

CANADA / JUDGMENT

O'Neil v. O'Neil

2025 BCSC 576

COURT

Supreme Court of British Columbia

DECIDED

28 March 2025

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2025 BCSC 576 O'Neil v. O'Neil

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

O'Neil v. O'Neil,

2025 BCSC 576

Date: 20250328

Docket: E153285

Registry: Vancouver

Between:

Rena Marie O'Neil

Claimant

And

Jeff O'Neil also known as Marc Bergeron

Respondent

Before: The Honourable Justice Latimer

Reasons for Judgment

Counsel for Claimant:

L. S. Dattilo

Counsel for Respondent:

A. E. Thiele

Place and Date Hearing:

Vancouver, B.C.

March 3 and 4, 2025

Written Submissions Received from the Respondent:

March 24, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 28, 2025

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Introduction

[1] This is a family law case involving parties who separated in July 2015 after a 17-year relationship.

[2] The parties entered into Minutes of Settlement dated February 16, 2016 (the "Minutes of Settlement") which provided, among other things:

6. SPOUSAL SUPPORT

6.1 The Husband shall pay to the Wife commencing March 1st, 2016 and payable on the first of the month thereafter pending the review as contemplated in paragraph 6.4 herein or a material change in circumstances as expressly set out in paragraph 6.3, the non-variable sum of \$5,414/month (herein the "Periodic Spousal Support").

6.2 The Spousal Support will be included by Wife in her taxable income and deductible by Husband.

Specified Material Change

6.3 The parties will be at liberty to apply to vary Periodic Spousal Support at any time should either party become disabled or unemployed. In the event of a disability, it is expected that the Periodic Spousal Support payments will adjust to take into account disability payments being received by either the Husband or the Wife, as the case may be, for such time as such payment are being received. In the event of unemployment of the Husband, the Periodic Spousal Support payments will be suspended pending the review but the Court will be able to retroactively adjust, if appropriate to do so. In any event, either party is at liberty to apply for variation should either of these events occur.

Specified Review

6.4 The Periodic Spousal Support will be payable on a non-variable basis, unless varied due to a specified material change, but will be reviewed by the parties on or after June 2023, [W.'s] graduation from high school. The review will be "de novo" and the Court will be entitled to consider both the ongoing obligation, quantum and if an ongoing obligation is found, further duration of such support payments. Pending the review, the Periodic Spousal Support payments will continue but the Court will be able to retroactively adjust to the date of the suspension, if appropriate to do so.

[3] On November 30, 2019, the parties divorced.

[4] On this application, the respondent, Jeff O'Neil also known as Marc Bergeron ("Mr. O'Neil"), applies for:

- a) An order that a review of spousal support shall occur pursuant to paragraph 6.4 of the Minutes of Settlement;
- a) An order that paragraph 6.1 of the Minutes of Settlement be varied so that Mr. O'Neil's obligation to pay spousal support is terminated forthwith;
- b) Costs.

- [5] The claimant, Rena O'Neil also known as Rena Peloso ("Ms. Peloso"), agrees that spousal support should be reviewed. She opposes termination of Mr. O'Neil's spousal support obligations and argues that she has a continuing entitlement to spousal support and that both quantum and duration should be set at the high end of the range based on the parties' current guideline incomes.

Issues

- [6] For the reasons that follow:

- a) I grant Mr. O'Neil's request that a review of spousal support occur pursuant to paragraph 6.4 of the Minutes of Settlement.
- b) I conclude Ms. Peloso has an ongoing compensatory and non-compensatory entitlement to spousal support.
- c) I order that paragraph 6.1 of the Minutes of Settlement be varied as follows:
 - i. Until end of August 2025, Mr. O'Neil's base gross annual income for the purposes of spousal support calculations is \$470,000.
 - ii. Commencing September 1, 2025, Mr. O'Neil's base gross annual income for the purposes of spousal support calculations is \$329,000.
 - iii. Ms. Peloso's base gross annual income for the purposes of spousal support calculations is:
 - (1) Employment income: \$119,531;
 - (2) Union, professional, or like dues: \$2,198.
 - iv. Pursuant to the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp) (Canada), Mr. O'Neil will pay to Ms. Peloso for her support the sum of \$5,801 per month, commencing April 1, 2025 and continuing on the first day of each and every month until and including August 1, 2025.
 - v. Pursuant to the Divorce Act, Mr. O'Neil will pay to Ms. Peloso for her support the sum of \$3,370 per month, commencing September 1, 2025 and continuing each and every month thereafter until and including July 1, 2030.
 - vi. Mr. O'Neil shall disclose the receipt of any bonuses to Ms. Peloso within seven days of receipt of those bonuses.
 - vii. In the event that Mr. O'Neil receives any such bonus, the bonus will be shared with Ms. Peloso as periodic spousal support in a proportion equivalent to the amount of spousal support payable from his base salary. The periodic spousal support will be payable within 31 days of receiving such a bonus.

Analysis

What legislation governs this Court's orders with respect to spousal support?

- [7] The parties were married and are now divorced. While the Minutes of Settlement refer to both the Family Law Act, S.B.C. 2011, c. 25 and the Divorce Act, neither enactment is referred to in the paragraphs addressing spousal support. The Divorce Act is referred to in the paragraphs addressing financial support for the children.
- [8] Both the Divorce Act and FLA are available as sources of jurisdiction. In light of the history of proceedings, and the availability of both statutes, the orders that follow will be grounded in the Divorce Act.

Is Ms. Peloso entitled to spousal support?

- [9] Section 15.2 of the Divorce Act prescribes the scope of the jurisdiction to award spousal support, the factors to be considered, and the objectives of a spousal support order. On a full review, the Court applies the same factors as in an originating spousal support application. Section 15.2 provides in part:

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

..

