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

Aaron Franks & Michael Zalev

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Five Years. Fixed Support. No Reviews. So What's to Worry About?

***L.A.B. v. M.L.B.* (2025), 22 R.F.L. (9th) 394 (B.C. S.C.) — Sukstorf J.**

You've seen this deal before — it is something that is a common result in mediations where parties suffer from litigation fatigue and just want to "get it done." You may have even drafted one yourself: two parents, through counsel, agree to fix child support for a fixed period, with no adjustments for changes in income or parenting time. The arrangement assumes that the world will stay roughly the same for five years — or that the parties will accept the risk of future changes. Of course, the world rarely cooperates. The payor's income doubles. The children move from a shared parenting arrangement into one parent's primary care. Yet both parties continue to follow the order. The now-primary caregiver eventually returns to court seeking a variation despite what was intended to be a fixed and non-variable arrangement.

We already know that courts can — and will — intervene. A number of cases, including *Chan-Henry v. Liu*, 2018 CarswellBC 3272 (S.C.), aff'd 2021 CarswellBC 2679 (C.A.); *Powell v. Powell* (2019), 23 R.F.L. (8th) 367 (B.C. S.C.) and *L.A.B. v. M.L.B.* (2025), 22 R.F.L. (9th) 394 (B.C. S.C.) have confirmed that parties cannot just contract out of the court's ability to vary child support when circumstances materially change. According to these cases, where an arrangement remains reasonable in light of the children's needs and parties' evolving circumstances, all is well; but once a material change occurs, such that the children's circumstances render the existing terms no longer reasonable, it is the court's "duty" to ensure compliance with the *Guidelines* prevails. An agreement that bars future variation is contrary to public policy.

But this can result in substantial unfairness, especially where a payor might have paid extra for the benefit of certainty and predictability for a period of time. And, to be clear, we are referring to agreements that were fairly negotiated with the assistance of counsel and the benefit of full disclosure — not "kitchen table" agreements where the recipient felt pressured. Therefore, the harder question is this: If a payor has fully complied with the (consent) order or agreement as written after a fair negotiation, should a later variation be treated the same way as an ordinary child support arrears case? That was the question Justice Sukstorf confronted.

The parties in *L.A.B.* married in 1996. They had two children: K.B. (born 2005) and S.B. (born 2008). They separated in 2011. After years of high-conflict litigation, a 2015 summary trial established shared parenting and imputed minimum-wage income to the respondent mother, a qualified teacher who had not returned to work.

By 2017, the father wanted to terminate spousal support and disclosed his plan to pursue a CFA designation and move into wealth management. He was then earning commission-based income through extensive overtime, and the contemplated career change was expected to reduce his income to between \$70,000 and \$150,000 for two to five years. The whole bargain was built around that expected drop. Through extensive negotiations between counsel, the parties agreed to a consent order (the "Consent

Order") that fixed the father's income under the *Child Support Guidelines* at \$90,000 for five years, required him to pay \$1,000 per month in child support and \$1,000 per month in spousal support, and to pay for 65% of the section 7 expenses.

The Consent Order also provided that changes in the children's living arrangements would not affect the fixed support amounts, and that child support could not be reviewed until July 2023 — and then only prospectively. This structure was proposed by the *mother's* counsel, so that the mother would receive \$2,000 per month for five years, no matter what, plus the full Canada Child Benefit despite shared parenting.

Then reality happened. The father failed the CFA exam — repeatedly. He kept working in his old job, and earned far more than \$90,000 — \$256,185 in 2018; \$200,166 in 2019; \$223,809 in 2020; \$296,406 in 2021; and \$182,480 in 2022. Meanwhile, S.B. moved primarily to the mother's care in September 2019, and K.B. followed in early 2020 during the pandemic. The perfect child support storm.

The father kept paying the \$2,000 each and every month and continued to provide annual tax returns through counsel. The decision does not explain why disclosure continued despite the fixed and non-variable support arrangement, nor whether it was required by the Consent Order itself. This is an important feature of the case. Many fixed-support arrangements are specifically designed to avoid annual income fights and disclosure altogether. Here, however, the mother continued to receive annual disclosure showing that the father's income was far exceeding the \$90,000 figure on which the arrangement was built. Both parties nevertheless believed that the Consent Order prevented either of them from changing anything. When the father told the mother he had failed the CFA exam, her response — "Why exactly are you sharing this with me?" — shut the door on further discussion.

That continuing visibility into the father's income would matter later.

