

CANADA / JUDGMENT

Zandbergen v. Craig

2024 BCCA 278

COURT

British Columbia Court of Appeal

DECIDED

25 July 2024

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2024 BCCA 278 Zandbergen v. Craig

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Zandbergen v. Craig,

2024 BCCA 278

Date: 20240725

Docket: CA48848

Between:

Anthony Benjamin Zandbergen

Appellant

(Claimant)

And

Sandra Darlene Craig

Respondent

(Respondent)

Before:

The Honourable Mr. Justice Willcock

The Honourable Mr. Justice Voith

The Honourable Justice Skolrood

On appeal from: An order of the Supreme Court of British Columbia, dated

January 4, 2023 (Zandbergen v. Craig, 2023 BCSC 7, Vancouver Docket E080945).

Counsel for the Appellant:

S.L. Booth, K.C.

K. Lawrence

Counsel for the Respondent:

F.C.M. Lowther

Place and Date of Hearing:

Vancouver, British Columbia

March 15, 2024

Place and Date of Judgment:

Vancouver, British Columbia

July 25, 2024

Written Reasons by:

The Honourable Justice Skolrood

Concurred in by:

The Honourable Mr. Justice Willcock

The Honourable Mr. Justice Voith

Summary:

The appellant applied to vary a support order on the grounds that the parties' child is no longer a child of the marriage and because the quantum of spousal support paid has satisfied his support obligations. The judge declined to find a material change in circumstances based on the quantum of support paid but accepted that the parties' child is no longer a child of the marriage. The judge terminated the appellant's child support obligations and ordered that he continue to pay spousal support at the high end of the SSAG range for an indefinite duration. The appellant appeals, arguing that the judge erred by failing to recognize that the cumulative amount of support paid constitutes a material change in circumstances which justifies ending or reducing support, and further erred by fixing support at the high end of the SSAG range.

Held: Appeal dismissed. The judge did not err by rejecting the appellant's allegation of a material change posed by the quantum of support paid. It was open to the judge to vary the order to provide for continuing support at the high end of the SSAG range.

Reasons for Judgment of the Honourable Justice Skolrood:

- [1] This is an appeal from an order of Justice E. McDonald of the Supreme Court dated January 4, 2023 following a summary trial in the parties' family law dispute. Justice McDonald's reasons for judgment are indexed at 2023 BCSC 7.
- [2] Both parties had applications before Justice McDonald dealing with child and spousal support issues. This appeal, brought by Mr. Zandbergen, centers on the judge's findings in respect of spousal support. Specifically, Mr. Zandbergen alleges that the judge erred in finding that the respondent, Ms. Craig, has an ongoing entitlement to spousal support and further erred in determining the quantum of that support.
- [3] For the reasons that follow, I would dismiss Mr. Zandbergen's appeal.

Background

The Parties

- [4] The parties married in 1993, separated in 2007 and were divorced in 2009. They have two children, a son born in 1995 and a daughter born in 1997. One of the issues before the judge was whether the daughter was still a child of the marriage for child support purposes. The judge answered that question in the negative and ordered that Mr. Zandbergen's child support obligation in respect of the daughter terminated effective February 28, 2022. Ms. Craig initially brought a cross appeal from this aspect of the judge's order but subsequently abandoned it.
- [5] During the parties' marriage, Mr. Zandbergen worked as a realtor. He has continued to do so since the parties' separation. Determining Mr. Zandbergen's income for support purposes has been a key focus of many of the court applications brought by the parties over the years.
- [6] Ms. Craig also worked in real estate at various points during the parties' marriage but she has had no meaningful employment outside of the home since separation.

Procedural History

- [7] On June 26, 2008 Justice Garson, then of the Supreme Court, found Mr. Zandbergen's Guideline income for child and spousal support purposes to be \$390,000 per year and she ordered him to pay interim child support of \$4,989 per month and interim spousal support of \$8,000 per month.
- [8] The parties subsequently went to trial but during the course of trial they reached a consent order. The order, dated June 9, 2009 (the "2009 Order"), set Mr. Zandbergen's Guideline income at \$300,000, set child support at \$5,000 per month inclusive of special and extraordinary expenses under s. 7 of the Federal Child Support Guidelines, SOR/97-175 ("Guidelines") and continued spousal support in the amount of \$8,000 per month.

