

CANADA / JUDGMENT

P.D.D. v. A.G.H.

2025 BCSC 278

COURT

Supreme Court of British Columbia

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2025 BCSC 278 P.D.D. v. A.G.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.D.D. v. A.G.H.,

2025 BCSC 278

Date: 20250220

Docket: E22360

Registry: Nelson

Between:

P.D.D.

Claimant

And

A.G.H.

Respondent

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Counsel for the Claimant

J.K. Shkooratoff

Counsel for the Respondent

M.G. Perry

Place and Dates of Hearing:

Nelson, B.C.

January 11 and 19, May 10 and September 17, 2024

Place and Date of Judgment:

Nelson, B.C.

February 20, 2025

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Introduction

- [1] A.G.H. applies for a variety of orders, primarily related to child support of the parties' child, I. The father, P.D.D., opposes most of the orders sought.
- [2] This application was filed on December 2, 2022. The application first came on for hearing before me on January 3, 2023. At that time, P.D.D. had not filed an application response and had recently retained counsel. On January 3, 2023, I adjourned the application at P.D.D.'s request, ordered that P.D.D. had until February 10, 2023 to file his application response materials, that the application was to be scheduled on the next available assize, with a half-day time estimate, and ordered costs of the appearance to A.G.H.
- [3] P.D.D. filed his application response and supporting affidavit on February 10, 2023, as well as an incomplete Financial Statement Form 8. The matter finally came back on for hearing on January 11, 2024, now with a one-day time estimate. Some of the delay in having the matter come back on for hearing was associated with a criminal trial being held in Nelson that prevented the application being heard.
- [4] The hearing did not finish on January 11, 2024 and further continuations were held on January 19, May 10, and September 7, 2024. Over that time, the parties' materials ballooned and their positions shifted, with numerous additional affidavits being filed. Counsels' failure to accurately estimate the time required for this application, coupled with the incremental and often delayed filing of additional materials, made this a most inefficient hearing, and has rendered making this decision much more time consuming than it would otherwise have been.
- [5] As set out in her notice of application, A.G.H., who was at that time self-represented, applied for the following orders:
1. An Order for arrears on Child Support for March 1 2021 through December 2022 payable by Paul Dowell to Alison Hamper in the amount of \$7,707 pursuant to BCFLA s7(147)(1) and by the Order pronounced in the Supreme Court of British Columbia dated January 18 2021 issued by Justice Verhoeven.
 2. An Order for corrected proportional 2020 income amounts on Section 7 Special and Extraordinary Expenses payable by Paul Dowell to Alison Hamper in the amount of \$905.86 pursuant to s7(156)(1)(b) of the BC Family Law Act by the Order pronounced in the Supreme Court of British Columbia dated January 18 2021 issued by Justice Verhoeven for dates February 1 2021 through November 2022.
 3. An Order to vary the Court Order pronounced by Justice Verhoeven in the Supreme Court of British Columbia on January 18 2021, to strike number 11. "BY CONSENT, the amount of child support payable to the Respondent shall be reduced by \$400 per month on account of the claimants parent access costs pursuant to section 10 of the Federal Child Support Guidelines."

4. An Order pursuant to the Federal Child Support Guidelines Section 19 Imputed Income (1)(e) (f)(g) and (2) that the party Paul Dowell is found to be a resident of British Columbia and is imputed to have:
 - a. A gross annual income of \$147,160 for the purposes of calculating any support on the Federal Child Support Tables in the year 2022
 - b. A gross annual income of \$174,796 for the purposes of calculating any support on the Federal Child Support Table in the year 2023.
5. An Order pursuant to the Federal Child Support Guidelines for Section 3 Child Support based on the Federal Child Support Tables, that the party Paul Dowell will pay the party Alison Hamper a monthly payment of \$1549.41 for the support of their child [I.] DOB April 27 2010, commencing on January 1 2023 and continuing on the 1st day of each and every month thereafter, for as long as the child is eligible for support under the Family Law Act or until further agreement of the parties or Court Order. This Order will vary the existing Order pertaining to monthly child support amounts pronounced by the Justice Verhoeven in the Supreme Court of British Columbia on January 18 2021.
6. An Order pursuant to the Federal Child Support Guidelines for Section 7 Special and Extraordinary Expenses that the party Paul Dowell will pay to the party Alison Hamper a monthly amount of \$440, commencing on January 1 2023 and continuing on the 1st day of each and every month thereafter, for as long a the child is eligible for support under the Family Law Act or until further agreement of the parties or Court Order. This amount includes the child's special and extraordinary expenses set out in the Order pronounced by Justice Verhoeven. All other Section 7 Special or Extraordinary Expenses are to be agreed between the parties in writing in advance of incurring the expense. This Order will vary the existing order pronounced by the Justice Verhoeven in the Supreme Court of British Columbia on January 18 2021.
7. Pursuant to the Federal Child Support Guidelines, for as long as the child is eligible to receive child support, an Order that Paul Dowell and Alison Hamper will exchange:
 - a. copies of their respective income tax returns including all attachments, not later than May 15th each year; and
 - b. copies of any Notice of Assessment or Reassessment provided to them by the Canada Revenue Agency, immediately upon receipt.

The parties shall conduct a review of child support and the child's special or extraordinary expenses on an annual basis and payments shall be adjusted as necessary by May 31 of every year, commencing May 2024.

8. An order pursuant to Section 213(2)(d) of the Family Law Act that the party Paul Dowell will pay \$5000 to the party Alison Hamper if he fails to file or otherwise provide financial information in accordance with this Order. This award is in addition to and not in place of any other remedy under the Act.
9. An Order pursuant to the Court Order Enforcement Act s.5(48)(1) and by the Order pronounced by Justice Blok in the Supreme Court of British Columbia on July 18 2022, for costs payable of \$150 by Paul Dowell to Alison Hamper.
10. An Order pursuant to Section 213 (2) (d) (iii) of the Family Law Act; to impose a fine of \$5000 on Paul Dowell for failing to comply with the Supreme Court Family Rules 5-1 (15)(a).
11. An Order pursuant to Rule 15-4(22) Enforcement of Orders and Rule 16(13)(a)(b) and 14)(a) for Costs arising from improper act or omission by Paul Dowell in Supreme Court on January 18 2021, assessed by the Court as more than ordinary difficulty with the amount to be assessed by a registrar.
12. An Order pursuant Rule 16(1)(d) and (14)(b) and Appendix B, Supreme Court Family Rules for Costs (deemed ordinary difficulty not assessed by the Court) at \$6250.00.
- [6] In his application response, P.D.D. opposed all orders sought other than an order for costs payable by him in the amount of \$150, as requested in paragraph 9, and the exchange of income tax documents by May 15 each year, in partial agreement with paragraph 7. He explained his refusal to consent to the annual review of child support and special and extraordinary expenses on the basis of his position that A.G.H. is purposefully under-employed and must be imputed with an appropriate income.
- [7] A significant period of time has passed since A.G.H. filed her notice of application and P.D.D. filed his application response. A.G.H. retained her present counsel in March 2023. Neither party applied to amend their application materials, but a significant body of affidavit material have been filed since the application and response were filed, and the parties' positions have been modified along the way to account for the additional evidence. I propose to deal with the substance of the application, as it was argued before me.

