IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lafrentz v. Palmer,*
2021 BCSC 1332

Date: 20210708
Docket: E54266
Registry: New Westminster

Between:

Vanessa Ellen Lafrentz

Claimant

And

Paul Clifford Palmer

Respondent

Before: The Honourable Mr. Justice Kirchner

Reasons for Judgment

In Chambers

Counsel for Claimant:	S. Das
Appearing on his own behalf:	Paul Palmer
Place and Date of Hearing:	New Westminster, B.C. June 10, 2021
Place and Date of Judgment:	New Westminster, B.C. July 8, 2021

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Introduction

[1] The claimant in this family law proceeding, Vanessa Lafrentz, applies for several interim orders for prospective and retroactive child support for her daughter, Kelly. Kelly is now 21 and has recently re-enrolled full time in a social work program at the College of New Caledonia in Prince George. The program will take two years to complete.

[2] The respondent, Paul Palmer, is Kelly's father, although the two have never had a relationship. Ms. Lafrentz and Mr. Palmer met and dated in 1998 but never lived together in a marriage-like relationship.

[3] A consent order dated May 31, 2000 made by the Honourable Judge MacGreggor of the Provincial Court fixed Mr. Palmer's child support obligations at $500 per month for so long as Kelly is entitled to support. This was based on Mr. Palmer having a "deemed" income of $59,900 per year for the purposes of the *Federal Child Support Guidelines*, SOR/97-175 (the "*Guidelines*"). Though Mr. Palmer failed to maintain consistent payments under this order, arrears have been collected under the Family Maintenance Enforcement Program and his support obligations under the May 31, 2000 order are current to January 2021.

[4] Among the relief sought in her notice of family claim, Ms. Lafrentz seeks to have Mr. Palmer:

> …pay monthly child support, retroactive and ongoing, for the care of Kelly pursuant to the provisions of the *Federal Child Support Guidelines*, and be imputed with an income of at least **$200,000 gross per annum**. [Bolding in original]

[5] On this application, Ms. Lafrentz seeks interim and, what she calls, "without prejudice" orders that:

a) Mr. Palmer pay retroactive child support based on an imputed income of "at least $200,000 gross per annum" for the period of January 2000 to September 2019;

b) Mr. Palmer pay prospective child support based on the same imputed income in the amount of $1,746 per month;

c) Mr. Palmer pay 50% contribution towards the retroactive special and extraordinary expenses for Kelly's postsecondary education in the amount of $6,680.55 and room and board in the amount of $3,600 as well as dental/orthodontic expenses in the amount of $3,575; and

d) Commencing February 1, 2021 and continuing thereafter, the parties share the special and extraordinary expenses proportionate to their respective incomes.

[6] In her notice of application, Ms. Lafrentz also sought an order that Mr. Palmer produce an extensive list of documents. That part of the application was heard by Justice Sharma on March 2, 2021 (the "March 2, 2021 Order") who ordered Mr. Palmer to produce the requested documents. She adjourned the balance of the claimed relief as it could not be addressed in the time set before her. The balance of the relief is now before me. Following the March 2, 2021 Order, Mr. Palmer disclosed, I am told, some 5,000 pages of documents, much but not all of which has been made evidence in this application. Counsel for Ms. Lafrentz advises that Mr. Palmer has not fully complied with the order but I am not being asked on this application to enforce it.

[7] As there is an existing order for child support, the application is for an interim order to change an existing order under s. 217 of the *Family Law Act*, S.B.C. 2011, c. 25 [*FLA*]. Much of the relief sought, particularly the retroactive payment of child support dating back some 20 years with an imputed income of $200,000, is ambitious for an interim application. The claimant says she is only seeking "rough justice" pending trial of this matter. However, the relief she seeks, particularly with regard to retroactive child support, would provide her, on an interim basis, with the full amount of relief she is seeking through the proceeding. Though the claim was filed in 2017, no trial date has been set.

[8] Mr. Palmer opposes the application. He argues his income now and in the past is nowhere near the $200,000 Ms. Lafrentz alleges. He says that while tax records disclose income in amounts that are substantially higher than the $59,900 on which the May 31, 2000 order is based, these do not accurately reflect his actual income and he has applied to the Canada Revenue Agency ("CRA") for a reassessment of most of his tax years. He also argues that Ms. Lafrentz has not established that Kelly, being 21, is a "child" within the meaning of s. 7 of the *FLA*, having not led evidence, or sufficient evidence, of the factors set out by this court in *Farden v. Farden*, (1993), 48 R.F.L. (3d) 60 at 64-65 (B.C.S.C.).

[9] Though Mr. Palmer had some limited assistance from a lawyer in preparing materials for the application, he is self-represented on this application.

[10] I will substantively address Ms. Lafrentz's application for interim relief regarding current and prospective obligations to pay child support. However, based on a combination of factors, I find that her application for an order reassessing Mr. Palmer's past child support obligations on an interim basis — using an imputed income and ordering an interim and "without prejudice" payment of the full amount of the reassessed retroactive child support arrears — is not reasonably achievable on this interim application, even on the standard of "rough justice".

Background Facts

[11] Ms. Lafrentz is 59 years old. She lived most of her life in Delta, B.C. and worked as a truck driver for the City of Richmond where she earned approximately $68,000 per annum. I take this to be her salary at the time of her retirement. She recently retired and moved to 100 Mile House due to financial issues that made it difficult to remain in the Lower Mainland.

[12] Kelly was born in 1999. Ms. Lafrentz deposes that Mr. Palmer, who is now 64, chose not to have a relationship with Kelly and has never had any time with her. She says she "initiated dialogue" with him to visit Kelly and her in the hospital when Kelly was born but Mr. Palmer chose not to visit. Mr. Palmer deposes that Ms. Lafrentz

made it clear to him she did not want or expect Mr. Palmer to participate in raising Kelly.

[13] As mentioned, by consent order dated May 31, 2000, the Provincial Court ordered that Mr. Palmer pay Ms. Lafrentz $500 per month in child support based on a “deemed” income of $59,900 per annum. Ms. Lafrentz argues that Mr. Palmer was not forthcoming in his financial disclosure at the time of the order. She states that on the date of the appearance in court on May 31, 2000, Mr. Palmer provided a sworn financial statement indicating he was self-employed with total income of $227,357. Ms. Lafrentz has not specifically explained why she proceeded with the consent order in light of this disclosure or why she did not seek to vary the consent order later, after receiving and considering this financial statement. She deposes more generally, though, that she commenced the current proceeding in December 2017 once she had the emotional strength and financial capacity to pursue Mr. Palmer for child support and financial disclosure.

[14] Ms. Lafrentz deposes she has supported her children and spent most of her life savings and income to help them do well in life. She says throughout Kelly’s childhood and into her post-secondary education, she has paid for all of Kelly’s education costs including books, tuition, enrolment fees, accommodation, gas, telephone, school trips, and other extracurricular activities such as dance (age 5 to 9 years) and swimming lessons. She says she has not received contribution from Mr. Palmer for these payments.

[15] After completing high school, Kelly immediately enrolled in a social work program at the College of New Caledonia in Prince George. Ms. Lafrentz deposes she did not have the money to support Kelly to complete her full social work degree so Kelly only attended a two-year diploma program which she completed in 2019. Kelly then began working for the Crisis Prevention Intervention Information Centre in Prince George with the hope that she would one day return to school to finish a social work degree.

