

CANADA / JUDGMENT

## Stollery v. Stollery

2025 BCSC 1931

### COURT

Supreme Court of British Columbia

### DECIDED

3 October 2025

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2025 BCSC 1931 Stollery v. Stollery

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stollery v. Stollery,

2025 BCSC 1931

Date: 20251003

Docket: E240552

Registry: Vancouver

Between:

Chanelle Marie Stollery

Claimant

And

Geoffrey Fairfield Stollery

Respondent

Before: Associate Judge Muir

Reasons for Judgment

Counsel for the Claimant:

I. Hayward

Counsel for the Respondent:

M. Guy

Place and Date of Hearing:

Vancouver, B.C.

September 9, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 3, 2025

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## Introduction

- [1] There were cross applications before me in this family matter. The claimant and the respondent filed their respective notices of application on March 3, 2025 and August 26, 2025.
- [2] In her notice of application, the claimant sought orders for her income to be determined to be \$0, and for the respondent's income to be imputed at \$798,671. As well, she sought orders that commencing July 1, 2024, the respondent would pay her retroactive and ongoing child support of \$9,813 per month and spousal support of \$17,580 per month. These support amounts sought were increased at the hearing before me based on allegations that the respondent's income was higher than \$798,671 and would increase further.
- [3] In addition, the claimant sought an order that the parties share the s. 7 special or extraordinary expenses (the "s. 7 expenses") for the children of the marriage, M., age 13, and C., age 11, with the claimant paying 26% and the respondent paying 74%, and ancillary orders.
- [4] The claimant also sought an order that the respondent provide her written notice forthwith upon him receiving, or becoming entitled to receive, a salary or pre-tax corporate or other income from 1346984 B.C. Ltd., and that the parties would be required to exchange relevant income documents and upon review, increase the interim monthly child support and spousal support payable by the respondent.
- [5] The claimant also sought costs payable forthwith, in any event of the cause.

- [6] At the hearing, the claimant also sought a fine of \$5,000 payable to the claimant because of the respondent's failure to comply with the Supreme Court Family Rules [Rules] regarding financial disclosure and the order of Justice Basran made at the Judicial Case Conference on June 25, 2024 (the "JCC").
- [7] In his notice of application, the respondent sought orders for document disclosure and a fine for failure to produce documents, as follows:
1. Pursuant to Rule 9-1(10) of the Supreme Court Family Rules, an order that the Claimant amend her list of documents and provide counsel for the Claimant the following documents within 14 days of the date of this order:
    - a. The Claimant's Hollyburn Club statements from the date when she had her own account to present;
    - b. All statements for the Claimant's CIBC Visa credit card from separation (or opening) to present;
    - c. Statements from all other bank accounts the Claimant has failed to disclose, including, but not limited to, RBC Account No. \*\*\*\* 1376 from separation (or opening) to present;
    - d. Documentation to show the purpose of the e-transfer funds transferred out of the Claimant's accounts and received by the Claimant;
    - e. All copies of all job applications that the Claimant has submitted and any response received from separation to present.
  2. Pursuant to section 213 of the Family Law Act, a fine of \$1,000 for:
    - a. the Claimant's failure to list and disclose documents that could be used by any party at trial to prove or disprove a material fact pursuant to Rule 9-1(1) of the Supreme Court Family Rules; and
    - b. the Claimant's provision of incomplete information pursuant to section 212(1)(b) of the Family Law Act.
  3. Costs.

## Background

- [8] The parties began cohabiting in March 2007 and married on October 26, 2013.
- [9] The parties disagree about their separation dates. The claimant pleads they separated on December 17, 2023, while the respondent pleads they separated on October 14, 2023.
- [10] The claimant filed her Notice of Family Claim on February 29, 2024. She seeks, inter alia, division of family property and family debt, child support and spousal support.
- [11] There is a trial scheduled for September 14, 2026.

