

CANADA / JUDGMENT

## Pauls v. Hutt

2024 BCSC 1167

### COURT

Supreme Court of British Columbia

### DECIDED

16 May 2024

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2024 BCSC 1167 Pauls v. Hutt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pauls v. Hutt,

2024 BCSC 1167

Date: 20240516

Docket: E18335

Registry: Chilliwack

Between:

Shawn Michael Pauls

Claimant

And

Sydney Elizabeth Hutt

Respondent

Before: The Honourable Mr. Justice Veenstra

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

M. Sidhu

Counsel for the Respondent:

W.L. Scott, K.C. (May 10, 2024)

M.E. Abercrombie (May 16, 2024)

Place and Date of Hearing:

Chilliwack, B.C.

May 10, 2024

Place and Date of Judgment:

Chilliwack, B.C.

May 16, 2024

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- [1] THE COURT: This is an application to vary a final order made pursuant to the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The claimant seeks to vary the provisions as to parenting time and to reduce arrears of child support that have accrued, through what is in essence a retroactive reduction in the monthly amount of child support. The claimant also seeks to review child support going forward and for the children to be placed in counselling.

## Facts

- [2] By way of background, the parties are now aged 34 and 33 respectively. They began to live together in 2012, when they were aged 22 and 21 respectively. They were married in March 2013. They had twin girls, O. and S., in July 2013. The children are now a few weeks away from their 11th birthday and are in the process of completing grade 5.
- [3] The parties separated on September 1, 2016, when their daughters were just over three years of age. Both parties have since re-partnered.
- [4] The parties entered into a separation agreement on or about September 24, 2016. Pursuant to the separation agreement, the claimant purchased the respondent's interest in the former family residence. He continued to live there until 2021, when it was sold.
- [5] The parties subsequently commenced a joint family law case, Chilliwack action E14674.

## The 2017 Order

- [6] An order of divorce was granted on October 10, 2017 (the "2017 Order"). In addition to providing for a divorce, the 2017 Order provided by consent for shared decision-making with respect to most matters; however, it stated that the respondent would make decisions as to where the children were to reside.
- [7] With respect to parenting time, the 2017 Order provided that:
2. The children will live primarily with [the respondent] who will have most of the parenting time. [The claimant] will have liberal and generous parenting time on dates and times agreed between the guardians.
  3. [The claimant] will have liberal and generous contact with the children at dates and times agreed between the parties.
  4. [The claimant] will have contact with the children every weekend from Saturday/8:30AM until Sunday/6:30PM, commencing September/1/2016.
  5. [The claimant] will have contact with the children on alternate weekends from Friday/after school to Sunday/6:30PM, commencing September/1/2018.

6. If the day preceding or following the weekend is a statutory holiday or professional development day, the contact time will include that extra day.
7. [The claimant] will pick up and drop off the children at the beginning and end of their contact.
- [8] With respect to child support, the 2017 Order stated that the claimant's Federal Child Support Guidelines [Guidelines] income at the time was \$65,000 per year and required the claimant to pay child support of \$986 per month commencing on December 1, 2016, with the parties to share special expenses in proportion to their Guidelines income. The 2017 Order also stated:
17. The parties will review child support annually by December/1st of each year and, if necessary, revise it to ensure that it accords with the requirements of the Child Support Guidelines.
18. [The respondent] and [the claimant] must each notify the other immediately upon becoming aware of a material change in circumstance that may affect child support obligations.

### Events Since 2017

- [9] At the time of the 2017 Order, the respondent was not working outside of the home. She was focused on raising her then four-year-old daughters. The respondent subsequently enrolled in a Bachelor of Education program, which she completed in June 2023. During the 2023/2024 school year, she has been employed full-time as a grade 6 teacher. While her current contract expires on June 30, 2024, and she does not have guaranteed work for the next school year, the prospects are good for her to be able to continue working as a teacher on a full-time basis. Her current salary is \$62,000.
- [10] The claimant worked in the construction industry. After suffering an injury in 2013, for which he continues to receive regular WorkSafe payments, he was retrained to work on the health and safety side of the construction industry. At the time of the 2017 Order, he worked for a large construction company in Vancouver doing health and safety work. That work required him to commute from the parties' home in Chilliwack to Vancouver each day, a round trip of approximately three hours. The claimant says that the parties' respective schedules in 2016, and the age of the children at that time, were both major factors in what was agreed to with respect to parenting time.
- [11] In March 2021, the claimant went on stress leave for four months. The evidence included a doctor's note provided at the time, as well as confirmation from his then employer of his sick days. It is not clear whether he received disability payments to replace his income during that leave, although given that his gross income for the year decreased by less than 15% from 2020 (as set out below), it is likely that he did.

