SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *C.A.V. v. L.C.M.*, 2020 NSSC 168

Date: June 2, 2020

Registry: Halifax

Between:

C.A.V.

Applicant

v.

L.C.M.

Respondent

DECISION

Judge: The Honourable Justice Cindy G. Cormier

Heard: February 24, 2020 in Halifax, Nova Scotia

Written Release: June 2, 2020

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.

By the Court:

Introduction

[1] This is an application to vary child support prospectively and retroactively. While C.A.V. filed her application under the *Interjurisdictional Support Orders Act* (*ISO*), she and L.C.M. ultimately agreed that it would be resolved by the Supreme Court of Nova Scotia, (Family Division), under the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3.

[2] L.C.M. advised the court that although all three children continued to reside with him for another 20 months after their eighteenth birthday, he was prepared to have child support for the children terminate the month following their eighteenth birthday, effective January 31, 2011. C.A.V. had suggested the children were independent as of 2012. Given the positions of the parties, a change of circumstances was identified and it was agreed child support originally payable under section 3 of the *Child Support Guidelines, O.Reg.391/97, [between June 2003 and January 31, 2011, would end February 1, 2011]*.

[1] The issues now before the court began with a Support Variation Application filed by C.A.V. pursuant to the *Interjurisdictional Support Orders Act*. She requested the following at that time:

- The court to "change the amount of unpaid supports arrears owing under the current support order(s) or agreement(s), and that the arrears be "fixed" or set at 0 as of June 6, 2018";
- The court terminate C.A.V.'s "obligation to pay support for the children as of June 6, 2018";
- "Future periodic disclosure of financial information as appropriate";
- "That any order made and information provided in this application be provided to the relevant enforcement authority";
- "To be notified of all hearings arising from this application"; and

- "If possible under the rules and procedures of the reciprocating jurisdiction, I ask to be given the opportunity to attend all hearings arising from this application by way of telephone or other technology".

[4] C.A.V.'s original Support Variation Application was never formally changed. However, in June 2019 C.A.V. filed a Notice of Variation Application applying to "vary or change an order or orders which is permitted by the following, section 17 of the *Divorce Act"*, C.A.V. sought;

- Termination of child support, "vary-proper account of." [C.A.V. indicated] "I wish to have a proper statement of account pertaining to alleged child support arrears";
- Arrears of support, "I want it all waived!!!" [C.A.V. specified she] "would like reimbursement for payments made to the respondent that I shouldn't have"; and
- Other, "criminal investigation into fraud". [C.A.V. specified] "I would like a criminal investigation into matters relating to fraud and the respondent and his wife, [J.W.S]".

C.A.V. asked the court not to rely on her Notice of Variation Application filed in June 2019. The relief sought by C.A.V. pursuant to the Notice of Variation Application filed in June 2019 is reproduced in previous and / or subsequent pleadings and /or motions / or affidavits filed by C.A.V. in any event.

[5] In November 2019 C.A.V. filed a Notice of Motion requesting the following relief:

- An Order "determining that the Order of Aston J of February 28, 2003 ON S.C.Stratford R01-135, at paragraph [63]… "Child support in the amount of $568.00 monthly, the table amount under the Child Support Guidelines O.Reg, 391/97, for an imputed income of $30.000.00 per annum is of no force and effect"; or alternatively
    - The court "grant an order varying the Order of Aston J of February 28, 2003".
- An Order "rescinding all alleged child support arrears as against the applicant", [C.A.V].;

- An Order that L.C.M. "produce a complete and detailed statement of accounts relating to a "Triplet trust fund" established"[…]" in or about October or November 2000 at TD Canada Trust (or Canada Trust) in Stratford, Ontario";
- An Order that L.C.M. "return all G.S.T. monies he received from" [C.A.V.];
- An Order that L.C.M. "disclose all monies he received relating to the adult children of this proceeding, to include child tax benefit monies, child support and all other monies obtained through public funds to include victim compensation programs"; and
- The recipient, L.C.M. "pay damages of $50,000 to each child" [for the] "overall destruction and lasting damages he inflicted upon her and her children";

[6] C.A.V. filed a further Notice of Motion by fax on January 3, 2020, she sought:

- All Orders requested in the Notice of Motion filed in November 2019;
- An Order "discharging or suspending all retroactive child support orders or enforcement orders or any order or action by provincial or federal government offices in Ontario and Nova Scotia related to alleged child support arrears and as against the applicant";
- An Order "as against the respondent to pay all post-secondary education expenses accumulated by the adult children in this proceeding";
- An Order "as against the respondent to pay all extraordinary expenses accumulated by the adult children related to post secondary studies to include interest on loans";
- An Order "as against the respondent to pay for professional counseling or psychiatric treatment the adult children require to relieve symptoms of P.A.S., P.T.S.D".
- An "Order as against the respondent" [the recipient, L.C.M.] "designating the adult children in this proceeding as

beneficiaries irrevocably of any and all the respondent's," [L.C.M.'s] "life insurance policies";

- An "Order as against the respondent" [the recipient L.C.M.,] "to designate the adult children in this proceeding as beneficiaries irrevocably of any and all pensions and any and all other benefit plans" [belonging to L.C.M.];
- An "Order that monies owing shall be garnished from the respondent's source of income for any amount he cannot or will not pay forthwith"; and
- An "Order as against Court Administration to produce written transcripts of proceedings within this file should an appeal be necessary".

[7] C.A.V. filed a further Notice of Motion on February 18, 2020, she sought:

- An "Order varying the Orders of Abbey J. of March 13, 2000, Aston J, of February 28, 2003, and Campbell J. of October 30, 2003 be varied respecting child support";
- An Order "discharging or suspending all retroactive child support orders or enforcement orders or any order or action by provincial or federal government offices in Ontario and Nova Scotia related to alleged child support arrears and as against the applicant";
- An Order "as against the respondent to pay all post-secondary education expenses and debts accumulated by the adult children in this proceeding according to applicable laws";
- An Order "as against the respondent to pay for professional counseling or psychiatric treatment for the adult children, who exhibit symptoms of P.A.S., P.T.S.D, as applicable by law";
- An "Order as against the respondent" the recipient, L.C.M. "to return all monies to the applicant collected and paid through the Family Responsibility Office working on his behalf"; and
- An "Order that monies owing shall be garnisheed from the respondent's source of income for any amount he cannot or will not pay to the children forthwith";

[8] On February 18, 2020 C.A.V. also filed an application for Judicial Review of Orders in the Nature of Mandamus, requesting;

- Various Orders [to have certain record holders produce certain documents], "including certified copies of Endorsements and Court Orders"; and [documents related to deposits or withdrawals from a bank account in or around 2000];
- An Order for "electronic transmission of documents, including a video link for the parties to be given their legal right to participate in the adjudications";

[9] To properly constitute the real issues before the court, I treated C.A.V.'s motions as requests to vary the relief sought in her original Support Variation Application filed in 2018, and / or her Notice of Variation Application filed in 2019, those were the documents which were supposed to define the issues.

Jurisdiction

[10] In Aston J.'s decision about the parties, 2003 CanLII 1965 (ON SC), he explained that an interim order regarding custody of the children was granted in 1995, and he stated "that over several years there were many court orders relating to custody and access", and that the "trial of the custody and access issues finally started in December 1999, four years after the original interim order, and was continued in March 2000".

[11] Aston J. indicated that "on March 13, 2000, in a lengthy oral decision, Abbey J. granted L.C.M. custody." The Order arising from the Honourable Mr. Justice Abbey's decision on March 13, 2000 was one of four orders registered with the Supreme Court of Nova Scotia on September 28, 2016. On March 13, 2000, C.A.V. was ordered to pay $568.00 per month beginning March 1. 2000, in accordance with the "*Uniform Federal and Provincial Child Support Guidelines Act*, 1997, after Abbey J., found C.A.V.'s annual income to be $30,000.00".

[12] In his preliminary endorsement dated December 4, 2002, Aston J. stated at paragraph 5, "I wish to record by this endorsement the common understanding that this is an application under the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, not the *Divorce Act*, R.S.C. 1985, c. 3 (2d) Supp.) as am. by R.S.C.1997, c.1." Aston J. was referring to custody and access matters only.

[13] At paragraph 17 of his preliminary endorsement referred to above Aston J. stated:

> Variation of the child support order made at trial is an issue, though it was not specifically identified in the original Notice of Application. On December 7, 2001 Desotti J varied the child support on an interim or temporary basis by suspending C.A.V.'s obligation to pay support as of January 1, 2001. That was only an interim order and the issue remains outstanding. C.A.V. seeks to cancel or suspend her obligation to pay for the period July 2000 to December 2000 inclusive, and L.C.M. claims that the child support obligation ought to be resurrected, at least as of now if not retroactively. I am now extending the ruling in paragraph 4 above to include the child support issue, thereby placing the issue before the court as if it were part of the original Notice of Application.

Presumptively Aston J. relied on the *Family Law Act* to deal with child support in a final form in February 2003.

[14] In February 2003 Aston J., ordered that commencing June 1, 2003, C.A.V. pay $568.00 per month pursuant to the "Child Support Guidelines", on an "imputed income of $30,000 per annum".

[15] On Form A.2 of the Support Variation Application filed by C.A.V. under the *ISO Act*, C.A.V. appeared to be somewhat unsure whether "a Divorce Order had been made" or whether "there is(was) no support order or undecided support claim under the *Divorce Act"*. Initially C.A.V. appearing to scratch out her response but later inserting "yes" next to the question, and initialling the change.

[16] The parties' divorce was effective on February 16, 1998. It appears from a full review of all the documents before me, a full review of all the relevant Endorsements in this matter, and an inquiry about the parties' divorce which was granted in Ontario, that a divorce judgement was granted to the parties as a stand alone judgement. No Corollary Relief Order was filed in this proceeding, and none was located after inquiry with the relevant Ontario court. C.A.V. applied for relief in Nova Scotia, and although L.C.M. resides in Ontario he has attorned to the jurisdiction of the Supreme Court of Nova Scotia (Family Division). Both parties requested the court make a final determination with regard to child support, and understood and they agreed to have this matter proceed pursuant to the *Divorce Act*.

[17] Upon reviewing the parties' written submissions, reviewing the evidence, reviewing various decisions by various courts and judges rendered in relation to the parties, [including decisions rendered by the Honourable Mr. Justice G.A. Campbell, and reviewing copies of the Honourable Mr. Justice D.R. Aston's complete decision in regarding the parties, 2003 CanLII 1965, and per para 71, reviewing Aston J.'s preliminary endorsement of December 4, 2002, and reviewing Aston J's follow up Endorsement dated March 21, 2013], I see no prejudice to the

parties in this court redefining the issues and dealing with child support in a final form pursuant to the *Divorce Act* and the *Federal Child Support Guidelines.*

Background

[18] The parties, C.A.V. and L.C.M., were married in 1988. They are the parents of triplets, born in January 1993. The parties divorced when the children were 5.

[19] During the relevant period, the children lived primarily with L.C.M. In 2003 Aston J., ordered C.A.V. to pay monthly child support of $568, every month beginning June 1, 2003, based on an imputed income of $30,000.

Variation of child support

[20] I must resolve prospective child support claims before retroactive claims: *Staples v. Callender*, 2010, NSCA 49 at paragraphs 41 – 43.

Prospective (future) child support

[21] In February 2020 C.A.V. requested "An Order as against the respondent to pay for extraordinary expenses by way of professional counseling or psychiatric treatment for the adult children, who exhibit symptoms of P.A.S., P.T.S.D, as applicable by law".