Background Facts

- [8] The parties were married on May 25, 2006 and separated in November 2016. They have one child, I., born on April 27, 2010.
- [9] During the relationship, the parties lived in the Lower Mainland. Following separation, A.G.H. sought to relocate with I. to Nelson. P.D.D. opposed the relocation. By decision dated August 1, 2019, Mr. Justice Kent dismissed P.D.D.'s application for an order prohibiting the move, and granted A.G.H. permission to relocate to Nelson: *Dowell v. Hamper*, 2019 BCSC 1266 (the "Relocation Decision"). A.G.H. and I. have lived together in Nelson since that time. Initially, P.D.D. remained in the Lower Mainland.

- [10] On January 18, 2021, on the first day of a scheduled trial, the parties entered into a consent order (the "Consent Order"), by which they intended to settle all matters in dispute, with the exception of prospective spousal support. Some of the orders A.G.H. seeks are to vary terms of the Consent Order.
- [11] Of importance to the present application, in paragraph 7 of the Consent Order, the parties consented to the following with respect to their respective incomes and quantum of child support:
7. BY CONSENT, and based on the Claimant having a guideline income of \$113,000 and the Respondent having a guideline income of \$48,000 and pursuant to the Federal Child Support Guidelines, the Claimant shall pay child support to the Respondent of \$1,055 per month commencing February 1, 2021 and continuing until further court order or agreement.
- [12] The parties consented to exchange financial information annually and review child support each year starting in May 2022. In paragraph 11 of the Consent Order, the parties consented to an order reducing P.D.D.'s child support by \$400 per month on account of his access costs to travel to Nelson to have parenting time with I.
- [13] In paragraph 12, the parties consented to an order regarding special and extraordinary expenses, with P.D.D. paying 61% and A.G.H. paying 39%. A.G.H. submits that these percentages were based on a mathematical error, and applies to vary the Consent Order to correct that error
- [14] Soon after the Consent Order was pronounced, P.D.D. purchased a home in Nelson. A.G.H. says that he purchased the Nelson residence on January 19, 2021, the day after the Consent Order was pronounced. P.D.D. says he received "notification of the purchase approval" on February 25, 2021, but acknowledges that he had been looking for property and a job in Nelson for over a year. None of that was disclosed to the court, despite its obvious relevance to the terms of the Consent Order, in particular with regard to access costs. P.D.D. advised A.G.H. of his move to Nelson on March 1, 2021.
- [15] I note that in his most recent Financial Statement Form F8, filed April 30, 2024, P.D.D. indicates he acquired his Nelson residence on January 19, 2021. I find that is the date he bought his Nelson residence.
- [16] P.D.D. obtained a new job in the Nelson area. A February 4, 2021 offer letter from Kalesnikoff Mass Timber ("Kalesnikoff") indicates a start date of March 22, 2021. The starting salary was \$80,000, with an RRSP matching program and benefits. P.D.D. signed the letter indicating his acceptance on February 8, 2021.
- [17] As of on or about April 1, 2021, P.D.D. unilaterally changed his child support payments to \$765 following his move and change of job. This amount was based on an \$80,000 annual salary. It did not take the matching RRSP program into account or make deductions for access costs.

- [18] In April 2022, P.D.D. again changed jobs and residence. He moved to Kelowna to work at Hexagon Purus. He notified A.G.H. of this move on April 24, 2022, but refused to provide her with any information about his new income at that time. That information was only provided pursuant to my January 3, 2023 order, and then only in part, on February 10, 2023. On January 19, 2024, in an effort to ensure that the court had complete and accurate information regarding P.D.D.'s finances, including income received from renting his Nelson residence, I granted him leave to file his T4 and further financial information, provided that doing so would not result in any further adjournments. He filed further material, including a new Form F8, on April 30, 2024.
- [19] P.D.D. has exercised no parenting time with I. since in or about December 2022. I am told their relationship is strained, and that I. refuses to spend time with her father. For the purposes of the present application, this is relevant solely to the question of the access costs addressed in paragraph 11 of the Consent Order.

Analysis

P.D.D.'s Income

- [20] One of the primary issues the court must decide for the purposes of this application is what P.D.D.'s income was in 2021, 2022, 2023 and 2024. A.G.H. says he should have the following income imputed in 2022 through 2024: \$152,111 in 2022; \$189,371 for 2023; and \$196,219.52 in 2024. P.D.D. says his income was essentially as indicated on line 150 of his tax returns for 2022 and 2023: \$106,327 and \$145,842.77.
- [21] Determining P.D.D.'s income is no easy task, made harder by the manner in which he has disclosed financial information to the court. I will deal first with the more complicated question of his rental income. Once I have determined his rental income for each of the years in question, I will determine what his employment and total income was each year.

Rental income

- [22] In 2021, P.D.D. bought the Nelson residence. He moved there in or about March 2021. There is a basement suite in the Nelson residence, in addition to the main residence. P.D.D. says that he lived in the basement suite while renovating the house, and that it was not rentable when he moved in. He did work on the yard and the interior. He rented out the basement suite as an Airbnb starting in July 2021. At some point, it would appear in September 2021, he ceased to rent the basement as an Airbnb and started to rent it as a long-term apartment. Sometime after he moved to Kelowna, he began to also rent out the main residence as a long-term apartment.
- [23] P.D.D. relies, in essence, on his declared net rental income in his personal taxes filed in 2021-2024 for the amount of rental income he received for the purposes of determining his Federal Child Support Guidelines, SOR/97-175 [Guidelines] income. A.G.H. disputes this for a

number of reasons. Her chief concern rests on P.D.D.'s alleged failure to prove the expenses he incurred and whether they were reasonably necessary for the purposes of renting out the two suites in the residence. She further submits that in the period after he first moved to Nelson he could have rented out one of the two suites immediately, and that he has not maximized the rental income from the residence.

