SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *P.W. v. C.M.*, 2021 NSSC 127

Date: 20210413
Docket: *Sydney* No. 96620
Registry: Sydney

Between:

P.W.

Applicant

v.

C.M.

Respondent

Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	March 11, 12, 13, 2020, February 17, 18, & March 18, 2021, in Sydney, Nova Scotia
Written Release:	April 13, 2021
Counsel:	P.W., Self-Represented Theresa O'Leary for the Respondent

By the Court:

[1] This is a decision on P.W.'s application to vary child support under s. 37 of the *Parenting and Support Act*, R.S.N.S. 1989, c. 160.

[2] C.M. opposes the application, saying that there has been no change in circumstances sufficient to warrant variation of child support.

[3] The parties are the parents of one child, who is currently five years of age. P.W. is a mechanic, carpenter and scaffolder, and he operates a company that owns residential rental units.

[4] The original parenting and support issues were dealt with in a contested hearing before Justice R.M. Gregan, who rendered a decision on March 2, 2017. The order arising from that decision was issued on July 12, 2017. It directs P.W. to pay monthly child support based on an annual income of $120,000.00 commencing on April 1, 2017.

ISSUES:

1. Has there been a change in circumstances?

2. What is P.W.'s income for purposes of child support?

3. What child support order is appropriate?

4. Should there be a retroactive adjustment to child support?

5. Is there arrears or a credit owing?

6. Should leave of the Court be required for future applications by P.W.?

7. Holdback

ISSUE 1: Has there been a change in circumstances?

[5] The *Parenting and Support Act*, R.S.N.S. 1989, c. 160 states:

> **Powers of court**
>
> **37 (1) The court**, on application, **may make an order varying**,
>
> rescinding or suspending, prospectively or retroactively, **a support order** or an order for custody, 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. R.S., c. 160, s. 37; 1997 (2nd Sess.), c. 3, s. 11; 2015, c. 44, s. 36. [emphasis added]

[6] Section 10 of the *PSA (supra*) states:

> **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.

[7] Section 14(a) of the *Nova Scotia Child Support Guidelines* (which are referenced in s.10 of the *PSA*) requires me to determine whether there's been a "change in circumstances that would result in a different child maintenance order…".

[8] In order for P.W. to be successful on this application, he must first prove, on a balance of probabilities, that there has been a change in circumstances that impacts his ability pay child support.

[9] As a starting point, P.W. says that his income is not, and has never been, in the range of $120,000.00. He argues that Gregan, J. was wrong to impute income to him. He says that his child support should be reduced to reflect his actual income, which he says is far less than $120,000.00 annually.

[10] I must look at what circumstances existed at the time the last order was granted and compare those circumstances with the present. In 2017:

- P.W. was qualified as a mechanic (not heavy equipment operator), a carpenter and a scaffolder;
- He regularly relied on Employment Insurance benefits to supplement his income when laid off;

- He had transferred his union membership from western Canada to the local union hall so that he could be more available to co-parent his young son;
- His business was earning rental income from eight units; and
- He provided maintenance and upkeep for the units.

[11] At the hearing before Gregan, J., P.W.'s financial disclosure was lacking. This time around, he made extensive disclosure of his corporate information, including receipts for expenses, tax returns, and his accountant's file. His accountant also testified. On cross-examination, his company assets and expenses were reviewed in detail.

[12] So has P.W.'s financial situation changed since 2017? At present:

- P.W. is a qualified mechanic, carpenter and scaffolder;
- He still relies on E.I. benefits to supplement his income when laid off;
- His business now earns rental income from 10 rental units; and
- He still provides maintenance and upkeep for the units.

[13] Other than an increase in rental units, the only difference between when the court calculated P.W.'s income in 2017 and now, is that Gregan, J. treated all of P.W.'s income as personal income, including business income from the rentals. It appears that P.W.'s disclosure was so inadequate that it wasn't apparent that the rental income was generated in a limited company.

