

CANADA / JUDGMENT

Wang v. Cao

2025 BCSC 2140

COURT

Supreme Court of British Columbia

DECIDED

30 October 2025

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2025 BCSC 2140 Wang v. Cao

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Cao,

2025 BCSC 2140

Date: 20251030

Docket: E250617

Registry: Vancouver

Between:

Yue Wang

Claimant

And

Bo Cao, Boca Holdings Ltd., B&Y Holding Corp., Chalet Hotel Group Corp., Radium Chalet Ltd., B&Y Hotel Group Inc., B&Y Commercial Property Management Inc., B&Y Radium Lodge Ltd., Motel Bo (Camrose) Ltd., and Bo Hotel Group Ltd.

Respondents

Corrected Judgment: The text of the judgment was corrected at paragraph 8, 47, 49, 53, and 59 on November 4, 2025.

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Claimant:

D. Huang

Counsel for the Respondent:

J. Cao

Place and Date of Hearing:

Vancouver, B.C.

July 23 & August 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 30, 2025

Introduction

[1] The claimant Ms. Wang applies for the following orders:

a) A determination that:

i. Ms. Wang's Guideline income is \$0;

ii. Mr. Cao's Guideline income be imputed as \$360,000;

b) Mr. Cao pay Ms. Wang interim child support in the sum of \$2,994 per month for their child, [S.] (age 2 years), commencing on January [redacted], 2023 [S.'s date of birth];

c) Mr. Cao pay Ms. Wang interim spousal support in the sum of \$10,279 per month, commencing December 11, 2024; and

d) Mr. Cao pay 70% and Ms. Wang pay 30% of various specified s. 7 expenses for the child.

[2] Mr. Cao opposes all of the relief sought.

Background

[3] The parties began cohabiting on or about February 1, 2021. They were married on November 18, 2022. The claimant says the parties separated on December 11, 2024. The respondent says they separated in June 2023. It is not necessary to resolve which date is correct for purposes of this application.

[4] The parties have one child of their relationship, [S], who was born January [redacted], 2023 (age 2 years). The claimant says that since separation, she has been S.'s de facto primary parent.

- [5] The claimant says that the parties own several hotels and motels in BC (3), Alberta (4) and Texas (2), and that the respondent manages and controls them. She also alleges the respondent has purchased other properties in BC, Alberta and possibly Texas, or elsewhere in Canada and the United States, without her knowledge and consent. She identifies one such property as 1616 Nelles Place, Victoria, BC. She says they own 6 companies in BC, 3 companies in Alberta and an unknown number in the United States.
- [6] The claimant argues that since S. was born, the respondent has spent no more than 4 months with her, over approximately 5 occasions. She alleges S. became fearful of the respondent after he exhibited violent behaviour towards her. She alleges the respondent simply walked away from the relationship without putting any arrangements in place for providing child or spousal support. As a result, she commenced this action. She believes he has been delaying matters in an effort to avoid paying support. She is also concerned that he has been trying to dissipate and deplete the family business without her knowledge or consent, including by transferring shares of various holding companies, selling family properties and collecting rents or accommodation payments.

History of Proceedings

- [7] On March 4, 2025, the claimant filed her notice of family claim.
- [8] On March 13, 2025, Chief Justice Skolrood pronounced a protection order and property restraining order concerning assets and bank accounts.
- [9] On March 21, 2025, Associate Judge Vos pronounced an order varying the property and bank accounts restraining order.
- [10] On March 27, 2025, the respondent filed his response to family claim and a counterclaim.

