Provincial Advocates Conference

Family Law Update

October 20, 2020

Agnes Huang
Saltwater Law

Family Law in the era of COVID

Parenting Arrangements

- denial of parenting time

Child Support / Spousal Support

- variation
- arrears

COVID & School

Zinati v. Spence, 2020 ONSC 5231 (Judge Akbarali)

In my view, and having regard to available jurisprudence on this new and evolving issue, determinations about whether children should attend in-person learning or online learning should be guided by the following factors:

a. It is not the role of a court tasked with making determinations of education plans for individual families or children to determine whether, writ large, the government return to school plans are safe or effective. The government has access to public health and educational expertise that is not available to the court. The court is not in a position, especially without expert evidence, to second-guess the government's decision-making. The situation and the science around the pandemic are constantly evolving. Government and public health authorities are responding as new information is discovered. The court should proceed on the basis that the government's plan is reasonable in the circumstances for most people, and that it will be modified as circumstances require, or as new information becomes known.

COVID & School

b. When determining what educational plan is in a child's best interest, it is not realistic to expect or require a guarantee of safety for children who return to school during a pandemic. There is no guarantee of safety for children who learn from home during a pandemic either. No one alive today is immune from at least some risk as a result of the pandemic. The pandemic is only over for those who did not survive it.

COVID & School

c. When deciding what educational plan is appropriate for a child, the court must ask the familiar question – what is in the best interest of this child? Relevant factors to consider in determining the education plan in the best interests of the child include, but are not limited to:

1. The risk of exposure to COVID-19 that the child will face if she or he is in school, or is not in school.

COVID & School

2. Whether the child, or a member of the child's family, is at increased risk from COVID-19 as a result of health conditions or other risk factors.

3. The risk the child faces to their mental health, social development, academic development or psychological well-being from learning online.

4. The child's wishes, if they can be reasonably ascertained.

COVID & School and Beyond

5. The ability of the parents with whom the child will be residing during school days to support online learning, including competing demands of the parent or parents' work, or caregiving responsibilities, or other demands.

Likely that some of the same factors may be applied to extra-curricular activities of the children; e.g. soccer, band, summer camps

Child Support

The Supreme Court of Canada has spoken!

Michel v. Graydon, 2020 SCC 24

Intervenor – West Coast LEAF

Child Support

M and G were in a common law relationship and are parents of A, born in 1991.

Child support was terminated by court order in 2012.

In January 2015, M applied to retroactively vary child support for period between April 2001 and April 2012 to reflect G's actual income.

Child Support

B.C. Provincial Court Judge ordered G to pay $23,000 in retroactive child support.

B.C. Supreme Court Judge allowed the appeal on the basis that the application had to be brought when child was still a child of the marriage (*Divorce Act* and *FLA*).

B.C. Court of Appeal upheld that ruling.

Child Support

S.C.C. allowed the appeal.

Brown J. (for the majority of five judges)

Section 152 of the *FLA* authorizes the Court to retroactively vary a child support order, irrespective of whether the beneficiary is a "child" at the time of the application and irrespective of whether the order has expired.

To hold otherwise would defeat the legislative purpose and create a perverse incentive for payor parents to avoid their obligations.

Child Support

Applying the *D.B.S.* factors

- The child A experienced hardship due to G's neglect of his child support obligation
- G's failure to accurately disclose his income at the time of 2001 Order was blameworthy conduct warranting an order for retroactive child support
- M's delay in seeking retroactive child support was reasonable

Child Support

Martin J. (with the Wagner C.J.)

Child support obligations arise upon a child's birth or the separation of their parents.

Retroactive awards are a recognized way to enforce such pre-existing, free-standing obligations and to recover monies owed but yet unpaid.

