

CANADA / JUDGMENT

Wise v. Lamont

2025 BCSC 1952

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1952 Wise v. Lamont

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wise v. Lamont,

2025 BCSC 1952

Date: 20251006

Docket: E68136

Registry: New Westminster

Between:

Jeanette Christine Wise

Claimant

And

Byron Daniel Lamont

Respondent

Before: The Honourable Justice Hoffman

Oral Reasons for Judgment

The Claimant, appearing in person:

J.C. Wise

Counsel for the Respondent:

T. Watkins

Place and Date of Hearing:

New Westminster, B.C.

September 22, 2025

Place and Date of Judgment:

New Westminster, B.C.

October 6, 2025

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Overview

- [1] These are my reasons for judgment on this application brought before me in chambers on September 22, 2025, and reserved to this date. These reasons were delivered orally and have since been edited for distribution and publication.
- [2] This is an application by the respondent, Mr. Lamont, pursuant to s. 168 of the Family Law Act, S.B.C. 2011, c. 25, to review a term of the order of Justice Norell pronounced July 30, 2024, relating to the payment of spousal support. I will refer to this order as the Final Order.
- [3] The Final Order required the respondent to pay \$4,300 to the claimant in monthly spousal support. The Final Order also expressly contemplated that a significant change in the condition of the respondent's hips or the effect of hip surgery that impacts his ability to work and earn an income would be deemed a material change triggering a review of the quantum of spousal support.
- [4] Despite the recency of the Final Order, Mr. Lamont wishes to terminate his spousal support obligation as of November 1, 2024. Alternatively, he seeks to suspend his obligation as of November 1, 2024, with the parties to review the respondent's spousal support obligation in January 2027.
- [5] Mr. Lamont brings this application on the basis that his ability to run his business has been impacted by the deterioration of his hips and his recent total hip replacement surgery. He says that as a result of these events, he has earned substantially less income from his concrete pouring business since the Final Order was entered into. On the basis of his current medical condition, Mr. Lamont seeks to reduce his spousal payments to zero.

- [6] The claimant, Ms. Wise, opposes this application. Ms. Wise submits that even prior to Mr. Lamont's issues with his hips, he always had subcontractors working for him who handled the physical labour. Ms. Wise also points out that their youngest son is working with Mr. Lamont. She takes the position that Mr. Lamont's business requires him to supervise the work of his sub-contractors and that he does not need do the physical work himself. Accordingly, Ms. Wise takes the position that Mr. Lamont's hip operations have not had a material impact on his ability to earn an income.
- [7] For the reasons that follow, I am not persuaded on the basis of the evidence provided by the respondent that he has met his onus to demonstrate that spousal support should be terminated.

Factual Background

- [8] The parties began to live in a marriage-like relationship in 1994. Prior to their separation in September 2021, the parties had a lengthy 27-year relationship. They have four children together who are now all adults. During the relationship, Ms. Wise says she was the one primarily responsible for the care of the parties' four children and the domestic tasks while Mr. Lamont was the primary breadwinner and focused on building his business. While Mr. Lamont generally denies the accuracy of Ms. Wise's affidavit, he does not specifically refute her evidence regarding their respective roles in their relationship in his reply affidavit.
- [9] Mr. Lamont is 58 years of age. For the past 18 years, Mr. Lamont has run his own construction and concrete business. Mr. Lamont describes his role as very physical. His work duties require him to engage in building activities and concrete placing in addition to supervising the work of others and coordinating projects.
- [10] The parties were able to come to an agreement on their separation and on July 20, 2024, entered into the Final Order by consent which required Mr. Lamont to pay \$4,300 in spousal support to the claimant and contained the following term:

The parties will engage in a review of the quantum of spousal support in the event of a material change, and for the purposes of such review a significant change in the condition of the Respondent's hips, or the effects of hip surgery that affects his ability to work and/or earn an income, will be deemed a material change. In the event of a disagreement either party is at liberty to apply to the court for a determination.

- [11] The Final Order does not set out a guideline income for either party. In this application, Mr. Lamont submits that the \$4,300 order was based on him having a guideline income of \$164,798 which was the amount he swore to be his income in his February 2024 F8 financial statement.