[14] It's now clear that P.W. is the sole shareholder, officer and director of a limited company that owns the rental units. That is a material change that I accept warrants a review of the child support payable by P.W.

ISSUE 2: What is P.W.'s income for purposes of child support?

[15] P.W.'s reported income for the years 2016 through to present is as follows:

YEAR	LINE 150
2016	$25,308
2017	$32,761
2018	$37,037
2019	$57,318
2020	$44,403

[16] His company reported income and expenses for the same years as follows:

YEAR	GROSS COMPANY INCOME	COMPANY EXPENSES DEDUCTED	NET COMPANY INCOME
2016	$62,450	$89,753	($26,782)
2017	$79,925	$98,851	($17,072)
2018	$83,720	$110,173	($26,072)
2019	$84,220	$82,465	$1,961
2020	$84,170	$121,665	($37,003)

[17] There is a difference between income calculated for income tax purposes, and income calculated for child support purposes. Deductions that are perfectly legal for tax purposes are not necessarily permitted for child support purposes. The point is to capture all income available to the payor, so that children are properly supported.

[18] Sections 15 – 19 of the *Nova Scotia Child Support Guidelines* must be considered. They state:

> **Determination of annual income**
>
> **15 (1)** Subject to subsection (2), a parent's annual income is determined by the court in accordance with Sections 16 to 20.
>
> …
>
> **Calculation of annual income**
>
> **16** Subject to Sections 17 to 20, a parent's annual income is determined using the sources of income set out under the heading "(Total Income)" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.
>
> Section 16 replaced: O.I.C. 2000-554, N.S. Reg. 187/2000; amended: O.I.C. 2007-321, N.S. Reg. 294/2007.
>
> …
>
> **Shareholder, director or officer**
>
> **18 (1)** Where a parent is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the parent's annual income as determined under Section 16 does not fairly reflect all the money available to the parent for the payment of child support, the court may consider the situations described in Section 17 and determine the parent's annual income to include

> **(a)** all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or
>
> **(b)** an amount commensurate with the services that the parent provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

Adjustment to corporation's pre-tax income

(2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the parent establishes that the payments were reasonable in the circumstances.

Imputing income

19 (1) The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:

> (a) the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child to whom the order relates or any child under the age of majority or by the reasonable educational or health needs of the parent;
>
> …
>
> (g) the parent unreasonably deducts expenses from income;

[19] According to the Nova Scotia Court of Appeal in **Reid v Faubert**, 2019 NSCA 42, I must first consider whether P.W.'s Line 150 income (as adjusted under Schedule III of the *CSG)* fairly reflects all the money available to him for the payment of child support.

[20] Schedule III of the *CSG* directs the court to make adjustment to a payor's Line 150 income in certain circumstances. P.W. is a member of a union, so under s.1(g) his union dues must be deducted. However, the only information I have about union dues is a 2-year summary (exhibit #26) showing union dues paid in 2019 of $1,785.42. That summary shows nothing paid for 2018. P.W. filed a notice of assessment for 2018 (exhibit #9) which doesn't break down his dues in the deductions from total income. However, his tax return shows an R.R.S.P. that year of $7,000.00 so I will assume that the balance of his deductions reflects union dues ($1,550.00).

[21] P.W. filed paystubs for 2020 that contain information on deductions (exhibits #11 & #15) but it's not clear what sum reflects dues vs. health coverage, etc. It's clear that P.W. worked through the union in 2020, so absent exact evidence from him on this figure, I will assume that he paid at least half of what he paid in 2019. Therefore, the amount deducted for 2020 is $892.71.

[22] I must also adjust P.W.'s income under s.5, which is for individuals who collect dividends from a taxable Canadian corporation. The actual amount received should replace the taxable amount used on their return, as dividends are reported at a multiplier value, and then taxed at a lower rate than regular income.

[23] In 2019, P.W. received dividends of $5,000.00. According to exhibit #26, he reported dividend income of $5,750.00 that year, so I will reduce his Line 150 income by $750.00.