[22] No expert evidence is before the court regarding any symptoms or diagnosis of any mental health issues for any of the now adult children. I am not prepared to make an order as requested by C.A.V.

Retroactive (past) child support

[23] In February 2020 C.A.V. requested "An Order as against the respondent to pay post-secondary education expenses and debts accumulated by the adult children in this proceeding according to applicable laws." Two of the children attended post-secondary programs between 2012 and 2016. It appears the third was in his "sixth and final year" in 2018 or possibly 2019. The request for a contribution to the children's post-secondary education costs is not prospective and I will address it in the context of retroactive (past) child support. I have no evidence of prospective (future) post-secondary education costs.

[24] It appears at least two of the children were no longer attending post-secondary studies when C.A.V. filed her initial Support Variation Application under the *ISO Act* in June 2018. Arguably the third child may have still been in school on a part-time or a full-time basis when C.A.V. filed her Application.

C.A.V. stated in one of her Affidavits "the children in this application left the respondent's house in September 2012 and have since maintained a financially independent life of their own. They currently have outstanding post-secondary school loans in excess of $125,000.00".

[25] All three children have now completed their post-secondary education and are independent, determined by agreement of the parties to be so since January 31, 2011. C.A.V. did not file any supporting documentary evidence related to the children's post-secondary educational costs as directed per paragraph 9 of this Court's Conference Memorandum dated November 5, 2019. Neither party filed a Statement of Special or Extraordinary Expenses with a breakdown of any costs. None of the children provided any documentary evidence of costs. L.C.M. indicated he was not claiming any special or extraordinary expenses.

[26] The children are now adults. L.C.M. believes that in August 2016 the Family Responsibility Office in Ontario reduced C.A.V.'s arrears of child support by $38,634.00, to coincide with the children's 18th birthday [January 1, 2011], finding the children to be independent. L.C.M. was, and he continues to be, prepared to have child support terminate effective January 31, 2011. C.A.V. suggested the children were independent as of September 2012.

[27] Given the current ages and circumstances of the children, and the parties' agreement the children are no longer dependent, I find a new claim for relief pursuant to *section 7* of the *Child Support Guidelines* is not open to either party. It is not open to C.A.V. to come back, just as the third child is finishing his post-secondary education, to argue that L.C.M. should pay off the children's post-secondary educational costs / debt with his own funds. C.A.V. failed to pay child support when she was ordered to do so while the children were dependent and living with L.C.M. If I decided differently and I allowed a claim from either party for the children's post-secondary expenses / debts, thereby finding the children to be dependent between 2012 – 2018 or 2019, I would then have to also consider what if any table amount of child support C.A.V. would continue to pay during that period, and then based on an examination of both parties' incomes (including C.A.V.'s imputed income), and each child's income or resources, I would need to determine what if any special or extraordinary expenses should be covered by either party or any of the children.

Retroactive variation of child support

[28] C.A.V. requested a "termination of the obligation to pay support for [… the children…] as of June 6, 2018."

[29] This application is governed by *Smith v. Helppi*, 2011 NSCA 65. I will deal with this claim in discrete time frames.

October 14, 2000 – May 31, 2003

[30] I cannot make a retroactive order for the period from October 14, 2000 to May 31, 2003. In his decision regarding the parties, 2003, CanLII 1965 (ON SC) Justice Aston has already terminated child support for the above noted period. Justice Aston has already dismissed C.A.V.'s claim to terminate child support before October 14, 2000. Because this claim has already been adjudicated and Aston J's decision was a final decision as it related to child support / it was not an interim decision regarding child support, I cannot revisit it.

Child support from June 2003 – January 31, 2011

[31] In Aston J's decision regarding the parties, 2003, CanLII 1965 (ON SC), rendered in February 2003, he ordered C.A.V. to pay monthly child support of $568 beginning June 1, 2003 and every month thereafter. This amount has never been varied. Subsequent decisions rendered by Aston J. (September 2003), and by Campbell J. (October and December 2003), dealt with the issue of access only, and costs related to the application to finalize the issue of C.A.V's access.

[32] There is no agreement between the parties to retroactively reduce or to forgive arrears between June 2003, and January 31, 2011. L.C.M. has stated:

> 1. Justice Aston (2003) (attachment 1) ordered [C.A.V.] to pay child support. Judge Aston's ruling is attached. I never received any payments until the Family Responsibility Office (FRO) began collecting small sums starting in August 2016. As a result, I have received approximately $1600.00 in child support since that date;
> 2. Justice Aston assigned a monthly payment based on an annual estimated income of $30,000. He noted that although [C.A.V.] did not currently have a job, that was no excuse for not finding employment. She was capable of working;
> 3. She is still capable of holding a job and along with her husband, owns property;
>
> […]
>
> 8. I do not want to 'forgive' the outstanding balance. **I hope to pass this money along to the 3 children to assist with their student debt. They know this intention**.

9. I have read the submissions by [C.A.V.]. Her affidavit is inaccurate, misleading and / or irrelevant. It is clearly an attempt to re-litigate a case that was dealt with decades ago. See Justice Campbell's written judgement (attached 3) for background and insight.
10. Justice Campbell, December 8, 2003 (attachment 4) awarded me over $12,500 in Costs (sic). I have not received these funds.
11. I received 2 documents by FAX from [C.A.V.], between November 26/19 and January 8/20. One was an Offer to Settle (attachment 5) the second a Notice of Motion (attachment 6). They are unacceptable
12. I propose the following – reinstate the existing child support order with the following adjustment:
    a. [C.A.V.]'s driver's license and passport will not be revoked
    b. All sources of Federal and/or Provincial income will continue to be garnished until the outstanding balance in paid.

    She would be able to seek work, travel and have minimal financial disruption without dealing with direct payment.

[My emphasis throughout].

Material change in circumstances

[33] The children became independent as of February1, 2011. I find this to be a change of circumstances since Aston J.'s decision was granted in February 2003.

[34] C.A.V. did not provide complete evidence regarding her place of residence between 2003 and 2011. However, both parties confirmed C.A.V. was detained in a federal penitentiary in Nova Scotia for periods between May 2005 and July 2007.

Retroactive variation of arrears

[35] As found in *P.M.B* v. *M.L.B*, 2010 NBCA 5:

> [38] "A finding of a material change in circumstances is an indispensable condition precedent to the granting of a retroactive variation order that reduces or eliminates arrears in regard to both spousal and child support."
>
> […]

[36] And the court in *Brown* went on to say:

> [43] …However, the most persuasive **argument that the plea of hardship based on a present and future inability should fall on deaf ears is tied to the reality that the plea is more illusionary than real**. This is so because there is an underlying and mistaken assumption that the payer will be asked to pay money which he or she does not have in order to pay down and off the arrears that have accumulated. This is not so. Let me explain.

> [My emphasis]

[37] The court found "A distinction must be drawn between the jurisdiction to forgive arrears and the jurisdiction to order their enforcement:"

> [44] …It may well be that the **court will have to consider ordering a temporary suspension with respect to the payment of arrears.** Either way, there can be no true hardship if the payer is truly experiencing a present inability to pay arrears and the future appears equally bleak. If the payer truly lacks the financial wherewithal to address the arrears problem, any enforcement options available to the support recipient and the court are of no practical benefit. This is why the plea of hardship is more illusionary than real. Above all**, the issue of enforcement is not to be confused with the question of whether the courts possess a residual discretion to forgive arrears**.
>
> [45] In summary, there is **no residual discretion to either reduce or cancel arrears based on the interlocking pleas of "inability to pay" and "hardship"…** "this is why the payer's inability to pay arrears is of relevance to the issue of enforcement but not to the forgiveness of arrears. As a matter of law, **support recipients are entitled to cling to the hope, however faint, of the payer's future ability to pay.**"
>
> [My emphasis throughout].

[38] Once the issue is before me I must consider what the proper arrears should be, given the totality of the evidence before me. In other words "having regard to all other relevant circumstances" during the relevant period (June 2003 – January 31, 2011), would C.A.V. "have been granted a reduction of her child support obligation but for her untimely application" in June 2018? L.C.M.'s past or present lifestyle is not relevant to the court's determination.

L.C.M.'s concerns about C.A.V.'s Affidavits

[39] L.C.M. argued that C.A.V.'s "affidavits were inaccurate, misleading and or irrelevant." He stated "It is clearly an attempt to re-litigate a case that was dealt with decades ago". An opportunity was extended to L.C.M. to make formal and / or detailed objections to the admissibility of parts of C.A.V.'s evidence. C.A.V.'s evidence includes hearsay statements, unqualified opinions, conjecture, and unsworn letters from third parties. L.C.M. agreed to rely on my discretion to determine what information is inadmissible, and / or what weight to attribute to the information which is admissible.

[40] I took a generous view of C.A.V.'s pleadings and submissions, and of L.C.M.'s submissions. I considered all relevant facts, all relevant arguments and all relevant law contained in C.A.V.'s various documents filed in 2018, 2019 and

in 2020, and I also considered L.C.M.'s arguments. The primary issue for my consideration is C.A.V.'s request for a retroactive variation of arrears of child support owing for the period between June 2003 – January 31, 2011.

[41] I have not considered, or I have placed little weight on the following paragraphs included in C.A.V.'s Affidavit of June 7, 2018: paragraphs 3, 4, 5, 6, 10, part of paragraph 12, paragraphs13, 14. Affidavit of June 18, 2019: paragraph 5. Affidavit of November 5, 2019: paragraphs 1, 6, 7, 8, 9, 11, 12, 13, 14, 15, part of paragraph16, paragraphs 20, 21, 23, part of paragraph 25, part of paragraph 26, part of paragraph 27, paragraphs 28, 32, paragraph 37 is partly inaccurate, paragraphs 39, 40, 41 42, 43, and 44. The paragraphs identified are either inaccurate, misleading, irrelevant, can be seen as an attempt to re-litigate or a combination of the above.

[42] On February 18, 2020, several days before the hearing commenced on February 24, 2020, C.A.V. filed another Notice of Motion with an additional Affidavit. I have not considered or I have placed little weight on certain paragraphs; paragraph 1, part of paragraph 3, paragraphs 6, 7, 8, 9, 10, part of paragraph12, paragraphs13, 14, 15, 16, 22, part of paragraph 23, paragraph 24 is inaccurate, and did not appear to address child support, paragraphs 26, 27, 29, 30, part of paragraph 31, 32, part of paragraph 33, paragraphs 34, 35, 38, and paragraph 45 as they were not relevant or helpful to my consideration of the issue of a possible retroactive variation of arrears owing between June 2003 and January 31, 2011.

Inability to pay child support between June 2003 and January 31, 2011

[43] C.A.V. has claimed she was diagnosed with Post Traumatic Stress Disorder, and as a result, she was unable to work. C.A.V. did not file evidence with the court to confirm if, or when, C.A.V. was diagnosed with any mental, emotional, or physical condition. There are no medical reports of how any diagnosis may have impacted on C.A.V's past or present ability to earn an income, or may impact on C.A.V's future ability to earn an income. In addition, C.A.V. failed to provide full disclosure of the particulars of a Teacher's pension income of $49,000 per year reportedly available to her in 2027.

