

**CITATION:** Tan v. Tan, 2023 ONSC 4885  
**COURT FILE NO.:** FS-19-00000162-0000  
**DATE:** 2023 09 05

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Romeo Banzon Tan

Applicant

**– and –**

Jennifer De Leon Tan

Respondent

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) Romeo Tan, In Person

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) Elliott Braganza, Counsel for the  
Respondent

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**HEARD:** January 30 and 31, 2023 and  
February 1 and 2, March 9, May 18,  
June 26, July 12, 2023

**JUSTICE G.D. LEMON**

**REASONS FOR JUDGMENT**

**Overview**

[1] The parties settled their divorce issues in 2014 by a consent and final order.  
That order dealt with, among other things, child and spousal support.

[2] In this proceeding, Ms. Tan seeks an order requiring Mr. Tan to pay towards their daughter's medical school expenses. She also asks for enforcement of the child and spousal support arrears that have built up since the time of the last order. Finally, she seeks orders with respect to the life insurance that Mr. Tan was ordered to maintain.

[3] In response, Mr. Tan seeks an order retroactively terminating child and spousal support as of 2015. He denies that he is obligated to pay for their daughter's medical education since she is not currently a dependant and was not, at the time this application was commenced, a "child of the marriage" as defined by the *Family Law Act*. In the result, he says that he has overpaid both child and spousal support.

[4] Mr. Tan also submits that he has no income because his license to practice medicine was revoked in June of 2021.

[5] Both parties have graduated from medical school. For the purposes of clarity, it is easier for the reader to refer to them without reference to their medical degrees. I mean no disrespect to their training.

[6] Ms. Tan brought this motion to change a final order dated June 17, 2014. That order was within a divorce proceeding commenced by Mr. Tan. Ms. Tan is therefore the applicant in this proceeding even though Mr. Tan is shown as the applicant. The result then is that, in some ways, both are applicants, and both are

respondents. Throughout the trial there was confusion as to who was who. And for that reason, as well, I shall refer to the parties as Mr. and Ms. Tan.

### **The Issues**

[7] In order to resolve this dispute, I must determine:

1. What are the annual incomes for the parties for the years 2015 to 2022?
2. Should other income be imputed to Ms. Tan?
3. Is Ms. Tan entitled to spousal support? If not, when did that cease to be the case?
4. Should other income be imputed to Mr. Tan?
5. Does the revocation of Mr. Tan's licence to practice medicine terminate his obligation to pay support?
6. Has there been a material change in circumstances such that the parties' agreement (and consent order) can be varied or reviewed?
7. Is the parties' daughter a child of the marriage and entitled to support? If not, when did that cease to be the case?
8. If Mr. Tan is required to pay s. 7 extraordinary expenses for the child of the marriage, what are those expenses?
9. What support arrears are owing from, or to, Mr. Tan?
10. Is Mr. Tan required to maintain life insurance or its equivalent for Ms. Tan?

### **The Background**

[8] Much of the background is undisputed. The relevant chronology is as follows.

[9] The parties met in medical school in the Philippines. They graduated from medical school in 1987. They planned to immigrate to Canada to work as doctors. They married in Manila in May of 1991.

[10] Ms. Tan first came to Canada in 1990. She passed most of the necessary medical examinations during her internship in Canada but was unable to complete the internship because she needed more time in the field of psychiatry.

[11] While Ms. Tan was in Canada, Mr. Tan was still working in Manila. She told him that he needed two more months of a psychiatric rotation to get his license in Canada, so he completed that in Manila before he came to Canada. Mr. Tan came to Canada in 1992. When he arrived, he was eligible to work in Canada while Ms. Tan was not.

[12] The parties' daughter, R.T., was born August 27, 1997. She was 25 at the time of trial.

[13] The parties finally separated on August 20, 2008.

[14] In November of 2009, Mr. Tan moved to Ontario and commenced a new medical practice in Toronto. He left a busy practice in Nova Scotia with 6000 to 7000 patients.

[15] The parties entered into a consent/ separation agreement on July 16, 2013. Those terms were included in a final consent order within their divorce proceeding on June 17, 2014. Monthly spousal support of \$6500 was based on an annual income for Mr. Tan of \$235,000, and nil for Ms. Tan as she was unemployed at the

time. The child support terms stipulated that support was payable in the amount of \$1892 per month, but there was no mention of Section 7 expenses.

[16] Ms. Tan and R.T. lived in the Cape Breton home from 2008 to 2013. They moved to Ontario in August of 2015 to allow R.T. to start her education at the University of Guelph.

[17] R.T. graduated from the University of Guelph in April of 2019 and started medical school in the Philippines in the fall of 2019. While the evidence is unclear, it appears that she has now graduated.

[18] This application was commenced in April of 2019 before R.T. started medical school. The primary issue at that time was Mr. Tan's contribution to those university expenses.

[19] Mr. Tan's license to practice medicine was terminated June 22, 2021, when the College of Physicians and Surgeons of Ontario revoked his license. After a hearing, the College found that Mr. Tan had sexually assaulted a patient. Mr. Tan was acquitted of a related sexual assault charge on June 22, 2023. This trial was delayed awaiting the result of his criminal trial.

### **Credibility and Evidence**

[20] Both parties made strong submissions about the lack of credibility of the other. I agree with both; I find that neither party was prepared to tell the whole truth of their circumstances in the past and present.

[21] Mr. Tan has failed to produce important and obvious records to support his position. He did not advise Ms. Tan that he did not maintain his court ordered life insurance policy until well into the trial. It is admitted that Mr. Tan did not update his financial information as required by the final order. He also did not maintain his support payments. This conduct throughout this proceeding shows that Mr. Tan is more concerned about his own interests than those of Ms. Tan and, indirectly, his daughter. I draw the inference that his self-interest impacted the truthfulness of his evidence here.

[22] Ms. Tan often answered challenging questions with “I don't remember.” She was quite vague about her health and job search prior to the commencement of this application. Ms. Tan acknowledged that she has failed to report income from a property in the Philippines.

[23] I have therefore endeavoured to rely on objective evidence rather than the contested evidence of the parties to support my determinations.

### **1. What are the annual incomes for the parties for the years 2015 to 2022?**

#### **Authorities**

[24] The determination of the parties' incomes was the principal issue in this litigation. Both submitted that the other's professed income was unreliable and should be imputed to be larger than disclosed. The relevant provisions of the

Federal Child Support Guidelines are s. 15 through s.25. They set out a variety of important principles for this dispute.

[25] In general, subject to some exceptions, a spouse's annual income is determined by using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency – their income tax return.

[26] If the court is of the opinion that the determination of a spouse's annual income from their income tax return would not be the fairest determination of income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable considering any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

[27] Where a payor spouse is a shareholder, director or officer of a corporation, a great deal of financial information is needed for the court to do its work.

[28] Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income would not provide the fairest determination of the annual income, choose to adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

[29] Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income does not fairly reflect all the money available to the spouse for the payment of child support, the court may determine the spouse's annual income to include all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

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

[31] A support recipient, such as Ms. Tan, who is applying for a child support order and whose income information is necessary to determine the amount of the order must include the following with the application:

- (a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years.

- (b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years.



(c) where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration.

[32] A support payor, such as Mr. Tan, who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, must provide the court with:

(a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years.

(b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years

(c) where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration

(d) where the spouse is self-employed, for the three most recent taxation years

(i) the financial statements of the spouse's business or professional practice, other than a partnership, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length

(e) where the spouse is a partner in a partnership, confirmation of the spouse's income and draw from, and capital in, the partnership for its three most recent taxation years

(f) where the spouse controls a corporation, for its three most recent taxation years

(i) the financial statements of the corporation and its subsidiaries, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length

[33] Where a spouse fails to comply with those necessary productions, the court may draw an adverse inference against the spouse who failed to comply and impute income to that spouse in such amount as it considers appropriate.

[34] The court may impute such amount of income to a spouse as it considers appropriate in circumstances which include:

(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.

(b) the spouse has failed to provide income information when under a legal obligation to do so.

[35] Every spouse against whom a child support order has been made must, on the written request of the other spouse or the order assignee, not more than once a year after the making of the order and as long as the child is a child within the meaning of these Guidelines, provide that other spouse with the documents referred to above.

Mr. Tan's Income

[36] Mr. Tan has failed to provide the necessary documentation to confirm his income. Ms. Tan submits that, for simplicity, I should use the figure of \$235,000 as set out in the agreement/order.

[37] Mr. Tan was ordered to produce financial records in accordance with the legislation on September 23, 2019, and October 8, 2020. Although he did not have counsel at trial, he did at the time of those orders. The trial scheduling endorsement

required Mr. Tan to provide the records he intended to rely on 30 days in advance of the trial and continued on to warn that “if a party does not provide disclosure or reports as required above, the trial may proceed regardless and an adverse inference may be made against them.” Mr. Tan was reminded to produce as required at the assignment court, August 29, 2022. He failed to comply with those orders and warnings.

[38] Instead, late on the night after the first day of trial and while Ms. Tan was still on the witness stand, Mr. Tan uploaded a variety of documents to Caselines. Ms. Tan’s lawyer objected to those documents on the grounds of late disclosure of documents that should have been produced earlier. After discussion between the parties, some were agreed to be admissible. However, I refused to allow Mr. Tan to rely on those documents that were objected to because of late delivery. Those documents included financial records and debt documents.