- [12] In the summer of 2021, the claimant reconsidered his vocational plans. He found work as an "assembler" at a local company, Tycrop Trailers ("Tycrop"). He initially earned \$23/hour. It is not clear what his initial schedule was at Tycrop; however, by early 2022, he was working only one day a week.
- [13] Although the 2017 Order provided for annual review of the amount of child support, that did not happen. The claimant did not share his income information with the respondent. It is not clear that the respondent took any steps to compel production of the required information, and the child support amounts were not varied each year in accordance with the claimant's actual earnings. Based on what has been disclosed in the present proceeding, the claimant's income for the intermediate years and the Guidelines table amount for that income level are as follows:

Year

Line 150 Income

Table Amount

2018

\$82,545

\$1,269

2019

\$81,362

\$1,254

2020

\$85,384

\$1,314

2021

\$74,618

\$1,148

- [14] The claimant says that in about July 2021, he and the respondent agreed to reduce his child support payments from \$986 per month to \$700 per month. From July 2021 to date, he has been paying this \$700 amount. The claimant says that there were no complaints about this new amount until October 2021, when they had an argument that stretched into November.

- [15] It seems to be clear that since November 1, 2021, the respondent has taken the position that the claimant is required to pay the \$986 amount provided for in the 2017 Order. There is a text in evidence that day, saying that the respondent had obtained legal advice, and that the claimant was required to pay the amount specified in the existing order until the order was varied by the court. The claimant did not accept this position and continued to pay only \$700 per month.
- [16] At some point in 2021, the claimant sold the former family home. He and his new partner moved into a suite in the basement of a home belonging to the claimant's father. The claimant's parents lived on the upper floor along with some foster children. The claimant invested the proceeds of sale of the former family home in a development property. His father and brother also invested in that property.
- [17] In March 2022, the claimant, his father, and brother began building a new home on the development property. The claimant worked on the construction of that home on the days he was not working at Tycrop. He was not paid wages for this work, although it was contemplated that he would share in the increased value of the home when it is eventually sold. The house was completed in October 2023, at which time the claimant began working full-time at Tycrop.
- [18] The claimant's line 150 income in 2022 was approximately \$25,000. In 2023, it was approximately \$26,000.
- [19] In January 2022, the parties agreed to the claimant having additional parenting time every Wednesday from 2:15 p.m. (typically the end of the school day) until 6:30 p.m. The claimant saw this as an interim step, and he has continued to press for increased parenting time. On September 20, 2022, he commenced the present proceeding, seeking a change to a week-on/week-off schedule. The notice of family claim also included a request that there be a s. 211 report.
- [20] There appear to have been further negotiations over the next several months. Ultimately, in the fall of 2023, the parties agreed to the preparation of a "views of the child" report from by Dr. Ellie Bolgar. Dr. Bolgar spoke with both parents and then met with the children individually on two occasions in October 2023. Her report was issued on November 20, 2023. I will discuss the report below.
- [21] In April 2024, the claimant was promoted by his employer. He is now a transport mechanic apprentice working full-time and earning \$30.22 per hour. His anticipated annual earnings at this wage are \$70,000. He has also recently purchased from his father the house in which he has been living since 2021. His parents have moved into the house that the claimant, his father, and brother constructed. The claimant has moved from the basement to the main floor of the house in which he has been living, and he now has a separate bedroom there for each of the children.

