

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Major v. Shupe*, 2026 NSSC 86

Date: 20260317

Docket: HFD No. MCA 062747

Registry: Halifax

Between:

Keith Major

Applicant

v.

Natalie Shupe

Respondent

Judge: The Honourable Justice Moira Legere Sers

Heard: October 23, 2025, October 31, 2025, January 21, 2026, in Halifax, Nova Scotia

Counsel: Judith Schoen, for the Applicant, Keith Major
Natalie Shupe, Self-Represented

By the Court:

Historic Facts

[1] The parties to this proceeding lived together between 2001 and spring 2008. They never married. They have two children, “S” born March 13, 2006, and “K” born February 4th, 2008. “S” is currently 19. Both children reside with the Respondent mother. Both are attending educational programs.

The Record

[2] The original court order required the Applicant father to pay table amount of child support of \$545.00 and Section 7 expenses of \$125.00 for childcare for a total support amount of \$670.00, commencing October 15, 2009, based on an annual income of \$36,970.20.

[3] The March 3rd, 2009, court conciliation record reflects a joint custody arrangement between the parties with the children residing solely with the mother. The Consent Order directed the mother would have final decision-making authority, given the father lived in Edmonton, Alberta.

[4] The father’s shared parenting application of March 18, 2010, was subsequently dismissed after he failed to appear on the return date.

[5] This motion was commenced after the Respondent registered the 2009 child support order for enforcement, in July 2022, resulting in enforcement procedures. On July 18th, 2022, the Applicant filed this Notice of Motion for Interim Relief.

[6] According to Maintenance Enforcement records, the father owed \$101,800.00 to May 15th, 2022. Further arrears have accumulated. Mr. Major sought suspension of enforcement of arrears as calculated by the Program and relief under s. 37 of the Maintenance Enforcement Act.

[7] No child support had been paid according to the order, from 2009 forward until the Interim Relief Order of October 20, 2022.

[8] The Applicant did not apply to vary the order. Although discussed in case management memos, no undue hardship application was filed.

[9] The Applicant seeks to have arrears recalculated from 2009 forward, to reflect his actual income. He seeks forgiveness of arrears. He also seeks an

adjustment/reduction in retroactive calculations to reflect a shared parenting arrangement.

[10] The Applicant was represented throughout; the Respondent was self represented for the entirety of the actual hearing on the merits.

[11] In pursuing this legal process following the Motion for Interim Relief, in 2022, there have been multiple appearances, case management and settlement conferences, and multiple orders to disclose, before various Judges. On April 23, 2023, Orders to Produce and disclose were issued.

[12] This matter came before me for hearing on October 23rd and 31st, 2025. Final submissions and amended calculations were submitted in November 2025, January 21, 2026, February 9th and 11th, 2026.

[13] A second hearing was held on January 21st, 2026, after the completion of the principal hearing but before final submissions. Until that point, there was no consent to include the eldest child as a dependant. Additional evidence satisfied the Applicant that both children remained dependent children of the union.

[14] Both parties agreed that the court could issue one decision regarding all issues.

ISSUES:

1. Determining the court's authority to include on its own motion reference to the *Parenting and Support Act*.
2. Determining whether a shared parenting arrangement existed, as alleged. If it existed, for what period did it exist and what effect should it have had on the quantum of child support?
3. Determining whether to include or exclude RRSP income and CERB payments.
4. Determining the start and finish date for recalculation.
5. What, if any, portion of the arrears should be forgiven?
6. Determining prospective and section 7 support for the eldest child currently attending University.

Issue 1: Determining the court's authority to include on its own motion reference to the *Parenting and Support Act*.

[15] The motion for interim relief before this court cited relief under section 37 of the *Maintenance Enforcement Act*. The *Parenting and Support Act* ought to have been cited, if not by the Applicant, then by the Respondent. The two Acts (PSA and MEA) are inextricably connected; one to empower a court to make the order and one empowering the court to enforce, rescind, or vary the order.

[16] I do not know why an application to vary was not coupled with the Interim Motion for Relief; whether it was strategic or simply overlooked. Section **37 (1)(a) of *The Maintenance Enforcement Act* 1994-95, c. 6**, provides the authority to review the arrears to determine whether all or part of the arrears ought to be forgiven.

- 37(1) Where a payor defaults in the payment of maintenance under a maintenance order or fails to comply with a requirement of the Director pursuant to clause 36(1)(k), the Director, in the case of a maintenance order being enforced by the Director, or the recipient may apply to the court for a hearing of the matter.
- (2) At a hearing pursuant to this Section, unless the contrary is shown,
 - (a) the payor is presumed to have the ability to pay the arrears owing and to make subsequent payments under the maintenance order; and
 - (b) a statement of arrears prepared by the Director is presumed to be correct as to the arrears owing
- (3) At a hearing pursuant to this Section, the court, unless it is satisfied that the payor is unable for valid reasons to pay the arrears or to make subsequent payments under the maintenance order, may order that
 - (a) the payor pays all or part of the arrears in such manner as the court considers just.

[17] The Act provides numerous other options to the court. Section 39 deals with Variations of Maintenance orders. It states in part:

An application to vary a maintenance order being enforced by the Director pursuant to this Act shall be made pursuant to the *Parenting and Support Act* or the *Divorce Act* (Canada), whichever is applicable

- (5) Where the court, that is asked to enforce a judgment, order or decree of the Supreme Court of Nova Scotia is satisfied that
 - (a) the circumstances have changed; and

- (b) the judgment, order or decree should be varied, rescinded or suspended, the court may file a report with the prothonotary or officer of the court that issued the judgement, order or decree or with such other person as the rules of the Supreme Court may provide.

[18] The relief requested by the Respondent is sometimes brought by the Director of Maintenance Enforcement. In this case the Respondent is moving it forward on her own accord. Her response to this Interim Motion to suspend and forgive arrears has been consistent; enforce all arrears.

[19] A fulsome review of past arrears demands an assessment of what arrears flow from the Order being enforced. If there has been a decrease in income, it is sometimes coupled with a request to review what should have been paid in accordance with the guidelines, had either or both parties kept their order current.

[20] Where significant arrears exist which create a sizeable lump sum obligation; the court may choose to verify the lump sum by using actual income figures, particularly where significant discrepancies exist between historic support orders and actual income.

[21] If the payor's income had diminished, such that a court might have changed the child support order, the arrears would then be based on actual income. This will be a more accurate and fair result.

[22] Notably, flowing from this Notice of Motion, subsequent orders have been issued varying the child support amount. Both parties have referred this issue to the court in their multiple presentations. I find there was implicit consent and an expectation that the child support payment forward would reflect an application of the Child Support Guidelines in accordance with current income. This ensured the child support awarded was current.

[23] Is there authority to permit the Court to incorporate a reference to the *Parenting and Support Act* This would permit a retroactive and prospective assessment of child support obligations to the current date; all in the interests of fairness and completeness.

Support order

9 Upon application, a court may make an order, including an interim order, requiring a parent or guardian to pay support for a dependent child.

Powers of court

10 (1) When determining the amount of support to be paid for a dependent child or for a child under Section 11, the court shall do so in accordance with the Guidelines.

(2) The court may make an order pursuant to subsection (1), including an interim order, for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as the court thinks fit and just.

37 (1) The court, on application, may make an order varying, rescinding or suspending, prospectively or retroactively, a support order or an order for decision-making responsibility, parenting arrangements, parenting time, contact time or interaction where there has been a change in circumstances since the making of the order or the last variation order.

(2) When making a variation order with respect to child support, the court shall apply Section 10.

[24] It is clear to me, from the parties' pre, and post hearing submissions, that they seek to have me review retroactively the arrears and determine whether they should all or in part be enforced.

[25] Throughout the last three years of court appearances, correspondence and case management conferences, it is clear that the relief requested by the Applicant relates to a request to retroactively assess the support from October 2009 forward to the present date; determine the duration of any retroactive claim; adjust for what was alleged was a period of shared parenting, which might then require a *Contino* analysis; decide on what if any portion of arrears ought to be forgiven and determine prospective support (see April 2023, July 2023, September 11, 2023 letter from counsel, repeated in her letter of February 18th 2025 and case management conference memo February 2025)).

[26] In the Applicant's pretrial summary filed August 24, 2022, the Applicant lists the issues to be decided as follows:

1. Is there retroactive child support owing and if so, how much?
2. What is the appropriate quantum of ongoing child support?

[27] The 2009 Order has been amended to reflect current circumstances when the Applicant sought interim relief. These orders have been issued on consent of the parties. In granting a temporary suspension of enforcement, the court issued an interim support order on October 20, 2022. The court recalculated the support order for the two children to a monthly payment of \$670.00 starting from June 2022 forward. The Applicant began paying the court ordered amount of \$670.00 per month from that date.

[28] The Interim Consent Order adjusted support to \$712.00 per month from December 1, 2024, forward, based on the gross up of the Applicant's WCB benefits, resulting in an annual income of \$39,753.

[29] In the Respondent's written and oral submissions, she seeks full enforcement of arrears and ongoing child support adjusted to current circumstances.

[30] Neither party advanced a formal application to vary in accordance with the Rules, even though their requests to suspend or enforce the past order and consent to change the current interim order prospectively is evidenced in court and on the record.

[31] This matter started in 2002 and has only come to hearing in October 2025. The issue of prospective child support by way of section 7 university costs is clearly before the court, as is a division of orthodontic expenses. Each party has had more than sufficient time to address their evidence. There have been multiple post hearing submissions. Further delay on form will prejudice both parties.

[32] I am satisfied on all the documentation, letters and submissions filed, that both parties required a fulsome analysis. It is the Applicant payor that wants a full retrospective review and forgiveness, and it is the payee with dependant children that wants full enforcement and prospective changes in accordance with the CSG.

[33] I have decided in the interests of efficiency and justice to incorporate a variation of child support retroactively and prospectively, where appropriate, while assessing the arrears and determining how those arrears are to be addressed. This will result in a reduction of some past arrears and an increase in child support where the income dictates it is appropriate in accordance with the CSG.

[34] Failure to take a holistic approach would create a real prejudice to the Respondent mother and the children. They would see a diminishment in child support retroactively and miss out on appropriate child support prospectively, at least from 2020 to date.

[35] By virtue of the assessment on the quantum of arrears, I will be indirectly assessing what an appropriate child support award should have been post 2009 to support a reduction and/or increase in child support and to conclude what arrears ought to be enforced, considering current obligations.

[36] While it might have been preferable to file an application to vary, to ground the prospective retroactive and relief, both parties have explicitly asked the court in their pleadings to assess these including adjusting the current support to reflect section 7 expenses

[37] Too much effort has been expended in the appearances before the court, case management conferences and settlement conferences set up under the original Notice of Motion in 2022, to ask the parties to start again by formally filing an application to vary, to achieve the same results.

[38] I find authority to support incorporating reference to the *Parenting and Support Act* to consider current and prospective variation on my own Motion from the following:

- The *Parenting and Support Act* defines “application” as “an application made in accordance with ... the *Nova Scotia Civil Procedure Rules*” (s 2(a)). As such, Rules 2.02 and 2.03 apply, leaving it open to the court to excuse compliance with a rule, or to correct an irregularity.
- In *Robichaud v MacKay*, 2014 NSSC 199, [2014] NSJ No 293, an existing order dealt with issues of custody and access, but not child support (paras 6-12). The applicant paid child support in the absence of an order (para 116-117). The applicant subsequently filed an application for variation, including of child support. Justice Dellapinna said:

Although the Applicant has applied to vary a child support order, there is no child support order to vary. Rather than compel the Applicant to file a new application which would put both parties to unnecessary additional expense, I will treat that portion of the Applicant's pleadings as an irregularity as contemplated by Civil Procedure Rule 2.02 and on the Court's own motion will treat her application to vary the child support order as an application in the first instance for an order for child maintenance pursuant to the Act.

Arrears

[39] The Maintenance Enforcement record shows \$101,800.00 in arrears owing to May 15th, 2022. The second MEP report for the period 01-June 2022 to 03 Nov 2025 reflects the changes made to monthly child support flowing from subsequent orders. Payments in accordance with the order appear to have been made and adjusted from June 15th, 2020, to November 2025.

[40] There is no dispute that between 2009 and May 2022, zero (0) payments were made in accordance with the order. The father confirmed he made no payments through MEP until they began enforcement in June 2022.

[41] There is no dispute that between 2009 and 2017 the children lived primarily with the mother.

[42] Due to the findings in this decision the current record of arrears will be adjusted to accord with actual incomes, retroactive and prospective, unpaid childcare, underpayments to interim orders, orthodontic expenses and post secondary school expenses.

[43] Any payments made since the enforcement procedures to November 1, 2025, have been credited to the Applicant. My decision reflects an assumption that payments continued as ordered to February 1st, 2026, and have been credited to the Applicant. If this is not correct, the Maintenance Enforcement Program shall adjust the arrears to reflect unpaid support.

[44] My review has determined that arrears to February 28th, 2026, are \$108,961.76. What follows is my analysis of the presented facts and law that support my decision.

Applicant's reasons for retroactive review

[45] Despite the order, the Applicant alleges that no payments are due as the parties had an arrangement, whereby, he paid the expenses either to the Respondent directly or on behalf of the children. He said he did make payments towards child support, although not in line with the order. He alleges those payments exceeded the amount specified in the order. The Applicant also alleges the parties had a shared parenting arrangement for a five-year period sometime between 2017 and 2022 ending in November 2021. In other filings he suggested it started and ended earlier.

[46] The Respondent disputes this contention. She contends the children have lived with her principally (greater than 60% of the time) as the primary parent, continually since birth.

[47] The Applicant also asks the court to exclude from the calculation of his income, the 2020 and 2021 CERB benefits (\$18,000 each year) and the 2022

RRSP income (\$14,468.7) he received. Post hearing, in the final submission, the Applicant acknowledged that the CERB payments ought to be included in income.

[48] The mother seeks to include the CERB and RRSP income in the calculation of support with an order enforcing full arrears. She seeks a contribution towards orthodontic expense and prospective support for the two children, including a contribution for her eldest child's post secondary education expenses.

