

CANADA / JUDGMENT

P.M.L. v. M.U.N.

2025 BCSC 1838

COURT

Supreme Court of British Columbia

DECIDED

22 September 2025

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2025 BCSC 1838 P.M.L. v. M.U.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.M.L. v. M.U.N.,

2025 BCSC 1838

Date: 20250922

Docket: E230037

Registry: Victoria

Between:

P.M.L

Claimant

And:

M.U.N.

Respondent

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for Claimant:

P. Scotland

Counsel for Respondent:

J.A.C. Stewart

Place and Date of Hearing:

Victoria, B.C.

July 24, 2025

Written Submissions Received:

August 11, 25 and

September 3, 2025

Place and Date of Judgment:

Victoria, B.C.

September 22, 2025

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Introduction

- [1] The parties were married in Mexico City, Mexico on January 10, 2020 and began residing together in or about March 2020, when the claimant moved to Canada. The parties separated on March 24, 2022.
- [2] There is one child of the marriage, M.M., who was born in 2019 (the "Child") and is nearly six years old.
- [3] The outstanding issues between the parties pertain to parenting time, child support and spousal support.
- [4] The matter proceeded by way of summary trial with the parties being cross-examined on their affidavits and financial statements. The claimant was assisted by a court certified translator translating the questions from English to Spanish.

Suitability for Summary Trial

- [5] Pursuant to a May 7, 2025 order of this court, this matter was set down as a one-day summary trial application, subject to the discretion of the presider determining the matter was suitable for summary disposition.
- [6] Both parties agree that the matter is suitable for summary disposition.
- [7] In considering whether a case is appropriate for summary trial, the court must consider a variety of factors, including: (1) the amount of money involved; (2) the complexity of the matters at issue; (3) the urgency of the matter; (4) the likelihood of prejudice arising from delay in resolving the matters at issue; (5) the costs of proceeding to a full trial; (6) the court proceedings to date; and (7) any other relevant issue: *Gichuru v. Pallai*, 2013 BCCA 60.
- [8] I find that this matter squarely fits within the parameters of determination by way of a summary trial. The issues to be decided are not complex, there is not a significant amount of money involved, there is urgency, and proceeding to a full trial is unnecessary. Both parties were cross-examined on their affidavits and financial statements allowing me to determine any issues of credibility within this proceeding. I am appreciative to counsel who tailored this case in a manner that recognized the needs of their clients for a just, speedy and inexpensive resolution of their family law matter.

Background Facts

- [9] The claimant is 37 years old and the respondent is 39 years old.
- [10] On March 4, 2020, the claimant and the Child moved to Canada and became residents of British Columbia. The two became permanent residents of Canada on December 1, 2021.

- [11] When the parties commenced their relationship, the claimant was working as a dentist in Mexico. The claimant's credentials were not recognized in Canada and she was not able to work in this field when she moved to Canada. The claimant cared for the Child and was not working during this time.
- [12] The respondent is a concrete finisher and has worked in this trade for approximately 15 years.
- [13] The parties attended a judicial case conference on May 18, 2023, and pursuant to an order made on that date, the parties are guardians of the Child and share parenting responsibilities on a permanent basis.
- [14] The parties attended mediation in July 2023, and pursuant to an interim mediation agreement signed July 19, 2023, the respondent would have parenting time with the Child from each Saturday at 7:00 p.m. to Tuesday at 8:00 a.m. The mediation agreement also provided that the respondent would pay the claimant child support in the amount \$1,113 per month and spousal support of \$2,297 per month for the months August to October, 2023. The parties were to return to mediation on October 30, 2023.
- [15] The parties did not return to mediation and were before the court on November 2, 2023, resulting in the following, inter alia, orders:
2. [M.U.N.] is found to be a resident of British Columbia and is imputed to have a gross income of \$120,000.00.
 3. [P.M.L.] is found to be a resident of British Columbia and is found to have a gross annual income of \$0.00.
 4. On an interim without prejudice basis, [M.U.N.] will pay to [P.M.L.] the sum of \$1,113.00 per month for the support of [the Child], born [date], commencing on November 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 Divorce Act or until further agreement of the parties or Court order.
 5. On an interim without prejudice basis, pursuant the Divorce Act, [M.U.N.] will pay to [P.M.L.] for her support, the mid-range calculation sum of \$2,589.00 per month, commencing November 1, 2023 and continuing on the 1st day of each and every month thereafter until further agreement of the parties or Court order.
- [16] The respondent declared bankruptcy in August 2024 and was discharged in May 2025.
- [17] The claimant says that completing the required steps to be certified as a dentist in Canada is not practical at this time and instead she has focused her attention on training to become a dental hygienist. The claimant completed a full-time English as a Second Language program in April 2024 and reached the highest level of proficiency. The claimant is now a part-time student taking pre-requisite courses for the dental hygiene program at Camosun College. While her schedule fluctuates each semester, her current schedule is Mondays from 12:30

