

CANADA / JUDGMENT

L.A.B. v. M.L.B.

2025 BCSC 2160

COURT

Supreme Court of British Columbia

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2025 BCSC 2160 L.A.B. v. M.L.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.A.B. v. M.L.B.,

2025 BCSC 2160

Date: 20251031

Docket: E39549

Registry: New Westminster

Between:

L.A.B.

Claimant

And

M.L.B.

Respondent

Before: The Honourable Madam Justice Sukstorf

Reasons for Judgment

Counsel for the Claimant:

E. Chhina

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D.K. Smith

Place and Date of Hearing:

Port Coquitlam, B.C.

July 15-17, 2025

Place and Date of Judgment:

New Westminster, B.C.

October 31, 2025

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OVERVIEW

- [1] This case concerns a consent agreement regarding child and spousal support, which stipulated that the terms would not be reviewed for a period of five years. The central question is whether such an agreement can lawfully prevent a retroactive recalculation of child support under the Federal Child Support Guidelines, SOR/97-175 [Guidelines], despite material changes in parenting arrangements and a significant discrepancy between the parties' income declared at the time the agreement was made and the income actually earned.

FACTS

- [2] The parties were married on December 21, 1996. They have two children: K.B., born in 2005, and S.B., born in 2008. They separated on April 23, 2011, after nearly 15 years together. The relationship was marked by significant conflict, which persisted even after their separation.
- [3] Following the separation, the claimant paid all family expenses and costs until the sale of the former family home, which did not occur until December 2012.
- [4] On May 23, 2012, the parties entered into a separation agreement ("Separation Agreement"). It provided that if the proceeds from the sale of the former family residence were insufficient to cover closing costs and joint debts, the claimant would assume sole responsibility for any shortfall and indemnify the respondent. As a result, the claimant assumed the entire family debt, totalling approximately \$75,000. The Separation Agreement also required the respondent to resume employment once the children were in full-time school and provided that spousal support would be reviewed four years after the claimant began paying it. Because the claimant commenced formal spousal support payments in January 2013, following the sale of the family home, the first review was scheduled for January 2017. The youngest child, S.B., began full-time schooling in September 2013.
- [5] On January 27, 2015, the parties appeared before Justice Groves for a summary trial to resolve contested issues of parenting time and child support. The claimant sought shared parenting, imputation of income to the respondent, adjustment of child support, and other relief, including a protection order. A final order was granted establishing shared parenting, and an annual income of \$21,320--the equivalent of the minimum wage for full-time work--was imputed to the respondent for 2013. The Court found that, as a qualified teacher, the respondent could earn significantly more and observed that she had been expected to resume full-time work when the youngest child began school in 2013. She had not done so,

citing health concerns and pending criminal charges arising from an assault on the claimant during a parenting exchange. A peace bond resolved those charges in December 2014. Justice Groves stated that he expected the respondent's income to increase once she returned to full-time employment, a change expected at the next review scheduled for 2016.

- [6] In his reasons, Groves J. determined that the claimant's Guidelines income should continue to be calculated by deducting allowable employment business expenses.
- [7] Spousal support was not addressed, as it was scheduled for a separate review in January 2017.
- [8] In January 2017, at the scheduled spousal support review, the claimant proposed terminating spousal support, noting that he had supported the respondent for more than six years from the date of separation, had reapportioned their family assets in the respondent's favour, and had assumed sole responsibility for approximately \$75,000 of family debt.
- [9] Given that both the children were in school full-time, the claimant also sought to impute additional income to the respondent, relying in part on the comments by Groves J. regarding the expectation that she would return to work full-time, as set out in his unpublished summary trial reasons: (27 January 2015), New Westminster E039549 (B.C.S.C) at para. 34 [2015 Summary Trial Reasons].
- [10] During negotiations, the claimant disclosed his intention to change careers. At the time, he was employed by a Canadian Bank as an Investment and Retirement Planner, earning a commission-based income subject to clawbacks. He faced a declining referral base and increasing stress, which contributed to persistent health issues. His higher post-separation income was achieved only by working extensive overtime to reduce the \$75,000 in family debt he had assumed, a level of effort that was not sustainable in the long term.
- [11] The claimant planned to join the Wealth Management Division of the Canadian Bank as an Investment Counsellor. This required him to complete a Chartered Financial Analyst ("CFA") program and serve in a junior role for one to two years before being considered to have met regulatory requirements. This transition was expected to reduce his income over the next two to five years to an estimated range of \$70,000 to \$150,000.
- [12] To pursue the career change, the claimant sought to adjust his child support obligations. The respondent, however, insisted on a fixed amount of support to protect against the risk that his income would decline.
- [13] Extensive negotiations between counsel resulted in the consent variation order ("CVO"), which is now under challenge. Under the terms of the CVO, the claimant's guideline income was fixed at \$90,000 for five years, during which he would pay \$1,000 per month in child support (offset) and \$1,000 per month in spousal support, while also contributing 65% of special and extraordinary expenses under s. 7 of the Guidelines.

- [14] Given the high level of conflict between the parties, they also agreed during the 2017 negotiations that the children would reside in a shared parenting arrangement, with equal time spent in each household. To avoid future disputes or attempts by either parent to alter parenting time for financial advantage, the CVO provided that any changes in the children's living arrangements would not affect the fixed child and spousal support amounts payable. The respondent would receive \$2,000 per month in total support regardless of whether the children lived equally with both parents, primarily with her, or primarily with the claimant. This structure was designed to create stability for the children and provide financial certainty for the parties.
- [15] The arrangement, proposed by the respondent's lawyer, treated spousal support as a proxy for child support to provide the respondent with financial security and reduce the claimant's tax burden. The respondent received the full Canada Child Benefit ("CCB") despite shared parenting, and the CVO guaranteed her \$2,000 in monthly support for five years, regardless of fluctuations in income or changes in parenting arrangements. It further stipulated that child support could not be reviewed until July 2023 and then only on a prospective basis.
- [16] The claimant began pursuing a career change within the Canadian Bank before the CVO was finalized. Between 2017 and 2019, he attempted the CFA exam three times without success, and the 2020 sitting was cancelled due to the COVID-19 pandemic. In late 2021, he learned that the Canadian Bank offered an entry-level training salary comparable to what was previously available only at the Canadian Bank's Wealth Management division, so he applied. On May 3, 2022, the claimant was hired as an Investment Advisor with a training salary of \$60,000, paid monthly for 15 months, ending in September 2023. Thereafter, he was expected to generate his own income.
- [17] However, because his career transition was delayed until 2022, the claimant continued working in his prior role longer than anticipated, resulting in his income from 2018 to 2021 being higher than expected at the time the CVO was made.
- [18] During the five-year term of the CVO, the claimant kept the respondent apprised of his career change efforts, including disclosing that he had failed the CFA exam. On August 27, 2018, he emailed the respondent to advise that he had written the exam, failed it, and planned to re-write it in 2019. She replied, "Why exactly are you sharing this with me? Can you please let me know how this affects me directly?" This response understandably discouraged further discussion. Nevertheless, the claimant continued to provide his annual tax returns, which were sent to the respondent through her former counsel. Although some tax returns were delivered a few months after the July 1 deadline, most delays were due to Canadian Revenue Agency ("CRA") timelines, particularly during the pandemic.
- [19] However, against the backdrop of the CVO, circumstances unfolded quite differently from what the parties had anticipated.

- [20] Parenting arrangements shifted away from shared care. In September 2019, S.B. began residing primarily with the respondent. Sometime in March 2020, due to the COVID-19 pandemic, K.B. began living primarily with the respondent and has continued to do so since then.
- [21] As a result of the claimant's inability to pass the CFA exams, he continued to work in his former role. As he had done before his attempted career shift, he continued to work very long hours. As a result, his actual line 150 income during the five-year term was significantly higher than the fixed \$90,000 salary on which the CVO was premised. His reported incomes were \$256,185 in 2018, \$200,166 in 2019, \$223,809 in 2020, \$296,406 in 2021, and \$182,480 in 2022. His 2023 income was \$166,864, and a November 30, 2024, paystub was annualized to approximately \$187,936.
- [22] Pursuant to the CVO, despite the claimant earning significantly more money during each of the five years, child and spousal support payments remained the same. The evidence before me indicates that both parents sincerely believed that the CVO prevented either of them from altering the ongoing support agreement.
- [23] On June 5, 2023, as the five-year non-variability period in the CVO approached expiration, the respondent's new counsel delivered formal notice to the claimant advising of the respondent's intention to seek a review and variation of support. This notice was first communicated through counsel's email.
- [24] K.B. is now an adult child, attending university and working part-time.
- [25] The above changes in parenting arrangements and in the claimant's income form the basis of the respondent's present application to set aside the CVO and seek retroactive child support.

POSITIONS OF THE PARTIES

- [26] The respondent seeks:
- to set aside the terms of the May 8, 2017, CVO that fixed child support on a non-variable income of \$90,000 for five years and that expressly precluded adjustments for changes in parenting time or income;
 - retroactive recalculation of child support based on the claimant's actual incomes and the actual parenting arrangements, commencing June 1, 2018, with the quantum (including interest) to be determined by the Registrar;
 - retroactive arrears from 2018 through July 2025 and prospective child support going forward;
 - continued child support for K.B., who is enrolled full-time in post-secondary studies, resides with the respondent, and works part-time;

- e) determination of the claimant's income using line 150, unless he properly establishes deductions under Schedule III of the Guidelines;
- f) reapportionment of s. 7 expenses based on the parties' actual incomes, together with court-ordered interest and costs.

[27] The claimant:

- a) opposes any retroactive variation earlier than June 5, 2023, the date of adequate notice through counsel;
- b) argues the parties deliberately structured the CVO to provide stability, that counsel represented both parties, and that there is no blameworthy conduct on his part to justify retroactive variation going back further than June 2023;
- c) maintains that his Guidelines income must reflect deductible employment expenses under Schedule III, that this is consistent with Groves J.'s 2015 Summary Trial Reasons and the parties' historical practice, and that his car and phone costs are properly deductible;
- d) seeks to have the respondent's imputed income increased for subsequent years, ranging from \$50,302 in 2018 to \$71,487 in 2024, based on average teacher salaries in the Abbotsford School District;
- e) submits that the respondent benefitted under the CVO by receiving \$2,000 monthly support, 65% of s. 7 expenses, and the ability to claim the full CCB despite shared parenting and should not be permitted to revisit the bargain now; and
- f) pleads that any retroactive award would cause him undue hardship, given his current debt load and limited assets.