[49] There are circumstances which made this hearing considerably difficult, including:

- a) Less than complete disclosure from both parents, despite repeated requests for disclosure from the Bench.
- b) The demand for a retrospective analysis back to 2009, the date of the existing order.
- c) Difficulty obtaining records from CRA other than Notices of Assessments for some years. The full returns were necessary to separate out income by source.
- d) Some returns were unavailable because the Applicant did not keep records. It also appears he only recently filed some returns. He admits there may have been some gaps in filing. He accepts for the years 2012, 2013 the court may use his 2014 income tax return.
- e) Lack of detail from both the Applicant and Respondent as to timing of any changes to parenting plans, division of labour, division of expenses and simply lack of memory of historic events.
- f) Costs and standard of living analysis in both households is hampered without the full returns, notice of assessments and full financial disclosure as to full household finances. These were important to a fulsome analysis.
- g) The long history of nonpayment.
- h) The self representation of the Respondent has proven problematic. Her lack of transportation to get to court, lack of appreciation for filing requirements that would assist her claim, inability to retain counsel and logistic difficulty obtaining duty counsel; time constraints given she holds two jobs; lack of appreciation for legal issues, lack of legal representation to assist in direct and cross examination, all proved to be obstacles. In preparation for the second hearing on child support the Respondent eventually did have an opportunity to see duty counsel.

ISSUE 2 -Did a shared parenting arrangement exist? If it existed, for what period did it exist and what effect should it have had on the quantum of child support?

[50] I have reviewed the evidence carefully with a view to determine whether the Applicant has met the burden of proof regarding the existence of a shared parenting plan.

Early Parenting schedule 2009- 2016

[51] Each affidavit in support of the father's assertion that a shared parenting arrangement existed is notable for its brevity, lack of precision and lack of a fulsome reporting on the chronology of events.

[52] This left the court trying to piece together disparate pieces of the most reliable evidence to determine whether a shared parenting plan existed, what were the roles of the parents, when it might have started and ended, if at all, and what responsibilities each parent continued to bear.

[53] During the initial 2009 appearance and for some undetermined time after that, the father lived in Alberta. He could not, when asked, provide a date, month or year when he returned to Nova Scotia. Reviewing his income tax returns was not helpful.

[54] There is no contest regarding the mother's statement that between 2009 and 2016 all visits with the children occurred in her home, according to the availability of the father.

[55] After the second child was born in 2008, the father would visit the youngest child in the mother's household and take the eldest out for a visit, returning her home for the night. His parenting time depended on his schedule and his location.

[56] On the totality of the evidence provided, I find the Applicant's contact with the children while outside the province, was minimal. The father admits that before 2016, he could not exercise his parenting time because he lived in Edmonton.

[57] The mother testified, and the father agreed, that from 2009 forward there were no overnights with the children until 2016. The children were then ten and eight years old in 2016.

[58] In his second affidavit, dated 11th September 2025, the father expands on his contact with the children. He states at paragraph 13:

During periods of time when I was incapable of working when the girls were young, I had discussions with Ms. Shupe, and she invited me into her home for periods of time where I

slept on the couch. I was able to reciprocate to some extent by assisting with the kids during these periods and helping her tidy the house. I did not keep track of specific time periods that this occurred nor the length of time I stayed over the various time spans but she was aware of my financial circumstances, as I would not have approached her, nor would she have invited me in to stay with her, had I not been destitute and without accommodations during these times.

[59] In response to the father's claim that he offered the mother parenting assistance while in her home during those early years (remembering we do not know when he was in Alberta and when in Nova Scotia) the mother admits that on one occasion her children asked her to let their dad stay in the home when he had no place to stay. This stay was of short duration.

[60] She also added that she already had day care plans in place. She adamantly denies his assistance while in her home was as robust as he suggested.

In the Applicant's Reply affidavit dated October 9th, 2025, he admits:

my assistance was primarily in relation to providing instruction in helping individual kids with the correct stance and movements required (*as it relates to karate*)

[61] The children remained in the mother's sole care from 2009 until sometime in late 2017 or early 2018 under a limited parenting plan designed largely to fit the father's circumstances.

[62] The father admits there were no formal arrangements for parental contact before 2016.

[63] When the eldest child was about 10 and the youngest 8 years of age, the father entered a relationship with a girlfriend I shall refer to as T. She assisted him in having parental contact on a more regular basis. I do not have the precise dates when the Applicant and T. were a couple.

[64] The Applicant then commenced parenting time in his home for the first time. The mother facilitated this increase in contact which worked for the father and the children.

[65] During that period no child support was paid despite repeated requests.

[66] During this cohabitation period with the Applicant and T in 2016, the mother describes a more regular schedule of Wednesdays and every second weekend. The father admits a more structured parenting arrangement occurred. He did not

remember if there were Wednesday visits, but he believes he saw the children regularly. He contends that he took them to school sometimes and picked them up after school sometimes.

[67] That structured parenting contact ceased when the relationship with T ended. Thereafter he returned to sporadic visits.

2017-2022

[68] In the Applicant's July 15th, 2022, affidavit, he contends the following:

After the order (i.e. *the 2009 order*) was issued, the parenting arrangement changed in that I was having the children in my care a minimum of 50% of the time.

[69] On the face of this assertion, one might think a shared parenting plan commenced soon after the order. The father's own evidence, his current partners evidence, the mother's evidence and other supplementary evidence does not support this conclusion.

[70] In late 2017 the Applicant met his current partner. Ms. Murphy supported a more structured parenting plan for the father. She testified they dated for approximately five months prior to, in her words" "Keith and I" buying a home on November 27th, 2017, and moving in together after purchase.

[71] At that time the eldest child would have been well into her 11th year and the youngest well into her 9th year.

[72] Ms. Murphy submitted a short affidavit and testified briefly in court. Her affidavit was amended in oral testimony to confirm the purchase of their new home was in November 2017. The home is in her name, and she provided the down payments. The Applicants contribution was not disclosed.

[73] The Applicant/father's evidence indicates that his relationship with Ms. Murphy started in 2018. I infer from other testimony that they began their relationship sometime in the latter half of 2017.

[74] Ms. Murphy testified she met the children shortly before the purchase of their home. I take this to mean that she first met the children before the November 2017 purchase.

[75] The deed helps establish a date, although undetermined, after which the parents may have talked about more extensive parenting time for the father.

[76] I have no evidence of firm start dates or finish dates to this plan. Neither of the parents or other witnesses could provide an accurate description of how this started.

[77] Ms. Murphy said in paragraph 17:

Although the parenting arrangements originally started out as a relatively informal exchange between Natalie (the mother), this progressed into a more solidified schedule relatively quickly and the girls were staying with us for a week and with Natalie (i.e. the *mother*) for the following week. The week on/week off arrangements started in approximately November of 2017 and I specifically recall a morning routine and getting the children to school, doing homework after school, and getting them organized mostly to participate in martial arts with Keith in the evenings.

[78] In her affidavit Ms. Murphy advised that Keith (the father) would take them to school in the morning whereas in his *viva voce* testimony the father clearly indicated Ms. Murphy drove them to school leaving, one child at the mother's home, until her school began.

[79] I am inclined to believe Ms. Murphy principally took them to school in the morning for the bulk of the time they were overnight in the father's residence. Ms. Murphy was in and out of the mother's house to do so.

[80] Ms. Murphy said she picked the children up after school. There is also a suggestion perhaps the father picked them up sometimes.

[81] The father's *viva voce* testimony was brief and not entirely helpful. He was not forthcoming on cross examination Without counsel; it was difficult for the mother to draw information from the Applicant to clarify or explain the details and get behind his evasiveness.

[82] He did not expand on the details of this parenting arrangement and admitted his girlfriend did much of the driving to school. He did advise he paid \$200 for the oldest child's cell phone (which he removed when the eldest ceased visiting him completely).

[83] The Respondent /mother indicates that the grandparents paid for the child's cell phone. The mother continued a relationship with the paternal grandparents, and they helped her when they could.

[84] Ms. Murphy's son provided an affidavit stating he lived with his mother for some of the time in question and the girls were around a lot between 2014 and 2024. This contrasts with his mother's (Ms. Murphy's) testimony that she had not met the children until later in 2017.

[85] The son's affidavit did not help define the nature and extent of the parental relationship. It does not accord with his mother's evidence as to a potential start date. His testimony is absent any defining time periods or frequency, and he admits he was otherwise occupied most of the time.

[86] There are many versions of a start date for more extensive parenting time. The one that appears most reliable is Ms. Murphy's date that the home was purchased on November 27th, 2017 (deed provided), and thereafter there was a place to try out more extensive parenting.

[87] The evidence also discredits the Applicant's testimony that shortly after the 2009 order a shared parenting arrangement existed.

[88] The mother admits that after Ms. Murphy entered the scene, she agreed to expand the father's contact (as she had with his previous girlfriend). She agrees they discussed a shared parenting arrangement. She said she was willing to try a week on week off parenting plan for a two-year stretch.

[89] The evidence also suggests that both the mother and Ms. Murphy tried to support an expanded parenting plan with the father.

[90] The mother's evidence and the father's brief comments lead me to the conclusion that they discussed this as a possible plan and decided to try week about, but ultimately found it was not operable or sustainable for reasons that will be discussed later.

[91] An incident between the eldest child and her father resulted in her abrupt return home, without notice to the mother after one parenting period on November 10th, 2022. Her cell phone was removed from her and future visits ended. Although the younger child continued her visits for a short time, those stopped as well. I have no evidence as to what transpired.

[92] Ms. Rodrigues lives across the street from the father's home. She testified about seeing the children in the father's home. Her affidavit verifies the children spent time with their father but does not assist in supporting a shared parenting

relationship or defining the nature and extent of the parenting plan. She observed the children playing with their father and doing outdoor activities including participating in Karate classes. All of this is admitted.

[93] Ms. Rodrigues observed the girls continuously in their father's care from 2016 to 2022. If her evidence is tendered to support a shared parenting plan from 2016 as a date of commencement, that would contradict the mother's testimony and Ms. Murphy's testimony.

[94] It may be that she saw them together, but the more reliable evidence indicates that after the first relationship ended in 2016 the visits with the father reverted to a random schedule.

[95] In 2022, Ms. Murphy and the Applicant sold the home where his children first visited with him and purchased another larger home using the equity they accumulated. Ms. Murphy was vague when quantifying the amount of the equity. She suggests it may have been \$20,000 to \$30,000.

[96] The Respondent moved for enforcement after the father purchased the second home. By that time all visits between the children and the father ended. By identifying this I do not make any inference or finding of malice. Malice was not present in the mother's testimony.

[97] Ms. Murphy did put the father's children on her medical plan for a while and took them off when what they thought might blossom into a shared parenting arrangement was terminated by the children. Ms. Murphy was supportive of the Applicant's parenting time and clearly contributed to driving the children and providing benefits as she could.

[98] I was not given dates for commencement or termination of coverage. I don't know if or how this benefit was used.

Parental duties
Transportation

[99] During the father's week it appears that for the most part Ms. Murphy would drive one child to school and drop the other off at the mother's apartment until her school went in an hour later.

[100] The father admits this but says he sometimes drove the children and picked them up.

[101] The mother does not have a car or a licence to drive. She advised that her mother, the children's grandmother, was her principal support and driver for the children's appointments and activities.

[102] The mother also advised that her mother, the children's grandmother, lived in the same building, was the go-to person if she was not home and drove the children for her, as her principal support for transportation and supervision. The children moved between the mother's apartment and the grandmother's apartment in the same building, whenever they needed something.

[103] It appears that, during the father's parenting time, Ms. Murphy entered the mother's home to leave the other child there. It is not clear to me whether she stayed the entire time to supervise or left the child at the mother's home until she left her mother's, to go to school and Ms. Murphy to work. The children went to their mother's home at lunch and after school and were picked up or driven to the father's home when he returned from work.

[104] The father suggests he was the back- up transport for the children particularly after he returned from Alberta. The mother disagrees. The totality of the evidence supports the mother's view.

[105] From 2018 to the present the father has been in receipt of Workers Compensation Benefits. He indicates he cannot work. No one has questioned his medical status, and no medical information has been provided to the court. There are clear periods throughout at least 2019 when his WCB income have been supplemented by employment income and benefits. Why he could not be the principal driver orchestrating the whereabouts of the children during his week is a puzzle.

[106] The mother also speaks to other employment the father had in the past that did not involve manual labour.

[107] In 2017 the father declares income solely from WCB. If shared parenting was in play between late 2017 and early 2018 and later, it would have been during the time he was on disability benefits. In 2018 he has employment income, WCB and some EI income. In 2019 he declares little employment income some EI and WCB benefits.

[108] The father's last employment income, according to his tax returns, was in 2019. In 2020-2021 he was in receipt of CERB and WCB benefits.

[109] I have no information as to what the parents did during COVID. Ms. Murphy worked outside the home until 2024. She ended her employment in 2024. Her financial circumstances are not before me.

[110] The facts raise questions that remain unanswered, answers that would have been useful in weighing the means and circumstances of the parties.

Supervision

[111] The mother also advised that during their attempt to implement a shared parenting arrangement and during the father's week, the father would typically change the schedule without notice and the children would end up at her home. He would drop the children off without notice to her and would simply return the children to her on some weekends.

[112] Thus, except for lunches that *might have been provided* by the other parent's household on alternate weeks, the mother's home continued to provide for their day-to-day needs including the hard costs of providing a residence for the children, i.e. food, heat, lights etc. I have insufficient evidence as to who provided the food on daily basis during the fathers parenting time

[113] The provision of supervision, lunches, and after school care also came from the mother's plans and safety net provided by the grandmother.

[114] The father admits there were severe difficulties with the "shared parenting arrangement" as the children would not abide by his direction and stay in his home for the entire week despite his repeated direction to refrain from attending their mother's home. The children did not observe the schedule. It is unclear to me why they spent so much time at the mother's if he was unemployed and available to bring them to his home.

[115] The father admits telling the children they were not to go over to their mother's home during his time with them. Nevertheless, they came to her place before school, at lunch and after school to be fed and cared for; to have a place to stay.

[116] The father admitted that the mother lived closer to the children's school, and it made sense to go there.

[117] On the totality of the evidence the children's decision to return to the mother's home is understandable. She was their principle and primary parent for

much of their life, and their father's involvement started later in their lives as a visiting parent and then as a partner to two people who facilitated more sustainable parenting.

[118] I have no dates or times, nor any evidence of a division of other duties or roles.

Communication and information exchange between parents

[119] The father advised that the parents did not ordinarily exchange information between themselves.