Child Support

Section 152 of the *FLA* promotes the best interests of the child, enhances access to justice, reinforces that child support is the right of the child and the responsibility of the parents, encourages the payment of child support, acknowledges there are many reasons why a parent may delay making an application, *and recognizes how underpayment of child support leads to hardship and contributes to the feminization of poverty.*

Child Support

Preventing historical claims for child support under s. 152 of the *FLA* also ignores how family law calls for an approach that takes into account the broader social framework in which family dynamics operate.

Gender roles, divorce, separation, and lone parenthood contribute to child poverty and place a disproportionate burden on women.

Allocation of Parental Responsibilities

N.M.B. v. K.D.B., 2020 BCPC 291, Judge Doulis

Two children, 9 and 7 years old.

Shared parenting when separated.

It is uncontested that between Spring 2018 and June 2019, K.D.B. struggled off and on with a cocaine addiction.

N.M.B. sought that all parental responsibilities be allocated to her.

N.M.B. also sought supervised visits on the basis that K.D.B. is an addict who is untruthful about when he is using. She wished to restrict K.D.B.'s parenting time *until he proved to her satisfaction he had stopped using drugs.*

Allocation of Parental Responsibilities

"Section 37(1) of the *FLA* requires the Court to consider the best interests of the children only. In other words, in considering the allocation of parenting responsibilities, [the judge] must focus on the best interests of R.B. and Q.B., rather than the interests and rights of K.D.B. or N.M.B."

Judge Doulis suspected that N.M.B.'s intractability in these proceedings is driven by her hostility toward K.D.B.'s new partner or her desire to punish K.D.B. "In the circumstances, I find it is in the best interests of the children to alleviate rather than sanction or exacerbate the power imbalance between their parents."

Judge Doulis ordered that the parties share equally all parenting responsibilities for the children.

Restrictions on Parenting Time

C.D.A. v. P.R.B., 2020 BCSC 1337 (MJ N. Smith)

The respondent Mother was seeking to review the parenting order, asking for primary residence or equal parenting time.

Master made an Order in December 2019 that the child reside primarily with the Father with the Mother having parenting time in public.

The Mother had suffered for most of her life from anxiety and depression and from an eating disorder.

Restrictions on Parenting Time

The Master stated that once the Mother had put together a better and more extensive pattern of counselling and self-awareness in respect of her unfortunate mental health issues, the parenting time was subject to review.

The Father wanted supervised parenting time, relied on Mother's clinical records.

MJ Smith stated that the Mother, having had significant insight in recognizing her need for treatment and appropriately seeking treatment, "now finds the records of that treatment being used against her."

Restrictions on Parenting Time

MJ Smith did not agree with the Father that the onus is on the Mother to provide a report confirming she is capable of parenting. Nothing in Master's order sets the bar that high.

"The mother suffers from anxiety and depression. Those are conditions that cannot be minimized, but they are all too common in society and their presence, in itself, cannot be grounds for denying or restricting parenting. Most important, there is nothing in the clinical records to suggest her condition poses a risk to the child."

Restrictions on Parenting Time

The Father says child has nightmares after spending time with the Mother.

MJ Smith: “It is virtually impossible to weigh or fully appreciate the context of hearsay statements of a 2 year old, particularly one who spends most of his time with adults who are clearly hostile to the mother.”

“The child has not had a normal relationship with his mother for a third of his life. There is need for some caution, but on the balance and considering the s. 37 factors, it is in best interests of the child to restore his relationship with his mother. Unlikely to happen if all her time is supervised and even less so if her time is at locations where their interactions are being directly monitored by the father and others close to him.”

Restrictions on Parenting Time

An order for supervised access requires evidence of exceptional circumstances because it is one small step away from complete termination of the parent-child relationship. The Court must weigh child’s right to a relationship with a parent and the risk of harm, among other factors.

(adopting Master Elwood’s approach in *M.D.F. v. D.O.T.C.*, 2020 BCSC 522)

MJ Smith noted that there are 16 years of co-parenting ahead of these parents. His Lordship ordered graduated parenting time for the Mother.

