

CANADA / JUDGMENT

Rai v. Athwal

2024 BCSC 2308

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Supreme Court of British Columbia

DECIDED

28 November 2024

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2024 BCSC 2308 Rai v. Athwal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rai v. Athwal,

2024 BCSC 2308

Date: 20241128

Docket: E221953

Registry: Vancouver

Between:

Balwinder Singh Rai also known as Balwinder Rai

Claimant

And

Narinder Kaur Athwal also known as Narinder Athwal

Respondent

Before: The Honourable Justice Veenstra

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

N.D. Allen

N. Bernardi

Counsel for the Respondent:

E.K. Chhina

Dates of Written Submissions Received:

August 27, September 24, 25
and November 18, 21, 2024

Place and Date of Hearing:

Vancouver, B.C.

November 26, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 28, 2024

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- [1] THE COURT: The trial of this family law case took place over 15 days in June 2024. Shortly after trial, I gave oral reasons for judgment dealing with parenting issues ("Parenting Judgment") but reserved judgment on financial matters. On July 12, 2024, I issued reasons for judgment with respect to the financial matters, with the latter judgment indexed as 2024 BCSC 1261 ("Finances Judgment").
- [2] The parties appeared before me on November 26, 2024, seeking directions or clarification, and in at least one case, what is arguably a reconsideration of some of the orders that I made.

- [3] Before that appearance, the parties had negotiated extensively with respect to two very detailed forms of order - one in respect of each of the two judgments I gave. They presented me with a discrete number of issues. Each tendered, as part of their most recent submissions, a draft order in respect of each judgment.
- [4] The parties do not agree as to whether their exchanges of draft orders were intended to be without prejudice. None of the three cover letters that were provided to me were marked without prejudice, but that in and of itself is not decisive. The claimant, who takes the position that the draft orders were exchanged on a without-prejudice basis, presented the Court with fresh draft orders, some of the provisions of which represent the claimant's revised position on matters that had been negotiated, and other provisions of which revert to the claimant's preferred position. The respondent, on the other hand, presented the Court with the most recent order exchanged by the parties, even though that order reflected some compromises that the respondent made only with a view to resolution. There is, of course, nothing to prevent a party from adopting by reference provisions relating to a draft order, even if those provisions had been previously put forward in negotiations. I encouraged the respondent to provide a rationale for the position she was advancing in respect of each of the disputed provisions and intend to decide this application based on my view of the merits and not on the basis of what may or may not have been either fully or tentatively agreed to.
- [5] I note as well that the parties had previously provided me with draft forms of order in connection with closing submissions. The claimant's order was provided as part of his closing submission, while the respondent's order was submitted with leave a few days later. Those orders were difficult to compare as each was lengthy and detailed, but each was also organized in a different manner, and the drafting styles were different.

Parenting Order

- [6] The first issue deals with payment of the cost of individual counselling for the parties' children. The claimant references para. 246 of the Parenting Judgment where I had noted that both parties' draft orders as provided in connection with their closing submissions provided for counselling, but stated:

The claimant's draft order provides a protocol to make sure it happens. I think that given where we are, the protocol is wise.

- [7] The claimant notes that the draft order he presented at that time also included a provision that the cost of counselling would be shared equally, and suggests that I should be taken to have indicated a preference for equal sharing of those costs. The respondent says that counselling for the children of the marriage is a special expense pursuant to s. 7 of the Federal Child Support Guidelines, SOR/97-175, and that unless clear indication is given to the contrary, the costs of counselling should be shared in the same manner as other s. 7 expenses. The respondent references para. 236 of the Finances Judgment where I provide for special expenses to be paid 63% by the claimant and 37% by the respondent.