[39] Although Mr. Tan said that the documents had been provided earlier in accord with the earlier orders, Ms. Tan’s counsel denied that. While I cannot determine that issue, there is no dispute that the documents that Mr. Tan sought to rely upon at trial were not provided 30 days prior to trial but only the second day of trial. That was too late.

[40] Mr. Tan had been ordered and warned to comply with his disclosure requirements. Even if these documents had been provided earlier, they were not provided in a timely fashion so that Ms. Tan and her lawyer could prepare for trial.

I would have needed to spend valuable trial time determining what had or had not been provided in accordance with the earlier order. Late disclosure will amount to trial by ambush and that must be avoided. See: *Fox v. Fox*, 2017 ONSC 6844.

[41] Particularly where a party is self employed or is a shareholder of a company and works for that company, they should know that, for support purposes, their Income Tax Returns may not be enough to establish income. In that case, the value of their interests in a company will need to be established by the use of and need for experts in many instances. The obligation and onus to satisfy the court as to income and the value of assets and debts is on the person whose income, asset or debt is called into question. See: *Blaney v. Blaney*, 2012 ONSC 1777, 19 R.F.L. (7th) 491.

[42] Mr. Tan testified that he lost money and incurred debt because of litigation related to his business and business partners, but he produced no records to support that testimony. He submitted that relying on his gross income, as argued by Ms. Tan, was unfair since he should be required to pay support on net income; however, he produced no records to show his legitimate expenses.

[43] Given those circumstances, I can put little weight on Mr. Tan's evidence where it is not supported by relevant documents.

Ms. Tan's Evidence Relating to Mr. Tan's Income

[44] Ms. Tan submits that she has been hampered by Mr. Tan's failure to produce his relevant records, but she was able to rely on some documents that had been produced by Mr. Tan.

[45] With respect to Mr. Tan's income, she relied on his gross billings that she had received from the Ministry of Health for the years 2015 to 2020. Those show a steady rise in his gross billings from \$490,000 in 2015 to \$729,000 in 2020.

[46] Mr. Tan's 2016 income tax return shows commission income from a company about which Ms. Tan has no other information from Mr. Tan. His total income in 2016 was \$243,357.96.

[47] Mr. Tan's 2017 income tax return shows an income of \$165,931. Again, it shows commission income with a variety of expenses booked against it including home office use of just over \$5000.

[48] Ms. Tan has produced Mr. Tan's payroll expenses for 2018. They show that his stepson was paid \$17,797.12, he paid himself \$64,993.80 and paid his new wife \$21,776.32. Mr. Tan's 2018 personal income tax return shows employment income of \$143,400. Mr. Tan's 2018 income tax return from his company shows an income of \$62,400.

[49] Ms. Tan has also been able to access Mr. Tan's business pay stubs showing payments to Mr. Tan, his wife, and his stepson totaling approximately \$300,000 in

December of 2019. Mr. Tan's 2019 income tax return shows a total income of \$190,582 and his 2020 income tax return shows a total income of \$125,736.

[50] Mr. Tan's financial statement, sworn July 30<sup>th</sup>, 2019, discloses income from both his medical practice and the sale of food supplements as \$175,760. His expenses show housing costs of \$5000 per month for rent and a car lease in the amount of \$1794 per month.

Mr. Tan's Evidence Relating to his Income

[51] Mr. Tan submits that his income for the relevant years is as follows:

| Year | Income    |
|------|-----------|
| 2015 | \$134,343 |
| 2016 | \$230,702 |
| 2017 | \$165,930 |
| 2018 | \$146,990 |
| 2019 | \$190,500 |
| 2020 | \$130,250 |
| 2021 | \$71,388  |
| 2022 | \$38,397  |

[52] Mr. Tan is 63 years of age. He testified that as of June 2nd, 2021, he has no employment income. He does not expect to be able to earn an income in the future.

[53] Mr. Tan has been a doctor for 35 years; first in the Philippines and then in Newfoundland, Nova Scotia, and Ontario. He has had no employment other than as a doctor.

[54] He commenced his medical practice in Toronto in November of 2009. He had left a busy practice in Nova Scotia. When he first moved to Ontario, it was hard to start his practice, so he added work as a locum at a Mississauga walk-in clinic. He was not paid by OHIP until March of 2010. For two weeks, he went back to Nova Scotia to do a locum as an on-call emergency doctor for both day and night shifts.

[55] He opened his new practice on Gerrard St. in Toronto with four to six patients a day and then added an office in Scarborough which required him to drive back and forth to earn his income. Subsequently, he set up two other clinics before opening an additional two clinics which he renovated from existing buildings. It cost him \$100,000 to renovate those locations, including \$30,000 that was stolen by his contractor.

[56] In October 2015, Mr. Tan incorporated a company, 2458816 Ontario Inc., to purchase a commercial property at 935 Sheppard Ave. West. That was purchased with business partners and his personal company entered a lease with 2458816. That lease commenced February of 2016.

[57] In May of 2016, the units were flooded because of a break in the septic system. His office was closed by the Department of Health, and it took some time to reopen.

[58] There was then a dispute between the insurance companies of the residences and the business in the building. There was also litigation between



2458816 and the building management company. That litigation is still not resolved. He only received income replacement benefits from his insurance company for the time his business was closed.

[59] In 2017, he was involved in litigation against his partners because they were not satisfied with the income that was being received from the business. He hired a lawyer, but his lawyer did not show up for his court case. His partners took over his shares and he lost his interest in 935 Sheppard.

[60] Mr. Tan testified that his income has reduced since 2015. He had to keep up the lease payments, plus HST, plus 50% of the tax requirements. He had little income during the investigation by the College of Physicians and Surgeons and he has been stressed and depressed.

[61] He sold his home in July of 2018 for \$1.6 million. \$1.2 million was paid to the bank and other funds were paid to the real estate agent, tax arrears, lawyers' liens on the property and legal fees with respect to his litigation. He had to pay \$67,500 for costs relating to the lease litigation. That left him with \$87,740 and he used \$60,000 of that for his new home.

[62] In 2019, he and his operating company went bankrupt because of the litigation debts and his tax debts.

[63] In the past, he has had four lawsuits at one time. This has been caused by an array of misfortunes and bad luck but was not self-inflicted to reduce his support obligations. He has no other rental properties or hidden accounts.

[64] In November of 2017, he was the subject of allegations of sexual abuse that occurred in 2014. When the allegations first came forward, he was not able to practice in the presence of a female patient.

[65] There was an investigation by the College of Physicians and Surgeons in February of 2020. In June of 2021, he was found to have committed professional misconduct and his license was revoked effective that date. He was required to close his practice and pay costs of \$58,110 to the College. He appealed that result but was unsuccessful and was again unsuccessful in obtaining leave to appeal.

[66] After he lost his license in 2021, he applied to be a doctor in Newfoundland but that was turned down. Accordingly, he has been unable to work in the medical field.

[67] His counsel for the College of Physicians and Surgeons and the criminal proceeding were paid through his professional membership. He did, however, pay \$8,000 towards his Court of Appeal fees.

[68] Mr. Tan acknowledges that he is in arrears of support, but that he has been unable to pay as ordered. In 2019, he was able to come to terms with the Family Responsibility Office (FRO) by making his payments as ordered plus \$1000 a month towards his arrears.

[69] With respect to his income, he believes that Ms. Tan is relying on his gross income rather than his actual net income. Although his revenue has gone up, an increase in income has meant that expenses have also gone up. More patients

mean more staff and overhead. He has also been required to pay expenses relating to the flooding.

[70] Mr. Tan denies that he has carried out “clever accounting” to hide his real income. Rather, his stepson and his new wife have earned the money that they have been paid when receiving payments from his company.

[71] With respect to his stepson, he has worked for Mr. Tan sporadically from high school until university over the years 2009 to 2020. In particular, he has been paid on an hourly basis for his work on weekends and after school. His stepson has carried out secretarial duties such as filing and scanning. While he was in university, he was instrumental in the installation and maintenance of the necessary technology to update the record keeping of the office, along with the set up of a website, e-mail, Office 365, fax, and the remote use of computers for a virtual home system during COVID. He also routinely updated the tech system and provided a patient online booking system. If Mr. Tan had hired an independent contractor, he believes that it would have cost much more.

[72] With respect to his present wife, she was the office manager and secretary for his practice. She is responsible for all the business except for the management of patients. She does the OHIP billing, office administration, and deals with vendors and suppliers, along with payables, billings, and regulatory filings. She designed and ordered the furniture for the new office. She is a 30% co-owner of the business but did not draw during times of surplus.

[73] Mr. Tan testified that he also has a business selling food supplements. He is paid by commission and that income shows up in a T4. He testified that he does have free incentive trips and goes to international conventions related to that enterprise.

[74] With respect to the property in which he resides, that is a property that was purchased by his new wife and her parents in 2002. In 2015, her parents wished to retire to the Philippines and transferred the property to her. It is rented out to international students and that rent covers the mortgage. They lived there in November of 2009 until they were able to find a place to live. He produced two mortgages that his wife has placed on the property to help finance the clinic and the lawsuits. The mortgage funds have also been used to fund their rent, car payments and expenses. His residential lease at the time of the trial expired March 1st of 2023 and they moved into this property.

[75] Mr. Tan's income was paid into the joint account with his new wife even though that account is in his wife's name. He has also used his stepson's personal credit card to pay for legal fees.

[76] Mr. Tan agreed that he provided no expert report with respect to his business income or his health circumstances. He has provided no record of payments to R.T. in 2018. He has no record of gifting a car to her. He has no record that the payments to his stepson were for his own legal fees.

