

CANADA / JUDGMENT

S.R.C. v. E.C.

2025 BCSC 1749

COURT

Supreme Court of British Columbia

DECIDED

8 September 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1749 S.R.C. v. E.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.R.C. v. E.C.

2025 BCSC 1749

Date: 20250908

Docket: E140748

Registry: Vancouver

Between:

S.R.C.

Claimant

And:

E.C. also known as E.A.

Respondent

Corrected Judgment: The text of the judgment was corrected throughout
on April 21, 2026

Before: The Honourable Justice Morishita

Reasons for Judgment

The Claimant, appearing in person:

S.R.C.

Counsel for the Respondent:

A. Shee

Place and Dates of Hearing:

Vancouver, B.C.

February 14 and July 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 8, 2025

Introduction

[1] This is an application by the respondent, E.C., to vary a consent order of Justice Ahmad, made September 22, 2021 ("Order"). Specifically, the respondent seeks to vary paragraph 5 of the Order (regarding child support) to reflect changes in the income of the claimant and the respondent since the date of the Order, retroactive to January 1, 2022. In addition, the respondent seeks to vary paragraph 6 of the Order (regarding the cost of special and extraordinary expenses), such that the parties share the costs of these expenses in proportion to their respective incomes.

[2] Paragraphs 5 and 6 of the Order read as follows:

AND UPON BEING ADVISED that the parties herein acknowledge and agree as to their understanding that the regular or base income of Respondent is approximately \$70,000 per year and that the regular or base income of the Claimant is approximately \$75,000 per year.

5. BY CONSENT: in the year 2021, the Claimant will owe and pay the Respondent the amount of \$100 per month child support. Further, the parties will have the obligation in each year, by June of each year commencing in 2022, to provide to the other party their respective tax return and income information of the previous year. If there has been a change in the regular or base income of a party, from the amounts stated herein, then a party can request a review and a change in the amount of child support being paid. If there is no review and no change, the amount being paid shall continue to be paid as provided for in paragraph 5 of this Order herein. Only the regular or base incomes of the parties shall be considered in determining the matter of child support.
6. BY CONSENT: With regard to the sharing of the expenses relating to the children for the matters set out in paragraph 4 of this Order, the parties shall share equally the said expenses commencing with those expenses in the year 2021 and in each year hereafter.

[3] The respondent states that she has paid a total of \$12,024.27 for various extraordinary expenses for the children, without reimbursement from the claimant.

- [4] The claimant, S.R.C., advised at the hearing that he has also incurred significant costs for several extraordinary expenses for the children, without reimbursement from the respondent.
- [5] Mr. C. did not file his own Notice of Application for an order regarding the costs he incurred, which he said are extraordinary expenses. Nevertheless, the respondent was willing to address some, but not all of these, at the hearing.
- [6] Because of the overlap of some of the issues relating to extraordinary expenses, I adjourned that portion of the respondent's application and directed that a further hearing would be held where both parties' claims for extraordinary expenses would be dealt with. I am seized of that specific issue.
- [7] The respondent claimed other relief in the Notice of Application, filed December 28, 2023; however, those remaining issues were either already addressed or not pursued at the hearing. Thus, the only issue for the Court to address in these reasons is whether the terms of the Order relating to child support should be varied and whether a fine should be imposed on Mr. C.
- [8] At the time the September 22, 2021 order was made, the parties anticipated having similar levels of income. However, by the end of the year, Mr. C ended up earning significantly more than Ms. C. On February 16, 2022, T.C., the parties' youngest child, was diagnosed with lymphoma. Ms. C. took time away from work to provide care to T.C., resulting in a reduction in her income. By September 2023, T.C.'s cancer went into remission, and Ms. C. returned to work. Since then, her income has continued to be lower than Mr. C.'s.
- [9] On September 8, 2017, Ms. C. took out a life insurance policy for T.C. with Ivori. The Ivori life insurance policy included a critical illness rider that would pay out \$25,000.00 to the beneficiary of the policy if T.C. were diagnosed with a critical illness. In addition to the Ivori policy, on February 22, 2021, Ms. C. took out a standalone critical illness policy for T.C. with Desjardins, which provided coverage of \$250,000.00 if she was diagnosed with a critical illness.
- [10] T.C.'s lymphoma qualified as a critical illness under each policy, and as a result, Ivori paid out \$25,000.00 and Desjardins \$250,053.78. Both payments were made to Ms. C. under the terms of the policy.
- [11] Mr. C.'s position is that the court should take into consideration the \$275,057.78 in insurance benefits Ms. C. received in determining Ms. C.'s Guidelines income.
- [12] Ms. C.'s position is that the insurance benefits are not income and should not be taken into account. In the alternative, she argues that the court could impute some of the insurance proceeds as income.

