

CANADA / JUDGMENT

R.G.B. v. J.G.S.

2025 BCCA 404

COURT

British Columbia Court of Appeal

DECIDED

20 November 2025

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COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R.G.B. v. J.G.S.,

2025 BCCA 404

Date: 20251120

Docket: CA50164

Between:

R.G.B.

Appellant

(Claimant)

And

J.G.S.

Respondent

(Respondent)

Before:

The Honourable Mr. Justice Harris

The Honourable Justice Winteringham

The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated

August 30, 2024 (R.G.B. v. J.G.S., 2024 BCSC 1607, Vancouver Docket E193013).

Counsel for the Appellant:

M. Katsionis

T.S. Thakur

Z.E. Berinstein

Counsel for the Respondent:

M. Witzman

Place and Date of Hearing:

Vancouver, British Columbia

June 27, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 20, 2025

Written Reasons by:

The Honourable Justice Edelmann

Concurred in by:

The Honourable Mr. Justice Harris

The Honourable Justice Winteringham

Summary:

The appellant challenges the decision of a chambers judge to reassess the amount of child support owed by the respondent over a ten-year period. At issue is an order made in 2015 that required the respondent to pay retroactive and prospective child support based on an imputed income of \$94,319. In 2018, the parties signed an agreement purporting to expunge all child support arrears. The chambers judge determined that the 2018 agreement was void as contrary to public policy. However, he characterized the 2015 order as provisional and found that the respondent could revisit child support arrears under that order. He then imputed a lower income to the respondent, thereby decreasing the amount of child support owed. The appellant raises multiple grounds of appeal relating to the retroactive assessment of child support and the imputation of the respondent's income.

Held: Appeal dismissed. The chambers judge found that the respondent never earned close to \$94,319 during the relevant period. It was open to him to impute income to the respondent in the manner he did and conclude that a retroactive adjustment of child support was fair and appropriate in the circumstances.

Reasons for Judgment of the Honourable Justice Edelman:

Overview

[1] This appeal arises in the context of family law litigation that has been ongoing for 12 years and has resulted in over a dozen court orders in three provinces. In the order under appeal, the chambers judge assessed the amounts owing for child support over a ten-year period, starting in 2014. The appellant alleges a number of errors, but at the core of the appeal is the question of whether the chambers judge erred in his characterization of the interim nature of an order for child support made by Justice Rawlins of the Alberta Court of Queen's Bench in 2015 (the "Rawlins Order") and in the manner he imputed income. For the reasons below, I am not persuaded that the chambers judge erred in characterizing the Rawlins Order as provisional, nor am I persuaded that he erred in imputing income to the respondent and retroactively varying the amount due for child support. I would therefore dismiss the appeal.

Grounds of Appeal

- [2] The appellant alleges some nine errors by the chambers judge in assessing retroactive child support. Seven of the grounds of appeal allege errors in the approach taken to the retroactive variation of child support. The primary ground of appeal is that the judge erred in treating the Rawlins Order as if it remained purely provisional, as the appellant submits that it had become tantamount to a final order through the passage of time.
- [3] The remaining grounds allege errors in the manner the chambers judge imputed income to the respondent. In particular, the appellant alleges that the chambers judge erred in concluding that it was unfair for the respondent's income assessment to be founded upon employment in two jobs and in not imputing periodic support from his parents to his available income.
- [4] I will begin by addressing the errors alleged with respect to the retroactive assessment of child support before turning to the other two grounds.

Retroactive Assessment of Child Support

- [5] The chambers judge engaged in some detail with the lengthy history in this case. The record before him was voluminous, although it did not include many of the application materials or reasons for judgment underlying several of the orders at issue. I do not propose to go through all of the background but will focus on the aspects that are relevant to the issues before this Court.

Background

- [6] The appellant and respondent married in Ontario in 2005. They had a child in 2010 and divorced in 2013. The divorce order was issued in Ontario on December 17, 2013, apparently following a trial. The order granted sole custody to the appellant, who was to reside with the child in Alberta. The order also established that there would be no retroactive or prospective child support payable by the respondent. Although reasons for the decision are not in the record before us, in her testimony before the chambers judge the appellant agreed that she had told the court in Ontario that she would pay for the child's schooling and that no child support would be required from the respondent if she was allowed to move to Calgary with the child.
- [7] The appellant moved to Calgary with the child in February 2014, while the respondent remained in Ontario. Shortly after moving, the appellant initiated family law proceedings in Alberta in which she sought child support retroactive to January 2014.
- [8] In June 2015, Rawlins J. made the order regarding child support that is at the centre of the current dispute between the parties. It would appear the respondent had not made financial disclosure prior to the hearing before Rawlins J., despite a 2014 court order requiring him to do so. The Rawlins Order calculated arrears retroactive to January 2014 and ordered the respondent to pay child support prospectively based on an imputed income of \$94,319 per year.
- [9] The respondent had assigned himself into bankruptcy in May 2014 and had not yet been discharged at the time of the hearing before Rawlins J. The Rawlins Order required him to facilitate surrender of his financial information from the trustee in bankruptcy and provide disclosure by July 15, 2015. It also provided the following:

The parties shall attend the first available mediation date with a dispute resolution officer (D.R.O.) for the purposes of determining retroactive child support once the Respondent has furnished his full financial disclosure for 2014 and 2015 and the Respondent may revisit child support arrears in morning chambers.

- [10] In August 2016, the respondent brought an application in Alberta to stay the Rawlins Order, and the appellant brought a cross-application addressing costs and contempt. The court made an order prohibiting the respondent from making further applications until he had complied with the disclosure provisions of the Rawlins Order. The order also directed the parties to "forthwith schedule and attend before a Dispute Resolution Officer".
- [11] In December 2017, the Alberta Court of Queen's Bench made an order prohibiting the appellant from relocating the child to BC without the respondent's consent or a court order authorizing the relocation.
- [12] The parties attended an Early Intervention Case Conference ("EICC") in Alberta in March 2018. They reached an agreement in which the appellant agreed to expunge all child support arrears to March 1, 2018, in exchange for the respondent's consent to relocating the child to BC. The agreement was set out in a handwritten document entitled "Consent Terms With Prejudice" and signed by both parties. Between March 2018 and March 2019 there were unsuccessful attempts to agree on the form in which the agreement would be entered as a consent order.
- [13] The respondent took the position throughout the proceedings, including before the chambers judge, that the agreement was enforceable such that his child support arrears pre-dating March 2018 were expunged.
- [14] The appellant has taken different positions in relation to the agreement. On December 17, 2018, the appellant swore an affidavit affirming the agreement:

At the EICC the Respondent and I entered into an a With Prejudice Consent Agreement on March 8, 2018. This Agreement allowed the Child to remain in my care while I move to Vancouver, British Columbia. [] based on the Agreement from the EICC, I then moved to Vancouver with [the child] where we continue to reside.

- [15] It appears to be common ground that, but for the agreement, the appellant's relocation of the child to Vancouver would have been contrary to the December 2017 order that required either consent or a court order for the child's relocation.
- [16] In August 2019, the respondent obtained a without notice provisional order in the Ontario Superior Court of Justice cancelling child support arrears pursuant to the March 2018 agreement and setting prospective child support based on the respondent's 2018 income, which was around \$50,000.
- [17] The appellant filed a notice of family claim in BC in November 2019. In November 2020, at the hearing of an application brought by the appellant, a judge in the Supreme Court of British Columbia declined to confirm the Ontario provisional order cancelling arrears and setting prospective child support.

Application before the Chambers Judge

- [18] On December 20, 2022, the appellant filed the application that was before the chambers judge in the matter under appeal. She sought, among other things, to enforce the Rawlins Order, as well as orders for the payment of child support arrears, financial disclosure and various findings related to alleged breaches of court orders by the respondent.
- [19] The respondent filed an application response in April 2023, in which he sought to rely on the EICC agreement with respect to child support arrears, as well as the provisional order from the Ontario Superior Court of Justice. He also alleged a number of breaches of court orders by the appellant.
- [20] The respondent filed a cross application on August 25, 2023. He sought orders relating to parenting time, recognition and enforcement of the EICC agreement cancelling arrears to March 2018 and the setting of child support based on his income and the Federal Child Support Guidelines, SOR/97-175, starting from April 1, 2018.
- [21] Both applications were heard by the chambers judge over several days in 2023 and 2024, which included the cross examination of both parties on their respective affidavits.