Claimant's Circumstances

- [11] Claimant originally said she is unable to work and that this has been the case since S's birth. Due to the child's "tender years", caring for her has occupied all of her time.
- [12] The claimant filed an F8 Financial Statement on April 8, 2025, in which she asserted that her income is \$0. She receives Canada Child Tax Benefit and BC Family Bonus totaling \$5,446.68. She discloses under "Other Income" gross rental income of \$32,400 and net rental income of \$17,393.
- [13] She claims monthly expenses which include:

Housing

\$4,116

Utilities

\$493

Household Expenses

\$1,750

Transportation

\$1,661

Other (vacation)

\$400

Health

\$800

Personal

\$770

Children

\$2,317

Total monthly expenses

\$12,307

Total Annual Expenses

\$147,684

[14] Under assets, she lists real estate [4343 Emily Carr Drive, Victoria, BC \$1,542,000 and 1616 Nelles Place, Victoria, BC \$1,682,000], one vehicle \$50,000, Financial Assets \$137,617, Business Interests \$3,411,617 [interests in 4 BC corporations and 1 Alberta corporation], secured debt of \$2,072,416 [mortgages on three Victoria properties], unsecured debt of \$4,020, for total debt of \$2,076,436. She lists excluded property claims in relation to 2 BC properties and discloses disposal of a property in Richmond, BC.

[15] Interestingly, the claimant asserts in another affidavit that since January 1, 2023, she has borrowed about \$500,000 from her parents to cover her and S.'s living expenses. See para. 2 of her affidavit #7 sworn June 3, 2025. This debt does not appear to be included in her F8 Financial Statement.

[16] Attached are Notices of Assessment indicating total incomes (employment income + net rental income) for the following tax years:

- a) 2024 - \$42,999;
- b) 2023 - \$40,797;
- c) 2022 - \$47,225;

d) 2021 - \$15,885.

[17] The claimant filed a second F8 Financial Statement on July 4, 2025, to which she attaches financial statements for various companies:

a) B&Y Holding Corp. - 4343 Emily Carr Drive, Victoria, BC (C=51%, R=49%)

i. 2022 Revenue \$86,349, Expenses \$126,177, Net Loss (\$39,828);

ii. 2023 Revenue \$123,809, Expenses \$135,790, Net Loss (\$11,981);

b) Radium Chalet Ltd.

i. 2022 Revenue \$643,395, Expenses \$500,727, Net Operating Income \$142,688, Net Income \$129,208, Retained Earnings \$348,567;

ii. 2023 Revenue \$426,807, Expenses \$342,867, Net Operating Income \$83,940, Net Income \$75,521, Retained Earnings \$424,088;

c) Chalet Hotel Group Corp.

i. 2022 Revenue \$29,900, Expenses \$58,478, Net Operating Loss (\$28,578), Net Loss (\$28,498);

ii. 2023 Revenue \$29,900, Expenses \$39,805, Net Operating Loss (\$9,899);

d) B&Y Hotel Group Inc.

i. 2022 Revenue \$154,801, Costs of Goods Sold \$23,016, Expenses \$130,073, Net Income \$1,712;

ii. 2023 Revenue \$160,901, Costs of Goods Sold \$34,463, Expenses \$146,804, Net Operating Loss (\$20,366), Other Income \$20,000, Net Loss for Year (\$366);

e) B&Y Radium Lodge Ltd.

i. 2023 Revenue \$319,803, Expenses \$258,173, Net Operating Income \$61,630, Net Income for Year \$63,072, Retained Earnings \$408,128;

[18] The claimant says that starting in March 2025 she began to exercise her right to manage and control some of the family businesses. The two which she assumed control over are Radium Chalet (Radium Chalet Ltd.) and Rocky Mountain Springs Lodge (B&Y Radium Lodge Ltd.). She describes the struggle for control of these properties she had with the respondent, with a Mr. Aman, who appears to have been the respondent's on-site manager and the respondent's mother. My understanding is that the claimant ultimately prevailed, but was not able to access certain accounts and websites relating to these businesses.

[19] The claimant says that due to her responsibilities to care for S., she is not able to travel to business locations located in the interior of BC, Vancouver Island or Alberta.

[20] The claimant complains that since they separated, the respondent has refused to provide her with access codes or passwords to the computer systems of the family business. This has caused her significant anxiety, depression and insomnia.

[21] The respondent asserts his belief that the claimant's 2023 and 2024 incomes were approximately \$368,000. In one of his affidavits, he asserts that he understands that the claimant's Chinese bank accounts have annual income of \$360,000, but he does not indicate how he arrived at that understanding.