- [22] As noted above, the children are currently in grade 5 at [redacted] Elementary School, which is within walking distance of the home owned by the respondent and her husband. In September 2024, the children will be attending [redacted] Middle School, which is in the same neighbourhood. The claimant's home is a five-minute drive away.
- [23] The materials before the court include a short-form statement from the BC Family Maintenance Agency ("BCFMA"), asserting that the total arrears of support are \$9,724. Unfortunately, the form of statement provided does not indicate for what months the arrears are calculated. It was suggested in argument that the arrears are calculated from the fall of 2021 onward and do not include the few months in the middle of 2021 for which the respondent says she agreed to a reduction. I have had difficulty trying to confirm that, and the \$9,724 in the BCFMA statement seems higher than \$286 multiplied by the relevant number of months.
- [24] The BCFMA statement also asserts a claim for interest of \$409.69 and a "default fee" of \$400. The total amount showing on the statement is \$10,533.69.

#### The Bolgar Report

- [25] Dr. Bolgar is a registered clinical counsellor. She holds a doctoral degree in the field of clinical psychology.
- [26] Dr. Bolgar spoke with each of the parents individually by telephone on October 30, 2023, before meeting with the children. She met with each of the children twice. The mother brought the children to the first meeting on November 14, 2023, and the father brought the children to the second meeting on November 15, 2023. Each child was interviewed individually, and neither parent was present in the room.
- [27] Dr. Bolgar's report is 15 pages long. It describes the interviews in a fair bit of depth. It seems clear from the report that the children have loving and positive relationships with their parents, their stepparents, their grandparents on both sides, and extended families including cousins.
- [28] It is also clear from the report that, at the time, the children had an appreciation for their mother's much larger house, said to be "like a mansion" in comparison to the basement suite in which their father lived at the time and in which the two children shared a room. As noted above, the claimant lived in the basement suite from 2021 when he sold the former family home until early 2024 when he purchased his current home and moved to the main floor. That occurred several months after Dr. Bolgar conducted the interviews. S. is quoted as having told Dr. Bolgar that "space is the main issue" at her father's house, but that there are also a lot of people there. It is clear as well that the children have more friends in the neighbourhood of their mother's house, which is a factor identified by the children, as well as its closeness to their school.

[29] It appears from the report that the children have different relationships with each of their parents. They have more serious heart-to-heart conversations with their mother, but O. was clear that she feels equally comfortable talking with her father as well, and both parents make her feel good. There was some concern that their father did not proactively address issues to do with behaviours of members of the extended family, although what is clear that the overall relationship with extended family is very good. I gather from the evidence that the claimant has taken to heart some of the comments about dealing with behaviours of extended family and is working to be more responsive to his children's concerns.

[30] Overall, Dr. Bolgar found that both children were articulate and presented their thoughts, feelings, and experiences with good insight into their family situation. They were both mature, intelligent, and sensitive. Dr. Bolgar commented that neither of the children appear to feel stressed about their lives, and commented that:

They are at an age where children often take sides when they are involved with their parents' conflict. [S.] and [O.] reported having awareness of their parents' disagreement, but they perceive them as respectful towards each other. It is important that their parents protect them from having any form of communication with the children or in the presence of the children about adult matters.

[31] She concluded:

It appears that both children perceive their parents in a positive light, but they wish to maintain the same living arrangement for practical reasons such as the location of their mother's house is walking distance from school, they feel more comfortable having their own room, less people live there, and they have friends living in the complex. That said they find value spending time at their father's house. [O.] expressed that if some of the above-mentioned issues would be addressed, she would be open to spending more time with him.

[32] The claimant had clearly anticipated a different result of the process. His evidence was that, from time to time, both children had expressed to him a desire to spend more time with him, and that at the end of some visits, the children were reluctant to leave. He suggested that some of the language attributed to the children by Dr. Bolgar was not age-appropriate, and most likely came from comments made to them by the respondent. He expressed concern that the children may have been prepared by or even pressured by the respondent to say certain things in the interview.

[33] The respondent adamantly denies this, and says that she obtained and followed to the letter instructions from Dr. Bolgar as to what to say to the children in advance of the interview.

