

CANADA / JUDGMENT

S.D.N. v. E.G.N.

2025 BCSC 1994

COURT

Supreme Court of British Columbia

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2025 BCSC 1994 S.D.N. v. E.G.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.D.N. v. E.G.N.,

2025 BCSC 1994

Date: 20251010

Docket: E137395

Registry: Kelowna

Between:

S.D.N.

Claimant

And

E.G.N.

Respondent

Before: The Honourable Justice Hardwick

Reasons for Judgment

Re Interim Child Support

Counsel for the Claimant:

T. Jackson

Counsel for the Respondent:

F. Wu

C. Drake

Place and Date of Hearing:

Kelowna, B.C.

September 19 and 23, 2025

Place and Date of Judgment:

Kelowna, B.C.

October 10, 2025

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Introduction

- [1] These reasons for judgment address the claimant's application for interim child support in this high-conflict family law proceeding. This is the final portion of the relief sought in what I have previously defined as the claimant's "Omnibus Application".
- [2] The Omnibus Application was filed on June 6, 2025. It has ultimately proceeded for hearing before me, with brief interruption for a short application filed by the respondent, over the course of four and one-half days.
- [3] One set of written reasons for judgment was released on September 5, 2025 and is indexed at 2025 BCSC 1733 after a minor correction (the "Electronic Communications Reasons").
- [4] A prior set of oral reasons for judgment addressing the claimant's request for financial disclosure and a fine pursuant to s. 213 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] was delivered to the parties orally on August 21, 2025, and a transcript was provided on or about September 1, 2025 (the "Disclosure Reasons"). Notwithstanding that the Disclosure Reasons will not be published in their entirety due to confidentiality concerns; I will refer to portions of those reasons herein as they are very material to the issues before the Court.
- [5] Before continuing, I recognize that it is somewhat unusual to be considering an interim support application given the trial of this action (the "Action") is scheduled to commence before me for 15 days commencing November 17, 2025--namely some approximately five weeks from the release of these reasons.
- [6] However, child support became live again back in April 2025 and since that time I am satisfied that the respondent has effectively controlled the agenda on this issue. Simply adjourning the issue to trial perpetuates that control. Further, as I have previously shared with counsel, even if this trial can complete within the 15 days currently scheduled, which is doubtful at this juncture, there is no possibility of reasons for judgment in the Action being delivered until sometime in 2026.

Overview

- [7] The Action primarily concerns the parties' daughter, T., who recently turned 15. T. is the only shared biological child of the parties.
- [8] The respondent, her father, has two significantly older sons, W. and A., from previous relationships. They reside in Alberta and are involved in the freight courier business which the respondent built. That corporate enterprise is based out of Alberta.
- [9] From the time the parties separated in the spring of 2015, when T. was approximately five and one-half years of age, there was a shared parenting arrangement. However, for a period of approximately two years, between the time T. was 12 and 14 years of age, T. was completely estranged from the claimant, her mother.

- [10] The matter was previously set for trial in October 2024. Quite shortly prior to, I was assigned as the trial judge. On the eve of the trial, counsel for the claimant and former counsel for the respondent negotiated a very comprehensive interim consent order (the "Interim Consent Order"). The Interim Consent Order, which is some 12 pages in length, involved, inter alia, the parties agreeing to engage with a systemic family reunification therapy team, implementing a progressive parenting time schedule, and my agreeing to take on certain quite close judicial oversight of this proceeding as the ongoing case management justice.
- [11] Despite the Interim Consent Order, the path forward for this former family unit has not been without challenges. Ultimately, however, with the significant assistance of the family reunification team, T. returned to a shared parenting arrangement in early April of 2025.
- [12] At or about the time of the resumption of shared parenting, the claimant made a demand for document disclosure to pursue child support from the respondent. The Interim Consent Order did not address child support in any way, given the estrangement between T. and the claimant. Further, the respondent had terminated his payment of child support previously being made pursuant to a separation agreement between the parties from back in September of 2015, in any event, after the cessation of parenting time between the claimant and T. in 2022.
- [13] With the resumption of shared parenting, the respondent did commence voluntarily paying child support again. The respondent selected the amount of \$1,701 per month which based upon his 2023 line 15000 income of \$225,000 offset against the claimant's substantially lower Guideline income. It was not an agreed-upon sum, even on an interim basis. It was unilaterally set by the respondent. I return to this point in due course.
- [14] The respondent did not respond to the claimant's original demand for document disclosure, or to the claimant's two subsequent written demands for additional documents.
- [15] As a result, as part of the Omnibus Application, the claimant sought orders pursuant to s. 212 of the FLA and Rules 5-1 and 9-1 of the Supreme Court Family Rules [Rules] that the respondent update his list of documents and to produce certain outstanding personal and corporate records set out in Schedule "A" to the Omnibus Application. I previously termed this the "Disclosure Application".
- [16] The Disclosure Application effectively required a balancing of the principles as most recently articulated in *Michel v. Graydon*, 2020 SCC 24 at para. 33 that:
- [33] Failure to disclose material information is the cancer of family law litigation
- [17] Whilst recognizing that, as stated in *Mossey v. Argue*, 2013 BCSC 2078, at para. 15:
- [15] The law is not that a party can demand every document that has come into a party's possession or control because they are suspicious of wrongdoing.

- [18] Ultimately, I found that some of the disclosure requested by the claimant went beyond that which I was satisfied was relevant under the Rules for a determination of the respondent's Guideline income, at least at the time. However, some of the disclosure was simply an update of key first-tier financial disclosure which was already provided by the respondent in this proceeding, and which was appended without any redaction to his most recent Form 8 financial statement sworn in the Action on September 13th, 2024 (the "Respondent's 2024 F8").
- [19] Complicating matters was the fact that, in response to the Disclosure Application, four corporations in which the respondent has an interest (the "Corporate Respondents"), retained their own counsel. That counsel subsequently filed an application response. Therein, the Corporate Respondents took a position opposing some aspects of the Disclosure Application entirely and sought quite onerous confidentiality terms on what other disclosure the companies indicated they did not oppose producing. That counsel, I was advised during the hearing of the Disclosure Application, takes instructions from W.
- [20] Notwithstanding the original position taken by the respondent and, later, by the Corporate Respondents, on or about July 28th, 2025, some approximately four business days before the commencement of three full days of hearing before me, the respondent served upon the claimant a Guideline income report prepared by Ms. Patti Daum of Daum Terpkosh Valuations (the "Daum Guideline Income Report").
- [21] The Daum Guideline Income Report relies on certain key documents which the claimant sought production of in the Disclosure Application. Specifically, Appendix "A" of the Daum Guideline Income Report sets out the documents Ms. Daum received from the respondent (or on the respondent's behalf) and relied upon in providing her expert opinion as to the respondent's Guideline income. There is obvious overlap between Schedule "A" and Appendix "A".
- [22] In the Disclosure Reasons, I noted that I was not considering the Daum Guideline Income Report on its merits on that occasion but highlighted how it underscored the need for a level litigation playing field as between the parties.
- [23] I reserved judgment on the Disclosure Application with oral reasons to follow simply due to the lack of time to hear all that was before me during the three days allocated for the various applications filed by both parties.
- [24] Upon advising that my decision was under reserve, I was told that counsel for the Corporate Respondents was going to provide certain disclosure on the confidentiality terms proposed on an effectively "without prejudice" basis. The expectation being that this would allow the claimant to at least start the process of having the Daum Guideline Income Report substantively reviewed by an expert of her own and possibly commission her own Guideline income report. That, however, ultimately did not occur.

