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Family Law Newsletters
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— Franks & Zalev - This Week in Family Law

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Oxymoronic Adult Children

Peters v. Peters, 2025 CarswellBC 2834 (S.C.) — Sigurdson J.

We have not written about adult children — really adult children — in a while. No time like the present, and we take the case of *Peters v. Peters* penned by Justice Sigurdson of the British Columbia Supreme Court to do so.

The claimant — we'll call him "Arnold" — and the respondent — we'll call her "Erin" — married in 1999. They separated on April 29, 2016. They had two kids along the way. We'll call them A.H.P. (age 21) and S.A.P. (age 18).

Arnold and Erin entered into a Separation Agreement in the Fall of 2016.

The parties were able to resolve some, but not all, of the current issues on their own. The remaining issues (of interest for our purposes) were:

1. Whether A.H.P. was still a child of the marriage.

2. Whether S.A.P. would no longer be a child of the marriage after completing her first post-secondary degree.

The parenting provisions of the Separation Agreement provided that the children would live primarily with Erin, and that Arnold's parenting time would be as arranged. Monthly child support was agreed as was the fact that Arnold would pay 55% of specified special or extraordinary expenses subject to an annual review.

On April 15, 2019, Arnold served a Notice of Family Claim seeking a divorce and parenting time. He believed that the children increasingly avoided spending time with him before that date.

Erin served a response in May, looking to maintain current parenting arrangements and for payment of retroactive special and extraordinary expenses.

At a Judicial Case Conference, the parties agreed Arnold would pay $475 a month toward special and extraordinary expenses for their participation in dance and swimming, and $3,500 in arrears.

The amount of child support was updated annually to the amount provided for in the *Federal Child Support Guidelines*, SOR/97-175. In 2024-2025, the amount was $1,711.13.

The parties agreed that around the summer of 2019 the children stopped seeing Arnold regularly. Arnold provided evidence that he had made ongoing efforts to text and email both children over the last several years, and had sent emails and messages

on special occasions such as birthdays and holidays. All his communications went without response. Arnold claimed there was no "rupture" or "triggering event" to justify the termination of the relationship.

At the time of the current hearing, A.H.P. was 21 and S.A.P. was 18. Both were engaged in post-secondary education.

A.H.P. had completed an Honours Bachelor of Sciences degree at UBC, was accepted to a Master of Science program at UBC, and planned to transfer to a PhD program upon completing the first year of graduate studies. A.H.P. had also written the MCAT, hoping to ultimately pursue a career in medical research.

S.A.P. had completed a first year of study toward a Bachelor of Urban Forestry at UBC. She had no concrete career plan but nonetheless had expressed interest in pursuing a second degree.

Both Arnold and Erin were employed. Both had significant expenses. Arnold had debt obligations and expenses suggesting limited access to additional funds, and a limited ability to save for retirement. Erin suggested that it was expensive to raise children and that she had depleted her savings and incurred debt. She had made every effort to ensure the children did not have to apply for student loans. Both parties owned property with significant mortgages.

The matter proceeded as a summary trial.

Did A.H.P. and S.A.P. remain "Children of the Marriage"?

The Separation Agreement adopted the definition of "child of the marriage" from the *Divorce Act*, s. 2(1): (a) a child under the age of majority and who has not withdrawn from their charge; or (b) a child that is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life.

When a child of a marriage reaches the age of majority (age 19 in B.C. — *Age of Majority Act*, R.S.B.C. 1996, c. 7), there is a presumption that they are no longer entitled to child support: see *Dring v. Gheyle* (2018), 17 R.F.L. (8th) 34 (B.C. C.A.) at para. 49 ("*Dring*").

Of course, pursuit of post-secondary education *can* be a valid reason for continued dependence: *Dring* at para. 51; *W.P.N. v. B.J.N.* (2005), 10 R.F.L. (6th) 440 (B.C. C.A.) at para. 18. ("*W.P.N.*."); *Brun v. Fernandez* (2023), 94 R.F.L. (8th) 141 (Ont. S.C.J.); *Licata v. Shure*, 2022 CarswellOnt 4209 (C.A.); *Rebenchuk v. Rebenchuk* (2007), 35 R.F.L. (6th) 239 (Man. C.A.); *Martell v. Height* (1994), 3 R.F.L. (4th) 104 (N.S. C.A.). However, there is no automatic rule that a child is no longer a child of the marriage after a first university degree; nor does enrolment in post-secondary education *necessarily* determine status as a child of the marriage — mere attendance at an educational institution is not sufficient: *W.P.N.*; *Marsland v. Gibb* (2000), 5 R.F.L. (5th) 406 (B.C. S.C.); *Dring*; *Beninger v. Beninger* (2010), 92 R.F.L. (6th) 350 (B.C. S.C.) at para. 9; *Geran v. Geran* (2011), 97 R.F.L. (6th) 68 (Sask. C.A.).