[77] Mr. Tan's most recent financial statement discloses that he presently has an annual income of \$26,038 based on employment insurance benefits and pension income. He drives a leased 2014 Porsche and has \$870 in the bank. Including the debt to the College, he has \$548,000 in debts.

[78] Mr. Tan's company went bankrupt in May of 2019, and he personally declared bankruptcy. Despite the bankruptcy, he still has debts totaling more than \$350,000.

### Analysis

[79] Without the necessary documentation, Mr. Tan has put Ms. Tan, and me, in a difficult position to assess his evidence of his income. That difficulty is resolved with my discretion to draw an adverse inference from his failure to provide documentation to confirm his debts and income. The court may draw an adverse inference against a party for their failure to comply with their disclosure obligations. See *Smith v. Pellegrini*, 2008 CanLII 46927 (Ont. S.C.); *Maimone v. Maimone*, [2009] W.D.F.L. 4469. The onus is upon Mr. Tan to persuade me that his income has changed since the original order, and he has failed to do so.

[80] I agree with Mr. Tan that gross income does not tell me what he was able to take home; however, the steady rise in his gross income requires an explanation from Mr. Tan as to what his real income is. He has declined to provide that information.

[81] Mr. Tan submits that in 2019 he earned \$190,500 for support purposes, but he has written off rent and car expenses in that year. The funds from those write offs, and perhaps other funds if disclosure had been made, should be added back to his income for support purposes. The onus rests upon the parent seeking to deduct expenses from income to provide meaningful supporting documentation in respect to those deductions, failing which an adverse inference may be drawn. See: *Smith v. Pellegrini*, at para 35.

[82] While Mr. Tan describes several setbacks to his business, the fact remains that his practice continued to grow despite those obstacles. He has provided nothing to confirm the litigation expenses, or the losses otherwise incurred. He has provided little about his company and related businesses. While it appears that there was little income from those enterprises, I have no information about his expenses that could, perhaps, show funds that could be added back into income for support purposes.

[83] Mr. Tan failed to pay support as ordered, but once the FRO moved to enforce against him, he was able to pay as required plus \$1000 per month in arrears. Clearly, Mr. Tan had the ability to pay but was giving his interests priority to that of court ordered support.

[84] Mr. Tan seeks to deduct his RRSP withdrawals from his income in some years. He says that he used those funds to recover from his earlier losses. For the purposes of calculating income, RRSP withdrawals, barring exceptional

circumstances, are considered part of income. See: *Fraser v. Fraser* 2013 ONCA 715, 311 O.A.C. 351.

[85] In some cases, if RRSP income is received on a one-time basis for a specific purpose, it may not be included in the spouse's income for the purposes of child support. See: *Foley v. Weaver*, 2010 ONSC 3305, [2010] W.D.F.L. 4765; *J.C.M. v. K.C.M.*, 2016 ONCJ 475, [2016] W.D.F.L. 5365. However, parents must not arrange their financial affairs to prefer their own interests over those of their children. See: *D.B.S. v. S.R.G.*, 2006 SCC 37, [2006] 2 S.C.R. 231, at para 106.

[86] Mr. Tan invested in his new life in Ontario while avoiding paying proper support to Ms. Tan and R.T. He failed to provide them with the information that he was required to provide, and that they needed to manage their own finances.

[87] For the years 2015 to 2020, I accept Ms. Tan's submission that I should find that Mr. Tan's income, on average, has not changed. I shall therefore use an annual income of \$235,000 for those years. However, in 2021, Mr. Tan lost his license to practice medicine. For the years 2021 and 2022, for the reasons set out in detail below, I find that Mr. Tan's 2021 income is \$71,388.90 and 2022 income is \$38,397.39.

#### Ms. Tan's Income

[88] The parties dispute what Ms. Tan's income was, other than the support as ordered, for the relevant years.

| Year | Mr. Tan's Position | Ms. Tan's Position |
|------|--------------------|--------------------|
| 2015 | 29,228             | 0                  |
| 2016 | 6,947              | 0                  |
| 2017 | 6,947              | 0                  |
| 2018 | 6,947              | 0                  |
| 2019 | 6,947              | 0                  |
| 2020 | 6,947              | 0                  |
| 2021 | 19,630             | 12,683             |
| 2022 | 41,189             | 34,508             |

*Ms. Tan's Evidence Related to Her Income*

[89] Ms. Tan has never practiced medicine in Canada. When she was close to finishing her training, she mistakenly gave morphine to a patient when she was not allowed to do so. As a result, she was unable to complete her obstetrics rotation. She was depressed and stressed because of those circumstances. Although she could have appealed to complete her residency, she was unable to do so because of her situation.

[90] She could have returned to the Philippines to complete her training, but she would have been away from Mr. Tan, who was already practicing in Newfoundland, and they both wanted to start a family. With the stress of retraining, she was unable to conceive and so, together, they decided that she would give up her training. In cross-examination, she said that she was not aware that she could have been sponsored by Mr. Tan at Saint John's University to continue her education.

[91] After their daughter was born, the couple considered having Ms. Tan go back to the Philippines to complete her residency but that would have taken four to five years. At the time, Mr. Tan had started to build a house for the family, and



Ms. Tan did not want to leave her child alone with him or to bring her daughter to the Philippines. They therefore agreed that she would not complete her residency.

[92] When their child was in school, Ms. Tan was able to participate in activities such as going to the gym, but she also took their daughter to her activities like hockey and helped with her homework after school. Ms. Tan did not want to work at a hospital, and Mr. Tan did not ask her to work in his clinic. In her evidence, Ms. Tan agreed that the couple had housecleaners who came to the house once a week.

[93] Ms. Tan's mother came to stay with them about three times, for two or three months each time. She would help with the cooking since Ms. Tan does not know how to cook. Ms. Tan denied that this arrangement gave her an opportunity to upgrade her education as her mother could not have stayed for an entire year.

[94] Between 2015 and 2019, Ms. Tan lived with R.T. in Guelph, but during the first year, their daughter lived in residence. While her daughter was in first year, Ms. Tan had no other money to train for other work. She was not aware that she could apply for her own OSAP loan. She was paying car insurance and a car loan along with other debts from their time in Nova Scotia. She confirmed that those loans are paid off now.

[95] Despite some efforts, Ms. Tan could not get a job in 2015 or 2016. Although Canadian Tire and Walmart would accept postgraduate employees, her medical

degree meant nothing for higher employment. It was only in 2019 or 2020 that she obtained employment at Amazon.

[96] In 2019, she took courses as a medical aesthetician and a medical lab assistant. When she took the medical aesthetician course, she was not aware that she had cataracts. She learned that fact when she was trying to use lasers and could not see things that other students could. Her family physician referred her to an ophthalmologist who diagnosed her with mild cataracts. As a result, she could not complete the course.

[97] She was able to find a job at Amazon in 2019, but that was not because Mr. Tan brought his motion to change in response to hers. She had tried to apply for other work before that, but no one accepted her applications.

[98] Although she looked for a job at Walmart, she was not successful. She could not afford other training because he was not regularly paying the support that he should. It was only when the FRO pushed him for money that she was able to look for other training. Until that time, her extra money went to support her daughter.

[99] As part of her evidence, Ms. Tan filed certificates for training in cosmetics and make-up and as a medical laboratory assistant.

[100] After obtaining employment with Amazon, Ms. Tan obtained employment with Dynacare and with the Osler Health Centre. Her present contract is as a Patient Care Assistant at the Brampton Civic Hospital. Her duties include screening patients for MRIs and CT scans, inserting IVs and pre- and post-care

following scans. That contract ends March 29, 2023. Her base rate is \$27.30 per hour.

[101] Ms. Tan filed medical records confirming her hypertension and need for cataract surgery. Her present employers do not know about any of her cataract problems, back pain, depression, or hypertension.

[102] Ms. Tan's 2018 notice of assessment shows income of \$65,352, including spousal support.

[103] Ms. Tan's 2019 income tax return confirms a total income of \$102,252.73. She said that she made a mistake in claiming for the spousal support that she had not received. Taking into consideration the payments that she received on arrears, she believes that her real income is more likely to have been approximately \$30,000. Her 2020 notice of assessment shows an income of \$30,102.

[104] The FRO records show that Mr. Tan made his support payments plus \$1000 a month in 2020. However, her notice of assessment for 2020 does not indicate that income. She said that it was not a deliberate attempt to avoid showing her income. She told her accountant about her mistake, and he corrected it with the CRA.

[105] Ms. Tan's 2021 income tax return shows income from employment of \$12,683.39 and spousal support of \$19,821.

[106] Ms. Tan acknowledged that her income tax returns do not show the income that she receives from a rental property in the Philippines. She estimates that

income to be approximately \$6,947 Canadian per year. She purchased the income property in 2008 with money she borrowed from Mr. Tan. She has paid that money back to him.

[107] She has only shown the income from that property since 2016. The property needed to be renovated to be rented. She is paying tax on that income in the Philippines and has told her accountant about it. Some of the annual income has not been declared. She did not know that it was to be reported and told her accountant when she found out that she should report the income.

[108] As of the trial date, Ms. Tan had not yet filed her 2022 income tax return but filed a 2022 pay stub evidencing employment income of \$2286.95 for two weeks work on a six-month contract.

[109] Ms. Tan agreed that the FRO records show that she received approximately \$100,000 in 2015 and 2016.

[110] She acknowledged that she received the proceeds of sale from the matrimonial in 2018. She could not remember the exact amount but believes that it could have been \$60,000. Although she had money then to go back to school, she has no memory of where the money went. Although her plan was to go back to school, her priority was her daughter's welfare.

