
CANADA / JUDGMENT

T.J.S. v. M.R.M.F.

2022 BCSC 1601

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1601 T.J.S. v. M.R.M.F.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.J.S. v. M.R.M.F.,

2022 BCSC 1601

Date: 20220912

Docket: E093013

Registry: Vancouver

Between:

T.J.S.

Claimant

And

M.R.M.F. aka

M.R.M.

Respondent

Before: The Honourable Mr. Justice Caldwell

Reasons for Judgment

In Chambers

Counsel for the Applicant, M.R.M.F. (on October 21 & 22, 2021):

S.Y. Kim

The Applicant, appearing on her own behalf (on March 10 & 11, 2022):

M.R.M.F.

Counsel for the Respondent to the Applications, T.J.S:

S.P. Simpson

Place and Dates of Trial/Hearing:

Vancouver, B.C.

October 21 & 22, 2021

March 10 & 11, 2022

Place and Date of Judgment:

Vancouver, B.C.

September 12, 2022

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[1] This family matter consists of two applications by the mother, M.R.M.F. (the "applicant").

PRELIMINARY MATTERS AND CONTEXT

[2] The first application of M.R.M.F. was filed on July 12, 2021, and sought extensive financial disclosure from the father, T.J.S. (the "respondent" to the applications), as well as fines for non-disclosure. The response of T.J.S. was filed to this application on July 19, 2021, but without any further materials at that time. This application was adjourned generally at the hearing in October 2021, except as regards the penalties and costs.

- [3] The second application of M.R.M.F., filed August 12, 2021, sought extensive review and variation of child support and s. 7 expenses as they arose from the final divorce order of Mr. Justice N. Smith, made May 17, 2010. The applications were set to be heard on October 21 and 22, 2021.
- [4] The response of T.J.S. to the second application was filed on October 15, 2021, approximately two months late and less than a week before the matter was set for hearing. It was accompanied by the respondent's Form 8 with 235 pages of attachments and his affidavit of 45 pages (142 paragraphs), plus 237 pages of exhibits. Included in the exhibits was a first List of Documents and a form of expert report purporting to calculate the respondent's incomes for each year back to 2013 pursuant to the Federal Child Support Guidelines, SOR/97-175 [Guidelines].
- [5] The applicant, M.R.M.F., filed a 12-page affidavit with 159 pages of exhibits in reply on October 19, 2021. When the hearing commenced, the respondent, T.J.S., sought an adjournment on the basis that the applicant's further reply materials were late and he had insufficient time to review them. That request for an adjournment was refused.
- [6] The matter consumed two days for the applicant's submissions. I directed that two further days be set as soon as they could be arranged. Dates could not be arranged until March 2022, and the matter was therefore set to proceed on March 10 and 11, 2022.
- [7] On March 1, 2022, more than four months after the first two days of hearing and little more than a week prior to the continuation, the respondent, T.J.S., filed two further affidavits. The first was a five-page affidavit with 56 pages of exhibits. The second was a 14-page affidavit attaching 948 pages of exhibits. Much of the exhibited material dealt with further financial disclosure, in spite of the respondent's submissions in October 2021 that he had then provided complete disclosure. One of the exhibits was yet another amended expert report regarding Guideline income. Also provided were 24 tabs of authorities and legislation. The applicant successfully objected to the late filing of this additional affidavit material. I refused to accept or consider it.
- [8] Counsel for the respondent, provided her submissions orally and in writing on March 10; the applicant, who was by that time self-represented, gave her reply and provided written submissions on March 11, 2022.

THE PARTIES

- [9] The parties married in November 2002 and were divorced by order of Justice Smith in May 2010. They have one child, who is currently 18 and lives with the applicant mother.
- [10] The respondent father is a First Nations commercial fisherman and has been since the parties were married, if not longer. His current annual income is acknowledged by him to be \$480,000 on a grossed-up basis, as he is not required to pay income taxes.

- [11] The applicant mother is a homestay host, who has worked for a series of non-profit community and social agencies as a support worker. Her current income is noted at approximately \$21,000.