Restrictions on Parenting Time (2)

M.D.F. v. D.O.T.C., 2020 BCSC 522 (Master Elwood)

Parties have two children: 4 and 1-1/2 years old

The Mother was seeking to have the Father's parenting time be supervised until the matter can be dealt with at trial.

The Father has a history of depression and suicidal ideation; he attempted to commit suicide (overdose) following separation.

The Father argues that the evidence is insufficient to show any risk of harm to the children and that he is doing well and receiving appropriate and ongoing treatment. He was seeking unsupervised parenting time and a section 211 report.

Restrictions on Parenting Time (2)

Is threatening to commit suicide family violence?

Master: "I have no difficulty accepting the mother's proposition that a threat to commit suicide may constitute family violence, particularly where the threat is used as a form of psychological weapon in a family dispute. However, I think it would be a mistake for the court to label every disclosure of suicidal ideation as family violence. *To do so risks stigmatizing people who struggle with mental illness and suicidal thoughts as violent or abusive.* Telling a spouse about suicidal thoughts is not, in-and-of-itself, abusive. Context is important." [emphasis added]

"Characterizing every disclosure of suicidal ideation as family violence would also risk discouraging those who need help from seeking that help and deprive their spouses of important information. As the mother herself argues, former spouses and medical professionals must rely on self-reporting by a suicidal spouse to recognize a potentially dangerous situation." [emphasis added]

Restrictions on Parenting Time (2)

"There is no evidence the father used the statements about his suicidal thoughts as a form of psychological abuse. His disclosures began before the relationship broke down. No evidence he used disclosures as leverage or retaliation against the mother. If anything, the father knowingly weakened his position on parenting arrangements by disclosing these thoughts to the mother."

"There is no evidence the father talked about suicide in the presence of the children, with the exception of one telephone call when he should have known the child was on speakerphone with mother. No evidence of a pattern of the father exposing child to statements that would scare her."

Restrictions on Parenting Time (2)

Should supervision of Father's parenting time be ordered?

The Mother insisted on supervision post discharge from hospital. The Father's only option was to agree or not see children altogether.

Note: there was no judicial determination that supervision was warranted.

Master: "While evidence of the Father's recovery is promising, I am unable to conclude on this interim application that he has fully overcome the depression that drove him to attempt suicide in February 2019. The question of whether he is fully clear of the risk of another suicide attempt can only be determined, if at all, at a trial with benefit of full testimony, cross and expert evidence. For present purposes, I must assume the father remains at risk based on the factors identified in February 2019."

Restrictions on Parenting Time (2)

However, the question was not whether the Father is at risk of attempting suicide again, but rather whether without supervision, the Father poses a risk to the physical, psychological and emotional safety and well being of the children.

"In my view, it is a large step from the recognized risk of a repeat suicide attempt to a risk that the father would seek to take his life or endanger the safety of his children while they are in his care. That step is too large for me to take on the evidence."

Factors considered by Master Elwood:

- Psychiatrists did not express concern for the safety of the children.
- The Father was cleared to work in emergency department, responsible for health and safety of vulnerable persons.
- No evidence of reckless behaviour by the Father that has put children's safety at risk.
- A year has now passed and no evidence of any behaviour by the Father that he had put children at any risk.

Restrictions on Parenting Time (2)

Conclusion: the best interests of the children will be protected by allowing the father unsupervised parenting time with the Father continuing with health monitoring program, regular updates from treating psychiatrist, and full and ongoing disclosure to the Mother.

Restrictions on Parenting Time (3)

A.P. v. S.T., 2019 BCSC 1780 (MJ Mayer)

Parties shared the parenting of six year old P.

S.T. struggled with alcoholism after child was born. She completed a residential treatment program.

In 2017, S.T. began working as an escort out of her rented home to supplement her income as a hair stylist.

