
CANADA / JUDGMENT

Waters v. Michie

2012 BCSC 639

COURT

Supreme Court of British Columbia

DECIDED

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2012 BCSC 639 Waters v. Michie

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Waters v. Michie,

2012 BCSC 639

Date: 20120503

Docket: D109625

Registry: Vancouver

Between:

Jodi Lynn Waters

Claimant

And

James Alexander Michie and Dawn Lanelle Michie

Respondents

Before: The Honourable Madam Justice Humphries

Reasons for Judgment

Counsel for the Claimant:

J. Shewfelt

C. Rajotte

Counsel for the Respondent, Dawn Lanelle Michie:

P.J. Daykin, Q.C.

E.C. Walker

James Alexander Michie:

Appearing on his own behalf

Place and Date of Trial:

Vancouver, B.C.

November 14 - 18, 23 - 25;

28 - 30, December 2, 2011

Place and Date of Judgment:

Vancouver, B.C.

May 3, 2012

- [1] This is a trial to determine income in order to establish whether child support is owing and if so, how much, by whom, for what periods, and for which of the three children of the marriage. The dispute between the parties, who separated in 1995, is of such long-standing that two children now live independently. Despite ongoing orders for payment of child support to the former Ms. Michie, now Ms. Waters, Mr. Michie has paid nothing since the fall of 2008, when he claims that he ceased to earn income. The youngest child has lived with him full time since the summer of 2009 and Ms. Waters has paid nothing to Mr. Michie for that child.
- [2] Ms. Waters alleges that Mr. Michie hid assets and also transferred property into his present wife's name in order to hide his income. Ms. Waters also alleges that Mr. Michie is intentionally underemployed.
- [3] In return, Mr. Michie says Ms. Waters should contribute to the support and expenses for the child who lives with him full time.
- [4] The evidence called at trial covered a great deal of ground, although the issues which the court is called upon to decide are fairly narrow. However, those issues are bound up in allegations respecting complicated and extensive business dealings and transfers of property that go back before Mr. Michie's marriage to Dawn Michie in 2004. Dawn Michie is also a defendant in this action.
- [5] On the first day of trial, counsel for Ms. Waters applied to amend the pleadings and adjourn the trial. This late development was the result of the unexpected, from Ms. Waters' point of view, dismissal of an appeal from a judgment in chambers of Madam Justice Loo. Madam Justice Loo had struck out part of the existing pleadings against Dawn Michie which alleged that she was involved in a tortious conspiracy with Mr. Michie.

- [6] Ms. Waters wished to amend the pleadings to include a claim for fraudulent conveyance from Mr. Michie to Dawn Michie in respect of unspecified assets and property, possibly as far back as the date of separation of 1995 leading up to the initial settlement between the parties in 2001. An adjournment was also sought to allow Ms. Waters to pursue these claims through oral and documentary discovery. I allowed the amendment but not the adjournment, and without the additional discovery, Ms. Waters did not wish to pursue the expanded claims. Certain claims against Dawn Michie were abandoned at the outset of trial, and the trial thus proceeded against her on the basis of an allegation of fraudulent conveyance to her in respect of two pieces of property - "the Patrick Road property" and "the Alderwood Avenue property". The issue in respect of Dawn Michie then, is: if Mr. Michie owes arrears and/or retroactive child support to Ms. Waters, and if he conveyed those two pieces of property to Dawn Michie in order to hinder or defeat creditors, then should the resulting orders against Mr. Michie be registered and executed against those titles, which are held by Dawn Michie?
- [7] The week following the conclusion of this trial, a defamation action brought by Mr. Michie against Ms. Waters began before another judge of this court and concluded in five days. That judgment is on reserve.
- [8] In 2007, another judge of this court referred the parties' disputes over s. 7 expenses to the Registrar. A lengthy recommendation was issued on February 7, 2011. Ms. Waters seeks confirmation of this recommendation. Mr. Michie disputes most of the Registrar's recommendations.
- [9] Since so many subjects covering a long period of time were testified to, I will approach the narrative chronologically. This is an overview only as the complexities and details of the evidence were extensive.

1992 - 2004

- [10] The parties had a short marriage. Mr. Michie and Ms. Waters (nee Guthrie, formerly Ms. Michie, now married and separated from Mr. Waters), were married on March 28, 1992. They separated in October 1995. The s. 57 declaration was made in November of 1996. They obtained an order of divorce in May of 1999.
- [11] They have three children: AM, born June 29, 1989, who is Ms. Waters' son from a previous relationship and whom Mr. Michie adopted, NM, born November 21, 1992, and MM, born January 27, 1995.
- [12] The parties entered into Minutes of Settlement which were incorporated into an order in January of 2001. The gist of the agreement was shared custody, with specified child and spousal support payments to cover 2001 and 2002. Spousal support was set at \$1,000 per month, to continue for two years, ending December 31, 2002. Child support was set at \$1,400 per month commencing January 1, 2002, reduced to \$800 per month as of January 1, 2002. Thereafter, the Federal Child Support Guidelines were to govern. Mr. Michie was to pay all s.

7 expenses for 2001 and 2002. Mr. Michie paid Ms. Waters \$60,000 in full and final settlement of all remaining claims.

- [13] Mr. Michie obtained the Alderwood Avenue property, where he and Dawn Michie live, in 1999 by borrowing \$40,000 from his father and obtaining a mortgage at CIBC. His Form 89 of August 17, 2000, that is prior to the Minutes of Settlement and Consent Order, disclosed his interest in this property and the corresponding debt. He kept the property in his name after his marriage to Dawn Michie in 2004.
- [14] Since Mr. Michie represented himself, his evidence was not led in a cohesive fashion, but it appears that at the time of the Consent Order, or shortly thereafter, he was employed by (or owned the beneficial interest in, according to Ms. Waters) a company based in Switzerland and Lichtenstein named GM Capital Partners Ltd. ("GMC"), run by a man named Mark Angst. The company, which also had a Canadian subsidiary (a numbered company) and an office in Port Coquitlam, B.C., is in the business of finding investment capital for small businesses. According to Mr. Michie, his salary from GMC was paid by the Canadian subsidiary up to 2008, and he owned no shares in either the Canadian subsidiary or GMC.
- [15] Ms. Waters' allegation that Mr. Michie owns GMC rests mainly on the evidence of Mr. Erwin Speckert.
- [16] Mr. Speckert, born and raised in Canada but now resident in Switzerland, said he met Mr. Michie in 2000 when he was working in Lichtenstein. Mr. Michie had a company called GM Capital. GMC's business was to seek funding for small listed and unlisted companies. Mr. Speckert had clients with money to invest. They formed a professional relationship and a friendship followed.
- [17] Mr. Speckert said Mark Angst was the face of the company, but all instructions came from Mr. Michie. He said Mr. Michie would introduce Mr. Angst as his boss but he made it very clear that he ran the company himself. According to Mr. Speckert, he considered Mr. Michie interchangeable with GMC, like the Pope and the Vatican, or Gordie Howe and Mr. Hockey. However, Mr. Speckert said although he shared office space with GMC, he was not a part of the company.
- [18] The Patrick Road property was acquired in the name of a numbered company, 646904 BC Ltd., in October of 2002. An important issue in this trial is whether that company, 646904 B.C. Ltd, ("646904") was owned and controlled by Mr. Michie, or by other parties.
- [19] According to Mr. Michie and his business associate, Robert Knight, a holding company 646904 B.C. Ltd. ("646904") was formed in May of 2002 as a vehicle for Mr. Speckert's property investments in British Columbia. The company was administered by Mr. Knight.

- [20] The Patrick Road property was first noticed to be for sale by Dawn Michie who liked to ride her horses along the dike bordering the property. She said she told Mr. Michie about it but he said they could not afford it. Within a week, however, he told her he had found an investor who would buy the property. That was Mr. Speckert, according to Mr. Michie and Mr. Knight, who purchased the property through 646904. Ms. Waters alleges that Mr. Michie, not Mr. Speckert, always owned and controlled 646904.
- [21] The Patrick Road property was purchased through a cash payment of \$150,000 and mortgage financing of \$389,000. Mr. Michie signed the mortgage on behalf of 646904 and in his personal capacity as guarantor. None of the documents were signed by Mr. Speckert.
- [22] In August of 2004, Mr. Speckert and Mr. Michie decided to go into business together in Switzerland. They set up an asset management company called Alpine Atlantic Asset Management ("Alpine Atlantic"). This company managed assets for private individuals.
- [23] Meanwhile, on the matrimonial front, Mr. Michie and Ms. Waters entered into another agreement for support for 2003, drafted by Mr. Michie, in which Ms. Waters agreed to a guideline income for herself of \$30,000. No amount was stipulated for Mr. Michie, but he agreed to pay Ms. Waters three months of child support at the rate of \$1,600 per month. They were unable to reach agreement for 2004.
- [24] Mr. Michie married his present wife, Dawn Michie in 2004.
- [25] AM, the oldest son, testified that his father and Dawn Michie took him and his sister NM to an architect's office and showed them the plans of the house to be constructed on Patrick Road, what their rooms would look like, and where the in-law suite for his grandparents would be. AM said he thought this was when he was in Grade 10, in 2004.

2005 - 2007

- [26] In May of 2005, there was an application in chambers which coincidentally came on before me, to impute income on both sides and to set child support. On this application Mr. Speckert stepped forward to assert ownership of 646904 and thus of the Patrick Road Property, allegedly at the request of Mr. Michie.
- [27] It was Ms. Waters' contention before me in May of 2005 that Mr. Michie and his new wife, Dawn Michie, owned this property on which there was a large equestrian center, and a house under construction. Thus Mr. Michie was hiding assets. Mr. Michie filed material from Mr. Speckert in which Mr. Michie's lawyer's assistant swore to a conversation with Mr. Speckert, then in Switzerland, in which Mr. Speckert stated that he owned the property, which was held by the numbered company. Mr. Speckert also provided a letter to set out his position and which was attached to the affidavit.