- [24] A.G.H. submits that the deficiencies in the evidence provided by P.D.D. in support of the rental expenses incurred are so great that his Guidelines income should include his entire gross rental income, with no deductions. Further, she submits that his income should be grossed up to reflect the tax advantages he received by being able to claim those expenses as deductions on his taxes.
- [25] I will address these issues in general before I return to my assessment of P.D.D.'s rental income for each of the years in issue.
- [26] A.G.H. submits that P.D.D. has failed to establish the reasonableness of the rental expenses he claims to have incurred. As a result, she submits that his gross rental income should be included in his income, with the unreasonably deducted rental expenses being grossed up to account for the fact P.D.D. did not pay income tax on them.
- [27] In his 13th affidavit, filed February 10, 2023, P.D.D. says that Canada Revenue Agency ("CRA") accepts his declared net rental income as his income so it is unclear why A.G.H. can argue it is somehow false. He repeats this view in his 14th affidavit, made July 7, 2023. P.D.D.'s view betrays a misunderstanding of the law. Rental expenses may be treated differently for income tax and child support purposes. This was explained as follows by Justice Fleming, then of this court, in *Sahi v. Sahi*, 2023 BCSC 736 at para. 285:
- [285] Under s. 19 of the Guidelines income may be imputed in a broad range of circumstances, including where the parent has unreasonably deducted expenses from income: s. 19(1)(g). Section 19(2) of the Guidelines specifies that the reasonableness of an expense deduction is not solely governed by whether it is permissible under the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.).
- [28] Also in his 13th affidavit, P.D.D. said that he was providing hundreds of pages of source documents related to his rental income and expenses to A.G.H., and could provide them to the court. The documents appear to have been provided to A.G.H. in the 21st century electronic version of a shoe box: initially, 161 pages on a thumb drive. P.D.D. later provided documents relating to his rental income and expenses in a somewhat more organized form as exhibits to three paralegal's affidavits in March and April 2024, prior to the May 2024 continuation dates in this matter. While somewhat more organized, these documents remain largely unexplained in the evidence. Each of the three affidavits has two or three paragraphs: the first stating that the affiant is a paralegal, the second stating that Exhibit A is the claimant's income and expenses for a given year, and attaching all of the documents as Exhibit A, and in two cases a third referring to a letter sent to A.G.H. or her counsel providing the documents contained in Exhibit A. The court is left to hunt and peck through

these hundreds of pages to attempt to identify and understand P.D.D.'s income and expenses.

[29] Like all parents post-separation, P.D.D. is legally required to make full and proper disclosure of all financial information necessary to determine his income for child support purposes. This includes proving the reasonableness of deductions from income. The point was made as follows by Justice Kent in *Wiebe v. Treissman*, 2017 BCSC 1523 [Wiebe] at paras. 92-94:

[92] It is of course central to any determination of a spouse's income for child support purposes that the spouse make full and proper disclosure of all financial information necessary for that determination. Non-disclosure has often been called the "cancer" of family litigation. Insofar as child or spousal support claims are concerned, s. 19(1)(f) permits imputing income to any spouse who fails to make proper disclosure of his or her income information.

[93] The disclosure requirements set out in the Guidelines are supplemented by Rules 5-1 and 9-1 of the Supreme Court Family Rules which pertain to financial disclosure and discovery of documents respectively. Among other things, these rules provide for:

- mandatory production of detailed financial statements and supporting documentation;
- ongoing and updated disclosure where information becomes inaccurate or incomplete by virtue of later changed circumstances;
- production of corporate documentation and information both by the spouse holding the corporate interests and by the corporation itself; and
- in the event of non-disclosure, imposing fines, drawing adverse inferences and/or attributing income in such amount as the court considers appropriate.

[94] The burden of proving the reasonableness of deductions from business income, whether in the context of self-employment or within a wholly-owned corporation, lies with the spouse making the deduction. It is the obligation of that spouse to fully disclose the financial information and documentation relied upon to justify the deduction of each expense. It is not the other party's responsibility to hire, nor is it the court's obligation to appoint, an accountant or other professional to assess and challenge the reasonableness of the deduction, although of course both are at liberty to do so in appropriate circumstances. For a recent affirmation of these principles, see *Cunningham v. Seveny*, 2017 ABCA 4.

[30] In *Riecker v. Parton*, 2024 BCCA 114 [Riecker] at para. 46 the Court of Appeal recently referred to para. 94 of *Wiebe* with approval.

[31] As I shall discuss in more detail in assessing P.D.D.'s rental income in each of the years in issue, there are significant problems with the financial evidence he has provided to A.G.H. and the court. It is incomplete, inconsistent and admittedly inaccurate in some respects. As the evidence is clear that P.D.D. deducted business expenses, the burden shifts to him to demonstrate that those expenses were reasonably deducted for child support purposes: *Sahi* at para. 286. Personal expenses that provide a personal benefit or are an ordinary living

expense should be added back into his income: Sahi at para. 286. P.D.D. relied on *Stuart v. Madigan*, 2018 BCSC 1205 [Stuart] at para. 32(6) to suggest the burden is on the non-payor spouse to prove that expenses claimed were improper. To the extent it does so, that passage from Stuart is inconsistent with the weight of authority in this province, including Sahi and Wiebe, and the binding authority of the Court of Appeal in *Riecker*. The burden lies on P.D.D.

- [32] In *Friesen v. Friesen*, 2021 BCSC 2447 at paras. 41-44, Justice Forth discussed parties' disclosure obligations, and how the court may deal with inadequacies in disclosure. At para. 41, she stated "Notwithstanding the respondent's failure to provide documents necessary to analyze the business expenses in detail, the Court may still undertake an assessment of the claimed deductions": citing *D.M.B. v D.W.A.L.*, 2018 BCSC 1254. At para. 43 of *Friesen*, Forth J. stated that the court "has discretion, in assessing income, to employ common sense when analyzing financial information". Further, "expenses may be added back to a party's income where no evidence is adduced": *Friesen* at para. 43.
- [33] *Wiatrak v. Wiatrak*, 2015 BCSC 2415 illustrates the application of these principles in the context of rental income. In that case, Madam Justice Sharma held that Mr. Wiatrak had failed to disclose all necessary financial information relating to two rental properties. At para. 72, she held that she could only rely on documentation supported by receipts, and could not accept expenses claimed without supporting documentation. At para. 73, after a global review of the evidence before her, she imputed \$10,000 to Mr. Wiatrak on the basis that that was the amount of rental income the properties were capable of generating in the current market conditions.
- [34] I am not prepared to disallow all of P.D.D.'s claimed deductions. I will do the best I can on the evidence and submissions before me to determine what reasonable rental expenses P.D.D. has established, and thus what his net rental income is for Guidelines purposes.

2021 and Interest Charges generally

- [35] On his 2021 taxes, P.D.D. claimed net rental income in 2021 of \$3,247.38. He declared gross rental income of \$15,795.00 and claimed \$10,204.48 in deductible expenses and a capital cost allowance of \$2,343.14.
- [36] When P.D.D. first moved into the Nelson residence, he says that he moved into the basement suite and renovated both the inside and outside of the home, and furnished and landscaped the property. He says it was not rentable prior to these renovations being done. He started renting out the basement as an Airbnb in July 2021. A.G.H. disputes this, submitting that he has exaggerated the renovations required and could have rented out part of the residence immediately.