Background

[13] The parties were married on November 22, 2002 and separated on April 1, 2011. The parties were granted a divorce order on September 22, 2021.

[14] The parties have three children together:

- a) A.J.C., born March 9, 2003;
- b) E.J.C., born August 16, 2006; and
- c) T.R.C., born June 26, 2008.

[15] The Order provided that:

- a) the claimant and the respondent would share parenting time of the children equally;
- b) the claimant would pay support to the respondent in the amount of \$100.00 per month, based on the claimant's income at the time of \$75,000.00 and the respondent's income at the time of \$70,000.00; and
- c) the claimant and the respondent would exchange tax returns and income information each year to determine whether there was a change in their respective incomes, in order for a review to be initiated in the event of a change in income.

[16] The claimant never paid any of the support provided for in the Order.

[17] At the time of the Order, the claimant and the respondent anticipated having similar levels of income for 2021.

[18] The claimant's 2021 Line 150 income was \$102,397.96.

[19] The respondent's 2021 Line 150 income was \$67,752.59.

[20] Since the Order was made, Mr. and Ms. C. continued to have shared parenting with the children, with the exception being that since about January 2022, A.J.C. has lived full-time with Mr. C.

[21] On February 16, 2022, T.C. was diagnosed with lymphoma.

[22] The respondent deposed that she was required to take time off from her primary employment with Coast Mountain Bus Company to care for T.C. while she underwent treatment. Although Mr. C. notes that he was able to continue working full-time while T.C. was undergoing lymphoma treatment, he acknowledged in his submissions that it was reasonable for Ms. C. to take time off.

- [23] After treatment, T.C.'s cancer went into a brief remission before the cancer returned on December 15, 2022. T.C. had a stem cell transplant on March 17, 2023 and ultimately returned to remission. Ms. C. returned to work in early September 2023. Ms. C. currently works full-time as a transit operator for Coast Mountain Bus Company and part-time as an insurance agent.
- [24] Ms. C. deposed that her income in 2022 and 2023 was impacted by taking time off to care for T.C.. Ms. C.'s Line 150 income in 2022 was \$32,621.29. In 2023, it was \$42,849.00.
- [25] In March 2024, Ms. C. went on long-term disability due to a sciatic nerve issue, which she says impacted her ability to work as a transit operator. Her long-term disability benefit is 50% of her regular wages.
- [26] Mr. C.'s Line 150 income in 2022 was \$178,169. His Line 150 income in 2023 was \$148,000.00.
- [27] The Court did not have the benefit of the parties' 2024 tax returns; however, this is not necessarily the fault of the parties, as this application was initially filed in late 2023, and for several reasons did not actually get heard until February 2025, before the deadline for the parties to file 2024 tax returns.
- [28] In submissions, Mr. Shee, counsel for Ms. C., indicated that her 2024 Line 150 income was similar to her 2023 income, i.e., \$42,849.00. He also noted that Ms. C. has returned to work from her period of disability, and from 2025 onwards should be earning about what she earned in 2021, before T.C.'s cancer. That amount is \$67,752.59.
- [29] In his submissions, Mr. C. stated that he was in the process of completing his 2024 tax return and that his estimated income for 2024 is approximately \$170,000.00.

Legal Framework

- [30] Section 152 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] permits the court to vary an order made respecting child support. It reads:

152 (1) On application, a court may change, suspend or terminate an order respecting child support, and may do so prospectively or retroactively.