LITIGATION HISTORY

- [12] The divorce order granted in May 2010 was comprehensive, dealing with among other things, parenting, Guideline incomes, and expenses under s. 7 of the Guidelines. It also provided for an annual exchange of financial information and adjustment of child support and, by implication, s. 7 expense contributions beginning in 2013. The original order fixed the respondent father's Guideline income at \$47,000 which was grossed up to \$63,000 as it was earned tax-free as a First Nations fisherman. The applicant mother's Guideline income was set at \$17,800. Special or extraordinary expenses were identified as being child care expenses, medical, dental and orthodontal expenses not covered by insurance, education expenses, and counselling expenses. The respondent father was to pay 60% of these s. 7 expenses and the applicant mother 40%.
- [13] In June 2011, barely a year after the divorce, the applicant, M.R.M.F., filed an application seeking to vary the final order so as to provide her with full custody of the child. Over the following ten years, the parties filed at least nine more applications, most if not all of which dealt with parenting issues. Neither party appears to have been hesitant in bringing such applications to court and both were, for the most part, represented by counsel throughout.
- [14] No financial disclosure was made by either party as required by the divorce order after 2013. The applicant says that she began requesting such disclosure and review of child support in or about 2019, but was rebuffed by the respondent. T.J.S. denies this. The applicant obtained various miscellaneous financial documents in or about December 2019, which she says suggested that the respondent was enjoying a significantly increased income. She says that she got these documents with the knowledge of the respondent and was told by him to hold onto them for him; he denies this.
- [15] By January 2021, the applicant, M.R.M.F., with counsel, began pursuing financial disclosure and a review of child support, with the result that these two applications were filed.
- [16] It appears that disclosure began to be provided by the respondent father's then counsel but, as previously noted, the flow was still ongoing up to a week before the final two days of hearing.

THE ISSUES

- [17] There are really only two central issues for determination in this application:
1. What is T.J.S.'s Guideline income or imputed income and for which past years is it relevant?
 2. How far back, if at all, should a retroactive variation order stretch?

[18] Once those issues are determined, arithmetic calculation or a referral to the Registrar for an accounting can address the outstanding issues, such as the final basic support figures, s. 7 expenses incurred under the divorce order and the later order of Madam Justice Fitzpatrick in December 2016, the payments made by each party over the relevant period, and the appropriate amount owing by one or other of them to the other.

THE APPLICANT MOTHER'S POSITION

[19] The applicant says that she requested but did not press for financial disclosure from the respondent, as was provided for in the divorce order, because she feared him and his response. She alleges past physical abuse and says that the respondent suffers from mental health and anger issues. She also alleges that he abuses narcotics.

[20] The applicant says that the respondent, T.J.S., has always made more money than he has disclosed. In particular, she alleges:

- that he always did considerable cash business during the marriage and never hid that fact;
- that he has a secure safe in his home containing valuables;
- that he told her that he had \$2,000,000 set aside in an account that nobody knows about;
- that he told her that he had his best ever year for crab in 2020, making an income of \$735,000;
- that he has other businesses, partnerships, licences, and quotas that are not disclosed, including one or more crab, shrimp, and salmon fishing businesses, and that he has been referred to as the "Prawn King";
- that he or his company owns several commercial fishing boats in addition to the two which are disclosed, but that he has friends or family hold the actual title so that he can avoid creditors;
- that he could have paid off his house but did not because his latest divorce was still pending and, if the house was paid off, his estranged spouse "could have got a lot more" - a statement which was confirmed in a text from the respondent, T.J.S., to the child of this marriage;
- he was not truthful about the rental suites in his home and the income received from them;
- that he told her he spent \$1,000,000 building a new house in 2011 or 2012;
- that he told her that he paid \$1,200,000 to have a new fishing boat built in 2018, and that he actually had no debt owing on it;
- that in October 2019, he purchased a new truck for over \$60,000 without financing;
- that even in a 2010 mortgage application, he represented his fishing income as being \$150,000 with an additional \$24,000 income from rental monies;

- that he told her "good luck trying to prove anything"; and
 - that in May 2021, she overheard him telling the child in a telephone call that he would "drag this out indefinitely" and that she wouldn't get a single thing.
- [21] The applicant says that the respondent's continued late and piecemeal disclosure is a continuation of his abusive and controlling behaviour, calculated to cause her to abandon her pursuit of proper child support.
- [22] The applicant says that the court should draw negative inferences from his limited and sporadic disclosure and should impute income to the respondent, T.J.S.
- [23] She says that even on the basis of the documents produced, the respondent has had, or should be taken as having had, an income (grossed up) of \$323,000 per year for the years from June 2013 to May 2019. She calculates his income to be \$487,000 for the year of June 2019 to May 2020 and \$480,000 per year since then. She seeks retroactive variation back to June 2013, based on these figures for both basic child support and calculation of s. 7 expense sharing. The basic child support shortfall to the end of May 2021 which would arise from these figures is approximately \$175,000 before consideration of s. 7 expenses and sharing.
- [24] Since May 2021, the respondent has provided a catch-up payment of \$18,665 (paid in November 2021). He has also paid \$3,330 per month, commencing December 2021, which I believe is in addition to the ongoing \$600 per month under the order, for a total of the agreed \$3,930 per month owed based on a Guideline income of \$480,000.