Factors

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

- (5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[10] Entitlement to spousal support is a threshold issue, which must be established before the Court analyzes the appropriate quantum: *Hagman v. Yasmina*, 2024 BCSC 807 at para. 149.

[11] There are three grounds for entitlement to spousal support:

- a) compensatory support;
- b) non-compensatory support; and
- c) contractual support.

(*R.J.L. v. T.G.S.*, 2023 BCSC 3 at para. 172.)

[12] In determining whether there are other grounds for entitlement, the Court begins with the objectives of spousal support. No objective is paramount and all must be considered.

[13] Between February 2016 and the date of this Order, Ms. Peloso had a contractual entitlement to spousal support arising from the Minutes of Settlement. In particular, paragraph 6.1, which is reproduced above.

[14] At the time of the Minutes of Settlement, the parties each resided with the children on a week-on/week-off basis. Mr. O'Neil's guideline income was agreed at \$400,000. Ms. Peloso's guideline income was imputed at \$77,000. The calculations in the Minutes of Settlement were prepared using a 50/50 net disposable income ("NDI") scenario.

[15] As noted, the Minutes of Settlement provided that spousal support was payable on a non-variable basis, unless varied due to a specified material change, but would be reviewed by the parties on or after June 2023, being the youngest child's graduation from high school.

[16] Is there any continuing entitlement to spousal support?

- [17] Compensatory entitlement arises where, as a result of the parties' roles during the marriage, one spouse suffers economic disadvantage, or has conferred economic advantages on the other. It most often arises when one spouse has sacrificed career opportunities to take on more of the family's household or child-rearing responsibilities. The longer the relationship, the greater the presumptive claim to an equal standard of living upon its breakdown: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-53.
- [18] Non-compensatory entitlement arises from the concept that spouses, by virtue of marriage, have some ongoing responsibility to care for one another. Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon the breakdown of a marriage. Need is a relative concept, and goes beyond the basic necessities of life. It is informed by the circumstances of the parties, including the length of the relationship and the standards of living enjoyed during and after the relationship: *Chutter* at paras. 54-55.
- [19] I find that Ms. Peloso has established entitlement to spousal support on both a compensatory and non-compensatory basis.
- [20] The relevant circumstances of the parties that inform this conclusion are the following.
- [21] Mr. O'Neil was born in 1967 and is currently 57 years old.
- [22] Ms. Peloso was born in 1972 and is currently 52 years old.
- [23] In June 1998, the parties began cohabiting. On June 26, 1999, the parties married.
- [24] The parties had two children:
- a) C. born in 2003 (currently 21 years old);
 - b) W. born in 2005 (currently 19 years old).

Child care responsibilities during the relationship

- [25] It is common ground that Ms. Peloso took time off from work when the children were born between 2003 and 2007.
- [26] Ms. Peloso deposes that the parties mutually decided that she would stop working in order to look after the children. While off work between 2003 and 2007, she deposes that she was responsible for all day-to-day aspects of child care including medical, education, and recreational.
- [27] Mr. O'Neil deposes that Ms. Peloso stopped working unilaterally. He deposes that he was equally involved in child care.

- [28] Mr. O'Neil's purported equal involvement in child care is disputed by Ms. Peloso, who deposes that Mr. O'Neil's position as a morning radio show host required him to leave the residence at approximately 5:00 A.M. Monday through Friday. She deposes that he would generally get back to their residence around noon and would have a nap in the afternoon. She deposes that he would then prepare for the next day's radio show in the evening.
- [29] Mr. O'Neil agrees he had to start work very early in the morning, around 5:00 AM. He says he returned to the residence around 11:00 AM and then took a one-hour nap. He has not explained whether, when, or how he would prepare for his on-air responsibilities.
- [30] Thus, it is common ground that Mr. O'Neil would not have been home to help with the children's morning routines. When he got home, he took a nap. I also find that it is more likely than not that after his nap, Mr. O'Neil would have put in some hours to prepare for the next day. Given that Ms. Peloso was off work and home with the children full time, I find it more likely than not that she bore the majority of the child care responsibilities during this period of time.
- [31] In 2007, Ms. Peloso returned to work on a casual basis as a registered nurse. Ms. Peloso's evidence is that:

When I returned to work in January 2007 it was in Public Health as opposed to in a hospital. This decision was made because Public Health offered casual positions and had a 8:30 A.M. to 4:30 A.M. set schedule as opposed to shift work. Mr. O'Neil and I jointly decided that returning to work in a casual position with these work hours would work best with his work hours, the Children's activity schedule, and allow the flexibility for me to continue to provide a significant amount of care to the Children, which I did.

- [32] Mr. O'Neil deposes that Ms. Peloso's decision to work in a casual position, was her own and not influenced by the children or their schedules. He deposes that the parties shared parenting responsibilities.
- [33] I find it more likely than not that Ms. Peloso's decision to eschew shift work was informed by Mr. O'Neil's work schedule and the need to have at least one parent available to assist the children with their morning routines. In any event, both parties and the children benefited from that decision as Ms. Peloso remained available to do so. I accept that the parties shared after school responsibilities for the children.

Child care responsibilities after separation

- [34] As noted, the parties entered into the Minutes of Settlement in or around February 16, 2016, when the children were approximately 13 and 11 years old, respectively.
- [35] In addition to property division and spousal support, the Minutes of Settlement address issues of custody, guardianship, parenting time, and child support. For the purpose of this application, the following provisions of the Minutes of Settlement are particularly relevant:

2. CUSTODY, GUARDIANSHIP AND PARENTING TIME

2.1 The parties shall share joint custody of their Children [W. and C.] pursuant to the Divorce Act.

2.2 The parties will remain Joint guardians of the Children and will share all parenting responsibilities as set out in section 41 of the Family Law Act.

