

CANADA / JUDGMENT

Roeske v. Roeske

2023 BCCA 358

COURT

British Columbia Court of Appeal

DECIDED

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2023 BCCA 358 Roeske v. Roeske

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Roeske v. Roeske,

2023 BCCA 358

Date: 20230919

Docket: CA48252

Between:

Matthew Eric Roeske

Appellant

(Respondent)

And

Amana Roeske aka Amana Dighe

Respondent

(Claimant)

Before:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Hunter

The Honourable Mr. Justice Abrioux

On appeal from: Orders of the Supreme Court of British Columbia,

dated March 30, 2022 and December 15, 2022 (A.R. v. M.E.R., 2022 BCSC 509 and 2022 BCSC 2417, New Westminster Docket E54447).

Counsel for the Appellant:

S.L. Specht

A. Ngom

Counsel for the Respondent:

R. Huinink

Place and Date of Hearing:

Vancouver, British Columbia

June 1, 2023

Place and Date of Judgment:

Vancouver, British Columbia

September 19, 2023

Written Reasons by:

The Honourable Mr. Justice Abrioux

Concurred in by:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Hunter

Summary:

This is an appeal of an order related to past and future child and spousal support arising out of a relationship that spanned less than four years. The appellant contends that the trial judge committed several errors including: (1) failing to base his award for retroactive support on an interim order; (2) failing to impute income to the respondent and misapprehending evidence regarding the respondent's ability to earn income; (3) ordering future spousal support for an indefinite duration; and (4) including the appellant's post-separation increases of income in the calculation of spousal support. The appellant also questions the sufficiency of the trial judge's reasons and brings an application to adduce fresh evidence. HELD: The appeal is dismissed; the application for fresh evidence is also dismissed. The judge applied the correct legal framework pertaining to interim orders and both child and spousal support and his decision is owed deference on appeal. The trial reasons are both factually and legally sufficient. The appellant's fresh evidence is not relevant to the issues on appeal since it is not for this Court to address the question of whether there has been a material change in circumstances since pronouncement of the trial judgment.

Reasons for Judgment of the Honourable Mr. Justice Abrioux:

I: Introduction

- [1] Mr. Roeske appeals from the orders of Justice Verhoeven following a family law claim which concerned past and future child and spousal support arising out of a relationship which lasted less than four years.
- [2] He contends the judge made various errors in calculating the amount and duration of support which include: 1) failing to base his award for retroactive support on the reasoning behind an interim order made by a Master of the Court; 2) not imputing income to Ms. Dighe and misapprehending the evidence regarding her ability to earn an income; 3) basing the awards for future support on his current as opposed to prior year's income; 4) ordering spousal support for an indefinite duration with the parties having leave to seek a review in 2025; and 5) including all his post-separation increases in income in the calculation of spousal support.
- [3] He also applies to adduce fresh evidence on appeal which he says is relevant to the proper calculation of the child and spousal support.
- [4] For the reasons that follow I would dismiss both the appeal and the application to adduce fresh evidence.

II: Background

- [5] This was succinctly summarized by the judge in his reasons for judgment which are indexed as 2022 BCSC 509:
- [2] The parties began cohabiting February 1, 2014. They were married later that same year on September 13, 2014. They have two children. A daughter, A., was born in September 2015. She is now six years of age. They have a son, L, who was born about a year later in October 2016. L. is now five years of age. The claimant is the mother, and the respondent is the father.
- [3] The parties separated December 9, 2017. The claimant commenced these proceedings December 15, 2017. They continued to reside together in the former family residence until August 2018, when the claimant moved out.
- [4] An interim order was made by Justice G.P. Weatherill on November 9, 2018 (the "Weatherill order"). The order provided for equal parenting on a week on week off basis. The order also provided for interim child support and spousal support to be paid by the respondent. The respondent's income for support purposes was determined to be \$195,000. The claimant was not working at the time and had no income. Justice Weatherill ordered that there would be a review of the interim child and spousal support order six months from the date of the order. Although the reasons for judgment were not transcribed and are therefore not available to me, based upon the comments of Weatherill J. during the hearing, it is clear that the issue to

be reviewed was the efforts the claimant was making to earn an income. He stated:

" between now and six months, she needs to be able to explain to somebody that these are the steps I'm taking."

- [5] On the review, on June 26, 2019, Master Harper made an order (the "Harper order") based upon imputed income to the claimant of \$55,000 per annum. Master Harper was persuaded that the claimant had the ability to earn that amount as an executive assistant, and that she had chosen not to pursue that work. She determined the respondent's income at \$202,322. This again was an interim order.
- [6] The parties were divorced pursuant to an order of Mr. Justice Jenkins made October 9, 2020. By then the family residence had been sold. Justice Jenkins made orders by consent of both parties for continuation of equal parenting on a week on week off rotation, division of property, and other orders.

III: Trial Judgment

The Trial Reasons

- [6] The judge began by setting out Ms. Dighe's claim for past child and spousal support in the amount of \$75,031 and Mr. Roeske's position that he had paid support prior to the Weatherill and Harper orders, and in accordance with those orders thereafter.
- [7] Ms. Dighe argued that the orders were interim, thus entitling the judge to reassess claims for past child and spousal support. She asked him to reconsider whether income should still be imputed to her pursuant to the Harper order. Mr. Roeske submitted that Ms. Dighe was seeking a "retroactive variation" of both child and spousal support, and that accordingly, the court should be guided by the Supreme Court of Canada's decisions in *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.] and *Colucci v. Colucci*, 2021 SCC 24. He argued that no retroactive awards should be made nor should the imputation of \$55,000 of income in the Harper order be varied.
- [8] The judge considered the principles that apply to interim orders, noting that "[g]enerally, interim orders are made on an incomplete and often inadequate record", whereby there is no opportunity to test evidence through cross-examination and " financial disclosure is often incomplete".
- [9] In accepting Ms. Dighe's position " that the court is entitled to reassess support payment issues at trial, on a complete record" the judge outlined the principles set out in *Robles v. Kuhn*, 2009 BCSC 1163 at para.12, stating that, " the court's task on interim applications is not the same as the court's task at trial".
- [10] He then discussed the principles outlined in the Spousal Support Advisory Guidelines: The Revised User's Guide (Ottawa: Department of Justice, 2016) [RUG]:

[37] At s. 20, the authors of the RUG state:

The law of retroactive spousal support was revised and restated in *Kerr v. Baranow*, 2011 SCC 10, after the release of the SSAG [Spousal Support Advisory Guidelines]. The Supreme Court of Canada ruled that the retroactive child support analysis of *D.B.S. v. S.R.G.*, 2006 SCC 37, with some modifications, should be applied to the determination of retroactive spousal support. The D.B.S. factors are:

- (i) the reasonable excuse for any delay in seeking support by the recipient;
- (ii) the presence or absence of blameworthy conduct by the payor;
- (iii) the circumstances of the support recipient; and
- (iv) any hardship to the payor occasioned by a retroactive award.

