SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *McLean v. Gonzalez*, 2025 NSSC 313

Date: 20250807
Docket: SFH HFD No. 1201-073001
Registry: Halifax

Between:

Andrew McLean

Petitioner

v.

Karla Gonzalez

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Samuel Moreau
Heard:	March 10 and 11, 2025, in Halifax, Nova Scotia
Written Decision:	October 3, 2025
Released to the parties:	August 7, 2025
Subject:	Credibility, Division of Matrimonial Assets, Parenting time (supervision v. non- supervision), decision making responsibility, determination of income for child support purposes and retroactive child support.
Summary:	The parties advanced arguments for division of matrimonial assets. The salient issue revolves around the Respondent's non-compliance with a Court Order and the resulting effect on division of the matrimonial assets. Parenting issues involves varying positions on supervision v. non-supervision regarding Mr. McLean's parenting time. The issue of decision-making responsibilities was contested. Ms. Gonzalez requested that income be imputed to Mr. McLean and also that she be awarded retroactive child support and section 7 expenses.
Issues:	- Credibility

- Division of matrimonial assets
- Parenting time
- Decision making responsibilities
- Determination of income
- Determination of a claim for retroactive child support and section 7 expenses.

Result: The Court held that there was insufficient evidence to order a division of matrimonial assets. Unsupervised parenting time was ordered for Mr. McLean. Decision making responsibilities was revamped from the previous order. Income was imputed to Mr. McLean. Ms. Gonzalez was awarded retroactive child support and section 7 expenses.

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Counsel:	Cassandra Armsworthy and Sydney Hull for the Petitioner Christopher Robinson for the Respondent

By the Court:

Overview

The Prior Proceeding

[1] The parties are the parents of the child, M., born in 2016. They were married in 2014 and separated in November, 2019. Subsequently Mr. McLean filed an application under the *Parenting and Support Act* (November 26, 2019) and a Petition for Divorce (November 17, 2020).

[2] The first trial commenced on February 16, 2021. On that date, the parties agreed to proceed in the following manner:

- A request that the divorce be granted;
- The claims made under the *Matrimonial Property Act* would be severed and addressed on a future date;
- The issues concerning parenting arrangements (care of the child, parenting time), decision making and child support would proceed under the *Parenting and Support Act.*

[3] The resulting decision cited as *McLean v. Gonzalez,* 2021 NSSC 167 and Order (Family Proceeding) issued on August 24, 2021, flowed from the trial held on February 16 and 17, 2021.

[4] The Divorce Order was issued on September 2, 2021.

The Intervening Period

[5] On December 14, 2022, Mr. McLean filed a Notice of Motion for Contempt Order. The Contempt hearing was scheduled for June 26, 2023, but did not proceed.

[6] On June 12, 2023, Ms. Gonzalez filed a Notice of Variation Application pursuant to Section 17 of the *Divorce Act* seeking a variation of the parenting arrangements.

[7] The Interim Consent Variation Order issued on October 24, 2023, seemingly addressed the concerns raised in Mr. McLean's Motion for Contempt and Ms. Gonzalez's Variation Application, temporarily.

The Current Proceeding

[8] The trial heard on March 10 and 11, 2025, involved three witnesses; the parties and Mr. McLean's mother, Birthe McLean, who was called as a witness on his behalf.

[9] The Court heard arguments on issues pertaining to the division of assets, parenting arrangements and child support.

Issues

[10] I will address the following issues in this decision:

- The credibility of the parties;
- The division of matrimonial assets;
- Parenting arrangements, including whether Mr. McLean's parenting time should be supervised and the logistics of same;
- Decision making responsibilities;
- Determining Mr. McLean's income for the purpose of his child support obligation, including an examination of whether income should be imputed to him;
- The appropriate quantum of prospective child support;
- The parties contributions towards special or extraordinary expenses; and

- Determining Ms. Gonzalez's request for retroactive child support and retroactive special or extraordinary expenses.

Credibility

[11] In many family court trials and other proceedings in which the contested issues/arguments tend to be fact based, the credibility of witnesses' evidence is central to the trier of facts analysis and findings. This case is no different.

[12] Both parties were cross-examined by opposing Counsel. It became readily apparent during their respective cross examination(s) that the issue of credibility bears relevance and should be considered in concert with analysis of the evidence.

Case Authorities

[13] Justice Forgeron's oft cited test in *Baker-Warren v. Denault,* 2009 NSCC 59, sets out the plurality of factors I ought to consider in an assessment of the parties' credibility:

> [19] With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:
>
> a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: **Re: Novak Estate**, 2008 NSSC 283 (S.C.);

> b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
>
> c) Did the witness have a motive to deceive;
>
> d) Did the witness have the ability to observe the factual matters about which he/she testified;
>
> e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
>
> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: **Faryna v. Chorney** 1951 CanLII 252 (BC CA), [1952] 2 D.L.R 354;
>
> g) Was there an internal consistency and logical flow to the evidence;
>
> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
>
> i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

Commentary

[14] I find it difficult to accept Mr. McLean's viva voce evidence on the following:

- His lack of employment and reasons for same;
- The state of the former matrimonial home and suitability of exercising parenting time there;
- The number of times Ms. Gonzalez paid him for work he did in relation to The Wedding Vogue; and
- The reason(s) for dismissal of the criminal code charges against him involving Ms. Gonzalez.

[15] Ms. Gonzalez left me with the impression of being an intelligent and driven business person. She has operated the business known as The Wedding Vogue since its inception in 2015 and to use the mantra often stated during the trial “is the face of the business” and “is the business”. As such I have much difficulty accepting her evidence on her bookkeeping/business accounting practices or the lack thereof; including her apparent lack of knowledge of what would reasonably appears to be basic practices and/or principles for someone who has been operating a seemingly successful business for approximately ten years.

[16] Also, Ms. Gonzalez’s evidence on the logistics of Mr. McLean’s parenting time during the summer months of 2022 and the incident at M.’s school in August of the same year leaves me with doubts as to the veracity of portions of her recollection(s).

[17] In *Djuric v. Dellorusso,* 2019 NSSC 95, while commenting on the credibility and reliability of witnesses’ evidence, Justice Forgeron makes the following observation:

> [22] In assessing credibility and reliability, I am cognizant of the weaknesses in the evidence of both parties, as well as the evidence from Ms. Dellorusso's brothers. Some errors are explained because time faded memories. However, other evidence was frankly false and given with the intent to mislead.

[18] I adopt this insightful and apt observation.

The Division of Matrimonial Assets

[19] The division of the parties' assets is governed by the *Matrimonial Property Act* (herein referenced as the *Act).* The provisions of the *Act* relevant to this proceeding follow:

Section 12 (1)

Application for division of matrimonial assets

12 (1) Where

(a) a petition for divorce is filed;

(b) an application is filed for a declaration of nullity;

(c) the spouses have been living separate and apart and there is no reasonable prospect of the resumption of cohabitation; or

(d) one of the spouses has died,

either spouse is entitled to apply to the court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets, and the court may order such a division.

Section 13

Factors considered on division

13 Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:

(a) the unreasonable impoverishment by either spouse of the matrimonial assets;

(b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;

(c) a marriage contract or separation agreement between the spouses;

(d) the length of time that the spouses have cohabited with each other during their marriage;

(e) the date and manner of acquisition of the assets;

(f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;

(g) the contribution by one spouse to the education or career potential of the other spouse;

(h) the needs of a child who has not attained the age of majority;

(i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;

(j) whether the value of the assets substantially appreciated during the marriage;

(k) the proceeds of an insurance policy, or an award of damages in tort, intended to represent compensation for physical injuries or the cost of future maintenance of the injured spouse;

(l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;

(m) all taxation consequences of the division of matrimonial assets. R.S., c. 275, s. 13; revision corrected.

Section 18

Contribution to business asset by spouse

18 Where one spouse has contributed work, money or moneys worth in respect of the acquisition, management, maintenance, operation or improvement of a business asset of the other spouse, the contributing spouse may apply to the court and the court shall by order

(a) direct the other spouse to pay such an amount on such terms and conditions as the court orders to compensate the contributing spouse therefor; or

(b) award a share of the interest of the other spouse in the business asset to the contributing spouse in accordance with the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. R.S., c. 275, s. 18.

