

CANADA / JUDGMENT

Marsh v. Patterson

2025 BCSC 2585

COURT

Supreme Court of British Columbia

DECIDED

6 November 2025

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2025 BCSC 2585 Marsh v. Patterson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Marsh v. Patterson,

2025 BCSC 2585

Date: 20251106

Docket: E63608

Registry: New Westminster

Between:

Brianne Mae Gladys Marsh

Claimant

And

Lynden William Patterson

Respondent

Before: Associate Judge Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

D. Terpylo

Counsel for the Respondent:

M. Brandon

Place and Date of Hearing:

New Westminster, B.C.

October 28, 2025

Place and Date of Judgment:

New Westminster, B.C.

November 6, 2025

- [1] THE COURT: This is my decision in this matter. In this application, the respondent seeks to vary the child support he was ordered to pay by Master Cameron on January 26, 2022 ("the Cameron order"). The order was made on both an interim and without prejudice basis in the sum of \$1,453 per month.
- [2] The parties were in a marriage-like relationship from June 2013 to September 2021. There are two children of the relationship; a daughter, who will be 12 years old later this month and an 8-year-old son.
- [3] The order was based on the respondent's income in 2020 of \$94,840 comprised of employment income of \$91,541 plus another \$3,040 in income from refereeing hockey.
- [4] From January 2020 to December 2022, the respondent was the director of building operations for Seton Villa, a retirement facility. On January 3, 2023, the respondent was terminated from his employment. Previously, in November 2019, the respondent had been working with a company called BGIS but he was terminated and was off work for about one month before he started at Seton Villa.
- [5] When terminated from Seton Villa, he sent out applications for similar positions as director of facilities but was not successful. It appears that although Seton Villa terminated him without cause, they did set out in a letter to the respondent several reasons why they let him go. Basically, he did not meet their expectations for the position.
- [6] The respondent deposes that he took the first position offered to him which was with Mustang Contracting ("Mustang"), a non-union position that only paid \$20 per hour. He says he took it while he looked for better opportunities. He deposes he was looking for a union position and got himself put on the hiring list with IBEW. By January 2024, he was offered a position at Ainsworth Electric ("Ainsworth") as a pre-apprenticeship electrician and was paid approximately \$23 per hour.
- [7] He says as a condition of his employment he was required to take a Level 1 electrical course at BCIT, which was for about 10 weeks beginning in March 2024. While attending BCIT, he was placed on training Employment Insurance benefits. He completed his Level 1 course on May 17 and returned to work with Ainsworth as a Level 1 electrician. In the fall of 2024, he

had a pinched nerve that was causing him pain, so he was unable to work. His last day of work that year was on November 12. He then went on regular Employment Insurance benefits from November 2024 to January 2025.

- [8] On January 6, 2025, he began his Level 2 electrical course, again at BCIT. His EI status then changed back to training benefits. The Level 2 course ended on March 14, and he was able to return to work. He started back at Ainsworth and has been working full-time since then as a Level 2 electrician.
- [9] On January 31, 2023, the respondent wrote to the claimant's counsel to advise them about the apprenticeship program. He estimated his income at that time would be about \$44,000 per year. He sought a reduction in the child support payments to \$679 a month. In February, he unilaterally reduced his payments to that amount. According to the BCFMA records, he increased the payments to \$929 in November 2024. The respondent continued to referee hockey and at times he increased the amount he earned while he was on EI benefits.
- [10] The respondent deposes his income historically since separation has been:
- 2021 - \$97,750 (which would be \$95,392 from employment and \$1,617 from refereeing);
 - 2022 - \$107,775 (which would be \$96,832 from employment and \$7,020 from refereeing);
 - 2023 - \$51,478 (which would be \$33,994 from employment and \$13,475 from refereeing); and
 - 2024 - \$46,651 (which would be \$37,390 from employment, \$6,806 from EI benefits, and \$4,768 from refereeing).

When you add up the total income for each year, it may be less than the Guideline income proposed by the respondent but that is because some of the income is grossed up. The respondent anticipates his income for this year will still be \$46,651.