[44] I have reviewed the Book of Authorities filed by C.A.V. on February 19, 2020. The authorities cited related to spousal support. I did consider the "grounds" and the law, and the argument sections of C.A.V.'s Notice of Motion

filed on February 18, 2020. I also carefully reviewed C.A.V.'s copy of the Honourable Mr. Justice David R. Aston's decision rendered February 28, 2003, which she filed with the court. I note C.A.V. **removed** various paragraphs from Aston J's decision including the following full or partial paragraphs: [my emphasis]

- part of paragraph 1;

- all of paragraphs 2, 3, 4, 5, 6, 7;

- part of paragraph 12;

- all of paragraphs 13, 14, and 15;

- part of paragraph 16;

- all of paragraphs 21, 22, 23, 24;

- most of paragraph 25;

- a part of paragraph 30;

- all of paragraphs 31, 32, 33;

- part of paragraph 38;

- all of paragraphs 39, 40, 41, 42, 43;

- a part of paragraph 44;

- a part of paragraph 46;

- all of paragraphs 47, 48, 49, 50,

- a part of paragraph 51;

- all of paragraphs 56, 57, 58, 59;

- a part of paragraph 60;

- a part of paragraph 65;

- all of paragraphs 66, 67, 68, 69, 70, 71; and

- portions have been removed from Schedule A of Aston J's decision, including 2g, and numbers 3, 4, 5, 6, and 7.

In addition, C.A.V. did not provide the court with a copy of Aston J.'s Endorsement dated December 4, 2002, which forms part of his decision rendered in February 2003, and did not provide a copy of Aston J.'s follow up Endorsement dated March 21, 2003. Considering that both parties were self represented in this matter, the court obtained copies of all relevant parts (Endorsements) related to the decision rendered by Aston J. in February 2003.

C.A.V.'s concerns about L.C.M.'s submissions

[45] On February 18, 2020, C.A.V. filed an application for "Judicial Review for Orders in the Nature of Mandamus." C.A.V. argued in part at paragraph 6:

> 6 The Order included in the respondent's sworn document marked as "Attached 4" is fraud contrary to the Criminal Code of Canada. The Applicant has a constitutional right to seek justice and this Court has the power and authority to forthwith instigate a police investigation.

[46] C.A.V. took issue with L.C.M. filing the Honourable Mr. Justice Campbell's decisions, *L.C.M.* v. *C.A.V.*, 2003 CanLII 47888 (ON SC), and *L.C.M.* v. *C.A.V.*, 2003 CanLII 1994 (ON SC) with this court. L.C.M. advised the court that the decisions were attached to provide the court with "background and insight". As noted above, Campbell J.'s decisions were in relation to access (October 2003), and costs related to the access issue (December 2003).

[47] Campbell J, stated at paragraph 9 of his decision rendered in October 2003:

> [9] …since the Aston J. order (which in itself they argued was "illegal" and made without jurisdiction**)** was still under appeal; that the order was not a final order;
>
> **[**…]

[48] The orders granted by Campbell J. were final orders in relation to access alone and costs arising, those orders followed an interim order granted by Aston J. on an expedited basis (interim / temporary) in September 2003, following C.A.V's failure to return the children to L.C.M. as per interim access provision in the Order granted in February 2003. Aston J.'s final decisions regarding custody and child support were rendered in February 2003, and were not considered by Campbell J.

[49] Campbell J. went on to state:

> […]
>
> [11] Mr. L.R.F. and Ms. C.A.V., after receiving rulings on their various spurious motions (for example, one of which was to set aside the present proceedings in their entirety and reinstate the pre-September 10, 2003 status — *i.e.* extensive access by Ms. C.A.V. to the children —
>
> […]
>
> [12] The respondents also argue now, that the September 10, 2003 temporary order of Aston J. is "illegal" because, they complain, since Aston J.'s order of February 28, 2003 is currently on appeal before the Ontario Court of Appeal, he should have recused himself from further involvement with these litigants.
>
> [13] This argument fails for several reasons:
>
> 1. Although this court is reviewing the circumstances and allegations surrounding the situation presented to Aston J. on September 10, 2003, this is not an appeal of that temporary order. One trial court justice does not review the correctness or legality of a decision of another trial court justice. That is the role of an appeal court.
>
> 2. No party raised the issue of recusal to Aston J. at the time. This argument is based on hindsight and is unfair, since Aston J. was not asked to consider this issue.
>
> 3. No party appealed Aston J.'s temporary order.
>
> 4. Whether Aston J. was correct or not is irrelevant to this present undertaking. I am not influenced by, nor am I constrained to follow or adopt Aston J.'s temporary decision. My present role is to consider all of the evidence then before the court, *de novo*, together with any additional evidence filed by any of the parties since then, and determine, now, what is in the children's best interest. My emphasis
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> […]
>
> [21] The respondents both seek the trial of the issue of access. At various times during their lengthy, scattered and tangential arguments, they sought "amendments" to their motion to allow them, *inter alia*, to re-raise the issue of (i) custody of the children…

[50] As noted, Campbell's decision in *L.C.M.* v. *C.A.V.*, 2003 CanLII 47888 (ON SC), was a review of the issue of interim access decided by Aston J. in September 2003. The matter arose following a further denial by C.A.V. of L.C.M.'s court ordered parenting time. At the end of his final decision regarding access only in *L.C.M.* v. *C.A.V.*, 2003 CanLII 47888 (ON SC) Campbell J. directed both parties to

file written submissions on costs by dates certain. Thereafter Campbell J., wrote an endorsement on costs in relation to the issue of access only.

[51] I see no cause to, but in any event, I have no authority or jurisdiction to interfere with the decisions of Campbell J. which dealt with access alone, and the costs related to the hearing about access alone.

[52] It appears the "Order", C.A.V. objected to is the written endorsement on costs of Campbell J., following his decision on the access issue *L.C.M.* v. *C.A.V.*, 2003 CanLII 47888 (ON SC). The endorsement on costs is published as *L.C.M.* v. *C.A.V.*, 2003 CanLII 1994 (ON SC). Of note, is that when considering costs, Campbell J., considered the issue of C.A.V.'s circumstances, "that she was apparently unable to pay costs because of her apparent impecuniosity." Campbell J. explained L.C.M's argument:

> In *L.C.M.* v. *C.A.V.*, 2003 CanLII 1994 (ON SC), L.C.M. argued that C.A.V.'s inability to pay costs was "self-imposed" as a strategy; that she was overusing the administration of justice while rendering herself "protected or immune from consequence by choosing not to seek employment in the fields of their training".

[53] Campbell J., ordered costs payable to L.C.M. forthwith by C.A.V., jointly and severally with another litigant, in the "amount of $12,500, plus disbursements of $350 and any G.S.T that is attracted thereto". L.C.M. has stated that C.A.V. has never paid the costs L.C.M. was awarded by Campbell J. C.A.V. did not argue otherwise. This is not an issue I have jurisdiction to deal with.

[54] At paragraph 20 of his preliminary endorsement dated December 4, 2002, arising from the hearing November 29, 2002, Aston J. stated:

> In her affidavit material, C.A.V. questions the determination of costs by the trial judge. The order of November 17, 2000 requiring her to pay $30,000 in costs can only be varied by an appeal court. This court's jurisdiction is limited to variation based on subsequent changes in circumstances. Desotti J. reached a similar conclusion at the top of p.68 of the transcript of the proceedings before him December 7, 2001, but without specifically referring to the costs. I mention that here so there is no confusion on that point, and to confirm I will not address those costs.

Aston J. clearly told C.A.V. he could not change an order for costs decided by another judge. He explained he had no jurisdiction to do so. I find it difficult to believe C.A.V. does not clearly understand I have no jurisdiction to deal with costs imposed by other judges in previous proceedings. It should be clear to C.A.V. that I do not have jurisdiction to review Campbell J.'s decision on costs.

2018

[55] As noted above, in June 2018, C.A.V. checked off, or requested the following relief per Form A.2 pursuant to the *Interjurisdictional Support Orders (ISO) Act*:

1. A "change in the amount of unpaid support arrears owing under the current support order(s) or agreements (s), [not specifying the amount], and that the arrears be "fixed" or set at 0 as of June 6, 2018";
2. The "termination of the obligation to pay support for the [subject children D, P and O] as of June 6, 2018";
3. "Future periodic disclosure of financial information as appropriate" [I presume C.A.V. was requesting disclosure from L.C.M.]; and
4. That any "Order made and information provided in this application be provided to the relevant enforcement authority".

[56] Per Form 1, C.A.V. claimed her total annual income for 2018 (before taxes and other deductions), had been approximately $5,000.00. When prompted to provide further information, C.A.V. indicated she had "currently applied for" disability insurance. Indicating she had applied April 15, 2018. C.A.V. did not attach any further documentation at that time.

[57] In 2018 C.A.V. provided no supporting documentation regarding her application for disability insurance. Where asked to provide an explanation about why she could not provide supporting documentation for income sources, she stated on her form: "do not have".

[58] With respect to providing documentary proof of previous income, in 2018 C.A.V. stated she had provided a complete copy of her "first previous year" Income Tax Return and was "waiting to hear from Revenue Canada", about a copy of her Notice of Assessment. Where asked C.A.V. indicated she did not have and did not attach her "second" or "third previous year" documents.

[59] C.A.V. did attach a copy of a letter she stated she had written and faxed to "Revenue Canada", dated May 28, 2018. The letter indicated in part "I do not wish to have copies of my income tax returns as this would unwarrantly (sic) increase the paper work and associated costs".

[60] In her Affidavit sworn June 7, 2018 C.A.V. made reference to her application to vary child support in 2003. However, the Order granted by Aston J. and issued in April 2003 was not included as part of C.A.V.'s application materials in 2018 or in 2019 (and / or available on the court's file). The most up to date order for child support included with C.A.V.'s application in 2018 was the order granted by Desotti J. terminating child support on an interim basis in January 2001.

Documents filed in June 2019

[61] As noted above, in June 2019 C.A.V. filed a Notice of Variation Application pursuant to section 17 of the *Divorce Act*. She sought: to have all her arrears "waived"; a criminal investigation into fraud; and to address under section 15 of the *Maintenance Enforcement Act*, a dispute between the parties about the amount of arrears, and under section 46(4) of the *Maintenance Enforcement Act* for relief from the payment of arrears, to take effect "15 years".

> Enforcement of arrears
>
> 15 (1) The Director may enforce arrears of maintenance under a maintenance order even though the arrears were incurred before the order was enforceable by the Director pursuant to this Act or before the coming into force of this Act.
>
> (2) The Director may refuse to enforce arrears incurred before the order was filed or before the coming into force of this Act where there is insufficient maintenance enforcement or unreliable evidence to substantiate the arrears, to locate the payor or to identify and locate the assets of the payor.
>
> (3) Where the Director refuses to enforce arrears, a recipient may apply to the court for an order respecting the enforcement of arrears.
>
> (4) **Where the payor or recipient disputes the amount of the arrears, the payor or recipient may apply to the court for an order determining the amount of the arrears.**
>
> (5) The court in determining whether to grant an application pursuant to subsection (3), shall make the determination on the basis of whether the decision of the Director pursuant to subsection (2) was in conformity with the provisions of that subsection and the court may remit the matter to the Director with such direction as the court considers appropriate as to the amount of the arrears, the location of the payor or the assets of the payor. 1994-95, c.6, s. 15.
>
> Recovery of payments
>
> 46 (1) Subject to subsection (4), **there is no limitation as to time on a recovery of periodic payments or a lump sum payment in default under a maintenance order**.

