

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Ferguson v. MacDougall*, 2026 NSSC 135

Date: 20260429

Docket: Tru No. 1207-004442

Registry: Tru

Between:

Lana Jean Ferguson

Applicant

v.

Joey Mark MacDougall

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Terrance G. Sheppard

Heard: February 10, 2026, in Truro, Nova Scotia

Written Decision: April 29, 2026

Subject: Variation of parenting schedule, attribution of pre-tax corporate income, variation of prospective and retroactive table amount of child support and extraordinary expenses.

Summary: The parties had shared parenting of their three children. The Applicant sought to vary child support when the two oldest children started living with her primarily. The Respondent asked to have the youngest child in his primary care. The Respondent further requested that income be imputed and attributed to the Applicant.

Issue: (1) What parenting schedule is in the youngest child's best interest?

- (2) Should income be imputed and/or attributed to the Applicant?
- (3) Should child support be retroactively varied to when the two oldest children started to live primarily with the Applicant?
- (4) Should special and extraordinary expenses be retroactively and prospectively varied?

Result:

- (1) It is in the youngest child's best interests to be in the primary care of the Respondent.
- (2) Income was not imputed to the Applicant for most reasons requested by the Applicant; however, approximately a third of her 60% share of the corporation's pre-tax income was attributed to her.
- (3) Child support was retroactively varied to April 1, 2024, which was when the Respondent received effective notice that the Applicant was seeking to vary child support. However, it was found that youngest child had been in the Respondent's primary care starting in January of 2025.
- (4) Special and extraordinary expenses were not varied. The most recent Order provides that the Applicant was to pay special and extraordinary expenses. Some expenses claimed by the Applicant were not special and extraordinary expenses. The extracurricular activities claimed by Applicant were governed by the most recent court order and there had been no change in circumstances. The Applicant's request for a contribution to the oldest child's post-secondary expenses was denied as she had failed to provide the basic information required to assess that claim.

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Counsel: Lana Ferguson, unrepresented
Joey MacDougall, unrepresented

By the Court:

OVERVIEW

[1] The parties were married on August 5, 2005. They have three children:

- a) CRM – 18 years old;
- b) NGM – 15 years old; and
- c) JNM – 11 years old.

[2] The parties separated on November 24, 2016, signed a separation agreement on April 18, 2017, and were divorced on November 4, 2019.

[3] The Corollary Relief Order called for shared parenting of all three children. However, in February of 2023, NGM started living primarily with Lana Ferguson. And, in September of 2023, CRM began living primarily with Lana Ferguson.

[4] JNM has, more or less, maintained the shared parenting schedule although there is a difference of opinion between the parents on exactly how much time she has spent with each of them. Joey MacDougall maintains that JNM wants to spend more time with him, and he asked for a schedule that places her in his care for 80% of the time. Lana Ferguson requests to continue with the equal parenting time and further requests that Joey MacDougall stop interfering with her parenting time with JNM.

[5] A Voice of the Child Report for JNM was completed by Nancy Baker and filed with the Court on September 22, 2025.

[6] The main issue at trial was parenting arrangements for JNM. Child support for her flowed from the decision on parenting; however, Lana Ferguson also wanted child support retroactively calculated back to February of 2023 for NGM and December of 2023 for CRM. Although CRM was living primarily with Lana Ferguson by September of 2023, she is only claiming retroactive back to December of 2023 because that is when she says CRM stopped having any regular parenting time with Joey MacDougall.

[7] Joey MacDougall asked to have included in Lana Ferguson's income all or part of the pre-tax income of her corporation, Arbour Dental Inc.

ISSUES

[8] The following issues must be resolved:

- a) Has there been a change in circumstances?
- b) Parenting arrangements for JNM;
- c) Income determination for Lana Ferguson;
- d) Prospective child support for all three children;

- e) Retroactive variation of child support for CRM and NGM; and
- f) Variation of special and extraordinary expenses.

ANALYSIS

a) *Change in circumstances*

[9] Given the increased time JNM has spent in Joey MacDougall's care since the last parenting order, and her express desire to spend more time there, I find that there have been material changes that may warrant changing the parenting schedule.