- [25] On or about August 19, 2025, I had Supreme Court Scheduling provide to all counsel a spreadsheet I had prepared outlining all 48 categories of documents sought by the claimant in Schedule "A" with a blank cell for the order(s) ultimately made. I did so both for efficiency and to avoid any confusion in preparing the form of order, given the scope of the production sought and the number of corporations involved (three of which are numbered companies).
- [26] Further, in advance of the hearing on August 21, 2025, wherein I delivered my oral reasons for judgment in respect of the Disclosure Application, I provided madam clerk with a completed copy of that spreadsheet outlining, in detail, the specific orders made in respect of all 48 categories of documents sought. I also provided madam clerk, in Word format, with the terms of the confidentiality order I made in respect of the disclosure ordered. The result being that madam clerk was in a position, almost contemporaneously with the conclusion of my oral reasons, to provide counsel with a "terms of order" summary sheet that reflected, effectively verbatim, my orders as pronounced from the bench.
- [27] Notwithstanding the accuracy of the "terms of order" summary sheet, counsel for the claimant took the initiative of ordering a transcript of my oral reasons for judgment. I received the draft transcript on August 27, 2025. I reviewed it as quickly as possible and made some necessary grammatical and stylistic changes, along with adding a paragraph explaining my decision to decline to publish the reasons even subject to anonymization due to confidentiality concerns. I signed off on the Disclosure Reasons on the morning of September 1, 2025. I understand counsel either received them that afternoon or possibly the following morning.
- [28] In light of the foregoing, I was extremely surprised to be advised by counsel at the hearing of the child support portion of the Omnibus Application on September 19, 2025 that the claimant still had not received the disclosure ordered from Schedule "A" which I ordered produced on August 21, 2025; almost exactly one month prior. The reason being, I was advised, was that the August 21, 2025 order had not yet been entered and the Corporate Respondents were not prepared to provide the disclosure until that occurred.
- [29] Counsel for the Corporate Respondents was not in attendance for the September 19, 2025 hearing as the companies are not actually parties to the Action. Although I expressly recognized that counsel for the respondent were in a somewhat challenging position of not taking instructions from W. on behalf of the Corporate Respondents, I did convey some frustration over the situation.
- [30] Specifically, I stated on the record that the Court provided oral reasons for judgment in a timely way notwithstanding the breadth of the relief sought and took extra steps to make sure that the order could be prepared both accurately and expeditiously. Further, when a transcript was ordered, the Court again undertook to review and complete it in a timely way to avoid further delay.

- [31] Despite those comments, I was advised when the hearing of the child support portion of the Omnibus Application continued on September 23, 2025, that the Schedule "A" disclosure still had not been provided to the claimant by the Corporate Respondents. As a result, the claimant was not in a position to obtain her own Guideline income report and remained limited to making arguments about the reliability of the Daum Guideline Income Report without the benefit of certain very key underlying source documents and other disclosure which would potentially prove or disprove material assumptions upon which that expert report is based.
- [32] In this regard, and before turning to the merits of the interim support application, I have one important final comment regarding this issue of delayed financial production. Namely, in addition to ordering the specified financial disclosure on August 21, 2025 and imposing certain confidentiality terms as to the use of that disclosure within the context of the Action, I fined the respondent the sum of \$2,500 pursuant to s. 213 of the FLA for his failure to fulfill his obligations pursuant to the Rules. My reasons for doing read as follows:
- [60] Failure to meet disclosure obligations can result in a fine against the offending party. Our court has held that failing to make proper and timely disclosure of a financial matter and failing to take financial disclosure obligations seriously is conduct that is unacceptable and must be sanctioned: see, for example, *Greenwood v. Greenwood*, 2019 BCSC 382, at paras. 164 and 165.
- [61] The claimant's evidence established that she requested certain core financial disclosure on April 28th, 2025. There were additional document requests on May 21st, 2025, and June 5th, 2025, but the primary document demand was made on April 28th, 2025.
- [62] At or about the same time as the primary document demand, there was a change in the respondent's counsel. I am certainly not suggesting that the two events are connected but just acknowledging the practical reality that there was some delay in new counsel getting on board and fully up to speed on the matter, which I accept is complicated.
- [63] It accordingly took some six weeks, following the service of the Omnibus Application on June 6th, 2025, for the respondent and the Corporate Respondents to file application responses. Those responses were filed on July 21st, 2025, and July 29th, 2025, respectively. Had that delay been the only issue, I would not be inclined to make a s. 213 fine, particularly in light of the change of counsel.
- [64] However, during that period of time, the respondent was clearly providing key financial disclosure to Ms. Daum and, presumably, his current counsel to allow Ms. Daum to prepare the Daum Guideline Income Report. It is simply not acceptable that the claimant is not provided access to the same disclosure so the claimant can be obtaining her own expert evidence on the respondent's Guideline income.

- [65] Moreover, I find using confidential concerns as a defence fails to justify this conduct. As noted, there has already been disclosure of corporate financial statements and other key financial documents by the respondent in both his list of documents and, more importantly, as attachment to his September 13th, 2024, Form F8 financial statement which was filed with the court. Since this time, the respondent cannot point to any conduct by the claimant which would suggest that she has not respected the implied undertaking and other provisions of R. 5-1 as to the confidentiality and use of financial disclosure in family law proceedings.
- [66] Further, if confidential concerns were really the issue, this could have been conveyed to claimant's counsel prior to the delivery of the Omnibus Application. As far as claimant's counsel was aware, the sound of "crickets" in terms of any response from the respondent meant that there was a wholesale refusal to provide the disclosure.
- [67] Further, the claimant's counsel was not even made aware of the Corporate Respondents intending to and indeed retaining separate counsel at the time that the Omnibus Application was filed. Had the claimant's counsel been so aware, I am satisfied the claimant's counsel would have given them proper notice of the application, because once she did become aware of the Corporate Respondent's counsel, she promptly attended to providing the materials to their counsel and took no issue with corporate counsel participating in the hearing before me via MS Teams.
- [68] Rather, I conclude that the respondent wanted to obtain a tactical advantage by getting his Guideline income report prepared first and within the time required under the Rules for the presently scheduled trial without the need to seek approval from the court to abridge the expert report deadline.
- [69] To appropriately sanction that conduct, which is to be strongly discouraged, I am going to impose a fine of \$2,500 pursuant to s. 213 of the FLA.
- [33] The fine did not appear to have the specific deterrence effect intended. The delayed production of the financial disclosure ordered continues (at least to September 23, 2025) to give a tactical advantage to the respondent.

Factual Background

- [34] The respondent is self-employed and holds an interest in five corporations, either directly or indirectly. All the companies are either involved in or associated with the freight courier industry. For confidentiality reasons, I am referring to them numerically and intentionally limiting background information:
- a) Company 1 is the respondent's primary holding company. It was incorporated in 2003. The respondent is a 100% shareholder in his personal capacity of Company 1. It holds shares in related corporations and owns real property. It receives both rental income and dividend income from related companies. The respondent is a director of Company 1;

- b) Company 2 is the operating company. Company 2 typically operates approximately 70 units of vehicles/equipment. Company 1 holds 100% of the shares in Company 2. Company 2 was acquired by the respondent personally in 2000 before ownership was transferred to Company 1. The respondent is a director of Company 2. Historically, Company 2 has paid the respondent T4 employment income personally and T5 dividend income to Company 1. For important context, Company 2's annual gross revenue was between approximately \$7.2 million to \$8.7 million during the years 2022 through 2024;
 - c) Company 3 is a holding company incorporated back in 2015. It continues to own certain equipment but is otherwise largely inactive at present. Company 1 holds 100% of the shares in Company 3. The respondent is a director of Company 3. Company 3 does not materially factor into these reasons given the state of its operations;
 - d) Company 4 is a holding company which owns commercial real estate. It was quite recently incorporated in November 2023. A portion of the commercial property Company 4 owns is rented to Company 2. Company 1 holds 40% of the shares of Company 4. The remaining shares are equally held by W. and A. in their personal capacities. The respondent, W. and A. are all directors; and
 - e) Company 5 is another holding company which owns commercial real estate. It was incorporated in February 2020. The commercial property it owns is primarily rented to Company 2, although there was a temporary tenant as well during the 2023 and 2024 fiscal years. Company 1 is a 50% shareholder in this company. The remaining shares are held by W. in his personal capacity. The respondent is a director.
- [35] In his 3rd affidavit sworn July 25th, 2025, W. deposed that he was a director of Company 1 and Company 2. W. specifically deposed that he became a director of Company 2 "in or around late 2021 or 2022".
- [36] This was directly contradictory to two Alberta Corporate Registry searches included by the respondent in one of his lists of documents prepared for the purposes of the Action back in September 2024. In those two searches, which were dated September 10 and 11, 2024, the respondent was identified as being the sole director of both Company 1 and Company 2.
- [37] W. also deposed in that same Affidavit that the respondent "is not and never has been" a director of Company 4. Again, a corporate search dated September 11th, 2024, showed the respondent, W., and A. all as directors.
- [38] In addressing this evidence in the Disclosure Reasons, I stated as follows:
- [33] The claimant attached these searches, together with searches for the other two corporations involved, in a reply affidavit, and so counsel for the Corporate Respondents effectively says that they did not have an opportunity to respond. Very technically, that is true; however, it ought not to have been necessary for the claimant to attach the searches to her original supporting affidavit to the Omnibus Application. There are literally thousands of pages before me in some seven large volumes of the application record, only a small fraction of