[20] As quoted by this Court in *S.M. v. Y.M.,* 2024 NSSC 410, Justice Dellapinna's commentary in *Coxworthy v. Coxworthy* 2006 NSSC 205, provides direction when conducting a section 12(1) analysis:

> [47] Section 12 of the ***Matrimonial Property Act*** presumes an equal division of assets that are categorized as matrimonial. However should the Court conclude that an equal division is unfair or unconscionable taking into account the factors listed in section 13, the Court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset. The onus is on the party who seeks a greater than equal share to prove that an equal division would be clearly unfair. MacKeigan, C.J.N.S. in *Harwood vs. Thomas* (1981), 1981 CanLII 4167 (NS CA), 45 N.S.R. (2d) 414 (A.D.) said at paragraph 7:
>
> > Equal division of the matrimonial assets, an entitlement proclaimed by the preamble to the Act and prescribed by s. 12 should normally be refused only where the spouse claiming a larger share produces strong evidence showing that in all the circumstances equal division would be clearly unfair and unconscionable on a broad view of all relevant factors. That initial decision is whether, broadly speaking, equality would be clearly unfair - not whether on a precise balancing of credits and debits of factors largely imponderable some unequal division of assets could be justified. Only when the judge in his discretion concludes that equal division would be unfair is he called upon to determine exactly what unequal division might be made.
>
> [48] See also *Ritcey v. Ritcey* (2002), 2002 NSSF 30 (CanLII), 206 N.S.R. (2d) 75 (F.D.).
>
> [49] Bateman, J.A. in *Young v. Young*, 2003 NSCA 63 (CanLII), 2003 N.S.C.A. 63 said at paragraph 15:
>
> > "...the division of matrimonial assets is *prima facie* equal, with unequal division permitted only in limited circumstances. The inquiry under s. 13 is broader than a straight forward measuring of contribution. The predominant concept under the **Act** is the recognition of marriage as a partnership with each party contributing in different ways. A weighing of the respective contributions of the parties to the acquisition of the matrimonial assets, save in unusual circumstances, is to be avoided. Since the introduction of the **Act**, it has been repeatedly stressed by this Court, that matrimonial assets will be divided other than equally, only where there is convincing evidence that an equal division would be unfair or unconscionable."
>
> [50] And further at paragraph 18:

> "...It is not sufficient, for an unequal division of matrimonial assets, that one of the s.13 factors be present. The judge must make the additional determination that an equal division would be unfair or unconscionable. The terms "unfair" and "unconscionable" do not have precise meaning. Lambert, J.A. wrote in *Girard v. Girard* (1983), 1983 CanLII 286 (BC CA), 33 R.F.L. (2d) 79; B.C.J. No.4 (Q.L.) (B.C.C.A.) supra, at p. 86:
>
> > I come then to the legislative purpose expressed in the word "unfair". That word evokes ethical considerations and not merely legal ones. It is not a lawyer's word. The section does not give a judge a broad discretion to divide property in accordance with his own conscience. There can be no doubt about that. There must be uniformity and predictability of judgment. The question of unfairness must therefore be measured by an objective standard. The standard is that of a fair and reasonable person whose values reflect those generally held in contemporary British Columbia. Such a person, while not insisting that everyone adopt his or her behaviour preferences, can recognize unfairness in the form of a marked departure from current community values.
>
> As directed by Harwood v. Thomas, supra, the judge must look at all of the circumstances, not simply weigh the respective material contributions of the parties."

Background

[21] The primary assets to be considered in this decision is the business known as The Wedding Vogue and the former matrimonial home. Both are located within the HRM. Ms. Gonzalez operates The Wedding Vogue. Mr. McLean has remained in the former matrimonial home since the parties' separated.

[22] The other matrimonial assets identified by the parties in their respective Statements of Property include:

Mr. McLean:

- Furniture and appliances valued at $3500;

- 7 vehicles, holding a total value of $14,500. I do not include the 2 vehicles Mr. McLean indicates were purchased post separation. (The Jeep vehicle in Ms. Gonzalez's possession is not valued.); and

- A joint account valued at $6.43.

Ms. Gonzalez:

- Household items (including jewellery and miscellaneous items) with a total value of $22,050. All items with exception of the jewellery (valued at $900) is listed as being in Mr. Mclean's possession;

- A Jeep vehicle (in Ms. Gonzalez's possession) valued at $28,822. An inoperable Ford vehicle in Mr. McLean's possession valued at $1500; and

- Three bank accounts (including one associated with The Wedding Vogue) holding a total value of $13,012.58.

The Wedding Vogue

[23] Ms. Gonzalez is originally from Mexico. She holds a Bachelor's degree in Psychology. The parties met in 2011, while both resided in Vancouver, British Columbia. At that time Ms. Gonzalez owned what she describes as a "very

successful cleaning business". She says she employed a group of "independent contractors" cleaning homes and various businesses.

[24] Eventually the parties moved to Nova Scotia in 2013 (Mr. McLean being originally from this province) and were married in 2014. Upon moving to Nova Scotia, Ms. Gonzalez decided to start a wedding planning business.

[25] The Wedding Vogue was registered with the Nova Scotia Registry of Joint Stock Companies (herein after referred to as N.S.R.J.S.C.) in June, 2015, as a partnership. The business partners were the parties. Mr. McLean completed the documents which were filed with the N.S.R.J.S.C. Ms. Gonzalez says upon signing the documents she noticed they identified the business as a partnership. She says "I wasn't entirely sure what that meant, but it didn't really matter to me, so I signed them and Andrew took them to the Registry and filed them." I infer from Ms. Gonzalez's comment, she was not sure what "a partnership" meant in the business sense of the term. I do not accept her evidence on that point.

[26] Initially The Wedding Vogue operated out of the matrimonial home, subsequently moved to rental spaces and eventually to its current location.

[27] The Wedding Vogue's revenue derives from fees for wedding planning services and rental fees for items used for weddings; decorations, chairs, tables, et

al. Mr. McLean's parents loaned Ms. Gonzalez $10,000 to start the business. The loan was provided with no conditions/attachments regarding interest and/or repayment. Ms. Gonzalez says to the date of trial, she has repaid a little over half the amount and intends to make full repayment.

Mr. McLean's involvement with The Wedding Vogue

[28] Mr. McLean does not dispute Ms. Gonzalez was and is "the face" of The Wedding Vogue. Despite being established as a partnership, for all intents and purposes, Ms. Gonzalez has operated The Wedding Vogue as a sole proprietorship.

[29] Mr. McLean says that while together he "did a lot of work behind the scenes" for the business. He says he helped with the set up and take down for various events including returning items to the primary location. He also says he performed services such as painting and making arrangements for tradespeople who were required to help prepare the office space(s) after the business moved from the matrimonial home.

[30] Ms. Gonzalez counters that Mr. McLean's involvement with the business was as a "casual labourer" for which he was paid (above the rate paid to other persons performing similar tasks). She says his involvement was limited to the

weekends (as he was otherwise employed during that period) and he demanded payment for work performed on behalf of The Wedding Vogue. Mr. McLean testified he was paid on five occasions approximately. Ms. Gonzalez says he always required payment.

[31] Mr. McLean seeks an equal division of the value of The Wedding Vogue. Ms. Gonzalez maintains that the business has been run as a sole proprietorship since its inception. She argues that Mr. McLean is not entitled to a share of the business. Further she says the business has significant debt.

Classification of The Wedding Vogue

[32] The evidence establishes that The Wedding Vogue can be classified as a business asset. *R.W.B. v. D.C.B.* 2015 NSSC 254. Accordingly any consideration(s) regarding Mr. McLean's claim to an interest in the business falls under sections 13 and 18 of the *Act.*

[33] In *Pirie v. Pirie,* 2020 NSSC 206 at paragraphs 47 and 48, Justice Jesudason (as he then was) writes:

> [47] Section 18 of the *MPA* allows me to award an amount to be paid as compensation or a share of the interest in a business asset where the claiming spouse "has contributed work, money or money worth in respect of the acquisition, management, maintenance operation or improvement of a business asset of the other spouse".

> [48] Section 18 of the *MPA* deals with direct contributions to a business asset. Indirect contributions shouldn't be considered under this section but can be considered under s. 13 of the *MPA*: *Young v. Young,* 2003 NSCA 63 and *Ryan v. Ryan*, 2010 NSCA 2.

Section 13 considerations

[34] An examination of the relevant Section 13 factors are as follows:

> (d) the length of time that the spouses have cohabited with each other during their marriage;

[35] Relatively speaking this was a short term marriage (5 years). The parties cohabited for approximately two years prior to being married. I acknowledge the principles articulated by our Court of Appeal in *Roberts v. Shotton,* 1997 NSCA 197 in relation to short term marriages.

> (e) the date and manner of acquisition of the assets;

[36] The Wedding Vogue came into being in 2015. It was registered as a partnership with the N.S.R.J.S.C. Mr. McLean's parents loaned Ms. Gonzalez $10,000 towards the startup. The loan is interest free with no conditions. To the date of trial, Ms. Gonzalez has repaid a little more than half the loan.

> (g) the contribution by one spouse to the education or career potential of the other spouse;

[37] I am satisfied Mr. McLean's contributions (direct or indirect) during the startup period enabled Ms. Gonzalez to grow the business sufficient to survive its

infancy and difficulties faced by many service based businesses during the Covid 19 pandemic.

(h) the needs of a child who has not attained the age of majority;

[38] M. will soon be 9 years old. She remains in the primary care of Ms. Gonzalez. Mr. McLean has been unemployed for the past five years and has not contributed financially in a substantive manner to M.'s upkeep.

(j) whether the value of the assets substantially appreciated during the marriage;

[39] Despite not being provided with a valuation for The Wedding Vogue, I am satisfied the sum of the evidence confirms the business has evolved and its value has appreciated.

Section 18

[40] I reasonably conclude the answer to the dispute on whether Mr. McLean was always paid for services rendered for or on behalf of the business, lies somewhere in the middle. Aside from his contributions of labour there was a contribution by his assumption of risk. Although run as a sole proprietorship any potential action against The Wedding Vogue could have involved Mr. McLean as a registered partner. *Pirie v. Pirie, supra*.

[41] Also, in addition to the business initially being operated from the matrimonial home, payments for the heat pump upon its move to the rental location derived from Mr. McLean's bank account. During his cross examination Mr. McLean testified Ms. Gonzalez would e-transfer funds to him on a monthly basis for the heat pump payments. The payment(s) would then be withdrawn from his account. Subsequent to separation Ms. Gonzalez continued to e-transfer same funds to Mr. McLean until July, 2020.

[42] During Ms. Gonzalez's cross examination she testified that the Nova Scotia Power Account was in both their names.