[10] To vary a parenting order, I must be satisfied there has been a material change in circumstances, specifically:

- a) A change in the condition, means, needs, or circumstances of the child and/or the ability of the parents to meet the needs of the child;
- b) The change must materially affect the child; and
- c) The change was either not foreseen or could not have been reasonably contemplated by the Judge making the last parenting order.¹

¹ See *Barendregt v. Grebliunas*, 2022 SCC 22, at paragraph 76 and *Gordon v. Goertz*, [1996] 2 S.C.R. 27 at paragraphs 12-13.

[11] Lana Ferguson did not contest that there had been a material change in circumstances. The last parenting order in this matter was the Corollary Relief Order issued November 4, 2019. There have been many orders since that CRO; however, they have only dealt with varying child support. The one qualified exception to that would be the most recent Consent Variation Order issued May 26, 2023. While the order only varied child support, it does indicate in the recitals that “the parenting arrangements had become more flexible, such that the girls do not always follow the schedule for shared parenting.” It is clear that this referred specifically to NGM, and perhaps CRM, but both parties agree that JNM was more or less following the shared parenting schedule at that time, although perhaps not equally.

[12] Joey MacDougall insists that JNM has spent more time in his care for years but agrees that he only started tracking it in December 2024. According to Joey MacDougall’s math, JNM spent 61.32% of her time in his care in 2025; according to Lana Ferguson, that number is 59.42%.

[13] In any event, I am satisfied there has been a material change in circumstances in that JNM now feels more comfortable in her father’s care, has expressed a desire to spend more time with him and, in fact, is spending more time with him. Further, this was not foreseen at the time of the CRO in 2019.

[14] The change in parenting arrangements for CRM and NGM is not contested.

b) Parenting Arrangements

[15] Given JNM's:

- a) clear desire to spend more time in Joey MacDougall's care,
- b) closer connection with Joey MacDougall and her paternal family;
- c) better fit with the lifestyle of Joey MacDougall (household rules, outings, etc.)

I find it is in her best interests to spend the majority of her time in Joey MacDougall's care.

[16] While not happy about it, given the ages of CRM and NGM, Joey MacDougall is not contesting that they reside primarily with Lana Ferguson.

[17] Parenting orders are governed by section 16 of the *Divorce Act*, R.S.C. 1985, c. 3; variation by section 17. Section 16(1) tells me that I must only consider the best interests of the child. The factors I must consider are listed in s. 16(3) and s. 16(2) tells me that I must give primary consideration to the child's physical, emotional, and psychological safety, security, and well-being.

[18] In *Barendregt v. Grebliunas*, *supra*, the Supreme Court of Canada

comments:

“[8] Determining the best interests of the child is a heavy responsibility, with profound impacts on children, families and society. In many cases, the answer is difficult — the court must choose between competing and often compelling visions of how to best advance the needs and interests of the child.”

[19] And further:

“[97] But, even with a wealth of jurisprudence as guidance, determining what is “best” for a child is never an easy task. The inquiry is “highly contextual” because of the “multitude of factors that may impinge on the child’s best interest.”

[20] This has been a heavily contested separation with many court appearances and many orders. Given the long-standing animosity between these parents, it is not surprising that there has been an alignment of the children with different parents. The following is a brief judicial history:

- a) Before the parties were divorced there was an interim order dealing with travel to Florida;
- b) Following a contested divorce trial, the parties were divorced on November 4, 2019;
- c) Lana Ferguson brought a variation application for child support, and an interim variation order was issued September 25, 2020, less than a year after the CRO;

- d) A further interim order regarding child support was issued on June 24, 2021, again, less than a year after the last interim order;
- e) It was finally scheduled for a two-day trial on November 8 and 10, 2021, and a variation order was issued August 9, 2022; and
- f) The consent variation order referenced earlier was issued May 26, 2023.
- g) Lana Ferguson filed a variation application for child support a year later on May 31, 2024.

[21] Joey MacDougall's evidence is that in early 2024, JNM started expressing to him, teachers, and her school principal how uncomfortable she was feeling at her Lana Ferguson's home. JNM's mother and older sisters would speak very badly about her father. She would show up at school crying and upset. As part of helping her deal with her emotions, Joey MacDougall encouraged her to write her feelings down. JNM wrote the following letter on June 9, 2024:

"I have been nervous to be around my mom because every time I go there, she talks about dad in a bad way. I feel like I have someone to come home to everyday at my dad's house. I've been coming to school crying and needing to talk with my Principal right when I get to school to calm down. She has been listening to me and telling me you can't fix that that's something your parents need to fix. I would feel way better if my mom would stop telling me I can go and then telling dad I can't. When I am at my mom's I don't feel okay telling her I want to see dad because she tries to convince me to stay with her instead of my dad and I've been wanting to stay at my dad's house more."