A.P. notified S.T.'s landlord of escort business and S.T. was evicted – Court called this conduct inappropriate.

A.P. called MCFD, which led to S.T. having supervised visits.

Restrictions on Parenting Time (3)

MJ Mayer: "In my view, working as an escort is a personal choice which S.T. was and is able to make. Her choice of work as an escort does not necessarily impact her ability to parent P, so long as she maintains an appropriate separation of this activity from her son."

S.T. was no longer working as an escort. She said she was working as a hairstylist in a separate rented commercial space.

MJ Mayer: "If she was operating an escort business out of this separate space, which I do not find is the case, this would not necessarily qualify as a material change of circumstance justifying a reconsideration of P's parenting arrangements. Something more would be required indicating that this activity put P at risk or otherwise impacted S.T.'s ability to care for him."

S.T. did not adequately consider the obvious risks of bringing clients into her home shared with P even when she was not there. But she has admitted her mistake now.

Restrictions on Parenting Time (3)

re alcohol use – the onus is on A.P. to satisfy the Court that S.T. was not only consuming alcohol but was doing so in P's presence or was intoxicated while he was in her care. The Court was not satisfied on the evidence.

Order – no exceptional circumstances for supervised parenting time.

MJ Mayer put in place a stepped process (with short term supervision) moving progressively back to 50/50 parenting.

Spousal Support – disability

D.M.T. v. S.A.I., 2019 BCSC 1867 (MJ Punnett)

Wife sought an order for spousal support including retroactive spousal support
Wife is 57 years old and disabled as a result of multiple sclerosis.

MJ Punnett:

- When a recipient is disabled, the authorities reveal a lack of consistency respecting where on the scale of the *Spousal Support Advisory Guidelines* spousal support is to be placed and for how long it is payable.
- Where the disabled spouse lacks substantial assets, the need for long term support is clear.
- The spousal support claim is compensatory and non-compensatory.

MJ Punnett ordered high end spousal support for an indefinite period, subject to variation and possible review, plus retroactive spousal support back to date of separation.

Spousal Support – reduced income

Stevens v. Stevens, 2020 BCSC 1339 (MJ Wilson)

The Claimant was terminated from her job after the trial decision. At trial, her claim for spousal support was dismissed.

The Claimant applied to reopen the trial on issue of spousal support. That application was allowed to proceed.

After the Claimant lost her job, she retrained as a care aid and got a job but it was for less money than her previous position.

MJ Wilson found that the Claimant was entitled to spousal support on a compensatory and non-compensatory basis.

Spousal Support – reduced income

Compensatory – redress for a spouse who suffered disadvantage or for a payor spouse who derived an economic benefit.

The Claimant assisted the Respondent in building his business, assuming bookkeeping role. The Claimant had to start again, at the bottom of seniority list.

MJ Wilson: “It is not possible to determine what the Claimant would have done for a career if it were not for the relationship, but I have not doubt that she would not have been two months into an entirely new career at 60 years of age”.

The Claimant was entitled to compensatory spousal support.

Spousal Support – reduced income

Non-compensatory – just because the Claimant might earn enough to cover her living expenses, does not mean she is not entitled to support.

MJ Wilson: “The court must seek to reduce the income disparity between the parties, and the parties should have roughly the same standard of living following separation after a long marriage” (citing *Nichol v. Nichol*, 2020 BCCA 173).

Relocation

T.I.R. v. M.W.P., 2020 BCPC 170 (Judge Skilnick)

Child D is in his early teens.

Applicant wanted to move with D to Alberta. She did so unilaterally, despite agreement for non-removal.

Respondent later moved to Ontario and did not return D to Applicant after his summer parenting time was over.

Relocation

Dr. Elterman: “Like most children, [the child D] wants to please both parents, but he finds himself in a position where he can’t do that.”

Judge Skilnick: “Within less than 5 months, [the child D] has changed his views about which parent he wishes to reside with, and it is difficult to discern if this is a genuine sentiment or if his desire to please causes him to prefer the parent he is in closet proximity to.”