Respondent's Circumstances

[22] The respondent filed an F8 Financial Statement on June 27, 2025, in which he asserts that his income is \$48,000, plus rental income of \$11,200, for a total of \$59,200. He claims monthly expenses which include:

Housing

\$21,600

Utilities

\$1,100

Household Expenses

\$1,200

Transportation

\$6,800

Other (pet care)

\$300

Health

\$300

Personal

\$500

Children

\$0

Total monthly expenses

\$31,800

Total Annual Expenses

\$381,600

- [23] Under assets, he lists real estate [3671 Bowen Drive, Richmond, BC \$1,840,000 and 1506 -1050 Smithe Street, Vancouver, BC \$713,000], two vehicles at \$60,000, Financial Assets \$0, Business Interests \$1,400,000 [interests in 6 BC corporations and 3 Alberta corporations] and secured debt of \$2,415,244 [mortgages on two Victoria properties], unsecured debt of \$412,764, for total debt of \$2,828,008. He lists excluded property claims in relation to 2 BC properties, 4 Alberta properties and 1 Chinese property.
- [24] The respondent states in his F8 Financial Statement that he is currently living with his mother (age 68 years) who is on a visitor visa. She is elderly, retired and entirely financially dependent on him. She does not speak English, cannot drive and requires 24-hour assistance for daily living activities. He must either accompany her at all times or pay for personal care assistance. She has no legal status to work, no income and no access to public healthcare or social benefits.
- [25] I note that this description of the respondent's mother's circumstances appears to be at odds with the claimant's evidence that the respondent's mother was at one point residing at one of the Radium properties and actively resisting her efforts to assume control of them. It is also at odds with the respondent's own assertion in his affidavit of June 12, 2025 at para. 9, that his mother had assisted him in the December 2023 purchase of 1616 Nelles Place in Victoria, BC. The purchase price was \$1,490,000. The respondent says his mother made the down payment, mortgage payments and paid for taxes and expenses. There were two mortgages on the property, a first for \$968,500 from Bank of Montreal and a second for \$255,000 from Chia-Lin Chang.
- [26] He attaches Notices of Assessment indicating his total incomes (employment income + net rental income) for the following tax years:
- a) 2024 - \$52,278;
 - b) 2023 - \$58,230;
 - c) 2022 - \$18,517;
 - d) 2021 - \$15,885.
- [27] The claimant asserts that the respondent has income which she believes exceeds \$58,000 per month. She includes in her calculation the following:
- a) She says the respondent has been receiving a cash payment of \$5,000 per month from a Korean "big boss" to manage his hotels, since about June 2023;
 - b) She says he has been receiving salary of \$4,000 per month, for managing various family hotels;
 - c) She says he has been receiving rent of \$3,800 per month from the Emily Carr property (Victoria);

- d) She says he has been receiving rent of \$6,600 per month from the Nelles Place property (Victoria);
 - e) She says he has been receiving B&Y Holding Corp. (Victoria) hotel rent of \$8,153 per month; and
 - f) She says he has been receiving cash income from the slot machine at the Cosmopolitan Hotel in Blairmore, Alberta, under Boca Holdings Ltd., of about \$30,000 per month.
- [28] A general concern I have with the current state of the financial evidence tendered for this application is that it appears to be limited, selective and does not appear to take into account the reasonable costs associated with operating the various relevant hotel and rental properties.
- [29] The claimant also says the respondent has been using Boca Holdings Ltd. to sponsor at least three business immigrants, from whom he has received cash compensation of \$50,000 each, for a total of \$150,000. She does not provide a timeframe for this.
- [30] The claimant says that on June 5, 2025, she discovered that the respondent is associated with the Breton Hotel & Bar in Breton, Alberta. She believes he acquired it, or an interest in it, in December 2024, when the parties were separating. She also says that following pronouncement of the property protection order in this matter, on March 19, 2025, the respondent switched the point of sale machine for the Radium Chalet to the Cosmopolitan Hotel in Blairmore, Alberta. She appears to suggest he re-directed roughly \$40,000 in various payments due to Radium Chalet to the other business, amongst other issues.
- [31] The claimant also provided internet search results identifying three hotels located in Texas, USA which appear to have the respondent's name associated with them. No other evidence was provided regarding what his interest in them is and what if any income he may be deriving from them.
- [32] Complicating the analysis further is the fact that the respondent has not responded directly to many of the claimant's allegations beyond a general denial and an assertion that various hotel operations have not been profitable.