which I was actually referred to in the course of submissions. It was perfectly acceptable to rely on those searches as confirming that the respondent was the sole director of [Company 1] and [Company 2] and was a director, along with W and A, of [Company 4] in seeking the relief sought in the Disclosure Application.

- [34] Rather, if there is some explanation as to why the corporate records for [Company 2, Company 1 and Company 4] are not being properly maintained in accordance with the Alberta Business Corporations Act, it was incumbent on W to provide an explanation in his affidavit. Instead, W's affidavit simply states he is a director of [Company 1] and has been a director of [Company 2] "since in or about late 2021 or 2022".
- [35] The latter statement is particularly curious, as there must be a resolution appointing W as a director. That conforms with the most basic principles of corporate law. And presumably, same would be required by the banking institutions which Company 2 deals with according to W's affidavit, namely RBC and Canadian Western Bank, as part of its required reporting.
- [36] This overall raises some red flags about W's evidence generally because, on balance, his affidavit contains a number of quite broad conclusory statements, many of which are not supported by documents. Documents which, like the corporate searches, might not specifically accord with what he is deposing to. That may not prove to be the case in due course, but the red flags still exist presently.
- [39] In response to the Disclosure Reasons, W. swore a further affidavit on September 10, 2025 (W's Affidavit #5). The claimant objected to its admissibility given that the evidentiary record for the Omnibus Application effectively closed back in July 2025 based on case management orders I made setting timelines for the delivery of materials. However, having regard to the somewhat unconventional way in which I heard the relief sought in the Omnibus Application in stages in an effort to make orders as expeditiously as possible, I let W's Affidavit #5 into evidence and said I would consider the timing of its delivery in the context of weight.
- [40] In W's Affidavit #5, he deposes that special resolutions were prepared and signed adding him as a director of Company 1 and Company 2 back on March 9, 2022. W. further deposes that he expected that paralegal services provider retained, which will refer to as CLPS, to prepare the documents would submit them to update the Alberta Corporate Registry but ultimately became aware they did not do so in late 2024 when he went to purchase a new vehicle. He says followed up with CLPS to ensure that the appropriate updates with the Alberta Corporate Registry had been filed but did not inquire again. There is no documentary record such as emails between W. and CLPS which corroborates any of this evidence.

- [41] Rather, what I have attached to W.'s Affidavit #5 are special resolutions which confirm that W. was added as a director of Company 1 and Company 2 "effective" March 9, 2022 and updated Alberta corporate record searches confirming that "Change of Director" was filed for both companies on October 1, 2024. October 1, 2024 happens to be the day that the trial in this matter was supposed to commence before me but ultimately the Interim Consent Order was spoken to instead. I have my suspicions that this timing is not a pure coincidence.
- [42] As it relates to Company 4, W. admitted he was incorrect in stating that the respondent had never been a director of Company 4. Instead, he clarified that he meant that the respondent has never been the "president" of Company 4.
- [43] On balance, W.'s Affidavit #5 does not calm the judicial red flags that were previously waved regarding his evidence. On the one hand W. wants the Court to accept that these were simply innocent mistakes because he does not have a "formal college education" and "relies on life experience and guidance of friends and family", but on the other hand wants the Court to accept that he is the CEO and president of Company 2 who has been the driving success of the overall freight courier business in recent years whilst the respondent is now merely a strategic advisor who defers to W.
- [44] Those concerns aside; I accept that the Alberta Corporate Registry now reflects that W. is a director of Company 1 and Company 2. W. is also noted to be the president and CEO of Company 2 and this is reflected on Company 2's webpage. The timing of the updates to Company 2's website engages a somewhat interesting question about the reliability of the information obtained through utilizing the "Wayback Machine", an internet archive which purports to allow users to search past websites using old browsers. I am declining to wade into that issue substantively here as, in my view, there is ample other evidence which supports an inference that the respondent remains significantly more involved in the operations of overall corporate enterprise than he and W. would seek to have this Court believe, regardless of what any website history might or might not indicate.
- [45] Specifically, based simply upon reviewing the financial disclosure which was appended to the Respondent's 2024 F8, I confirmed that:
- a) The respondent certified the T2 corporate tax returns for Company 1, Company 2 and Company 5 for the fiscal years 2021 through 2023 inclusive; and
 - b) The respondent certified the T2 corporate tax return for Company 4 for the 2023 fiscal year--the year that company was incorporated and the only year for which disclosure has been provided to date in the Action.
- [46] Moreover, in the Respondent's 2024 F8 he deposed, in the preamble, that he was in the "process of retiring and succession planning" and that "[his] sons will take over ownership and operation of [Company 2] in late 2024 or 2025". The respondent's most recent evidence is that this apparent "estate freeze" is anticipated to occur effective December 1, 2025. However, there is no corroborating evidence, such as even an instruction letter from the law

firm W. deposes was "re-engaged" to move forward with the freeze, to support the assertion that any active steps are being taken in this regard.

Position of the Parties

- [47] At the time that the parties resumed shared parenting of T. in April of 2025, the respondent did commence paying child support. That was, as I already noted, \$1,701 per month based upon a Guideline income of \$225,000 per annum (his 2023 line 15000 income) offset against what I calculate to be a Guideline income of \$27,200 per annum for the claimant (\$1,941 - \$240 = \$1,701 in net child support under s. 9 of the Guidelines). The quantum of this support was unilaterally determined by the respondent.
- [48] In the Omnibus Application, the claimant sought child support of \$9,992 per month based upon the respondent having a Guideline income of \$1,351,361 per annum and the claimant having a Guideline income of \$80,000 per annum. This is the full table amount based upon the respondent's Guideline income of \$1,351,361 being taxed as employment income and without any adjustment under s. 4 of the Guidelines.
- [49] The Daum Guideline Income Report was served on the claimant July 28, 2025. Following delivery of that report, the respondent increased his child support to \$4,124 per month based upon a Guideline income for himself of \$603,000 per annum (how that is calculated is explained below) and a Guideline income for the claimant of \$80,000 per annum effective August 1st, 2025. Again, the quantum of support was unilaterally determined by the respondent. This continues to be interim support agreement in place at present.
- [50] In the claimant's written submissions, the claimant now, having the benefit of reviewing the Daum Guideline Income Report, takes the position that the respondent's Guideline income should be found to be \$2,615,646 per annum. This calculation, very simply stated:
- a) attributes all the pre-tax corporate income for Companies 1 and 2 to the respondent;
 - b) adds back all the amortization deducted by Companies 1 and 2 to the pre-tax corporate income;
 - c) attributes 40% of the pre-tax corporate income for Company 4 to the respondent;
 - d) adds back 40% of the amortization deducted by Company 4 to the pre-tax corporate income;
 - e) attributes 50% of the pre-tax corporate income for Company 5 to the respondent;
 - f) adds back 50% of the amortization deducted by Company 5 to the pre-tax corporate income; and
 - g) adds back personal expenses claimed by the respondent inappropriately as business expenses for Company 2 and applies the appropriate taxation gross up.