Relocation

Judge Skilnick: “It should be noted that despite being assigned the role of the rope in a very tenacious game of tug-of-war, D presents as a remarkably well-adjusted and poised young man.”

“A child like D deserves cooperative parenting. Instead, he received competitive parenting.”

“Making an order that is in the best interests of D’s emotional health is best effected not by granting either of the parties their wishes, but by listening to what D has to say”.

The Court ordered that D would live in Ontario with his father.

Relocation (2)

Baldus v. Lillow, 2020 BCSC 22 (MJ Baker)

Parties live in MacKenzie.
Agreement intends for equal parenting of 3 year old child.

Respondent mother seeking to relocate with child to Clinton. Mother has a new relationship and is expecting child with her new partner.

Claimant father is opposed, says the mother's access proposal not workable and would result in considerably less parenting time with his son.

Relocation (2)

Facts – Mother

- Mother will be on maternity leave. Can return to her job in MacKenzie; has no job in Clinton
- Mother's parents live in Mackenzie but say they are planning to move to Kamloops
- Mother's partner has a good job and roots in the Clinton/Cache Creek area. His family supports the relationship.

Relocation (2)

Facts – Father

- Due to his work schedule, Father actively trying to get son into a daycare which opens at 6 am so he can have his son overnight
- Father very involved in the child's daily life
- Father grew up in MacKenzie; his family lives there (parents, brother and nephew) and they are involved with the child on a regular basis

Relocation (2)

Factors under section 69(6) of the *FLA:*

Good faith? Yes

Reasonable proposal?

MJ Baker: "While [the mother's proposal] is superficially attractive, I find that it is not reasonable or sustainable."

MacKenzie to Clinton is a 6-7 hour drive; hazardous in the winter, placing child's safety at risk.

Schedule only effective until the child starts school – *Mother essentially wanting to defer any assessment on parenting arrangements until then.*

Relocation (2)

Best interest of the child?

- No material difference between MacKenzie and Clinton for economic opportunities
- Move would significantly disrupt the child's relationship with extended family
- New partner's family not a significant factor as they are not the child's family
- Mother's emotional well-being will be affected but it was her decision to become involved with a new partner who does not live in MacKenzie created the difficulty for her.
- Relationship with father's family pre-dates mother's new relationship
- No evidence that child is unhappy in present environment

Annulment

S.Z. v. X.J., 2020 BCSC 1336 (MJ Baker)

The Claimant was seeking an annulment (versus a divorce) due to her faith. Annulment would render the marriage voidable.

Ground: The Respondent's impotence

Test: One or both parties is incapable of engaging in sexual intercourse due to a physical or psychological incapacity.

Annulment

Onus is on the Claimant to establish incapacity at date of marriage and throughout marriage.

The Respondent could not maintain an erection. One doctor did a blood test and could not find anything wrong with the Respondent.

The Respondent says he has new girlfriend and they have sexual intercourse regularly. (There was no evidence from the girlfriend.)

Key point: "Impotence does not need to be a general incapacity but can be in respect of the particular spouse only."

Annulment granted, with costs to the Claimant.

Reapportionment

James v. Chase, 2020 BCSC 1181 (MJ Verhoeven)

Section 95 – Unequal division of property

95(2)(g)(i) – a spouse, *other than acting in good faith*, has substantially reduced the value of family property

Parties owned a 5 acre property on the outskirts of Prince George. This was their only substantial asset.

Husband sought unequal division of the family home because of damage to the house due to Wife's operation of a cat rescue for some years, with up to 40 cats living in the house.

Husband said that the damage caused by the cats diminished the value of the property by $100,000.

Reapportionment

Lack of good faith could cover a wide range of behaviours.

The Court could infer from the evidence that the situation with the cats arose as a combination of poor judgement, together with emotional and psychological factors of some sort resulting in poor decision-making.