As the five-year non-variability period approached its end, the mother's new counsel delivered formal notice on June 5, 2023 of her intention to seek a review and variation. She sought a retroactive recalculation based on the parties' actual incomes and actual parenting arrangements, ultimately arguing that support should be recalculated back to June 2018.

Her argument was not hard to understand: the father had earned far more than the assumed income on which the Consent Order had been based, the children had moved primarily into her care, and she said she had delayed seeking a variation because the Consent Order expressly provided that support was fixed and non-variable for five years.

The father responded that the Consent Order represented a deliberate and reasonable bargain negotiated with counsel, disclosure, and full knowledge of the risks. The parties had structured support around the likelihood that his income would decline during a career transition, the mother had received the benefit of a guaranteed support stream, and both parties had complied with the arrangement in good faith for years. Alternatively, if the court ultimately varied support, the father argued that any retroactive adjustment should be limited to June 2020. Relying on the framework set out in *D.B.S. v. S.R.G.* (2006), 31 R.F.L. (6th) 1 (S.C.C.) and reaffirmed in *Colucci v. Colucci* (2021), 56 R.F.L. (8th) 1 (S.C.C.), he submitted that, absent blameworthy conduct, retroactive support should generally not extend more than three years before formal notice.

The (Unfortunately) Easy Part: You Can't Freeze Child Support in Time

Justice Sukstorf dealt with the enforceability question quickly.

The non-variation clauses were unenforceable to the extent they purported to preclude adjustment of child support in response to material changes in income or parenting. While courts should respect reasonable negotiated settlements, parents cannot freeze child support in time. Child support settlements may attract considerable weight, but they cannot prevent a court from varying support when changed circumstances render the original arrangements inadequate: see e.g. *D.B.S. v. S.R.G.* (2006), 31 R.F.L. (6th) 1 (S.C.C.) at paras. 78-79.

This should cause some degree of concern for anyone negotiating fixed and non-variable child support for a fixed period.

The Harder Questions: How Far Back and On What Terms?

The enforceability question is not the issue that makes [L.A.B.](#) interesting — it's everything that came after.

The case law is not complicated in principle, even if it can be messy in application. Courts will generally respect child support bargains that still work. They will not enforce attempts to freeze child support after the factual assumptions underlying the bargain have completely collapsed.

Having determined that the support provisions were not immune from review, Justice Sukstorf applied the two-step approach summarized by Justice Schultes in *G.J.L. v. M.J.L.*, [2017 CarswellBC 1134](#) (S.C.) at paras. 122-124, a framework that has been repeatedly applied by British Columbia courts when assessing whether a child support agreement should be replaced with a court order.

First, she determined what child support should have been paid under the *Guidelines* based on the parties' actual incomes and parenting arrangements. She then compared that figure to the amount paid under the Consent Order and asked whether the Consent Order (or the underlying agreement) continued to provide reasonable arrangements for the children's support notwithstanding its departure from the *Guidelines*. The ultimate question was not whether the parties had struck a reasonable deal years earlier, but whether the deal continued to provide reasonable arrangements for the children in the circumstances.

Justice Sukstorf's answer to those questions was straightforward. The Consent Order may have represented a reasonable bargain when it was negotiated in 2017 — but no longer. The father's income far exceeded the \$90,000 assumption on which the arrangement was built, the parenting schedule shifted in the mother's favour, and the resulting support fell well below what the *Guidelines* would have required. In those circumstances, the agreement could no longer be said to provide reasonable arrangements for the children.

That conclusion resolved the enforceability question. But it did not resolve the retroactivity issue. Under [Colucci](#), once a material change is established, retroactivity presumptively runs to the date of effective notice, subject to the usual limit of three years before formal notice. The distinction matters. The three-year rule operates as a *limit* on retroactivity, not necessarily as the presumptive *starting point* for retroactivity. Courts may depart from that result after considering the reason for any delay, the payor's conduct, the circumstances of the children, and any hardship that a retroactive award might create. This is a distinction sometimes forgotten.

The mother claimed retroactive support back to July 2018. The father argued that, in the absence of blameworthy conduct, retroactivity should be limited to the three-year period before formal notice — that is to June 2020.

On the mother's delay, the judge accepted that she may have believed the five-year clause prevented variation. But she was represented by counsel and received annual tax returns showing incomes consistently and substantially above \$90,000. She had both the means and the information to challenge the arrangement earlier. But she had been ambivalent at best; remember her answer: "Why exactly are you sharing this with me?"

On the father's conduct, the judge found no blameworthy behaviour. He paid the agreed support, disclosed his income annually, contributed significantly to RESPs, and paid the majority of section 7 expenses. This was not a case of concealment, strategic underpayment, or failure to disclose.

