

CANADA / JUDGMENT

Skraban v. Skraban

2025 BCSC 1988

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Supreme Court of British Columbia

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2025 BCSC 1988 Skraban v. Skraban

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Skraban v. Skraban,

2025 BCSC 1988

Date: 20251010

Docket: E11398

Registry: Chilliwack

Between:

Karen Susan Skraban also know as

Karen Susan Miller

Claimant

And

Peter Michael Skraban also known as

Peter Micheal Skraban

Respondent

Before: The Honourable Justice Walkem

Reasons for Judgment

In Chambers

Counsel for the Claimant:

D. Klassen

Counsel for the Respondent:

D.P. Kuhn

Place and Date of Hearing:

Chilliwack, B.C.

September 9, 2025

Place and Date of Judgment:

Chilliwack, B.C.

October 10, 2025

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[1] This is an application to vary an order for child support and s. 7 expenses. This application relates to a consent order made May 9, 2019 by Justice Jenkins (the "Jenkins order"). The order concerned child support and s. 7 expenses for the two children of the marriage:

Emily Skraban, born March 12, 2004 (now 21)

Noah Skraban, born May 28, 2002 (now 23)

(the "Children").

[2] The Jenkins order provided that the respondent was found to have an annual income of \$65,400, and would pay the claimant child support in the amount of \$1,080 per month beginning June 1, 2019.

[3] Additionally, the Jenkins order provided the following with respect to s.7 expenses and information-sharing:

7. The Respondent will pay the Claimant the amount of \$150.00 per month per child, for the Children's Section 7 expenses which will include medical, extra-curricular activities and any other special and extra-ordinary expenses, commencing June 1, 2019. The parties are to agree in advance to the activities the Children are to be enrolled in.

8. Commencing in 2020, the parties are to provide each other with their Income Tax Returns and Notice of Assessments for the preceding taxation year and this requirement shall continue on June 30th of each and every year thereafter for as long as the children are children of the marriage.

[Emphasis added]

- [4] The purpose of exchanging yearly tax information was so that child support could be recalculated to reflect the parties' actual income.
- [5] At the time the Jenkins order was made, and thereafter, the children have been primarily resident with the claimant.
- [6] The questions before me are: 1) whether s. 7 expenses required advance agreement about what activities the Children were enrolled in (and absent such agreement if they were not payable); 2) whether, and for how long, the Children continued as children of the marriage past reaching the age of adulthood, especially as they embarked on some post-secondary studies. Put another way, this question asks how long the respondent's child support and s. 7 obligations should last; and, 3) The amount of the respondent's income for purposes of determining any child support or s. 7 expenses payable.
- [7] The respondent paid child support and s. 7 expenses until August 2024, with some small gaps. There is a record as payments were made through FMEP.

Section 7 Expenses

- [8] The Jenkins order, on its face, covered medical and extracurricular expenses as well as any other special and extraordinary expenses. The respondent was ordered to pay \$150 per month in s. 7 expenses for each child. I understood that Emily engaged in extracurricular activities with costs associated with those activities, while Noah did not. It seems that setting a fixed amount in s. 7 expenses was an attempt to minimize conflict between the parties. The Jenkins order required agreement between the parties on "activities" the Children were enrolled in, but not on other s. 7 expenses, which I interpret to include medical, dental, and some educational and other non-activity based costs.
- [9] The respondent paid \$150 per month in s. 7 expenses, not \$300 per month. I understand, based on the respondent's submissions, that this was possibly due to a misreading of the Jenkins order.
- [10] There was never an agreement about activities that the Children would be enrolled in. I do not find that this was a requirement for the s. 7 expenses to be payable.
- [11] Regarding s. 7 expenses, the Jenkins order required the respondent to pay \$150 per child as long as they were children of the marriage. It called for agreement about some activities. However, it did not require consent about other expenses. It may have been that the \$150 would increase if a child was involved in an activity involving additional expenses, and that

additional expense would require the parties' consent. I do not find the amount payable was to decrease or be non-payable unless and until there was an agreement on activities. This result would have sustained conflict rather than calmed it. It also does not make sense in light of the array of non-activity based costs falling under the umbrella of s. 7 expenses.

- [12] I find the respondent, per the terms of the Jenkins order, owed \$150 per month in s. 7 expenses, per child. This obligation lasted as long as each was a child of the marriage, as set out below.

Are the Children Still Children of the Marriage?

- [13] The Children have each become adults.

- [14] The question before me is whether the Children remain children of the marriage (or for how long they remained so). In other words, for what period does the respondent owe child support?

- [15] Noah turned 19 on May, 28 2021. Emily turned 19 on March 2023. The claimant argues that they have been unable to leave her care, have enrolled in post-secondary studies, and so should continue to be (at least for some time) considered "children of the marriage".