[11] The judge observed that -- as outlined in the RUG -- initial spousal support applications often include claims for retroactive spousal support, and that it may be necessary to revisit interim support.

[12] He accepted that the D.B.S. factors may have a "more substantial role in some cases", such as where "the payor could reasonably believe that he was fully complying with his support obligations" as in *Ducharme v. Rempel*, 2016 BCCA 198. However, in this case "the Weatherill and Harper orders were clearly intended as true interim orders", which were "intended to apply only until the trial".

[13] The judge found that there had been no delay in seeking support and Ms. Dighe was entitled to wait until trial in order to put the full financial picture before the court, stating that "any material underpayment of child support or spousal support can be expected to have some effect on the living standards of the children or spouse". He decided that structuring a potential retroactive payment over time would reduce the possibility of financial hardship to Mr. Roeske, observing that had Master Harper been provided with an exhaustive evidentiary record, "she would not have imputed income to the claimant", and that it was therefore in the interests of justice to reassess retroactive support.

[14] With regard to imputed income, the judge stated:

[52] The fundamental principles relating to imputation of income were recently re-stated by the Court of Appeal in *Zilic v. Zilic*, 2021 BCCA 107 [Zilic], at para. 19:

[19] The imputation of income is discretionary. The burden is on the party seeking to establish that income should be imputed. The broad governing test is reasonableness, having regard to the parties' actual capacity to earn income in light of all of their relevant circumstances, including age, education, health (physical and mental), work history, and work availability (which also takes into account child care responsibilities).

[15] He then made a number of factual findings related to the evidence at trial concluding that Ms. Dighe:

- Had made reasonable efforts to obtain suitable remunerative employment since separation, made many job applications, and in general, did her best under the circumstances and had succeeded in doing so by obtaining a full-time position with the Canada Revenue Agency ("CRA"), earning \$58,076 per annum; and
- Had acted reasonably in not returning to retail sales work or in attempting to establish a career as a real estate agent so as to avoid scheduling conflicts with her parenting responsibilities.

[16] The judge also found that Ms. Dighe was significantly limited by mental health challenges, which had affected her employment in the past, and continued to do so. He commented on the fact that she had no local family members or other people to support her or assist with child care which had also limited her ability to obtain and maintain employment. Accordingly, he decided that no income should be imputed in respect to the claims for retroactive spousal and child support and that they should be assessed on actual past income.

[17] With regard to the effective date from which to calculate support, the judge decided that retroactive claims should be based on actual incomes in the year in which the income was earned, with prospective support to be based on the previous year's income.

[18] Having considered Mr. Roeske's income for retroactive support claims, the judge concluded that the post-separation increases in income should be taken into account due to:

- The continued link between his current career advancement and the marriage; and
- The fact that the upward trajectory in earnings was not impeded by his parenting responsibilities.

[19] Accordingly, the judge accepted that a simple set-off approach was appropriate for child support with shared expenses such as day care to be accounted for as between the parties.

[20] The judge then turned to future spousal support and decided that Ms. Dighe remained entitled to support on both compensatory and non-compensatory grounds, commenting on the fact that her career was interrupted by pregnancies, child care obligations and that the pregnancies and the marital relationship had negative consequences on her mental health. In considering the basis for non-compensatory grounds, the judge found that without spousal support, Ms. Dighe would suffer a significant decline in her standard of living as compared with the joint standard of living of the parties during the relationship. He concluded that while this factor was much weaker due to the relatively short duration of the marriage, that the spousal support order should be indefinite, subject to an optional review in 2025.

- [21] Given Mr. Roeske's employment circumstances, the judge determined that the income for current support purposes would be \$290,000 with the parties to exchange income information on an annual basis to permit for the recalculation of child and spousal support amounts.

Supplementary Reasons

- [22] The judge issued further reasons for judgment, indexed as 2022 BCSC 2417 (the "Supplementary Reasons"), which settled certain issues arising from the Trial Reasons.
- [23] He acknowledged the parties' agreement that Mr. Roeske's 2021 income was \$390,165, which was applicable to the calculation of the retroactive awards for support. Since the parties still differed as to Mr. Roeske's income the judge set the 2022 income at \$360,000 -- an upward revision from the \$290,000 referred to in the Trial Reasons.
- [24] He also set payment of the retroactive child support to be a lump sum amount payable as of February 1, 2023. With respect to the retroactive spousal support, the judge ordered that payments be made monthly, in equal amounts, over the course of 12 months, beginning on February 1, 2023.

IV: On Appeal

- [25] Mr. Roeske challenges the judge's findings and conclusions on a number of grounds:
- a) in departing from the presumption established in *D.B.S. v. S.R.G.*, 2006 SCC 37, by disturbing the Harper order;
 - b) by not imputing any income to Ms. Dighe and by making a serious misapprehension of the evidence to support her inability to work, in part due to her alleged mental health issues;
 - c) by not utilizing his previous year's income for calculating support, based on an implied agreement between the parties; in the alternative by misapprehending the evidence in finding there was no agreement between the parties for yearly review and adjustments of support amounts; by failing to provide sufficient reasons "to explain the departure from the principles set-out in *K.A.M.R. v. W.H.G.*, 2014 BCSC 103 in regard in having a consistent scheme where both retroactive and prospective support are at issue";
 - d) by not terminating spousal support, setting it for an indefinite duration, and not weighing the marital standard of living in a short marriage to award amounts over and above that range; or, in the alternative, providing insufficient reasons for his conclusions including the basis for ordering a review of spousal support;
 - e) by including all of his post-separation increases in income in the calculation of spousal support.