- (2) Before making an order under subsection (1), the court must be satisfied that at least one of the following exists, and take it into consideration:
- (a) a change in circumstances, as provided for in the child support guidelines, has occurred since the order respecting child support was made;
 - (b) evidence of a substantial nature that was not available during the previous hearing has become available;
 - (c) evidence of a lack of financial disclosure by a party was discovered after the last order was made.

- [31] In *Mracek v. Grees*, 2025 BCSC 911, Justice Hamilton summarizes the applicable law as follows:
- [15] The principles governing retroactive child support are set out in *D.B.S. v. S.R.G.*, 2006 SCC 37, and restated in *Michel v. Graydon*, 2020 SCC 24 at para. 10, and in *Colucci v. Colucci*, 2021 SCC 24.
- [16] At para. 30 of *Colucci*, the Court outlines the three main categories of claims for retroactive relief under s. 17 of the DA. The first two categories apply to the parties' applications: (1) where the payor submits the final order overestimates his income and seeks a retroactive decrease in support because of past changes in the payor's ability to make payment when they are due; and (2) where the recipient submits that the final order underestimates the payor's income and seeks a retroactive increase in support because of past changes in the payor's ability to pay support. The third category in *Colucci* is not applicable as there are currently no arrears of child support. I will now turn to what *Colucci* says about how to analyze each of the two relevant categories starting with retroactive decreases before moving to retroactive increases.
- [17] In *Colucci*, the Court explains just because a payor establishes a past decrease in income, that does not automatically entitle the payor to a retroactive decrease in support back to the date of the decrease because the overall decision is discretionary:
- [6] As I will explain further, the court's discretion is structured by a presumption in favour of retroactively decreasing support to the date the payor gave the recipient effective notice of an intention to seek a downward adjustment of the child support obligation, up to three years before formal notice is given of an application to vary under s. 17. This presumption is triggered as soon as a past material change in circumstances is established -- it is no longer necessary to first ask whether retroactive relief is generally appropriate before moving to the question of how far back retroactive relief should extend. Discretionary factors parallel to those considered in *D.B.S.* may justify departing from the presumptive date in favour of a longer or shorter period of retroactivity.
- [7] Given the informational asymmetry between the parties, a payor's success in obtaining a retroactive decrease will depend largely on the payor's financial disclosure and communication. Indeed, effective notice in this context is only "effective" when there has been disclosure of the changed financial circumstances. At the stage of considering the *D.B.S.* factors, disclosure will once again be a key consideration in assessing whether the payor's conduct operates to shorten or lengthen the presumptive period of retroactivity.
- [Emphasis in original.]
- [18] The Court in *Colucci* then summarizes the analysis applicable when a payor applies to retroactively decrease child support at para. 113:

- (1) The payor must meet the threshold of establishing a past material change in circumstances. The onus is on the payor to show a material decrease in income that has some degree of continuity, and that is real and not one of choice.
 - (2) Once a material change in circumstances is established, a presumption arises in favour of retroactively decreasing child support to the date the payor gave the recipient effective notice, up to three years before formal notice of the application to vary. In the decrease context, effective notice requires clear communication of the change in circumstances accompanied by the disclosure of any available documentation necessary to substantiate the change and allow the recipient parent to meaningfully assess the situation.
 - (3) Where no effective notice is given by the payor parent, child support should generally be varied back to the date of formal notice, or a later date where the payor has delayed making complete disclosure in the course of the proceedings.
 - (4) The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The D.B.S. factors (adapted to the decrease context) guide this exercise of discretion. Those factors are: (i) whether the payor had an understandable reason for the delay in seeking a decrease; (ii) the payor's conduct; (iii) the child's circumstances; and (iv) hardship to the payor if support is not decreased (viewed in context of hardship to the child and recipient if support is decreased). The payor's efforts to pay what they can and to communicate and disclose income information on an ongoing basis will often be a key consideration under the factor of payor conduct.
 - (5) Finally, once the court has determined that support should be retroactively decreased to a particular date, the decrease must be quantified. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the Guidelines.
- [19] Absent effective notice of a drop in the payor's income, "certainty and predictability for the child are to be prioritized over the payor's interest in flexibility": Colucci at para. 84. The payor is aware of their own financial situation and able to decide when to disclose that information so the payor controls the date of notice and the date of retroactivity. Once effective notice is given, the payor's interest in flexibility comes to the forefront of the analysis: "by making the date of effective notice the presumptive date of retroactivity, the framework preserves ample flexibility for the payor": Colucci at para. 85.
- [20] The Court in Colucci addresses what qualifies as "effective notice" in the decrease context. A payor must do more than broach the topic of reduction of support with the recipient because the payor has an informational advantage over the recipient. As such, the timing and extent of disclosure is a critical consideration to ascertain whether and when effective notice has been given and whether to depart from the presumptive date of retroactivity: Colucci at para. 87.
- [21] The proof that must accompany effective notice in decrease cases is described by the Court in Colucci as follows:

- [88] In decrease cases, therefore, courts have recognized that effective notice must be accompanied by "reasonable proof" that is sufficient to allow the recipient to "independently assess the situation in a meaningful way and respond appropriately" (Gray, at para. 62, citing Corcios, at para. 55; Templeton, at para. 51). This ensures that effective notice provides a realistic starting point for negotiations and allows the recipient to adjust expectations, make necessary changes to lifestyle and expenditures, and make informed decisions (Hrynkow v. Gosse, 2017 ABQB 675, at para. 13 (CanLII); Hodges v. Hodges, 2018 ABCA 197, at para. 10 (CanLII)).
- [89] In some cases, such as where the payor is incarcerated or suffers a serious health setback, clear communication may be sufficient to meet the requirements of effective notice. In other cases, the payor may not have access to full income information at the time notice is given, but should provide proof of the change in circumstances by promptly obtaining and disclosing available documents, such as those demonstrating new employment, reduction of salary or termination of employment. Even where a diligent payor believes in good faith that a decrease in income will be temporary, the most prudent course of action is nevertheless to communicate the change to the recipient and provide information which substantiates the claimed change in circumstance.
- [90] After communicating a change and providing available documents, a payor maintains "an ongoing obligation to engage in meaningful dialogue with the recipient, advise the recipient of changes in their circumstances that may impact their ability to pay support and voluntarily disclose pertinent information so that the recipient can continue to independently assess the situation and react appropriately" (Templeton, at para. 52). Failure to do so may impact the period of retroactivity when the court applies the discretionary D.B.S. factors. Further, effective notice of an initial change in income will not amount to effective notice of subsequent changes (Corcios, at para. 55).
- [22] Even when effective notice has been given by the payor, the period of retroactivity is presumed to be no more than three years before the date of the formal notice. However, the court may depart from that presumption according to the factors in D.B.S. which may be summarized as: (1) whether there is an understandable reason for the delay in giving notice or seeking relief in court; (2) the payor's conduct; and (3) the circumstances of the children.
- [23] In Colucci at para. 114, the Supreme Court turns to the principles which apply to applications like Ms. Mracek's application to retroactively increase support under s. 17 of the DA:
- a) The recipient must meet the threshold of establishing a past material change in circumstances. While the onus is on the recipient to show a material increase in income, any failure by the payor to disclose relevant financial information allows the court to impute income, strike pleadings, draw adverse inferences, and award costs. There is no need for the recipient to make multiple court applications for disclosure before a court has these powers.

- b) Once a material change in circumstances is established, a presumption arises in favour of retroactively increasing child support to the date the recipient gave the payor effective notice of the request for an increase, up to three years before formal notice of the application to vary. In the increase context, because of informational asymmetry, effective notice requires only that the recipient broached the subject of an increase with the payor.
 - c) Where no effective notice is given by the recipient parent, child support should generally be increased back to the date of formal notice.
 - d) The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The D.B.S. factors continue to guide this exercise of discretion, as described in *Michel*. If the payor has failed to disclose a material increase in income, that failure qualifies as blameworthy conduct and the date of retroactivity will generally be the date of the increase in income.
 - e) Once the court has determined that support should be retroactively increased to a particular date, the increase must be quantified. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the Guidelines.
- [32] Although the applications in both *Mracek* and *Colucci* were made under the Divorce Act, the *Colucci* principles apply to an application under s. 152 of the FLA: *Kenny v. Martinetti*, 2022 BCSC 1581 at para. 12; *Kelly v. Martel*, 2022 BCSC 756 at para. 44.
- [33] With these principles in mind, I will first address Ms. C.'s application for a retroactive decrease in her child support, after which I will address her application for a retroactive increase in Mr. C.'s child support.