Decision of the Chambers Judge

- [22] In relation to the issues relevant on this appeal, the chambers judge began by addressing the enforceability of the EICC agreement. The appellant took the position that the EICC agreement was not enforceable in relation to the cancellation of child support arrears as it was contrary to public policy.
- [23] The chambers judge said that it was understandable why the respondent continued to rely on the EICC agreement as a basis for cancelling at least a portion of the child support arrears. However, based on his review of the jurisprudence, he said he was "compelled to conclude" that any agreement to cancel child support arrears was void as contrary to public policy. I note that the cases relied on by the chambers judge appear to address the question of waiving prospective child support rather than arrears. To my knowledge, this Court has not addressed the issue of public policy relating to the waiver of child support arrears. As the question is not being raised by either party, I do not propose to address it in this case and nothing in these reasons should be seen as expressing a view on the approach taken by the chambers judge on this issue.
- [24] The chambers judge then made findings with respect to the respondent's actual income from 2010-2022:
- 2010 - \$77,162
 - 2011 - \$60,831
 - 2012 - \$98,640

- 2013 - \$53,000
- 2014 - \$20,390
- 2015 - \$23,695
- 2016 - \$183
- 2017 - \$3,470
- 2018 - \$50,100
- 2019 - \$57,920
- 2020 - \$48,831
- 2021 - \$45,100
- 2022 - \$36,633

[25] The chambers judge noted that the respondent "survived extensive cross examination relatively unscathed" and he was "satisfied that the employment and income history recounted above is accurate". The appellant does not challenge those findings on appeal, alleging errors only with respect to the imputation of income, which I will address below.

[26] The chambers judge then turned to the question of whether he ought to reassess the respondent's child support obligations retroactively. As noted above, the appellant alleges some seven errors related to the approach taken by the chambers judge to the scope of assessment of child support. I will now turn to the errors alleged, the primary focus of which relates to the characterization of the Rawlins Order.

Characterization of the Rawlins Order

[27] The chambers judge described the Rawlins Order as "essentially interim in nature". The appellant submits that the chambers judge erred in doing so, as the order had become tantamount to a final order through the passage of time. The appellant relies heavily on comments by this Court in *Hildebrand v. Hildebrand*, 2024 BCCA 395, which was released after the decision of the chambers judge in the case before us.

[28] In *Hildebrand*, an Alberta court had made an "Interim Without Prejudice Consent Order" in 2014 setting the father's income for support purposes. A divorce order was made in 2015 but did not address corollary relief. In 2023, the father applied to retroactively set child support for 2014-2023. The question before the Court was whether the application at issue was a variation under s. 17 of the Divorce Act, R.S.C. 1985, c. 3. The Court came to the following conclusion:

- [66] In circumstances somewhat similar to those of the case at bar, it has been said that an interim order may "through the passage of time" become "tantamount to a final order": see *Rouleau v. Fawkes* 2009 BCSC 257 at para. 35, per Hinkson C.J.S.C. In my respectful view, the second Alberta Order in this case qualified as a "support order" under s. 17 or had become tantamount to one for purposes of the Divorce Act by the time Mr. Hildebrand filed his application.
- [29] In the case before us, there appears to be little question that the chambers judge was applying s. 17 of the Divorce Act. On its face, the Rawlins Order was varying the 2013 divorce order issued in Ontario. However, the Rawlins Order also explicitly foresaw a reassessment of both retroactive and prospective child support once disclosure had been made. In assessing the impact of the Rawlins Order and whether it had effectively become a final order, it is helpful to examine the relevant timeframes.
- [30] The first relevant timeframe is January 2014 to the date of the Rawlins Order in June 2015. The order imputed an annual income of \$94,319.00 during that period and calculated arrears of \$24,179.94. The order also directed that "the respondent may revisit child support arrears in morning chambers" once full financial disclosure for 2014 and 2015 had been made. That was not done until the application before the chambers judge filed in August 2023. The appellant says the chambers judge erred in concluding that it was still open to the respondent to "revisit child support arrears" under the Rawlins Order in 2023, as that aspect of the order had become tantamount to a final order through the passage of time. If the Rawlins Order had become tantamount to a final order in relation to the arrears, the appellant says it was only open to the chambers judge to reduce those arrears through rescission, not reconsider them. Rescission is approached on the basis that the underlying court order reflects the correct amount of child support owing. The payor subsequently asks the court to forgive all or part of the accrued debt because of present financial hardship. Rescission is only appropriate in exceptional circumstances: *Colucci v. Colucci*, 2021 SCC 24 at para. 8.
- [31] I am not persuaded the chambers judge erred in considering the context surrounding the child support arrears in the Rawlins Order. The chambers judge recognized issues related to the respondent's lack of financial disclosure but found that sufficient disclosure had been made by 2017. At that stage in the Alberta proceedings, it would appear evident that both retroactive and prospective child support under the Rawlins Order were still live issues and were to be addressed at the EICC in 2018. The appellant accepts that an agreement was reached, at least with respect to arrears that had accumulated to that point. However, the parties disagree as to whether that agreement continued to be effective or enforceable in the ensuing years. The respondent consistently sought to rely on the EICC agreement up to and including in the proceedings before the chambers judge. Although the chambers judge ultimately found the agreement not to be enforceable, he found that it was understandable why the respondent would have relied on it. In effect, the appellant also appears to have relied on the EICC agreement when it was in her interest to do so. In my view, it was open to

