SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Last v. Clayton*, 2025 NSSC 196

Date: 2025-06-11
Docket: *SFHPSA* HFD No. 128716
Registry: Halifax

Between:

Sohanna Cheyenne Last

Applicant

v

Custio Clayton

Respondent

Judge:	The Honourable Justice Theresa M Forgeron
Heard:	January 13 and 14, 2025 and February 5, 2025 in Halifax, Nova Scotia
Decision:	June 11, 2025
Counsel:	Zoë Busuttil for the Applicant, Cheyenne Last Custio Clayton, self-represented

By the Court:

Introduction

[1] Custio Clayton and Cheyenne Last disagree about child support issues concerning their 20-year-old daughter. Ms. Last seeks retroactive child support from February 2020 until July 2024, when the daughter ceased to be dependent. Ms. Last also seeks to impute income to Mr. Clayton because she states that his reported income does not represent all income available for child support purposes. Ms. Last states that Mr. Clayton reduced his income to avoid paying retroactive child support.

[2] Mr. Clayton challenges most of Ms. Last's claims although he does not dispute paying retroactive child support from February 2023 until July 2024, as long as his income is not imputed. Mr. Clayton provided five main reasons to support his position:

- The daughter was actually living with his mother, "the grandmother", and not Ms. Last, from September 2020 until June 2022.
- He always supported the daughter by providing money to Ms. Last, the daughter, and the grandmother.
- Ms. Last unreasonably delayed filing her child support application.
- He cannot afford to pay a retroactive award because of hardship considerations given his financial circumstances, debt obligations, and lack of savings.
- His income reduced for reasons outside of his control. For example, he has been unable to secure high-profile fights as a professional boxer because his ranking dropped and he was embroiled in a lawsuit.

[3] Ms. Last disagrees with Mr. Clayton. She states that the daughter has always lived in her primary care, and not the primary care of the grandmother. In addition, she says that it is appropriate to impute income to Mr. Clayton in a range between $123,000 to $200,000 given his actual financial position, including corporate income.

[4] Further, Ms. Last states that retroactive support should be granted based on a balancing of the four *DBS* factors:

- She has an understandable explanation for why she delayed filing her court application. She was concerned that Mr. Clayton would distance himself from the daughter's life which, according to Ms. Last, actually occurred after she filed her application.
- Mr. Clayton engaged in blameworthy conduct by not disclosing his income and by paying less child support than required under the *Child Support Guidelines.*
- Ms. Last and the daughter need retroactive support because they experienced significant financial challenges as a result of Mr. Clayton's underpayment. Further, the daughter continues to be financially dependent on Ms. Last, even though the daughter doesn't meet the legal definition of a dependent.
- Any concerns around potential hardship can be mitigated because Mr. Clayton has substantial equity in the two properties he owns. Alternatively, Mr. Clayton can pay retroactive support through monthly instalments.

Issues

[5] In my decision, I will answer the following questions:

- What parenting arrangements were in place between September 2020 and June 2022?
- What was Mr. Clayton's income between 2020 and 2024?
- What is the appropriate retroactive child support award?

Background

[6] The daughter was born in July 2005. Neither party made application to formalize the parenting and child support arrangements.

[7] Throughout her life, the daughter lived in Ms. Last's primary care and would visit her father. In addition, Mr. Clayton would send money to Ms. Last when she requested. Mr. Clayton, however, did not provide income information to Ms. Last. Ms. Last had no way of knowing whether Mr. Clayton was paying the correct amount of child support.

[8] In September 2020, the daughter enrolled in a culturally focused school which was located outside the school district where Ms. Last lived. Ms. Last lived in the Bedford area and the school was located in Dartmouth. At the time, Mr. Clayton was living in Quebec. To attend the school, the daughter had to be registered in its catchment area. Therefore, Mr. Clayton registered the daughter as living with his cousin.

[9] The parties disagree about where the daughter lived from September 2020 to June 2022 when she attended the Dartmouth high school. Ms. Last and the daughter state that the daughter lived primarily with Ms. Last. Mr. Clayton and the grandmother state that the daughter lived primarily with the grandmother. This contested issue will be resolved later in my decision.

[10] Following her graduation, the daughter attended CBBC and completed an eyelash enhancement technician program. She remained in Ms. Last's primary care while attending CBBC and continues to do so while she seeks employment and sorts out her life circumstances. The daughter is expecting her own child and is thus reliant on Ms. Last for continued financial and emotional support.

[11] On February 7, 2023, Ms. Last applied for child support.