> (2) Where a payor dies and at the time of death payments under a maintenance order being enforced pursuant to this Act are in default, the amount in default is, subject to subsection (4), a debt of the estate and recoverable by the person entitled to the payments in the same manner as any other debt recoverable from the estate.
>
> (3) Where a recipient dies, the personal representative of the recipient may, subject to subsection (4), recover for the estate of the recipient any payments under a maintenance order in default at the time of the death.
>
> (4) Where payment under a maintenance order is in default, a judge of the court that made the order may, on application, relieve the payor or the estate of the payor of the obligation to pay the whole or part of the amount in default if the judge is satisfied that
>
> (a) having regard to the interests of the payor or the estate of the payor, it would be grossly unfair and inequitable not to do so; and
>
> (b) having regard to the interests of the person entitled to the payments or the estate of that person, it is justified.
>
> [My emphasis throughout]

[62] In June 2019 C.A.V. provided additional financial information, including: A Statement of Income with incomplete calculations.

[63] C.A.V. filed two letters from the Department of Community Services dated June 11, 2019. One of the letters from the Department of Community Services referred to income assistance received by C.A.V. in 2018 ($7,695.00), and the second letter referred to income assistance received by C.A.V. in 2019 ($5,538.00 up to June 2019). Only one letter was signed. Neither letter referred to any presenting medical issues or disclosed why or when benefits started and/ or why or when they may be scheduled to end.

[64] C.A.V. filed an Affidavit sworn June 18, 2019 requesting the following:

1. "to have a proper statement of account pertaining to alleged child support arrears";
2. "reimbursement for payments made to the respondent that I shouldn't have"; and
3. "a criminal investigation into matters relating to fraud and the respondent and his wife, JWS".

Interjurisdictional Support Orders hearing scheduled in July 2019

[65] An *ISO* hearing was scheduled on July 8, 2019, but was converted to a court conference, and adjourned to a further court conference in September 2019.

- On July 8, 2019 C.A.V. filed Child Status and Financial Statement forms for the three children, Form J.

- On July 8, 2019 C.A.V. filed Income Tax Returns 1995 - 2016. The Income Tax Return for 2017 indicated there was "no assessment information found". C.A.V. did not provide the appropriate Income Tax Return Information for 2017, or 2018, and she did not provide any pay stubs or receipts of payment of any income, disability or otherwise for 2019. C.A.V. did not file any assessments or re-assessments.

[66] The hearing was adjourned to ensure L.C.M. received notice of the proceeding (*Waterman* v. *Waterman*, 2014, NSCA 110*)*, and to allow the court and the parties an opportunity to discuss outstanding issues, including procedural issues, needing to be addressed before a formal hearing could be held.

[67] Issues to be addressed included but were not limited to the following:

1. Court staff were directed to contact L.C.M. to notify him of the application to vary and to determine if he wished to participate in a hearing, and to make inquiries with respect to whether L.C.M. would attorn to the jurisdiction of the Supreme Court Family Division for the Province of Nova Scotia, to deal with child support on a final basis under the *Divorce Act*;
2. At C.A.V.'s request, the court agreed to obtain information from the Family Responsibility Office in Ontario confirming any arrears owed by C.A.V., as she was concerned about determining how much, if any child support she owed; and
3. Again, at C.A.V.'s request, to confirm if it would be possible for the parties to deal with all outstanding arrears with one hearing.

[68] The court assured C.A.V. that all relevant documents would be considered, regardless of whether C.A.V.'s evidence or submissions had been filed pursuant to the *ISO Act* in 2018, *or* pursuant to *section 15, 17 or 18* of the *Divorce Act* in 2019 or 2020.

Suspension of collection and enforcement of arrears

[69] On September 30, 2019, L.C.M. participated in a court conference via telephone. C.A.V. appeared in person. L.C.M. attorned to the jurisdiction of the Supreme Court Family Division for the Province of Nova Scotia to address the issue of child support. The parties agreed to deal with C.A.V.'s application to vary child support pursuant to the *Divorce Act* and the relevant *Federal Child Support Guidelines.*

[70] After L.C.M. attorned to this court's jurisdiction, he consented to suspend the collection and enforcement of arrears owed by C.A.V., on a without prejudice basis, until a full hearing could be held to determine what if any arrears might be forgiven due to C.A.V.'s circumstances between 2003 and 2011. A Without Prejudice Interim Order suspending the collection and enforcement of arrears owed by C.A.V. was granted on September 30, 2019 pursuant to s. 17 of the *Divorce Act*, R.S.C, 1985. c.4, and was issued on November 5, 2019. Arguably the Order more properly should have been granted pursuant to section 15 of the *Divorce Act*, as an original order under the *Divorce Act*, varying or suspending the Aston J's order. **That Order will no longer be in force after July 1, 2020**.

Further pleadings

[71] On November 5, 2019 C.A.V. filed a Notice of Motion seeking the following order:

> An Order determining that the Order of Aston J of February 28, 2003 ON S.C Stratford R01-135, granting at paragraph [63]… "Child support in the amount of $568.00 monthly, the table amount under the *Child Support Guidelines*, O.Reg, 391/97 for an imputed income of $30,000.00 per annum…" is of no force and or effect, or alternatively [C.A.V.] argued Aston J exceeded his jurisdiction;

[72] As noted in *R.* v. *L.R.F*., 2007 NSCA 32, the court remarked in part at paragraph 47:

> [47] …The order in question was reviewable in the civil courts…However, even in the face of a successful challenge a court order is presumed valid until struck down. (see also R. v. Wilson, 1983 CanLII(SCC), [1983] 2 S.C.R. 594; S.C.J. No. 87 (Q.L)…

Only the Ontario Court of Appeal could strike down the final court Order granted by Aston J. in February 2003 (custody and child support). This issue was dealt with more than a decade ago, the issue was explained to C.A.V. I dismiss C.A.V.'s request to find the Order of Aston J. to be of no force or effect, or to consider whether Aston J. exceeded his jurisdiction.

[73] After finding a material change of circumstances since the order granted by Aston J., (children's 18th birthday on January 1, 2011), the court may vary the child support order after it came into force in June 2003. I will come back to this later in my decision.

[74] On November 5, 2019 C.A.V. requested the following:

> An Order that the respondent produce a complete and detailed statement of accounts relating to the "Triplet Trust Fund" established for the adult children in the proceeding in or about October or November, 2000 at TD-Canada Trust (or Canada Trust) in Stratford, Ontario; and
>
> An Order that the respondent disclose all monies he received related to the adult children in this proceeding to include all child tax benefit monies, child support and all other monies obtained through public funds to include victim compensation programs.

[75] On February 24, 2020 I advised C.A.V. that the information she was seeking from L.C.M. was not relevant to the issue I needed to decide, what child support she owed. L.C.M. was the primary parent for all three children during the relevant period, and the children are no longer "children of the marriage". L.C.M. was the recipient of child support during the relevant time period of June 1, 2003 and January 31, 2011, and I dismissed C.A.V.'s retroactive application for special or extraordinary expenses between 2012 – 2018 or 2019. I do not need L.C.M.'s financial information to decide C.A.V.'s application. I dismiss C.A.V.'s requests for any information regarding L.C.M.'s financial circumstances for the relevant periods between June 1, 2003 – January 31, 2011, and between September 2012 and 2018 or possibly 2019.

[76] I would note that at paragraph 18 of Aston J's preliminary endorsement dated December 4, 2002 Aston J. stated:

> There was a motion September 27, 2001 by [C.A.V.] for production of income tax returns for [L.C.M.] and his spouse for the years 1998, 1999, and 2000. That issue is seemingly connected to a request she made in an affidavit for disclosure and an accounting in relation to the "Triplets' Trust Fund". The request concerning trust funds is not properly before the court. It involves other parties. The request for the income tax returns is, therefore, dismissed.

[77] C.A.V. requested:

> An Order that the respondent return all G.S.T monies made payable to the applicant of which he received.

This would only be relevant if C.A.V. was found to owe no arrears.

[78] On February 24, 2020 I explained I would review what child support arrears remained owing if any.

[79] In her submissions, C.A.V. referred to various provisions from the Canadian Criminal Code, including 139(2); 380(1); 341; 131(1); and 127(1). These provisions refer to obstruction, deception, fraud, perjury, and disobeying lawful orders. On February 24, 2020 I advised I would not be dealing with C.A.V.'s requests for a criminal investigation. I have no jurisdiction under the *Criminal Code*, or the *Judicature Act*, R.S.N.S., 1989, c. 240, s. 32A.

[80] In *Fink* v. *VandenElsen* v. *Hartlieb*, at al., 2006 NSSC 3, Nathanson J. considered various civil claims made by C.A.V., and another party, including claims for negligent misrepresentation and other claims. C.A.V.'s civil claims were dismissed by Nathanson J. as the "allegations did not contain material facts or sufficient particulars to identify a cause of action". C.A.V.'s claims were determined to be "unsustainable" and "certain to fail". In 2006, the court found "it is [was] plain and obvious that they disclose no cause of action against either of these two defendants or disclose radical defect".

[81] Specifically, in 2006 Nathanson J. found many issues included in C.A.V.'s Statement of Claim disclosed no cause of action, that other claims were out of time, and still others provided insufficient particulars to disclose any cause of action. In addition, Nathanson J. found C.A.V.'s claim that L.C.M. had obtained a court order by surreptitious means did not give rise to a right of civil action.

[82] Some of the information contained in C.A.V.'s affidavit of November 5, 2019 referred to concerns C.A.V. has already raised or were similar to those she had already raised before Nathanson J., in *Finck* &*Vandenelsen* v. *Hartlieb*, *at al*., 2006 NSSC 3.

[83] At the end of the Notice of Motion filed November 5, 2019, C.A.V. indicated she was seeking "all orders sought in the motion", and "damages as against the respondent in the amount of $50,000.00 to be paid forthwith, to each of the adult children in this proceeding." No particulars are set out. No material facts are claimed in support of her claim. The legal nature of the alleged wrong, and the causal link to the damages claimed are not set forth. The children are not parties to this proceeding.

[84] C.A.V. is not the litigation guardian for any of the children and does not have the capacity to sue L.C.M. as their representative.

[85] In 2003 Aston J. found neither party had presented any evidence to support a causal link between the children's behaviour at that time, and the time spent with either parent.

[86] C.A.V. deleted most of paragraph 46 of Aston J's decision wherein Dr. Jeff St. Pierre in a report dated July 24, 2002, "rejected the need for individualized clinical therapy"…for one child…and also commented about another child.

Notice of Motion faxed to the court on January 3, 2020

[87] C.A.V. forwarded a further Notice of Motion filed with the Court January 3, 2020. C.A.V. sought:

> 1. Orders sought within the applicants Notice of Motion filed November 5, 2019;
>
> 2. An Order discharging or suspending all retroactive child support orders or enforcement orders or any order or action of provincial or federal government offices in Ontario and Nova Scotia relating to alleged child support arrears and as against the applicant;
>
> 3. …(sic)
>
> 4. An Order as against the respondent to pay all post-secondary education expenses accumulated by the adult children in this proceeding;
>
> 5. An Order as against the respondent to pay all extraordinary expenses accumulated by the adult children related to post-secondary studies to include interest on loans;
>
> 6. An Order as against the respondent to pay for professional counseling or psychiatric treatment the adult children require to relieve symptoms of P.A.S., PTSD;
>
> 7. An Order as against the respondent designating the adult children in this proceeding as beneficiaries irrevocably of any and all his life insurance policies;
>
> 8. An Order as against the respondent to designate the adult children in this proceeding as beneficiaries irrevocably of any and all pensions and any and all other benefit plans;
>
> 9. An Order that monies owing shall be garnisheed (sic) from the respondent's sources of income for any amount he cannot or will not pay forthwith; and
>
> 10. An Order as against Court Administration to produce written transcripts of proceedings within this file should an appeal be necessary.