the chambers judge to conclude that the respondent could still "revisit child support arrears" under the Rawlins Order given his understandable belief that the issue had been resolved in 2018 by the EICC agreement.

- [32] The second relevant timeframe relates to prospective child support under the Rawlins Order. The analysis I have just set out with respect to arrears seems equally applicable to the period between the date of the order in June 2015 and the EICC agreement in 2018. I am not persuaded that much turns on the characterization of the Rawlins Order as it relates to child support between the date of the order and the time of the application before the chambers judge. Even if the Rawlins Order was tantamount to a final order, the prospective child support under that order could be varied upon the respondent establishing a material change in circumstances. Given the finding by the chambers judge that the respondent never earned anywhere close to the income imputed in the Rawlins Order over the relevant period, a material change in circumstances was well-established in the evidence. To the extent the characterization of the order may be relevant, it would be in the context of deciding how far back to reassess child support. I will now turn to that issue.

Scope of Retroactive Reassessment

- [33] In *Colucci*, the Supreme Court of Canada set out the framework for retroactively decreasing child support. Where a final order is in place, once a material change in circumstances is established, a presumption arises in favour of retroactively decreasing child support to the date the payor gave the recipient effective notice, up to three years before formal notice of the application to vary. Effective notice requires clear communication of the change in circumstances accompanied by the disclosure of any available documentation necessary to substantiate the change and allow the recipient parent to meaningfully assess the situation: at para. 113.
- [34] The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The factors set out in *D.B.S. v. S.R.G.*, 2006 SCC 37 (adapted to the decrease context) guide this exercise of discretion. Those factors are: (i) whether the payor had an understandable reason for the delay in seeking a decrease; (ii) the payor's conduct; (iii) the child's circumstances; and (iv) hardship to the payor if support is not decreased (viewed in context of hardship to the child and recipient if support is decreased). The chambers judge explicitly referred to the principles set out in *Colucci* and *D.B.S.*
- [35] The appellant says the chambers judge erred by misapplying effective notice requirements, resulting in retroactive adjustments without the proper disclosure and timing mandated by *Colucci*. In my view, this was not a case that turned on the date of effective notice. Given that formal notice of the respondent's application for a decrease in child support was not given until 2023, the date of effective notice would have been outside the three-year presumptive limit in any event. The date of effective notice would also have been different for the various timeframes. For example, the chambers judge concluded that effective disclosure had been made in 2017 with respect to the preceding years. The appellant was clearly on notice that

the respondent considered the issue of child support to have been resolved by the EICC agreement, at least in relation to arrears pre-dating March 1, 2018. Ultimately, the decision turned on the application of the D.B.S. factors. I am not persuaded that the approach the chambers judge took to effective notice led him to err in applying those factors.

[36] The chambers judge, at para. 110, began his analysis of the scope of retroactive reassessment by setting out several reasons why this was a "highly unusual case":

- the 2013 Ontario trial judgment stipulated that no child support would be paid at all, a marked departure from the standard Guideline regime and one that was not explained in any reasons for judgment;
- for the past decade, the parties had been living in different provinces, thousands of kilometres apart. The Father has had virtually no parenting time with the Child during that period;
- the Mother initiated family law proceedings against the Father in Alberta in 2014 shortly after relocating to that province. She sought a variation of the Ontario "no child support" order. This ultimately resulted in a June 4, 2015 order from the Alberta court imputing income of \$94,319 per annum to the Father retroactive to June 1, 2014 and imposing a retroactive and future child support obligation in the amount of \$1,343.33 per month. This order thus effectively created immediate child support arrears in excess of \$24,000;
- the Father was in bankruptcy for a period of two years commencing May 2014 (i.e. before the Alberta litigation was even started) and could not afford to hire a lawyer to represent him in the Alberta litigation. His efforts at self-representation were wholly ineffective;
- the 2015 child support order was based on an imputed income derived from the Father working two jobs in 2012, an employment scenario which was terminated in 2013. His income in 2013 was only \$53,000 and was just \$20,000 in 2014 (the year of the bankruptcy). His actual annual income in the ensuing eight years never exceeded \$58,000 (highest point);
- the Alberta court in 2015 seems to have understood the Father [sic] submissions that his actual income was far below \$94,000 per annum and thus expressly provided for a retroactive child-support review/readjustment mechanism upon proper further disclosure. The Father subsequently and unsuccessfully attempted several times to trigger that review in the Alberta court, hence the Mother was on notice and was well aware that the Father was objecting to and wanted to reduce the existing child support order throughout the Alberta litigation;
- the Alberta court dealt only summarily with the various applications before it and provided no reasons for judgment responding to the Father's submissions and explaining the various orders made (including at least one instance of contempt);