- [16] In *Hutchison v. Taravias*, 2022 BCSC 1982, Justice Crossin outlined factors for consideration on when children, who have reached the age of majority, may nonetheless remain children of the marriage:

- [58] A recent case involving the determination of whether an adult child is considered a "child of the marriage" is *L.L.M. v. D.R.M.*, at para. 34, Justice Lyster [summarized] the principles used for determining whether an adult is considered a "child of the marriage". *L.L.M.* involved applications under the Family Law Act, which uses the term "child" rather than "child of the marriage". In the FLA, the definition of "child" includes a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians", which is, in essence, the same as "child of the marriage" under the Divorce Act.

- [59] There are no statutorily mandated criteria for what constitutes "other cause". However, the words are to be interpreted liberally, and whether a cause is sufficient to bring a person of the age of majority into the definition of "child of the marriage" will depend on the circumstances: *Pound v. Pound* [at the] (B.C.C.A.). This liberal interpretation must also be informed by the relatively recent decision in *Dring v. Gheyle*, 2018 BCCA 435 at para. 50 where it is said that this wording "signifies something more than a mere lifestyle choice to remain dependant." The court considers whether post-secondary education is a valid reason for continued support by considering whether the educational pursuits are reasonable, and if so, whether it is appropriate for the parents to finance the child's education. Factors to be used in considering these inquiries are found in *Farden*.

[60] The Farden factors specifically contemplate the pursuit of post-secondary education as impacting whether an adult will be considered a "child of the marriage".

[17] In *M.J.L. v. G.H.*, 2015 BCPC 208 at para. 29, Judge Marchand (as he then was) outlined the factors a court may consider in making this determination:

In considering whether a child's educational pursuits justify an adult child remaining a child for purposes of child support, the following factors from *Farden v. Farden* (1993), 1993 CanLII 2570 (BC SC), 48 R.F.L. (3d) 60 (BCSC) may be helpful:

- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
 - (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
 - (4) the ability of the child to contribute to his own support through part-time employment;
 - (5) the age of the child;
 - (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
 - (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
 - (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought
- [18] The respondent pointed to *Lamont v. Johnson*, 2016 BCSC 366 for the proposition that if an adult child continues a course of study, there is nonetheless a need to show that a course of studies is reasonable, for them to be found to have continued as a child of the marriage during those studies: at paras. 51, 58.

Noah

[19] Noah attended the Electrician Construction Program at Riverside College from September 2020 until June 2021. He finished the program but did not earn marks sufficient to have pass the program. He noted in his affidavit, "I knew from the first month this was not the path I was destined to take". He appears to have taken time off, and then through and enrolled in the University of Fraser Valley ("UFV") in the fall of 2021.

- [20] The claimant says she paid for the costs for Noah attending UFV part-time. He did not work while attending school. He did not apply for student loans, or provide any other evidence as to seeking alternative sources of funding. Noah's evidence was that the claimant paid for his education, and drove him back and forth to and from his classes.
- [21] Since enrolling at UFV, Noah has generally attended classes on a part-time basis, and he does not appear to have done very well at those classes.
- [22] There was no evidence presented of a disability that would prevent him from working part time or taking out a loan.
- [23] Noah claims to have undertaken studies he knew would not suit him. He finished the initial course he took, but did not pass. He then decided to enrol in a second course of studies. He also traveled back and forth to California, where he met his girlfriend. While in California he volunteered in his girlfriend's business endeavors. His girlfriend later moved into his mom's house with him.
- [24] Noah now claims, on the eve of the application, to have returned to school full time in September 2025 and produced a registration document to support this.
- [25] Noah appears to be a free-spirited nomad who the claimant chooses to support.
- [26] Noah has not, on the record before me, worked or otherwise sought to contribute to his education or living expenses.
- [27] I find Noah ceased to be a child of the marriage at the end of June 2021 when he finished his first course of study. He remained a child of the marriage for only one month after turning 19.

Emily

- [28] Emily's situation is different from Noah's. She has made efforts to assist with her own education. She has worked at various jobs, first at a vape store then at a KalTire, at a low wage. Her evidence is that she sought student loans of around \$10,000. There was no evidence produced aside from her own statement about this loan; however, I accept that she had student loans.
- [29] Emily first attended UFV full-time, and then part-time, studying social work. There are some areas of study where she has done very well, and others where she has struggled. Emily ultimately quit her studies to work full-time and enrol in an online tattooing course. I find Emily was no longer a child of the marriage from when she was no longer enrolled at school full-time at UFV (from April 2024 onwards).
- [30] If Emily re-enrols full-time in post-secondary education within the next two years, the respondent will pay for 50% of her tuition fees and contribute \$500 per term directly to her for books and supplies until she finishes her studies.

- [31] Otherwise, the respondent will not owe any child support or s. 7 expenses to the claimant beyond April 2024.