- [8] I agree with the respondent. My comments about the protocol were clearly a reference to the claimant's proposal for how to select a counsellor. There is no circumstance in this case that would lead to individual counselling for the children being treated differently from other special expenses.
- [9] The parties disagree as to whether there should be a provision in the parenting order specifying the day of the week for exchanges once the parties move to a week-on/week-off schedule. The claimant notes that I had provided that, subject to a limited jurisdiction for the parenting coordinator to vary the commencement date, week-on/week-off parenting would commence on a Monday, and suggests that it makes sense to have express provision for Monday to be the exchange day. The respondent says that if the parenting coordinator delays the commencement, then week-on/week-off parenting may well start on a different day of the week, so specifying Monday would potentially create uncertainty and confusion.
- [10] It is my view that there is value to specifying Monday as the presumptive exchange day once the week-on/week-off parenting schedule commences. However, it is my view the parenting coordinator should be given authority to vary that as the time for moving to that schedule arrives.
- [11] The parties disagree as to the exchange location for exchanges on non-school days. The interim orders in this proceeding provided for exchanges to occur at a parking lot. The claimant proposes that exchanges should instead occur at the children's school, suggesting that this is a familiar location for the children and has playground equipment on which they can pass time if the exchange does not occur immediately. The respondent prefers to maintain the current location, which is said to be in a busy area where there are always lots of people and is sheltered from bad weather.
- [12] I am not going to make any change at present to what has been provided for in the interim orders. It is my view that this is something that is appropriately reviewed with the parenting coordinator. It may well be that the exchange location will be different at different times of year. At the present time of year, access to a playground is likely of minimal value on most days.
- [13] There were a number of issues with respect to parenting time during holidays. For the reasons noted at para. 240 of the Parenting Judgment, I did not provide extensive direction as to holidays.
- [14] The draft orders provided by the parties for purposes of the present hearing, each contained, in para. 16, comprehensive provisions for parenting time during holidays. They are agreed that the parties will divide the spring break equally. The claimant proposes that the children will always be with him for the first half of spring break, with an exchange time at 10:00 a.m. on the Saturday morning in the middle of the break. The respondent, on the other hand, proposes that the party who did not have the children in their care on the Friday before spring break will have the children in their care for the first half of spring break. I prefer the respondent's wording of sub-para. (iii), which ensures no doubling up of weeks. I

agree with the claimant's proposed addition of a sub-para. (iv), which should provide that unless otherwise agreed and subject to the direction of the parenting coordinator, the exchange time will be 10:00 a.m. on the Saturday morning.

- [15] With respect to the summer holiday period, the primary difference between the parties is that the claimant is proposing that commencing in 2025, each party will have the option of a two-week holiday with the children each summer. The respondent wishes to stick to a week-on/week-off schedule even during summer break.
- [16] I note that the parties' initial move to a week-on/week-off schedule will be in the summer of 2025. In my view that will be a significant change for the children to adapt to. I am concerned that adding a two-week break at that point in time may be too much change too quickly. That said, I do believe that there is significant value in children being able to have special holiday times with their parents, including the occasional extended holiday.
- [17] I am somewhat wary of making an order that will take effect two years post-trial. At the same time, I recognize the cost and emotional strain of further court applications. In anticipation of the claimant continuing to build his capacity as a parent, I am going to direct that the provisions for a two-week holiday in the claimant's draft order become part of my order but that they commence in 2026 rather than in 2025. By the summer of 2026, the children will have been accustomed to a week-on/week-off schedule over a lengthy period, and they will by that time be aged eight and ten. Obviously, if there is clear evidence by the spring of 2026 that a two-week holiday is inappropriate, then application can be made to vary this order, but I would hope that is not necessary.
- [18] The parties generally agree that parenting time over the winter school break should be shared equally. The primary difference is the respondent's desire that each year she would have either December 24 or 25 with the children. The claimant proposes instead that they alternate each year such that each party will have the children for the first half of the winter break, which includes December 24 and 25, on alternating years, and that neither of the two eight-day parenting times would be broken up.
- [19] Neither counsel was able to remind me as to what the evidence was as to the parties' respective family traditions surrounding December 24 and 25. On a quick review of my notes, there was only a brief reference in the evidence of family get-togethers on those days. My recollection is that the evidence related primarily to the claimant's family.
- [20] I am going to direct that the provisions for winter holidays be somewhat of an amalgam of the parties' proposals. The winter break will be shared equally, with the question of who has the children for the first half and for the second half decided primarily based on who had the children on the Friday prior to the commencement of the break, again, so that there is no doubling up of time periods. However, the children will spend 24 hours with the other parent beginning at noon on December 25 and going until noon on December 26. The calculation of the equal sharing of the overall winter break should be adapted to account for this 24-hour hiatus during the first half of the winter break.

