
CANADA / JUDGMENT

T.C. v. A.J.

2021 BCSC 1696

COURT

Supreme Court of British Columbia

DECIDED

27 August 2021

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2021 BCSC 1696 T.C. v. A.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.C. v. A.J.,

2021 BCSC 1696

Date: 20210827

Docket: E111109

Registry: Vancouver

Between:

T.C.

Applicant

And:

A.J.

Respondent

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

In Chambers

Counsel for the Applicant:

C.P. Amundsen

The Respondent, acting on his own behalf:

A.J.

Amicus Curiae:

P.J. Reimer

Place and Dates of Hearing:

Vancouver, B.C.

October 16, 2020

January 14, 2021

Place and Date of Judgment:

Vancouver, B.C.

August 27, 2021

I. INTRODUCTION

- [1] This family matter involves a protracted history of financial non-disclosure and non-payment of child support by the father, who lives in New Zealand. The father has brought an application under the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29 [ISOA] to confirm, with some exceptions, an amended provisional variation order of the New Zealand Family Court ("Provisional Order") regarding his child support obligations and related arrears. The mother contests the confirmation of the Provisional Order due to the father's incomplete financial disclosure and his Federal Child Support Guidelines, SOR/97-175 income over recent years, which is higher than that imputed by the New Zealand Court. The parties also seek confirmation of their respective incomes for child support purposes from 2019 onward.
- [2] The father's history of non-payment has resulted in the engagement of the Family Maintenance Enforcement Program ("FMEP") under the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127 [FMEA] and New Zealand's Inland Revenue Department ("IRD"), which performs the same function as the FMEP. During the course of these proceedings, the father has underscored a renewed commitment to pay child support for his daughter, and he also expressed his regret and apology for not doing so in the past.
- [3] On February 12, 2014, Master Muir ordered the father to disclose his income over several years, imputed income to him based on the limited evidence before the Court, and also ordered he pay certain arrears, future child support, and s. 7 expenses ("Master Muir's Orders"). Master Muir's Orders were registered in the New Zealand Family Court in Wellington on July 15, 2014, and were recognized and filed as maintenance orders of the New Zealand Family Court. In the fall of 2015, the father brought proceedings before the New Zealand Family Court to vary Master Muir's Orders. He was partially successful, as discussed below.

- [4] The father's financial non-disclosure has been a serious ongoing problem, both before and after Master Muir's Orders. While he made income disclosures to the IRD, he did not fully disclose his yearly incomes to the mother until August 30, 2019, when he swore an affidavit that produced his New Zealand income tax returns from 2015 to 2019. In 2019, he also disclosed his tax returns to the mother regarding his rental income in England for the years 2015-2018. His 2019 UK return was not prepared for filing at that time but he disclosed his net rental income for that year.
- [5] At the hearing before me, the father's income disclosure was complete, and the parties confirmed they had reached the following agreement:
- (a) the father will pay all arrears properly due and owing;
 - (b) child support payments will continue until May of 2025, when their daughter graduates from university;
 - (c) section 7 expenses will be shared proportionately until their daughter reaches the age of 19 in 2022; subsequently, s. 7 expenses will be shared equally;
 - (d) the father will send his tax returns to the mother and will share financial information by May 1st every year, based on New Zealand's tax year;
 - (e) the mother will keep the father updated on all fees and expenses for their daughter and will provide him with receipts; and
 - (f) there will be no change in child support or arrears unless there is a material change in circumstances.
- [6] In light of the evidence before me, I am satisfied this agreement ought to be confirmed as a consent order. I so order. I note item "f" reflects the current law in British Columbia in any event. In addition, I also order that the mother provide her yearly financial information and income tax returns to the father to inform her share of s. 7 expenses.
- [7] In regard to the New Zealand Provisional Order, the outstanding issues before me are:
- A. What portions of the New Zealand Provisional Order are confirmed?
- 1. What is the duration of father's child support obligations?
 - 2. Should the portion of the Provisional Order that varies Master Muir's child support arrears, from the date of the daughter's birth to December 31, 2013 (as calculated by Master Muir) be confirmed?
 - 3. Should that portion of the Provisional Order that declines to vary clause 5 of Master Muir's Orders (regarding the father's s. 7 arrears from the date of the daughter's birth to December 31, 2013) be confirmed?

4. Should the Provisional Order varying the father's income for the financial year ending March 31, 2014 be confirmed?
 5. Should the Provisional Order varying the father's income for the financial year ending March 31, 2015 be confirmed?
 6. Should the Provisional Order varying the father's income for the financial year ending March 31, 2016 be confirmed?
 7. Should the Provisional Order varying the father's income for the financial years ending March 31, 2017 and March 31, 2018 be confirmed?
 8. Should the Provisional Order varying the father's income in the financial year ending March 31, 2019 be confirmed?
 9. What is the Mother's Guideline income from 2015 and onward?
 10. What are the father's Section 7 costs?
 11. What interest should apply to outstanding arrears?
- [8] The parties both assert that this Court has the discretion to confirm the New Zealand Provisional Order or to decline to do so. Following a review of the ISOA, which I address later in these reasons, I agree. This Court has the discretionary authority to exercise its own independent judgment on the issues before me based on the laws of British Columbia: see ss. 31 and 32 of the ISOA; *Herriman v. Beresford*, 2012 BCCA 437 at para. 19; *Mathers v. Bruce*, 2005 BCCA 410.

II. BACKGROUND FACTS

- [9] The parents are well-educated and capable professionals. The mother is a chartered accountant. The father is a product designer. They never married or lived together. They had a two-year relationship which started in 2000. Their daughter, H., was born in London, England on January 7, 2003.
- [10] The mother and the daughter remained in England until they immigrated to British Columbia in May 2010. They have lived here since. The New Zealand Family Court found that the mother's intention to move to Canada was "signalled" to the father as early as 2005: *Reasons of New Zealand Court*, August 7, 2018 at para. 14.
- [11] The father lived in England until 2002. He then moved back to New Zealand to complete a degree but returned to London in 2004; he deposes he did so to be close to his daughter. While the father's relationship with his daughter waned following her move to Canada with her mother, he has remained in contact with his daughter, and has expressed a desire to be a meaningful part of her life.