p.m. to 2:20 p.m., Wednesdays from 8:30 a.m. to 9:50 a.m. and 1:00 p.m. to 2:20 p.m., and Fridays from 8:30 a.m. to 9:50 a.m. The claimant says that her fluctuating school schedule combined with caring for the Child have made finding suitable work difficult.

Parenting Time

- [18] The respondent is seeking increased parenting time with the Child and requests equal shared parenting time on a one week on, one week off basis.
- [19] The claimant seeks to maintain the status quo. The present schedule grants the respondent parenting time with the Child from each Saturday at 7:00 p.m. to Tuesday at 8:00 a.m.
- [20] It is apparent to me that both parties can provide a loving and nurturing environment for the Child.
- [21] The only question to determine is whether the proposed parenting regime is consistent with what is in the Child's best interests.
- [22] Section 16(6) of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3, states that in allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child. The child's needs, given the age and stage of development, such as the child's need for stability are factors to consider in determining the child's best interests: Divorce Act, s. 16(3)(a).
- [23] The claimant opposes an increase in parenting time as she says the respondent has not consistently exercised parenting time in the past. The claimant does not want to have a reduction in the time she has with her son, which would occur on the proposed schedule. On cross-examination, the claimant confirmed that the respondent is a good father and she has no concerns with the Child being in the respondent's care. The claimant testified that she accepts that at some point a shared parenting time schedule will be in the Child's best interests; however, that should occur gradually and after the respondent has demonstrated he can exercise his parenting time.
- [24] The respondent is currently working full time. His evidence was that he has recently taken a new job that provides him flexibility so that he can work shorter days and make up time at work when required. The respondent explained that any issues related to past missed parenting time was a consequence of an inflexible work schedule and the respondent carrying the financial burdens of the breakdown of the party's relationship.
- [25] The claimant submits that the respondent will likely have to rely on child care while the respondent is exercising his parenting time, which will not result in an increase in his time with the Child. Both parties use child care to accommodate their respective work or educational commitments. I do not find this to be a compelling factor in favour of either party with respect to what would be in the Child's best interests.

[26] Based on the evidence before me, the proposed parenting arrangement is in the Child's best interests. The Child is still at a young age and will benefit from having both of the Child's parents equally in their life. I find that it will be in the Child's best interests to spend a longer duration of time with the respondent than was previously provided for in the existing parenting time arrangement. I have no compelling evidence that a week on, week off parenting schedule is not in the Child's best interests. The respondent has confirmed that the parenting issues are in the past and he has structured his life so that he can exercise his parenting time consistently. This supports transitioning now to an equal division of parenting time instead of at some time in the future, as proposed by the claimant. I find the proposed parenting schedule is consistent with the principles prescribed by the Divorce Act and I make that order.

Imputing Income for Child & Spousal Support

[27] Both parties seek orders imputing income to the other.

Applicable Legal Principles

[28] Section 19 of the Federal Child Support Guidelines, SOR/97-175 (the "Guidelines") expressly addresses income imputation to payors of support on various enumerated grounds.

[29] Particularly relevant to this case is the ability of the court to impute income on the basis of intentional under-employment: see s. 19(1)(a). Although the Guidelines are expressly directed at child support, the jurisprudence interpreting s. 19 has been applied more broadly in family law.