- [21] The respondent proposes that paras. 11 and 12, which provide for the transitions to a 2/2-5/5 and then a week-on/week-off parenting schedule, should each make it clear that they are subject to para. 15. Paragraph 15 reflects the jurisdiction I have granted to the parenting coordinator to delay these transitions by up to 60 days. I agree with this proposal.
- [22] The parties made various submissions as to communications protocols. I note para. 239 of the Parenting Judgment, in which I commented that I intended to say little about communications protocols given the involvement of the parenting coordinator, and that there may well be a need for protocols to evolve as the parties move forward, a matter best dealt with by leaving this in the hands of the parenting coordinator. That said, there were certain provisions that were presented to me as being with the consent of both parties (paras. 19 to 25 of the claimant's proposed draft and 21 to 27 of the respondent's proposed draft). I am amenable to including those in the draft order, given that they are by consent, although it should be made clear that the parenting coordinator may provide further clarifications, and these directions may evolve over time. For these reasons, I would not add any of the additional provisions proposed by either of the parties.

Financial Order

- [23] The first point raised with respect to the financial order is more a drafting than a substantive issue. The claimant has proposed that para. 2 of the financial order set out the three components of the claimant's current income for purposes of support (employment income, net rental income, and capital-cost allowance). The respondent says that the section should also include a total, i.e., the introductory part of the paragraph should say that the Guidelines income is \$175,371, grossed up to \$178,271. I agree with the respondent's submission on this. It is helpful if the income on which current support is based is made clearly apparent in the form of order.
- [24] The parties disagree as to one part of the paragraph of the financial order dealing with special expenses. That is sub-para. (b) dealing with Dasmesh Academy expenses. The claimant proposes that the order reference only fees for the Khalsa Kids Club. The respondent proposes instead that it reference "any classes that the parties agree in advance that the Children should attend or that the Parenting Coordinator determines that they should attend."
- [25] I discussed the Dasmesh Academy programs at paras. 203, 204, and 237 of the Parenting Judgment. It seems clear from what I said that I contemplated that the parenting coordinator would be making decisions as to what Dasmesh Academy programs the children participate in, acknowledging that the respondent and the claimant will likely continue to have differing views. In my view, it is appropriate that those programs that the parenting coordinator approves should be paid for as a shared expense. For that reason, I am of the view that the respondent's proposed wording should be adopted.

- [26] With respect to RESPs, the parties had both advanced at trial the view that the parties would jointly manage and administer the existing RESP account to which they have jointly contributed, but that moving forward each would maintain separate RESP accounts, to which they would each contribute no more than half of the maximum allowable contribution per year unless they obtain consent of the other party to make a greater contribution. This is reflected in the claimant's proposed order.
- [27] The respondent advises that she has recently learned that there may be a way to split the existing RESP. It appears that the information she has obtained on this possibility is not fully developed and has not been shared with the claimant. Claimant's counsel expressed openness to the idea of splitting the RESP if possible. My view would be that the fewer financial interactions the parties have moving forward, the better. However, given that this is a newly arising issue, I do not think it should be part of the order that reflects my decision from July 2024.
- [28] As a result, I would accept the claimant's proposed wording, but to the extent necessary, the order can make clear that it is open to the parties by consent to agree to splitting the RESP if that is feasible.