[24] P.W.'s income as adjusted is as follows:

2018	$35,487
2019	$54,782
2020	$43,510

[25] I must next decide whether P.W.'s income, as adjusted, fairly reflects all money available to P.W. to pay child support. I find it does not, because:

- P.W. has discretion to draw money from his company as wages, dividends, or repayment of his shareholder's loan;
- P.W. derives personal benefits from allowable deductions;
- P.W. leads a lifestyle that suggests a higher income; and
- P.W. has skills, qualifications, and experience which he could use to generate a higher income.

[26] This takes me to s.18 and s.19 of the *CSG*. Section 18 grants the court discretion to attribute pre-tax company income to a payor, while s.19 grants the court discretion to impute income. Courts across the country have written about the intersection of these two provisions, yet there doesn't seem to be a consensus on

how they are to be applied in these circumstances. The Nova Scotia Court of Appeal has not ruled specifically on the issue.

[27] In my view, it's appropriate to use s.18(2) to add back any personal expenses that P.W. ran through his company. These are payments made "on behalf of persons with whom the corporation does not deal at arm's length" and P.W. did not establish that the deductions were "reasonable in the circumstances".

[28] This approach is consistent with The Ontario Court of Appeal's decision in **Riel v. Holland** [2003] O.J. No. 3901, *obiter* comments by the Newfoundland and Labrador Court of Appeal in **Gosse v Sorenson-Gosse**, 2011 NLCA 58, and the New Brunswick Court of Appeal's decision in **J.O. v. M.C**. 2017 NBCA 15. However, if that is not the correct approach, I would impute the same amounts to P.W. under s.19(1)(g) on the basis that he "unreasonably deducted" these same amounts.

[29] Before proceeding to analyze expenses under s.18, I must first consider whether any pre-tax corporate income should be attributed to P.W. as personal income. His company reported losses in the last four of five years. In 2019 he reported nominal income of $1,921.00.

[30] The onus is on P.W. to establish that there was a sound business reason not to withdraw that money. Absent evidence to the contrary, I am entitled to conclude that this was money available to P.W. as income. P.W. didn't advance evidence to show that, for example, there were cash flow or capital needs that would require him to leave that money in the company. Thus there's no evidence to prove that its withdrawal would have affected the viability of his company (**Reid v Faubert**, 2019 NSCA 42).

[31] That amount must be grossed up as well. For purposes of this analysis I've used 23%, so $2,505.00 will be added to P.W.'s 2019 income.

[32] Next, I'll consider C.M.'s claim that P.W. personally benefits from business expenses. If so, the amounts deducted will be attributed to him as income under s. 18. I must also consider whether these sums will be grossed up in accordance with the Ontario Court of Appeal decision in **Riel** *(supra)*. In that case, it was noted that courts have discretion to "level the playing field" between salaried employees, and those payors who use their company to pay personal expenses. The distinction is that salaried employees pay their personal expenses from after-tax dollars. Where

P.W.'s lifestyle suggests that his ability to run expenses through his company greatly benefits him, I find that a gross up is appropriate.

[33] According to the G.I.F.I. tendered by P.W.'s accountant, the company expenses include: meals and entertainment, interest and bank charges, repairs and maintenance, heat, amortization, office expenses, wages, travel, telephone, insurance, professional fees, director's fees, and municipal water.

[34] In reviewing these expenses, I've considered *the type of business* that P.W. runs, whether the amounts are *paid out of pocket* or not, and *the need* for the expense in terms of operating the business.

[35] P.W. supplied his accountant with meal receipts (which he says include gift card purchases) for purposes of his corporate tax return. However, those receipts are not annotated to indicate *who* ate the meal or received the gift card. At least one receipt included a Happy Meal from McDonald's. I reject P.W.'s suggestion that this he bought this for a helper. It's much more likely that it was a meal bought for his son.

[36] I also reject the suggestion that some meals were purchased while on company business. The nature of P.W.'s business does not require his full attention every day. And his business dealings (with the exception of a trip off Cape Breton Island to buy a tractor) are all local. He isn't away from home to the extent required to deduct meal expenses.