- [11] The claimant submits that the respondent has not been forthright in disclosing his income and that he has purposely reduced his income. She says when the Cameron order was made, even though the respondent was represented by counsel and had notice of the application, he did not put into evidence his current income, likely because he knew that his 2021 income was higher than 2020. He also failed to disclose his income from refereeing.
- [12] The claimant further submits that in November 2022 her application for a sharing of s. 7 expenses came before the court. However, the respondent had not filed his financial statement or responsive materials. On December 7, 2022, an order was made with respect to the sharing of the s. 7 expenses.
- [13] The claimant says throughout the relationship and following the separation, the respondent has always been employed in property management. He has a Red Seal certification as a building engineer and his income from this employment has generally increased over the years, reaching in excess of \$90,000. She submits that when the respondent lost his employment at Seton Villa, he did not take any steps to secure employment in the building

maintenance field. Instead, he made a unilateral decision to abandon his career and instead pursue an electrical apprenticeship which has reduced his income to approximately one-third of what it used to be.

- [14] After a hearing before Justice Baker, she delivered reasons for judgment on March 5, 2025 and noted the following about the respondent, starting at para. 5:
- [5] At the time the child support order was made, the respondent was employed in the building maintenance operations field and was earning approximately \$100,000 a year. Since that time he has lost his job and is in the process of requalifying for a new career as an electrician. He says his current income cannot support the child support order made in January 2022. However, the respondent's application to vary child support was not before me.
- [20] I agree that the respondent has been difficult to deal with, and has not responded promptly to matters that need to be dealt with. In his application response, he opposed a number of the orders in the application before me, but then consented to them during the hearing of the application. His actions have caused extra cost and delay to the claimant.
- [21] He is clearly frustrated by the litigation process, and has not been able to organize himself to bring before the court his application to vary child support and his other obligations to reflect his current employment circumstances.
- [23] However, in relation to his desire to vary child support and other obligations, the claimant has resisted his attempts because the respondent has failed to comply with his obligations for document production and financial disclosure, both currently and when he was represented by counsel at the beginning of these proceedings. He has failed to disclose bank accounts and relevant information on his F8 Financial Statements, and he has failed to comply with the claimant's detailed and reasonable requests for documents relating to his income, accounts, and employment, for at least one year.
- [26] I order that the respondent shall not bring on any application to vary child support or his obligation to pay s. 7 expenses, including daycare expenses, until he has satisfied the production order I made on February 28, 2025.
- [15] As noted earlier, the Cameron order was made on a without prejudice basis, so the respondent is not required to show a change in circumstances to vary or cancel that order (D.P.G. v. V.M.G., 2015 BCSC 1038). When this matter was before Justice Baker, the respondent had not yet filed an application. Justice Baker ordered that the respondent was not to bring any application to vary until he complied with the order that she made on February 27, 2025 requiring him to produce financial documents.

