

CANADA / JUDGMENT

A.B.C. v. D.E.F.

2025 BCSC 1737

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Supreme Court of British Columbia

DECIDED

5 September 2025

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2025 BCSC 1737 A.B.C. v. D.E.F.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.B.C. v. D.E.F.,

2025 BCSC 1737

Date: 20250905

Docket: E65282

Registry: New Westminster

Between:

A.B.C.

Claimant

And:

D.E.F.

Respondent

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Counsel for the Claimant:

D. Labun

Counsel for the Respondent:

N. Chen

Place and Dates of Trial:

New Westminster, B.C.

June 30, 2025

July 2-5; 7-11, 2025

July 14-15, and 17, 2025

Place and Date of Judgment:

New Westminster, B.C.

September 5, 2025

Table of Contents

I. Introduction and Issues. 4

II. Background Facts. 4

III. Division of Property and Debt. 5

A. Legal Principles. 5

B. Division of Family Property and Debt 5

C. Claimant's Failure to Disclose Allegation. 6

D. Adjustments and Compensating Payments. 11

1. Interest of the Respondent's Parents in the FFH.. 11

a) Background. 11

b) Analysis. 17

2. Tax Payment 19

3. FFH Expenses and Mortgage Payments Post Separation. 21

4. Occupational Rent 24

5. Arizona Property, and Capital Gains Tax. 24

6. Vehicles, Bank Account, Credit Card, Trailer 25

E. RESPs, RRSPs, CPP, Life Insurance. 25

F. Household Contents. 26

G. Business and Trust Interests of the Parties 26

IV. Spousal and Child Support - Background.. 30

V. Child Support. 31

A. Guideline Incomes of the Parties. 31

1. Claimant's Income. 31
 - a) Background: Claimant's Income. 34
 - b) Analysis: Claimant's Income. 37
2. Respondent's Income. 40
 - a) Shareholder's Loans Issue. 41
 - b) Meals Benefit 42
3. Summary: Incomes of the Parties. 42

B. Retroactive and Prospective Child Support 42

C. Special and Extraordinary Expenses - FCSG S. 7. 47

VI. Spousal Support. 48

A. Entitlement, and Issues. 48

B. Retroactive Spousal Support 51

1. Entitlement to Retroactive Spousal Support 51
2. Respondent's Income Over \$350,000. 52
3. Quantum of Retroactive Spousal Support 56

C. Prospective Spousal Support 58

D. Review of Spousal Support 60

E. Security for Spousal Support 61

VII. Sale of the FFH.. 62

VIII. Parenting Issues. 63

IX. Conclusion.. 65

I. Introduction and Issues

- [1] These are reasons for judgment in a family law action.
- [2] The major issues relate to the division of property, and determination of child and spousal support amounts.

- [3] The parties both grew up in the Lower Mainland area of B.C. They were married on November 21, 1998. They separated January 13, 2022, after a marriage of 23 years. The claimant is the wife and mother. She was 24 years of age at the date of the marriage, 47 years of age at the date of separation, and is now 51. The respondent, the husband and father, was 23 years of age at the date of the marriage, 47 years of age at the date of separation, and is now 50.

II. Background Facts

- [4] I have anonymized these reasons for judgment, in accordance with the request of the parties, in order to respect the privacy of their children, and in order to protect their business interests. The initials of the parties are not those set out in the style of cause. I will refer to the relevant business as XYZ.
- [5] The parties have three children. I will refer to them as M., J., and K. The eldest child, M., is 21 years of age this calendar year. The parties agree that M. ceased to be a child of the marriage as of December 31, 2023. J. is 18 years of age. At the date of trial K. was 15 but will be 16 years of age in this calendar year.
- [6] After their separation on January 13, 2022, the parties continued to live together with their three children in the former family home (the "FFH") in a suburban area within the Lower Mainland until either May 10, 2022 (the respondent's best recollection), or May 12, 2022 (the claimant's recollection), at which time the claimant moved out of the FFH, into a nearby rented home, where she continues to reside presently. The minor difference in these dates is not material. For purposes of these reasons, I will adopt the date of May 11, 2022, as the date the parties physically separated. The respondent continues to reside in the FFH.
- [7] On July 17, 2025, the final day of the trial, I made an order for divorce, by consent.
- [8] Other than their business interests, which will be addressed later in these reasons, their only major valuable asset is the FFH. It was appraised at a value of \$5,000,000, as of February 23, 2024, approximately 17 months prior to the conclusion of the trial.

III. Division of Property and Debt

A. Legal Principles

- [9] The division of family property and family debt is governed by Part 5 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], which consists of ss. 81-109.
- [10] Under s. 81 of the FLA, spouses equally share family property and family debt, regardless of their respective use or contribution to the family property and debt, but subject to an agreement or order that provides otherwise, and except as set out in Parts 5 and 6 of the FLA.

[11] This action was commenced July 8, 2022. The FLA was amended by the Family Law Amendment Act, 2023, which received royal assent May 11, 2023. Some of the property division sections were amended. However, under s. 24 of the amending legislation, the new s. 81.1 and the amendments to ss. 85 and 96 do not apply to pre-existing proceedings, such as this one. As a result, for purposes of this decision, the recent amendments to the FLA do not apply. However, neither party suggests that the recent amendments would be relevant to the issues in this case.

B. Division of Family Property and Debt

- [12] Both parties seek an equal division of family property and family debt, except for certain adjustments or compensating payments. Neither party is claiming any excluded property, pursuant to s. 85.
- [13] The respondent agrees that an order for sale of the home should be made, but he hopes to be able to buy the home by matching any offer received.
- [14] In relation to the sale of the home, the respondent contends that the claimant's equal share of the proceeds of sale should be subject to several compensating payments in his favour. The claimant contests several of the respondent's claims. She contends that the home should be sold, and the proceeds divided equally, subject only to expenses required to prepare the home for sale as well as the usual selling expenses.

C. Claimant's Failure to Disclose Allegation

[15] The claimant contends that the respondent has failed to disclose assets. She argues that, for that reason, she should not be liable to pay several of the respondent's claims for compensation required to equalize property division. The claimant's position is that on this basis, as well as others, the respondent's claims should be denied. The contested claims are:

1. \$124,283, as her share of the 2022 tax payment, to be discussed below.
2. FFH expenses:
 - i. Repair, maintenance, taxes, insurance: \$70,998
 - ii. Mortgage: \$79,274

Total for FFH: \$150,272.

3. Vehicle debt: \$10,055.
4. CIBC credit card: \$4,811.

[16] The total of these claims is \$289,421.

- [17] Alternatively, the claimant argues that only some of the FFH expenses the respondent claims should be allowed -- for property taxes, house insurance, and the cost of repairing the swimming pool.
- [18] In addition to the contention that the respondent should be denied recovery on the basis of non-disclosure of assets, she also answers the respondent's claim for FFH expenses with a claim for occupational rent.
- [19] In relation to non-disclosure, in effect, the claimant contends that I should infer and impute to the respondent hidden assets that are worth at least \$290,000. She cites the well-known dictum of Justice G. Peter Fraser in *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93, 1994 CanLII 3195 (S.C.).
- [20] The legal principles in this respect were reviewed by the Court of Appeal in *Wu v. Sun*, 2011 BCCA 239. There, Justice Donald wrote:
- [40] The case reference is to *Laxton v. Coglon*, 2008 BCSC 42, 49 R.F.L. (6th) 164, which followed *Cunha v. Cunha* (1994), 1994 CanLII 3195 (BC SC), 99 B.C.L.R. (2d) 93 (S.C.). In *Cunha*, Mr. Justice Fraser urged a robust exercise of the adverse inference power when in matrimonial litigation one party conceals assets, since costs seldom provide an adequate remedy for concealment. In *Laxton*, Mr. Justice Kelleher proposed a kind of formula where in cases of non-disclosure the inference to be drawn is that the value of undisclosed assets is at least equal to the value of the disclosed assets.
- [41] I am not the first to observe that non-disclosure is the Achilles heel of family assets litigation. Strong measures are justified in discouraging it. However, one cannot make something out of nothing. The right note of caution was sounded by Madam Justice Baker in *Palanca v. Palanca*, 2005 BCSC 1014:
- [127] Counsel for Mrs. Palanca submitted that the court could draw an adverse inference against Mr. Palanca's estate in relation to the existence of family assets in the Philippines because Mr. Palanca failed to comply with court orders relating to accounting and disclosure. I accept that Mr. Palanca did not meet his obligations in this regard, but an adverse inference is not an adequate substitute for evidence about specific assets, the ownership of those assets, whether the assets were used for a family purpose, or otherwise met the definition of family assets, or the value of the family assets, sufficient to allow for the making of a compensation order that is more than a guess.
- [42] With respect, I think the judge erred in putting any value on the overseas investments when there was not any evidence about them. In my view, the \$1.6 million ascribed to this item must be taken out of the reckoning of family assets.