- [51] For context, based upon a Guideline income of \$2,615,645 per annum for the respondent and the same \$80,000 Guideline income for the claimant, the monthly child support using the offset formula under s. 9, assuming all income received is taxed as employment income and without any adjustment under s. 4 of the Guidelines, is \$19,283 per month. That is close to \$10,000 more per month than the support specifically sought in the Omnibus Application.
- [52] In the respondent's written original written submissions provided to the Court on September 19, 2025, the respondent suggested three possible methods of determining his Guideline income, which I have attempted to summarize in as simple terms as possible:
- a) Firstly, the respondent submitted that his Guideline income should be determined to be \$226,806 per annum. This involves an averaging (a.k.a. patterning) of actual dividends received by the respondent from 2022 through 2024 (and excluding a non-recurring capital gain, which exclusion is not controversial);
 - b) Secondly, and in the alternative, the respondent submitted that his Guideline income should be determined to \$289,000 per annum, which is an amount derived from scenario 2 of the Daum Guideline Income Report. This manner of calculation adds back a portion of the corporate pre-tax income based upon a consideration of both the "RBC stress test" and "CWB debt covenants" but otherwise accepts all other assumptions put to Ms. Daum were reasonable and appropriate; and
 - c) Thirdly, and in the further alternative, the respondent submitted that his Guideline income should be determined to be \$603,000 per annum, which is an amount derived from scenario 1 of the Daum Guideline Income Report wherein the "RBC stress test" is not considered. It further involves an averaging (a.k.a. patterning) of income approach from 2022 through 2024.
- [53] In combination of supplementary written submissions (which I address in due course) and further during oral argument, counsel for the respondent proffered two further alternative submissions for determining the respondent's Guideline income. These submissions utilize the claimant's Guideline income calculation of \$2,615,646 as a starting point and then adjust accordingly. Continuing numerically for simple continuity:
- a) Fourthly, the respondent submitted that his Guideline income should be determined to be \$1,874,433 per annum which does add back the all of the corporate pre-tax income of Company 1 and Company 2 but makes a minor correction to his line 15000 income and, more importantly, does not add back any amortization claimed by Companies 2, 4 and 5 and also does not add back any pre-tax corporate income for Companies 4 and 5; and
 - b) Fifthly, the respondent submitted that his Guideline income should be determined to be \$1,389,528 per annum which uses the same revised framework set out above and then also subtracts Company 2's principal debt repayments for 2024 (which total \$484,246).

[54] Despite all the various calculations contained in the foregoing, it bears noting that the respondent's final alternative submission that the respondent's Guideline income be set, on an interim basis, at \$1,389,528 per annum is remarkably similar to the claimant's initial position in the Omnibus Application that the respondent's Guideline income be set at \$1,351,361 per annum. Indeed, given there is consensus about imputing the claimant a Guideline income, for interim support purposes, of \$80,000 per annum, the difference between the monthly child support between those two positions is some \$297 to the benefit of the claimant.

The Daum Guideline Income Report

[55] Considering the difficulties in obtaining disclosure from the respondent and the claimant's current inability to tender her own expert report, the Daum Guideline Income Report factors very significantly into the determination of the respondent's Guideline income for interim support purposes. I am, however, obviously not bound to follow it.

[56] The scope of the Daum Guideline Income Report is stated to be "to determine the respondent's Guideline income for the years 2022 through 2024, inclusive". In so doing, Ms. Daum utilized two scenarios based upon the instructions from the respondent's counsel.

[57] The assumptions underlying Scenario 1 can be summarized as follows:

- a) The respondent's 2022 T1 taxable capital gains income (and the actual capital gains therefrom) is not included in his Guideline income. This is a minor adjustment and, as noted above, is not controversial;
- b) Application of the "CWB debt covenants" set out in the "CWB commitment letter of October 16, 2024";
- c) The respondent, as a minority shareholder of Company 4 and Company 5, cannot draw funds from either of these two corporations; and
- d) Company 2 needs to retain sufficient funds to satisfy its capital lease principal repayments and long-term loan principal repayments.

[58] Of note, the "CWB [Canadian Western Bank] Commitment letter of October 16, 2024" is not included in the application record. All the court has is W's affidavit #3 which purports to detail a portion of those debt covenants. The basis for not attaching the letter as an exhibit is that "the letter require[s] [Company] 2 to keep the terms of the commitment letter confidential except for professional advisors and where required by law". In respect of the latter, I would suggest that the respondent's disclosure obligation in this action meets the threshold of "required by law"; particularly given the confidentiality terms which I imposed over and above the implied undertaking obligation combined with the specific provisions of R. 5-1 regarding the use of financial disclosure obtained in the course of family law litigation.

- [59] What W. does importantly disclose in his affidavit #3 is that the equipment financing Company 2 has in place with CWB totaled just \$79,215,40 as of October 16, 2024. Simply put, it's a fairly insignificant amount of borrowing for a corporate enterprise of this nature.
- [60] Scenario 2 involves all the same assumptions from Scenario 1 with the additional assumption that Company 2 must meet "RBC's stress test" ratio of a "debt service ratio of no less than 1.25 to 1.0 and a debt to tangible net worth ratio of not greater than 2.25 to 1.0".
- [61] Again, there is no supporting documentation attached, but W.'s affidavit #2 does outline that as of the November 30, 2024 financial year end, Company 2 (and the related holding companies, Companies 4 and 5) had total authorized credit from RBC of \$2,726,141.82. This, I accept, is a far more material sum.
- [62] There are additional factual assumptions underlying both scenarios - namely that the respondent received the following personal benefits from Company 2 as follows:
- a) Fuel: 70% of \$5,820 per annum;
 - b) Vehicle: 70% of \$12,798 per annum;
 - c) Cell phone: 70% of \$953.64 per annum;
 - d) Tuition for T: \$5,858 in 2022 and 2023 and \$6,574.90 in 2024; and
 - e) Professional fees: \$54,770.88 in 2023 and \$301,000 in 2024 (for context, the gross up for the latter amounts to \$494,234 in taxable income according to Ms. Daum).
- [63] Based upon the scope of Ms. Daum's review of the financial disclosure she was provided and the assumptions outlined, the Daum Guideline Income Report concludes that:
- a) The respondent's Guideline income in scenario 1 shall be determined as follows:
 - i. 2022 = \$402,000;
 - ii. 2023 = \$525,000; and
 - iii. 2024 = \$963,000.
 - b) The respondent's Guideline income in scenario 2 shall be determined as follows:
 - i. 2022 = \$(140,000);
 - ii. 2023 = \$174,000; and
 - iii. 2024 = \$833,000.

Interim Support: General Principles

- [64] Interim orders are made pending trial with the expectation that the full financial circumstances of the parties will be forthcoming and available to the trial judge (which in this case, is me): see *Tedham v. Tedham*, 2003 BCCA 600 at para. 69.

- [65] In a similar vein, the overarching principle is that on interim support applications the court does not embark on an in-depth analysis of the parties' circumstances as that is better left for trial. The court is in a position of trying to achieve rough justice at best: *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12 and *Barnes-Morrison v. Kolas*, 2024 BCSC 2033 at para. 52.
- [66] Although *Barnes-Morrison* involved an application for interim spousal support versus child support, I reference it because it also involved certain challenges in determining a payor's Guideline income in a not entirely dissimilar situation wherein there are complicated key family dynamics in play. Unlike in *Barnes-Morrison*, however, I do have the benefit of the Daum Guideline Income Report here.
- [67] Further, when determining a payor's Guideline income for interim support purposes, I recognize that the court should generally rely on the most current sources of income available because it best reflects the current ability to pay: see *A.R.J. v. Z.S.J.*, 2009 BCSC 1662 at paras. 29-30.