[12] On May 1, 2023, an interim support order issued requiring Mr. Clayton to pay $204.66 per month based on an annual income of $26,100. In addition, the parties eventually agreed that Mr. Clayton's prospective child support obligation should terminate in July 2024 - when the daughter turned 19. Further, during a case management conference, the parties agreed that Mr. Clayton would contribute $1,308.86 towards the daughter's postsecondary education expenses.

[13] On December 27, 2024, about two weeks before the scheduled hearing, Mr. Clayton filed an undue hardship application.

[14] The contested hearing was held on January 13 and 14, 2025. During the hearing, each of the parties, the daughter, and the grandmother testified.

[15] At the commencement of the hearing, I dismissed Mr. Clayton's undue hardship application because he did not comply with the *Rules*. Mr. Clayton's application was filed late, and his financial disclosure was deficient. For example, Mr. Clayton did not provide complete disclosure of his own income tax returns and his 2024 year-to-date income information was incomplete. Further, he supplied no

proof of income for his wife. Therefore, any hardship considerations will only be considered as part of the ***DBS*** retroactive analysis.

[16] On February 5, 2025, final submissions were delivered; I reserved for decision.

Analysis

What parenting arrangements were in place between September 2020 and June 2022?

[17] The parties disagree about the daughter's primary residence from September 2020 to June 2022. Ms. Last and the daughter state that the daughter lived primarily with Ms. Last. Mr. Clayton and the grandmother state that the daughter lived primarily with the grandmother. Mr. Clayton points to various text messages to support his position and discounts the daughter's evidence which he states was perjured and coerced.

[18] I disagree with Mr. Clayton's assessment of Ms. Last and the daughter; I find Ms. Last and the daughter credible. I prefer their evidence to that of the grandmother and Mr. Clayton when there is a conflict in the evidence. The grandmother loves her son and was quite protective of Mr. Clayton and his position when testifying. Neither the grandmother nor Mr. Clayton were credible.

[19] I find that the daughter lived primarily with Ms. Last during the disputed time for four reasons. First, the daughter did not permanently move in with the grandmother. She only stayed at the grandmother's home so she could attend the specialized high school which was located in Dartmouth as Ms. Last lived in Bedford. The daughter typically stayed with Ms. Last during weekends, holidays, school closures, and the summer vacation.

[20] Second, commencing March 2021, the daughter attended school virtually because of COVID lockdowns, although the daughter still occasionally visited and stayed with the grandmother as they had a close relationship. After the lockdowns were lifted, the daughter generally stayed with, and was driven to school by Ms. Last. At times, the daughter would stay with the grandmother after school until about 6 PM when Ms. Last finished work and was able to drive the daughter back home. At other times, an aunt would drive the daughter from school to Ms. Last's apartment. In May 2022, when the daughter became licenced, she drove herself to and from school using Ms. Last's car.

[21] Third, Ms. Last was the parent who continued to pay for the vast majority of the daughter's expenses, including direct expenses such as clothing, school and personal supplies, medical and dental expenses, and food, including food and snacks while staying with the grandmother. Although the grandmother provided some food for the daughter, she did not pay for her other direct expenses. Further, Ms. Last always maintained a residence for the daughter's use.

[22] Fourth, the daughter lived with the grandmother for less than 40% of the time in 2020 and 2021. The shared parenting provisions of the *CSG* are engaged because from September 2020 to June 2021, the daughter lived with Ms. Last and stayed with the grandmother for a portion of the time. The shared parenting provisions are based on an annual calculation as s. 9 states: "[w]here a parent exercises parenting time with a child for not less than 40 per cent of the time *over the course of a year*, …" [Emphasis added].

[23] My findings, as shown in the following listing, confirm that the daughter lived with the grandmother for less than 40% of the time:

- In 2020, the daughter stayed in Ms. Last's home about 78% of the time. From January 1 to August 31, the daughter lived exclusively with Ms. Last. From September 1 until December 31, the daughter lived with Ms. Last for about 40 days. Although the daughter stayed with the grandmother during most weekdays when school was in session from September to December 2020, she also stayed over with her cousin from time to time.
- In 2021, the daughter stayed in Ms. Last's home about 83% of the time, including 8 days in January, 9 days in February, 14 days in March, and then she stopped staying with the grandmother, except for the odd occasion.
- After the March 2021 lockdown, including when she contracted COVID, the daughter lived exclusively with Ms. Last, except for the odd occasion when she would visit the grandmother for an overnight. After March 2021, the daughter lived with Ms. Last.

[24] In summary, although the grandmother allowed the daughter to stay at her home during the school week between September 2020 and March 2021, Ms. Last always maintained primary care and residence of the daughter. Ms. Last was always primarily responsible for the daughter's expenses. Further, after March 2021, the daughter only occasionally spent overnights at the grandmother's home.