- [9] In February 2017, Justice Smith heard cross applications brought by the parties concerning child and spousal support. Prior to that date, in November 2016, the parties had consented to an order providing that their son was no longer a child of the marriage effective February 25, 2014, and child support was accordingly reduced to \$2,744 per month commencing March 1, 2014.
- [10] Justice Smith issued reasons for judgment on March 27, 2017 (2017 BCSC 487, the "Smith Reasons") in which he ordered that Mr. Zandbergen pay retroactive child support for the daughter in the amount of \$26,460, set ongoing child support at \$5,000 for the nine months of the academic year and \$3,395 for the remaining months while the daughter remained enrolled in her current academic program. In supplementary reasons dated April 24, 2017 (2017 BCSC 662), following additional submissions from the parties concerning the Spousal Support Advisory Guidelines ("SSAG"), Smith J. ordered that Mr. Zandbergen continue to pay \$8,000 in spousal support based upon a Guideline income of \$430,000 (the "Smith Order").
- [11] Of note, in the Smith Reasons, Smith J. made the following findings concerning Ms. Craig's entitlement to ongoing spousal support:
- [64] The respondent is now 57 and long out of the work force. I do not find any reasonable prospect of her being able to obtain employment or becoming self-sufficient, nor any basis on which income can be imputed to her. I am satisfied that the compensatory and non-compensatory grounds for spousal support remain essentially as they were at the time of the June 9, 2009 Order with, if anything, a greater non-compensatory component.
- [65] The claimant accepts that he continues to have an obligation to pay spousal support, but seeks a time limit. Although the June 9, 2009 Order refers only to a review as to amount, he says duration of payments is directly linked to the total amount paid.
- [66] The claimant argues that the Spousal Support Advisory Guidelines ("SSAG") set a duration, based on the length of the relationship in this case, of between seven years, two months and 14 years, four months. The claimant submits that the appropriate duration is 12 years and six months, including all payments since separation, and therefore payments should terminate on December 1, 2020.
- [67] Although the SSAG formula calculates duration of support, termination of support in accordance with the formula does not flow automatically. As the court said in Bracklow in para. 57:

57 The respondent in effect seeks a judicially created "statute of limitations" on marriage. The Court has no power to impose such a limitation, nor should it. It would inject a rigidity into the system that Parliament and the legislatures have rejected. Marriage, while it may not prove to be "till death do us part", is a serious commitment not to be undertaken lightly. It involves the potential for lifelong obligation. There are no magical cut-off dates. [Emphasis in original]

- [68] In *Nataros v. Nataros*, 2000 BCCA 55 at para. 6, the court said that "time-limited orders for maintenance are not the usual rule".
- [69] I do not find it likely that the respondent's financial situation or her ability to become self-sufficient will improve between now and 2020 or any date that can be predicted. Circumstances may arise that justify a variation application, but the evidence does not support a pre-determined end date for spousal support.
- [12] Later in his reasons, Smith J. ordered that Ms. Craig "will continue to receive spousal support for an indefinite period" (at para. 84).

The Decision Under Appeal

- [13] As noted at the outset, both parties had applications before the judge, but this appeal is limited to the judge's decision on Mr. Zandbergen's application in which he sought to terminate spousal support or, alternatively, to vary support and set a definite date for termination.
- [14] The judge described the main grounds for Mr. Zandbergen's application in these terms (at para. 48):
- a) He has paid spousal support for a longer period of time than the length of the parties' relationship and longer than the upper limit under the SSAG; and
 - b) Ms. Craig has failed to manage her resources well and she has taken no steps towards self-sufficiency.
- [15] The judge rejected both of these submissions. Her reasons for doing so are succinctly summarized in the following paragraphs:
- [67] I do not read any of the cases that I was referred to as supporting the conclusion that, in light of the circumstances before me, a material change in circumstances will be established by the length of time a payor has paid spousal support or the recipient's perceived non-efforts at gaining self-sufficiency.
- [68] In my view, Mr. Zandbergen's submission that his payment of spousal support beyond the time limit in the SSAG amounts to a material change of circumstances is not viable on the facts as they exist before me. I say this including because Mr. Zandbergen tried without success to convince Smith J. that the court should impose an end-date on the support obligation.
- [69] There does not appear to be a basis for suggesting that the duration of support payments, or Ms. Craig's failure to achieve self-sufficiency, were not taken into account by Smith J. It seems to me that Smith J. considered the possibility of Mr. Zandbergen paying spousal support indefinitely and without a pre-determined end date. In so doing, Smith J. can be taken to have considered that Mr. Zandbergen might pay support for a duration longer than the length of the parties' relationship. In short, I do not find that Mr. Zandbergen's payment

of spousal support beyond the length of the parties' relationship amounts to a material change in circumstances in the specific circumstances of this case.