[30] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses; however, there must be an evidentiary basis upon which to attribute or impute income to a party. The party seeking to impute income to the other spouse bears the burden of proof. The test for imputing income for intentional under-employment 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": *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37; see also *Willms v. Willms*, 2020 BCCA 51 at para. 41.

[31] Furthermore, a finding of bad faith is not necessary to impute income: *Yeung v. Silva*, 2016 BCSC 1682 at para. 46.

Background Facts

[32] In her April 22, 2025 financial statement, the claimant declared receiving \$3,375 in student grants and \$10,475 in Canada Child Tax Benefit and BC Family Bonus, in addition to child and spousal support received from the respondent. The claimant has not earned employment income since moving to Canada.

- [33] In 2022, the respondent had total income of \$82,413. In 2023, the respondent had total income of \$151,309. The respondent says that in 2024, he had total income of \$92,424.73, although the notice of assessment was not put into evidence for 2024.
- [34] In his March 4, 2025 financial statement, the respondent declared annual income of \$85,900.49. The respondent is presently employed as a concrete finisher with a Victoria-based company. The respondent testified that he earns the equivalent of \$39.00 per hour for a 40-hour work week and that he does not work overtime hours.

Income of the Claimant

- [35] The respondent submits that the claimant has not taken reasonable steps to find employment and suggests that the claimant could take the exams to become a licenced dentist in Canada or, at a minimum, work while she is attending classes at Camosun College.
- [36] The claimant testified that five exams are required for becoming a licenced dentist, with each exam costing between \$5,000 - \$8,000 plus taxes. The total cost would be between \$25,000 and \$40,000 plus taxes, if each exam is passed on the first attempt. The claimant testified that she does not have the funds to cover this expense, leading her to conclude that obtaining the credentials to work as a dentist is not practical at this time. The claimant also raised concerns with her English proficiency being at the level necessary to pass the exams on the first attempt.
- [37] It is not reasonable to impute income to the claimant on the basis that she has not qualified to practice dentistry in Canada. The barriers are too great at this time and the claimant's plan to obtain the qualifications to become a dental hygienist is a reasonable one. I would not impute income to the claimant by failing to become a registered dentist in Canada.
- [38] With the claimant's current part-time school schedule, I do find that she has the ability to earn some income. Additionally, the week on, week off parenting schedule will provide her with additional flexibility to find some employment. While I am imputing income to the claimant, it is at the lower end recognizing that the claimant will need time outside of school to study and complete course assignments. If the claimant returns to full time studies, I do not find it reasonable to impute income as the claimant will be required to dedicate her full time and attention to her studies and parenting the Child during her respective parenting time.
- [39] Recognizing that the claimant may transition between part-time and full-time studies during any given year, the amount that will be imputed to the claimant while she is a part-time student is \$850 per month and if the claimant returns to full-time studies, there will be no imputation of income during those months. This imputation is for the purpose of calculating child and spousal support.

Income of the Respondent

- [40] The last notice of assessment produced by the respondent is for 2023 when he earned \$151,309. The respondent says that his 2024 income was \$93,424.73 and he is expected to earn even less in 2025. I accept that the respondent has adjusted his employment to make time for parenting the Child and this will have an impact on his ability to earn as much as he has in the past. With that said, the respondent works in an industry that allows him to work overtime and take on additional projects, as evidenced by his past earnings. I do not find it reasonable that his income has reduced from \$151,309 to \$85,000 as a consequence of the adjustments he has made for parenting his Child and that his age, health and experience allows him to earn more than \$85,000 per year.
- [41] I find the lack of financial disclosure for 2024 weighs against the respondent. The respondent has historically underestimated his income in his sworn financial statements and what the respondent thinks he might earn is not reliable for determining income.
- [42] I conclude that the claimant has satisfied the evidentiary basis for imputation of income. Accordingly, I find that the respondent's imputed income should be \$110,000 per year for the purposes of child and spousal support.

Child Support

- [43] Child support for the Child shall be payable in accordance with s. 3(1)(a) of the Guidelines based on the incomes I have imputed to the parties.
- [44] The change in child support shall be effective as of November 1, 2025.