- [12] After the marriage, the parties entered into a marriage agreement dated November 18, 2013, which the claimant has applied to set aside.
- [13] The respondent has various claims for excluded property.
- [14] As noted, the parties have two children.
- [15] The claimant resides in the former family home, which has an assessed value of \$3,328,000. The property is mortgage-free.
- [16] At the JCC held on June 25, 2024, the parties consented to an order made by Basran J. that the respondent pay the claimant monthly child support and spousal support in the amounts of \$4,739 and \$9,006 respectively. This order was made on an interim and without-prejudice basis on a guideline income of \$368,603 for the respondent.
- [17] In addition, there was an order that the respondent provide a complete Form F8 Financial Statement, with all attachments listed on page 2 of that form, within 14 days of the JCC order and provide an updated list of documents by July 25, 2025.
- [18] In his Form F8 Financial Statement sworn July 8, 2024, the respondent claims his annual income is \$368,603. That statement is not complete and does not contain all the required attachments.
- [19] The respondent pays the private school expenses of approximately \$35,000 per annum for one of the children. The other child is in public school.
- [20] In addition, there has been an interim advance of \$150,000 paid to the claimant.
- [21] By order of Associate Judge Vos following a Chambers hearing on April 7, 2025, the respondent was ordered to pay a fine of \$1,000 for failure to provide documentation pursuant to Rule 5-1 of the Rules. Associate Judge Vos dismissed the claimant's application for a fine of \$5,000 for the respondent's failure to comply with Rules 5-1(11) and 7-1(11) of the Rules and the order of Basran J. made at the JCC.
- [22] The claimant is currently 41 years old. She has not had significant employment during the parties' relationship. She does, however, have a BC Institute of Technology certificate in marketing and communications.
- [23] The respondent is 54 years old. He has three companies:
- a) 1218897 B.C. Ltd. (the real estate company), a company that provides real estate advisory services;
  - b) 1287069 B.C. Ltd. (the Langley day care), which is running a very profitable day care in Langley; and
  - c) 1346984 B.C. Ltd. (the Squamish day care), which is developing a day care business in Squamish along the same lines as the Langley day care.

## The Parties' Financial Circumstances and Income

- [24] The claimant, as noted, submits that the respondent's income should be imputed at approximately \$800,000 per annum by including the pre-tax corporate income of the Langley day care business. That number fluctuated due to not having the corporate financial statements for 2024. They were provided at the hearing, however, and the pre-tax corporate income for 2024 is said to be \$499,917.
- [25] The respondent says that these funds must be kept in the company. He says no less than \$250,000 must be retained in the company's bank account to cover obligations for salaries and other expenses. He deposes that monthly salaries amount to more than \$160,000 per month. He deposes that a healthy business should have cash on hand of three to six months of operating expenses, although he has no expert evidence in that regard and only references an American article.
- [26] In addition, the respondent points out that approximately \$600,000 of the seed money for this business was provided by his mother and is reflected in the shareholders' loan account.
- [27] The respondent has recently purchased a home which was listed for more than \$3.9 million. He does not indicate how much was actually paid for this residence. He does say that he was only able to afford it with the assistance of his mother.
- [28] The respondent provided an email document dated March 20, 2025, said to be from his mortgage broker, Keith Baker, confirming that the down payment for the residence was provided by the respondent's mother and that she co-signed the mortgage obtained by the respondent. This email is not properly identified such as to qualify it as admissible hearsay. However, for present purposes, I accept his assertions as to the financing for the new property.
- [29] In the attachments to that email, I note that the respondent declared his income to be \$356,067 per annum from the Langley day care.
- [30] As to 1346984 B.C. Ltd., the Squamish day care, some portion of the shares of that company were sold to the respondent's mother in return for her taking over the financing of the development of that business. It was expected to be operating in the spring of 2025, and I gather from counsel's submissions that it is indeed operating, but there is no evidence from the respondent in that regard. The respondent's earlier evidence was that once the Squamish day care was operational, he would receive income of \$8,000 per month from that source.
- [31] Although the respondent formerly obtained income from 1218897 B.C. Ltd., the real estate company, his evidence is that this company has not earned significant income since the parties' separation. The company does have funds, although counsel for the respondent argues that after corporate taxes are finalized, it is likely to be in a deficit position. The evidence cited in support of that in counsel's written submissions is para. 23 of the respondent's affidavit #6. However, para. 23 does not exist--because that affidavit ends at

para. 14. The only evidence I could find in this regard was in the respondent's affidavit #5 at para. 15 where he deposes that the 2024 net income for this company is expected to be negligible.