- [37] While P.D.D. may have exaggerated to some extent the amount of renovations necessary to make the basement rentable, and he has not proven the costs associated with doing so, as I will discuss further below, four months is not an excessive period after purchasing a home to ready it to be rented out. I do not accept A.G.H.'s submission to the contrary.
- [38] A.G.H. also submits that P.D.D. has not maximized the rents available from the residence. She bases this submission on the high demand for rental accommodation in Nelson and her assumptions about what the suites could be rented out for. I found these submissions speculative on A.G.H.'s part. I find that P.D.D. has reasonably attempted to maximize the rents available from the residence.
- [39] The chief difficulties for P.D.D. arise from the rental expenses he has claimed.
- [40] In court, P.D.D. submitted that he improperly calculated his taxes in 2021 because he claimed too much interest, because he wrongly claimed the principal payment on one of two mortgages registered against the residence, in the amount of \$2,414.07. While I appreciate P.D.D.'s candour in raising this, this error is an indicator that the expenses claimed by P.D.D. on his taxes cannot necessarily be taken at face value.
- [41] This point is underscored by considering the evidence P.D.D. put forward about the various mortgages and lines of credit registered against the residence throughout the period relevant to this application.
- [42] In his February 10, 2023 Form F8, P.D.D. listed a single Scotia Bank mortgage, with an account number ending in 509, as a secured debt. He stated it was incurred February 2, 2023, in the amount of \$508,882.97. In his April 25, 2024 Form F8 he listed four secured debts. The account numbers are not given, but the information given is as follows: Scotia Bank mortgage incurred February 5, 2021 in the amount of \$404,450.29; Scotia Bank mortgage incurred February 5, 2021 in the amount of \$91,478.69; Scotia Bank mortgage incurred June 1, 2023 in the amount of \$58,589.32; and Scotia Bank line of credit incurred June 1, 2023 in the amount of \$25,207.25.
- [43] On their face, it is impossible to reconcile the secured debts listed by P.D.D. on his two Form F8s.
- [44] The financial documents exhibited to the paralegal's three affidavits include some relatively limited bank documents. For 2021, there is a Scotia Bank line of credit. The first statement provided is dated March 12, 2021. It shows a balance of \$429,554.76, with \$427,000.00 having been advanced on February 25, 2021. I cannot locate an account number on the statements in evidence, but it would appear that it may be ending in 083. It would appear likely that this is the line of credit or mortgage that P.D.D. used to finance the purchase of the Nelson residence.
- [45] Also included in the 2021 documents is a December 31, 2021 Scotia Total Equity Plan statement. It refers to a mortgage ending 083 on which he owed \$427,000.00. It also refers to a mortgage with an account number ending 904 on which he owed \$96,585.93. So far as I can

determine, P.D.D. is claiming the interest paid on both of these two mortgages as deductible expenses in 2021, in the total amount of \$11,639.83. I do not know if 904 was used to finance the purchase of the residence or not. No conveyancing documents were provided by P.D.D. which might have enabled the court to answer this question.

- [46] A difficulty raised by the documentation provided by P.D.D. is that the annual mortgage statement dated December 31, 2021 for 083 shows that he paid no interest or principal on that mortgage in that year. This is difficult to understand, as there was clearly activity on the account in 2021. However, it is broadly consistent with the principal balance having not changed since February 2021. No explanation has been provided for why the annual mortgage statement shows no interest having been paid, while P.D.D. claims \$10,113.70 in interest paid. The annual mortgage statement for 904, by contrast, shows that he paid interest totalling \$1,526.13 in 2021. When combined, interest payments of \$10,113.70 on the 083 mortgage and \$1,526.13 on the 904 mortgage would amount to \$11,639.83, the same amount he seeks to deduct.
- [47] Before returning to my consideration of 2021, I will continue to review the evidence related to the debts secured against the residence and the interest payments claimed. In 2022, P.D.D. claimed interest payments totalling \$15,520.81 against mortgages ending in 904 and 083. Very limited disclosure has been made of the banking records related to these mortgages. The annual statement dated December 31, 2022 indicates that he owed \$415,649.29 on 083 and \$94,055.56 on 904. The same document indicates that he paid \$12,216.78 in interest on 083 and \$3,304.03 in interest on 904.
- [48] In 2023, P.D.D. claimed \$29,374.96 in interest as a deduction on his taxes. Once again, only the annual statement has been disclosed. It shows that he now had three mortgages with Scotia Bank, 083 and 904, plus 197. P.D.D. submits that 197 is a personal line of credit, and he has not claimed the interest paid on it. He does claim \$23,576.15 paid in interest on 083 and \$5,798.81 paid in interest on 904.
- [49] To return to P.D.D.'s Form F8s, the court has no explanation why only one mortgage was claimed on the February 10, 2023 Form F8, with the account number ending in 509, as a secured debt, or why he stated it was incurred February 2, 2023, in the amount of \$508,882.97. Nor is there any explanation why, on his April 25, 2024 Form F8, there are four mortgages or lines of credit registered against the property, two stated to have been incurred on February 5, 2021 and two on June 1, 2023, with a total listed value of \$579,734.55. It would appear that P.D.D. may have used the equity in the residence to obtain further loans, but that is speculation on my part. In this regard, it is notable that the listed value of P.D.D.'s pensions and RRSPs increased from \$359,252.26 to \$566,803.00 in the same period between the two Form F8s.
- [50] The lack of explanation provided by P.D.D. for the various inconsistencies and anomalies I have identified relating to the mortgages secured against the residence and the interest claimed by him likely goes back to his repeated refrain that CRA has accepted his

deductions, and it is not for A.G.H. to question them. He simply has not seen fit to explain these issues. For example, he provides no evidence about the hundreds of pages of exhibits attached to the three paralegal's affidavits, leaving it to the court to do the best it can, with the assistance of counsel's submissions, to make sense of them. The difficulty for P.D.D. is that the burden is on him to show the reasonableness of the expenses claimed, and he has failed to do that in relation to the interest charges claimed.

- [51] I find that P.D.D. has failed to discharge his onus of establishing that any of the interest payments claimed as deductions in 2021-2023 were reasonably necessary. He has failed to do so despite being clearly put on notice, beginning with the notice of application, that the reasonableness of his rental expenses was being challenged. He obtained an adjournment of the original hearing date, and was given until February 10, 2023 to file his application response and financial disclosure. As this hearing dragged on, he had over a year to rectify the situation, and provide an explanation that would justify his rental expenses. He failed to do so, despite the three paralegal's affidavits and his April 2024 Form F8. I disallow all of the interest payments claimed as deductions in 2021-2023.
- [52] I turn to the other expenses claimed in 2021. P.D.D. claims \$479.00 in property insurance, being 41.3% of the property insurance paid in 2021. He further claims an additional \$300.00, which would appear to have been an additional charge as of July 1, 2021 due to the rental of the basement. I accept both of these are reasonable expenses.
- [53] P.D.D. claims \$400.00, being the cost of a business licence from the City of Nelson for the period from July 1 to November 30, 2021 for running a guest house or suite. I accept that this is a reasonable expense.
- [54] P.D.D. claims \$1,345.04, being 41.3% of the property taxes paid to the City of Nelson in 2021. I accept this is a reasonable expense.
- [55] P.D.D. claims \$768.97, being 41.3% of the total \$1,861.9 utilities paid in 2021. I have not located any source documents for the utilities paid, nor has any calculation been provided of what the utilities consist of. I find that P.D.D. has not established this expense or that it is reasonable.
- [56] P.D.D. claimed \$1,106.72 in repairs and maintenance in 2021. I do not know what these repairs and maintenance are. P.D.D. has submitted a number of receipts in the paralegal affidavit for 2021, but no explanation has been provided of them, such as whether they were required for the suite or the main floor of the house. I find them not proven by P.D.D.
- [57] P.D.D. claimed a capital cost allowance claim of \$2,343.14 in 2021. From his counsel's submissions, I understand that this was for a shed and a fence. A shed and a fence would not be necessary for the purposes of operating a rental suite. I do not accept this as a valid deduction for the purposes of determining P.D.D.'s rental income. Rather, it is in the nature of an improvement to the property, which will be to P.D.D.'s ultimate benefit.