The question is *not* simply whether a child over the age of majority can support themselves while attending school. The test is much broader and requires the court to determine whether an adult child should be entitled to continued support from his or her parents given his or her particular academic, financial, and family circumstances: *Beninger* at para. 15. The financial circumstances of the parents are also relevant: *Beninger* at paras. 15 and 25. The question is whether it is appropriate that the pursuit of education be financed by the parents: *Nordeen v. Nordeen* (2013), 29 R.F.L. (7th) 288 (B.C. C.A.) ("*Nordeen*") at para. 16; *D.W.Mc v. M.A.B.*, 2012 CarswellNB 291 (N.B. Q.B.); *Beninger*; *Williams v. Wallace* (2017), 99 R.F.L. (7th) 222 (Alta. Q.B.); *Williams v. Wallace* (2017), 99 R.F.L. (7th) 222 (Alta. Q.B.). Ultimately, parents are not — and should not be — required to live a life of austerity and to forsake saving for their own retirement to over-contribute to the costs of education.

In British Columbia, and in much of Canada, the leading case on the factors to be considered in determining whether an adult child enrolled in post secondary education should continue to be considered "children of the marriage" for purposes of child support continues to be *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C. S.C.), in which Master Joyce set out the relevant considerations as follows:

(1) Whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;

(2) whether or not the child has applied for or is eligible for student loans or other financial assistance;

(3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;

(4) the ability of the child to contribute to his own support through part-time employment;

(5) the age of the child;

(6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;

(7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;

(8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

Subsequent cases have extended to, added to and refined the "*Farden* Factors." So, for those of you that like lists we offer: *Menegaldo v. Menegaldo*, 2012 CarswellOnt 6030 (S.C.J.); *Edwards v. Edwards*, 2021 CarswellOnt 2711 (S.C.J.); *Brun v. Fernandez* (2023), 94 R.F.L. (8th) 141 (Ont. S.C.J.) (good summary) (deals with "delayed adulthood"); *Licata v. Shure*, 2022 CarswellOnt 4209 (Ont. C.A.); *Rebenchuk v. Rebenchuk* (2007), 35 R.F.L. (6th) 239 (Man. C.A.); *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406 (B.C. C.A.); *Zaba v. Bradley* (1996), 18 R.F.L. (4th) 1 (Sask. C.A.).

The final *Farden* Factor — the idea of a child having unilaterally terminated a parental relationship — has been the source of much controversy and judicial to-and-fro.

In *Shaw v. Arndt* (2016), 75 R.F.L. (7th) 270 (B.C. C.A.) at para. 29, the B.C. Court of Appeal adopted the following "useful description" of the current law concerning the estrangement of adult children from their parents (following conclusions drawn from a 2010 paper on the subject written by Justice David Corbett entitled Child Support for Estranged Adult Children):

(a) Contrary to certain recent literature, there has not been "growing judicial recognition" that the quality of the relationship should have a bearing on child support.

(b) Courts have been willing to impose a few specific responsibilities on adult support recipients, and may properly do so, but not conditions that include maintaining a social relationship with a parent.

(c) The statutory basis for taking the quality of the child-parent relationship into account is dubious.

(d) There is appellate authority permitting the court to place some weight on the parent-child relationship, but that authority is more ambiguous than trial and motions court decisions suggest.

(e) On the current state of the law, there seems to be a discretion to take this factor into account, though few courts do, and fewer have found it a significant factor in a support decision.

(f) The better view is that if conduct is ever relevant, it should only be in truly egregious cases of misconduct by a child against a parent.

This led Justice Newbury to conclude, in *Shaw v. Arndt*:

[31] The unsatisfactory relationship is not an excuse for [the father's] failure to pay child support; nor is it a reason why [the child] should not be regarded as a child of the marriage. Many parents or step-parents have troubled relationships with their children, but by virtue of their youth, children still have to be supported, in whole or in part, in obtaining training or

> degrees that will allow them to become self-sufficient. The final 'Farden factor' may justify the cessation of support in rare cases, but this case does not begin to approach the egregious circumstances in which a cut-off of support would be justified.

Or as similarly stated by the Manitoba Court of Appeal in *Rebenchuk v. Rebenchuk* (2007), 35 R.F.L. (6th) 239 (Man. C.A.):

> [56] Termination of the parent/child relationship is a particularly difficult issue. In my view, selfish or ungrateful children who reject the non-custodial parent without justification should not expect to be supported through their years of higher education. But this factor rarely stands alone as the sole ground for denying support unless the situation is "extremely grave." [citations omitted]

We cannot say we *completely* agree with this position. No matter what the reason for the lack of communication or estrangement, it is a lot to ask a parent to contribute to the increasingly exorbitant costs of post-secondary education (to say nothing of a second degree) when a child refuses to engage in any communication or relationship with that parent. Part of being an adult is learning to communicate with people we may not want to communicate with.