What was Mr. Clayton's income between 2020 and 2024?

Mr. Clayton's Sources of Income

[25] Mr. Clayton worked as a professional boxer. Prior to 2022, Mr. Clayton was unincorporated and reported self employment income. In 2022, Mr. Clayton incorporated a company where his boxing income was deposited and various expenses were paid. In some years, Mr. Clayton was paid a dividend and at other times, received money from the company as a shareholder. In 2023, Mr. Clayton also began working as a truck driver and thus reported employment income and EI benefits. In addition, in 2023, Mr. Clayton acquired a rental property.

Position of the Parties

[26] In her post trial submissions, Ms. Last asks me to impute income to Mr. Clayton because his reported line 15000 income does not represent all income available for child support, and suggests a range from $123,000 to $200,000, taking into account Mr. Clayton's various income sources including employment, EI, dividends, rent, share holder payments, and some of the pretax corporate income (PTCI).

[27] In contrast, Mr. Clayton states that his income should be his line 15000 income. He states that his 2020 income was $73,002; 2021was $84,397; 2022 was $80,500; 2023 was $44,033; and 2024 was $46,404. He also states that his income reduced for reasons outside his control and as a result, no income should be imputed.

Law

[28] To establish an income amount that "fully and fairly reflects"[1] available income for child support purposes, I must review ss. 16, 18, and 19 of the *CSG* because Mr. Clayton reported self-employment and employment income, and after 2022, business income earned through a corporation.

A. Self-Employment Business Income and Expenses

[29] Section 16 of *CSG* states that I must look to the payor's T1 General and make the necessary Schedule III adjustments. Payors who are self-employed must

[1] Julien Payne and Marilyn Payne in *Child Support Guidelines in Canada, 2024*, (Toronto: Irwin Law, 2024) at p 118, quoting ***WLG v ACG***, 2021 SKCA 112.

report their business income and expenses to CRA and also disclose these to the other parent.

[30] Section 19 allows me to impute income in an amount that I consider appropriate in a variety of circumstances, including when a payor fails to disclose, unreasonably deducts business expenses, or receives dividends. Dividend income should be grossed up because of its preferential tax treatment. Further, s. 19(2) confirms that "the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the *Income Tax Act*."

[31] When interpreting s. 19 claims, I must exercise my discretion judicially and not arbitrarily so that a reasonable and fair estimate of income is ascribed: ***Coadic v Coadic***, 2005 NSSC 291. The goal of imputation is not punishment***: Staples v Callender***, 2010 NSCA 49.

[32] The claimant must prove that imputation is appropriate in the circumstances. The burden then shifts to the payor when the payor states that their income earning capacity is compromised or that their business expenses are properly deductible: ***MacLellan v MacDonald***, 2010 NSCA 34; ***MacGillivary v Ross***, 2008 NSSC 339; and ***Wilcox v Snow,*** 1999 NSCA 163.

[33] In *Child Support Guidelines in Canada*, *2024*, authors Julien and Marilyn Payne provide an excellent summary of the law respecting onus and disclosure at pages 222 and 223:

> In order to impute claimed business expenses back into a parent's income pursuant to section 19 (1)(g) of the Guidelines, it is **not necessary to establish** that the party who has claimed the deductions **has acted improperly or outside the norm** for claiming expenses in the income tax context. Rather, the issue is **whether the full deduction of the expense results in a fair representation of the actual disposable income that is available** to the party for personal expenses. In determining whether business expenses claimed by a party are unreasonable, the court **must balance the business necessity of the expense against the alternative of using those monies for the purposes of child support**. A **party who seeks to deduct business expenses** from their income for child support purposes **has an obligation to explain the reasons** for the expenses and **how they were calculated**, and must **provide documentary proof of the expenses in an organized manner** so that the court can make a proper determination as to the reasonableness of the expense from the standpoint of the child support calculation. The **onus rests upon the parent seeking to deduct** expenses from income **to provide meaningful supporting documentation** in

> respect of those **deductions failing which an adverse inference may be drawn.** *[Emphasis added]*

[34] And further at page 210, the authors note that the analysis should focus on those expenses necessarily incurred to earn an income, while scrutinizing those of a more discretionary nature:

> Special care must be taken when scrutinizing the expenses of self-employed spouses. The court should focus on expenses that were necessarily incurred to earn income. Discretionary expenses, such as entertainment or promotional expenses, even if deductible from taxable income, may be more readily reduced or disallowed, as may also capital cost depreciation for use of an office in the home or automobile expenses. …