[88] Numbers 4, 5, and 6 were dealt with above. Numbers 7, 8 and 9 are dismissed given that C.A.V. does not have the capacity to sue L.C.M. on the children's behalf.

[89] C.A.V.'s request for an Order against the court administration in the Supreme Court Family Division in the Province of Nova Scotia to produce written transcripts of this proceeding, should an appeal be necessary, is dismissed, and I

would reference *Finck* v. *Smith*, 2005 NSCA 43 in support of my determination. Evidence and submissions in this matter were filed in written form by both parties. C.A.V. declined to ask L.C.M. any questions, and both asked the court to make a decision based on documents already before the court. Specifically, on February 24, 2020 both parties requested this court render a decision based on documents filed by them up to that date. Neither party wished to adjourn the matter to allow for cross examination or to make further submissions. There is no need for a transcription of the proceedings.

Notice of Motion filed February 18, 2020

[90] On February 18, 2020 C.A.V. filed a further Notice of Motion specifying she was seeking:

> 1. An Order varying the Orders of Abbey J. of March 13, 2000, **Aston J. of February 28, 2003 and Campbell J. of October 30, 2003** respecting child support;
>
> 2. An Order discharging or suspending all retroactive child support orders or enforcement Orders or any other Order or action by provincial or federal government offices in Ontario and Nova Scotia relating to alleged child support arrears and as against the applicant;
>
> 3. An Order as against the respondent to pay post-secondary education expenses and debts accumulated by the adult children in this proceeding according to applicable laws;
>
> 4. An Order as against the respondent to pay for extraordinary expenses by way of professional counseling or psychiatric treatment for the adult children, who exhibit symptoms of P.A.S., P.T.S.D., as applicable by law;
>
> 5. An Order against the respondent to return all monies to the applicant collected and paid through the Family Responsibility Office working on his behalf and;
>
> 6. An Order that monies owing shall be garnisheed (sic) from the respondent's source of income for any amount he cannot or will not pay to the children forthwith.

C.A.V.'s requests for relief sought in part of number one, and numbers three through six were dismissed.

Application for Judicial Review filed February 18, 2020

[91] On February 18, 2020 C.A.V. filed an application for "Judicial Review for Orders in the Nature of Mandamus". C.A.V. sought:

> 1 .An Order in the nature of mandamus against the Minister of Canada pursuant to Civil Procedure Rule 7:11 (e) for an order providing anything formerly provided by prerogative writ;

> 2. An Order on the Justice Minister of Canada and the Minister of Justice for Ontario pursuant to Civil Procedure Rule 7:11 (e) to provide this Court with all certified Endorsement and Court Orders by Campbell J. pertaining to [C.A.V.], [L.R.F.] and [L.C.M], made within in the Superior Court of Justice in Stratford, Ontario and the Ontario Court of Appeal in Toronto, Ontario;
>
> 3. An Order in the nature of mandamus against the Toronto-Dominion Bank/TD Canada Trust, C.E.O Mr. Bharat Masrani to include all donations deposited and disbursements withdrawn within the Triplet Trust Fund Account established in Stratford in or around November 2000;
>
> 4. An Order on the Justice Minister of Canada and the Minister of Justice for Ontario pursuant to Civil Procedure Rule 7:11 (e) to provide this Court with all Endorsements and Court Orders in Court File No: 03-912 in Superior Court of Justice between [C.A.V] (plaintiff) and the London Free Press and the Stratford Beacon Herald (defendants). See Attached as Exhibit "A" Statement of Claim";
>
> 5. An Order in the nature of mandamus for electronic transmission of documents pursuant to Civil Procedure Rule 40.06(2) including a video link for the parties to be given their legal right to participate in the adjudications.

[92] A copy of the court order of Aston J. granted in February 2003, and signed by him April 28, 2003, and entered at Stratford April 29, 2003, was provided to the court by L.C.M. Both parties agreed it was the relevant order to be varied. As noted, C.A.V. provided only portions of Aston J.'s written decision dated February 2003. Also noted was that the court was able to obtain the full version of Aston J.'s decision rendered in February 2003 CanLII 1965 [including the preliminary Endorsement from the hearing November 29, 2012, which is referred to in paragraph 71 of Aston J's decision involving the parties, and dated December 4, 2002, and the subsequent Endorsement from March 2003]. These documents should have been available to the parties and they should have filed these with the court. The other information sought by C.A.V. is not relevant to the decisions I have jurisdiction to make in this matter.

[93] I am satisfied I have reviewed all relevant decisions from the Court of Appeal and the Superior Court of Justice in Ontario including the full decision of Aston J. rendered February 2003.

[94] At the commencement of the hearing on February 24, 2020, I provided the parties with an "overview" of the documents the parties had filed, and I provided direction with regard to what the court could consider as requested by C.A.V. I explained I was prepared to adjourn the matter to allow for cross-examination on the materials filed, and to allow for further submissions. The parties declined the

court's offer to adjourn the hearing. As noted above, both parties requested the court make a decision based on the documents filed by them up to that point.

[95] At paragraph 18 in *Trang* v. *Trang*, 2013 ONSC 1980, the Honourable Mr. Justice Pazaratz advised the parties that he "could not determine their motion based upon their affidavits because", at paragraph 18 the court indicated:

> a. There was a significant doubt about the reliability of the sworn documents, and
>
> b. in any event, each party's case was based upon an allegation that the other party was lying about finances. Credibility could not be determined based on untested and completely contradictory affidavits, even if t here had been no issue concerning their respective English language skills.

[96] In this case, the relevant facts are not in dispute. The children resided with L.C.M. between June 2003 and January 31, 2011. L.C.M. has agreed child support shall terminate effective February 1, 2011. There is no argument regarding C.A.V.'s professional training, her travel to Nova Scotia in late 2003, her conviction of certain criminal offences in June 2005, and her incarceration in Nova Scotia for periods between June 2005 and July 2007.

[97] C.A.V. has argued that this court should not impute income to her. Aston J. imputed an income of $30,000 to C.A.V. in 2003, and he ordered C.A.V. to "re-commence" child support payments June 1, 2003. L.C.M. asks that I impute income to C.A.V. I must decide what, if any income, should be imputed to C.A.V. between June 1, 2003 and January 31, 2011?

Written argument

[98] C.A.V. argued in part:

> Following my unwanted involvement in the Canadian court system I have lost all my children, a **successful teaching career, all my savings, and any chance at meaningful employment**. I was grossly and publicly defamed by a controlled media, I've spent **years in prison** and now have a **criminal record**. The disability benefits I receive following a diagnosis of Post Traumatic Stress Disorder are enough for a "hand to mouth" existence, if I attend a food bank. And the physical damage I'm left with after years of living as a motherless mother and P.T.S.D is extensive and now, medically concerning.
>
> [Emphasis mine]

Analysis

Arrears

[99] The court in *P.M.B* v. *M.L.B.*, 2010 NBCA 5, found:

> [2] The jurisdiction to issue retroactive variation orders that reduce or cancel arrears of support has been carefully circumscribed under both the provincial and federal legislation. In each instance, the order is contingent on the court finding a **change in circumstances of one of the parties, or a child**, between the time of the original order and the application for variation. Invariably, the law requires the change to be material. Actually, the court must rule on two discrete questions: **Was there a material change in circumstances during the period of retroactivity** and, having regard to all other relevant circumstances during this period, **would the applicant have been granted a reduction in his or her support obligation but for his or her untimely applicatio**n? The concept of material change in circumstances has always been interpreted broadly. As a general proposition, the court will be asking whether the **change was significant and long lasting**; **whether it was real and not one of choice.**
>
> [3] When deciding whether to grant a full or partial remission of arrears, courts need not be concerned with several factors often explored in the jurisprudence of other jurisdictions. Specifically, the court **need not address why the applicant failed to make a timely application for retroactive variation.** Correlatively, the **court need not be concerned with the reasons underscoring the support recipients failure to pursue timely enforcement measures thereby thwarting the accumulation of arrears**. In short, the notion of **fault plays no role in the decision to grant retroactive variation orders involving support arrears**. Admittedly, this narrowed approach appears to deviate from the analytical framework set down in *D.B.S. v. S.R.G.*[2006] 2 S.C.R. 231, [2006] S.C.J. No. 37 (QL), 2006 SCC 37. In that case, the Supreme Court outlined four factors to be considered when deciding whether to order a retroactive in child support, including the two factors just cited. But the present case involves a retroactive order to both spousal and a child support. The distinction between the two orders is not without difference and one which did not escape the Supreme Court. It is one thing to demand immediate payment of monies with respect to a past obligation that only recently matured and quite another to **seek an order that recalculates and reduces the amount owing with respect to a debt never paid.**
>
> [4] As will be explained, the understanding that f**ault plays no role in the adjudication of applications for retroactive variation of support arrears** is consistent with both the majority and minority opinions…there is no room in the law for retroactive variation orders that reduce or eliminate support arrears based on misconceived notions of laches, acquiescence and waiver on the part of the support recipient.
>
> […]
>
> [6] Finally, these reasons do not stand for the proposition that the ability to pay arrears is never relevant. It is relevant when it comes to the matter of arrears enforcement. If payers of support truly lack the present and future financial resources to address the arrears problem, the court cannot be expected to craft an enforcement order that ignores the adage: "one cannot draw blood from a stone". In this limited sense, the pleas of inability to pay and hardship cannot be ignored. **But the pleas must fall deafly on judicial ears when the relief sought is a forgiveness of arrears. As a matter of law, support recipients are entitled to cling to the faint hope of a future ability to pay.**

[…]

[22] Assuming the court accepts the applicant's evidence, and agrees the applicant would have been entitled to a reduction with respect to the support obligation, because of a material change in circumstances, it must be asked whether other factors are to be considered and weighed before decided the matter. For example, are we to consider the factors which the Supreme Court of Canada outlined in *D.B.S* v. *S.R.G*? In my respectful view, the answer is "no".