[111] Ms. Tan's financial statement, dated January 3, 2023, shows that she has debts of \$91,229.98 which she testified resulted from Mr. Tan's failure to pay his support orders.

Mr. Tan's Evidence Related to Ms. Tan's Income

[112] Ms. Tan had come to Canada before Mr. Tan, but she did not have the necessary requirements to practice medicine in Canada. He encouraged her to go back to the Philippines to train, but she refused to return.

[113] He encouraged Ms. Tan to requalify and obtained a sponsorship for her in 1994 to have an internship with Memorial University for one year. However, she failed to complete that internship and was dismissed.

[114] Their daughter was born in 1997, and by 1999, Mr. Tan was practicing in Nova Scotia. He suggested that they put their daughter in daycare so that Ms. Tan could retrain. She refused. She would also not help with his practice by either assisting him or doing the administrative work. She refused to be involved in a doctor's office unless she was acting as a doctor.

[115] They continued to have marriage problems in 2000 and she refused to help around the house even though they had hired a housekeeper. He came home from work and was required to make dinner. She would not even order pizza, leaving those tasks to him.

Analysis

[116] There was no significant dispute as to Ms. Tan's reported income for each of the years in question.

[117] The major difference between the parties as to Ms. Tan's income in final submissions was the inclusion of her rental property income, which in my view is

clearly income. There was no evidence of any deductions from the annual rental income of \$6,947. The evidence shows that the rental income commenced halfway through 2016. I have added that to Ms. Tan's income for support purposes for the years 2016 to 2022.

[118] Mr. Tan submitted that Ms. Tan had RRSP income in 2015; however, I have no evidence of that amount. I have not included it in my calculations.

[119] The real issue was whether further income should be imputed to Ms. Tan because of her failure to do more to earn income.

## **2. Should other income be imputed to Ms. Tan?**

## **3. Is Ms. Tan entitled to Spousal Support and, if not, when did that cease to be the case?**

### **Analysis**

[120] These two questions are best analyzed together.

[121] Mr. Tan takes the position that Ms. Tan has not done enough to make herself self-sufficient; he submits that I should impute income to her and find that she is no longer entitled to spousal support. Ms. Tan submits that she has done all that she could to become financially independent and is still entitled to spousal support on a compensatory and needs based analysis.

[122] In *Abdullahi v. Warsame*, 2021 ONCJ 449, Sherr J. described the issues related to imputed income as (paras 58-65)

...the court is not bound by the reported income of the party. Section 19 of the guidelines permits the court to impute income to a party if it finds that the party is earning or is capable of earning more income than they claim.

Imputing income is one method by which the court gives effect to the joint and ongoing obligation of parents to support their children. In order to meet this obligation, the parties must earn what they are capable of earning. If they fail to do so, they will be found to be intentionally under-employed.

The Ontario Court of Appeal in *Drygala v. Pauli* set out the following three questions which should be answered by a court in considering a request to impute income:

1. Is the party intentionally under-employed or unemployed?
2. If so, is the intentional under-employment or unemployment required by virtue of the party's reasonable education or health needs?
3. If not, what income is appropriately imputed?

The onus is on the party seeking to impute income to the other party to establish that the other party is intentionally unemployed or under-employed. The person requesting an imputation of income must establish an evidentiary basis upon which this finding can be made.

Once a party seeking the imputation of income presents the evidentiary basis suggesting a prima facie case, the onus shifts to the individual seeking to defend the income position they are taking.

Absence of a reasonable job search will also usually leave the court with no choice but to find that the payor is intentionally under-employed or unemployed.

Once under-employment is established, the onus shifts to the payor to prove one of the exceptions of reasonableness. When an employment decision results in a significant reduction of child support, it needs to be justified in a compelling way.

As a general rule, separated parents have an obligation to financially support their children and they cannot avoid that obligation by a self-induced reduction of income. [Citations removed.]

[123] In *Davidson v. Patten*, 2021 ONCJ 437, Curtis J. determined that a party attempting to avoid a claim for imputation of income based on alleged medical reasons should provide a medical report setting out at least the diagnosis, prognosis, treatment plan, and compliance with that plan, along with specific and detailed information connecting the medical condition to the ability to work. See also *Geishardt v. Ahmed*, 2017 ONSC 5513, [2017] W.D.F.L. 5509.

[124] The court must have regard to the parties' capacity to earn income in light of such factors as employment history, age, education, skills, health, available employment opportunities and the standard of living enjoyed during the parties' relationship. The court then looks at the amount of income the party could earn if he or she worked to capacity.

[125] It is clear that Ms. Tan did nothing to advance her own interests until 2019. And when she applied herself, within a short time, she had a new career and income. Although she says that she could not retrain without support from Mr. Tan, the records indicate that she had funds to do so even if not all that to which she was entitled, and the payments were erratic. In 2015, 2016, and 2020, she received over \$100,000 each year in combined child and spousal support and approximately \$65,000 in 2017 through 2019 and 2021. That is not to excuse Mr. Tan from failing to pay as he should, but Ms. Tan's excuse for failing to move on with her own support rings hollow.



[126] Ms. Tan's doctor's letters were entered without objection but are of little assistance. They are vague and do not confirm that she is unable to obtain employment. Indeed, she is now employed.

[127] That said, I find that Ms. Tan remained unemployed and at home in the Maritimes with the begrudging consent of Mr. Tan since 1992. It would not make sense for her to return to the Philippines for more training when the parties were planning a family, and certainly not when they had a family. Given Ms. Tan's lack of success in the medical field to that point, her future in the profession would have seemed dim.

[128] Accordingly, by the time the parties separated in 2008, Ms. Tan had been out of the work force for 16 years and was caring for an 11-year-old child by herself. Mr. Tan submits that her support should have ended in 2015. I find that it is unreasonable to think that Ms. Tan would have become self-sufficient in the immediate future. The parties agreed as much in their consent order in 2013.

[129] In *Fisher v Fisher*, 2008 ONCA 11, the Ontario Court of Appeal outlined self-sufficiency as (para 52 – 55):

Section 15.2 (6) (d) (d) of the *Divorce Act* promotes the objective of economic self-sufficiency only if it is "practicable" to do so and where the objective can be realized "within a reasonable period of time".

Self-sufficiency, with its connotation of economic independence, is a relative concept. It is not achieved simply because a former spouse can meet basic expenses on a particular amount of income; rather, self-sufficiency relates to the ability to support a reasonable standard of living. It is to be assessed in relation to the economic partnership the parties enjoyed and could sustain

during cohabitation, and that they can reasonably anticipate after separation. Thus, a determination of self-sufficiency requires consideration of the parties' present and potential incomes, their standard of living during marriage, the efficacy of any suggested steps to increase a party's means, the parties' likely post-separation circumstances (including the impact of equalization of their property), the duration of their cohabitation and any other relevant factors.

Self-sufficiency is often more attainable in short-term marriages, particularly ones without children, where the lower- income spouse has not become entrenched in a particular lifestyle, or compromised career aspirations. In such circumstances, the lower-income spouse is expected either to have the tools to become financially independent or to adjust his or her standard of living.

In contrast, in most long-term marriages, particularly in traditional long-term ones, the parties' merger of economic lifestyles creates a joint standard of living that the lower- income spouse cannot hope to replicate, but upon which he or she has become dependent. In such circumstances, the spousal support analysis typically will not give priority to self- sufficiency because it is an objective that simply cannot be attained. [Citations removed]

[130] While Mr. Tan was building his practice in the Maritimes, Ms. Tan was assisting with caregiving and housekeeping. Even were I to accept all of Mr. Tan's evidence about Ms. Tan's failure to do more within the household, she was still assisting with the home and child while he was employed full time.

[131] Recently, in *Nairne v. Nairne* 2023 ONCA 478, the Ontario Court of Appeal said (para 30):

In determining entitlement to spousal support on the basis of compensation and need, the trial judge was required to step back and weigh the overall circumstances of the parties, rather than requiring, to the extent he may have done so, [the applicant] to prove in detail the role she played prior to the marriage breakdown and her financial needs after the breakdown. [Citation removed.]

[132] Although Ms. Tan could have done more, and sooner, to support herself independently of Mr. Tan's support, on this evidence, I cannot quantify what income she could have received. I decline to impute more income to her than she submits.

[133] On that basis, and subject to my findings below, I find that Ms. Tan continues to be entitled to spousal support on a needs and compensatory basis.

**4.Should other income be imputed to Mr. Tan?**

**5. Does the revocation of his licence to practice medicine terminate Mr. Tan's obligation to pay support?**

**Analysis**

[134] Again, these two questions are best dealt with together.

[135] For the reasons set out above, I agree with Ms. Tan that, given Mr. Tan's failure to provide relevant financial information, he has not met his onus to show a material change in circumstances until at least 2020.

[136] On the evidence above, I find that Mr. Tan's incomes for the years 2015 to 2020 are \$235,000. Indeed, the evidence suggests that in some years, Mr. Tan may well have earned more than Ms. Tan is submitting. Ms. Tan points out that Mr. Tan's gross revenues from OHIP were \$729,745.80 in 2019 and \$729,325.60 in 2020.

[137] The determination of Mr. Tan's income for 2021 and after is more difficult.

[138] Ms. Tan submits that she and R.T. should not suffer financially because Mr. Tan has lost his license to practice because of his own acts. Mr. Tan denies that he sexually abused his patient and submits that, as of June 2021, he no longer has an ability to pay the support as ordered.

