

CANADA / JUDGMENT

Leering v. Leering

2020 BCSC 1231

COURT

Supreme Court of British Columbia

DECIDED

21 August 2020

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2020 BCSC 1231 Leering v. Leering IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Leering v. Leering, 2020 BCSC 1231 Date: 20200821 Docket: E127131 Registry: Kelowna Between: Vincent Joseph Leering Petitioner And Catherine Irene Leering Respondent Before: The Honourable Mr. Justice Hori Reasons for Judgment The Petitioner on his own behalf: V.J. Leering Counsel for The Director of Maintenance Enforcement: V. Beier No other appearances Place and Date of Trial/Hearing: Kelowna, B.C. July 22, 2020 Place and Date of Judgment: Kelowna, B.C. August 21, 2020

Introduction

- [1] The petitioner, Vincent Joseph Leering, applies, pursuant to s. 18 of the Divorce Act, R.S.C. 1985, c. 3, (2nd Supp.), for a provisional order to vary the child support aspects of an order made by the Ontario Superior Court of Justice on May 15, 2007 ("Ontario Order"). When the court made the Ontario Order both Dr. Leering and the respondent, Catherine Irene Leering, resided in Ontario.
- [2] Since the making of the Ontario Order, Dr. Leering has moved to British Columbia while Ms. Leering continues to reside in Ontario. Accordingly, in order to vary the Ontario Order, Dr. Leering must rely on s. 18 of the Divorce Act to initiate the process.
- [3] Dr. Leering seeks to vary the Ontario Order on a retroactive basis to 2010. He claims that the variation of the order is justified as a result of a change in circumstances in accordance with s. 17(4) of the Divorce Act. The changes in circumstances alleged by Dr. Leering are:
- a) his income has reduced significantly since February 2010;
 - b) his two children have been alienated from him by Ms. Leering; and
 - c) his two children have attained the age of majority.
- [4] The Director of the Family Maintenance Enforcement Program ("FMEP") has authority to enforce the support aspects of the Ontario Order. As such, the Director received notice of this application and appeared at the hearing to make submissions on the enforcement issues only. Background Facts

- [5] Dr. Leering is a chiropractor who resides in Kelowna, British Columbia. Ms. Leering is employed as a manager or director with Sun Life Financial in Waterloo, Ontario.
- [6] The parties were married on October 9, 1999. They were divorced by order of the Ontario Superior Court of Justice pronounced June 29, 2004.
- [7] The relationship between the parties started in the fall of 1991. They had their first child, Alexander Leering, in November 1993. The parties' second child, Adam Leering, was born in May 2002.
- [8] From the start of their relationship until 2010, both parties resided in Ontario. However, in August 2010 Dr. Leering moved to Kelowna, BC.
- [9] On May 15, 2007, on the application of Ms. Leering, the Superior Court of Ontario made the Ontario Order which included the following orders, among others:
- a) Ms. Leering shall have custody of the children, Alexander and Adam;
 - b) Dr. Leering shall have access to Alexander at times mutually agreeable to Dr. Leering and Alexander;
 - c) Dr. Leering shall have access to Adam as specified in the order;
 - d) For the purposes of determining the amount of child support and the proportionate share of special and extraordinary expenses in accordance with the Federal Child Support Guidelines, Ms. Leering's income (based on her 2005 T4 statement) is \$68,748.69 and Dr. Leering's total adjusted net professional income is \$65,292.20 (based on his 2005 income tax return);
 - e) Dr. Leering shall pay to Ms. Leering for the support of Alexander and Adam the sum of \$882 per month for the period January 2006 to April 2006, and the sum of \$976 per month commencing May 1, 2006 and on the first day of each month thereafter;
 - f) Dr. Leering shall pay 48.71% of the special and extraordinary expenses;
 - g) The special and extraordinary expenses for Alexander and Adam for January 1, 2007 and ongoing are as follows:
 - i. counselling (Alexander) of \$593.88; ii. daycare expenses for calendar year 2007, exclusive of private school, (Adam) of \$5,500; iii. karate (Alexander) of \$924; iv. Orthodontics (Alexander) of \$2,020.25, for a total of \$9,038.13. Dr. Leering's proportionate share of \$9,038.13 is 48.71% annually or \$287 monthly. The monthly payments therefore commence on the first day of January 2007 and on the first day of each month thereafter;
 - h) The parties shall exchange copies of their individual personal income tax returns and notices of assessment by June 1 of each year commencing June 1, 2007. The parties shall review and adjust the table child support payable annually as well as their proportionate contributions to Alexander's and Adam's special or extraordinary expenses;