[…]

[31] …A failure to pay support impinges on that right and has one of two consequences. The support recipient does with less or relies on others to make up for the failed obligation to pay support…

[My emphasis throughout]

[100] The court went on to acknowledge at paragraph 39 and 43:

[39] I cannot deny the existence of a large body of jurisprudence supporting the commonly held understanding that courts retain the jurisdiction to reduce or cancel arrears in circumstances where there is a present and future inability to pay on the part of the delinquent payer. I am also aware of the existence of legislation which expressly authorizes the remission of arrears on broad grounds. The **British Columbia Family Relations Act**, R.S.B.C 1996, c. 128, s. 96(2) and (3), authorizes the court to forgiver arrears if it is satisfied that it would be "grossly unfair" not to do so […]

[40] As a matter of statutory interpretation and policy, **I am of the opinion that the law should not read-in or imply a residual discretion to forgive arrears for two reasons**. First, the existence of the discretion is inconsistent with other statutory provisions which **seek to preserve, rather than extinguish, debt obligations that arise as a result of a failure to comply with a support obligation**. Second, to the extent the residual discretion rests on the interlocking pleas of **inability to pay and hardship, those please are misdirected**. They are relevant, but only when it comes to the matters of arrears enforcement. In short, **a distinction must be drawn between the power to forgive arrears and the power to enforce payment…**

[…]

[43] …any **perceived hardship that a payer of support might face because of a present or future inability to pay arrears is self-imposed, or self-induced**. **Someone who had the financial ability to pay support and deliberately chose not to do so is the author of his or her own misfortune**. The law should have little sympathy for this litigant and be reticent in establishing a precedent which might well be perceived as an incentive for payers to allow arrears to accumulate over a protracted period. However, the most persuasive argument that the plea of hardship based on a present inability should fall on deaf judicial ears is tied to the reality that the plea is more illusionary than real. This is so because there is an underlying and mistaken assumption that the payer will be asked to pay money which he or she does not have in order to pay down and off the arears that have accumulated…

> [My emphasis throughout]

[101] In *Smith* v. *Helppi*, 2011 NSCA 65, the court considers issues related to a retroactive reduction of child support, whether it takes the form of forgiveness of arrears or a retroactive decrease in support payable and recalculation of arrears. Six of the factors are reviewed in paragraphs 101 – 106:

> [16] Mr. Smith argues that the judge erred in imputing income as he did. What a judge is to consider in doing so was summarized in *Gould v. Julian*, 2010 NSSC 123, where Justice Darryl W. Wilson stated:
>
> > [27] Factors which should be considered when assessing a parent's capacity to earn an income were succinctly stated by Madam Justice Martinson of the British Columbia Supreme Court, in **Hanson v. Hanson**, 1999 CanLII 6307 (BC SC), [1999] B.C.J. No. 2532, as follows:
> >
> > > 1. There is a **duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work**. It is "no answer for a person liable to support a child to say he is **unemployed and does not intend to seek work** or that his potential to earn income is an irrelevant factor". . . .
> > >
> > > [My emphasis]

[102] In this case I am not struggling with the issue of credibility as between the parties. The problem is a lack of relevant and or / reliable evidence. The evidence provided by C.A.V. indicates she was seeking disability benefits in 2018…that is after the children ceased to be dependent, after January 31, 2011. What C.A.V. was "able" to earn post 2011 is relevant with respect to enforcement but not forgiveness of arrears. C.A.V. has provided no evidence with regard to any effort she made to seek any form of employment to enable her to meet her obligation to the children to pay child support during the relevant period between June 1, 2003 and January 31, 2011. Factor number two in *Hanson, supra*:

> > 2. When **imputing income on the basis of intentional under- employment**, a court must consider **what is reasonable under the circumstances**. The **age, education, experience, skills and health of the parent are factors** to be considered in addition to such matters as **availability to work, freedom to relocate and other obligations**.
> >
> > [Emphasis is mine]

[103] There is agreement that C.A.V. was pregnant with a fourth child in 2003, and she delivered the child in December 2003. There is no dispute that C.A.V. was incarcerated for periods between June 2005 and July 2007. The information about

C.A.V.'s period of incarceration was given viva voce by C.A.V. when the court made the inquiry. She did not provide specific evidence for that period. Nonetheless, the parties were advised the court would take into consideration C.A.V.'s period of incarceration when considering the issue of arrears. Factor number 3 in *Hanson supra*:

> 3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at a lower end of the wage scale, **courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment**.
>
> [Emphasis is mine]

[104] C.A.V.'s income tax information indicates she earned $33,232 in 2000, $30,629 of that income is listed as RRSPs. C.A.V. had previously been employed as a teacher and in 1996 had earned $44,340.00. C.A.V. indicated "I was a functioning school teacher until my resignation in 1999, no longer able to concentrate on my work. The stress of losing my children in corruption was unbearable".

[105] I find it was not open to C.A.V. to refuse or to fail to take any steps to address her financial obligation to the children. Factors four through six in *Hanson supra*:

> 4. **Persistence in unremunerative employment may entitle the court to impute income**.
>
> 5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
>
> 6. **As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income**. [Emphasis mine]
>
> [. . .]

With the Court of Appeal in *Helppi supra* stating:

> [33] In Nova Scotia, the test to be applied in determining whether a person is intentionally under-employed or unemployed is **reasonableness**, which **does not require proof of a specific intention** to undermine or avoid child maintenance obligations.

[My emphasis throughout]

[106] It was unreasonable for C.A.V. not to seek counseling to address any mental health concerns, and / or not to seek any form of employment.

[107] I would note that when C.A.V. was sentenced to a period of incarceration *R.* v. *L.R.F*, 2005 NSSC 192, at paragraph 56, the Honourable Justice Robert W. Wright stated "Lastly, I want to record my recommendation that both offenders be offered psychiatric counselling programs while incarcerated. Their cooperation in engaging in such programs may appear to be a dim prospect at the moment, but it is still worth the try for me to make this recommendation."

[108] Wright J's recommendation was also quoted at paragraph 167 in *R.* v. *L.R.F*., 2007 NSCA 32. C.A.V. provided no evidence of any attempt to take advantage of services available to her, or to obtain gainful employment. I agree with Wright J's comments at paragraph 20 of his decision:

> The rule of law in this country cannot be eroded by citizens choosing to disobey a valid and subsisting order of a court of law of which they have knowledge, simply because they do not agree with it, no matter how emotionally charged this situation may be. If rights of appeal are exhausted without success, the parties to the dispute must live with the judicial outcome, rather than taking the law into their own hands. We would otherwise be living in a state of anarchy.

[109] The Court in *Helppi*, *supra* also stated as follows:

> [18] It is clear from the record and the judge's decision **that he considered Mr. Smith's job skills and experience and what, according to his evidence, the appellant had done towards being fully employed**. It is also clear that he was **not satisfied that Mr. Smith had made the appropriate effort in gaining and retaining full employment.** As explained earlier, the judge who sees and hears the parties directly is entitled to a degree of deference. He has an advantage denied this court. I see no error in principle or serious misapprehension of the evidence regarding the appellant's employment history, finances or otherwise which would support judicial interference with the judge's decision to impute income.
>
> [Emphasis mine]

[110] I have considered C.A.V.'s reported job skills as a teacher, and as an author. I have observed that C.A.V. is an intelligent and capable person. I find C.A.V. made the choice to spend a considerable amount of her energy addressing issues unrelated to her obligation to pay child support for the three children in question. Given that C.A.V. has not provided any evidence of any efforts to take advantage of services, or to obtain employment, I am drawing an adverse inference. I find

C.A.V. made a choice not to take advantage of services, and a choice not to seek gainful employment.

[111] C.A.V's choices do not translate to evidence that she could not have participated in services or she could not have obtained employment for the greater part of June 2003 through January 31, 2011. I find that on a balance of probabilities C.A.V. could have found and retained a job had she directed her energy and resources toward that goal.

[112] C.A.V. has provided little explanation with respect to what if any efforts she made to overcome any obstacles to employment she may have faced. C.A.V.'s evidence focusses on what she perceives others have done to her. At no time does she acknowledge any culpability, accountability, or responsibility for her circumstances. She does not provide any evidence of her efforts to obtain employment and / or to pay the outstanding arrears of child support owing.

[113] The Court in *Helppi*, *supra* states in part:

> **21** In summary, the jurisdiction to order a partial or full remission of support arrears is dependent on the answer to two discrete questions: **Was there a material change in circumstances during the period of retroactivity and, having regard to all other relevant circumstances during this period, would the applicant have been granted a reduction in his or her support obligation but for his or her untimely application**? As a general proposition, the court will be asking **whether the change was significant and long lasting; whether it was real and not one of choice**.
>
> [My emphasis throughout]

[114] The Court of Appeal in *Helppi*, directs that I must consider whether the changes C.A.V. experienced were "significant and long lasting"; and whether they were "real and not one of choice". In addition, the court directs that the test to be employed to determine if a payor is under-employed is reasonableness.

[115] The parties acknowledge as fact that C.A.V. delivered a child in December 2003, and that C.A.V. was incarcerated for periods between June 2005 and July 2007. I find those changes were significant, but not long lasting. I also find that C.A.V.'s incarceration was as a direct result of choices she made. The court in *Helppi* supra stated:

> [22] Mr. Smith submits that the judge erred by not reducing or forgiving his arrears for the periods when his only income was employment **insurance or when he was unemployed and had no income**. However, as indicated in the passage from his decision cited in paragraph 7

> above, the judge was **not satisfied with Mr. Smith's frankness, his repeated failure to report employment and income, and his efforts in gaining and retaining full employment** in the trucking field. Not having accepted Mr. Smith's arguments regarding his reduced income and Mr. Smith having acknowledged the lack of full disclosure regarding his income, the judge refused to waive the arrears of child maintenance arrears. In these circumstances, I am unable to accept that the judge erred in not forgiving the arrears.
>
> [My emphasis throughout]

[116] I have considered all of the circumstances presented when determining C.A.V.'s request for a retroactive reduction of child support, either in the form of forgiveness of arrears or a retroactive decrease in support payable and recalculation of arrears. I have also considered L.C.M.'s position, that he did not wish to forgive the arrears owing of approximately $49,931.91, and that he planned to give any money he received to the children to help them pay any outstanding student debt.

[117] At paragraph 64 of his decision Aston J., 2003 CanLII 1965 (ON SC), he states:

> [64] [C.A.V.] also claims that the child support for the period from July 1, 2000 to December 31, 2000 ought to be rescinded. In October, November and December of that year, she was on the run with the children. Though parents have an obligation to support their children financially, child support, **even based on imputed income, should not be a form of punishment. It should be a reflection of the parent's potential income. She was living off savings and had no income**. It seems obvious she could not work while hiding out with the children and that there was little or no employment opportunity for her in Mexico. Furthermore, [C.A.V.] **was discharging her responsibility to support the children during the time they were with her by providing for their everyday needs herself.** [L.C.M.] had custody "on paper" but [C.A.V.] assumed the costs of maintaining them from October 14 to January 21. [C.A.V.] **offers no explanation for the termination of her employment income in the period leading up to her disappearance from the jurisdiction**. It would be unfair to terminate the child support order for those months. An order is therefore granted relieving [C.A.V.] of the obligation to pay child support for half the month of October and for November and December 2000 but not for the antecedent period.
>
> [My emphasis throughout]

[118] There is disagreement between the parties with regard to imputation of income to C.A.V. after June 2003.

[119] In *Trang*, *supra* paras 39 – 59, Pazaratz J. reviews the law related to a motion for change in child support and spousal support, **when the original support order was based upon "imputed income"**.

[120] In this case, in 2000 Abbey J., based interim child support on C.A.V.'s income, but thereafter, in 2003 Aston J., based the final child support order upon imputed income.

[121] In *Trang, supra* Pazaratz J. has stated:

[…]

> **46.** But **if the original support order was based upon "imputed" income, a more comprehensive analysis is required on a motion to change.** The court must consider:
>
> a. *Why* did income have to be imputed in the first instance? Have those circumstances changed? Is it still appropriate or necessary to impute income, to achieve a fair result?
>
> b. *How* exactly did the court quantify the imputed income? What were the calculations, and are they still applicable?

[122] In 1999 C.A.V. resigned from a teaching position in Ontario. Her evidence is that she is eligible for a Teacher's pension of $49,000.00 per year beginning in 2027. As noted, C.A.V. has provided no evidence of efforts to become employed after June 2003. C.A.V. does claim she paid child support until October 2003 when she left the province. It is difficult to tell from the reports received from the Family Responsibility Office of Ontario, whether C.A.V. paid any child support after June 2003. If C.A.V. did make payments between June 2003 and October 2003, those 5 months should be accounted for at $568.00 per month for a total of $2,840.00, but only if the Family Responsibility Office is able to confirm receipt of funds from C.A.V. during that period.