[139] In *Morden v Pippy*, 2016 ONSC 6886, [2016] W.D.F.L. 6533, Chappel J. referred to unemployment in the support analysis as (para 31):

The court may also impute income to a party on the basis of deliberate under-employment or unemployment if the party quits their employment for selfish or bad faith reasons, or if they engage in reckless behaviour which affects their income-earning capacity.

When a party experiences an involuntary loss of employment, they may be given a "grace period" to investigate options and seek out employment in their field at a comparable rate of remuneration before income will be imputed to them. However, if they have been unable to secure comparable employment within a reasonable time frame, they will be required to accept other less remunerative opportunities or options outside of the area of their expertise in order to satisfy their obligation to contribute to the support of their children.

Even if the court determines that the payor parent is deliberately under-employed or unemployed, the court has the discretion to decide whether or not to impute income to them. This decision will turn on the court's overall assessment of the reasonableness of the payor's decisions and actions in relation to their income. If an employment decision results in a significant reduction of income, it must be justified in a compelling way.

Finally, in determining the amount of income to impute on the basis of deliberate under-employment or unemployment, the court must consider what is reasonable in the circumstances of the particular case. The factors that the court is required to consider include the age, education, experience, skills and health of the payor, their past earning history and

the amount of income that the payor could reasonably earn if they worked to capacity. [Citations removed.]

[140] While Mr. Tan denies that he sexually abused a patient and has been found not guilty of the criminal offence, the fact remains that his income has been materially reduced because of the loss of his license to practice medicine.

[141] Courts have a significant degree of discretion when imputing income. See: *Menegaldo v. Menegaldo*, 2012 ONSC 2915, [2012] W.D.F.L. 5086; *Tillmanns v. Tillmanns*, 2014 ONSC 677, 53 R.F.L. (7th) 210.

[142] Where underemployment or unemployment is the result of one's own actions or misconduct, support obligations may not be reduced or cancelled. See: *Luckey v. Luckey* (1996), [1997] W.D.F.L. 146, (Ont.C.J.); *Marucci v. Marucci*, 2001 CarswellOnt 4349 (Ont.S.C.); *Sherwood v. Sherwood* (2006), [2007] W.D.F.L. 1966 (Ont.S.C.); *Rodgers v. Rodgers*, 2013 ONSC 1997, 30 R.F.L. (7th) 330; *Gordon v. Wilkins*, 2020 ONCJ 115.

[143] The cases are divided where the payor's income has been reduced or eliminated by reason of criminal activity or imprisonment. The cases of *Costello v. Costello*, 2012 ONCJ 399, [2013] W.D.F.L. 259; *Billingsley v. Billingsley*, 2010 ONSC 3381, [2010] W.D.F.L. 4101; *S.H. v. R.A.A.*, 2016 ONCJ 255, 80 R.F.L. (7th) 476; and, *Lewis v Willis*, 2022 ONCJ 421 stand for the proposition put forward by Ms. Tan: the payor's criminal activities should not benefit the payor and harm the payee and family.

[144] While Mr. Tan has not been found guilty of a criminal offence, the loss of his employment is the result of the College's finding – on a balance of probabilities – that his actions have led to the loss of his license. His appeal to the Divisional Court was dismissed and he was not granted leave to appeal to the Court of Appeal. Regardless of the onus of proof or Mr. Tan's denial of the allegations, the fact remains that he cannot practice medicine.

[145] In *Cote v. Taylor*, 2013 ONSC 5428, 38 R.F.L. (7th) 448, the court rescinded child support arrears accumulated during the five years the payor was in prison.

The court wrote at para 23:

I fail to see any rational basis to impute income to Mr. Taylor while he was incarcerated for five years. There may be situations where a payor is convicted of an offence against his spouse or a family member, or of an offence to defeat creditors, where it would offend public policy to allow an incarcerated person to avoid his support obligation because of his crime. However, the matters for which Mr. Taylor was incarcerated, during which time his support arrears accrued, had no connection with his support obligations. I am not prepared to find that although Mr. Taylor had no ability to pay the support ordered to be paid on December 21, 2000, public policy demands that he not be relieved of his obligation because he is benefitting from his criminal act. [Citations removed.]

[146] Similarly, in *S.M. v. N.T.*, 2018 ONSC 6011, MacEachern J. chose not to impute income to a payor who had been in jail for 18 months: (paras 44-45)

This matter is not a situation, in contrast to some of the other decisions, where the Respondent's present incarceration is related to conduct that was motivated by an intention to evade his child support obligation. Although the law in Ontario, under the *Drygala v. Pauli* decision of the Ontario Court of Appeal, is that there is no need to find a specific intention to evade child support obligations before income can be imputed, the lack of such an

intention may still form part of the circumstances the court may consider in determining whether it is appropriate to impute income.

Based on all of the circumstances before me, I find that it is not appropriate to impute income to the Respondent for the purpose of paying child support. The Respondent has no ability to pay child support at this time. The consequences of making a child support order that the Respondent has no means of paying exposes the Respondent to further enforcement measures due to non-payment, which ultimately exposes him to the risk of further incarceration. Such a result does not serve the interests of justice, does not provide a fair and just result, and does not assist the best interests of [the child].

[147] See also *TM v. ZK*, 2021 ABQB 588, 60 R.F.L. (8th) 57; *Sheridan v. Cupido*, 2018 ONSC 5817, 17 R.F.L. (8th) 475; *D.C.C. v. D.W.C.*, 2022 NBKB 232, 83 R.F.L. (8th) 437.

[148] Mr. Tan's failure to produce the necessary records leaves me unable to find what income he may have to pay support. Mr. Tan acknowledges that he failed to report his full income to Ms. Tan, as his circumstances changed after moving to Ontario. He has failed to provide that information to this court as well.

[149] And yet, there can be no dispute that Mr. Tan is no longer practicing medicine and that was his primary, if not only, source of income. At 63 years of age, Mr. Tan is unlikely to earn significant income into the future.

[150] I fully understand the public policy interest to ensure that those who cause their lack of income not be rewarded for their conduct. As said in *Rogers v. Rogers*, 2013 ONSC 1997, 30 R.F.L. (7th) 330 at para 59: "[The Applicant's] choices have resulted in unquestionably painful consequences. But why should the Respondent

and her children share any portion of that pain? Why should a support recipient suffer from a *payor's* misconduct?"

[151] However, ultimately, I agree with MacEachern J in *S.M. v. N.T.* Mr. Tan has little ability to pay support at this time. The consequences of making a support order that he has no means of paying exposes him to further enforcement measures due to on-going non-payment, which ultimately exposes him to the risk of incarceration. Such a result does not serve the interests of justice, nor does it provide a fair and just result or assist the best interests of the parties.

[152] While I find that, as of June 2021, Mr. Tan no longer earned an annual income of \$235,000, his failure to provide full financial disclosure makes it difficult to assess his real income. I do not trust any of Mr. Tan's evidence as to his ability to pay, other than the evidence that his long-standing lucrative medical practice has come to an end. But I have no principled way to find other than as disclosed by him in his income tax returns, in order to fix an imputed income.

[153] Accordingly, I find that Mr. Tan's income for support purposes for 2021 is \$71,388.90 and \$38,397.39 for 2022, as submitted.

### Result

| Year | Mr. Tan's Income | Ms. Tan's Income |
|------|------------------|------------------|
| 2015 | 235,000          | 0                |
| 2016 | 235,000          | 3,473.50         |
| 2017 | 235,000          | 6,947            |
| 2018 | 235,000          | 6,947            |
| 2019 | 235,000          | 6,947            |
| 2020 | 235,000          | 6,947            |



|      |          |                |
|------|----------|----------------|
| 2021 | \$71,388 | 12,683 + 6,947 |
| 2022 | \$38,397 | 34,508 + 6,947 |

**6. Has there been a material change in circumstances such that the parties' agreement (and consent order) can be varied or reviewed?**

Analysis

[154] Before I can vary the terms of the order, I must be satisfied that there has been a change which, if known at the time, would likely have resulted in different terms. The relevant terms of the parties' agreement and consent order read as follows:

Periodic Child Support

Based on the Nova Scotia Child Support Guidelines Table effective December 2012 and the husband's income of \$235,000, the husband shall pay to the wife the sum of \$1,892 per month commencing April 1, 2013 and continuing on the 1st of each month thereafter for the one child of the marriage.

Proof of Income

Upon written request of either party, each party will provide the other with true copies of statements of Income and deductions from their respective employers, income tax returns for any year during which support is payable under this Agreement by May 30 of the following year. The husband shall provide to the wife a copy of the annual financial statements of Dr. Romeo Tan Medical Clinic Inc. within 14 days of his receiving the statements for any year during which support is payable under this Agreement. Notices of Assessment or Re- Assessment from Canada Revenue Agency shall be provided within three weeks of receipt.

## Spousal Support

The parties acknowledge they have considered the objectives of spousal support orders as set out in the *Divorce Act*, which are to:

Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

Apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

Relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

Insofar as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Upon having considered these objectives and the condition, means, needs and other circumstances of each spouse, including the length of time the spouses cohabited and the functions performed by each spouse during the relationship, the parties agree to the following with regard to spousal support:

### Periodic Spousal Support

Commencing on April 1, 2013 and continuing on the 1st day of each month thereafter, the husband shall pay to the wife, as an allowance for her maintenance and support, payments of \$6,500.00, subject to variation as contemplated by applicable legislation, the review contemplated in clause 551 or by the consent of the parties. The wife acknowledges all payments are up to date. It is understood that the payments shall cease absolutely in the event that the wife dies.