Decision on Mr. McLean's claim to a share of the value of The Wedding Vogue

[43] I accept the business began as a family venture. It is undisputed Ms. Gonzalez has operated the business as a sole proprietorship since its establishment.

[44] Absent Mr. McLean's involvement, The Wedding Vogue may not exist in its current embodiment. His parents helped with funding the startup and despite Ms. Gonzalez's opinion/position to the contrary, I am satisfied his role in getting the business off the ground during its infancy was more than trifling. The principal and as it appears more arduous task is ascribing a value to Mr. McLean's interest in The Wedding Vogue.

[45] While I am satisfied Mr. McLean is entitled to a share of the value in the business, I question whether that share should be 50%. Further I question whether I have the ability to designate a percentage or amount to Mr. McLean's interest in The Wedding Vogue. I shall provide further comment on the latter later in the decision.

Valuing The Wedding Vogue

[46] Upon examination of the Court running file, discussions on the division of assets took place during the April 6, 2021, Court Conference. Counsel for Mr. McLean raised the issue of having a business valuation for The Wedding Vogue completed. During the September 1, 2021, Court Conference, Counsel indicated Mr. McLean was in the process of obtaining an expert to value the business. Counsel also indicated a request for financial disclosure had been sent to Counsel for Ms. Gonzalez, some six weeks prior. The expert could not commence with work on the valuation without the disclosure. Ms. Gonzalez was directed to provide the requested disclosure and the matter was adjourned to November 15, 2021, for a Conference.

[47] On November 15, 2021, Counsel for Mr. McLean indicated the requested financial disclosure had not been provided.

[48] During the December 17, 2021, Court Conference, an Order for Production was granted. The substantive portion of the Order is reproduced below:

> NOW UPON MOTION, the following Is ordered:
>
> 1. Karla Gonzalez shall produce the following and shall provide copies of the following to Cassandra L. Armsworthy, Patterson Law, 10 Church Street, Truro, Nova Scotia, no later than fifteen (15) days after the issuance of this Order:
>
> > The balance sheet of The Wedding Vogue as at November 30, 2019. If a Balance Sheet is not available, then a document showing all of the assets and liabilities of or attributable to The Wedding Vogue as at November 30, 2019 and their respective fair market values, including but not limited to: bank balances, pre-paid expenses, inventory, accounts receivable and capital assets, credit card balances, accounts payable, accrued liabilities, taxes payable, person loans and bank debts.
> >
> > The general ledger of The Wedding Vogue for 2016 through 2019 inclusive;
> >
> > Documentation showing a detailed summary of annual subcontracts and wage expenses on a per-individual basis for 2016 through 2019 inclusive, including the roles, duties, and titles of each individual;
> >
> > Documentation showing a summary of annual weddings and their respective values for 2016 through 2019 inclusive;
> >
> > A listing of any planned wedding and their respective values as at November 30, 2019; and,
> >
> > A listing of any customer deposits held as at November 30, 2019.
>
> 2. In the event Karla Gonzalez is unable to produce any of the documentation or information itemized in this order, she shall provide a sworn statement of explanation regarding any omissions no later than fifteen (15) days after issuance of this order.

[49] The disclosure of items stated above never took place.

[50] During her cross examination Ms. Gonzalez testified that:

- She operates the Wedding Vogue;

- In conjunction with a "business partner" (The Vogue Flower Shop), The Wedding Vogue has expanded into offering floral services;

- The Wedding Vogue's main service remains wedding planning;

- The business has a good reputation in the local community and handled many events in 2024; currently clients should book 8 months in advance in order to plan a wedding;

- The business has expanded/increased its operations since the parties separated; and

- In 2024 The Wedding Vogue earned approximately $350,000 in gross revenue.

[51] Ms. Gonzalez also testified that:

- Her personal and business finances are intermingled. She used/uses her personal credit card for business purposes;

- She does not keep a balance sheet for The Wedding Vogue;

- Prior to the past year, she kept no records of sales. It is only within the past year she began keeping records of services provided;

- Sometimes her personal expenses were paid from the business account;

- She and/or the business owes $137,000 to the Canada Revenue Agency with respect to H.S.T. monies. Ms. Gonzalez expects this amount owing to the C.R.A. to be reduced significantly after the processing of her 2023 Income Tax Return;

- She has never taken a salary from the business;

- Prior to separation some household expenses were paid from the business account;

- With regard to the filing of taxes, she examines the bank statements and highlights/separates the business expenditures from her personal expenditures.

[52] During a particular exchange between Counsel for Mr. McLean and Ms. Gonzalez, she (Ms. Gonzalez) said she did not know what a ledger sheet was in response to Counsel's question on whether she maintains a business ledger. The exact exchange is reproduced below:

> Question – Ms. Armsworthy: Do you recall you were asked to provide general ledgers for The Wedding Vogue?
>
> Answer- Ms. Gonzalez: I don't know what is a general ledger.

> Question- Ms. Armsworthy : So it's fair to say you didn't keep a general ledger?
>
> Answer – Ms. Gonzalez: (First part of the answer is inaudible)….. What is a ledger explain me.
>
> Question – Ms. Armsworthy: Did you keep a balance sheet for the company?
>
> Answer – Ms. Gonzalez : No.
>
> Question – Ms. Armsworthy: Did you keep a list of, did you have a list of weddings you have done and how you have been paid for them….. (The last part of the question is inaudible).
>
> Answer – Ms. Gonzalez: Maybe for the last year that I got a system ….. (The last part of the answer is inaudible).
>
> The Court – Sorry I just want to understand your answer to the question, you are saying just for the past year you kept records?
>
> Answer – Ms. Gonzalez: I have a new system that we are using, so it keeps records of things.
>
> Question – Ms. Armsworthy: So is it fair to say you don't have a lot of records showing what the business was spending or what the business was making?
>
> Answer- Ms. Gonzalez: It is fair to say I have nothing under control.
>
> The Court – You have nothing…..
>
> Answer – Ms. Gonzalez: Under control in terms of the business. Like I have, I have no record of how many things we are buying or how many things we are paying, I have no records.
>
> Question – Ms. Armsworthy: You have no records?
>
> Answer – Ms. Gonzalez: No.

[53] Simply put, I do not accept Ms. Gonzalez's evidence on her bookkeeping practices. She is an experienced business person. I am satisfied her evidence as to her bookkeeping practices is neither credible nor reliable.

[54] I am satisfied Mr. McLean took reasonable steps in attempting to obtain a valuation for The Wedding Vogue.

[55] In *Wolfson v. Wolfson,* 2021 NSSC 260, Justice Forgeron comments on the obligation of " the titled spouse" "to provide credible and meaningful proof of value." At paragraphs 53 to 62 she writes:

> Owner's Obligation to Provide Meaningful and Credible Evidence of Value
>
> [53] Mr. Wolfson is the controlling shareholder of 11 private companies which own and operate 21 rental properties. Mr. Wolfson owns all shares in the 11 companies, except for 5900 Holdings Limited. Mr. Wolfson's two sisters were issued preferred shares in 5900 Holdings Limited. The sisters neither play a role in the company's operations nor do they receive financial benefits from the company.
>
> [54] Further, Mr. Wolfson owns the controlling shares in the management company, LSC Leasing Inc. LSC Leasing Inc does not own real property but rather offers management services to the rental properties. Ms. Wolfson has preferred shares in LSC Leasing Inc.
>
> [55] Mr. Wolfson did not supply proof of the value of his shares in the 12 companies in either of his Statements of Property, despite his obligation to do so. In proceedings brought pursuant to the Matrimonial Property Act, R.S.N.S., c. 275, the titled spouse has a positive obligation to both identify their property and to provide credible and meaningful proof of value. In Canadian Family Law 6th ed., (Toronto, Irwin Law, 2015), authors Julien and Marilyn Payne state as follows at p. 2-8:
>
> > … The Ontario Court of Appeal made it clear in Homsi v. Zaya that the party asserting the value of an asset must provide credible evidence as to its value. This requirement obliges the party to provide not just a guess but a realistic value based on credible evidence. At times, documentary evidence or expert valuations may be required and it may be necessary to obtain information in the possession of a third party. …. However, it is not always necessary to call expert evidence to prove values for minor assets and a court is entitled to ascribe a global value to ordinary household contents.
>
> [56] Similarly, in Evidence in Family Law (Loose leaf ed., 2021), author Harold Niman states as follows about the obligation to provide meaningful financial disclosure in family law proceedings at p 2-8:
>
> > The requirement for parties to make full and complete financial disclosure is fundamental to family law proceedings. Financial statements must be filed wherever financial disclosure is relevant to the issues in a case. As Galligan J. opined in Silverstein v. Silverstein, financial statements "must not be perfunctory pro forma documents but they must be real, complete, up-to-date and meaningful". ….

[57] And at p 2-10:

> In addition, the onus of establishing the value of all property is on the owner – not the party seeking disclosure – and this obligation may require the party to obtain an expert valuation report. It is not acceptable to simply insert "unknown" in a financial statement, even if property values will ultimately be potentially deducted or excluded from a party's net family property.