- while there have been shortcomings in the Father's production of financial information over the years, adequate disclosure was made by late 2017. However variation of the child support order became moot on March 8, 2018 when the Mother expressly agreed with the Father to expunge child support arrears in exchange for consent to her relocation with the child to Vancouver;
- the continued FRO enforcement of child support arrears in Ontario caused the Father to obtain a provisional order in the Ontario Superior Court of Justice in August 2019 cancelling the child support arrears pursuant to the March 8, 2018 agreement and substantially reducing his ongoing child support obligations;
- when served with the Ontario order, the Mother commenced the present action in this court to, among other things, oppose confirmation/enforcement of the Ontario order, a strategy that ultimately succeeded in November 2020, thereby in effect affirming the FRO's ability to continue enforcement, subject to the Father's further application in this court for retroactive variation of his child support obligations.

[37] The chambers judge addressed the delay in seeking relief and the respondent's conduct:

[115] [I]t is certainly arguable that the Father's delay in seeking more timely relief from the courts, his failure to voluntarily pay child support in the past, and the shortcomings in past disclosure all militate against retroactive adjustment, whether for any presumptive three year period before formal notice or, indeed, at all. The Father's behaviour over the years has not been praiseworthy although much the same might also be said of the Mother who has a history of noncompliance with her own financial disclosure obligations and, possibly more importantly, has essentially deprived the Father of any meaningful parenting time with the Child.

[38] He rejected the appellant's submissions that the respondent was living beyond his means or enjoying a standard of living beyond his disclosed income. During part of the relevant period, the respondent relied on support from his new partner and his parents to supplement what was left of his income after part of it was diverted by maintenance enforcement.

[39] The chambers judge also noted that there was no evidence of hardship being suffered by the child:

[111] There was no evidence before me of any hardship being experienced by the Child. To the contrary, the Child seems to be enjoying a relatively high standard of living, residing in a nice home in North Vancouver jointly owned by the Mother and grandmother, going to an expensive private school, and enjoying a wide variety of extracurricular activities (including competitive hockey which the Child particularly enjoys). The Mother has not worked outside the home here in BC, apparently devoting all of her time to looking after the Child, and all costs of living have been and continue to be funded through the generosity of the grandmother.

- [40] He ultimately concluded that a retroactive adjustment was justified:
- [113] Several times in the Colucci judgment, the Supreme Court of Canada emphasized the importance of "fair balancing" and "just outcomes" in the operation of the statutory child support regime under the DA [Divorce Act]. In this particular case, the outcomes for the payor parent have been harsh. The amount of child support imposed by the Alberta court in 2015 did not reflect his actual income, whether at the time or in any of the subsequent years. The 2015 order was essentially interim in nature and expressly contemplated retroactive variation upon further disclosure, a process that has not occurred until the hearing before me.
- [114] In my view, it is fair and appropriate in all the circumstances for the court to reassess the Father's child support obligations from day one and adjust the accumulated arrears based on his actual or fairly imputed income as the case may be.
- [41] The appellant submits that the chambers judge erred in departing from the presumptive three-year retroactivity limit without adequate justification under D.B.S. and Colucci. In particular, the appellant says that the chambers judge erred by accepting the respondent's reasons for delay, insufficiently considering the respondent's blameworthy conduct, minimizing the child's best interests and improperly assessing the appellant's conduct without an evidentiary basis.
- [42] The appellate standard of review with respect to discretionary decisions was articulated by the Supreme Court of Canada in *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19:
- [27] A discretionary decision of a lower court will be reversible where that court misdirected itself or came to a decision that is so clearly wrong that it amounts to an injustice: *Elsom v. Elsom*, [1989] 1 S.C.R. 1367, at p. 1375. Reversing a lower court's discretionary decision is also appropriate where the lower court gives no or insufficient weight to relevant considerations: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at pp. 76-77.
- [43] In my view, the appellant is in large part seeking to re-argue the case before this Court. The chambers judge considered a voluminous record and heard evidence from the parties over the course of many days. The appellant does not point to any palpable or overriding errors in the findings of fact made by the chambers judge. At its core, the appellant's argument is that the chambers judge ought to have come to different conclusions about various facts. It is not the role of this Court to revisit the findings of fact made by the chambers judge unless the appellant can demonstrate a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 10.
- [44] The chambers judge instructed himself on the law as it applied to the scope of retroactivity. He set out the factors in D.B.S. and applied them to the case before him. He recognized that some of the factors, notably the respondent's conduct, did not favour a retroactive