### Fixed Review Date

Support for the wife may be reviewed, upon the application of either party, in or after June 2015, when it is anticipated the child [R.T.] will graduate from high school. In addition to other factors the court shall review steps taken by the wife to achieve self-sufficiency. One month prior to the review date, the parties shall exchange up-to-date statements of financial information in the form then required for divorce proceeding in Nova Scotia.

[155] Ms. Tan submits that there has not been a material change in circumstances such that the order could be changed. She submits that her request to have Mr. Tan share in R.T.'s medical education costs is not a change in the order but an addition where the prior order has been silent. I disagree.

[156] To add a significant obligation, like a share in R.T.'s medical education expenses, the present order would have to be changed. Pursuant to the SSAG's, s. 7 expenses have a potentially significant impact on the range of spousal support to be paid. For Ms. Tan to be successful in that claim, she requires a finding that there has been a material change in circumstances.

[157] I find that there have been material changes in the circumstances of the parties as of 2019. By the time this application was brought in 2019, R.T. had not only graduated from high school, but she had also graduated from university.

[158] By the time of trial, R.T. has essentially graduated from medical school and Mr. Tan is no longer employed. I am satisfied that there has been a material change "in the condition, means, needs or other circumstances" of both parties such that a variation may be made.

[159] In any event, the order itself provides for a review of spousal support at this point. As set out above, spousal support for the wife may be reviewed, upon the application of either party, in or after June 2015, when it is anticipated R.T. will graduate from high school.

[160] However, Mr. Tan seeks a retroactive variation from 2019, while Ms. Tan sought a prospective variation when she brought her application in 2019.

[161] With respect to a retroactive variation, the Ontario Court of Appeal said in *Gray v. Rizzi*, 2016 ONCA 152, 129 O.R. (3d) 201 (paras 56 – 63):

. . . on a motion to retroactively vary child support, one must always keep in mind the ultimate issue: namely, the best interests of the child: As Chappel J. stated, "Ultimately, the goal in addressing child support issues is to ensure that children benefit from the support they are owed when they are owed it, and any incentives for payor parents to be deficient in meeting their child support obligations should be eliminated."

Next, a court should distinguish cases where a payor seeks relief from payment of arrears based on current inability to pay from those where arrears accumulated due to a change in the payor's circumstances that affected the payor's ability to make the child support payments when they came due.

A payor's request for relief from payment of arrears based on a current inability to pay generally will not result in the rescission or reduction of arrears unless the payor has established, on a balance of probabilities, that he cannot and will not ever be able to pay the arrears. . .

Where, however, the payor demonstrates that a change in circumstances took place during the time that arrears were accumulating which rendered the payor unable to make child support payments for a substantial period of time, the court may provide relief by varying the child support order or rescinding arrears. As Chappel J. stated, "[the court] may determine that it is appropriate to retroactively suspend enforcement of the support order during the time when the payor was unable to pay, or decrease the amount of child support owed during that time and reduce or rescind the arrears owing accordingly".

The present case falls into this second category. While there is no fixed formula a court must follow when exercising its discretion in this circumstance, Chappel J. identified the following factors to guide a court in determining whether to grant retroactive relief, the date of retroactivity and the quantum of relief:

(1) The nature of the obligation to support, whether contractual, statutory or judicial;

(2) The ongoing needs of the support recipient and the child;

(3) Whether there is a reasonable excuse for the payor's delay in applying for relief;

(4) The ongoing financial capacity of the payor and, in particular, his ability to make payments towards the outstanding arrears;

(5) The conduct of the payor, including whether the payor has made any voluntary payments on account of arrears, whether he has co-operated with the support enforcement authorities, and whether he has complied with obligations and requests for financial disclosure from the support recipient. As stated by Chappel J. : "Behaviour that indicates wilful non-compliance with the terms of the order or failure to work cooperatively to address the child support issue is a factor that militates against even partial rescission or reduction of arrears";

(6) Delay on the part of the support recipient, even a long delay, in enforcing the child support obligation does not, in and of itself, constitute a waiver of the right to claim arrears;

(7) Any hardship that may be occasioned by a retroactive order reducing arrears or rescinding arrears, or by an order requiring the payment of substantial arrears. As put by Chappel J. :

[I]f a retroactive order reducing child support would result in the child support recipient having to repay money to the child support payor, this may militate against making the order, particularly if the payor has not given the recipient notice of the change in their circumstances, has not provided appropriate disclosure to support their claim for an adjustment to the child support, or has delayed initiating court proceedings to change the order.

If a retroactive reduction of child support is appropriate in light of these factors and any other relevant considerations, the court must determine the date from which the reduction should take place and the extent of the reduction. Following *S.(D.B.)*, a retroactive order normally should commence as of the date of effective notice that a request is being made for a child support adjustment. It is generally inappropriate for a retroactive order to extend back more than three years before formal notice is given.

Where a payor seeks a retroactive reduction in child support or rescission of arrears, effective notice requires the payor to provide "reasonable proof to support the claim for a change to the [order], so that the recipient can independently assess the situation in a meaningful way and respond appropriately". As put by Chappel J.:

A child support recipient is entitled to expect that the existing order will be complied with, and to arrange their financial affairs respecting their children accordingly, unless they are in receipt of reasonable proof that a relevant change in the payor's circumstances has occurred.

This obligation to disclose and negotiate with the recipient parent is ongoing, so that the recipient can assess and react to changes in the payor's financial situation. A payor's failure to comply with his continuing notice and financial disclosure obligations most likely will impact the remedy which the court crafts. [Citations removed.]

[162] For the following reasons, I deny Mr. Tan's claim to retroactively vary spousal or child support prior to June of 2021.

[163] I have found that there was no material change in circumstances to that point; there had been no change in either party's financial circumstances. Although Ms. Tan was receiving some income from the property in the Philippines, in comparison to Mr. Tan's income, her addition does not much change their respective circumstances. The addition of Ms. Tan's rental income does not take the ordered support out of the range of potential spousal support in the *Guidelines*.

[164] Mr. Tan did not provide ongoing financial information to Ms. Tan and failed to pay proper support without reason. He did not bring his application until 2019, and even then, only upon Ms. Tan bringing her application.

[165] To that point, Mr. Tan had failed to pay as he should have. I see no reason to rescind any arrears to the point of his revocation of his license in June of 2021.

[166] Accordingly, I make no variation to the child and spousal support order from 2015 to July 2021.

[167] As of the end of 2021, however, the parties' annual incomes had changed from \$235,000 and \$6,947 to \$71,388 and \$19,630.

[168] As of 2022, Mr. Tan's income was \$38,397 and Ms. Tan's income was \$41,455.

[169] Following the *Child Support Guidelines*, on that income, Mr. Tan should have paid \$667 per month in child support in 2022 and \$340 per month in 2023. However, Ms. Tan seeks only a s.7 claim for those years.

[170] Pursuant to the *Spousal Support Guidelines*, (taking into consideration their incomes as set out above and the s. 7 determination below) the range of spousal support was nil in 2021 and nil in 2022. Accordingly, spousal support shall end July 1, 2022. While Ms. Tan's need and entitlement otherwise continues, Mr. Tan has no ability to support her.

**7. Is the parties' daughter still a child of the marriage entitled to support and, if not, when did that cease to be the case?**

[171] R.T. is 25 and has completed two university degrees. Ms. Tan seeks to have child support continue. Mr. Tan says that, as of 2019, R.T. was no longer a child of the marriage and that child support should have ended when R.T. graduated from her first post graduate degree at the University of Guelph.

[172] In *Meyer v. Content*, 2014 ONSC 6001 (paras 32-33), Chappel J., in her usual comprehensive fashion, itemized the considerations in the case law to determine if a child is entitled to support as follows:

The case-law has clarified that in order to establish that a child is unable to withdraw from parental charge due to enrolment in ongoing educational studies, the court must be satisfied that the child's educational plan is reasonable taking into account the child's abilities, the plans and expectations of the parents in regard to the child's post-secondary education, and the needs and means of the child and the parents. As the Saskatchewan Court of Appeal stated in *Geran v. Geran*, the ultimate question in deciding the issue of entitlement in these circumstances is whether the child is "unable without the direct or indirect financial assistance of the parents to pursue a reasonable course of post-secondary education to the end of bettering the future prospects of the child." The courts have outlined a number of factors which should be considered in answering this question. The following is a collective list of some of the factors, as derived from the cases...:

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 the child has applied for or is eligible for student loans or other financial assistance, or has received any bursaries or scholarships, and if so, the amounts received.
3. The ability of the child to contribute to their own support through part time employment.
4. Whether the child has a reasonable and appropriate education and career plan, or whether they are simply attending an ongoing educational program because there is nothing better to do.
5. In reviewing the child's education and career plan, important factors include the nature and quality of the plan, the duration of the proposed study period, the prospects of the child succeeding in the program, the potential benefit of the studies and the associated cost of the course of study.
6. The age, qualifications and experience of the child.
7. The aptitude and abilities of the child, their level of maturity and commitment and their sense of responsibility.
8. Whether the child is performing well in the chosen course of studies.



9. What plans the parents made for the education of their children, particularly where those plans were made during cohabitation. In considering this factor, the court should bear in mind that reasonable parents are ordinarily concerned about treating each of their children comparatively equally.
10. The means, needs and other circumstances of the parents and the child.
11. The willingness of the child to remain reasonably accountable to the parents with respect to their post-secondary education plans and progress. If a child is unwilling to remain accountable, or has unilaterally and without justification terminated their relationship with a parent, they may have difficulty establishing that they are unable to withdraw from parental charge based on a reasonable course of post-secondary education.