[58] In **Virc v. Blair**, 2017 ONCA 394, the Ontario Court of Appeal confirmed the obligation of the titled spouse to provide credible evidence of value:

> [56] The husband submits the trial judge misapprehended the evidence and misunderstood the disclosure he made to the wife. He submits he did disclose the existence of his assets as required by the Family Law Act. His wife, he argues, had the ability to value the assets, but did not do so.
>
> [57] The trial judge found, at para. 94 of his reasons:
>
> [T]he husband never alerted the wife to the fact that the book value of Renegade's investments significantly exceeded their market value. At best, the husband's evidence is that he did nothing to prevent the wife from testing the veracity of his representation of the company's value.
>
> The trial judge concluded this was not a sufficient discharge of the duty to make full disclosure, especially given the husband's valuation expertise and the wife's deference to that expertise.
>
> [58] In my view, the husband's submission is improperly characterized as an alleged misapprehension of fact on the part of the trial judge. In reality, the husband asserts an error of law, in that the husband submits he fulfilled his disclosure obligations because the wife could have sought to independently verify his valuations.
>
> [59] The trial judge did not err. Inherent in the duty to disclose is the duty of the titled spouse to fairly value the asset. This is a basic principle of disclosure. The onus is on the party asserting the value of an asset that he or she controls to provide credible evidence as to its value: Menage v. Hedges (1987), 1987 CanLII 5234 (ON SC), 8 R.F.L. (3d) 225 (Ont. U.F.C.), at para. 44; Homsi v. Zaya, 2009 ONCA 322, 65 R.F.L. (6th) 17 (Ont. C.A.), at para. 38. The husband's submission to the contrary is wrong in law.

[59] In **Leskun v Leskun,** 2006 SCC 25, the Supreme Court of Canada approved the comments of Fraser, J which underscored the critical nature of disclosure, while further noting that the non-disclosing husband had a poor platform from which to launch an appeal:

> 34 In all of these circumstances, the appellant has a poor platform from which to launch an attack against the trial judge's conclusion regarding his

assets and liabilities. As Fraser J. commented in **Cunha v. Cunha** 1994 CanLII 3195 (BC SC), (1994), 99 B.C.L.R. (2d) 93 (S.C.), at para. 9:

> Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlements which are inadequate. It increases the time and expense of litigation. The prolonged stress of unnecessary battle may lead weary and drained women simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a reasonably-based suspicion that justice was not done.
>
> If problems of calculation exist the appellant is largely the author of his own difficulties. I would not interfere on that basis.

[60] Moreover, Beaton, JA in **Donner v Donner,** 2021 NSCA 30 discussed the frustrations associated with decision-making in the absence of adequate evidence and the potential consequences for the non-disclosing party:

> [42] As noted by Ms. Donner, in family litigation trial judges are unfortunately often faced with making decisions without the benefit of adequate information. While this can undoubtedly be frustrating for the opposing party, insufficient disclosure leaves trial judges to do justice as best they can with the limited information provided. There comes a point in a case where both the opposing party and the judge should end efforts to secure more or better disclosure, and instead forge a way to a hearing and decision. If not, already burdened trial dockets would risk becoming even more congested, and the resolution opposing parties seek further delayed. The consequences to the party who falls short of meeting disclosure obligations can be addressed by such "tools" as, for example, adverse inferences the judge might draw, credibility findings and evidentiary conclusions the judge might reach, and potential cost consequences that might be imposed on a non-disclosing party.

[61] I now return to the case before me. Although in his Statements of Property, Mr. Wolfson listed his share ownership in his 12 companies, he did not provide credible or meaningful proof of the value of his shares. His failure to do so created a substantive and problematic evidentiary gap.

[62] To address the gap, appraisals of the real property owned by the companies were entered into evidence. Some of the appraisals were acquired by Ms. Wolfson for litigation purposes; others are dated and were created for non-litigation purposes. Thus, the best evidence of the value of Mr. Wolfson's shares, are the property appraisals of the rental properties owned by the companies. From these appraisals and other evidence, each party put forth their position on the value of Mr. Wolfson's shares, which I now review.

[56] The quote from Justice Beaton in *Donner v. Donner,* 2021 NSCA 30, (paragraph 60) illuminates the realities often faced by trial Judges (in family law litigation) due to a lack of disclosure.

[57] Given the totality of the evidence, I am satisfied Ms. Gonzalez's estimation regarding The Wedding Vogue's gross revenue in 2024 cannot be relied upon, as with other aspects of her evidence.

The Matrimonial Home

[58] The parties agree that the former matrimonial home is valued at $519,000. Mr. McLean says that as of January 31, 2025, there is $207,411.73 owing on the mortgage.

[59] Ms. Gonzalez requests that the net equity be divided equally between the parties. Mr. McLean wishes to retain the home, assume responsibility for the mortgage and have Ms. Gonzalez's name released from same. Mr. McLean says that due to Ms. Gonzalez's lack of co-operation (upon the home mortgage coming due for renewal) he has paid approximately $19,865.10 in increased mortgage payments because she refused to sign the renewals. This was not disputed by Ms. Gonzalez. Mr. McLean requests that he be reimbursed for the increased mortgage payments.

[60] Given the lack of evidence regarding the value of The Wedding Vogue, I am left in the unmanageable position of not being able to adequately evaluate Mr. McLean's share in the business. As I stated earlier, Mr. McLean is entitled to a share in the value of The Wedding Vogue. However, as Ms. Gonzalez failed to comply with disclosure requests, including a Court Order, a percentage and/or amount is difficult if not impossible to quantify.

[61] In these circumstances, I draw an adverse inference against Ms. Gonzalez. Additionally it is reasonable to draw an inference between the appreciation of The Wedding Vogue's value and Ms. Gonzalez's failure to comply with the Order for Production.

[62] Research has yielded the following precedents where Judges have declined to order a division of matrimonial assets:

- In *B.A.J. v. S.D.*, 2015 NSSC 205, Justice Dellapinna characterized the evidence with respect to the parties' assets as "unreliable." At paragraph 105 he writes:

  > [105] Given the inadequacy of the evidence presented I decline to order any division of assets but do order that each party will retain the assets currently in his or her possession and each will be responsible for any

> debts currently in his or her name. It is my understanding that there are no joint debts.

- In *M.J.D. v. J.P.D.*, 2001 BCSC 113, a decision from the Supreme Court of British Columbia, Justice Clancy ordered that each party retain assets in their possession, with the exception of some family photographs. At paragraph 43, Justice Clancy writes:

> [43] The evidence as to family assets was unsatisfactory. The description of the assets was superficial and there was no acceptable evidence of value other than the estimates given by the parties. Those values seem to me to indicate that Mr. D. obtained items of a somewhat higher value. He has an entirely different view. It was his obligation to present satisfactory evidence that would allow me to make an order for an unequal division of assets. He has not done so. There will, therefore, be an order that each party retain the family assets currently in their possession.

- In *Surrett v. Butkiewicz*, 2018 BCSC 2194, another decision from the Supreme Court of British Columbia, Justice Baird declined "to attempt" division of certain monetary investment assets because of insufficient evidence.

[63] Within the context of this discussion, it is worth bringing attention to the case of *M.W. v. N.L.M.W.*, 2021 BCSC 1273. That Court faced the task of determining the value of two companies without the benefit of valuation reports. Justice Veenstra assessed the values of the companies utilizing annual income information. At paragraphs 358 to 360, Justice Veenstra writes:

> [358] In order to obtain an allocation of the values of these two companies, in the absence of any valuation evidence and in the interest of providing the parties with

> finality, I have concluded the most appropriate approach is to use the number calculated above in connection with the income determination, which represents approximately one year's net income (without deduction for owner's compensation) for each company – that is, $185,000 for AG Inc. and $20,000 for GI Inc.
>
> [359] I recognize that this is an imprecise method. A business valuator would likely have made further deductions from that amount to establish net earnings, and then applied a multiplier. However, no valuation report has been obtained, and the document production with respect to the two companies would have been insufficient for a business valuation in any event.
>
> [360] I adopt this approach in place of an alternative approach – which would be to simply not allocate any value to either company. In my view, that would give rise to substantial unfairness in the event of an equal division of assets, and necessitate an unequal division of assets that would have had much the same result as the division of assets set out below.

[64] In the absence of a valuation report (and/or equivalent/comparable evidence) it is impractical and I submit imprudent to arbitrarily assign a number to the The Wedding Vogue's value and Mr. McLean's share. The available evidence does not provide the plenitude or copiousness to make a sound and informed decision and certainly lacks the quality and detail of information required for such a task. These facts distinguishes the current case from the situation faced by Justice Veenstra in *M.W. v. N.L.M.W., supra*.

[65] I find I am without sufficient evidence to assign a value to The Wedding Vogue. Correspondingly I decline to order a division of assets.

[66] Each party shall retain the assets currently held in their possession. Principally, Ms. Gonzalez shall be the sole owner of The Wedding Vogue and Mr. McLean the sole owner of the matrimonial home.

[67] Each party shall be responsible for any debts in her/his name.

[68] I am satisfied that given the present equity in the matrimonial home and the growth and increased value of The Wedding Vogue, each party retains an asset of significant worth. I also considered the increased mortgage payments faced by Mr. McLean and the other assets held in their respective possession(s).

[69] I am satisfied my decision on declining to order a division of assets shall not impose a hardship nor unduly prejudice either party.

[70] Within 60 days of the Corollary Relief Order being issued, Mr. McLean shall have Ms. Gonzalez's name removed from the matrimonial home mortgage. Likewise (if not already done) Mr. McLean's name shall be removed from, or as having any partnership interest in The Wedding Vogue.

Parenting Arrangements

[71] M. has been in the primary care of Ms. Gonzalez since the parties separated in November, 2019. The current arrangement for Mr. McLean's regular parenting time is set out in paragraphs 2 to 7 of the Interim Consent Variation Order issued on October 24, 2023.

