SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *J.C. v. B.W.*, 2024 NSSC 95

Date: 20240419
Docket: SFH1201-69466
Registry: Halifax

Between:

J.C.

Applicant

v.

B.W.

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Samuel Moreau
Heard:	November 17, 2023, in Halifax, Nova Scotia
Written Decision:	April 19, 2024
Subject:	Family, Child Support, Table amount, Imputing Income Disclosure, Variation, Material change in circumstances, Filing Deadlines, Judicial Notice
Summary:	The Petitioner/Applicant filed a Notice of Variation Application, inter alia, seeking a downward adjustment of his child support obligation. He did not comply with the Court imposed filing deadlines for the trial.
Issues:	(1) Has there been a change in circumstances? And is so; a) Determining the Applicant's income for the purpose of his child support obligation; and

b) Should income be imputed to the Applicant?

Result: The Court imputed income to the Applicant.

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Respondent

Judge:	The Honourable Justice Samuel Moreau
Heard:	November 17, 2023, in Halifax, Nova Scotia
Released to the Parties:	April 5, 2024
Counsel:	Phillip Whitehead, for the Applicant, J.C. Iain Burton, for the Respondent, B.W.

By the Court:

Introduction

[1] The Parties were divorced by a Divorce Order issued on December 13, 2016.

[2] The Corollary Relief Order issued on the same date, inter alia, sets out the terms of J.C.'s child support obligation.

[3] The Parties are the parents of the children, P., born in 2009, R., born in 2011 and G., born in 2014.

[4] Subsequent to their separation in April, 2015, B.W. has maintained primary care and residence of the children.

[5] Herein after I shall refer to J.C. as the "Applicant" and B.W. as the "Respondent".

History of Proceedings

[6] On March 23, 2021, the Applicant filed a Notice of Variation Application, seeking changes in the parenting arrangements and also to his child support obligation.

[7] He requests a downward variation of his monthly child support payments because of a decrease in income due to a change in his employment.

[8] Following the settlement conference held on May 12, 2022, the Parties reached agreement on the issues relating to parenting arrangements, as set out in the varied Consent Order issued November 21, 2022.

Motion Hearing

[9] Throughout the course of this proceeding three interlocutory motions have been filed. Of relevance to this decision is the motion filed by the Respondent on December 17, 2021, requesting an Order for Disclosure concerning the Applicant, C.C. and a corporation called Carle Solution Inc. C.C. is the fiancé/partner of the Applicant.

[10] The Respondent’s motion addressed comprehensive financial disclosure in order to determine the Applicant's income for the purpose of his child support obligation.

[11] The contested motion hearing was heard on January 12, 2022.

[12] On January 21, 2022, this Court issued an Order for Disclosure by Non-Party.

[13] The Order identifies C.C. as President of Carle Solutions Inc. and also as the Applicant’s fiancé.

[14] The Applicant and C.C. were ordered to disclose financial information relating to Carle Solutions Inc., for the 2019, 2020 and 2021, taxation years and other financial documentation relevant to the administration of the corporation and its subsidiaries.

Pre-Trial Period

[15] During the pre-trial conference held on January 17, 2023, the matter was scheduled for trial to be heard on November 17, 2023, and the parties were directed as follows:

[16] During the pretrial conference held on September 5, 2023, the above filing deadlines were confirmed.

[17] The Court directed that all witnesses for the trial appear in person.

[18] The Applicant was directed to inform the Respondent within 2 weeks (of September 5, 2023) whether C.C. would be made available for the purpose of cross examination.

[19] On October 16, 2023, the Court received correspondence from Counsel for the Respondent requesting that a subpoena be issued compelling C.C.'s attendance at the trial as the Applicant had failed to indicate whether she would be made available for cross examination.

[20] The requested subpoena was duly issued and returned.