[28] These competing positions frame the central issues for determination: whether the CVO should be set aside in whole or in part; whether retroactive child support should be ordered; how the claimant's Guidelines income is to be calculated; and what prospective arrangements are appropriate.

ISSUES

[29] The issues raised by this application can be framed as the following questions for determination:

A. Issue 1: Enforceability - Are the CVO clauses that fixed the claimant's Guidelines income at \$90,000 and barred changes to the support amounts, regardless of income or parenting time, unenforceable because they conflict with the Guidelines and the children's right to support?

B. Issue 2: Parenting Arrangements - When did S.B. and K.B. begin primarily living with the respondent?

C. Issue 3: Children of the Marriage - Is K.B., who was born in 2005 and is now over the age of majority, still a child of the marriage while attending post-secondary studies and, if so, on what terms?

D. Issue 4: Retroactivity - Assuming the impugned terms of the CVO are set aside or limited, how far back should any retroactive adjustment run and from what start date?

E. Issue 5: The Parties' Guidelines Incomes - How should the claimant's Guidelines income be determined? Should his claimed employment expenses (i.e., his car and phone) be deducted under Schedule III of the Guidelines, and what evidentiary standard applies? Further, should any income be imputed to the respondent?

F. Issue 6: Payable Child Support - Based on the determined Guidelines income, what amount of child support should have been paid each year?

G. Issue 7: Special and Extraordinary Expenses - How should special and extraordinary expenses be apportioned under s. 7 of the Guidelines?

H. Issue 8: Interest - If arrears are ordered, what guidance should be provided to the Registrar regarding interest, including the application of the Court Order Interest Act, R.S.B.C. 1996, c. 79 [COIA], and relevant Family Maintenance Enforcement Program ("FMEP") practice?

ANALYSIS

Issue 1: Enforceability

Legal Framework

[30] Child support is the right of the child. Parents have a continuing obligation to provide support commensurate with their means, and agreements between them cannot oust this statutory obligation.

[31] However, section 15(2) of the Guidelines permits a court to adopt an agreed income if the parties have reduced it to writing and the court is satisfied that it is reasonable, having regard to the income disclosure. Sections 148-150 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], and ss. 15.1(5), (7)-(8), and 17(6.4) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), similarly allow courts to respect written agreements if reasonable arrangements are made for the child.

[32] In *D.B.S. v. S.R.G.*, 2006 SCC 37, the Supreme Court of Canada emphasized that while parental agreements attract considerable weight, they cannot displace the child's entitlement. Courts may respect negotiated settlements if they are reasonable but cannot allow parents to immunize themselves against variation when real-world changes render the arrangements inadequate: at paras. 78-79.

[33] British Columbia jurisprudence reflects this approach. In *G.J.L. v. M.J.L.*, 2017 BCSC 688, the Court set out a two-step approach as follows:

- [122] when considering whether to change a child support agreement, it is necessary to consider all of the matters in s. 150. The first step is to proceed under s-s (1) and determine what an application of the Guidelines would produce. That is what the court will initially consider in deciding whether it "would make a different order" than what is provided in the agreement. However, it is also open to the party seeking to uphold the agreement to refer the court to s-s (2) and ask it to find that reasonable arrangements have been made for the support of the children. If it makes that finding then it is not a situation in which it would "make a different order" and set aside the agreement or replace it with an order. [Footnote omitted.]
- [123] Because this is a shared custody situation, an application of s. 9 of the Guidelines will produce the amount of child support against which the amount in the agreement should be compared. Even if that amount is higher than the agreement amount, it is still open to me to be satisfied that "reasonable arrangements" are in place for the children and uphold the agreement.
- [124] In my opinion, s-s (2) and its concept of reasonable arrangements offers an exception to the usual result of a s. 9 analysis, to allow courts to uphold those agreements that still provide sufficient support despite falling short under that analysis.
- [Emphasis in original.]
- [34] Cases such as *Gale v. Dawson*, 2015 BCSC 1795; *Visser v. Visser*, 2019 BCSC 1856; and *Sidhu v. Chima*, 2020 BCSC 768, confirm that agreements will be upheld where the arrangements meet the children's needs and are broadly consistent with the Guidelines. In *Nicholl v. Nicholl*, 2020 BCCA 173, the Court of Appeal affirmed that agreements providing children with a fair standard of support will not be disturbed.
- [35] By contrast, in *Chan-Henry v. Liu*, 2018 BCSC 2140, aff'd 2021 BCCA 318, the Court struck down clauses that purported to fix child support indefinitely and preclude adjustments for changes in income or parenting time. Justice Kent held that such provisions were contrary to public policy as they attempted to do indirectly what the Guidelines prohibit: freeze child support regardless of actual circumstances: at para. 178.
- [36] The unifying principle flowing from the case law is that while good faith, full disclosure, and independent legal advice lend significant weight to a consent agreement or order, that weight endures only so long as the agreement continues to make reasonable arrangements for the support of the child within the meaning of ss. 17(6.4)-(6.5) of the Divorce Act. Courts will generally respect agreements that are child-centred, negotiated on a fully informed basis, and broadly consistent with the Guidelines, recognizing that predictability and autonomy have value: *Greene v. Greene*, 2010 BCCA 595 at paras. 49-53.
- [37] However, the principle of reasonableness is not static. Once material changes occur--such as a significant increase in a parent's income or a shift in parenting arrangements--the underlying rationale for the bargain collapses. At that point, the agreement ceases to meet the reasonable arrangements standard and the court must intervene to ensure the children's

statutory entitlement to support commensurate with parental means is preserved: Chan-Henry at para. 178; D.B.S. at paras. 78-79. Thus, while courts will uphold consent arrangements that were reasonable when made, they cannot shelter clauses that immunize child support from future variation once the factual predicates for reasonableness no longer exist.

Positions of the Parties

- [38] The claimant argues that the CVO reflected a reasonable bargain at the time: both parties were represented by counsel, financial disclosure was exchanged, and the respondent obtained significant benefits, including enhanced spousal support, receipt of all CCB despite shared parenting, and a guaranteed \$2,000 support payment per month plus 65% of s. 7 expenses. He submits that these arrangements are entitled to deference under D.B.S., Sidhu, and Gale.
- [39] The respondent argues that paras. 4-5 of the CVO are unenforceable to the extent that they bar responsiveness to changes in income or parenting. She relies on D.B.S. and Chan-Henry to emphasize that child support is a non-derogable right. She seeks retroactive support from June 2018 based on the claimant's actual incomes, which ranged from \$182,000 to \$296,000 during the relevant period. The respondent also relies on the change in the children's primary residence in 2019 and 2020. She submits that these material changes rendered the reasonable arrangements negotiated in 2017 inadequate.

Application of Law to Facts

- [40] The CVO, made on May 8, 2017, was negotiated through counsel to reduce conflict and ensure predictability. The parties fixed the claimant's income at \$90,000 for five years, set child support at \$1,000 per month, and spousal support at \$1,000 per month. The respondent also received the full CCB and 65% of s. 7 expenses.
- [41] These terms reflected the parties' expectations at the time: the claimant anticipated a career change likely to reduce his income while the respondent sought stability. Spousal support was extended and enhanced as a proxy for child support, ensuring the respondent received \$2,000 per month regardless of income fluctuations or changes in parenting arrangements.
- [42] However, the non-variability clauses purported to preclude adjustments even if the claimant's income rose substantially or the children's residence shifted. Once those events occurred--the claimant's income rising far beyond \$90,000 and both children moving to the respondent's care--the terms no longer met the standard of reasonable arrangements. As Chan-Henry confirms, clauses insulating child support from material change are unenforceable.

- [43] In Greene, the parties similarly entered into a consent order on custody, access, and support. Under that order, the children's primary residence was with the mother, Ms. Hauptman, who was permitted to move to Vernon while the children's father, Mr. Greene, was granted substantial access, including regular weekends and extended holidays, to preserve his relationship with the children despite the distance.
- [44] The consent order fixed Mr. Greene's income at \$99,180 and required payment of \$600 per month (\$300 per child). That reduced amount reflected the parties' agreement that his significant travel costs justified a lower support amount. The order also dismissed Ms. Hauptman's spousal support claim and made her responsible for all s. 7 expenses. Both parties, with legal counsel, understood it to be a fair and final resolution at the time.
- [45] Over the following years, Mr. Greene's income rose to about \$158,000, yet he continued paying \$600 per month in child support and provided no disclosure of his increased income. Ms. Hauptman sought a variation only in 2010. The Court of Appeal later held that while the order was reasonable when made, it became untenable as the payor's income increased, and the children's needs grew. Although both parties acted in good faith, the order no longer reflected the children's entitlement to support commensurate with their father's means.
- [46] By analogy, the impugned clauses in the CVO cannot bar review. While the merged spousal and child support structure may have been reasonable when negotiated, it ceased to meet the Guidelines standard once the claimant's income increased dramatically and the children's residence changed. Spousal support cannot permanently substitute for child support where the Guidelines indicate a significantly higher entitlement. As the Court of Appeal observed in Greene, a consent order that was reasonable when made is not immutable; it may later require variation under s. 17 of the Divorce Act when material changes occur. Here, the claimant's significant increase in income and the children's transition to the respondent's care are such changes.
- [47] Applying the two-step test set out in G.J.L., the Guidelines would have mandated an average child support payment of approximately \$3,000 per month during the relevant period, while the respondent received \$2,000 per month under the merged support structure. That arrangement, though reasonable in 2017, became inadequate once the claimant's income far exceeded the agreed amount and the parenting arrangements shifted significantly.
- [48] While parties are entitled to structure their financial affairs with a degree of predictability and autonomy, that autonomy carries weight only so long as the resulting arrangements remain reasonable in light of the children's needs and the parties' evolving circumstances. Once material changes in income, parenting arrangements, or the children's circumstances render the existing terms no longer reasonable, the court's duty to ensure compliance with the Guidelines prevails.

- [49] Unlike the agreements upheld in *Gale*, *Visser*, *Sidhu*, and *Nicholl*, the CVO expressly sought to bar future variation. That feature aligns this case with *Chan-Henry*, where the Court found such clauses to be contrary to public policy.
- [50] Accordingly, paragraphs 4 and 5 of the CVO are unenforceable to the extent that they purport to preclude the adjustment of child support in response to material changes in income or parenting arrangements. The remainder of the CVO remains valid and enforceable.
- [51] With the impugned clauses set aside, I must now determine the actual parenting arrangements for the relevant period, as they directly affect the calculation of child support under the Guidelines.