The Law relating to assessing whether a Shared parenting arrangement exists

[120] I turn now to examine the law on shared parenting, according to section 9 of the *Child Support Guidelines*. *SOR/97-175*, and section 9 of the *Child Support Guidelines*, NS Reg 53/98.

[121] The leading authority on this subject arose from the Supreme Court of Canada *Contino v. Leonelli-Contino* [2005] 3 S.C.R. 217, 2005 SCC 63, per McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Abella and Charron JJ.:

[122] Section 9 of the Guidelines provides:

Shared parenting time

- 9 Where a parent exercises parenting time with a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
 - (a) the amounts set out in the applicable tables for each of the parents.
 - (b) the increased costs of shared parenting time arrangements; and
 - (c) the conditions, means, needs and other circumstances of each parent and of any child for whom support is sought.

[123] In the SCC *Contino* court summary, it is noted that section 9 implies a departure from the payor/recipient model that comes under s. 3.

Section 9 requires a court to determine the amount of child support in accordance with the three listed factors **once the 40 percent threshold is met**. The specific language of s. 9 warrants emphasis on flexibility and fairness to ensure that the

economic reality and particular circumstances of each family are properly accounted for. The three factors structure the exercise of the discretion and none of them should prevail. The weight given to each factor will vary according to the particular facts of each case. [Emphasis added]

Under s. 9, there is no presumption in favour of awarding at least the Guideline amount under s. 3. Nor is there a presumption in favour of reducing the parent's child support obligation downward from the Guidelines amount, as it is possible that, after a careful review of all the factors in s. 9, a court will come to the conclusion that the Guideline amount is the proper amount of child support. [paras. 19-31] [para. 39]

Under s. 9(a), a court is required to take the financial situations of both parents into account, but the provision does not include a conclusive formula to determine how the Table amounts are to be considered or accounted for.

The simple set-off amount is the preferable starting point for the s. 9 analysis, but it must be followed by an examination of the continuing ability of the recipient parent to meet the needs of the child, especially in light of the fact that many costs are fixed.

Where both parents are making effective contributions, it is necessary to verify how each parent's actual contribution compares to the Table amount that is provided for each of them when considered payor parents. [Emphasis added]

This will provide the judge with better insight when deciding whether the adjustments to be made to the set-off amount are based on the actual sharing of child-related expenses.

The court retains the discretion to modify the set-off amount where, considering the financial realities of the parents, it would lead to a significant variation in the standard of living experienced by the children as they move from one household to the other. [paras. 40-51.]

Section 9(b) does not refer merely to the expenses assumed by the payor parent as a result of the increase in access time from less than 40 percent to more than 40 percent. This paragraph recognizes that the total cost of raising children may be greater in shared custody situations than in sole custody situations.

Given that some applications under s. 9 are not meant to obtain a variation order but constitute a first order and that the Table amounts in the Guidelines do not assume that the payor parent pays for any expense for the child, the court will consider all of the payor parent's costs.

The court will examine the budgets and actual expenditures of both parents in addressing the needs of the children and determine whether shared custody has resulted in increased costs globally. These expenses will be apportioned between the parents in accordance with their respective incomes. [paras. 52-53]

Lastly, s.9(c) vests the court with a broad discretion to analyse the resources and needs of both the parents and the children. It is important to keep in mind the

objectives of the Guidelines, requiring a fair standard of support for the child and fair contributions from both parents.

The court will look at the standard of living of the child in each household and the ability of each parent to absorb the costs required to maintain the appropriate standard of living in the circumstances. Financial statements and/or child expense budgets are necessary for a proper evaluation of s. 9(c).

There is no need to resort to s. 10 and s. 7 of the Guidelines either to increase or to reduce support, **since the court has full discretion under s. 9(c)** to consider "other circumstances" and order the payment of any amount above or below the Table amounts... **It is important that the parties lead evidence relating to ss. 9(b) and 9(c)**, and courts should demand information from the parties when the evidence is deficient. A court should neither make "common sense" assumptions about costs incurred by the payor parent, nor apply a multiplier to account for the fixed costs of the recipient parent. [paras. 56-57] [Emphasis added]

[124] The analysis of Bastarache J. is instructive, emphasizing the critical principle all parents need to know. Given there were no payments made in accordance with the court order since 2009 in the case before me, it is important the Applicant understand his **free-standing obligation to support his children.**

32 The underlying principle of the Guidelines is that "spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation" (*Divorce Act*, s. 26.1(2) (see Appendix)). The Guidelines reflect this principle through these stated objectives (Guidelines, s. 1): (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation; (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective; (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[125] Bastarache J. also recognized the difficulties facing courts when considering a shared parenting analysis and set out the analysis required pursuant to section 9.

4. The application of the factors under s. 9 of the Guidelines have proven to pose serious difficulties. The problems have been addressed in terms of fairness. As mentioned by professor C. Rogerson in her article "Child Support Under the Guidelines in Cases of Split and Shared Custody" (1998), 15 Can. J. Fam. L. 11, at p. 20:

Pushing in favour of some adjustment is a concern for fair and consistent treatment of payors *who incur increased expenses* during the time they spend with the child.

There are two dimensions to the fairness claim. *The first is fairness between the payor and the support recipient, who is arguably being relieved of some costs assumed by the payor.* The second is fair and consistent treatment of the payor as compared to payors at the same income level who may not be spending any money directly on their children apart from the payment of child support.

But then adjustments are hard to evaluate. More time spent with a child may not involve increased spending or significant savings for the other parent. Where there is a significant disparity of incomes, a new formula can mean a drastic change in the amount of support for the lower-income parent, who was previously the custodial parent, and exacerbate the differences in standard of living in the two households. (emphasis added).

5. Against this backdrop, the role of the Court is to interpret the Guidelines as drafted by Parliament. Section 9 is labelled "Shared custody". Forty percent or more time spent with physical access to the child triggers the application of the three factors in s. 9. The Court is being asked to decide whether the s. 9 award can be greater than the Guidelines amount; whether the Guidelines amounts are presumptively applicable; whether all three factors in s. 9 are to be given equal weight; whether "increased costs" under s. 9 refers to increased costs of the previously non-custodial parent or increased costs resulting from the shared custodial arrangement; whether a multiplier can be used in the absence of evidence of increased costs; and how actual needs, conditions and means are taken into account in deciding on a deviation from the Guidelines amounts. These questions must be approached in the context of the particular facts of this case, to which I now turn.

[126] Bastarache J. added, at para.24

The court "must" determine the amount of child support in accordance with the three listed factors once the 40 percent threshold is met. There is no discretion as to when the section is to be applied: *discretion exists only in relation to the quantification of child support* (J. D. Payne and M. A. Payne, Child Support Guidelines in Canada 2004 (2004), at p. 254).

[127] And at para.27:

The three factors structure the exercise of the discretion. These criteria are conjunctive: none of them should prevail (see *Wensley*, at p. 90; *Payne and Payne*, at p. 254; *Jamieson v. Jamieson*, [2003] N.B.J. No. 67 (QL), 2003 NBQB 74, at para. 24). *Consideration should be given to the overall situation of shared custody and the costs related to the arrangement while paying attention to the needs, resources and situation of parents and any child. This will allow sufficient flexibility to ensure that the economic reality and particular circumstances of each family are properly accounted for. It is meant to ensure a fair level of child support.*

[128] Courts continue to struggle to conduct a factual analysis to determine whether a shared parenting arrangement in fact exists: see *Lindsay-Graham v. Lindsay*, Chiasson J., 2023 NSSC 197; at paras 82-89; *Marchand v. King*, Marche J., 2025 NSSC 172, at para 52; *SW v. JH*, 2022 ABPC 162, at paras 37-52; *YS v. K.R.C.*, 2024 BCSC 1473, at paras 125-126; *JS v. M.F.N.*, 2024 NBKB 237, at paras 78-86; *A. A. v. J.A.*, [2023] 2023 NBKB 210, at paras 62-76; and *Papaevangelou v. Papaevangelou*, 2024 ONSC, 4692 at paras 25-36.

[129] In *Lindsay-Graham v. Lindsay*, the court determined a shared parenting arrangement was in play by counting days and weeks over the course of a year to determine the pattern of time when the children were in one parent's care or the other. Chiasson J. adopted the statement in *Froom v. Froom*, 2005 Carswell Ont 545 (Ont C.A.), that "there is "no universally accepted method for determining the 40%...".

[130] In *L. (L.) v. C. (M.)*, 2013 ONSC, 1801, Justice Czutrin commented on the two most common approaches to calculating the 40%-time threshold

37 The two most common approaches to calculating access and custody time are in days, and in hours. If using days, to reach 40 per cent, the access parent must have the child in his or her care for 146 days per year (*Handy v. Handy*, [1999] B.C.J. No. 6 (Sask. K.B.)). When calculating in hours, the 40 per cent threshold lies at 3504 hours per year (*Claxton v. Jones*, [1999] B.C.J. No. 3086 (B.C. Prov. Ct.)). 38 In his paper, "A Practitioner's Guide to the Economic Implications of Custody and Access under the Divorce Act and the Federal Child Support Guidelines", Julien D. Payne points out that no matter how the calculation is completed, the relevant period is the amount of time the child is in the care and control of the parent not the amount of time that the parent is physically present with the children ((2002) 32 R.G.D. 1-36, at 8). The calculation includes the time the child spends in swimming lessons, at day care, at school, or with a nanny, so long as the parent claiming this time is the parent who during that period is "responsible for their well-being" (*Sirdevan v. Sirdevan*, [2009] O.J. No. 3796 (Ont. S.C.J.)).

39 In line with this approach, a custodial parent will be credited with time that a child spends sleeping or at school, except for those hours when the non-custodial parent is actually exercising rights of access or the child is sleeping in the non-custodial parent's home (*Cusick v. Squire*, [1999] N.J. No. 206 (Nfld. T.D.)). If there is a fixed drop-off time for the access parent to deliver the child to school or daycare and the child returns to the custodial parent at the end of that day, the time during school or daycare is typically credited to the custodial parent (Maultsaid, at para. 20; *Barnes v. Carmount*, 2011 ONSC 3925, [2011] O.J. No. 3717 (Ont. S.C.J.), at para. 43).

[131] Justice M. Belanger-Richard in *A. A. v. J.A.*, [2023 NBKB 210], said as follows:

63. Section 9 imposes a distinct child support regime if a parent who "exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year". Because the *Divorce Act* does not contain any definition of shared parenting, section 9 of the Federal Child Support Guidelines has come to define the term "shared custody/parenting...

65 In *L. (L.) v. C. (M.)*, supra, Justice Czutrin commented on the two most common approaches to calculating the 40%-time threshold, i.e., in days or in hours, and provided helpful comments on how to allocate responsibility (and consequently time) in some circumstances such as school days or day care time:

66 Though the method of calculating the threshold is not set out in the legislation, it is clear that 40 per cent is the minimum period of parenting time fixed by Parliament as sufficient to trigger a child support assessment under section 9 of the Guidelines. Courts cannot ignore this mandatory requirement and do not have the discretion to round up or round down the figure reached (see *L. (L.) v. C. (M.)*, supra, at paras. 24 and 34).

67 However, it is important not to get lost in the numbers entirely. In *M. (F.) v. H (T.)*, 2016 NBCA 29, Justice Baird makes the point that *the existence of a shared parenting arrangement requires more than a simple mathematical calculation of parenting time. She states:*

The determination whether a shared parenting arrangement exists requires more than a simple mathematical calculation of access time. Issues such as who has the overall responsibility to arrange medical appointments, which parent has the responsibility to drive the children to their appointments, which parent has the primary decision-making responsibility to oversee a child's health and welfare either at school, or elsewhere, and whether the parents are able to effectively communicate with each other on matters affecting their children, are critical considerations. This approach is in keeping with the reasons of Bastarache J. in *Contino v. Leonelli-Contino*, 2005 SCC 63, [2005] 3 S.C.R. 217 (S.C.C.). The Supreme Court observes the analysis must consider the child rearing roles of the parents, in addition to the straight mathematical calculation of access time. The analysis pursuant to ss. 9(b) and (c) of the Guidelines is undertaken **only if the court finds the 40 per cent threshold has been met by the access parent.** [Emphasis added]

68 The consideration of qualitative factors (the so-called holistic approach) has been criticized (see *The TLC of Shared Parenting: Time, Language and Cash*, by Rollie Thompson, article presented at the 27th Annual Institute of Family Law, Montebello, QC, April 13-14, 2018) and rejected by the British Columbia Court of Appeal in *Maultsaid. v. Blair*, 2009 BCCA 102 (para. 21). However, such holistic approach has been adopted by

the Manitoba Court of Appeal in *Mehling v. Mehling*, 2008 MBCA 66 (Man. C.A.) where B.M. Hamilton J.A. stated:

42. So, should the 40 per cent threshold analysis be a strictly mathematical calculation? I think not. Is there a mathematical component to the analysis? Of course, because the pattern of parenting must be analyzed and this will, by necessity, involve a consideration of the time the children are with their respective parents. In *Cabot*, this court specifically rejected a "minute-by-minute" calculation method. While I would not categorically rule out an assessment on the basis of hours, it seems to me that an assessment of the time that a parent is with, or responsible for the children and their needs, on the basis of days or weeks, or portions thereof, will be a more realistic approach to the analysis than an hourly accounting. That being said, the approach to be used for the assessment of time is within the judge's discretion to determine.

43. In some cases, this assessment of time will lead to an obvious conclusion that the 40 per cent threshold has, or has not, been met. But when that result is not obvious, as was the case here, more will be required. **The approach must remain flexible to enable the judge to take into account the varied circumstances of different families. By doing so, the assessment will be more realistic, and more holistic, than a strict mathematical calculation of the time with each parent. In my view, this is in keeping with the equitable goals of s. 9. [Emphasis added]**

[132] And further, regarding the Burden of Proof: Justice M. Belanger-Richard states:

69. The onus is on the parent who is relying on section 9 of the Guidelines to establish that the 40% threshold has been met. In the present case, the father did not produce any calendars to demonstrate the time he was spending with the children. He relied on the parenting schedule that both parties had similarly described and on a discussion, he had had with people at the Office of Support Enforcement (OSE).

70. The father admitted that he did not calculate the exact time that the children spent with him for vacation and holidays. The father did not attempt to provide calculations that would have supported his position. The mother produced a calendar covering a period of 16 months (May 2022 to August 2023) I decided to use the calculation by hour because of the responsibility retained by the mother for the Friday supper and for the preparation to school on Monday morning. Calculation in hours was more reasonable and accurate in these circumstances than using days or overnights.