- i) Ms. Leering will provide to Dr. Leering reasonable documentation of the amounts she has incurred for the children's special or extraordinary expenses on an annual basis by June 1 of each year commencing June 1, 2007;
 - j) As long as Dr. Leering is obligated to pay child support, he will obtain and maintain a life insurance policy in the amount of \$350,000 and so long as either child remains a child of the marriage designate and keep the children as beneficiaries of the policy.
- [10] Dr. Leering was a registered member of the College of Chiropractors of Ontario. He became a member of the College in 1997. On April 16, 2008, the College found Dr. Leering guilty of professional misconduct and revoked his certificate of registration.
- [11] Dr. Leering appealed the decision of the College. The Ontario Superior Court allowed the appeal and set aside the decision of the College to revoke Dr. Leering's registration.
- [12] The College appealed the decision of the Ontario Superior Court. On February 2, 2010, the Court of Appeal for Ontario allowed the College's appeal and reinstated the decision of the College to revoke Dr. Leering's certificate of registration. The Court of Appeal also awarded \$30,000 in costs against Dr. Leering.
- [13] Following the decision of the Court of Appeal, Dr. Leering obtained a professional license to practice chiropractic medicine in British Columbia without sanction or restriction. Therefore, in August 2010, Dr. Leering moved to British Columbia.
- [14] Dr. Leering has had a difficult financial history. He filed for bankruptcy in December 2002. He filed for bankruptcy a second time in July 2007. After the final resolution of the disciplinary matter in February 2010, Dr. Leering had further financial difficulties. He has applied for positions in British Columbia, the Netherlands, United Arab Emirates, and Saudi Arabia but was not successful in securing a position as a chiropractor. Dr. Leering relates his inability to secure a position to the disciplinary findings of the Ontario College of Chiropractors.
- [15] Dr. Leering finds that he is unable to establish his own practice because of his financial circumstance, his poor credit rating due to previous bankruptcies and his professional disciplinary record. Dr. Leering managed to find some work as an independent sub-contractor to other chiropractors until December 2019, when he was able to take over the part-time practice of another chiropractor without any upfront costs.
- [16] Dr. Leering's financial situation led him to make a consumer proposal in 2011 to avoid a further bankruptcy. However, Dr. Leering was unable to meet the terms of the consumer proposal. As a result, Dr. Leering filed for bankruptcy for a third time in October 2016.
- [17] Dr. Leering's son, Alexander, is now 26 years old. Alexander cut off contact with Dr. Leering in 2006 when he was 13 years old. He reached the age of majority (18 years in Ontario) in November 2011. After attaining the age of majority, Alexander continued to attend school until June 2013.