Determination of Income

Applicable Law

- [33] Section 16 of the Guidelines provides that, subject to s. 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total Income" in the T-1 general form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

- [34] Section 17(1) provides that if the court is of the opinion that the determination of a spouse's annual income under s. 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation of income or receipt of a non-recurring amount during those years.
- [35] Section 18 addresses determination of income when a spouse is a shareholder, director or officer of a corporation:

Shareholder, director or officer

18 (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

- (a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or
- (b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

Adjustment to corporation's pre-tax income

- (2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.

- [36] Section 19 deals with imputing income:

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:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;

- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (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;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

[37] In *Shapiro v. Simpson*, 2016 BCSC 211 [Shapiro] at para. 173, the court noted that parents have a joint and ongoing obligation to provide reasonable and necessary support for children of the marriage:

173 Parents have a joint and ongoing legal obligation to provide reasonable and necessary support for children of the marriage. In order to meet his or her child support obligation, each parent must earn what that parent is capable of earning within the specific context and circumstances of the family. See *Shapiro No. 1*, at para. 42 (citing *Vlek v. Graff*, 2013 BCSC 1906, at para. 34).

[38] In *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 36-38, the court of appeal summarized the principles applicable to imputation of income in cases involving intentional unemployment or under-employment:

36 For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.

37 The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work.

38 Although the legal foundation for awarding spousal support is different from that of child support, the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: "Means" has been interpreted to include all capital and other sources of income

[citations omitted]

[39] In Shapiro at para. 176, the court summarized the principles applicable to imputing income:

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

[40] The court's discretion to impute income is broad and is not limited to the enumerated heads in s. 19. See *K.E.J. v. P.R.J.*, 2018 BCSC 1401 at para. 142. See also *T.L.T. v. R.E.S.*, 2022 BCSC 598, in which income level was imputed based on the respondent's self-reported pattern of spending after separation.

[41] In *Lafrentz v. Palmer*, 2021 BCSC 1332 at paras. 94-96, Justice Kirchner summarized as follows:

94 The court has considerable discretion under the Guidelines to impute income on a parent's means of the supporting a child. In *Hathaway v. Hathaway*, 2015 BCSC 1485, Justice Abrioux (as he then was) described this authority at para. 59:

... the court is not limited to a consideration of income alone when determining child and spousal support. It may also consider financial means. The reference in section 1 of the [Guidelines] to the parents' "means" expands the calculation of income beyond income. The word "means" has been liberally interpreted to include all pecuniary resources, capital assets, income from employment or earning capacity, and any other source from which gains or benefits are received, together with, in certain circumstances, money that a person does not have in possession but that is available to such person: *Leskun v. Leskun*, 2006 SCC 25 at para. 29; *Griffiths v. Griffiths*, 2006 BCSC 1077 at para. 25; *C.A.B. v. M.S.C.S.*, 2006 BCSC 1393 at para. 11; *S.M. v. V.V.*, 2014 BCSC 565 at para. 118;

...

... section 19 of the [Guidelines], particularly section 19(1)(a), empowers the court to impute income based on a parent's means. This includes a wide variety of factors, the following being germane in this case:

* a payor's capital and assets, includes assets obtained through the division of property: *Bullock v. Bullock*, 2007 BCSC 318 at para. 25;

* a parent's lifestyle, monthly living expenses, assets and investments, and the range of income earned during the marriage: *Motyka v. Motyka*, 2001 BCCA 18 at paras. 6, 16;

* the age, education, experience, skills and health of the parent: *Watts v. Willie*, 2004 BCCA 600 at para. 16;

* a parent's experience, business acumen, and business contacts: *Braich v. Braich*, [1997] B.C.J. No. 1764 at para. 68 (S.C.);