- [28] Based on the material before me on the application of May 2005, I did not impute income to either party, and set child support based on the parties' respective line 150 incomes, retroactive to 2004. Counsel agreed that the appropriate amount, after setting off the respecting incomes, was \$948 per month.
- [29] Mr. Speckert testified at this trial that at the request of Mr. Michie, he agreed to sign backdated documents in 2005 showing that he owned 646904 at the time it was incorporated and thus that he, not Mr. Michie, owned the Patrick Road property. He said Mr. Michie asked him if he would appear to be the owner for taxation purposes. Mr. Speckert said he had no problem with that as "tax optimization" is the Swiss national sport where financial secrecy was a way of life until recently. He suggested they do some background documentation because "if we're going to be dancing the dance, we better have some music."
- [30] Mr. Speckert said Mr. Michie drafted the letter that was put before the court in the 2005 application for child maintenance.
- [31] Mr. Speckert said he later learned Mr. Michie had asked him to do this in order to thwart an upcoming application by Ms. Waters for increased child and spousal support, something that upset Mr. Speckert, causing him to volunteer to come forward for this trial to aid Ms. Waters.
- [32] Mr. Knight testified at this trial and said Mr. Speckert was always interested in investment properties in British Columbia and the purchase of Patrick Road was similar to others done in 2004 and 2005, particularly one in Naramata.
- [33] Mr. Speckert testified that he knew nothing of the Patrick Road property or 646904 in 2002. He said he was given a tour of the property by Mr. Michie at some later point, but in 2002 he had no interest in acquiring property in British Columbia, and he has never had any interest in horses or an equestrian center, which is the central feature of this property.
- [34] In May of 2005, nominal ownership of 646904 was transferred to Mokandi International SA ("Mokandi"), managed by a Mr. Bohler from Lichtenstein. Mr. Knight ostensibly handled this transfer.
- [35] It is Ms. Waters' position that Mokandi (as well as 646904) is actually owned by Mr. Michie. Mr. Michie said he had met Mr. Bohler but he provided no financial assistance to Mokandi himself and had no interest in the company. He agreed in cross examination that Lichtenstein provides strict secrecy and it is possible to use a Lichtenstein trustee to control a company anonymously.
- [36] Mr. Knight testified he knew Mr. Bohler, but said he never asked him who the shareholders of Mokandi were.
- [37] Mr. Speckert said he did not know Mr. Bohler, although he had heard Mr. Michie talk about him.

- [38] Moving to the matrimonial issues, custody of the children was shared equally during this time until AM, the oldest child, commenced living with Ms. Waters full-time in December of 2006.
- [39] In 2006, Ms. Waters married Mr. Waters, with whom she had been living since 2001.
- [40] In August of 2007, Ms. Waters filed an application to vary child support based on having AM with her full-time. Madam Justice Bennett, who was then on the trial court, heard the application. She took into account various factors, including that AM was of an age where he could work, and set child support, after applying the appropriate set-off, at \$1,549 per month. She also ordered a reference to the registrar in respect of s. 7 expenses. That hearing took place in late 2009 and early 2010. The report and recommendation was issued February 2011.
- [41] AM graduated from high school in 2007 and continued to live with his mother, working part time, but being supported entirely by her as he spent all his own money on recreational activities. He has had very little, if any, communication with Mr. Michie since he began to live with his mother full time.
- [42] Ms. Waters and Mr. Michie continued to share custody of NM and MM.
- 2008
- [43] Many things relevant to this action happened in 2008.
- [44] A trial of the issue of Mr. Michie's income was ordered in January of 2008.
- [45] According to Mr. Michie, Mr. Speckert misappropriated funds from the working capital of Alpine Atlantic and was let go in 2008. Mr. Speckert says Mr. Michie supplied him with documents to assist him with a lawsuit against him by his former employer regarding insider trading. The documents involve several companies that, according to Mr. Speckert, Mr. Michie admitted owning and that trace back to GM Capital. Mr. Michie denied any communications in this regard and says he does not own these companies. According to Mr. Speckert, he thought his agreement with Mr. Michie went far enough to allow him to use the funds from Alpine Atlantic to pay his legal bills and he returned the funds when told he was not authorized to use them.
- [46] In any event, the two ceased their business relationship. Mr. Speckert took all his clients with him when he left, leaving Alpine Atlantic in an unfortunate position.
- [47] Mr. Speckert joined with a number of friends who were vacationing at a fishing lodge in the Queen Charlottes in cutting out a corporate logo of GMC from a customized shirt and sending it to Mr. Michie with a sheet of paper containing all of their fingerprints and the words "You Die" scratched on the paper.
- [48] Mr. Speckert contacted Ms. Waters and told her he had lied on the chambers application in 2005, and Mr. Michie had owned the Patrick Road property all along.

- [49] Mr. Michie had a falling out with a number of people in 2008 in addition to Mr. Speckert, among them, a man named Argang Shariat, who had also worked for GM Capital Partners, but had been let go.
- [50] According to Mr. Michie, Mr. Shariat started an international "slander" campaign aimed at destroying Mr. Michie's business reputation and livelihood. Mr. Shariat and Mr. Speckert collaborated with a Swiss journalist to create a damaging and widely published article which Mr. Michie says has destroyed his business career and reputation. As well, Mr. Shariat sent emails to the executive of the minor hockey league in Port Coquitlam where Mr. Michie coached hockey. He also obtained the private email addresses of all the hockey parents and sent them damaging information about Mr. Michie, going so far as to allege he is a paedophile.
- [51] Mr. Michie caused a criminal investigation to be launched against Mr. Shariat in Switzerland, where he says Mr. Shariat has now been found guilty of criminal slander.
- [52] GMC went into receivership in June of 2008. Mr. Michie said the federal banking commission in Switzerland decided GMC did not have appropriate licences to allow it to operate as a broker/dealer without adequate capital so the company was placed into receivership, which he equated with bankruptcy. As a result, he lost his monthly income.
- [53] In June of 2008, AM turned 19. In July of 2008, Mr. Michie lowered his child support payments to \$938 to exclude AM and stopped them entirely in November of 2008.
- [54] In July of 2008, Mr. Michie transferred the Alderwood Avenue property to Dawn Michie by way of a contract for purchase and sale, for a deposit of \$1.00. Both continued to live there. Mr. Michie said he transferred the property because he considered Mr. Shariat to be a physical threat and wanted to make things easier for Dawn Michie if something happened to him. However he acknowledged that the transfer would make it difficult for people with claims against him to get at the house.
- [55] In the fall of 2008, as Mr. Michie and his associate Mr. Knight persisted in saying, "the world fell apart". That is, the world economy took a bad turn.
- [56] Although Alpine Atlantic Asset Management was now a shell due to the departure of Mr. Speckert, Mr. Michie was also connected with another company, Alpine Atlantic Global, which is an active company and allowed him to maintain a connection to the European financial community. He says he was let go from that company because of all the "slander" and because counsel for Ms. Waters sent them an email asking about his income. He still uses their phone and remains friends with the staff.
- [57] In November of 2008, the Patrick Road property was sold by the current owners, Mokandi, the offshore company who had apparently taken ownership of it from the numbered company, to Dawn Michie, at a value far below market price. Ms. Michie simply assumed the existing mortgage of \$1.6 million, thus acquiring a property worth much more than that.

- [58] According to Mr. Knight, the owners of Mokandi were desperate to get rid of the property as their economic position was collapsing all over the world and their loans were being called. He said Mokandi was willing to walk away from all of the equity in the Patrick Road property because they were in difficulties in the United States, they wanted no further exposure, including mortgage payments, and wanted to liquidate everything. When asked why Mokandi did not simply allow foreclosure on the property and take the equity, Mr. Knight said he did not accept that there was any equity in the property, especially in 2008.
- [59] Mr. Knight initially testified that he put Dawn Michie and Mr. Bohler together to make the deal on Patrick Road, but after thinking about it overnight, he said he had acted as the go between for them. He denied that this change in his testimony was to conform with evidence that would come from Dawn Michie.
- [60] Mr. Michie testified that he expected to make a lot of money from a deal that was to come to fruition in November of 2008, so he indicated on a loan application document in September of 2008 that he had a large income that year: \$240,000. He testified that the deal fell through due to the death of the principal investor, the world economic crisis occurred, and it is his position that he has made nothing since GMC went into receivership.
- [61] Mr. Michie also started an action in British Columbia against Ms. Waters alleging that she has libelled him. He testified this action, including the posting of security for costs, is being funded by a friend of his in Austria, Mr. Staggl. This action, as mentioned above, proceeded to trial in the week following the conclusion of this trial.

2009

- [62] In the summer of 2009, NM decided to live full time with Ms. Waters. MM decided to live full time with Mr. Michie.
- [63] Dawn Michie was added as a party to this litigation in 2009.

2010 - 2011

- [64] NM graduated from high school in 2010 and got a part time job, continuing to live with Ms. Waters.
- [65] As of September 2011, NM and AM now share accommodation which they pay for, subsidized to some extent by Ms. Waters. Mr. Michie provides funds to NM directly, with the assistance of Dawn Michie and her family.
- [66] NM turned 19 on November 1, 2011. AM is now 23. MM is now 16 and continues to live full time with Mr. Michie and Dawn Michie.
- [67] Ms. Waters now lives in a small apartment on her own.