- [18] There is no evidence before me about Alexander's situation since June 2013. There is no evidence that after June 2013, Alexander has been unable to withdraw from his parents' care or to obtain the necessities of life. Ms. Leering has not provided any details of special or extraordinary expenses for Alexander since 2008.
- [19] The situation is similar with Adam. Adam reached the age of majority in May 2020. Dr. Leering had regular contact with Adam by telephone and Skype. He also had personal contact with Adam two to four times per year until 2016 when Adam was 14 years of age. After 2016, Dr. Leering has had no contact with Adam.
- [20] The only evidence of Adam's current situation is that Dr. Leering expects Adam to continue in school to upgrade his education after graduation from high school. However, Dr. Leering has not received any details of special or extraordinary expenses related to Adam.
- [21] When Dr. Leering made his consumer proposal in July 2011, Dr. Leering identified Ms. Leering as a creditor. The administrator for the consumer proposal, BDO Canada Limited, sent notice of the consumer proposal to the creditors in July 2011. On June 29, 2012, the administrator received a preferred claim from Ms. Leering for outstanding child support in the amount of \$18,349.82. As a result, she should have been aware of Dr. Leering's financial circumstance by at least July 2011.
- [22] Ms. Leering eventually received payments through the consumer proposal of \$8,799.43. Dr. Leering alleges that Ms. Leering did not accurately disclose those receipts to the FMEP resulting in a \$417.26 under reporting. Therefore, Dr. Leering claims a credit of \$417.26 against his child support arrears.
- [23] Dr. Leering claims that he attempted to have the Ontario Order varied in September 2012. In that regard he refers to a case conference brief filed in the Ontario Superior Court of Justice. The brief refers to a case conference scheduled for September 26, 2012. The brief makes reference to the Ontario Order and requests that the Court:
- a) assess any support arrears based on hardship, material change of circumstances and the facts presented; and
 - b) assign interim support amounts going forward based on the current income of \$24,000 per year.
- [24] Dr. Leering deposes that he abandoned his application to vary the Ontario Order when Ms. Leering sought to convert the application into a multi-day trial. Dr. Leering says that he was unable to navigate the process as an unrepresented person. Therefore, he withdrew his application.
- [25] In the spring of 2013, Dr. Leering applied for a variation of the Ontario Order pursuant to the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29. Dr. Leering submitted his application to British Columbia Interjurisdictional Support Services ("IJSS") in April 2013. IJSS sent the application to Ontario for hearing. On July 10, 2013, IJSS advised Dr. Leering

that his application had been rejected because he sought to vary an order made under the Divorce Act. The IJSS directed Dr. Leering to apply to this Court for a provisional order pursuant to the Divorce Act.

- [26] Dr. Leering explains that he took no further steps to vary the Ontario Order from July 2013 until he made this application because he was dealing with health issues and his bankruptcy. According to Dr. Leering, he suffered from depression and low testosterone which caused insomnia, lack of motivation and malaise. Dr. Leering deposes that during this time, he attended regularly to his doctor and to counselling. Further, in December 2019, Dr. Leering sustained an injury to a finger which put him in a brace for two months.
- [27] Ultimately, Dr. Leering filed this petition on March 16, 2020, for a provisional order.
- Procedural Requirements
- [28] Where a child support order is made pursuant to the Divorce Act, a variation of that order must be made in accordance with the terms of the Divorce Act. Since the Divorce Act is federal legislation, the process established by the provincial Interjurisdictional Support Orders Act cannot be engaged to vary a Divorce Act order.
- [29] Section 18 of the Divorce Act applies where an application is made for a variation of a support order in a province where:
- a) the respondent in the application is ordinarily resident in another province and has not accepted jurisdiction of the court; or
 - b) both former spouses have not consented to the application of section 17.1 of the Divorce Act.
- [30] In the circumstances prescribed by s. 18 of the Divorce Act, if the court is satisfied that the issues can be adequately determined by proceeding under s. 18, the court shall make a variation order with or without notice to and in the absence of the respondent. However, any order made by the court under s. 18 is a provisional order only and has no legal effect until it is confirmed in a proceeding in the jurisdiction where the respondent ordinarily resides.
- [31] Once a provisional order is made, the order and other supporting documents are transmitted to the court in the province where the respondent ordinarily resides. The respondent is then entitled to receive a copy of the provisional order, the supporting documents and notice of a hearing to confirm the provisional order.
- [32] Dr. Leering is seeking a provisional order which has no legal effect until the Ontario Court confirms it. Ms. Leering will receive notice of the confirmation hearing along with the supporting documents.

- [33] Section 18 of the Divorce Act authorizes the hearing for a provisional order to proceed in the absence of the respondent, and since the respondent will have an opportunity to respond to the application at the confirmation hearing, it is appropriate to proceed with this application without notice to the respondent. Further, I am satisfied that the evidence before the Court is sufficient to allow the issues to be determined adequately.

