)

7 (Jun - Dec)

376

2,632

2022

10 (Jan - Oct)

376

3,760

Total

33,674

[109] The respondent was effectively served with this application on October 30, 2020. Therefore, I find that this is the effective date of notice. The evidence does not support, on balance, going back further than three years: D.B.S. at para. 123; that is, October 30, 2017.

[110] It is worth briefly drawing attention to the amount per month used for the 2017 calculations. There were updates made to the Guidelines that came into effect on November 22, 2017 that impact the amount per month used for November 2017, and the new amount is used for December 2017.

Section 7 Expenses

Medical and Dental Expenses

[111] The claimant seeks an order that the Divorce Order be varied so as to order the respondent be wholly responsible for medical and dental expenses going forward; and, retroactive to 2008. With respect, neither the evidence nor the submissions can support this proposition. There is no proper basis upon which to allow this aspect of the claimant's application. I am not persuaded the Divorce Order should be varied in this regard. I come to this conclusion notwithstanding the imputed income in relation to the respondent.

[112] The Divorce Order will remain intact concerning the medical and dental expenses of Nicolas going forward.

[113] As previously stated, the claimant has taken the position that Alexander is no longer a child of the marriage as at May 1, 2021. I agree.

[114] The related order the claimant seeks is effectively an order for the payment of outstanding medical and dental expenses in accordance with the Divorce Order. As previously referenced, there is no suggestion in the evidence or submissions that the expenses were not reasonably and properly incurred. The last figure, at least that I can locate in the material evidencing these expenses, is \$406.22 representing one half of the costs of the outstanding medical expenses; and \$13,110.61 representing one half of the outstanding dental/orthodontic expenses. These expenses total \$13,516.83. This amount is now due and owing to the claimant.

The Education Expenses

[115] In accordance with the reasoning in relation to a variation of child support, I conclude the Divorce Order may be varied to address the issue of s. 7 expenses.

[116] Sections 3(2) and 7(1) of the Guidelines provide as follows:

3 (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.

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation

[117] In this regard the law requires the parties to present evidence as to the reasonableness and necessity of a s. 7 expense in that they each should have as equal as possible an opportunity to obtain evidence at or near the time of the expenses incurred, in order to determine whether or not the expense is a necessity in relation to the child's best interests, and is a reasonable expense in relation to the needs of the spouses and those of the child.

[118] The Guidelines do not require an agreement in order for an expense to be characterized as a s. 7 expense; but I am very much alive to the caution articulated by Justice Skolrood, then of this Court, in *Younger v. Younger*, 2017 BCSC 363, at para. 50:

Before delving more into the details of the amounts spent by each party, it is worth making a couple of observations. First, it is apparent that many if not most of the expenditures made by one or the other parent were made without the other parent's agreement, and some of those expenditures are significant. While the Guidelines do not require the agreement of the two parents in order for an expense to be properly characterized as a s. 7 expense, it is unreasonable for either parent to incur significant expenses without the other's agreement and then seek recovery from that other parent, particularly well after the fact. The absence of agreement between the parties leads to the difficult situation facing the court on this application of having to look back in time to parse the details of who paid what and when.

[119] The respondent of course has provided evidence that he was not consulted concerning these expenses, nor provided any opportunity for input.

[120] The claimant's evidence in this regard is unfortunately somewhat generic. The evidence of the claimant, from her affidavit dated July 17, 2020, in this regard is as follows:

[49] After the 2006 order I asked the respondent to contribute towards the children's extraordinary expenses. The respondent always said he had no money and refused to pay.

[50] After several requests and his usual answer I stopped asking.

[51] Prior to bring this application I once more broached the subject with the respondent in the hopes of resolving this issue out of court and he gave me his usual answer, except this time he said that he and his parents have already provided some funds and are gathering their records, however, he has never paid for his half of the children's extraordinary expenses.

[121] I conclude there is sufficient evidence to determine that the expenses were properly and reasonably incurred on behalf of the children. It is apparent on the evidence that while these expenses were burdensome, they were clearly expenses in the interests of the children to pursue their educational needs. I am also of the view that, while the respondent has a right to complain about the lack of consultation in determining how to address the educational needs, he surely was aware of the children's educational needs. He has in fact contributed to those educational needs, at least in part, although admittedly late in the day.