[68] Mr. Justice Dley and Mr. Justice Grauer made orders in September 2010 and October 2011 respectively relating to child support which all parties agree were interim and will be subsumed by orders made at trial. No support has been paid pursuant to those orders. Mr. Justice Dley denied Mr. Michie's application to have AM declared no longer a child of the marriage in 2010; Mr. Justice Grauer later determined that AM is no longer a child of the marriage as of August 31, 2011.

Dawn Michie's evidence

- [69] I have set out very little of Dawn Michie's evidence in the general narrative, since she did not have much testimony to give about the various business dealings and property acquisitions.
- [70] She testified she met Mr. Michie in 2000, when she was working as a flight attendant. She began living in the Alderwood property in 2001, and built up a relationship with Mr. Michie's children. She and Mr. Michie married in 2004.
- [71] Dawn Michie is from a wealthy family and works for her father at this time in a business related to horses. She says she has received about \$500,000 from her father since 2008. She is retired from her job with the airline and spends a great deal of her time with her horses, as she has always done.
- [72] She testified that she expressed interest in the Patrick Road property, and Mr. Michie told her very soon thereafter that Mr. Speckert would invest in it. She wanted a barn and riding area and provided some designs to Mr. Michie. The barn and riding area were, she testified, "approved by the owner". She moved her horses there in 2003.
- [73] She was on the property from day to day but says she had no direct involvement in the plans for the barn and paid no money personally to anyone for any purpose connected with the property. She does not know who paid the mortgage or tax or utility payments. She signed mortgage documents when asked to do so by Mr. Michie. She said she did meet with the architect and had input into the design of the house. She said she hoped to own the house, but she also wished to make it attractive for resale. She agreed they took the children to the architect's and showed them what might be their rooms, but said she did know if they would ever own the house at that point.
- [74] She said she met Mr. Speckert and knew he was aware she was using the property and he had no problem with it.
- [75] Dawn Michie said she bought the Patrick Road property in 2008 with the assistance of her father. Mr. Michie and Mr. Knight negotiated the price. She said she did not merely have to assume the debt; she had to finance the construction costs, as there was a lot to be done. She obtained a mortgage for \$227,000 in December of 2008 and a second mortgage in September of 2011 for \$800,000. She paid out the bank, the first mortgage, the property taxes and the liens, leaving about \$80,000 for further construction costs and living expenses.

- [76] The provincial government reassessed her on the purchase tax, setting the fair market value at \$2,862,100, rather than \$1,651,000. She appealed, and the value was reduced to \$2,607,100.
- [77] Although she has filed a progress report indicating the property is 100% complete in order to get an occupancy permit, she says this is only for the guest suite. She says there is still a great deal to be done on the main house - about \$500,000 worth.
- [78] Also in 2008, Mr. Michie told her he wanted to do some estate planning in case something ever happened to him, and he transferred the Alderwood property to her. Alderwood was assessed at \$584,000 in 2011 and is heavily mortgaged.
- [79] Dawn Michie says she has paid all the family expenses since 2008, and supports MM, with the help of her father, her horses, and her investments. She also pays for things for NM and has paid for things for AM. She says she keeps her accounts separate from Mr. Michie and has never received any money from him, GMC or Alpine Atlantic. She testified that her grandmother left money in trust for the children and her parents delivered that money to AM and NM in 2011.
- [80] Dawn Michie testified that she has an assistant, Ms. Sales, who also works for Mr. Michie. She said Ms. Sales does banking, accounting, paperwork, and payroll for the barn for her, which requires perhaps ten hours a week. She does not know what she does for Mr. Michie. Mr. Michie said Ms. Sales is his wife's assistant and he thinks she is paid \$3,000-\$4,000 per month.

THE PLEADINGS

- [81] This matter came to the trial list as a result of the order of Mr. Justice Kelleher of January 11, 2008. A copy of the order was not provided to me, so I do not know if it was entered. Nevertheless, I have Kelleher J.'s reasons, which state:

There should be a trial on the issue of the defendant's income from 2004 to date....in the absence of an allegation of fraud, it need not go further back than the calendar year 2004. That issue is referred to trial. The normal pre-trial procedures apply. The parties can work out when a statement of claim should be delivered and the rest of the timing and proceed from there.

- [82] Ms. Waters was given leave to add Dawn Michie as a defendant on August 28, 2009, and the Claim was filed on November 19, 2009. It was amended on September 14, 2010 to include the tort of conspiracy against Dawn Michie. That claim was struck out by Madam Justice Loo, confirmed by the Court of Appeal.
- [83] Several claims in the Amended Notice of Family Claim were abandoned at the outset of trial when the adjournment was refused.
- [84] The paragraphs requesting orders setting aside the Minutes of Settlement and the Consent Order were abandoned during trial, and are therefore dismissed.

[85] The Notice also contained claims based on Ms. Waters' assertion that Patrick Road and Alderwood were family assets because funds used to purchase them could be traced back to the triggering event in 1996. Declarations following upon those claims were also abandoned and are hereby dismissed:

A declaration that the defendant Dawn Michie holds the legal title to [Patrick Road and Alderwood] as a constructive trustee for the benefit of the plaintiff with respect to a 50% beneficial ownership interest to which the plaintiff is entitled in equity.

A declaration....that the Defendant James Michie holds equitable title to [Patrick Road and Alderwood] as a constructive trustee for the benefit of the Plaintiff with respect to a 50% beneficial ownership interest to which the Plaintiff is entitled in equity.

[86] The remaining claims are:

a) an order for retroactive and prospective child support under the Divorce Act, or alternatively, the Family Relations Act.

...

f) ...a declaration that the transactions described in paragraphs 36.11 and 36.12 [the transfers to Dawn Michie of the Patrick Road property and Alderwood] are void and of no effect

g) restitution or damages for fraudulent misrepresentation and conspiracy and interest pursuant to the Court Order Interest Act.

...

j) an order that the Respondent Dawn Michie is personally liable to pay damages or restitution to the Claimant up to the value of the money and other property that was conveyed to her by the Respondent James Michie to delay, hinder or defeat creditors and others, including the Claimant contrary to the Fraudulent Conveyance Act, RSBC 1996, c. 163.

k) special costs.

ISSUES AT TRIAL

[87] The issues at trial, which are now fairly narrow, are conveniently set out in the argument of Dawn Michie, and I have added the issue in respect of Mr. Michie's claim against Ms. Waters:

- a) should income be imputed to Mr. Michie?
- b) has Mr. Michie fraudulently under-stated his income?
- c) are there any arrears of child support owing by Mr. Michie?
- (i) who is a child of the marriage and for what periods?
- (ii) which children resided with which parent, and when?

- d) should a retroactive child support order be made?
- e) if so, was the transfer of the Alderwood property intended to defeat Mr. Michie's creditors?
- f) was Mr. Michie the beneficial owner of the Patrick Road property in November of 2008 and if so, was the transfer to Dawn Michie intended to defeat Mr. Michie's creditors?
- (g) what are Ms. Waters' child support obligations?

POSITIONS OF THE PARTIES

Ms. Waters' position

- [88] Ms. Waters says it is appropriate to revisit child support back to the agreement of 2003, which should be set aside as it was not based on any financial disclosure by Mr. Michie. Thereafter child support should be adjusted retroactively in accordance with the findings of the court as to Mr. Michie's income. She says child support for AM was owed until August 2011 and continues to be owing for NM.
- [89] Ms. Waters agreed that Mr. Michie's parents have been very supportive of the children, much more than her own parents. She also agreed she has seen cheques from Dawn Michie for the benefit of the children, but she said she believes the money actually comes from Mr. Michie.
- [90] Ms. Waters says Mr. Michie purchased, developed, and owned the Patrick Road property at all material times. The following moneys should therefore be attributed to his undisclosed income:
- (a) the \$150,000 cash component of the purchase price in 2002
 - (b) the mortgage payments between 2002 and 2008
 - (c) the development costs
 - (d) the equity windfall conferred upon Dawn Michie on the transfer of the property, which should be set at \$956,100, and which constitutes income to Mr. Michie under the Income Tax Act.
 - (e) the benefit of the cost of a trip to Hawaii in 2006, discussed below
 - (f) the \$51,545.50 debt to 629256 BC Ltd. written off by Mr. Knight
 - (g) the money given to Mr. Michie to prosecute his defamation action
- [91] In addition, Ms. Waters alleges that Mr. Michie is intentionally underemployed, and should have employment income imputed to him.

[92] Thus Ms. Waters says Mr. Michie owes retroactive child support in amounts to be determined by the findings at trial. She characterizes the claim as one for retroactive support, but arrears are also in issue in view of the outstanding orders which have not been complied with.

Patrick Road property

[93] In support of her position that Mr. Michie purchased, developed, and owned the beneficial interest in the Patrick Road property until it was transferred to Dawn Michie in 2008, Ms. Waters points to the following evidence:

- Dawn Michie discovered the property as she was riding her horse and loved it.
- Mr. Michie signed the initial mortgage on behalf of the numbered company in October of 2002 and also personally guaranteed it.
- In May of 2003, Mr. Michie mortgaged his personal residence (the Alderwood property) to obtain mortgage funds to help finance the construction of an equestrian center on the Patrick Road property for Dawn Michie. Mr. Knight signed the mortgage as well on behalf of 646904.
- In June of 2004, Mr. Michie signed a further mortgage for the Patrick Road property as covenantor.
- In November of 2005, October of 2007 and May of 2008, Mr. Michie and Dawn Michie signed as covenantors on a further mortgage on the property. Funds were used to finance further construction on the house. Mr. Michie acted as the contact person for appraisal purposes. Some of his credit card statements in 2004 were sent to Patrick Road.
- Ms. Michie provided a general design for the house, met with the architects and contractors, and was on the site every day. Mr. Michie's lawyer was the lawyer for 646904.
- In 2003 and 2004, Mr. Michie acted as guarantor for the lease of four pieces of machinery on the Patrick Road property.
- AM, the oldest child, testified that Mr. Michie and Dawn Michie took the children to the architects' office in 2004 and showed them on the plans what their rooms would look like. He remembered Mr. Michie pointing out the bedrooms for the children and the grandparents' suite, and telling him he could have his graduation party at the house.
- No mortgages involving Patrick Road were ever signed by Mr. Speckert.
- There is no communication in evidence between Mr. Speckert and anyone with respect to Patrick Road prior to April 2005.
- Mr. Speckert testified neither he nor his wife ever had any interest in horses.
- Mr. Speckert testified that he was given a tour of the property in 2005 when the house was under construction. Mr. Michie pointed out the various rooms to him.