[22] I corrected the spelling.

[23] Given that this was written by JNM at the encouragement of Joey MacDougall nine days after Lana Ferguson filed a variation application, I am suspicious of the motivation for having JNM write the letter. However, the letter does track with the Voice of the Child Report of Nancy Baker dated September 22, 2025, and with messages JNM and her parents.

[24] The salient points from the Voice of the Child Report are:

- a) JNM was emotional (crying) sporadically throughout the interview. At times, the interview was paused to allow JNM to compose herself;
- b) The current schedule is a rotating 2/2/3/3 schedule where each parent has JNM in their care for two weekdays and then the weekend days are alternated. Which two weekdays the parents have JNM in their care are alternated as well. Whoever has JNM in their care on the weekend, the other parent has her in their care on Mondays and Tuesdays;
- c) JNM does not know exactly how the schedule works and finds it confusing. She often does not know which home she will be in on any given day;

- d) Her mother's home does not have many rules; whereas her father's home does have rules. JNM prefers having the structure of rules in the household;
- e) JNM's relationship with her mother is not as good as her relationship with her father. It is more comfortable talking to her father and stepmother than it is talking with her mother;
- f) JNM gets along well with her stepmother and two stepsisters, one of whom is her age;
- g) At her father's home, they often plan outings and encourage her to play outside, which JNM enjoys;
- h) Her father is flexible and it is easy to ask him to change the plan so that she could be with her mother. However, she feels caught in the middle between her parents when she asks her mother if she could see her father. She gave two specific examples of this: first, wanting to be at her father's last Christmas because it was her paternal grandmother's last Christmas and, second, wanting to go apple picking with her father and stepmother's family;
- i) JNM would like more time than she currently has with her father;

- j) She wants the flexibility to choose when she wants to be with one parent because she misses them or wants to be a part of something that is happening in their home;
- k) The assessor did not have any concerns about JNM's cognitive or developmental ability;
- l) There is no evidence to suggest that the child had been coached or unduly influenced by either parent or any other party.

[25] Joey MacDougall works a regular Monday – Friday daytime. Lana Ferguson works Monday – Wednesday daytime and is off every Thursday, Friday, and weekends. Joey MacDougall's wife works from home. Lana Ferguson does not have a partner.

[26] Whenever JNM wants to spend additional time with Joey MacDougall, Lana Ferguson's attitude is that he and his wife are interfering in her parenting time with JNM. When JNM asked to stay extra at Christmas, Lana Ferguson's reply text was:

- "this is not very nice of your dad and Jeanine [stepmother] to do;" and
- "it was wrong of them to invite you when they knew that it was my year for Christmas. They should not have done that and it's very cruel and it puts you in the middle."

[27] JNM assures her that it was not Joey MacDougall and his wife and texts back that it is Lana Ferguson that is putting her in the middle. Joey MacDougall's evidence, which I accept, is that often it is not him or his wife inviting JNM to these functions, but JNM finds out about them from her stepsiblings, or through a group family chat, and then wants to attend.

[28] It is also clear from these text messages that JNM feels empowered by the fact that NGM and CRM were allowed to choose not to spend time with Joey MacDougall. Perhaps she also feels that this is unfair to Joey MacDougall, increasing the alignment with him.

[29] There are a set of messages from JNM to Joey MacDougall where she says that Lana Ferguson is crying because "you just texted that I wanna stay full-time at your place and she had to talk to me for a long time." Joey MacDougall assures her that he texted Lana Ferguson no such thing. JNM goes on to say that Lana Ferguson told her that they have a court meeting in February.

[30] Even if Joey MacDougall had texted Lana Ferguson that JNM wanted to live full-time with him, Lana Ferguson ought to have sheltered JNM from her emotional reaction to that and certainly not gone on to talk about court appearances with her.