Issue 2: Parenting Arrangements

- [52] The evidence regarding parenting arrangements is not in dispute. The respondent deposes, and the claimant acknowledges, that S.B. has resided primarily with the respondent since September 2019.
- [53] Likewise, K.B. moved in with the respondent full-time sometime in March 2020, following the onset of the COVID-19 pandemic in mid-March 2020. Although the claimant disagreed with the circumstances that led to the transition, he does not contest that K.B. has lived primarily with the respondent since the COVID-19 pandemic.
- [54] I therefore find that, from September 2019 onward, S.B. was primarily in the respondent's care. Although the precise date of K.B.'s return to the respondent's home is uncertain, I find that the evidence establishes that the transition was complete by April 2020. These findings demonstrate the foundation for recalculating child support obligations in accordance with the Guidelines.

Issue 3: Children of the Marriage

Relevant Facts

- [55] K.B. turned 19 in November 2024. She is enrolled full-time at the University of the Fraser Valley in a Fine Arts program, with plans to transfer to complete a bachelor's degree and pursue graduate studies. She has consistently maintained a full course load and strong academic standing.
- [56] K.B. resides with her mother, the respondent, who continues to provide her housing, groceries, utilities, and other daily necessities. Her relationship with the claimant is currently strained.

- [57] K.B. is employed part-time in retail, working 23-30 hours per week at a rate of \$18.03 per hour. As of June 30, 2025, her year-to-date employment income was \$10,750, putting her on track to earn nearly \$20,000 for the year. Additionally, she owns a vehicle valued at \$7,500 and bears responsibility for vehicle-related expenses, including approximately \$2,951 per year in insurance, as well as gas, repairs, and parking.
- [58] K.B.'s tuition costs have been almost exclusively funded from Registered Education Savings Plan ("RESP") contributions made by her father, the claimant.

Legal Framework

- [59] Under s. 2(1) of the Divorce Act, a child of the marriage includes not only children under the age of majority who remain in the charge of their parents, but also those who have attained the age of majority and remain in their parents' charge but are unable, by reason of illness, disability, or other cause, to withdraw from their charge or to obtain the necessities of life.
- [60] The leading British Columbia authority on determining whether an adult child enrolled in post-secondary education continues to qualify as a child of the marriage for child support purposes is *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, 1993 CanLII 2570 (B.C.S.C.). In *Farden* at 64-65, Master Joyce (as he then was) identified a non-exhaustive list of factors relevant to determining whether an adult child attending post-secondary studies continues to qualify for support:
- (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.

- [61] The Farden factors continue to guide courts in determining dependency for post-secondary students, subject always to the overarching principles articulated in *Shaw v. Arndt*, 2016 BCCA 78.
- [62] Not all of the Farden factors must be satisfied for an adult child to remain a child of the marriage and the relative importance of each factor will vary depending on the circumstances of each case: *Shaw* at para. 25. In some situations, the eighth factor, estrangement, has carried weight, particularly where a mature child has deliberately severed the parental relationship. However, it has seldom been determinative: *Shaw* at paras. 27-29, citing *Rebenchuk v. Rebenchuk*, 2007 MBCA 22 at para. 56, *Athwal v. Athwal*, 2007 BCSC 221 at paras. 52-53, *A.C. v. M.Z.*, 2010 ONSC 6473 at para. 172; see *H.M.H. v. T.R.H.*, 2017 BCSC 1899.
- [63] The Guidelines distinguish between children under and over the age of majority. Section 3(1) provides that support for a child under the age of majority is presumptively the table amount plus any special or extraordinary expenses under s. 7. Section 3(2) governs support for children of the marriage who are of the age of majority or older. In those cases, the court may either:
- apply the table amount as if the child were under the age of majority, or
 - where that approach is inappropriate, fix an amount it considers appropriate, having regard to the condition, means, needs, and circumstances of the child and the financial ability of each parent to contribute.
- [64] The choice between the two approaches under s. 3(2) of the Guidelines depends on the degree of the adult child's dependency. The focus of the s. 3(2) inquiry is whether the table amount remains appropriate, recognizing that the basic assumptions underlying the tables may not apply to an adult child's living arrangements or financial situation: *Schreiber v. Schreiber*, 2009 BCSC 366 at para. 13.
- [65] The leading appellate authority on child support payable for adult children pursuing post-secondary education is *W.P.N. v. B.J.N.*, 2005 BCCA 7. In that case, the Court of Appeal held that, in general, support for an adult child who remains dependent due to attendance at a post-secondary institution should be determined under s. 3(2)(b) of the Guidelines: at para. 42. In contrast to s. 3(2)(a) of the Guidelines, which requires the court to rigidly apply table amounts, s. 3(2)(b) authorizes the court to fix an 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."
- [66] In *De Beck v. De Beck*, 2012 BCCA 465 at para. 56, the Court of Appeal affirmed that the choice between applying s. 3(2)(a) and s. 3(2)(b) is a discretionary one to be exercised according to the facts of each case. The Court emphasized that neither provision should be treated as being presumptively required in the circumstances. The mere fact that a child is attending post-secondary studies while living at home does not foreclose the application of

s. 3(2)(b). Likewise, the absence of a challenge to the usual table approach does not preclude the court from considering s. 3(2)(b) where circumstances warrant: DeBeck at paras. 55-56.

- [67] As the Court of Appeal observed in *McClement v. McClement*, 2017 BCCA 416 at para. 12, "the more closely the circumstances of the adult child resemble those of a minor child living at home, the less likely it is that the approach found in s. 3(2)(a) will be determined to be inappropriate." Conversely, where the child demonstrates increasing financial and practical independence--such as by earning income, living away from home, or having tuition costs covered by other means--courts will typically apply s. 3(2)(b) and adjust the quantum of support to reflect those realities.
- [68] Finally, under the Age of Majority Act, R.S.B.C. 1996, c. 7, the age of majority in British Columbia is 19 years. A child who has reached this age must therefore demonstrate continuing dependency within the meaning of s. 2(1)(b) of the Divorce Act to qualify for ongoing support.

Positions of the Parties

- [69] The parties agree that K.B., now 19 and attending university full-time, remains a child of the marriage but disagree about how her support should be calculated.
- [70] The respondent submits that K.B. continues to depend on her parents for the necessities of life. She resides with the respondent and, although she earns part-time income, the respondent argues that it is modest and directed toward discretionary expenses. The respondent argues that the claimant's RESP contributions cover tuition as a s. 7 expense and does not offset the claimant's obligation to pay for monthly support. She seeks the full table amount under s. 3(2)(a) of the Guidelines.
- [71] The claimant contends that full table support is no longer appropriate. K.B. earns approximately \$20,000 per year, and her tuition is paid almost entirely from RESP funds. He submits that these circumstances justify the application of s. 3(2)(b) of the Guidelines and reducing the support attributable to K.B. by roughly one-third. For clarity, the claimant does not dispute that the youngest child, S.B., is entitled to continuing support at the full table amount.

Application of Law to Facts

- [72] The evidence indicates that K.B. is enrolled full-time in a diploma program and intends to continue her post-secondary studies toward a bachelor's degree and beyond. She has consistently maintained a full course load and achieved strong academic standing. K.B. resides with her mother, the respondent, who continues to provide her housing, groceries, utilities, and other necessities. The claimant, for his part, has almost exclusively funded K.B.'s tuition and related educational expenses through RESP contributions that he has made on his own since the parties separated.

- [73] K.B. is also employed part-time in retail, working between 23 and 30 hours per week at an hourly rate of \$18.03. Her earnings enable her to make a material contribution to her discretionary expenses, and she is to be commended for her diligence. However, her income does not obviate the need for ongoing parental support while she remains a full-time student and dependent within the meaning of s. 2(1)(b) of the Divorce Act.
- [74] Turning to the evidence, the relationship between the claimant and his daughter is presently strained. While sustained estrangement or a deliberate repudiation of the parental relationship may, in rare cases, weigh against continued entitlement to support, this is not such a case.
- [75] The claimant does not dispute that K.B. remains a child of the marriage within the meaning of s. 2(1)(b) of the Divorce Act. Despite the strain in their relationship, he has continued to provide support in good faith and has expressed a genuine wish to rebuild their connection. The issue before the Court is therefore not her entitlement to support but the appropriate quantum, having regard to her circumstances and the respective financial capacities of the parties. Her continuing educational dependency--rather than the current state of the parental relationship--remains the determinative factor under *Farden and Shaw*.
- [76] As set out above, section 3(2) of the Guidelines provides that support for an adult child may be determined either by applying the table amount as if the child were under 19 or, where that approach is inappropriate, by fixing an amount the court considers suitable having regard to the condition, means, needs, and circumstances of the child and the financial ability of each parent to contribute.
- [77] Applying the standard table amount under s. 3(2)(a) of the Guidelines would be inappropriate in these circumstances. K.B. is on track to earn approximately \$20,000 this year, and her tuition is fully funded through RESP contributions made by the claimant. She also owns a vehicle that she shares with a stepsibling, further demonstrating financial independence absent in L.M.W. While K.B. continues to rely on parental support for her ordinary living costs, these factors justify an assessment of support under s. 3(2)(b) to reflect her partial self-sufficiency and each parent's financial capacity.
- [78] While there is no fixed formula, courts in British Columbia routinely reduce the table amount for adult children who pursue post-secondary education, work part-time, and have their tuition already funded. In the well-cited case of *L.M.W. v. R.L.W.*, 2016 BCSC 758, Justice Dorgan considered the appropriate level of child support for a 19-year-old daughter who was enrolled part-time in college while living with her mother and working part-time. The father, a high-income earner, sought a reduction from the full Guidelines amount because the child had reached the age of majority, was earning income, and was gradually becoming independent.
- [79] Similar to the facts of this case, the Court in *L.M.W.* accepted that the child remained a child of the marriage under s. 2(1)(b) of the Divorce Act, but held that her part-time earnings were a relevant factor in assessing support under s. 3(2) of the Guidelines. The Court reviewed the

authorities cited above, including W.P.N., and ultimately confirmed that while s. 3(2)(a) may apply where an adult child's living circumstances closely mirror those of a minor child, s. 3(2)(b) is the appropriate framework where the adult child earns income or demonstrates partial independence: L.M.W. at para. 36.