Nor was there evidence that the children had suffered any hardship. They attended private school, participated in specialized sports, and enjoyed a lifestyle that the judge found exceeded what the parties likely anticipated when they negotiated the Consent Order.

That is what makes the result here a little "unsatisfactory" at first glance. The children were not under-supported in any real-world sense. Their needs were more-than met. Yet Justice Sukstorf still awarded retroactive support. The reason is straightforward: under the *Guidelines*, child support is tied to income and parenting arrangements, both of which had changed significantly. The absence of hardship therefore did not defeat the claim. It did, however, help explain why the court stopped at June 2020 rather than going all the way back to 2018. Applying the [Colucci](#) factors, Justice Sukstorf found that the non-variation clause was

part of the story, but not the whole story. The mother had the father's annual income disclosure, was represented by counsel, and had the ability to challenge the arrangement long before she did. Coupled with the absence of blameworthy conduct and any evidence of hardship to the children, those considerations led Justice Sukstorf to limit retroactivity to June 2020 rather than extending it back to 2018.

The better question is why did the retroactive obligation go back that far, given the ambivalence of the mother and the lack of any bad conduct by the father? And the answer may lie in her Honour having put the cart before the horse. In [Colucci](#), albeit in the context of a retroactive decrease, the Supreme Court stated that retroactivity *presumptively* runs from the date of effective notice, subject to a three-year limit before formal notice. Justice Sukstorf's analysis appears to reverse that sequence, treating June 2020 — three years before formal notice — as the presumptive *starting point* and then asking whether there was a basis to go back further. But that ain't the proper order of operations.

The difficulty with that approach is that it transforms a presumptive *limit* on retroactivity into a presumptive *entitlement* to retroactivity. If June 5, 2023 was the first effective notice in the case, as the reasons appear to suggest, it is not immediately obvious why June 2020 became the presumptive date for retroactive support. As Rollie Thompson recently observed in *Retroactive Support: You Can't Always Get What You Want, Or What You Need*, available on Westlaw at 43 C.F.L.Q. 393, the three-year rule is frequently misunderstood. It does not create a presumptive entitlement to three years of retroactive support. Rather, *absent effective notice, the three-year rule is not engaged and the presumptive start date is the date of formal notice itself*.

It may be, however, that this issue was shaped by the way the case was argued. The father appears to have accepted June 2020 as the appropriate fallback position and focused his submissions on resisting any further retroactivity. The reasons do not suggest that either party squarely addressed whether June 2023 was the proper presumptive date under [Colucci](#).

Whether the result should have extended three years before actual notice is likely to be the point on which readers divide. The mother had the father's annual income disclosure, knew his income far exceeded the figure on which the Consent Order was based, and was represented by counsel throughout. Justice Sukstorf accepted that the parties' shared belief in the enforceability of the non-variation clause explained part of the delay. Reasonable people can disagree on whether that explanation justified three additional years of retroactivity — because, if this situation justifies a full three years of retroactivity, what wouldn't?

The judge also addressed how the resulting arrears should be paid. Although the father failed to establish hardship, Justice Sukstorf nevertheless recognized that a substantial retroactive award can create practical difficulties even for a compliant payor. The arrears were therefore ordered payable over a period not exceeding three years.

The exact arrears were left to be calculated by counsel and, if necessary, the Registrar. What mattered for present purposes was that the resulting amount could be substantial, given the father's income and the length of the retroactive period.

The court also had to determine whether interest should be payable on the arrears.

Step back for a moment and consider what makes this case unusual. There was no concealment, no failure to disclose, and no strategic underpayment. Both parties had counsel, both believed the Consent Order governed their obligations, and the father paid every dollar the order required while continuing to disclose his income. That reality — mutual good faith compliance with a presumptively valid order — helps explain the result of the case: no blameworthy conduct, retroactivity "limited" (given our comments above) to June 2020 rather than 2018, and no pre-judgment interest.

Against that backdrop, the mother sought pre- and post-judgment interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (the "*COIA*"). The father argued that both parties had complied with the Consent Order in good faith and that interest should not apply.

The centrepiece of the judge's analysis is a distinction between two fundamentally different kinds of child support arrears. In *J.C.H. v. S.M.B.H.*, 2024 CarswellBC 70 (S.C.), Justice Punnett held that child support arrears could constitute a pecuniary judgment attracting interest under the *COIA*. But in *J.C.H.*, the payor had an existing obligation to pay support, failed to disclose his income, failed to adjust payments, and breached the terms of an order requiring annual reviews. Those were arrears arising

from non-payment of an existing obligation — money that was owed under the order as written and simply never paid. The payor was ordered to pay interest on account of the non-payment of an existing obligation.