[123] In *Trang, supra*, at paragraphs 47 - 60, Pazaratz reviews the circumstances which allow a court to impute income, including how the burdens can be different if the payor's income was imputed in the previous order:

> **47.** Section 19 of the *Child Support Guidelines* allows the court to impute such income to a spouse as it considers appropriate in the circumstances, which circumstances include:
>
> (a) the parent or spouse **is intentionally under-employed or unemployed**, other than where the under-employment or unemployment is required by the needs of any child or by the reasonable educational or health needs of the parent or spouse;
>
> (b) the parent or spouse is exempt from paying federal or provincial income tax;
>
> (c) the parent or spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;

(d) it appears that income has been diverted which would affect the level of child support to be determined under these guidelines;

(e) the parent's or spouse's property is not reasonably utilized to generate income;

(f) the parent or **spouse has failed to provide income information when under a legal obligation** to do so;

(g) the parent or spouse unreasonably deducts expenses from income;

(h) the parent or spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and

(i) the parent or spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

48. The **list of categories set out in section 19 is not exhaustive**. The court has the discretion to impute income in circumstances that are not only analogous but also those in which imputation would be consistent with legislative intent. *Bak v. Dobell (2007)* 2007 ONCA 304 (CanLII), *86 O.R. (3d) 196 (C.A.)*

49. The wording of section 19 of the Guidelines is open-ended ("which circumstances include"), indicating that the categories listed in that section are merely examples of situations in which income may be imputed. There are, therefore, other potential scenarios in which income can and should be imputed. *Riel v. Holland (2003)* 2003 CanLII 3433 (ON CA), *67 O.R. (3d) 417 (C.A.)*

50. In most variation proceedings, it should be possible to establish why (and how) income was imputed in the original order. Those factual findings and calculations are usually set out in affidavits or transcripts (in uncontested proceedings) and written endorsements or judgments (in contested proceedings). This is relevant information which should be presented to the court on a motion to change. It is essential to an understanding of what factors the court considered when the previous order was made – and whether *those* factors have changed.

51. When a court imputes income, that's a determination of a fact. It's not an estimate. It's not a guess. It's not a provisional order awaiting better disclosure, or further review. It's a determination that the court had to calculate a number, because it didn't feel it was appropriate to rely on – or wait for -- representations from the payor.

52. A party who argues that an imputed income level is no longer appropriate **must go beyond establishing their *subsequent* "declared" income. They must address why income had to be imputed in the first place. They must present evidence of changed circumstances which establish that either:**

a. It is no longer necessary or appropriate to impute income. The payor's representations as to income should now be accepted, even if they weren't accepted before.

Or,

b. Even if income should still be imputed, changed circumstances suggest a different amount is more appropriate.

53. If "declared income" automatically prevailed on a motion to change support, it would defeat the purpose of imputing income in the first place. It might even be a disincentive for payors to participate in the initial court process. They could simply ignore support Applications – as they often do. They could wait to see if the court imputes income, and how much. **If dissatisfied with the amount, the payor could later return to court waving their tax returns, to suggest that the original judge got it wrong**.

54. Support claimants should not be forced to go through this two-step process. Our family court system certainly can't afford it.

55. Similarly, the onus should not fall on the support recipient to establish why income should *still* be imputed on a motion to change. That determination has already been made. **The onus is on the support payor to establish that there should be a change in the way their income is to be calculated.**

56. If for example the original support order imputed income because the court concluded an unemployed payor *should have been working*, it would be illogical to allow the payor to extinguish that determination by returning on a motion to change, with proof that he *wasn't working*. That wouldn't constitute a change in circumstances.

57. If a trial judge imputed income to a self-employed person on the basis that their tax return didn't reflect cash sales and excessive write-offs, there should be a presumption that so long as the payor maintains the same business activities and accounting practices, subsequent tax returns will be equally unreliable.

58. Imputed income matters. The *reason* why income had to be imputed matters.

59. If an aggrieved party feels income was *wrongly* imputed, they can take timely steps to *correct* the original determination. They can appeal. They can bring a motion to set aside the order based on mistake or misrepresentation.

60. But **if a payor proceeds by way of motion to change, they must face the presumption that the original order was correct –** and the original imputation of income was correct. **If they want to rely on their declared income, they must establish why *this time* their representations should be accepted by the court…**

[My emphasis throughout]

[124] In her evidence C.A.V. states that after giving birth to the children in January 1993, she took leave from her full time teaching position to care for the children. C.A.V. also states she worked part-time for a period, and that she resigned from her teaching position in 1999. She does not provide details of when she worked full-time or part-time. In her various Affidavits C.A.V. has stated:

> "I was a functioning school teacher until my resignation in 1999, no longer able to concentrate on my work. The stress of losing my children to corruption was unbearable"

> […]
>
> By Order of March 13, 2000 by Abbey J. Craig obtained sole custody while my contact with the children was reduced to eight hours a month. Child support was based on an income of $30,000.00 notwithstanding that my income was less than $12,000… (this would have been after she resigned from her teaching position).
>
> […]
>
> In Early October 2002 I published a treatise account detaining the legal kidnapping of my children.
>
> […]
>
> Almost five months later and following a sabotage of Christmas sales, Aston J., on February 28, 2003…made an Order for child support, imputing an income of $30,000.00 per annum…
>
> […]
>
> In June 2003 I brought a motion to vary Aston J's child support order. Aston J dismissed the motion, further prohibiting me from bringing any further motions forward without first, leave of the court.
>
> […]
>
> Since 2000 I was and have been unable to maintain my teaching career and any other meaningful employment after all my children were taken from me. I became a defendant in various trials in two provinces consuming all of my time and energy. I have been to federal prison and have a criminal record. I have been and remain the recipient of disability benefits for Post Traumatic Stress Disorder (P.T.S.D) receiving less than $12,000.00 a year. My assets are a few pieces of furniture and a 2005 Toyota Echo. I attend a food bank and go to a shelter for abused women for my clothing and household needs. (I note that C.A.V. does not reference her teacher's pension here).

C.A.V. was obligated to bring evidence of her circumstances after Aston J's decision in February 2003, or after June 2003 when she was ordered to start paying child support based on an imputed income of $30,000.00.

[125] Upon review of C.A.V.'s Income Tax Return Information I note her line 150 for the 1995 tax year was $14,786.00; in **1996 it was $44,340.00**; in **1997 $24,484.00**; in 1998 **$27,193.00** ($10,130 from RRSP income); in 1999 C.A.V. resigned from her teaching position $10,369 (RRSP income of $4,939.00 and other $3,000.00); in 2000 **$33,232.00** (RRSP $30,619.00, rental $1,325.00); in 2001 $3,575.00 (gross rental income of $8000.00, net rental $3,575.00); in 2002 $1,301 (RRSP income); in 2003 **changed her status to married** and reported $988 at line

150 (social assistance payments); in 2004 $1,230.00 (social assistance payments); in 2005 $1,236.00 (social assistance); in 2006 $1.00; in 2007 $1.00; in 2008 no line 150 reported, net income $0.00; in 2009 $2,463.00 (social assistance payments); in 2010 $1.00; in 2011 $10,602 (social assistance payments); in 2012 $12,858.00 (social assistance payments); in 2013 $12,790.00 **changed status to separated** (social assistance payments); in 2014 $1,500.00; in 2015 $4,701; in 2016 $9,640.00.

[126] In her affidavit sworn June 7, 2018 C.A.V. stated in part:

> […] In early 2003 I motioned to vary child support and it was dismissed. Another order was made prohibiting me from filing further motions without leave. Leave was thereafter denied.
>
> Throughout this time and until October 2003 I continued paying child support, fearful I would be denied my children, which occurred regularly and often. I also **met (sic) financial needs of my children while they were in my care** which included clothing, furniture, memberships and sports equipment. I do not recall when and how and why the F.R.O. became involved. I recall paying the respondent. I no longer have receipts.
>
> […]
>
> I was not aware of any alleged child support arrears until later in 2016 when I began receiving letters from various government offices.
>
> …

C.A.V. has indicated she did pay child support after June 2003 but was not able to point to evidence that she in fact paid, stating she did not have the receipts.

[127] In her Affidavit sworn November 5, 2019 C.A.V. stated in part:

> I will go to prison before I hand over another penny to anyone but my children, personally.

[128] In his decision Aston J., noted L.C.M.'s reference to evidence presented in November 2001 that C.A.V. "told a lawyer acting on behalf of the Family Responsibility Office she would rather go to jail than pay child support to L.C.M. (paragraph 38). C.A.V. deleted paragraph 38 from the copy of Aston J's decision which she filed with this court.

[129] I find C.A.V. was aware of her court ordered obligation to pay child support beginning June 2003 through January 2011.

[130] In *Parsons* v. *Parsons*, 2012 NSSC 239, this court stated the principles that apply to the imputation of income pursuant to s. 19(1)(a) at paras 32 and 33, as follows:

> 32 Section 19 of the *Guidelines* provides the court with the discretion to impute income in specified circumstances. The following principles are distilled from case law:
>
> a. The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reasons and justice, not arbitrarily. A **rational and solid evidentiary foundation, grounded in fairness and reasonableness**, must be shown before a court can impute income: **Coadic v. Coadic**, 2005 NSSC 291 (N.S. S.C.).
>
> b. The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: **Staples v. Callender**, 2010 NSCA 49 (N.S. C.A.).
>
> c. The burden of establishing that income should be imputed rests upon the party making the claim, however, the **evidentiary burden shifts if the payor asserts that his/her income has been reduced or his/her income earning capacity is compromised by ill health**: **MacDonald v. MacDonald**, 2010 NSCA 34 (N.S. C.A.); **MacGillivary v. Ross**, 2008 NSSC 339 (N.S. S.C.).
>
> d. The court is not restricted to actual income earned, but rather, may **look to income earning capacity**, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to **objective factors in determining what is reasonable and fair** in the circumstances: **Smith v. Helppi**, 2011 NSCA 65 (N.S. C.A.); **Van Gool v. Van Gool** (1998), 1998 CanLII 5650 (BC CA), 113 B.C.A.C. 200 (B.C. C.A.); **Hanson v. Hanson**, 1999 CanLII 6307 (BC SC), [1999] B.C.J. No. 2532 (B.C. S.C.); **Saunders-Roberts v. Roberts**, 2002 NWTSC 11 (N.W.T. S.C.); and **Duffy v. Duffy**, 2009 NLCA 48 (N.L. C.A.).
>
> e. **A party's decision to remain in an unremunerative employment situation, may entitle a court to impute income where the party has a greater income earning capacity**. A party cannot avoid support obligations by a self-induced reduction in income: **Duffy v. Duffy**, ***supra***; and **Marshall v. Marshall** (2007), 2008 NSSC 11 (N.S. S.C.).
>
> [My emphasis]

[131] In this case, income had already been imputed to C.A.V. by Aston J in February 2003, with payments starting in June 2003. When Aston J. imputed income to C.A.V. he made a "determination of fact". C.A.V. needed to go beyond establishing her "subsequent declared income". C.A.V. needed to address why Aston J. had imputed income to her in the first place. She needed to provide evidence of changed circumstances. "Declared income does not prevail on a

motion to change support". "The onus is on the support payor to establish that there should be a change in the way their income is to be calculated". C.A.V. did not establish, or convince this court, why "this time" their request to rely on "declared income" should be accepted by the court.

[132] As noted above, in this case "the onus should not fall on the support recipient to establish why income should *still* be imputed on a motion to change". That determination has already been made. The onus is on the support payor to establish that there should be a change in the way their income is to be calculated." C.A.V. sought to have this court rely on her line 150 as reflected in her Income Tax Returns between 1995 and 2016. For all the reasons listed above, I am not prepared to do so.