- [80] In L.M.W., Dorgan J. emphasized that the court retains broad discretion under s. 3(2)(b) to fix an amount having regard to the condition, means, needs, and other circumstances of the child. In that case, the daughter's limited earnings and responsible financial behaviour justified a slight reduction from the full table amount, reflecting the child's ability to contribute modestly to her own expenses while recognizing her continuing dependency. It is notable that in the present case, K.B.'s income is more than double that of the adult child in L.M.W.
- [81] The decision in L.M.W. illustrates that when an adult child is enrolled full-time in post-secondary education, works part-time, and continues to live at home while relying primarily on one parent for support, the court may appropriately adjust the Guideline amount under s. 3(2)(b). In such cases, the child's earnings and level of financial independence are relevant in determining whether a reduced amount under s. 3(2)(b) more accurately reflects the child's continuing dependency than the full table amount.
- [82] Balancing these considerations, I find that reducing K.B.'s share of the table amount by approximately one-third appropriately reflects her partial financial independence while ensuring that her ongoing dependency is adequately supported. Accordingly, child support for K.B. is fixed at two-thirds of the table amount attributable to her share, consistent with the discretion afforded under s. 3(2)(b) of the Guidelines and recognizing the claimant's ongoing RESP contributions. This adjustment applies only to K.B.'s portion of support; S.B.'s portion remains payable at the full table amount.

Issue 4: Retroactivity

Legal Framework

- [83] Section 15.1 of the Divorce Act authorizes the court to award child support. Section 17(1)(a) explicitly allows courts to vary support orders retroactively.
- [84] When a payor's income has undergone a past material change, the existing support order no longer reflects their legal obligation: D.B.S. at paras. 66, 78; Colucci v. Colucci, 2021 SCC 24 at paras. 74, 114. Retroactive variation presumptively dates back to the date of effective notice, up to a maximum of three years before formal notice: Colucci at para. 80.
- [85] Effective notice occurs when the recipient is given sufficient information to assess a change in support entitlement. For retroactive decreases, the payor must provide reasonable proof of the change; for increases, it is sufficient for the recipient to raise the issue: Colucci at paras. 86-88.

- [86] In *Hildebrand v. Hildebrand*, 2024 BCCA 395, the British Columbia Court of Appeal emphasized that courts must balance certainty and predictability against flexibility in light of changing circumstances: at para. 29, citing *Colucci* at para. 4. Thus, the starting point is the single presumption that retroactivity runs from the date of the effective notice: *Hildebrand* at para. 30, citing *Colucci* at paras. 74-76.
- [87] The second step in the analysis is to consider whether fairness requires a departure from the presumptive date of retroactivity: *Colucci* at para. 96. Factors relevant to this analysis include the reason for the delay in notice or seeking relief, the payor's conduct, the child's circumstances, and hardship: *Colucci* at paras. 96-108.
- [88] Specifically, the court considers:
- a) whether there was an understandable reason for the delay in giving effective notice or seeking relief in the courts (*Colucci* at paras. 97-100);
 - b) the payor's conduct in disclosing changes and continuing payments (*Colucci* at paras. 101-103);
 - c) the child's circumstances and ongoing dependency (*Colucci* at paras. 104-106); and
 - d) hardship to either party, viewed in context (*Colucci* at paras. 107-108).
- [89] Where fairness requires, courts retain discretion to backdate support to when the obligation should have increased, even before notice, particularly in cases of blameworthy conduct: *D.B.S.* at para. 124; *Michel v. Graydon*, 2020 SCC 24 at para. 36; *Colucci* at paras. 96, 124; see also *Pechangco v. Tugade*, 2022 BCSC 1295.
- [90] Hardship is one of the factors recognized by the Supreme Court of Canada in *D.B.S.* and *Colucci* as relevant to the exercise of discretion in retroactive child support cases. The Court in *D.B.S.* noted that retroactive awards may cause hardship because they are based on past income rather than present ability to pay: at para. 115. Courts should therefore attempt, where possible, to craft retroactive awards in ways that minimize hardship: *D.B.S.* at para. 116.
- [91] Further, s. 10 of the Guidelines provides that a court may depart from the table amount of support if the payor establishes that paying it would cause undue hardship. While the s. 10 hardship test does not directly govern retroactivity, its disclosure discipline is instructive.
- [92] In *Kelly v. Kelly*, 2011 BCCA 173 at paras. 33-34, the British Columbia Court of Appeal set out a two-step approach for assessing undue hardship under s. 10 of the Guidelines. First, the party claiming hardship must establish that paying Guidelines support will cause undue hardship. Section 10(2) of the Guidelines sets out several factors to consider in making this determination. The onus rests with the party claiming hardship. However, given that the "hardship that must be established is described in the authorities as severe, extreme, improper, unreasonable, or unjustified," the claimant bears a heavy burden: *Kelly* at para. 33, citing *Van Gool v. Van Gool* (1998), 64 B.C.L.R. (3d) 94 at 107-109, 1998 CanLII 5650

(B.C.C.A.).

- [93] If the party claiming undue hardship is successful, they must then disclose the income of all household members so that the court can compare the standard of living of both households in accordance with s. 10(3) of the Guidelines: Kelly at para. 34; Schedule II of the Guidelines. Provided that the payor of child support does not enjoy a higher standard of living than the recipient after a reduction in Guidelines support, the court may exercise its discretion to order child support in an amount other than that required by the Guidelines: Kelly at paras. 34-35.
- [94] The two-step approach set out in Kelly was most recently affirmed by the British Columbia Court of Appeal in *Ke v. Zhang*, 2025 BCCA 245. In *Ke*, the Court of Appeal overturned the decision of a trial judge who failed to consider and apply the two-step analysis contemplated by s. 10 of the Guidelines: at para. 43.

Positions of the Parties

- [95] The respondent seeks a retroactive variation of child support dating back to July 1, 2018. She argues that the CVO's non-variability clause deprived the children of adequate support after the claimant's income more than doubled and parenting shifted primarily to her care. She further submits that the claimant acted in a blameworthy manner by failing to provide an annual income disclosure on the stipulated dates and by failing to initiate a variation despite earning far in excess of the agreed \$90,000. Relying on Colucci and D.B.S., the respondent contends that retroactivity should extend beyond the presumptive three-year limit, as she reasonably believed the CVO prevented her from seeking relief during its five-year term.
- [96] The claimant maintains that both parties acted in good faith and complied with the CVO, which expressly barred variation. He says he consistently disclosed his income and paid all required support, and that the respondent unreasonably delayed seeking a review despite having his income information for years. The claimant submits that granting an earlier period of retroactive variation would unfairly disturb the parties' settled expectations and cause undue hardship, given his household expenses and debt load. Relying on Colucci, he argues that, in the absence of blameworthy conduct, any retroactive variation should be limited to the presumptive three-year period commencing June 5, 2023: the date of formal notice from the respondent's counsel.

Application of Law to Facts

- [97] The material change threshold is readily met on the facts of this case. As discussed earlier in these reasons, the CVO can no longer be considered reasonable within the meaning of s. 17 of the Divorce Act. The payor's income, parenting arrangements, and the children's circumstances have all evolved substantially since the CVO was negotiated. These changes not only rendered the earlier agreement unreasonable but also establish the past material change in circumstances required to justify a retroactive award: D.B.S. at paras. 61-79;

Colucci at para. 114.

[98] I therefore proceed directly to determining the appropriate date of retroactivity, which will inform the quantification of arrears.

[99] Applying the above principles to the present case, the presumptive date of retroactivity is June 5, 2023, when the respondent's counsel provided formal notice of her intention to review child support. In accordance with Colucci, the presumptive period for retroactive variation extends three years before that date, to June 2020, unless the equities of the case justify a different start date.

[100] The next question is whether fairness requires a departure from that presumptive date. Assessing this involves considering the familiar factors outlined in Colucci and D.B.S., namely:

- a) whether the respondent had a justifiable reason for any delay in seeking a variation, particularly given the CVO's five-year non-variability clause;
- b) the claimant's conduct in providing disclosure and continuing to pay only \$2,000 per month, while his income more than doubled the amount the CVO was premised upon;
- c) the circumstances of the children, who have both resided primarily with the respondent since early 2020; and
- d) whether a retroactive award would cause hardship to either party.

[101] These factors collectively guide the determination of how far back, if at all, the retroactive award should extend.

A. Was There a Justifiable Reason for the Delay?

[102] This first aspect of the analysis concerns the respondent's conduct as the recipient parent, particularly her delay in seeking a variation. Under the framework articulated in D.B.S. and reaffirmed in Colucci, delay is a relevant factor in determining both the extent of retroactivity and the fairness of imposing arrears. The rationale is that an unexplained or unreasonable delay may reinforce the payor's perception that their obligations are being met and that the existing arrangements remain appropriate.

[103] Courts recognize that certain circumstances can provide a reasonable excuse for delay, such as where the recipient parent feared retaliation or lacked the emotional, financial, or informational means to bring an application. Conversely, where a recipient knows or ought to know that higher support payments are warranted but elects not to act, the delay is generally considered unreasonable. As Justice Bastarache noted in D.B.S., the onus lies with the recipient to act diligently once aware of a potential entitlement: at paras. 101-103.

- [104] I accept that the respondent may have believed she was unable to seek a variation while the five-year non-variability clause remained in effect. That misunderstanding may explain part of her delay in seeking relief. However, she was represented by legal counsel and provided with the claimant's annual tax returns, which showed incomes consistently and substantially higher than the \$90,000 salary on which the CVO was premised. She could have applied earlier to test the enforceability of the non-variability clause.
- [105] When the claimant notified the respondent in 2018 that he had failed his CFA examinations, her reply was terse and dismissive. Rather than engaging in any discussion about support, she closed the door to communication. By that point, the respondent had re-partnered and there is no evidence that she or the children experienced financial hardship during the relevant period.

B. The Claimant's Conduct

- [106] Having addressed the respondent's conduct as the recipient parent, I now turn to examine the claimant's conduct as the payor parent.
- [107] While a payor parent's failure to increase support automatically does not, in itself, amount to blameworthy conduct, the court must assess such conduct contextually. The inquiry is primarily subjective, focusing on the payor's state of mind and the reasonableness of their belief that they were meeting their obligations. Objective indicators, however, remain helpful. For example, where a payor reasonably believes that a valid court order or consent agreement continues to govern the parties' obligations and complies with it in good faith, that conduct is generally not blameworthy. The order or agreement is presumed valid, and the payor is presumed to be acting reasonably by conforming to it: see D.B.S. at para. 108.
- [108] The evidence establishes that the claimant reasonably believed that the non-variation clause precluded any recalculation of support until its expiry. However, the presumption of reasonableness may be displaced if circumstances change so materially that continued reliance on the existing order is no longer reasonable and the payor fails to disclose or adjust accordingly.
- [109] D.B.S. explains that blameworthy conduct is "anything that privileges the payor parent's own interests over his/her children's right to an appropriate amount of support": at para. 106. It includes behaviour such as hiding income, misleading the recipient about real income, consciously ignoring a support obligation, or intimidating the recipient to the point that he or she feels unable to pursue increased support: D.B.S. at paras. 106-107. The focus is on whether the payor acted in a way that deprived the children of support to which they were entitled.
- [110] In this case, I find that the claimant consistently paid the \$2,000 per month as agreed, disclosed his tax returns annually through counsel (albeit sometimes after July 1, but generally within CRA-extended timelines during the pandemic), and candidly informed the respondent of his career plans and failed CFA exam attempts. He also contributed

significantly to the children's RESP and bore the majority of s. 7 and educational costs, which I note also included private high school tuition and expensive specialized sports training for the children. These are not indicia of concealment or shirking.