## Legal Context

## Parenting Arrangements

[34] The 2017 Order was made pursuant to the then provisions of the Divorce Act. Although the parties framed their submissions largely in light of s. 37 of the Family Law Act, S.B.C. 2011, c. 25, counsel were agreed that it was actually the very similar provisions of s. 16 of the Divorce Act that governs. That section provides:

### Best Interests of the Child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

### Primary consideration

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

### Factors to be considered

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
  - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
  - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
  - (d) the history of care of the child;
  - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
  - (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
  - (g) any plans for the child's care;
  - (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
  - (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[35] The parties were agreed that family violence is not an issue in the present case.

[36] A child's best interests are to be assessed from the point of view of the child and not from the perspective of either parent: *C.M. v. N.L.*, 2020 BCSC 3, at para. 95.

[37] Section 16(6) of the Divorce Act requires that:

### **Parenting time consistent with best interests of child**

(6) 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.

[38] This provision came into force in March 2021. Prior to that time, the Divorce Act required consideration of what was called the "maximum-contact principle" in dealing with matters such as parenting time. As explained by Justice Karakatsanis in *Barendregt v. Grebliunas*, 2022 SCC 22:

[133] What is known as the maximum contact principle has traditionally emphasized that children shall have as much contact with each parent as is consistent with their best interests. A corollary to this is sometimes referred to as the "friendly parent rule", which instructs courts to consider the willingness of a parent to foster and support the child's relationship with the other parent, where appropriate: see *Young*, at p. 44. Both of these considerations have long been recognized by the Divorce Act: see Divorce Act, pre-amendments, ss. 16(10) and 17(9); and Divorce Act, post-amendments, ss. 16(6) and 16(3)(c).

[134] Although Gordon placed emphasis on the "maximum contact principle", it was clear that the best interests of the child are the sole consideration in relocation cases, and "if other factors show that it would not be in the child's best interests, the court can and should restrict contact": *Gordon*, at para. 24; see also para. 49. But in the years since *Gordon*, some courts have interpreted what is known as the "maximum contact principle" as effectively creating a presumption in favour of shared parenting arrangements, equal parenting time, or regular access: *Folahan v. Folahan*, 2013 ONSC 2966, at para. 14 (CanLII); *Slade v. Slade*, 2002 YKSC 40, at para. 10 (CanLII); see also F. Kelly, "Enforcing a Parent/Child Relationship At All Cost? Supervised Access Orders in the Canadian Courts" (2011), 49 Osgoode Hall L.J. 277, at pp. 278 and 296-98. Indeed, the term "maximum contact principle" seems to imply that as much contact with both parents as possible will necessarily be in the best interests

of the child.

[135] These interpretations overreach. It is worth repeating that what is known as the maximum contact principle is only significant to the extent that it is in the child's best interests; it must not be used to detract from this inquiry. It is notable that the amended Divorce Act recasts the "maximum contact principle" as "[p]arenting time consistent with best interests of child": s. 16(6). This shift in language is more neutral and affirms the child-centric nature of the inquiry. Indeed, going forward, the "maximum contact principle" is better referred to as the "parenting time factor".

[Emphasis in original.]

[39] Also of assistance is the Department of Justice explanatory note with respect to s. 16(6), as it was implemented by Bill C-78, S.C. 2019, c. 16:

It is well accepted that unless circumstances, such as safety concerns, indicate otherwise, children should have strong relationships with each parent. Sufficient time with each parent is necessary to maintain these relationships.

However, the optimal amount of time depends on an individual child's circumstances and must be based on what is in the child's best interests. Therefore, courts must take into account all factors relating to the best interests of the child in determining what division of time would be best.

[40] Section 16(3)(e) requires consideration of "the child's views and preferences, giving due weight to the child's age and maturity." A child's views, depending on their age and level of maturity, are regularly considered as part of the best interests analysis, with more or less weight to be attached to those views depending on their age and level of maturity: P.J.D. v. W.K.W., 2019 BCSC 1188, at paras. 41-42.