[21] On October 20, 2023, the Court received correspondence from Counsel for the Respondent, requesting an extension for the filing of the Respondent's Affidavit as the Applicant had not filed his Affidavit, which delayed preparation of the Respondent's Affidavit. The request was granted.

[22] The Respondent's Affidavit was filed on October 23, 2023.

[23] Also, on October 23, 2023, I directed my then Judicial Assistant to contact the parties in relation to the filing of documents as the Court was not in receipt of any filings from the Applicant.

[24] On October 27, 2023, my Judicial Assistant received email correspondence from Counsel for the Applicant containing the Applicant's Affidavit including financial information and indicating that the original documents would be filed "next week". Some of the attachments containing the financial information could not be opened and were beyond the page limit (41 pages) prescribed by Court Administration for delivery of documents via email.

[25] On November 3, 2023, the Court received correspondence from Counsel for the Respondent requesting an extension for the filing of his legal brief. The request was granted.

[26] On November 8, 2023, the Court received correspondence directly from C.C., replying to the subpoena which was served on her on November 2, 2023.

[27] In her correspondence C.C. references Civil Procedure Rule 50 and indicates she was not given sufficient time to seek legal advice and/or retain counsel with respect to the subpoena and to make adequate child care arrangements.

[28] On November 10, 2023, the Applicant's Affidavit and legal brief were filed with the Court. Also, on November 10, 2023, the Respondent's Exhibit Book was filed with the Court.

[29] On November 16, 2023, the Applicant's Exhibit book was filed with the Court.

[30] Throughout the period between January 17, 2023, and November 17, 2023, the Court did not receive any requests from the Applicant related to filing deadline extensions.

The Trial

[31] On November 17, 2023, the parties and Counsel appeared.

[32] In my preliminary comments, I reviewed my clear and unambiguous directions provided on January 17, 2023, in relation to the filing of documents for the trial.

[33] I further indicated that as the Applicant's Affidavit and financial information were filed almost 1 month after the deadline to do so (and subsequent to the filing of the Respondent's Affidavit) my finding that the Respondent was prejudiced as a result of the Applicant's actions/inactions.

[34] The Applicant's filings (Affidavit, Exhibit book and legal brief) were struck from the proceedings.

[35] The imposition of filing deadlines (especially for trial matters) is an essential and important administrative tool utilized by the Supreme Court (Family Division) and other Courts to effect a timely and fair trial process. Failure to comply with Court imposed filing deadlines can have the result of sometimes causing otherwise unnecessary delays and/or adverse finding(s) as in this case.

[36] The Applicant questioned whether the trial could proceed based on the Respondent's evidence, as she had not filed a (documentary) response to the Applicant's Notice of Variation Application.

[37] The Respondent's position on the Variation Application (in relation to the issue(s) to be addressed at trial on November 17, 2023) were well known and clearly articulated throughout the life of the proceeding.

[38] The first mention of the filing of a Response to the Application was on November 17, 2023.

[39] The trial proceeded on the Respondent's evidence.

[40] The Applicant made an oral motion to exclude paragraphs 27 and 29 of the Respondent's Affidavit sworn on October 23, 2023. In my analysis of the evidence, I have considered the weight, if any to be assigned to the impugned paragraphs.

Issues

[41] Has there been a change in circumstances? And if so;

1. Determining the Applicant's income for the purpose of his child support obligation; and
2. Should income be imputed to the Applicant?

The Law

[42] Sections 17 (1)(a) and (4) of the *Divorce Act* reads:

Variation order

> 17(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, retroactively or prospectively,
>
> (a) a support order or any provision of one, on application by either or both former spouses;
>
> Factors for child support order
>
> (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

Change in Circumstances

[43] The Applicant's current monthly child support obligation ($1,198.00) was based on his annual income of $65,754.00 in 2016, which was derived from his employment with the Canadian Armed Forces.

[44] The Respondent believes the Applicant first entered the military in 2008 for a period of 5 years.

