
CANADA / JUDGMENT

Innes v. Innes

2011 BCSC 722

COURT

Supreme Court of British Columbia

DECIDED

3 June 2011

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

2011 BCSC 722 Innes v. Innes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Innes v. Innes,

2011 BCSC 722

Date: 20110603

Docket: ED 30936

Registry: Nanaimo

Between:

Martina Mary Innes

Claimant

And

William James Innes

Respondent

Before: The Honourable Mr. Justice Truscott

Reasons for Judgment

Counsel for the Claimant:

K. Rongve

Counsel for the Respondent (Applicant):

J.A. Anthony

Place and Date of Hearing:

Nanaimo, B.C.

May 9, 2011

Place and Date of Judgment:

Nanaimo, B.C.

June 3, 2011

- [1] The respondent husband and father applies for an order that his obligations for spousal support as set out in the divorce order of August 16, 2002 be reviewed and/or varied such that his obligations ended as of August 31, 2005.
- [2] Additionally he applies for an order varying his obligations for child support set out in that divorce order, such that his child support obligations ended for three of his children at their 19th birthdays, and for his fourth child at November 30, 2010, on the basis that as of that date he was no longer a child of the marriage.
- [3] The claimant does not oppose the order for the end of child support for the three children as of their 19th birthdays, but does oppose the order for the fourth child until he moves out of her home on June 30, 2011.
- [4] The claimant also opposes termination of the respondent's spousal support obligations as of August 31, 2005, but only seeks spousal support thereafter for 2006 and 2007 of \$500 per month, followed by agreed termination thereafter.
- [5] The parties were married on December 1, 1984 and were divorced on August 16, 2002, by desk order in which they both consented to the corollary relief.
- [6] The order included a provision that the respondent pay to the claimant \$1,521 per month for the four children, on a Guideline income of \$75,500, continuing so long as each child was a child of the marriage as defined by the Divorce Act.
- [7] Another provision of the order required the respondent to pay to the claimant spousal support of \$400 every two weeks commencing August 30, 2001, with each party having liberty to apply for a review after 36 months following entry of the order, which was on August 19, 2002.
- [8] The respondent paid the child support and spousal support obligations as required until August 2005, but on September 6, 2005 he emailed the claimant and said "According to my calculations the spousal payment term has ended ...". Thereafter he paid no further spousal support but did continue to pay child support as required.

- [9] There was no further communication between the parties on spousal support after that email, although there were further communications on child support. The claimant made no further demand for spousal support.
- [10] In his affidavit the respondent says he considered the claimant's absence of response to his email to signify her consent to the end of spousal support at that time.
- [11] He says now that he realizes that the right to a review in 36 months did not automatically mean an end to spousal support, but he says as well that to his knowledge the claimant was self-supporting as of September 2005, having returned to full-time work at a local school board where she continues to work steadily to the present day.
- [12] The claimant agrees that she became a full-time secretary at the school board in 2005 and has worked full-time since that date, but she says she never agreed with the respondent for termination of spousal support.
- [13] She says that she always felt forced to accept the funds the respondent provided as she didn't have enough money to pay a lawyer to handle the issues for her. In addition she says the respondent was a landed immigrant in Canada and a citizen of New Zealand and could have left Canada at any time if she tried to press him for further spousal support.
- [14] She says that in fact he told her that if she asked for more money he might as well quit his job and move out of the country.
- [15] She says her concern that he might leave Canada became more pressing when he married his current spouse who is from Chicago as she has always been aware he could go there if she asked for more money.
- [16] She says she suffered significant financial hardship after the respondent unilaterally cut off spousal support, although she does not provide any further details of that financial hardship.
- [17] She says she earned the following income from 2005-2010 inclusive:
- 2005 \$34,166.48
- 2006 \$39,019.95
- 2007 \$37,371.11
- 2008 \$37,191.93
- 2009 \$36,925.00
- 2010 \$36,765.17
- [18] The claimant filed her claims with the Family Maintenance Enforcement Program ("FMEP") only after the respondent ended child support for the fourth child on November 30, 2010.