[Emphasis added.]

- [21] The first question is whether the claimant has succeeded in establishing that the respondent has failed to comply with his obligations to disclose family property. However, deficiencies in disclosure do not inevitably lead to an inference of hidden family property: *S.O.S. v. T.Z.*, 2025 BCSC 813, at para. 67. The second question is therefore whether there is evidence supporting inferences regarding hidden property that are sufficient for a compensation order that is based on "more than a guess".
- [22] I am not satisfied that the claimant has established that the respondent has failed to disclose family property. I consider both parties to be generally credible witnesses at trial. The respondent vehemently denied failing to disclose any property in his testimony at trial. In the context of all of the evidence at trial, I have no trouble accepting his testimony in this respect.
- [23] The claimant's contention is unspecific. For example, there is no specific suggestion of undisclosed domestic or foreign property, or undisclosed business interests, or financial assets. There are no documentary clues suggesting hidden property.
- [24] There are no court orders for disclosure that the respondent has not complied with.
- [25] Although the respondent was in charge of the FFH construction project, including financing the cost, the claimant was generally responsible for the family finances prior to separation. She had a very good understanding of the family finances, which were not overly complex. The respondent's employment with XYZ was the source of substantially all of the family income during the marriage, and the respondent's income after they separated. There is no hint of hidden sources of income in the evidence.
- [26] The contention that the respondent has undisclosed property is not pleaded. The claimant's Trial Brief filed with the court May 2, 2025, makes no reference to this. The claimant's Trial Brief says only that the family property and debt should be equally divided, subject to compensation to the claimant for "assets dissipated and/or debts increased by the respondent." A generic reference to "dissipated assets" does not equate to an allegation that the respondent has deliberately failed to disclose family property.
- [27] I accept the respondent's testimony that the first time he was made aware of an allegation that he failed to disclose property was during cross-examination at trial.
- [28] In response to this testimony, the claimant says that she questioned this in paragraph 33 of Part 2 of a Notice of Application she filed with the court on March 6, 2025. The Notice of Application is not formally in evidence, but I have reviewed this reference solely for the purpose of considering this point. The paragraph referred to contains only a non-specific reference to the claimant questioning what became of the respondent's sizable 2021 income. This, again, is at best a reference to "dissipation" of income, rather than non-disclosure. This particular question was pursued in detail during the respondent's lengthy cross examination at trial. I am not persuaded that the respondent hid some part of his 2021 income.

- [29] The claimant argues that the respondent thwarted her request for corporate credit card statements made on his examination for discovery. I am not persuaded that this is accurate. The request had to do with personal expenses that may have been charged to the respondent's corporate credit card. The respondent provided a spreadsheet of corporate credit card expenses derived from the company's general ledger to the joint business appraiser, Mr. Ghanavizchian, so that he could assess such "non-operational" business expenses. The spreadsheet was also produced to the claimant. The request for credit card statements in addition to the spreadsheet is not free of ambiguity. In her responding letter dated June 12, 2025, the respondent's counsel asked for clarification. There is no evidence of any follow-up response or further demand. The respondent was cross-examined on the spreadsheet in some detail. It does not appear to be incomplete.
- [30] The claimant contends that the respondent has not produced all bank account records in existence at the date of separation, as there are no accounts which show the monthly mortgage payments. This point was not put to the respondent in cross-examination. The claimant does not point to any related failure to produce documents. As noted, the claimant was familiar with the family finances and bank accounts pre-separation. I put no weight on this contention.
- [31] The claimant contends that the respondent was unable to fully account for what became of the payments of over \$1,000,000 that he received from XYZ in 2021. According to the claimant, the respondent is unable to account for \$335,577.
- [32] Answering this question would entail a significant exercise in forensic accounting. It is not surprising that the respondent would be unable to fully account for his 2021 income, spontaneously, while under cross-examination at trial. He acknowledged he was unable to do so from the witness box. He is not an accountant. He suggested various possibilities, such as continuing FFH construction expenses, household expenses, charitable or religious donations, or other expenditures. He testified that the parties were not good at budgeting. He emphatically denied, once again, that there were hidden accounts. His denial is not implausible.
- [33] In submissions, respondent's counsel contends that the shortfall or gap is largely explained by repayment of a shareholder's loan, to the extent of \$250,000 more than in the claimant's submissions, as well as \$88,616.56 in charitable donations. Without the aid of some form of reliable forensic accounting, I am unable to make firm findings about this.
- [34] Similarly, the respondent was asked on cross-examination to explain why his shareholder's loan debt to XYZ had increased significantly post separation. He was unable to do so. I place no weight on the respondent's inability to do this, spontaneously. Again, in my view, a careful forensic examination would be required to address this.
- [35] In summary, I am not satisfied on the evidence that the claimant has established the basis for the inference and imputation of undisclosed property she seeks.

D. Adjustments and Compensating Payments

[36] The issues the parties raise in this respect are as follows.

1. Interest of the Respondent's Parents in the FFH

a) Background

[37] During 2019 and 2020, the parties built a very large luxurious new home on property they had owned since 2012. They were already residing on the property in an older home when they built the new one on the same property. The new home (which is the FFH) has an attached two-bedroom self contained suite in which the respondent's parents reside (I will refer to the respondent's parents as "his parents" or simply "the parents" in this section of these reasons).

[38] The respondent contends that his parents have a beneficial interest in the home, based upon payments totalling \$500,000 that they contributed during the course of the construction in 2019. He contends that their interest must be accounted for on a sale of the FFH. The claimant disputes the amount of to be paid to his parents on a sale of the property. She says the amount is subject to possible downwards adjustment, depending on the sale price.

[39] As the parties agree that the FFH must be sold, this question has some practical consequences.

[40] The parents contributed a total of \$600,000 to the cost of construction of the FFH, by means of six payments made between January 7 and September 27, 2019. They moved into the suite on November 16, 2019. The suite was completed in late 2019 or early 2020, a few weeks before the main residence was completed. The respondent and his parents say that \$100,000 of this money was a gift to the parties, but the other \$500,000 was not. Specifically, the respondent and his parents contend that the parties are bound by the terms of a written agreement between the parties and his parents dated November 17, 2019, the day after his parents moved into the suite (the "Agreement"). The document is signed by the respondent and his father, who purported to sign on behalf of themselves as well as their respective spouses. In other words, the claimant did not sign the document. She testified that she did not see this document until this litigation was underway, and she did not agree to its terms.

[41] The respondent drafted the Agreement. No legal advice was obtained by the parties in relation to their dealings with the parents, their payments, or the Agreement.

[42] The Agreement is very brief. It provides that the \$500,000 paid "for the build of the new suite" attached to the home "gives [his parents] 20% ownership of the home". It also provides that if the house is sold, the parties "owe back the \$500,000 for the initial investment plus a percentage of the growth from when the first appraisal was completed." However, there was no appraisal of the FFH at the time. The respondent says that the "first appraisal" referred to would be the appraisal completed later, dated March 11, 2020, on behalf of TD Canada Trust, for purposes of the parties' mortgage. That appraisal gives a market value of \$4,900,000,

excluding an outbuilding, or \$5,000,000 including the outbuilding. It noted that the home is "98% complete".

- [43] The parties are the registered owners of the property. They have owned the property since 2012. Therefore, the reference to the parents having a 20% interest in the home was not reflected in a change of legal title.
- [44] The claimant does not dispute that the parents paid the money. However, she says she did not agree that they would have a beneficial interest in the property, nor that they would share in an increase in value of the property in the event of a sale.
- [45] In her view, the parents were paying for or contributing to the construction cost of the suite, although she did not know what that cost actually was. The agreement was that they would live out their lives in the suite. In the event of their deaths, the parties would pay the \$500,000 to the respondent's siblings.
- [46] She says that she told the respondent that she wanted a legal agreement to be prepared by a notary public, but it never happened.
- [47] The parties acknowledge that, in view of present market conditions, there is a good chance that the FFH will sell for less than the 2024 appraised value of \$5,000,000. At present, it seems likely therefore that there would be no "growth from when the first appraisal was completed" (the wording of the Agreement), but that remains to be seen.
- [48] The claimant concedes that the parties should repay some portion of the \$500,000 contributed by the respondent's parents. Her position is that, if the FFH sells for less than its value when it was newly built, the parties should pay them less than \$500,000. As such, the loss would be shared. Her submissions are not clear as to the precise formula that she would apply in this scenario.
- [49] The respondent's position is that the Agreement is valid and binding. His submissions state that his parents should receive \$500,000 out of the proceeds of the sale of the house, even if it sells for less than the 2024 appraised value of \$5,000,000. He did not specifically address what should happen if the home is sold for more than \$5,000,000, apparently taking the view that this was likely to be a moot point.
- [50] The respondent's Counterclaim does not contend that his parents have a beneficial interest in the property. It contends that the \$500,000 was a loan. It asserts that:

The parties owe \$500,000 as well as a percentage of the increase in value of the former family home, to the Respondent's parents pursuant to a loan agreement.