[45] In 2015 he rejoined the military (ostensibly on a 2 year contract) leaving in 2017.

[46] The available evidence suggests the Applicant's current source of income is from his work for and/or with Carle Solutions Inc.

[47] I am satisfied that since the making of the last order (December 13, 2016) there has been a material change in circumstances, occasioned by the Applicant's change in employment and seemingly his level of income.

Determination of the Applicant's Income

[48] I shall now address the Applicant's income for the purpose of his child support obligation and whether the quantum of his monthly payments should be varied.

[49] The Respondent maintains that upon the Applicant's move to Ontario in 2018, he started a business called Carle Solutions Inc. She says in 2017 and 2018 while in Nova Scotia the Applicant owned and operated a business called Carle Solutions.

[50] The focus of the January 12, 2022, motion hearing was disclosure of Carle Solutions Inc.'s financial documentation.

[51] I am satisfied the evidence establishes that the Applicant's fiancé, C.C., is President and Director of the corporation, Carle Solutions Inc.

[52] I am also satisfied that the Applicant is employed by or derives income from Carle Solutions Inc.

[53] However, I am without any evidence pertaining to the following:

- The Applicant's income since the filing of his Notice of Variation Application (and the years subsequent) including his year to date income for 2023;

- The financial information ordered as per the Order for Dislcosure by Non-Party issued February 17, 2022; and
- Any evidence which could enable me to impute income to the Applicant, derived from Carle Solutions Inc. or any other source.

[54] The Applicant's non-compliance with the Court's January 17, 2023, direction, has served to render his employment and or procurement of income with/from Carle Solutions Inc., as a moot point, at least for this trial.

[55] I conclude I am without sufficient evidence relating to Carle Solutions Inc. on which to base a change or to impute income to the Applicant.

Military Income

[56] The Applicant's current child support obligation is based on his 2016 income ($65,754.00) while still employed by the Canadian Armed Forces.

[57]] In July, 2022, the Applicant unilaterally lowered his child support payments to $796.13 per month, without notice to the Respondent.

[58] As indicated, there has been a material change in the Applicant's employment circumstances, however I am without any evidence on which to base his child support obligation in relation to his current employment.

[59] The available evidence leaves me with the following options in determining the quantum of the Applicant's prospective child support obligation:

1. Leave the current order in place (the status quo); or
2. Consider the Applicant's prior employment with the Canadian Armed Forces in relation to his current child support obligation.

[60] In *Stevenson v. Kuhn*, 2010 NSSC 398 at paragraph 68, Justice Jollimore articulates the four core principles that are the basis of child support jurisprudence:

1. Child maintenance is the right of the child;
2. The right to be maintained survives breakdown of relationship between the adults;
3. As much as possible, child maintenance should provide the child with the same standard of living the child experienced when the parents were together; and
4. Child maintenance will vary, depending on the income of the paying parent.

[61] The Applicant's child support obligation remains exactly that; his obligation. I recognize that compliance with the Court's directions may have resulted in a downward variation of his child support obligation.

[62] However, based on the totality of the evidence, I draw the inference that compliance as directed (including disclosure of the financial information in accordance with the Order for Disclosure by Non-Party issued February 17, 2022) may well have resulted in an increased obligation.

[63] The Applicant should not benefit from his non-compliance while depriving the children of their rightful financial support.

[64] In Khan v. Khan, 2022 ABCA 370, at paragraph 32, the Court referred to the "informational asymmetry" which often exists in family law cases:

> [32] That the appellant is underemployed to evade child support obligation was certainly a reasonable inference on this record. It does not appear to have been the first time that a court was forced to impute income in his case. Failure to disclose financial information occurs far too often in family law support situations which involve "informational asymmetry": see ***Colucci v Colucci***, 2021 SCC 24 at para 8 and paras 40-54, 458 DLR (4th) 183; ***Michel v Graydon***, 2020 SCC 24 at para 29 per Brown J, and 111-126 per Martin J, 449 DLR (4th) 147. A court is not unentitled to be skeptical of vague and general assertions by payors, particularly where their primary emphasis in response to the claim sounds more like "you cannot prove it" than "I don't have it".