[37] I do accept that several gift cards were purchased as gifts for work crews, particularly CBRM crews who delivered fill for the lands under development. However, P.W. did not annotate each receipt, so I am unable to calculate the amount of gift cards purchased. I therefore find that all of these expenses should be added back under s.18.

[38] The next category is interest and bank charges. Bank charges are a necessary part of doing business and should not be added back.

[39] The interest paid on mortgages secured by company properties is an out-of-pocket expense that isn't usually added back. However, P.W. mortgaged company properties to finance his new home. I accept C.M.'s calculation of 38%, representing the portion of the debt attributable to the new home, thus that same percentage will be added back.

[40] Repairs and maintenance are normal expenses for a rental property business. However, in 2020 P.W. spent significantly more than other years. C.M. says that some of that cost should be added back, as the decision to renovate was discretionary. I agree that the decision was discretionary, and I have also found that it was not an immediate need. However, it was money paid out of pocket, thus no amount for repairs and renovations will be attributed as income.

[41] Most of the rental units include heat with the monthly rent. One of those units has a garage situated behind it. Though P.W. takes issue with the term "heated garage", he concedes that the building has its own furnace. He says that the tenants use the garage far more than him, though he uses it on occasion, and he's stored vehicles in it. I find it's reasonable to add back $200.00 for oil costs in 2020, to reflect his personal use of the garage over the prior three years.

[42] Capital assets have been amortized for accounting and tax purposes. P.W. acknowledges that amortization on buildings should be added back, as it's not an actual out-of-pocket expense.

[43] Other assets that have been amortized include vehicles and equipment. There's no evidence that these items are actually depreciating at the rate allowed for tax purposes, so I will add back 50% of those figures.

[44] P.W. claims office expenses, which include a portion of his home for use as a home office. That amount will be attributed to him as income, as he'd incur the cost of a mortgage and utilities in any event.

[45] Further, P.W.'s tenants mostly pay by cheque. He collects the cheques and makes a trip to the bank to deposit them. There's very little to be done from home, and little paperwork generated. In fact, during the first years of his business, he managed it from out west with his mother's help. In addition, deducting for a home office doesn't reflect monies paid out of pocket. It's perfectly legal and authorized for tax purposes, but it artificially reduces P.W.'s income for purposes of child support.

[46] The second element of his claim involves office supplies. In the past year, his cost of office supplies has increased substantially. P.W. candidly acknowledges that the extra cost was for paper and ink cartridges used in preparing and copying disclosure for this proceeding. That's a personal cost, not a company expense. I will add back the full amount claimed for each year.

[47] Wages paid to P.W. are accounted for in his personal returns. I accept that he paid smaller sums in cash to a couple of helpers. Though they are not necessarily arms-length, they did perform work of value to the company, so these expenses are reasonable.

[48] P.W.'s travel claims are strongly contested by C.M., who points out that all of the rental units are in the same area where P.W. resides, there's very little management required in this type of business, and P.W. expenses two trucks, one of which is his personal vehicle. P.W. responds that he uses the larger truck for picking up building supplies, while he may drive the other truck to the accountant's office, the bank and the hardware store. He also buys and expenses gas for equipment such as the tractor, trimmer and mower.

[49] P.W. doesn't keep a logbook to record travel. He doesn't annotate each receipt to indicate what vehicle was filled, or whether the charge was for filling a vehicle or filling gas cans for equipment. He combines trips to pick up his son with errands, and he operates at least two personal vehicles. The evidence is clear that a significant portion of vehicle expenses relate to personal use, so I will add back 50%.

[50] P.W. has a cell phone and internet that he uses for business and personal use. He deducts the full amount of the bill. It's not reasonable to deduct the full amount, so 50% of that cost will be added back to reflect personal use.

[51] Insurance is a necessary expense, as are professional fees. No amount will be added back for those deductions.

[52] P.W. is paid director's fees on occasion, which are accounted for on his personal return.

[53] The rental units include municipal water in the rent, so that's also reasonable, as it's actual money paid out of pocket.