The Guidelines: Income Determination Provisions

- [68] The provisions of the Guidelines pertaining to the determination of Guideline income are sections 15 to 19:

Determination of annual income

15 (1) Subject to subsection (2), a spouse's annual income is determined by the court in accordance with sections 16 to 20.

Agreement

- (2) Where both spouses agree in writing on the annual income of a spouse, the court may consider that amount to be the spouse's income for the purposes of these Guidelines if the court thinks that the amount is reasonable having regard to the income information provided under section 21.

Calculation of annual income

16 Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

Pattern of income

17 (1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

Non-recurring losses

- (2) Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

Shareholder, director or officer

18 (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

- (a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or
- (b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

Adjustment to corporation's pre-tax income

- (2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.

Imputing income

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

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;

- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

Reasonableness of expenses

- (2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.

[69] The objectives of these provisions are expressly described in s. 1 of Guidelines as follows:

- a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[70] Further, it merits mention that s. 21(2) of the Guidelines requires that a parent who is served with an application for child support and whose income information is necessary to determine the amount of support payable, must, within 30 days, provide the court and the other parent with the financial disclosure set out in s. 21(1).

[71] The disclosure required in s. 21(1) is what I will describe as first-tier disclosure and less onerous than that which I ordered on August 21, 2025 but nonetheless, it has still had not been fully complied with by the respondent as of the hearing of the child support portion of the Omnibus Application.

[72] Accordingly, the Guidelines permit the court to draw an adverse inference and impute income in such an amount as it considers appropriate: see s. 23. The language of s. 23 is permissive as it states that the court "may" draw an inference, but the discretion is directly conferred upon the court by the legislation, obviously subject to it being exercised judiciously: see *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453 at paras. 22-23.

Section 18: Corporate Pre-Tax Income Attribution

Corporate Pre-Tax Income Attribution Generally

- [73] The foundational case regarding the application of s. 18 of the Guidelines continues to be *Kowalewich v. Kowalewich*, 2001 BCCA 450:
- [40] I disagree with Justice Pitfield's approach [in *Stamoulos*] to sections 17 and 18. A court need not look for signs of bad faith or undeclared personal benefits to support a conclusion of intentional avoidance of a child support obligation before reaching the opinion required to trigger an adjustment under ss. 17 or 18. Nor should it look only to the value of a payor's services to a company that parent owns or controls.
- [41] I note the use of pre-tax corporate income as a basis for the determination of child support does not strip a spouse of his available money. It is to use available money as a measuring rod for the purpose of fixing annual income and thus the amount of child support.
- [42] suggest that at the root of these provisions is a concept not unlike that of income earning capacity well known to the law of support obligations in the pre-Guidelines era, as this Court noted in *Van Gool v. Van Gool* (1998), 59 B.C.L.R. (3d) 395. Courts have long imputed to underemployed parents the amount they could earn if working to capacity. The Guidelines affirm that approach in s. 19(1)(a) and (e). The purpose of the Guidelines is to permit an impartial assessment of "money" available to a spouse to pay child support. They are not just about actual income as a parent directly or indirectly determines it to be.
- [43] In this regard, I find helpful the view Justice Martinson expressed in *Baum v. Baum* (1999), 182 D.L.R. (4th) 715 at para. 28:

Valid corporate objectives may differ from valid child support objectives. The purpose of s. 18 is to allow the court to "lift the corporate veil" to ensure that the money received as income by the paying parent fairly reflects all of the money available for the payment of child support. This is particularly important in the case of a sole shareholder as that shareholder has the ability to control the income of the corporation. See *Bhopal v. Bhopal*, [1997] B.C.J. No. 1746 (S.C.), *Blackburn v. Elmitt* (1997), 34 R.F.L. (4th) (B.C.S.C.) and *McCrea v. McCrea*.

- [44] A court's effort to ensure fairness does not require a court to second-guess business decisions nor, as Justice Pitfield so colourfully noted in *Stamoulos*, supra, at para. 44, to "place the largest available shovel in the company store." What it does require is that a spouse's allocation of pre-tax corporate income between business and family purposes be assessed for fairness by an impartial tribunal when parents cannot reach agreement on priorities as they would in an intact family and may upon separation under s. 15(2).

- [45] To determine whether "Total income" fairly reflects money available for child support, a court might ask what an objective well-informed parent would make available for child support in the circumstances of a particular business over which the parent exercised control, having regard to the objectives of the Guidelines, the underlying parental obligation to support children in accordance with one's means, and any applicable situation in s. 17.
- [47] The Guidelines give no explicit guidance as to how a parent or a court might go about choosing whether to use the corporate income method or the personal services method in determining annual income. However, s. 18 suggests two considerations in the preconditions for its application: (1) which method produces an annual income that more fairly reflects "all the money available to the spouse for the payment of child support;" and (2) which method does the nature of the spouse's relationship with the corporation support. Section 18 also permits reference to the "situations described in s. 17," and thus to the spouse's income pattern over the previous three years.
- [48] In some cases, the nature of the spouse's relationship with the corporation will be decisive. Section 18 applies to a spouse who wholly controls a corporation, but it also applies to one who shares ownership and control with others. In the former case, the corporate income method is likely to be the fairer method of determining income. This is because it allows a court to include not only reasonable payment for personal services but also a reasonable return on the owner's entrepreneurial capacity and investment. These are sources of income available for child support an intact family would utilize. Moreover, it not only permits but requires the inclusion of the income of companies related within the meaning of the Income Tax Act, and of non-arms length payments made without value for the company.
- [54] The Guidelines allow a court to include all of the pre-tax income of a corporation for the most recent taxation year in a spouse's annual income for Guideline purposes. They do not require it. I am not persuaded they make the inclusion of all pre-tax income the default position.
- [58] It seems to me regard should also be had to the nature of the company's business and any evidence of legitimate calls on its corporate income for the purposes of that business. Justice Drake cautioned about not killing the goose who lays the golden eggs. Monies needed to maintain the value of the business as a viable going concern will not be available for support purposes. In my view they should not be included in determining annual income. In *Hollenbach v. Hollenbach*, 2000 BCCA 620, the trial judge recognized the need for a reserve for depreciation as an appropriate factor to be considered in a real estate business. Justice Dorgan recognized Mr. Kowalewich's business expansion plan as a valid business purpose in a retail business.

[59] I do not recite these factors to suggest this Court should tinker with a trial judge's exercise of discretion, nor that a trial judge should second guess business decisions. I do say that a trial judge must have regard to the evidence of legitimate business needs in determining what portion of pre-tax corporate income to include in annual income for Guideline purposes.

[74] The issue came before the Court of Appeal again in *Hausmann v. Klukas*, 2009 BCCA 32, wherein the issue of onus was addressed. Kirkpatrick J.A., writing for the Court, held as follows:

[51] While the purpose and application of s. 18 were outlined in *Kowalewich*, this Court has not heretofore established an onus test. Some post *Kowalewich* authorities from this province, however, have concluded that there is an "emerging presumption" that pre-tax corporate income will be assumed to be available to a payor unless evidence is led to the contrary. These authorities state that the onus in the circumstances is on the payor. As discussed in *Jeffery v. Motherwell*, 2006 BCSC 140, 36 R.F.L. (6th) 377, at para. 13:

Kowalewich has been applied on other occasions by judges of this court and is binding authority. One of those cases *Bartkowski v. Bartkowski* (2003), 37 R.F.L. (5th) 242 (B.C.S.C. [In Chambers]), albeit dealing with very different factual circumstances in that the payor contended that his line 150 income was inflated to take advantage of tax benefits, the court said this about the authorities post *Kowalewich*:

I am of the view that these cases reveal an emerging presumption that the corporation's pre-tax income will be assumed to be available to the shareholder payor for the payment of child support unless compelling evidence is led by the payor spouse to support the conclusion that re-investment is necessary to sustain the company as a viable enterprise. ... (para. 51)

The onus is on the payor to provide the necessary evidence that the corporation's pre-tax income is not available to the payor. The court should not have to ferret out the necessary information from inadequate or incomplete financial disclosure. While *Bartkowski* says the evidence of the payor must be compelling, I prefer to use the word clear when discussing the necessary evidence of business circumstances as the former word might be taken to suggest a higher standard of proof than is called for by *Kowalewich*.