## Child Support

[41] The parties are *ad idem* that child support is to be governed by the Federal Child Support Guidelines, SOR/97-175. Their primary difference relates to the appropriateness of imputing income. Section 19(1)(a) of the Guidelines provides that:

The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

## Reduction or Cancellation of Support Arrears

- [42] I was referred to the classic statement of the law by Justice Martinson in *Earle v. Earle*, 1999 BCSC 283, which has been cited on numerous occasions over the years, including in *MacCarthy v. MacCarthy*, 2015 BCCA 496, at para. 58. In *Earle*, Justice Martinson noted at para. 22 that there is a substantial onus on the person asking for a reduction or cancellation of arrears to show that there has been a significant or long-lasting change in circumstances. At para. 27, Justice Martinson noted that a party seeking a reduction or cancellation of arrears must show that the change was real and not one of choice, and also that every effort was made to earn money (or more money) during the time in question, and that those efforts were not successful.
- [43] In *Colucci v. Colucci*, 2021 SCC 24, the Court accepted the appropriateness of applications for a retroactive decrease in support based on a material change in circumstances, but concluded that any such decrease should go back only to the date of "effective notice" being given - to a maximum of three years before formal notice of the application to vary. Effective notice, however, requires clear communication of the change in circumstances as well as disclosure of all available documentation necessary to substantiate the change.

## Positions of the Parties

### The Claimant

- [44] The claimant submits that the needs of the children and his ability to provide full-time care are substantially different now than they were in October 2017 and that it is thus appropriate to reconsider the provisions for parenting. The children are now six and a half years older than they were. Both parents are now working full-time in the Chilliwack area, and both parents have stable home environments, the ability to capably parent the children, and a desire to maintain and continue developing strong relationships with them. He submits there should be equal shared parenting, either on a week-on/week-off basis, or alternatively on the basis of a 2-2/5-5 sharing.
- [45] The claimant relies upon his own understanding that the children want to spend more time with him and notes that there is in the Bolgar report no straight denial of a desire for more time with the claimant. He submits that the views expressed in the report are clearly influenced by the respondent and should be given reduced weight. He also argues that there have been significant changes in his housing arrangements since Dr. Bolgar did her interviews, and thus some of the concerns that were expressed by the children are no longer relevant.

- [46] He submits that the children have strong positive relationships with each of the parties, their new partners, and their respective extended families, that both are able to meet the children's needs, and that this is a case where the court should apply the dictate of s. 16(6) - that children should have as much time with each parent as is consistent with their best interests - as giving rise to equal parenting time.
- [47] He submits that he has exercised regular parenting time, to the extent he is able, over several years, and maintained a strong relationship with each child. He now has a full house, with bedrooms for each of the children, and is able to provide them with a home comparable to that provided by the respondent.
- [48] He argues that, with summer approaching and the children approaching a transition to a new school, this would be a good time for a change in parenting arrangements so that the children become accustomed to a new and stable environment.
- [49] With respect to the request for counselling, the claimant submits that some of the statements in Dr. Bolgar's report give rise to the concerns about the children's wellbeing, and thus he believes counselling is appropriate.
- [50] With respect to child support, the claimant submits that the parties' agreement to reduce the amount to \$700 per month should be enforced through a retroactive decrease in the amount payable, particularly given that he was only earning \$25,000 or \$26,000 per year in 2022 and 2023. He says that he has paid that \$700 each month and sought thus no arrears to be applicable.
- [51] He says that going forward, there should be shared parenting time with the setoff amount of \$124 per month payable by him to the respondent.

## The Respondent

- [52] The respondent submits that the current parenting arrangement is very stable, and that the views of the children - that they would like it to continue - should be given significant weight. The respondent agrees that both parents are responsible and caring but says that given the history of the children's care, it would not be appropriate to have any substantial change.
- [53] That said, the respondent has put forward a proposal for a slight modification to parenting time, which would be in two parts. For the school year (from September 1 to June 30 each year), the claimant's parenting would be as follows:
- Every second weekend from Friday after school to the start of school on Monday morning, except if Monday is a statutory holiday or professional development day when the children will remain in the claimant's care until the start of school on Tuesday morning;
  - Every Wednesday from after school to 7 p.m.;