[12] Mr. Lamont filed an updated F8 financial statement in July 2025. Both of his F8 financial statements enclose his personal and business income tax returns. Based on these documents, Mr. Lamont claims that his gross sales, net income after deduction of payments for sub-contractors and expenses, and his Line 15000 personal income are as follows for the past four years:

Year

Gross Sales

Net Income

Line 15000

2021

\$267,496

\$57,737

\$56,383

2022

\$396,892

\$166,908

\$164,797

2023

\$405,883

\$148,117

\$146,763

2024

\$230,168

\$32,294

\$28,495

[13] Mr. Lamont says that because his job requires physical labour and due to his hip condition, he has been required to replace the work that he can no longer do with sub-contractor labour. Mr. Lamont says that in each of the years 2021 to 2024, he spent the following amounts on sub-contractors:

Year

Sub-contractors

2021

\$93,215

2022

\$71,354

2023

\$97,336

2024

\$63,957

[14] In his affidavit, Mr. Lamont says that from 2021 to 2023, these sub-contractor payments were on average 23% of his total revenue, and in 2024, these payments increased to 37%.

[15] Ms. Wise is currently 49 years of age and is employed five days a week as a Youth Care Worker with School District 36. However, she is employed only during the school year. She has held this position since 2011. Prior to that position, Ms. Wise worked part time in the evenings for a car dealership.

[16] Ms. Wise reports her income in the past four years as follows:

Year

Line 15000

2021

\$45,633

2022

\$50,574

2023

\$53,692

2024

\$51,480

[17] With her portion of the proceeds from the family home, Ms. Wise purchased a condo unit outright.

- [18] I turn now to the evidence regarding Mr. Lamont's physical condition. It is not disputed that Mr. Lamont has recently undergone a double hip replacement. I have medical evidence before me that his left hip was replaced on December 30, 2024, and his right hip was replaced on April 9, 2025. Before me is a November 5, 2024, letter from Dr. Neufeld, the orthopedic surgeon who recommended that Mr. Lamont undergo surgery. This letter indicates that Mr. Lamont reported that his pain had dramatically increased to the point where he was no longer able to perform most of his work duties.
- [19] Mr. Lamont says in his affidavit that throughout 2024 his mobility became progressively worse to the point where he was unable to walk without extreme pain and became unable to perform any of his physical duties. Mr. Lamont says that he was limited to supervisory work and had to increasingly rely on sub-contractors to do the physical work. He described having to hire sub-contractors to do jobs that he could previously do independently.
- [20] According to Mr. Lamont, he first communicated to Ms. Wise in October 2024 that he was "in serious pain and unable to work" and, therefore, could no longer afford to make spousal support payments.
- [21] Mr. Lamont missed a payment in October 2024, and the file was registered with the BC Family Maintenance Enforcement Agency. Mr. Lamont says that he had to draw from his savings to make payments. The only payment currently in arrears is the payment for September 2025.
- [22] After his first hip surgery, Mr. Lamont made a request through counsel to suspend spousal support on an interim basis. Following the second surgery in April 2025, Mr. Lamont provided an updated F8 financial statement which he swore on July 21, 2025. Mr. Lamont now claims an income of \$26,758 for the purposes of spousal support. Mr. Lamont says that Ms. Wise did not respond to these requests until she filed her materials in response to this application on August 13, 2025.
- [23] Mr. Lamont sets out in his affidavit that he is still recovering from surgery and that he has been advised by his physicians that there is no prospect of being able to return to the full range of his accustomed work duties in the near future. He expects his income in 2025 and likely 2026 to remain the same. Mr. Lamont says that since his second surgery, when he has tried to do more labour, he has experienced a burning sensation in his hips and legs. However, these assertions are not supported by independent medical evidence. Most significantly, Mr. Lamont has not provided the court with any medical evidence from his treating physician regarding his expected course of recovery.