Spousal Support

- [45] Pursuant to s. 15.2 of the Divorce Act, there are four objectives of spousal support:
- To recognize any economic advantages or disadvantages to the spouses arising from the marriage and/or the breakdown thereof;
 - To apportion between the spouses any financial consequences arising from the care of their children (beyond the duty to pay child support);
 - To relieve any economic hardship of the spouses arising from the breakdown of the marriage or relationship; and
 - Insofar as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [46] There are three forms of spousal support which a spouse may be entitled to: compensatory, non-compensatory, and contractual: *Zacharias v. Zacharias*, 2015 BCCA 376 at paras. 25-27. Contractual support is not at issue here.

- [47] The purpose of compensatory support is to equitably share any economic disadvantages (or advantages) arising from the marriage, especially any of such arising from the division of childcare responsibilities: *Chutter v. Chutter*, 2008 BCCA 507 at para. 50. To achieve this equitable sharing, compensatory support may be awarded to ensure an equal standard of living between the spouses, particularly where the marriage was a long one: *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, 1992 CanLII 25 (S.C.C.).
- [48] The purpose of non-compensatory support is to "narrow the gap between the needs and means of the spouses upon marital breakdown": *Chutter* at para. 54. The concept of "need" has been interpreted liberally and must be considered with reference to the standard of living during the relationship and the payor spouse's post-separation standard of living: *Chutter* at paras. 57-61.
- [49] Section 15.2 of the Divorce Act requires the court to consider the "condition, means, needs and other circumstances of each spouse" in making an order for spousal support. This includes considering the length of time the spouses cohabitated, the functions performed by each during that time, and any order, agreement or arrangement relating to the support of either spouse: *Y.M.F. v. R.V.F.*, 2022 BCSC 699 at para. 111.

History of Support Payments

- [50] At the time of separation, the parties informally agreed that the respondent would pay the claimant's expenses in lieu of spousal support, and this continued for a period of time. Neither party kept records of the amount of these payments; although both parties agree that payments were being made.
- [51] The claimant was unable to say how much she received from the respondent. The respondent has provided three different amounts to the court:
- a) \$125,466.50 as indicated on his May 10, 2023 financial statement;
 - b) \$73,140.00 as set out in his March 4, 2025 affidavit; and
 - c) \$38,460.69 as set out in his May 2, 2025 affidavit plus \$8,000 - \$19,000 provided to the claimant or her mother.
- [52] On cross-examination, the respondent was unable to confirm which of the three amounts set out above was more accurate.
- [53] As neither party was able to provide reliable evidence on the amounts of payments made, I am unable to determine how much was paid from the respondent to the claimant. I make a finding that while the respondent was paying the claimant's expenses, the claimant was not in any need and that these payments satisfied the respondent's obligations for spousal support for that period of time when the separation was in the early stages and when there was no agreed upon or court-ordered amount of spousal support to be paid.

Position of the Claimant

- [54] The claimant submits that she is entitled to compensatory spousal support as she left a well-paying profession in Mexico to move to Canada to be with the respondent.
- [55] The claimant submits that she required and still requires extensive English language training as a direct result of moving to Canada and her ability to achieve economic self-sufficiency has been delayed by her role as the Child's primary caregiver. It is the claimant's position that her need for support is directly related to the economic disadvantages that she experienced due to the circumstances of the relationship and its breakdown.
- [56] The claimant submits that the evidence supports that the respondent's bankruptcy was not solely due to the marriage or its breakdown and that he contributed to it by living beyond his means and purchasing luxury items he could not afford.
- [57] With respect to non-compensatory support, the claimant submits that her lifestyle would be diminished to living in poverty. The claimant relies on the income disparities between the parties.

Position of the Respondent

- [58] The respondent submits that the quantum and duration of spousal support have been satisfied and the principles of non-compensatory support no longer apply.
- [59] The respondent submits that the claimant's lifestyle will not be diminished and that she has some savings available to her, approximately \$9,000. Secondly, the respondent submits that he has carried the financial burden of the marriage breakdown and should be relieved of his obligations to pay spousal support. Thirdly, the respondent submits that the length of the marriage was short and the spousal support paid to date has satisfied his legal obligations.