Spousal Support - Duration and Review

- [29] At para. 227 of the Finances Judgment, I summarized the position of the respondent on duration of spousal support as follows:
- [227] The respondent says that quantum of spousal support should be guided by the SSAG ranges. The respondent seeks an order that spousal support be ordered on an indefinite basis, with a review at the mid-point of the SSAG duration range. The respondent says that pursuant to the SSAG, the minimum duration would be half the length of the relationship (4.5 years), while the maximum duration would be until the youngest child turns 18 (12 years).
- [30] While this reflects what was in the respondent's written submission, the claimant has pointed out that during oral submissions, in response to questions about the basis for the review that was sought, counsel for the respondent said that her position had changed and that she now proposed that rather than an order for indefinite support with a review, she would support an order that provided for termination of support in September 2031.
- [31] With respect to duration, I said the following at para. 238 of the Finances Judgment:
- [238] The SSAG recommend that spousal support be made indefinite, with no duration specified. Notwithstanding the claimant's submissions, it is my view that the order should follow the SSAG with respect to duration. I would, however, accept the respondent's submission that there should be a review in or after September 2033.

- [32] The claimant seeks an order that I reconsider my decision on this point, given that I did not reference the respondent's change in position during oral submissions. The claimant notes that cases such as *Leskun v. Leskun*, 2006 SCC 25, emphasize that review orders have a "useful but very limited role" (para. 36). As noted at para. 39:
- [39] Insofar as possible, courts should resolve the controversies before them and make an order which is permanent subject only to change under s. 17 on proof of a change of circumstances. If the s. 15.2 court considers it essential (as here) to identify an issue for future review, the issue should be tightly delimited in the s. 15.2 order. This is because on a "review" nobody bears an onus to show changed circumstances. Failure to tightly circumscribe the issue will inevitably be seen by one or other of the parties as an invitation simply to reargue their case.
- [33] The respondent, on the other hand, notes that given the imputation of substantial income to her, the quantum of spousal support is substantially less than she anticipated. While duration and quantum are at least in theory analytically distinct, their practical impact on a recipient spouse's financial wellbeing can be significant. See the discussion at *Namdarpour v. Vahman*, 2019 BCCA 153, at paras. 151-152. The respondent supports the order that I have made, that I set out in my Finances Judgment, which provides for indefinite support with a review.
- [34] As I noted in the Finances Judgment, indefinite support is recommended by the Spousal Support Advisory Guidelines [SSAG] in the circumstances of this case. As noted in *Namdarpour*, at paras. 140-152, British Columbia courts are encouraged to follow the guidance of the SSAG unless there is a good evidentiary basis to depart from them. As noted at para. 37 of *Leskun*:
- 37 Review orders, where justified by genuine and material uncertainty at the time of the original trial, permit parties to bring a motion to alter support awards without having to demonstrate a material change in circumstances: *Choquette v. Choquette* (1998), 39 R.F.L. (4th) 384 (Ont. C.A.). Otherwise, as the amicus curiae fairly points out, the applicant may have his or her application dismissed on the basis that the circumstances at the time of the variation application were contemplated at the time of the original order and, therefore, that there had been no change in circumstances. The test for variation is a strict one: *Willick v. Willick*, [1994] 3 S.C.R. 670, at pp. 688-90.
- [35] The strict test for variation provides challenges in cases where compensatory entitlement has arguably been satisfied, but no specific event can be identified as a material change: see R. Thompson, *When does spousal support end?* No answer from the BCCA, Law360, August 23, 2024, commenting on *Zandbergen v. Craig*, 2024 BCCA 278.

[36] In *Moradkhan v. Mofidi*, 2013 BCCA 132, the trial judge issued supplementary reasons for judgment substantially altering the result determined in the initial reasons for judgment. The Court ordered a new trial, concluding that the process followed was flawed and unfair. In summarizing the principles applicable on an application to reopen, Justice Garson stated at para. 31:

- it is generally speaking in the interests of justice to consider that a trial is complete when each side has closed their case and the judge has delivered his or her judgment;
- a judge's unfettered discretion to reopen a trial should be exercised with restraint;
- a party may not use the rule to re-argue, re-cast, or re-state his or her case, rather the rule is available to remedy what might otherwise be a substantial injustice;
- it is not intended that a party should be able to lead substantial new evidence, nor does the rule generally permit the leading of new expert evidence;
- the reasons that the evidence was not led or submissions not made in the first place may be relevant to the exercise of the judge's discretion, particularly where the failure to do so in the first place was a considered or pragmatic decision; and
- the discretion should only be exercised if the reception of the new evidence would probably change the result of the trial.