Nature of the Application

- [24] As a preliminary issue, I must determine the proper scope of this application; in other words, whether it is merely a review of the spousal support order under s. 168 of the Family Law Act, or it is an application to vary a final order which requires the applicant to establish a material change in circumstances before the court will consider any variation application.
- [25] The distinction between a review and a variation application was drawn by the Court of Appeal in *Morck v. Morck*, 2013 BCCA 186 at paras. 16-17. On a variation, the order is presumed to be correct, and, therefore, the party seeking to vary it must establish that there is material change in circumstances in order to vary it. The Court of Appeal described the nature of a review as follows:
- [17] By contrast, on an application to review an earlier order of spousal support, the applicant need not establish a material change in circumstances. Instead, the review is a hearing de novo, and treated as an initial application for support under s. 15.2 of the Divorce Act. [Or I will add parenthetically the Family Law Act.] This permits the court to adjust support in a manner that takes into account changes that may have been contemplated by the parties at the time the order was made, but were nevertheless uncertain. Because the issues on review are similar to those on an initial application, the Spousal Support Advisory Guidelines may be used for guidance: *Domirti v. Domirti*, 2010 BCCA 472 at paras. 32-36, 10 B.C.L.R. (5th) 281; and *Tedham v. Tedham*, 2005 BCCA 502 at paras. 22, 47 B.C.L.R. (4th) 254.
- [26] Another important distinction between a variation application and a review is that the right to a review is created by a term in an order or agreement. It is important to clearly identify the issue to be reviewed, so the party seeking a change in the order does not interpret the review hearing as a right to reargue their position on the original order sought to be changed: *Jordan v. Jordan*, 2011 BCCA 518 at paras. 33-34, citing *Leskun v. Leskun*, 2006 SCC 25 at para. 39.
- [27] Mr. Lamont submits that this application should proceed as a review of spousal support under s. 168 of the Family Law Act because para. 11 of the Final Order specifically contemplates a review in the circumstances in which the condition of his hips has deteriorated and surgery has occurred. Mr. Lamont says that there is no need for him to establish a material change in circumstances, but if there were such a requirement, he submits that it would be satisfied given the substantial decrease in his income in 2024.
- [28] Although it is not entirely clear from the application response filed by Ms. Wise, she appears to contest both that the review clause has been triggered and that there has been any material change in circumstances that would justify a variation of spousal support. She says that Mr. Lamont has always hired sub-contractors to do the physical work and, therefore, his inability to carry out physical work due to the condition of his hips has not had a substantial impact on his ability to earn an income. She seeks to impute income to Mr. Lamont on the basis that he has failed to accurately report his earnings.

- [29] Based on my review of paragraph 11 of the Final Order, I am satisfied that if Mr. Lamont can establish that the condition of his hips or the recovery from hip surgery has impacted his ability to earn an income, it would trigger a review of the quantum of the spousal support obligation. However, the scope of any review is narrowly circumscribed to the issue of quantum. Paragraph 11 does not contemplate a broad review that would include the question of the claimant's entitlement to spousal support. This is in keeping with the guidance of the Court of Appeal in *Jordan*.
- [30] While there is no scope to address entitlement on this review, the entitlement of Ms. Wise to an indefinite period of spousal support is not in question given the length of the relationship in which she was the primary caregiver of their four children resulting in a significant delay to the development of her career as well as her current comparatively low earnings. In relationships longer than 20 years, the Spousal Support Guidelines without child support formula provides for an indefinite duration of support.
- [31] Accordingly, I will proceed to resolve this application with reference to s. 168(2) of the Family Law Act.
- [32] Although Mr. Lamont's notice of application seeks a review of spousal support under s. 168(2), in effect, the relief he seeks amounts to a retroactive variation of spousal support going back to November 2024. This is beyond the scope of a review under s. 168(2) which contemplates only prospective, rather than retroactive, relief. Where a retroactive change to spousal support is sought, the applicant must apply for a retroactive variation and satisfy the test set out in *D.B.S. v. S.R.G.*, 2006 SCC 37; *Riznek v. Riznek*, 2022 BCSC 2068. As Mr. Lamont has not addressed the D.B.S. factors in his application, I will treat this application as a review of spousal support.

Has the respondent met the onus to demonstrate spousal support should be varied?