- [12] In July 2007, the father and his new partner purchased a property in London, which they still own. It has generated rental income since they left England in 2010 to move back to New Zealand.
- [13] In June 2012, the father and his partner purchased a property in Wellington, New Zealand. The New Zealand Family Court noted that although only the father's wife's name is on the title to this property, it is their family home. The couple had a son who was born March 8, 2015. They have since had another child, a daughter.
- [14] In its reasons for judgment, the New Zealand Family Court affirms the following additional background facts;
- [15] [The father] made sporadic contributions towards [the daughter's] maintenance between January 2003 and September 2008 comprising of two or three payments shortly after her birth, and two further payments in November and January 2006.
- [16] In September 2008 [the father] proposed a privately managed maintenance agreement, to start making monthly payments and to back date his payments to [the daughter's] birth. [The father] proposed paying £85 per week which he calculated to be 15% of his income at the time. This was confirmed in an email from [the father] to the mother and accepted by her ("the 2008 agreement").
- [17] Within a year of the 2008 agreement [the father] had made some payments but defaulted on others. He owed arrears of £2,493 as at the end of October 2009, and he had made no payments towards the amounts owed from before September 2008. He resumed payments in 2010 paying a total of £1,288 up until [the mother] and [the daughter] returned to Canada in May 2010. No further payments were made until the Canadian order was registered in New Zealand in 2014 and the New Zealand Inland Revenue Department became involved.
- [18] On 15 September 2010 [the mother's] lawyer wrote to [the father] issuing demand for payment of child support arrears owed which by then were calculated to be \$CAN27,959. This amount included arrears from the date of [the daughter's] birth. Confirmation of [the father's] income was sought to calculate his child support liability from 2008 and for ongoing years. The father was encouraged to instruct a Canadian lawyer and advised that court proceedings would be issued if no response was received within 28 days.
- [19] In November 2010 [the father's] UK property was listed for rent and by December 2010 [the father] had resigned his employment as a senior graphic designer and had moved to New Zealand. Initially he advised [the mother] he was away on holiday and suspended his contact with [the daughter] for three months. In February 2011 [the father] advised [the mother] he would remain in New Zealand temporarily until June 2012 and his contact with [the daughter] resumed.

A. Master Muir's Order

- [15] The mother brought proceedings in British Columbia to enforce payment of child support, s. 7 expenses, and child support arrears. Notably, in 2011, 2012, 2013, and 2014, the father did not pay any child support, s. 7 expenses, or arrears. In its reasons for judgment, the New Zealand Family Court describes the British Columbia proceedings as follows:
- [20] [The mother] applied for a child maintenance order in April 2011. The father was served via email while holidaying in Fiji. On his return to New Zealand he applied for and received an unemployment benefit through Work and Income New Zealand. He instructed a Canadian lawyer and responded to [the mother's] claim, but did not provide all the information about his income which was needed to calculate his liability under Canadian law.
- [21] On 29 January 2014 [the father's] lawyer withdrew from representing him in the Canadian proceedings. [The father] took no further steps and the Canadian order was made as sought by [the mother] on 12 February 2014. The Canadian order required [the father] to provide to [the mother] documents relating to his income and asset position as identified in the order and specifically reserved to [the father] the right to apply to set aside or vary the Canadian order within 60 days of service of the order on him. No such application was made by [the father].
- [16] On February 12, 2014, in addition to issuing numerous orders requiring the father to make financial disclosure, including income tax assessments from 2007-2013, Master Muir ordered, in part, as follows:
2. the Respondent shall pay to the Claimant interim support in the amount of \$923.00 Canadian per month commencing on January 1, 2014 and continuing on the 1st day of each and every month thereafter for the support of the child, [name omitted], born January 7, 2003, based on an imputed income of \$100,309.00 Canadian;
 3. the Respondent shall pay to the Claimant his proportionate amount of special and extraordinary expenses regarding the aforesaid child in the amount of \$283.00 per month Canadian commencing on January 1, 2014 and continuing on the 1st day of each and every month thereafter;
 4. the Respondent shall pay to the Claimant arrears for support for the aforesaid child dating back to the child's birth in the amount of \$75,816.00 Canadian;
 5. the Respondent shall pay to the Claimant arrears for his proportionate amount of special and extraordinary expenses regarding the aforesaid child dating back to the child's birth in the amount of \$57,722.00 Canadian;

6. the Respondent shall have liberty to apply to set aside or vary this order within sixty (60) days of service of a copy of this order upon him, provided that the Respondent shall give at least seven (7) days notice of such application to the Claimant, and the Claimant shall have liberty to serve a copy of this order upon the Respondent by way of his email address which is [address omitted]; and
 7. the Claimant be and is hereby awarded her costs of this application.
- [17] Although the father was at liberty to apply to set aside or vary Master Muir's Orders and was provided 60 days to do so, he did not. Nor did he appeal.
- [18] Master Muir's Orders were registered in the New Zealand Family Court in Wellington on July 15, 2014.
- [19] After Master Muir's orders and since December 2014, with the involvement of the IRD, the father has been paying monthly child support, coupled with small monthly contributions towards his child support arrears. At the time of registration with the FMEP in 2014, under Master Muir's Orders, the father owed \$137,156.00 in arrears. As of January 14, 2021, he still owed \$124,864.06 in arrears according to FMEP records.
- [20] The registration of Master Muir's Orders in New Zealand meant it was now a New Zealand Court Order (this Court Order is to be distinguished from the Provisional Order which was issued following the hearing before the New Zealand Family Court). Accordingly, the IRD deducted ongoing monthly payments in respect of interim support and special expenses of \$977.08 (NZ) and \$299.58 (NZ) respectively per month. The father was required to make these payments from January 1, 2014. He was also liable to pay arrears of support and special expenses of \$80,258.01 (NZ) and \$61,103.90 (NZ), respectively. These amounts were calculated from the amounts set out in Master Muir's Orders, converted to New Zealand dollars.
- [21] The original New Zealand Order, issued in 2014, also confirmed the original clause contained in Master Muir's Orders that provided the father with the right to apply to vary the order within 60 days of service of the order on him.

B. Proceedings before the New Zealand Family Court

- [22] On October 5, 2015, the father applied to the New Zealand Family Court to vary Master Muir's Orders. He requested the following variations:

- (a) deletion of clause 2 [of Master Muir's Orders] and substituting the following:

the respondent shall pay the claimant child support for the child to raise [Daughter] born 7 January 2003 based on his actual income, calculated in accordance with the formula assessment under the New Zealand Child Support Act 1991 until [the daughter] obtains the age of 18 years or becomes financially independent of the respondent.

- (b) discharging clause 3, which requires the father to contribute to the daughter's special expenses;
- (c) varying clause 4 by reducing the amount of arrears to NZ\$13,527.43;
- (d) discharging clause 5 of the order, which requires payment of arrears for special expenses dating back to the daughter's birth;
- (e) remitting any penalty interest due under the orders;
- (f) discharging clause 7 of the order, which requires payment of the mother's cost in regard to the proceedings before Master Muir.

[23] The mother opposed the father's variation application. His application was set down for a hearing before the New Zealand Family Court on October 25, 2016, was heard in part, and concluded on November 1, 2016. That Court also received written submissions on December 19, 2016, and rendered its decision the following August.