Judicial Notice

[65] An evolved principle of Canadian law permits me to take notice of "basic facts" which are:

> a. so notorious as not to be the subject of dispute among reasonable persons; or
>
> b. capable of immediate and accurate demonstration by resorting to readily accessible sources of indisputable accuracy
>
> *Discrimination, Burdens of Proof, and Judicial Notice, Alberta Law Review* [Volume XXXIV, No. 4 1996].

[66] In Locke v. Bramwell, 2016 NSSC 300, Justice MacLeod-Archer examines the tenets of Judicial Notice:

> [10] The Nova Scotia Court of Appeal in Dean v. Brown, 2002 NSCA 124 addressed the issue of judicial notice in the context of a child support claim

involving imputed income. Delivering the decision of the court, Roscoe J.A. stated:

> **13** In Angelucci v. Dartmouth Cable T.V. Ltd. (1996), 155 N.S.R. (2d) 81, this court said:
>
> > [28] As indicated by this court in R. v. MacDonald (R.A.) (1988), 83 N.S.R. (2d) 293; 210 A.P.R. 293 (C.A.), a trial judge cannot take judicial notice of a fact unless:
> >
> > > ... (a) the matter is so notorious as not to be the subject of dispute among reasonable men, or (b) the matter is capable of immediate accurate demonstration by resort to readily accessible sources of indisputable accuracy.
> >
> > [29] In Cross on Evidence (6th Ed.), the authors say at p. 69:
> >
> > > The general rule is that neither a judge nor a juror may act on his personal knowledge of facts. Nor may the court take steps to acquire such knowledge in private, for example, by applying a scientific instrument to an exhibit in the absence of a party. This rule has reference to particular facts.
> >
> > Caution must be exercised in resorting to the doctrine of judicial notice, particularly where such is done without notice to the parties or their counsel. In R. v. Quinn (1975), 27 C.C.C. (2d) 543, MacDonald, J., of the Alberta Supreme Court said (p. 550):
> >
> > > ... I note that there is a difference between the taking of judicial notice on the basis of information not referred to by counsel at the trial, and doing so on the basis of sources referred to by counsel. Where the former is the case, the trial judge should proceed with the utmost of caution, where the fact which he is tempted to notice is one vital to the resolution of the case...
>
> **14** In this case, the matters of which the trial judge took judicial notice do not meet the requisite test. **No notice was given to the parties that he intended to impute income or**

> **that he would take judicial notice of economic factors**. **There was no evidence before the court from which any inference or conclusion could be drawn relating to any increased earning capacity of the appellant. Furthermore the trial judge took judicial notice in order to contradict the evidence before him which was unchallenged. (emphasis added)**

[11] The circumstances in the Dean (supra) case are different. Here, Ms. Bramwell was aware of Mr. Locke's request that the court take judicial notice of Alberta's economic conditions. Her counsel cross-examined Mr. Locke on that subject, and argued the issue in closing submissions. It was very much a live issue at the hearing.

[12] In the Children's Aid Society and Family Services of Colchester County v. E.Z., 2007 NSCA 99 the Court of Appeal more fully outlined the test for judicial notice:

> **40** To address what he perceived to be a gap in the evidence on this issue the judge turned to the text **Intervention for Children of Divorce, Custody, Access and Psychotherapy** (2nd ed.) by Dr. William Hodges.
>
> …
>
> **43** The judge's resort to the **Hodges** text is not supportable here. It clearly does not fit within the test for judicial notice as set out by the Supreme Court of Canada in **R. v. Find**, [2001] 1 S.C.R. 863 at para. 48, per McLachlin C.J.:
>
> > 48 ... Judicial notice dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. Facts judicially noticed are not proved by evidence under oath. Nor are they tested by cross-examination. Therefore, the threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy ...
>
> **43** This formulation of judicial notice was originally

posited by Professor E. M. Morgan in "Judicial Notice" (1943-1944), 57 Harv. L. Rev. 269.