- [111] I find that the claimant did not conceal or misrepresent his income at any point. Instead, he consistently disclosed his financial circumstances and did not attempt in any way to discourage the respondent from filing an application.
- [112] His conduct, therefore, cannot be characterized as blameworthy within the meaning of D.B.S. and Colucci. Further, based on the evidence before me, his conduct also negates any suggestion that the respondent's delay was induced by intimidation or uncertainty about his financial position.

C. The Circumstances of the Children

- [113] The next consideration is the children's circumstances, both past and present: D.B.S. at para. 110. In assessing whether a retroactive award is appropriate, D.B.S. directs the court to consider whether the children suffered hardship during the period in question or whether, conversely, they enjoyed the standard of living that would have been available had proper support been paid. Where a child experienced deprivation of the benefits to which they were entitled, a retroactive award may serve a compensatory purpose. Conversely, where the child's material needs were met and they enjoyed advantages commensurate with full parental support, the case for retroactivity is less compelling: D.B.S. at para. 113.
- [114] There is no evidence before me that the children experienced financial hardship during the relevant period. They both lived primarily with the respondent and, by all accounts, enjoyed stability, access to private education, specialized sports training, and a lifestyle likely better than that anticipated by the parties at the time the CVO was negotiated. There is no suggestion that either child was deprived of necessities or opportunities because of the amount of child support then being paid. To the contrary, the children's educational and personal needs appear to have been consistently met.
- [115] K.B., now 19, has successfully transitioned into post-secondary studies at the University of the Fraser Valley. She works part-time, contributes to her own expenses, and remains on track to complete a fine arts diploma before pursuing a bachelor's degree. S.B., now 17, is enrolled in high school and continues to reside with the respondent. Both children have benefited from the claimant's ongoing financial contributions, including his funding of RESP contributions and his direct payment of s. 7 educational expenses.
- [116] The respondent's own evidence indicates that, during the five-year term of the CVO, the household was supported not only by child support payments but also by the respondent's and her new partner's income. She maintained a family home and helped with the children's extracurricular activities. In her affidavits, the respondent did not assert that the children lacked for anything; instead, she identified that any retroactive sum awarded would now be directed toward her legal fees, home renovations, and a family trip. Such

stated purposes confirm that the children's day-to-day needs were met throughout the relevant period.

- [117] In these circumstances, I am not persuaded that the children suffered any hardship that would justify extending the retroactivity beyond the presumptive three-year period established in Colucci. The record, instead, reflects that the children were well provided for and enjoyed all the advantages they would have had if support had been paid at the full Guidelines amount. As Bastarache J. noted in D.B.S., hardship suffered by other family members who made additional sacrifices to assist the children is not relevant to this analysis: at para. 113.
- [118] Accordingly, while the children's entitlement to proper support remains paramount, the absence of any demonstrated hardship or deprivation during the relevant years militates against a longer retroactive period.

D. Undue Hardship

- [119] The claimant submits that a retroactive award of child support will cause him undue hardship. He relies on his financial statement, which shows annual expenses of approximately \$158,680, exclusive of child support. He provided the court with evidence that he is still repaying the parties' family debt that he had assumed. When child support of about \$27,000 per year is included, his yearly expenses exceed \$185,000. Against his 2024 income of \$187,936, he argues that this leaves little financial margin. He further deposes that his spouse has minimal income and contributes little to household expenses. While he did not complete Parts 5 and 6 of Form F8, which outline undue hardship claims and household income, he states that this is because he is not seeking a prospective reduction of ongoing support under s. 10 of the Guidelines. Instead, he raises hardship solely to argue that a retroactive lump sum award would be unfair.
- [120] The respondent disputes that any hardship has been shown. She emphasizes that the claimant failed to provide the disclosure of household income, including his spouse's earnings, mandated by Schedule II of the Guidelines, and left the sections of Form F8 that address undue hardship blank. She submits that his own materials show his household income exceeded his expenses by roughly \$30,000 in 2024, even before accounting for any contribution from his spouse. In these circumstances, she argues that even a sizeable retroactive award could be paid without fundamentally altering his lifestyle.
- [121] The claimant is not seeking a formal undue-hardship determination under s. 10 of the Guidelines. Even so, the evidentiary and disclosure requirements in s. 10 offer a useful framework for assessing hardship on a retroactive application. In this case, the claimant has not met the evidentiary burden to establish undue hardship under s. 10 and did not complete the portions of Form F8 that address the s. 10(2) circumstances. Accordingly, he has not satisfied the first stage of the undue-hardship analysis described in Kelly. The record shows that his 2024 income of \$187,936 exceeded his reported expenses by approximately

\$30,000, although his assets are limited. While he did not provide the household-income disclosure that a formal s. 10 claim would require, the evidence is sufficient to assess his overall financial position. It does not demonstrate that paying retroactive support would prevent him from meeting his ongoing obligations--including his continuing responsibility to pay current child support--or from maintaining his basic financial commitments.

- [122] That said, even where the payor has the capacity to meet a retroactive obligation, the Court must remain attentive to the practical impact of repayment in light of fairness and the payor's continuing duty to provide ongoing support. Retroactive awards are not directly tied to a payor's present ability to pay and may cause temporary financial disruption. While this does not justify eliminating arrears, it is a relevant consideration in determining how repayment should proceed. D.B.S., at paras. 115-116. Accordingly, any demonstrated hardship will be taken into account in structuring the timing and method of any arrears payment, while ensuring that the claimant continues to meet his ongoing child support obligations.

E. Summary of Analysis

- [123] By early 2020, both children were living primarily with the respondent, and the claimant's income had risen well above the salary premise underlying the CVO. Applying the principles in Colucci and D.B.S., I find it would be unfair to confine retroactivity to June 2023 alone. The appropriate date of retroactivity is June 2020--three years before the respondent's formal notice of June 5, 2023.
- [124] Although the respondent believed the five-year non-variability clause bound her, she had both the means and the information to seek variation earlier. The claimant, meanwhile, acted in good faith and complied fully with the CVO, and the children experienced no material hardship during the relevant period. Balancing fairness, predictability, and the children's right to support commensurate with their parents' means, I conclude that retroactivity should be limited to the presumptive three-year period.
- [125] Although the claimant has not established undue hardship within the meaning of s. 10 of the Guidelines, the retroactive nature of the award justifies repayment flexibility. I find it appropriate for the claimant to repay the arrears in structured instalments to mitigate short-term disruption. The relevant period for recalculation is June 2020 onward (the "Retroactive Period").

Issue 5: The Parties' Guidelines Incomes

- [126] I will now determine the Guidelines incomes of both the respondent and the claimant. While the parties' incomes are relevant to the calculation of child support under the Guidelines, I note that the incomes below are also to be used for calculating s. 7 expenses.

Legal Framework

- [127] Under s. 15 of the Guidelines, a spouse's annual income is determined in accordance with ss. 16-20. Section 16 establishes that income is generally taken from the "Total income" line of the CRA T1 General form.
- [128] Schedule III of the Guidelines permits certain deductions from total income. Employment expenses may only be deducted if they qualify under s. 8(1) of the Income Tax Act, R.S.C. 1985, c.1 (5th Supp.). The onus rests with the party claiming the deduction to demonstrate that the expense qualifies: *A.D.J. v. F.J.*, 2022 BCSC 600 at para. 85. Courts have held that a signed T2200 Declaration of Conditions of Employment ("T2200 Declaration"), as well as an employment contract confirming employment expenses, are normally required to establish a deduction. Deductions accepted by the CRA are not automatically accepted for family law purposes: *A.D.J.* at para. 77, adopting *Haras v. Camp*, 2018 ONSC 3456 at paras. 34-37.
- [129] With respect to underemployment, s. 19(1)(a) of the Guidelines provides that where a parent is intentionally under-employed or unemployed, the court may impute income "unless the under-employment is required by the needs of a child of the marriage." Courts have interpreted this provision to include circumstances where a parent reasonably reduces or modifies employment to care for dependent children, even if those children are not of the marriage but form part of the household.

Positions of the Parties

- [130] The claimant seeks to continue having his Guidelines income reduced by deducting certain employment expenses relating to his car and cell phone. He relies on his historical practice of claiming these deductions and notes that, in earlier proceedings, Groves J. accepted that such expenses be deducted in calculating his Guidelines income: 2015 Summary Trial Reasons at paras. 10, 34. The claimant points to his income tax filings (line 22900 and T777 forms) to support these deductions.
- [131] The respondent disputes the deductions. She submits that the claimant has not met the evidentiary threshold under the Guidelines for deductibility. She emphasizes that the claimant has not produced a T2200 Declaration nor any contractual or employer evidence demonstrating that the expenses were necessary and non-reimbursable. On this basis, she argues that his line 150 income (i.e., the total income reported to the CRA) should serve as the basis for his Guidelines income.
- [132] Regarding the respondent's income, the claimant argues that she is under-employed. He references salary grid information for teachers in the Abbotsford School District and her professional qualifications, asserting she can earn considerably more than her reported income.

- [133] The respondent attributes her reduced earnings to household responsibilities, including caring for her new spouse's children with special needs. She maintains that her actual line 150 income is the most relevant measure of her ability to contribute to support.