C. Reasons and Decision of the New Zealand Family Court

- [24] During the course of its reasons, the New Zealand Family Court noted that because the father "had not provided proof of his earnings" to the "Canadian Court", it was required to impute his income. The New Zealand Court concluded that Master Muir's Orders should be varied but did so expressly on a provisional basis:
- [71] [The father] was in fulltime employment in the UK earning the equivalent of NZ\$78,064 at the time of the 2008 agreement and the equivalent of NZ\$77,325.64 in 2010 when [the mother] sought to enforce the 2008 child support agreement. These amounts are similar to the NZ\$78,243.61 he earned during his first year of full time employment in New Zealand. I find had the father had been able to obtain fulltime employment in New Zealand immediately on his return to New Zealand in 2010 or remained in the UK until he had secured full time employment in New Zealand, his salary was likely to have been around NZ\$78,000 in the years ending 2011, 2012 and 2013.
- [72] The only evidence of additional income earned by him in respect of his business interests, companies or property ownership is the NZ\$2,000.00 net rental from the UK property.
- [73] I consider it is appropriate to use NZ \$80,000 as the base income from which to assess [the father's] income and therefore child support liability from 2010 to the financial year ended 31 March 2016. This is the income he could and should have been earning over that time but chose not to. The 2008 agreement should be the basis for determining his liability until then.
- [25] The New Zealand Court also made additional findings of fact relating to the father's unfortunate approach to his child support obligations:

- [74] [The father] made the decision to return to New Zealand without seeking fulltime employment. The consequence of his decision which should not be borne by [the daughter] or [the mother]. He knew his child support obligations at that time. They were clearly set out in the 2008 agreement and this had been confirmed to him in the letter he received from [the mother's] lawyer in September 2010. His decision to leave his well remunerated fulltime employment in the hope that he would be able to find similar employment in New Zealand and his then apparent inability or unwillingness to find employment which would, at the very least, cover his child support obligations is difficult to reconcile with his apparent willingness to pay child support.
- [75] I find he has prioritised his lifestyle over his financial obligations to [his daughter] and continues to do so. He decided to leave paid employment in 2010 without alternative employment and then to have a number of years out of the work force, supported by his partner, during which time he was free to travel and enjoy holidays overseas and in New Zealand.
- [76] He has obtained an interest in a home in New Zealand whilst retaining a property in the UK, thereby tying up capital which could have been used to pay his child support debts or used as security to borrow money to pay those debts. He is now in the privileged position of owning homes in both London and Wellington whilst owing a significant child support debt.
- [77] He has chosen to have another child, with all the ongoing financial commitments which come with being a parent, and being the primary financial provider for the family.
- [26] The New Zealand Family Court notes that on April 2, 2016 the father was involved in a serious boating accident. However, the Court did not have the father's income tax information beyond March 31, 2015. Accordingly, the Court imputed income in the years that followed and/or ordered that the father's actual income be used.
- [27] The Father has since recovered from the boating accident and his Guideline income increased beyond \$80,000 (NZ) even in the years following this accident. In November 2020, he was hired in a new position; he is now earning \$130,000 annually plus an additional 15% of his salary each year in shares. He also continues to receive rental income from the property in England.
- [28] In regard to the father's argument that he should not have to contribute to special and extraordinary expenses, the New Zealand Family Court reasoned:
- [80] I do not accept [the father's] assertion that he should not have to contribute towards special and extraordinary expenses because he was not consulted before those were incurred. The evidence from [the mother] shows she did attempt to engage him in those discussions. Those expenses which include child care and extra curricula activities were eventually accepted by [the father] as being reasonable and/or necessary. [The mother] was unable to stay at home to care for [the daughter] and needed to buy in child care to ensure she could earn sufficient to meet her and [the daughter's] costs. She certainly could not rely on [the

father's] assistance.

[81] [The father's] liability to pay a share of special and extraordinary expenses will, however, need to be recalculated as those have been assessed using incorrect income figures.

[29] On August 7, 2017, after a thorough review of the evidence, the New Zealand Family Court varied Master Muir's Orders as follows:

[82] Having assessed all the evidence and the s 145C factors I am satisfied that the Canadian order must be varied in the following way:

(a) Clauses 2 and 3 which determine [the father's] liability for child support and special expenses are confirmed but the amounts payable are to be recalculated using:

(i) the income figure of NZ \$80,000 for the financial years ending 31 March 2011 to 31 March 2016; and

(ii) [the father's] actual earnings from ACC and his employer for the financial years ending 31 March 2017 and 2018;

(iii) From then on until [the daughter] reaches the age of 18 years, or 20 years if she engages in a course of full-time education or training, and provided she remains financially dependent on [the mother], then using the greater of [the father's] actual income or the sum of NZ\$80,000.00.

(b) Clause 4 by substituting the amount of arrears now due in accordance with the amended calculation of [the father's] liability per clause (a) above.

[83] Clause 5 is confirmed without variation. There is no basis for remitting arrears for special expenses dating back to [the daughter's] birth.

I also find no basis for remitting the penalty interest payable or discharging the clause requiring payment of [the mother's] costs. She and the IRD have been put to additional cost because of the way [the father] has conducted himself in both sets of proceedings. The Canadian proceedings would not have been necessary had he complied with the 2008 agreement. He had an opportunity to fully participate in the Canadian proceedings but did not do so. He also had an opportunity to have his liability properly assessed after the Court order was made.

[84] The variation order made is provisional only and is to be referred to the Supreme Court of British Columbia for confirmation. It appears to me the order originally made by that Court was intended to be provisional in that [the father] was ordered to provide information about his income and given 60 days from the date the order was made to do so. I infer from these clauses and the reference to "interim support" in the order, an intention by the Canadian Court to review and reconsider his liability once better information about his financial situation was available.

[85] In any event, I consider it appropriate for the Canadian Court to consider the variations I have ordered on the basis of the evidence available to me and law applicable in New Zealand, and to confirm the order as final after the amounts payable are recalculated, subject to that Court accepting the variations as consistent with Canadian law.

D. Events following the New Zealand Court's August 7, 2017 Decision

[30] On or about August 28, 2017, the father launched an appeal of the Provisional Order and the mother cross-appealed. By consent, both appeals were abandoned with the father agreeing to pay the mother's appeal costs.

[31] Approximately a year later, the New Zealand Family Court released a supplemental decision that awarded costs to the mother as the successful party. This decision also provided clarification that the income figures to be used to calculate the father's income for the period preceding the financial year ending March 31, 2011 would be the father's actual income. The Court's Amended Provisional Variation Order was issued on September 13, 2018 and provided:

The Order made in the Supreme Court of the British Columbia on 12 February 2014 and registered in New Zealand on 15th July 2014 under s.135 of the Family Proceedings Act 1980 is provisionally varied as follows:

- (a) Clauses 2 and 3 which determine [the father's] liability for child support and special expenses are confirmed, but the amounts payable are to be recalculated using:
 - (i) The income figure of NZ\$80,000.00 for the financial years ending 31 March 2011 to 31 March 2016; and
 - (ii) [The father's] actual earnings from ACC and his employer for the financial years ending 31 March 2017 and 2018;
 - (iii) From then on until [the daughter] reaches the age of 18 years, or 20 years if she engages in a course of full-time education or training, and provided she remains financially dependent on [the Mother], then using the greater of [the "father's] actual income or the sum of NZ\$80,000.00.
 - (b) Clause 4 by substituting the amount of arrears now due in accordance with the amended calculation of [the father's] liability per clause (a) above.
- [32] On March 16, 2019, the father filed his application in this Court under the ISOA, for a hearing "respecting confirmation of the said Amended Provisional Order ." In April 2019, the mother once again requested further disclosure of the father's income. However, the father would not provide disclosure without a court order. On May 14, 2019, Justice Schultes directed that the designated authority in New Zealand contact and "have him file with this Court", the following financial documentation:

- a) Copies of his New Zealand Income Tax Returns and Assessments for the tax years to March 31, 2019, 2018, 2017, 2016 and 2015;
- b) Copies of his United Kingdom Income Tax Returns and Assessments for the tax years April 5, 2019, 2018, 2017, 2016 and 2015;
- c) Documents showing receipts, yearly balances and transactions of his holdings of employee shares in Xero Limited (XASX: XRO) since 2012;
- d) Documents showing a breakdown of net rental income from his U.K. property since 2010, including gross rent and any expenses claimed as tax deductions; and
- e) Income or Corporate Tax Returns and Notices of Assessments/Re assessment for his company "Ants Jackson Ltd." for the tax years 2007-2010.