44 This is a strict test for judicial notice which does not apply in all cases in which a court takes judicial notice. As Binnie J. put in **R. v. Spence** [2005] 3 SCR 458:

> para. 60 Professor Davis' useful distinction between adjudicative facts and legislative facts is part of his larger insight, highly relevant for present purposes, that the permissible scope of judicial notice should vary according to the nature of the issue under consideration. For example, more stringent proof may be called for of facts that are close to the center of the controversy between the parties (whether social, legislative or adjudicative) as distinguished from background facts at or near the periphery.
>
> para. 61 To put it another way, the closer the fact approaches the dispositive issue, the more the court ought to insist on compliance with the stricter Morgan criteria.
>
> … a review of our jurisprudence suggests that the Court will start with the Morgan criteria, whatever may be the type of "fact" that is sought to be judicially noticed. The Morgan criteria represent the gold standard and, if satisfied, the "fact" will be judicially noticed, and that is the end of the matter.
>
> para. 62 If the Morgan criteria are not satisfied, and the fact is "adjudicative" in nature, the fact will not be judicially recognized, and that too is the end of the matter.
>
> para. 63 It is when dealing with social facts and legislative facts that the Morgan criteria, while relevant, are not necessarily conclusive. There are levels of notoriety and indisputability. Some legislative "facts" are necessarily laced with supposition, prediction, presumption, perception and wishful thinking. Outside the realm of adjudicative fact, the limits of judicial notice are inevitably [page 491] somewhat elastic. ...

45 The "facts" which the judge judicially noticed here were, for him, dispositive of the issue he had to address and therefore the strict test set out in **R. v. Find, supra**

should have been applied.

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> adjudicative fact, the limits of judicial notice are inevitably [page 491] somewhat elastic. ...
>
> **46** The "facts" which the judge judicially noticed here were, for him, dispositive of the issue he had to address and therefore the strict test set out in **R. v. Find, supra** should have been applied.

> [13] The Nova Scotia Court of Appeal dealt with the issue again in Cape Breton & Central Nova Scotia Railway Ltd. (Re), 2003 NSCA 18, where Oland, J.A. in chambers declined to take judicial notice of the claim that the loss of railway service on the Sydney line would have a negative impact on the municipality's economic strategy or its development. The court held that such matters are relatively complex, and involve multiple economic and other factors, so they are neither "so notorious as not to be the subject of dispute among reasonable men" nor "capable of immediate accurate demonstration".

In the present case, I take judicial notice of the fact that salaries pertaining to Canadian Armed Forces personnel have risen some 8% since the making of the current order.

[67] The information referenced in relation to military salaries is sourced from the Government of Canada website relating to Military pay rates:

(1) https://www.canada.ca/en/department-national-defence/services/benefits-military/pay-pension-benefits/pay/regular.html,

(2) https://www.canada.ca/en/department-national-defence/services/benefits-military/pay-pension-benefits/pay/previous-pay-rates.html.

I am satisfied that the Judicial notice I have taken meets the test articulated by the Supreme Court of Canada in R. v. Find, 2001 SCC 32(CanLII).

[68] There are several cases which provide precedent in taking judicial notice of information from government web sites.

[69] In *Pinto v. Pinto*, 2011 ONSC 7403 (CanLII), the court considered information about employment insurance on a government website when deciding on whether to order interim spousal support. At paragraph 51 the Court states:

> [51] Although the amount of Mrs. Pinto's expected EI benefit was not in the evidence, the court finds that judicial notice can be taken of the official government website concerning EI at www.servicecanada.gc.ca/eng/ei which states that regular benefits are 55 percent of insurable income up to a maximum or $45,900 per annum.