Analysis

Change in Guidelines Income

- [34] Dr. Leering submits that his professional circumstances changed significantly on February 2, 2010, when the Ontario Court of Appeal reinstated the decision of the College of Chiropractors. As a result, Dr. Leering lost his status as a registered chiropractor in Ontario as of February 2, 2010.
- [35] Dr. Leering presents evidence of his income after February 2010. The evidence shows a significant reduction in his income starting in 2010. Dr. Leering submits that this reduction in income is a change in circumstance that warrants a variation of the Ontario Order.
- [36] Section 17(1) of the Divorce Act provides that a court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively, a support order or any provision thereof on application by either or both former spouses.
- [37] Section 17(4) sets out the factors for consideration in the variation of child support orders as follows: 17 (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.
- [38] Section 14(a) of the Federal Child Support Guidelines describes the change of circumstances that would result in the variation of a child support order. Section 14(a) provides as follows: For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:
- (a) In the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;
- [39] The Ontario Order set Dr. Leering's net professional income at \$65,292.20 as of May 15, 2007. The Ontario Order specifically sets Dr. Leering's income for the purposes of determining the amount of child support payable by Dr. Leering and his proportionate share of special and extraordinary expenses in accordance with the Federal Child Support Guidelines. The Ontario Order establishes Dr. Leering's child support payments based on the applicable table amounts set out in the Guidelines. Therefore, a change in Dr. Leering's income, must constitute a change of circumstances in accordance with s. 14(a) of the Guidelines. It then

follows that a change in Dr. Leering's income is a change of circumstances under s. 17(4) of the Divorce Act.

- [40] If the payor parent's income increases, the recipient parent and the children would expect a corresponding increase in the child support payments. Similarly, if the payor parent's income decreases, the payor parent's child support obligation should decrease.
- [41] In 1994, the Supreme Court of Canada decided the case of *Willick v. Willick*, [1994] 3 S.C.R. 670. In *Willick*, the Court considered the previous version of s. 17 of the Divorce Act. The previous version of s. 17(4) provided that a court may vary a support order upon being satisfied that there has been a "change in the condition, means, needs or other circumstances of either former spouse or of any child of the marriage for whom support is or was sought occurring since the making of the support order". The Supreme Court of Canada, in *Willick*, interpreted this section of the Divorce Act as meaning that there must be a material change of circumstances. The Court elaborated further by describing a material change as a change that, if known at the time, would likely have resulted in different terms.
- [42] Section 17(4) of the Divorce Act was amended after the decision in *Willick* to its present form. Section 17(4), as it now reads, refers to a change of circumstances as provided for in the applicable Guidelines. However, Madam Justice Smith in *C.L.B. v. A.H.B.*, 2013 BCCA 472, held that s. 14 of the Guidelines does not replace the requirement to establish a material change in circumstances as set out in *Willick*.
- [43] Smith J. held at para. 15 as follows:
- [15] In *Bockhold v. Bockhold*, 2006 BCCA 472, 59 B.C.L.R. (4th) 211 (BCCA), this Court confirmed that s. 14 of the Guidelines does not supplant the test of a material change in circumstances as set out in *Willick* (paras. 32-34), . . .
- [44] Smith J. held further at para. 16:
- [16] Thus, a party seeking to vary an order for child support must first establish a material change in circumstances as that threshold requirement has been interpreted in *Willick* and confirmed in *L.M.P.*, and if met, and if in the exercise of its discretion the court determines that a variation order should be made, it must make an order that complies with the Guidelines.
- [45] Dr. Leering's line 150 income from his income tax returns for 2010 to 2019 is show in column 2 in the table below:
- | Date | Line 150 Income | Line 150 Adjustments | Adjusted Line 150 Income |
|------|-----------------|----------------------|--------------------------|
| 2010 | \$17,616.00 | \$2,782.89 | \$20,398.89 |
| 2011 | 9,710.00 | 2,744.00 | 12,454.00 |
| 2012 | 22,869.00 | 460.00 | 23,329.00 |
| 2013 | 27,486.00 | 1,675.62 | 29,161.62 |
| 2014 | 21,904.00 | 1,066.02 | 22,970.02 |
| 2015 | 35,719.00 | 1,790.00 | 37,509.00 |
| 2016 | 21,551.00 | 861.90 | 22,412.90 |
| 2017 | 16,605.00 | 1,327.45 | 17,932.45 |
| 2018 | 31,104.00 | 1,736.67 | 32,840.67 |
| 2019 | 33,510.00 | 1,969.35 | 35,479.35 |