[72] The arrangement calls for Mr. McLean to have parenting time every Wednesday from 4:00 p.m. to 8:30 p.m. and one day each weekend from 10:00 a.m. to 6:30 p.m. The only holiday/special occasion parenting time identified is Christmas which specifies parenting time from 11:00 a.m. to 6:30 p.m. on December 25 for Mr. McLean.

[73] The Interim Consent Variation Order further states that all of Mr. McLean's parenting time is to be supervised by either of his parents, Josh McLean or any other adult agreed to by the parties.

Positions

[74] Mr. McLean requests that he have unsupervised parenting time every other weekend from Saturday morning to Sunday evening. He also seeks a specified schedule for holidays/special occasions.

[75] Ms. Gonzalez requests maintenance of the status quo (including supervision) with Mr. McLean's parenting time not to take place at the former matrimonial home.

The occurrences of 2022 and 2023

[76] Flowing from my decision in *McLean v. Gonzalez, supra*, Mr. McLean's parenting time was on alternate weekends from Thursday at 1:00 p.m. to Sunday at1:00 p.m. and additional parenting time as mutually agreed upon between the parties in writing. One or both of Mr. McLean's parents was responsible for facilitating M.'s transport for his parenting time visits.

[77] During the summer of 2022, M. attended a daycare at her school. In mid to late June, or early July, 2022, Mr. McLean had a conversation with an Instructor at M.'s school when attending for a parenting time pick up. Ms. Gonzalez says subsequently she was contacted by the school's Principal who expressed concerns regarding comments allegedly made to the Instructor by Mr. McLean about the Principal.

[78] Ms. Gonzalez goes on to state that on July 6, 2022, she informed Mr. McLean and his parents of her conversation with the Principal and of her decision that she would be the only person to pick up and drop off M. at the school. On July 7, 2022, Ms. Gonzalez was informed by the Principal that Birthe McLean picked up M. at 10:30 a.m. Ms. Gonzalez subsequently contacted Ms. McLean requesting that M. be returned to the school as Mr. McLean's parenting time commenced at 1:00 p.m. Ms. Gonzalez says Ms. McLean refused to return the child to the school.

[79] Mr. McLean maintains his conversation with the instructor was appropriate. He says he spoke about his disappointment of "being excluded from information regarding M.'s educational progress". Mr. McLean says Ms. Gonzalez then unilaterally attempted to change his parenting time to three weekends each month, Fridays to Sundays.

[80] Mr. McLean was scheduled to have parenting time with M. during the weekend of August 5, 2022. He says on August 2, Ms. Gonzalez contacted his mother requesting that M. be picked up at 3:30 p.m. on August 4 (the Thursday of that week) and that no one but herself (Ms. Gonzalez) was permitted to pick up the child from her school. Ms. McLean requested that the August 4 pick up take place at 1:00 p.m. Ms. McLean says Ms. Gonzalez refused the 1:00 pm pick up. Ms. McLean agreed to the 3:30 p.m. pick up to take place at a gas station in Bedford. Mr. McLean says his parents attended at the gas station but Ms. Gonzalez and M. did not appear. He says telephone calls to Ms. Gonzalez went unanswered.

[81] Mr. McLean then asked his parents to pick up M. from her school the following day (Friday, August 5). They arrived at the school at 1:35 p.m. M. was out on a field trip so they waited in the parking lot. Mr. McLean also attended, independent of his parents. Mr. McLean says when he arrived Ms. Gonzalez was "filming or taking pictures" of his parents while standing with the school Principal.

[82] By all accounts what transpired appears to have been a chaotic scene involving the parties, the school Principal, the Vice Principal (according to Ms. Gonzalez) and the Paternal Grandparents. Fortunately it appears M. was not present during the scenario. Ms. Gonzalez says she took the child into the school building so that she would not be exposed to the conflict.

[83] Mr. McLean says he contacted the police in an effort to have them assist with enforcing his parenting time for that weekend. He says Ms. Gonzalez informed the police it was her weekend and the following weekend (the weekend of August 12) was Mr. McLean's. The police informed Mr. McLean that Ms. Gonzalez would make M. available for his parenting time on Thursday, August 11.

[84] Birthe McLean's Affidavit evidence indicates the police informed Frank McLean and herself that Ms. Gonzalez told them the weekend of August 5 was her weekend and Mr. McLean's was the following weekend. She further states Ms. Gonzalez did not make M. available during the weekend of August 11, 2022.

[85] Ms. Gonzalez says following the incident, the Principal informed her M. would no longer be permitted to attend that school.

[86] It is undisputed Mr. McLean was then denied parenting time with M. until October 11, 2023. Under cross examination Ms. Gonzalez confirmed she denied Mr. McLean contact with M. from August, 2022 to October , 2023.

[87] Ms. Gonzalez's Affidavit sworn on June 12, 2023, sets out her concerns regarding the state of Mr. McLean's mental health based on various occurrences in 2022 and 2023. In his Affidavit evidence, Mr. McLean says he became ill shortly before the contempt hearing scheduled for June 26, 2023. He says he became ill because of his lack of attention to a physical injury he suffered while working on a car and various stressors in his life (such as ongoing litigation regarding this matter and the aforementioned criminal code charges against him) and I infer his failure to seek assistance regarding the combined effects of same on his mental health.

[88] Mr. McLean was "placed on an involuntary hold" at a mental health facility in the HRM. He was hospitalized for approximately one month. He was connected with a Psychiatrist. He was prescribed medication to aid with stress and anxiety. He continued to meet with the Psychiatrist and other mental health professionals during the summer months of 2024. He says he has been utilizing the tools provided by the mental health professionals to better manage stress and is able to seek their assistance if required.

[89] Mr. McLean says he did not experience any mental health crises prior to that incident and none since.

Legislation and Case Authorities

[90] Any determinations I make concerning M. in the context of parenting arrangements, ought to be considered in the lenses of her best interests. Section 16(3) of the *Divorce Act* sets out the following factors:

> **(3)** In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
>
> > **(a)** the child's needs, given the child's age and stage of development, such as the child's need for stability;
> >
> > **(b)** the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
> >
> > **(c)** each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
> >
> > **(d)** the history of care of the child;
> >
> > **(e)** the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
> >
> > **(f)** the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
> >
> > **(g)** any plans for the child's care;
> >
> > **(h)** the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
> >
> > **(i)** the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
> >
> > **(j)** any family violence and its impact on, among other things,
> >
> > **(i)** the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

> **(ii)** the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
>
> **(k)** any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[91] Section 16(6) states:

> **Parenting time consistent with best interests of child**
>
> **(6)** In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

[92] In *V.S.J. v. L.J.G.,* 2004 Can LII 17126 (ONSC), the term "best interests" is examined in the context of parental contact:

> [122] "Best interests" is an imprecise, vague and difficult legal criteria to define and apply.
>
> [123] The application of the best interests test in the context of access was carefully considered by the Supreme Court of Canada in *Young v. Young* (1993), 1993 CanLII 34 (SCC), 49 R.F.L. (3d) 117 (QL) (S.C.C.). The majority decision considered the issue of best interests one of balancing harmful conduct against the benefits of promoting parental contact. McLachlin C.J.C. concludes as follows:
>
> > 210 I conclude that the ultimate criterion for determining limits on access to a child is the best interests of the child. The custodial parent has no "right" to limit access. The judge must consider all factors relevant to determining what is in the child's best interests; a factor which must be considered in all cases is Parliament's view that contact with each parent is to be maximized to the extent that this is compatible with the best interests of the child. The risk of harm to the child, while not the ultimate legal test, may also be a factor to be considered. This is particularly so where the issue is the quality of access -- what the access parent may say or do with the child. In such cases, it will generally be relevant to consider whether the conduct in question poses a risk of harm to the child which outweighs the benefits of a free and open relationship which permits the child to know the access parent as he or she is. It goes without saying that, as for any other legal test, the judge, in determining what is in the best interests of the child, must act not on his or her personal views, but on the evidence.

> [124] The difficulty the courts have in applying the best interests of the child test was discussed in *MacGyver v. Richards* (1995), 1995 CanLII 8886 (ON CA), 11 R.F.L. (4th) 432 (Ont.C.A.) by Abella J.A. who stated at para. 27:
>
> > Clearly, there is an inherent indeterminacy and elasticity to the "best interests" tests which makes it more useful as legal aspiration than as legal analysis. It can be no more than an informed opinion made at a moment in the life of a child about what seems likely to prove to be in that child's best interests. …

[93] In *G.Y. v. C.Y.*, 2024 ONSC 1673, Justice Ramsay of the Ontario Superior Court of Justice provides further commentary on the Supreme Court's decision in *Young v. Young* (1993), 1993 Can LII 24 (SCC):

> [413] The Supreme Court of Canada laid out the principles guiding access in *Young*, at paras. 27 and 219:
>
> > As the ultimate goal of access is the continuation of a relationship which is of significance and support to the child, access must be crafted to preserve and promote that which is healthy and helpful in that relationship so that it may survive to achieve its purpose. Accordingly, it is in the interests of the child, and arguably also in the interests of the access parent, to remove or mitigate the sources of ongoing conflict which threaten to damage or prevent the continuation of a meaningful relationship. [Emphasis added.]
> >
> > . . .
> >
> > I conclude that the ultimate criterion for determining limits on access to a child is the best interests of the child. [Emphasis added.]
>
> [414] In *Young*, the Supreme Court noted that "the custodial parent has no "right" to limit access": at para. 219. The termination of parental rights is a remedy of last resort. In *C.A.S.* v. *C.F. and J.M.*, 2020 ONSC 3755, McGee J. stated that "Access is the right of a child": at para. 32. Access is only to be ordered in circumstances where there will be a benefit to the child; parents do not have an absolute "right" of access: *Jennings v. Garrett*, (2004) 2004 CanLII 17126 (ON SC), 5 R.F.L. (6th) 319 (Ont. S.C.J.). Justice Blishen's decision in *Jennings* is widely cited in cases involving a request to terminate access (parenting visits). He stated as follows:
>
> > There is a presumption that regular access by a non-custodial parent is in the best interests of children. The right of a child to visit with a non-custodial parent, to know and maintain or form an attachment to a non-custodial parent is a fundamental right and should only be forfeited in the most extreme and unusual circumstances. To deny access to a parent is a

> remedy of last resort: at para. 128. [Emphasis added, internal citations omitted.]
>
> [415] The caselaw establishes that supervised access is normally contemplated for before termination is considered. In this case, the respondent thwarted any attempt for supervised visits to take place, even when she showed up on time. Given the court's finding that the respondent is an alienating parent, the court is not convinced that a therapeutic goodbye, which would permanently sever this child's relationship with her father, would be in M.'s best interest.