...

74. I note that the Interim Order dated March 2, 2022, and the Interim Order dated May 30, 2022, **provide for start and end times** for the father's parenting time that are different from what I have used. However, the proffered evidence was that the parties were not following the times set out in these orders. The father mentioned that he occasionally

complained about the non-respect of these orders. The mother testified that she simply followed the children's wishes and preference.

75 In addition to *the mathematical calculation* of the father's parenting time, I have considered *the parents' roles* in the care of their children. It is undisputed that the mother has had *overall responsibility to oversee the children's health and well-being either at school or elsewhere, to arrange for medical and dental appointments, to address learning issues, to attend parents-teacher meetings, to drive the children to school, to their appointments and to their activities, and to communicate with the father on various matters affecting the children.* Although the parenting arrangement has been flexible and the parties have been able to communicate with respect, it is evident that the father has not proactively taken responsibility for rearing the children.

76 Therefore, I conclude that the parenting arrangement that the parties have had since 2016 is not a shared parenting arrangement both in terms of a mathematical approach to the time spent with each parent as well as from a holistic perspective. [Emphasis added]

[133] After an analysis of the evidence in *Marchand v. King*, 2025 NSSC 172, P. Marche J. rejected the argument that a shared parenting plan was in place. The court found that neither the *de-facto* plan nor the order reflected a shared parenting arrangement (para.52).

[134] In *YS v. KRC* 2024 BCSC 1473, at paras 125-126, the court reviewed the facts relating to the roles of the parents including who shopped for groceries, fed the children paid the bills associated with their needs etc., to decide that there was a shared parenting relationship. Notably, in this case, the parties continued to live in the same house at the time in dispute and one parent was unemployed and at home more than the other.

[135] In *JS v. M.F.N.*, 2024 NBKB 237) at paras 78-86, M. Boudreau-Dumas J. looked to the roles of the parents and their time spent with each parent. She noted neither parent provided her with a schedule. There was sufficient evidence of the time and their involvement in other aspects of the children's lives to allow her to conclude there was a shared parenting arrangement.

[136] In *Papaevangelou v Papaevangelou*, 2024 ONSC,4692, [2024] O.J. No5187 the court refused to decide on shared custody given the lack of evidence, indicating the burden is on the proponent and a hearing on the merits would be required to address the actual parenting plan specifics. The court said:

33 The reference in s.9 of the CSG to "not less than 40 percent of the time over the court of a year" is why an analysis needs to be undertaken to determine whether the children spend 40% of the time with the mother. "Over the course of a year" is not defined the CSG,

nor does the case law support a single interpretation. In some cases, the court look at the hours spend with each parent: *Lussier v. Lussier*, [2001] O.J. No. 169 (Sup. Ct.). In other cases, the court calculates the time by overnights spent with a parent.

34. In *Hus v. Hus*, 1998 CanLII 13597 (SKKB), the court stated:

5.The onus is on the parent wishing to invoke the operation of s. 9 to demonstrate to the court's satisfaction that a shared custody arrangement as contemplated by s. 9 is in fact in place, and has been, or will be in place over the course of a year. While it is not necessary that there be in all circumstances a written agreement or court order to this effect before the onus can be discharged, the court should, in my opinion, exercise caution before imposing a s. 9 child support regime on what may be a short-term informal custody arrangement.

6.In this case, the respondent is prematurely relying on s. 9. A track record has not yet been established. Whether or not he will continue to have access to or physical custody of the children for more than 40 percent of the time over the course of a year is unclear. Accordingly, I am bound to determine child support having regard only to the respondent's income and the applicable table.

35 Given the conflicted record, it is impossible for the Court to determine whether the children were residing with the parties pursuant to a shared parenting arrangement or whether they were living primarily with the father. The court would need detailed schedules from the parents to see whether the children were living with the mother for all the Christmas holidays, March Break and summer, as she claims, or whether they were sharing holidays over the course of a year before a determination could be made as to shared custody.

[137] I have highlighted those considerations particularly relevant to the case at hand. In doing so I emphasize the following:

- It is quite possible that after a careful review of all of the factors in s. 9, a trial judge will conclude that the Guidelines amount will remain the proper amount of child support (see, e.g., *Berry v. Hart* (2003), 233 D.L.R. (4th) 1, 2003 BCCA 659).
- Not only is there no presumption in favour of awarding at least the Guidelines amount under s. 3, but there is also no presumption in favour of reducing the parent's child support obligation downward from the Guidelines amount (*Wensley*, at pp. 89-90).

[138] It is evident in the case before me, as in the referenced cases; that courts struggle with constructing an analysis of shared parenting from the facts in evidence. The analysis is made more difficult by the absence of facts that define

who does what in their de-facto roles and how, if at all, each parent accepts the responsibilities for meeting the day-to-day needs of the children.

[139] It is critical to unpack what parents mean by shared parenting and how that relates to their actual parenting plan and to section 9 of the CSG. It is equally important to assess with a reasonable air of certainty what is the de-facto plan.

Findings

[140] On the totality of the evidence and the law, applying the civil standard of proof, I cannot conclude there was a shared parenting relationship, which, would require an initial finding that the children spent 40% of their time with the father, however measured.

[141] The plan was based on an unpredictable back and forth uncertain schedule, leaning heavily on the mother's home to provide daily support. I conclude that the Applicant's parental involvement was not nothing, but certainly not significant, or in any way equal to a 40- 60% shared time arrangement.

[142] I have considered the evidence in it's totality when reviewing the mother's day to day contribution, which she accomplished alone, or by the efforts of the support she received from her mother, the children's grandmother, who picked them up from school, dropped them off, and, according to the mother, played a significant supporting role to her parenting of the children. There was also mention of some support from their paternal grandparents. I do not have evidence to quantify this support.

[143] If there was a plan to implement a shared parenting arrangement, the evidence would support a conclusion that it was unsuccessful and would not have survived scrutiny should either parent have tried to change the child support obligations.

[144] The mother did not benefit from any child support before or after this attempt and did not experience the decrease in cost associated when one parent takes the children and provides lunches, after school food, support, and before school support.

[145] Luckily for these children their grandmother lived in the same building as the mother. For many years she was the mother's principal babysitter, back up and family presence for and near the children during the mother's working hours. She

was a significant parenting influence in the children's lives. Sadly, the maternal grandmother became ill and passed away in later years.

[146] None of the evidence is specific enough to meet the burden of proof resting on the Applicant. He was unable to convince the court, with any precision or accuracy, that there was in fact a shared parenting relationship. Thus, the section 9 approach would not be the correct approach for this family.

[147] The best I can conclude is this:

- When the Applicant was in a relationship with his current partner and his former partner his contact with the children was more regular.
- Prior to when the children terminated their contact with the father, he had more frequent overnights at his home.
- I can conclude that he participated for a time in getting the children to their Karate lessons and, at one point, one child to guitar lessons.
- I can conclude that early in the relationship with Ms. Murphy, the children's relationship with the father was sufficiently positive that they were seen together more frequently and he had fun with them at his home and during their extracurricular activities.

[148] Unfortunately, I cannot determine with accuracy on the evidence the extent of the overnights and weekends except to say they were more frequent.

[149] These conclusions, that the father's parenting time increased, are the furthest the evidence leads me, in assessing his contact during the years when he partnered with Ms. Murphy.

[150] On the evidence provided it would be impossible to draw any conclusion on how much time the children spent in the father's home or calculate the impact on their presence in the home and on his financial circumstances, whether I use counting overnights, assessing a change in responsibilities daily, or any other method discussed in available case law.

Evidence relating to costs associated with a shared parenting arrangement.

[151] The *Contino* analysis indicates that after determining that a parent exercises parenting time in excess of 40% the next step is to refer to the setoff amount

49. Hence, the simple set-off serves as the starting point, but it cannot be the end of the inquiry. It has no presumptive value. Its true value is in bringing the court to focus first on the fact that both parents must make a contribution and that fixed and variable costs of each of them have to be measured before making adjustments to take into account increased costs attributable to joint custody and further adjustments needed to ensure that the final outcome is fair in light of the conditions, means, needs and other circumstances of each spouse and child for whom support is sought. Full consideration must be given to these last two factors (see Payne, at p. 263). The cliff effect is only resolved if the court covers and regards the other criteria set out in paras. (b) and (c) as equally important elements to determine the child support.

52. As I discuss later in these reasons, it means that the court will generally be called upon to examine the budgets and actual expenditures of both parents in addressing the needs of the children and to determine whether shared custody has in effect resulted in increased costs globally. Increased costs would normally result from duplication resulting from the fact that the child is effectively being given two homes.

[152] I have not been convinced on the totality of the evidence that a 60/40-time share existed. In the interests of finality, if I err in failing to conclude this loose parenting arrangement was a shared parenting arrangement; I will for the purposes of this decision, consider the second stage analysis.

[153] If a shared parenting arrangement existed, should the table amount of child support be altered?

[154] Once the first finding is set (i.e. a 60/40-time share is in place) one turns to the second stage of the *Contino* analysis to examine the conditions means and circumstances of the parties, the costs of the plan to both households the standard of living indicators, etc. I have only included the broad range of years for this analysis and not all years from 2009 to 2024, given there are admissions when shared custody is not being argued.

[155] If the court finds the facts meet the 40% threshold, then there must be an analysis of the conditions means and circumstances considering the relative positions and financial responsibilities, expenses and standard of living for these children in each household.

[156] The parenting plan must reflect the purpose of the formula to account for these higher costs. If no higher costs are incurred and one parent continues to absorb the bulk of the financial responsibility, then an adjustment to the table amount may not be justified.

[157] There must be evidence of the cost to each parent or the reduction of cost to the other parent because of the *de-facto* parenting arrangement.

[158] If one cannot use time as a principal indicator, we look to other indicia including who plays what role and takes on what responsibility when meeting the needs of the children.

[159] It is equally clear that one format does not fit all. The facts presented may not allow for an effective assessment. What can be extracted is this: time spent is not the only criteria.

[160] Courts have been directed to insist on further information where there is insufficient information to make the finding of fact on this second stage analysis including financial information to assist with the second stage in the *Contino* analysis.

[161] I am concerned about the length of this litigation, the history of noncompliance and wish to promote certainty and finality in the only manner available to the court. In *L.S. v. M.F.N.* [2024] N.B.J. No. 383, para 81, M. Boudreau-Dumas J referred to *A.A. v. J.A.*, wherein she adopted the comments below:

my colleague Bélanger-Richard J. reviewed the test to be met to establish shared parenting time (not less than 40% of the time). She acknowledged that the onus was on the parent claiming shared parenting time, in this case, Mr. N-H, to show that the 40% threshold had been met.

[162] In the case before me, since 2022, there have been a multitude of adjournments for more disclosure. The 2009 order has never been followed. This directly impacted the children. The burden is on the Applicant to provide evidence of increased costs associated with the shared parenting plan he suggests existed.

[163] There have been repeated referrals back to both litigants for additional information. Given the significant delays that have already occurred, I accept that I have all the evidence available.

[164] The review of their respective circumstances starts with the income tax returns for the disputed years 2017 to 2022 as set out below. The figures have been adjusted to include a gross up on WCB. This illustrates comparative income to assist the court in evaluating the effect of parenting changes on their respective

incomes and expenses and to consider the condition means and circumstances of the parties as required according to the Contino analysis.

Applicant/Father		Respondent/Mother
2014	\$30,274	\$35,152
2015	\$31,262	\$39,202
2016	\$30,782	\$36,786
2017	\$37,715	\$40,174
2018	\$32,415	\$41,580
2019	\$38,172	\$44,416.
2020	\$60,403	\$49,211
2021	\$70,128	\$46,946
2022	\$81,304	\$50,552.
2023	\$49,681	\$ 61,739
2024	\$67,014	\$67,478
2025	\$65,924	\$76,499
2026 figures unavailable		

[165] In the father's household from 2017 up to 2024 Ms. Murphy was employed. She advised she elected a medical retirement sometime in 2024, Her/their household income was not provided. It would clearly exceed that of the Respondents with two children. A household standard of living would require those figures to determine total household income.

[166] Ms. Murphy paid the down payment on their first home in 2017. They purchased a second home in 2022 using \$20,000 to \$30,000 equity from their first home. While the home is in Ms. Murphy's name the father's contribution and future entitlement is an issue to be explored.

[167] What this does illustrate is, this couple had cash to invest.

[168] In 2022, when the second home was purchased, the Applicant also received \$14,468 from his RRSP. I have no information how this was spent, except that his children did not profit from this withdrawal.

[169] His statement of expenses illustrates his half of the household food budget is \$1000., his share of cable television is \$75 per month, his half share of average house repairs is \$250 a month, \$200 a month for toiletries, \$100 for his own

clothing. His vehicle is costing him \$324 a month and he has \$700 a month in credit card debt which indicates a lifestyle larger than his income.

[170] In contrast the Respondent's food budget was \$1,200 for herself and the two children in her household; she has \$50 a month for repairs, \$200 per month for the three in her household for toiletries and household supplies and \$200 for clothing for the three of them compared to the \$100 per month he declares. He operates a vehicle; the Respondent does not.

[171] From 2009 to 2022 the mother has born the full financial responsibility for the children without assistance. She has indicated she has no property, no pension and has accumulated debt to pay interest on a line of credit set up to cover her expenditures. She testified she has been unable to provide the extras she would like for and to the children. Her income is the sole source of income for the family; she has one child in school and one in university.

[172] On the face of the evidence before me, I can conclude that the Applicant's apparent lifestyle appears significantly better than the Respondents.

[173] His household expenses are shared by another income earner. This put him in a more sustainable financial position than the mother.

[174] Finally, I have had no evidence of any costs of this shared parenting plan to the father, that would allow me to determine whether there is any reason to adjust the table amount in his favour. He was able to search back to 2008-9, looking to refute the evidence that he had received email requests from the mother. Surely in all the means available, there would be some electronic trace of payments made, purchases, bank transfers between the two, cash withdrawals, noteworthy events requiring lump sum payments; in essence something verifying the transfer of funds, directly, or to third parties; something that would verify payments in kind other than the court ordered support.

[175] Relying on the evidence before me as to how much of the father's alleged parenting time the children spent in the mother's home weekly, I can reasonably conclude that any increase in this parenting time did little to reduce the mother's hard costs of maintaining a home for the two children.