- [46] In Column 3 of the table above are Dr. Leering's adjustments for deductions he made from his professional income that he admits should be included in his Guidelines income. Column 4 of the table above lists Dr. Leering's Guidelines income for each year adjusted for deductions.
- [47] It is apparent from Dr. Leering's tax returns that in 2010, and in the years following, his Guidelines income was significantly less than his Guidelines income in 2007. Neither Dr. Leering nor Ms. Leering could have known that Dr. Leering would lose his licence in February 2010 resulting in a significant reduction in his income. Based on the foregoing analysis, I conclude that a loss of Dr. Leering's chiropractic license and the reduction in his income from 2010 are changes that, if known on May 15, 2007, would likely have resulted in different terms in the Ontario Order.
- [48] Therefore, the significant reduction in Dr. Leering's income from 2010 to date is a material change in circumstances that warrants a variation of the Ontario Order. Alienation of Children
- [49] Dr. Leering claims that both of his children have been alienated from him by Ms. Leering. Dr. Leering argues that the alienation of his children is a material change in circumstances that should result in the discontinuance of any child support obligations.
- [50] I am not prepared to accept Dr. Leering's submission in this regard. The allegation of alienation of the children requires more than the evidence that is before me in this application. The evidence of Dr. Leering is that Alexander, at age 13, and Adam, at age 14, discontinued contact with him. The suggestion that the children ended their contact with Dr. Leering because they have been alienated from him by their mother is only speculation. There is no clear or specific evidence of alienation before me.
- [51] Mr. Justice Kent in *Kanta v. Kanta*, 2017 BCSC 1428 at para. 139, cites the British Columbia Court of Appeal case of *Williamson v. Williamson*, 2016 BCCA 87. Kent J. outlines the limitations imposed by the Court of Appeal in *Williamson* in cases involving allegations of alienation. The limitations cited by Kent J. are as follows: · the only consideration in determining what particular remedy is appropriate in any individual case is the best interests of the child, in both the short-term and long-term in accordance with the factors outlined in s. 37(2) of the Family Law Act . . . ; · alienation is a serious allegation and its existence and root cause must be proved on the evidence . . . ; · properly admissible expert evidence is required to prove not only the existence of alienating behaviours on the part of any particular parent but also to support the appropriate response and intervention that will be in the best interests of the child in the circumstances . . . ; and · draconian orders changing custody, guardianship and parental rights or respecting access to and contact with the child must not be made without finding a party "guilty" of alienation and without careful consideration of all alternative remedies posited by admissible expert evidence . . .

- [52] The onus is on the party who alleges alienation to establish the allegation on the evidence. In my view, Dr. Leering has failed to present sufficient evidence to establish the allegation of alienation. Therefore, I am not prepared to vary the Ontario Order on the basis of alienation. Age of Majority
- [53] The Divorce Act requires a parent to pay for the support of any children of the marriage. "Child of the marriage" is defined in s. 2(1) of the Divorce Act as: a child of two spouses or former spouses who, at the material time,
- (a) is under the age of majority and who has not withdrawn from their charge, or
 - (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;
- [54] Dr. Leering's son, Alexander, reached the age of majority in November 2011. Dr. Leering deposes that Alexander continued to attend school after reaching the age of majority until June 2013. Therefore, he acknowledges his child support obligations for Alexander until June 2013. However, after June 2013, Dr. Leering's child support for Alexander should have ended.
- [55] Dr. Leering's son, Adam, reached the age of majority in May 2020. However, Dr. Leering concedes that Adam will likely be unable to withdraw from his parents' charge at this time. Dr. Leering expects that Adam will require education upgrading after his graduation from high school. Therefore, Dr. Leering's child support obligations for Adam will continue prospectively for a period of time.
- [56] It is of note that, according to Dr. Leering, since 2008, Ms. Leering has not asked for any contribution to the children's special or extraordinary expenses. In particular, there has been no request to contribute to the cost of any post-secondary education programs. Retroactive Variation
- [57] Having found that there has been a material change in circumstances from 2010, it is necessary to determine whether the Ontario Order should be varied retroactively to February 2, 2010.
- [58] In *G.M.W. v. D.P.W.*, 2014 BCCA 282, Madam Justice Smith held that when considering whether the retroactive reduction of an initial child support order is appropriate, the court must consider the factors established by the Supreme Court of Canada in *D.B.S. v. S.R.G.*, 2006 SCC 37. The Supreme Court, in *D.B.S.*, identified the following four factors to be considered in determining the appropriateness of a retroactive order:
- a) the circumstances surrounding the delay in bringing the application;
 - b) the payor parent's conduct;
 - c) the children's circumstances; and