[94] In this jurisdiction, Justice Forgeron provides the following synopsis in *J.T. v. M.W.,* 2017 NSSC 118:

> [16] In addition, the following legal principles have emerged from case law, including the decisions of **Young v. Young**, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3 (S.C.C.); **Abdo v. Abdo** (1993), 1993 CanLII 3124 (NS CA), 126 N.S.R. (2d) 1 (N.S. C.A.); **Bellefontaine v. Slawter**, 2012 NSCA 48 (N.S. C.A.); and **Doncaster v. Field**, 2014 NSCA 39 (N.S.C.A.):
>
> - The burden of proof lies with the party who alleges that access should be denied or restricted, although proof of harm need not be shown. Proof of harm is but one factor to consider in the best interests test.
> - The right of the child to know and to be exposed to the influence of each parent is subordinate in principle to the child's best interests.
> - The best interests test is a positive and flexible legal test which encompasses a wide variety of factors, including the desirability of maximizing contact between the child and each parent, provided such contact is in the child's best interests.
> - The court must be slow to extinguish or restrict access. Examples where courts have extinguished access include cases where access would place the child at risk of physical or emotional harm, or where access was found to be contrary to the child's best interests.
> - An order for supervised access is seldom seen as an indefinite or long term solution.
> - Access is the right of the child; it is not the right of a parent.
> - There are no cookie-cutter solutions. Courts must examine the unique needs of each child and craft an order that protects and enhances that child's best interests.

Analysis

[95] In both her Affidavit and viva voce evidence, Ms. Gonzalez cites Mr. McLean's mental health struggle(s) as her rationale for denying him parenting time with M. and upon its reinstatement that it be supervised.

[96] In his closing arguments, Counsel for Ms. Gonzalez articulated the following points:

- Ms. Gonzalez only became aware of Mr. McLean's mental health crisis upon the filing of his Affidavit for this trial;
- Without the element of supervision, Ms. Gonzalez would not have the ability to know if Mr. McLean has suffered a mental health setback; and
- Mr. McLean's evidence as to the current stability of his mental health is an assertion, not a fact, as there is no evidence before the court corroborating same.

[97] Counsel requests that I draw a negative inference against Mr. McLean in relation to his position that his mental health is stable but provided no medical evidence to corroborate same.

[98] As articulated in the case authorities, it is in M.'s best interests and also her fundamental right to maintain contact with her father. Ms. Gonzalez's justification

for denying the child contact with Mr. McLean (as protecting her) is not credible. Ms. Gonzalez continued to follow the access schedule in 2022 even after some occurrences where she seemingly questioned the stability of Mr. McLean's mental health.

[99] Ms. Gonzalez made the unilateral decision (after her unilateral consultation with the school principal) that neither Mr. McLean's parents nor himself could effect access exchanges at the M.'s school. In my original decision, I designated Mr. McLean's parents with the task of facilitating the child's transport (for access visits) as I determined their ability to provide a stabilizing presence in a high conflict situation. Their assistance/presence had been invaluable in ensuring Mr. McLean's continued contact with M. and also limiting the possibility of contact between the parties and ergo further conflict. The assistance of the Paternal Grandparents was also helpful from a practical perspective as Mr. McLean may have been subject to an undertaking from Provincial Court to refrain from contact with Ms. Gonzalez.

[100] I conclude from Birthe McLean's Affidavit evidence her insistence to Ms. Gonzalez that the conflict between the parties be kept between the parties and as much as was/is possible, not to involve the Paternal Grandparents. I further conclude Ms. Gonzalez took umbrage to Ms. McLean's approach.

[101] In my view Ms. Gonzalez could have utilized a more reasoned approach/process regarding her concerns, if she concluded Mr. McLean's mental health posed a risk to M. The utilization of supervision instead of flat out denial for over one year could have been a viable option. Also, her denial of contact commenced well in advance of the mental health crisis suffered by Mr. McLean in 2023.

Decision on Mr. McLean's Parenting Time

[102] In *McLean v. Gonzalez, supra*, I state in paragraphs 75 to 77:

> **Willingness of a Parent to Facilitate Contact and Develop and Maintain a Relationship with the Other Parent**
>
> [75] Ms. Gonzalez's behaviour with respect to the facilitation of Mr. McLean's parenting time subsequent to the November 11, 2019, incident calls for stern disapproval. Ms. Gonzalez effectively denied Mr. McLean parenting time for considerable periods. Ms. Gonzalez attributes this to acting in Maya's best interests, given some of the behaviours displayed by Mr. McLean.
>
> [76] To date the Court has issued five Interim Orders in this matter. All but the last (Interim Order issued March 11, 2021) required Mr. McLean to participate in counselling for issues that may include substance use and/or anger management. All but the August 19, 2020, Interim Order required the involvement of Mr. McLean's parents during his parenting time, whether facilitating transportation, directly supporting or supervising.
>
> [77] The involvement of the grandparents adds that layer of comfort which should go towards mitigating concerns with respect to Mr. McLean's behaviour. Ms. Gonzalez must continue to support Mr. McLean's parenting time with Maya and foster a positive relationship.

[103] Mr. McLean maintains that Ms. Gonzalez used the final decision making authority granted to her in the original decision (and order issued on August 24,

2021) to justify her denial of parenting time and stated to him as such. Ms. Gonzalez denies making any such statement to Mr. McLean. Whether Ms. Gonzalez verbally weaponized her decision making authority to deny Mr. McLean his court ordered parenting time is immaterial. It remains clear Ms. Gonzalez justifies her actions in the context of protecting M. Undoubtedly her denial of parenting time to Mr. McLean for over one year was wrong and must be seen for what it was; her disagreement with Mr. McLean and his mother over what she perceived as a challenge to her authority.

[104] The jurisprudence clearly articulates that "the burden of proof lies with the party who alleges that access should be denied or restricted, although proof of harm need not be shown." It would be inappropriate for me to draw an adverse inference against Mr. McLean in these circumstances. Based on her concerns it was well within Ms. Gonzalez's purview to pursue evidence and subpoena witnesses in relation to the status of Mr. McLean's mental health. She chose not to.

[105] Upon review and consideration of the relevant factors set out in Section 16(3) and Section 16(6) of the *Divorce Act* and the case authorities, I find there is insufficient evidence to order that Mr. McLean's parenting time continue to be supervised.

[106] I am satisfied there is compelling evidence to conclude it is in M.'s best interests that parenting time with her father not take place at the former matrimonial home. The photographs depicting the state of the home (contained in Court Exhibit 2) confirms it is not a fit location for a child of M.'s age to cohabit. In the future, should Mr. McLean wish to exercise his parenting time with M. at the former matrimonial home, he must clean the home and make it fit for that purpose.

[107] Mr. McLean shall have unsupervised parenting time every Wednesday from 4:00 p.m. to 8:30 p.m. and every other weekend from Saturday at 11:00 a.m. to Sunday at 6:00 p.m. Birthe McLean shall continue to facilitate M.'s transport for Mr. McLean's parenting time visits.

[108] I confirm apart from Mr. McLean's request for a specified holiday/special occasions parenting time schedule, no other proposal was made. The holiday/special occasion parenting time schedule shall be as follows:

March Break - Commencing in 2026 and in all even numbered years, Mr. McLean shall have parenting time with M. from after school on the Friday leading into the March Break holiday to Wednesday at 12 noon. Ms.

Gonzalez shall have parenting time with M. from Wednesday at 12 noon to the beginning of school whereby the regular parenting schedule shall resume. This schedule will alternate so that in odd numbered years, commencing in 2027, Ms. Gonzalez shall have the first half of the March Break holiday (Friday to Wednesday) and Mr. McLean the second (Wednesday to Sunday).

Easter - Commencing in 2026 and in all even numbered years, Ms. Gonzalez shall have parenting time with M. from after school on holy Thursday to 6pm on Easter Saturday. Mr. McLean shall have parenting time from 6pm on Easter Saturday to 6pm on Easter Monday. This schedule shall alternate so that in odd numbered years, commencing in 2027, Mr. McLean will have the first half of the Easter holiday (Thursday to Saturday) and Ms. Gonzalez the second half (Saturday to Monday). Thereafter the regular parenting schedule shall resume.