2.5 The Wife will have the primary responsibility for setting up medical, specialist and dental appointments for the Children and the Husband will also have the ability to make such appointments, if required. Both parties shall have the obligation, when setting such appointments to advise the other party of the appointment date and time, it being understood and agreed that the appointment will be outside of the other party's working obligations to enable him/her to attend should he/she wish to do so.

2.8 The Children will reside with the Husband and the Wife on a weekly rotating basis with the Children's transition to occur on Sunday evenings between 7-7:30 p.m.

4. FINANCIAL SUPPORT FOR THE CHILDREN

Monthly Table Support

4.1 The Husband's Guideline Income for child support purposes Is agreed at \$400,000. The Wife's Guideline income for child support purposes is agreed at an imputed amount of \$77,000.

4.2 Commencing March 15th and continuing on the 15th day of each and every month thereafter until the Children are no longer "children of the marriage" as defined by the Divorce Act, or as varied from time to time, the Husband shall pay \$4,089 to the Wife for Monthly Table child support which is calculated using the set off approach.

[36] Ms. Peloso deposes that in November 2021, when W. was 16 years old, he began spending more extended periods of time at Mr. O'Neil's residence but without a consistent pattern. Ms. Peloso deposes that on January 28, 2022, when the children were 18 and 16 respectively, Mr. O'Neil advised Ms. Peloso that the children would be living with him full-time from that point forward.

[37] In contrast, Mr. O'Neil deposes that since on or about October 1, 2021, W. has lived with him full-time and C. has lived with him full-time since on or about January 5, 2022.

[38] I need not resolve this conflict in the evidence as there is no application to retroactively adjust support and it is common ground that since approximately end of 2021 or early 2022, both children have lived with Mr. O'Neil on a full-time basis.

Standard of living during the relationship

[39] The parties had an excellent standard of living during the relationship.

[40] They resided in a detached house, in a nice neighbourhood, close to schools for the children.

[41] They had two vehicles and would travel to Ontario to visit family.

Standard of living after separation

[42] After separation, Mr. O'Neil has maintained an excellent standard of living. He received an inheritance shortly before separation. He was able to use approximately \$250,000 to buy out Ms. Peloso's half interest in the former family home.

[43] Ms. Peloso moved out of the former family home and into a rental property. Eventually, she purchased a townhome in the same neighbourhood as the former family home. The townhome was not as spacious as the former family home but it did have a room for each of the children.

[44] Mr. O'Neil has been able to afford to provide the children with large gifts. For example, he bought them each their own vehicle and he pays for their insurance, gas, and parking. While Ms. Peloso has contributed to many of the children's expenses, and continues to pay child support, she has not been able to purchase them large luxury items like this.

[45] Mr. O'Neil emphasizes that the parties agreed to a 50/50 NDI scenario for support so that, any disparity in the means and needs of each spouse that has arisen since separation arises from Ms. Peloso's own decisions. For example, he argues that Ms. Peloso was intentionally under-employed until 2017. While he does not ask for a retroactive variation of support, he does argue that the Court should factor this alleged under-employment in when evaluating Ms. Peloso's means and needs.

[46] I do not conclude that Ms. Peloso was intentionally under-employed, as argued by Mr. O'Neil. I note that in the Minutes of Settlement, Ms. Peloso agreed to have the full-time salary of a nurse imputed to her for the purpose of child support.

[47] In 2019, Mr. O'Neil applied to have the Court impute a higher income to Ms. Peloso for child support purposes. By order dated October 30, 2019, the Court declined to do so. Although the legal foundation for awarding spousal support is different from that of child support (see *Kerr v. Baranow*, 2011 SCC 10 at para. 208), the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support.

[48] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history, and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37.

- [49] Just as the Court did not conclude it was appropriate to impute additional income to Ms. Peloso for under-employment in 2019, I do not find it appropriate to impute her additional income in the past now. Having regard, in particular, to her age, education and work history, I find her income and employment choices to be reasonable.
- [50] Her work history is set out in more detail below but suffice to say that she was out of the workforce between 2003 and 2007 after the birth of the children. She re-entered the workforce in a casual position in 2007 in order to be available to care for the children while Mr. O'Neil worked early mornings. Despite this, when the parties separated, she agreed to have the full-time annual income of a nurse imputed to her. However, given the time she had spent out of the regular workforce, she had lost many of her acute care skills and would have needed to be retrained to return to a hospital setting. She explains that the casual nature of her position made it difficult for her to secure full-time positions and also left her without certain benefits. She therefore transitioned to a part-time position in 2017 to secure benefits and a pension. She lacked the necessary seniority to secure a full-time position until 2020.
- [51] Mr. O'Neil also argues that Ms. Peloso chose to sell her townhome in 2023. He says this was an improvident investment decision and that the consequences of that sale, in terms of its impact on her means and needs, should not be visited upon him when the Court evaluates their respective standards of living.
- [52] There is no evidence upon which I can accede to Mr. O'Neil's argument that the sale of Ms. Peloso's townhome (or later purchase of her new home) was an improvident investment decision. As I will set out below, I am also satisfied that the sale of the townhome was, in part, precipitated by Ms. Peloso's insecurity over whether Mr. O'Neil would respect the support obligations he had assumed.
- [53] The disparity in standards of living has arisen for several reasons, but not the ones identified by Mr. O'Neil.
- [54] First, despite that the parties attempted to arrive at a 50/50 NDI scenario in the Minutes of Settlement, that did not in fact occur for a couple of reasons. One reason is that Mr. O'Neil's actual income has consistently been higher than the \$400,000 upon which the Minutes of Settlement were based. This was partially reflected in a court order made on October 30, 2019 ("2019 Order"), which provided among other things, that:

Mr. O'Neil's base gross annual income for the purposes of support calculations is \$410,000

[Ms. Peloso's] base gross annual income for the purposes of support calculations shall remain \$77,000.