- [122] I do not believe however that it is appropriate to find the respondent responsible for all of the educational expenses. The fact is, while the application seeks an order of this nature, it was not really argued on that basis, nor was there a factual basis apparent in the evidence to justify such an order.
- [123] As well, I am not persuaded it is appropriate to re-visit this particular responsibility further back than three years prior to the effective notice of application; that is, October 30, 2017. The retroactive s. 7 education expenses will be determined roughly proportionate to the income Guidelines of the parties from October 30, 2017.
- [124] In my view, taking into account all relevant factors, including the finding of imputed income, the Divorce Order should be varied to include the obligation of the respondent to share in the educational expenses (s. 7 expenses) going forward on a 50/50 basis, consistent with the other expenses. This variation for ongoing expenses will apply to Nicolas only, as he is the only child who retains status as a "child of the marriage" at the time of this judgment. It bears repeating that the basis for my finding that Nicolas continues to be a "child of the marriage" is largely based on his educational status; upon completion of his current program at UBC it is likely that he will cease to hold that status.
- [125] In relation to a retroactive award, I appreciate that the proportionate share may favour an increase of responsibility on the part of the respondent given the imputed income, but nevertheless I conclude that responsibility for expenses shall remain equal in terms of any retroactive award.
- [126] In this regard, given the evidence before me I conclude the respondent paid \$4,250 to the claimant regarding educational expenses between October 30, 2017 to on or around the date that the application was made. Accordingly, this amount will be deducted from the education expenses owing.

Child Support Arrears

- [127] The claimant seeks arrears of child support that amounted to \$6,428.03 at the time of the application. I made an order during the hearing of the application that this amount be paid by the respondent. It was, in my view, a consent order. Upon the resumption of the application in October 2021, I did not hear that this amount had not been paid. For greater certainty for the claimant, I will again order the amount be paid and it will be an amount that forms part of the overall obligations arising from this decision. Of course, if the arrears have been paid, the amount of the global obligation will be reduced accordingly.

The Application of the Respondent

- [128] The respondent generally describes the purport of his application as seeking that paragraph two of the Divorce Order be varied retroactively and prospectively, and that the amount of child support payable by the respondent for the children be reduced to reflect the child support Guidelines amount commensurate with the respondent's CRA reported

income in each year since the 2006 Divorce Order was pronounced. In addition, that any arrears of child support payable by the respondent be cancelled and any overpayment of child support by the respondent be repaid to the respondent by the claimant or, alternatively, credited to the respondent for future ongoing child support.

[129] I pause to note again that the respondent has consented to pay the arrears owing at the time of the application.

[130] In any event, the position of the respondent appears to take aim at the child support obligations from a number of different directions.

[131] The respondent submits that based upon his reported income now in evidence before the Court, he has overpaid support for his children. He seeks the return of child support payments. In this regard, the respondent also submits, again based upon his continuing position that the children have ceased to become children of the marriage, he has paid support for his children when the children were not legally entitled to his financial assistance. He now seeks the return of those funds.

[132] This amount, the respondent submits, is in the amount of \$42,472.08.

[133] With all due respect, this position of course rests upon factual submissions that are not supported. I have found the respondent ought to have income imputed. In other words, it is artificial in the extreme to now rely on his reported income for any purpose.

[134] For the same reason, I reject the argument that there is a basis to seek a credit or set-off of s. 7 expenses that, the respondent submits "he has paid recently". There remain other features to this application seeking to claw back and extinguish his obligations concerning the children retroactively. In my view, the application simply cannot be sustained on the evidence and the findings I have made.

[135] The application of the respondent is dismissed in its entirety.

Summary of Orders Made

[136] I order that child support be varied retroactively in accordance with the amounts set out at paragraph 110 of these Reasons.

[137] I order that paragraph 7 of the 2006 Divorce Order be varied to include a responsibility on behalf of the respondent to pay for one-half of the educational expenses of the children dating back to October 30, 2017.

[138] I order that the 2006 Divorce Order remain intact with respect to medical and dental expenses for Nicolas on an ongoing basis.

[139] If he has not already done so, I order the respondent to pay the claimant arrears of \$6,428.03 in addition to the above orders.

[140] I order payment of the outstanding medical and dental expenses owing from the respondent to the claimant in the amount of \$13,516.83.

Costs

[141] Costs will follow the event and are awarded to the plaintiff at Scale B. The award of costs is subject to any party advising there are circumstances relevant to the issue of costs that ought to be brought to my attention. In that event, the parties may contact Trial Scheduling and so advise.

"Crossin J."

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