Application of Law to Facts

A. The Claimant's Guidelines Income

- [134] I recognize that in prior proceedings, Groves J. accepted the claimant's practice of deducting certain employment expenses, namely vehicle and phone costs, in calculating his Guidelines income. That determination was based on the evidentiary record before him at the time and on the nature of the claimant's employment in 2015, which remained the same until June 2022, when he transferred into a training salary. I note that he began his new position as Investment Advisor in September 2023.
- [135] As the claimant has changed his employment, transitioning at least in part to being a salaried employee during his training, it is not appropriate to merely carry forward the historically allowed deductions. A fresh evidentiary basis is required.
- [136] The claimant has not produced a T2200 Declaration nor any evidence from his current employer confirming that such expenses are a required condition of his current employment and not subject to reimbursement. While he continues to deduct these amounts for tax purposes, deductions permitted by the CRA are not determinative under the Guidelines.
- [137] Accordingly, unless the claimant provides both a T2200 Declaration and evidence from his current employer confirming that such expenses are required as a condition of employment, his Guidelines income must be based on his line 150 income going forward, without any deduction for car or phone expenses.
- [138] Given that the retroactive period begins in June 2020, it is appropriate to calculate the claimant's and respondent's Guidelines incomes from that year forward. With respect to the claimant, and applying the findings above regarding allowable deductions, I determine his Guidelines income for each relevant year as follows:

Year

Income

Deduction

Guidelines Income

2020

\$223,809

\$12,380

\$211,429

2021

\$296,406

\$10,927

\$285,479

2022

\$182,480

* \$5,335

\$177,145

2023

\$166,864

\$0

\$166,864

2024

\$187,936

\$0

\$187,936

2025

\$187,936

\$0

\$187,936

*Based on 50% of the year's total costs of \$10,670, up to June 2022, when the claimant ceased working in the earlier commissioned position at the Canadian Bank.

B. The Respondent's Guidelines Income

[139] The respondent has reported incomes on line 150 that, in several years, fall below what a person working full-time at the minimum wage in British Columbia would earn. For example, her income in 2023 was \$24,928 and in 2024 was \$29,435. As of June 1, 2025, the provincial minimum wage is \$17.85 per hour, which, on a full-time basis (i.e., 40 hours per week, 52 weeks per year), produces an annualized income of \$37,128. Even accounting for historical increases, the respondent's reported income in recent years has consistently

fallen short of the full-time minimum wage.

[140] The respondent is a trained and qualified teacher. While she and her new partner may have decided that the respondent does not need to work full-time, there is no admissible evidence establishing that this decision was necessitated by the needs of any child of the marriage or that it warrants imputing a reduced income to her. This is so even in light of the generous interpretation courts have given to the term child of the marriage under s. 19(1)(a) of the Guidelines. References to the respondent caring for her new partner's children are not substantiated by evidence sufficient to displace the presumption of earning capacity. While she is entitled to make personal choices about her level of workforce participation, that choice does not exempt her from her legal obligation to contribute to the support of her children.

[141] I find that imputing income to the respondent at a level equivalent to full-time employment at the prevailing minimum wage is both fair and conservative. This approach reflects her capacity to earn a predictable and attainable income consistent with her qualifications while avoiding speculation about her potential earnings as a certified teacher.

[142] To provide a clear and objective benchmark for this imputed income, I have reviewed the historical increases to British Columbia's minimum wage over the relevant years. The following table sets out what the respondent's annual income would approximate if she were employed full-time (40 hours per week, 52 weeks per year) at the prevailing statutory minimum rate in each year:

Year

Hourly Minimum Wage

Full-time Annual Income (40hrs/wk, 52wks)

2020

\$14.60

\$30,368

2021

\$15.20

\$31,616

2022

\$15.65

\$32,552

2023

\$16.75

\$34,840

2024

\$17.40

\$36,192

2025

\$17.85

\$37,128

See "Minimum wage" Province of British Columbia (July 3, 2025), online.

Issue 6: Payable Child Support

[143] Having determined that the non-variability provisions of the CVO are unenforceable and having fixed the parties' respective Guidelines incomes, I must next identify the framework for calculating the child support payable under the Guidelines.

[144] Counsel for both parties confirmed that, once these reasons establish the applicable incomes, parenting findings, and adjustments under s. 3(2)(b), they will jointly calculate the precise monthly and annual child support amounts using the DivorceMate software. The Court's task, therefore, is to determine the governing parameters, not to perform the mechanical calculations. The resulting reconciliation of amounts payable and any arrears shall be prepared by counsel in accordance with these reasons and, if required, I direct that they be referred to and determined by the Registrar.

[145] Under the CVO, the claimant was required to pay a combined total of \$2,000 per month: \$1,000 designated as child support and \$1,000 designated as spousal support. The evidence indicates that this division was the result of significant negotiation between counsel: the claimant's initial proposal contemplated no spousal support but the final compromise reflected the parties' bargaining positions and their shared desire for financial stability. While child and spousal support operated together as a package of family support, the distinction between them remains legally significant. The spousal support portion is a separate obligation unless and until it is varied and it cannot be re-characterized as child support for calculation purposes.

[146] However, consistent with Greene at para. 92, payments made during the Retroactive Period may be credited to the extent that the parties agree, or evidence before the Registrar demonstrates, that those payments directly covered the children's needs and would otherwise duplicate amounts payable under the recalculated Guidelines award. The Registrar's role is limited to applying these directions within the accounting. Any dispute about the characterization or scope of such credits may be referred back to the court for

determination.

- [147] The claimant further suggested that the \$1,000 monthly spousal support payment should be treated as having been made "in lieu" of child support, as he would not have agreed to pay it but for the compromise negotiated in 2017. That submission cannot be addressed on this record. The spousal support component of the CVO remains a distinct legal obligation unless and until it is varied under the Divorce Act or the FLA. The Court has not received a formal application or submissions to vary or re-characterize spousal support. If the claimant wishes to advance that argument, he may bring a variation application on appropriate notice and supported by the required financial disclosure. Until such relief is sought and granted, the spousal support payments cannot be treated as satisfying or substituting for the claimant's child support obligations.
- [148] Child support is presumptively determined using the tables set out in the Guidelines: s. 3(1). The tables mandate monthly child support payments according to the payor's annual income, the number of dependent children, and the province of residence.
- [149] As K.B. reached the age of majority in late-2024, the one-third reduction of support payable for her under s. 3(2)(b) of the Guidelines shall take effect January 1, 2025. As explained earlier, support for K.B. after that date shall reflect her partial independence and the claimant's direct funding of her tuition. In contrast, support for S.B., a minor child of the marriage, will continue at the full table amount.
- [150] Using the Guidelines incomes already determined in these reasons for both parties, counsel shall calculate the specific amounts of retroactive and prospective child support as follows:
- a) Retroactive Period: From June 2020 (three years before notice delivered on June 5, 2023) to January 1, 2025, applying the claimant's and respondent's annual incomes as determined by the court.
 - b) Prospective Period: Effective January 1, 2025, using the most recent Guideline incomes fixed in these reasons--\$187,936 for the claimant and \$37,128 for the respondent.
- [151] For the Retroactive Period, counsel shall credit the \$1,000 monthly child support payments made under the CVO toward the Guidelines obligation for each relevant year. The additional \$1,000 spousal support component may be considered to the extent that it directly covered the children's needs during that same period, consistent with the fairness principles found in *Greene and D.B.S.* Only documented payments that directly covered ordinary child expenses in the same period and would otherwise duplicate table amounts may be credited. For clarity, any ambiguity is to be resolved in favour of avoiding duplication to ensure that no payment is counted more than once. If the parties cannot agree on the appropriate credits or adjustments, they may return to the court for further submissions and direction.
- [152] The recalculated child support amounts for each year shall distinguish between the two children. While both remain dependent, the total payable shall equal the table amount for two children, less a one-third reduction to the portion attributable to K.B., effective January

1, 2025. When K.B. ceases to qualify as a child of the marriage within the meaning of s. 2(1)(b) of the Divorce Act, support shall automatically adjust to the table amount for one child at the same income level, effective the first day of the following month, subject to agreement or further order.

Issue 7: Special and Extraordinary Expenses

Legal Framework

[153] Under s. 7 of the Guidelines, special or extraordinary expenses (including, where applicable, post-secondary education costs) may be ordered if they are reasonable and necessary in light of the child's needs and the parents' means. The parents share such expenses in proportion to their respective Guidelines incomes: s. 7(2) of the Guidelines. The respondent's submissions expressly frame the issue this way and seek a forward-looking ratio based on the parties' incomes.

[154] Post-secondary education is an eligible expense under s. 7(1)(e). Under s. 7(2) of the Guidelines, courts consider the parents' means and the child's financial resources, with expenses to be shared in proportion to the Guidelines incomes. RESP funds are typically treated as a resource available for the child's post-secondary costs. The net cost of post-secondary education after RESP funds, grants, and scholarships is therefore apportioned and documented payments by one parent may be credited on the s. 7 ledger.

Positions of the Parties

[155] The parties agree that s. 7 of the Guidelines governs special and extraordinary expenses, which are to be shared by parents in proportion to their respective Guidelines incomes after deducting any contributions made by the child. They disagree, however, on how those expenses should be reconciled for past years and apportioned going forward.

[156] The respondent submits that the same principles governing retroactive variation of basic child support apply to the proportionate sharing of s. 7 expenses. She asks that the Court direct a recalculation of those expenses using the parties' actual or imputed incomes for each year from 2018 forward. Based on her calculations, the claimant's proportionate share would range between 77% and 87% and the respondent's between 13% and 23%. She relies on her DivorceMate analysis, appended to her submissions, and seeks both a retroactive and a prospective order reflecting those updated ratios.

[157] The claimant asserts that he has already paid well above his proportionate share of s. 7 expenses. He states that he has reimbursed approximately 65% of all extraordinary expenses since separation in addition to paying all RESP contributions, private-school tuition, and the majority of the children's medical and extracurricular costs. He seeks a credit for these overpayments in the final reconciliation and an order confirming that future s. 7 expenses continue to be shared according to the parties' relative Guidelines incomes, with advance consultation and proof of payment to be required before

reimbursement.

Application of Law to Facts

- [158] I begin from the premise that prospectively, s. 7 expenses should be shared in proportion to the parties' Guidelines incomes.
- [159] For 2025, I have imputed an income of \$37,128 (i.e., the full-time minimum wage equivalent) to the respondent and adopted an income of \$187,936 (i.e., the claimant's actual 2024/2025 income) for the claimant. On that basis, the proportionate share of s. 7 expenses for 2025 are: 84% paid by the claimant and 16% paid by the respondent. This ratio shall apply from the first day of the month following judgment and continue until the next annual review, at which time it shall be updated in accordance with the most recent Guidelines incomes exchanged under the disclosure regime set out later in this judgment.
- [160] For clarity, allowable s. 7 expenses must be reasonable and necessary, the parties must consult in advance where practicable, and the payor is entitled to proof of payment.
- [161] Retroactive s. 7 allocations and credits, if any, are to be addressed in the accounting in accordance with my arrears' directions. For retroactive purposes, any arrears of s. 7 expenses shall be calculated based on the parties' actual or imputed Guidelines incomes for each year, using the corresponding proportional shares applicable to that year. This ensures that each parent's contribution reflects their means during the relevant period and that no party bears more than their proportionate share of the post-secondary or other extraordinary costs.
- [162] The claimant submits that his post-separation RESP contributions--approximately \$40,000 used to fund K.B.'s tuition and related post-secondary expenses--should be applied to offset child support arrears. While these contributions should be recognized when assessing overall fairness, I am not persuaded that they can be applied as a direct offset against child support arrears, which serve to meet the child's ordinary living expenses rather than special or extraordinary costs. The jurisprudence distinguishes between base child support obligations under s. 3 of the Guidelines and the sharing of special or extraordinary expenses under s. 7. As explained in *Menegaldo v. Menegaldo*, 2012 ONSC 2915, overpayments toward post-secondary costs may properly be recognized in the s. 7 accounting or credited against future obligations to avoid double recovery but they do not discharge arrears of the child support table amount in the Guidelines: at paras. 200, 204(f). Likewise, in *Greene*, the Court of Appeal permitted credits only to prevent duplication within the retroactive award itself, not as a general set-off against ongoing or past support: at paras. 92, 94.