- c) Father's Day each year from 9 a.m. to 8 p.m., if Father's Day is not a day included in the claimant's regular parenting time; and
  - d) Such other parenting time as may be agreed upon in writing.
- [54] The respondent is proposing a move to what is in substance a week-on/week-off schedule for school holidays, as follows:
- a) The children will be with one parent for the first half of the Christmas and New Year holidays (such holidays to correspond with the local school holiday schedule), then with the other parent for the second half of the holiday with the claimant having the first half of the holiday period in odd-numbered years, except that whatever parent does not have the children in their care for the first half of the holiday will have them in their care from 1:00 p.m. on Christmas day to 7:00 p.m. on Boxing Day;
  - b) For the school spring break, the children would again be with one parent for the first half of the holiday, then with the other for the second half, with the claimant to have the first half of the school spring vacation in odd-numbered years; and
  - c) For July and August of each year, there would be a week-on/week-off rotation such that one party will have the children from 9:00 a.m. on July 1 to 9:00 a.m. on July 8, then the other for the next week with that rotation ongoing until August 31 at 9:00 a.m. The respondent proposes that the claimant will have the first week of the summer holidays in odd-numbered years with the respondent to have the first week in even-numbered years.
- [55] The respondent proposes that there be a review of this schedule in the summer of 2025, at which time the children will be about to turn 12 years of age.
- [56] The respondent does not agree that the children are in need of counselling. She says that Dr. Bolgar's report confirms that the children are not stressed about their lives and that they are happy and well adjusted.
- [57] With respect to child support, the respondent notes that the claimant failed to comply with the terms of the 2017 Order by disclosing his increased income from 2018 to 2021 and thus ended up paying less support than he should have for those years. With respect to time periods from July 2021 until late 2023, during which time the claimant earned substantially less income, the respondent submits that the claimant was choosing to work less in order to work on his home, and that he should be imputed with an income of at least the \$65,000 per year reflected in the 2017 Order, and possibly more.
- [58] The respondent thus submits that there is no basis for forgiveness of arrears.
- [59] With respect to child support moving forward, the respondent says that child support should be assessed and paid in accordance with the Guidelines based on the parties' current incomes.

## Analysis

### Parenting Time

- [60] I accept that the parenting time provisions of the 2017 Order were an appropriate reflection of the children's then age and the parties' then circumstances. In my view, the same order would not be made were the parties to have recently separated and come before the court today. In that sense, it is appropriate to consider afresh the best interests of the children.
- [61] That said, it is clear that the history of the children's care is an important factor to be considered. The children are clearly comfortable with the current arrangement, and it has provided a stable base for their growth and development over the past seven years.
- [62] I accept that the children have a strong, positive, and loving relationship with each of their parents, as well as with their extended families on each side. They thus have strong bases of support on each side of the family, and it appears from the materials that their parents have mostly worked well together in the best interests of the children, while mostly shielding the children from any impacts of those disagreements that have arisen.
- [63] In my view, these children are of an age and maturity where it is appropriate to give their views some weight. That is particularly so where a professional has conducted a detailed interview pursuant to a multi-day process designed to minimize the risk of excessive influence from either of their parents. Having reviewed the report of Dr. Bolgar, it seems clear to me that she assessed the opinions being expressed to her as sincerely held opinions, and the concerns identified by the claimant do not persuade me that the report should be given minimal weight.
- [64] All of that said, I accept that some of the matters raised by the children have their roots in housing arrangements that have since changed. Not all of them do, however, and the fact that the children have close friends in the neighbourhood in which the mother resides is a factor to consider.
- [65] In my view, the proposal put forward by the respondent has significant merit. It provides for some measure of incremental change in parenting arrangements during the school year, while also providing opportunities to work within a week-on/week-off schedule during school holidays. This sort of arrangement has the benefit of facilitating family vacations.
- [66] Finally, the proposal contemplates a review in just over a year, by which time the parties will have been through at least one summer as well as two shorter school breaks in which a week-on/week-off schedule has been implemented. The children will have become comfortable with the claimant's new housing arrangements and completed their transition to middle school.