[31] In balancing the factors set out in s.16(3) of the *Divorce Act*, giving JNM a voice in this proceeding, and considering the parents' work schedules, I determined that it is in JNM's best interest to be in Joey MacDougall's primary care and will have the following parenting schedule with Lana Ferguson in alternating weeks:

- a) In one week, JNM will be in Lana Ferguson's care every Wednesday and Thursday overnight.
- b) In alternating weeks, JNM will be in Lana Ferguson's care overnight Thursday, Friday, and Saturday.

[32] Pick up and drop offs will be from and to the school whenever possible. If there is no school on Wednesday, pick up will be 4:00 PM. If there is no school on Thursday, pick up will be 9:00 AM. Drop off on Sunday will be 4:00 PM.

[33] The schedule of overnights is as follows:

Week	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	Dad	Dad	Dad	Dad	Mom	Mom	Mom
2	Dad	Dad	Dad	Mom	Mom	Dad	Dad

[34] This schedule will be easier for JNM to follow than the rotating 2/2/3/3 she had been attempting to follow. Lana Ferguson is off every Thursday and Friday and available to care for JNM. This schedule gives some weight to the voice of JNM who wanted to spend more time with Joey MacDougall. Joey MacDougall has argued that she was already spending approximately 60% of the time with him so, when JNM indicated she wanted to spend more time with him than she currently had with him, she was indicating that she wanted to spend more than 60% of the time. However, it is not clear to me whether JNM was referring to the equal time that she was supposed to be spending with each parent or the somewhat sporadic schedule where she would spend approximately 60% of her time in Joey MacDougall's care. While this is not the 80% of parenting time requested by Joey MacDougall, it is a 65/35 split between him and Lana Ferguson and gives some weight to JNM's wishes.

[35] I agree with Joey MacDougall that the number of transitions, while appropriate when JNM was two years old and the parties first separated, is more problematic now that she is eleven. The proposed schedule gives a block of three overnights with Lana Ferguson and five with Joey MacDougall, rather than the two- and three-day blocks in the current schedule.

[36] Regarding JNM's wish to have more flexibility with the schedule, Lana Ferguson put to Joey MacDougall in cross-examination that the order should simply say that JNM will have the choice where she goes on any given day. Joey MacDougall gave an excellent answer. For a child JNM's age, it is not beneficial to be given too much decision-making. Telling JNM it is her choice puts the burden on her and forces her to choose one or the other. Requests for more flexibility, more say in where she goes, comes back to JNM's desire for less confrontation when asking to spend time with the other parent, specifically when asking Lana Ferguson to spend more time with Joey MacDougall. Lana Ferguson's proposal to simply let JNM decide shows her lack of insight into the conflict bind JNM would be in with such a parenting arrangement.

[37] Therefore, there will be flexibility in JNM's schedule but on the following parameters:

- a) The parents will make every effort to ensure that JNM is involved as little as possible in any discussions regarding a change in the schedule;
- b) To that end, the parents will first discuss any change to the schedule between them without involving JNM;

- c) The parents will make every effort to discuss a change to the schedule prior to JNM finding out about an upcoming event through her sisters, stepsisters, cousins, or through a family chat group;
- d) Any requested changes to the parenting schedule will not be unreasonably denied;
- e) If JNM requests a change to the parenting schedule, that parent will only indicate to JNM that they will discuss it with the other parent and let her know. The parents will discuss the change requested by JNM and come to a mutual decision. Any changes requested by JNM will be given significant weight. The parents will communicate a decision regarding the suggested change to JNM as a joint decision.

b) Income Determination

[38] There is agreement on Joey MacDougall's income. For Lana Ferguson, approximately one third of her company's pre-tax income will be attributed to her income for the purpose of determining her child support obligation.

[39] The parties agree that Joey MacDougall's 2024 income was \$123,700 and his 2025 income was \$128,222.

[40] Lana Ferguson is a dentist and owns 60% of Arbour Dental Inc. The other partner is Jeff Thompson who owns the remaining 40%. Mr. Thompson has not yet received any compensation for his ownership interest although the hope is that the company will be able to start providing him with compensation in 2027.

[41] Lana Ferguson has filed three statements of income in this proceeding. They all state her income slightly differently, but they range from \$182,280 - \$183,465.