[35] In ***Wilcox v Snow,*** *supra,* the Nova Scotia Court of Appeal affirmed that analysing business expenses involved a different exercise when calculating child support than when calculating income tax for CRA:

> [22] In the case of a self-employed businessman, like the respondent, there is very good reason why the Court must look beyond the bare tax return to determine the self-employed businessman's income for the purposes of the **Guidelines.** The net business income, for income tax purposes, of a self employed businessman, is not necessarily a true reflection of his income, for the purpose of determining his ability to pay child support. The **tax department may permit the self employed businessman to make certain deductions** from the gross income of the business in the calculation of his net business income for income tax purposes. However, in the determination of the income of that same self employed businessman, **for the purpose of assessing his ability to pay child support, those same deductions may not be reasonable**. *[Emphasis added]*

[36] Further, the Court of Appeal affirmed that the business owner must prove that the claimed business expenses must be reasonably taken into account. Such an exercise requires more that simply filing the owner's most recent tax return:

> [26] Where, as here, the respondent is applying to vary an existing child support order, he bears the onus of proof. As **a self-employed businessman he cannot, simply, file with the court a copy of his most recent income tax return, and expect that his net business income for tax purposes will be equated with his income for child support purposes.** That is what the respondent did in this case. **It is not enough**. The businessman **must demonstrate**, among other things, that **the deductions** which were made from the gross income of the business, in the calculation of his net business income, **should, reasonably, be**

> **taken into account** in the determination of his income for the purpose of calculating his obligation to pay child support. *[Emphasis added]*

B. Corporate Income

[37] Section 18 of the *CSG* allows me to lift the corporate veil when I am satisfied that the payor's line 15000 income does not fairly reflect all income available for child support purposes. In ***Reid v Faubert***, 2019 NSCA 42, Bourgeois JA confirmed that the burden fell on the business owner to prove why all or some of the PTCI should not be available for the calculation of child support.

> [42] I would also note the application judge does not clearly explain how **Mr. Faubert met his burden to establish that all or some of the corporate pre-tax income should not be included for child support purposes.** In my view, it was incumbent on the application judge to explain not only how that burden was met, but what portion of the pre-tax income was not available for child support purposes. Without doing so, this Court is unable to ascertain whether she appropriately considered the totality of the evidence before her and applied the correct legal principles. *[Emphasis added]*

[38] The discretionary ability of the court to lift the corporate veil is an important consideration where the payor, as a sole shareholder, can control the income of the corporation, as noted by Van den Eynden JA in ***Ward v Murphy****, 2022 NSCA 20*:

> [117] I now turn to the s. 18 analysis, which the judge used to determine whether pre-tax corporate income should be attributed to Mr. Ward for the purpose of determining his child support obligations. Section 18 allows a judge to **lift the corporate veil if satisfied income under s. 16** (the payor's Line 150 income) **does not fairly reflect all income available for child support purposes**. This is particularly important in the case of a sole shareholder (as is the case here) because that shareholder has the ability to control the income of the corporation. *[Emphasis added]*

[39] In addition, it may be appropriate to pierce the corporate veil and impute additional income to the payor where the court is satisfied that the parent is using a closely-held company to pay for personal expenses, as noted by Beaton, JA in the dissent of ***Ward v Murphy***, *supra*:

> [44] Section 18 is a tool designed for a specific purpose. It permits a judge to look into the financial circumstances of a company by "piercing the corporate veil". As stated in *Aubin v. Petrone*, 2020 ABCA 13:

> [37] The concept of the corporate veil enters family law most frequently on questions of child support. The first step in determining child support is determining the income of the payor parent. Where a payor parent obtains his or her income from a closely-held corporation, the *Federal Child Support Guidelines*, SOR/97-175, enable courts to look past the corporate veil to determine whether the parent is using a company to disguise income, for example by splitting income with a non-arm's-length party, **by paying for personal expenses**, or by unnecessarily leaving earnings in the company rather than drawing them out as income: *Cunningham v Seveny*, 2017 ABCA 4 at paras 25-27. *[Emphasis added]*

[40] Further, when a shareholder receives benefits that are expensed through a closely-held corporation, the court has the discretionary authority to gross up the value of those benefits to reflect any tax advantage. As is noted, in part, by Julien Payne and Marilyn Payne in *Child Support Guidelines in Canada, 2022,* at p 205:

> The *Federal Child Support Guidelines* base support payments on the payor's gross taxable income. One of the objectives of the Guidelines is to ensure "consistent treatment" of those who are in "similar circumstances." Thus, there are provisions to impute income where a parent is exempt from paying tax, lives in a lower taxed jurisdiction, or derives income from sources that are taxed at a lower rate. **Where a parent pays substantially less tax or no tax on income received, the income must be grossed up for the purpose of determining the amount of child support to be paid. This is the only way to ensure the consistency mandated by the legislation**. *[Emphasis added]*

[41] Similarly, in footnote 4 of ***Ward v Murphy****, supra*, Van den Eynden JA stated in part:

> [4] As a general statement, **gross up of personal expenses paid by corporation are non-controversial, as it reflects the pre-tax value**. …. *[Emphasis added]*

[42] In ***Ward v Murphy***, *supra,* Van den Eynden JA identified factors that I am to consider when determining what portion, if any, of the PTCI should be attributed to a payor for child support purposes :

> [153] In short, a s. 18 analysis should not be shied away from when its use is appropriate. Here are some general, non-exhaustive, considerations that may assist in deciding whether income should be attributed under s. 18:
>
> ….

> When deciding the amount of pre-tax corporate income to attribute to the payor, consideration should be given to:
>
> - What is the nature of the business?
> - Is there a business reason for retaining earnings?
> - What is the historical practice for retaining earnings?
> - What degree of corporate control does the payor exercise?
> - Is there only one principal shareholder or other *bona fide* arm's-length shareholders involved?
> - Depreciation;
> - Possible economic downturns;
> - Return on invested capital; and
> - If the corporation, after adding back expenses to the pre-tax corporate income, has an overall negative pre-tax income (also known as a loss), no amount of pre-tax corporate income can be attributed to the payor's income. (As illustrated above, this was not relevant in this case.)

…

Decision

[43] I find that Mr. Clayton's line 15000 income does not fully and fairly reflect all income available for child support purposes. I will now explain why.

A. 2020 Tax Year

[44] Mr. Clayton shows a line 15000 income of $73,002.38 which is comprised of $14,000 in other income and $59,002.38 in net business income. The $14,000 was a COVID payment which CRA determined Mr. Clayton must repay. It is therefore not included as income for support purposes.

[45] Mr. Clayton reported $198,130 in business income. He did not provide a statement of business/operating expenses. Mr. Clayton did not identify specific amounts for any of the alleged business expenses. Mr. Clayton did not provide a reasonable explanation for why these unnamed business expenses were required for the generation of business income. Mr. Clayton provided no supporting documentation for the business expenses. The burden was on him to do so.

[46] I therefore find Mr. Clayton's 2020 income for child support purposes to be **$198,130**.

B. 2021 Tax Year

[47] Mr. Clayton shows a line 15000 income of $84,396.52 comprised of $12,000 in RRSPs and net business income of $72,396.52. Again, Mr. Clayton did not provide a statement of business expenses. Again, Mr. Clayton did not identify specific amounts for any of the alleged business expenses. Again, Mr. Clayton did not provide a reasonable explanation for why these unnamed business expenses were required for the generation of business income. Again, Mr. Clayton provided no supporting documentation for the business expenses. The burden was on him to do so.

[48] Given that Ms. Last has not asked to include the RRSPs, I find Mr. Clayton's 2021 income for child support purposes to be **$123,152**.

C. 2022 Tax Year

[49] Mr. Clayton shows a line 15000 income of $80,500 from dividend income which when replaced with the actual divided paid of $70,000 and then grossed up for its preferential tax treatment equals $89,463.[2]

[50] In addition, I have determined that a portion of the PTCI should be included as income. In 2022, the corporation grossed $525,549. From this amount, the dividend payment of $70,000 must be deducted, leaving a balance of $455,549. Total reported operating expenses are represented as $168,221, leaving a PTCI of $287,328. Of this amount, Ms. Last seeks to include $7,883 for vehicle expenses. In addition, although not reported as an operating expense, Ms. Last wants to include as income the $68,834.92 advanced to Mr. Clayton as a shareholder.[3]

[51] Based on ***Ward v Murphy***, supra, I don't believe I can include the shareholder payment as income because it does not form part of the operating expenses for which adjustments are possible under s. 18 of the *CSG,* although I arguably can, in certain circumstances, include all or a portion if the payment is characterized as a shareholder loan under s.19 of the *CSG*. The initial prohibition against including shareholder loans as income has softened such that a more nuanced approach is being adopted based on the unique factual matrix presented in subsequent cases: Julien Payne and Marilyn Payne, *Child Support Guidelines in Canada, 2024*, (Toronto: Irwin Law, 2024) at pp 232 – 234.

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[2] I have accepted counsel's Child View figures for the gross up calculation.