[33] Justice Schultes also awarded the mother's costs of the application and adjourned the matter to September 12, 2019 for purposes of determining "the adequacy of the material received from the Reciprocating Jurisdiction and setting a date for an actual hearing."

[34] Because there was no live proceeding before the New Zealand Court, Justice Schultes' order was not enforceable in New Zealand. As noted above, the father finally disclosed his financial records and income to the mother in August 2019. This matter was to proceed in February 2020, but was adjourned by consent to obtain additional court time to complete the hearing.

III. LEGAL ANALYSIS AND DISCUSSION

[35] My analysis will begin by addressing what portions, if any, of the New Zealand Variation Order should be confirmed. I will then address the father's and mother's respective Guideline Incomes.

A. What Portions of the New Zealand Variation Order Are Confirmed?

[36] This analysis is shaped and informed by the various provisions of the ISOA, primarily those set out herein. In Mathers, at para. 4, our Court of Appeal succinctly stated the history and purpose of the ISOA as follows:

[4] The ISO Act is based on model uniform legislation which was developed by a standing committee of officials from the federal, provincial, and territorial governments for the purpose of facilitating the interjurisdictional recognition, variation, and enforcement of support orders made in family proceedings. It repealed and replaced Part 8 of the Family Relations Act, which was entitled "Reciprocal Enforcement of Maintenance Orders".

[37] It was within this statutory regime that the New Zealand Family Court made the provisional variation order to vary Master Muir's Orders.

[38] A "provisional variation order" is defined in s. 1(1) of the ISOA:

"provisional variation order means:

- a) a variation of a support order of a court of British Columbia that has no effect until confirmed by a court in a reciprocating jurisdiction, or
- b) a similar order made in a reciprocating jurisdiction and received for confirmation in British Columbia.

"Support" is defined in s. 1(1) of the ISOA as including: "support, maintenance or alimony payable for a person or for the child of a person or for both". A "support order" is defined in s. 1(1) of the ISOA as follows: "an order or interim order, made by a court or by an administrative body, that requires the payment of support ."

[39] Sections 28-34 of Division 2 of the ISOA apply to variations of provisional child support orders if an applicant, such as the father in this case, resides outside British Columbia in a reciprocating jurisdiction. Section 31(1) of the ISOA provides that I must apply the laws of British Columbia where, as here, there is entitlement to child support in British Columbia:

31(1) In determining entitlement to receive or to continue to receive support for a child, the British Columbia court must

- (a) subject to paragraph (b), apply the law of British Columbia, and
 - (b) if there is no entitlement to support for the child under the law of British Columbia, apply the law of the jurisdiction in which the child habitually resides.
- (2) In determining the amount of support to be paid for a child, the British Columbia court must apply the law of British Columbia.
- (3) In determining a party's entitlement to receive or continue to receive support other than child support, and the amount of support, the British Columbia court must
- (a) subject to paragraph (b), apply the law of British Columbia, and
 - (b) if the party is not entitled to support under paragraph (a), apply
 - (i) the law of the jurisdiction in which the party habitually resides, or
 - (ii) if the party is not entitled to support under subparagraph (i), the law of the jurisdiction in which the parties last maintained a common habitual residence.

[40] Section 32 sets out the powers of a British Columbian court in regard to variation orders as follows:

32(1) After considering the evidence and documents with respect to a support variation application, a British Columbia court may do the following in respect of a party, a child or both:

- (a) make a support variation order;
- (b) make an interim support variation order and adjourn the hearing to a specified date;

- (c) adjourn the hearing to a specified date without making an interim support variation order;
 - (d) refuse to make a support variation order.
- (2) An order under this section may also provide for one or more of the following:
- (a) payment periodically, annually or otherwise, and either for an indefinite or limited period or until the happening of a specified event;
 - (b) payment of a lump sum directly or in trust on terms provided;
 - (c) charging of property with payment under the order;
 - (d) payment of support in respect of any period before the order is made;
 - (e) payment for expenses arising from and incidental to
 - (i) the prenatal care of the mother or child, or
 - (ii) the birth of a child.
- (3) A British Columbia court that refuses to make a support variation order must record the reasons for its refusal.
- [41] Under this statutory framework, unless this Court confirms the Provisional Order, it is unenforceable in this jurisdiction. Having carefully considered the matter in light of British Columbian law, I am unable to confirm the Provisional Order in a number of respects for the reasons set out below.
1. What is the duration of the father's child support obligations?
- [42] Since the New Zealand Order was issued, the parties have agreed that child support and special expenses should be shared until their daughter completes university in 2025. This agreement now forms part of the consent order, set out earlier in these Reasons, and supplants clause a) (iii) of the Provisional Order set out above, which would have terminated the father's child support and s. 7 obligations when the daughter turned either 18 or 20 years of age (depending on the status of her educational pursuits). Accordingly, I do not confirm this aspect of the Provisional Order.
2. Should the portion of the Provisional Order that varies Master Muir's child support arrears, from the date of the daughter's birth to December 31, 2013 (as calculated by Master Muir), be confirmed?
- [43] I decline to confirm the Provisional Order to the extent it varies Master Muir's Orders regarding the arrears due and owing by the father on and before December 31, 2013. To do so would not conform to the laws of British Columbia relating to the retroactive variation of child support orders.