The amount Mr. O'Neil is required to pay to [Ms. Peloso] under the Federal Child Support Guidelines table for British Columbia is \$5,227 per month.

The amount [Ms. Peloso] is required to pay to Mr. O'Neil under the Federal Child Support Guidelines table for British Columbia Is \$1,195 per month.

Each party's obligation to pay child support in accordance with the Federal and British Columbia Child Support Guidelines will be satisfied by Mr. O'Neil paying to [Ms. Peloso] the difference between the amounts each is required to pay under the Federal Child Support Guidelines table for British Columbia, which is \$4,032 per month, as of June 1, 2019.

Mr. O'Neil shall pay to [Ms. Peloso] a lump sum of 14.16% of his gross annual bonus income each and every year he receives a bonus, within 31 days of receiving such a bonus.

[55] As I will set out in more detail below when I discuss the parties' work history, in each subsequent year, Mr. O'Neil's income was higher than \$410,000 and much closer to \$500,000 per annum.

[56] Despite that child support obligations were adjusted to reflect the respective incomes of the parties (including Mr. O'Neil's bonuses), spousal support calculations remained non-variable. Even though Ms. Peloso's income has been higher than \$77,000, calculations to arrive at 50/50 NDI based on the parties' actual guideline incomes in each year shows that the non-variable spousal support has been consistently in Mr. O'Neil's favour in terms of NDI in light of the parties' actual respective guideline incomes.

[57] As well, as I will outline below, Mr. O'Neil has delayed satisfying his support obligations on a number of occasions and this has negatively impacted Ms. Peloso.

[58] In each of 2020 and 2021, Mr. O'Neil received a \$75,000 bonus but failed to disclose this to Ms. Peloso, despite the 2019 Order, until June 2022.

[59] In September 2021, Mr. O'Neil unilaterally reduced spousal support from \$5,414 to \$4,032 per month.

[60] On February 1, 2022, Mr. O'Neil unilaterally reduced spousal support from \$5,414 to \$2,977.70.

[61] As noted above, near the end of 2021 or the beginning of 2022, both children began living full-time with Mr. O'Neil. In April 2022, Mr. O'Neil served a notice of application to vary the quantum of spousal support. On June 30, 2022, the parties executed an agreement varying the 2019 Order including, among other things:

- a) Mr. O'Neil was no longer required to pay child support;
- b) Mr. O'Neil would resume paying spousal support in the sum of \$5,414 per month;

[62] In August 2022, Mr. O'Neil re-set his application to vary spousal support. Ms. Peloso set an application for various relief including, among other things, specified spousal support arrears. In September 2022, the following order was reached by consent:

1. BY CONSENT, the Respondent will pay to the Claimant the lump sum of \$2,764 for spousal support arrears for the period of September 2021 through December 2021, which sum is a net amount after tax considerations and the sum will not be claimed by either party for tax purposes.
 2. BY CONSENT, based on the Respondent's obligation to pay the sum of \$5,414 per month in periodic spousal support and the Respondent already having paid the sum of \$18,917 in spousal support for the period of January 2022 through June 2022 (the "Prior Paid Support"), the Respondent will pay to the Claimant the additional sum of \$13,563.50 forthwith for spousal support arrears for the period of January 2022 through June 2022 (the "Arrears").
 3. BY CONSENT, the Prior Paid Support and the Arrears are taxable for the Claimant and tax deductible for the Respondent.
 4. BY CONSENT, after taking into account the child support obligations of each party for the period of January 2019 through September 2022, the Respondent will pay to the Claimant the sum of \$18,777 for child support arrears.
 5. BY CONSENT, on the first of each month and commencing February 1, 2022, the Claimant will pay to the Respondent the sum of \$1,524 per month for child support.
 6. The Respondent will pay the sum of \$1,000 to the Claimant for costs thrown away.
 7. BY CONSENT, the remainder of the relief sought in Respondent's Notice of Application filed April 6, 2022 and the Claimant's Notice of Application filed August 22, 2022 is adjourned generally.
- [63] In July 2023, Mr. O'Neil ceased paying spousal support to Ms. Peloso. In later correspondence from his counsel, the position was taken that Mr. O'Neil was concerned that he would never get an agreement to a court date for a review of spousal support if he kept paying spousal support.
- [64] In August 2023, Ms. Peloso ceased paying child support to Mr. O'Neil. She deposes that her last payment to him was made on August 1, 2023; in contrast, he deposes that in January 2024, she had not made a child support payment since July 2023.
- [65] On or around January 15, 2024, the Family Maintenance Agency ("FMA") took steps to garnish Mr. O'Neil's wages for spousal support. Mr. O'Neil deposes:
- On January 31, 2024, 50% of my paycheque was garnished by FMA. On February 15, 2024, 70% of my paycheque was garnished by FMA. As a result, I was unable to make my mortgage payment in February.
- [66] The impact of FMA's garnishment on Mr. O'Neil demonstrates the sizeable arrears he owed to Ms. Peloso by January 2024.