[52] I respectfully agree with the above comments in *Jeffery v. Motherwell*.

[75] In *Quinton v. Kehler*, 2020 BCCA 254, Justice Willcock considered *Kowalewich*, *Hausman* and other relevant authorities at concluded at para. 85:

[85] From these cases, I extract the following principles applicable to this case. First, the Guidelines should be interpreted in light of their stated objectives, including the ability to calculate child support in an objective manner that ensures consistent treatment of spouses and children who are in similar circumstances. Second, under a s. 18 approach, the corporate income method is likely to be the fairer method of determining income of an individual who wholly controls a corporation. This method allows a court to include all income available for child support an intact family would utilize. Third, where that

approach is appropriate, pre-tax corporate earnings, not retained earnings or earnings after payment of taxes, are the starting point for an assessment of Guidelines income. Fourth, where a company is wholly owned by the payor, the onus is on the payor to provide evidence that his pre-tax corporate earnings are not available to him.

[76] Finally, while there are various helpful decisions of this Court applying these principles, I am only going to refer to Justice Marzari's decision in *Wiebe v. Treissman*, 2017 BCSC 1523 as it quite accurately articulates some of the same difficulties present in this case:

[94] The burden of proving the reasonableness of deductions from business income, whether in the context of self-employment or within a wholly-owned corporation, lies with the spouse making the deduction. It is the obligation of that spouse to fully disclose the financial information and documentation relied upon to justify the deduction of each expense. It is not the other party's responsibility to hire, nor is it the court's obligation to appoint, an accountant or other professional to assess and challenge the reasonableness of the deduction, although of course both are at liberty to do so in appropriate circumstances. For a recent affirmation of these principles, see *Cunningham v. Seveny*, 2017 ABCA 4.

[101] Ms. Wiebe says that her forensic efforts to differentiate "genuine business expenses" from personal expenses in Medco have "proven extraordinarily difficult as a result of Dr. Treissman's refusal to make full disclosure of all relevant documents". While Medco's General Ledger has been produced, requests for additional information and corroborating documents such as cheques, receipts and annotated credit card statements have been largely refused. In a letter dated June 29, 2017, counsel for Dr. Treissman states:

Your ongoing requests for disclosure now appear to be an attempt to conduct a forensic accounting of each transaction within the corporation for the 2016 fiscal year. This was not the intention of the parties when conducting an annual review of child support as set out in the Final Order. Similarly, your request for document disclosure far exceeds that which is required under the Federal Child Support Guidelines. We do not agree to your requests.

[102] It is evident Dr. Treissman misunderstands the nature of the disclosure requirements applicable to spouses conducting business through wholly-owned corporations and the onus of proof the law imposes upon him to justify and substantiate expenses deducted from business income. Ms. Wiebe's requests for corroboration were reasonable, particularly in light of the valuator's earlier report confirming that personal expenses were indeed being deducted from Medco, and Dr. Treissman's refusal to supply the requested information entitles the Court to draw adverse inferences and to impute income accordingly.

Amortization

[77] The law recognizes that amortization expenses may be added back to a payor's income under the rubric of s. 18 of the Guidelines in certain circumstances. The law in this regard, however, is complicated: see *S.C. v. D.A.*, 2012 BCSC 1061 at paras. 77-78.

[78] This issue was first raised by the claimant in her written submissions provided to the Court and respondent's counsel on September 19, 2025. The crux of the claimant's submission in this regard states as follows:

In the case at bar, there is a legal and factual basis to include the respondent's corporate pre-tax corporate income with the amortization expenses added back in. The respondent has provided no reliable evidence to justify the amortization expenses. This would be necessary as part of a proper and in-depth Guideline income analysis. If amortization expenses were to be added back to the respondent's pre-tax income, the respondent's total available income for the fiscal years 2021-2023 would range from \$1.93M - \$3.46M, for an average income of \$2.4M, as set out in the chart below.

[79] I have not reproduced the claimant's entire chart referenced. However, for context, the amount of amortization sought to be added back to the pre-tax income of Company 2 alone under s. 18 is as follows:

- a) 2021 - \$303,679;
- b) 2022 - \$401,442;
- c) 2023- \$521,797; and
- d) 2024 - \$603,234.

[80] Given the significance of this issue, when hearing of the Omnibus Application resumed before me on September 23, 2025, the respondent's counsel tendered a 16-page supplementary written submission, the bulk of which addresses the issue of amortization and, to a much lesser extent, addresses the appropriateness of imputing pre-tax income where the payor is a minority shareholder.

[81] In those supplementary submissions, the respondent cites quite extensively from *Ross v. Ross*, 2017 BCSC 371, which was also a chambers proceeding, albeit a post-final order application seeking both retroactive and prospective support and not an interim support application. In *Ross*, Justice Fitzpatrick refers to the S.C. decision of Mr. Justice Armstrong I cited above wherein it is recognized that amortization can be a complex issue to consider in the context of determining the appropriate child support payable by a shareholder spouse, and then states as follows:

[93] Accordingly, the issue often needs to be addressed by the evidence of stakeholders in the corporation (such as Ms. Mahoney or Mr. Ross in *RGY* and Mr. Ross and the other shareholders in *Nantree*) and possibly accountants who act for these corporations, all toward the issue as to what amount of amortization is reasonably required to meet the businesses' need to replace capital assets.

[94] The facts in *J.T. v. K.C.*, 2011 BCSC 1723 were similar to those relating to *RGY* here in that a company contracted out heavy equipment and the shareholder spouse owned only 50% of the shares. The Court discusses the issue at paras. 15-18 and commented that expert

evidence would be required to prove that the rates allowed by CRA were unrealistic in reflecting the decreased value of the equipment over time. The Court rejected the wife's argument that this expense artificially understated the company's annual income. The approach in J.T. accords with the Court of Appeal's caution that the court is not required to second-guess valid business decisions made by a company in its operations and financial affairs: Kowalewich at paras. 44.

- [95] I have already described that RGY's principal assets and value over the years has been heavy contracting equipment used in its grapple yarding operations. There are also motor vehicles. Nantree's amortization cost relates to its buildings, equipment, computers, furniture and fixtures.
- [96] The difficulty in addressing this issue is that beyond the amounts indicated by RGY and Nantree in their respective financial statements as to amortization costs, Mr. Ross has not adduced any evidence on the issue, including the amortization rates used, nor any other matter, such as what amount of amortization is reasonably required to meet the respective businesses' need to replace their capital assets.
- [97] The reason why that is so lies at the feet of Ms. Ross herself.
- [98] No questions were put by Ms. Ross' counsel to Mr. Ross on the amortization issue at his examination for discovery in April 2015. Further and most importantly, in Ms. Ross' notice of application filed in February 2016, when she had most of the corporate financial statements in hand, there is absolutely no mention that she was seeking to add back the amortization expense to Mr. Ross' income, beyond a general reference in the "Legal Basis" that she was relying on s. 18 of the Guidelines.
- [99] The first indication to Mr. Ross that this relief was sought was while reading the written argument handed out by Ms. Ross' counsel on the first day of this hearing. At that time, it also became apparent that Ms. Ross was relying on *Boykiw v. Boykiw*, 2013 BCSC 1107 at paras. 36 and 44 in support of this argument, a case that was not included in the extensive case list found in the notice of application. Even so, the Court in *Boykiw*, following *D.P.G. v. M.A.G.*, 2011 BCSC 290, seems to have simply accepted the adding back of amortization without any extensive analysis of the evidence (if any) on the issue. Other case authorities were not considered in *Boykiw*, including *S.C.*, *J.T.* and even earlier cases, such as *Barker v. Barker*, 2002 BCCA 345 at para. 71, *L.M.W. v. M.J.L.Y.*, 2004 BCSC 113 at para. 16, *Boulton v. Beirne*, 2008 BCSC 577 at para. 24 and *B.M.D. v. C.N.D.*, 2010 BCSC 1785 at paras. 151 and 167-172.
- [100] When coupled with the assertion that the onus was on Mr. Ross to satisfy the court on these corporate expenses (per Hausmann), I find Ms. Ross' submissions on this issue to be unfair in the extreme. In my view, Mr. Ross has clearly been ambushed on this issue. He has had no forewarning that this issue was to be addressed at this hearing, which would have allowed him the opportunity to marshal the necessary evidence.