- [70] In respect of the argument that Ms. Craig, by virtue of her failure to take reasonable efforts to achieve self-sufficiency, has created a material change in circumstances, I note that Smith J. specifically found it unlikely, given Ms. Craig's age, her health issues and her years out of the work force, that her prospects for self-sufficiency would improve "between now and 2020 or any date that can be predicted".
- [71] The evidence before me is that Ms. Craig's financial situation has deteriorated and her chances of becoming self-sufficient have not improved since the parties appeared before Smith J.
- [16] The judge did find one material change in circumstances, that being the cessation of Mr. Zandbergen's obligation to pay child support given her finding that the daughter was no longer a child of the marriage. As a result, she found that spousal support under the SSAG should be calculated using the "without child support" formula rather than the "with child support" formula that had previously been employed.
- [17] The judge found that Mr. Zandbergen's spousal support obligation should be based upon income of \$430,000, the same figure used by Smith J. In doing so, she rejected Ms. Craig's argument that Mr. Zandbergen's income was substantially higher and that he had structured his business to make it appear that his income was lower than it actually is (at para. 87). The judge declined to impute any income to Ms. Craig (at para. 101).
- [18] Applying the SSAG to these incomes resulted in a range of spousal support of \$7,686 at the low end, \$8,967 at the mid range and \$10,248 at the high end. The judge ordered spousal support at the high end, stating:
- [103] In light of the evidence concerning the parties' present means, needs and circumstances, and in light of Ms. Craig's ongoing need for support and her limited ability to become self-sufficient, I conclude that Mr. Zandbergen shall pay Ms. Craig ongoing support at the high-end of the range of \$10,248 each month on an indefinite basis. In my view, this amount reflects a finding that Ms. Craig was, and continues to be, entitled to support and the continuation at the high-end of the range is as consistent as possible with the determination in the Final Order, except for the calculation adjustment now required by the cessation of child support.

Issues on Appeal

- [19] Mr. Zandbergen submits that the judge erred in:
- a) Finding that the Smith Order contemplated payment of support beyond SSAG durational limits such that payment of support beyond those limits did not constitute a material change of circumstances;

- b) Finding an ongoing basis for entitlement to spousal support;
 - c) Failing to apply the SSAG and departing from the SSAG without a stated reason or exception; and
 - d) Failing to consider the SSAG, the strength of entitlement claims, and the respondent's stated need in determining the amount of ongoing spousal support.
- [20] In my view, the alleged errors are each simply different variations of Mr. Zandbergen's central contention that the judge erred in refusing to terminate or vary spousal support.

Standard of Review

- [21] It is well established, and indeed the parties agree, that appellate review of support orders attracts a highly deferential standard of review. An appellate court will only intervene where it is established that there was an error in principle, a significant misapprehension of the evidence, or unless the award was clearly wrong: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at para. 11; *Rozen v. Rozen*, 2016 BCCA 303 at para. 18.
- [22] In *Hickey*, the Supreme Court of Canada explained the rationale for the deferential standard (at para. 12):

There are strong reasons for the significant deference that must be given to trial judges in relation to support orders. This standard of appellate review recognizes that the discretion involved in making a support order is best exercised by the judge who has heard the parties directly. It avoids giving parties an incentive to appeal judgments and incur added expenses in the hope that the appeal court will have a different appreciation of the relevant factors and evidence. This approach promotes finality in family law litigation and recognizes the importance of the appreciation of the facts by the trial judge.

Discussion

- [23] The central thrust of Mr. Zandbergen's position is that by virtue of paying spousal support for a period of time equal to the duration of the parties' relationship, he has discharged his support obligation. He submits further that this constitutes a material change in circumstances thus permitting a termination, or variation, of spousal support. I am unable to agree with these submissions.
- [24] As the judge observed (at para. 37), s. 17(4.1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) provides that before a court makes an order varying spousal support, the court must be satisfied that there has been a change in the condition, means, needs or other circumstances of either former spouse since the making of the spousal support order or the latest variation order. The courts have long interpreted this provision as requiring a "material change" in circumstances.