- [51] However, it seems that the claim of a beneficial interest does not come as a surprise to the claimant. The Agreement was disclosed during the course of this litigation. The respondent's F8 financial statement filed June 2, 2025, states that the property is partly beneficially owned by his parents. No issue about the respondent's pleadings in this respect was raised at the trial. I am satisfied that this issue should be decided on the basis of the evidence and submissions made at trial.
- [52] A description of the FFH project is of some relevance to this issue and also has some relevance to other issues in the case.
- [53] The property is just over an acre in area. When the parties bought the property in 2012, they planned to demolish the older home on the property and build a new one. Financial constraints meant that it took some time before they could put their plans into action. Serious planning for the new home construction, the FFH, took place in 2016 and 2017. Construction began in late 2017. The FFH was completed (or in any event, virtually completed) in early 2020, just a few weeks before the Covid-19 pandemic began.
- [54] The scope of the new build project ballooned over the course of time. According to the claimant, she had originally contemplated that the FFH would be about 4,200 square feet in size. As built, the FFH is much larger -- the main residence has 7,291 square feet of living space, which includes five bedrooms and seven bathrooms. Additionally, there is a 780 square foot outbuilding which includes a garage, shop, games room, and bathroom. It has an attached three-car garage and a large patio with a very well-equipped outdoor kitchen and a bar. There is a built-in hot tub and a large swimming pool. The 2024 appraisal report says the home has "very good street appeal" and is well built and features very good quality components.
- [55] The suite is 968 square feet in size. It has two bedrooms, two bathrooms, and an attached single car garage.
- [56] The home was built by the respondent's brother's construction company. His father worked on the FFH construction project as a site supervisor. He was employed and paid by the construction company and was on the site daily.
- [57] I accept the claimant's evidence that building a custom home had long been the respondent's dream, and that he was very passionate about the project. He was primarily responsible for coordinating and managing the project, including paying the costs. The claimant was heavily involved in design choices and had information as to the costs associated with various design choices but had little or no information about the overall budget and costs of the project.

- [58] The original architectural plans for the home did not include a suite. It was, in fact, the claimant who first raised the idea of adding a suite for the parents. The claimant suggested this when the parties and their families, including both sets of parents, were on a family trip to New Zealand in late 2016 and early 2017. At the time, the respondent's parents were living in the respondent's sister's basement suite.
- [59] Before construction began, in 2017, the parties and the parents jointly decided that a suite would be added for his parents. It was also agreed that they would contribute \$500,000 to the costs of construction of the suite.
- [60] There is no evidence as to the cost of construction of the suite, as such.
- [61] In fact, there is no reliable evidence as to the overall cost of construction of the FFH. I accept that the cost substantially exceeded the original budget. The respondent testified that the original budget was \$1.8 million. The contractor suggested that \$2.2 to \$2.4 million was more realistic. The respondent kept a spreadsheet of expenses, which indicates that the budget was \$2.433 million, but the total of costs recorded are \$3.150 million. However, the respondent says that his spreadsheet is incomplete, and that additional expenses were incurred. He says that he lost an earlier version of the spreadsheet and had to re-create it at a later time.
- [62] The claimant says that the parties and his parents had a few "around the dinner table" discussions about the cost of construction of the suite and the contribution or payment to be made by them. She says the \$500,000 figure arose early in the build.
- [63] She testified that she and the respondent had many discussions about the arrangements for the suite. She says that she was adamant that his parents would not be on the title to the property. She says that she and the respondent agreed that their contribution would not increase in value.
- [64] The first payment of \$60,000, was made from the parents to the parties on January 7, 2017, but this does not mean that the figure of \$500,000 had necessarily been established at that time. The only documentary evidence concerning the figure of \$500,000 is in the Agreement, which is dated November 17, 2019. By then, the suite was complete.
- [65] The respondent agrees with the claimant that the \$500,000 amount was established early on. He says that the amount was arrived at based upon what his parents could afford to pay, before the parties had even approached the architect about redesigning the project to include the suite. He says there were many conversations with regard to the suite over family dinners. He says that while the \$500,000 figure was arrived at very early on, the 20% proportion referred to in the Agreement "kind of evolved" and was based upon the size of the suite in relation to the size of the home.
- [66] He says that he and his father signed the Agreement on the day after his parents moved into the suite. He says the claimant wanted "something in writing" and he wanted to document the arrangements "for the family" in case "something happened". The Agreement was signed

in the suite. He says the document was signed on the island counter in the kitchen, and that the claimant and his mother were nearby, in the adjacent family room of the suite. He says that he did not think it was necessary to have the claimant or his mother sign the Agreement, since it was "more for our families" than for the parties themselves.

[67] The respondent's father testified about the Agreement. He was unaware of the actual cost of construction of the suite, but says that based upon his own construction experience, \$500,000 represents an approximate cost of building it. However, he agrees with the respondent that the figure of \$500,000 was based upon what he and his wife could afford to pay. His evidence about the arrangements regarding the suite was generally vague, but his testimony about the signing of the document was quite precise and remarkably similar to the evidence of the respondent. In his view, the Agreement meant that, if the property was sold, he and his wife would receive 20% of any increase in value, but would not lose any of their money if the property sold for less than \$5,000,000.

[68] I observe that the Agreement only contemplates an increase in value of "the home". It is silent as to any loss in value.

b) Analysis

[69] In the circumstances, I am left with the difficult task of determining the legal obligations of the parties, when at the material time they did not properly, legally document their agreement, and probably did not turn their minds to all of the legal implications of their arrangements.

[70] This is of course understandable, if unwise. The parties were close family members whose decisions were primarily driven by their desire for mutual benefits as family members. Their discussions were casual and informal.

[71] The respondent's parents are not parties to this action. The onus is on the respondent to prove the terms of the agreement that he asserts. I am not satisfied that he has met this onus. The Agreement is therefore not binding on the claimant.

[72] On the evidence overall, I accept that the claimant did not agree that the parents would receive any beneficial ownership interest in the property. I also do not accept that the payment was an "investment" which carried a profit potential to the parents. There was no oral agreement for a beneficial interest in the property, or for an investment with profit potential. Furthermore, the claimant is not bound by the Agreement. The discussions that took place prior to the date of this document were general and informal. I accept that, as the claimant says, she did not see the Agreement until this action was underway.

[73] The \$500,000 payment was only notionally tied to the cost of construction of the suite. The amount was driven by the amount that the parents could afford to contribute, not the actual costs.

- [74] It is unlikely that the claimant would agree to give up 20% of the ownership interest of the property in the circumstances or agree to give up such a share of any increase in value. As the claimant noted in her evidence, even assuming that the \$500,000 could represent some similar proportion of the building costs, this neglects the value of the land. The land value as set out in the 2020 bank appraisal was \$2.5 million. The 2024 appraisal states that the value of the land is \$1,875,000, in the context of an estimated replacement cost of the property including improvements of \$4,975,000. I do not accept that the claimant would have agreed that the parents would receive a 20% interest in the property in return for their \$500,000.
- [75] Additionally, the authenticity of the Agreement is questionable. Even on the evidence of the respondent and his father, it was signed after the fact. The lack of signatures of the spouses is suspicious. If it truly represented a consensus of both the claimant and the respondent, she would have signed it, or at the very least, would have seen it and authorized the respondent to sign it on her behalf. The respondent does not assert that the claimant gave him authority to sign it and his explanation for the absence of her signature is unconvincing. In my view, the striking similarity between the testimony of the respondent and that of his father regarding the actual signing suggests that their evidence is the product of collusion. Even if the document was in fact signed in the circumstances they allege, the mere presence of the claimant nearby is of no significance in the circumstances of this case. I put no weight on the Agreement as an indication of any agreement actually made.
- [76] I accept that the \$500,000 was not simply a gratuitous payment, or in other words, a gift. The contents of the Agreement were that the respondent's parents would contribute this amount of money, in return for lifetime accommodation in the suite. However, I accept the claimant's evidence that she and the respondent expected to pay the money to the respondent's family when his parents died. Thus, she recognized that the \$500,000 would remain owing to his parents, or to their estate.
- [77] Doing the best I can with the evidence, I conclude that the \$500,000 payment was essentially a loan. There was no term for interest or any gain, other than the benefit of residing in the suite, without any formal rent obligations (although I note that the parents contributed to some ongoing expenses). The claimant and the respondent benefitted financially, by saving interest costs. There was no agreement for profit or a loss to the parents on a sale of the home. In particular, the parties and the parents did not turn their minds to the possibility that the home would be sold at a loss.
- [78] The claimant's position is inconsistent. She says that the parents should not receive any upside on the sale but should share in a downside.
- [79] I conclude that the parties owe \$500,000 to the respondent's parents, which is repayable on the sale of the property.