Her reported income in the last four years has been:

2021	2022	2023	2024
\$183,461	\$176,405	\$183,461	\$183,012

[42] Not unexpectedly, as of the trial date on February 10, 2026, Lana Ferguson was unable to provide any confirmation of her 2025 income. The most information we have is from a letter from Jeff Thompson, partner and vice-president of Arbour Dental Inc. indicating that 2025 was a positive year, "...largely due to the successful recruitment and retention of two hygienists and two dentists for most of the fiscal year." He goes on to state, "maintaining adequate staffing throughout the year had a direct and positive impact on patient access, service capacity, and revenue stability."

[43] His projected outlook for 2026 is not near as positive given the expected departure of a dentist later this year, inflationary pressures, and a data loss that occurred in December of 2025.

[44] Joey MacDougall requested the court find that Lana Ferguson has additional income above and beyond the approximately \$183,000 she claims for the following reasons:

- a) Arbour Dental Inc. owes a loan to a company named Rimrock in the amount of \$276,885. Rimrock is a company owned by Jeff Thompson, a 40% owner in Arbour Dental Inc. and the vice-president. However, I have no reason to believe that this is anything other than a legitimate loan between businesses;
- b) Lana Ferguson's income in April of 2017 was \$230,000. However, I cannot base child support in 2026 on income from 9 years ago. In 2017, Lana Ferguson was self-employed working for a dental practice; however, now she is part owner of the dental practice;
- c) Joey MacDougall says that Lana Ferguson did not submit a statement of expenses and in previous trials it was determined that a considerable portion of her personal expenses were being paid by

the corporation. However, in fact, Lana Ferguson filed two statements of expenses in this matter, neither one of which indicate that any of her personal expenses are being paid by the corporation. Further, Joey MacDougall has not pointed to any specific personal expenses that are currently being paid by the corporation.

- d) Joey MacDougall wants me to attribute 60% of the pre-tax income of Arbour Dental Inc. to Lana Ferguson, pursuant to s.18 of the *Child Support Guidelines*.
- e) Lana Ferguson only works three days a week and her earning potential is much higher than reported;

[45] The difficulty with the arguments that Lana Ferguson only works three days per week and that 60% of the pre-tax income of Arbour Dental Inc. should be attributed to her is that Joey MacDougall has made these two arguments twice before without success.

[46] At the previous two hearings, Lana Ferguson was only working three days a week and both times the Court declined to impute income to her because of this. The Court also declined to attribute any pre-tax income from the corporation to Lana Ferguson.

[47] The first time was during the divorce trial on May 30, 2019. Granted, at that time Lana Ferguson had just purchased the business in November of 2018. In the court's decision on July 4, 2019, Lana Ferguson was found to have an income of \$180,000.

[48] There was a variation hearing on child support on November 8, 2021. By then, Lana Ferguson had owned the business for three years, but two of those years were during the pandemic. Both sides engaged experts, Charlene Rodenhiser for Lana Ferguson and Harold Duffett for Joey MacDougall. In its oral decision on March 29, 2022, the court preferred the evidence of Lana Ferguson's expert, Ms. Rodenhiser, and again set her income at \$180,000.

[49] However, the business has changed since then. During the 2021 variation hearing, the effects of Covid-19 were still being strongly felt. The net income for the corporation since 2019 has been:

2019	2020	2021	2022	2023	2024	2025
\$83,808	(\$267,418)	\$53,984	(\$45,999)	\$149,684	\$22,841	\$148,664

[50] The amounts for 2020 and 2021 are before taking into account government grants.

[51] The net income for the business in both 2023 and projected for 2025 are over 75% higher than 2019, the full year prior to the pandemic.

[52] I must start with s.16 of the *Child Support Guidelines* which directs me to, first, consider the “Total income” in the payor’s income tax return. Only if I am satisfied that the payor’s income as determined under s.16 does not fairly reflect all the money available to them can I include all or part of the pre-tax income of the corporation.

[53] The corporation has had a solid increase in net revenue since the matter was last before the court in 2021. I cannot ignore 2023 and 2025 when the net income of the corporation was almost \$150,000 in both years. Joey MacDougall urges me to add \$89,198 to Lana Ferguson’s income for 2025 which represents 60% (her percentage ownership) of the pre-tax income of the corporation.