V: Standard of Review

- [26] As was recently stated in *Nami v. Yunusova*, 2023 BCCA 124:
- [28] Appeal courts must apply a highly deferential standard of review to all family law matters, including issues of property division. We may intervene only where there is a material error, a serious misapprehension of the evidence, or an error of law: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at para. 12, 1999 CanLII 691.
- [29] Our role is not to re-do the work of the trial judge by allowing parties to reargue the case but to correct errors. This strict and limited scope is necessary to promote finality in the resolution of parties' issues, to uphold public confidence in the judicial process and to ground the proper administration of justice: *Barendregt v. Grebliunas*, 2022 SCC 22 at paras. 100-104. It recognizes that the trial judge is in "an advantageous position when it comes to assessing and weighing vast quantities of evidence", and it is "not the role of appellate courts to second-guess the weight to be assigned to evidence ... [nor] to interfere with a factual conclusion that it disagrees with where such disagreement stems from a difference of opinion": *Housen v. Nikolaisen*, 2002 SCC 33 at para. 22-23.
- [30] In application, this means that deference is given to the findings and conclusions of the trial judge, except where there is an error of law or a palpable and overriding error of fact. Palpable means the error is obvious and overriding means that it goes to the core of the outcome of the case. Both inferences of fact and findings of fact are subject to this standard. Put another way, we will not interfere where there is some evidence upon which the judge could have relied to come to their decision: *Housen* at paras. 1, 8, 10, 19, and 36.
- [31] A high standard also applies to the review of a judge's discretionary decision. An appeal court will defer to the judge's exercise of their discretion except where they have made an error in principle, or made a palpable error such as failing to consider relevant circumstances or misconceiving the evidence, or the decision is so clearly wrong that permitting the order to stand would work an injustice: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 at para. 43; *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 27.
- [27] As I shall explain, the following comments in *Nami* apply equally in this case:
- [32] Mr. Naimi misunderstands the role of this Court. His appeal is an impermissible "second kick at the can": *Barendregt* at para. 39. He repeats arguments made below and attempts to re-litigate the factual findings of the trial judge, who had the benefit of observing the parties and receiving the evidence first-hand. Such an approach is not consonant with the strict standard of review this Court must apply.

VI: Analysis

- [28] I would reframe the alleged errors within the context of the following issues.

Issue #1: Did the judge err in his awards for retroactive support by ordering amounts which were based on different findings than those in the Harper Order?

- [29] The judge summarized the Harper Order at para. 5 of the reasons quoted at para. 5 above.
- [30] Mr. Roeske challenges the award for past support in part on the ground that the judge erred in not adhering to the findings contained in the Harper Order. That order imputed Ms. Dighe's annual income at \$55,000. At trial, he argued that given the prior orders, in particular the Harper Order, Ms. Dighe was effectively seeking a retroactive variation of child and spousal support and thus the D.B.S. framework applied: Reasons at paras. 31-32.
- [31] Ms. Dighe argues, as she did at trial, that the judge was entitled to, and in fact should, re-evaluate the question of whether income ought to have been imputed to her, and if so, the appropriate amount.
- [32] The judge outlined the legal framework that applies both to interim orders and retroactive support: Reasons at paras. 33-48. He referred to Robles, which summarizes the principles which apply on interim applications, D.B.S., regarding applications for retroactive support, and Ducharme, where the argument is advanced that the payor could reasonably believe he was fully complying with his support obligations.
- [33] His analysis included:
- [40] However in this case, the Weatherill and Harper orders were clearly intended as true interim orders. That is, orders that were intended to apply only until the trial. The factors of certainty and predictability have very little weight in this case.
- [42] This is not a case where the claimant delayed in seeking support. She filed a notice of family claim December 15, 2017, within days of the agreed-upon date of separation, claiming child support and spousal support. She was entitled to wait until trial in order to put the full financial picture before the court: Tedham, at para. 62. The court may award retroactive spousal support to the date of the commencement of proceedings, even where the recipient brings no interim application: Kerr, at para. 216. In Kerr, the trial judge relied on the SSAG to determine the amount of retroactive support that should be paid. I applied this same approach in James v. Chase, 2020 BCSC 1181, at paras. 93 to 99, cited by the claimant here. In that case no interim application was made, and I assessed retroactive spousal support to the date the notice of family claim was filed.
- [43] In my view, the claimant should not be in a worse position for having brought an interim application for spousal support than she would have been if she had simply waited until trial. The "rough justice" interim orders should not stand in the way.
- [45] In Ducharme, the Court of Appeal accepted that the presumption that the previous order is valid may be rebutted in the circumstances of the case. The court held that in the circumstances of that case, the interim spousal support order did not preclude the making of a retroactive spousal support award (Ducharme, at paras. 39-40). The court noted:

- [40] Interim proceedings are not geared to determine final issues or disputed issues of fact; interim orders provide "rough justice" until the trial may be held and a final determination of issues made: *Newson v. Newson* (1998), 65 B.C.L.R. (3d) 22 (C.A.). In my view this was not a case in which Mr. Rempel could reasonably have assumed that he was fully complying with his support obligation. I would not accede to this ground of appeal.
- [46] The concept that the previous order should be presumed to be valid is at odds with the nature of interim orders designed to provide "rough justice" on an incomplete record, until the trial is held and a final determination of the issues may be made.
- [47] There are numerous decisions in which courts have made retroactive support orders at trial that vary interim orders: see e.g., *Tedham*; *Ducharme*; *Pereverzoff v. Pereverzoff*, 2017 BCSC 687 ;
- [34] In my view, in light of the judge's findings of fact, the deferential standard of review applies and no fault can be found in this analysis. Accordingly, the judge committed no reviewable error when he stated:
- [50] Moreover, as I will explain, I am satisfied that if Master Harper had had a full evidentiary record, she would not have imputed income to the claimant. Therefore, it is in the interests of justice to reassess past support. [51] In summary, I conclude that in the circumstances of this case, it is appropriate to reassess past child and spousal support, in light of the full record available to me as the trial judge.
- [35] I would not accede to this ground of appeal.