[16] In late 2020, Kelly enrolled again, full-time, at the College of New Caledonia to continue her studies starting in January 2021. Ms. Lafrentz deposes that this program will last another two years, at which point Kelly will have a degree. Ms. Lafrentz paid the tuition for this enrolment, being (at the time of her affidavit) $1,080.85, but says she will need to pay a further amount for a course Kelly has been waitlisted for but expects to get in. Ms. Lafrentz has attached to her affidavit her bank statement showing the $1,080.85 payment dated December 5, 2020.

[17] Ms. Lafrentz swore her affidavit in December 2020, before Kelly's program started and while Kelly was living in Prince George. However, she states that Kelly would be moving in with her in 100 Mile House to save money on rent and would do her studies remotely, which is how the program is currently delivered. Ms. Lafrentz deposes Kelly does not have the funds to pay for her education or her living expenses and that Ms. Lafrentz continues to assist her in that respect. She also deposes that she has had to assist Kelly with her living expenses even while Kelly was living in Prince George and working at the Crisis Prevention Centre.

[18] Ms. Lafrentz has provided other receipts in respect of Kelly's schooling costs to Mr. Palmer through legal counsel. Those receipts are for Kelly's earlier schooling in 2017 and 2018, room and board for the same period, and dental/orthodontic work dating back to 2014.

[19] Mr. Palmer describes himself as a boat builder and a repairman, but he is also the sole shareholder of at least three companies:

a) Fraser Pacific Marine Services Ltd., said to be a boat repair and servicing company;

b) Palmer Yachts Ltd., a company said to have been created for the purposes of building and developing homes in Richmond; and

c) Bridges Marina Ltd., which is said to have been created to own and manage docks adjacent to the homes built by Palmer Yachts.

[20] As discussed below, Mr. Palmer asserts these companies are illiquid.

Mr. Palmer's Financial Circumstances

[21] Central to Ms. Lafrentz's application is her argument that the court should impute a substantially higher income for Mr. Palmer beyond that set out in the May 31, 2000 consent order. She argues an income of "at least $200,000" should be imputed for Mr. Palmer, both for the purpose of an interim order for current and prospective child support and for the purpose of an interim retroactive order for support going as far back to 2000. This latter order would involve an interim reassessment of arrears based on the imputed income that may be subject to adjustment (or potentially reversal) at trial.

[22] Ms. Lafrentz has led evidence relating to Mr. Palmer's financial circumstances around the time of the May 31, 2000 consent order and more recently. The evidence for the earlier period includes the sale of a property in 2002 for $1 million more than Mr. Palmer purchased it for in 1999, and that he owned a property in or about 2004 on River Road in Richmond, which is now held by Palmer Yachts.

[23] She has also led evidence of companies that Mr. Palmer owned at the time, including the listed assets and revenues of those companies. She notes the balance sheet as of January 31, 1999 for one of these companies, Pirate Holdings, showed assets of $559,000 and $189,683 due to Palmer Yachts and Breakaway Yachts. The balance sheet also shows mortgages totalling $412,000. The balance sheet for Palmer Yachts as of January 31, 1999 indicates $269,189 cash on hand, another $8,765 cash in trust, and $790,205 in work in progress. It also shows a mortgage of $1,250,000 and accounts payable of $106,704. The income statement for Breakaway Yachts for the year ending December 31, 1998 shows revenues of $443,864 and expenses that Ms. Lafrentz argues "could be questionable line entries for support calculations," including $38,736 for food and liquor, but even with these expenses the company showed a gross profit of $186,306. However, it also shows a deficit of ($156,770) at the beginning of the year and a year-end deficit of ($6,818).

The written submissions provided by Ms. Lafrentz's counsel focus on the revenues but do not mention the debts or expenses.

[24] There is little other evidence of Mr. Palmer's financial circumstances dating back before the past decade. Ms. Lafrentz has sought, and Sharma J. has ordered, production of financial information dating back to 2000. Mr. Palmer says he has now provided much of what Sharma J. has ordered but he no longer has many of the documents that reach as far back as the order (to 2000). Mr. Palmer was forced into personal bankruptcy in 2003 and not discharged until 2005. Justice Sharma's order requires production of all the documents associated with his bankruptcy but Mr. Palmer says that he no longer has those documents.

[25] It is not necessarily surprising that a person would not have financial records dating that far back. Moreover, without deciding any issues that will be canvassed at trial, it seems unlikely that Mr. Palmer could have successfully hid income from the CRA while he was in bankruptcy. For this and other reasons I will discuss later, I would not, on this application for interim relief only, impute additional income on Mr. Palmer for the time he was in bankruptcy and before. Nor would I reassess this child support obligations on an interim basis for this early period. There are complicated and disputed factual issues regarding Mr. Palmer's income and bankruptcy as well as potential delay in seeking relief, all of which require a trial.

[26] Ms. Lafrentz has also led extensive evidence about the three companies Mr. Palmer currently owns and some evidence of his personal finances over the past decade in seeking to impute income and reassess his past child support obligations on an interim basis. These take the form of several binders of documents, including banking statements, tax returns, and financial statements dating back to 2009. There is no expert (or other) evidence analyzing these financial records and the court has not had the benefit of specific direction or assistance on what these documents might suggest Mr. Palmer's true income could be.

[27] Mr. Palmer's evidence is that all three of the companies are illiquid. He says they were corporate vehicles through which he pursued an ambitious housing

development project in Richmond that lost $5.2 million. He acknowledges one company, Bridges Marina, has a significant asset in the form of a marina adjacent to the housing development but says it is also burdened by a debt of almost equal value. He says the marina was only developed to try to cover the losses from the housing development and keep creditors from foreclosing. I will say more about all this later.

[28] An articled student at the office of Ms. Lafrentz's counsel has prepared summary tables setting out the amounts of money coming in and going out of the companies on a monthly basis. The evidence, though detailed and carefully summarized, is, unfortunately, non-descriptive of the precise nature of the transactions. This is not a criticism of the student's work: detailed descriptions of the transactions do not, for the most part, appear in the financial records the student was asked to summarize.

[29] For example, the first summary table, being for one of Fraser Pacific Marine Services' business accounts for January 2013, shows the credits and debits for that month but contains little or no explanation of what the specific transactions are for. I reproduce the table as follows:

Date	**Credit**	**Debit**	**Description**
TOATAL	**$210,893.03**	**$89,247.75**	
Jan 30	$10,893.03		Deposit 0030
Jan 30		$7,500.00	Cheque 219
Jan 31	$200,000.00		Credit Adjustment – Client request transfer from personal account ending 8326 to bus account ending 0198
Jan 31		$31,317.79	Certified cheque
Jan 31		$37,436.00	Cheque – 223

[30] The table for the following month, February 2013 shows substantially higher debits than credits but is no more descriptive than the January 2013 table:

Date	**Credit**	**Debit**	**Description**
TOATAL	**$24,700.00**	**$158,5322.62**	
Feb 1		$9,680.34	Cheque – 221
Feb 1		$20,000.00	Cheque – 225

Feb 1		$21,569.77	Cheque – 222
Feb 4		$10,000.00	Cheque – 224
Feb 4		$22,000.00	Cheque – 227
Feb 5		$9548.00	Cheque – 231
Feb 5		$9620.34	Cheque – 220
Feb 13		$19,829.60	Cheque – 233
Feb 14		$12,550.00	Cheque – 230
Feb 15	$20,000.00		Client request – Transfer from Palmer Yachts to Fraser

[31] This kind of information is repeated on a monthly basis up to 2021. There is a substantial drop in activity starting in early 2018 with almost no account activity recorded through to March 2021. At present, the account shows a debt of $21. The financial records themselves shed no further light on these transactions. For example, it cannot be determined what the cheques were issued for.