[54] The onus is on Lana Ferguson to establish that there are sound business reasons not to withdraw the income from the corporation. Common examples would be that the funds are needed for cashflow or capital expenditures. Without such evidence, part or all or part of the pre-tax income can be attributed to the payor.²

² See *P.W. v. C.M.*, 2021 NSSC 127. Overturned on other grounds at *Ward v. Murphy*, 2022 NSCA 20.

[55] While I cannot ignore the substantial growth in the net income in 2023 and 2025, I also cannot ignore the much lower net income in 2024, \$22,841. Also of note is that the corporation lost almost \$46,000 in 2022.

[56] I also take Jeff Thompson's point that the anticipated loss of one of the corporation's dentists, inflationary pressures, and the anticipated cost in recovering the lost data, "...reinforces the need for conservative financial planning." I also take note that Jeff Thompson, a 40% owner in the business, has not yet taken an income and likely will not until next year.

[57] Given the totality of the evidence and, taking a cautious approach to the attribution of pre-tax corporate income, I attribute an additional \$30,435. This is approximately 34% of her 60% share of the pre-tax net income of the corporation. Adding this to her declared income of \$183,465 brings her income for child support purposes to \$213,900.

c) Prospective Child Support

[58] CRM and NGM are in the primary care of Lana Ferguson. Joey MacDougall's income of \$128,222 produces a table amount of child support for two children of \$1,748. JNM is in the primary care of Joey MacDougall. Lana Ferguson's income of \$213,900 produces a table amount of child support for one

child of \$1,748. Pursuant to s.8 of the *Child Support Guidelines*, the set off amount of child support is zero.

d) Retroactive Child Support

[59] The court cannot go behind the Consent Variation Order issued May 26, 2023, as requested by Lana Ferguson. Given that there was no blameworthy conduct by Joey MacDougall, and that effective date of notice that child support was being sought from him was March 14, 2024, retroactive child support will commence as of April 1, 2024. Child support will be payable by Joey MacDougall to Lana Ferguson from April 1, 2024, to and including December 1, 2024, based on CRM and NGM being in the primary care of Lana Ferguson and JNM being in their shared care. JNM has been in Joey MacDougall's primary care since January of 2025, so no retroactive child support is awarded from January 1, 2025, forward.

[60] The first step in assessing applications to retroactively vary child support is to determine if there has been a change in circumstances. If there has been a change of circumstances, the next step is to determine the start date. The presumptive start date will be the date of effective notice, capped at three years before the date of formal notice. There are four factors I must consider in determining whether to adjust the start date:

- a) Delay
- b) Blameworthy Conduct
- c) Child's circumstances
- d) Hardship to the payor.

[61] Once a start date is determined, I must apply the tables retroactively for each applicable month and year and calculate the retroactive amount owed. Once the global amount owing is determined, I have residual discretion to adjust this amount depending on the circumstances of the payor and their ability to pay both ongoing and retroactive support. However, I can only forgive legitimate arrears if I am satisfied that the payor parent will never be able to pay them. An inability to pay the child support in the past does not mean that they cannot pay the arrears in the future. Short of forgiving the arrears, I can allow a payment plan for the arrears. On the other hand, I can include a trigger that if the payor fails to meet the payment arrangement, the full amount of arrears becomes due.³

[62] Lana Ferguson started this variation application because she wanted child support from Joey MacDougall given that CRM and NGM were in her primary care. She says that NGM stopped following the parenting schedule completely and

³ See *S. (D.B) v. G. (S.R.)*, 2006 SCC 37, *Michel v. Graydon*, 2020 SCC 24, and *Colucci v. Colucci*, 2021 SCC 24.

resided full-time with her since February of 2023. For CRM, she lived primarily with Lana Ferguson since September of 2023; however, Lana Ferguson is only claiming child support retroactive to December of 2023 for CRM when she says that both her and NGM had little contact with Joey MacDougall. These facts are not disputed by Joey MacDougall.

[63] The difficulty with Lana Ferguson's request is that the parties agreed and a Consent Variation Order was issued on May 26, 2023, which indicated in the recitals:

“And whereas the parenting arrangements have become more flexible, such that the girls do not always follow the schedule for shared parenting.”

[64] The Consent Variation Order provided that neither party was to pay child support to the other.