- [32] The bank statements for the real estate company show a closing balance of \$551,523.59 as at December 20, 2024.
- [33] The respondent's 2024 income tax return was only provided in his affidavit #7, sworn September 9, 2025, despite apparently having been filed on April 26, 2025. In that income tax return, it shows that he declared income of \$130,000 from the real estate company in 2024.
- [34] Again, in the 2024 income tax return, the respondent also shows taxable dividends of \$119,559.05. I could not ascertain what company these were attributed to. His total taxable income was reported as \$226,963.67.
- [35] In paras. 15 and 16 of his affidavit #5, sworn March 9, 2025, the respondent deposes that he does not receive a salary from the Langley or the Squamish day cares, but that his income is 100% from dividends or a draw down of the shareholders' loan account. He notes as well that he "drew just under \$451,000 from Langley in 2024. \$150,000 of this was paid to the claimant and her counsel as advances".
- [36] Counsel for the respondent used this evidence to submit that the proper income for the respondent for 2024 would be \$301,000. Nothing in the evidence or in counsel's submissions explains the income reported in the respondent's 2024 income tax return (i.e., \$226,963.67). Nor do we have the corporate financial statements for the real estate company.
- [37] If the draw down of \$301,000 from the Langley day care is added to the income reflected in his 2024 Income Tax Return, his 2024 income would have been \$527,963.67 (\$301,000 + \$226,963.67).
- [38] In addition, it appears that the Squamish day care having opened, the respondent will now be receiving \$8,000 per month income from that source. If that was not the case, I would have expected the respondent to provide evidence of the actual financial circumstances. As he has not done so, I conclude that he is indeed receiving that income and that it likely commenced July 1, 2025.
- [39] The respondent would have me believe that his failure to provide proper corporate financial statements and personal and corporate income tax returns in a timely way was due to absences by his accountant.
- [40] However, the evidence pointed to in support of this assertion in submissions of counsel was simply not there. The reference was the respondent's affidavit #6, paras. 30 to 33 and Exhibit "F". Those do not exist. Nor could I find evidence in any affidavit in support of this, other than Exhibit "D" to the respondent's affidavit #5, which is an email said to be from the respondent's accountant dated September 8, 2025. That email indicates that they are working on the financial statements for the real estate company and says, "Thanks for

sending all bank statements as requested". It is indicated that over the next 45 days, the respondent's accountant anticipates finalizing the corporate year-end filings for 2021 to 2023.

- [41] Given the lack of evidence supporting the submissions of counsel and given the statement in the accountant's email showing that they have apparently just received requested documentation, I do not accept that the respondent's failure to provide this financial information can be laid at the feet of anyone but himself.
- [42] The respondent submits that the claimant is intentionally underemployed. He points out that the children are in school and there is nothing preventing her from returning to the workforce. Instead, he points out that she travels extensively and, in his application, seeks documents to show that she spends an inordinate amount of time playing tennis and lunching with friends.
- [43] The respondent urged me to impute an annual income to the claimant of \$65,000.
- [44] The respondent also pointed out that the claimant's residence is mortgage- and rent-free and urged me to take that into account when awarding spousal support. He argues that is a benefit of \$8,000 to \$10,000 per month.

#### Analysis and Conclusion on the Claimant's Application

[45] Section 213 of the FLA provides:

#### Enforcing orders respecting disclosure

213 (1) This section applies if a person

- (a) fails to comply with
- (i) an order for disclosure made under section 212 [orders respecting disclosure], or
- (ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court Family Rules,

within the time or in the manner required by the order or Rules, or

- (b) provides information that is incomplete, false or misleading.
- (2) In the circumstances set out in subsection (1), the court may do one or more of the following:
- (a) make an order under section 212;
  - (b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference;
  - (c) require a party to give security in any form that the court directs;

- (d) make an order requiring the person described in subsection (1) to pay
- (i) a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution,
- (ii) an amount not exceeding \$5 000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or
- (iii) a fine not exceeding \$5 000;
- (e) make any other order the court considers appropriate.

[46] There is much conflicting evidence provided by the respondent. There is much financial documentation that the respondent has failed to provide or has not provided in a timely manner. He is still in breach of the rules and Basran J.'s JCC order regarding production of financial documentation and a complete Form F8 Financial Statement.

[47] As noted, the respondent was fined for this with the balance of the application by the claimant for fines for non-disclosure dismissed by Vos A.J.

[48] The respondent points out that there was no claim for a fine included in the claimant's notice of application and argues that the issue is res judicata because of the order of Vos A.J.

[49] The respondent is, however, in continuing breach of his disclosure obligations. This resulted in such a confusing mass of conflicting income evidence that, not only did these applications require a full day of court time, but I also have since had to wade through this conflicting material to come to some sensible interim conclusions.

[50] As I read s. 213 of the FLA, the court is empowered to levy a fine for failure to disclose financial information even absent an application in that regard. I advised counsel for the respondent of my reading of the section, and she did not provide me with any argument contra.

[51] As a result, due to the failure of the respondent to provide the required information despite the fine ordered by Vos A.J., I conclude that a further fine is necessary to impel the respondent to comply. The respondent will pay a fine of \$5,000 to the claimant for failure to provide documentation required by the Rules and as ordered by Basran J. That fine is payable forthwith.