- [67] The impact of the garnishment upon him is the other side of the impact that his own unilateral reduction in his support payments had on Ms. Peloso. Those impacts were described by Ms. Peloso in February 2024, in the following terms:
35. Mr. O'Neil's application to reduce or terminate spousal support, coupled with his unilateral reduction in spousal support payments, has caused me significant stress and anxiety about my current financial situation and the security of my future financial situation.
 36. The unilateral reduction of spousal support, combined with the change in living arrangements for the Children, has left me in a financially vulnerable position. I was not expecting either of these reductions to occur, had no warning from Mr. O'Neil, and was unable to make a financial plan to deal with the consequences of suddenly seeing my monthly funds decrease by thousands of dollars.
 37. I have been unable to plan any vacations or purchases because of the decrease in my support payments and my fear of a financially uncertain future.
 38. I am extremely concerned about what my retirement will look like as I had been budgeting based on the support payments I was receiving. A termination of spousal support or insufficient spousal support, coupled with my reduced pension as a result of time off work and working a casual position in order to care for the Children, would leave me in a poor position financially compared to where I expected to be at retirement age.
 39. Please note that I was only provided with support payment cheques until June 2023. I assumed that Jeff, given his history, would not make further payments without the court's influence. The lack of support payments made considering staying in my townhouse with mortgage payments and all other costs impossible. Therefore, I made the decision to sell.
 46. As a result of Mr. O'Neil's actions, there have been a serious negative impact on my relationship with the Children. The ongoing involvement of the Family Maintenance Enforcement Program ("FMEP") and lawyers has resulted in Mr. O'Neil continually speaking to the Children about our financial affairs. The Children have been told that I am lying, stealing and trying to take all their money and home.
 47. On October 13, 2023 [W.] accused me of having Mr. O'Neil's wages garnered and stealing money from them. He requested that I retract my involvement with FMEP. [W.] no longer has any telephone contact with me.
- [68] Mr. O'Neil deposes that the spousal support arrears were paid in full in 2024 and that he has been receiving child support payments regularly since September 2024.
- [69] The affidavit evidence before me establishes that as of January 2025, Mr. O'Neil owed Ms. Peloso \$8,655.29 in spousal support arrears, interest, and default fees.

[70] Thus, the evidentiary record simply does not support Mr. O'Neil's efforts to explain away the disparity in the means and needs of the parties on the basis that Ms. Peloso was inappropriately underemployed or somehow improvident in her savings and investments.

[71] A consideration of the means and needs of the parties can include their assets and debts which are summarized as follows:

Asset

Mr. O'Neil

Ms. Peloso

Real Property

\$1,999,000

\$1,500,000

Financial Assets

\$19,097.89

\$17,518.10

RRSP

\$91,064.52

\$363,389.23

Employment Pension

\$627,381 Corus RRSP

+ share of Ms. Peloso's employment pension

Ms. Peloso's employment pension minus share owing to Mr. O'Neil under Minutes of Settlement

Debts

Mr. O'Neil

Ms. Peloso

Mortgage

\$996,717

Home LOC

\$620,000

\$19,000

Personal LOC

\$8,955.81

Credit Cards

\$1,294.56

\$10,051.39

- [72] Mr. O'Neil argues that Ms. Peloso's pension is very valuable and likely equally valuable to his own Corus RRSP. I am unable to accept that argument. Making such a valuation of Ms. Peloso's pension would be speculative in the absence of any expert evidence as to its valuation.
- [73] By December 31, 2023, Ms. Peloso had 13 years and 7 months of contributory service and 10 years and 1.3 months of pensionable service. She had made \$83,388.10 in contributions plus interest. I am satisfied that Ms. Peloso's pension is lower than it would have been had she not worked in a casual position during the children's school years.
- [74] Mr. O'Neil also deposes that Ms. Peloso has a claim to her mother's estate which he believes is valued over \$1 million. The value of the estate is based largely on the value of her mother's home. He argues that Ms. Peloso's mother's home was transferred to her sister for two dollars shortly after a court appearance. He suggests this transfer was inappropriate and the sister is holding the house in trust for the mother's estate.
- [75] In January 2025, Ms. Peloso deposed as follows:
14. In response to paragraph 25 of the Respondent's 9th Affidavit, my 75 year old mother is still very much alive. The Respondent's mother is also living.
 15. My mother is living in a facility due to her dementia and mobility concerns. She pays roughly \$6,000 monthly to live there. Her rent and medical expenses are expected to continue to climb. Any funds or assets she has are being used/reserved for her living expenses and are not for the use or planning for my sister or myself.
 16. In further response to paragraph 25 of the Respondent's 9th Affidavit, I deny the Respondent's inference that I am acting nefariously. My parent's home was transferred to my sister, Stephanie Peloso, as she is Power of Attorney for my mother given that she is geographically closer. This will allow my sister to sell my mother's home, in order to continue to pay for her care.
- [76] I accept Ms. Peloso's evidence on this point. I find the notion that Ms. Peloso will receive an inheritance to be speculative. Her mother's house has already been transferred to her sister. Her mother is still alive. I do not find that her sister is holding that house in trust for her living mother's eventual estate. I refuse to account for the possibility of a future inheritance in these circumstances in assessing the means and needs of the parties.