d) any hardship caused by a retroactive child support order.

[59] Dr. Leering gives three reasons for the delay in bringing this application. Those reasons are:

- a) his inability to finance the cost of an application;
- b) his not being familiar with the process required to vary an Ontario Superior Court order when he ordinarily resides in British Columbia; and
- c) his struggles with depression and other health issues.

[60] I must also consider that Dr. Leering attempted to vary the Ontario Order in 2013 pursuant to the Interjurisdictional Support Orders Act. However, Dr. Leering's application was denied because the Ontario Order had been made pursuant to the Divorce Act.

[61] Dr. Leering has not been guilty of any blameworthy conduct other than having to delay this application. Dr. Leering has not concealed or failed to disclose his financial circumstance in an effort to avoid an increase in his child support obligations. In this circumstance it is quite the opposite. Dr. Leering has delayed in making appropriate applications to reduce his child support obligations based on his earnings history.

[62] In G.M.W., the Court defined "blameworthy conduct" as "anything that privileges the payor parent's own interests over his/her children's right to an appropriate amount of support". In this case, Dr. Leering has not conducted himself in any way that would privilege his position over the interests of his children. As a result of his delay in bringing this application, he has been unable to make the payments under the Ontario Order and has accrued significant arrears through the FMEP.

[63] I have no evidence that the children have suffered as a result of a delay in bringing this application. I have no evidence that Ms. Leering has taken steps to collect the child support payments under the Ontario Order other than to have it enforced by the FMEP. Further, Dr. Leering has paid the sum of \$34,700 to the FMEP since April 2012. The records from the FMEP show payments made by Dr. Leering on a regular and consistent basis, although the payments are not in the amounts set out in the Ontario Order.

[64] I also have no evidence of any hardship that might be caused by retroactively reducing the child support payments to February 2010. Ms. Leering has not been receiving the entirety of the child support payments ordered by the Ontario Superior Court since 2010. In these circumstances Ms. Leering could not have grown to rely upon the full amount of the child support payments ordered in the Ontario Order. Further, a retroactive variation of the Ontario Order to February 2010 will reduce the arrears owing by Dr. Leering but it will not require repayment of any overpayments made by Dr. Leering for child support. Therefore, it is unlikely that a retroactive child support order to reduce the child support obligation will work a hardship on Ms. Leering.