Issue #2: Did the judge err in not imputing income to the respondent and in determining spousal support based upon, in part, her actual income?

- [36] Mr. Roeske challenges the judge's findings -- essentially on the basis that he misapprehended the evidence -- with regard to the following conclusions:
- That Ms. Dighe had made reasonable efforts to obtain suitable remunerative employment since separation: Reasons at para. 61;
 - That "[he] accepts [Ms. Dighe's] evidence that she constantly looked for suitable work, made many job applications, and in general, did her best under the circumstances": Reasons at para. 67; and
 - Ms. Dighe's mental health was an additional factor in her efforts to become self sufficient: Reasons at para. 70.
- [37] He argues that Master Harper's findings at the time of the Harper Order -- that the respondent could work as an executive assistant -- should have been preferred by the judge.

[38] The reasons set out the evidentiary record upon which these findings were based (at paras. 70-77), including Mr. Roeske's own evidence that in 2015 he considered Ms. Dighe to be mentally unstable.

[39] In my view, there was an ample evidentiary record on which the judge could have made his findings and concluded that he should consider Ms. Dighe's claims for retroactive support based on her actual income. Those findings are entitled to deference.

Issue #3: Did the judge err in utilizing the appellant's current income to determine the quantum of support in a given year?

[40] Mr. Roeske alleges the judge erred by not utilizing his previous year's income for calculating support. He argues:

- There was an implied agreement between the parties to that effect or, in the alternative, that the judge misapprehended the evidence in finding there was no agreement for an annual review and adjustments of support amounts; and
- The judge's approach was inconsistent with the need for "a consistent scheme where both retroactive and prospective support are at issue" and amounted to double recovery.

[41] I will first consider the argument that the parties had an express or implied agreement for an annual review of support obligations.

[42] The judge stated:

[79] The respondent argues that support should be calculated on the basis of the parties' incomes for the prior calendar year, based upon the tax returns they file in the following year. However, he argues that the support payments should not reflect the actual incomes earned until the following year. In other words, he contends that adjustments should only be made prospectively, beginning for example on July 1 of the year following any increase or variation in income, after the parties have exchanged tax information for the prior year. Therefore, to take an example, if the respondent were to receive an increase in pay effective January 1 of year one, an upwards adjustment of support would not occur until eighteen months later, effective July 1 of year two, after the parties had exchanged year one income information.

[80] In this respect, the respondent relies upon the Weatherill order, which provided that the parties shall exchange their respective tax information for the prior year not later than June 1 of each year. He also contends that by implication the parties agreed to this approach, which has in fact been followed.

[81] However, the Weatherill order does not say anything about how retroactive adjustments should be made. It merely states that income information shall be exchanged annually. And there is no actual agreement between the parties to the effect relied upon by the respondent.

- [82] The respondent's position is contrary to the established principle that insofar as possible, retroactive support is to be determined base[d] upon actual income earned in the year for which it is due: *Hsieh v. Lui*, 2017 BCCA 51, at para. 49.
- [83] However, ongoing support orders may provide for adjustment based upon evidence of the income for the previous year, particularly where the payor's income fluctuates or is uncertain: see *K.A.M.R. v. W.H.G.*, 2014 BCSC 103, at paras. 9-19; *Vanos v. Vanos*, 2010 ONCA 876 at paras. 14-16.
- [84] In summary, the claimant's retroactive support claims should be on actual past incomes, in the year in which the income was earned. Prospective support should be based on the previous year's income.
- [43] Mr. Roeske does not rely on any viva voce evidence to support the allegation that there was an agreement between the parties. Rather he points to a letter from counsel requesting Ms. Dighe to adjust support based on income for the prior year which was agreed to for 2020 and 2021.
- [44] In her factum, Ms. Dighe states:
64. In addition to her testimony on the point, the Wife argues that it would be illogical for her to have agreed to use prior years' income data while not addressing the income incorrectly imputed to her for those years -- years in which her employment income was always far below her imputed income. The letter relied on by the Husband to upset the trial Judge's finding that there was no such agreement does not support the Husband's contention.
- [45] While it was open to the judge to specifically address Mr. Roeske's argument on this point, the fact he did not does not constitute reviewable error.
- [46] It is well-established that reasons for judgment are to be considered contextually and as a whole: *R. v. G.F.*, 2021 SCC 20 at para. 69 [G.F.].
- [47] Furthermore, a trial judge is not required to grapple with every piece of evidence or every argument advanced by the parties in their reasons for judgment, only the live issues at trial: *Coast Mountain Aviation Inc. v. M. Brooks Enterprises Ltd.*, 2014 BCCA 133 at para. 74, citing *R. v. R.E.M.*, 2008 SCC 51 at para. 64.
- [48] It would indeed have been illogical for Ms. Dighe to agree to what Mr. Roeske was suggesting. In fact, it can be taken from para. 79 of the reasons that the judge held a similar view.
- [49] I turn now to the issue of alleged double recovery.
- [50] Mr. Roeske also argues that the judge's conclusion that actual income should form the basis for claims that are both retroactive and prospective, resulted in the possibility of double recovery. He submits that the judge's approach is contrary to the "consistency" principle outlined in *K.A.M.R. v. W.H.G.*, 2014 BCSC 103, at paras. 9-19.