- [77] Third, Mr. O'Neil argues that the expenses set out in Ms. Peloso's financial form are artificially inflated. He argues that I should infer that her boyfriend is contributing to at least some of those expenses. For example, the boyfriend has co-signed on Ms. Peloso's mortgage and is on title to her house. From this, Mr. O'Neil argues that I should assume Ms. Peloso's boyfriend is also sharing in her housing expenses. He also argues that her monthly food expenses of \$800 are too high for a single person.
- [78] Ms. Peloso argues that her financial statement is her sworn evidence of what her monthly expenses are, and there is no evidence to the contrary. She notes that Mr. O'Neil has claimed \$3,500 per month for three people for food. Her own claim is less than a third of that.
- [79] I accept Ms. Peloso's evidence that she used the net sale proceeds from the sale of her townhome to purchase her new residence in 2024. I accept her evidence that the bank required her boyfriend to go on the mortgage and title. I accept that he has his own home and does not contribute to her housing expenses. To conclude otherwise in the face of her sworn evidence and in the absence of any cross-examination on it, would be pure speculation. There is no basis on which I can conclude that the purchase of her new residence in 2024 was an improvident investment used to increase her needs. She would always have had housing costs whether she rented or owned. The value of her new home was not extravagant. It was, in fact, less than Mr. O'Neil's own home.
- [80] Next, I will first address certain arguments that were made in respect of Mr. O'Neil's asset base.
- [81] First, Mr. O'Neil argues that I should exclude a sum to account for the fact that his interest in the family home was secured using an inheritance which is excluded property. As I have noted, Mr. O'Neil was able to pay Ms. Peloso for her interest in the family home, in part, by using an inheritance of \$250,000. Mr. O'Neil asks that I value and then exclude at least double of this contribution (\$500,000) from consideration of his means. He says I should double the value because if he had invested the money rather than invested it in the family home, the money could have doubled.
- [82] I have not been pointed to any authority or evidence that could ground a finding that this contribution should be valued at two times the amount paid. I reject the argument that I should do so as lacking any legal or evidentiary basis.
- [83] I need not resolve whether or not to exclude the \$250,000 from Mr. O'Neil's asset base because I conclude that whether or not I exclude it, there is a significant discrepancy in the parties' means and needs.
- [84] If the \$250,000 inheritance is excluded, that discrepancy is as follows:

Mr. O'Neil

Ms. Peloso

Total non-taxable assets

\$1,146,803

\$482,793

Total taxable assets

\$719,445.52

Plus Mr. O'Neil's share of Ms. Peloso's employment pension

\$363,389.23

Plus Ms. Peloso's share of her employment pension

[85] If the \$250,000 inheritance is not excluded, the discrepancy is:

Mr. O'Neil

Ms. Peloso

Total non-taxable assets

\$1,396,803

\$482,793

Total taxable assets

\$719,445.52

Plus Mr. O'Neil's share of Ms. Peloso's employment pension

\$363,389.23

Plus Ms. Peloso's share of her employment pension

Current circumstances of the children

[86] Next, I will address the current circumstances of the children because Mr. O'Neil argues that the expenses he incurs on their behalf significantly reduce his means to pay spousal support.

[87] As noted, both children are over the age of majority. C. is 21 years old and W. is 19 years old.

[88] C. is currently in his fourth year at a college. W. is currently enrolled in an undergraduate program at a university.

[89] Mr. O'Neil deposes that C. plans to apply for a Masters program or to enroll in the Justice Institute after he graduates. There is no evidence of C.'s scholastic achievements at college in the record before me.

- [90] Mr. O'Neil deposes that W. plans to apply for law school after he graduates. There is no evidence of his scholastic achievements at university in the record before me.
- [91] There is no evidentiary basis on which I can assess the likelihood of either child's plans after they complete their first degree.
- [92] For the first year of university, W. lived in residence. C. and W. currently both live full-time with Mr. O'Neil.
- [93] Mr. O'Neil argues that Ms. Peloso does not contribute to the children's support. That is incorrect. Ms. Peloso pays child support in respect of both C. and W.
- [94] C. works part-time. His line 15000 income for 2023 was \$36,576.76. W. works part-time. His line 15000 income for 2023 was \$18,225.54. Both C. and W. therefore have a demonstrated ability to contribute to their own expenses.
- [95] In January 2025, C.'s RESP balance was \$38,467.49. In January 2025, W.'s RESP balance was \$57,184.77.
- [96] At some point after separation, Mr. O'Neil bought each of the children their own vehicle. Mr. O'Neil deposes that his residence is a 1.5 to 2-hour commute from the university, "whether by car or transit". Mr. O'Neil deposes that W. commutes to university by car. Mr. O'Neil pays insurance, gas, and parking for both W. and C. Mr. O'Neil deposes that he can no longer afford W.'s car insurance "so we will use some of his school funds for that moving forward".
- [97] I do not find Mr. O'Neil's claim of car expenses for C. and W. to be a reasonable basis upon which to conclude that Mr. O'Neil lacks the means to pay reasonable spousal support that Ms. Peloso is entitled to. The personal use of vehicles for adult children, and all the attendant expenses, are a luxury that Mr. O'Neil is free to provide if he so chooses, but not at the expense of paying reasonable spousal support to Ms. Peloso. This is particularly so given that both C. and W. are over the age of majority, have employment income, free housing, and that on Mr. O'Neil's own evidence, the commute to school is roughly the same whether the children take transit or a private vehicle.
- [98] Mr. O'Neil deposes that he intends to use C. and W.'s RESPs to pay for some of the expenses attendant upon each of C. and W. having and operating their own personal vehicle. If Mr. O'Neil does what he deposes he intends to do, then Ms. Peloso may be entitled to an equal division of the balance of the RESP because the Minutes of Settlement provide:

RESP Accounts

4.6 The Children's RESP accounts will be considered Family Property in the event that the funds are not used for either or both children's post-secondary educational needs such that the balance will be divided equally between the parties.

4.7 The parties will firstly rely on the RESPs accounts for the Children before such expenses become a sharable section 7 expense.

The parties' work history and incomes for the purpose of support

Mr. O'Neil

[99] Mr. O'Neil moved to Vancouver in 1995 to host the evening show at CFOX for Shaw Communications. He has worked at CFOX since that time. His starting salary was \$28,500 for the first six months. After six months, his salary increased to \$40,000 per year.

[100] In or around 1998, the year the parties began cohabiting, Mr. O'Neil was promoted to the afternoon drive host and his salary increased to roughly \$65,000 per year.

[101] In or around 2002, Mr. O'Neil was promoted to morning show host, where his salary was roughly \$120,000 per year.

[102] In or around 2015, Mr. O'Neil signed a contract for \$400,000 per year.