Application to Retroactively Decrease Ms. C.'s Child Support

- [34] Where a retroactive variation is premised upon a decrease in income, that change must be significant, have some degree of continuity and must not be the result of the payor's choice: *Kwantes v. Kwantes*, 2025 BCSC 901 at para. 52, citing *Colucci* at para. 61.
- [35] The onus is on the payor to disclose sufficiently reliable evidence to allow the court to make the determinations as to why, when and how far their income fell: *Kwantes* at para. 52, citing *Colucci* at para. 62.
- [36] If Ms. C. succeeds in establishing a material change, the next question is how far back the changes can be made.
- [37] The Order was based on Ms. C. earning approximately \$70,000.00 per year. In 2021, Ms. C.'s Line 150 income ended up being \$67,751.00. In 2022 and 2023, her income went down to \$32,620.00 and \$42,849.00, respectively. Ms. C. deposes that the decrease was due to her taking time away from work to care for T.C. T.C.'s cancer went into remission in 2023, and Ms. C. returned to work full-time in September 2023. In March 2024, Ms. C. went on long-term disability due to a sciatic nerve issue, which she says impacted her ability to work as a

transit operator. Her long-term disability benefit is 50% of her regular wages. As indicated, the 2024 tax returns from either party are not before the court. Further, there is no documentation before the court about the health issue leading to Ms. C. taking long-term disability, the precise time period that she was on disability, or the details of the payments she received.

- [38] I will break down the analysis into two relevant periods: 2022 through 2023, which is the time period when T.C. was going through cancer treatment, and 2024, which is the year when Ms. C. was on disability for some period of time.
- [39] I find that Ms. C. has not established a material change for the period 2022 through 2023. While Ms. C. has demonstrated a significant change in income during that period and some degree of continuity, in my view, she has not established that the change was not a result of her own choice. I am mindful that when a child is diagnosed with a life-threatening illness such as cancer, one or both parents may need to take time away from work to care for that child. In most circumstances, there is likely little choice involved. Nevertheless, the circumstances of this case are atypical in that Ms. C. took out critical illness insurance on T.C. beforehand in the amount of \$275,000.00. Ms. C. is listed as the beneficiary of both critical illness policies. Ms. C. deposed that she took out the two policies for all her children to protect their insurability in the future. I interpret this statement to mean that she wanted to obtain life and critical illness insurance policies for the children while they were young, and before they potentially developed health concerns or issues that could impact their ability to obtain those coverages in the future, and/or that she wished to secure lower premiums for them. Ms. C. deposed that she designated herself the beneficiary of both policies, as the children were all minors when she took the policies out.
- [40] The claims were accepted by each insurer, and the benefits were paid to Ms. C. Ms. C. has not provided any evidence of what use she put the funds towards, other than deposing that of the \$275,053.78 she received, she currently has \$56,845.37 remaining, which is invested in a mutual fund, and is being held for T.C.'s benefit to purchase her a vehicle ultimately and to pay for tuition in the future.
- [41] I find that the critical illness benefits Ms. C. received provided her with a financial cushion, allowing her to make the choice to take time off work to care for T.C.. Accordingly, I find that Ms. C. has not established a material change for the period 2022 through 2023.
- [42] If I had found a material change, the next issue would be how far back the changes can be made. In my view, the effective date of notice of Ms. C.'s change in circumstances regarding her income is December 28, 2023, the date she filed this Notice of Application.
- [43] Ms. C. did provide some notice before December 28, 2023. By email sent October 24, 2023, Ms. C.'s counsel advised Mr. C. that Ms. C.'s 2022 income had declined significantly due in large part to her having to take time off to care for T.C.. A copy of Ms. C.'s 2022 income tax return was attached to that email.