Amount of Child Support

- [32] In August 2020, the respondent provided updated income information. His income at the time was \$76,109. It appears that the amount of child support paid was not adjusted on an ongoing and regular basis.
- [33] After the first year following the Jenkins order, there was no ongoing financial disclosure between the parties and no corresponding adjustment of child support. For a period of a few months, the respondent paid increased child support based on the Federal Child Support Guidelines, SOR/97-175, [Guidelines] in line with his increased income and then stopped. The respondent paid child support throughout--including an additional \$100 per month towards retroactive child support set out in the Jenkins order--but did not increase the quantum of child support commensurate with the increase in income.
- [34] The issue now facing this Court concerns how to calculate the respondent's income, given that he did not update his income on a yearly basis, and also that he became self-employed.
- [35] Child support in the Jenkins order was intended to reflect Guidelines amounts. The order committed the parties to provide an annual update of their incomes, and adjust child support accordingly. In practice, child support was not adjusted on an ongoing basis. After the first year, the respondent did not provide updated disclosure of his income.
- [36] The respondent now argues that because the claimant did not make specific disclosure requests to ascertain his business income, she is therefore not in a position to seek to have expenses deducted as business expenses attributed back to him. With all due respect this approach ignores the Jenkins order and child support framework outlined in the Guidelines and repeatedly emphasized by the Supreme Court of Canada.
- [37] The Guidelines set out a comprehensive and predictable regime for determining child support based on parents' incomes. The principle which underlies this scheme is that a parent should support their children to their ability to do so: *D.B.S. v. S.R.G.*, 2006 SCC 37 at para. 48.
- [38] Each parent must provide timely and sufficient financial information to determine their income, to ensure a child's right to be supported according to the means of each of their parents is met: Guidelines, ss. 21(1).
- [39] Disclosure gives effect to the right of a child to be supported according to the means and ability of their parent, and protects the interests of both payor and recipient parents: *Colucci v. Colucci*, 20201 SCC 24 at para. 52. A payor-parent's failure to disclose increases of income does not reduce child support due, but it may delay it until such time as the underreporting is discovered.

- [40] In D.B.S., the Supreme Court of Canada emphasized that child support is the right of the child, and gave directions on how retroactive child support should be calculated:
- [54] [P]arents have an obligation to support their children in a way that is commensurate with their income. This parental obligation, like the children's concomitant right to support, exists independently of any statute or court order. [T]he total amount of child support owed will generally fluctuate based on the payor parent's income. Thus, under the federal scheme, a payor parent who does not increase his/her child support payments to correspond with his/her income will not have fulfilled his/her obligation to his/her children.
- [41] A parent's annual income is generally determined by their total income on their tax return: Guidelines, s. 16. Provision is also made for parties who have a business, trust, or other sources of income that must be calculated differently. Section 17 provides for consideration of the last three years of income to determine a fair and reasonable amount of income, in light of patterns of income, fluctuation in income, or receipt of a non-recurring amount during those years.
- [42] In D.B.S., Justice Bastarache emphasized the need to consider the rights of the child and to disincentivize payer parents from shielding income to reduce child support payments:
- [4] the ultimate goal must be to ensure that children benefit from the support they are owed at the time when they are owed it. Any incentives for payor parents to be deficient in meeting their obligations should be eliminated.
- [43] Section 19(1) of the Guidelines allow a court to impute income in certain circumstances as the court considers it appropriate. Such circumstances include where "the spouse has failed to provide income information when under a legal obligation to do so": s. 19(1)(f).
- [44] A child and recipient parent should not suffer--nor should a non-disclosing payor parent benefit--from a lack of financial disclosure. In Colucci, the Supreme Court of Canada observed the following:
- [37] In D.B.S., the Court took a decisive step into the Guidelines era by emphasizing that retroactive child support awards "cannot simply be regarded as exceptional orders to be made in exceptional circumstances" (para. 5). When the payor's income rises but they continue to pay in accordance with an existing court order, they fall short of meeting the free-standing legal obligation to pay support commensurate with income. D.B.S. confirmed that a retroactive increase of support in such circumstances is therefore "not truly retroactive"; rather, it "enforce[s] an obligation that should have been fulfilled already" (paras. 67-68; see also para. 69).
- [52] In line with these realities, courts have increasingly recognized that the payor's duty to disclose income information is a corollary of the legal obligation to pay support commensurate with income (Brear, at paras. 19 and 69, per Pentelechuk J.A.; Roseberry v. Roseberry, 2015 ABQB 75, 13 Alta. L.R. (6th) 215, at para. 63; Cunningham v. Seveny, 2017 ABCA 4, 88 R.F.L. (7th) 1, at paras. 21 and 26). As explained by Brown J., speaking for the full

Court in Michel, payor parents "are subject to a duty of full and honest disclosure -- a duty comparable to that arising in matrimonial negotiations" (para. 33, referencing Rick v. Brandsema, 2009 SCC 10, [2009] 1 S.C.R. 295, at paras. 47-49). Courts and legislatures have also implemented various mechanisms to incentivize and even require regular ongoing disclosure of updated income information by the payor, along with tools to move proceedings forward in the face of non-disclosure. Those mechanisms include imputing income to payors who have failed to make adequate disclosure, striking pleadings, drawing adverse inferences, and awarding costs. By encouraging timely disclosure, these tools reduce the likelihood that the recipient will be forced to apply to court multiple times to secure disclosure.