[103] Mr. O'Neil's income has been as follows:

- a) 2019: \$489,764
- b) 2020: \$498,899
- c) 2021: \$518,875
- d) 2022: \$484,981
- e) 2023: \$518,417
- f) 2024: \$498,333.36

[104] Mr. O'Neil remains currently employed as a morning radio show host with a gross base annual salary of \$470,000. He deposes that the company is facing financial difficulties. In February 2025, his employer presented two options regarding changes to his role and employment effective September 2025. Mr. O'Neil deposes that he intends to accept Option 1 which is as follows:

Option 1:

Retain Full-Time employment with Corus Entertainment Inc., ("the Company"). for the position of Announcer, Morning Show, Senior effective September 1, 2025, with the following amendments to your employment agreement dated June 11, 2015 and amendment letter dated June 19, 2020 as follows:

1. Term: Your employment will commence September 1, 2025, for an indefinite term, subject to the separation provisions set forth in your employment agreement.

2. Compensation: Your annual base salary will be \$329,000.00, payable in 24 semi-monthly installments, less statutory and applicable withholdings, including applicable benefits premium contributions.
3. Company Benefits: You will continue to participate in the Corus Benefit Plan.
4. Pension Plan: You will continue to participate in the Corus defined contribution (DC) registered pension plan.

S. Vacation: There will be no changes to your vacation entitlement.

All other terms of your employment agreement dated June 11, 2015 and Amendment Letter dated June 19, 2020, will remain unchanged.

[105] Option 2 provides for working notice for 24 months starting September 1, 2025 at Mr. O'Neil's current annual salary being \$470,000.

[106] I accept that Mr. O'Neil will take Option 1.

[107] Thus, until end of August 2025, Mr. O'Neil will have an annual base salary of \$470,000 and effective September 1, 2025, Mr. O'Neil will have an annual base salary of \$329,000.00. Mr. O'Neil remains eligible for bonuses which, as set out above, have been significant in the past.

Ms. Peloso

[108] Ms. Peloso moved from Toronto to Vancouver for a full-time nursing position in or around 1997.

[109] In 1998, the year the parties began cohabiting, Ms. Peloso worked full-time for Medisys Health Group. Eventually, Ms. Peloso left that position to work for NAVCan as a community health nurse.

[110] In or around 2003, Ms. Peloso shifted to working part-time as a nurse for Fraser Health.

[111] When C. was born, in 2003, Ms. Peloso stopped working.

[112] In 2007, Ms. Peloso returned to work on a casual basis as a registered nurse. This decision has negatively impacted her in a number of ways. First, casual positions with public health did not accrue seniority in the same way that regular positions did. Seniority for casual positions was tracked by hours worked, as opposed to from the employee's start date. That means that Ms. Peloso did not accrue seniority during holidays, days off, or leaves.

[113] This lack of seniority has impacted her in other ways:

- a) Her choice of vacation time is restricted;

b) Although she would have liked to, she was unable to secure a position on a different team in Public Health in October 2021 when all registered nurses had to reapply for their positions; and

c) She has not received interviews for positions that are posted because of her low seniority.

[114] In addition, casual positions did not provide benefits. She only began receiving pension benefits in January 2010. As a result, she has lower contributions to her pension than she otherwise would.

[115] She also has not kept her acute care skills current and she deposes that this would be required to return to a hospital setting. Ms. Peloso deposes that she would require further training to pursue such a path.

[116] In 2017, Ms. Peloso began a part-time position. She began working full-time in July 2020.

[117] Ms. Peloso's income has been as follows:

a) 2019:

- i. Employment income: \$84,310
- ii. Union, professional, or like dues: \$2,277

b) 2020:

- i. Employment income: \$97,926
- ii. Union, professional, or like dues: \$1,770

c) 2021:

- i. Employment income: \$102,696
- ii. Union, professional, or like dues: \$1,895

d) 2022:

- i. Employment income: \$95,056
- ii. Union, professional, or like dues: \$1,849

e) 2023:

- i. Employment income: \$90,071
- ii. Union, professional, or like dues: \$2,387

f) 2024:

- i. Employment income: \$119,531
- ii. Union, professional, or like dues: \$2,198

[118] Ms. Peloso is currently employed full-time as a public health nurse with Fraser Health. She works in the Enhanced Family Visiting program with vulnerable mothers and babies.

Conclusion on Entitlement

[119] As I have set out above, Ms. Peloso has a strong compensatory and non-compensatory claim to support in light of all the considerations set out above.

[120] By way of a brief summary of those considerations, Ms. Peloso is a registered nurse in her 50s. As a result of the parties' respective roles during their marriage, she has suffered economic disadvantages and conferred economic advantages on Mr. O'Neil. In particular, she was out of the workforce altogether for a number of years for child-rearing obligations. She returned to the workforce in a casual position so that she would be available to assist the children with their morning routines while Mr. O'Neil was able to focus on his career as a morning radio show host. This was a long marriage and she has a presumptive entitlement to an equal standard of living upon its breakdown. Having regard to the standard of living the parties enjoyed during the marriage, and after separation, there is a significant gap between the needs and means of these parties.

Quantum

[121] Once entitlement to support is established, the issue is the appropriate quantum. Quantum includes both the amount and duration of spousal support. The basis of entitlement informs the determination of the amount and duration of support.

[122] British Columbia courts have endorsed the Spousal Support Advisory Guidelines ("SSAG") as a useful tool in determining the amount and duration of support: Chutter at para. 100.

[123] Where the payor has a gross annual income of more than \$350,000, as Mr. O'Neil will for the next few months, the formulas should no longer be automatically applied to divide income beyond that threshold. Instead, the court will have to exercise discretion in fixing the amount of spousal support including by continued use of the formulas as one method of arriving at an amount in a particular case.