[80] This conclusion also accords with basic fairness. The expectation of the parents that they would be able to live out their lives in the suite will not be met (unless the respondent succeeds in buying out the claimant's interest). They are elderly and are faced with the prospect of finding a place to live. They retained an interest in the payment they made.

2. Tax Payment

[81] The respondent claims for 50% of income taxes he paid in 2022 relating to dividend income he received in 2021. The tax payment was \$248,567 (the "2022 tax payment"). Thus, he claims 50% of this amount, which is \$124,283.50. I will round this down to \$124,283 for simplicity.

[82] For a debt to be treated as family debt, it must have been incurred during the relationship or following the date of separation if incurred to preserve family property: FLA s. 86. The onus of proof is on the party alleging the family debt: *Chang v. Chang*, 2020 BCSC 1783 at para. 85.

[83] The 2022 tax payment was incurred as a result of the respondent and his business partner, DS, abandoning a corporate reorganization plan. When the respondent's marriage broke down in 2022, the expected tax savings of the reorganization were no longer achievable.

[84] Pursuant to the reorganization plan, taxable dividend income in the amount of \$680,260 that the respondent received during 2021 was re-characterized as a shareholder loan payment to him, via a journal entry on December 31, 2021. The plan was that this loan would be repaid in 2022 by way of a tax-free dividend payable to the respondent, which would be used to repay the loan. When the plan was abandoned, the dividend paid in 2022 in order to re-pay the loan became fully taxable. The net effect of this is that income tax in the amount of \$248,567 that would otherwise have been payable by the respondent in 2021 was instead paid by him in 2022.

[85] The 2022 dividend payment related to money that the respondent had actually received in 2021, during the marriage, and which therefore benefitted the joint family finances during the marriage. The parties agree that the 2022 dividend payment of \$680,260 does not form part of the respondent's 2022 income.

[86] Had there been no reorganization plan, then the income taxes would have been paid in 2021, during the marriage. The 2021 family finances would have been negatively affected in that year. Had there been no breakdown of the marriage, the reorganization plan would have resulted in the 2021 dividend income being paid to the respondent tax-free.

[87] As of the date of separation (January 13, 2022) the respondent was liable for a shareholder loan incurred in 2021, relating to money he received in 2021. Therefore, the loan was a family debt pursuant to s. 86, which is subject to equal sharing. The respondent paid that family debt in 2022, with dividend income that he did not actually receive in that year. In paying the family debt, he incurred the tax liability, resulting in the 2022 tax payment.

[88] As the tax payment reduced the family debt, including the claimant's portion of the family debt, the claimant is liable for her equal share of the 2022 tax payment incurred to pay the debt. This amount is \$124,283, as a compensating payment required to carry out the division of property and debt of the parties, pursuant to s. 97(1)(b) and s. 97(2)(c) of the FLA.

3. FFH Expenses and Mortgage Payments Post Separation

[89] The respondent has paid all expenses associated with the FFH since separation. He claims for these expenses, incurred from May 2022 to July 2025:

1. 50% of general house expenses: \$70,998
2. Mortgage payments: \$79,274

Total: \$150,272

[90] The respondent's claim for mortgage payments is net of the claimant's rent of \$3,400 per month. His claim for the other house expenses is net of the estimated total amount of \$10,500 (\$3,500 per annum) in contributions that his parents have made to the expenses.

[91] The claimant argues that:

1. These claims should not be entertained, as they amount to a claim for unequal division under s. 95, which neither party pleaded, and requires a finding that equal division would be significantly unfair;
2. As previously noted, the claimant argues that the claims should be denied based upon her allegation that the respondent failed to disclose property. I have rejected that contention;
3. The mortgage payments prior to June 2025 were insufficient to cover accruing interest, resulting in the equity of the parties decreasing since separation. The mortgage statements show that the principal amount increased by \$60,557 from December 31, 2021, to December 31, 2024. The mortgage had a variable rate. The bank's prime rate increased during 2022 by 4%, while the monthly payment was fixed, at \$10,501.75 per month. Effective June 1, 2025, the mortgage payment increased to \$16,042.62 per month;
4. Some of the expenses claimed relate to the luxurious nature of the FFH and its upscale features, such as the swimming pool, home electronics, landscaping, or relate to expenses for parties held at the home;
5. In the alternative, she contends that reimbursement should be limited to certain expenses such as property taxes, insurance, and \$17,046 paid in October 2024 to repair the swimming pool; and
6. She should receive an off-setting payment for occupational rent, since she moved out of the property that she jointly owns.

- [92] I do not accept the claimant's assertion that the court cannot address the respondent's claims.
- [93] They fall under the court's broad jurisdiction under FLA s. 97(1)(b) to make "any order that is necessary, reasonable or ancillary to give effect to the division" and s. 97(2)(c), to "require a spouse to pay compensation to the other spouse for the purpose of dividing the property". The respondent characterizes these and similar claims as "equalization payments", which is an accurate description of such payments, and are seen in almost every case where the court deals with property division. Property division is dealt with at trial, typically well after the parties separated, and as the FLA recognizes, ancillary orders or orders for compensating payments may be required to carry out the overall order for division of property.
- [94] The erosion of the equity of the parties since separation due to the increase in interest rates affects both parties equally. The low payments made post separation reduces the respondent's claim.
- [95] While there was little evidence about the claimant's rental accommodations, I infer that the respondent has been able to enjoy a significantly more luxurious lifestyle than the claimant, based upon his continued occupancy of the home. In addition, I accept the claimant's contention that some of the expenses relate to the luxurious nature of the home, which the respondent had the benefit of, such as the expenses for pool maintenance (aside from the major repair bill), landscaping expenses, and other general expenses and repairs. The insurance expenses and property taxes are very high, as compared with what they would be on typical single-family home.
- [96] Although the evidence of the parties conflicts somewhat on this point, on the evidence overall, I find that it was the respondent's choice to remain in the home, while the claimant had to find alternative accommodation.
- [97] The claimant moved for a sale of the home by Notice of Application filed with the court on March 6, 2025. The respondent resisted the order. His application response refers to his desire to buy out the claimant's interest, if he is able to do so. Counsel advises me that they were unsuccessful in having the hearing of the application completed prior to the trial, due to unavailability of the Associate Judge hearing the matter. In effect, the claimant's application has been addressed at trial.
- [98] The respondent's parents have had the benefit of free or nominal housing expenses. However, this was the arrangement that both parties agreed to.
- [99] In my view, taking all circumstances into account, the claimant should compensate the respondent for 40% of the costs of the mortgage, property taxes, insurance, net of this parents' contribution, and 50% of the pool repair expense. As the respondent acknowledges, her payment should also be net of her rental expense of \$3,400 per month. The mortgage payments were required to service the parties' joint debt. The insurance and property taxes

were also necessary. But in view of the fact that the claimant has not had the benefit of living in the home, her share of these expenses should be 40% rather than 50%, and the respondent should pay the other repair costs, other than the pool repair.

[100] In summary, I allow the respondent's claim to the extent of 40% of the mortgage expense, after reduction for the claimant's rent, and 40% of the expenses for property taxes and insurance, after taking into account the contributions made by the respondent's parents. These amounts are therefore: (1) mortgage: \$38,259; (2) taxes and insurance: \$33,854. These total \$72,113.

4. Occupational Rent

[101] I stated in *Smith v. Smith*, 2023 BCSC 991:

[61] Occupational rent is not a stand-alone claim, but may be considered in the re-apportionment analysis. The objective of an award for occupation rent is to do what is "just and equitable" between the parties, albeit within the parameters of the statute: *Shen v. Tong*, 2013 BCCA 519, at para. 94 (per D. Smith J.A., concurring); *Holland v. Holland*, 2017 BCCA 75, at para. 23.

[102] A non-exhaustive list of potentially relevant factors in assessing a claim for occupational rent is set out in the concurring reasons of Justice D. Smith in *Shen v. Tong*, 2013 BCCA 519 at para. 94. I have considered these factors in this case. However every case depends on its own unique facts.

[103] There is no need, in this case, for an award of occupational rent in order to achieve a just and equitable outcome. The respondent's claims for mortgage and other FFH expenses have been significantly reduced to reflect the differences in their accommodation and fully reflects the claimant's rent expense. In addition, the claimant has received interim spousal support and will also receive retroactive spousal support.