* deferring or receiving a reduced income for future benefits: *Motyka v. Motyka* at para. 18; *Nielsen v. Nielsen*, 2007 BCSC 306 at paras. 29-31, varied 2007 BCCA 604;

* business expertise and contacts: *Akkor v. Roulston*, 2009 BCSC 1584 at paras. 74, 79; and

* historic earnings: *Nielsen v. Nielsen* (S.C.) at paras. 29-31; *Nielsen v. Nielsen* (C.A.) at para. 46; *Akkor v. Roulston* at paras. 74, 76;

...

... imputing income can and should be employed to prevent sophisticated payor spouses from reducing their support obligations by using deferred forms of compensation such as shares and stock options. *Motyka v. Motyka*; *Nielsen v. Nielsen* (S.C.) at para. 31;

95 In *Brown v. Brown*, 2014 BCCA 152, Justice Groberman, speaking for the court said:

[23] Sections 17-20 of the Guidelines allow courts a degree of flexibility in specific circumstances where parties have unusual forms or patterns of income, or where they are able to manipulate their income for tax purposes in a manner that might frustrate the goals of the Guidelines. It is important, however, in interpreting and applying those sections, that courts recognize the need for consistent and predictable results. Courts should interpret ss. 17-20 of the Guidelines with a view to advancing the objectives set out in s. 1.

96 As noted above, the onus falls to the party seeking to impute income to establish the imputed income on a rational and evidentiary basis: *Windle* at para. 88.

[42] Significant disputes regarding imputation of income are often best left to be resolved at trial, where parties can fully canvas their respective earning capacities and contested evidence can better be assessed: *Kouznetsova v. Kouznetsov*, 2014 BCCA 160 at para 45.

Analysis

[43] The respondent says that prior to their separation, the parties agreed that the claimant would receive a salary of \$2,000 per month and he would receive \$4,000 per month from their family businesses. The claimant says that since separation, she has been effectively excluded from the family businesses by the respondent.

- [44] The claimant argues that her Guideline income should be set at \$0, due to her inability to work while she is focused on caring for S. She asks that the court impute income of \$360,000 to the respondent, which she suggests is modest, considering her estimate that his actual inflow of funds exceeds \$57,000 per month.
- [45] The claimant says she only started to assert her right to manage some of the family corporations in March 2025. She qualifies this by noting that her ability to do that is limited by the fact that she cannot travel to the interior of BC, Vancouver Island or Alberta to manage them in person due to her child care responsibilities. The claimant points to the respondent's refusal to share with her access and password information to various websites and computer systems for these businesses, which has impaired her ability to manage them fully and effectively. Based on the claimant's affidavit evidence, it appears she has taken control of two Radium Hot Springs based hotels. Based on the financial statements produced, these appear to be the two most financially active of the family corporations. Unfortunately, there is no evidence provided which sets out how much (if any) income she has been able to generate from them since she assumed control.
- [46] The claimant argues the respondent has been using the family business and family corporations to pay his personal expenses and not just legitimate business expenses. She alleged he has used income from them to reinvest in businesses and to acquire properties in his own name. Unfortunately, claimant's counsel did not provide a detailed analysis setting out the extent of the alleged diversion of funds. The state of document production relating to these allegations is frankly lacking. The affidavit evidence is anecdotal at best. Many of the claimant's allegations are bare in nature and unsupported by documentary evidence. The respondent does not respond directly to many of the claimant's primary allegations, and his answers to the ones he does respond to tend to be terse. He has not offered detailed explanations or responses to key points, including what the nature of his interest is in his solely owned hotel businesses in Alberta and Texas, and what if any income he may be generating from them. There appears to be considerable capital available to the respondent with which to purchase real estate, including rental properties and hotel properties from which he can generate income. The \$5,000 per month in income he claims to generate is wildly out of proportion to the \$31,800 per month in expenses he claims he has been servicing. No explanation is provided for how he manages to sustain this gap.
- [47] It is notable that the respondent appears to have been able to acquire the 1616 Nelles Place property in Victoria, BC and hotel businesses in Alberta and possibly Texas, but has been less than fully transparent about how he managed to do so. He was able to secure two mortgages on that property, but it is not clear how he would qualify for such borrowing if it was based on the income information he discloses for this application.