- [25] In *L.M.P v. L.S.*, 2011 SCC 64, the Supreme Court of Canada confirmed the principles set out in its earlier decisions in *Willick v. Willick*, 1994 CanLII 28, [1994] 3 S.C.R. 670 and *G. (L.) v. B. (G.)*, 1995 CanLII 65, [1995] 3 S.C.R. 370 defining a material change as one that if known at the time of the original order, would likely have resulted in different terms (*Willick* at p. 688). See as well *Gordon v. Goertz*, 1996 CanLII 191, [1996] 2 S.C.R. 27 at paras. 63-64.
- [26] The Court said in *L.M.P.*:
- [33] The focus of the analysis is on the prior order and the circumstances in which it was made. *Willick* clarifies that a court ought not to consider the correctness of that order, nor is it to be departed from lightly (p. 687). The test is whether any given change "would likely have resulted in different terms" to the order. It is presumed that the judge who granted the initial order knew and applied the law, and that, accordingly, the prior support order met the objectives set out in s. 15.2(6). In this way, the *Willick* approach to variation applications requires appropriate deference to the terms of the prior order, whether or not that order incorporates an agreement.
- [34] The decisions in *Willick* and *G. (L.)* also make it clear that what amounts to a material change will depend on the actual circumstances of the parties at the time of the order.
- [35] In general, a material change must have some degree of continuity, and not merely be a temporary set of circumstances (see *Marinangeli v. Marinangeli* (2003), 66 O.R. (3d) 40, at para. 49). Certain other factors can assist a court in determining whether a particular change is material. The subsequent conduct of the parties, for example, may provide indications as to whether they considered a particular change to be material (see *MacPherson J.A.*, dissenting in part, in *P. (S.) v. P. (R.)*, 2011 ONCA 336, 332 D.L.R. (4th) 385, at paras. 54 and 63).
- [27] In *Dedes v. Dedes*, 2015 BCCA 194, this Court described the test emanating from *L.M.P.* in these terms:
- [25] As articulated in *L.M.P.*, the test for material change is based not on what one party knew or reasonably foresaw, but rather on what the parties actually contemplated at the time the order was entered by agreement. A function of the material change threshold is to prevent parties from re-litigating issues that were already considered and rejected; in such cases, an application to vary would amount to an appeal of the original order (see *Gordon* at para. 15).
- [Emphasis in original.]
- [28] In keeping with the principles established in the leading authorities, when determining Mr. Zandbergen's application to terminate or vary spousal support, the judge was required to consider what was known to the parties, and to Smith J., at the time the Smith Order was made. On this point, the judge found that "it was within the contemplation of Smith J. at the time he made the [Smith] Order that Ms. Craig was unlikely to ever achieve self-sufficiency" (at para. 60). Indeed, Smith J. expressly stated as much in his reasons as reproduced at para. 11 above.

[29] Mr. Zandbergen submits that the judge erred in relying on the Smith Order because, at the time it was issued, the maximum duration contemplated under the SSAG had not been reached. Thus, according to Mr. Zandbergen, the Smith Order cannot be interpreted as contemplating payment of spousal support beyond the SSAG durational limit. Mr. Zandbergen argues that Smith J.'s determination of indefinite support cannot be equated with "permanent" support.

[30] The Saskatchewan Court of Appeal considered issues similar to those that arise on this appeal in *Townsend v. Townsend*, 2023 SKCA 91, which was released on August 10, 2023, some months after the judge here released her reasons for judgment.

[31] Speaking for the Court, Justice McCreary posed the central question in issue at para. 1 of the reasons for judgment:

When spousal support has been paid longer than the parties were married, can the duration and quantum of support paid constitute a material change of circumstances so as to justify varying an indefinite support order?

[32] The Court answered that question in the negative (at para. 6).

[33] The underlying facts in *Townsend* bear some resemblance to the facts of this case. Following a trial in 2002, the appellant Mr. Townsend was ordered to pay spousal support on an indefinite basis. As described by McCreary J.A. (at para. 7), the trial judge identified a number of factors supporting the award, including Ms. Townsend's medical condition that limited her ability to work. The trial judge said this about the indefinite duration of the spousal support order (cited at para. 8 of the CA reasons):

[96] A review of the jurisprudence indicates that in situations where it is unlikely a spouse will ever achieve economic self-sufficiency and/or in situations where the marriage has created an economic dependency, a time-limited support order should not be awarded. This is the situation in this case. Accordingly, I believe an indefinite order is appropriate. If either party's circumstances change significantly it is always open to them to bring an application for variation

[34] In 2003 and 2006, Mr. Townsend applied to vary the support order but these applications were dismissed. He applied again in 2018 to terminate spousal support. At the time of that application, Ms. Townsend had received over \$393,000 in spousal support that had been paid for longer than the duration of the marriage (CA Reasons at para. 9). This application was also dismissed, which gave rise to the appeal.