5. Arizona Property, and Capital Gains Tax

[104] The parties agree that Canadian capital gains tax paid by the respondent on the sale of a property the respondent owned together with the claimant's brother and father is a family debt that should be shared. The property was sold after separation, in January 2023. The capital gains tax paid was \$44,982. The claimant's 50% share is \$22,491. The parties have already each received USD \$91,844.81 from the sale. The remaining proceeds of sale of USD \$42,482 should be divided equally.

[105] The claimant adds that the respondent should be responsible for equally sharing any income tax refund that he may receive in respect of the payment that he made, as he also paid U.S. income tax in respect of the same disposition. I agree and therefore order accordingly.

6. Vehicles, Bank Account, Credit Card, Trailer

- [106] During the marriage, the parties had a joint chequing account with Simplii Financial, a division of CIBC. The parties agree that in view of the various transactions relating to this account and the evidence overall, there is no need for any specific order for payment to equalize this account.
- [107] The parties also agree that there is no need for an order to equalize the value of their respective vehicles.
- [108] At separation, the parties or the respondent owed \$20,110 in relation to the respondent's vehicle. The respondent paid off this loan after separation, and claims for 50% of the payment, \$10,055.11.
- [109] The respondent claims for 50% of the claimant's CIBC credit card debt that he paid after separation, in June 2022. He claims \$4,811.
- [110] The claimant's submissions do not directly respond to these two claims; however, she resists payment based on the respondent's alleged non-disclosure of property. I have rejected that contention, and therefore the respondent's claims in this respect is allowed.
- [111] The claimant acknowledges liability to pay \$5,000 in relation to disposition of a recreational trailer post-separation.

E. RESPs, RRSPs, CPP, Life Insurance

- [112] The parties agree that they will equalize their respective RRSP accounts by tax free spousal rollovers, subject to deduction for the respondent's post separation contribution in the amount of \$16,244.
- [113] CPP entitlements will also be equalized.
- [114] The respondent's submissions recognize that he has a BMO Term 100 Life Insurance policy with a cash surrender value of \$8,442.54 at separation, and that this is property to be divided equally. However, I do not know what order, if any, the parties seek in this respect. They have liberty to apply if they cannot agree about this.
- [115] There is a Registered Education Savings Plan (RESP) account for the benefit of the three children, which the claimant controls. As of May 27, 2025, the value of the account was \$76,807. The claimant agrees that the fund should be applied equitably to the post-secondary expenses of their children. She would agree to adding the respondent as a joint subscriber to the account. However, the respondent is content with the claimant remaining as the sole subscriber and administrator of the RESP account, provided that his consent is obtained before funds are withdrawn. These orders are made.

- [116] The respondent also proposes orders governing how the RESP funds will be used. In my view, as the claimant submits, there is no need for such orders at this time. If in the future the parties are unable to agree as to the use or disposition of the RESP funds, they have liberty to apply.

F. Household Contents

- [117] The parties agree to divide the household contents by mutual agreement. Both have referred to a process of alternating picks. I see no need for me to specify the process to be used by the parties.

G. Business and Trust Interests of the Parties

- [118] The respondent is employed by XYZ, a successful local financial services firm. He is one of the company's two senior executives. The other senior executive is DS, who is the claimant's brother. DS has worked for XYZ since 1991. The respondent and DS are the sole directors of XYZ.
- [119] The forerunner business of XYZ was founded by the claimant's father, RS, in 1975. The respondent began working for XYZ in January 1999, very soon after the parties' marriage in November 1998. He had no experience in the financial services industry at the time. He had previously worked in his father's construction business.
- [120] In 2003, RS and his spouse LS established a family trust (the "SFT"). RS and LS are the sole trustees of the trust. The SFT owns all of the Class B non voting, participating shares of XYZ. The respondent and DS each own 50% of the Class A voting shares of XYZ. Although the corporate documents are not in evidence, the parties advise me that pursuant to the company's constituting documents, as written, the Class A shareholders control the company's affairs, but the Class B shareholders own the equity in the company. In addition, RS and LS continue to own Class C non-voting preferred shares.
- [121] The initial beneficiaries of the trust were RS, LS, and their two children, DS and the claimant. As of February 2009, the spouses of DS and the claimant were added as beneficiaries of the trust. In the result, the claimant and the respondent are both beneficiaries of the trust.
- [122] RS, LS, DS, and the respondent entered into a shareholders agreement dated January 1, 2018. Among many other things the agreement provides that no transactions out of the ordinary course of business may be undertaken without the consent of the preferred shareholders (that is, RS and LS), and no transfer of shares may take place without the consent of all shareholders.

- [123] In early 2023, the shareholders of XYZ received a proposal to purchase XYZ for an initial purchase price of \$33.6 million. In addition to this price, the proposal included retention payments of \$2 million to each of the respondent and DS after two years, should they remain employed by the company.
- [124] According to the respondent, the buyer withdrew from negotiations when it learned that he and DS did not own and fully control the company. He says that he had been unaware of this previously.
- [125] On December 29, 2023, RS and LS executed a Deed of Appointment which provides that each of the beneficiaries of the trust will receive 20% of the Class B non-voting participating shares in XYZ. However, the shares have not been transferred, as all shareholders have not yet consented to the share transfers.
- [126] If the shares are distributed, then the claimant and the respondent will each own 20% of the Class B participating shares of the company. In the meantime, however, the Class B shares continue to be held by the trustees.
- [127] On November 23, 2023, the respondent commenced legal proceedings against RS, LS, DS, and the company, claiming that documents entered into in 2009 and 2018 did not embody the true intent of the parties thereto. He asserts that the true intention of the parties was for him and DS to receive 100% ownership of the company as equal shareholders. He seeks orders for rectification of the documents. No trial date has been set for this action.
- [128] If the action is successful, then the respondent would own 50% of the participating shares in XYZ. The claimant contends that the shares would be family property, eligible for division. On the other hand, if the lawsuit is not successful, and if the transfers of shares from the SFT to the parties are carried out, then the claimant and the respondent will each own 20% of the participating shares, and no division of this property would be required. In particular, the claimant does not allege that the respondent's shares would be family property.
- [129] The claimant characterizes the respondent's legal claims as highly unlikely to succeed. However, she submits that the respondent's contingent interest in 50% of the equity of XYZ should be treated as a present interest, albeit a chose in action, and equally divided now. She submits that this would prevent the parties from having to return to court if the respondent proves his claim, in order to deal with the fruits of his claim as family property. She further submits that if he succeeds in his action, the manner in which equal division is effected may require further orders, which could be the subject of a future application if necessary.
- [130] A chose in action may constitute property subject to division under the FLA: *Sidhu v. Sidhu*, 2025 BCCA 263 at para. 85.

- [131] However, complicating matters further, by way of a lawyer's letter dated June 10, 2025, (that is, about three weeks before the beginning of this trial) the claimant's parents, RS and LS, allege that the respondent's shareholder loans from the company were made in breach of the shareholder's agreement. They claim that the respondent's breach entitles them to purchase his Class A voting shares, and they gave notice of their intent to exercise this right. The shareholders' agreement says the shares will be acquired at fair market value of the company's assets.
- [132] The letter notes the fact that the respondent has brought legal proceedings against them.
- [133] The respondent says the claims of RS and LS could potentially mean that he would lose his voting, controlling shares, and could be removed as a director, and terminated as an employee.
- [134] But in a further letter dated July 4, 2025, RS and LS say they will temporarily pause their proposed litigation until this family action is concluded, "in hopes that the parties are able to negotiate a global resolution without the need for further litigation."
- [135] The respondent submits that determination of the parties' interests in XYZ or the SFT and division of those interests should be adjourned until the respondent's civil action has been resolved. I infer that the respondent is also proposing that determination of this question also await resolution of the claims of RS and LS under the shareholder's agreement.
- [136] Currently, the parties are both beneficiaries of the SFT. On the limited evidence before me, it does not appear that the beneficiaries of the SFT have received any tangible benefits from the SFT to date.
- [137] However, they may become equal owners of the Class B participating shares.
- [138] In principle I agree with the claimant that it would be preferable to deal with all matters that can properly be dealt with at this time, if possible. Unfortunately, I am not confident that this is possible. It is not simply a matter of declaring that the parties are entitled to share equally in the fruits of the respondent's action, as a chose in action that can be divided. There is also uncertainty with respect to the respondent's Class A shares caused by the recent claims of RS and LS.
- [139] The joint expert valuation report prepared by Kiumars Ghanavizshain values the company as a whole ("en bloc"). There is no evidence of the value of the respondent's Class A shares, which would be property to be divided under ss. 81 and 84 of the FLA. His shares may be acquired and valued in accordance with the provisions of the shareholders agreement. Or the corporate litigation could be resolved through negotiation, as RS and LS suggest in their letter.