- [48] There is evidence indicating the respondent may have intercepted rent payments which a mortgagee was attempting to secure pursuant to an assignment or rents in foreclosure proceedings pending against one of the properties. The claimant also alleges he has intercepted certain revenue from hotel operations, but this has been presented in an anecdotal fashion. Some bank account statements have been tendered, but without accompanying analysis.
- [49] This application appears to have been brought before there has been adequate document production achieved. The state of the evidence provided on this application is not sufficient to allow a firm interim determination of Guideline Incomes. It is clear that the respondent has control over substantial hotel and other assets, and that he has the capacity to generate income which significantly exceeds the claimant's capacity. The claimant now controls two of the family hotels and as such appears to be able to generate some income. She is claiming for child care costs for S. as a section 7 expense.
- [50] In my view, in the circumstances it is appropriate to impute a base level of Guideline income to each of the parties for purposes of determining an interim without prejudice level of support pending further and better document production, and possibly preparation of a Guideline Income report. I set the claimant's Guideline income at \$50,000 based on her ability to do some work while caring for S. and her control of the two Radium hotels. I set the respondent's Guideline income at \$150,000. Both parties are at liberty to apply to review this retroactively once discovery has made significant progress and further and better evidence is available.

Child Support

- [51] Section 149 and 150 of the Family Law Act, S.B.C. 2011, c 25 [FLA] allows the court to make orders for child support:

Orders respecting child support

149 (1) Subject to subsection (3), on application by a person referred to in subsection (2), a court may make an order requiring a child's parent or guardian to pay child support to a designated person.

(2) An application may be made by

(a) a child's parent or guardian

Determining child support

150 (1) If a court makes an order respecting child support, the amount of child support must be determined in accordance with the child support guidelines.

(2) Despite subsection (1), a court may order child support in an amount different from that required by the child support guidelines if

- (a) the parties consent under section 219 [persons may consent to order being made] or have an agreement respecting child support, and
- (b) the court is satisfied that reasonable arrangements have been made for the support of the child.
- (3) The court must consider the child support guidelines for the purposes of subsection (2), but must not consider arrangements made for the support of the child to be unreasonable only because the amount required under the child support guidelines differs from those arrangements.
- (4) Despite subsection (1), a court may order child support in an amount different from that required by the child support guidelines if satisfied that
 - (a) an agreement or order respecting the financial duties of the parents or guardians or the division or transfer of property, other than an agreement respecting child support, benefits the child directly or indirectly, or that special provisions have otherwise been made for the benefit of the child, and
 - (b) applying the child support guidelines would be inequitable on consideration of the agreement, order or special provisions.
- (5) If a court makes an order respecting child support in an amount different from that required under the child support guidelines, it must give reasons for doing so.

[52] Section 3 of the Guidelines sets out the presumptive rule:

Presumptive rule

3 (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

[53] The claimant seeks an order for child support retroactive to January [redacted], 2023, which is S.'s birth. Note that the claimant alleges that the parties separated on December 11, 2024, meaning she seeks pre-separation support. Claimant's counsel was not able to direct me to any authority supporting the proposition that interim child support can be ordered for a time period which pre-dates the parties' date of separation.

- [54] The claimant says that the respondent has not paid any child support since the parties separated. She filed her notice of family claim in March 2025 and this application on May 1, 2025. I agree that it is appropriate for the respondent to pay the claimant interim without prejudice child support for S. commencing January 1, 2025, based on the Guideline incomes specified in the previous section. This works out to \$1,383 per month in basic support.
- [55] The claimant also seeks an order that the respondent pay special and extraordinary expenses for S.
- [56] Section 7 of the Guidelines is as follows:

Special or extraordinary expenses

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

[57] The sub-categories sought by the claimant include (a), (c), (d) and (f).