[65] By that time, it is clear that NGM was primarily in the care of Lana Ferguson. JNM was still following the shared parenting arrangement. Lana Ferguson does not complain that Joey MacDougall (and his wife) started interfering with her parenting schedule with JNM until December of 2024. For CRM it is unclear how often she was in each parents' care when the Consent Variation Order was issued. Lana Ferguson says that “[CRM] started spending less time at her father's and began asking to leave her father's early when she did go to

his home.” Further she says, “[NGM] was living full-time with me and [CRM] was staying with me more often.”

[66] Joey MacDougall rightly questions what the material change of circumstances are. There is certainly no change in circumstances regarding NGM who was already primarily in Lana Ferguson’s care at the time the May 26, 2023, Consent Variation Order was issued. The only possible change in circumstances was that, as of May 26, 2023, CRM had not yet crossed over into being in the primary care of Lana Ferguson, albeit was spending more time with her than the equal amount of time called for in the CRO.

[67] Given that CRM was not in the full-time care of Lana Ferguson until September of 2023, and this occurred after the May 26, 2023, Consent Variation Order, I find that this was a change in circumstances.

[68] Regarding the request for retroactive child support to February of 2023 for NGM, I find that there was no change in circumstances regarding NGM’s care after the issuance of the Consent Variation Order on May 26, 2023.

[69] Lana Ferguson first contacted Joey MacDougall to request child support on March 14, 2024. This is the date of effective notice. Given the application was

made in May of 2024, there has been no significant delay by Lana Ferguson from the date of effective notice to the date of formal notice.

[70] There was no blameworthy conduct by Joey MacDougall given that the Consent Variation Order was just issued May 26, 2023, that NGM was already in the primary care of Lana Ferguson, and that CRM was already spending more time with Lana Ferguson at the time of the Consent Variation Order and only transitioned to her full-time care in September of 2023. I also accept Joey MacDougall's evidence that Lana Ferguson had assured him less than a year before that there would be no more court.

[71] There are no circumstances of the children or hardship to Joey MacDougall that would affect a retroactive recalculation of support.

[72] To determine any retroactive support amount, I must first determine whether JNM was in Joey MacDougall's primary care for any of the retroactive period. It is not until December of 2024 that Lana Ferguson complains that Joey MacDougall (and his wife) are interfering with her parenting time with JNM. The parties tracked the parenting time starting in January of 2025 for Lana Ferguson and December of 2024 for Joey MacDougall. Joey MacDougall acknowledges that

JNM was in their shared parenting in December of 2024 so I will start with the analysis of 2025.

[73] Joey MacDougall says that in 2025 JNM was in his care 61.32% of the time; Lana Ferguson says 59.42%. There is a very small, less than 2%, variance between these parties' calculations, albeit a legally significant difference.

[74] Overall, I accept Joey MacDougall's calculations over Lana Ferguson's. Joey MacDougall calculates the parenting time by hours. Lana Ferguson counts it by overnights. Depending on the circumstances, either one can be an appropriate way to calculate the percentage of time in each parent's care. However, where such a small difference is so significant, counting the hours, as Joey MacDougall does, is more accurate.

[75] Further, the amount of parenting time that JNM is in Joey MacDougall's care increased as 2025 progressed. For the last six months of the year, the percentage is 63.6%. For the last three months of the year, the percentage is 64.14%.

[76] Finally, although both parties' calendar tracking is detailed, I find Joey MacDougall's tracking to be more detailed. He notes things such as when school was cancelled, when JNM met with the Schools Plus counsellor, when they went to

Hatfield Farms, etc. Lana Ferguson's notes are more of a cut and paste of emails between her and Joey MacDougall about all the times he interfered with her parenting time with JNM.

[77] Given my finding that JNM was in the primary care of Joey MacDougall for 2025 and given my finding respecting the attribution of pre-tax corporate income to Lana Ferguson, no child support is payable by either parent for 2025.

[78] For 2024, given the pre-tax corporate income for Arbour Dental Inc. was only \$22,841, I cannot attribute any of that to Lana Ferguson. Her income in 2024 was \$183,004. Joey MacDougall's was \$123,700.

[79] Neither party have detailed evidence about what percentage of time JNM spent in each of their respective care in 2024. I accept Lana Ferguson's evidence that JNM, more or less, followed the shared parenting schedule up to December of 2024. The burden would be on Joey MacDougall to show that JNM was in his primary care in 2024, which he has not done.