- Some of the corporate records of 646904 appear to have been created by Mr. Knight at a later date in order to show Mr. Speckert as the owner of the property.
- Mr. Michie admitted he provided the initial draft of the letter which Mr. Speckert placed before the court in 2005 to support the contention that he, Mr. Speckert, owned 646904. Mr. Michie also admitted he sent emails to Mr. Speckert suggesting further revisions to the letter.
- On April 18, 2005, Mr. Speckert sent Mr. Michie an email saying:

we should likely create some documentation supporting the creation of 646904 BC Ltd. ie. when was this company formed? There should be a signed letter to support my asking Bob to set it up and some correspondence to me from him about the process. This might not be "needed" but it is better to have it on hand as it may kill a few birds with a single stone. In essence, whatever you and he originally did in written form, we should "mimic" in my name.

- On April 19, 2005, Mr. Michie sent an email to Mr. Speckert attaching an unsigned subscription for shares of 646904 BC Ltd dated May 2, 2002, with a request for Mr. Speckert to sign the document and return it. He did.

- Since Mokandi, the legal owners of 646904, sold the property to Dawn Michie at a substantial loss - that is, she assumed the existing mortgage debt of \$1,651,000 when the property was assessed at around \$3,000,000 - the only reasonable inference is that Mr. Michie owned Mokandi and thus 646904, and thus the Patrick Road property. This transfer resulted in the provincial government putting a lien on the property for unpaid property transfer tax. Dawn Michie appealed and the value was set at \$2,607,100, making the equitable windfall to Dawn Michie \$956,100.

- [94] Ms. Waters takes the position that that windfall was a taxable benefit and should be imputed as income to Mr. Michie.
- [95] Mr. Knight, who was subpoenaed by Ms. Waters as an adverse witness, testified that Mr. Speckert did own 646904 as of 2002. Ms. Waters' position is that Mr. Knight cannot be believed. She points out that the particulars on a share certificate setting out the initial share ownership of 646904 in 2002, to a solicitor named Carl Jacobson when it was a "shelf company" at his law firm, was printed in a particular font, whereas the share certificate showing Mr. Speckert holding the shares in 2002 and the share certificate showing Mokandi International holding the shares in 2005 are in a different font, but identical to each other. It is thus likely, in her view, that Mr. Knight created these documents to support Mr. Michie.
- [96] Mr. Knight testified that he took the corporate records out of the law firm's custody in 2005 to save money. Mr. Jacobsen, the solicitor who handled the records, could not remember anything about the transactions, but said it was unlikely he would sign documents dated 2002 in 2005, and he left the firm in 2004. He said if his former partner contacted him and asked him to clean up documentation he would, but it would be unusual.

Alderwood Avenue property

- [97] Ms. Waters says this property was fraudulently transferred to Dawn Michie on July 14, 2008. There was no consideration for the transaction. Both Mr. Michie and Dawn Michie continued to live in the house. Mr. Michie said he transferred it to Dawn Michie because he believed Argang Shariot, who was threatening him with civil proceedings, was a physical threat to him.
- [98] However, he admitted he knew the transfer would make it difficult for people with claims against him to get at the house.
- [99] At the time, Mr. Michie was aware of an investigation by Swiss regulators into the activities of GMC. Mr. Michie cashed in his RRSPs in 2008. He let his credit cards go into default. A trial on the issue of his income had been ordered by this court in January of 2008, and by October of 2008, Mr. Michie has ceased all child support payments.

Mr. Michie's position

- [100] Mr. Michie takes the position that he owes no arrears and in fact Ms. Waters owes him money. To set his income based on circumstances that existed at the time Madam Justice Bennett made her order in 2007 would not be fair because Mr. Michie has lost his income. As well, he takes care of MM on his own (with the help of Dawn Michie) and also contributes to NM's expenses.
- [101] Mr. Michie says Madam Justice Bennett took account of AM's own earnings when considering the appropriate amount of child support in 2007. As I read her reasons, however, that was a factor she considered in deciding upon the appropriate method of set-off and calculation, not the amount itself.
- [102] In any event, Mr. Michie says there should be no child support owing for AM as of his 19th birthday (June 29, 2008), and the amounts of child support generally under the various orders should be adjusted retroactively to reflect his lack of income after the fall of 2008.
- [103] Mr. Michie says AM was not in school for a year after he turned 19. His attendance has been off and on. He is now working full time and is paying off his student loans. He had plans to go to school but did not follow them up and even today has no plans to get further schooling. AM had the ability during this time to contribute to own his support, as recognized by Madam Justice Bennett in her reasons, but he admitted in the witness box that he used the money strictly for partying and drinking and relied entirely on Ms. Waters to support his daily needs. AM terminated his relationship with Mr. Michie unilaterally in the spring of 2007 and refuses to have any contact with his father at all.

- [104] As for NM, any retroactive child support owing for her should take into account her own earnings and should cease at her 19th birthday (November 1, 2011). Thereafter, Mr. Michie would continue to assist her with money as necessary, but not through paying funds to Ms. Waters. NM now lives independently with AM, still has a relationship with Mr. Michie and he and his parents help NM generously.
- [105] Mr. Michie says Ms. Waters, who makes between \$45,000 and \$47,000 per year and has received all the child tax credits since the breakdown of the marriage, should pay child support for MM.
- [106] MM, who is 16, has lived with Mr. Michie since the summer of 2009. Mr. Michie says he is entitled to support for MM, and is particularly concerned about s. 7 expenses as reflected in Registrar Blok's (as he then was) report. This focuses on expenses for MM's budding hockey career, which Mr. Michie says are about \$5,450 per year, and which Ms. Waters does not feel are justified.
- [107] In general, Mr. Michie says his ability to earn any income since the fall of 2008 has been prevented by the slander campaigns started by Mr. Shariat, contributed to in various ways by Mr. Speckert and to a lesser degree by Ms. Waters (he points to an email exchange between Ms. Waters and the writer of an article in a Swiss magazine that was highly damaging to Mr. Michie's business reputation). As well, the economy was very bad as of the fall of 2008.
- [108] Mr. Michie maintains that he has never owned Patrick Road directly or indirectly. If he had, he would have continued to hide his interest and would never have transferred it to his wife. He says he helped Mr. Speckert with the mortgages but got no benefit from it. He has no knowledge of Mr. Knight's activities and the corporate records. He sent the blank share certificate to Mr. Speckert at Mr. Knight's request.
- [109] As for Dawn Michie's acquisition of the Patrick Road property, he said Mr. Knight approached him when the owners of Mokani were in financial difficulty. He was unable to do anything but fortunately, Dawn Michie is from a wealthy family. Mr. Michie said he would have tried to persuade Dawn Michie not to buy the property; he would have allowed it to foreclose to get the equity if he had owned it. However Dawn Michie loved the property and his years of dealing with Mr. Knight helped her get the deal.
- [110] In any event, Patrick Road is heavily mortgaged and he says its value is questionable. He does not know if there is even any equity in it.
- [111] Mr. Michie says he transferred the Alderwood property, which is also heavily mortgaged, to Dawn Michie because he was concerned about Mr. Shariat's threats. If something happened to him, Dawn Michie would have the house. He could not explain why he did not put it in joint tenancy. However, he said he was not concerned about creditors because he expected to earn a large amount of money by the end of the year, but the deal fell through.

- [112] As for the evidence given by Mr. Speckert and/or Ms. Waters about his lifestyle, Mr. Michie admits he took the three children and his wife on an expensive vacation to Hawaii in 2006. He says it was all paid for by Mario Staggl, the person whom he says is currently financing his defamation action against Ms. Waters for reasons that were never made clear. Mr. Michie said Mr. Staggl was thinking of buying into Alpine Atlantic at the time of the trip to Hawaii, but decided not to do so.
- [113] Mr. Michie acknowledges the debt in the amount of approximately \$50,000 that he owed to one of GMC's companies, 629256 BC Ltd., which was written off by Mr. Knight, should be added to his income. The company was dissolved in 2008, along with 646904.
- [114] Mr. Michie says he did drive a nice vehicle but it was taken out of his driveway and impounded in 2010.
- [115] Mr. Michie says he is trying to earn an income but he is 48, basically unemployed and starting over. He has spent all his effort pursuing his various actions, and is also a defendant in a multi-million dollar law suit in California. He produced many letters for credit requests he made in 2001 and 2002, all declined. His car was repossessed in March of 2010. He was told by HSBC to get another bank in March of 2009 because that bank refused to deal with him anymore, and has an overdraft of over \$75,354 for which he has been unable to find another facility. GMC is in receivership; Mr. Speckert took all the valuable clients from Alpine Atlantic. He says he is beginning to earn income but the magnitude of the slander case coupled with the economy and his lack of education has hampered him. He says he lives off credit, RRSP's, the help of friends, and his wife and her family. He says he continues to work very hard and only the extraordinary circumstances which have faced him have stopped him from earning income.
- [116] Ms. Waters admitted that she makes over \$40,000 per year working at Fitness Depot. Mr. Michie asks for child support for MM and an order that child support ended for AM and NM when they each became 19. However, he says he will continue to support them directly as necessary. Mr. Michie sought \$17,000 (mainly hockey expenses for MM) before the Registrar and was granted approximately \$2,700. He wants his full s. 7 expenses as submitted to the registrar.
- [117] Mr. Michie also wants the court file sealed in order to protect his reputation as he tries get into the business world again.