- [65] The final question on the retroactive variation of the Ontario Order is whether it is appropriate to vary the Ontario Order retroactively to February 2, 2010. The Supreme Court of Canada, in *D.B.S.*, established that the general rule is to award retroactive child support to the date upon which the parent seeking to alter the child support gives effective notice of the claim to the other parent. The Supreme Court also suggested that in normal circumstances it will be inappropriate to make a support award retroactive to a date more than three years before formal notice was given. At para. 123 of the decision Justice Bastarache says as follows:
- [123] Once the recipient parent raises the issue of child support, his/her responsibility is not automatically fulfilled. Discussions should move forward. If they do not, legal action should be contemplated. While the date of effective notice will usually signal an effort on the part of the recipient parent to alter the child support situation, a prolonged period of inactivity after effective notice may indicate that the payor parent's reasonable interest in certainty has returned. Thus, even if effective notice has already been given, it will usually be inappropriate to delve too far into the past. The federal regime appears to have contemplated this issue by limiting a recipient parent's request for historical income information to a three-year period: see s. 25(1)(a) of the Guidelines. In general, I believe the same rough guideline can be followed for retroactive awards: it will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice was given to the payor parent.
- [66] In this unusual case, it is my view that it is appropriate to vary the Ontario Order retroactively to February 2, 2010, because:
- a) Dr. Leering, the payor parent, seeks to reduce the child support amount based on a reduction of his Guidelines income;
 - b) the variation of the Ontario Order will not deprive the children of the child support payments to which they were entitled but will properly set the child support payments for the children based on Dr. Leering's income levels from 2010;
 - c) a retroactive variation of the child support will not work a hardship on Ms. Leering;
 - d) Ms. Leering would likely have known immediately after the revocation of Dr. Leering's registration as a chiropractor that his income would be reduced; and
 - e) Ms. Leering was aware that Dr. Leering had financial problems because she was notified of his consumer proposal in July 2011.
- [67] As a result of the foregoing findings, I am prepared to vary the Ontario Order, on a provisional basis, to reflect the child support payments set out in the following table. The adjusted child support awards for each year considers the adjusted income for Dr. Leering, the number of dependent children remaining at the time and the appropriate Guidelines tables in effect. Date Adjusted Line 150 Income Monthly Child Support Number of Months Number of Children Guidelines Reference 2010 \$20,398.89 \$322.00 11 2 May 1, 2006 2011

12,454.00 163.00 12 2 May 1, 2006 2012 23,329.00 369.00 12 2 December 31, 2011 2013
 29,161.62 450.00 6 2 December 31, 2011 261.00 6 1 December 31, 2011 2014 22,970.02 198.00
 12 1 December 31, 2011 2015 37,509.00 342.00 12 1 December 31, 2011 2016 22,412.90 193.00
 12 1 December 31, 2011 2017 17,932.45 150.00 11 1 December 31, 2011 128.00 1 1 November
 22, 2017 2018 32,840.67 308.00 12 1 November 22, 2017 2019 35,479.35 333.70 12 1 November
 22, 2017 2020 35,479.35 333.70 6 1 November 22, 2017

- [68] The income figures for Dr. Leering in 2020 are the same as his income in 2019 on the basis that his income will not change significantly in 2020.
- [69] With respect to special and extraordinary expenses, there will be a variation of the Ontario Order to eliminate the requirement for the payment of special and extraordinary expenses from 2010 on the basis that there is no evidence of any ongoing special or extraordinary expenses and no evidence that Ms. Leering has made any demand or request for payment of those expenses. Life Insurance
- [70] The Ontario Order requires Dr. Leering to obtain and maintain a life insurance policy, with the children as beneficiaries, so long as either child remains a child of the marriage. Dr. Leering applies to cancel this life insurance requirement.
- [71] I see no basis to cancel this order. The Ontario Order clearly contemplates that the policy is to stay in place so long as either child remains a child of the marriage. Dr. Leering concedes that Adam continues to be a child of the marriage as he is continuing his education. Therefore, the life insurance requirement should remain in the Ontario Order. FMEP Issues
- [72] Dr. Leering applies for an order that the FMEP suspend all enforcement proceedings and reinstate and/or return Dr. Leering's passport and driver's licence privileges. Dr. Leering also applies for a cancellation of all fees, charges and fines assessed by the FMEP. It is premature to make the orders requested by Dr. Leering against the Director of Family Maintenance Enforcement.
- [73] The orders I have made herein are provisional orders only. My orders will not have any force or effect until confirmed by the Superior Court of Ontario. Therefore, I will adjourn generally Dr. Leering's application as it relates to the Director of Family Maintenance Enforcement. Dr. Leering has leave to make further application for any of the relief he seeks against the Director at a later date if necessary. "Hori J."

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