[32] Similar tables are provided for another account of Fraser Pacific Marine Services, as well as accounts for Palmer Yachts (which drops to almost no activity after July 2016) and Bridges Marina (which is still active). There are also summaries of the financial statements and tax returns for each of the three companies, which I will briefly describe here.

Fraser Pacific Marine Services Summaries

[33] The summaries of financial statements and tax returns for Fraser Pacific Marine Services show, at least initially, assets of $2,680,789 starting in 2009 and gross revenues in that year of $109,376. It also shows $310,538 due to a “related party” and $757,795 due to shareholder. It shows retained earnings in 2009 of $776,139. The value of the assets rises to a high of $6,016,095 in 2013 and gross revenues peak in 2011 at $826,562. Retained earnings peak in 2013 at $1,454,713. Throughout this time, the shareholder loan steadily increases to a high of $2,717,670 in 2012.

[34] The summaries only contain financial statements for Fraser Pacific Marine services up to 2016. In that year, it shows assets of $4,707,340, gross revenues of $325,614, retained earnings of $1,751,999 and a shareholder loan of $2,630,438.

However, the corporate tax returns for Fraser Pacific Marine for 2015/2016 show total assets of $100 and retained earnings at a negative balance of ($1,026,967). There are no financial statements for Fraser Pacific Marine in evidence after the 2015/2016 fiscal year but the tax returns up to 2019 show total assets of no more than $100 and a negative balance of retained earnings of ($1,037,467). That appears to be the present state of the company.

Palmer Yachts Summaries

[35] The summaries for Palmer Yachts begin in 2008. In that year, they show $1,814,239 in assets, $293,526 due to a related party and $300,000 due to shareholder. The assets increase to a peak of $11,056,868 in 2015 with gross revenues in that year of $233,557, $2,359,965 due to related party, and $518,971 due to shareholder. It also shows retained earnings as a negative balance of ($1,291,984).

[36] According to the tax return summaries, after 2015 the total assets dropped to $100, no gross revenues, no amount due to shareholders, and a negative balance of retained earnings of ($5,245,147). That appears to be the present state of the company.

Bridges Marina Summaries

[37] There are no summaries for Bridges Marina's financial statements but there are summaries of its corporate tax returns. As of 2019, the summary indicates total assets of $1,494,417, amounts due to shareholders of $1,439,928, gross revenues of $380,000 and total retained earnings of $42,389.

Mr. Palmer's Credit Card Statements and Personal Accounts

[38] The summaries also contain yearly tables of Mr. Palmer's RBC Visa card which show fairly substantial amounts of spending each month and little in the way of carrying a balance. However, my review of the actual statements suggests Mr. Palmer uses the card to purchase goods and services in connection with his marina and boat repair business. It is difficult to discern from the statements, and the

summaries provided, what might be imputed to Mr. Palmer personally. Indeed, counsel made no submissions on what specific income I might infer from the pattern of spending, other than the assertion that it is "at least $200,000 per annum."

[39] Mr. Palmer has evidently not produced his personal banking statements (apart from his credit card statements) as ordered by Sharma J. While he argues the collection of documents compiled in the affidavits tendered by Ms. Lafrentz is incomplete, he has not filed his own affidavit attaching additional documents from the Sharma J. production he considers relevant. I can find no good explanation for why Mr. Palmer has not produced personal banking statements. He has an ongoing obligation to ensure he is in compliance with the March 2, 2021 Order and, indeed, with his document production obligations more generally. Enforcement of the March 2, 2021 Order is not part of the application before me but the court certainly expects Mr. Palmer to bring himself into compliance with that order without delay.

Anecdotal evidence

[40] Ms. Lafrentz also leads anecdotal evidence about Mr. Palmer's business. She has attached as exhibits to her affidavit excerpts from the Bridges Marina website which promotes the business as the "place to buy a boat, keep a boat, have fiberglass and gelcoat repairs and mechanical maintenance done or for full boat restorations". She also attached articles from the local Richmond paper and a real estate magazine about Mr. Palmer's business and the housing development project. She suggests this is evidence of Mr. Palmer's business success.

Declared Income

[41] Ms. Lafrentz points to more concrete evidence of Mr. Palmer's income. As Mr. Palmer acknowledges, between 2008 and 2016, he reported substantially higher annual income in his tax returns than is contained in the May 31, 2000 order. These range from a low in 2014 and 2015 of $118,000 to a high in 2012 of $250,000. However, as discussed below, he maintains these amounts do not reflect his actual income and his accountant is in the process of seeking a reassessment of this income by the CRA. He has led some evidence of this reassessment application

and, through an affidavit of his accountant, some explanation for it. I will turn to that now.

Mr. Palmer's Evidence and Submissions on these Documents

[42] Mr. Palmer's evidence purports to explain both the financial records of the three companies and his tax returns between 2008 and 2016. Alexander Suelzle, a chartered professional accountant, has sworn an affidavit deposing that he has been Mr. Palmer's accountant since some time before 2007 and has prepared all of his personal and corporate tax returns and the companies' financial statements from 2008 to the present. He deposes that all three of Mr. Palmer's companies are illiquid due to the failed housing development project.

[43] The project, named Blue Herron Marina Estates, built nine homes on a piece of land purchased by Mr. Palmer through Palmer Yachts. Mr. Suelzle deposes the land purchase was financed through loans from Fraser Pacific Marine Services, Mr. Palmer personally, and friends and family of Mr. Palmer. He says Mr. Palmer sold the land, buildings, and equipment occupied and owned by Fraser Pacific Marine, as well as Mr. Palmer's own principal residence, to finance the project. He says Mr. Palmer also borrowed money from his wife and parents throughout the years for this purpose.

[44] Mr. Suelzle deposes that Mr. Palmer, Fraser Pacific Marine Services, and Palmer Yachts entered into a finance arrangement with various private lenders to finance the construction and development of the Blue Herron project homes. The amount borrowed was approximately $8,500,000. Mr. Palmer's contribution was apparently secured by way of one or more shareholder loans from the companies. In order to repay that loan, or at least part of it, Mr. Palmer is said to have transferred title of one of the homes from Palmer Yachts to Mr. Palmer personally with valuation of approximately $900,000. Mr. Palmer then mortgaged that home to personally secure financing to complete the Blue Herron project.

[45] The project was apparently a failure. Mr. Suelzle deposes that the homes were expected to sell for about $2 million each but they sold at an average price of

$1.3 million. As a result, the project suffered an overall loss of approximately $5.2 million, leaving all three of Mr. Palmer's companies illiquid. In order to keep private lenders from foreclosing on his residence and businesses, Mr. Palmer, with his wife and children, built Bridges Marina in front of the development. The marina is said to have provided additional security for the private lenders. As mentioned, there is currently a mortgage registered against the marina approximately equal in amount to the stated value of the marina.