- [44] Nevertheless, effective notice requires clear communication of the change in circumstances, including the disclosure of any available documentation necessary to substantiate the change and to allow the other parent to meaningfully assess the situation. In my view, it was incumbent on Ms. C. to include particulars of the critical illness policy at that point in time. Accordingly, the October 24, 2023 email did not constitute effective notice.
- [45] By the time effective notice occurred, Ms. C. had already returned to work full-time; thus, she is presumptively not entitled to retroactive child support for the period before that date.
- [46] That said, the court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. In determining whether there is unfairness, the court can take the following into account: (1) whether there is an understandable reason for the delay in giving notice or seeking relief in court; (2) the payor's conduct; (3) the child's circumstances; and (4) hardship to the payor if the support is not decreased (viewed in the context of hardship to the child and recipient if support is decreased): Colucci at para. 113.
- [47] In my view, unfairness has not been established. In reaching this conclusion, I note that while Ms. C.'s delay may be understandable given the stress associated with having T.C. go through cancer treatment, Ms. C. did not disclose receipt of the critical illness benefit in a timely fashion. Moreover, given that Ms. C. received the insurance benefit, I am not satisfied that she would experience much hardship if the support is not decreased, nor that T.C. will experience hardship.
- [48] Although he did not bring an application seeking to increase Ms. C.'s support retroactively, Mr. C. did argue that the critical illness payment should be taken into account in determining Ms. C.'s support. In other words, Mr. C. sought to have income imputed due to the critical illness benefit.
- [49] Counsel for Ms. C. advised that he could not locate any case law where the court dealt with the question of whether income should be imputed under s. 19 of the Federal Child Support Guidelines to a parent on the basis that they received benefits from a child's critical illness insurance. Counsel did take the Court through some cases that could assist in determining whether income should be imputed. These cases included the following:
- a) Papasodaro v. Papasodaro, 2014 ONSC 30 - where the Court declined to impute income based on a spouse receiving proceeds from a home insurance payout;
 - b) Koch v. Underhill, 2013 BCSC 1889 - where a \$1,000,000 capital gain earned by one spouse from a property flip was determined to be a "one-time windfall" and was not considered for income purposes; and
 - c) Sharpe v. Sharpe, 2004 MBCA 26 - where a spouse won the lottery and the Court imputed the likely investment return on the lottery winnings (but not the winnings) as income.

- [50] The case law establishes that payments which substitute income should be included as income for the purposes of child support. Examples of such payments include employment insurance, Canada Pension Plan disability benefits, and disability insurance: *Walgren v. Walgren*, 2002 BCSC 432; *Khan v. Khan*, 2024 ONSC 4045. In addition, portions of settlements or awards attributable to lost income are income for the purposes of the Guidelines: *M.K. v. R.A.S.*, 2004 BCSC 1798 at paras. 35-38.
- [51] In this case, I had little evidence about the purposes of the critical illness insurance. As indicated, Ms. C. testified that she obtained the insurance to ensure her children's insurability. However, there was no evidence about the purposes of critical illness insurance. Presumably, people take out critical illness insurance to cover lost income and related costs and expenses in the event that they are diagnosed with a critical illness. However, since I received no evidence or submissions on this issue, I cannot make any findings regarding whether critical illness insurance includes an income replacement component, thereby qualifying it as income for the purposes of the Guidelines.
- [52] This brings us to 2024. Ms. C. went on long-term disability from her employment with Coast Mountain Bus Company in March 2024. The disability, she deposes, is due to sciatica. In her January 19, 2025 affidavit, Ms. C. indicates that she was still currently receiving long-term disability benefits, which were 50% of her regular wages. At the hearing, Ms. C.'s counsel noted that Ms. C. had returned to work full-time and that she expects her 2025 income to be similar to her pre-2022 income, which was \$67,751.00. I pause to note that the Court did not have the benefit of any documents from Ms. C.'s long-term disability provider or her employer in relation to the disability she experienced in 2024-2025.
- [53] The onus is on Ms. C. to disclose sufficiently reliable evidence to allow the Court to make the determinations as to why, when and how far her income fell. In my view, Ms. C. has not provided sufficiently reliable evidence to allow the Court to make the determination of why, when, and how far her income fell in 2024.
- [54] Accordingly, Ms. C.'s application to retroactively decrease her child support is dismissed.
- [55] Going forward, Ms. C.'s income for the purposes of child support is \$67,751.00.
- [56] I will now turn to Ms. C.'s application to increase Mr. C.'s child support retroactively.