- [163] RESP withdrawals used to pay tuition and educational expenses therefore represent the claimant's proportionate contribution to s. 7(1)(e) expenses and will be credited in that context. On this record, the claimant's RESP disbursements toward K.B.'s tuition are accepted as amounts paid toward s. 7 post-secondary expenses for the relevant periods. However, those payments cannot be applied to reduce or extinguish arrears of the monthly child support obligation, which exists to meet the children's ordinary living expenses.
- [164] For retroactive accounting, RESP disbursements proven by RESP statements or e-transfer records shall be credited to the claimant on the s. 7 ledger up to his proportionate share for each year. To the extent RESP disbursements exceed his share for a period, the excess may be recognized as a credit within the s. 7 account (not against monthly child support arrears) unless otherwise agreed or ordered.
- [165] Prospectively, available RESP funds (from any plan) shall be applied first to eligible post-secondary tuition and mandatory fees. The net balance of educational expenses, after accounting for RESP withdrawals, grants, and scholarships, shall be shared in proportion to the parties' Guidelines incomes. For 2025, the claimant shall pay 84 percent of the post-secondary education expenses, and the respondent shall pay 16 percent. Each party must consult the other in advance, and the payor is entitled to proof of payment, including institutional invoices, RESP statements showing the source of any disbursement, and receipts. After this accounting has been completed, the claimant shall receive credit within the s. 7 accounting for any RESP disbursements derived from his own contributions. This ensures that RESP funds are properly applied first to reduce the total cost and that the remaining balance is equitably apportioned between the parents, consistent with the principles articulated in *Menegaldo and Greene*.
- [166] In the arrears reconciliation, it is imperative to ensure that no double counting occurs. Instead, consistent with *Menegaldo and Greene*, RESP-funded tuition must be credited within the s. 7 ledger.

Issue 8: Interest

Positions of the Parties

- [167] The parties take opposing positions on whether interest should be payable on the retroactive child support arrears ordered in this judgment. The respondent seeks both pre- and post-judgment interest pursuant to the COIA, arguing that child support arrears constitute a pecuniary judgment and therefore attract mandatory interest from the start of the Retroactive Period. The claimant maintains that the CVO was valid and binding throughout the relevant period. However, if the Court finds it to be unenforceable, he argues that interest should not be awarded because both parties complied with its terms in good faith.

Legal Framework

- [168] Section 1(1) of the COIA provides that the court must add interest to a pecuniary judgment calculated from "the date on which the cause of action arose to the date of the order." Once a pecuniary judgment exists, the addition of pre-judgment interest is mandatory; there is no discretion to decline to award it.
- [169] Section 7(2) addresses post-judgment interest, providing that a pecuniary judgment "bears simple interest from the later of the date the judgment is pronounced or the date money is payable under the judgment" (emphasis added).
- [170] Section 8 further empowers the court to set a different post-judgment interest commencement date where necessary to give effect to its intent.
- [171] The language in ss. 7 and 8 of the COIA gives the court express authority to determine both when and how post-judgment interest will run on a monetary award, recognizing that a judgment may fix a future payable date where the court deems it appropriate.
- [172] Together, ss. 1(1) and 7(2) of the COIA establish that interest attaches only after a pecuniary judgment comes into existence.
- [173] The term pecuniary judgment is not defined in the COIA. However, its meaning has been the subject of judicial interpretation that provides helpful guidance.
- [174] In its 1987 Report on The Court Order Interest Act, the Law Reform Commission of British Columbia discussed the meaning of pecuniary judgments. It stated that the Legislature adopted the term pecuniary judgment to replace the older phrase "a judgment sounding in money": Law Reform Commission of British Columbia, Report on the Court Order Interest Act (Victoria: Queen's Printer for British Columbia, 1987) at 65 [LRC 90]. The intent was to limit interest to orders requiring payment of money. As such, if a judgment does not direct payment, such as a divorce decree or injunction, it does not "sound in money" and interest does not apply: LRC 90 at 65.
- [175] The meaning of the term pecuniary judgment was also examined by the Court of Appeal in *S.G. & S. Investments (1972) Ltd. v. Golden Boy Foods Inc.* (1991), 60 B.C.L.R. (2d) 305, 1991 CanLII 5735 (B.C.C.A.) [S.G.]. Writing for the Court, Justice Southin observed that the COIA does not define pecuniary judgment but compared it to s. 14 of the Interest Act, R.S.C. 1985, c. I-15, which describes a "judgment debt" as any sum of money made payable by a court order: at para. 19. Referring to dictionary definitions, Southin J. noted that "pecuniary" means "consisting of money" or "having relation to money": S.G. at para 20. Justice Southin then concluded that a pecuniary judgment can be enforced by a writ of seizure and sale--the modern equivalent of a writ of fieri facias--that is, a judgment for the payment of money: S.G. at para. 22.

- [176] In *Wepruk (Guardian ad litem of) v. McMillan Estate* (1993), 87 B.C.L.R. (2d) 194, 1993 CanLII 6872 (B.C.C.A), the Court cited the Law Reform Commission's rationale: interest compensates a party who has been "kept out of money" rightfully theirs during the delay between the cause of action arising and judgment being rendered: at para 10, citing LRC 90 at 9. The imposition of interest on a judgment is therefore not intended as a penalty, but rather to restore the time value of money wrongfully withheld.
- [177] Interest applies only to existing, crystallized sums due as of judgment, not to payments directed toward future maintenance or support. The COIA does not permit interest on sums representing future loss: s. 2(a); *Wepruk* at para. 11. The purpose of prejudgment interest is therefore compensatory: to ensure that a party kept out of money rightfully owed is reimbursed for the time value of that money between the date the obligation arose and the date judgment is pronounced. Interest is awarded to offset the unfairness of delay, not to penalize or provide a windfall.
- [178] In short, the COIA requires two conditions before interest applies: (a) a judgment must exist, and (b) that judgment must be pecuniary in nature. The critical question in this case is whether, on the facts, the arrears owed by the claimant constitute a pecuniary judgment under the COIA and, if so, when that judgment arose.
- [179] The British Columbia Court of Appeal in *Crown Zellerbach Canada Limited and British Columbia Forest Products Limited v. R. in Right of British Columbia* (1979), 13 B.C.L.R. 276, 1979 CanLII 611, and later in *S.G. and Wepruk*, confirmed that a pecuniary judgment is a final, enforceable order for the payment of a specific sum of money. Declaratory or prospective orders do not qualify because no amount is yet due: *Crown Zellerbach* at 282. In other words, where the obligation to pay exists only by virtue of the judgment itself, rather than from pre-existing arrears or withheld funds, the COIA does not apply until after the order is made: *Crown Zellerbach* at 282.
- [180] Justice Punnett's decision in *J.C.H. v. S.M.B.H.*, 2024 BCSC 54, provides a comprehensive discussion of how the COIA operates in family law contexts. His reasons trace the legislative history and distinguish cases involving child support arrears wrongfully withheld from those where arrears only arose through a later recalculation.
- [181] In *J.C.H. Punnett J.* concluded that child support arrears may constitute a pecuniary judgment attracting interest but stated that each case depends on its facts. In that case, the parties had entered into a separation agreement requiring annual support reviews beginning in 2016. No reviews occurred and the payor failed to disclose his income, which increased significantly, or adjust payments in response to the increase. Justice Punnett found this to be particularly blameworthy conduct and held that the resulting arrears could be appropriately characterized as a pecuniary judgment under the COIA. The case thus involved the breach of an existing, binding obligation.

- [182] In contrast, the claimant in this case fully complied with the CVO, consistently paid support as ordered, and contributed to s. 7 expenses. Both parties relied on the CVO in good faith and structured their finances according to that agreement. The arrears arise only because this judgment sets aside certain provisions of the CVO and recalculates support retroactively. Until the release of this decision, no further money was owed, and no judgment was enforceable.
- [183] Justice Punnett expressly relied on *Price v. Price Estate* (1991), 56 B.C.L.R. (2d) 387, 1991 CanLII 746 (B.C.S.C.), and *Newson v. Newson* (1980), [1981] 2 W.W.R. 398, 1980 CanLII 3054 (B.C.S.C.), both of which distinguish between arrears deliberately withheld and arrears created by a later variation.
- [184] As Justice Coultas observed in *Price*, there has long been "a paucity of law" on whether interest accrues on support arrears and for many years there was "no case directly on point": at para. 14. That observation remains largely true with respect to the facts before me. While the case law provides guidance on when interest may be payable under the COIA, no case directly addresses a situation where both parties complied in good faith with a valid court order or agreement that is later set aside and varied retroactively. More recently, in *A.E. v. L.L.*, 2023 BCPC 59 at paras. 90-93, the Provincial Court held that a support order differs from a pecuniary judgment because it remains subject to variation or cancellation under ss. 152, 167, and 174 of the FLA. On that basis, Judge Lee concluded that interest should be awarded under s. 11.1 of the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127 [FMEA], rather than under the COIA.
- [185] However, in *J.C.H., Punnett J.* rejected the suggestion that the FMEA displaces the COIA: at para. 67. He held that the two statutes operate in tandem: the FMEA provides an enforcement mechanism for maintenance obligations while the COIA governs entitlement to interest where a pecuniary judgment exists. The COIA is compensatory, not administrative or maintenance-based. Whether it applies in a family law context depends on the particular facts of the case and the character of the existing order or judgment.