[58] I agree that it is appropriate that special and extraordinary expenses be paid, on an interim without prejudice basis, based on Claimant 25% and Respondent 75% of the foregoing categories of special and extraordinary expenses.

Spousal Support

[59] The claimant seeks an order that the respondent pay her interim spousal support for the period December 11, 2024 onward. She argues that she is entitled to support because she is primarily responsible for caring for S. The respondent has exercised minimal parenting time with her, which places a greater child care burden on her. She has been unable to work

since separation due to the child's tender years and need for a more intensive level of care. Her income since separation has decreased due to her loss of the income she was receiving through the family businesses. I understand the claimant's position to be that she is asserting a non-compensatory basis of entitlement to spousal support.

[60] Sections 161 and 162 of the FLA set out the objectives of spousal support:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

Determining spousal support

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[61] In *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12, Master Keighley summarized principles applicable to an interim spousal support application:

12 On interim support applications, the application of these provisions must be qualified by certain established considerations:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);

3. On interim support applications the court does not embark on an in- depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 1082; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
4. The courts should not unduly emphasize any one of the statutory considerations above others;
5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006 B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B.*

[62] In *I.F. v. R.J.R.*, 2015 BCSC 793 at paras. 122-126, Justice Ballance discussed the purpose for an interim order:

122 The main purpose of an interim order for spousal support is to bridge the period between when the action is commenced and the trial at which time the court will be in a position to make a decision on the merits: *D.R.M. v. R.B.M.*, 2006 BCSC 1921; *Goriuk v Turton*, 2011 BCSC 652.

123 Because interim orders are summary in nature and temporary, they provide a rough justice at best: *Newson v. Newson*, 65 B.C.L.R. (3rd) 22 (C.A.) at para. 11. The "rough justice" approach underlying the temporary order implicitly recognizes that the evidence before the chambers judge on the interim application is often insufficient to permit an in-depth analysis of the wide array of factors relevant to entitlement and quantum of support: *R.C.G. v. C.L.G.*, 2010 BCSC 1596, para. 11; *Johnson v Johnson*, [1993] B.C.J. No. 2140 at 16.

124 The legal test governing interim support is not necessarily the same as the test applicable in reaching the final order: *Goriuk*. This is because the full picture of many of the considerations under the applicable legislation will not be known until a fulsome inquiry on the merits is embarked upon a trial.

125 Relying on *Newson*, *Goriuk* confirmed that where the marriage is admitted and need is proved interim support should be ordered without adjudicating the issues, unless the action is frivolous or vexatious.

126 While the other relevant factors that inform the issue of spousal support are to be considered to the extent possible, the respective needs and means of the parties are ordinarily the central factors, if not the most prominent, on an interim application. The corollary is that considerations such as compensatory factors and the need to achieve self-sufficiency often hold less significance: R.C.J. v. C.L.G., 2010 BCSC 1596 at para. 11; Goriuk at para. 33.

[63] I am satisfied that the claimant has made out an interim without prejudice entitlement to non-compensatory (needs based) support, based on the foregoing Guideline incomes. Mid-range spousal support is \$1,848 per month, commencing January 1, 2025.

Orders Made

[64] I impute, on an interim without prejudice basis, Guideline incomes to the parties as follows:

- a) Claimant - \$50,000; and
- b) Respondent - \$150,000.

[65] Both parties are at liberty to apply to review this retroactively once discovery has made significant progress and further and better evidence is available.

[66] The respondent is ordered to pay the claimant interim without prejudice child support for S. commencing January 1, 2025, of \$1,383 per month.

[67] The parties will share, on an interim without prejudice basis, special and extraordinary expenses for S. based on Claimant 25% and Respondent 75% for subcategories (a), (c), (d) and (f) of s. 7(1) the Guidelines.

[68] The respondent will pay the claimant, on an interim without prejudice basis, spousal support of \$1,848 per month, commencing January 1, 2025.

[69] The claimant has had the larger measure of success and is entitled to costs of this application, at the conclusion of the action.

"Associate Judge Bilawich"

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Prepared on 26 October 2026 · Esheria