I would add to this list that a judge may reasonably exercise such discretion where a relatively discreet error in math or some mechanical consideration of the evidence is clearly in error. Finally, the overarching consideration is whether it is in the interests of justice that the court reopen the case.

[37] This is not a typical reconsideration case, given that I did not specifically deal in my reasons for judgment with what counsel for the respondent had said in oral submissions. That said, the order I did make was made after a careful review of the evidence and the multiple authorities that were provided to me by the parties, as well as the SSAG.

[38] Having given this matter some thought, it is my view that the order I made continues to be appropriate. In my view, there is no appropriate basis in the circumstances of this case to depart from the SSAG recommendation of indefinite duration.

[39] That said, the circumstances of this case are somewhat out of the ordinary, as both parties will be in their 60s as their children graduate from high school. At the time of the review I have ordered, it may well be no longer appropriate to impute income to the respondent. While I found her decision to retire at her current age to be such as to attract imputation of income, the result may well be different at that time. The claimant's employment plans will also be evolving by that point. The question of whether there is an ongoing basis for non-compensatory support will be key on the review, although I would not want to preclude a consideration of whether the respondent's compensatory entitlement has been satisfied.

[40] For all of these reasons, I am not going to reconsider my decision with respect to duration and the order for a review.

Costs

[41] The parties provided me with written submissions as to costs. As I advised through Supreme Court Scheduling, I held off any decision as to costs until the various applications for clarification and reconsideration were dealt with. That has now occurred.

[42] The parties were generally agreed on the legal principles governing costs. However, each claimed to have been substantially successful at trial, and each claimed to have made a formal offer to settle that the other should have accepted and on that basis to be entitled to double costs.

Substantial Success at Trial

[43] It is not in dispute that costs follow the event such that if a party was substantially successful at trial (i.e., if they succeed on 75% or more of the issues), that party is entitled to tariff costs. See Rule 16-1(7) of the Supreme Court Family Rules; *Gold v. Gold* (1993), 82 B.C.L.R. (2d) 180, 1993 CanLII 1248 (C.A.); *Fotheringham v. Fotheringham*, 2001 BCSC 1321; and *Marquez v. Zapiola*, 2014 BCCA 35.

[44] The claimant's submission is that:

- a) He was entirely successful on issues of parenting given that the court ordered:
 - i. Gradually increasing parenting time generally as recommended in the s. 211 report; and
 - ii. The parenting coordinator be appointed on the terms proposed by the claimant.
- b) With respect to other parenting issues, he says that:
 - i. He was successful in obtaining joint decision-making authority with the parenting coordinator to have final authority where the parties cannot agree.
 - ii. He was successful in obtaining a direction that the children's participation in Dasmesh Academy programs that the parties could not agree on would be decided by the parenting coordinator, which impacts not only on available parenting time but also the amount of special expenses.
 - iii. He was partially successful in obtaining provisions for the children to attend a family wedding in July 2024, given that the respondent was still to have time with the children during that relevant six-day time period.
 - iv. Although the parties agreed that counselling for the children was appropriate, the claimant's protocol for how the counsellor was to be appointed was accepted.

- v. The court accepted the claimant's proposal that vacation travel that did not conflict with school would not be restricted based on extracurricular activities.
- c) With respect to financial issues:
 - i. The claimant says that the primary financial issue was the question of imputation of income to the respondent for purposes of both child and spousal support, on which he says he was successful, even though the amount imputed was less than what he sought.
 - ii. The claimant acknowledges that the respondent was successful on the one disputed issue with respect to the claimant's income, that being the adding back of capital-cost allowance deductions to income.
 - iii. The claimant acknowledges that the respondent was successful on establishing entitlement to spousal support.
 - iv. The claimant says that he was successful in obtaining a partial credit for overpayment of interim child and spousal support (although significantly less than what he sought).
 - v. The claimant says that he was successful in defeating the respondent's claim for occupation rent.
 - vi. The claimant says that the parties had mixed success in respect of both property division and claims for exclusions.