Dawn Michie's position

- [118] Mr. Dakin, who acts for Dawn Michie, added a few submissions on Mr. Michie's behalf in order to assist with the application of the law to Mr. Michie's factual submissions, and because Mr. Michie and Dawn Michie's interests coincide in certain respects, although not all.

- [119] Mr. Dakin notes that the only issue left from the very short marriage of Mr. Michie and Ms. Waters is child support. As of 2008, Mr. Michie ceased to earn any income, and Dawn Michie took over support of the family. Even if there were reasons to impute income before 2008, there can be none after, because there was no income. Overall, the important issue is what will be of benefit to the children. In *D.B.S. v. S.R.G.*, [2006] 2 S.C.R. 231, 2006 SCC 37, the Supreme Court of Canada said it is not always appropriate to order retroactive child support where there is no discernible benefit to the children and where hardship is caused.
- [120] The children have lacked for nothing, have had many activities and opportunities, and have always been generously cared for by various relatives, mostly Mr. Michie's and Dawn Michie's. Ms. Waters says she will use a retroactive award to pay for their secondary education, but it is nonsensical to take away money from Mr. Michie for something that may never occur and which he can pay directly for in any event. As well, Mr. Michie takes care of MM alone. Mr. Michie and Dawn Michie have no assets, and a lot of debt. Mr. Michie's RRSP's are gone. Therefore Ms. Waters is, in reality, trying to get money from Dawn Michie.
- [121] It was not until 2005 that Ms. Waters raised the issue of imputed income. Up to that time, the agreements should govern.
- [122] Mr. Michie's line 150 income between 2003 and 2007 was \$90,000-\$105,000. The only evidence to suggest this was not correct was from Mr. Speckert who speculated that Mr. Michie really owned GMC, and that company is now in receivership. In 2008, Mr. Michie declared \$113,749, which was RRSP withdrawals, and in 2009, he declared \$10,875. In 2010, he declared nothing. In his testimony, Mr. Michie said he earned \$9,000 in 2011, which appears on his latest property and financial statement.
- [123] If in fact Mr. Michie did own GMC, there is no issue that the company is no longer operating as of 2008 - it has gone into receivership as being undercapitalized. The demise of this company, if it belonged to Mr. Michie, would have profoundly affected him financially. As well, when Mr. Speckert left Alpine Atlantic, he took all his clients with him, leaving the company a shell.
- [124] Mr. Dakin suggests that AM should have come to Mr. Michie and asked for assistance as he needed it. He did not. He refused all communication. He is an adult now and it is too late for him to seek retroactive support. NM should be able to deal directly with her father.
- [125] While Mr. Dakin concedes that the evidence about who owned Patrick Road is unclear, he says in the end it does not have much significance if an order for retroactive child support would have no discernible benefit to the children.

- [126] Mr. Dakin says the issue in respect of Patrick Road is: is there undisclosed income to be inferred from the circumstances surrounding the acquisition of the property? He makes the following points: There is no evidence Mr. Michie paid the cash component of the purchase price. If Mr. Michie really were the owner and had untapped income in Europe, why would he place expensive mortgages against the property? If he were hiding behind Mokandi, why would he sell the property to Dawn Michie?
- [127] Mr. Dakin says Mr. Speckert clearly has animus against Mr. Michie and attended at trial not out of some righteous desire to right wrongs, but to continue his campaign against Mr. Michie.
- [128] Mr. Dakin contests Mr. Shewfelt's arithmetic regarding the "equitable windfall" to Dawn Michie. He says the equity should be the value (\$2,600,000) less the new first mortgage (\$2,050,000) plus the funds Ms. Michie received at the time of taking the mortgage (\$121,755), making the net equity only \$671,000.
- [129] Mr. Dakin appeared to suggest that this court has no jurisdiction to consider the issue of equitable windfall arising under the Income Tax Act, and in any event could not do so without expert advice from a tax lawyer.
- [130] He suggests that, where fraud is alleged, the claimant should be held to a higher standard of proof, relying on *Wellesley Lake Trophy Lodge Inc. v. BLD Silviculture Ltd.* 2006 BCCA 328.
- [131] Mr. Dakin submits for Dawn Michie that, even if Mr. Michie did pay the \$150,000 cash component of the purchase price, the court cannot attribute it into the equity that was passed to Dawn Michie. As well, development costs should not be double counted, both as increasing the equity and as being included in the equity passed to Dawn Michie. She has \$2,050,000 in new debt, along with the \$389,000 she acquired on acquisition; therefore she paid consideration for the property.
- [132] Mr. Dakin says there is no evidence to support that Mokandi was a bare trustee for Mr. Michie, as suggested by the plaintiff, and there is no evidence to allow the court to conclude that Patrick Road was transferred to Dawn Michie by Mr. Michie rather than Mokandi.
- [133] As for Alderwood, Mr. Dakin concedes that the transfer is vulnerable because of the circumstances surrounding it and the fact that it was made for no consideration. The property is assessed at \$584,000 and has two mortgages against it. The equity is \$118,000. If any order is to be made in respect of that property, Mr. Dakin asks for a period of time to allow the retroactive support order to be paid by Mr. Michie, rather than permit the execution of a judgment against Dawn Michie. Counsel for Ms. Waters had no difficulty with that.

[134] Mr. Dakin takes the position that Dawn Michie should never have been brought into this action. Once she was allowed to be added as a party, she has had to deal with numerous applications and most of the claims against her have now been abandoned because the adjournment was refused. Therefore she seeks her costs of all steps of the action.

Reply

[135] In reply, Mr. Shewfelt says that the demise of GMC, since it was a shell, should not affect Mr. Michie's ability to earn income. Nothing concrete was lost, and nothing prevents Mr. Michie from starting up such a company again.

[136] In response to the suggestion by Mr. Dakin that the court should be mindful, in assessing whether the claimant has proven her case, that she has made allegations of fraud, Mr. Shewfelt says there is no elevated standard of proof for fraud. He relies on C.(R.) v. McDougall 2008 SCC 53. In that case, the Supreme Court of Canada examined the concept that the standard of proof may vary with the gravity of the misconduct alleged or the seriousness of the consequences. The court stated clearly, at paras. 40 and 49 that, while context is all important, there is only one civil standard of proof at common law and this is proof on a balance of probabilities.

[137] Mr. Shewfelt acknowledges that the \$150,000 cash component of the purchase price of Patrick Road, if paid by Mr. Michie, cannot be counted twice in the equity passed to Dawn Michie. As well, development costs should not be counted twice, although development costs do not count 1:1 for increases in equity. The assumption of debt as valuable consideration only holds if it has been or will be paid, and that is not the case here.

[138] Mr. Shewfelt says he did calculate the equity of the alleged windfall correctly. Mr. Dakin left out \$265,000 and \$50,000 from the calculations. As well, this court can interpret the Income Tax Act. It is wrong to say this court requires expert evidence to do so.

[139] As for child support for NM, Mr. Shewfelt agrees that the flexible discretionary approach under s. 3(2)(b) of the Federal Child Support Guidelines, which applies to children over the age of majority, is applicable. Despite Mr. Dakin's suggestion that the parties might cooperate, Mr. Shewfelt for Ms. Waters says this is not a case where the parties can work out their own arrangements.

CREDIBILITY

[140] Unfortunately, there was no witness, with the exception of the lawyer Mr. Jacobson, who had no interest in the outcome of this trial but also had no specific recollection of the transactions he was asked about, whose evidence is easy and convenient to accept in its entirety.

- [141] I did not find Ms. Waters to be a particularly forthcoming witness. While answering all questions in a deliberately even and unemotional tone, she still managed to be evasive and argumentative. Her certainty that Mr. Michie has behaved fraudulently has apparently fueled this litigation, regardless of whether the outcome will be of any real benefit to the children.
- [142] She testified that she intended to use part of any retroactive ward to pay her legal fees and repay loans from her parents. She has borrowed a substantial amount from her mother, and she acknowledged that her lawyer has put in many hundreds of hours on her case and has not been paid. When questioned more thoroughly by Mr. Dakin on the issue of whether any of the retroactive child support would go to benefit the children, she said she would use the money for her children's future post-secondary education and would repay her loans from the special costs she expects to get as a result of proving Mr. Michie's fraud.
- [143] It is not entirely clear why Ms. Waters has pursued this litigation with such determination. She acknowledged the children have had many opportunities given to them and that Mr. Michie's parents and Dawn Michie have been extremely generous to them. She admitted she borrowed money from her mother for legal fees, but said she did not consider it appropriate to ask for money when AM apparently needed some orthodontic work, a lapse she blames on Mr. Michie. She also blames Mr. Michie for AM's failures in school, but she admitted Mr. Michie had asked for AM's transcripts many times and had not been given them. She also admitted she had never consulted Mr. Michie about AM's school endeavours.
- [144] AM is clearly aligned with his mother and against Mr. Michie, so his evidence must be considered with that in mind. However, his evidence that he was shown the plans of the house and had rooms pointed out to him is corroborated by Dawn Michie.
- [145] Mr. Michie's manner in the witness box was overtly frank, straightforward and candid, regardless of the subject he was testifying about and the substance of his answers. He appeared to be adept at portraying himself as a very reasonable person helplessly caught up in a terrible situation of others' making. His testimony that his libel suit against Ms. Waters is being financed by a friend who feels sorry for him is not credible. Apparently this man also funded the action against Shariot, paid Mr. Michie's security for costs order, and took him and his family on an expensive trip to Hawaii. Anytime Mr. Michie had to explain the use of large amounts of cash he relied on this man's unaccountable generosity. His evidence that his own extensive involvement in the Patrick Road property was merely to facilitate Mr. Speckert is not believable, nor is his reason for transferring Alderwood Avenue to Dawn Michie, rather than putting it in joint tenancy.