Mother's Day and Father's Day -	M. shall be in the care of the celebrating parent from 11 am to 6 pm if mother's day or father's day does not fall on that parent's weekend.
Summer -	Mr. McLean shall have parenting time for 1 week (Sunday to Sunday) in July and 1 week (Sunday to Sunday) in August of each year. The weeks shall not be taken consecutively. Mr. McLean shall inform Ms. Gonzalez on or before May 31 of each year, the weeks he wishes to designate. Ms. Gonzalez will inform of any conflict regarding dates on or before June 7 of each year. In even numbered years Mr. McLean's designated dates will have priority and in odd numbered years Ms. Gonzalez's plans will have priority.
Christmas -	M. will be in Ms. Gonzalez's care each year on December 24 to 12 noon on December 25. Mr. McLean will have parenting time each year from 12 noon on December 25 to 12 noon on December 26. Thereafter the regular parenting schedule shall resume.

[109] Mr. McLean shall have any other parenting time with M. as mutually agreed in writing between the parties.

[110] Any overnight parenting time exercised by Mr. McLean shall take place at the residence of Birthe and Frank McLean. As stated earlier, Mr. McLean shall not exercise any parenting time with M. at the former matrimonial home.

Decision Making Responsibilities

[111] Paragraphs 1, 2 and 3 of the Order (Family Proceeding) issued on August 24, 2021, reads as follows:

> Terms for joint custody
>
> 1. "Joint Custody" is defined as both parties, in carrying out their parental role and responsibilities as set out herein, shall consult with the other before making any major development decision which could affect the children's education, religious upbringing, health, development or relationship with the other parent.
>
> 2. In the event consensus cannot be reached, the parties shall seek a professional opinion. If consensus still cannot be reached, the professional opinion shall be final.
>
> 3. If the decision involves an issue in which a professional opinion is not warranted and the parties are unable to reach consensus, Ms. Gonzalez shall have final decision-making authority.

[112] Mr. McLean requests that the order flowing from this decision "specify that Ms. Gonzalez's decision-making authority does not include the authority to unilaterally deny my parenting time, as that has been an ongoing issue." At

paragraphs 39 and 43 of his Affidavit sworn February 3, 2025, Mr. McLean says Ms. Gonzalez used her final decision making authority to deny his parenting time.

[113] In paragraph 38 of her Affidavit sworn June 12, 2023, Ms. Gonzalez says; "I did not state that I was keeping M. under my final decision-making authority. I was doing so to protect M." In his pre-trial submissions, Counsel for Ms. Gonzalez requests that she be designated M.'s sole decision maker.

Legislation and Case Authorities

[114] Sections 16.2 (2), 16.3 and 16.4 of the *Divorce Act* reads:

> Day-to-day decisions
>
> (2) Unless the court orders otherwise, a person to whom parenting time is allocated under paragraph 16.1(4)(a) has exclusive authority to make, during that time, day-to-day decisions affecting the child.
>
> 2019, c. 16, s. 12
>
> Allocation of decision-making responsibility
>
> 16.3 Decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either spouse, to both spouses, to a person described in paragraph 16.1(1)(b), or to any combination of those persons.
>
> 2019, c. 16, s. 12
>
> Entitlement to information
>
> 16.4 Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request from another person to whom parenting time or decision-making responsibility has been allocated information about the child's well-being, including in respect of their health and education, or from any other person who is likely to have such information, and to be given such information by those persons subject to any applicable laws.
>
> 2019, c. 16, s. 12

[115] In *Caniga v. Thwaites,* 2024 ONSC 6390 (CanLII), the Court addressed the issue of decision making as follows:

> [76] Justice Madsen summarized the law as it relates to decision making in *Gaynor v. Cruz Belliard*, 2024 ONSC 1661, at paras. 88-90:
>
> > 88 The level of conflict between the parties is a crucial consideration in determining whether joint decision-making is appropriate. Joint decision-making is frequently contraindicated where there is significant conflict: see *Kaplanis v. Kaplanis* (2005), 2005 CanLII 1625 (ON CA), 10 R.F.L. (6th) 373 (Ont. C.A.), at paras. 10-11. It is a misuse of sole decision-making responsibility where information is not shared or worse, where access to information is blocked. Awarding sole responsibility for major decision-making where a party has misused this on a temporary basis rewards past inappropriate behaviour: see *J.Y. v. L.F.-T.*, 2019 ONSC 1718, 22 R.F.L. (8th) 272 (Div. Ct.), at para. 15; and *T.T.U. v. A.M.U.*, 2024 ONSC 677, at para. 18.
> >
> > 89 Decision-making authority helps ensure that a parent's relationship with their child is not marginalized. See *Rigillo v. Rigillo*, 2019 ONCA 548, 31 R.F.L. (8th) 356, at para. 12; *Khurmi v. Sidhu*, 2022 ONSC 6413, at para. 14; and *T.T.U.*, at para. 18.
> >
> > 90 The goal in crafting an appropriate decision-making regime is to promote the child's "right to grow up within a parenting regime that is co-operative and effective, where decisions are made in a child-focused way and with the least amount of acrimony and stress.": see *McBennett v. Danis*, 2021 ONSC 3610, at para. 96, citing *J.B.H. v. T.L.G.*, 2014 ONSC 3569, at para. 354; and *Mane v. Mane*, 2023 ONSC 5343, at para. 85.
>
> [77] It is important to a child's well-being for them to know that both parents, to the extent that it is in their best interests, participating in their life. This participation does not only include spending time with the child but also playing an active role in making decisions that will shape the child's life.

[116] In *Griggs v. Brooks,* 2016 NSSC 268, Justice Legere-Sers was called upon to consider care arrangements for children in a shared custody v. primary care argument. At paragraph 67 Justice Legere-Sers writes:

> [67] On a rare occasion where maintaining a power balance between parents is essential, the Court will impose a shared parenting or parallel parenting arrangement to keep both parents firmly ensconced in their children's lives.

[117] Of course the distinguishing feature in this scenario is the consideration being decision making authority.

Analysis

[118] I am unclear whether Ms. Gonzalez consulted Mr. McLean prior to enrolling M. in her former school. The sum of the evidence suggests he was not consulted. I am satisfied he was not consulted prior to M. being enrolled in her current school. I am also satisfied it is more than likely Mr. McLean has not been consulted on any major decision affecting M. since the prior trial and decision.

[119] It is immaterial whether Ms. Gonzalez verbally invoked her final decision making authority to Mr. McLean as a justification/rationale for denying his parenting time. The more pertinent indicator is her actions. Based on her action of denying Mr. McLean contact with M. for over one year, it is not unreasonable to conclude Ms. Gonzalez used her final decision making authority as a sword in a unilateral and inappropriate manner.

[120] Clearly the provisions of the current order relating to the issue of decision making requires a revamping to ensure Mr. McLean remains relevant in his

daughter's life in a meaningful way. In her pre-trial submissions, Counsel for Mr. McLean sets out a number of proposed provisions with respect to the issue of decision making. I find the provisions suggested by Counsel are appropriate and in keeping with M.'s best interests. The suggested provisions shall form a part of the Order flowing from this decision:

Decision-making

- The parties would have joint-decision-making authority with respect to all major decisions affecting M., including those related to health, education, spiritual upbringing, or general welfare.

- In the event that a major decision arises, Ms. Gonzalez shall advise Mr. McLean in writing. The notice shall provide a full explanation of the decision to be made, state Ms. Gonzalez's position, and provide all necessary details, including the names and contact information of any involved professionals.

- Mr. McLean shall be free to contact the involved third party professionals to obtain any information he feels necessary to allow him to make a decision and shall reply in writing to Ms. Gonzalez within

three (3) business days to advise as to whether or not he agrees with her position and state any reasons supporting the decision.

- If there is no agreement, and a third party professional is involved, the parties will defer to the recommendation of the third party professional.

- If there is no agreement, and no third party professional is involved, Ms. Gonzalez will have final decision-making authority. She will advise Mr. McLean of her decision within 48 hours of receiving his response.

- Both parties shall have the right to obtain information from third-party professionals involved with M., including teachers, school officials, doctors, dentists, and child care providers. Neither party will make any effort to limit the other parent's ability to communicate with third party professionals who are involved with M.

- All communications between the parties will be polite, respectful, business-like and child-focused.

- Mr. McLean may, at his discretion, employ the use of a third party to assist him in communicating with Ms. Gonzalez, All communications

with the third party will be polite, respectful business-like and child-focused.

- Ms. Gonzalez's final decision-making authority cannot be used to unilaterally change the parenting schedule. Changes to the parenting schedule shall be made only by agreement of both parties.

[121] In addition to the Corollary Relief Order (setting out the terms of this decision), a separate order granting both parties the ability to independently obtain information/reports regarding M. from third party providers (Educational institutions, medical professionals, et al) is granted.

Prospective Child Support

[122] Subsequent to the prior trial Mr. McLean was not ordered to pay child support to Ms. Gonzalez as he was unemployed and without an income. Mr. McLean remains unemployed. He continues to reside in the former matrimonial home. His parents have provided/provides the necessary financial assistance which enables him to remain in the home (payment of the mortgage etc.) He is currently in receipt of income assistance benefits.

[123] Ms. Gonzalez requests that income be imputed to Mr. McLean at the minimum wage rate. Mr. McLean seeks a further twelve months to obtain employment. He asks that income not be imputed to him at this time.