However, the Court did not find that this demonstrated a lack of good faith by the Wife.

Therefore, section 95(2)(g)(i) did not apply.

Significant Unfairness

Storey v. Terry, 2020 BCCA 30

The Claimant had paid the mortgage, property tax and insurance without contribution from the Respondent for approximately two years after separation, but she also had sole occupancy of the house.

On appeal, the Claimant argued that awarding equal division of the house amounted to dividing family debt unequally. The Court of Appeal did not accept the Appellant's characterization that the expenses incurred after separation were family debt.

The Court held that the equal division of the property was fair given that, while the Claimant had paid expenses to maintain the house, she did not pay any rent to the Respondent and he had to provide for his own accommodation.

Unequal Division

Singh v. Singh, 2020 BCCA 21

The Court of Appeal considered the scope of the factors that properly falls within the ambit of s. 95(2)(i) of the *FLA* – "any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness".

The trial judge had adjusted an otherwise equal division of assets by allocating an additional $250,000 to the Wife, pursuant to s. 95, after taking into consideration the Husband's bad faith conduct in relation to a bankruptcy and his lack of disclosure surrounding assets in India.

The Court of Appeal considered whether such factors are properly the subjects of s. 95(2)(i).

Unequal Division

The Court of Appeal concluded that the scope of s. 95(2)(i) cannot be *any* factor that may lead to significant unfairness, but rather is a limited class, namely, the "economic characteristics of a spousal relationship".

Referring the Court of Appeal's decision in *Jaszczewska v. Kostanski*, 2016 BCCA 286, the Court noted that this limited class would allow for the consideration of the relative contribution of spouses to the acquisition, preservation, maintenance, or improvement of family property during the relationship.

Unequal division

As for the two factors relied on by the trial judge in *Singh,* the Court of Appeal held that the limited class would clearly encompass the existence of undisclosed assets and the costs of bankruptcy and a party's motivations for entering bankruptcy.

Regarding the bankruptcy, the Court of Appeal found that it could also fall under s. 95(2)(f).

The Court of Appeal upheld the trial judge's determination that an equal division of assets would be significantly unfair.

Excluded Property

S.T.C. v. D.J.B., 2019 BCSC 1967 (MJ Jackson)

personal injury settlement

Section 85(2) of the *FLA* - The spouse advancing the excluded property claim is responsible for demonstrating that the property is excluded property.

The Respondent was unable to demonstrate that none of his personal injury settlement was attributable to lost income. Further, he could not provide any documentary evidence to support the tracing of the settlement proceeds. The Respondent relied on some receipts which did not show the source of the funds and his oral testimony.

Excluded Property

MJ Jackson: "Where an excluded property claim depends on a party's oral evidence unsupported by any independent documentation, that evidence must be scrutinized for reliability and credibility".

The Respondent was not able to establish that the settlement did not include lost income.

As a result, *no part* of the settlement was found to be excluded from family property.

Evidence of Children

D.D.R. v. K.T.R., 2019 BCSC 1805 (MJ Francis)

Mother sought to relocate to Bulgaria with the children, 12 and 3 years old.

The parties had lived in Bulgaria prior to 2008.

Father was charged with assault and pled guilty; he received a conditional discharge with one year probation.

Is 12-year old TR's evidence via third parties admissible?

The Court found an exception to hearsay rule.

The Court was satisfied that hearsay statements (of the counsellor and social worker) were necessary in determining the best in interests of the children and that they were reliable evidence that TR had been subjected to family violence at the hands of his father.

Evidence of Children

The Court had to consider TR's statements in context of his personality, intelligence and understanding. The Court found TR to be mature and thoughtful, and sensitive to preserving a relationship with his father.

The Court found there was "credible evidence of the children being exposed to family violence has played a major role in the parenting orders made herein".

The relocation application was granted.