- [44] The application of s. 152 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], and the reasoning in *Willick v. Willick*, [1994] 3 S.C.R. 670 and *Colucci v. Colucci*, 2021 SCC 24, do not permit a variation of Master Muir's Orders regarding the father's child support obligations for this period for the following reasons.
- [45] Pursuant to s. 152 of the FLA, the Court may change, suspend, or terminate an order respecting child support, and may do so prospectively or retroactively: e.g., see *Michel v. Graydon*, 2020 SCC 24. Sub-section 152(2) requires that before making such an order, the Court must be satisfied that at least one of the following criterion exists:
- 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; or
 - c) evidence of a lack of financial disclosure by a party was discovered after the last order was made.
- [46] In the instant case, there has been no material change in circumstance that has occurred since the Master Muir's Orders were made. The father's actual income up to and including December 2013 has always been what it was; it did not change during that period. The only change is that the father has now, after the passage of considerable time, chosen to disclose the income he earned in the years prior to the hearing before Master Muir. However, the father's misconduct in failing to disclose his financial income does not constitute a material change within the meaning of that s. 152 of the FLA.
- [47] Clearly, the father knew what his income was prior to the Master Muir Order but chose not to disclose it. His income was imputed as a result of his non-disclosure; further, he had an opportunity in 2014 to disclose his income and set aside the income Master Muir imputed. Again, he cannot now attempt to go behind Master Muir's order, based on his own misconduct, and seek to retroactively vary her order. Such a result is not countenanced by the law of British Columbia. Failures to disclose material financial information is a serious problem; it has been described as the "cancer" of family law litigation: *Michel*, at para. 33, citing *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.). The Court simply cannot accommodate such non-disclosures.
- [48] My conclusions in this regard are confirmed by the reasons of the Supreme Court in *Colucci*, at para. 63:

Of course, a payor whose income was originally imputed because of an initial lack of disclosure cannot later claim that a change in circumstances occurs when he or she subsequently produces proper documentation showing the imputation was higher than the table amount for their actual income. The payor cannot rely on their own late disclosure as a change in circumstances to ground a variation order (*Gray*, at paras. 33-34). This would "defeat the purpose of imputing income in the first place" and act as "a disincentive for payors to participate in the initial court

process" (Trang v. Trang, 2013 ONSC 1980, 29 R.F.L. (7th) 364, at para. 53).

- [49] In sum, I am not satisfied that it is appropriate to confirm or order a retroactive variation of the father's child support obligations for the period prior to Master Muir's Orders. In the wake of the father's non-disclosure, Master Muir ordered that he pay the mother specified child support arrears, from the date of their daughter's birth to December 31, 2013 in the amount of \$75,816.00 (CAD). I confirm this amount as due and owing for that period, less what the father has already paid in arrears to date, as it is wholly inappropriate for the father to now seek to vary this order on the basis of documents he was obliged to produce at the time and did not.
- [50] In concluding whether I should confirm the New Zealand Family Court's retroactive variation of Master Muir's Orders, I have also reviewed the Supreme Courts reasons in D.B.S. v. S.R.G., [2006] 2 SCR 231. I have considered not only the father's past misconduct, but also the financial impact and hardship on the father of the arrears orders. I have also considered the impact of the circumstances on all others affected including the daughter, H. I am mindful that the father's outstanding arrears are significant and that this is a burden to him. Nevertheless, I am satisfied that the father should remain responsible for the entirety of the arrears that have not yet been paid. This is a just and fair result given that these arrears accrued over many years of non-disclosure and non-payment of child support, all of which caused the mother and daughter significant hardship over a significant span of time. Nevertheless, as I discuss later in these Reasons, given the father has two other children to support, coupled with ongoing child support and s. 7 expenses, I have concluded that his outstanding arrears may be paid in installments.
- [51] The mother will also be entitled to interest accruing since Master Muir's Order on unpaid arrears. Interest will be calculated in the usual course by the Director under s. 6.5 of the Family Maintenance Enforcement Regulation.
3. Should that portion of the Provisional Order that declines to vary clause 5 of Master Muir's Orders (regarding the father's s. 7 arrears from the date of the daughter's birth to December 31, 2013) be confirmed?
- [52] In a word, "Yes."
- [53] On the evidence before her, Master Muir ordered special expenses dating back to the daughter's birth and up to December 31, 2012 at \$57,722.00 (CAD). My Reasons, and the applicable law in British Columbia, set out above in regard to the father's child support obligations, apply equally to his s. 7 obligations and the related arrears ordered by Master Muir.

- [54] The Provisional Order, in declining to vary these s. 7 expenses, at clause 5 of Master Muir's Order, conforms to British Columbia law. Accordingly, the father's s. 7 arrears are confirmed at \$57,722.00 for the period from the date of the daughter's birth, up to and including December 31, 2013, less any arrears he has paid to date. As with the father's child support obligations, the calculation of arrears and interest on outstanding s. 7 expenses will be left to the Director of FMEP to determine and address under the Act and Regulations.
4. Should the Provisional Order varying the father's income for the financial year ending March 31, 2014 be confirmed?
- [55] Before commencing my analysis on this issue, I note that the New Zealand Family Court referenced the "financial years ending March 31st" in its Provisional Order. The Court also set out the father's taxable income, from 2003 to 2015, in a table appended to its reasons entitled "Years Ended March/April" for each of these years. This language corresponds to the end of New Zealand's taxation year, although I also note that, on the father's income tax returns, his taxation years actually began on April 6th and ended on April 5th year of the year that followed. For sake of clarity and consistency with the Provisional Order, I have also referred in my Reasons to the financial year ending March 31st of each year, as stated in the Provisional Order, so that confirmation or non-confirmation of various portions of the Provisional Order corresponds with its own language. I should note, however, that in assessing the father's Guideline income, I have considered the father's income for each taxation year, as it is set out in each of his income tax returns, which includes financial years ending April 5, not March 31st..
- [56] In this light, the analysis in this section will address the three-month period following December 31, 2013 to the financial year ending March/April 2014.
- [57] My conclusion in regard to this period and the reasons underlying it are the same as those for the period ending December 31, 2013; accordingly I will not confirm the Variation Order regarding the father's income for the year ending March/April 2014.
- [58] As discussed above, the father had ample opportunity during this period to disclose his income and vary the Master Muir order in this Court, or to at least begin that process in New Zealand earlier than he did. He could have disclosed his actual income and made submissions as to why his child support and s. 7 obligations should be varied, but he chose not to do so.
- [59] My decision to not vary the father's payment obligations that accumulated during this period is supported by the reasons of the Court in Colucci and also by the analytic approach, endorsed in Willick that: 1) makes child support orders child-centered not parent-centered; 2) requires consideration of the children's needs as the priority, including the relative ability of the parents to pay; and 3) reinforces the joint obligations of parents to financially support their children (Willick, at 689-690). Until at least March 31, 2014, and indeed for all 2011-2013 inclusive, the mother was left to support the daughter on her own with little or no financial support from the father. A variation in favour of the father during this period of time,

requested in October of 2015, would effectively give non-paying parents the ability, if not the incentive, to continue breaching child support orders and then apply to vary such orders retroactively according to when and what suits their finances best, rather than what is in the best interest of the children involved. This is unacceptable.