[3] Although Ms. Last characterizes this payment as a shareholder loan, it appears to be an advance as it is reported as an asset, and not a liability of the company in the balance sheet. The characterization of this payment is made difficult because of the meager evidence presented and incomplete financial disclosure.

[52] In assessing which business expenses should be adjusted, I find that Mr. Clayton did not lead compelling evidence about the business necessity of many of the listed operating expenses. Many are discretionary or have a personal component such as meals and entertainment, travel, telephones, and vehicle expenses. For example, in 2022, the business owned and expensed costs associated with both a Jaguar and a Dodge Durango. I find there is a personal component to these vehicles and their operating expense as well as to the following business expenses:

Meals and Entertainment	50%	$ 1,842
Amortization	50%	$ 1,529
Telephone	50%	$ 2,870
Vehicle Expenses	50%	$ 3,941
Total Adjustments		$10,182

[53] This amount should be grossed up because of preferential tax treatment, resulting in an adjustment of **$12,604.**

[54] In summary, the adjusted PTCI for 2022 is as follows:

Gross Income	$525,549
Dividend Payment	($ 70,000)
Operating Expenses	($168,221)
Adjusted Expenses	$ 12,604
Available PTCI	**$299,932**

[55] Mr. Clayton did not lead credible evidence about why the PTCI is not available for support purposes. He did not lead evidence about the factors discussed in ***Ward v Murphy***, *supra.* Ms. Last, albeit for other reasons, asks that $166,179 be imputed as available income in 2022, which includes the $89,463 adjusted dividend payment. I will do so. I find Mr. Clayton's 2022 income for child support purposes to be **$166,179**.

D. 2023 Tax Year

[56] Mr. Clayton shows a line 15000 income of $44,033 which includes employment income of $24,697; dividend income which when replaced for the actual divided paid of $20,000 and then grossed up for its preferential tax treatment

equals $25,564[4] together with rental income. He reports $14,400 in rental income and a loss of $3,664.

[57] In determining available rental income for support purposes, I note that Mr. Clayton did not meet the burden of proof that was upon him. He did not produce a statement of business/operating expenses for the rental property. Other than proof of the interest payment on the mortgage which was entered by Ms. Last, Mr. Clayton did not identify specifics for any of the other alleged rental expenses. Mr. Clayton provided no supporting documentation for any rental expenses.

[58] Exhibit 9 shows the $205.94 monthly interest charge on the mortgage which is a reasonable and appropriate deduction. Although Mr. Clayton only rented the property for about six months, he nonetheless paid interest for nine months – for a total payment of $1,853.46. This amount will be deducted from the gross rental payment leaving a net amount of $12,546.54, which I will include as income.

[59] I will now address the corporate income. After Ms. Last filed her application, the company's income showed a marked decline. Mr. Clayton said the decline was coincidental. Ms. Last argues otherwise.

[60] In 2023, the company reported total income of $1,528.35 together with $16,720.93 in operating expenses. Further, the company paid Mr. Clayton a shareholder's advance of $133,507.71[5] which Ms. Last wants to include as income for child support purposes.

[61] I have determined that this is an appropriate case to allocate $80,000 of the shareholder advance as income pursuant to s. 19 of the *CSG* for the following reasons:

- The company started to operate in 2022. Prior to that, all income earned by Mr. Clayton through boxing was reported on his personal return as a self-employed person.
- The company and Mr. Clayton are closely associated. The company generates income from Mr. Clayton's boxing revenues. The company does not generate income independent of Mr. Clayton.
- Mr. Clayton is able to write off expenses that have a significant personal component as a result of the incorporation.

[4] I have accepted counsel's Child View figures for the gross up calculation.
[5] The comments stated in endnote iii apply equally to this payment.

- The company notionally retained $223,216[6] in earned income from 2022 based on my adjustments as previously outlined. Had there been no incorporation, in 2022, Mr. Clayton would have had to pay child support based on an annual income of $389,395,[7] and not the $166,179 previously ordered.
- Mr. Clayton used the shareholder advance to fund his personal lifestyle.

[62] For 2023, I find Mr. Clayton's income to be:

Employment Income	$ 24,697
Dividend Income	$ 25,564
Rental Income	$ 12,547
Shareholder Advance	$ 80,000
Total Income	**$142,808**

2024 Tax Year

[63] Given that the variation was heard in January and February 2025, Mr. Clayton had not yet prepared his 2024 tax returns. The evidence, however, confirms that in 2024, Mr. Clayton had four sources of income. First, he was employed as a truck driver. Mr. Clayton did not supply his last paystub showing year-to-date income. In the circumstances, I am satisfied that Ms. Last's calculations are correct and that he earned $46,404 from this source and not $42,915.