Application of Law to Facts

- [186] In summary, the case law confirms that the COIA applies only after a pecuniary judgment is entered and that interest should not be imposed for any period before an enforceable obligation arose. Whether such a judgment exists in the context of retroactive child support therefore depends on the factual circumstances and the nature of the prior order.
- [187] Given the continuing validity of the CVO, no enforceable monetary obligation arose until these reasons struck down the impugned provisions and ordered quantification of the amount of arrears owing.
- [188] Although retroactive child support is sometimes described as a "past debt," that characterization does not automatically attract pre-judgment interest. The arrears in this case do not represent an unpaid obligation that either party failed to meet at the time. Both

parties complied with the CVO, which was presumptively valid and enforceable until varied by these reasons. As a matter of public policy, parents are entitled to rely on the integrity and finality of court orders and agreements governing support obligations unless and until they are lawfully set aside or amended. The obligation to pay an increased amount of support only crystallized when this judgment quantified the difference between what was paid and what ought to have been paid. The arrears, therefore, constitute a newly quantified sum rather than a historic debt and interest properly runs from the date the judgment fixes that amount as payable, consistent with s. 7(2) of the COIA.

- [189] Although there is no case directly on point, the facts here closely align with *Greene*. As described above, the parties lived for years under a similar consent order that was later found not to reflect the payor's actual income. The Court varied the order, made the award retroactive to 2008, and directed that court order interest was to commence "as of the date of release of these reasons for judgment": at para. 100. However, in that case, the Court of Appeal had before it an exact accounting that enabled a final monetary order.
- [190] While *Greene* does not include an extended discussion of the COIA, it is nonetheless instructive. In *Greene*, both parties had acted in good faith under a valid consent order and it was only upon variation that a monetary obligation crystallized. Interest was therefore limited to the period following judgment. In ordering that only post-judgment interest applied to the child support arrears, the Court of Appeal employed a fairness-based approach that I find applies equally here.
- [191] In *0731431 B.C. Ltd. v. Panorama Parkview Homes Ltd.*, 2024 BCSC 614, Justice Walker considered whether repayment obligations arising from a prior bankruptcy order constituted a "pecuniary judgment" under the COIA. The Court held that the COIA was not engaged because the repayment order was declaratory in nature and did not direct payment of a specific, enforceable sum: 0731431 B.C. at paras. 35-37, 40. Any entitlement to interest therefore arose only in equity and was limited to avoid unfairness. The decision confirms that the COIA applies only where a final, enforceable monetary obligation exists and that interest should not be imposed for periods predating the crystallization of that obligation. The same principle applies here.
- [192] The fair and principled approach, consistent with *Greene* and 0731431 B.C., is to treat the arrears owed by the claimant as crystallizing when the exact amount owed is determined and to calculate interest only from the date of these reasons forward. This balances the mandatory language of the COIA with the requirement that a pecuniary judgment first exist. Further, by ordering only post-judgment interest on the arrears in this case, this Court respects the equitable principle that where both parties acted in good faith under a valid order, pre-judgment interest should not undermine their settled expectations.

[193] The parties shall complete the final DivorceMate calculations and arrears reconciliation either by consent or, if an agreement cannot be reached, I direct a referral to the Registrar for their determination. Once the total quantum of arrears for the Retroactive Period is calculated in accordance with these reasons and certified, it shall constitute a pecuniary judgment for the purposes of the COIA and may also be enforced under the FMEA.

[194] Interest shall accrue under s. 7 of the COIA from the date the arrears are certified, at the Registrar's prescribed rate, until payment in full. Nothing in these reasons limits statutory interest under the FMEA, where applicable, for enforcement purposes.

[195] Accordingly, I find that interest is payable only from the date on which the quantified arrears are certified by the Registrar, or agreed to in writing by counsel and become payable.

DISPOSITION AND ORDERS

IT IS ORDERED THAT:

Enforceability of the Non-Variation Clauses

[196] Paragraphs 4-5 of the CVO dated May 8, 2017, are set aside to the extent they purport to:

- a) fix child support based on an assumed \$90,000 Guidelines income; and
- b) bar changes based on variations in income or parenting time.

Parenting Arrangements

[197] I find as follows:

- a) S.B. has resided primarily with the respondent since September 1, 2019.
- b) K.B. has resided primarily with the respondent since April 1, 2020.

Children of the Marriage

[198] There is no dispute that S.B. is a child of the marriage.

[199] K.B. remains a child of the marriage while enrolled in full-time post-secondary studies and is unable, by reason thereof, to withdraw from the charge of her parents.

[200] Effective January 1, 2025, support for K.B. is ordered under s. 3(2)(b) Guidelines, with the table amount to be used as a starting point. As set out in these reasons, a one-third reduction shall be applied to the table amount attributable to K.B. to reflect her demonstrated ability to contribute to her own living expenses, while recognizing that she does not bear any tuition costs. Each party must promptly advise the other of any material change in K.B.'s post-secondary enrolment, residence, or earnings.

Retroactivity

[201] Child support shall be recalculated for the Retroactive Period in accordance with the parties' Guidelines incomes.

The Parties' Guidelines Incomes

[202] The parties' Guidelines incomes for retroactive and prospective support are those set out in these reasons and captured as follows:

Fiscal Year

Claimant

Respondent

2020

\$211,429

\$30,368

2021

\$285,479

\$31,616

2022

\$177,145

\$32,552

2023

\$166,864

\$34,840

2024

\$187,936

\$36,192

2025

\$187,936

\$37,128

[203] Prospectively, if the respondent's income is less than a full-time minimum wage salary, it is to be imputed as such.

Accounting of Arrears

[204] Within 14 days of the date of this judgment (unless otherwise agreed in writing), the parties shall exchange any outstanding materials required to complete the arrears accounting for the Retroactive Period. Materials that must be disclosed include:

- a) year-end T1 and Notice of Assessment forms;
- b) proof of payments made under the CVO; and
- c) documentation relied on for any claimed credits.

[205] Within 35 days of the date of this judgment (unless otherwise agreed in writing), counsel shall meet to complete the DivorceMate calculations and prepare a joint statement of arrears in accordance with these reasons. In doing so, the parties and their counsel shall be subject to the following guidelines:

- a) If the parties reach an agreement on the final arrears figure, they shall jointly submit the statement to the Registrar for certification.
- b) If agreement cannot be reached, I direct it to be referred to the Registrar, who shall determine the final arrears and certify the results.

[206] In completing the reconciliation, counsel or the Registrar shall:

- a) apply the Guidelines table amounts for one parent having primary residence throughout the Retroactive Period (i.e., no s. 9 set-off);
- b) use the claimant's annual line 150 income, applying only those Schedule III deductions recognized by Groves J. or otherwise permitted in these reasons;
- c) apply the imputed incomes for the respondent as set out herein; and
- d) give credit for the \$1,000 monthly child support payments made under the CVO and, where proven or agreed, any portion of the \$1,000 spousal support payment that directly covered the children's needs and would otherwise duplicate the recalculated Guidelines amount.

[207] Upon certification by the Registrar or written agreement between counsel, the total arrears determined shall constitute a pecuniary judgment for the purposes of the COIA. They may also be enforced under the FMEA.

[208] Interest on the arrears shall run under s. 7 of the COIA from the date the arrears are certified by the Registrar (or agreed to in writing by counsel), at the Registrar's prescribed rate, until payment in full.

Prospective Child Support

[209] Effective January 1, 2025, the claimant shall pay child support to the respondent as follows:

- a) The table amount for two children based on a payor income of \$187,936, less a one-third reduction applied to the portion attributable to K.B. under s. 3(2)(b) of the Guidelines.
- b) Upon K.B. ceasing to qualify as a child of the marriage under s. 2(1)(b) of the Divorce Act, support shall automatically adjust to the table amount for one child at the same income level, effective the first day of the following month, subject to agreement or further order.

[210] The above amount is based on the incomes determined in these reasons and is without prejudice to either party applying for variation upon a material change in circumstances.

Section 7 Special and Extraordinary Costs

[211] The parties shall share allowable s. 7 expenses, including post-secondary costs, in proportion to their respective Guidelines incomes for each year from 2020 to 2025, as set out in these reasons. This proportional sharing applies to both retroactive and prospective expenses, subject to the following:

- a) for 2025, the parties' proportionate shares are 84% (claimant) and 16% (respondent);
- b) future ratios shall be updated annually upon exchange of financial disclosure;
- c) the parties must consult in advance where practicable and the payor is entitled to proof of payment;
- d) RESP funds shall be applied first to eligible tuition and mandatory fees; and
- e) the claimant shall receive credit within the s. 7 accounting for any RESP disbursements made directly from his own contributions.

[212] Counsel shall reconcile s. 7 expenses for the period June 2020 to December 2024. Alternatively, if necessary, the Registrar may, in the arrears accounting, use the parties' proportional shares for each year and credit documented payments.

Annual Disclosure and Review Mechanism

[213] By July 1 of each year, each party must exchange:

- a) T1 General (with all schedules);
- b) Notice of Assessment; and
- c) if claiming employment expense deductions, a T2200 Declaration (or equivalent employer confirmation) and employment contract for the prior taxation year.

[214] Child support shall be updated annually, effective July 1, in accordance with the Guidelines and based on the disclosed incomes for the prior taxation year. In the event of disagreement, the parties may update child support by filing an application with the court.

Interest on Arrears

- [215] Interest shall run from the date the arrears are certified, at the Registrar's prescribed rate, until payment in full.
- [216] The Registrar shall calculate and include the applicable interest when issuing the certificate or statement of arrears.
- [217] No pre-judgment interest shall accrue for any period before the certification of arrears as both parties acted in good faith under the CVO until this decision varied it.

Terms of Payment

- [218] In light of the evidence before me, the claimant shall repay any arrears determined in accordance with these reasons on a mutually agreed upon instalment schedule not to exceed three years from the date of this judgment, unless the court approves an extension on further application.
- [219] Counsel shall first attempt to agree on a reasonable instalment schedule consistent with the foregoing. In the event of disagreement, I refer the matter to the Registrar for the determination of an instalment schedule that takes into account cash flow, the child-focused nature of the support, and the need to promptly settle the arrears.
- [220] Nothing in this order prevents enrolment of the support obligation with the FMEP for collection and enforcement.

Liberty to Apply

- [221] Either party may apply to the court for directions regarding the implementation of these reasons, including the calculation of arrears, application of credits, or determination of interest, should any dispute arise following the Registrar's accounting.

Costs

- [222] The results in this proceeding are mixed. The respondent succeeded in setting aside the non-variability clauses and obtaining a recalculation of support. At the same time, the claimant prevailed on limiting the retroactive period, establishing the parties' respective Guidelines incomes, and securing proportional adjustments to both s. 3(2)(b) and s. 7 obligations. In these circumstances, the parties should first attempt to resolve costs between themselves. If they cannot agree, they may speak to costs in writing within 30 days after the filing of the statement or certificate of arrears. Written submissions shall not exceed five pages per party.

"Sukstorf J."

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