- [33] I now turn to the question of whether Mr. Lamont has met his onus to demonstrate that spousal support should be terminated or suspended.
- [34] The answer to this question is arrived at through a determination of the parties' respective incomes and a consideration of the impact of Mr. Lamont's surgeries on his ability to earn an income.
- [35] At the outset, it is helpful to explain the disclosure obligations on parties in family law matters. The Supreme Court Family Rules, B.C. Reg. 169/2009, require that the parties make financial disclosure and reflect the absolute necessity of full and frank financial disclosure to the fair resolution of family law disputes. As the party seeking to vary support, Mr. Lamont bears the onus of satisfying the court as to the true extent of his business income and the reasonableness of the expenses that he deducts from that income. As held in *Wiebe v. Treissman*, 2017 BCSC 1523:

[94] The burden of proving the reasonableness of deductions from business income, whether in the context of self-employment or within a wholly-owned corporation, lies with the spouse making the deduction. It is the obligation of that spouse to fully disclose the financial information and documentation relied upon to justify the deduction of each expense. It is not the other party's responsibility to hire, nor is it the court's obligation to appoint, an accountant or other professional to assess and challenge the reasonableness of the deduction, although of course both are at liberty to do so in appropriate circumstances.

[Emphasis in original.]

[36] Rule 5-1(28) of the Supreme Court Family Rules provides that if a party fails to comply with a requirement to file a Form F8 Financial Statement or any applicable income document, the court may dismiss all or part of a party's application or may attribute income to that party in the amount the court considers appropriate.

[37] I turn next to a consideration of the medical evidence regarding Mr. Lamont's surgeries. While I accept as reasonable that Mr. Lamont would experience some drop in his income due to his physical condition in 2024 and 2025, I do not have sufficient medical evidence before me to assess whether this impact on his ability to earn an income is temporary or more long lasting. Hip surgery is a major operation with a significant recovery period. However, such surgeries can also result in the restoration of a significant amount of physical function.

[38] Mr. Lamont's affidavit fails to set out how many jobs his company typically handles in a year and how many fewer jobs his company was able to handle because he was unable to contribute his own physical labour to those jobs.

[39] It is also significant that Mr. Lamont does not suggest in his affidavit that he plans to wind down his business due to his medical condition, only that his overhead has increased. Given his age, it is likely that Mr. Lamont will continue to operate his business to earn an income for a number of years. The evidence before me suggests that Mr. Lamont has resumed his business activities in some capacity. From a review of the bank statements for his business account, Mr. Lamont purchased more than \$6,600 in building supplies in a month and a half period between April 2, 2025, and May 15, 2025. Mr. Lamont swore in his affidavit that most of the large deposits into his business account represent payments for jobs completed. There are just over \$20,000 in large deposits into this account in May 2025 alone.

[40] Ms. Wise takes the position that Mr. Lamont's past earnings history demonstrates a sustained earning capacity. She submits that given his past history of hiring sub-contractors to do physical work, his inability to do physical labour should have little impact on his ability to earn an income. I take from her submissions that Ms. Wise either seeks to impute income to Mr. Lamont at \$164,797, the guideline income he swore to in his February 2024 F8, or says that he has not demonstrated that his hip surgeries have negatively impacted his capacity to earn the guideline income that Mr. Lamont agreed to for the purposes of the Final Order.

