



Case in Brief: **Michel v. Graydon**

Judgment of November 14, 2019 (written reasons issued September 18, 2020) |
On appeal from the Court of Appeal for British Columbia
Neutral citation: 2020 SCC 24

British Columbia law says courts can order back child support even after the child is grown up, the Supreme Court has ruled.

Ms. Michel and Mr. Graydon were “common-law” spouses. This meant the law considered them married, even if they didn’t have a marriage certificate. They lived in British Columbia. They had a child, AG. A few years later, the relationship ended. AG went to live with Ms. Michel. Mr. Graydon said his income was about \$40,000 a year. He agreed to pay about \$340 a month in child support based on that.

While AG was growing up, Ms. Michel lived on social assistance. Because of this, she had to sign over her rights to child support to the government. The government would collect the child support and pay her social assistance. The government never tried to ask for more support for AG.

When AG became an adult, the child support ended. But Ms. Michel found out that Mr. Graydon’s income had been higher than he said. She asked for back (retroactive) child support based on his real income.

Mr. Graydon said it was too late to ask for this. He said the court didn’t have the power to make him pay now, because AG wasn’t a child anymore.

When parents are formally married and decide to get divorced, the *Divorce Act* applies. The *Divorce Act* is a federal law. But before someone files for divorce, or when parents are *de facto* spouses (in Quebec) or common-law spouses (in other provinces), provincial laws apply. Under the federal *Divorce Act*, if the child is now grown up, parents don’t have to pay back child support even if they should have paid it earlier. Mr. Graydon said British Columbia’s *Family Law Act* should be read the same way.

The trial judge said Mr. Graydon hid his real income, and this hurt AG. He was to blame for the situation. The trial judge ordered Mr. Graydon to pay \$23,000 in back child support, split between Ms. Michel and AG. But the appeal judges agreed with Mr. Graydon that it was too late to order back child support.

All the judges at the Supreme Court of Canada said Mr. Graydon had to pay. They said that courts could change past child support orders under the *Family Law Act*. They could do this even if the child was now grown up.

Child support is a right that belongs to the child. The parents can’t negotiate it away. It should give the child the same standard of living they had when their parents were together. All the judges agreed that back payments are fair. Parents are always responsible for paying according to their income. Back payment orders just hold them to that.

All the judges said courts need to consider the entire situation in deciding whether to make a parent pay retroactive child support. This includes why a parent waited to ask for the support, the behaviour of the parent who was supposed to pay, the child’s situation, and whether it would cause hardship. The majority said the reason Ms. Michel waited to ask for back payments was that she had been badly hurt and the government took over her right to support. Mr. Graydon knew his income was higher than he was saying, so it wouldn’t have been a surprise to him that he had to pay more. He also knew how bad AG’s living situation was because of lack of money, and instead of helping her, made hurtful comments about it. He could afford to pay it now. All of this meant that he had to pay.

All the judges agreed that preventing retroactive child support hurt women most. They said that support should be limited only where the law clearly says so. They said that although an older version of the law might have prevented child support for the past, the current one didn’t. In any case, it would be wrong to encourage people to avoid paying in case the other parent might wait too long to ask for it. People shouldn’t be able to profit from acting badly.

This case was decided “from the bench” at the end of the hearing on November 14, 2019. When a case is decided from the bench, it means the judges tell the parties the outcome right away. In this case, the judges gave written reasons later to explain.

Decision from the bench: The Supreme Court unanimously allowed the appeal | **Breakdown of reasons:**
Majority: Justice Russell [Brown](#) said courts can retroactively change child support orders, even if the child is grown up or the order has expired (Justices [Moldaver](#), [Côté](#), [Rowe](#), and [Kasirer](#) agreed) | **Concurring:** Justice Sheilah [Martin](#) agreed with the majority, but said there were other important reasons to allow retroactive child support (Chief Justice [Wagner](#) agreed) | **Concurring:** Justice Rosalie Silberman [Abella](#) agreed with both Justices Brown and Martin (Justice [Karakatsanis](#) agreed)

More information (case # 38498): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: child support order (Provincial Court of British Columbia, not available online) | [appeal](#) (Supreme Court of British Columbia) | [appeal](#) (Court of Appeal for British Columbia)