- [51] Specifically, he argues that for 2021 and 2022, he will be paying support based on his 2021 income which was the highest it had been, since it included significant non-recurring events.
- [52] Mr. Roeske also submits that the judge erred by taking into account his post-separation increases in income when considering spousal support.
- [53] For her part, Ms. Dighe points to the evidence at trial as to the uncertainty regarding the appellant's 2021 and 2022 income levels, which were outlined by the judge in his reasons at paras. 20-22. There was also Mr. Roeske's evidence that he was unsure of the income tax treatment that would apply to the sale of shares realized upon the exercise of certain stock options.
- [54] The judge specifically addressed these issues:
- [85] The respondent's income for the years prior to 2021 is documented and not in issue.
- [86] His 2021 income remains uncertain, to some extent. Prior to May 24, 2021, he worked at Sauce Labs. The sale of his Sauce Labs shares will provide gross receipts of \$55,500. The net amount and the tax treatment of this payment is not yet clear. His base salary at Spin is \$260,000. He received the \$37,500 signing bonus in 2021, but this is subject to possible repayment if he does not remain employed with Spin past May 24, 2022. At that time he would qualify for a retention payment of \$50,000, which would form part of his income for 2022.
- [87] The respondent argues that his post-separation increase in income should not factor into the spousal support assessment. As noted in the RUG at 82, this is an issue that usually comes up at the variation and review stages, after the initial order.
- [88] I have no difficulty concluding that, at this stage, in respect of the respondent's 2021 income and for ongoing spousal support purposes, the respondent's post-separation increase in income should be taken into account. Currently there remains a link or connection between his current career success and the marriage. During the marriage he continued to progress in his successful career. He was recruited to join Sauce Labs during the marriage. Later he was recruited to join Spin. As noted, the steady upward trajectory of this career was not impeded by parenting, thanks in part to the claimant.
- [89] Fairness is another factor. The respondent, naturally, contends that the claimant's current income should be taken into account.
- [90] Therefore, for 2021, the respondent's actual income for the year should be utilized for both child support and spousal support re-calculation purposes.

- [91] Given that the uncertainty concerning the respondent's 2021 income ought to be removed by late May of this year, it makes practical sense to defer the final calculation of the claimant's retroactive support claims until, at the latest, July 1, 2022. The calculation will be for the period of time up to the date of the order arising from these reasons for judgment.
- [55] It is clear, in my view, that this is precisely the kind of reasoning that attracts the highly deferential standard of review to which I have referred. My comments below pertaining to the consideration of the RUG by the judge, apply equally to this ground of appeal.
- [56] In any event, the judge canvassed Mr. Roeske's income in the Supplementary Reasons, and set the 2022 income at \$360,000, the amount that Ms. Dighe sought. This, he observed, was "surprisingly" lower than the \$390,165 sum counsel for Mr. Roeske calculated by "utilizing the structure set out in the reasons for judgment ": Supplementary Reasons at paras. 8-12.
- [57] Accordingly, I would not accede to these grounds of appeal.

Issue #4: Did the judge err by concluding that the respondent was entitled to ongoing spousal support on both compensatory and non-compensatory grounds for an indefinite duration, subject to an application for a review at the option of either party after July 1, 2025?

A: The Judge's Reasons

- [58] Further to what I outlined above, the judge based his decision that Ms. Dighe was entitled to spousal support on both compensatory and non-compensatory grounds on an assessment of the factors outlined in the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), and certain well-established principles, stating:
- [100] I adopt my discussion of the legal principles involved in relation to spousal support set out in *McGrail v. McGrail*, 2016 BCSC 104, at paras. 95-100. There, I referred to a number of leading authorities on these topics, including the decision of the B.C. Court of Appeal in *Chutter v. Chutter*, 2008 BCCA 507, the decision of the Supreme Court of Canada in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 1999 CanLII 715 (SCC), and with respect to retroactive spousal support, *D.B.S.*; and *Kerr*. I stated:
- [95] The factors and objectives of a spousal support order for set out in ss. 15.2 (4) and 15.2 (6) of the Divorce Act. They read as follows:
- [96] All of the factors referred to in s. 15.2(4) and all four of the objectives under s. 15.2(6) must be taken into account. No single objective is paramount. The four objectives set out in s. 15.2(6) can be viewed as an attempt to achieve an equitable sharing of the economic consequences of marriage or marriage breakdown: *Moge v. Moge*, 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813 [*Moge*].
- [97] Section 161 of the FLA is substantially the same as s. 15.2(6) of the Divorce Act.

- [98] The relevant principles regarding spousal support were reviewed and summarized by Madam Justice Rowles, for the Court, in *Chutter v. Chutter*, 2008 BCCA 507 at paras. 45 to 61. Madam Justice Rowles at para. 47 states that the Supreme Court of Canada has identified three grounds for entitlement to spousal support: (1) compensatory support, which primarily relates to the first two objectives of the Divorce Act; (2) non-compensatory support, which primarily relates to the third and fourth objectives; and (3) contractual support, citing *Bracklow v. Bracklow*, 1999 CanLII 715 (SCC), [1999] 1 S.C.R. 420 at paras. 15, 41-42.
- [99] With respect to orders for retroactive spousal support, in *D.B.S. v. S.R.G.*, 2006 SCC 37 (CanLII), [2006] 2 S.C.R. 231 [D.B.S.] the Supreme Court of Canada states that in determining whether to make a retroactive award of child support, the court should strive for a holistic view of the matter and decide each case on the basis of its particular factual matrix: page 275-276.
- [100] In *Kerr v. Baranow*, 2011 SCC 10 (CanLII), [2011] 1 S.C.R. 269 [Kerr] the Supreme Court stated that while D.B.S. was concerned with child as opposed to spousal support, similar considerations are also relevant to deciding the suitability of a "retroactive" award of spousal support. Specifically, these factors are the needs of the recipient, the conduct of the payor, the reason for the delay in seeking support and any hardship the retroactive award may occasion on the payor spouse. However, in spousal support cases, these factors must be considered and weighed in light of the different legal principles and objectives that underpin spousal as compared with child support; Kerr, para. 207. Nonetheless, the same flexibility and regard for a holistic view of the matter on its merits is appropriate in the case of retroactive spousal support: Kerr, para. 212.

B: Compensatory Support and Duration

(i) The parties' positions

[59] Mr. Roeske's challenges to the judge's findings include the following:

- It is "unclear" from the reasons how Ms. Dighe's entitlement to compensatory support and its indefinite duration was arrived at "given that support has been ongoing for over 4 years"; and
- the judge's alleged failure to explain the applicability of the RUG in that the provisions in question apply to recipients with primary care of children as opposed to situations involving shared parenting.

[60] For her part, with respect to compensatory support and duration, Ms. Dighe submits:

- Mr. Roeske is rearguing the case he made at trial and seeks to challenge the judge's specific findings of fact;
- The RUG can be considered when there is shared parenting.

(ii) Analysis

[61] It is clear to me that the first challenge to the judge's findings regarding entitlement to compensatory support is an attempt to re-argue the issue in this Court in the hope that we will make different findings of fact. That is not our role.