[54] The above add-backs will be attributed to P.W. as income under s.18 (see Schedule "A").

[55] Next, I'll consider whether income should be imputed to P.W. under s.19. As indicated above, if I am wrong in attributing income to P.W. under s.18 for expenses, then I would impute income to him for the same amounts under s.19(1)(g).

[56] Section 19(1)(a) allows the court to impute income for payors who are intentionally underemployed or unemployed, except as required to address the needs

of a dependent child. The onus is on C.M. to satisfy the court that income should be imputed. C.M. says that P.W.'s circumstances have not changed, thus the amount if income imputed in 2017 should continue. The court at that time imputed income of $60,000.00, based on employment and E.I. benefits. In addition, $60,000.00 was imputed for expenses unreasonably deducted from income.

[57] At the earlier trial, P.W. told the court that he was looking for work. He'd transferred his union membership and was on the local union call-out list. That year, his Line 150 income was $36,761.00. It appears he was successful in securing work, because his Line 150 income increased.

[58] In 2020, P.W. worked for several months through the union and collected EI benefits. After being laid off, he collected wages from his company of $17,500.00 and a dividend of $5,000.00, which he used to purchase an R.E.S.P. for his son. His Line 150 income for 2020 was $44, 403.00 (not adjusted under Schedule III).

[59] P.W. strongly denies that he is underemployed. He says that because he was performing renovations to his company's rental units and working on a subdivision plan, he was not eligible to collect E.I. However, he acknowledges that he had had enough hours to open a claim.

[60] P.W. also admits that he wasn't on the union call-out list and that he wasn't actively looking for work in the last five months of 2020. Instead, he worked for his company. In addition to renovations, he pursued subdivision of company lands for future development, and he built infrastructure on that site. He says that if he didn't do the work, he'd have to hire someone else to do it.

[61] However, if P.W. had collected E.I. benefits and made himself available for work, he could still have completed renovations, subdivision, and infrastructure work while waiting for a call from the union. He could also have drawn money from his director's account as he'd done in earlier years. I'm not satisfied that the choice to work for his company in the fall of 2020 was reasonable, nor that the work he completed couldn't be interrupted or delayed if he got union work.

[62] P.W. was questioned about local opportunities on several large commercial projects. He testified that he cannot work on those projects, as he's not a red seal carpenter. It's not clear whether or how P.W. could attain the same qualifications. In fact, there is no evidence that P.W. has made any attempt to upgrade his qualifications since 2017, other than to renew his 'fall arrest' certificate for scaffolding work.

[63] In **Sugg v. MacNeil**, 2016 NSSC 54, Jollimore, J. dealt with a situation where the payor's income had been imputed in an earlier order. The question arose whether a payor can later rely on their actual reported income in a variation application, particularly if they request a retroactive variation of child support. Jollimore, J. quoted from Pazaratz, J. of the Ontario Superior Court in **Trang v. Trang**, 2013 ONSC 1980, where he stated:

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

[64] Jollimore, J. laid out two steps to analyzing income in these circumstances. I will follow the same analysis in asking first *Why* income was imputed to P.W. in 2017, and then *How* the court quantified his income?

[65] The short answer to the question *Why* income was imputed to P.W. in 2017 is that the court was satisfied that P.W. could earn at least $60,000.00 annually, between work as a tradesman and E.I. benefits.

[66] Next, I must ask *How* income was imputed. Gregan, J. determined P.W.'s total income by considering his historical earnings, as well as his skills and qualifications. He made allowance for P.W.'s court and counselling obligations in setting that figure.

[67] In this case, I'm satisfied that it's still appropriate to impute $60,000.00 yearly to P.W. from employment and E.I. benefits. P.W.'s ability to generate income is still greater than his Line 150 income.