- [19] The respondent says he has paid over \$170,000 for child and spousal support over 10 years and he has never had any intention of leaving his children nor his home in British Columbia where he has resided since 1977.
- [20] He says his income for 2005-2010 inclusive was as follows:
- 2005 \$88,134.00
- 2006 \$91,035.00
- 2007 \$95,502.00
- 2008 \$45,446.00
- 2009 \$72,746.00
- 2010 \$83,202.00
- [21] An FMEP printout sets out the respondent's obligations for child support from July 1, 2001 and spousal support from August 30, 2001, as the divorce order stipulated, and in the case of the child support obligations has appropriately reduced the \$1,521 ordered per month as each child became 19 years of age, except for the fourth child who turned 19 on January 19, 2009. For that child, FMEP has continued an obligation of \$702 per month to the present date.
- [22] The FMEP has calculated the respondent's arrears to February 17, 2011 for child and spousal support together to be \$76,788.56.
- [23] The respondent says approximately \$55,000 of these arrears pertain to spousal support that he has not paid since September 2005.
- [24] He says he stopped paying child support for his fourth child in November 2010 when he was told that his son was working full-time and earning \$24,000 per year while also attending university full-time.
- [25] The claimant says that while her fourth child turned 19 in January 2009, he has continued to live with her thereafter and go to school full-time and she has continued to pay all his housing costs and a substantial amount of food and clothing while he pays his own university costs and all other expenses.
- [26] However, the claimant and the fourth child who is over the age of majority have declined to provide any detailed list of his expenses for the purpose of determining what amount, if any, he should personally contribute towards any ongoing child support requirements of the respondent.

Analysis and Decision

- [27] I find myself unable to order continuance of the child support order for the fourth child in any amount beyond the respondent's last payment in November 2010, without any evidence of what that child can contribute himself towards his expenses.
- [28] Without this evidence it would be unfair to the respondent in my view to impose any further obligation on him when the appropriate amount of any ongoing child support is to be determined on consideration of the "child's" efforts to contribute to his own support.
- [29] The order of August 16, 2002 as it pertains to child support for each of the four children is terminated as of the last payments made by the respondent for each of the four children on the basis that as of those payments each no longer continued to be a child of the marriage.
- [30] On the issue of spousal support, respondent's counsel submits I should accept that the claimant has been guilty of "hoarding" by not objecting to the respondent ending spousal support in 2005 and applying to the court then to force a continuance if necessary, but rather saying nothing and waiting a further six years thereafter to claim ongoing spousal support now.
- [31] In addition, counsel submits that if the review had taken place in 2006, as authorized by the order, spousal support would have been ordered at an end as of that date on the basis that at that time the claimant was self-supporting.
- [32] It is submitted that it was on this expectation that the parties agreed to the three-year review date in the order in the first place.
- [33] The claimant's counsel points out that the claimant says in her affidavit that she couldn't afford a lawyer, and felt forced to accept what the respondent offered, and says she has suffered financial hardship after the respondent unilaterally ended spousal support.
- [34] However, her counsel concedes that if a review had taken place in 2006, the order from 2002 for spousal support would have been reduced as to quantum and she presents to the Court draft spousal support guidelines "with child support" for 2006 and 2007.
- [35] Using these guidelines she presents a range of \$272-\$920 per month for spousal support in 2006 and \$439-\$1,103 for 2007, inputting both the claimant's and the respondent's incomes and inputting two children.
- [36] I decline to conclude that the claimant has intentionally been guilty of hoarding. I am not sure that "rule" even exists any longer. In any event, under that rule of thumb she would be entitled to arrears for one year at least.
- [37] While I do not accept that the claimant should have been in fear of the respondent leaving the jurisdiction, I cannot reject her affidavit evidence of having that fear, nor her affidavit evidence of not feeling that she had enough money to pay a lawyer.

- [38] In addition, the respondent had no right in law to unilaterally end spousal support in the face of only having a right of review, when the claimant did not respond to his declaration of termination. He should have sought a court order then if he thought he was entitled to a termination.
- [39] I consider the proposal of the claimant for two years of spousal support at \$500 per month for 2006 and 2007 followed by termination to be a reasonable proposal.
- [40] On a review of the divorce order of August 16, 2002, as of January 1, 2006, or alternatively on variation of that order as of that date, on a change in the means, needs and circumstances of the claimant as of that time when she returned to work full-time, I order the respondent to pay the claimant \$500 per month commencing July 1, 2011 and continuing on the first of every month thereafter through to a final payment on June 1, 2013, after which spousal support is terminated.

"The Honourable Mr. Justice Truscott"

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/11/07/2011BCSC0722.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/innes-v-innes-2011>

Prepared on 26 October 2026 · Esheria