- [140] Reluctantly, I conclude that matters having to do with division of the property interests of the parties in XYZ and the SFT must be deferred. However, these matters are not necessarily adjourned to after the conclusion of the corporate litigation. As noted, there is no trial date in the proceedings the respondent has brought, and the claims of RS and LS are not even in court yet. The matter should not languish indefinitely.
- [141] The parties are at liberty to apply with respect to division of their business and trust interests at any time. I am not seized of any further application or trial in relation to division of these interests.

IV. Spousal and Child Support - Background

- [142] The parties agree that no spousal or child support is payable prior to June 1, 2022, because until on or about May 11, 2022, they continued to reside in the FFH and had not yet separated their finances.
- [143] In response to the claimant's application, the parties entered into a without prejudice consent order which provides that the respondent pays the claimant interim child support of \$6,000 per month, and interim spousal support of \$11,500 per month, for a total of \$17,500 per month, commencing May 25, 2023. The consent order also provided that the respondent would continue to be solely responsible for the expenses of the FFH.
- [144] The claimant continued to receive approximately \$6,000 per month in salary from XYZ until June 2023. The respondent paid undifferentiated spousal and child support of approximately \$4,000 to \$4,400 per month to "top up" the claimant's income to a total of \$10,000 per month. The claimant's XYZ salary is included in the retroactive support calculations of both parties.
- [145] At the time of the consent order, the parties shared parenting equally for all three children. However, they agree that the eldest child, M., ceased being a child of the marriage for support purposes after December 31, 2023, and that as of mid-October 2024, equal shared parenting of K. ended. Since then, K. has primarily resided with the respondent. The middle child, J., currently resides with both parents equally. Beginning in September 2025, he will be residing in a college dormitory at a educational institution located in the Lower Mainland, not far from the residences of the parties. As noted, he is currently 18 years of age and will be 19 in January 2026. The parties agree that he remains a child of the marriage presently. They expect that he will likely choose to divide his holiday breaks equally with both parties. He told the claimant that he would like to maintain a bedroom at her residence.

V. Child Support

A. Guideline Incomes of the Parties

[146] Calculation of past and prospective spousal and child support requires determination of the incomes of the parties pursuant to the Federal Child Support Guidelines [FCSG] and the Spousal Support Advisory Guidelines [SSAG].

1. Claimant's Income

[147] As previously noted, at the date of separation (January 13, 2022), the claimant was 47 years of age. She was 24 years of age when the parties married in November, 1998. She is now 51.

[148] The respondent contends that the claimant's income for purposes of the FCSG and the SSAG should be imputed, pursuant to 19(1)(a) and (e) of the FCSG, as follows:

1. 2022: \$90,000
2. 2023: \$45,000
3. 2024: \$50,000
4. 2025 and onwards: \$65,000

[149] The claimant concedes that a "modest" imputation of income would be appropriate, such as \$10,000 for 2025, rising to \$20,000 in 2026.

[150] Section 19(1) of the FCSG provides that the court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which include the following circumstances relied upon by the respondent:

- (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;
- (e) the spouse's property is not reasonably utilized to generate income.

[151] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. The onus is on the party seeking to have income imputed to establish an evidentiary basis for the imputation of income: *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 36-37; *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para. 35.

[152] In *Small v. Small*, 2023 BCCA 349 at paras. 90, 103, the Court endorsed the following statement of principles relating to s. 19(1) as stated by the trial judge (*Small v. Small*, 2020 BCSC 1253):

[193] Imputing income for intentional unemployment or under-employment does not require a finding of bad faith on the part of the spouse in respect of whom the imputation is sought; it only requires a finding that he or she is not earning to capacity: *M.C.V. v. F.V.*, 2018 BCSC 96 at para. 153.

[194] The imputation of income should not be the product of speculation or guess-work; the court must find that the parent is realistically capable of earning the income that is sought to be imputed and whether he or she has taken reasonable steps to obtain employment commensurate with factors such as age, health, education, skill and work history: *Bourque v. Gerlach*, 2006 BCCA 157 at para. 63; *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37 [Marquez]; *Shen v. Tong*, 2013 BCCA 519 at paras. 81-82.

[153] In *Marquez*, Madam Justice D. Smith, on behalf of the court, stated:

[37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 1998 CanLII 5650 (BC CA), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46.

[38] Although the legal foundation for awarding spousal support is different from that of child support (see *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 at para. 208), the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. "Means" has been interpreted to include all capital and other sources of income (*Leskun v. Leskun*, 2006 SCC 25 (CanLII), [2006] 1 S.C.R. 920 at para. 29).

[154] In *Watts v. Willie*, 2004 BCCA 600, after referring to s. 19(1)(a) of the FCSG, the Court said:

16 In *Donovan v. Donovan* (2000), 190 D.L.R. (4th) 696, 2000 MBCA 80, Madam Justice Steel gave the judgment of the court and wrote at para. 21:

The following guidelines may be considered when determining whether to impute income. (See Dr. Julien D. Payne, *Imputing Income, "Determination of Income, Disclosure of Income"*, Child Support in Canada, Canrab Inc., August 3, 1999).

1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor" (*Van Gool v. Van Gool* (1998), 1998 CanLII 5650 (BC CA), 166 D.L.R. (4th) 528 (B.C.C.A.)).
2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.

3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at the lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
4. Persistence in unremunerative employment may entitle the court to impute income.
5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

[155] The circumstances of each situation must be evaluated using all of the criteria articulated in *Donovan v. Donovan*, 2000 MBCA 80 as adopted in *Watts: McCaffrey v. Paleolog*, 2011 BCCA 378 at para. 58.

[156] I discussed the principles of imputation of income under s. 19(1)(a) in *Neely v. Neely*, 2019 BCSC 610, at paras. 111 and 136-138, which the respondent cites, and which I adopt for purposes of these reasons for judgment.

a) Background: Claimant's Income

[157] The claimant graduated from high school in 1992.

[158] She is trained as a teacher of classical piano. She began teaching piano at the age of 14. She obtained formal qualifications as a piano teacher shortly after graduating from high school. Other than her piano teaching accreditation, she has no other formal post-secondary education. She attended Capilano College for two semesters, but did not complete a program of study. When the parties were married in 1998, she was working independently, as a piano teacher. She estimates that she had about 35 students at that time. She testified that it takes time to build a student clientele.

[159] Prior to the marriage, she also worked in a delicatessen for approximately one year. At the time she had an interest in culinary arts, which she did not pursue.

[160] During summers while she was in high school, she worked in a clerical or secretarial capacity (e.g. filing, answering the telephone, typing) in her father's financial services business, XYZ. After the marriage, she continued to work for XYZ part-time until about 2002. At times she worked part-time for XYZ while continuing with her work as a piano teacher.

[161] Her piano teaching clientele grew after the marriage. It peaked at about 45-47 students, within about five years of the marriage and prior to the birth of the parties' first child, M., in August 2004. She continued teaching after that, but with a reduced volume. As she

explained, there is a steady attrition of the number piano students as they age. She stopped piano teaching altogether sometime after a miscarriage in late 2005. After that, she was primarily responsible for looking after the parties' three children. The parties' second child, J., was born in 2007 and their third child, K., was born in 2009. The claimant was no longer teaching piano at separation.

- [162] In 2009, the claimant began developing a small, part-time business as a photographer, doing family photographs and some weddings. She estimates that her best year of income from this business was 2014 or 2015, when she earned approximately \$17,000 to \$20,000. As she put it, the Covid-19 pandemic decimated her photography business. She has struggled to re-build the business following separation. Currently, she is doing some unpaid work as a photographer but hopes to re-establish this business.
- [163] Since separation, she has resumed teaching piano. The piano teaching season is from September to June. Lessons are scheduled around school times, so they are usually scheduled from 3:15 p.m. to 9 or 9:30 p.m. Recently, her lessons have taken place on Wednesday and Thursday afternoons, from 3:30 to 5:30 p.m. She hopes to work three weekday afternoons and evenings per week in the future, possibly augmented with some day-time teaching if possible. Students generally have one 30-minute lesson per week, for which she charges \$30. She currently has five students but hopes to have seven to 10 students in September 2025.
- [164] She has also looked into paid employment as a piano teacher at a private music school. Other than this, she has not sought paid employment of any kind. She has made no job applications.
- [165] In 2021, she began developing an apparel business. The business started with novelty t-shirts. She has expanded the product line, focussing on apparel with amusing hunting, fishing, and outdoor activity themes. The business is a sole proprietorship. She sells online, and via trade shows. She promotes the business using social media.
- [166] Her business endeavours are unprofitable, unfortunately. On her calculations, on a combined basis her self-employment income was negative \$9,225 in 2022, negative \$12,054 in 2023, and negative \$1,976 in 2024. In 2024 she earned revenue of \$2,881 from teaching piano. The apparel business generated revenue of \$13,742, but that business entails substantial expenses, such as the cost of merchandise. Her best apparel sales opportunities are via trade shows. She hopes to increase her participation in trade shows in future.
- [167] She has not photographed a wedding since 2019. She has done five or six unpaid assignments in the past two years. She has no photography work booked for the remainder of 2025.
- [168] In her sworn financial statement filed May 30, 2025, she states that her FCSG income is \$5,000.