[68] The effect of attributing personal expenses and corporate pre-tax income, plus $60,000.00 imputed income to P.W., means that his income is calculated as follows:

YEAR	**IMPUTED INCOME**	**S. 18**	**TOTAL**
2018	$60,000	$41,146	$101,146
2019	$60,000	$43,058	$103,058
2020	$60,000	$43,845	$103,845

[69] In addition, the add-backs must be grossed up to reflect the fact that there was no tax paid (**Riel v Holland,** [2003] O.J. No. 3901). Again, I have used a marginal rate of 23% as shown in Schedule "A". The above totals include attribution of grossed up pre-tax income for 2019.

ISSUE 3: What child support order is appropriate?

[70] Based on an annual income of $103,845 in 2020 (see Schedule "B") P.W. must pay child support on a prospective basis under the Nova Scotia table of $883.00 per month, commencing May 1, 2021.

ISSUE 4: Should there be a retroactive adjustment to child support?

[71] In deciding whether it's appropriate to retroactively adjust support, I must ask "two discrete questions" (**Sugg**, *supra*):

> (a) Was there a material change in circumstances during the period of retroactivity?
>
> (b) Having regard to all other relevant circumstances during this period, would the applicant have been granted a reduction in his or her support obligation...

[72] I've already determined that there's been a change in circumstances. And I accept that a different amount of support would have been ordered in 2017, if the information before the court now, had been available then.

[73] However, while I am prepared to exercise my discretion to grant a retroactive adjustment of child support, I decline to adjust it retroactive to January 1, 2018 as requested. P.W. failed to make full disclosure, and he didn't provide sufficient evidence on his sources of income at the last hearing. That left the court with little option but to add back expenses to personal income under s.19. P.W. cannot now remedy that omission and expect the court to adjust support payable as if the earlier trial hadn't happened.

[74] P.W.'s child support will therefore be adjusted retroactive to October 1, 2018.

ISSUE 5: Is there arrears or a credit owing?

[75] Based on the calculation of P.W.'s income from all sources, including imputed and attributed income, he should have paid child support as shown in

Schedule "B". The Director of Maintenance Enforcement will calculate whether P.W. is entitled to a credit, or whether this leaves him in arrears.

[76] If there are arrears owing, P.W. must pay them at the monthly rate of $200.00 (in addition to the table amount), until the arrears are paid in full. If there's a credit, it will be applied at the rate of $200.00 per month until exhausted.

[77] As part of that calculation, M.E.P. will have to adjust for the order granted on March 30, 2020, which temporarily reduced P.W.'s child support payments, due to the uncertainty related to the Covid-19 pandemic. It's now clear that the pandemic hasn't affected P.W.'s income. His rentals are stable, and he was able to work in 2020. The March 30, 2020 order is therefore vacated. For the period during which the temporary order was effective, P.W.'s child support obligation will be adjusted to reflect the 2020 table amount shown in Schedule "B".

ISSUE 6: Should leave of the Court be required for future applications by P.W.?

[78] C.M. asks the Court to invoke s.54B of the *Parenting and Support Act*, which states:

> **Frivolous or vexatious proceedings**
>
> **54B (1)** Where a court is satisfied that a person has habitually, persistently and without reasonable grounds started frivolous or vexatious proceedings or has conducted a proceeding in a frivolous or vexatious manner in the court, the court may make an order restraining the person from
>
> > **(a)** starting a further proceeding on the person's own behalf; or
> >
> > **(b)** continuing to conduct a proceeding, without first obtaining leave of the court.

[79] Justice Gregan's order was issued on July 12, 2017. P.W. filed this Application on September 4, 2018. His Application to Vary which was filed in 2017 had already been dismissed.

[80] On the Court's own motion, Justice Gregan directed that P.W. must seek leave of the Court before filing any further applications on the parenting issue. That's because he had filed numerous applications in the past five years, and he recently applied for leave to apply to vary the parenting order again.

[81] There's also evidence that P.W. filed a claim against C.M. in Small Claims Court, and even though the issue was resolved, he insisted on proceeding the night of the scheduled hearing. The matter was dismissed, but C.M. had to appear. In fact, C.M. has been obliged to respond to each of these applications, and for each, she's retained legal counsel.