[62] Deference is owed to the judge's findings, including those relating to the facts that:

- Ms. Dighe's career was interrupted as a result of her pregnancies and child care obligations;
- She has limited marketable skills and the pursuit of a real estate career is no longer a practical option for her;
- Her ongoing work for the CRA call centre (even though it is performed from her home) depends on reliable, scheduled day care.

In comparison, Mr. Roeske's career has not been detrimentally impacted by the relationship and his skills, and the nature of his work allow him greater flexibility in child care.

[63] Mr. Roeske argues that the judge erred in law by referring to the RUG in his analysis regarding compensatory support. The judge does so at para. 103 of the Trial Reasons, although the commentaries in question are set out in some detail in his analysis concerning non-compensatory support.

[64] His argument is similar with respect to both compensatory and non-compensatory support -- that is, the RUG commentaries do not apply in cases of shared parenting.

[65] Given the significance of this point to Mr. Roeske's submissions on appeal, it is of assistance to set out the manner in which the judge framed the issue and the commentaries in question as outlined in the Reasons:

[108] As noted, the respondent argues that spousal support should now be terminated. In effect he argues that the grounds for spousal support no longer exist, and that his obligations have been satisfied by the financial support and spousal support he has already paid to date. Based on my previous comments, it should be apparent that I do not agree. In my view, compensatory and non-compensatory grounds continue to exist.

[109] This conclusion is supported by the commentary in the RUG, chapter 8(n), as follows (at 43-44):

(n) Short marriages, young children (SSAG 8.5.5)

This has now emerged as one of the major problems under the with child support formula. Lawyers argue for, and courts grant, a short time limit at the initial stage where the marriage is short and there are young children. The time limit on spousal support is typically fixed at the number of years of marriage or cohabitation, e.g., 4 years of support after a 4-year marriage, even though the recipient has the primary care of children aged 1 and 3.

Such short time limits will only rarely be the right outcome at the initial hearing. The vast majority of these orders should be "indefinite (duration not specified)". Often a review will be required in these indefinite orders.

Remember that there are two tests for duration under the with child support formula. Not just the length-of-marriage test, but also the age-of-children test. The second test is more important for shorter marriages, with a range from the time the youngest child commences full-time school to the upper end of the last child finishing high school.

These are usually cases with strong compensatory claims. The compensatory claim derives less from the past disadvantage during the marriage and much more from the future disadvantage for the parent with ongoing primary care of the children, as identified in s. 15.2(6)(b) of the Divorce Act.

[]

The imposition of short time limits in these cases reflects a failure of compensatory analysis. A more careful approach is needed. The most obvious area for such analysis would be the basic formula cases, where the recipient continues with a disproportionate share of child care going forward. In the more complex custody cases, like shared, split, hybrid or step-child cases, there may be circumstances that warrant shorter time limits, especially the step-child cases. A short time limit would normally mean a quick "bounce back" by the support recipient, someone with pre-existing skills who can find good employment reasonably quickly and become truly "self-sufficient."

[Emphasis added in Reasons.]

[110] The RUG commentary at ch. 18 is also helpful (at 95):

Self-sufficiency is only one of the four objectives stated in s. 15.2(6), said the Supreme Court of Canada in *Leskun v. Leskun*, 2006 SCC 25, and a qualified one at that. There is no absolute "duty" on a former spouse to become self-sufficient.

Moge reminded us all of some important lessons about self-sufficiency: courts must be realistic about self-sufficiency; courts must not underestimate the labour market disadvantages faced by recipients returning to work; and courts should not be too quick to "deem" or "predict" that recipients will achieve self-sufficiency in future

[111] And at 99:

Time limits under the with child support formula are "softer", with initial orders "indefinite" and time limits coming later through variation or review, perhaps not until a "crossover" to the other formula. Under this formula concepts of "self-sufficiency" will be shaped by the strongly compensatory nature of many of the claims. For marriages shorter than 20 years, it is anticipated that at some point the economic disadvantages of the recipient will be fully compensated and, if there is no non-compensatory claim left, a time limit will be imposed and spousal support terminated

- [112] In this case it cannot be said that the claimant is a person "with pre-existing skills who can find good employment reasonably quickly and become truly 'self-sufficient'" (RUG at 44).
- [113] Although in this case parenting is shared, the claimant continues to share equally in parenting duties, which limit her career options, as I have explained.
- [114] I conclude that the spousal support order should be indefinite. In view primarily of the short duration of the marriage relationship, I accept the claimant's submission that a review of spousal support in approximately three years is warranted. The question will be whether the claimant continues to be entitled to spousal support in the circumstances then existing. The review may take place at the option of either party anytime after July 1, 2025.
- [Emphasis added.]
- [66] Given that parenting was shared, the issue then becomes whether, as Mr. Roeske submits, the judge erred in law by considering the RUG commentaries in the manner he did.
- [67] In my view, he did not. In *Namdarpour v. Vahman*, 2019, BCCA 153, Justice Savage referred to the SSAG observing that:
- [139] In *Redpath v. Redpath*, 2006 BCCA 338, this Court concluded that if a judge orders a quantum of spousal support that is substantially lower or higher than the range provided by the SSAG and there are no exceptional circumstances to explain the anomaly, then this may constitute a reversible error (at para. 42.)
- [68] He then referred to the RUG in considering the "integrated approach", being the interrelationship between duration and amount of spousal support:
- [152] The "integrated approach" continues under the current SSAG. Ignoring duration is a misapplication of the formula: see SSAG, s. 7.5.1; C. Rogerson & R. Thompson, *Spousal Support Advisory Guidelines: The Revised User's Guide* (April 2016) at 27.
- [69] The parties did not specifically raise as an issue on appeal whether the RUG should be treated in a manner similar to the SSAG; nor would I consider answering this question to be necessary for the disposition of this appeal. That is because, reading the judge's reasons contextually and as a whole, it is evident that he was prepared to consider the RUG as part of his analysis without being obliged to follow it.
- [70] The RUG Commentary in chapter 8(n) "Short marriages, young children" may well be of assistance in situations where parents share custody or co-parent.
- [71] In his factum Mr. Roeske submits that the judge "fails to explain how [the cited passage] applies, given that [it relates] to recipients with primary care of the children, as opposed to this situation of shared parenting".