[64] Second, Mr. Clayton earned EI income and I accept Ms. Last's calculation of $7,812 as an accurate representation of what he received as Mr. Clayton did not provide sufficient disclosure of this source of income.

[65] Third, although mentioning it in his affidavit, Mr. Clayton did not disclose his earned boxing income in his 2024 corporate financial statement or in his personal statement of income. Mr. Clayton earned $25,000 US from this source which when converted equals about $34,000 CD. No credible evidence as to expenses was lead.

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[6] Adjusted PTCI $299,932 – $76,716 (Imputed income of $166,179 less adjusted dividend of $89,463) = $223,216.
[7] Adjusted dividend payment of $89,463 + adjusted PTCI of $299,932 = $389,395.

[66] Fourth, although Mr. Clayton did not reference his rental income in his statement of income, I am satisfied that he earns income from this source. Mr. Clayton provided limited disclosure about the rental income and expenses, although I am aware of the monthly interest charge on the mortgage payment. I am assigning $26,000 as income from rent in 2024.

[67] In addition, Ms. Last wants me to include insurance proceeds as income. The insurance company paid out a lump sum to replace a company vehicle damaged in an accident. I have no authority to include the insurance payment as income. I decline to do so.

[68] In summary, for 2024, I find that Mr. Clayton earned **$114,216** composed of $46,404 in employment income; $7,812 in EI benefits; $34,000 from boxing; and $26,000 in rental income.

What is the appropriate retroactive child support award?

[69] The following table represents the child support which Mr. Clayton ought to have paid according to the *CSG*, and based on Mr. Clayton living in Quebec in 2020 and 2021, and in Nova Scotia thereafter.

Year	Income	Due	Months	Annual Amount
2020	$198,130	$1,539	11	$16,929
2021	$123,152	$1,046	12	$12,552
2022	$166,179	$1,361	12	$16,332
2023	$142,808	$1,188	12	$14,256
2024	$114,216	$ 965	7	$ 6,755
Total Due				**$66,824**

[70] From this amount, Mr. Clayton would receive credit for payments made. In calculating the payments, I include e-transfers sent to Ms. Last and the daughter after February 1, 2020 which total $4,977.25. In addition, I include the $245 which

Mr. Clayton e-transferred to the grandmother while the daughter stayed with her in the fall of 2020. I also include Mr. Clayton's payment of the daughter's phone bill which totalled $1,285.99. I did not include insurance payments because the insurance appears to have been a family plan which benefits Mr. Clayton, his wife, and their children as well. Thus, Mr. Clayton is credited **$6,508.24** towards the retroactive award.

[71] In addition, Mr. Clayton will receive credit for all payments made through MEP, which as of September 2024 equalled **$3,069.90**.

[72] The total retroactive award which would be payable equals **$57,245.86,** together with a credit for MEP payments made by Mr. Clayton after September 2024.

[73] What, if any, of this amount should be payable?

Foundational Legal Principles

[74] To answer this question, I must analyse applicable legal principles as reviewed in ***DBS v SRG***, 2006 SCC 37, where retroactive support was considered during an initial application; and then expanded in both ***Michel v Graydon***, 2020 SCC 24, where retroactive support was considered after the child had become independent; and ***Colucci v Colucci,*** 2021 SCC 24, where retroactive support was considered during a variation application. Principles extracted from these cases include:

- In ***DBS****, supra*, Bastarache J confirmed that parents who do not increase their child support payments to correspond with their income do not fulfill their obligation to their children, at para 54.
- In ***Michel v Graydon****, supra*, Brown J held that parents should not profit from knowingly paying inadequate support or from making inadequate or delayed disclosure, at paras 32 and 33.
- In ***Michel v Graydon****, supra*, Martin J held that because a disproportionate number of single mothers and their children live in poverty, and poverty negatively affects access to justice, a holistic response is required, at paras 94, 96 and 100.
- In ***Colucci v Colucci****, supra*, Martin J noted that information asymmetry is both connected to the determination of effective notice and the presumptive period of retroactivity at para 7. She further

stated that information asymmetry results in two distinct burdens. For payee parents, effective notice only requires the broaching of an increase. In contrast, a payor parent seeking a decrease must provide reasonable proof of income at paras 86 to 88.

- In ***Colucci v Colucci****, supra*, at para 114 (b) to (d), Martin J held that when effective notice is lacking, then the presumptive date is the date of formal notice, with the discretion to select an earlier date if the result would otherwise be unfair. Where the payor engaged in blameworthy conduct by not disclosing their income, then generally retroactive support would be awarded to the date of the payor's increase in income.