- [60] In summary, the father's child support obligation of paying \$923 per month and his proportionate amount of special and extraordinary expenses of \$283 per month in 2014 will not be varied for this period and the Provisional Order is not confirmed for this period. As the Supreme Court of Canada reasoned in *Colucci*, a payor cannot ground their own late disclosure as a change in circumstances to justify a variation order. Master Muir's Orders shall also remain undisturbed for this period.
- [61] Again, the calculation of arrears and interest on arrears, giving the father credit for what arrears have been paid, will be left to the Director of FMEP to determine and address under the Act and Regulations.
5. Should the Provisional Order varying the father's income for the financial year ending March 31, 2015 be confirmed? [1]
- [62] As noted above, in 2015, the father applied to the New Zealand Family Court to vary his child support and s. 7 obligations, as he was entitled to do. Both the mother and the father assert that the father's actual income for the financial years ending March 31, 2015 (also referred to by the New Zealand Court as "the financial year ending March/April 2015") is what ought to be used to calculate his Guideline income for child support and s. 7 purposes. The New Zealand Court imputed income to the father for this period of \$80,000 (NZ), which is significantly lower than what the father actually earned that year but less than the Guideline income imputed by Master Muir. For the reasons set out below, I have concluded that the Provisional Order should not be confirmed. However, in my view, the father's Guideline income should nevertheless be varied to be the father's actual income.
- [63] The New Zealand Family Court found that the father earned \$78,243.61 (NZ) for the financial year ending March/April 2014 (\$71,749.39 CAD) and \$107,527 (NZ) for the financial year ending March/April 2015 (\$96,021.61 CAD). The increase in the father's income between these two years constitutes a material change in circumstances under British Columbia law that must necessarily inform the father's child support and s. 7 obligations for that year: see s. 152(2)(a) of the FLA, *Willick*, and *Colucci*.
- [64] Once a material change in circumstance is found, the analysis in *Colucci*, *Willick*, and s. 152 is engaged, each of which supports the variation of Master Muir's Orders for this period. Pursuant to s. 152(2)(a) there was clearly a change in circumstances, as contemplated by the child support Guidelines since Master Muir made her order in February 2014. There is clearly evidence of a substantial nature that was not available before Master Muir (i.e., the father's actual income between April 1, 2014 and the financial year ending March/April 2015), as contemplated by s. 152(b). Further, the father is seeking to jointly support his daughter's child care needs in conformity with the Guidelines; a joint responsibility he is

now taking seriously to his credit: see Willick, at 689-90. Furthermore, it is in the interest of certainty and predictability, as contemplated in Colucci, at paras. 46 and 77, to vary the father's child support obligations according to his actual income in the circumstances before me. Accordingly, the father's Guideline income to March/April 2015 is his actual income for that period of \$96,021.61 (CAD). Of course, the child support payments the father made during this period, as with all subsequent periods, must be deducted from the child support he owes.

- [65] The New Zealand Order did not address the mother's proportionate share of s. 7 expenses for any of the years in question. However, the Guidelines require that the mother's Guideline income also be considered in assessing the appropriate amount of the father's s. 7 obligation, as he is only required to pay his proportionate share of those expenses: see Guidelines, s. 7(2). I will address the mother's Guideline Income below.
6. Should the Provisional Order varying the father's income for the financial year March 31, 2016 be confirmed?
- [66] The New Zealand Court also imputed the father's income to March 31, 2016 at \$80,000 (NZ). The New Zealand Court did not have the benefit of being provided with evidence of the father's actual income in 2016; the evidence before it was current to March/April 2015.
- [67] The total of the father's income, including rental income from the UK was actually \$107,633 (NZ) or \$99,378 (CAD). Accordingly, I am not able to confirm the New Zealand Variation Order of \$80,000 (NZ) for 2016.
- [68] Nevertheless, the father's actual income in 2016 constitutes a material change in circumstances as it comprised "evidence of a substantial nature that was not available during the previous hearing: see s. 152 of the FLA. Further, the facts before me satisfy the factors that should be considered in Colucci and Willick, as discussed above. Those factors also justify retroactively varying Master Muir's Orders on this point. Accordingly, the father's Guideline income is set at his actual Guideline income of \$99,378 for 2016. The variation in the calculation of unpaid arrears will be left to the Director of FMEP to determine and address under the Act and Regulations.
7. Should the New Zealand Provisional Order varying the father's actual income in the financial years ending March 31, 2017 and March 31, 2018 be confirmed?
- [69] Essentially the New Zealand Court ruled that the father's liability for child support and s. 7 expenses be based on his actual income for 2017 and 2018, provided that his income is above the imputed amount of \$80,000 (NZ). Since his income was well above that imputed income, I have no difficulty confirming the New Zealand Provisional Order, as it conforms to the law of British Columbia.

- [70] My conclusion in this regard is supported by my previous reasons. The facts before me satisfy the relevant factors in s. 152 of the FLA, and those underscored in Colucci and Willick as discussed above.
- [71] The father's income tax return confirms that his total income to the period ending March/April 2017, including his rental income from the UK, is \$107,175 (NZ) or \$98,912 (CAD). Notably, his income was somewhat reduced in that financial year, as compared to his previous financial year, due to his boating accident. The sum of \$98,912 (CAD) will be his Guideline income for his child support and s. 7 payments in the financial year ending March/April 2017.
- [72] The father's income tax return confirms that his total income for the financial year ending March/April 2018, including his rental income from the UK, is \$168,267 (CAD). That will be his Guideline income for his child support and s. 7 payments in 2018.
- [73] I note that the father's income in 2018 was substantially higher because he sold shares he received as an employee during that year; these are shares he obtained as partial remuneration in addition to his salary. The father submits, correctly so, that shares should only be included in income when they are sold and become a realized gain. The shares provided to the father confer no immediate benefit from which child support could be paid until, of course, they are sold: see ss. 17 and 18 of the Guidelines and *Brown v. Brown*, 2014 BCCA 152.
8. Should the New Zealand Provisional Order varying the father's actual income in the financial years ending March 31, 2019 and onward be confirmed?
- [74] Essentially the New Zealand Family Court ruled that the father's liability for child support and s. 7 expenses be based on his actual income, provided that his income is above the imputed amount of \$80,000 (NZ). Since his income in for the financial year ending March/April 2019 was above this threshold, I have no difficulty, for the reasons articulated above, varying the father's income to his actual income for that period and confirming the New Zealand Provisional Order.
- [75] The father's income tax return confirms that his total income for the financial year ending 2019, including his rental income from the UK is \$128,496 (NZ) or \$112,396 (CAD). That will be his Guideline income for his child support and s. 7 payments for 2019.
- [76] The father's income tax return confirms that his total income for the financial year ending March 31, 2020, including his rental income from the UK, is \$111,496 (NZ) or \$97,135.32 (CAD). It does not appear that the father sold any shares in 2020; however, to be clear, any year where he has done so, or has sold property and earned a capital gain or income from such a transaction, the amount earned must be added to his Guideline income. Otherwise, for the same reasons set out above, Master Muir's Order's will be varied to \$97,125.32 (CAD); that will be his Guideline income for his child support and s. 7 payments for the year ending March/April 2020.