- [67] In my view, however, there would be benefit to increasing the proposed Wednesday visit such that, rather than concluding at 7:00 p.m., the children stay overnight with the claimant and are delivered by him to school on Thursday mornings.
- [68] As well, it is my view that in fairness to the respondent, there should be provisions for parenting time on Mother's Day that would match what is set out for Father's Day.
- [69] I would thus order that parenting time be varied as proposed by the respondent as I have set out above, except that the mid-week parenting times during the school year extend from Wednesday after school to Thursday morning at the start of the school, and that there be a provision for Mother's Day that matches what is set out for Father's Day.

## Counselling

- [70] I agree with the respondent that there is no evidentiary basis to make an order that the children have counselling. Dr. Bolgar's assessment of the children as articulate, insightful, mature, intelligent, and sensitive, and her comment that neither child appears to feel stressed about their lives, are inconsistent with a need for counselling in the circumstances. While I recognize that Dr. Bolgar was not asked to assess the need for counselling, in my view she is an experienced independent observer who is a counsellor herself and who embarked on the sort of discussions with the children that would most likely have turned up any issues that provide a foundation for the court to order counselling.
- [71] In my view, the suggested need for counselling is rooted in the claimant's view that the children had been manipulated by the respondent and that they must be feeling stressed by that. For the reasons set out above, I do not conclude that the children were manipulated.

## Prospective Child Support

- [72] As noted above, the parties' incomes moving forward are not in dispute, and the parties are agreed that those will form the basis for future child support payments.
- [73] The schedule I have set out contains a total of three months, or one quarter of the year, during which there is a 50/50 sharing of parenting time, while for the balance of the year, the respondent has the majority of parenting time.
- [74] The parties did not refer me to any authorities as to how the Guidelines had been applied in circumstances like this, although they suggested that there are at least some cases that have considered this issue.
- [75] As I discussed with the parties, I have made my order with respect to parenting time based on my assessment of the best interests of the children. If the parties are unable to resolve the application of the Guidelines in the circumstances, they are at liberty to bring this back before me with submissions supported by case law on this particular issue.

## Arrears

- [76] The claimant does not suggest that his line 150 income of \$25,000 and \$26,000 in recent years reflects his actual income-earning capacity. He agrees that he was working several days each week on construction of the home, for which he was not paid a wage, but for which he will in the long term receive a financial benefit. He suggests that the \$700 amount he did pay is a calculation he made based on his actual earning capacity at the time, although he did not have specifics of that calculation at the court hearing. He says that it was a reasonable amount for him to be paying from 2021 until recently.
- [77] By my calculation, \$700 in child support paid for two children would reflect a deemed income of \$44,443 per annum. In my view, given that the claimant's income when he has worked full time has ranged from \$65,000 to \$85,000, that number is too low.
- [78] There is no application before me to retroactively increase the claimant's child support payments for 2018 through 2021. In my view, however, I can take into account that the claimant paid less in child support in those years than he should have and that he was able to do so as a result of his failure to comply with the disclosure provisions in the 2017 Order.
- [79] In my view, in all of the circumstances, it would be inappropriate to grant any sort of retroactive reduction in the claimant's child support obligations. It is fair to the claimant to recognize the brief reduction that the respondent agreed to (albeit without any disclosure), but otherwise the claimant should have been paying at minimum the amount provided for in the 2017 Order.
- [80] I have noted above that I have some reservations about the BCFMA calculation of arrears. I assume the parties will be able to obtain the underlying calculations. If there is an issue about how they have been calculated, the parties are at liberty to bring that before me. Otherwise, I would not order any reduction of the arrears.

## [SUBMISSIONS]

- [81] As I said, I could not replicate the BCFMA calculation. I think there is a need to go back and get the detailed calculation and figure out where their number came from. I have told you that it should have been \$986 per month except for those few months that there was an agreed reduction. If that is what the BCFMA calculation shows, then their number is fine. I could not replicate the calculation, and I do not want to order payment of a specific amount that has not been proven before me.

"Veenstra J."

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Prepared on 25 October 2026 · Esheria