- [101] In all of the above circumstances, I decline to ascribe any part of either RGY or Nantree's amortization expense to Mr. Ross' income.
- [82] Counsel for the respondent also referred me to other decisions involving quite lengthy discussions of the issue of amortization in the context of determining Guideline income involving the application of s. 18: see *Kimm v. Kimm*, 2018 BCSC 5 at paras. 31-35 and *Adama v. Adama*, 2019 BCSC 772 at paras. 46-66.
- [83] Whilst I have made quite clear that I take a dim view of the respondent's current conduct vis-à-vis his document disclosure obligations in the Action, I find the comments of Justice Fitzpatrick do have some application here. The Omnibus Application does not refer to the issue of amortization at all in reference to determining the respondent's Guideline income. Rather, the legal basis of the child support portion of the Omnibus Application is limited to four paragraphs and those paragraphs merely cite the basic principles from the *Hausmann* and *Quinton* which I have referred to above. The failure to raise the amortization issue also is independent of the disclosure issue as the claimant did have financial statements for Company 2 (the only company where this issue really matters) for 2021, 2022 and 2023. The amount of amortization increased in 2024, but the issue was not new.

Minority Shareholdings

- [84] As noted, the other issue addressed in the respondent's supplementary written submissions is the appropriateness of application of s. 18 regarding Companies 4 and 5.
- [85] As set out above, the respondent is a 50% shareholder of Company 5. Despite what the respondent submits, that is not a minority shareholding interest. Also, the remaining 50% of the shares are held by W. I have made clear my concerns about the reliability of W.'s evidence as to the respective roles of the respondent and W. in the overall corporate enterprise and who is, in fact, running the proverbial show.
- [86] The respondent is technically a minority shareholder of Company 4, holding only 40%. However, the other 60% of the shares are held by W. and A. and not by arms-length third parties. In this regard, A. has not provided an affidavit, and I draw no specific adverse inference from that. However, what I do infer from the evidence generally is that as between W. and A., W. is the one primarily making the decisions and A. is aligned with W. A is thus stuck with the frailties of W.'s evidence at this point.
- [87] On this issue more generally, I refer to the comments of Justice Kent in *Bennett v. Bennett*, 2015 BCSC 699:

- [81] The husband is of course only a minority shareholder in VancouverCruises.com and RAP Holdings Ltd. Generally speaking, s. 18 of the Child Support Guidelines will not be applied as against minority shareholders unless there is evidence that they can influence the amounts paid out notwithstanding a minority interest: *Kowalewich v. Kowalewich*, 2001 BCCA 450 at paras. 51-52; *Chapman v. Summer*, 2010 BCCA 237; *E.M.M. v. J.I.M.*, 2012 BCSC 372 at para. 23.
- [82] In this instance, however, the husband admits that he has been running the business for the past ten years. He consults regularly with his father, who is the majority shareholder, but he plays a significant role in directing the financial affairs of the companies. Hence s. 18 all of the Guidelines can have application in this case should the circumstances warrant same.

Section 19: Income Imputation

- [88] Section 19 of the Guidelines expressly confers upon the court the ability to impute income on the various enumerated grounds as articulated above. However, the court's discretion to impute income is broad and is not limited to those enumerated grounds: see *T.L.T. v. R.E.S.*, 2022 BCSC 598 at para. 65 and *Minami v. Chu*, 2024 BCSC 40 at para. 58.
- [89] Importantly, imputing income can be employed to prevent a sophisticated payor spouse from reducing their support obligations by using deferred forms of compensation: see *Minami* at para. 59.
- [90] Leaving aside the ability of the court to impute income where a spouse has not provided income information when under a legal obligation to do so, the key provisions I highlight here are s. 19(f) which contemplates the imputation of income where a spouse unreasonably deducts expenses from their income and s. 19(g) which contemplates the imputation of income where a significant portion of the party's income derives from untaxed sources or sources taxed at a lower rate than employment income.
- [91] Quite obviously, the respondent should not have been claiming his legal expenses incurred in relation to this family law proceeding as business expenses. They very clearly are not. Further, this was not a situation where the respondent used corporate funds to pay his legal expenses at first instance, and those payments were allocated as draws as against his shareholder loan account(s) as is not uncommon. In that scenario, the transaction(s) is usually properly documented such that the payor has the opportunity to repay the loans within the time permitted under the Income Tax Act before being required to take it into their personal income if not repaid. That practice may raise other income imputation considerations, but it is permissible under the Income Tax Act. In this case, but for the scrutiny placed on the determination of the respondent's Guideline income herein, the respondent's personal legal expenses were simply claimed and accepted by the Canada Revenue Agency as legitimate business expenses of Company 2, thus conferring a very significant personal benefit to the respondent.

- [92] Company 2 also pays other personal expenses of the claimant, as outlined in the assumptions provided for the purposes of the Daum Guideline Income Report. The personal component of the fuel, vehicle and cell phone expenses, assuming the assumptions can be proven once disclosure is provided, appear quite nominal having regard to the overall operating expenses of Company 2 and while appropriately addressed by Ms. Daum in her Guideline income calculations, they do not give the court real any pause. Particularly given that I accept that the consensus to impute a Guideline income of \$80,000 to the claimant recognizes she too receives some personal benefit from her claimed self-employment expenses.
- [93] However, the practice of claiming of T's private school tuition as a business expense does give the court pause. As with the respondent's personal legal fees, there is no legitimate basis for this claim. It is, again, quite obviously contrary to the Income Tax Act. Further, the fact that this practice has been allowed to continue while Company 2 is purportedly being run by W. belies, in my view, the suggestion that the respondent does not maintain a significant level of control over the corporate enterprise generally. If W. can dictate that the respondent is not able to access any of the pre-tax income of Company 5, could W. not dictate that the respondent cease running obvious personal expenses through Company 2 as business expenses? That rhetorical question is particular germane given W's affidavit evidence that he is apparently the sole signing authority for Company 2.

Guideline Income Determination: Analysis

- [94] Dovetailing back to earlier comments about the role of the court on interim support applications, I fully recognize that the issue of Guideline income determination, specifically attribution of pre-tax corporate under s. 18 of the Guidelines, and to a lesser extent income imputation under s. 19 of the Guidelines, is going to be a potentially very significant and complicated issue at trial. I strongly anticipate the possibility of competing expert reports.
- [95] At present, however, despite having over 70 pages of very articulately prepared written submissions from counsel, the evidentiary record before me primarily relies upon:
- a) The Daum Guideline Income Report, which is premised upon assumptions that the claimant is highly constrained in being able to substantively challenge given the claimant does not have key portions of the financial disclosure upon which the report is based or documents which prove and/or disprove material assumptions;
 - b) The evidence of W., which has not been tested on cross-examination, but which has the Court has identified as being somewhat problematic in its reliability;
 - c) The evidence of the respondent which effectively defers to W. and seemingly tries to downplay the reality that there would be no corporate enterprise for W. and A. to run but for the business acumen of the respondent who acquired Company 2 in 2000 when, by my rough calculation, W. was 12 years of age; and

- d) The respondent's 2024 F8 (which was sworn more than a year ago and not updated for the purposes of the Omnibus Application).