[46] Mr. Suelzle deposes that during the construction of the Blue Herron project from 2012 to 2016, he prepared Mr. Palmer's tax returns. In those returns, Mr. Palmer declared personal income in varying amounts over the years ranging from a low of $118,000 to a high of $250,000. He says, however, this does not reflect Mr. Palmer's true income for those years but rather were amounts Mr. Palmer hoped he would be able to generate from the project, which would be paid out to Mr. Palmer by the companies in due course. The amounts owing to Mr. Palmer were recorded as shareholder loans in the companies' financial statements. By declaring these amounts as personal income each year, though, it was thought Mr. Palmer would be better able to secure bank financing for the project. Once it became evident that the project was going to lose substantial amounts of money, and the shareholder loans would not be repaid, Mr. Suelzle assisted Mr. Palmer in making an application to have the CRA reassess his income for those years. They are currently waiting on the results of that application.

[47] Mr. Palmer attached to one of his affidavits a T1 Adjustment Summary that he says Mr. Suelzle prepared. It sets out the amount of income Mr. Palmer originally reported in his tax returns for 2008 through 2019 and the amounts for which Mr. Palmer now seeks reassessment. Those are:

Year	**Declared Income**	**Proposed Reassessment**
2008	$136,700	$60,000
2009	$150,000	$60,000

2010	$150,000	$62,500
2011	$200,000	$60,000
2012	$250,000	$60,000
2013	$125,000	$60,000
2014	$118,000	$60,000
2015	$118,000	$60,000
2016	$117,000	$60,000
2017	$175,500	$60,000
2018	$81,200	
2019	$138,000	

[48] As described in Mr. Suelzle's affidavit, the notes on this T1 Adjustment Summary state that the reported income was not the actual income that Mr. Palmer withdrew from the companies. The amount reported was "inflated to aid in the financing of Paul Palmer's personal home and real estate development."

[49] Apart from the affidavit of his accountant, Mr. Palmer has provided almost no evidence of his application for reassessment nor of its status. Presumably, his accountant has copies of the documents that have been filed with CRA but those have not been made exhibits in this application. Counsel for Ms. Lafrentz says they have not been produced. Notably, disclosure of correspondence with CRA was part of the March 2, 2021 Order.

[50] Mr. Palmer has produced a CRA document entitled "Change my Return" that was apparently printed on September 27, 2018. It indicates that Mr. Palmer is seeking a reassessment of his declared income for 2008-2016. Ms. Lafrentz says the date this document was printed is significant because it is after Mr. Palmer was served with the notice of family claim. She suggests this indicates Mr. Palmer is only seeking to reassess his income to avoid a reassessment of his retroactive child

support obligations. Mr. Palmer disputes this and maintains the reassessment process started earlier, in light of the unexpected losses from the Blue Herron project.

Mr. Palmer's Current Income

[51] On September 18, 2018, Mr. Palmer swore a financial statement for this litigation in which he states his annual income to be $100,000 and annual expenses totalling $194,000. In his second affidavit filed in this application, he deposed that his 2018 income, as per his notice of assessment, was $81,200. He deposed that his taxable income for 2019 and 2020 is yet to be determined, but the T1 Adjustment summary prepared by his accountant, and attached as an exhibit to the same affidavit, states that his "Originally reported (Line 150)" income for 2019 was $138,000. As noted earlier, Mr. Palmer has not provided copies of personal bank statements.

Interim Orders

[52] A court's authority to make interim orders under the *FLA* is found in s. 216 which reads:

> **216** (1) Subject to this Act, if an application is made for an order under this Act, a court may make an interim order for the relief applied for.
>
> (2) In making an interim order respecting a family law dispute, the court, to the extent practicable, must make the interim order in accordance with any requirements or conditions of this Act that would apply if the order were not an interim order.

[53] It is often said that on applications for interim relief in family law matters, the court seeks to achieve "rough justice" at best pending a full trial: *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12; *N.N.N. v. D.E.B.*, 2016 BCSC 1778 at para. 1; *Boucher v. Garnett*, 2016 BCSC 2284 at para. 18. On an application for interim support, the court does not embark on an adjudication of the issues or questions to be "thrashed out" at trial: *Santelli v. Trinetti,* 2019 BCCA 319 at para. 121. As stated in *Robles* at para. 12, "an in-depth analysis of the parties' circumstances … is better left to trial."

[54] In *Boucher*, Justice Rogers said it is particularly important to exercise caution in an application for interim relief where there are contested issues of fact, where determinations of credibility will be made and where the order may result in money being paid in circumstances where there is an issue of whether it can be recovered. He stated:

> [18] It has long been the case that interim proceedings in family matters are summary in their nature. They provide rough justice at best. To that end, interim proceedings should not be bogged down with the merits of the case: *Newson v. Newson*, (1998), 65 B.C.L.R. (3d) 22 (C.A.) at para. 11, quoting *B. (R.) v. B. (M.)* (1989), 19 R.F.L. (3d) 92 (Ont. H.C.J.).
>
> [19] Caution must be exercised when the evidence in an interim application conflicts on a threshold issue: *L.G.B. v. M.A.C.M.*, 2005 BCSC 1786. That is especially so if resolving a conflict requires the court to assess and make findings of credibility: *Kyung v. Bowman* (1998), 35 R.F.L. (4th) 48, (S.C.). After noting the relevant case law, in *L.G.B.* Barrow J. described the reasons for taking a cautious approach in such circumstances:
>
> > [14] From the foregoing, four points may be distilled. First, given the limitations of both time and evidence which necessarily constrain interim applications, caution should be exercised before descending into the merits of an issue. The greater the need to resolve contested issues of fact, especially those going to a threshold issue as in this case, the more likely it is that the decision ought not to be made on an interim basis.
> >
> > [15] Second, the need for caution is all the greater when, as a result of an interim order, money will be paid and there is an issue as to whether it can be recovered following a trial if it is determined that the recipient is not entitled to the funds.
> >
> > [16] Third, and related to the first, where an interim issue requires a determination of credibility, there is a risk that such a finding may embarrass the trial judge when called upon to make findings of credibility in relation to the very same issue. When this is so, even greater circumspection is required before making such an order.
> >
> > [17] Finally, to minimize the mischief inherent in the first and third of these observations, interim decisions should only be made where it can be said that a *prima facie* case for entitlement has been made out.
> >
> > [Emphasis added]

[55] In *Ball v. Ball*, 2016 BCSC 2264, Master Bouck considered an application for a wide range of interim relief regarding the care and residency of the children, child support, and retroactive child support. While she made interim orders respecting most matters, she did not make an interim order for retroactive child support, even

though she found that the payor parent owed the recipient some amount of retroactive support. As she stated at para. 3, the question regarding retroactive support "to be determined at trial is how much."

Retroactive Child Support

The Order Sought

[56] Ms. Lafrentz's application for interim retroactive support gives rise to contested facts and issues of credibility regarding Mr. Palmer's income from 2000 to the present. The application calls for a complex factual analysis of Mr. Palmer's personal finances and those of his companies. It asks the court to assess all this material on an interim basis and impute an income on Mr. Palmer dating back a full two decades to 2000. It would then require the court to reassess his child support obligations and consequential arrears for that period, again on an interim basis pending a full trial of the issues required to determine this point.

[57] If an order was made on this basis, Mr. Palmer would be required to pay the difference, on an interim basis, between what he paid in child support under the order of Judge MacGreggor dated May 31, 2000 and what I might assess would be appropriate on my interim determination of the issue. All of the findings and orders made on this application could then be subject to change by a trial judge who will have the benefit of a full trial, *viva voce* evidence of the parties, and, one might expect, expert evidence analyzing the financial records of Mr. Palmer's companies. As I describe in the following paragraphs, I consider these issues are unsuitable to determination on an application for interim relief.