[176] On the totality of the evidence there does not appear to be a decrease in the hard costs under the table amount nor a proven increased costs in the father's household.

[177] I can conclude the parents talked about implementing a shared parenting arrangement in principle but in practice it never transpired, such that a concise calculation of the costs to each household and an assessment of the needs and means of the parties, could be analysed.

[178] I have, overall, little evidence that the parenting arrangement led to a reduction in the mother's expenses, such that I could reach any conclusion on the second aspect of the *Contino* formula.

[179] I have no evidence of other payments made to replace child support or to credit the payor with assessing or reducing arrears. I do not find fault with counsel's preparation at all. The father's testimony lacked detail both in affidavit and cross examination.

[180] If I err on the first aspect of a section 9 determination, I conclude based on the evidence before me as to the second stage analysis on needs, means, and circumstances of the parties, there is no justification to modify the base amount of child support, given the frequency of the children's presence in the mother's home, even on the fathers' parenting time.

Retroactive and Prospective Analysis

[181] The burden is on the Applicant to justify a retroactive change and forgiveness.

[182] Between 2010 and 2016 the father's income before grossing up of WCB would average \$23,700 (plus or minus). His grossed-up income as provided by his counsel in 2009 was \$36,970. The parties take no issue with the 2009 order.

[183] There have been changes in the Applicants historic income that exceed \$6,000 annually up to 2016. Some qualify as material changes. Prospectively, there were material changes in income at least from 2020 forward. Had everyone adjusted annually, the child support would have been varied. Additionally, the expenses relating to post secondary education require consideration and sharing.

[184] Clearly there is merit in a review and variation.

Determining actual income and child support according to the CSG

[185] The chart below, created out of the evidence tendered, will examine to the extent possible the Applicants true income since 2009. I accept the final

calculations from the Applicant's counsel except for 2017 and 2022 where minor adjustments have been made.

Tax Year	Income	Monthly Child Support	Annual Amount	Tax Refund/Debt
2009	\$36,970.20	\$545 plus day care	\$2010*	
2010	\$25,354	\$377.	\$4,524.	-260.95
2011	\$21,046	\$306.	\$3,672.	
2012	\$30,344 ¹ WCB	\$445	\$5,340. **	
2013	\$30,297 WCB	\$444.	\$5,328. **	
2014	\$30,274 WCB	\$444.	\$5,328. **	
2015	\$31,262. WCB	\$457	\$5,484	+398.82
2016	\$30,782 WCB	\$451	\$5,412	
2017	\$37,715 WCB	\$558	\$6696	+1487.32
2018	32,415	\$489	\$5,868.	+1528.94
2019	\$38,172.	\$564.	\$6,768.	
2020	\$60,403. ²	\$859.	\$10,308.	+896.50
2021	\$70,128	\$995.	\$11,940.	
2022	\$81,304 ***	\$1,142	\$13,704	+3,174.90
2023	\$49,681	\$714.	\$8,568.	
2024	\$67,014	\$948.	\$11,376.	
2025	\$65,924	\$933		
2026	No figures available	\$933	Upaid\$442****	

NS Tables used. There is no precise evidence as to when the Applicant returned to Nova Scotia from Alberta in 2009.

* 2009 arrears agreed upon. ** Consent to use 2014 income for three years*** RRSP funds incl.**** Jan/Feb 2026.

[186] Using only his Notices of Assessment did not distinguish between sources of income. Reference to complete tax returns do provide that distinction.

[187] I have excluded all split pension income. Grossed up WCB; CERB and RRSP income is included in determining income for the purpose of calculating child support table amount according to the guidelines. My reasons will follow.

¹ Identifies all income including gross up for WCB

² 2020 & 2021 Includes CERB

[188] Retroactive arrears are determined based on actual income earned January to December each year. This matter was not enrolled with Maintenance Enforcement until 2022 and there was no automatic recalculation.

[189] The chart depicts the arrears as calculated according to the Applicant's income as assessed by the court. In the interests of fairness and justice to the Applicant, the order reflects a retroactive reduction in table child support and a prospective increase when his income merits such.

[190] Both parties benefit from the review where there have been variations in income reducing and correspondingly increasing the child support amount based on evolving income.

[191] The court made numerous enquiries of the parties to clarify their submissions including holding a post hearing appearance to review again the Applicant's calculations prior to final submissions.

[192] Each party was granted additional time for correcting submissions and verifying the method for grossing up and calculating the arrears for proper child support, based on the disclosure provided.

[193] This process was made more difficult because the Respondent did not have an adequate grasp on the law or the facts required to ask the questions she needed or the means to verify the submissions of counsel, by creating her own table or guide in calculating arrears.

ISSUE #3- Reasons supporting exclusion of split income, and inclusion of RRSP and CERB income.

[194] The course of the applicant's employment since 2009 to date, is peppered with some income sharing with his current partner; WCB benefits, which, for the purpose of this application were grossed up; EI or work-related income, CERB income and RRSP withdrawals.

[195] I have excluded in the chart and calculation of income for child support purposes, any income arising from a split of his partner's pension as per schedule III of the CSG, as incorporated into the *Parenting and Support Act*.

Split-pension amount

- 14 If a spouse is deemed to have received a split-pension amount under paragraph 60.03(2)(b) of the Income Tax Act that is included in that spouse's total income in the T1 General form issued by the Canada Revenue Agency, deduct that amount.

RRSP income

[196] Ingersoll J. discussed this issue in *Strait-Hinnerichsens*, 2023 NSSC 340, at para.152 and 201-205. Ingersoll J. did exclude the RRSP as a non matrimonial assets in that instance due to the source of the RRSP, i.e. an unmingled inheritance. However, both counsel agreed on, and the court ordered the inclusion of an annual conservative projection of growth in the RRSP funds in determining income for child support. Ingersoll J concluded as follows:

201 I find that although the RRSP Account is not a matrimonial asset, the balance in the account can and should be considered in determining Mr. Strait-Hinnerichsen's prospective child support obligations. Section 1(a) of the Guidelines direct me to ensure that the children "continue to benefit from the financial means of both spouses after separation." Mr. Strait-Hinnerichsen's investments are means from which his children should benefit post separation. Caselaw supports the finding that funds held by a parent can be considered and used as a basis for imputing income for the purposes of calculating child support. (See Ellis v. Carpenter, [1999] OJ No 934, Bak v. Dobell, 2007 ONCA 304, RJN v. PMF, [2018] OJ No 827 and St. Amand v. St. Amand, [2006] NBJ 261)

[197] In *J.M.M. v. C.R.M.*, 2025 ONSC 3067, Chappel J L., reviewed numerous authorities at paras. 589-601:

595 Section 17 of the Guidelines is relevant for the purposes of determining whether the parties' respective RRSP withdrawals and the father's pension payout in 2020 should be fully included in their income for the relevant years, or whether a different approach is warranted. It grants the court some discretionary flexibility in deciding a party's income in circumstances where the judge is of the opinion that determining the party's income pursuant to section 16 of the Guidelines would not be the fairest determination.

599 With respect to RRSP withdrawals and non-recurring pension amounts such as the father's payout in 2020, these must be reported as income on the T1 Income Tax Return, and therefore they presumptively form part of a spouse's income for the purposes of the Guidelines, subject to sections 17 to 20 of the Guidelines (Fraser, at para. 97; *Ludmer v. Ludmer*, 2014 ONCA 827 (C.A.), at para. 22) However, section 17 of the Guidelines grants the court the flexibility to exclude such non-recurring amounts from a party's income in appropriate circumstances. The unique facts of every case must be carefully considered to determine whether or not the inclusion of these amounts would generate the fairest determination of the party's income for Guidelines purposes (*Fraser; Ludmer*, at para. 23; *Burzminski*, at para. 11; *McKenzie v. Perestrelo*, 2014 BCCA 161 (C.A.), at para. 82).

600 ...the onus is on the party seeking to exclude them from their income pursuant to section 17(1) of the *Guidelines* to satisfy the court that it is appropriate to do so (*Fraser*, at paras. 97-99; *Burzminski*, at para. 82; *McKenzie*, at para. 82). In considering whether to fully include the amounts in income, the court must keep in mind that the object is to arrive at income levels that fairly reflect the financial capacities of the spouses for support purposes (*Ludmer*, at para. 25). For example, if the RRSP withdrawals are fairly regular and appear to have been used to cover ordinary living expenses for the party's lifestyle choices, they are more likely to be included as income for the purposes of determining support (*G. (J.P.) v. G. (V.S.)*, 2012 BCSC 946 (S.C.), at para. 74; *McKenzie*, at para. 82; *M.R. v. J.R.*, 2018 NBCA 12 (C.A.)). However, the fact that RRSP withdrawals are irregular or non-recurring in nature is not determinative of the issue (*McKenzie*, at para. 82). The reason for the RRSP withdrawal is an important factor in determining whether it should be included in income. In *Fraser*, the court decided to include RRSP funds that the father had used to purchase a home in the calculation of the father's income despite their non-recurring nature, given that he was not working or earning regular employment income at the time. In *Ludmer*, the court upheld the trial judge's decision to exclude RRSP withdrawals from the parties' respective incomes on the basis that they were non-repeating encroachments on capital. Similarly in *Warsh v. Warsh*, 2012 ONSC 6903 (S.C.J.), the court did not include non-recurring RRSP withdrawals in a payor spouse's income for spousal support purposes on the basis that the draw-down on the RRSP funds was not sustainable. The need for RRSP withdrawals to fund Family Law litigation between the parties is also a factor that the courts have considered in deciding to back out RRSP proceeds from income for support purposes (*Ludmer*; *M.(J.C.) v. M. (K.C.)*, 2016 ONCJ 475 (O.C.J.); *Zigiris v. Foustanelas*, 2016 ONSC 7528 (S.C.J.); *McKenzie*, at para. 86; *Swirsky v. West*, 2020 ONSC 1213 (S.C.J.), at para. 400). Courts have also excluded non-recurring RRSP withdrawals from a payor's income where they were used to pay off debt, or to cover expenses for a pressing specific purpose rather than routine living expenses (*Brown v. Brown*, 2020 BCCA 53 (C.A.); *Foley v. Weaver*, 2010 ONSC 3305 (S.C.J.); *K.A.M. v. P.K.M.*, 2008 BCSC 93 (S.C.), at para. 51; *M. (C.A.) v. H. (T.C.)*, 2016 BCSC 1756 (S.C.), at para. 109; *Leet v. Beach*, 2010 NSSC 433 (S.C.)). The caselaw reflects a reluctance to include non-recurring RRSP withdrawals in the income of a recipient spouse where the funds were used to cover their needs during a period when they were not receiving the correct amount of support (*McConnell v. McConnell*, 2015 ONSC 2243 (S.C.J.); *Collins v. Nowosad*, 2019 ONSC 755 (S.C.J.), at paras. 47-50).

[198] As authority for the proposition that RRSP withdrawals may be excluded, the Applicant relied on *Leet v Beach*, 2010 NSSC 433. *O'Neil ACJ*, as he then was, acknowledged that each case is fact specific. He excluded the RRSP funds in calculating child support.

[199] In some cases, RRSPs withdrawals are excluded from income as a one-time event. It is a reasonable proposition to suggest they be excluded if one is forced to withdraw RRSP savings because one requires those funds to sustain oneself in dire times, to meet one's basic needs.

[200] If, however, one uses this exemption to one's benefit, as in this case, a benefit which proves to continue a disadvantage to one's children; absent evidence of necessity, it is unreasonable to exclude this income from the calculations.

[201] The absence of support was not a one off; it was a long-term pattern of complete avoidance of one's financial responsibility and breach of the court order from 2009 to 2022.

[202] The RRSP withdrawal took place in 2022 when the total income for Mr. Major was \$72, 152.71, inclusive of \$14,468.70 in RRSP funds and split pension income (which I have excluded). These funds in the father's hands gave him an opportunity to sustain, if not improve his standard of living.

[203] In the same year as the withdrawal, the Applicant's household purchased another home and received, according to Ms. Murphy, approximately \$20-30,000 in equity from their previous home to complete the purchase.

[204] During this same year Mr. Major obtained an order suspending enforcement of child support. No child support or payments towards arrears occurred until enforced.

[205] In contrast, the lack of child support in the mother's hands limited her choices in providing for the children.

[206] There has been a significant and absolute abdication of the Applicant's financial responsibility. The children should have had the benefit of what income the payor had available to him.

[207] Excluding these RRSP funds available to the Applicant does not accord with the priority that has been placed on child support as a parent's primary financial obligation.

[208] The burden of providing evidence that would permit a court to exercise its discretion to exclude RRSP funds rests with the person proposing such. In the case before me the burden has not been met. I can see no justification for excluding the RRSP withdrawal amount for 2022 in this instance.

[209] I exercise my discretion on the facts as set out to include the proceeds in the calculation of the year's income only in the year it was received.

CERB Income

[210] During covid there were two occasions when the Applicant had the benefit of CERB payments of \$18,000 each in 2020 and 2021. This was in addition to his WCB benefits. While claiming entitlement to CERB the Applicant continued to receive his WCB and as such his ordinary income source was not lost to him.

[211] In each of 2020 and 2021 the Applicant received a tax refund. In neither of these years did he pay partial or full child support. In 2022 the Applicant received a tax refund of \$3,174. Again, until enforcement began, the children did not receive the benefit of his available income. Yet the father's finances were sustained if not improved.

[212] Given the legislative mandate to support children according to parental ability; the emphasis placed by the Supreme Court of Canada on child support as a fundamental priority and the complete absence of payment by the Applicant; it would fly in the face of reason to protect the Applicant's RRSP and CERB income to the exclusion of the children.

[213] As noted in *Ladouceur v Parent*, 2021 ONSC 6112:

36 There is ample authority for the inclusion of the CERB income for the purpose of determining the respondent's child support obligations. See, for example, *Dalgleish v. Spencer*, 2021 ONSC 1708, at paras. 24 and 33; *T.M.R. v. J.K.S.*, 2021 ONCJ 182, at para. 54. The CERB was intended to replace employment income lost because of the COVID-19 pandemic. I see no reason to exclude the respondent's CERB income when determining his child support obligations for 2020.

Other section 7 expenses

[214] The mother alluded in her submissions to the other section seven expenses she managed on her own. A final adjournment was granted to permit further evidence on this point for evidence regarding the eldest child's post secondary education expenses.