THE RESPONDENT FATHER'S POSITION

- [25] The respondent, T.J.S., denies that the applicant, M.R.M.F., ever sought financial information or a review of child support, but points out that the financial issues were addressed in the 2016 order of Justice Fitzpatrick, in that s. 7 expenses were addressed and expanded and the 60/40 contribution split was confirmed. He denies all allegations of violence, abuse, mental health problems, and drug use. He says that he has provided the applicant with thousands of dollars when she has found herself short of funds or out of work, and that he paid \$4,000 for her to accompany him and the child on a trip to Mexico in late 2019. He says further:
- that his cash income is very limited, amounts to a very few thousand dollars per year, and has been disclosed in any event;
 - that he is the sole shareholder of G.W.F. Ltd. ("G.W.F.") and basically earns his income through that vehicle;
 - that he does have a secure safe in his home for storage of personal documents, such as passports and a few thousand dollars in cash for emergency use;

- that he does not have \$2,000,000 in undisclosed accounts and never told the applicant that he did;
- that although 2020 was his best year ever, he did not make \$735,000 income from crabbing that year and never told the applicant that he had;
- that he has made full disclosure of all of his income sources and has no other undisclosed business interests or sources of income;
- that he, through G.W.F., owns only two fishing vessels, both of which have been disclosed; one of which is old and may have a limited remaining lifespan, and that he has no interest in any other vessels as alleged;
- that there is a boat registered in his sister's name, which G.W.F. may or may not purchase; another boat which G.W.F. leases, along with its licences and quota for harvesting various species of fish; and two further boats that he or G.W.F. sold in recent years to assist with the purchase and construction of the new boat, and to provide money for a property settlement relating to a separation from another spouse;
- that he did provide inaccurate information about rental income but has now remedied that situation and has now made accurate disclosure;
- that he did not build a new house at a cost of \$1,000,000 but did add onto his house and do some renovations all of which cost less than \$300,000 and were completed in 2013;
- that his income fluctuates greatly as it is based on various matters beyond his control including the supply of and demand for fish, crabs and other resources; species closures; market prices; weather; licence and quota lease availability; and cost;
- that G.W.F. purchased the SUV (not truck) in 2019, with money accumulated over several years;
- that he never threatened to drag this matter out; and
- that the applicant shares responsibility for the overall situation, as she also breached the May 2010 order by failing to provide her financial disclosure as required by that order.

[26] Overall, the respondent, T.J.S., says that he has made full disclosure relating to his finances, although it has taken him some considerable time to gather it together and, even at this date, he is unable to locate some particular documents.

[27] The respondent agrees that he has made very good income over the last couple of years, reaching \$480,000 in 2020/21, but says that such has not been the norm since 2013. He relies on a report of Spence Valuations, which suggests that his incomes have been as follows:

Year:

Income:

2013

\$19,000

2014

(\$9,000)

2015

\$45,000

2016

\$120,000

2017

\$263,000

2018

(\$10,000)

2019

\$106,000

2020

\$480,000

[28] The respondent says that he has always paid the ordered \$600 per month under the May 2010 order, even when he was making considerably less than the Guideline income ascribed to him. In November or December 2021, he provided catch-up payments, as discussed above.

[29] The respondent says that there should be no retroactive variation increasing the child support and that, if anything, there should be a retroactive variation reducing child support for the years of his reduced income with the result that he will be recognized as having overpaid child support. He is content to continue paying child support of \$3,930 per month, based on the Guideline income of \$480,000 subject to review if and when that amount changes.