[70] In *Cozzi v. Smith*, 2015 ONSC 396, the Court proceeded in a similar fashion:

> [24] I have already commented on the fact that the parties agreed that evidence arising after the trial cannot be referred to in dealing with child support issues. This means that I cannot have reference to the EI information set out in Ms. Smith's submission. That does not, however, prevent me from taking judicial notice of what her income would be from EI if she took her maternity leave.
>
> [25] I can take judicial notice of any fact that is "capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy": see *R. v. Find*, 2001 SCC 32 (CanLII), once I can determine the income of the claimant EI benefits are relatively easy to determine from having reference to the government website. This was done by F. Graham J. in *Pinto v. Pinto*, 2011 ONSC 7403, In that case a spousal support claimant had recently lost her job. F. Graham J. noted that there was no judicial notice can be taken of the official government website concerning EI at www.servicecanad.gc.ca/eng/ei which states that regular benefits are 55 percent of insurable income up to a maximum of $45,900 per annum". He used that government website to determine the claimant's income from EI for spousal support purposes.

> [26] I intend to do the same. It is clear to me that Ms. Smith's income was well above the maximum amount of income under the EI regulations. Based upon my findings as to Ms. Smith's income noted above, her employment earnings would have exceeded the maximum insurable yearly insurable earnings of $47,400. This amount divided by 52 weeks in a year results in a maximum insurable benefit of $911.54 per week. Under section 14(1) of the *Employment insurance Act*, the weekly benefits payable would be 55% of these maximum insurable weekly earnings resulting $501.35 in EI earnings per week. Over 50 weeks (the first two weeks are not payable during the "waiting period" under s. 13) Ms. Smith would therefore receive 50 payments of $501.35 for a total of $26,067.31. This gives rise to child support (based again on Ms. Smith's British Columbia residency) in the amount of $214 per month for the duration of her maternity leave.

[71] In *King v. MacDonald*, 2022 ABKB 736, the court imputed income to the husband, whose income was derived from a landscaping company he owned. The Court considered information on a Government website:

> [74] In order to ground a rational basis for imputing Mr. MacDonald's income I am guided by the description of Graymac's work that Mr. MacDonald provided in his affidavit and further by the description found on Graymac's website. I also take judicial notice of the income information found on the Alberta Government website, Alis (Alberta Learning Information Service): see alis.alberta.ca/occinfo/wages-and-salaries-in-alberta/.
>
> [75] The Alis website includes as category of Wages and Salaries for landscape and horticultural technicians and specialists, which includes consulting with clients and other trades to carry out landscaping operations and design (including residential and commercial grounds). This description seems to best fit with the inferences that I can draw, based on the limited evidence before me, about the work that Mr. MacDonald performs within Graymac. On the Alis website, the average salary in this category (based on a 37.2-hour work week) is $38,203, with the top end of the range being $84,522.
>
> [76] Using the very limited evidence before me, the information from Graymac's website, the information from the Alis Website, and noting that Mr. MacDonald is the sole owner of Graymac with several years' experience in this field of work, I set his income at the higher end of the range, at $70,000 per year.

[72] In *Bakharat v. Andraos*, 2023 ONSC 582, the parties disputed jurisdiction over custody and the location of their children.