[82] C.M. now asks that the Court require P.W. to apply for leave before being allowed to file any further applications dealing with child support. I grant her request. This is a case that cries out for such a step. The Courts have limited resources, and the pressures on the docket are enormous. P.W.'s numerous applications have taken up an inordinate amount of Court resources and time, from processing new files, intake procedures, conciliation efforts, pretrial conferences, case management, and numerous court hearings. As C.M. points out, the idea seems to be that until P.W. gets a decision he likes, he'll just keep on filing new applications.

[83] Schedule "C" outlines the applications filed by P.W. since 2017. The list is lengthy. Although he met with minor success on a couple of these applications, for the majority he did not. Likewise with this decision, P.W. met with some success, but the amount of child support he'll pay is only marginally lower than ordered in 2017. Yet a six day trial was required in order to reach that conclusion.

[84] I find that P.W. has habitually, persistently, and without reasonable grounds or merit, started or pursued vexatious proceedings, and that he has conducted them in a vexatious manner. Some examples include the undue hardship claim he advanced in 2018 but never perfected, as well as the Small Claims matter referenced above. His belligerent attitude throughout this proceeding, as well as the inappropriate comments made to the Court and C.M.'s counsel at the hearing, only compound the vexatious tone and nature of P.W.'s claims.

[85] I direct that P.W. must seek leave of the Court before filing any new applications dealing with child support. In seeking leave, he must file an affidavit outlining what change in circumstances he alleges, as well as the status of his child support payments. A brief no longer than 10 pages (containing no new evidence) must be submitted as well. To be clear, the motion for leave must be made and granted first, before any documents in support of a variation application may be filed.

ISSUE 7: Holdback

[86] P.W. asks the Court to deal with the issue of a $300.00 holdback. In the larger scheme of things, it's not a large sum. But it has been a bone of contention for P.W. throughout this proceeding. His insistence that the Court deal with it is indicative of the vexatious manner in which P.W. conducted these proceedings.

[87] In his decision of March 2, 2017, Justice Gregan calculated P.W.'s support arrears based on the income he'd imputed. In dealing with arrears, he expressly stated: "… the amount owed by P.W. is $1,645.00. That includes his payments up to March 1, 2017, so I have taken into account March's payment already." The problem is that P.W. has not made a child support payment for March, 2017, meaning that the arrears calculation was off by a month.

[88] In 2017, when Ms. O'Leary sent payment for costs owing by C.M. to P.W., she withheld $300.00, which represents the shortfall in arrears owing as a result of that missed month. P.W. takes great umbrage with that holdback. He has accused Ms. O'Leary of theft and breach of the court order, among other things.

[89] In support of his position that he owed nothing more, and thus the holdback was in error (or "illegal" according to P.W.) he tendered two printouts from M.E.P. in evidence. The first (exhibit #21) shows support due and paid from August 9, 2017 to March 9, 2020. The second shows fees charged to his account (which appear to relate to the garnishee order being enforced against him).

[90] Neither statement captures March, 2017 which is the period at issue. Exhibit #21 shows a $0 balance on August 9, 2017. P.W. seems to suggest that this proves he didn't owe C.M. any money for arrears when the holdback was taken.

[91] The problem with that logic is that M.E.P. would only have recorded the arrears set out in Gregan J.'s order. So, whether or not P.W. paid those arrears as directed, there was still an adjustment owing for the month of March, 2017.

[92] Technically, C.M. should have brought the matter back to Justice Gregan for correction. But the cost of doing so, after a lengthy contested hearing, was understandably prohibitive. Thus, according to Ms. O'Leary, counsel agreed that they would adjust for the missing month when C.M. made payment of costs.

[93] Although the payment of the $300.00 was not made in accordance with Gregan J.'s order, I am satisfied that the month of March, 2017 was missed when

calculating arrears in the last order, and that P.W. owed C.M. $300.00. That clarification will be included in my order, but the order will also reflect the fact that payment has been made.