[35] In her analysis, McCreary J.A. rejected the proposition that the mere passage of time can, on its own, constitute a material change in circumstances. Instead, McCreary J.A. noted that the proper question to be determined is whether the objectives of the spousal support reflected in the original order have been satisfied as a result of the passage of time (at para. 30, citing *N.T. v. P.T.*, 2022 ONSC 5263 at para. 200).

- [36] Justice McCreary found that the judge below did not err in finding that the objectives of the original support order were not satisfied by the passage of time. She said:
- [31] As noted by the Chambers judge, it is significant that the trial judge reviewed the objectives of spousal support and the parties' circumstances and determined that an order for indefinite support was appropriate with no provision for a review. The trial judge found that an indefinite order for spousal support was necessary because Ms. Townsend suffered economic hardship due to the marriage breakdown and because she would very likely never be self-sufficient. In other words, it was foreseen that she would always require support. Today, Ms. Townsend has failed to achieve any level of self-sufficiency, but the trial judge already factored in her limited employment opportunities and her refusal to contribute to her own support when she settled on the quantum of spousal support and the indefinite duration of the Support Order (see paras 84 and 96). A fact that was known when a support order was made cannot later be relied upon to prove a change of circumstances justifying a variation of the order: *G.(L.)* at paras 49 and 73.
- [37] Justice McCreary then addressed Mr. Townsend's argument, one mirrored by Mr. Zandbergen here, that given the passage of time, the economic hardship still experienced by Ms. Townsend is no longer caused by the breakdown of the marriage:
- [33] This argument is superficially compelling but, ultimately, cannot succeed. Again, subjective foreseeability guides a consideration of material change. We must ask: what was known at the time of the Support Order and what was foreseeable? The trial judge acknowledged that Ms. Townsend was economically advantaged by the marriage and disadvantaged by its breakdown, but she also acknowledged that the disadvantage caused by the breakdown would not be remedied by Ms. Townsend becoming self-sufficient. It was foreseen that Ms. Townsend would never be able to support herself independently. This was a stated reason for the indefinite period of support, without the inclusion of a review provision. I note, also, that since the Supreme Court's decision in *Miglin*, which followed the Support Order, the legislative objective of spousal support encouraging self-sufficiency has been de-emphasized. The Supreme Court noted in *Miglin* that self-sufficiency is but one of the objectives of spousal support and is an attenuated objective, in that it is only to be promoted "insofar as practicable" (at para 35, quoting *Moge* at 852). This was similarly noted by the trial judge.
- [34] In conclusion on this point, the trial judge determined that an order for spousal support was necessary to relieve the economic hardship of the marriage breakdown and to promote self-sufficiency as far as doing so was practicable. She also concluded that the Support Order should be indefinite because it was unlikely Ms. Townsend would ever achieve self-sufficiency. Despite the passage of time, there has been no material change to Ms. Townsend's economic hardship or her dependency. Thus, the objectives of the Support Order have not been satisfied.