- [169] She recognizes that her best avenue to earn income is as a piano teacher, but she plans to continue with her apparel and photography businesses. She says her main focus will be on teaching piano, although she also plans to devote more time to the apparel business and to continue with her photography business. She states that it took more than a decade to build her piano student clientele to its former maximum of 45 to 47 students.
- [170] She was not asked to estimate how many hours per week she has been working since separation, or how many hours per week she expects to work in the future. She was not asked to estimate what she believes she could realistically expect to earn in future.
- [171] Prior to separation, she was paid as an employee of XYZ but did minimal work. Payment of her salary was essentially an income-splitting tax reduction strategy. Her 2022 salary was \$90,000. Her 2022 line 150 income was \$81,253, after deduction of her business losses. Her 2023 line 150 income was \$30,152, not including spousal support payments she received that year in the amount of \$80,500. Her income included her XYZ salary of \$30,000, for four months. Her XYZ salary has not continued. Her 2024 line 150 income was negative \$3,845, not including spousal support.
- b) Analysis: Claimant's Income
- [172] In my view, following separation the claimant has been and presently and continues to be intentionally under-employed or unemployed, within the meaning of s. 19(1)(a) of the FCSG.
- [173] In the latter years during the marriage, due to the respondent's ample income, there was no real need for the claimant to earn income. However, once the parties separated, circumstances changed, and the claimant became obliged to make reasonable efforts to earn an income: Donovan at para. 21. The fact that she has not succeeded is obvious from the fact that she has earned nothing, on a net basis. This is not to say that the claimant has not done any work at all, but rather than seeking paid work, she has persisted in unremunerative business ventures.
- [174] To her credit, she resumed teaching piano after not having taught piano for several years. She might have concentrated her efforts on piano teaching, which is her best avenue to earn an income, as she recognizes, but she has not done so. She testified that she only registered with the relevant professional teaching association in May 2025. She testified that membership in the association would be good for her business.
- [175] The claimant is in good health. There is nothing preventing her from working full-time.
- [176] On the evidence, it is doubtful that she will ever earn much as a photographer. This venture is, at present, best characterized as a hobby. Her apparel business is unprofitable. On the limited evidence available, it does not seem likely to ever become anything more than marginally profitable, if at all.

- [177] The claimant testified that the apparel business requires only about two hours per week, except when she is preparing for a trade show. Preparation for a trade show begins 10 to 12 weeks in advance, but on the limited evidence, it appears that trade shows have been relatively infrequent. She attended three of them in 2023. As noted, the claimant hopes to attend more of them in future.
- [178] On the evidence, it seems unlikely that the claimant's photography and apparel businesses will ever justify her time and the investment of capital.
- [179] The claimant has no specialized occupational skills, other than as a piano teacher. However, there is no evidence as to what the claimant could realistically earn as a piano teacher, or what piano teachers earn, generally. Her present earnings as a piano teacher are minimal. They are unlikely to increase dramatically in the foreseeable future.
- [180] However, the claimant is healthy, intelligent, and articulate. I infer that she has good organizational and administrative skills. She has operated her own businesses, which, while not profitable, have enjoyed some success. She was responsible for managing the family finances. Prior to separation, the parties often hosted large gatherings at their residence which would have required some significant organizational effort and skills on the part of the claimant. The evidence regarding the parties' active social life pre-separation leads me to infer that she has good people skills. Her marketable skills at present are limited, but I have no trouble finding that she is highly employable, in a general sense.
- [181] Even at the age of 51, with time and consistent effort, the claimant could still potentially develop a career earning an income in line with the respondent's submission. However, on the evidence, I am not convinced that she can currently earn \$65,000, as the respondent submits. The basis of the respondent's suggestion of \$65,000 is unclear to me. It is not more than speculation.
- [182] A parent with limited work experience and job skills may have to take uninteresting work that is at the lower end of the wage scale: Donovan at para. 21.
- [183] In the absence of better evidence, courts are often driven to rely on statutory minimum wage levels for guidance. Judicial notice may be taken of the availability of work in the service sector paying at or slightly above statutory minimum wages: J.R.G. v J.C.K., 2021 BCSC 616 at para. 109; A.N.K. v. E.K., 2024 BCSC 1391 at para. 469. I do so here, as an indication of the minimum amount that the claimant should be able to earn.
- [184] The parties agree that the current B.C. statutory minimum wage is \$17.85 per hour, as of June 1, 2025. In 2022 the rate was \$15.65. The amount has increased each year. As of June 1, 2024, the rate was \$17.40 per hour. Based upon the current rate, the claimant could earn \$30,845 in one year, based upon working 36 hours per week, over 48 weeks. I adopt this amount as the amount of the claimant's imputed FCSG income for 2025, and prospectively.

[185] The parties agree that the claimant's guideline income for 2022 was her actual income of \$81,615. For 2023, her guideline income is \$30,153, which was her actual income, and is not much different than what she might have earned at minimum wages. For 2024, her income is imputed at \$30,672, based upon the minimum wage in effect in 2024. As I said, for 2025, and prospectively, her guideline income is imputed at \$30,845. Naturally, this amount is subject to variation pursuant to s. 17 of the Divorce Act, R.S.C. 1985, Chapter 3 (2nd Supp.) [DA], and review.

2. Respondent's Income

[186] The respondent is 50 years of age. He is a high school graduate. He has no formal post-secondary education, other than the studies required to write the exams to fulfill financial services licensing requirements.

[187] As noted, after high school, he worked in his father's construction business. After the parties were married in late 1998, he began working in financial services for XYZ early in 1999.

[188] Since 2009, and in particular since 2018, the respondent and the claimant's brother have together been chiefly responsible for managing the business affairs of XYZ. As of 2018, the claimant's father, RS, retired, leaving the respondent and DS in control of the business operations of XYZ. As noted, as of 2018, the respondent and DS each own 50% of the voting Class A common shares of the company and are the company's directors. In his testimony, the respondent described himself and DS as "partners" and this same term is indicated as their titles in the business valuation report relating to XYZ.

[189] DS has medical issues which have severely limited his work capacity. His medical disability became particularly acute in mid 2022, a few months after the parties separated. As a result, the respondent has taken on most of the functions formerly carried out by DS. In practical terms, the respondent is the company's chief executive.

[190] Prior to separation, and since 2018, the respondent was paid almost entirely by way of receipt of dividends. Since 2018, the respondent and DS have jointly decided the amounts of their compensation. Currently, the respondent is paid a salary, of \$80,000 per month.

[191] The submissions made by the parties as to the respondent's income for FCSG purposes from 2022 to the present are quite similar. For example, the claimant contends that the respondent's current income from employment is \$960,000. The respondent says it is \$947,092.

[192] However, the claimant argues that the respondent's income must be grossed up to account for the value of non-taxable benefits the respondent receives for: (1) interest-free shareholder's loans from the company; and (2) restaurant meals.

[193] I infer that the claimant relies on s. 18 of the FCSG. Section 18 is intended to ensure that a payor's income fairly reflects the money available to the payor for the payment of child support: *de la Fuente v. Breen*, 2022 BCCA 424 at para. 26; *Kowalewich v. Kowalewich*, 2001 BCCA 450 at para. 43.

a) Shareholder's Loans Issue

[194] During several of the calendar years since 2019, the respondent has received substantial loans from the company characterized as shareholder's loans. Each year the loans have been repaid before the end of the calendar year, in order to avoid the respondent being taxed on the loans. The amount of the outstanding loan has generally increased, especially since early 2024. The loan amount as of the end of 2024 was \$721,497. The respondent has borrowed a total of \$1,100,000 from the company so far in 2025. The respondent insists that he will repay the loan by the end of the year, as usual.

[195] The claimant contends that the loans provide a non-taxable benefit to the respondent, and so his income should be grossed up to reflect the value of the benefit. The claimant suggests that the gross-up should be calculated by reference to the CRA's prescribed rate applicable to loans to shareholders. For 2024, the amount of prescribed interest would be \$32,060, as the claimant calculates it. In 2025, if the loan remains unpaid to the end of the year, the claimant says the amount of prescribed interest would be \$35,427.