[215] The mother has submitted her orthodontic expenses showing the uninsured portion owing was \$5,053., She paid this expense entirely, since late summer 2022 when it should be noted the Applicant's income alone, for two of those years, exceeded the Respondents. The mother asks for an equal sharing of the uninsured portion of this expense.

[216] Should the mother wish now to recover other past section seven expenses health related or otherwise she will be required to advance a second application with full disclosure of the expense. Procedural fairness requires the father be fully

informed in a timely fashion, to enable him to adequately respond to a further application.

[217] I have provided in this decision a method to divide prospective health and educational related expenses.

[218] I am aware of the financial constraints facing these parents and the difficulty finding affordable legal advice. The parents should strive to find agreement as to their appropriate contributions on an ongoing basis. Again, I urge the mother to obtain independent legal advice.

Retroactive section 7 expenses.

Orthodontic costs

[219] The net uninsured costs were \$4,932.53. I assess the Applicant's net uninsured share of the Orthodontic costs at **\$2,466.26**. The Applicant asks whether these costs were necessary. They were undertaken and paid for by the Respondent. They were undertaken by a professional. I have no evidence to suggest they were cosmetic. I assess his share of the uninsured costs be added to the arrears.

Child Care Arrears 2009 to 2013 inclusive

[220] By agreement, day care support was ended in 2013, when the eldest was 7 years old and the youngest 5. For the 2009 year these have been included with the table amount as agreed.

[221] For the years 2010 to and inclusive of 2013 the permissible deductions from income as reflected in the Respondent's notices of assessment and included in the Applicant's November 18th, 2025, submissions include total childcare costs of \$12,101.

[222] The Applicant shall be responsible for one half the costs of this. The sum shall be added to the arrears. I fix the Applicant's childcare costs for the 2009 to 2013 year at **\$6,050.50**. Any discrepancy in calculating his one-half share is minimal.

[223] The MEP record of arrears included the original payment of \$125. per month to May 2022. That inflated the total arrears to May 2022. This recalculation will correct that assumption and fix actual childcare arrears.

2024-Post Secondary NSCC courses

[224] The NSCC and university costs and incidentals have been paid for out of the mother's income and savings, as well as the child's employment income.

[225] I have considered the 2023- and 2024-income tax returns. In the year 2024 the child held two jobs while she successfully upgraded part time at NSCC. Her course costs were \$1,339. I have considered the parties circumstances and the child's income for the NSCC year.

[226] For this year only, having regard to S.'s income and the party's individual income I assess the Applicant's share at 33% equal to a contribution of **\$446**.

[227] To put this in perspective (with a view of evaluating his 2024 ability to make contributions to the children); in 2024 Mr. Major took in \$67,014. With enforcement in place, he paid \$712. when the actual payment should have been \$948. Annual adjustments have not been made voluntarily. His total section 7 expenses relating to NSCC was an annual amount of \$445. or put another way an additional \$37. monthly. That year he received a tax refund of \$510., illustrating that contributing to the children, when he could, was never a priority.

2025-2026 Academic year

[228] In the 2025 academic year S. entered university. Her plan was to continue working two jobs. She registered in her hardest courses for her first year. The academic results suffered. The plan going forward is to reduce her outside employment to concentrate on her studies for the coming academic year.

[229] Her 2025 pay stub YTD (October) indicates an income of \$4,819.82 and her second income fluctuates. She pays her gym fees, licencing, registration and insurance for a second-hand vehicle she purchased to get herself to school.

[230] Assessing the parents' income and expenses and S's. current expense statement, I have reduced the Tuition costs by a notional contribution from S. of \$2,400 for a net balance of \$7,951.89.

[231] There are no bursaries or scholarships noted, and no loan. I understand the mothers' laudable goal of trying to get the children through without a loan. Whether that is realistic for future is a point for discussion if only to contribute not wholly but proportionately to her education.

[232] The parents shall share the net costs equally. The Applicant's share is **\$3,976**, for the academic years 2025-2026 and shall be added to the arrears. In doing so I have considered whether a proportionate share or equal share is the most appropriate division.

[233] In balancing the households' circumstances and the parents' individual expenses and resources, the effects of long-term failure to pay, I determine an equal sharing will create some better degree of equality of sharing than a proportionate sharing, always conscious of the likelihood of recovery of total arrears which, if it occurred, might call for a more proportionate sharing.

[234] In this 2025 year the Applicant took in \$65,924, continued to pay monthly through enforcement \$712.00 when his payment should have been \$933.00. He shares his household expenses with someone who has another income. His total annual contribution to his daughters schooling would result in a monthly payment of \$331. I do not have his tax return.

[235] In contrast, both mother and daughter each, have been working two jobs to cover their expenses. Through the mother's savings and the eldest child's employment they have managed to cover the costs thus far without any assistance from the Applicant. They have not taken out a student loan.

[236] Totally absent is any part or full payment of CSG table support or any other necessities relating to costs referred to by the mother over the years as unclaimed and absorbed by her. The Applicant did not contribute to a savings plan for educational costs.

[237] The costs thus far for university are minimal. The hardship the Applicant now faces in attending to current expenditures in accordance with the CSG are of his own making.

[238] His one-half share of the eldest child's net NSCC and University costs total **\$4,422**. This sharing formula will no doubt be reviewed for the 2026-2027 academic year.

[239] Having reviewed the past section 7 expenses, as noted above, the Applicant share is recoverable with the arrears as set out in this decision.

[240] I have used actual child care costs as suggested by the Applicant through counsel and considered the post secondary expenses claimed by the mother, the

child's income earned for this period, the father and mothers' income and circumstances.

[241] The Applicant's share of past section 7 expenses is:

Net Orthodontic	\$2,466.26
Child Care from 2009 to 2013 inclusive	\$6,050.50
2024 to 2026 Post secondary expenses	\$4,422
Total	\$12,938.76

[242] Having recalculated arrears to account for actual income; before adding past section 7 expenses and crediting for payments made the total outstanding gross arrears are \$123,964.

[243] To further assist the parties in understanding the adjustment to retroactive arrears, I include the following:

[244] The MEP records as of May 15th, 2022, show arrears (inclusive of childcare) of \$101,800. The recalculation of just table amount based on the income in the chart provided, considering actual income to May 15th, 2022, results in arrears of \$84,389.20.

[245] The Applicant's share, only to year end 2013, of actual childcare costs have been adjusted, as set out in the Respondent's income tax returns, when, as agreed, childcare costs terminated.

[246] Any increase in arrears from May 15th, 2022, to end of February 2026 can be attributed to the increases in his income not addressed in the interim orders.

Set off payments-What credits should be applied to the outstanding arrears?

[247] The Father's counsel suggested that while the father agrees he did not pay pursuant to this order from 2009 forward, he is not suggesting he did not contribute to the children, prior to, or after the period he claims they had a shared parenting arrangement.

[248] Unfortunately, he has provided no evidence of other payments. he made "informally" before the dates he alleges the agreement became one of shared parenting.

[249] There is no evidence before me of any contribution he made to the table amount, or provision of necessities of life or other support for the children either in cash or in kind.

[250] The father participated in the children's karate lessons when he returned to Nova Scotia. The mother also contributed to Karate lessons. The mother indicates there was a subsidy involved that assisted to compensate the parents. I have no evidence of what effect this would have on costs.

[251] Karate lessons would fit within an assessment of section 7 or other expenses inclusive of extracurricular expenses; not table child support meant to address the hard and soft costs of housing, feeding and clothing children. They would be additional to, not a replacement for table child support.

[252] There are no set off payments or evidence of in-kind contributions other than the documented payments according to the MEP records. There were no unusual contributions to their daily needs in evidence, that would be out of the ordinary for a person exercising his parenting time. There is no evidence of increased costs from a change in the parenting plan and the frequency of visits.

[253] There was no precise evidence of how much the father contributed to extracurricular activities, how often he assumed other key roles, and day to day needs, including transportation. The contribution to medical and dental is expected if a parent can do so although I have no specifics of amounts or description of this benefit that was extended by for a period by Ms. Murphy's plan. Certainly, any assistance was of benefit to both the Respondent and the children.

[254] The Applicant did not give a reasonable explanation as to why he did not contribute to the orthodontic costs, childcare costs, or table amount.

[255] I find the Applicant performed supplementary tasks with the assistance of his partners and the Respondent. Until enforcement commenced, he played no role in financial support other than extracurricular activity support.

[256] It is equally clear that he did not contribute financially in the manner required by law and had no receipts for any contributions he might have made.

[257] The state of the evidence before me causes me to conclude there was a significant long-term refusal to financially support the children according to the

Applicant's ability to pay, following the formula set out for all parents living in Canada and subject to Canadian law, as set out in the Child Support Guidelines.

[258] The chart contains the most reliable evidence as to total adjusted income. I have had submissions from Child View and various amended submissions from Divorce mate. I have used as a base, the adjusted calculations from the Applicant's latest amended submissions, adding in the RRSP income.

[259] Starting with the agreement that arrears in 2009 were \$2,010, and calculating arrears forward, I have credited the Applicant with payments received by MEP as shown in their records ending in November 2025; (\$27,941). I have then assumed January and February 2026 payments were made at the same rate and added the underpayment to the chart above.

[260] The significant divergence in the calculations pre and post hearing resulted in my adapting a cautious approach to calculations in submissions.

Demand for payment

[261] The Respondent's testimony is consistent and believable. She asked for child support throughout and did not agree to nonpayment of child support.

[262] She stated his response was consistent throughout; that she did not need the ordered support, and he refused to provide his income information.

[263] The Respondent stated she was afraid of the Applicant and was afraid that her repeated requests would negatively influence the Applicant's parenting time with the children. The Applicant did not adequately address this assertion.

[264] The Applicant's only comment on nonpayment was in response to her assertions that she spoke to him and emailed him as to her need for support. He said in his affidavit:

I have reviewed all my email exchanges with Ms. Shupe back to 2008 to see if there were any discussion that I do not recall pertaining to child support and there are none.

[265] This does not persuade me that a request or requests were not made. Indeed, the mother's evidence throughout was open, forthright, and unambiguous.

[266] I am satisfied he had actual, effective notice of her requests to comply with the court order and provide support throughout, whether in writing or directly, or by other electronic means.

[267] I am satisfied the Applicant was aware of her demands throughout.

Determining the start and finish date for recalculation.

[268] I move to look at the time over the arrears occurred to determine whether they are all enforceable. I have recalculated from the 2009 Order to the current date in February 2026.

[269] The mother works two (2) jobs, one as a ECE for a local Regional Centre for Education and the second as a cashier. Over the course of these years, she has struggled with tax debt although she has in 2021 had a refund.

[270] She is a single parent, has had no child support for 13 years until enforcement procedures were initiated in 2022, or tangible assistance until she received some health benefits from Ms. Murphy's plan, access to which has been terminated.

[271] She advises she accumulated debt, has no savings other than what she has put aside for her children's education, no car, and has limited opportunity to provide the children access to extracurricular activities.

[272] The Applicant's mother and stepfather provided an affidavit affirming their daughter-in law's struggle with financially supporting the daughters. They too, tried when they could to assist the respondent mother.

Result

[273] Using the latest submissions from the Applicant, his child support obligations to February 2026, based on his actual income, are **\$123,964**.

[274] I have assumed he continued to pay \$712.00 per month to end of February 2026. The amount owing for the first two months of 2026 would be \$1,866. leaving an amount owing of \$442. If he has arrears from the previous two interim orders to date this figure will have to be adjusted to add on any further underpayments.

[275] I have added the unpaid past section seven expenses

[276] The second report from Maintenance Enforcement indicates the Applicant has made payments of \$27,941. since enforcement commenced. He will be credited with these payments. I have already adjusted for underpayments to February 28th, 2026.

[277] The arrears shall be updated to the current month (March 2026) to account for any further underpayment because of this order.

Total Net arrears are \$108,961.76

[278] The gross arrears have been adjusted to account for past section 7 expenses (arrears in childcare, orthodontic and post secondary expenses) and payments made as noted above. In fixing these costs given the discrepancies, I have taken a cautious view and accepted the most reliable evidence before me to be fair to both parties.

Enforcement and variation according to *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry; Hiemstra v. Hiemstra*, [2006] 2 S.C.R. 231, 2006 SCC 37.

[279] Finally, I must determine whether the court should erase some of these arrears.

[280] Support is the right of the child. Parents have a financial obligation to their children that begins at birth and continues even after parental separation. *D.B.S.* clarified that if a payor's income increases, it is the duty of the Payor to increase support payments under a free-standing legal obligation to their children. *D.B.S.* also emphasized was the consistent need for full and frank disclosure of income by the payor. It is often said that accurate and timely disclosure of income is the linchpin of the child support system. Once the applicant has established a change in circumstances, there is an automatic presumption triggered that support will be varied back to a certain date.

[281] While there is a presumptive guide of three years retroactive assessment, that date is within the discretion of the court. To depart from the presumptive timeline, *Colucci v. Colucci*, 2021 SCC 24, has established four factors that should be considered. I will review each individually.

Factor 1: Understandable reason for the delay

[282] The Applicant wishes to use unreasonable delay to avoid enforcement of historic arrears.

[283] The delay argument does not benefit him in arrears from 2020 forward where the greatest increases in his income occur. Given the Respondent registered her order for enforcement in July 2022, the Respondent is well within her rights to enforce arrears commencing from 2020 without a delay argument affecting her claim.

[284] As we learn in *Hiemstra v. Hiemstra*; delay in disclosing financial documentation, generally tips the scales towards the courts not upholding an order for retroactive variation. Understandable reasons for delay have been identified as significant health issues, an unwillingness to disrupt a fragile parent-child relationship, and the payor lacking the financial and emotional wherewithal to proceed with the matter. In *Colucci* the Applicant was unable to obtain past income statements.

[285] In determining historic arrears, the Applicant profits in a variation/enforcement based on actual income because of the declining income for the earlier years. Erasure of the debt totally is another issue. Recovery is also a significant issue.

[286] The Applicant argues that the delay in pursuing enforcement ought to limit recovery. He argues that this delay hampered his ability to produce documentation.

[287] The delay the court must also consider is the Applicant's delay in pursuing his application to vary when his income decreased and correspondingly increased quite substantially. Given his refusal to disclose, he was the only one in position to know about the decreases and increases.