Mr. Palmer's Past Child Support Obligations

[58] There is no question Mr. Palmer had a duty throughout the past two decades to disclose to Ms. Lafrentz any increase in his income that might affect his child support obligation. Mr. Palmer argues that Judge MacGreggor's May 31, 2000 consent order did not require him to disclose financial information on an ongoing basis but that argument is immaterial. While it may be desirable for the sake of

clarity to impose such an obligation in a child support order, that obligation exists at law irrespective of the order.

[59] Disclosure is a central pillar of our family law system. Justice Martin recently remarked in *Colucci v. Colucci*, 2021 SCC 24 at para. 50:

> Without proper disclosure, the system simply cannot function and the objective of establishing a fair standard of support for children that ensures they benefit from the means of both parents will be out of reach…

And at para. 55:

> Payors should not be better off from a legal standpoint if they do not pay the child support the law says they owe. Nor should payors receive any sort of benefit or advantage from failing to disclose their real financial situation or providing disclosure on the eve of the hearing.

[60] Child support is the right of the child. Both parents have a mutual obligation to support their children according to the children's need and the parents' ability to pay in proportion to their respective incomes: *D.B.S. v. S.R.G.*, 2006 SCC 37 at para. 41. Where a payor parent's income rises but the amount of child support does not, an unfulfilled obligation is established on the part of the payor parent that may later be enforced by the court: *D.B.S.* at para. 59. An increase in the payor parent's income is a material change in circumstances that, depending on the case, may and typically will justify a variation of an existing child support order, including one arrived at by consent. Thus, even where the payor parent has made payments consistent with an existing court order, that parent would not fulfill their support obligations to the child if those payments did not increase commensurate with the payor's income: *D.B.S.* at para. 68.

[61] In *Colucci* at para. 114, Martin J. summarized the principles that apply to applications to retroactively increase child support under s. 17 of the *Divorce Act,* R.S.C., 1985, c. 3 (2nd Supp.). In doing so, she noted the potential consequences of inadequate disclosure:

> The recipient must meet the threshold of establishing a past material change in circumstances. While the onus is on the recipient to show a material increase in income, <u>any failure by the payor to disclose relevant financial</u>

> information allows the court to impute income, strike pleadings, draw adverse inferences, and award costs. There is no need for the recipient to make multiple court applications for disclosure before a court has these powers. [Emphasis added]

[62] This principle also applies to child support under the *FLA*: *Bennett v. Bennett,* 2015 BCSC 699 at para. 46.

[63] A payor parent's failure to disclose an increase in income that may affect the child support obligations is considered "blameworthy" conduct that may entitle the recipient parent or the children themselves to receive the full amount of retroactive child support to which they were properly entitled. Potentially (in the case of blameworthy conduct) this obligation may date back and be enforceable to the date when the income increased: *Michel v. Graydon*, 2020 SCC 24 at para. 36. Such blameworthy conduct may displace a presumption that otherwise exists that a retroactive increase in child support should run from the date the recipient parent gave effective notice of an intention to seek an increase (*D.B.S.* paras. 121-123), although the Supreme Court of Canada has recently questioned whether even this presumption is a valid one in light of the payor parent's obligation to make positive disclosure of an increase in income: *Colucci* at para. 45.

[64] Thus, it is no excuse for Mr. Palmer to say the May 31, 2000 consent order did not require him to produce financial information on an ongoing basis. As the Court of Appeal found in *Burchil v. Roberts*, 2013 BCCA 39:

> [29] It is not a justification for Mr. Roberts to state that he was unaware of the *Guidelines* or the amounts he should have been paying pursuant to those *Guidelines*. What he did know is that the parties had agreed in 1997 that $737 was an appropriate amount of child support for their 5-year-old son based on Mr. Roberts' income of $90,000. He could not reasonably have regarded that as a final agreement governing child support which absolved him of any further financial responsibilities in the future. He would have been aware of the increased costs of raising his son as he grew older, not the least because he had three children from a previous relationship. He would have been aware of the rising cost of inflation and its impact in eroding the spending power of $737 over 14 years. Totally apart from the *Guidelines*, he would reasonably have understood the basic concept that "If you make more, you pay more." Nor could it have escaped his attention that paying $737 child support for a 5-year-old child in 1997 was unlikely to satisfy his share of the cost of raising a child who was 10, 15 or 19 years old. [Emphasis added]

See also *Greene v. Greene*, 2010 BCCA 595 at paras. 70-74.

[65] Under the *FLA,* the ongoing obligation to disclose increases in income and to pay a concomitant increase in child support survives the child reaching the age of majority: *Michel* at paras. 9 and 28. In other words, even where a child reaches the age of majority and no longer qualifies as a "child" under Part 7 of the *FLA*, a payor's potential liability for reassessed arrears that ought to have been paid when the child qualified to receive support remains alive.

[66] In short, Mr. Palmer has always been under an ongoing obligation to disclose changes in his income that might affect the amount of child support he was paying under the May 31, 2000 consent order. If he has failed to meet this obligation, he is potentially liable for payment of retroactive support as well as any current and prospective support obligations.

[67] Conversely, where there has been a delay in the recipient parent seeking an increase in child support, the court may consider reasons for that delay. Here, Ms. Lafrentz filed the present action in 2017 and served it in 2018. There is no evidence on this application of any effective notice before this date. Presumptively (at least for now, having regard to Martin J.'s *obiter* remark in *Colucci* at para. 45), this could limit Ms. Lafrentz's claim to the date she served the notice of family claim. However, this is subject to an assessment of whether Mr. Palmer has engaged in blameworthy conduct and of other factors that might provide a reasonable explanation for any delay.

[68] The fact that Mr. Palmer provided Ms. Lafrentz with a financial statement on May 31, 2000, the day they were in Provincial Court to seek the consent order, stating he had an income of $227,357 may be relevant factor since Ms. Lafrentz proceeded with the consent order and did not thereafter, until 2017, seek to vary it. Also potentially relevant is Ms. Lafrentz's evidence that in 2012 she was present at the site of the Blue Herron development with her crew from the City of Richmond to pour concrete for the sidewalk in front of the project. She deposes that Mr. Palmer was present and identified himself as the owner and builder of the project. This may

suggest Ms. Lafrentz was aware at that time of issues regarding Mr. Palmer's business that might affect his income but she did not bring this claim for another five years. These points might be weighed against her evidence that she lacked the financial and emotional means to pursue the matter until 2017 and, of course, with any blameworthy conduct on the part of Mr. Palmer relating to non-disclosure of changes in his income or otherwise.

[69] As this is an interim application, I am making no findings on these issues.

Analysis of Interim Retroactive Child Support

[70] I have determined, based on a combination of factors, that this is not an appropriate case to make the interim retroactive order sought by Ms. Lafrentz.

[71] First, there are complex and disputed issues of fact that cannot be resolved on this short interim application. Mr. Palmer's finances for the past 20 years are certainly mysterious and extraordinarily difficult to trace and follow. He has led some evidence purporting to explain why he declared large amounts of income on his tax returns for the years 2008 to 2017 when, he says, his actual income was much lower. The financial statements of his companies, which identify large and growing amounts of shareholder loans, suggest there may be some support for this explanation, although I make no finding on that. He has also led at least some evidence of his application to CRA to reassess his income for those years. That process is said to be ongoing and may ultimately support Mr. Palmer's position that this 2008-2017 income was not as declared.