The courts have held that it is not necessary to address all of the factors set out above to prove that the child remains entitled to support. [Citations removed.]

[173] The onus is on the party seeking to maintain child support payments, to provide evidence to the court, that on the balance of probabilities, the child remains a “child of the marriage.”

*Ms. Tan's Evidence With Respect to Child Support*

[174] When their daughter was born, the couple were living in Nova Scotia. R.T. graduated from high school in Cape Breton and then moved to Guelph. She went to the University of Guelph and graduated in April of 2019 with an honours Bachelor of Science degree in biomedical science and a minor in neuroscience. It was always R.T.'s plan to go to medical school in or outside of Canada, or to do a masters.

[175] Mr. Tan was not involved with R.T. after the separation because he moved to Ontario, but Ms. Tan did not stop him from being involved with R.T. She denied that she interfered with his plans to spend time with R.T. She did not tell R.T. to stay away from him; that was R.T.'s choice. In re-examination, she pointed out that their 2013 agreement left parenting time to their daughters' choice.

[176] Ms. Tan does not remember if Mr. Tan was at R.T.'s high school graduation. She does not remember if she told him that R.T. was going to the University of Guelph. She does not remember if she told him that R.T. was going to medical school, but it may have been in an e-mail when she was asking Mr. Tan for money.

[177] Ms. Tan said that she was not aware that R.T. could have a spot in medical school because she was born in Newfoundland, but R.T. had failed her MCAT in any event.

[178] Mr. Tan was to sign the passports for R.T. to go to the Philippines. He was to meet them at the Toronto airport to do so, but Ms. Tan does not remember if R.T. saw Mr. Tan there.

[179] Ms. Tan did not know if Mr. Tan visited R.T. at school in February of 2011, but then remembered that she got a call from the school and had to pick R.T. up because she was crying and screaming in the principal's office when Mr. Tan arrived at her school.

[180] In June of 2022, Mr. Tan agreed to pay to R.T. the sum of \$18,600 from the proceeds of sale of a home in Nova Scotia for his “share of [R.T.’s] post secondary educational expenses.”

Mr. Tan’s Evidence With Respect to Child Support

[181] Mr. Tan testified that he now has no relationship with his daughter, and she has refused to speak with him. She has referred to him as “Dr. Tan.” He believes that is because R.T. has been alienated from him by Ms. Tan. He has not seen R. T. in 14 years and believes that he has been treated as a “walking wallet.”

[182] Although Mr. Tan paid for counseling for R.T., she refused to have him come to her high school graduation. He purchased a new car for R.T. Ms. Tan was to provide monthly reports about their daughter, but she failed to do so on a regular basis.

[183] Ms. Tan moved to Ontario in 2019 but did not inform him of R.T.’s plans to go to medical school. He was aware that R.T. used the parties’ RESP and that she obtained bursaries to assist with her first degree. He fully funded the RESP.

[184] Mr. Tan submits that R.T. is now 25 years of age and has successfully completed her medical education. She has not consulted with him or given him notice of her education or plans. She is no longer a dependent.

[185] Mr. Tan points out that R.T. worked part time in 2017 and 2018. In 2017, she earned \$8,498 and in 2018 she earned \$13,218.

[186] Mr. Tan agrees that he provided the \$18,600 towards R.T.'s post secondary educational expenses in 2022.

Analysis

[187] Ms. Tan seeks to have continuing support for R.T. beyond her present education. Without evidence, she submits that R.T. has ongoing expenses for her residency. Mr. Tan submits that support should have ended at R.T.'s graduation from the University of Guelph. For the following reasons, I find that both are incorrect.

[188] To bring support to an end, Mr. Tan primarily relies on the fact that he no longer has a relationship with R.T. While I agree with him, this is only one factor in the analysis.

[189] Ms. Tan was evasive about her involvement in R.T.'s estrangement from Mr. Tan. I have doubts about her evidence in that regard. However, it is uncontested that Mr. Tan left the home and moved to Ontario when R.T. was 12. It is uncontested that he failed to pay support as he should have. Those factors would also damage his relationship with R.T. On this evidence, I cannot determine who in this family is at fault for this turn of events.

[190] In consideration of all other factors, the evidence weighs in favour of finding that R.T. was a child of the marriage as of the date of this application.

[191] It would be expected that a child of two doctors would want to be a doctor. She had the credentials to do so and was, in hindsight, able to graduate. This was

a reasonable career plan and undertaken on a full-time basis. I am confident that if the marriage had remained intact, the parties would have made every effort to send R.T. to medical school.

[192] Ms. Tan does not claim for a s.7 expenses while R.T. was at Guelph. She acknowledges that her contributions plus the RESP and bursaries covered those expenses. Despite Mr. Tan's failure to pay as he should, she incurred debt to maintain herself and provide what she could to R.T. She only claims with respect to the medical school expenses.

[193] I have no evidence of whether R.T. has presently applied for, or is eligible for, student loans or other financial assistance, or has received any bursaries or scholarships, and if so, the amounts received. Nor do I have any evidence of R.T.'s ability to contribute to her own support through part time employment. While I can accept that medical school is a daunting exercise during the school term, I know nothing with respect to her summer employment. That said, I can find that R.T. is a child of the marriage and then take that lack of evidence of her contribution into consideration when assessing Mr. Tan's contribution.

[194] Mr. Tan has already agreed to fund this expense by the agreed terms of the sale proceeds in 2022 after he lost his license to practice medicine.

[195] On the totality of the evidence, I am satisfied that Ms. Tan has met her onus to satisfy me that, on a balance of probabilities, R.T. remained a "child of the

marriage” to the end of her medical degree. However, I am not satisfied that R.T. continues to be such now that she has graduated from medical school.

[196] Even had Mr. Tan continued to be employed, I do not know if the family could have financed R.T. once she graduated from medical school. The reality is that now, the family does not have the ability to underwrite their daughter with two university degrees.

[197] I have no evidence of R.T.’s present circumstances to determine her expenses or ability to share in those expenses. That lack of evidence is partly because the trial was just before the end of R.T.’s final year. However, I could have heard from R.T. about her expected circumstances (in person or by Zoom). Without that information, Ms. Tan has not met her onus to prove the need for s. 7 expenses beyond June of this year.

**8. If Mr. Tan is required to pay s. 7 expenses for the child of the marriage, what are those expenses?**

[198] The agreement/order is silent with respect to s. 7 expenses. I have found that there has been a material change such that I may vary that order as of June 2021.

[199] I have found that R.T. remained a child of the marriage to the end of her medical degree.

[200] Mr. Tan has agreed that, if I made those findings, he accepted some of the expenses claimed by Ms. Tan. Other expenses are in dispute.

[201] Section 7 of the *Child Support Guidelines* provides that, within a child support order, the court may provide for an amount to cover all or any portion of the expenses for post-secondary education. The court must take into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation. Those expenses may be estimated.

[202] The guiding principle in determining the amount of such an expense is that the expense is shared by the spouses in proportion to their respective incomes after deducting the contribution, if any, made by the child from the expense. Income is defined as taxable income meaning that the income is net of any spousal support paid or received.

[203] In determining the amount of an expense, the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

[204] The onus is on the parent seeking the special or extraordinary expenses to prove that the claimed expenses fall within one of the categories under section 7

and that the expenses are necessary and reasonable, having regard to the parental financial circumstances. See *Park v. Thompson* (2005), 77 O.R. (3d) 601.

[205] Where the expense is not within the means of the parties, the court may limit or deny recovery of that amount. See: *Ebrahim v. Ebrahim*, 1997 CanLII 2959 (B.C.S.C.); *L.H.M.K. v. B.P.K.* 2012 BCSC 435, [2012] W.D.F.L. 5975; *Hawkins v. Hawkins*, 2019 ONSC 7149.

[206] In *Roth v. Roth*, 2010 ONSC 2532, [2010] W.D.F.L. 4305, at para 16, Ricchetti J. set out the principles applicable to post-secondary expenses:

- a) Generally, post-secondary education is considered a necessary expense in the best interests of the children.
- b) The reasonableness of the expense considers the means of the spouses or former spouses and the means of the child.
- c) Children have an obligation to make a reasonable contribution to their own post-secondary education or training. This does not mean that all of a child's income should necessarily be applied to the costs of the child's further education. The court should consider whether the child should be entitled to some personal benefit from the fruits of his or her labours.
- d) Grants, scholarships and bursaries are generally treated as a reduction of the education expense as they involve a net transfer of resources to the child without any obligation of repayment.

*Mr. Tan's Evidence With Respect to s. 7 Expenses*

[207] Mr. Tan objected to the following expenses:



- a) R.T.'s day to day food including groceries
- b) Sanitary products;
- c) Laundry
- d) Her personal cell phone
- e) University wifi costs
- f) Transportation in and around her university

[208] Mr. Tan testified that he was the only one who contributed to the RESP.

[209] He agreed that one half of the net proceeds from the sale of the joint property in Nova Scotia was to reduce his child support and some of the Section 7 expenses in this case.

*Ms. Tan's Evidence Regarding s. 7 Expenses*

[210] Ms. Tan testified that R.T.'s expenses at the University of Guelph were covered by scholarships or her parents' RESP. Those expenses are not claimed by Ms. Tan in this application.