THE LAW

[30] Nearly 30 years ago, Mr. Justice Fraser commented in *Cunha v. da Cunha*, (1994), 99 B.C.L.R. (2d) 93, 1994 CanLII 3195 (S.C.) [Cunha]:

- [9] Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlements which are inadequate. It increases the time and expense of litigation. The prolonged stress of unnecessary battle may lead weary and drained women simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a reasonably-based suspicion that justice was not done. Non-disclosure also has a tendency to deprive children of proper support.
- [31] Those words ring as true today as when they were first penned. Whether the issue is asset division or proper and adequate support, full, frank and timely financial disclosure is a basic requirement of the law and is the responsibility of all litigants.
- [32] The court in *Cunha* went on to say that where there has been concealment (in that case, of assets), it should ordinarily be held that the concealment is ongoing and that the onus of establishing later full disclosure rests with the concealing party. The judge comments at para. 12:
- Not only is it a matter of doing justice in any particular case, it is also a matter of general interest. The system should not give offence to the honourable litigant by treating the dishonourable litigant the same.
- [33] These principles were recently restated in *M.C.V. v. F.V.*, 2018 BCSC 96 at paras. 124-127:
- [124] Ms. C. relies on the approach taken by Mr. Justice Fraser in *Cunha v. Cunha*, (1994), 1994 CanLII 3195 (BC SC), 99 B.C.L.R. (2D) 93 (S.C.), a case decided under the [Family Relations Act, R.S.B.C. 1979, c. 121]. The *Cunha* approach urged a robust exercise of the adverse inference power when one party in matrimonial litigation conceals assets: at paras. 11-13.
- [125] In *Laxton v. Coglon*, 2008 BCSC 42, Mr. Justice Kelleher clarified that the Court in *Cunha* did not reapportion family assets pursuant to s. 65 of the [Family Relations Act]. Rather, the Court, having not been satisfied that adequate disclosure had been made, inferred that the value of the undisclosed assets was at least equal to the value of the disclosed assets: at paras. 27-29. It is key that the principle in *Cunha* only applies where there is a sound evidentiary basis to support the notion that one of the parties to the litigation has hidden assets. See also *Nearing v. Sauer*, 2015 BCSC 58, at para. 126.
- [126] In *Wu v. Sun*, 2011 BCCA 239, the Court of the Appeal, while affirming that strong measures are justified in discouraging nondisclosure, cautioned that there must be sufficient evidence upon which the court may draw any adverse inferences regarding the existence of undisclosed family assets: at paras. 40-42.
- [127] In *Nearing*, the Court concluded, at para. 132, that the adverse inference referred to in *Cunha* and the subsequent authorities continues to be applicable to the new regime for property division under the [Family Law Act]. I agree.

[34] More modern statements regarding financial disclosure can be found in *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.], *Michel v. Graydon*, 2020 SCC 24 [Michel], *Colucci v. Colucci*, 2021 SCC 24, and other similar cases dealing specifically with applications for retroactive child support orders or variations. Statements emanating from those cases include that:

- child support is the right of the child;
- the specific amounts of child support owed will vary based on the income of the payor parent;
- retroactive awards are not truly retroactive, but rather hold the payor to the legal obligation they always had to pay support commensurate with their income;
- retroactive awards are not confined to exceptional circumstances;
- a payor parent's interest in certainty must be balanced with the need for fairness and flexibility;
- a payor parent who does not increase child support to correspond with increased income will not have fulfilled the parent's obligation to the child;
- when a prior order for support requires the payor parent to disclose financial information each year and automatically adjust child support, it may be unnecessary to resort to the principles outlined in *D.B.S.*;
- the principles set out in *D.B.S.* are applicable to s. 7 expenses; and
- blameworthy conduct is anything that privileges the payor parent's interests over the child's right to an appropriate amount of support.

[35] On the issue of the obligation of disclosure, the court noted at para. 32 of *Michel*:

[32] Retroactive child support awards will commonly be appropriate where payor parents fail to disclose increases in their income. Again, *D.B.S.* is instructive: "a payor parent who knowingly avoids or diminishes his/her support obligation to his/her children should not be allowed to profit from such conduct" (para. 107). And where the strategy for avoiding child support obligations takes the form of inadequate or delayed disclosure of income, the effect on the child support regime is especially pernicious. This is because the methodology adopted by the Federal Child Support Guidelines, SOR/97-175, which are expressly incorporated in the FLA, results in information asymmetry. Apart from shared parenting arrangements, the Guidelines calculate child support payments solely from the payor parent's income. At any given point in time, therefore, the payor parent has the information required to determine the appropriate amount of child support owing, while the recipient parent may not. Quite simply, the payor parent is the one who holds the cards. While an application-based regime places responsibility on both parents in relation to child support (*D.B.S.*, at para. 56), the practical reality is that, without adequate disclosure, the recipient parent will not be well-positioned to marshal the case for variation.