[52] As to the pre-tax corporate income of the Langley day care, I am not satisfied that it is appropriate to include it in the respondent's income at this time. It is not something that is to be automatically included in income but is a fact specific exercise: *Kowalewich v. Kowalewich*, 2001 BCCA 450, referred to by the respondent in his submissions. There, the Court of Appeal noted:

[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 v. Pavlakis* (1997), 82 R.F.L. (4th) 75] 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).

[ ]

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.

[53] The success of that business is critical for the parties' income, and I conclude that it is necessary for the business to have the cushion argued for by the respondent at present.

[54] As to the interim support ordered by Basran J. at the June 25, 2024, JCC, that was made on an interim, without-prejudice basis. There had not been proper financial disclosure at the time. I am satisfied that the order was thus made with the intention that it be varied if subsequent disclosure provided a different income picture. As such, I conclude that it was made under the Family Law Act and not the Divorce Act and that I have jurisdiction to vary the order.

[55] I agree that it is appropriate to impute an income to the claimant. She does not appear to have taken any steps to attempt to achieve the required self-sufficiency and I consider that she is intentionally unemployed but capable of working.

[56] As was noted in *Shapiro v. Simpson*, 2016 BCSC 211:

[175] Section 19(1) of the Guidelines provides in relevant part that:

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;

[176] The basic principles concerning imputing income to a parent, where it appears that the parent is underemployed, are well-known, and include the following:

- (a) there is a duty to seek employment where a parent is healthy and there is no reason why the parent cannot work;
- (b) when imputing income on the basis of intentional unemployment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work and other obligations;
- (c) a desire simply to stay home with a child is not sufficient to invoke the exception in s. 19(1)(a) of the Guidelines. A parent who chooses to work less than full-time must justify that choice by evidence of the needs of the children;
- (d) bad faith is not required, and a parent is intentionally under-employed if the parent chooses to earn less than he or she is capable of earning.

[57] I believe that it is reasonable to attribute more than minimum wage employment to the claimant given her education and experience, but I acknowledge that she has been a stay-at-home mother and unemployed for essentially the parties' whole relationship. I therefore attribute an annual income of \$50,000 to the claimant.

[58] Although the respondent's income is greater than \$150,000, I am satisfied that the guidelines should apply. Child support will be calculated on the guideline amount for these incomes commencing July 1, 2024.

[59] The benefit to the claimant of having a rent and mortgage-free residence should be considered in the award of spousal support. I see no need to deviate from the Spousal Support Advisory Guidelines despite the amount of the respondent's income; thus, the claimant will have spousal support based on the Spousal Support Advisory Guidelines at the low end of the scale commencing July 1, 2024.

[60] The respondent will have credit for all amounts paid to date for child and spousal support.

[61] The parties assured me that if I determined what the appropriate guideline income was for them, they would be able to calculate the necessary support. If there is any issue, there is liberty to apply.

[62] As I concluded earlier, I find the respondent's 2024 income was \$527,963.67.

- [63] As at July 1, 2025, I conclude that the respondent's income increased by \$96,000 per annum due to the income from the Squamish day care.
- [64] If my conclusions do not reflect the respondent's reality, it is on his head for his failure to properly disclose his financial circumstances. Section 213(2)(b) of the FLA gives me authority to impute income in such circumstances, and I consider these amounts appropriate and warranted here.
- [65] The other orders sought by the claimant are granted as follows:
- a) The parties will share the s. 7 expenses for the children, with the claimant paying 26% and the respondent paying 74%.
  - b) The respondent will pay all the private school expenses for the one child enrolled in private school as due and the claimant will pay her share to the respondent within 30 days after being provided with evidence of payment by the respondent,
  - c) Either of the parties may pay the children's dance expenses as due, and the non-paying party will reimburse the paying party within 30 days of receiving evidence of payment.
- [66] As to para. 4 of the claimant's notice of application, seeking written notice from the respondent of income received from 1346984 B.C. Ltd., as I have concluded what income is being received and have determined its start date, there is no need for this order absent a change of circumstances, and it is therefore dismissed.
- [67] Although the success on this application was somewhat mixed, I have concluded that the claimant was substantially successful. I have also concluded that the actions of the respondent in failing to provide timely and clear financial disclosure resulted in this application first being necessary and second being as lengthy as it was. As a result, the claimant will have her costs of this application in the amount of \$2,000, payable forthwith and in any event of the cause.