[45] The respondent takes a different view. She says with respect to parenting issues that:

- a) The primary issue with respect to parenting time was the speed of implementation of the recommendations in the s. 211 report and the role and powers of a parenting coordinator.
- b) Although a significant amount of trial time was spent dealing with the parties' respective parenting abilities, this was at the instance of the claimant and was not really necessary, given that the primary parenting issue was actually the legal issue of the permissible scope of powers of a parenting coordinator under the Family Law Act, S.B.C. 2011, c. 25.
- c) With respect to the timing of the implementation of increases in the claimant's parenting time, the respondent says that she was partially successful in that the order provided authority for the parenting coordinator to delay the timelines otherwise provided in the judgment.
- d) With respect to attendance at the July 2024 wedding, the respondent says that she was actually successful given that the primary dispute was whether the children would spend any time with her during the six days, which was something that the judgment provided for.

[46] With respect to financial issues, the respondent says that:

- a) The claimant was only partially successful on imputation of income, given that the amount imputed was at a midpoint between the income levels the parties had proposed to be used for purposes of calculating support.
 - b) The respondent was successful on the only contested issue with respect to the claimant's income, the adding back of capital-cost allowances.
 - c) The respondent was successful in obtaining a retroactive adjustment for child support, with the Finances Judgment essentially concluding that the respondent had received insufficient child support and an excess of spousal support.
 - d) The respondent was successful in establishing entitlement to spousal support.
 - e) With respect to property division, the respondent says that she was successful on issues surrounding exclusion claims with respect to the family home, as well as entitlement to an equal share of the increase in value of the Langley property. She was also successful on issues surrounding her pension buy-back benefit, arrears, and equal division of the bank accounts.
- [47] I note that the primary financial issue decided on the reconsideration and clarification applications was the question of duration of spousal support. The respondent was successful on that issue.
- [48] I have not considered the parties' respective offers to settle in my determination of which party was substantially successful. I accept the claimant's submission that, as set out in *Paul v. Pumble*, 2013 BCSC 1844, at para. 23, offers to settle are not considered in determining substantial success for purposes of Rule 16.
- [49] Taking an overall view of the variety of orders made, it is my view that neither party was substantially successful. Thus, apart from any questions arising from formal offers to settle, each party will bear its own costs of this proceeding.

Costs of a Section 211 Report

- [50] The parties also made submissions about sharing the costs of the s. 211 report. In accordance with the interlocutory order of Justice Taylor, the \$30,750 fee with respect to that report was, on an interim basis, shared equally by the parties, with the ultimate apportionment of that cost left to the trial judge.
- [51] Given my conclusion that each party should bear their own costs of trial, it is my view that unless I conclude that one party caused the costs of the reports to be increased, there should be no variation to the preliminary allocation made by Justice Taylor.

- [52] I appreciate that the author was provided with a great deal of information. The volume of information reflected the parties' shared concerns with respect to the proper parenting of their children. Having considered the comments with respect to the report in the Parenting Judgment, I am of the view that the appropriate direction is that the parties continue to share the costs equally.