- [38] Finally, McCreary J.A. rejected Mr. Townsend's argument that because he had paid spousal support in excess of the duration and quantum range set out under the SSAG, there had been a material change in circumstances:
- [37] Nevertheless, the difficulty with Mr. Townsend's submission is that it presumes that Ms. Townsend's entitlement to spousal support has ended because it exceeds the range in the SSAG. The assertion that Ms. Townsend has experienced an "end of entitlement" confuses the requirement to establish a material change with the requirement to prove entitlement.
- [39] In my respectful view, Mr. Zandbergen's argument in this appeal is similarly flawed. His position that his support obligation must end because he has paid spousal support in excess of the duration contemplated by the SSAG ignores the fact that Ms. Craig's entitlement to spousal support was established by way of the 2009 Order and was subsequently confirmed in the Smith Order. As noted above, Smith J. found that Ms. Craig had no reasonable prospect of obtaining employment or becoming self-sufficient and, accordingly, he ordered spousal support for an indefinite period. In coming to this conclusion, Smith J. expressly rejected Mr. Zandbergen's request that he set a specific end date for the payment of support (Smith Reasons at paras. 64-69, reproduced above at para. 11).
- [40] Justice Smith's findings provide ample support for the conclusion of the judge that Mr. Zandbergen had not established a material change in circumstances:
- [69] There does not appear to be a basis for suggesting that the duration of support payments, or Ms. Craig's failure to achieve self-sufficiency, were not taken into account by Smith J. It seems to me that Smith J. considered the possibility of Mr. Zandbergen paying spousal support indefinitely and without a pre-determined end date. In so doing, Smith J. can be taken to have considered that Mr. Zandbergen might pay support for a duration longer than the length of the parties' relationship. In short, I do not find that Mr. Zandbergen's payment of spousal support beyond the length of the parties' relationship amounts to a material change in circumstances in the specific circumstances of this case.
- [41] While the judge did not say so expressly, it is apparent that Mr. Zandbergen's application was in large measure an attempt to relitigate matters that had previously been considered and rejected, contrary to the objectives of the material change test (Dedes at para. 25, cited above at para. 27).
- [42] As McCreary J.A. stated in Townsend (at para. 30), the essential question to be determined is whether the objectives of the original spousal support order have been satisfied. It is clear that both Smith J. and the judge here were of the view that those objectives were not in fact satisfied merely by the payment of support for the duration set out under the SSAG.
- [43] The judge observed (at para. 105), echoing the comments of Smith J. (Smith Reasons at para. 69), that circumstances may arise that will justify a future variation application. However, those circumstances were not present before the judge and Mr. Zandbergen has not established that the judge erred in dismissing his application to terminate support.

- [44] Mr. Zandbergen also challenges the quantum of spousal support ordered by the judge. His argument on quantum is based in large part on his position that the payment of spousal support to the limit set out under the SSAG amounts to a material change in circumstances thus requiring the judge to conduct a new assessment of Ms. Craig's financial needs. He submits that those needs do not support an order for spousal support at the high end of the range. He submits further that the judge simply defaulted to the top end of the spousal support range because that was consistent with the Smith Order.
- [45] For the reasons set out above, I have rejected Mr. Zandbergen's material change argument. Further, I do not agree that the judge erred in setting spousal support at the high end of the range in order to be consistent with the Smith Order. That approach was open to her given her finding that Mr. Zandbergen had not established a material change in circumstances warranting a variation of spousal support (apart from the change from the "with children" to "without children" formula).
- [46] It should be noted as well that in coming to her determination of quantum, the judge rejected Ms. Craig's position that Mr. Zandbergen's Guidelines income should be significantly increased, to over \$1 million, because of the manner in which he structured his business (at para. 87). The judge's analysis led her to find that Mr. Zandbergen's income for support purposes should continue to be \$430,000, the same figure used to quantify support in the Smith Order. She similarly found that Ms. Craig's circumstances had not changed since the date of the Smith Order in that she "remains solely reliant on support payments and her self-sufficiency outlook is unchanged since 2017" (at para. 98). In other words, the judge considered the parties' financial circumstances and needs at the time they appeared before her.
- [47] On the issue of quantum, the judge concluded:
- [103] In light of the evidence concerning the parties' present means, needs and circumstances, and in light of Ms. Craig's ongoing need for support and her limited ability to become self-sufficient, I conclude that Mr. Zandbergen shall pay Ms. Craig ongoing support at the high-end of the range of \$10,248 each month on an indefinite basis. In my view, this amount reflects a finding that Ms. Craig was, and continues to be, entitled to support and the continuation at the high-end of the range is as consistent as possible with the determination in the Final Order, except for the calculation adjustment now required by the cessation of child support.
- [48] As the Supreme Court of Canada made clear in *Hickey*, the judge's determination of spousal support is entitled to a high degree of deference. Mr. Zandbergen has not established that the judge, in exercising her discretion as she did, erred in principle, significantly misapprehended the evidence, or made an award that was clearly wrong. Accordingly, there is no basis for this Court to interfere.

Conclusion

[49] I would dismiss the appeal.

"The Honourable Justice Skolrood"

I AGREE:

"The Honourable Mr. Justice Willcock"

I AGREE:

"The Honourable Mr. Justice Voith"

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Prepared on 25 October 2026 · Esheria