[80] Given that NGM and CRM were primarily in Lana Ferguson's care and JNM was in a shared parenting arrangement, the set-off table amount of child support would be \$705 payable from Joey MacDougall to Lana Ferguson. I have discretion under s. 9 to order a different amount than the set-off; however, I have

no evidence from the parties on the conditions, means, needs and other circumstances of the children and parents. Further, the parties have done the set-off amount of child support since their separation in 2017. I will order this set-off amount.

[81] Joey MacDougall will pay \$705 per month from April 1 to and including December 1, 2024. Lana Ferguson only requests that the change in child support for CRM go back to December of 2023; however, given that she only provided notice of her intention to seek child support in March of 2024, and as I found earlier, there is no blameworthy conduct by Joey MacDougall, I will not order child support prior to April 1, 2024. The total amount of retroactive child support is \$6,345 (9 months X \$705). This payable by Joey MacDougall within ninety days from today.

[82] Given the modest amount produced by the retroactive recalculation of support, there is no need to exercise any residual discretion to forgive any portion of it or set up a payment plan.

e) Variation of Special and Extraordinary Expenses

[83] There has been no change in circumstances since the Consent Variation Order to warrant a change in the sharing of the extracurricular activities for the

children. Some expenses claimed by Lana Ferguson are not special and extraordinary expenses. CRM's post-secondary expense would be a special and extraordinary, but Lana Ferguson has failed to provide the bare minimum of information necessary to assess that claim.

[84] The parties have had various regimes for the sharing of special or extraordinary expenses since their separation in 2017. However, the current order is the Consent Variation Order issued May 26, 2023. That provides in paragraphs 4 and 5 that each party will be responsible for childcare when the children are in their respective care. Further, Lana Ferguson shall continue to cover the current s.7 expenses and any replacement extracurricular expenses without contribution from Joey MacDougall.

[85] Lana Ferguson now requests various special or extraordinary expenses for NGM, all of which are extracurricular activities. Her claim for these expenses is dismissed. There is no change in circumstances since the issuing of the Consent Variation Order.

[86] For JNM she claims one extracurricular activity, and two items that are not special and extraordinary expenses (coat and boots). Her claim for these expenses is dismissed.

[87] For CRM, there are three items totalling \$348 which are not in relation to post-secondary education; however, I have no indication whether these expenses were being covered by Lana Ferguson when the Consent Variation Order was issued on May 26, 2023. I note that Joey MacDougall lists \$6,585 worth of special or extraordinary expenses he has paid since 2024, including many extracurricular activities which Lana Ferguson would otherwise have been responsible for. Therefore, I dismiss Lana Ferguson's claim for the special or extraordinary expenses totalling \$348.

[88] The only new special or extraordinary expense for which she can claim a contribution from Joey MacDougall is CRM's post-secondary educational costs. There are several issues with her claim:

- a) Although she filed a sworn statement of special or extraordinary expenses dated April 25, 2025, she attaches no receipts or confirmation of these expenses. She filed an affidavit outlining the expenses as well but does not attach any receipts there either;
- b) We do not know CRM's income. I would need to know this in order to properly assess what, if any, contribution toward these expenses CRM should contribute;

- c) Also, regarding CRM's contribution to the expenses, there is no indication if CRM received any scholarships or bursaries to offset the cost of the university expenses. There is a reference in the affidavit to a student loan for \$15,000; however, again, there is no confirmation of this or any details. Often, student loans include a non-refundable portion;
- d) Part of the claim is for CRM's residence and meal plan of \$17,122.34; however, these are living expenses and are typically included in the table amount of child support. Lana Ferguson cannot claim both a contribution toward these living expenses and a table amount of child support;
- e) Lana Ferguson has not provided any calculations to show the tax credits for CRM's post-secondary education that she will receive if CRM is able to transfer them to her. Again, I would need CRM's income to determine if she will use up all the educational tax credits or be able to transfer any to a parent.

[89] I therefore dismiss Lana Ferguson's claim for a share of CRM's post-secondary educational expenses.

CONCLUSION

[90] If either party requests costs, they must make submissions to the court no later than one month after the release of this written decision. The other party has two weeks to file their response.

Sheppard, J.