[211] The parties had purchased a small lot and house in Nova Scotia. It was sold in June of 2022 and the proceeds of sale were divided such that Mr. Tan paid \$18,640.45 towards support arrears and university expenses.

[212] Although R.T. failed her MCATs in first year in Guelph, she could not afford to take them in her 4th year because Mr. Tan did not assist with financial support. So R.T. went to the Philippines, tested there, and was successful in obtaining her entrance into medical school in the Philippines. Although Ms. Tan paid the expenses for R.T. to fly to the Philippines and to take the test, she does not claim for those amounts in this application.

[213] The expense allowance of \$1050 per month covered R.T.'s meals, her cell phone and her Wi-Fi expense. The grocery expense covered snacks and food and drink in the refrigerator. Transportation expenses were to allow R.T. to go to school and her hospitals but avoid the dangerous public transportation. R.T. had an iPad to take to class and a MacBook for working at home. These were the same expenses for all four years. Ms. Tan testified that she has provided the Visa statements to Mr. Tan, but she did not produce them in court.

[214] Mr. Tan provided a car for their daughter when she asked him to do so. However, he did not pay off the car loan. When R.T. went to the Philippines, Ms. Tan sold the car and used the proceeds to buy a new one.

### Analysis

[215] The parties agreed upon some expenses if I were to find that R.T. was a child of the marriage. Those expenses were:

|      |           |
|------|-----------|
| 2019 | \$41,213. |
| 2020 | \$21,117  |
| 2021 | \$19,842  |
| 2022 | \$21,599  |

[216] Those expenses are to be shared according to the parties' incomes as found by me, as set out above.

[217] Further, Ms. Tan submits that any child support paid under either the old order or this one should reduce her claim for these expenses over the years of R.T.'s medical schooling. I therefore do not need to consider whether this claim should be dealt with under s. 3(2)(b) of the *Child Support Guidelines* as child support.

[218] The parties' disputed monthly expenses total \$1,736.84 per month (in addition to rent and utilities):

(a) Allowance – \$1,052.63

(b) Groceries – \$263.16

(c) Toiletries – \$105.26

(d) Laundry – \$105.26

(e) Transportation – \$210.53

[219] The difference between them is:

2019 \$18,022

2020 \$18,180

2021 \$20,232

2022 \$20,548

[220] It is to be remembered that I can estimate expenses; however, I have no evidence of R.T.'s contribution to these expenses or of any grants or bursaries that may have been available to contribute to these expenses. As set out above, while I can accept that medical school is a daunting exercise during the school term, I have nothing with respect to her summer employment.

[221] One would expect that an "allowance" from Ms. Tan would cover many of the other disputed expenses.

[222] In *Craig v. Niro*, 2022 ONSC 5178, the court had no difficulty concluding that the expenses associated with the purchase of furniture, appliances, food, toiletries and even "shower flip flops" were properly characterized as post-secondary education expenses for a temporary residence being shared with someone else while at university.

[223] Accordingly, as a group, I can see how these expenses could be included as s. 7 expenses. However, on this record, I cannot find that Mr. Tan must contribute to the full expense.

[224] On this evidence, the best I can do is to estimate the disputed items as \$1000 per month.

[225] I acknowledge that I have found that Mr. Tan's income was reduced in 2021 and R.T.'s expenses continued until 2023. However, Mr. Tan's failure to provide me with complete financial information prevents me from knowing his other means

and asset base to assist R.T. I have therefore continued his obligation to pay towards her medical school expenses until her graduation in 2023.

**9. What support arrears are owing from, or to, Mr. Tan?**

[226] Based on those findings, the chart below sets out the calculations to this point in my determinations.

[227] There is substantial dispute about what and when Mr. Tan paid his support payments in each year so as to be accounted for as income to Ms. Tan. That could change each parties' income and the determination of the share of the expense to be paid. I cannot make that determination on this record and have therefore simply used the income and support obligation as found.

[228] I asked the parties to review the FRO payment statement to agree upon what has been paid to date, but they could not agree. Neither appeared to take into consideration the \$18,600 that Mr. Tan paid in 2022. I therefore leave the final calculations to the FRO based on the findings set out above and summarized in the chart below. If there are difficulties in that calculation, I shall remain seized of this issue.

|  | <b>Applicant<br/>Mr. Tan's<br/>income</b> | <b>Respondent<br/>Ms. Tan's<br/>income:<br/><br/>1. Employed<br/>Income</b> | <b>Child<br/>Support<br/>to be<br/>paid<br/><br/>(/Month)</b> | <b>Spousal<br/>Support<br/>to be<br/>paid<br/><br/>(/Month)</b> | <b>Section 7<br/>expenses<br/><br/>(Yearly /<br/>12) – if<br/>entitled</b> | <b>Proportionate<br/>Sharing % - if<br/>entitled</b> |
|--|---|---|---|---|--|--|
|--|---|---|---|---|--|--|

|      |           |            |                     |                                    |                         |       |
|------|-----------|------------|---------------------|------------------------------------|-------------------------|-------|
| 2015 | \$235,000 | \$ 0       | \$ 1892             | \$ 6,500                           |                         |       |
| 2016 | \$235,000 | \$ 3473.50 | \$ 1892             | \$ 6,500                           |                         |       |
| 2017 | \$235,000 | \$ 6,947   | \$ 1892             | \$ 6,500                           |                         |       |
| 2018 | \$235,000 | \$ 6,947   | \$ 1892             | \$ 6,500                           |                         |       |
| 2019 | \$235,000 | \$ 6,947   | \$ 0 (Sept 1, 2019) | \$ 6,500                           | \$ 4,434 (Sept 1, 2019) | 65/35 |
| 2020 | \$235,000 | \$ 6947    | \$ 0                | \$ 6,500                           | \$3,009                 | 65/35 |
| 2021 | \$71,388  | \$ 19,638  | \$ 0                | \$ 6,500 to July 2021 and then \$0 | \$2,635                 | 62/38 |
| 2022 | \$38,397  | \$ 41,455  | \$ 0                | \$ 0 as of January 1               | \$2,799 to June 2023    | 48/52 |

[229] I do not rule out arithmetic errors on my part. If so, either party may make written submissions within 15 days (copy to the other party).

**10. Is Mr. Tan required to maintain life insurance or its equivalent for Ms. Tan?**

**Analysis**

[230] The agreement/ draft order reads:

## Life Insurance

In accordance with clause 50 herein, the husband shall keep in force life insurance in the amount of \$1,000,000 in favour of the wife for so long as he is required to provide spousal and child support. Upon the husband no longer being required to provide child support, he shall be entitled to reduce the amount of life insurance by one-third. Upon the review of spousal support set out in clause 55, the husband shall be entitled to further reduce the amount of life insurance by one-third. The husband shall maintain his current policy with SunUniversal Insurance Company, policy number \*\*\*471. The husband shall obtain, within one month of the date of this Agreement, a letter from the life insurance company noted above confirming the wife has been named the irrevocable beneficiary of this policy subject to review and Order of the court permitting the husband to reduce the coverage in favour of the wife.

[231] Mr. Tan acknowledges that he was required to maintain a life insurance policy of \$1,000,000. However, with his license revoked, he could not afford the \$1000 per month policy. He cancelled the policy without notice to Ms. Tan until he gave his evidence in this trial. He did not have the funds to pay for her insurance, and that policy is no longer in effect. That occurred two years ago, and he agreed that he did not advise her that the insurance was not in place.

[232] Mr. Tan's conduct is disgraceful; however, given the result above, child and spousal support has come to an end. Accordingly, Mr. Tan is no longer required to maintain life insurance for Ms. Tan.

## **Result**

[233] Mr. Tan's obligation to pay child support ended May 1, 2023; the date of his last payment.

[234] Mr. Tan's obligation to pay spousal support ended July 1, 2021; the date of his last payment.

[235] Mr. Tan shall pay towards R.T.'s medical school s. 7 expenses as set out above (para 228/229).

[236] The Family Responsibility Office shall re-calculate Mr. Tan's arrears based on the findings above. I shall remain seized of this issue. Any submissions with respect to mathematical errors may be made within 15 days.

[237] Mr. Tan's obligation to maintain life insurance for Ms. Tan and R.T. is rescinded.

### **Costs**

[238] It appears that success has been divided but I am not aware of any offers to settle or other relevant factors. If costs cannot be agreed upon, Ms. Tan shall provide her costs submissions within the next 15 days. Mr. Tan shall provide his response within 15 days thereafter.

[239] Each submission shall be no more than three pages, not including any Bills of Costs or Offers to Settle. No reply submission will be accepted unless I request it.

[240] If I have not received any submissions within the time frames set out above, I will assume that the parties have resolved the issue and I make no order as to costs.



[241] Neither party need include the authorities upon which they rely so long as they are found in CanLII and the relevant paragraph references are included.

[242] Any costs submissions shall be forwarded to my office in Guelph by electronic transfer to GuelphOffice.SCJ@ontario.ca or by mail to Guelph Superior Courthouse, 74 Woolwich St., Guelph, N1H 3T9.

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Justice G. D. Lemon

**Released:** September 5, 2023

**CITATION:** Tan v. Tan, 2023 ONSC 4885  
**COURT FILE NO.:** FS-19-00000162-0000

**DATE:** 2023 09 05

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Romeo Banzon Tan

Applicant

**– and –**

Jennifer De Leon Tan

Respondent

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**REASONS FOR JUDGMENT**

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Justice G.D. Lemon

**Released:** September 5, 2023