Questioning Self-reps

Brown v. Brown, 2020 BCCA 53

On appeal, the Appellant argued that the Chambers judge had erred by posing questions to the Respondent, who was representing herself, during her submissions and then accepting unsworn evidence from the Respondent both in answers to questions and in the course of her submissions.

The Court of Appeal dismissed the appeal and held that there is some scope for admitting unsworn statements into evidence and that even though acceptance of inadmissible statements into evidence constitutes an error of law, it will not found a meritorious ground of appeal unless it is shown that the inadmissible evidence may have affected the judgment, or that it rendered the proceedings unfair.

Questioning Self-rep

The Court of Appeal further held that a judge dealing with a self-represented party must strive to ensure that the hearing is fair to both parties.

A judge may properly ask questions to ensure that the self-represented party is afforded an opportunity to present their case, but the judge may not make determinations in absence of evidence, or act on allegations that have no evidentiary value.

What is important is not whether a party says things beyond admissible evidence, but rather whether the judge made improper use of those statements.

Evidence - Recordings

A.J.F. v. N.L.S., 2020 BCSC 26 (MJ Skolrood)

The Claimant sought orders to address what he characterizes as the Respondent's "repeated, prolonged and unrepentant failures and refusals to abide by multiple court orders".

MJ Skolrood: To say this is a "high conflict" case does not capture the "degree of toxicity that has pervaded the lengthy history of this litigation…"

Many affidavits of both parties were replete with hearsay, opinion and argument.

Much of the evidence and submissions focused on excavating the parties' history and relitigating past grievances.

Evidence - Recordings

The Claimant was frustrated because Crown declined to charge the Respondent for breach of a Protection Order, so the Claimant surreptitiously recorded a conversation with Crown counsel and then sought to introduce the transcript into the family law proceeding.

MJ Skolrood disallowed the transcript, citing *Lin v. Wang*, 2019 BCSC 1169, which held that the practice of recording personal conversations for use in family litigation is insidious and should be discouraged.

The Court noted that the Claimant could not explain or justify recording a conversation with Crown counsel, and stated that "To do so and then propose using the recording in this proceeding shows remarkably poor judgment".

Enforcing Compliance with Orders

Section 230 of the *FLA*

- Applies for the purpose of enforcing an order made under the *FLA* if there are no other provisions in the Act to enforce the order

- e.g. does not apply to enforcing Protection Orders (s. 188) or conduct orders (s. 228)

Enforcing Compliance with Orders

Section 230 remedies

The Court may:

- require a party to give security in any form
- require a party to pay for all or part of the expenses reasonably and necessarily incurred as a result of the party's actions, including fees and expenses related to family dispute resolution
- require a party to pay an amount not exceeding $5,000
- require a party to pay a fine not exceeding $5,000

Failure to Comply with Orders

Ho v. Chu, 2020 BCSC 927 (MJ MacDonald)

s. 230(2)(b)

The Claimant failed to comply with a Master's order to jointly retain an expert to prepare a section 211 report.

The Claimant refused to engage in the process altogether by failing to schedule appointments for herself and the child, or to pay her share of the retainer.

Failure to Comply with Orders

MJ MacDonald: “I am satisfied that Ms. Ho has acted in a manner that frustrates the court-ordered s. 211 process. This Court can order a fine to enforce a court order: s. 230((2)(b). At this juncture, I am not prepared to order a $5,000 penalty for Ms. Ho’s non-compliance with the Vos Order. I am prepared to order costs of this application against Ms. Ho, to be paid forthwith. This is more appropriate for a first time breach.”

Failure to Comply with Orders

MJ MacDonald: “Lastly, I emphasize that court orders are serious and cannot simply be ignored. Compliance is not discretionary. The importance of complying with court orders is fundamental to the proper administration of justice and maintenance of the rule of law: *A.J.F. v. N.L.S.*, 2020 BCSC 26, at para. 75.