[72] I note, though, that Mr. Palmer's failure to fulfill his disclosure obligations respecting the CRA reassessment application is problematic. Beyond a printout from what appears to be a CRA website and the general statements of his accountant, there is no evidence that allows the court to assess the basis for this application and how realistic a reassessment would be. Nor is the court able to assess the status of the application. I assume that Mr. Palmer's accountant has complete records of this application and Sharma J. ordered that they be disclosed, but I am told by counsel for Ms. Lafrentz that Mr. Palmer has not yet done so.

[73] Despite the shortcomings in disclosure, determination of all these issues gives rise to contested issues of fact, including Mr. Palmer's income history, the effect of his bankruptcy in 2003-2005, and Ms. Lafrentz's own knowledge, at least to some extent, of Mr. Palmer's business activities as early as 2012. In my view, these are not matters that can be reconciled on an application for interim relief.

[74] Secondly, apart from Mr. Palmer's declared income for the years 2008-2017 (which, as noted, is the subject of the CRA reassessment), the court is ill-equipped on this interim application to impute a past income on Mr. Palmer based on his companies' financial records as tendered in evidence on this application. Those records extend to three large binders of documents. Some of the information has been helpfully summarized in the affidavit of Simran Oberoi, something that obviously involved considerable work, but I am not able to identify from the documents or summaries how Mr. Palmer may have been receiving income or payments in his personal capacity. Nor am I able to discern what expenses have been charged through the company that might be imputed as being for his personal benefit.

[75] The court does not have the benefit on this application of expert evidence or even some direction to assist in understanding and interpreting these financial records. Counsel for Ms. Lafrentz argues the very substantial amounts of money going in and out of the companies' accounts and recorded from time to time in the financial statements and tax returns suggests Mr. Palmer is not accurately reporting his income. In effect, her submission is that with this much money moving in an out of the companies, Mr. Palmer's income must be more than he is letting on and likely in excess of $200,000. She argues that one does not operate businesses dealing in these amounts of money without making money. She argues the principle of "rough justice" would justify even an imprecise retroactive interim imputation of Mr. Palmer's income based on the financial records.

[76] Mr. Palmer has offered an explanation for the large amounts of money flowing in and out of the company, relating to the Blue Herron project. His explanation, like

the financial records themselves, requires scrutiny, analysis and testing through the trial process. Its truth cannot be determined on this application.

[77] In *Windle v. Windle*, 2010 BCSC 18, Justice MacKenzie (then of this court) noted that it falls to the party seeking to impute income to establish on a rational and evidentiary basis that income should be imputed and at what amount:

> [88] The onus of proof is on the party seeking to impute income to show on a balance of probabilities that income should be imputed: *K.S.F.K. v. M.K.*, 2003 BCSC 417 at para. 27. Imputation of income is a judicial exercise that requires a rational and evidentiary basis. The plaintiff maintains it is appropriate to impute income of $90,000 per year to the defendant for *Guideline* child support of $971 per month. There must be evidence in support of the amount of income to be imputed. [Emphasis added]

[78] The several volumes of financial records in evidence do not, on their own show a path – even a rough one – to an imputed income of "at least $200,000 per annum". The path may well be there, but I cannot see it in the context of this short, interim application and on the face of the financial documents. A trial is needed to make that determination. I find that Ms. Lafrentz has not met the burden described in *Windle* as it applies to an interim application.

[79] Ms. Lafrentz also argues that her application for an interim reassessment of the past support obligation may be based on the income Mr. Palmer declared in 2008-2017. This certainly has attraction given that Mr. Palmer has declared these amounts as income on his tax returns. While he has applied to CRA to reassess each of these years, he has produced little in the way of documents in relation to that application. However, the financial records showing substantial and growing shareholder loans, together with the evidence of Mr. Palmer's accountant, provides some potential support for his explanation for the reassessment application. This evidence must be fully explained, examined, and tested at trial.

[80] As the Supreme Court of Canada recently recognized in *Colucci,* any failure by Mr. Palmer to disclose relevant financial information allows the court to make adverse inferences against him and to impute his income. At this stage, there are still serious issues with the extent of Mr. Palmer's disclosure — in particular, his

failure to disclose his personal bank statements and his tax reassessment application. While it is tempting to impute Mr. Palmer's past income based on his previously declared 2008-2017 income for a retroactive reassessment (and may well be what a trial judge will do), I am not persuaded it is appropriate to do so on this interim application, having regard to the other factors I have discussed earlier and will discuss below.

[81] Third, granting Ms. Lafrentz's application for interim retroactive reassessment of imputed income and payment arrears as determined on an interim basis would effectively decide the entire claim at this interlocutory stage. The order sought by Ms. Lafrentz would have Mr. Palmer paying potentially the full amount of the claim for two decades worth of reassessed arrears on an interim basis. This gives rise to an issue of whether that money could be repaid if Mr. Palmer is successful or even partially successful at trial: *L.G.B. v. M.A.C.M.*, 2005 BCSC 1786 at para. 15.

[82] Fourth, Ms. Lafrentz has not identified any urgency for resolving the issue of retroactive support on an interim basis. She has deposed it has been a financial hardship to raise Kelly with limited support from Mr. Palmer over the past 20 years, particularly since Mr. Palmer was often in arrears on his child support payments, but this does not explain urgency for the present interim order. I appreciate that she has declared an income for *Guidelines* purposes of only $23,984.28 based on her pension income but her financial statement also shows financial assets of just over $300,000. This is not to say that her financial assets excuse any retroactive child support obligations Mr. Palmer might have, but it does not suggest her financial circumstances require immediate interim relief.

[83] Finally, Ms. Lafrentz has cited no authority where substantial arrears of child support were awarded on an interim basis pending trial. In fact, as noted above, Master Bouck declined to make an interim order for retroactive support in *Ball* even though it was established that some amount of arrears were owed. She left that to be determined at trial.

[84] Taking this constellation of factors together, I find this is not an appropriate case to consider Ms. Lafrentz's application for an interim order that reassesses Mr. Palmer's child support obligations from January 2000 to September 2019 using an imputed income based the recent document disclosure. These are matters to be determined at trial.

[85] I will reiterate once more that Mr. Palmer has a legal obligation, and this court has already ordered him to produce, the rest of his relevant financial documents, including his CRA reassessment application and bank statements. Without weighing in on the matter at this time, I note that continued failure to disclose relevant documents may lead the court to draw an adverse inference against him and impute his income at trial.

Current and Prospective Child Support

[86] Ms. Lafrentz also seeks an order for interim child support for Kelly now that she has re-enrolled full time in the post-secondary social work program at the College of New Caledonia. This requires me to examine three questions:

a) Is Kelly a "child" as defined under Part 7 of the *FLA*?

b) If so, what is Mr. Palmer's income for the purposes of applying the *Guidelines*?

c) Should I set child support at the amount prescribed by s. 3(2)(a) of the *Guidelines* or at some other amount pursuant to s. 3(2)(b)?

Is Kelly a Child within the Meaning of Part 7 of the FLA?