In this case, the evidence led Justice Sigurdson to conclude that the adult children continued, in different ways, to be dependent on their parents. Both parents were bound by a moral (and legal) obligation to provide them with support and assistance while they made reasonable efforts, in their early adulthood, to become self-sufficient. His Honour concluded that was not one of those rare or egregious cases in which parent-child estrangement justified the termination of support. Short of such egregious circumstances, child support is not conditional on a good relationship between the parent and child: *Nicholson v. Nicholson*, 2021 CarswellOnt 7124 (S.C.J.) at para. 14.

Was A.H.P. Still a "Child of the Marriage"?

The question was whether A.H.P.'s educational pursuits meant that A.H.P. continued to be unable to withdraw from parental charge.

Farden factors 1, 3, 6 and 7 relate to the child's educational enrolment and plans. There was no dispute that A.H.P. had a great deal of potential and had been enrolled in full-time studies, with sensible and attainable career plans. A.H.P. was successful enough in undergraduate studies to be accepted into graduate work. A.H.P. was pursuing a program founded in high academic achievement.

Farden factors 2 and 4 related to the ability of the adult child to support themselves and their education in some other way, such as by applying for or obtaining financial aid, or through employment. Here, his Honour determined there was little room for outside work during this particular demanding Master's program. These limits suggested ongoing dependence.

However, Justice Sigurdson was concerned as to the very limited evidence presented as to A.H.P.'s ability to obtain scholarships or student loans. While failing to apply for student loans is not an automatic "strike" against a child's status as a child of the marriage (primarily because loans only defer costs — they do not eliminate costs), the availability of loans is just one factor among many to be considered: *W.P.N.*. at para. 24. Where an adult child is embarking on a graduate course of study, it merits consideration that the child did not take the initiative to seek to support their own advanced education. As noted by Justice Sigurdson, "[a]t some point in adulthood — which will no doubt vary with each case — a person is to be expected to take on both the burdens and the benefits of adult pursuits, including the fulfilment of personal, professional and academic goals."

His Honour was not satisfied that A.H.P. did not have the capacity to contribute more significantly to the costs of graduate studies — so *Farden* factors 2 and 4 suggested that A.H.P. *may* no longer be a child of the marriage entitled to support.

While Erin and Arnold disagreed about the cause of the rupture in the relationship between Arnold and the children, it was clear that Arnold had made some effort to be in contact with A.H.P. and S.A.P. on a consistent if not occasional basis. And it was uncontradicted that A.H.P. and S.A.P. had not responded to Arnold since 2019. However, the cause of the ruptured relationship was not readily apparent. Therefore, his Honour did not rely heavily on the final *Farden* factor. The fact that A.H.P. had chosen to not have a relationship with Arnold was relevant, but it was only one factor.

A "holistic" application of the *Farden* factors led his Honour to conclude that A.H.P was able to withdraw from parental charge. In all of the circumstances, A.H.P was no longer a child of the marriage.

Should S.A.P. Cease to be a "Child of the Marriage" After Completion of her First Degree?

S.A.P. was still only 18 years old and she was presently enrolled in a post-secondary program of study which was of professional and academic interest to her and through which she was contemplating future goals.

Arnold sought an order (further to the definition of "child of the marriage" in the Separation Agreement and the *Divorce Act*) that S.A.P. would no longer be a child of the marriage as of the date she completes her first post-secondary degree, with liberty to apply for a review at that date of whether she continues to be a child of the marriage.

It was easy for his Honour to conclude that S.A.P. would remain a child of the marriage and remain entitled to support further to the Separation Agreement until the completion of her first post-secondary degree. As for after that, said his Honour:

> [43] In *Woody v. Milner*, 2014 BCSC 396 at para. 48, Justice Groves made the following comments, which I adopt:
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> [48] At some point, the answer to the question of whether or not parents are obligated to support a child's academic endeavours must be no. I am of course aware that if it was not for [the] parents' divorce, [the child], at age 24, could not look to the court to compel either of his parents to support him . . .
>
> [44] I would not compel Arnold to support S.A.P. through a further post-secondary degree without other reasons establishing that her dependence at that stage justifies her maintaining the status of child of the marriage.
>
> [45] Given the family's circumstances, the parties' respective financial resources, the importance of post-secondary education to them, and the reasonableness of the pursuit of that education by S.A.P., I am granting the order requested that S.A.P. remain a child of the marriage until she has completed her first degree, subject to any decision reviewing this determination at that time.

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