[288] The Applicants explains his delay by arguing the parents had an agreement. There was no proof of an agreement or of expenses he absorbed other than for extracurricular activities which were, according to the mother partially subsidized. While he advised the court, he searched his emails historically he did not produce any bank records or email transfers where payments could be verified.

[289] In short, he argues, based on their agreement there were no arrears. If there were, her delay is grounds for forgiveness of arrears due to deficiency of documentation and lack of supporting documentation because of the passage of time. Both delays must be considered.

[290] *Colucci v. Colucci* [2021] SCC 24 Mr. Colucci relied on the passage of time as his reason for delay, The court held that the passage of time is not a valid reason to be unable to produce such financial documentation.

[291] In assessing delay *Colucci* tells us to determine when the payor had actual notice of a request to enforce or disclose.

[292] Since the original child support order the mother testified, she made numerous/appeals to the father each time he came home and while he lived in HRM, to honour the child support order. She had no success. She states she informed him on her ongoing financial hardships resulting from his failure to comply.

[293] When asked by the Respondent, the father refused both support and requests for financial information. The mother expressed fear of aggravating the father with repeated requests given her concerns about the effect on the children's relationship with the father. This relationship was tenuous and sporadic at first.

[294] The mother recalls the court advising her in 2009 that regardless of nonpayment, her duty was to facilitate contact between the father and the children. She took that duty seriously. When the father's respective partners worked to facilitate contact with him, she cooperated. She made serious efforts to include the father in the children's lives throughout despite his failure to follow the order.

[295] Notably, until formal enforcement proceedings began, the father did not respond to any request until he was ordered by the court following his Motion to suspend enforcement. Unless before the court, the annual adjustments to his obligations did not take place, resulting in underpayment to the current date.

[296] This statement regarding her repeated request was consistent with her other evidence, all of which was not seriously challenged. The father's response on this issue was not believable.

[297] The reasons for a retroactive review that exceeds the presumptive three years and a consideration of delay in taking action to enforce this debt was discussed by Chapel J., in *JMM v CRU*, 2025 ONSC 3067, [2025] O.J. No. 2316 For clarity I include this discussion.

569 The Supreme Court of Canada set out a comprehensive framework for the analysis of retroactive child support claims in *D.B.S.*, both in the context of original

applications for support and in proceedings to retroactively increase child support. The court revised this framework in the child support context in the cases of *Michel* and *Colucci*, but the analysis set out in *D.B.S.* remains relevant in both the child support and spousal support contexts.

570 In *Colucci*, the Supreme Court of Canada held that the following analytical framework applies with respect to claims for retroactive child support, whether in the context of an original application or a variation proceeding:

1. A presumption arises in favour of allowing a retroactive claim to be advanced starting from the date when the recipient gave the payor "effective notice" of their claim for relief, up to a maximum of three years prior to the date when the recipient gave the payor "formal notice" of the claim to vary. In claims for retroactive child support, effective notice requires only evidence that the recipient broached the subject of child support with the payor, or if child support is already being paid, that the current amount of child support should be discussed and re-negotiated. The court considered this approach advisable because the appropriate Table amount is based on the payor's income, the payor has the pertinent information regarding their income and overall financial circumstances, and the child support recipient typically has an informational disadvantage (*Colucci*, at para. 86). Cases decided prior to *Colucci* held that to establish "effective notice," there must be a reasonably identifiable date when the issue of support was raised. Vague assertions about having talked to the payor about support at some time in the past will not suffice (*Hansen v. Clark*, 2008 MBQB 324 (Q.B.), aff'd 2009 MBCA 69 (C.A.)).
2. Where no effective notice was given by the recipient, child support should presumptively be increased starting from the date when formal notice to the payor was given. In *D.B.S.*, the court indicated that formal notice is not necessarily the commencement date of the proceeding, and that it could be some other type of formal notification to the payor of the request for support or an increase in support.
3. Once the court determines the presumptive date for the commencement of a retroactive child support award, it must then consider whether a departure from that date is appropriate on the facts of the case to achieve a fair and just result (*Colucci*, at para. 71). This discretion includes the ability to extend the award further back in time than the soft general limit of three years prior to formal notice, or prior to the date of effective notice, particularly where a payor has engaged in blameworthy conduct (*Colucci*, at para. 45). [emphasis added] It also includes the discretion to fix the commencement date for a retroactive claim to a date after court proceedings were commenced, and even up to the time of trial in appropriate circumstances (*Colucci*, at para. 95). In carrying out this discretionary analysis, the court should strive to achieve a fair balancing of the three interests at play in claims for retroactive increases in support, namely: the

child's interest in a fair standard of support; the payor's interest in certainty and predictability; and the interest of the child and recipient in flexibility. It should also be guided by the four general considerations set out in D.B.S. (the "*D.B.S.* factors"), which the court has now elaborated upon and updated. These four factors are as follows:

- a) Whether the party seeking retroactive support had an understandable reason for the delay in giving effective notice of their claim or seeking relief from the courts.
 - b) The conduct of the support payor.
 - c) The past and present circumstances of the child; and
 - d) Any hardship that may result by granting retroactive relief, and by extending the temporal scope of a retroactive award.
4. If the payor has failed to disclose a material increase in income and to address their corresponding child support obligations appropriately, that failure typically qualifies as blameworthy conduct and the date of retroactivity will generally be the date of the increase in income.
 5. None of the four discretionary D.B.S. factors are decisive. In weighing the factors, the court must keep in mind that a claim for retroactive child support is for a legally enforceable debt and should not treat child support as a lesser form of debt entitled to unusual leniency that is not available in other areas of debtor-creditor law (see also Michel, at para. 109).
 6. The payor's interest in certainty and predictability is the most compelling in situations where there is a court order and the payor has been complying with the terms of the order. Conversely, the payor cannot rely on their interest in certainty and predictability in defending a retroactive claim if there is evidence that they have not abided by the terms of the order (D.B.S., at para. 98).
 7. Once the court has determined that retroactive child support should be awarded from a particular date, the increase must be quantified. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the relevant legislation and Guidelines.

571 The framework set out above should be applied both to retroactive claims respecting the Table amount of support and contribution to section 7 expenses (*Hetherington v. Tapping*, 2007 BCSC 209 (BCSC), at para. 20; *A.E. v. A.E.*, at para. 200). Cases decided before *Colucci* held that the court should in dealing with those claims base its decision on the actual incomes of the parties for each year under consideration (*Vanos v. Vanos*, 2010 ONCA 876 (C.A.), at paras. 13-16). [emphasis added]

[298] And further, regarding Understandable Reasons for the Delay in Advancing the Claim:

- 572 In *D.B.S.* and *Michel*, the Supreme Court of Canada held that in considering the issue of delay, the court must be sensitive to the practical concerns associated with initiating child support proceedings. It emphasized in *Michel* that delay in advancing a child support claim is not, in and of itself, inherently unreasonable, and that the appropriate question is whether the claimant has provided understandable reasons for the delay (at paras. 111, 113). A delay by the recipient will only be prejudicial to their claim if it is deemed to be unreasonable, "taking into account a generous appreciation of the social context in which the claimant's decision to seek child support was made" including any concerns respecting family violence or access to justice challenges (*Michel*, at para. 113; see also *D.B.S.*, at para. 101).
- 573 Supreme Court of Canada has held that understandable reasons for delay in giving effective notice or commencing legal proceedings to advance a child support claim may include the following:
1. Fear of the support payor due to concerns respecting family violence or other factors.
 2. Intimidation by the support payor.
 3. Reasonable grounds to fear that the payor would react vindictively to raising the support issue, including advancing a claim for primary residence of the child.
 4. Lack of financial means to commence a legal proceeding.
 5. Mental, emotional or physical health challenges that impacted the recipient's ability to deal with the child support issues.
 6. The recipient's inability to locate or contact the payor parent.
 7. The fact that the support order was assigned to a government agency.
 8. Inadequate legal advice; and
 9. The conduct of the payor with respect to disclosure issues, since inadequate disclosure may create an information asymmetry that results in the recipient lacking the information required to determine whether action on their part is appropriate. [I have emphasized relevant factors as explained below]
- 574 In *Michel*, the court indicated that the court may pay particular attention to the length of any delay in pursuing proceedings after the cause of the delay has ceased to exist. The longer the delay after that point, the less likely the court will be to find that the delay was reasonable (*Michel*, at para. 113).
- 575 In *Henderson v. Micetich*, 2021 ABCA 103 (C.A.), the Alberta Court of Appeal held that the legal developments relating to the factor of delay by the recipient are such that delay now "has a very limited role to play in determining the

availability and extent of a retroactive child support order" (at para. 44). It added as follows:

- 44 Put simply, delay has a very limited role to play in determining the availability and extent of a retroactive child support order. Any delay on the part of a recipient parent must be viewed in light of available information, resources, and social context, including gender, social and economic inequities. Given the structure of the Guidelines and the well understood, and now widely accepted, philosophy that child support is an obligation on the part of both parents, the amount of which depends on the payor's income, there will be few cases where delay can be truly seen as unreasonable or a factor that should preclude the award of previously-owed support to children.

[299] Regarding the underlined factors in paragraph 573 above; the mother experienced a number of these factors. She was concerned about the effect of her constant demands on the father's interaction with the children, which interaction was sporadic at least until 2016 and only enhanced when in a relationship with cooperative partners.

[300] In the case before me, the father and his partner purchased a larger home in 2022. That same year he received additional monies from an RRSP, and his partner received a lump sum from a medical discharge which she put towards the down payment. The mother was unaware of the father's financial position because of his failure to disclose.

[301] While there is no suggestion of physical abuse, the adamant refusal to pay support or abide by a court order or participate financially in a meaningful manner, coupled with her fear of the effect of constant reminders on his sometimes-unpredictable parenting schedule clearly intimidated the mother.

[302] While the Payor argues that there was an unreasonable delay in enforcement, Ms. Shupe responds that she did not delay in obtaining the court order and the delay, if any, that has prejudiced the Applicant is his own failure to make an application to vary.

[303] Should she be penalized by late enforcement and the payor absolved from late filing of an application to vary? Indeed, delaying a variation action might be seen as profiting the payor given the increase in his sources of income and exposure to an increase in child support particularly when faced with post secondary costs.

[304] In this case the delay has not impaired the court's ability to calculate arrears retroactively. The prejudice to the payor in this instance is that he has created for himself a rather large debt that need not have occurred had he paid on a regular basis.

[305] It is now only the father's say so that reasonable arrangements were made for the support of the children. Absent convincing evidence of these arrangements there is no basis to waive support or evidence of any consideration for doing so.

Factor 2: The payor's conduct

*Blameworthy conduct on the payors part is a considerable factor to consider when determining retroactive child support variations. As defined in *Goulding v Keck, 2014 ABCA 138 at paragraph 44*, blameworthy conduct is conduct that has "the effect of privileging [the payors] interests over the child's right to support". In applying this factor, the court will look to whether or not the payor has put in effort to disclose and communicate with the recipient about their financial situation. Here, the courts will also look at whether the party made voluntary payments against the arrears, if they continued to pay in accordance with their ability to pay, if there was cooperation with enforcement agencies, and if they showed willingness to support their child rather than absconding those obligations.*

[306] In the case before me there is no evidence of health difficulties that were not considered when setting the original order. The Applicant's contributions were determined having regard to his actual WCB benefits. There was no evidence of efforts to contribute, or any voluntary payments towards table amount; no evidence of other contributions to be considered as a set off and no evidence of efforts to disclose. The only evidence relating to contribution is to section seven expenses related to extracurricular activities.

[307] Ms. Shupe testified she made repeated requests for payment. In response, Mr. Major offers that he searched his records and could not find a written request to pay what the court ordered.

[308] Nowhere in the law or the literature is this explanation considered a valid excuse for nonpayment, particularly considering the comments of the leading authority that *it is the duty of the Payor to increase support payments under a free-standing legal obligation to their children*.

[309] There is no other reasonable conclusion than this; the Applicant's failures amounted to blameworthy and intentional refusal to follow the child support obligations pursuant to the existing court order.

Factor 3: Circumstances of the child

[310] When considering a retroactive variation in child support, the court considers the effect of a retroactive change will affect the recipient and the child.

[311] We have two children before me, both of whom are in educational pursuits both of whom remain with the mother in her home. Those facts speak for themselves, as does the fact that the mother has held two jobs to support them; that their grandmother was an integral partner with the mother providing for their supervision, care and well being during her lifetime; and notably the eldest child held down two jobs to support her educational pursuits, perhaps to her disadvantage.

[312] I conclude the mother's household continues to need assistance to permit both children to benefit from both parents' income and lifestyle and to meet their needs and entitlement as defined by the CSG.

Factor 4: Hardship

To establish hardship, the payor must disclose evidence to establish real facts in support of a finding of hardship. A showing of hardship will not automatically trigger a departure from the presumptive three-year rule. This fourth and final factor will carry less weight in the instance that the payor has made an unreasonable failure to make proper disclosure or give notice to the recipient.

[313] The Applicant has not provided any evidence that would allow me to assess how repayment of past child support would put him in jeopardy other than to say he is on workers compensation. He has current child support obligations and when they are satisfied there are strategies that can be put in place to repay what he owes, adjusting for his circumstances.

[314] Finally, in *Colucci v Colucci* para 77, we have the following:

On an application for a retroactive increase, the recipient seeks the flexibility of a retroactive award to capture the payor's increased income and secure payment of child support in the correct amount. It is the payor who has some interest in the certainty and predictability supplied by an existing court order or agreement (D.B.S., at para. 63). However, this certainty interest is heavily qualified by the Guidelines-era principle that

more income means more support. The payor cannot reasonably expect their child support obligations to remain static in the face of material increases in income. Given the structure of the Guidelines, the only real “certainty” in the face of fluctuating income is that the payor is responsible for paying the table amount based on actual income. Further, a payor who has fallen into arrears cannot resist a retroactive increase based on their interest in certainty, as the payor cannot claim they relied on the order in arranging their affairs (Gray, at para. 51; MacEachern v. Bell, 2019 ONSC 4720, 33 R.F.L. (8th) 68, at para. 89). [Emphasis added]

[315] Paragraph 89 of the above noted reference to *MacEachern v. Bell* states as follows:

Even where a diligent payor believes in good faith that a decrease in income will be temporary, the most prudent course of action is nevertheless to communicate the change to the recipient and provide information which substantiates the claimed change in circumstance.