Notice

[75] On February 7, 2023, Ms. Last provided formal notice that she was seeking child support when she filed her application. At the time, she requested retroactive support to January 1, 2019. She later modified her request to February 2020.

[76] Ms. Last also provided effective notice as early as 2021. In 2021, Ms. Last experienced difficulty collecting voluntary support payments. Previously, Ms. Last would request support and Mr. Clayton would pay the amount requested. The amount requested, however, was never based on Mr. Clayton's income as he did not disclose his earnings. As the informal arrangement began to break down. Ms. Last broached the subject of payments and her requests were frequently ignored.

Understandable Reason for Delay[8]

[77] Ms. Last provided an understandable reason for the delay in filing her court application – she was concerned that her application would negatively impact the father daughter relationship. Her concerns have proven to be well-grounded. For example, as soon as he was served, Mr. Clayton immediately telephoned the daughter to complain causing the daughter to be confused and worried. Further, Mr. Clayton has distanced himself from the daughter as exemplified in the Christmas incident.

Payor's Conduct

[8] The ***DBS*** reasonable excuse factor was replaced with understandable reason for delay as noted in paras 97 to 100 of ***Colucci v Colucci*****,** *supra*.

[78] Second, prior to this court proceeding, Mr. Clayton never disclosed his income to Ms. Last. Even after the proceeding commenced, Mr. Clayton's disclosure was problematic. Given information asymmetry, Ms. Last had no knowledge of Mr. Clayton's actual income. She had no ability to determine whether appropriate child support was being paid.

Daughter's Circumstances

[79] The daughter's needs were not being met with the amount of child support being paid. Ms. Last's income was substantially less than Mr. Clayton's income. Ms. Last's annual income varied between $35,000 and $40,000 per year. She did not share expenses with another adult. Her budget was frugal. She and her children live in an apartment and are of modest means.

[80] The daughter required the child support that should have been paid. She continues to have need. Although she is an adult, her personal circumstances are difficult and Ms. Last continues to pay for the daughter's expenses.

Hardship Factors

[81] Mr. Clayton's hardships claims are not determinative for the following reasons:

- Only he knew his income. He never paid the correct amount of child support in keeping with his income. He should not benefit from the circumstances which he created by his nondisclosure and underpayment of support, both of which detrimentally impacted the daughter.
- Mr. Clayton's income was substantially greater than Ms. Last's income. At times, he was earning three to five times more than Ms. Last.
- Mr. Clayton lives in a home while Ms. Last and the daughter share an apartment. Also living in the apartment is Ms. Last's other child. Mr. Clayton also owns a rental home. Ms. Last does not.
- Mr. Clayton shares expenses with his wife. Ms. Last does not share expenses with another adult. Instead, she continues to support the daughter who is living with her.

- Mr. Clayton has two vehicles – including a Jaguar. Ms. Last has one vehicle which the daughter uses.
- Mr. Clayton has equity in his home of at least $120,000 and in the rental property of at least $63,000.
- Mr. Clayton's discretionary overspending does not rank above his child support obligation.

Unfairness Determination

[82] I find that the presumptive date of retroactivity would be unfair after balancing the four modified *DBS* factors:

- Ms. Last provided an understandable explanation for her delay in filing her application.
- Mr. Clayton engaged in blameworthy conduct in that he did not provide his income information at any time before the proceeding was initiated. He benefited from the nondisclosure to the detriment of the daughter and Ms. Last by underpaying support.
- Ms. Last prioritized the daughter's needs and will continue to do so. Retroactive child support was and is needed.
- Mr. Clayton did not prove that he will experience hardship that cannot be mitigated by refinancing and the imposition of a repayment schedule.

Conclusion

[83] Mr. Clayton must pay retroactive child support to Ms. Last in the amount of **$57,245.86**, less credit for MEP payments made after September 2024. The award is payable as follows:

- A lump sum of $40,000 within 60 days. Mr. Clayton can refinance given the equity in his home and the rental property.
- The balance will be paid in monthly installments of $400 until all arrears are paid in full.

[84] In addition, if Mr. Clayton has not yet paid his share of the s.7 post secondary expenses to Ms. Last, then the balance outstanding of the $1,308.86 shall be added to the retroactive award and paid out accordingly.

[85] All payments will be made through the Maintenance Enforcement Program.

[86] Ms. Last did not seek costs as she is represented by NSLA. No costs are awarded. Counsel for Ms. Last will draft and circulate the order.

Forgeron, J