[58] In summary, for 2021, I find that P.D.D. had gross rental income of \$15,795. I have accepted a total of \$2,524.04 in proven reasonable expenses necessary for operating a rental suite. This results in net rental income of \$13,270.96 in 2021. I have not chosen to gross up the rental expenses claimed by P.D.D. in 2021 or subsequent years which I have not found to be proven or reasonably necessary.

2022

[59] I turn to 2022. For the reasons I have already given, I do not accept the \$15,520.81 claimed by P.D.D. in interest charges.

[60] P.D.D. paid property insurance in the amount of \$1,690.00 in 2022, plus an additional \$300.00 policy for the basement suite. He claims 75.5% of the former, amounting to \$1,275.95, and 100% of the latter, which I accept as reasonable, for a total of \$1,575.95.

[61] P.D.D. claims \$400.00 for a City of Nelson business licence. I accept this expense.

[62] P.D.D. claims \$743.32 in legal and accounting fees, 100% of which he attributes to rental expenses. I have not located invoices or receipts for these fees and no explanation has been provided of what they are related to. I find that P.D.D. has not proven that these fees were incurred or if they were that they were reasonably necessary to earn rental income.

[63] P.D.D. claims \$4,220.78 in property taxes paid to the City of Nelson. This is the amount stated in his 2022 Property Taxes, with no homeowner grant. I do not know if P.D.D. would have been entitled to a homeowner's grant, as he did live in the residence for part of 2022. In any event, he has claimed 100% of the property taxes payable on his income tax return. That is not right, as he did live there for part of the year. Using the same percentage he used for property insurance, 75.5%, I find that P.D.D. may claim \$3,186.69 in property taxes reasonably incurred to earn rental income in 2022.

[64] P.D.D. claims 100% of utilities he says he paid, in the amount of \$1,560.80. Once again, he fails to account for his personal use. The only receipt provided is for water, sewer and waste from the City of Nelson in the amount of \$1,560.80. Applying the same percentage, I find that P.D.D. may claim \$1,178.40 in utilities reasonably incurred to earn rental income in 2022.

[65] P.D.D. claims \$7,354.24 in repairs and maintenance in 2022. A number of receipts and invoices are attached as part of the exhibit to the paralegal's affidavit for 2022, but no explanation or breakdown is provided. From the cover sheets in the exhibit, I can see reference to things such as a concrete landing and stairs, shed materials, and fence labour and materials. These all appear to be in the nature of improvements to the property rather than expenses necessary to earn a rental income. I find that P.D.D. has not proven that these are reasonable rental expenses.

[66] In summary, for 2022, I find P.D.D. had gross rental income of \$36,132.97. I have found that he incurred reasonable expenses necessary to earn that income in the amount of \$6,341.04. This results in a net rental income for the purposes of determining P.D.D.'s Guidelines income of \$29,791.93.

2023

[67] I turn to 2023. Once again, for the reasons I have already given, I find that P.D.D. has not established the \$29,374.96 in interest payments claimed as reasonably incurred to earn a rental income.

[68] P.D.D. claimed \$1,472.00 on his 2023 taxes for property insurance paid. In submissions before me his counsel stated the total expense was \$1,829.00. As I understand it, the basis for the difference is that he was paying a single insurer for insurance on both the Nelson residence and his rental home in Kelowna. From my review of the insurance documents, I accept the \$1,472.00 claimed was reasonably incurred to earn a rental income.

[69] P.D.D. claims \$84.00 for tax and accounting assistance. There is an invoice in that amount from an accountant in the exhibit to the paralegal's affidavit, but it has not been proven that this advice related to the rental property. I deny this expense.

[70] P.D.D. claims \$100.00 for management and administration fees. These were paid to someone named Wendy Allen. It has not been proven that they were incurred to earn a rental income and I disallow them.

[71] P.D.D. claims \$2,832.77 in repairs and maintenance. As in other years, receipts are attached to the paralegal's affidavit for 2023, but the court has no way of knowing on the evidence before me if these were incurred to earn a rental income.

[72] P.D.D. claims property taxes in the amount of \$4,354.17. This is consistent with the assessment notice and I accept it as reasonably incurred.

[73] P.D.D. claims \$267.77 in travel expenses and \$645.43 in motor vehicle expenses. His counsel submitted these were incurred to check on the property and meet with the cleaners. No details were provided about when these trips were made, and whether P.D.D. had any other reason to travel to Nelson at those times. P.D.D. has not proven that these expenses were reasonably incurred to earn a rental income.

[74] Finally, P.D.D. claims utilities in the amount of \$1,785.35. P.D.D. has submitted in support of this expense his 2023 annual water, sewer and waste invoice in the amount of \$1,587.80. I accept the latter amount as reasonably incurred.

[75] In summary, P.D.D. had gross rents of \$59,682.00 in 2023. I have found that P.D.D. has established that a total of \$7,413.97 in expenses were reasonably incurred to earn those rents, resulting in a net rental income for Guidelines purposes of \$52,268.03.

Employment and total Guidelines income

2021

- [76] In the Consent Order, the parties agreed that P.D.D.'s income was \$113,000 as of January 18, 2021.
- [77] As discussed above, P.D.D. changed jobs shortly after the Consent Order was pronounced. According to his employment letter with Kalesnikoff, his starting salary was \$80,000, plus an "RRSP Program" stated to be "2:1 match-company max contribution 6% (eligible after 30 days)". P.D.D. disclosed his new, lower, salary to A.G.H., but did not tell her about the matching RRSP program.
- [78] P.D.D.'s line 150 income for the year 2021 was \$95,502.32. This is made up of \$92,254.94 in employment income and \$3,247.38 in declared net rental income. His T4 from his previous employer, Corvus Energy, indicates that he received employment income of \$25,879.78 and other taxable allowances and benefits of \$1,886.55 in 2021. His T4 from Kalesnikoff indicates he received employment income of \$66,375.16 and other taxable allowances and benefits of \$3,813.68. The combined income amounts, not including allowances and benefits, total \$92,954.94. P.D.D. says, and I accept, that the RRSP matching contributions from both employers are included in his total employment income.
- [79] P.D.D.'s 2021 employment income, therefore, consists of \$92,254.94.
- [80] P.D.D.'s total declared employment income and gross rental income for 2021 amounts to \$108,049.94, before any deductions.
- [81] A.G.H. throws out an array of alternative calculations of what income P.D.D. should be imputed with for 2021, the highest of which is \$157,857.
- [82] I have found that P.D.D.'s net rental income in 2021 was \$13,270.96. In the result, I find a Guidelines income for P.D.D. for 2021 in the amount of \$105,525.90.