- [77] The father's income tax return for the year ending March/ April 2021 should now be available and should have been exchanged with the mother. His Guideline income for that period should be calculated on the same principled basis as above.
- [78] As noted above, for the current tax year, beginning April 2021, the father has advised that at his new job he has a salary of \$130,000 plus a 15% share allocation available in three tranches over three years (he did not specify whether this was in Canadian or New Zealand dollars.) Any UK rental income will need to be added to this \$130,000 figure plus the value of any shares sold, in order to properly formulate his current Guideline Income.
9. The Mother's Guideline income from 2015 onward
- [79] The father takes issue with the mother's pension deductions. However, because the mother has not advanced these deductions for purposes of determining her Guideline income, the issue need not inform my analysis. Rather, she properly relied on her line 150 income, coupled with other proper deductions, as the basis for her Guideline income.
- [80] The mother deposed that her CRA tax return, line 150 income for 2015 was \$119,852. However, she deducted her professional fees of \$552 (at CRA line 212), which is appropriate. Accordingly, the mother's Guideline income for 2015 is \$119,300.
- [81] The mother's CRA tax return, at line 150, confirms that her income for 2016 was \$95,760. However, she deducted her professional fees of \$565 (according to CRA line 212), which is appropriate. The mother also deducted "carrying charges" of \$8798 in 2016 under line 221 of her tax return (now line 22100) representing, she deposes, the legal fees she incurred to obtain a child support order.
- [82] The father argues that carrying charges are not an appropriate deduction. Neither party provided case law on this point.
- [83] Carrying charges are addressed in s. 8 of Schedule III of the Guidelines as follows:

Carrying Charges

8. Deduct the spouse's carrying charges and interest expenses that are paid by the spouse and that would be deductible under the Income Tax Act.

The government of Canada's on-line notes explaining the application of line 22100 affirms this expense is an appropriate reduction. The on-line explanatory note reads in part:

Claim the following carrying charges and interest you paid to earn income from investments:

legal fees you incurred relating to support payments that your current or former spouse or common-law partner, or the natural parent of your child will have to pay you

- [84] Accordingly, the legal fees the mother incurred are a legitimate deduction for income tax purposes for the mother's line 150 income: see *McBennett v. Danis*, 2021 ONSC 3610 at para. 297; *Nixon v. Lumsden*, 2020 ONSC 147 at para. 184. I find this is also a reasonable deduction in assessing Guideline income in the circumstances of this case.
- [85] The mother's ability to care for her daughter was significantly compromised not only by the father's non-payment of child support as required by law, but also by the legal expenses the mother incurred as a result of the father's unwillingness to disclose his income or pay child support. A fair assessment of the mother's Guideline income must take into account the extent to which the mother's income was depleted because she was required, essentially on their daughter's behalf, to enforce the father's duty to also support their daughter.
- [86] Accordingly, the mother's Guideline income for 2016 is confirmed at \$86,397, which includes deductions for her professional fees and proper carrying charges.
- [87] In 2017, the mother's line 150 income was \$101,276. Deducting \$572 for professional fees/employment expenses at line 212, and \$19,324 for carrying charges at line 221, the mother's Guideline income for 2017 is \$81,380.
- [88] In 2018, the mother's line 150 income was \$104,548. Deducting \$914 for professional fees/employment expenses at line 212, and \$2,575 for carrying charges at line 221, the mother's Guideline income for 2018 is \$101,059.
- [89] In 2019, the mother's line 150 income was \$111,647. Deducting \$935 for professional fees/employment expenses at line 212, and \$16,435 for carrying charges at line 221, the mother's Guideline income for 2019 is \$94,277.
- [90] The mother's 2020 income tax returns were not prepared at the time of the hearing before me. However, I understand that the parties, should by now have exchanged their financial information for 2020. The mother's income for 2020 should be calculated on the same principled basis as I have done above. For the 2021 tax year, the mother's current yearly income minus the deductions noted above to date (i.e., professional fees and carrying charges) may be used to calculate her 2021 Guideline income.
10. What are the father's Section 7 expenses?
- [91] The father is required to pay his proportionate share of s. 7 costs from 2014 to date. The mother has set out in her affidavit materials the s. 7 costs she has to pay to support their daughter. Most of the costs she claims are appropriate s. 7 costs.
- [92] Assessing what is a proper s. 7 special or extraordinary expense as compared to what is a day-to-day ordinary expense that is covered by child support payments was discussed by Mr. Justice Baird in *Clarke*, at paras. 48-53 as follows:

- [48] Section 7 of the Federal Child Support Guidelines gives the court the discretion to order payment of an amount over and above the regular table amount [of child support payments]. However, in order to qualify for a s. 7 order, the expenses must be proven to be "special" or "extraordinary" in some way.
- [49] This is because the basic table amounts of child support are designed to cover all the "ordinary" costs of raising a child: *D.M.C.T. v. L.K.S.*, 2008 NSCA 61 at para. 25. Food, shelter, clothing and other necessities are all ordinary, as are many educational, extracurricular and recreational expenses: *McLaughlin v. McLaughlin* (1998), 167 D.L.R. (4th) 39 (B.C.C.A.).
- [50] So when does an expense qualify as special or extraordinary? First, it must fit within one of the categories of expenses listed in section 7.
- [51] That list is exhaustive. If the claimed expense does not fit into any of those categories, it cannot be a special or extraordinary expense: *Kase v. Bazinet*, 2011 ONCJ 718 at para. 39.
- [93] An expense for education or extracurricular activities is extraordinary if, for example, it is more than the mother can reasonably pay based on her income and the amount of child support received; or related to any special needs and talents of the child; see *Clarke v. Clarke*, 2014 BCSC 824 at paras. 47-54, and *Bodine-Shan v. Shan*, 2014 BCCA 191 at para. 66.
- [94] In the context of this case, special or extraordinary expenses include the mother's child-care expenses; the daughter's expenses for her post-secondary education; extraordinary expenses for the daughter's primary education, secondary education, or any other educational programs that meet the daughter's particular needs and talents such as tutoring; and her high performance field hockey activities. Regular activities such as swimming or ballet do not typically qualify. Recreational sports and other similar extracurricular activities (such as dance lessons, swimming, community sports leagues, ski trips, etc.) are generally considered "ordinary." The question is whether the participation goes beyond that of the "average child": *D.L.C. v. F.M.C.*, 2010 BCSC 1312 at para. 67.
- [95] However, as noted by Justice Baird at para. 53 of *Clarke*, in assessing whether an expense is extraordinary the special needs or talent of a child and the overall cost of the activities are relevant factors.
- [96] In summary, in light of the applicable case law and the Guidelines, I find that the daughter's private school fees, high level field hockey expenses, and her tutoring fees are proper s. 7 expenses. However, her swimming and ballet expenses are not.
- [97] The following table reflects my findings and is based on the s. 7 evidence before me.

Section 7 expenses since the Master Muir's Orders

Year

Expense

Amount

(CAD)

2014

School fees

2,074

Field hockey

217

Childcare

1,990

2014 TOTAL:

4,281

2015

School fees

2,759

Field hockey

2,802

Childcare

2,025

2015 TOTAL:

7,586

2016

School fees

5,937

Field hockey

2,530

Childcare

2,159

2016 TOTAL:

10,626

2017

School fees

6,193

Field hockey

569

Childcare

1,738

2017 TOTAL:

8,500

2018

School fees

5,631

Field hockey

2,008

2018 TOTAL:

7,639

2019

School fees

7,766

Field hockey

1,814

Tutoring

889

2019 TOTAL

10,469

[98] The parties should now, with the Court's guidance, be able to determine between themselves what s. 7 expenses are appropriate for 2020 and 2021.