[73] A court in Lebanon, where the mother and children were located, made an order barring the children from leaving that country and awarding temporary custody to the mother. The father argued that the Ontario Superior Court of Justice could consider information on government websites about conditions in Lebanon:

> [22] With respect to the third issue, taking judicial notice of website information of governments or other nongovernmental organizations, about safety concerns in Lebanon, I conclude I can.
>
> [23] *R. v. Spence* 2005 SCR 458 set the test for judicial notice. A court may take judicial notice of a fact where it is (1) so notorious or generally accepted that no reasonable person would disagree, or (2) capable of immediate demonstration by reference to sources of indisputable accuracy (see also: *R. v. Find* 2001 SCC 32, para 48). These can be social, legislative or adjudicative.
>
> [24] The facts that Father seeks to introduce from government and NGO websites are social facts which are useful in deciding factual issues critical to the resolution of the lists before the court's (see: *Spence* at para. 26(3). A court may take judicial notice of facts can come from government and NGO websites provided that the government or organization has a reputation for credibility…

[74] In *KDB v. KB*, 2022 NBQB 74, the court states as follows in a custody proceeding where a parent objected to a child being vaccinated:

> [38] I intend to rely on the information from Health Canada and the COVID-19 dashboard of the Province of New Brunswick. I recognize that other courts have relied on information from the Center for Disease Control of the United States and the declarations of the World Health Organization.
>
> [59] The father refers to an article featuring an interview with Dr. Robert Malone, inventor of mRNA technology used in the COVID vaccine. The interview was conducted by Fox News' Tucker Carlson. This is not a reliable source on which a Canadian court can depend to overturn judicially noticed facts established by Health Canada. It is improper for a judge to take judicial notice of facts found in random articles from the social media sites, websites, and online information from questionable sources.

[60] All in all, I am prepared to take judicial notice of the facts found on the official Health Canada website and the COVID Dashboard website of the Province of New Brunswick.

[61] In her decision, *D.O. and C.J*, 2022 NBQB 019, Justice Hackett of this court summarized the facts of which she took judicial notice relating to COVID-19 and the safety and efficacy of vaccinations endorsed by governments and public health. The paragraphs 24 and 25 of her decision are relevant in this regard. They read as follows:

> [24] I also take judicial notice of the following facts:
>
> • Vaccines reduce the risk of contracting COVID-19 and suffering serious illness as a result.
>
> • Although children are less likely to become really sick from COVID-19 they still can get sick and spread the virus to others.
>
> • Health Canada and the provincial government of New Brunswick have endorsed vaccinations against COVID-19 for children.
>
> • Health Canada has concluded the benefits of vaccination outweigh the risks in children 5 to 11 years of age.
>
> • Health Canada has approved vaccinations for children between the ages of 5 to 11 years of age, and New Brunswick has made children 5 to 11 years old eligible for the vaccine.
>
> [25] The above information is in public documents available on the provincial government website (www2.gnb.ca). Therefore, in my view, it would also meet the exception to the hearsay rule for public documents (see *A.C. v L.L.*, 2021 ONSC 6530.)

[62] For the purposes of this decision, I will take judicial notice of the facts outlined in the previous paragraph, relating to COVID-19 and the safety and efficacy of the vaccines. As well, the said websites of the government of New Brunswick and Health Canada are admissible evidence under the public documents exception to the hearsay rule pursuant to section 43 of the Evidence Act, R.S.N.B., 1973, Chap. E-11.

[75] I note the Court in KDB v. KB, supra, not only relied on common law judicial notice but also on the "Public documents" provision of the New Brunswick Evidence Act.

[76] No equivalent provisions allowing admission for their truth of open ended categories of government documents without further proof, such as purported certification by a relevant official appears in the *Nova Scotia Evidence Act* or in the *Canada Evidence Act*.

Imputation of Income

[77] In *D.G. v. J.G.*, 2021 NSSC 57, Justice Marche provides a comprehensive review of the law on the imputation of income at paragraphs 10 to 12:

> [10] Section 19(1) of the *Nova Scotia Child Support Guidelines* directs that a Court may impute income to a parent for the purpose of calculating child support in certain circumstances:
>
> 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 underemployment 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;
>
> (f) The parent has failed to provide income information when under a legal obligation to do so;
>
> [11] Justice Forgeron in *Standing v. MacInnis*, 2020 NSSC 304, reviewed and summarized the law around imputation of income as follows:

> [21] In Parsons v. Parsons, 2012 NSSC 239, this Court reviewed legal principles that apply when underemployment is alleged. Paragraph 32 states in part as follows:
>
> [32] Section 19 of the Guidelines provides the court with the discretion to impute income in specified circumstances. The following principles are distilled from case law:
>
> a. The discretionary authority found in s. 19 must be exercised judicially, and in accordance with rules of reason and justice, not arbitrary. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: *Coadic v. Coadic*, 2005 NSSC 291.
>
> b. The goal of imputation is to arrive at a fair estimate or income, not to arbitrarily punish the payor: *Staples v. Callender*, 2010 NSCA 49.
>
> c. The burden of establishing that income should be imputed rests upon the party making the claim, however, the evidentiary burden shifts if the payor assets that his/her capacity is compromised by ill health: *MacDonald v. MacDonald*, 2010 NSCA 34; *MacGillivray v. Ross*, 2008 NSSC 339.
>
> d. The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors in determining what is reasonable and fair in the circumstances: *Smith v. Helppi* 2011 NSCA 65; *Van Gool v. Van Gool* (1998), 1998 CanLII 5650 (BC CA), 113 B.C.A.C. 200; *Hanson v. Hanson*, 1999 CanLII 6307 (BC SC), [199] B.C.J. No. 2532; *Saunders-Roberts v. Roberts*, 2002 NWTSC 11; and *Duffy v. Duffy*, 2009 NLCA 48.
>
> e. A party's decision to remain in a unremunerative employment situation, may entitle a court to impute income where the party has a greater income early capacity. A party cannot avoid support obligations by a self-induced reduction in income: *Duffy v. Duffy*, supra; and *Marshall v. Marshall*, 2008 NSSC 11.

[12] In Smith v. Helppi, supra, at paragraph 22, the NS Court of Appeal confirmed the factors to be balanced when assessing income earning capacity:

> [22] Factors which should be considered when assessing a parent's capacity to earn an income were succinctly stated by Madam Justice Martinson

of the British Columbia Supreme Court, in Hanson v. Hanson, 199 CanLII 6307 (BC SC), [199] B.C.J. No 2532, as follows:

> 1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor".
>
> 2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability to work, freedom to relocate and other obligations.
>
> 3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at a lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
>
> 4. Persistence in unremunerative employment may entitle the court to impute income.
>
> 5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
>
> 6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

[23] As also noted, in Nova Scotia the test to be applied when determining whether a person is intentionally under-employed is reasonableness, which does not require proof of a specific intention to undermine or avoid a support obligation: *Smith v. Helppi*, 2011 NSCA 65l

[78] Sections 19(1)(a) and (f) of the Federal Child Support Guideline are congruent with the provincial legislation:

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

[79] I find income should be imputed to the Applicant for the following reasons:

- His failure to adhere to Court filing deadlines as directed, including his failure to provide court ordered financial disclosure;

- The lack of any evidence as to illness or any other factor which may impede the Applicant's ability to derive income in an amount consistent with my finding below.

[80] I impute income to the Applicant in the annual amount of $71,014.32.

[81] I arrived at that figure by increasing the Applicant's 2016 income ($65,754.00) by 8%.

[82] Based on the Ontario tables the Applicant shall pay child support to the Respondent in the amount of $1,417.28 per month, commencing December 1, 2023.

[83] I am satisfied that upon considering the available evidence and my approach herein, I remained mindful of the principles enunciated by our Court of Appeal in

Staples v. Callender, 2010 NSCA 49; There must be a rational and evidentiary basis for the amount of income I impute to the Applicant and the goal of imputation is to arrive at a fair estimate of income, and not to arbitrarily punish the payor.

Conclusion

[84] Counsel for the Respondent shall prepare the Varied Order.

[85] Any written submissions on Costs may be provided at least 30 days subsequent to the Order being issued.

Samuel C.G. Moreau, J.