- [16] The claimant submits that the respondent has not fully complied with the production order and therefore cannot proceed with this application. On May 6, the respondent through his current counsel (who was not his counsel at the hearing before Justice Baker) sent a letter outlining the documents produced pursuant to the production order. I will summarize it as follows.
- [17] The respondent provided a 2024 tax return. He advised that he did not have his original tax returns for 2018 to 2020. They have checked online using his CRA account and he is unable to retrieve them. However, he has provided his notices of assessment for 2018 to 2023, as shown in his list of documents.
- [18] The letter goes on to say that the respondent was able to retrieve a November 2019 email from BGIS confirming his termination. Mr. Patterson does not have a copy of the actual termination letter. The letter goes on further to say Mr. Patterson's paystubs from Mustang Contracting from February 2023 to January 2024 are in his list of documents. Likewise, his paystubs from Ainsworth from January 7, 2024 to November 21, 2024 are also listed.
- [19] It is then noted that Mr. Patterson was on EI from November 2024 to March 2025. His paystubs from Ainsworth from March 27, 2025 to present were provided. The letter goes on to outline the monthly bank statements that have been provided from January 2018 to date, including accounts from RBC, Simply Financial, Manulife, Sun Life and with respect to a Bitcoin account.
- [20] The letter lastly sets out that he produced his vendor transactions from Langley Twin Rinks and that when he receives his current RBC statements that he has ordered, they will also be provided with respect to his historical refereeing income.
- [21] It is arguable that the respondent has not complied with the exact letter of the production order made by Justice Baker. However, he explained why he did not provide his 2018 to 2020 tax returns and he did provide the notices of assessment for those years and for other years. The claimant has been provided with information with respect to his income from 2018 to 2024, all of which is relevant for this application.
- [22] Furthermore, while he may not have provided the 2019 termination letter as ordered by the court, he did provide the email confirming his termination.
- [23] In the production order at para. 1(d), it says he was to provide copies of any and all documents and correspondence between the respondent and any employers for the period from January 1, 2018 to present, in relation to any and all instances of termination of his employment with any employer and for any reason. It appears that the email may satisfy that requirement.
- [24] For 2023, the year that his income was significantly reduced, he did provide all of his paystubs from Mustang and Ainsworth.

- [25] As for bank statements, it appears from the affidavit of the respondent filed on August 14, he has provided more than 700 pages of bank records, that include statements with respect to his Bitcoin accounts. The bank statements go back as far as January 2018, which is almost three years prior to the separation.
- [26] On June 11, 2025, Justice Morishita ordered that the respondent was to provide within 14 days an affidavit confirming compliance with the production order, which he did on June 24. As noted in para. 23 of Justice Baker's reasons for judgment, at the time of her order the respondent had failed to disclose bank accounts and relevant information on his financial statement, and he had failed to comply with the claimant's detailed and reasonable request for documents related to his income, accounts and employment.
- [27] I find that since that order was made the respondent has provided information and documents that are relevant to this application to vary child support and that this level of disclosure may be similar to what is required for a trial. In my view, it goes beyond what is needed for an interim application. While the exact letter of the production order may not have been satisfied, I find it complies with the intent of the order to ensure that the claimant has all reasonable and necessary documents related to an application to vary child support on an interim basis.
- [28] Accordingly, I will now determine the respondent's application on its merits. The issue before the court is not necessarily the earnings of the respondent since separation, but, rather, the issue is whether the respondent has been underemployed and continues to be underemployed. The task of the court on an interim application for child support is to put in place a reasonable arrangement which will serve the interests of the children and the parties until a thorough review of the financial circumstances can take place at trial. Any unfairness may be resolved by the trial judge (*Roche v. Chen*, 2012 BCSC 1290 at para. 32). The court may only be able to achieve rough justice on an interim application (*Stober v. Stober*, 2015 BCSC 743 at para. 80).
- [29] Section 216(2) of the Family Law Act, S.B.C. 2011, c. 25 provides that: "the court, to the extent practicable, must make the interim order in accordance with any requirements or conditions of this Act that would apply if the order were not an interim order."
- [30] In *V.A.P. v. L.W.P.*, 2004 BCSC 245, Justice McEwan heard an application for a reduction in child support due to a career change. The applicant in that case had worked in a mill but faced temporary layoffs from time to time, so he sought a career as a realtor. McEwan J. noted the following:
- [23] A diminution of income is an unfortunate consequence of his "new endeavour". These endeavours have apparently not paid anything significant until 2003. The respondent suggests that certain "expenses" ought to be deducted from the amount he earned in 2003, although he is quite unclear as to what that really means. The respondent's plan to improve himself has so far left him with a deficit of over \$60,000 over the years 2001-2003 compared to what he could have made in the job he left. While it may be that the respondent's change

of occupation will, in the long run, prove to be to his advantage, the timing of it has meant that one "unfortunate consequence of his new endeavour" is that the petitioner has had to support the children largely on her own. Given his options and his responsibilities, the respondent cannot be permitted to foist all of the consequences of his leap from an economic precipice on the petitioner. In other words, I do not think the respondent should be allowed to load the costs of his career adjustment on the petitioner, now, while he reaps the benefits in years to come.