ANALYSIS

- [36] In my respectful view, it is beyond question at law that the respondent father has, since the 2010 order, had a constant and ongoing obligation to make full, frank, and timely financial disclosure; the May 2010 order simply recognizes and highlights that obligation, commencing at least as of June 2013.
- [37] The respondent utterly ignored and disregarded that obligation. In the context of this case and in light of the authorities, these actions amounted to concealment as discussed in Cunha, and blameworthy conduct as described in the more recent cases.
- [38] I look to the respondent's disclosure and submissions to assess whether he has overcome his concealment or non-disclosure and satisfied me that he has now made full disclosure.
- [39] There is no question that he has made extensive financial disclosure and provided extensive sworn explanation regarding that disclosure. That certainly mitigates in his favour.
- [40] That disclosure was seriously delayed however, and was provided in great volume at almost the last possible moment, both prior to the initial hearing dates and the continuation dates. I find it hard, if not impossible, to avoid drawing the inference that the respondent father's actions in this respect were calculated to force a delay of the proceedings. This view is at least somewhat supported by the fact that when the applicant mother, under considerable time pressure from receipt of the late response materials, prepared and delivered reply materials, they were met at the first hearing date with an application to adjourn due to the late delivery of such reply materials.
- [41] I look also to the respondent's position regarding his historical income.
- [42] In 2012 and 2013, the respondent says that he earned \$15,000 and \$19,000 respectively. His affidavit indicates that during those same two years, he undertook and completed a nearly \$300,000 renovation on his home, albeit with the assistance of financing.
- [43] In 2014, he claims to have had no income at all, saying in fact that he lost \$9,000. In spite of that, he made no disclosure of such loss or hardship and continued to pay the \$600 per month owing under the order.
- [44] In 2016, he himself lists his income at \$120,000 - approximately double the Guideline amount fixed in the May 2010 order. By 2017, his income shows as being \$263,000 - or more than four times that fixed in the order. No disclosure of this was forthcoming until a week before the first hearing dates in late 2021.
- [45] In 2018, he claims to have lost \$10,000. In that year, he commissioned the construction of a new fishing boat at a cost of somewhere between \$500,000 and \$1,200,000. In submissions, counsel indicated the respondent's position as being that he wanted to put money, including current cash flow and sale proceeds from other vessels into this expense because it would greatly increase his ability to generate money in the future. Given his increased income beginning in the 2019/2020 year span, this may well have represented good planning;

however, it is reasonably clear that the majority of the benefit of that vessel will accrue to the respondent father after the child ceases being a child of the marriage. It seems difficult to justify this diversion of available cash from potential and available income to calculate child support to a largely self-serving project to increase future income at a time when child support obligations have ceased.

- [46] Finally, he says that by 2020 he was earning \$480,000 - although he tempers that by pointing out that his business and income are inconsistent and that there is no guarantee that such income will continue. Once again, I note the respondent's position that no request was made for financial disclosure until in or about February 2021. By his own evidence, he was then earning (on average) \$40,000 per month and had been doing so for over all, or at least a great portion, of the preceding year. That amount was more than seven times the income attributed to him in the 2010 order, and yet he had not seen fit to disclose anything about the increase to the applicant mother, saying basically "she didn't ask".
- [47] I note at this point that the above income figures have been taken from a form of report from Mr. Derek Sanders of the Spence Valuation Group. That report was dated October 14, 2021 - one week prior to the initial hearing dates - and was delivered as Exhibit G of the respondent father's affidavit sworn that same day. The report was not served 84 days before the hearing; it also failed to include any statement wherein Mr. Sanders acknowledged his role and his obligations to the court. What it did include was a series of limiting statements indicating that the results were based on information provided by the respondent.
- [48] The report was clearly inadmissible as a form of expert opinion but I refer to it as basically the only indication from the respondent father as to his income. I find it to be entirely self-serving, consistent with a strategy of late disclosure and, at most, the respondent's "best possible position" regarding his income pattern.
- [49] Finally, I turn to the respondent's Form 8 financial statement, filed October 15, 2021.
- [50] The income shown on that form is \$480,000 "per Sanders Report" which appears to be a grossed-up figure and to include rental income and Employment Insurance. Expenses on that same form are shown as being nearly \$180,000 - most if not all of which appear to be established and consistent types of expenses. There is no indication of recent increases in any of the categories, although it may be that the spousal support expense could fit into that category to some extent. On the other hand, he notes that his vacation expense has been reduced due to COVID-19, indicating by implication that prior to March 2020 his expenses were actually higher. Reference to the debt section shows a small mortgage, a nominal credit card account, and two amounts owing to the Native Fishing Association that are presumably related to the fishing enterprises and the construction of the new boat. Taken as a whole, it appears that the respondent has, and has had over the preceding years, no problems meeting his expenses without the need to accumulate significant debt. I see nothing in the materials indicating that a large debt of this type existed but was paid off during the recent years of high income; counsel for the respondent did not point me to any