[96] In the circumstances, I am going to determine the respondent's Guideline income on a genuinely rough justice basis for interim support purposes using the claimant's chart included at para. 28 of her written submissions dated September 19, 2025, as modified by the respondent's annotations to that chart at para. 22 of his supplementary submissions dated September 23, 2025. Those calculations are as follows:

- a) The respondent's line 15000 income = \$202,000;
- b) Company 1 - 100% of corporate pre-tax income = \$480,078;
- c) Company 2 - 40% of corporate pre-tax income = \$279,248;
- d) Company 4 - 40% of corporate pre-tax income = \$30,763;
- e) Company 5 - 50% of corporate pre-tax income = \$8,344;
- f) Personal expenses paid by Company 2 as grossed up = \$494,234.

Total = \$1,494,667 (rounded to \$1,500,000)

[97] In determining the respondent's Guideline income, I have made the following key factual findings on an interim basis:

- a) The respondent has not satisfied the onus of demonstrating that the pre-tax income from Company 1 is not available to him;
- b) Despite my concerns about W's evidence, which is critical to the assumptions in the Daum Guideline Income Report, I have concluded that the respondent has discharged the onus of proving that the entirety of the pre-tax income of Company 2 is available for support purposes. Company 2 is an operating company which I accept does have ongoing cash requirements and the intention of an interim support order is truly not to "kill the golden goose". Based on the evidence I do have before me and which I am prepared to accept, I am rather conservatively concluding that 40% of the pre-tax income of Company 2 is available to the respondent for interim support purposes;
- c) Considering the foregoing conclusion as to the portion of pre-tax income of Company 2 that is available for interim support purposes, I have declined to make any further adjustment for the principal loan repayments of Company 2;
- d) The respondent has not satisfied the onus of demonstrating that his 40% share pre-tax income from Company 4 is not available to him;
- e) The respondent has not satisfied the onus of demonstrating that his 50% share pre-tax income from Company 5 is not available to him;

- f) The claimant has not satisfied me that it is appropriate in the circumstances to add back any of the amortization claimed by Companies 1, 2, 4 and 5 to the pre-tax income of those corporations; and
- g) The respondent concedes that the personal expenses paid on his behalf by Company 2 have to be added to his income and appropriately grossed up: see T.L.T. at para. 84.
- [98] I have further expressly declined to use a patterning of income as permitted, where appropriate, under s. 17 of the Guidelines. This is a true interim support order which is intended to be in place for a reasonably short duration given the pending trial date. In accordance with A.R.J., I am therefore satisfied it is appropriate to make my calculations based on the most current sources of income available because it best reflects the respondent's current ability to pay.
- [99] Finally, for the purposes of the quantum of support, I am attributing all \$1,500,000 under s. 18 of the Guidelines as "imputed as employment income" while utilizing the DivorceMate software. Technically speaking, the respondent did receive some modest dividend income in 2024. However, all the submissions received from counsel, including new calculations received following the hearing, with my permission, because of the update to the basic child support tables effective October 1, 2025 use this method (albeit with different income inputs per the various scenarios I have already outlined). Given this is a true interim order, as noted, and having regard to the extremely modest difference it makes to the quantum of support payable in the circumstances of this case, I have elected to adopt counsels' collective approach.

Quantum of Support and Effective Date of Support

- [100] Although *Francis v. Baker*, [1999] 3 S.C.R. 250 is referred to in written submissions, neither party made any substantive submissions as to the application of s. 4 of the Guidelines for the purposes of determining interim support herein, notwithstanding that in all possible scenarios before the Court put the respondent's Guideline income in excess of \$150,000 per annum (and in the case of the claimant's current submission, more than 17x beyond that threshold). The closest oral argument really came was a general discussion between the court and the respondent's counsel about child support not amounting to a wealth transfer in disguise of support.
- [101] Given the limited submissions received on this point, I am not making any adjustment to the quantum of interim support on account of s. 4 of the Guidelines. That is an issue that clearly can be brought forward for fulsome submissions, if necessary, at trial but I am otherwise satisfied that the amount of interim support ordered is not "inappropriate" under s. 4 as that term has been judicially considered.
- [102] In terms of the effective date of support, the Omnibus Application seeks support commencing April 1, 2025. The respondent was aware of his obligation to commence paying support as of that date and indeed did so, simply at an amount significantly lower

than what I have ordered. While the respondent's blameworthy conduct in delaying and, in my view, obstructing financial disclosure merits strongly in favour of a retroactive adjustment, I must be mindful of the quantum of support involved here. Further, I must also be mindful that the claimant is a person of relatively modest means such that there is a risk that the respondent will not be able to recover any overpayment of support should my conclusion on Guideline income determination be different at trial after consideration of all of the evidence and with the benefit of viva-voce testimony and cross-examination. That risk is heightened given that child support is the only ongoing financial tie between the parties - issues of property division and spousal support having been resolved close to a decade ago: see *K.A.M. v. A.F.V.*, 2025 BCSC 985 at para. 54.

[103] Based upon the claimant being imputed a Guideline income of \$80,000 per annum, the respondent having been determined to have a Guideline income of \$1,500,000 per annum and there being a shared parenting arrangements under s. 9 of the Guidelines, I order, pursuant to the Divorce Act, that:

- a) Commencing October 1, 2025, and continuing on the 1st of each month thereafter pending further court order or written agreement, the claimant shall pay to the respondent child support for T. in the amount of \$765 per month;
- b) Commencing October 1, 2025, and continuing the 1st of each month thereafter pending further court order or written agreement, the respondent shall pay to the claimant child support for T. in the amount of \$11,886 per month; and
- c) The offset amount of child support owing by the respondent to the claimant for T. commencing October 1, 2025 and continuing on the 1st of each month thereafter pending further court order or written agreement, is \$11,121 per month.

[104] The claimant's claim for retroactive child support for the period April 1, 2025 through to and including September 1, 2025 shall be adjourned to trial. Any other retroactive support claim by either party for any period of time pre-dating April 1, 2025 is already put over to trial.

Section 7 Expenses

[105] T.'s primary s. 7 special and extraordinary expense is her private school tuition, which as noted has been paid by the respondent (albeit using corporate funds).

[106] Relying on judicial notice, I expect T.'s private school tuition has already been paid for the 2025/2026 academic year. Even if I am mistaken in this regard, the respondent has the means to ensure this tuition is paid and the claimant's very small proportionate share of same can be adjusted, if needed, at trial.

- [107] There are no other significant s. 7 special and extraordinary expenses which I can glean from the materials as the cost of T's volleyball, the primary sport which I am aware she participates in, is neither special nor extraordinary when one considers the parties' means, needs and other circumstances in light of the prospective interim support order which I have just made.
- [108] The issue of s. 7 special and extraordinary expenses can obviously be addressed more comprehensively at trial for the purposes of a final order. I am simply not satisfied there is any evidentiary basis for an interim order.

Costs

- [109] As the parties and counsel are aware, this is the fifth set of reasons for judgment which arose out of the hearings which started before me on August 5, 2025 and concluded on September 23, 2025.
- [110] With one minor exception, all the applications heard and determined have been the filed by the claimant.
- [111] Accordingly, I think is appropriate that counsel for the claimant deliver written submissions on costs first with counsel for the respondent having a right of response. If, upon reviewing the submissions, I consider an oral hearing necessary, I will arrange same with counsel during my ongoing case management.
- [112] Having regard to the amount of work required to get this matter ready for trial, I do not consider cost submissions to have a particularly high priority and am going to set the deadline for their exchange accordingly. I do not, however, want to simply put the issue of costs over to trial as do think it is appropriate that they be dealt with separately while the history of these interlocutory applications is fresh in my mind.
- [113] Subject to the parties otherwise agreeing or the court otherwise ordering:
- a) The claimant shall have until 4:00 on October 27, 2025 to deliver written submissions;
 - b) The respondent shall have until 4:00 on November 12, 2025 to deliver responding written submissions;
 - c) The written submissions shall not exceed 10 pages in length; and
 - d) The written submissions must comply with Practice Direction No. 69.

"Hardwick J."

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Prepared on 27 October 2026 · Esheria