- [146] Mr. Speckert's manner of testifying was unusual. He often did not answer questions directly or have specific evidence to give to back up an assertion, instead answering with analogies or assumptions. His alleged motivation for testifying "truthfully" at trial as opposed to the information provided to the court at the chambers hearing in 2005 was that he was outraged at unfairnesses perpetrated on Ms. Waters. This is simply not credible. He clearly has an animus towards Mr. Michie which colours all of his evidence.
- [147] Dawn Michie's evidence in some areas was straightforward, and there seems to be no dispute that she has been helpful to the children, although Ms. Waters is suspicious of the source of the funds she provided for their use. However, Dawn Michie's professed lack of knowledge of anything involving the circumstances surrounding the purchase and subsequent ongoing financing of Patrick Road was less credible.
- [148] Mr. Knight's evidence was not helpful because he was the business person who should have had documents to support what he was saying, but he had few or none. His memory or ostensible knowledge of the various corporate dealings was vague, selective and served Mr. Michie well. His evidence respecting the acquisition of Patrick Road changed overnight to accommodate Dawn Michie's evidence. His explanations for the obvious discrepancies in the documents surrounding 646904 were not credible, nor was his evidence regarding Mokandi.

DISCUSSION OF ISSUES

- [149] Despite the extensive evidence about complicated business relationships and transactions, this case is mainly about whether income should be imputed to Mr. Michie. The ownership of the now defunct GMC is of little significance.
- [150] It is alleged that Mr. Michie has contrived to hide the true state of his financial affairs in order to avoid paying child support. Mr. Michie stopped paying child support in 2008 and has not paid any since, despite a series of orders; thus arrears have accrued. As well, Ms. Waters seeks to impute income to Mr. Michie at a much higher level than that contemplated by the orders, and to have child support set retroactively based on those higher amounts, back to 2004, or even 2002.
- [151] The relevant subsections of s.19 of the Federal Child Support Guidelines provide:
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 underemployed or unemployed, other than where the underemployment or unemployment is required by the needs of the child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse

...

- (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.

[152] Ms. Waters relies on *Watts v. Willie*, 2004 BCCA 600 and *Nielsen v. Neilsen*, 2007 BCSC 306, aff'd by 2007 BCCA 604 for the factors a court should consider when determining whether to impute income. Briefly, the principles are these: there is a duty upon a parent to seek work; when imputing income, age, education, experience, skills, health, business acumen and contacts, lifestyle, expenses, assets and investments, and past income earned, as well as the availability of work, will be relevant considerations.

[153] Section 17(1) of the Divorce Act provides for the retroactive variation of child support:

- s. 17(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,
 - (a) a support order or any provision thereof on application by either or both former spouses.

...

(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

[154] Since AM and NM are over the age of majority, s. 3(2) of the Federal Child Support Guidelines is also relevant:

- s. 3(2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is
 - (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[155] The factors respecting whether and when AM and NM ceased to be children of the marriage are similar under s. 2(1) of the Divorce Act and s. 87 of the Family Relations Act . In each case, child support is still an issue for children over the age of majority/19 years of age or older who are unable, because of illness, disability or other cause, to withdraw from the charge of the parents or to obtain the necessities of life.

[156] The considerations applicable to a claim for retroactive child support do not apply to a claim for arrears. The Supreme Court of Canada drew a distinction between the two in *D.B.S. v. S.R.G.*

[157] The court began by considering at length the principles applicable to retroactive child support orders. The court said at para. 94:

The foregoing analysis only confirms that courts ordering child support will generally have the power to order it retroactively. But having determined that a court may order a retroactive child support award, it becomes necessary to discuss when it should exercise that discretion.

It will not always be appropriate for a retroactive award to be ordered. Retroactive awards will not always resonate with the purposes behind the child support regime; this will be so where the child would get no discernible benefit from the award. Retroactive awards may also cause hardship to a payor parent in ways that a prospective award would not. In short, while a free-standing obligation to support one's children must be recognized, it will not always be appropriate for a court to enforce this obligation once the relevant time period has passed.

[158] The factors to be considered before awarding retroactive child support are set out, beginning at para. 100:

- reasonable excuse for why support was not sought earlier

- conduct of the payor parent - each parent's behaviour should be considered in determining the appropriate balance between certainty and flexibility in a given case. Blameworthy conduct is anything that privileges the payor parent's own interests over his children's right to an appropriate amount of support. Indirect contributions that satisfy child support obligations can militate against a retroactive award.

- circumstances of the children - consideration should be given to the circumstances of the children, both at the time when support should have been paid and presently.

- hardship to the payor parent - this entails a broader consideration of hardship than "undue hardship" under the Guidelines, and can take into account disruption to financial affairs that would interfere with obligations to other children

- determining the amount, considering the start date (when effective notice was given, it will generally be inappropriate to make an award retroactive to a date more than three years before formal notice was given - para. 123), and quantum (the Divorce Act provides for use only of the Guideline amount, but consideration of hardship and an appropriate start date can temper that approach).

[159] The Court ended its discussion of the issue of quantum with the following statement at para. 130:

Unless the statutory scheme clearly directs another outcome, a court should not order a retroactive award in an amount that it considers unfair, having regard to all the circumstances of the case.

[160] At para. 98, the court drew a distinction between retroactive child support and arrears:

...I also want to mention that these factors are not meant to apply to circumstances where arrears have accumulated. In such situations, the payor parent cannot argue that the amounts claimed disrupt his/her interest in certainty and predictability; to the contrary in the case of arrears, certainty and predictability militate in the opposite direction. There is no analogy that can be made to the present cases.

Application to this case

[161] Before delving into the complexities of the property purchases and financial dealings, it is convenient to set out again what child support was paid, and when. As well, the residences and ages of the children for various times should be clarified. It will then be clearer whether and to what extent child support is in issue.

2001 - 2002

- Agreement for shared custody and child support for the three children, to be set by the Guidelines thereafter
- child support set at \$1,400/month for 2001
- child support set at \$800/month for 2002

2003

- new agreement drafted by Mr. Michie - 3 payments of \$1,600 each

2004

- no agreement

2006

- AM moved in with his mother full time in December 2006

2007

- Chambers application before Bennett J., August 9, 2007
- child support set on Guideline incomes (\$27,809 for Ms. Waters; \$103,323 for Mr. Michie and varied to \$1,549 per month, retroactive to January 2007
- child support set on guideline incomes (\$27,809 for Ms. Waters; \$103,323 for Mr. Michie)
- arrears set at \$4,808
- s. 7 expenses referred to Registrar

2008

- AM turned 19 on June 29, 2008

· Mr. Michie ceased to pay child support for AM as of July 2008 and ceased to pay any child support in October of 2008

2009

· MM moved in with Mr. Michie full time in June, 2009. NM moved in with her mother full time in August, 2009

2010

· Interim order of Mr. Justice Dley, September 30, 2010 - incomes noted to be \$45,632 (2009) and \$27,236 (2010) for Ms. Waters and \$103,323 (the same as Madam Justice Bennett had determined) for Mr. Michie

· application for a declaration that AM was no longer a child of the marriage denied

· child support set at \$1,064 for July - December 2009, and \$1,234 per month, retroactive to January 1, 2010 and ongoing

2011

· NM turned 19 in November; NM and AM live independently as of September. MM, 16, continues to live with Mr. Michie

· order of Mr. Justice Grauer, October 4, 2011 - child support obligations cease for AM as of August 31, 2010

· child support decreased to \$679 per month for September and October, 2011, with no support payable from that date by either party, on the basis that support for NM and support for MM would offset each other.

[162] Kelleher J. ordered a trial on the issue of Mr. Michie's income back to 2004, in the absence of an allegation of fraud. Ms. Waters does make an allegation of fraud but it pertains to transfers of property in 2008. Therefore, it is not appropriate to go back beyond 2004, nor is it appropriate, in view of the factors set out in D.B.S., to entertain the concept of setting aside the 2003 agreement. That was eight years ago, and at this point there is no benefit to the children in reconsideration of that agreement.

[163] As of mid 2009, NM lived with her mother and MM with his father, so child support is in issue as of that date for each child from the non-resident parent.

[164] To take the approach suggested by Mr. Dakin on behalf of Mr. Michie, I would now turn to the question of retroactivity. I would ask whether any award of child support, payable to Ms. Waters, would be of benefit to the children. There is no dispute that they have been well taken care of; there is no need for an amount of money to be given to Ms. Waters for their future educations, especially when it will come from the parent who supports MM. AM has no plans for future education; NM is well supported by a number of relatives, including Mr. Michie's parents. Mr. Michie himself (at least through Dawn Michie) supports

MM on his own. Mr. Michie has made no money since 2008, so there is no income to impute from that date forward.

- [165] To take Ms. Waters approach, the alleged fraud perpetrated on her and the court in respect of the ownership of the Patrick Road property, and its transfer to Dawn Michie, along with the Alderwood property, by Mr. Michie outweighs any question of whether a retroactive award would benefit the children. I should turn determine what income and assets Mr. Michie has tried to hide, in particular Patrick Road, impute income to him, and set child support accordingly. Child support can then be realized by executing against the two pieces of property, based on a fraudulent intent to hinder creditors.
- [166] Ms. Water's contention that additional income must be imputed to Mr. Michie rests largely on the allegation that he owned Patrick Road. She seeks to have added to his past income the equity windfall of the transfer of Patrick Road to Dawn Michie, as well as the mortgage payments. These are factors that are relevant to whether Mr. Michie has the means to pay arrears, as well as to the potential for retroactive child support. It is therefore appropriate to start with a consideration of the ownership of Patrick Road.
- [167] Since the issue of Alderwood Avenue is fairly simple, I will touch on that briefly before turning to Patrick Road.