[124] I am satisfied the evidence supports Ms. Gonzalez's request that imputation of income to Mr. McLean should be considered.

The Legislation and Case Authorities

[125] Section 19(1)(a) of the Federal Child Support Guidelines reads:

> **19 (1)** The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
>
> > **(a)** the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

[126] In *Rideout v. Woodman,* 2016 NSSC 205, at paragraph 29, Justice Forgeron's synopsis of the jurisprudence on the imputation of income is helpful to my analysis here:

> [29] Given these submissions, I must now determine if income should be imputed to Mr. Rideout since the 2005 court order. In **Smith v. Helppi**, 2011 NSCA 65 (N.S. C.A.), para 16, Oland J.A. approved the factors outlined by Dr. Julien D. Payne, in *Imputing Income, "Determination of Income; Disclosure of Income", Child Support in Canada*, Danrab Inc., August 3, 1999 as quoted by Martinson, J. in **Hanson v. Hanson**, 1999 CanLII 6307 (BC SC), [1999] B.C.J. No. 2532 and by Wilson J. in **Gould v. Julian**, 2010 NSSC 123 (N.S.S.C.). These factors are as follows:

- 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." (*V. (J.A.) v. V. (M.C.)* at para 30.)

- 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 of work, freedom to relocate and other obligations.

- 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 the 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.

- Persistence in unremunerative employment may entitle the court to impute income.

- A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.

- As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

[30] In **Parsons v. Parsons**, 2012 NSSC 239, paras 32 and 33, this court distilled other principles applicable to s. 19 imputation claims as follows:

- The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reason 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.).

- 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.).

- 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.).

> • 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.).
>
> • 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.).
>
> • 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.

Analysis

[127] Mr. McLean is 43 years old. He holds a bachelors degree from a local university. He testified as to currently having “no physical or mental disability.” He has been unemployed for the past five years.

[128] Mr. McLean says trying to find employment during the period which encompassed the Covid 19 pandemic was challenging as he chose not to be vaccinated. Many employers required potential employees to be vaccinated.

[129] I acknowledge Mr. McLean’s argument relating to the stress he suffered because of the breakdown of the marriage, the resulting litigation and the criminal

code charges against him. However, apart from the period during which he was hospitalized after the mental health crisis, I have not been provided with any evidence which substantiates Mr. McLean's underemployment/unemployment.

[130] I find it is reasonable to impute income to Mr. McLean for the following reasons:

- He has provided no cogent evidence (medical or otherwise) for his underemployment/unemployment;
- His level of education suggests he has the ability to earn an income at least at the minimum wage rate; and
- Based on the sum of the evidence, it is reasonable to conclude he has intentionally chosen to remain underemployed/unemployed.

[131] The current minimum wage rate in Nova Scotia is $15.70 per hour. Based on a 40 hour work week the annual amount calculates to $31,591.68. Income in the annual amount of $31,591.68 is imputed to Mr. McLean.

[132] Commencing March 1, 2025, and continuing on the first day of each month thereafter, Mr. McLean shall pay prospective child support to Ms. Gonzalez in the guideline amount of $270.73 per month.

Special or Extraordinary Expenses

[133] The parties shall contribute to any section 7 expense proportionally. Based on an imputed annual income of $31,591.68, Mr. McLean's contribution shall be 38%. Based on an annual income of $51,432, Ms. Gonzalez's contribution shall be 62%.

Retroactive Child Support and Retroactive Special or Extraordinary Expenses

[134] Ms. Gonzalez requests that Mr. McLean be ordered to pay retroactive child support in the amount of $11,904, and retroactive section 7 expenses in the amount of $1,953. I shall consider Ms. Gonzalez's requests in accordance with the factors set out by the Supreme Court of Canada in *D.B.S. v. S.R.G.* [2006] 2 S.C.R. 231. Those factors are:

- Understandable reasons for Ms. Gonzalez's delay in applying for child support;
- Mr. McLean's conduct;
- M.'s circumstances; and
- Could Mr. McLean experience a hardship if a retroactive award is ordered.

Understandable reason for the delay

[135] Notwithstanding Ms. Gonzalez's oversight of not advancing a claim for child support in her Notice of Variation Application filed June 12, 2023, I am satisfied she has not intentionally delayed her request for retroactive child support and section 7 expenses. Mr. McLean's employment or lack thereof/circumstances were addressed in the prior trial and subsequently he was under no child support obligation. Other issues pertaining to M. have been at the forefront.

[136] Ms. Gonzalez addresses the issue of retroactivity in her February 11, 2025, Affidavit.

The Conduct of the Payor Parent

[137] At paragraphs 106 and 107 of *D.B.S. v. S.R.G., supra* the Supreme Court states:

> 106 Courts should not hesitate to take into account a payor parent's blameworthy conduct in considering the propriety of a retroactive award. Further, I believe courts should take an expansive view of what constitutes blameworthy conduct in this context. I would characterize as blameworthy conduct anything that privileges the payor parent's own interests over his/her children's right to an appropriate amount of support. A similar approach was taken by the Ontario Court of Appeal in *Horner v. Horner* (2004), 2004 CanLII 34381 (ON CA), 72 O.R. (3d) 561, at para. 85, where children's broad "interests" — rather than their "right to an appropriate amount of support" — were said to require precedence; however, I have used the latter wording to keep the focus specifically on parents' support obligations. Thus, a payor parent cannot hide his/her income increases from the recipient parent in the hopes of avoiding larger child support payments: see *Hess*

> *v. Hess* (1994), 1994 CanLII 7378 (ON SC), 2 R.F.L. (4th) 22 (Ont. Ct. (Gen. Div.)); *Whitton v. Shippelt* (2001), 293 A.R. 317, 2001 ABCA 307; *S. (L.)*. A payor parent cannot intimidate a recipient parent in order to dissuade him/her from bringing an application for child support: see *Dahl v. Dahl* (1995), 1995 ABCA 425 (CanLII), 178 A.R. 119 (C.A.). And a payor parent cannot mislead a recipient parent into believing that his/her child support obligations are being met when (s)he knows that they are not.
>
> 107 No level of blameworthy behaviour by payor parents should be encouraged. Even where a payor parent does nothing active to avoid his/her obligations, (s)he might still be acting in a blameworthy manner if (s)he consciously chooses to ignore them. Put simply, a payor parent who knowingly avoids or diminishes his/her support obligation to his/her children should not be allowed to profit from such conduct: see *A. (J.) v. A. (P.)* (1997), 1997 CanLII 12394 (ON SC), 37 R.F.L. (4th) 197 (Ont. Ct. (Gen. Div.)), at pp. 208-9; *Chrintz*.

[138] In particular I highlight the direction that courts take an expansive view of the elements of blameworthy conduct and that such conduct can be characterized as anything that privileges the payor's parent interests over the child's right to support.

[139] I have made a finding that Mr. McLean has chosen to remain underemployed/unemployed. I am satisfied Mr. McLean's behaviour falls within the parameters of the Supreme Court's definition of blameworthy conduct.

Circumstances of the Child

[140] Ms. Gonzalez has been able to provide for M.'s needs (with little or no financial help from Mr. McLean) since the parties separated. A retroactive award would be beneficial to M.

Hardship Occasioned by a Retroactive Award

[141] It is reasonable to conclude that a retroactive award may place a hardship on Mr. McLean, given his current circumstances. This reality is weighed against the fact that Mr. McLean has chosen to remain underemployed/unemployed for five years, thus depriving M. of her right to be financially supported.

Decision

[142] After carefully considering the various factors in their totality, I will exercise my discretion and grant an award for retroactive child support and section 7 expenses.

[143] The period of retroactivity shall be from June 1 , 2023, (Ms. Gonzalez filed her Notice of Variation Application on June 12, 2023) to February 28, 2025. For the purposes of retroactive child support, income shall be imputed to Mr. McLean based on the minimum wage rate for the relevant years. The breakdown is as follows:

- The minimum wage rate for the period April 1, 2023 to October 1, 2023, was $14.50 per hour. On October 1, 2023, the rate increased to $15.00 per hour. For the period June 1, 2023, to September 30, 2023, Mr.

McLean's annual imputed income calculates to $30,136.80, with a guideline amount of $259.12 per month. For the period October 1, 2023, to March 31, 2024, Mr. McLean's annual imputed income calculates to $31,176, with a guideline amount of $267.41 per month. For the period June 1, 2023, to March 31, 2024, Mr. McLean owes Ms. Gonzalez $2,640.94 in retroactive child support.

- The minimum wage rate increased to $15.20 per hour on April 1, 2024. For the period April 1, 2024, to February 28, 2025, Mr. McLean's annual imputed income calculates to $31,591.68, with a guideline amount of $270.73 per month. For the period April 1, 2024, to February 28, 2025, Mr. McLean owes Ms. Gonzalez $2,978.03 in retroactive child support.

[144] In total Mr. McLean owes Ms. Gonzalez $5,618.97 in retroactive child support and $1,925.97 in retroactive special or extraordinary expenses. If he is unable to pay the amounts owing in a lumpsum, Mr. McLean shall pay in increments of $200 per month until same amounts are paid in full.

Conclusion

[145] Counsel for Mr. McLean shall draft the Corollary Relief Order and the Order permitting both parents to independently obtain information/reports pertaining to M. from third party providers.

[146] The parties may file written submissions on costs 30 days after the issuing of the Corollary Relief Order.

Samuel C.G. Moreau, J.