2022

- [83] It was in February 2022 that P.D.D. was terminated from his employment with Kalesnikoff. He began working for Hexagon Purus in April 2022. He moved to Kelowna to take that job. At some point after that date, he started to rent out the upper part of his Nelson residence, in addition to the basement suite.
- [84] In his 13th affidavit, P.D.D. says that his current income is \$115,000 per year with an additional 6% RRSP contribution. I infer that this was his annual salary from Hexagon Purus. He says that if the RRSP is taken into consideration "which I disagree with", the total is \$121,000. Whatever P.D.D.'s views on the subject, the employer's matching RRSP contribution is to be included in his income for child support purposes, and I have done so.

[85] P.D.D.'s 2022 line 150 income is \$106,328.18. His tax return shows total employment income of \$95,160.41, an amount which does include his employer's RRSP matching contribution. For this reason, I rely on the amount in the tax return rather than the salary P.D.D. provides in his affidavit. In addition, he received \$3,190.00 in employment insurance. He declared net rental income of \$7,977.77.

[86] I have found that P.D.D.'s net rental income for the purposes of determining his Guidelines income in 2022 was \$29,791.93.

[87] Adding this to his employment and employment insurance income, I find a total Guidelines income for P.D.D. in 2022 of \$128,142.34.

2023

[88] P.D.D.'s 2023 employment income is listed as \$127,020.24 on his tax return. He also declares \$18,765.55 in net rental income. This amounts to a total declared income of \$145,842.77.

[89] I have found that P.D.D.'s net rental income in 2023 for the purposes of determining his Guidelines income is \$52,268.03.

[90] Adding this to his employment income, I find a Guidelines income for P.D.D. in 2023 of \$179,288.27.

2024

[91] Given when the hearing occurred, the court does not have the evidence necessary to determine what P.D.D.'s 2024 income was. Consistent with the Consent Order, the parties are to exchange all necessary financial information by May 15, 2025, including their tax returns and notices of assessment. In P.D.D.'s case, he is also required to provide full disclosure of all rental income received and all rental expenses incurred in 2024 by that same date. I would underscore that full disclosure on P.D.D.'s part may mean that he will be able to establish some of the rental expenses in 2024 that I have rejected as unproven in 2021-23. In other words, full disclosure is not only P.D.D.'s legal obligation; fulfilling that obligation may be to his financial advantage.

A.G.H.'s Income

[92] In general terms, P.D.D. submits that A.G.H. is intentionally under-employed and that she must be imputed with an income in the \$60,000-\$80,000 range.

[93] A.G.H. submits in response that P.D.D. has not made an application to impute her with income. I would not decline to deal with P.D.D.'s imputation argument on that basis, as A.G.H.'s income is obviously relevant and must be established in order to determine what her proportionate share of s. 7 expenses is.

[94] Substantively, however, I do not agree with P.D.D. that A.G.H. should be imputed with any additional income.

- [95] A.G.H. was involved in a serious cycling accident in September 2015 which has affected her ability to work. In the Relocation Decision at para. 3, Kent J. stated that she had at that date been off work for four years, and was receiving long-term disability insurance benefits of approximately \$40,000 per year.
- [96] A.G.H. moved to Nelson with the hope of being able to work, and she did obtain a position there. According to her record of employment, she worked at a position in Nelson for a brief period in the summer of 2019 and was terminated during her probation period. According to a letter from her treating psychiatrist, dated February 23, 2023, A.G.H. was not able to successfully perform the duties of this job. Her psychiatrist expressed the opinion, albeit not in the form of an expert report, that he considered her fully disabled from her own and any other comparable occupation. A.G.H. states in her 17th affidavit, sworn January 4, 2024, that there have been no significant changes in her income since her last financial statement on December 5, 2022, and that she is still not able to work as she is medically disabled.
- [97] In 2021, A.G.H.'s tax return indicated that she received \$39,253.51 in disability benefits. In 2022, she received \$40,861 in disability benefits.
- [98] P.D.D. submits that A.G.H. should be imputed with an income of not less than \$60,000-\$80,000. He says that she is refusing to work. In support of his position, he refers to the fact she was able to do some volunteer work as a safety person with I.'s hockey team.
- [99] I granted A.G.H. leave to file an additional affidavit to address P.D.D.'s assertions regarding her alleged under-employment. Her 19th affidavit, sworn May 18, 2024, fully addresses those assertions. She has been unable to work due to disability since 2015. She has attempted to return to the workforce but has been unsuccessful in those attempts. She did volunteer at I.'s hockey matches and hosted international students, but no longer does so as she was unable to meet the requirements for either activity. I find that A.G.H. is unable to work due to her disabilities. There is no basis for imputing any additional income to her beyond that reflected in her income tax returns.

Retroactive Child Support

- [100] A significant issue that must be addressed in determining the quantum of retroactive child support payable by P.D.D. is the effective dates upon which the changes in P.D.D.'s income are to take effect. For example, when P.D.D. changed jobs in February 2021, he unilaterally altered the child support he was paying to base it upon his new, lower, rate of pay. Conversely, when he obtained new, higher, paying employment in April 2022, he continued to pay child support based on his previous salary, not based on his new, higher rate of pay. P.D.D. told A.G.H. that he had moved and had a new job on April 24, 2022, but he did not tell her his new salary. When the parties were corresponding about child support issues in June 2022, and A.G.H. was requesting full financial disclosure, P.D.D. never shared his current income, continuing to rely on the \$80,000 salary he had received at Kalesnikoff.

- [101] In other words, P.D.D. cherry-picked when to share his new income, and when to change his child support payments on the basis of that new income, on the basis of whether it would reduce or increase the child support payable.
- [102] This is not an appropriate way to go about determining the quantum of child support payable. It is not for one party to unilaterally decide to reduce their child support payments. Failing agreement, an application should be made to court if there is a material change in circumstances warranting a variation. P.D.D. did not do that.
- [103] Quite beyond that, all parties require stability and predictability. Children are legally entitled to be provided for, and it is each parent's legal obligation to do so in accordance with their means. In the present case, the parties previously turned their minds to the process to be followed in reviewing child support. Paragraph 8 of the Consent Order provides that the parties will review child support annually with the first review in May 2022. Paragraph 9 provides that they will exchange financial information on or before May 15 of each year commencing in 2022, with that information to include their T1s and notices of assessment. Paragraph 10 provides that if the parties cannot agree within 15 days of the exchange of financial information on the amount of child support, either party is at liberty to apply to court for a determination of the amount of child support.
- [104] I propose to hold the parties as close to their bargain as the present circumstances permit. This means that child support for each year will be based on the previous year's financial information, and that any changes in child support payable will be effective May of each year. This will ensure that the quantum of child support is based on proven Guidelines incomes, taking away any volatility due to uncertainty about how much money a parent will earn in a given year. This is particularly important where the payor parent is, like P.D.D., earning rental income, where the full income and expense situation cannot be known until the end of the year. It also addresses the issue he raises with respect to not knowing until the end of the year how large his employer's RRSP match contribution will be.
- [105] Sometimes, in a given year, this approach will benefit the payor spouse. In other years, it may be to the payor spouse's disadvantage. But at all times it will provide greater predictability, which is ultimately to the benefit of both parties, and in the best interests of I.
- [106] Following this approach yields the following results.