[87] Part 7 of the *FLA* defines "child" as follows:

> "child" includes a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessaries of life or withdraw from the charge of his or her parents or guardians

[88] Ms. Lafrentz argues that, while Kelly is now 21, she is still in need of support due to her enrollment in the social work program at the College of New Caledonia. In

Nordeen v. Nordeen, 2013 BCCA 178 at para. 16, the Court of Appeal said a determination of whether the pursuit of post-secondary education may result in a continuation of child support requires courts to consider two questions: first, whether, in all the child's circumstances, the educational pursuits are reasonable and second, whether it is appropriate that the pursuits be financed by the parents. The Court referred, as most do, to the factors in *Farden* at 64-65 where Master Joyce, as he then was, set out a non-exhaustive list of factors typically considered in these cases:

> (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
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> (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
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> (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
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> (4) the ability of the child to contribute to [their] own support through part-time employment;
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> (5) the age of the child;
>
> (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
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> (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
>
> (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

[89] Here, the evidence of Kelly's circumstances is not extensive and there is no evidence from Kelly herself. Ms. Lafrentz's evidence is that Kelly will be enrolled in full time school and will not be working while in school. However, the court knows nothing about why Kelly is unable to work, at least part time, while in school, whether she has applied or qualified for any loans or bursaries, or whether her time working over the past two years has allowed her to save money to contribute to her own education. On the latter point, though, Ms. Lafrentz deposed she had to support Kelly to some degree, even while Kelly was working. This suggests Kelly was not able to save money during this time.

[90] Despite these shortcomings, I accept for the purposes of an interim order that Kelly's full-time enrollment in the social work program qualifies her to be child under Part 7 of the *FLA*. I make this determination having regard to the following points set out in Ms. Lafrentz's affidavit:

- Kelly is still relatively young (21 years old);
- She is enrolled full-time in a social work program at the College of New Caledonia with the intention obtaining a degree;
- She has already obtained a diploma from the program after completing two years, indicating she is serious about completing a full degree program;
- While I do not have evidence of her academic record, she completed the diploma program and was accepted to complete the degree program so I infer that her performance is at least satisfactory; and
- She has worked for the past two years in a crisis prevention centre presumably putting her social work education into practice and demonstrating an interest and intention to work in the field.

[91] With regard to the last factor identified in *Farden*, Kelly has never had a relationship with her father. Whether that is because Mr. Palmer chose not to engage in her life or because Ms. Lafrentz did not want him involved is of no moment. It was a choice made for Kelly early in her life, and child support is her right.

What is Mr. Palmer's Income?

[92] Mr. Palmer has not filed a financial disclosure statement since 2019. That statement discloses an income of $100,000 for *Guidelines* purposes.

[93] Ms. Lafrentz asks the court to impute an income of "at least $200,000" on Mr. Palmer, arguing that that Mr. Palmer's lack of disclosure, combined with the evidence of significant amounts of money flowing in and out of his companies and his declared income tax over the years. I have addressed this earlier.

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

> … the court is not limited to a consideration of income alone when determining child and spousal support. It may also consider financial means. The reference in section 1 of the [*Guidelines*] to the parents' "means" expands the calculation of income beyond income. The word "means" has been liberally interpreted to include all pecuniary resources, capital assets, income from employment or earning capacity, and any other source from which gains or benefits are received, together with, in certain circumstances, money that a person does not have in possession but that is available to such person: *Leskun v. Leskun*, 2006 SCC 25 at para. 29; *Griffiths v. Griffiths*, 2006 BCSC 1077 at para. 25; *C.A.B. v. M.S.C.S.*, 2006 BCSC 1393 at para. 11; *S.M. v. V.V.*, 2014 BCSC 565 at para. 118;
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> …
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> … section 19 of the [*Guidelines*], particularly section 19(1)(a), empowers the court to impute income based on a parent's means. This includes a wide variety of factors, the following being germane in this case:
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> - a payor's capital and assets, includes assets obtained through the division of property: *Bullock v. Bullock*, 2007 BCSC 318 at para. 25;
> - a parent's lifestyle, monthly living expenses, assets and investments, and the range of income earned during the marriage: *Motyka v. Motyka*, 2001 BCCA 18 at paras. 6, 16;
> - the age, education, experience, skills and health of the parent: *Watts v. Willie*, 2004 BCCA 600 at para. 16;
> - a parent's experience, business acumen, and business contacts: *Braich v. Braich*, [1997] B.C.J. No. 1764 at para. 68 (S.C.);
> - deferring or receiving a reduced income for future benefits: *Motyka v. Motyka* at para. 18; *Nielsen v. Nielsen*, 2007 BCSC 306 at paras. 29-31, varied 2007 BCCA 604;
> - business expertise and contacts: *Akkor v. Roulston*, 2009 BCSC 1584 at paras. 74, 79; and
> - historic earnings: *Nielsen v. Nielsen* (S.C.) at paras. 29-31; *Nielsen v. Nielsen* (C.A.) at para. 46; *Akkor v. Roulston*at at paras. 74, 76;
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> …
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> … imputing income can and should be employed to prevent sophisticated payor spouses from reducing their support obligations by using deferred forms of compensation such as shares and stock options. *Motyka v. Motyka*; *Nielsen v. Nielsen* (S.C.) at para. 31;

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

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

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

[97] I have already found the extensive financial records put in evidence by Ms. Lafrentz do not, on their own, permit the court to draw a particular inference on this interim application of what income ought to be imputed on Mr. Palmer, even on an interim basis. However, there is evidence that Mr. Palmer's income is substantially higher than the $60,000 on which the May 31, 2000 order is based and certainly more than the "paycheque to paycheque" existence "doing odd jobs" deposed to by Mr. Palmer's accountant.

[98] Mr. Palmer's September 18, 2018 financial statement identifies an income of $100,000 with annual expenses of $194,000. Those annual expenses make it difficult to accept that Mr. Palmer was living "paycheque to paycheque" in 2018 or now. As stated in *Hathaway,* I may take into account a parent's lifestyle, monthly living expenses, assets and investments in imputing income.

[99] The T1 Adjustment Summary prepared by Mr. Palmer's accountant and attached to Mr. Palmer's second affidavit states that Mr. Palmer's income as declared on Line 150 of his 2019 tax return is $138,000. This evidence contradicts Mr. Palmer's evidence in the same affidavit in which he deposes that his 2019 taxable income is yet to be determined. However, given that Mr. Palmer's accountant prepares all of Mr. Palmer's personal tax returns, the accountant ought to know that a tax return was filed for 2019 and what the declared income was.

[100] Further, the 2019 tax return would have been filed after Mr. Palmer had applied to reassess his 2008-2017 income down to $60,000. Thus, the $138,000 annual income could not have been declared for a purpose of securing further credit as doing so would undermine Mr. Palmer's reassessment application for other years.

[101] I have no evidence of Mr. Palmer's 2020 income.

[102] On the basis of the 2019 reported income, as identified by Mr. Palmer's accountant, and having regard to the fact that a court on an interim application is seeking to achieve rough justice as between the parties pending the full trial, I impute an income of $138,000 on Mr. Palmer for the purposes of applying the *Guidelines.* I emphasize, though, that Mr. Palmer is under an ongoing legal obligation to fully disclose changes in his income, including income of his corporations that might be used to impute personal income.

What Amount of Support is Appropriate?

[103] Once it is determined that a child over the age of majority is still entitled to support under the *FLA,* s. 3(2)(a) of the *Guidelines* provides that the amount of support to be ordered should be determined on the same basis as though the child were under the age of majority unless the court considers that approach to be inappropriate. If it is inappropriate, the court may, pursuant to s. 3(2)(b), order an amount 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".