Formal Offers to Settle

- [53] The parties were agreed as to the appropriate principles that apply to consideration of a formal offer to settle. Both parties referenced the various provisions of Rule 11-1, including the available options in Rule 11-1(5) and the considerations set out in Rule 11-1(6). As conveniently summarized in *S.A.M. v. J.A.M.*, 2017 BCSC 2348, at para. 7, sub-paras. (f)-(h):
- (f) Where an offer to settle a family case has been made, the court may award double costs for all or some of the steps taken after the date of delivery or service of the offer (Rule 11-1(5) of the Rules);
 - (g) As a general rule, an award of double costs should be made against a party who did not accept an offer to settle that should, in all the circumstances, have been accepted (*Hartshorne v. Hartshorne*, 2011 BCCA 29); and,
 - (h) In determining whether a double costs order should be made, the court may consider any factor the court considers appropriate, including whether the offer was one that ought reasonably to have been accepted upon receipt or at any later date, the relationship between the offer and the judgment, and the relative financial circumstances of the parties (Rule 11-1(6) of the Rules).
- [54] The parties exchanged numerous detailed offers to settle in the weeks leading up to trial. For purposes of Rule 11-1, the claimant relies upon its offer dated May 11, 2024, which it says the respondent ought to have accepted. The claimant also relies upon subsequent offers made on May 15 and 28. The respondent on the other hand relies upon its offer made May 24, 2024, which it says the claimant ought to have accepted.
- [55] The May 11 offer from the claimant provides for immediate adoption of a three/four parenting schedule, followed by a move to a 2/2-5/5 schedule on July 1, 2024. It provides for appointment of the same parenting coordinator appointed at trial, shared decision-making, counselling for the children with costs shared equally, specifically counselling for the respondent, as well as a variety of specific provisions for holidays and travel, communication, and homework. It does not deal with financial issues.
- [56] The May 15 offer provides a proposal for financial issues. It provides that support will be payable based on incomes of \$171,000 for the claimant and \$92,000 for the respondent. It provides for special expenses to be shared 65/35, with special expenses at the Dasmesh Academy limited to the Khalsa Kids Club. It provides for the respondent to pay \$35,815 as a retroactive adjustment for past overpayment of support. It provides for the claimant to

retain the Langley property and all accounts in his name, with the respondent to retain all accounts in her name. The net sale proceeds of the family home would be divided by paying \$172,795.90 to the claimant in respect of his exclusions, \$127,795.90 to the respondent in respect of her exclusions, and the balance divided equally, with each to pay the other a series of amounts for property transactions.

- [57] The respondent's May 24 offer includes provisions reflecting the respondent's position at trial that the parenting coordinator would review the claimant's parenting performance before approving any increases to parenting time. This position was, of course, rejected at trial. The offer proposes that the claimant's Guidelines income would be \$174,551 while the respondent's Guidelines income would be \$67,500. Child support would continue to be payable on a primary parenting basis until the parenting coordinator approved a change in parenting times. Spousal support would be \$1,141 initially, then \$1,657 per month once shared parenting began, with a review in June 2027. A variety of orders were proposed with respect to property division.
- [58] The claimant's May 28 offer was a response to the respondent's May 24 offer. The claimant rejected the powers proposed to be given to the parenting coordinator. The offer provided for a 4/3 schedule to continue until September 2, 2024, and then transition to a 2-2/5-5 schedule in the fall of 2024, with no power in the parenting coordinator to vary from these transitions. The claimant maintained his position with respect to including only the Khalsa Kids Club as a special expense. He offered to pay \$25,000 as lump-sum spousal support. With respect to other financial terms, the offer proposed imputed income to the respondent greater than what was determined at trial. It failed to account for the respondent's excluded property claim with respect to the former family home and valued her interest in the Langley property at a lower level than found at trial. It also provided for a division of bank accounts less beneficial to the respondent than that provided for in the trial judgment.
- [59] Having reviewed these offers, it is my view that the eventual result at trial falls between the offers made by the two parties in many material respects. Financially, the respondent did significantly better at trial than in any of the offers proposed by the claimant. With respect to parenting, given the respondent's position on the role of the parenting coordinator, the claimant did better at trial in respect of parenting than what the respondent had proposed, although he did not achieve the transition timeline he sought. Importantly for the respondent, the parenting coordinator will have jurisdiction to delay implementation of some of the changes in parenting time. Overall, it is my view that none of the claimant's offers are offers that the respondent ought reasonably to have accepted and that the respondent's offer was not one that the claimant ought reasonably to have accepted.

Conclusions as to Costs

[60] I therefore dismiss the applications of each party for costs pursuant to either Rule 16-1 or Rule 11-1. Each party will bear their own costs, and the costs of the s. 211 report will continue to be shared equally.

"Veenstra J."

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