2021 - April 2022

- [107] Child support for 2021 was, in accordance with the Consent Order, to be based on P.D.D. having a Guidelines income of \$113,000 and A.G.H. having a Guidelines income of \$46,000, resulting in child support payable in the amount of \$1,055 per month. It was impermissible for P.D.D. to unilaterally reduce the child support he was paying in March 2021 on the basis of his new salary at Kalesnikoff.

[108] P.D.D. is ordered to pay retroactive child support equal to the difference between what he paid in child support between March and December 2021 and the amount owing under the terms of the Consent Order. As I find below, no reduction in child support, based upon the cost of exercising parenting time, is warranted in that same period.

[109] The same child support is payable for January to April 2022. As of April 2022, P.D.D. is, for the reasons I have given below, entitled to the \$400 reduction as he had moved to Kelowna.

[110] I leave it to counsel to calculate the amounts owing by P.D.D. for child support as a result of this order in this and all subsequent retroactive periods.

May 2022 to April 2023

[111] Child support for the period from May 2022 to April 2023 is to be determined on the basis of the parties' Guidelines incomes for 2021.

[112] I have found a Guidelines income to P.D.D. for 2021 of \$105,525.90.

[113] A.G.H.'s Guidelines income for 2021 was \$41,171

[114] These figures result in child support being payable in the amount of \$993.21 per month. From this, P.D.D. is entitled to the \$400 reduction for expenses associated with exercising parenting time for May 2022 to December 2022. No such reduction is applicable from January 2023 forward.

May 2023 to April 2024

[115] Child support for the period from May 2023 to May 2024 is to be determined on the basis of the parties' Guidelines incomes for 2022.

[116] I have found a Guidelines income for 2022 of \$128,142.34 for P.D.D.

[117] A.G.H.'s Guidelines income for 2022 was \$40,861.59. These figures result in child support being payable in the amount of \$1,180.17 per month for the period May 2023 to April 2024.

May 2024 to April 2025

[118] Child support for the period from May 2024 to April 2025 is to be determined on the basis of the parties' Guidelines incomes for 2023.

[119] I have found a Guidelines income for P.D.D. of \$179,288.27 in 2023.

[120] A.G.H.'s Guidelines income for 2023 was approximately \$46,696. These figures result in child support being payable in the amount of \$1,584.45 per month.

Prospective Child Support

[121] Consistent with the approach taken throughout this decision, child support for the period May 2025 to April 2026 is to be determined on the basis of the parties' Guidelines incomes in 2024. As previously mentioned, given when this hearing occurred, the court does not have

the evidence necessary to establish the parties' 2024 incomes. The parties are to provide the necessary financial information to one another by May 15, 2025, and are to seek to agree on prospective child support. Should they be unable to agree within 15 days, either party is at liberty to apply to court to determine prospective child support. In order to avoid some of the difficulties associated with the application currently before me, such a future application is to be brought no later than July 15, 2025. I am seized, should any such application be brought in 2025. I am not seized thereafter.

Paragraph 11 of the Consent Order

- [122] A.G.H. applies to vary the Consent Order to remove paragraph 11, which provides that P.D.D.'s child support shall be reduced by \$400 per month on account of his access costs.
- [123] P.D.D. moved to Nelson in March 2021, and incurred no parent access costs after that date. I agree with A.G.H. that that was a material change of circumstances. She claims that he is not entitled to any reduction in child support for travel costs after this date. In February 2022, P.D.D. was terminated from his job in Nelson. In April 2022, P.D.D. moved to Kelowna for a new job. I agree with P.D.D. that this too was a material change in circumstances. P.D.D. claims that he is entitled to the \$400 per month reduction after that date, as he once again had to travel to exercise parenting time.
- [124] P.D.D. was entitled to parenting time every three weeks. He travelled from Kelowna to Nelson approximately once every three weeks starting sometime after April 2022 to exercise parenting time with I.
- [125] P.D.D. has not exercised any parenting time with I. since in or about December 2022. He has clearly not incurred any costs to exercise parenting time with I. since that time. In his February 10, 2023 Form F8, he claimed undue hardship in the form of unusually high expenses for exercising parenting time, and provided calculations to support monthly costs of \$643.34 to travel to spend parenting time with I. I do not believe supporting documents have been produced to support these expenses. These costs assume a three-night hotel stay, despite the fact he owns a home in Nelson. He did not maintain this undue hardship claim in his April 25, 2024 Form F8.
- [126] I find that P.D.D. was entitled to reduce his child support payment by \$400, in accordance with paragraph 11 of the Consent Order, solely for February 2021 and for April-December 2022. Since December 2022, he has not exercised any parenting time with I. Given the material changes in circumstances since the Consent Order, including P.D.D.'s changes in residence and the cessation of any parenting time with I., I vary the Consent Order to delete paragraph 11, effective January 2023.

Paragraph 12 of the Consent Order

- [127] Paragraph 12 of the Consent Order addresses s. 7 expenses and provides that they are to be split 61%/39%. A.G.H. applies to correct paragraph 12 to address a mathematical error. She says that s. 7 expenses were to be paid in proportion to the parties' income, and that using the incomes set out in the Consent Order, that should be 71%/29%.
- [128] A.G.H. communicated this error to P.D.D. promptly on or about February 18, 2021.
- [129] In his 13th affidavit, P.D.D. says that he does not believe that he should have to pay 71% of I.'s s. 7 expenses because A.G.H. is misleading the court about her ability to work. I have already rejected the submission that A.G.H. is misleading the court about her ability to work. P.D.D. provides no principled basis upon which the court should decline to vary the Consent Order to accurately reflect the parties' agreement.
- [130] The parties clearly intended s. 7 expenses to be split in proportion to their agreed upon incomes. Paragraph 12 itself states that the proportion of payment for s. 7 expenses is "based on the parties' respective incomes." I, therefore, order paragraph 12 varied to reflect the parties' clear intention that they be split 71%/29%.
- [131] The parties' proportionate share of s. 7 expenses is to be reviewed annually, together with the review of child support quantum. Retroactively, P.D.D. is required to pay the difference between the s. 7 expenses he paid, and the proportionate share he is required to pay on the basis of the Guidelines incomes I have found. Similarly, prospectively, the parties' proportionate share of s. 7 expenses will be determined on an annual basis, beginning in May 2025 for the May 2024 to April 2025 period.
- [132] Before leaving the subject of s. 7 expenses, the evidence and submissions before me demonstrate that the parties have had recurring disagreements about what expenses are properly compensable as s. 7 expenses, and that this has caused problems with the enforcement of these payments by the B.C. Family Maintenance Agency. As suggested during the course of the hearing, the parties may well be better served by agreeing to a set quantum of s. 7 expenses, so that they do not have to negotiate over every claimed expense, thereby reducing conflict. There is no application before me to vary paragraph 12 of the Consent Order beyond correcting the mathematical error in expressing the parties' respective proportionate shares. The parties may further vary paragraph 12 by consent. Absent agreement, either party may apply to further vary paragraph 12. I am seized of such an application, should it be brought in 2025