- [41] Based on Mr. Lamont's record of gross sales, even if Mr. Lamont does not experience a full recovery after his hip surgery, it would be open to the court on a proper review to find that he would have some capacity to re-structure his business to take on more jobs that would be done by sub-contractors to make up for the savings associated with contributing his own physical labour.
- [42] To justify a complete cessation of spousal support going forward, Mr. Lamont would need to demonstrate a sustained inability to earn an income. Given the lack of medical evidence as to his prognosis for recovery combined with the financial records which suggest that his business is continuing to operate, I am unable to conclude that the termination of spousal support is appropriate.
- [43] I turn now to the question of whether there is a sufficient evidentiary basis before me to consider an adjustment to the spousal support provided for in the Final Order. While it may be the case that Mr. Lamont's income has been affected in the short term by his hip surgery, Mr. Lamont has not met his onus to provide full financial disclosure sufficient to allow the court to determine the extent to which his income has been impacted.
- [44] In the face of this lack of disclosure, it is not surprising that Ms. Wise has concerns that Mr. Lamont's reported earnings for 2024 do not reflect his true earnings. Ms. Wise points to the disconnect between this level of income and his reported expenses of \$162,676 annually with spousal support payments and \$111,076 without. Ms. Wise also says that during their marriage, she would find large amounts of cash hidden in their home and that the majority of the children's expenses would be paid in cash suggesting that Mr. Lamont may not be reporting all of his income. Finally, she notes that two of their adult children, who are both employed, are living with Mr. Lamont.
- [45] Mr. Lamont confirms in his reply affidavit that since April 2025, his two children each began contributing \$500 a month to household expenses. Mr. Lamont does not report this \$12,000 of income in his most recent F8.
- [46] Mr. Lamont claims a dramatic drop in his income for 2024. In late July 2024, when Mr. Lamont agreed to the Final Order, he agreed to the income of \$164,797 sworn to in his financial statement. Based on his updated F8 financial statement, Mr. Lamont now says his 2024 income has dropped to \$26,758 due to the condition of his hips and the requirement to hire more sub-contractors to do the work he would otherwise do.
- [47] Mr. Lamont claims that his gross sales decreased from \$405,883 in 2023 to \$230,168 in 2024. However, I do not have before me any financial records to verify these amounts as Mr. Lamont has only entered into evidence his bank records from August 2, 2024, to May 20, 2025. These records are not necessarily consistent with the alleged income. For example, these records show that for the four month period between August 23, 2024, to December 23, 2024, Mr. Lamont deposited over \$160,000 during a period when he says in his affidavit that he was unable to do any physical labour due to extreme pain and restricted mobility.

- [48] I recognize that Mr. Lamont would have had to pay any sub-contractors who performed the work to generate this revenue, but I am unable to discern from the documents provided what sub-contractor costs would be appropriate to deduct from this revenue. This is because Mr. Lamont has provided only income tax information and a statement of his global business income and expenses, and there are no documents to verify the substantial amounts he has claimed for sub-contractor expenses. I am left to guess from the bank records what e-transfers may represent sub-contractor payments. Mr. Lamont is obligated to explain to the court what specific sub-contractor payments were made and justify the deduction of these payments from his income.
- [49] In addition to the inconsistency between his affidavit evidence regarding his inability to work and the receipt of substantial gross sales income in the latter half of 2024, I have concerns that Mr. Lamont is unreasonably deducting expenses from his income. For example, in 2024, Mr. Lamont claims \$12,780 for vehicle expenses and \$2,817 for telephone expenses, but there is no explanation of whether these costs are associated with his personal vehicle and cell phone use. In addition, there is a \$3,274 deduction for rent, but from the addresses on his tax returns, it appears that he runs his business out of his residence. Mr. Lamont bears the onus of explaining how these tax deductions are reasonable expenses for the purposes of determining his income for spousal support, and he has failed to do so.
- [50] In conclusion, I find that there is insufficient disclosure of Mr. Lamont's financial and medical circumstances to carry out a review as contemplated in the Final Order. As explained, I am unable on the basis of the evidence before me to determine the extent to which Mr. Lamont's income has been reduced by his hip condition. Given that Ms. Wise is entitled to spousal support and relies on these payments to meet her day-to-day needs, it is imperative that any further review take place on the basis of full disclosure. Further, any such review should take place at a time when it is clear on the basis of reliable medical evidence how Mr. Lamont's medical condition will continue to impact his ability to earn an income into the future.

Disposition

- [51] I order that Mr. Lamont's application to vary the Final Order to terminate or suspend spousal support is dismissed.
- [52] I further order the parties must exchange their 2025 income tax returns by June 30, 2026.
- [53] Either party may seek a review of the quantum of spousal support for the limited purpose of determining the parties' incomes, but in any future review, Ms. Wise is entitled to the disclosure of all of Mr. Lamont's medical records relevant to his recovery from hip surgery as well as financial statements and the disclosure of complete records for Dan Lamont Construction Services relating to all revenues and expenses, including records of individual, rather than consolidated sub-contractor payments.

[54] Ms. Wise is entitled to her costs for this application.

"Hoffman J."

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