L.A.B. was different. Under the Consent Order as written, the father owed \$2,000 per month. He paid it. There were no arrears under the order as it existed. The obligation to pay more arose only when Justice Sukstorf set aside the non-variation clauses and recalculated support retroactively. Until then, no further amount was payable and no judgment was enforceable.

For Justice Sukstorf, that meant the *COIA* did not apply until there was a pecuniary judgment. The arrears were not unpaid amounts owing under the Consent Order; they were a newly quantified sum created by the retroactive recalculation.

Drawing on *Greene v. Greene* (2010), 92 R.F.L. (6th) 52 (B.C. C.A.) — where interest on retroactive arrears was limited to the period following judgment — Justice Sukstorf ordered that interest runs only from the date the arrears are certified by the Registrar. No pre-judgment interest for any period before certification.

Put differently, *L.A.B.* distinguishes between arrears from non-payment of an existing obligation and arrears created by a later variation order. The former may attract pre-judgment interest. The latter, on this reasoning, do not.

Practical Takeaways

First, non-variation clauses in child support agreements remain risky. They will be upheld only so long as the underlying assumptions reasonably hold. Duration also matters. A shorter arrangement may need little more than disclosure, assumptions, and a review date. A five-year freeze should have more architecture: clear assumptions, annual or event-based disclosure, defined review triggers, and a realistic mechanism for what happens if the premise of the bargain fails. Time creates risk. Draft accordingly. At the very least, parties wishing to achieve certainty and predictability should specifically set out in the order or agreement the potential changes in circumstances they have considered in reaching their agreement and clearly identify the changes they agree will, or will not, warrant reconsideration of the terms: *Sandy v. Sandy* (2018), 6 R.F.L. (8th) 253 (B.C. C.A.); *Pawluck v. Pawluck* (2019), 24 R.F.L. (8th) 1 (B.C. C.A.). The one-liner of "fixed and non-variable for x years" is not sufficient.

Second, if the parties are fixing child support for a period of time, say exactly what each side is getting for the bargain. Do not just recite that the amount is "fixed and non-variable" and hope for the best. Record the assumptions: anticipated income changes, parenting expectations, direct payment of expenses, spousal support trade-offs, property or debt concessions, and the reason the arrangement was considered reasonable for the children when made. If the bargain later comes under attack, the court needs to be able to understand the whole deal — not just a child support number floating in space. A significant factor can be that the parties do not wish to incur significant time or legal fees battling about support variations.

Third, if you're the recipient and you're receiving the payor's tax returns showing income far above the agreed level, don't do nothing. The judge was direct: the mother "had both the means and the information to seek variation earlier." The non-variation clause may have given her comfort, but comfort is not a substitute for legal advice about whether the clause is enforceable. Waiting until the clause expires to act may cost you retroactive years.

Fourth, if you're the payor and your income has ballooned beyond what was contemplated, you cannot assume the non-variation clause will carry the day once the assumptions supporting the bargain have collapsed. But do keep paying what you owe, and document everything. The father in this case earned himself a finding of no blameworthy conduct ruling precisely because he did all of those things.

Fifth, the interest ruling in this case is significant — but it is a trial-level decision in British Columbia with no directly on-point authority, and the judge herself acknowledged as much. Until an appellate court weighs in, you cannot assume that good-faith compliance will always shield a payor from pre-judgment interest on retroactive arrears. Treat this as an argument to use on similar facts, not a settled appellate rule.

Finally, if you're going to claim a retroactive award will cause hardship, you need to do the evidentiary work. The father raised hardship but did not provide the disclosure necessary to establish it. Courts may structure repayment to reduce disruption, but hardship is not something that can be assumed.

L.A.B. is ultimately a case about prediction. Two represented parties negotiated a detailed support arrangement around a specific assumption: that the father's income would fall while he transitioned into a new career. The agreement was carefully structured, extensively negotiated, and entirely reasonable if that prediction proved true. But it didn't.

That is what makes the decision useful. Nothing went wrong in the conventional sense. There was no concealment, no failure to disclose, no strategic underpayment, no non-payment, and no bad faith. The parties simply built a child support arrangement around an alternate universe — or a multiverse for Marvel fans. The court respected the bargain for as long as it remained reasonable, but intervened once the assumptions underlying it no longer reflected reality.

Negotiated certainty has value, but only for so long as the facts continue to support it. Child support arrangements built on predictions about future income, parenting schedules, or life circumstances may buy peace for a time. But they do not buy immunity or absolution.

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