[104] In *Wesemann v. Wesemann* 1999, 59 B.C.L.R. (4th) 211 (S.C.), Justice Martinson set out the process to be followed in considering support for children over the age of majority as follows:

> Step One
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> Decide whether the child is a "child of the marriage" as defined in the Divorce Act? If [they are] not, that ends the matter.
>
> Step Two

> Determine whether the approach of applying the Guidelines as if the child were under the age of majority ("the usual Guidelines approach") is challenged. If that approach is not challenged, determine the amount payable based on the usual Guidelines approach.
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> Step Three
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> If the usual Guidelines approach is challenged, decide whether the challenger has proven that the usual Guidelines approach is inappropriate. If not, the usual Guidelines amount applies.
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> Step Four
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> If the usual Guidelines approach is inappropriate, decide what amount is 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?

[105] In *H.K v. W.K.*, 2017 BCSC 1817, Justice MacNaughton considered these steps and said the following about the analysis under s. 3(2) of the *Guidelines*:

> [53] The analysis under s. 3(2) does not focus on the table amount of child support *per se*, but on whether the assumptions which underlie the table amounts are inappropriate: *Schreiber v. Schreiber*, 2009 BCSC 366 at para. 13. Those assumptions include that the child resides with one or both parents, is generally not earning an income and is dependent on his or her parents. Although the payor's income is used to calculate the amount of support payable, it is understood that the other parent makes a significant contribution to the cost of the child's care because the child resides with him or her. The closer the adult child's circumstances are to those which form basis for the *Guidelines* approach, the less likely it is that the *Guidelines* approach will be inappropriate: *Wesemann* at para. 31.
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> [54] In *Wesemann*, the court said that the burden is on the party challenging the *Guidelines* approach to demonstrate that it is inappropriate. The decision of whether to apply s. 3(2)(a) or (b) is discretionary, governed by the circumstances of the case: *P.R.M. v. B.J.M.*, 2012 BCSC 1795, aff'd 2013 BCCA 327.
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> [55] In *De Beck v. De Beck*, 2012 BCCA 465, the Court of Appeal upheld a decision awarding table support, pursuant to s. 3(2)(a), for two adult children who were living at home while attending post-secondary school. Both children were contributing to some of their personal and post-secondary expenses out of their employment earnings but *Guidelines* support was found to be reasonable, reflecting a contribution to the adult children's accommodation and food expenses.
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> [Emphasis added]

[106] In this case, Mr. Palmer has argued that Ms. Lafrentz has provided insufficient evidence to establish that Kelly is in need of support. I take this to be a challenge step one from *Wesemann* and potentially a challenge to step two.

[107] I have already determined, at least for the purposes of this interim application, step one has been met. These findings also support the assumptions that underlie the table amount, relevant to steps two and three, being that Kelly resides with Ms. Lafrentz, is generally not earning an income, and is dependent on her parents while in school.

[108] To the extent Mr. Palmer has challenged the application of the *Guidelines* amount under the third step in *Wesemann*, it is a weak challenge at best. He has simply argued there is inadequate evidence to show that Kelly is enrolled in full time school and that she needs support. I have found otherwise and thus Mr. Palmer has not met his burden of establishing that the *Guidelines* amount is inappropriate. I also find support for my conclusion in the fact that Kelly is enrolled in full time school, will not be working while she does so, and will be living with Ms. Lafrentz. Further, as Justice MacNaughton observed in *H.K*, the Court of Appeal in *De Beck v. De Beck*, 2012 BCCA 465, upheld the application of the *Guidelines* amount in similar circumstances, even where the children were making a financial contribution to the living arrangement.

[109] I therefore find, on an interim basis, that Mr. Palmer is obligated to pay child support for Kelly based on the *Guidelines* amount for as long as Kelly is enrolled in full time attendance in her post-secondary program at the College of New Caledonia and, of course, subject to a final order of the court in this proceeding.

[110] I have imputed an income of $138,000 on Mr. Palmer. Ms. Lafrentz has declared an annual income for *Guidelines* purposes of $23,984. Using the DIVORCEmate calculator and applying the *Guidelines* based on these incomes, I understand this generates monthly child support payments of $1,261. If the parties find an error in this calculation it can be addressed in settling the order.

[111] I find that this child support obligation is effective January 1, 2021, when Kelly's program began and I order that it be paid retroactive to that date.

Special and Extraordinary Expenses

[112] I also order that Mr. Palmer contribute to Kelly's special and extraordinary expenses, again on an interim basis while Kelly is in full-time attendance in the degree program and subject to a final order of the court, including the tuition cost of $1,082.85 plus any additional tuition costs for the waitlisted course. Mr. Palmer and Ms. Lafrentz will share these costs in proportion to their incomes (being $138,000 for Mr. Palmer and $23,984 for Ms. Lafrentz).

[113] Ms. Lafrentz also seeks an interim order requiring Mr. Palmer to pay 50% of Kelly's special and extraordinary expenses while she was enrolled in school in 2017 and 2018, room and board for the same period, and dental/orthodontic expenses dating back to 2014. I accept that an interim order requiring Mr. Palmer to contribute to these expenses is appropriate and Ms. Lafrentz's application that he pay 50% of them is reasonable, though subject to potential variation at trial.

[114] Ms. Lafrentz claims $6,680.55 for tuition, being half of $13,361.10. In support of this she has attached to her affidavit several different forms of receipts and proof of payment, including Tuition Enrollment Certificates from CRA, online payment notifications and confirmations, as well as registration statements from the College of New Caledonia. There is also a receipt from the College's Student Services. Given the different types of receipts and proof of payment, it not clear to me that there is no overlap or duplication in the receipts. Making what I can of them, I accept that $5,011.52 was paid in tuition for 2017 and 2018, based on the documents at pages 17-20 of Ms. Lafrentz's affidavit. If more may be properly claimed, it should be addressed at trial. I order on an interim basis that Mr. Palmer to pay 50% of this amount.

[115] I also make an interim order that Mr. Palmer pay the dental/orthodontic costs of $3,575 (being half of $7,150) which were incurred when Kelly was a minor.

[116] I am not ordering payment of the room and board claim at this point as there is no explanation for this in Ms. Lafrentz's affidavit and nothing on the copies of the receipts for room and board explaining by whom they were issued. Those claims require further explanation which will need to be addressed at trial.

Costs

[117] Ms. Lafrentz seeks an order of special costs, arguing that Mr. Palmer's failure to make timely and complete disclosure as required by law constitutes reprehensible conduct deserving of rebuke. I agree that timely and complete disclosure is an essential pillar upholding a functioning system of family law and justice for parties to family disputes and, especially, their children. Mr. Palmer has been slow to comply with these requirements and it took an order of Sharma J. for him to step up to meet his obligations. However, he has, evidently made substantial disclosure of, I am told, over 5,000 pages of documents including those in evidence on this application. There is still more to be produced, including his personal banking statements and a complete record of his CRA reassessment application. It appears he has also not provided a recent financial statement for the purposes of the litigation. Despite this, in light of the fact that he has now made significant advancement in making the extensive disclosure ordered by Sharma J., I do not accede to an award of special costs for this interim application.

[118] However, I do award Ms. Lafrentz costs of this application and, in light of Mr. Palmer's dilatory approach to disclosure, I order that those costs be payable forthwith and in any event of the cause. I set those costs at Scale C since sorting though the complicated financial records of the three companies puts this application at more than an ordinary level of difficulty. Although I have ultimately not based my decision on those financial records, I accept that it was reasonable for Ms. Lafrentz's counsel to make an effort to understand them and attempt to assist the court in doing the same.

"Kirchner, J"