[133] C.A.V. has submitted that her "livelihood and overall health and welfare has diminished significantly following the Order of February 28, 2003 to include the loss of her fourth child, Complicated Grieving, a diagnosis of Post Traumatic Stress Disorder, a criminal record and current disability payments of $923.00 a month. Further she has submitted that she has not earned an income since 2000 currently living in absolute poverty collecting $923.00 a month in disability benefits."

[134] I have found certain of C.A.V.'s circumstances were of her own making, and other circumstances were not proven including any diagnosis during the periods in question, June 2003 through January 31, 2011.

[135] C.A.V. has not provided any expert evidence regarding how her grieving process or any diagnosis of Post Traumatic Stress Disorder, has impacted on her ability to obtain employment during the relevant periods between June 2003 and, January 2011. Despite this, and given L.C.M.'s position, I have forgiven arrears owed by C.A.V. between December 2003 and May 2004 (6 months, after the birth of her fourth child), as well as between June 2005 and July 2007 (19 months, while C.A.S was incarcerated).

[136] I do not have sufficient evidence to support the conclusion that between June 2003 – November 2003, June 2004 – May 2005, August 2007 - January 2011 C.A.V. was unable to work at any job earning $35,000.00 - $49,000. I decline to rely solely on C.A.V.'s reported income. I have considered other factors including but not limited to her skills, abilities, and her availability.

[137] Specifically, Aston J, 2003 CanLII 1965 (ON SC), found in part at paragraph 62 that C.A.V. was "an intelligent professionally trained person with very good communication skills. She has apparently been unemployed or underemployed since the summer of 2000. She has not adduced any evidence that would unable the court to find that she is no longer capable of earning $30,000.00 or more per annum"…

[138] As in the case of *Costello v. Costello*, 2012 ONCJ 399 paras 49-76, there is no evidence C.A.V. took any "steps to find reasonable employment" during the relevant periods. In addition, there is no evidence C.A.V. "made any attempts to obtain assistance in attempting to use her experience, skills and knowledge to apply them to a new career".

[139] In the case of *Rogers* v. *Rogers*, 2013, ONSC 1997, at paragraphs 51, through 62, the Honourable Mr. Justice Pazaratz, found the husband, and I find that in this case that C.A.V. "created and controlled" the circumstances under which her job was "terminated", in that C.A.V. resigned from her job. Following her resignation I find C.A.V. made "conscious decisions to do things – illegal things – with the full knowledge" that her "reckless and anti-social behavior would make her unavailable (let alone, unacceptable) for employment", and specifically in C.A.V.'s circumstances, unacceptable for employment as a teacher.

[140] In the case of *Luckey* v. *Luckey*, 1996, CanLII 11217 (ON SC), the court found "the support payor had lost his employment because he was convicted of assaulting a co-worker." The court did not vary his support obligation as this was an event over which he had control. The court found that it could "not condone the parent's actions of assaulting a co-worker to create legitimate inability to pay support that justified a variation." I do not condone C.A.V.'s poor choices, or her illegal actions, as creating a legitimate inability for her to pay child support.

[141] As in the case of *Luckey supra*, I find C.A.V.'s unemployment or underemployment throughout most of June 2003 through January 31, 2011 did not arise "through mix up, honest mistake, bad luck, or even isolated error in judgment." C.A.V. "knowingly and intentionally made very bad decisions". She "broke the law – over and over again." C.A.V's choices have "resulted in unquestionably painful consequences."

[142] C.A.V. criticizes L.C.M. for not doing more to offset the cost of the children's post secondary education. I find that given C.A.V.'s failure to meet her

financial obligation to the children, that L.C.M. was forced to do with less while the children were living with him, and he may have had to rely on others to make up for C.A.V.'s failed obligation to pay child support between June 2003 and January 31, 2011. L.C.M.'s stated intention to give any money C.A.V. pays in child support arrears to the children, does not absolve C.A.V. of her obligation to have paid L.C.M. the child support at the time it was owed.

[143] C.A.V. did not provide full financial disclosure. She failed to properly complete her Statement of Income, she failed to file her Income Tax Returns for 2017 and 2018, she failed to file Notices of Assessment or Re-Assessment for all tax years. Regardless, C.A.V. could not rely solely on reported income, and I have found that C.A.V. failed to try to obtain employment during the relevant period. As noted above, the two letters C.A.V. did file from the Department of Community Services were not reliable, and they were not tremendously helpful in determining when or why C.A.V. was not working during the relevant period between June 2003 and January 2011, or when C.A.V. may be expected to work or look for work again in the future.

Decision

[144] C.A.V. has not provided full and complete disclosure, or in many respects sufficient relevant evidence to support many of her claims. I accept C.A.V. had a reduced ability to pay child support between December 2003 and May 2004, after her child was born, but find this circumstance was not long lasting. I also accept C.A.V. was incarcerated for periods between the end of June 2005 and July 2007, and had a reduced ability to pay child support between June 2005 and July 2007, and also find this circumstance was not long lasting.

[145] With a great deal of hesitation I have decided not to impute income to C.A.V. between December 2003 and May 2004 (directly following the birth of C.A.V.'s child), and between June 2005 and July 2007 (while C.A.V. was incarcerated for periods). I made the decision not to impute income to C.A.V. for those periods <u>not</u> primarily because C.A.V. was not available for work, but because L.C.M. was not asking the court to increase the amount of arrears owed by C.A.V., and L.C.M. planned to give the money to the adult children. Once the arrears are adjusted for an increase in imputed income to C.A.V after July 2007, the amount of arrears owing remains almost the same as the amount originally identified by L.C.M. as owing.

[146] I find C.A.V. owes child support for 60 months (for the periods June 2003 through November 2003, June 2004 through May 2005, August 2007 through January 2011). I find C.A.V. was imputed an income of $30,000 by Aston J. in 2003. I also find C.A.V. expects to receive an Ontario Teacher's pension of approximately $49,000.00 per year "available 2027".

Disposition

[147] Child support payable under section 3 of the *FCSG* shall end February 1, 2011.

[148] Given C.A.V.'s skills, her age, and her level of functioning at the relevant time, I find as follows:

1. Between June 2003 and November 2003 and between June 2004 and May 2005, C.A.V. was able to earn an income of at least $30,000, and I impute that income to her, (6 months at $568 according to Aston J's decision), and (12 months at $598.00 Nova Scotia tables);

2. Between August 2007 and December 2007, C.A.V. was able to earn an income of at least $35,000 and I impute that income to her (5 months at $680.00); and

3. Between January 2008 and January 31, 2011, C.A.V. was able to earn an income of $49,000, and I impute that income to her (37 months at $936).

C.A.V. owes $48,048.00 in arrears to L.C.M. to be paid through the Maintenance Enforcement Office in Nova Scotia or the Family Responsibility Office in Ontario.

[149] C.A.V. claimed she did not and would not have the means to pay arrears, yet she failed to provide any documents in relation to her teacher's pension, payable at $49,000 per year in 2027. It is unclear whether C.A.V. is able to request a release of a portion of those funds in advance of 2027 ($49,000), but **I am granting an Order to produce any and all information related to when the pension, or a portion thereof would be available.**

[150] In *Costello v. Costello,* 2012, ONCJ 399 paras 49-76, the Honourable Ms. Justice Roselyn Zisman adopted the reasoning in *Luckey supra*, and after reviewing the father's financial information she concluded that he had an asset, "namely his pension, which could be used to pay the outstanding support arrears".

Ongoing disclosure

[151] If, within one month of the receipt of this decision, C.A.V. files evidence confirming she is not yet in receipt of her pension income, and that she continues to qualify for disability benefits, I am prepared to grant an order as follows: that C.A.V. pay the arrears to L.C.M., through the Maintenance Enforcement Office in Nova Scotia, or the Family Responsibility Office in Ontario, in affordable installments, including the garnishee of any funds payable to C.A.V. from the Provincial or Federal governments, those installments to be determined by me, or by the relevant maintenance enforcement office based on pre-existing policy considerations.

a. Within one month of receipt of this decision, C.A.V. shall file with the court and with L.C.M., formal documentation from her pension provider confirming when her pension will be in pay, and whether she is able to access any of the pension money before 2027.

b. Within one month of receipt of this decision C.A.V. shall also provide this court and L.C.M. with recent formal documentation confirming she is currently in receipt of disability insurance payments, and she will continue to be in receipt of disability insurance payments for the foreseeable future. This confirmation should indicate when she began receiving the payments and when or if the payments are scheduled to terminate.

c. If the above noted information is received by the court within one month, and it appears an immediate payment of arrears would create a hardship for C.A.V., an order shall be granted that arrears be repaid by C.A.V. in affordable installments.

d. C.A.V. shall be responsible for keeping her address up to date with the court and any maintenance enforcement agency, and C.A.V. shall disclose formal documentation related to any ongoing disability insurance payments received, and formal documentation regarding her pension, on an annual basis before or by July 1 each year.

e. If C.A.V. fails to file the above noted formal documentation to prove her financial circumstances, including reliable documentary evidence from any government body or private agency providing ongoing disability insurance payments to C.A.V., and reliable documentary evidence from her pension

provider indicating if C.A.V. has access to any pensions funds before 2027, and confirming what funds are available beginning in 2027, then shall be responsible to commence paying installments of $936.00 per month, to L.C.M., toward outstanding child support arrears until they are paid in full. These payments shall be made through a maintenance enforcement program.

f. C.A.V. shall pay to L.C.M. $936.00 per month toward outstanding arrears once C.A.V begins receiving her Ontario Teacher's pension income as anticipated in 2027.

g. Any accommodation granted before C.A.V.'s. pension is in pay, is conditional on C.A.V., continuing to keep her contract information up to date and providing the above noted information to the court or to the maintenance enforcement office 1. within one month of this decision being published in 2020, and 2. every year thereafter providing the relevant information on or before July 1 each year, until C.A.V.'s pension is in pay.

h. If the information requested is not provided to the court, or the maintenance enforcement office by C.A.V. within one month of the publication of this decision in 2020, C.A.V shall begin making monthly payments of $936.00 per month to L.C.M., through the appropriate maintenance enforcement office, beginning on July 1, 2020, until arrears are paid in full.

i. Should C.A.V. fail to disclose all necessary information related to her Teacher's Pension in Ontario, this court shall give Notice to the appropriate pension provider of the Court's intention to endorse and to issue an Order for Production, absent any objection from the pension provider, then an Order shall issue.

Enforcement

[152] In response to C.A.V.'s various Applications and various Notices of Motion, L.C.M. suggested this Court grant an Order stipulating that C.A.V.'s license and passport not be revoked, but sources of Federal and Provincial income be garnished until the outstanding balance of any arrears were paid in full. This court does not have the jurisdiction to determine how the Maintenance Enforcement Office or the Family Responsibility Office will enforce any outstanding child support arrears.

[153] A copy of this decision and all Orders arising from this decision be provided to the relevant enforcement authorities including the Nova Scotia Maintenance Enforcement Program and the Ontario Family Responsibility Office.

[154] The Without Prejudice Interim Order suspending the collection and enforcement of arrears owed by C.A.V., granted on September 30, 2019 pursuant to s. 17 of the *Divorce Act*, R.S.C, 1985. c.4, and issued on November 5, 2019, will cease to be in force after July 1, 2020.

[155] All submissions on costs in relation to this decision should be filed by both parties within forty five days of receiving this decision.

Cindy G. Cormier, J.