[316] The Court in Colucci went on to say:

[90] After communicating a change and providing available documents, a payor maintains “an ongoing obligation to engage in meaningful dialogue with the recipient, advise the recipient of changes in their circumstances that may impact their ability to pay support and voluntarily disclose pertinent information so that the recipient can continue to independently assess the situation and react appropriately” (Templeton, at para. 52). Failure to do so may impact the period of retroactivity when the court applies the discretionary D.B.S. factors. Further, effective notice of an initial change in income will not amount to effective notice of subsequent changes (Corcios, at para. 55).

(d) *Discretion to Depart from the Presumption: The Four D.B.S. Factors*

[96] The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair in the circumstances of a particular case. In this section, I explore how the *D.B.S.* factors — adapted to suit the retroactive decrease context — help the court reach a fair balancing of the three interests at play, namely the child’s interest in a fair standard of support, the payor’s interest in flexibility, and the interest of the child and recipient in certainty. There is no fixed formula; none of the factors is determinative and they must be viewed holistically (*D.B.S.*, at para. 99).

In O’Connor v. Ng’ang’a, 2024 NSSC 219, Doucet J. implemented a retroactive review beyond the three-year presumptive rule and considered the problem regarding effective notice (In our case the first of many requests for payment and /or the first failure to disclose his income). She said, at paragraph 87:

87 *DBS*, *supra*, created a presumption in favour of retroactively increasing child support to the date the recipient gave effective notice of an intention to seek an increase, up to three years before formal notice of an application to vary. Effective notice does not require legal

action, but simply that the payor brings up the topic of an increase of child support. However as outlined above, *DBS, supra*, also held that when there is blameworthy behaviour, the date of retroactivity could be the date of the material change in income (para. 125). *Colucci, supra*, also noted that the date of the payor's change in income may be a more appropriate commencement date when a payor has not disclosed the increase in income (para. 45).

[317] The application to vary was always available to the Applicant payor to adjust for reductions in his income.

[318] The Applicant's income slightly decreased between 2009 and 2019 and then largely increased from 2019 to date. The years 2017 and 2020 forward saw an increase in the Payor's sources and amount of income. In some years he earned more income than the Respondent and considerably more than the income he disclosed in 2009.

[319] There was no formal undue hardship application even though it was discussed in preliminary appearances.

[320] The burden is on the Applicant to show why forgiveness may be legally justified and to prove a change of circumstances.

Summary

[321] The interests of children must take priority in these applications.

[322] To obtain relief by way of forgiveness or retroactive variation, the party must ensure that they are consistently disclosing full and accurate financial changes. Notice to the payor, whether effective or formal, is an important consideration. The conduct of the payor will be considered.

[323] At para 45 of *Colucci v Colucci*, 2021 SCC 24: The Supreme Court contemplated a situation such as the one before me.

In light of the existing approach to blameworthy conduct and the pervasiveness of non-disclosure, **it may be necessary in a future case to revisit the presumptive date of retroactivity in cases where the recipient seeks a retroactive variation to reflect increases in the payor's income. A presumption in favour of varying support to the date of the increase would better reflect the recipient's informational disadvantage and remove any incentive for payors to withhold disclosure or underpay support in the hopes that the status quo will be maintained. Such a presumption would accord with other core principles of child support and reinforce that payors share the burden of ensuring the child receives the appropriate amount of support.** [Emphasis added]

[324] The issue of fairness and justice was considered by Sheppard J. in *Watkins v. Collins*, 2025 NSSC 363:

[26] The presumptive rule capping retroactive variation to three years was put in place in the context of a payor attempting to go back much earlier to vary the child support down, as was the case with Mr. Colucci. However, in the circumstances of this case, this works an injustice to the recipient, Maragret Collins. Jeremy Watkins' income from 2016 through to and including 2022 was significantly higher than pegged in the Final Order (August 29, 2016)

[27] Allowing the child support to be retroactively calculated only to August of 2022, as Jeremy Watkins requests, would mean a reduction in child support especially if it is based on his actual income. It is only fair that this amount be balanced against the child support that would have been due and owing from September of 2016 until July of 2022 had Jeremy Watkins followed the order and provided his income disclosure.

[325] In *DBS* at para.43 the court directed us:

In determining whether to make a retroactive award, a court should strive for a holistic view of the matter and decide each case on the basis of its particular facts. The payor parent's interest in certainty must be balanced with the need for fairness to the child and for flexibility.

[326] Fairness and justice call for a flexible view of the years from 2009 to the current day. A recalculation back to 2009 will certainly benefit him. It would be grossly unfair to stop there.

[327] From 2017, except for 2018, through to the current date, a recalculation would result in material increases forward. In viewing this holistically, the retroactive analysis from 2009 to the current date will reduce, but by no means eliminate, his arrears. The prospective analysis largely benefits the Respondent and the children.

[328] The Supreme Court endorsed a flexible and just approach while creating a starting point of three years. A more restrictive view of this decision might result in review retrospectively for three years after formal notice which might be considered the date the order was registered for formal enforcement (June 2022). That would bring us back to 2019 when the Applicants income and circumstances were considerably improved. This would benefit the Respondent.

[329] Such an expansive backward view may profit the Applicant by reduction, but the Respondent only begins to profit, and the Applicant is only affected, from

2017 forward, and only materially affected by the increase in support from 2020 forward.

[330] I conclude it would be unfair to enforce all arrears without adjustment for the leaner years reflecting the Respondent's actual income and ability as designed by the Guidelines, not driven by fault.

[331] I have concluded that the Respondent gave the Applicant effective notice early in the children's lives, while he was still in Edmonton. She continued to ask for support throughout. She needed help from the father to financially support their children. I conclude the Applicant knew he was expected and was asked to follow the order. Formal notice could be construed as the date the order was registered for enforcement.

ISSUE # 5- Determining whether to forgive part or all the arrears.

[332] Arrears shall be set and fixed at \$108,961.76 to February 28, 2026, adjusted only for any arrears as per the courts findings from November 2025 to end of February 2026.

[333] The Applicant shall pay \$200.00 a month towards the arrears until further order of the court. Failing agreement of the parties in August 2026, the court may reassess future Section 7 costs for the 2026/2027 together with the monthly arrear's payment.

[334] I conclude the recalculated arrears are enforceable in full. Priority is to be given first to current child support and current Section 7 expenses.

[335] I reject the submission that the unpaid child support will be a windfall or planned in any way, as suggested by the Applicant. The process of obtaining recovery through the courts has been lengthy.

[336] The children cannot now be put in the position they should have been, had both parents been contributing according to their ability as determined by the CSG. Any payments will profit the mother's household and help to support the children.

[337] Should the Applicant come into money in the future he might be able to repay in larger lump sums or in full. Clearly, if they recover some or all the arrears, their current and future circumstances will be improved.

[338] There is no evidence that I should limit the mother's right of recovery.

[339] The payor operates a car, as does his partner. If, as he indicated, his ability to work outside of the WCB benefits is minimal, so his need for transportation is diminished.

[340] I have no evidence that would allow me to draw any conclusions about his ability to be employed in any capacity. He has the benefit of living in a household with another income to reduce his monthly expenditures. He may well have a claim in future to some equity in the proceeds of sale of the home he occupies with his partner.

[341] The benefit he receives from his partners financial contribution to the Applicant as part of a couple, lies in reducing the Applicant's expenses, thereby making space and flexibility in his lifestyle choices to support his children. They both received lump sum equity from the sale of their previous home. The children did not profit from this influx of money in their father's household even though he had his partner's assistance maintaining the home and splitting the expenses as evidenced by his statement of income and expenses.

[342] Where blameworthy conduct exists, as is the case here, the court has the discretion to go beyond the presumptive rule where the facts support such a conclusion. The blameworthy conduct as defined in DBS rests in the Applicant's conduct.

[343] The only reason offered by the Applicant to avoid enforcement back to 2009 is the late, formal request put to MEP to enforce the order. Notably he has never made an application to vary.

[344] Other than the assistance she received from her mother, when alive, and the supplementary sums the paternal grandparents contributed when they could, the Respondent bore the total financial responsibility for the two children, until court intervention. This has had serious financial repercussions on what she could afford to provide and on her own financial security.

[345] I have considered the Applicant's circumstances as set out in his testimony. There is no evidence before me that would suggest the arrears should be reduced or eliminated.

[346] To do so arbitrarily and without evidentiary foundation would undermine the principle of parental responsibility for child support, as a priority against any other financial responsibilities. The Applicant has already profited from nonpayment.

[347] Having found that Ms. Shupe did request payment to address her household needs and was repeatedly refused both support and disclosure, the struggle here is to find evidence to support a legitimate reason to limit the recovery.

[348] The logistics of repayment may be difficult, while he is paying prospective support. However, he may well be able to repay those sums, even if periodically, or by refunds from his income tax returns.

[349] If fairness is a measurement of justice, forgiveness of the arrears in this case would not meet that standard. Any reduction on my part would be unsupported and arbitrary.

[350] I extend to the Applicant 45 days from the date of this decision to negotiate with the Applicant regarding enforcement of this decision, either in whole or in part. This 45-day grace provides the Applicant some limited time to negotiate with the Respondent to end this obligation by way of lump sum settlement.

[351] If, after 45 days from the date of this order, there is no written agreement by the parties to enforcement or partial lump sum payment, I direct MEP, using the legal avenues available to them, to enforce this order in full.

[352] I direct the Maintenance Enforcement program to garnish any income tax refunds and take such measures either that are agreed upon between the parties in writing or on their own, absent any agreement.

[353] In considering whether to accept partial payment in a lump sum the Respondent would be wise to consider the likelihood of full recovery and the benefit of a lump sum in hand immediately. She would be wise to get legal advice on any such proposals.

[354] Finally, I have reviewed the authorities provided by the Applicant. *Currie v. Currie*, 2022 NSSC 23, a decision of *Marche J.* is a case where the payor accumulated significant arrears over a 15-year period. The payor was not relieved of his obligation to pay, as the hardship he encountered was of his own making. The court extended to the payor an opportunity to propose a reasonable plan of arrears, and I shall remind the Applicant this decision does not prohibit him from making a *reasonable proposal* for repayment, which if accepted, could be incorporated into a court order.

[355] *Delaney v. Best*, 2022 NSSC 76, is distinguishable on the facts, given there had been a Notice of Discontinuance filed, which created reasonable expectations by the payor regarding his obligations.

[356] As well, *Martin v Powell*, 2025 NSSC 211, is not helpful to the payor before me given the Judge therein made finding of credibility in favor of the payor and a finding that a shared parenting plan existed.

ISSUE # 6- Prospective support and section 7 support for the eldest child currently attending University.

[357] Based on his 2005 income \$65,924 the current child support payable by the Applicant to the Respondent the child support payable for two children living at home shall remain at the 2025 level of \$933 a month payable on March 15th, 2026, and the 15th of each month through the Offices of the Maintenance Enforcement, adjusted as required by the guidelines each year thereafter, as long as there are dependant children.

[358] The first adjustment shall be on or before June 1st, 2026, after verified disclosure as set out in the CSG including full and complete copies of the Applicants income tax returns together with all schedules and information slips, whether filed with Revenue Canada or not, together with Notices of Assessment immediately on receipt. This disclosure shall continue each year thereafter while there remain dependant children.

[359] Failing annual disclosure by the Applicant as ordered, I order that the reasonable legal costs incurred by the mother to obtain disclosure as ordered shall be covered by the Applicant.

[360] Should there be a future issue regarding whether a child remains dependant that will require a separate application.

[361] The Respondent shall keep the Applicant advised if there is any change in residency of the children that will require a change in the formula for child support.

[362] The university costs to date have been addressed in the Arrears section.

[363] Should the child be enrolled in university in September 2026 and disclosure provided as ordered, the parties will determine the net disbursements after any subsidies, or grants and assess what contribution the child can reasonably make to the expenses. The balance shall be divided equally.

[364] Should they fail to agree they may apply to the court for an order addressing the Applicant's contribution.

[365] Adjustments can be made in June 2026 when up to date disclosure is complete. Unfortunately, despite many Bench requests to obtain a statement from workman's compensation to year end December 2025, none was forthcoming.

[366] The WCB benefits shall be grossed up in each year of receipt as reflected in the total income.

[367] The Order shall be enrolled in the Maintenance enforcement program, and recalculation program, if possible, to adjust table support.

[368] The parties shall abide by the directions to disclose to each other and to MEP on an annual basis as it relates to table support.

Section 7 expenses

[369] The parties shall equally share necessary section 7 expenses relating to net uninsured health costs, net after tax, educational costs, on a prospective basis.

Disclosure

[370] **The Applicant shall file with the Office of the Director of MEP and the Respondent on or before June 1st of each year:**

1. His full and complete income tax return together with schedules, whether filed with Revenue Canada or not.
2. He shall file with in 48 hours of receipt, his notice of assessment for each year, while he remains under an obligation to pay child support.
3. He shall file confirmation from Workers Compensation as to all benefits received by him in the previous year.
4. The Applicant shall report to MEP and the Respondent any cash employment as earned on a quarterly basis.
5. Copies of all disclosure shall be provided by the Applicant to the respondent at the same time as filed with the Director of MEP.

[371] This disclosure shall continue until both children are no longer dependant children according to the CSG and the Parenting Support Act.

Post secondary Section 7 expenses

[372] While section 7 expenses are in issue, the Respondent shall file with the Applicant on or before June 1 of each tax year her complete copy of her income tax return with all schedules and information slips whether filed with Revenue Canada or not, and within 48 hours of receipt, a copy of her *Notice of Assessment*.

[373] And before August 1st and January 30th of each year each year, verification from the educational institution that the child (s) is registered and attending post-secondary education and remains a dependant child(s).

[374] The mother will advise of each child's educational status and provide to the father evidence of enrollment and a full copy of expenses associated with post secondary education, she shall quarterly advise the father of their attendance status (in writing).

[375] The mother shall also provide the eldest child's income tax return within the same time guidelines or proof of year-to-date earnings, grants, scholarships, or income assistance, including student loans, etc.

[376] Disclosure for the September 2026-2027 academic year shall be completed on or before August 1st, 2026.

[377] This matter shall be set over for pretrial on **August 18, 2026, from 10:00 am to 10:30 am, In-Person** for directions to file to review post secondary expenses for the 2026 2027 academic year. If MEP is unable to recalculate Table support the then current incomes shall be disclosed and table child support adjusted accordingly.

Legere Sers, J.