- [45] In Colucci the Supreme Court of Canada also affirmed the court's power to provide a remedy to avoid the recipient parent having to make numerous court applications. In the circumstances of this case, it is fair to impute an income to the respondent given his lack of financial disclosure over the time that child support was due: Guidelines, s. 19(1). In such circumstances, determinations of appropriate figures are not calculations, per se, but rather judgment necessitated by the lack of financial disclosure. It is rough justice at best.
- [46] Had the Jenkins order been followed, disclosure of the respondent's income would have occurred annually, and child support would have been adjusted accordingly.
- [47] Recipient parents and children suffer from insufficient financial disclosure. A non-or under-disclosing payor parent should not be supported by the courts to reap the reward of their own failure to provide adequate and timely financial disclosure. A payor parent's non, or late, or incomplete disclosure should not benefit them to the detriment of a child and recipient parent: Michel v. Graydon, 2020 SCC 24 at para. 34; Colucci at para. 42.
- [48] The claimant argues that the respondent's declared employment income does not reflect his actual income available to pay child support. She argues that the court should consider the company's expenses and retained earnings because the revenue of the respondent's company appears to show greater income available for child support than he declared. I agree. I consider it appropriate to adjust child support due back to 2020.
- [49] According to income tax documents exchanged in 2020, the respondent's income in 2019 was \$76,109. The respondent's reported 2020 income was \$87,538. From 2021 onwards, things become more complicated. The respondent was laid off in 2021 and he subsequently started a business called Tech 4 Security company, which he runs to this day. The respondent's personal income recorded on his tax return appears to have fallen quite drastically in 2021 and thereafter. He provided proof of taxable income in 2021 of \$7,000, and claims personal income of \$38,285 in 2022 and of \$16,000 in 2023. The claimant argues that the information provided by the respondent is insufficient to assess his actual self-employment income. The claimant says that there are significant gaps in information and points to company sales of between \$168,490 and \$219,751, retained earnings of \$59,358 for one year, and dividends of \$20,000 in another with no actual T1 issued, as evidence that the

respondent has underreported his actual income.

[50] Child support remains payable, as long as each child is a child of the marriage, based on the respondent's income. Courts have recognized that there is considerable malleability when a parent earns business income and pays themselves employment income from that business. A parent may decide to inflate or deflate their employment income or business earnings, for tax purposes. Thus these numbers may not adequately reflect the amount that a payor parent has available for purposes of calculating child support. Mechanisms a payor parent has to adjust their income include paying themselves a lower amount in employment income; deducting expenses that are of personal benefit to the parent through the company as business expenses; or, retaining earnings. In such circumstances, to ensure that the needs of a child are met courts will "pierce the veil" and look behind declared income to ascertain what amounts are actually available to a payor parent.

[51] The cost of sorting out the actual amounts available to the respondent would be high and prolong an unnecessary conflict. I find it appropriate to impute the respondent's income from 2021-2024 as the average of his reported income from 2018-2020:

- a) 2018: \$65,400 (as set out in the Jenkins order)
- b) 2019: \$79,109
- c) 2020: \$87,538

The average income from 2018-2020 amounts to \$77,349 $(\$65,400 + \$79,109 + \$87,538) / 3 = \$77,349$ from 2021-2024). I therefore impute an annual income of \$77,349 to the respondent for the years 2021-2024.

[52] I calculate the amount owing in child support as follows:

- a) 2020: \$87,538 - \$1,352.17/month (two children)
- b) 2021: \$77,349 - \$1,200.37/month x 6 (two children)
- c) 2021: \$77,349 - \$739.49/month x 6 (one child)
- d) 2022: \$77,349 - \$739.49/month x12 (one child)
- e) 2023: \$77,349 - \$739.49/month x12 (one child)
- f) 2024 (to April): \$77,349 - \$739.49/month x 4 (one child)

[53] These amounts are rough calculations based on the income I have imputed to the respondent. I also found, as outlined above that the respondent owes \$150 for each child in s. 7 expenses so long as each child remained a child of the marriage (until June 2021 for Noah and April 2024 for Emily). Parties may correct the calculations, as necessary, in the final order, and account for payments made by the respondent during this time in determining overall amount due.

"A. Walkem J."

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