Alderwood Avenue

- [168] Mr. Michie acquired the Alderwood property three years after the triggering date and his interest in it was disclosed to Ms. Waters prior to the Consent Order. It has been Mr. Michie and Dawn Michie's matrimonial home.
- [169] GMC had just gone into receivership when the house was transferred in July of 2008. It is clear that the Alderwood Avenue property was transferred by Mr. Michie to Dawn Michie to make it more difficult for someone with a claim against Mr. Michie to get at the house. Mr. Michie admitted as much, while claiming his primary motivation for the transfer was apprehension about Mr. Shariot. The transfer to Dawn Michie in 2008 put this asset of Mr. Michie beyond the reach of his creditors, one of which was Ms. Waters. It was thus a fraudulent conveyance.
- [170] Whether there is any significance to this transfer in the context of the claim for retroactive child support will depend on whether access to the value of the house is needed to pay any award.

646904 and Patrick Road

- [171] The primary issue of credibility in respect of 646904 is between Mr. Michie and Mr. Knight on the one hand, and Mr. Speckert on the other. Ms. Waters simply alleges fraud and impropriety on the part of Mr. Michie, but she was not in a position to know anything directly. Dawn Michie claimed to know nothing, although the extent of her ignorance began to smack of wilful blindness.
- [172] The case brought by Ms. Waters to show that Mr. Michie actually owned the beneficial interest in Patrick Road through 646904 from the beginning is very persuasive. Taking all the indicia referred to by the plaintiff and set out above, it defies common sense to say Mr. Michie did not own the property. While I would not place much, if any, reliance on Mr. Speckert's evidence alone, Mr. Michie signed the initial mortgage on behalf of 646904, and also personally guaranteed it; he obtained the subsequent mortgages or guaranteed them, even mortgaging his personal residence along with Patrick Road; Dawn Michie pursued her horse interests on the property, had the equestrian center and barn built, had input into the design of the house and was on the property every day. Dawn Michie admits she and Mr. Michie showed the children their proposed rooms on the plans for the house, despite her contention that this was just wishful thinking at the time. The documents provided in 2005 are simply not convincing when displayed in the context of all the evidence at trial. As well, the circumstances of the transfer of the property into Dawn Michie's name support rather than detract from the proposition that Mr. Michie owned the property, by that time under the name of Mokandi.
- [173] While denying any connection with Mokandi, Mr. Michie testified that he would have let the property go into foreclosure if he had owned it, but he acknowledged that Dawn Michie loved the property and he wanted her to be able to keep it. Thus he worked with Mr. Knight to allow that to happen.
- [174] There is no clear explanation before the court as to why the property was dealt with as it was, but in my view, the evidence supports the proposition, and I find, that Mr. Michie owned the beneficial interest in the Patrick Road property through 646904 and thereafter through Mokandi.
- [175] Was his intention in transferring the property to Dawn Michie in November of 2008 to hinder creditors? Around the same time as this property was transferred, the Alderwood Avenue home was transferred, Mr. Michie's RRSP's were all liquidated, he ceased working and ceased paying child support. As mentioned above, GMC had recently gone into receivership. The lucrative business opportunity he had hoped would materialize had fallen through. He was admittedly concerned about claims against his house, and he has a multi-million law suit outstanding against him and a number of other defendants in California. It appears that there is much more to this story than is evident on the material before the court, but given the timing of the transfer, there is no other inference to draw but that the transfer to Dawn Michie was to hinder creditors. Again, whether this finding has any consequence in terms of child support will be determined once any amounts owing are determined and payment of the judgement becomes an issue.

- [176] What are the consequences of the finding of ownership of Patrick Road on Mr. Michie's income? The only cash injected into Patrick Road property was the \$150,000 component of the purchase price, and that was in 2002, which is outside the scope of the issues before the court on this trial.
- [177] The property, purchased for \$539,000, has been mortgaged continuously from the date of purchase. It is still mortgaged and construction appears to be incomplete, although the extent of the occupation permit is confusing. The mortgage payments have been made continually and development and construction have taken place.
- [178] According to Mr. Shewfelt's calculations, the mortgage payments were about \$40,000 in 2002, \$17,000 in 2003, \$46,000 in 2004, \$216,000 in 2005 (paid over three years), \$20,000 in 2007, and \$18,750 in 2008. Thereafter, according to Dawn Michie, she made all the payments and has financed the construction since 2008 when it was sold to her for \$1,651,000, while assessed at \$2,607,100.
- [179] Mr. Dakin says if Mr. Michie owned the property and transferred it to Ms. Michie at a substantial loss, then there are no funds from that sale to be imputed to him in income.
- [180] Mr. Shewfelt says that despite the sale at a loss, the equity windfall to Dawn Michie can count as income to Mr. Michie. He relies on s. 56(2) of the Income Tax Act:
- (2) Indirect payments - A payment or transfer of property made pursuant to the direction of, or with the concurrence of, a taxpayer to some other person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person...shall be included in computing the taxpayer's income to the extent that it would be if the payment or transfer had been to the taxpayer.
- [181] I do not accept Mr. Dakin's position that I am precluded from interpreting the Income Tax Act without expert evidence from a tax lawyer. However, this does not seem to be an appropriate approach to the imputation of income to Mr. Michie under the Guidelines. Even if the Income Tax Act considers such a transaction "income" for purposes of federal taxation, I am not convinced that this would be "income" for child support purposes, especially where the transactions are non-arm's length. Whatever else it shows, the transfer itself does not prove an ongoing source of income that was available for child support purposes. Mr. Michie bought the property through 646904 at \$539,000 and it is now worth \$2,607,000, with a partially constructed house on it. That does not mean Mr. Michie had income in the interim of \$2.3 million, or even of the amount asserted by Ms. Waters of \$986,000. It means the property increased in value by that amount, obviously because of construction and development, and possibly also through market forces. It does show that Mr. Michie had the means to improve this property, although it was always heavily mortgaged, and that he owned and disposed of a valuable asset.
- [182] I turn to the imputing of income for 2008, the year in which Mr. Michie ceased paying child support.

- [183] The disposition of the Patrick Road property to Dawn Michie in 2008 does not in itself establish that Mr. Michie had undisclosed sources of income, but the maintenance of the property before that disposition does show that Mr. Michie had means and owned a valuable asset. However, during the period when he was paying the mortgage on Patrick Road, he also kept up his child support, until late 2008.
- [184] Even on his own evidence, Mr. Michie was earning income through most of 2008. He also had a company debt of \$51,645 written off by Mr. Knight in 2008. Income can reasonably be imputed to him for the remainder of that year at the rate set by Madam Justice Bennett of \$103,323, and thus arrears owing for 2008 for NM and MM should be paid at the rate set out in her order.
- [185] AM will be dealt with separately, as explained below.
- [186] I now turn to 2009 - 2011.
- [187] Mr. Michie testified that he ceased to earn any income as of 2008, although he had formerly made a decent income. In 2006, he declared \$103,323. In 2007 he declared \$105,835. In 2008, he declared \$113,749, although only \$42,000 of that was listed as employment income. The rest came from cashing in \$70,444 of RRSP's. In 2009 he declared on \$10,875 in EI benefits, and in 2010 he declared zero. In 2011, he declared \$9,000.
- [188] Mr. Michie disposed of two valuable assets in 2008 - the house on the Patrick Road property and the Alderwood Avenue property - to Dawn Michie. The house on Patrick Road, albeit in an apparent state of ongoing construction financed by Dawn Michie, is very large, with a built-in theater, equestrian center, and many special features. As such, it is evidence of a certain lifestyle.
- [189] Mr. Michie says he experienced difficulties in working at the same type of business as GMC after the fall of 2008, but he has had the means to finance various law suits since that time. His testimony that this all came from the generosity of a friend is very hard to credit. Either Mr. Michie has other means at his disposal, or at the least he had valuable assets which he transferred to Dawn Michie when child support was owing.
- [190] As well, no reasonable excuse was given for Mr. Michie's failure to earn income after 2008. He has devoted much of his time to pursuing various legal actions. He is relatively young, healthy, a skilled and experienced businessman. The international "slander" campaign is not an answer to an alleged complete failure to find employment. He still has contacts in the business world, and he has access to funding through assets, although they are presently in his wife's name. It appears that he also has a business assistant. Dawn Michie was very vague about the role of Ms. Sales, who she works for, and how much she uses Ms. Sales' services herself, but it is apparent that Ms. Sales does work for Mr. Michie.