reassessment of child support. He explicitly acknowledged the direction in Colucci that any exercise of judicial discretion under s. 17 of the Divorce Act must in no way reward those who have improperly withheld financial information they ought to have shared. He set out in some detail why he considered the overall facts of this case to be "highly unusual" and ultimately concluded that retroactively adjusting child support to accord with the respondent's actual or fairly imputed income was not a "reward", but a fair and appropriate outcome in the circumstances. While the appellant may disagree with that result, I am not persuaded that the chambers judge gave insufficient weight to relevant considerations. I am also not persuaded that the manner in which the chambers judge exercised his discretion has led to an injustice.

- [45] I would not accede to the grounds of appeal relating to the scope of retroactive reassessment of child support.

Imputation of Income

- [46] The appellant sought to have income imputed to the respondent throughout the relevant period. The chambers judge found that the respondent was underemployed from 2014-2017 and imputed an income of \$50,000 during those years based on the amount the respondent earned in 2013, the year he lost one of the two jobs he had been working in 2012. The appellant submits that the chambers judge erred in not imputing the respondent's 2012 income of \$94,319 instead, a year when he was working two jobs.
- [47] The chambers judge made clear findings with respect to the respondent's employment:
- [70] The [respondent] survived extensive cross examination relatively unscathed and I am satisfied that the employment and income history recounted above is accurate. I also accept his evidence and find as a fact that, except for the period 2015 - 2017, the [respondent] has not been deliberately unemployed or underemployed and that, except for those years, he has been diligent in attempting to find employment during periods of unemployment, including the years when the beverage and hospitality industry was decimated by COVID 19.
- [48] Based on those findings the chambers judge imputed income to the respondent for 2014-2017. While he accepted that the respondent was underemployed during that period, the chambers judge also noted that the respondent never returned to having an income in the range of \$94,319. From 2018-2023, the respondent's highest annual income was \$57,919.
- [49] In my view, the chambers judge's conclusion that income ought not to be imputed based on a year in which the respondent was working two jobs was clearly open to him on the record. I would not accede to this ground of appeal.

Failure to Impute Parental Support

- [50] Finally, the appellant alleges that the chambers judge erred in not imputing income based on support that the respondent received from his parents over the relevant period. The respondent testified that he had accumulated a debt of \$200,000 to his parents as a result of cash they had advanced to him, both to support him and to pay his legal fees. The appellant says that the respondent failed to present any independent evidence that the money was loaned to him and alleges the chambers judge erred in not imputing additional income to the respondent based on what she says were recurring gifts.
- [51] The chambers judge did impute an annual income of \$50,000 to the respondent for 2014-2017. He found that the respondent's actual cumulative income during those four years was \$47,738, meaning that a total of \$152,262 in income was imputed. Presumably, much of the parents' support would have been needed during this period, particularly in 2016 and 2017 when the respondent earned less than \$4,000 in total. Even assuming that that the funds received were gifts and ought to be imputed as income (neither of which is conceded by the respondent), it is not clear to me what the basis for imputing additional income during those years would be. The chambers judge imputed income for 2014-2017 because he found that the respondent was underemployed and was capable of earning \$50,000 during those years. If the reason the payor is receiving support from his parents is because he is underemployed, I fail to see the basis for imputing income twice.
- [52] I am not persuaded that the chambers judge erred in not imputing additional income based on support received from the respondent's parents.

Conclusion

- [53] I would dismiss the appeal.

"The Honourable Justice Edelman"

I AGREE:

"The Honourable Mr. Justice Harris"

I AGREE:

"The Honourable Justice Winteringham"

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