Analysis

- [60] Based on the evidence before me, the claimant has a strong case for compensatory and non-compensatory support.
- [61] I find on the evidence that there is a significant disparity in the standard of living of the parties. While not a long marriage, the claimant undertook significant personal and geographic locational changes over the course of the relationship that prejudiced the claimant and advantaged the respondent. The Child is now established in Canada, and it is not reasonable for the claimant to return to Mexico where she could be self-sufficient at a high paying job.
- [62] The claimant did not receive any property division as there was no property to divide following the bankruptcy of the respondent. There is a disparity in income levels and the claimant's primary source of income is the spousal support she receives. This spousal support is required to allow her to advance her skills to become self-sufficient.

- [63] Accordingly, the claimant is entitled to spousal support at the mid-range of the Guidelines based on the imputed incomes I have found for the claimant and respondent.
- [64] The change to spousal support shall be effective November 1, 2025.
- [65] Absent a change of circumstances occurring beforehand, the issue of spousal support shall be reviewable in 4 years when it is anticipated that the claimant will have completed her training to become a dental hygienist.

Family Vehicle and Division of Property

- [66] There is a dispute over what should happen with the family vehicle, a 2018 Nissan Sentra (the "Vehicle") that has been in the claimant's possession since early 2023.
- [67] The respondent has been making the monthly payments on the Vehicle and reporting the same to British Columbia Family Maintenance Agency as support payments made to benefit the claimant.
- [68] The claimant submits that if the Vehicle is sold, she would forfeit the contributions she made, through spousal support, on the expectation of future ownership.
- [69] The respondent testified that he wants the Vehicle to be available to the claimant as it benefits the Child; however, he does not want the Vehicle loan to remain in his name.
- [70] I am advised that the approximate amount outstanding on the loan is \$8,777.69.
- [71] It is in the best interests of the Child for the claimant to maintain the Vehicle. The mechanism for achieving that is complicated and I have attempted to balance the needs and interests of the parties in the order I have made.
- [72] The parties have not canvassed the claimant's ability to assume responsibility for the Vehicle loan. Accordingly, I make an order that the claimant will take reasonable steps to have the Vehicle loan transferred into her name within the next 60 days, and will report the status to the respondent. In the meantime, the respondent will continue to make payments towards the Vehicle loan with those payments being credited against the amount of spousal support he is to pay the claimant.
- [73] Should the claimant not be approved to assume the Vehicle loan, the respondent will continue to make payments towards the Vehicle loan with those payments being credited towards his spousal support payments for a period of 12 months from the date of this judgment. At the conclusion of the 12 months, the claimant will be responsible for assuming the Vehicle loan and if she is unable to do so, the Vehicle may be sold with the proceeds being used firstly to pay the outstanding amount of the Vehicle loan, and secondly to the claimant.

[74] While the Vehicle loan is in the name of the respondent, the claimant is responsible for maintaining insurance on the Vehicle and providing proof of valid insurance when the respondent requests.

[75] For certainty, any equity in the Vehicle is property of the claimant.

[76] I am advised that there are no other assets or debt that constitutes family property or family debt, and as such all other claims respecting the same are hereby dismissed.

Order for Divorce

Applicable Legal Principles

[77] A spouse may commence divorce proceedings in the superior court of any province in which either spouse was habitually resident for at least one year immediately preceding the commencement of proceedings: Divorce Act, s. 3(1).

[78] A court may grant a divorce on the ground that there has been a breakdown of the marriage: Divorce Act, s. 8(1).

[79] A breakdown of a marriage is established if the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding.

[80] In a divorce proceeding, it is the duty of the court, before considering the evidence, to satisfy itself pursuant to the Divorce Act, among other things, that:

- a) there is no possibility of reconciliation of the spouses (s.10(1));
- b) there has been no collusion in relation to the application for a divorce (s.11(1)(a)); and
- c) that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines (s.11(1)(b)).

Discussion

[81] I am satisfied that all of prerequisites for a divorce are satisfied and make an order for divorce.

Costs

[82] In view of the divided success of the parties in this summary trial, the parties have leave to make written submissions on the issue of costs, not exceeding 5 pages, within 20 days from the date of these reasons. If I do not receive written submissions as set out herein, there will be no order for costs.

"Justice LeBlanc"

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Prepared on 25 October 2026 · Esheria