- [191] In all these circumstances, either Mr. Michie had a source of funds himself, or he should have and is intentionally under-employed. Based on the evidence available to me, and acknowledging that much of the story is untold and the motives for dealing with Patrick Road as Mr. Michie did are far from clear, I find that Mr. Michie had the means to pay child support pursuant to the orders that are now in arrears. Thus he will have income imputed to him at the continuing rate last set by Madam Justice Bennett in 2007 of \$103,232.
- [192] That means the arrears of support based on the existing orders must be paid to Ms. Waters for NM and MM up to June of 2009 when MM moved in with Mr. Michie. Thereafter, Ms. Waters owes child support to Mr. Michie for MM. Mr. Michie continues to owe child support for NM until November of 2011, when she turned 19 and was living independently with AM.
- [193] As for the years from 2002 - 2008, Ms. Waters would have the mortgage payments added to Mr. Michie's declared income for the years 2002 and 2008 and increased child support set retroactively. However, considering all the factors outlined in D.B.S., I do not think that is appropriate. Mr. Michie is required to pay the arrears owing from 2008 in part because he disposed of two valuable assets to his wife. He should not have to account for it twice.
- [194] Even if this were to factor into a consideration of an increased retroactive award, I consider as well that the children have always been well treated and generously provided for by Mr. Michie during those years. While I have found that that Mr. Michie put false material before the court during the application of 2005, he paid child support as ordered up to the fall of 2008 and despite his failure to live up to the court orders after that, continues to support MM on his own and to provide for NM, apparently through the generosity of Dawn Michie. Such retroactive attribution of income at this late date would not be of benefit to them, and on the evidence before me, would result in increased payments that would likely be made with the assistance of Dawn Michie. If there are consequences to the untruthfulness, that will be dealt with through costs.
- [195] As well, I would not include the cost of the trip to Hawaii in Mr. Michie's income for 2006, even if it was paid through the unaccountable generosity of Mr. Staggl. This trip was taken with the children and it is not in accord with the principles of D.B.S. to attribute that amount to income at this late date.
- [196] Mr. Michie's conduct has been blameworthy in that he was not truthful with the court, but in the context of child support, he has not "privileged" his own interests over that of his children, to use the phrase employed in D.B.S. His conduct has been an inexplicable mixture of secretiveness and generosity where support of the children has been concerned, but overall the children have not suffered.
- [197] I will not order retroactive child support for 2002-2008.

AM

- [198] Should child support for AM be paid, and if so, to what date?
- [199] As a result of the order of Mr. Justice Grauer, AM is no longer a child of the marriage as of August 31, 2011.
- [200] Mr. Michie takes the position that AM was no longer entitled to child support when he turned 19 at the end of June 2008. Ms. Michie says AM should be entitled to child support until the court decided he was no longer a child of the marriage.
- [201] AM graduated from high school in 2007 and went to Douglas College until May of 2008, when he was required to withdraw for academic reason. He took a year off and worked part time, supported by Ms. Waters. He was unable to find a full time job, and returned to school in May of 2009 for three semesters, into 2010. He took the summer off, working part time, and went back to school in the fall until May of 2011. He has not returned to school. AM spent all the money he earned during his time at school on personal recreation and was supported by Ms. Waters and by student loans. He is now working full time in order to avoid incurring further student loans. He lives with his sister NM. He has cut off all contact with Mr. Michie, requested nothing from him, and never provided him with any information about his work or education.
- [202] Mr. Michie says AM ceased to be a child of the marriage under *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C.S.C.) when he turned 19, was not seriously pursuing an education, was working, albeit not saving, and when he unilaterally terminated his relationship with Mr. Michie.
- [203] I agree that many of the factors in *Farden* are present. AM was desultory in his educational efforts and although working much of this time, simply spent all his money and relied on his mother to support him. Mr. Michie tried to maintain a relationship with him but AM refused to have anything to do with him. AM was eligible for student loans, but had no goal in mind for his education. He did not provide Mr. Michie with any information about his studies or his work, nor did he request any help from him. Since the parties' marriage was of such short duration and the children were young when it ended, there was no particular plan for his education.
- [204] Mr. Michie has attempted before to have AM declared no longer a child of the marriage, but did not succeed until August of 2011. I cannot sit on an appeal of the order of Mr. Justice Dley, who denied Mr. Michie's application to have AM declared no longer a child of the marriage in 2010. Nevertheless, the child support set at that time was interim only. After AM turned 19, the amount should have reflected AM's own ability to earn income and the other factors in s. 3(2) of the Guidelines. "Other circumstances" allows a consideration of all of the factors as set out above.
- [205] Ms. Waters says AM's failure to pursue his schooling was partly due to lack of funds and desire not to incur student loans, factors she puts at the feet of Mr. Michie.

- [206] In hindsight, it appears that AM was not serious in steadily pursuing his education, although he now professes to have an interest in philosophy. Nevertheless, he did attend at Douglas College full time for several terms and Mr. Michie should have provided some support during those periods. Had he done so, it is possible AM might have been prompted to attend to his schooling with more diligence.
- [207] Considering the amount of child support in place in June of 2008, the amount by which Mr. Michie reduced it unilaterally, and the various considerations in s. 3(2) of the Guidelines, I set the amount of arrears owing for AM at \$5,000.

Future support for NM

- [208] No support was paid for NM after October of 2008. At that point she was still a child of the marriage and entitled to support from her father, as set out above. Mr. Michie and Dawn Michie both testified that NM received regular support from them and from Dawn Michie's parents, although it was not paid through Ms. Waters.
- [209] NM is now 19, living independently with her brother as of September 1, 2011, is attending school and working part time. Her mother helps support her. Apparently Mr. Michie, through Dawn Michie, does as well, but the details are vague. Since the evidence before me shows that NM is attending school and requires parental support, she is still a child of the marriage. However, there is no reason why child support should be filtered through Ms. Waters now that NM lives independently. Since NM no longer lives with Ms. Waters, there is no need for Ms. Waters to maintain a home for her, and in fact she does not.
- [210] I have little information about NM's own earnings. She has apparently received an undisclosed amount of money from Dawn Michie's parents.
- [211] In the absence of agreement, the parties will have to make further submissions on an appropriate level of support to be paid for NM, taking into account the factors in s. 3(2) of the Guidelines. For this purpose, Mr. Michie's income level will remain as set out in the previous orders: \$103,323.

Child support for MM

- [212] Ms. Waters has made \$47,101 in 2008, \$45,185 in 2009, and \$27,985 in 2010. I could find no explanation for the reduction in income in 2010. Her obligation to pay child support for MM was the subject of an order by Mr. Justice Dley in September of 2010, in which he noted that her income for that year at that date was \$27,236. As of October 2011, Ms Waters had made \$36,145 for that year. She has taken all the child tax credits for all the children up until three months ago.
- [213] Ms. Waters owes Mr. Michie child support commencing July 1, 2009, for the period of time during which MM has lived solely with Mr. Michie, based on her declared incomes for the relevant years.

SECTION 7

- [214] Moving on to the s. 7 expenses recommended by Mr. Justice Blok, sitting as a Registrar, Mr. Michie's main point of contention with the recommendation is that it does not sufficiently recognize MM's potential to play professional hockey. He also says the expenses were cut back because he had lost his job; Ms. Waters can no longer maintain that position in light of her assertion that he was really earning income all that time.
- [215] Registrar Blok allowed all of the hockey expenses except the hockey camps and training. He did acknowledge that Mr. Michie said his income had plummeted. However, an important consideration for the Registrar was that Mr. Michie had assured Ms. Michie that he would pay for these expensive camps in which he had enrolled MM over Ms. Waters' objections. Mr. Michie confirmed his willingness to pay for the camps and other unusually high expenses in an email.
- [216] In these circumstances, I am not inclined to interfere with the Registrar's recommendations, and I accept and confirm his report. He left the calculations to the parties, which I do as well.
- [217] Special expenses for MM will continue to be shared proportionately to the parties' incomes, with Mr. Michie's income imputed as above.

SEALING THE FILE

- [218] Mr. Michie seeks an order sealing the file. Rule 5-1(29) requires documents disclosed pursuant to the rule requiring financial disclosure to be kept confidential. Rule 5-1(30) allows the court to seal financial information in the case of hardship.
- [219] Mr. Michie sought a similar order before in 2009. His application was denied, leave to appeal was granted, and the appeal was dismissed (2010 BCCA 232). The Court of Appeal held that public access is the norm and Mr. Michie had not brought himself within the limitations provided for in the Rule. I am unable to find that anything material has changed in Mr. Michie's favour since that time. The file will not be sealed, but Rule 5-1(29) continues to apply.

COSTS

- [220] Although some submissions on costs were made, it would be helpful in the unusual circumstances of this case to have further submissions made in light of the above findings once the determination of amounts owed is made by the parties.

RESULT

- [221] This is a brief summary only. Reference should be had to the respective portions of the reasons for judgment.

- [222] The following paragraphs from the Amended Notice of Family Claim are dismissed as abandoned: paragraphs (b), (c), (d), (e), and the portion of (f) dealing with constructive trust.
- [223] The transfer of Alderwood Avenue to Dawn Michie was a fraudulent conveyance.
- [224] The transfer of Patrick Road, the beneficial interest of which I find was owned by Mr. Michie, to Dawn Michie was a fraudulent conveyance.
- [225] Retroactive imputation of higher levels of income beyond Mr. Michie's declared income for 2008 and previous years is not allowed.
- [226] Mr. Michie had the means to pay child support pursuant to the outstanding orders, and arrears are owing accordingly from October of 2008, for MM to June 1, 2009 and for NM to September 1, 2011.
- [227] Arrears of child support for MM owing to Mr. Michie from Ms. Waters are payable based on Ms. Waters' declared income, commencing July 1, 2009, and continuing.
- [228] Arrears of child support for AM are set at \$5,000.
- [229] Child support for NM from September 1, 2011 until she ceases to be a child of the marriage will be paid directly to her in an amount which takes into account s. 3(2) of the Guidelines, to be agreed or spoken to, given these findings.
- [230] Section 7 expenses owing by Ms. Waters to Mr. Michie are as set out in Registrar Blok's report, which is confirmed. Expenses will continue to be shared proportionately.
- [231] The application by Mr. Michie to seal the file is dismissed.
- [232] Costs are to be spoken to at the convenience of the parties. At that time, the need for any consequential orders in respect of the property can also be addressed.
- [233] Counsel and/or the parties have liberty to apply for clarification of any terms, and to adjust calculations and amounts by agreement.

"M.A. Humphries J."

The Honourable Madam Justice M.A. Humphries

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