### Analysis and Conclusion on the Respondent's Application

[68] Rule 9-1 of the Rules sets out the procedure for demanding and obtaining production of documents in addition to those listed in a list of documents.

[69] That procedure provided in Rules 9-1(8) to (10) includes:

Party may demand additional documents

- (8) If a party who has received a list of documents believes that the list should include documents or classes of documents that
  - (a) are within the listing party's possession, power or control,
  - (b) relate to any or all matters in question in the family law case, and
  - (c) are additional to the documents or classes of documents required under subrule (1) or (6),

the party, by written demand that identifies the additional documents or classes of documents with reasonable specificity and that indicates the reason why such additional documents or classes of documents should be disclosed, may require the party who prepared the list to

- (d) amend the list of documents,
- (e) serve on the demanding party the amended list of documents, and
- (f) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (12) and (13).

#### Response to demand for documents

- (9) A party who receives a demand under subrule (7) or (8) must, within 35 days after receipt, do one of the following:
  - (a) comply with the demand in relation to all of the demanded documents;
  - (b) comply with the demand in relation to those of the demanded documents that the party is prepared to list, and indicate, in relation to the balance of the demanded documents,
    - (i) why a supplementary list of documents that includes those documents is not being prepared and served, and
    - (ii) why those documents are not being made available;
  - (c) indicate, in relation to the demanded documents,
    - (i) why a supplementary list of documents that includes those documents is not being prepared and served, and
    - (ii) why those documents are not being made available.

#### Application for production of documents

- (10) If a party who receives a demand under subrule (7) or (8) does not, within 35 days after receipt, comply with the demand in relation to all of the demanded documents, the demanding party may apply for an order requiring the listing party to comply with the demand.

[70] Although the claimant suggested that the document demand made by the respondent did not comply with Rule 9-1(8), and that is required before relief can be obtained under Rule 9-1(10), I am satisfied that a sufficient, if somewhat brief, basis for the demand was set out in respondent's counsel's letter of May 20, 2025.

[71] The claimant apparently only responded by providing a swath of documents the day before this hearing. The respondent provided an affidavit the morning of the application, September 9, 2025. That affidavit sets out that the documents provided by the claimant were incomplete.

- [72] I am satisfied that the documents requested by the respondent are appropriate. They go to the need of the claimant, the determination of family assets and debts, whether the claimant has any income or undisclosed financial resources, and her efforts to achieve economic self-sufficiency.
- [73] I am satisfied that the documents sought have not been provided in their entirety, so the order sought in para. 1 of the respondent's notice of application, set out in para. 7 above, is granted.
- [74] As to the claimant's position regarding the fine sought in para. 2 of the respondent's notice of application, essentially it was twofold, firstly, that they are attempting to obtain the documents sought and provide them as quickly as possible and, secondly, that the fine sought was overkill compared to the failures of the respondent in document disclosure. No objection was taken to the relevance of the documents sought.
- [75] These documents were first sought by the respondent by letter of March 27, 2025, followed up by another letter of May 20, 2025, which, as noted, sets out the rationale for requiring production. Even if the date of the second letter is used, the claimant failed to respond at all for almost four months; five-and-a-half months from the first letter. That lack of response required a hearing of the application and that is precisely why the courts are so clogged with unnecessary financial disclosure and document applications in family matters.
- [76] The rule is clear. The party receiving a demand must provide a response within 35 days. Failure to do so is a breach of the Rules that entitles the court to levy a fine.
- [77] This court in *Cunha v. Cunha*, 1994 CanLII 3195, 99 B.C.L.R. (2d) 33 (S.C.) noted that non-disclosure of assets was the cancer of family litigation. Regrettably, the situation has not improved in the more than 30 years since.
- [78] Refusal or failure to produce relevant documents is not necessarily intentional non-disclosure of assets, but it is still a serious problem that confounds family litigation. It is deserving of serious rebuke. It stems from a cavalier attitude on the part of both counsel and clients to both the Rules and court orders, which in turn results in applications that should be unnecessary and brings the administration of justice into disrepute.
- [79] Thus, the fine sought by the respondent is perfectly justified and the order sought in para. 2 of his notice of application in that regard is granted. The claimant will forthwith pay a fine of \$1,000 to the respondent for her failure to comply with the rules for document disclosure. The respondent may set off this \$1,000 fine against the amounts owing to the claimant.
- [80] The respondent is entitled to his costs on this application from the claimant. I assess them at \$1,000, as this application took up only a small part of the day. Those will also be payable forthwith and the respondent is entitled to set them off against the amounts owing to the claimant.

"Muir A.J."

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