Fines

- [133] In her notice of application, A.G.H. seeks an order pursuant to s. 213(2)(d) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] that P.D.D. will pay her \$5,000 if he fails to file or otherwise provide financial information in accordance with the court's order. She further seeks a fine pursuant to s. 213(2)(d)(iii) of the FLA that he pay a fine of \$5,000 for failing to comply with Rule 5-1(15)(a) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Family Rules].
- [134] As developed in her counsel's written submissions, A.G.H. relies on P.D.D.'s failure to disclose to the court that he had purchased the Nelson residence and intended to move to Nelson when the Consent Order was signed, as well as his failure to provide complete income information for the 2022 and 2023 child support reviews. In addition, she relies on his failure to comply with my January 3, 2023 order that he file his response materials, including complete financial information, by February 10, 2023.
- [135] So far as the materials before me show, P.D.D. purchased the Nelson property the day after the Consent Order was pronounced. He had not yet purchased it when he gave evidence in court in support of the Consent Order being granted on January 18, 2021. That said, he cannot have been unaware that a property purchase was in the offing, and he certainly knew that he planned to move to Nelson and obtain work there. His failure to disclose that information was a material omission. Had that information been shared prior to the Consent Order being rendered, paragraph 11 would never have been included in the Consent Order. It is not clear to me, however, that P.D.D.'s failure to disclose this information at the time the Consent Order was a breach of any Family Rules or provision of the FLA that could give rise to a fine under s. 213 of the FLA.
- [136] P.D.D.'s refusal in June 2022 to provide the financial documents demanded by A.G.H. in her June 14, 2022 letter was inappropriate. Written in the midst of an active dispute between them regarding child support and related issues, A.G.H. requested the following documents:

I request that you submit the following documents by June 17th 2022:

- All current employment contracts
- 3 most recent earning statements
- AirBnB income statements for 2021 and 2022
- Signed authorization to obtain income information directly from AirBnB for 2021 and 2022
- All other documentation to prove rental income and expenses claimed on your 2021 Tax Return. This includes mortgage statements, monthly rental income and any other expenses claimed against the income.
- Completed current F8 Financial Statement.

- [137] P.D.D. refused to provide any of the requested documents at that time. No Form F8 was provided until February 2023, and it was incomplete. No rental related documents were provided until beginning in the spring of 2023. All of these are documents which P.D.D. was legally obligated to provide pursuant either to paragraph 9 of the Consent Order or Rule 5-1(15) of the Family Rules. P.D.D. failed to provide complete or current financial information.
- [138] On his behalf, his counsel submits that P.D.D. did not have legal counsel at the time, the document request was onerous, and that he did ultimately provide the documents requested, albeit not until 2023. While P.D.D. was delinquent in meeting his disclosure obligations in 2022, I would not order a fine on the basis alone of this failure to disclose necessary financial documents, in part because the terms of the Consent Order arguably lack specificity about precisely what must be disclosed. I will address this issue below to provide the parties with greater clarity.
- [139] In addition, P.D.D. failed to pay the \$150 in costs ordered by Justice Blok on July 18, 2022, despite indicating in his application response that he consented to doing so. A.G.H. should not have had to return to court to seek an order that P.D.D. pay Blok J.'s costs order. For the sake of clarity, I order that P.D.D. pay Blok J.'s \$150 costs order within 15 days of the date of this order, if he has not already done so.
- [140] Of most concern is P.D.D.'s failure to comply with my January 3, 2023 order. The materials P.D.D. filed by the February 10, 2023 deadline were materially incomplete. Ultimately, he ended up supplementing them with three paralegal affidavits on March 25 and April 24, 2024, attaching copies of hundreds of pages of claimed rental expenses and other documents, as well as another financial statement, filed April 30, 2024. This late disclosure contributed to the subsequent delay in this hearing concluding.
- [141] I consider it appropriate to order P.D.D. to pay a fine of \$2,500 for the breach of my disclosure order. To be clear this is not, as sought in paragraph 8 of the orders sought in the notice of application, a fine "If he fails to file or otherwise provide financial information". It is a fine for the established breach of my order, which occurred within an ongoing context of P.D.D. not fulfilling his disclosure obligations and previous failure to comply with a court order. Any further failure on P.D.D.'s part to comply with his ongoing disclosure obligations is likely to result in further, and greater, fines.

Paragraph 9 of the Consent Order

- [142] Paragraph 9 of the Consent Order requires the parties to disclose financial information annually, as follows:
9. BY CONSENT, the parties will exchange financial information on or before May 15 of each year commencing in 2022 as required under the Federal Child Support Guidelines such information to include their respective T1 General tax returns and Notices of Assessment.

[143] It is clear that these parties require certainty about their disclosure obligations. They are required to provide, as part of their annual disclosure, their complete T1 General tax returns, all T4s, and all notices of assessment or reassessment. In addition, if either party is earning rental income, they must provide complete documents showing rents received and invoices and receipts for all rental expenses claimed. If interest charges are claimed, the documents must show how such interest charges relate to the rental income claimed. It is not enough for P.D.D., as he submits, to simply provide his T1 general income tax returns and notices of assessment, as they do not permit A.G.H., or if necessary the court, to assess the reasonableness of the rental expenses claimed for the purposes of determining his Guidelines income. I appreciate this may be a somewhat cumbersome process, but given these parties' history, there is no other solution available which will ensure that the parties, and if necessary the court, have clarity about P.D.D.'s rental income.

Conclusion

[144] I have not calculated all amounts owing as a result of the orders made in this decision. In part, this is because the evidence is not clear about precisely what amounts P.D.D. has paid to date. I trust that counsel will be able to reach agreement on the calculations and amounts owing. Should there be any difficulty in this respect, either party may request to appear before me for the purpose of settling the amounts payable. In that event, I direct both parties to provide their complete calculations of the amounts owing to me through Supreme Court Scheduling in advance of the court appearance.

[145] A.G.H. requested her costs of this application, including special costs, which P.D.D. opposed. It is my preliminary view that A.G.H. is entitled to her ordinary costs of this application, on the basis that she has been substantially successful. Should the parties be unable to agree on costs, they may request to appear before me to address costs. Should that be necessary, the same hearing is to be scheduled to address both costs and, if necessary, any calculation issues.

"L.M. Lyster J."

LYSTER J.

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