- [72] The "with child support" formula under chapter 8 of the RUG is comprised of a grouping of six formulas. One of these is the basic formula, involving a lower-income parent with primary care: Ch. 8(e). Another is the shared custody formula: Ch. 8(f).
- [73] After reviewing these formulas, the RUG discusses the special problem which arises regarding the duration of support in short marriages involving young children: Ch. 8(n). In my view, this section (at 44) may well be a relevant consideration to "with child support" formula cases, including those involving shared custody or parenting as is seen by the excerpt from the RUG quoted at para. 65 above.
- [74] I would add that chapter 8(n) of the RUG specifies that the "vast majority" of support orders involving short marriages and young children "should be 'indefinite (duration not specified)'", often with a review required: at 44. In my view, this is consistent with the shared custody formula, under which all initial orders should be indefinite.
- [75] Although not determinative, support for this conclusion is found in the SSAG itself [Carol Rogerson & Rollie Thompson, Spousal Support Advisory Guidelines (Ottawa: Department of Justice, 2008)], where the subsection regarding short marriages with young children is in a section concerning duration of support under the basic formula (s. 8.5): see SSAG 8.5.5.
- [76] Ms. Dighe also takes issue with Mr. Roeske's position that shared parenting can, in some way, vitiate her claim or the application of the SSAG, arguing in her factum:
73. The SSAG, at part 8.6, page 88, specifically addresses this in the following passage:
- "If the straight set-off of child support is calculated as above, it turns out that the spousal support ranges are basically the same in these shared custody situations as in sole custody situations. Shared custody arrangements do not result in any automatic lowering of spousal support."
- [77] I agree with Ms. Dighe that shared parenting did not prevent the judge from considering the RUG as part of his analysis which lead to his conclusion as to the need for an indefinite spousal support order, with the option of a review in 2025. It is open to a judge -- on the facts of each case and the application of the law to those facts -- to make an indefinite spousal support order, regardless of the short duration of a marriage or the existence of a shared parenting arrangement.
- [78] I would add that the judge did not consider himself bound to follow the RUG observing, for example, at para. 110 of the reasons, quoted at para. 65 above, that he found them "helpful".
- [79] In conclusion, I am of the view that the judge set out the applicable legal framework and committed no reviewable error in applying it to the facts as he found them to be.

C: Non-Compensatory Support and its Duration

(i) The parties' positions

- [80] With respect to non-compensatory support and its duration, Mr. Roeske submits that:

- The judge did not properly consider the evidence that at the time of trial the parties had been separated for over three years;
- He erred in stating that "it cannot be said that [Ms. Dighe] is a person with pre-existing skills who can find good employment reasonably quickly and become truly 'self sufficient'";
- The comparable marital standard of living, while applicable to long marriages, was "less appropriate" to shorter marriages "and must have an end date".

[81] Ms. Dighe's position is that:

- Mr. Roeske again challenges findings of fact made regarding her employability; and
- At trial, Mr. Roeske argued in his closing submissions that spousal support should be set at an amount that achieves equal NDI (net disposable income) between the parties, and it was therefore open to the judge to find that equal NDI was appropriate as he did: Reasons at para. 94.

(ii) Analysis

- [82] I agree with Ms. Dighe that Mr. Roeske again seeks to challenge certain of the judge's findings, which include her difficulties in finding "good employment and [becoming] truly self sufficient". As I have said, there was evidence upon which he could reasonably reach this conclusion and it is entitled to deference.
- [83] Mr. Roeske also advances a number of arguments regarding the parties' respective standards of living. He submits, based on certain tables contained in his factum, that the respondent's standard of living has "nearly doubled the marital standard of living" when property division and the significant arrears in support, which have now been paid, are considered.
- [84] And yet, both parties agreed that the judge could consider the issue of spousal support based on an NDI approach, which is what he did. It was thus appropriate for the judge to find that this approach was a fair way to decide the issue and to apply the passages from the RUG to which he referred at paras. 109-110 of the Reasons, quoted at para. 66 above.
- [85] I would add that my conclusions regarding the propriety of the judge's references to the RUG in relation to compensatory support apply equally here.

D: The Review as of July 2025

(i) The parties' positions

[86] Mr. Roeske's position includes:

- There is no "genuine uncertainty" regarding Ms. Dighe's future employability. At the time of trial, she was working full time under the terms of a contract that continued until May 2023;
- By the time of the review in July 2025, the parties will have been separated for over 7 and half years, "double the length of the relationship" and "it is unclear what the review intends to achieve".

[87] Ms. Dighe, for her part, says that several uncertainties were identified in the reasons. Furthermore, Mr. Roeske raised uncertainties regarding his own employment situation which included whether his employment with his current employer would continue. Accordingly, the order for a review was properly grounded both in the law and the evidence.

(ii) Analysis

[88] There is a clear overlap between the issue of indefinite spousal support and the order for a review in 2025. The legal framework which applies was recently summarized in *M.T. v. J.S.*, 2023 BCCA 64:

[39] Under s. 15.2(3) of the Divorce Act, the court may include review provisions in support orders to permit the parties and the court to reconsider the support award where there is "genuine and material uncertainty at the time of the original trial" on a factual issue that is the basis for a support award. In such cases, once the uncertainty has been resolved, a party should not have to meet the strict threshold of establishing a material change in circumstances to have the support award reconsidered: *Leskun v. Leskun*, 2006 SCC 25 at paras. 36-37 and 39. Unless the order providing for a review sets out limitations on the scope of the review, a review is a hearing de novo and encompasses determination of each of the issues of entitlement, quantum and duration: *Domitri v. Domitri*, 2010 BCCA 472 at paras. 38-39; *Morck v. Morck*, 2013 BCCA 186 at para. 17.

[42] As the Supreme Court observed in *Leskun* at para. 37:

[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), 1998 CanLII 5760 (ON CA), 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 CanLII 28 (SCC), [1994] 3 S.C.R. 670, at pp. 688-90.

[Emphasis added.]