11. What interest should apply to outstanding arrears?

[99] The mother seeks interest on the father's outstanding arrears. As noted earlier the FMEA and its regulations address the interest payable on maintenance awards: see s. 6.5 of the Family Maintenance Enforcement Regulation, B.C. Reg. 346/88. Once court orders are registered with the FMEP, "interest and penalties accrue automatically under s. 11.[1] of the FMEA": see *Beavis v. Beavis*, 2014 BCSC 422 at para. 52; *Dorey v. Havens*, 2017 BCSC 2206 at para. 85, *aff'd* 2019 BCCA 47. Accordingly, the calculation of arrears and interest will be left for the Director to determine and address under the Act and Regulation, according to the Guideline incomes and amounts due and owing under the Guidelines, in light of my conclusions herein.

IV. DISPOSITION

[100] The following orders will be made by consent of the parties:

- a) the father will pay all arrears properly due and owing;
- b) child support payments will continue until May of 2025, when their daughter graduates from university;
- c) section 7 expenses will be shared proportionately until their daughter reaches the age of 19 in 2022; subsequently, s. 7 expenses will be shared equally;
- d) the father will send his tax returns to the mother and will share financial information every year, based on New Zealand tax year, by May 1st every year;
- e) the mother will keep the father updated on all fees and expenses for their daughter and will provide him with receipts;
- f) there will be no change in child support or arrears payments unless there is a material change in circumstances.

[101] The mother will also be required to provide her yearly financial information and income tax returns to the father to inform her share of s. 7 expenses.

[102] I decline to confirm that portion of the Provisional Order that reduces and varies the father's child support arrears from the time of the daughter's birth on January 7, 2003 to December 31, 2013; this is the period in time in which the arrears set out in Master Muir's Orders were calculated. As such, the father's child support arrears over this considerable period of time is \$75, 816 (CDN), less the arrears he has paid to date. The mother is also entitled to interest on these arrears as calculated by the Director under s. 6.5 of the Family Enforcement Regulations.

- [103] I confirm that portion of the Provisional Order that declines to vary Clause 5 of the Master Muir Order dealing with s. 7 arrears. Accordingly, the father also owes the sum of \$57,722 in s. 7 arrears that accrued from the daughter's birth to December 31, 2013, less what he has already paid to date. Again, the mother is entitled to interest as calculated by the Director under s. 6.5 of the Family Enforcement Regulations.
- [104] While the father earns a very good income and owns two homes with his wife, one in England and one in New Zealand, I am nevertheless of the view that he should be provided the opportunity to pay the remainder of his outstanding arrears in installments should he chose. I am mindful that he also has two other children to support and therefore some leniency in this regard is justified. Accordingly, while he must pay his unpaid arrears in full, he may do so in equal monthly installments over the course of the next three years; alternatively, the parties are at liberty to agree, in writing, to another payment schedule, and to settle the matter on different terms.
- [105] For the reasons set out above, I decline to confirm that portion of the Provisional Order that varies the father's 2011 to March 31, 2016 income to an imputed amount of \$80,000 (NZ). His income for the financial year ending March 31, 2014 will be based on that imputed by Master Muir at \$100,309 (CAD), with interim child support at \$923 monthly and his proportionate share of \$283 monthly, as set out by Master Muir's Orders.
- [106] For the reason set out above, I decline to confirm that portion of the New Zealand Variation Order that imputes the father's income for child support and s. 7 purposes for the financial years ending 2015 and 2016 at \$80,000 (NZ) for each year. The father's Guideline income will be his actual income in those two years, which is \$96,022 (CAD), rounded to the nearest dollar, and \$99,378 (CAD) respectively.
- [107] I confirm that portion of the New Zealand Variation Order that would base the father's income for 2017 and 2018 on his actual income for those years, which was \$98,912 (CAD) and \$168,267 (CAD) respectively.
- [108] I confirm that portion of the New Zealand Order that would base the father's child support payments and his s. 7 expenses on his actual income from 2019 onward. Accordingly, the father's Guideline Income for 2019 is \$112,396 (CAD). The father's Guideline income for the period ending March 31, 2020 is \$97,135 (CAD), rounded to the nearest dollar. The father has confirmed he is earning \$130,000 plus a 15% share allocation available in three tranches over three years. If any of these shares are sold within this tax year, the income must be included in his 2021 Guideline income, along with any UK rental income.
- [109] As discussed above, I have also determine the mother's Guideline income for purposes of discerning the parties' respective s. 7 obligations, based on the information and evidence presented in these proceeding. For ease of reference, and to facilitate determining their proportionate s. 7 obligations, I set out the parties' respective Guideline Incomes for the years in question in the tables below.

Father's Guideline Income

Year ending March/April

NZ Returns (NZD)*

NZ sale of shares

Actual total income (CAD)

Notes

Income for Child Support (CAD)**

2015

107,527

96,022

Actual income

96,022

2016

107,633

99,378

Actual income

99,378

2017

107,175

98,912

Actual income

98,912

2018

118,262

69,264

168,267

Actual income includes capital income from employee share sale

168,267

2019

128,496

112,396

Actual income

112,396

2020***

111,496

97,135

Actual income

97,135

*UK rental income included in NZ Returns

**Rounded to the nearest dollar

***Father to confirm no capital gains/ or shares sold

Mother's Guideline Income

Year

Mother's income

CRA Line 150 (CAD)

Deduct Line 6: Employment expenses

CRA Line 212 (CAD)

Deduct Line 10: Carrying charges

CRA Line 221 (CAD)

Mother's annual income for child support purposes (CAD)

2015

119,852

552

-

119,300

2016

95,760

565

8,798

86,397

2017

101,276

572

19,324

81,380

2018

104,548

914

2,575

101,059

2019

111,647

935

16,435

94,277

2020**

Actual income not yet available

To be determined

To be determined

To be determined

**Mother to confirm actual income for 2020

[110] Based on the evidence and applicable law, the father is required to pay his proportionate share of the following s. 7 expenses:

2015:

\$7,586

2016:

\$10,626

2017:

\$8,500

2018:

\$7,639

2019:

\$10,469

[111] The father's arrears will be varied based on each of the above orders.

[112] The mother is entitled to interest, as discussed earlier in these Reasons.

[113] This matter was document and labour intensive to adjudicate. The Court was required to review a multitude of documents and numbers. It may be that the complexity of this matter will require further direction from the Court to implement this judgment. Although the Guidelines provide clear and specific direction, I will remain seized of this matter in the event further direction from this Court is required.

[114] At the end of the hearing, both the father and mother expressed a sincere commitment to work together to finally resolve their outstanding issues in a collaborative manner, and in their daughter's best interest. The father repeatedly apologized for his past behaviour. I commend both the father and the mother for their renewed collaborative effort. I encourage them to continue to work together in supporting their daughter and in reaching a final resolution to this long outstanding matter.

"MORELLATO J."

[1]As noted earlier in these reasons, references to "financial year ending March 31st" is used to match, and be consistent with, the language in the Provisional Order. The father's financial year end is actually April 5th, according to the father's income tax returns.

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