such material.

CONCLUSION

- [51] On the basis of the foregoing, I am not satisfied that the respondent, T.J.S., has made full and accurate disclosure of his financial affairs, particularly his income for purposes of calculating child support. I am satisfied that he wilfully and intentionally withheld disclosure of his increased income from the applicant, M.R.M.F., for his own purposes and with full knowledge of his obligations under the May 2010 order and the Guidelines. He did so specifically to the prejudice of the child. I am satisfied that his actions constitute blameworthy conduct and warrant an award of retroactive variation of child support and s. 7 expenses.
- [52] I have considered the appropriate period of retroactivity and start date for the variation. I note that the parties were before Justice Fitzpatrick in December 2016, at which time financial matters were addressed by way of a consent order. In my view, it would be inappropriate to vary the 2010 order effective prior to that December 2016 order, as the parties clearly had the opportunity to address financial disclosure and child support at that time.
- [53] Under the terms of the original order, the first disclosure/adjustment occasion following the Fitzpatrick order would have been June 1, 2017. In my view, that is the appropriate date for variation to occur and for retroactivity to take effect.
- [54] In determining the appropriate Guideline income to be attributed to the respondent, T.J.S., I have considered the matters noted above under Analysis. I also note and consider ss. 19(1) and (2); 21(1) and (2); 22(1) and (2); and 23 of the Guidelines, which address the imputation of income (s. 19), financial disclosure obligations (s. 21), failure to comply with those obligations (s. 22), and the court's powers to draw adverse inferences in response to a failure to comply (s. 23). The relevant sections are as follows:

Imputing income

19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
- (b) the spouse is exempt from paying federal or provincial income tax;
 - (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
 - (f) the spouse has failed to provide income information when under a legal obligation to do so;
 - (g) the spouse unreasonably deducts expenses from income;

Reasonableness of expenses

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

Obligation of applicant

21. (1) A spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order must include the following with the application:
- (a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years;
 - (b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;
 - (c) where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration;
 - (d) where the spouse is self-employed, for the three most recent taxation years
 - (i) the financial statements of the spouse's business or professional practice, other than a partnership, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;
 - (e) where the spouse is a partner in a partnership, confirmation of the spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;
 - (f) where the spouse controls a corporation, for its three most recent taxation years
 - (i) the financial statements of the corporation and its subsidiaries, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;
 - (g) where the spouse is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements; and

- (h) in addition to any income information that must be included under paragraphs (c) to (g), where the spouse receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year, or if such a statement is not provided, a letter from the appropriate authority stating the required information.

Obligation of respondent

- (2) A spouse who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, must, within 30 days after the application is served if the spouse resides in Canada or the United States or within 60 days if the spouse resides elsewhere, or such other time limit as the court specifies, provide the court, as well as the other spouse or the order assignee, as the case may be, with the documents referred to in subsection (1).

Failure to comply

22. (1) Where a spouse fails to comply with section 21, the other spouse may apply
- (a) to have the application for a child support order set down for a hearing, or move for judgment; or
- (b) for an order requiring the spouse who failed to comply to provide the court, as well as the other spouse or order assignee, as the case may be, with the required documents.

Costs of the proceedings

- (2) Where a court makes an order under paragraph (1)(a) or (b), the court may award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

Adverse inference

23. Where the court proceeds to a hearing on the basis of an application under paragraph 22(1)(a), the court may draw an adverse inference against the spouse who failed to comply and impute income to that spouse in such amount as it considers appropriate.