- [31] The claimant relies on the decision of Justice Schultes in *K.J.P. v. B.S.J.G.*, 2024 BCSC 167. In that case, the father had left a position as a journeyman gas fitter to become an HVAC apprentice with a reduced income for about four years. Schultes J. found he was intentionally underemployed, so he ordered support be paid based on his usual earnings as a gas fitter. However, I find this case distinguishable for two reasons.
- [32] First, that applicant did not provide evidence that he could not find work as a gas fitter. Rather, he wanted to pursue a career that would allow him to work locally. I accept that Mr. Patterson did seek positions similar to his position at Seton Villa but he could not find such a position and, likely as well, he may not have been suitable for the job in the first place.
- [33] Second, Justice Schultes' decision followed an eight-day trial, not a 90-minute chambers hearing such as before me. He had the opportunity to fully investigate the issue with witnesses called and cross-examination. Any unfairness in my decision may be resolved by the trial judge, as I understand the trial in this matter could be as early as spring 2026.
- [34] The respondent is entitled to a reduction in his child support payments pending trial. The respondent immediately after being terminated from his position at Seton Villa sought a similar position but was unsuccessful. He decided to pursue a different occupation as an electrician. He has diligently pursued that occupation by taking the required courses and apprenticeships.
- [35] In January 2023, the respondent advised the claimant as to the new career he was pursuing and that he had entered an apprenticeship program. I cannot find that he is intentionally underemployed.
- [36] This is the order I am prepared to make. I will retroactively vary the Cameron order as follows. I grant the orders set out in paras. 2 and 3 of the notice of application which sets the payments for 2021 and 2022 that will commence on October 1, 2021.
- [37] Commencing on January 1, 2023, the respondent's Guideline income is imputed at \$65,000. I do so on the principle that the respondent cannot foist all of the consequences of his new career endeavours on the claimant. Based on that income, his payments commencing January 1, 2023 are reduced to \$1,009 per month. Then with the new tables that went into effect on October 1 of this year, his payment is increased to \$1,012 per month until further order of the court or written agreement of the parties.

[38] Now, briefly, are there any submissions on costs? Mr. Brandon.

[39] CNSL M. BRANDON: I feel like costs should be in the cause. It sounds like there was mixed success here.

[40] THE COURT: Mr. Terpylo.

[41] CNSL D. TERPYLO: Your Honour, I'm of the view that the claimant should be entitled to her costs of this application in any event of the cause because at the end of the day the claimant faced argument the respondent is intentionally underemployed and that has been the ruling today. Although the claimant did not achieve true success, she certainly did achieve success in my view. So that is my take on costs.

[42] THE COURT: Thank you. There was mixed success in this case. The applicant was able to reduce his child support payments and also in his application voluntarily increased payments for a partial year for 2021 and a full year for 2022. As for 2023, he was partially successful in reducing the child support payment. With that mixed success, I will order that costs of this application will be in the cause. Mr. Brandon, do you wish to retrieve the binders that I have or should they be recycled?

[43] CNSL M. BRANDON: No. I'll retrieve them.

[44] THE COURT: They will be at the Abbotsford SC Scheduling Office where I am sitting today.

[45] CNSL M. BRANDON: Okay. I'll have our agent pick them up.

[46] CNSL D. TERPYLO: Your Honour, just -

[47] THE COURT: Go ahead, sir.

[48] CNSL D. TERPYLO: - quick, quick matter of clarification. You said based on the October 1 - or the new table amount is \$1,012 per month, correct?

[49] THE COURT: Yes, the new table went into effect on October 1 of this year. It just increases it from \$1,009 to \$1,012.

[50] CNSL D. TERPYLO: Thank you. I just wanted to make sure I got that dollar amount correctly. Thank you, Your Honour.

[51] THE COURT: Thank you. We are adjourned.

"Krentz A.J."

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