CONCLUSION

[94] The following relief is granted:

- A retroactive child support adjustment is granted; it will be calculated in accordance with Schedule "B" attached.
- Prospective child support is payable at the monthly rate of $883.00 per month, commencing May 1, 2021.
- The March 30, 2020 order is vacated and child support owing for the months of April through December, 2020 will be calculated at the rate of $883.00 per month, with credit for amounts paid under the March 30, 2020 order.
- The $300.00 holdback is confirmed to be payment of child support owing for March, 2017.
- P.W. will require leave of the Court before filing any new applications dealing with child support.

[95] Each party will have 30 days from the date of this decision to provide an affidavit (not to exceed two pages with up to 10 pages of exhibits) and a written brief (not to exceed 10 pages and not to contain additional evidence) in support of their claim for costs. That decision will follow this one. An order to reflect this decision will be issued forthwith.

MacLeod-Archer, J.

SCHEDULE "A"

OPERATING EXPENSES	2018 AMOUNT CLAIMED	2018 AMOUNT ADDED BACK	2019 AMOUNT CLAIMED	2019 AMOUNT ADDED BACK	2020 AMOUNT CLAIMED	2020 AMOUNT ADDED BACK
Meals & Entertainment	$762	$762	$411	$411	$984	$984
Amortization of Intangible Assets	$25,255	$18,592 $3,331.50	$22,609	$17,848 $2,380.50	$31,762	$17,972 $6,895
Insurance	$5,958	$0	$5,459	$0	$6,539	$0
Interest and bank charges	$9,991	$3742	$10,625	$4095	$7,082	$2634
Office expenses	$660	$660	$2,675	$2,675	$557	$557
Professional fees	$1,843	$0	$4,482	$0	$3,100	$0
Repairs and maintenance	$8,791	$0	$5,227	$0	$20,044	$0
Salaries and wages	$2,281	$0	$400	$0	$18,235	$0
Directors fees	$22,000	$0	$2,500	$0		$0
Property taxes	$11,851	$0	$12,124	$0	$12,399	$0
Travel expenses	$6,321	$3,160.50	$4,665	$2,332.50	$6,440	$3,220
Water	$3,896	$0	$2,336	$0	$3,558	$0
Heat	$7,695	$0	$5,985	$0	$7,318	$200
Telephone and telecommunications	$2,869	$1,434.50	$2,967	$1,483.50	$2,597	$1,298.50
Bad Debt Expense					$1,050	
TOTAL	$110,173	$31,682.50	$82,465	$31,225.50	$121,665	$33,760.50
GROSSED UP AT 23%		**$41,146**		**$40,553**		**$43,845**

SCHEDULE "B"

YEAR	TOTAL INCOME	TABLE AMOUNT
2018	$101,146	$862
2019	$103,058	$876
2020	$103,845	$883
2021	$103,845	$883

SCHEDULE "C"

P.W V. C.M. – Summary of Filings after Decision of Gregan, J. (March 2017)

Sept 22, 2017 – Notice of Variation Application

- Variation Order (re: daycare) issued Oct.2, 2017
- Order Dismissing Application & Order for Costs issued Feb. 22, 2018

September 4, 2018 – Notice of Variation Application

- Seeking change to Labour Day access
- Order issued October 11, 2018

January 9, 2019 – Amended Notice of Variation Application

- Seeking variation to parenting time, child support (table), retroactive & arrears
- Statement of Undue Hardship filed
- Child Support issue to be dealt with separately

August 9, 2019 – Notice of Variation Application

- Custody, parenting arrangements for the child, parenting time
- Seeking to amend order from March 2, 2017

August 23, 2019 – Hearing before Justice Gregan

- On education issue only
- Order granted August 27, 2019

November 3, 2019 – Order for Costs – Gregan, J.

- $2,000.00 Payable to Ms. M.
- RE: costs from hearing held August 23, 2019

January 2, 2020 – Amended Variation Application

- Parenting time, child support (retroactive variation), Arrears of support (imputed income)

September 25, 2020 – Notice of Variation Application

- Leave to apply, custody, parenting time