[124] In the particular circumstances of this case, I have found the SSAG remains a useful method to arrive at an amount for spousal support. Neither party urged me to depart from the SSAG. The parties relied upon the SSAG in reaching the Minutes of Settlement and also in advancing their respective positions before me. In any event, Mr. O'Neil's base gross annual income will be below \$350,000 by September.

[125] Under the SSAG there are two basic income-sharing formulas for determining quantum and duration of spousal support: the "with child support" formula, which applies in cases where there is a concurrent child support obligation; and the "without child support" formula, which applies in cases where there are no dependent children: Chutter at para. 108.

- [126] In this case, the "with child support" formula applies and it requires software to calculate. This formula has several variations depending on parenting time arrangements. There is a basic formula, a shared custody formula, a split custody formula, the custodial payor formula, and the adult child formula. In this case, the custodial parent will be the payor, and that is the formula that applies.
- [127] As set out above, Mr. O'Neil's base gross annual income is \$470,000 until the end of August 2025. Starting September 1, 2025, Mr. O'Neil's base gross annual income is \$329,000.
- [128] Ms. Peloso submits that the Court may choose to impute a higher income to Mr. O'Neil by averaging the bonuses he has received over the last three years. She acknowledged, however, that such an approach may work an unfairness to Mr. O'Neil given that his income will be reduced in September.
- [129] I am persuaded that the upcoming change in Mr. O'Neil's employment circumstances creates sufficient uncertainty that it would be unfair to simply impute him a higher income based on averaging the bonuses he has received over the last three years. However, Mr. O'Neil has reliably received fairly significant bonuses and remains eligible for them. In fairness to Ms. Peloso, given her contributions to Mr. O'Neil's career in the form of her domestic labour, there must be a mechanism to adjust the spousal support to account for such bonuses if and when they are received.
- [130] In the result, I find that Mr. O'Neil's base gross annual income for spousal support purposes is \$470,000 until the end of August 2025. Starting September 1, 2025, Mr. O'Neil's base gross annual income for the purposes of spousal support calculations is \$329,000.
- [131] Mr. O'Neil shall disclose the receipt of any bonuses to Ms. Peloso within seven days of receipt of those bonuses. In the event that Mr. O'Neil receives any such bonus, the bonus will be shared with Ms. Peloso as periodic spousal support in a proportion equivalent to the amount of spousal support payable from his base salary. The periodic spousal support will be payable within 31 days of receiving such a bonus.
- [132] In this case, Ms. Peloso's income for spousal support purposes will be determined by taking into account:
- i. Gross annual employment income of \$119,531; and
 - ii. Union, professional, or like dues of \$2,198.
- [133] In this case, using those figures for 2025, the custodial parent pays formula results in a range of spousal support of \$4,972 to \$6,630 per month until the end of August 2025, for a duration of 8.5 to 17 years from the date of separation. Starting September 1, 2025, using those figures, the custodial parent pays formula results in a range of spousal support of \$2,889 to \$3,852.

- [134] Ms. Peloso asks that I set spousal support at the high end of the range for both quantum and duration. Mr. O'Neil asks that I terminate spousal support now or, in the alternative, set it at the low end of the range for both quantum and duration.
- [135] I have determined that spousal support should be set at the midpoint of the range in respect of quantum, being \$5,801 per month, commencing April 1, 2025 and continuing on the first day of each and every month until and including August 1, 2025. Pursuant to the Divorce Act, Mr. O'Neil will pay to Ms. Peloso for her support the sum of \$3,370 per month, commencing September 1, 2025 and continuing each and every month thereafter until and including July 1, 2030.
- [136] As set out above, I have also determined that spousal support should be set at the higher end of the range for duration. The spousal support obligation will end on July 30, 2030 and both parties should plan for that.
- [137] In making this determination, I have not overlooked Mr. O'Neil's evidence that he fears his employment may be somewhat precarious. Since at least 2022, Mr. O'Neil has given evidence that he may soon lose his job. He has also deposed that he has suffered from some throat issues, since at least 2020.
- [138] Despite his longstanding concerns, Mr. O'Neil remains employed in a highly remunerative position. While, I accept that the company is facing some financial uncertainty and that he has been asked to take a pay cut, in choosing Option 1 from his employer, he is betting on his own longevity in the industry.
- [139] There is also no evidence that Mr. O'Neil has a current plan or needs to work less as a result of his throat issues.
- [140] In making these determinations on quantum and duration, I have considered that Ms. Peloso has a relatively strong compensatory and non-compensatory claim. She gave up career opportunities for Mr. O'Neil's benefit and to accommodate child care. She has suffered economic disadvantage as a result of the parties' respective roles during the marriage and her historic child care responsibilities. She has a decent income but limited room for income growth. She is in her 50s. It is unrealistic that she undertake additional training to benefit her earning potential in her particular circumstances because this would significantly impair her ability to meet her financial needs. Significantly, the economic impacts of the parties' arrangement include an impact to her pension. This was a long marriage and the parties' standards of living after separation have been somewhat disparate. Although there is evidence that Ms. Peloso is in a romantic relationship, her boyfriend is not presently contributing to her monthly expenses. That Ms. Peloso has a romantic partner is no basis for a reduction or termination of spousal support in these circumstances.

[141] On the other side, Mr. O'Neil has a very high income, significant assets, and the ability to pay spousal support. He is in the same job that Ms. Peloso's efforts helped him to hold onto and advance in through the early years of their marriage. His income in this same role has continued to grow. Ms. Peloso is entitled to share in the increase in his income given the length of the marriage and the roles adopted during marriage.

Costs

[142] Ms. Peloso is entitled to her costs of this application.

"Latimer J."

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