Application to Retroactively Increase Mr. C.'s Child Support

- [57] Ms. C. must establish a material increase in Mr. C.'s income since 2021. I am satisfied that she has. Mr. C.'s 2021-2023 tax returns indicate that he earned significantly more income than anticipated in the Order. The Court did not have the benefit of Mr. C.'s 2024 tax return, as he was still in the process of completing it at the time of the hearing. Nevertheless, in submissions, he estimated that his 2024 income would be approximately \$170,000.00.
- [58] Accordingly, I find that Mr. C.'s income is as follows:

Year

Amount (\$)

2021

102,398

2022

178,169

2023

148,000

2024

170,000

[59] Ms. C. gave Mr. C. effective notice by way of Mr. Shee's October 24, 2023 email, where he indicated that based on Mr. C.'s 2021 tax return, Ms. C. was owed retroactive support. As indicated, the formal application was brought two months later, on December 23, 2023.

[60] In my view, the circumstances of this case warrant a departure from the presumptive date of retroactivity, as such a result would be unfair to Ms. C. In Colucci, Justice Martin held that a payor parent's failure to disclose an increase in income constitutes "blameworthy conduct," which typically moves the presumptive date of retroactivity back to the date of the income increase: Colucci at para. 41. Mr. C.'s failure to disclose his increase in income in 2021, 2022, and 2023 is blameworthy conduct and provides a reasonable basis for Ms. C.'s delay in bringing the application for increased support. Further, there was no evidence as to whether Mr. C. would suffer any hardship in paying the retroactive support ordered; however, I would be prepared to set a payment schedule if the parties cannot agree on one.

Fine

[61] Ms. C. seeks an order under s. 213 of the FLA requiring Mr. C. to pay a fine of \$5,000.00 for his failure to provide disclosure of his tax returns, contrary to the Order.

[62] I am not satisfied that the circumstances warrant imposing a fine. While the evidence before me does indicate that Mr. C. delayed providing his tax returns contrary to the Order, it appears to me on the evidence that Ms. C. also did not provide at least some of her tax returns on time - although I note that Mr. C. delayed providing them when requested, while there was no indication that Mr. C. requested Ms. C.'s tax returns at the relevant times.

Orders

[63] I make the following orders:

- a) Ms. C.'s application for a retroactive reduction in child support is dismissed.
- b) Pursuant to section 152 of the Family Law Act, paragraph 5 of the Order of the Honourable Madam Justice Ahmad, dated September 22, 2021 is varied such that child support shall be retroactively increased based on the claimant earning \$102,398 in 2021, \$178,169 in 2022, \$148,000.00 in 2023, and \$170,000.00 in 2024.
- c) Pursuant to section 152 of the Family Law Act, paragraph 5 of the Order of the Honourable Madam Justice Ahmad, dated September 22, 2021 is varied as follows:
 - i. In the year 2025, child support payable by the parties will be assessed based on the claimant's income being \$170,000.00 and the respondent's income being \$67,751.00.
 - ii. By October 1, 2025, the parties shall provide to each other their respective tax return and income information for 2024. If there has been a change in the income of a party from the amount stated in this order, then a party can request a review and a change in the amount of child support being paid for 2024 onwards. If there is no review and no change, the amount being paid shall continue to be paid as provided for in this order.
 - iii. By June 1 of each year, starting in 2026, the parties shall provide to each other their respective tax return and income information of the previous year. If there has been a change in the income of a party from the amount stated in this Order, then a party can request a review and a change in the amount of child support being paid. If there is no review and no change, the amount being paid shall continue to be paid as provided for in this order.

Costs and Calculations

- [64] Ms. C. has been substantially successful in this application and is entitled to her costs in any event of the cause, payable within 60 days, and assessed at \$2,000.00, pursuant to Appendix B.
- [65] I will leave it to the parties to calculate the specific amounts owing for child support for 2021 to date using the income determinations above. If the parties cannot agree as to the calculations, they may request a brief appearance before me at 9:00 a.m. by MS Teams.

"Morishita J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/17/2025BCSC1749cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/s-r-c-v-e-c-2025>

Prepared on 29 October 2026 · Esheria