[89] I would not accede to Mr. Roeske's submission that the judge erred in ordering a review on the basis that there is no genuine uncertainty in this case. In fact, the Trial Reasons identify several uncertainties, which include:

- Whether his contract of employment at the time of trial would continue considering the evidence of significant lay offs having taken place;
- The effects of Ms. Dighe's mental health issues on her employability;
- The potential of repayment of bonuses if Mr. Roeske's employment was terminated; and

- The quantification of the proceeds of sale of certain of the stock options.

[90] It is also evident from the passages of the RUG to which the judge referred that while post-Leskun reviews were generally considered to be the exception rather than the rule, that landscape has changed in the fifteen years that have elapsed post-Leskun. This is seen, for example, in the RUG commentary at chapter 8(n): "often a review will be required in these indefinite orders".

[91] Reviews, therefore, allow a court to reconsider the financial circumstances of the payor and payee, and to assess the payee's path to self-sufficiency at a given period following the trial.

[92] In my view this ground of appeal is one of mixed fact and law which engaged the judge's exercise of discretion and I do not consider the alleged error in considering the passages in the RUG to which he referred to be an extricable question of law. The standard of review is thus deferential, absent palpable or overriding error. The judge identified the proper framework and his findings of fact supported his conclusion that a review was appropriate in this case. No reviewable error has been demonstrated.

E: Conclusion

[93] I would not accede to any of these grounds of appeal.

Issue #5: Did the judge err by considering all of the appellant's post- separation income, as it varied from time to time, in calculating spousal support?

[94] Mr. Roeske submits that the judge erred by concluding that all his post-separation increases in income should be considered when calculating spousal support. He argues that the short duration of the marriage did not support the finding that he was able to increase his career prospects during the marriage to the degree that warrants a sharing of his post-separation income.

[95] He says that he developed significant skills and education prior to the relationship, including employment experience, which made him a sought-after employee/contractor. He points to the fact that he obtained particularly remunerative employment after the parties separated. Furthermore, he says in his factum that:

98. Other than the Respondent taking maternity leave for both Children, there was no direct connection between the Appellant's career and the respondents' contributions to the same. While childrearing can be seen as an indirect contribution, it was very short in duration and the parties have maintained shared parenting since August 2018.

[96] The judge's analysis of this issue is set out at paras. 87-89 of the Reasons quoted at para. 54 above.

[97] In my view the judge's conclusions and his reference to the RUG are subject to a deferential standard of review absent palpable and overriding error.

[98] No reviewable error has been identified and I would not accede to this ground of appeal.

VII: Alleged Insufficiency of Reasons

[99] A number of the grounds of appeal challenge the sufficiency of the Trial Reasons.

[100] The Supreme Court recently summarized the applicable framework in G.F at paras. 69-71, 74 and 79 which I will not quote in these reasons.

[101] Respectfully, there is, in my view, no merit to this submission. The Trial Reasons are both factually and legally sufficient with the low bar of factual sufficiency more than satisfied. The Trial Reasons are comprehensive, set out the applicable legal framework, make appropriate findings of fact, and apply the legal framework to the respective factual determinations. This Court is well able to perform its task of appellate review. The path taken by the trial judge which includes setting out the "what" and the "why" is not, as submitted, by Mr. Roeske, "unintelligible", but the opposite.

[102] I would not accede to this ground of appeal.

VIII: The Application to Adduce Additional ("Fresh") Evidence

[103] Mr. Roeske also applies to adduce additional evidence on appeal pursuant to Rule 59, Court of Appeal Rules, B.C. Reg. 120/2022.

[104] He submits that the evidence sought to be adduced is new evidence, "being documents and information which have arisen since the trial was completed. It includes the Appellant's 2021 tax return, [and] notice of assessment as well as correspondence between the parties in an effort to address the change in circumstances since the Trial Decision was released".

[105] The application also includes the Supplementary Reasons. These are not properly the subject of this type of application. Ms. Dighe agrees they should be before the Court and they were included in the Amended Appeal Record which was filed on May 2, 2023.

[106] The test to determine whether additional (or "fresh") evidence should be admitted on appeal when adduced for the purpose of reviewing the decision below is set out in *Palmer v. The Queen* (1979), [1980] 1 S.C.R. 759, 1979 CanLII 8 as follows:

- (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial
- (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
- (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
- (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[107] As the Supreme Court held in *Barendregt v. Grebliunas*, 2022 SCC 22:

- [31] The Palmer test is purposive, fact-specific, and driven by an overarching concern for the interests of justice. It ensures that the admission of additional evidence on appeal will be rare, such that the matters in issue between the parties should "narrow rather than expand as [a] case proceeds up the appellate ladder": *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 2 [2000] 1 S.C.R. 44, at para. 10.
- [32] The test strikes a balance between two foundational principles: (i) finality and order in the justice system, and (ii) reaching a just result in the context of the proceedings. The first criterion seeks to preserve finality and order by excluding evidence that could have been considered by the court at first instance, had the party exercised due diligence. This protects certainty in the judicial process and fairness to the other party. The remaining criteria -- that the evidence be relevant, credible and could have affected the outcome -- are concerned with reaching a just result.
- [108] On consideration of the Palmer criteria, I would not admit the fresh evidence. Although Mr. Roeske's 2021 income tax return, and Ms. Dighe's 2021 notice of assessment were obtained after the trial decision, they are not relevant to the issues on appeal. This is because the parties were required, pursuant to the trial order, to determine Mr. Roeske's 2021 income from all sources. They did so and the amount was set out in the order under appeal.
- [109] As for the balance of the new evidence, it relates primarily to Mr. Roeske's loss of employment after the trial decision. It is also noteworthy that Mr. Roeske refers to this evidence as "correspondence between the parties in an effort to address the change in circumstances since the trial decision was released".
- [110] It is not for this Court, on appeal, to address the question as to whether there has been a material change in circumstances since the trial decision was rendered. It is for Mr. Roeske to bring a variation application under s. 17(1)(a) of the Divorce Act in the Supreme Court of British Columbia should he consider it in his interests to do so.
- [111] I would dismiss the application to introduce fresh evidence.

IX: Disposition

[112] I would dismiss the appeal.

"The Honourable Mr. Justice Abrioux"

I AGREE:

"The Honourable Madam Justice Newbury"

I AGREE:

"The Honourable Mr. Justice Hunter"

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