[55] For the reasons noted above, I reject the income estimates contained in the Sanders report save and except as regards the most recent years, when it seems to be agreed that the respondent father's income was at least \$480,000. For the years prior to that, I find that the appropriate income figure to be imputed to the respondent is \$250,000 gross, based on the material before me and including importantly his spending patterns and ability to meet expenses of \$180,000 as acknowledged by implication in his most recent Form 8.

[56] Accordingly, I order the following variation of basic child support:

1. June 1, 2017 to May 31, 2018 - Guideline income \$250,000;
\$2,136 per month support;
 2. June 1, 2018 to May 31, 2019 - Guideline income \$250,000;
\$2,136 per month support;
 3. June 1, 2019 to May 31, 2020 - Guideline income \$250,000;
\$2,136 per month support;
 4. June 1, 2020 to May 31, 2021 - Guideline income \$480,000;
\$3,930 per month support; and
 5. June 1, 2021 to May 31, 2022 - Guideline income \$480,000;
\$3,930 per month support.
- [57] The basic child support shall continue at \$3,930 per month, unless and until varied by agreement or further order of the court, or until the child ceases to be a child of the marriage as defined.
- [58] I make no award for interest or penalties on these amounts.
- [59] I am aware that the respondent father has made certain payments over the period from June 1, 2017, including a balloon payment in late 2021; however, I do not have full details of those amounts, all of which should be credited against the above amounts owing.
- [60] Based on the above figures, the respondent father is responsible for 89% of s. 7 expenses from June 1, 2017 to May 31, 2020; and for 94% thereafter and ongoing until varied by agreement or further order of the court, or until the child ceases to be a child of the marriage as defined. The s. 7 expenses remain as defined by the original May 2010 order, as that order was later varied or expanded by the order of Justice Fitzpatrick.
- [61] If the parties are unable to reach agreement on basic support arrears and/or s. 7 contributions and amounts owing based on the above orders, such questions are hereby referred to the Registrar for an accounting. I order that at the conclusion of such accounting, the Registrar prepare a Report of his or her findings and that such Report be referred back to me for confirmation and determination as to the appropriate order for costs associated with such accounting and confirmation hearing.

COSTS

- [62] In terms of costs for this application, the applicant, M.R.M.F., has been significantly if not totally successful. I have found that the respondent, T.J.S., was guilty of blameworthy conduct. I am also of the view that his behaviour in withholding proper disclosure until the last possible moment, in clear breach of the requirements of the Supreme Court Family Rules, B.C. Reg. 169/2009 and then to inundate the applicant with documentation totalling

into hundreds, if not thousands, of pages on the eve of hearing - not once but twice - is worthy of rebuke. I find that such behaviour was calculated to intimidate the applicant, to increase the cost to her, and to delay the matter from proceeding, all to the prejudice of the applicant.

[63] Were this matter to be assessed under the Family Tariff as a matter of more than ordinary difficulty, it would result in an amount of approximately \$10,000 to \$12,000 consisting of items 2 and 4, and assuming three-and-one-half to four days for the hearing of the application. In my view, that amount does not recognize the realities of this matter as I have outlined above.

[64] However, I fear an order of special costs would result in a further protracted hearing before the Registrar - to the financial and emotional detriment of both parties.

[65] Rule 16-1(1)(c) and Rule 16-1(14) read as follows:

Tariff of costs

- (1) If costs are payable to a party under these Supreme Court Family Rules or by order, those costs must be assessed in accordance with Appendix B unless any of the following circumstances exist:
- (c) the court awards lump sum costs for the family law case and fixes those costs under subrule (14) in an amount the court considers appropriate;

Costs of whole or part of family law case

- (14) The court may award costs
 - (a) of a family law case,
 - (b) that relate to some particular application, step or matter in or related to the family law case, or
 - (c) except so far as they relate to some particular application, step or matter in or related to the family law case

and in awarding those costs the court may fix the amount of costs, including the amount of disbursements.

[66] Those provisions allow the court to award costs for an application, step or matter in, or related to, the family law case in a lump sum that the court feels is appropriate in the circumstances and to fix that amount inclusive of disbursements.

[67] In the circumstances of this case, I exercise my discretion under Rule 16-1 and award lump sum costs to the applicant, M.R.M.F., in the amount of \$19,000 plus \$1,000 towards disbursements, for a total lump sum of \$20,000.

[68] The parties will have liberty to apply for further directions or clarification should it be necessary.

"Caldwell J."

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