[196] The evidence about the respondent's income, the shareholder's loans, and the company's finances in general is not well-developed. The specific purpose of the loans is largely unexplained. Approximately \$40,000 was borrowed to pay for the respondent's legal action. The respondent was unable to fully explain the purpose of his current loans. My impression is that the loans are perhaps caused by a combination of very high spending and poor budgeting, but I have no direct evidence about this. The claimant's assertion that the interest the respondent saves by borrowing from the company should be available to pay support was not put to the respondent. Additionally, Kiumars Ghanavizshain, who prepared a joint expert report relating to the respondent's FCSG income, was not asked to opine on this.

[197] In the circumstances, I am not persuaded that the respondent's income for FCSG purposes should be increased as suggested by the claimant. I am not satisfied that the notional savings of interest the claimant points to reflects money that the respondent could be using to pay support.

b) Meals Benefit

[198] I accept that the respondent obtains a small benefit in that the company often pays for his restaurant meals when he is entertaining clients or meeting with staff or clients over a meal. The claimant suggests that the respondent has the benefit of four paid meals per week which should be valued at \$20 each, in relation to the amount the respondent saves. The claimant contends that this benefit should be valued at \$4,000 per annum. I consider

that \$2,500 per annum better represents the actual savings to the respondent, since I infer that if he is not eating in a restaurant for work purposes, which he is very frequently obliged to do, he would likely choose to eat meals at home.

- [199] The respondent concedes that he receives benefits estimated at \$5,000 per year that are not included in his taxable income.
- [200] There are some other minor differences in the respondent's income used by the parties in their calculations which were not specifically addressed in their submissions. If they are unable to resolve these issues, they have liberty to apply.

3. Summary: Incomes of the Parties

- [201] The incomes of the parties are determined in accordance with these reasons.

B. Retroactive and Prospective Child Support

- [202] The respondent submits that no retroactive child support should be payable.
- [203] He also submits that table support is inappropriate in respect of his income in excess of \$150,000, relying on s. 4(b) of the FCSG.
- [204] The parties agree as to the child or children for whom support is payable, and their respective primary parenting time for purposes of the FCSG. Parenting of all three children was equal after separation until December 31, 2023, when M. ceased to be a child of the marriage. Shared parenting of J. and K. continued until mid-October 2024, when K. stopped residing with the claimant and began residing with the respondent full-time. For calculation purposes, K.'s support is shared until October 31, 2024.
- [205] J. continues to split his time with both parents equally but will be in residence at college full-time beginning in September 2025. He remains a child of the marriage for support purposes, however.
- [206] Neither party submits that ss. 9(b) or (c) of the FCSG should be applied.
- [207] Since the parties agree as to the basic parameters of child support, the retroactive child support calculations the parties have presented for illustrative purposes are generally similar. The difference is mostly in the incomes of the parties for child support purposes. The respondent's calculations indicate that \$97,387 is the amount of table retroactive child support, to and including July 2025. However, this calculation overstates the amount he paid from June 2022 through April 2023 by including the amount the claimant was receiving by way of XYZ salary. The claimant applies the respondent's "top up" payments of approximately \$4,000 to \$4,400 per month to child support. Her calculations indicate that retroactive child support of \$162,417.94 is owing, to and including September 2025. Counsel for the parties recognize that some adjustments in the calculations will be required, depending on the court's decision.

[208] The core principles governing retroactive child support are set out in *D.B.S. v. S.R.G.*, 2006 SCC 37. The principles were restated in *Michel v. Graydon*, 2020 SCC 24, at para. 10. They may be summarized as follows:

- 1) child support is the right of the child;
- 2) the right to support survives the breakdown of a child's parents' marriage;
- 3) child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together;
- 4) the specific amounts of child support owed will vary based on the income of the payor parent;
- 5) retroactive awards are not truly retroactive but rather hold the payor to the legal obligation they always had: to pay support commensurate with their income;
- 6) retroactive awards are not confined to "exceptional circumstances" or "rare cases"; and
- 7) a payor parent's interest in certainty must be balanced with the need for fairness and flexibility.

[209] The Court exercises discretion in making a retroactive child support order, but such awards should not be seen as exceptional: *D.B.S.* at para. 97. The applicable factors include: (1) the circumstances surrounding the delay in applying; (2) the payor parent's conduct; (3) the child's circumstances; and (4) any hardship caused by a retroactive award: *D.B.S.* at paras. 99-106. However, no single factor is decisive, and courts should strive for a holistic view of the matter and decide each case on the basis of its particular factual matrix: *D.B.S.* at para. 99.

[210] In the context of this issue and this case, there is no prior agreement of the parties or prior court order to consider. The payments made by the respondent prior to implementation of the consent order simply represent a practical arrangement entered into by the parties to cover the claimant's basic financial needs. The consent order was expressly interim, and without prejudice. In sum, this is not a variation application.

[211] The respondent relies only on the third factor: the circumstances of the children. He contends that the children's needs have been met since separation with the child support he has paid. He argues that, in her testimony at trial, the claimant did not identify any specific needs of the children that could have been met if she had received more child support.

[212] The respondent's submission in this respect ignores the principle that child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together. The claimant is not required to articulate specific needs or desires of the children that were unmet. Child support is no longer limited to the amount required to cover the basic needs of the child. Especially before the consent order was implemented, the claimant only received enough support to cover her basic expenses. On

any calculation made with reference to the FCSG, the respondent consistently and substantially underpaid child support. If the respondent had paid child support aligning with the FCSG, the claimant would have been able to provide them with a standard of living while in her care that better approximated the standard they enjoyed before separation, and which was available to them when they were in the respondent's care.

[213] There is no material hardship in making an order for retroactive support in this case. The parties agree that the FFH must be sold, and that any retroactive support obligations of the respondent should be paid from the net sales proceeds.

[214] I conclude that the respondent is liable to pay retroactive child support.

[215] The respondent's income exceeds \$150,000, thus s. 4 of the FCSG is engaged.

[216] The principles governing the application of s. 4 of the FCSG were reviewed in *Hathaway v. Hathaway*, 2014 BCCA 310:

[28] The leading authority on the principles governing a judge's discretion under s. 4 of the FCSG is *Francis v. Baker*, 1999 CanLII 659 (SCC), [1999] 3 S.C.R. 250. Madam Justice Newbury provided a concise summary of these principles in *Metzner v. Metzner*, 2000 BCCA 474 at para. 30:

- 1) It was Parliament's intention that there be a presumption in favour of the Table amounts in all cases (para.42);
- 2) The Guidelines figures can only be increased or reduced under s. 4 if the party seeking such a deviation has rebutted the presumption that the applicable Table amount is appropriate (para.42);
- 3) There must be clear and compelling evidence for departing from the Guidelines figures (para.43);
- 4) Parliament expressly listed in s. 4(b)(ii) the factors relevant to determining both appropriateness and inappropriateness of the Table amounts or any deviation therefrom (para.44);
- 5) Courts should determine Table amounts to be inappropriate and so create more suitable awards only after examining all circumstances including the factors expressly set out in s. 4(b)(ii) (para.44);
- 6) Section 4(b)(ii) emphasizes the "centrality" of the actual situation of the children. The actual circumstances of the children are at least as important as any single element of the legislative purpose underlying the section (para.39). A proper construction of s. 4 requires that the objectives of predictability, consistency and efficiency on the one hand, be balanced with those of fairness, flexibility and recognition of the actual "condition, means, needs and other circumstances of the children" on the other. (para.40)

- 7) While child support payments unquestionably result in some kind of wealth transfer to the children which results in an indirect benefit to the non-paying parent, the objectives of child support payments must be kept in mind. The Guidelines have not displaced the Divorce Act which has as its objective the maintenance of children rather than household equalization or spousal support (para.41).
- 8) The court must have all necessary information before it in order to determine inappropriateness under s. 4. If the evidence provided is a child expense budget, then "the unique economic situation of high income earners" must be considered.
- 9) The test for reasonableness of expenses will be a demonstration by the paying parent that the budgeted expense is so high "as to exceed the generous ambit within which reasonable disagreement is possible": *Bellenden v. Satterthwaite*, [1948] 1 All E.R. 343 at 345.
- [29] I would add to this list the comment from *Hollenbach v. Hollenbach*, 2000 BCCA 620 at para. 45, in which this Court interpreted *Francis* as creating a "formidable onus" for wealthy payors seeking to establish that the FCSG amount is inappropriate.
- [217] The respondent has not met the "formidable onus" on a wealthy parent to rebut the presumption that the table amount of support is appropriate.
- [218] He argues that since January 2024, no child support has been payable for M., but the amount he has paid for child support pursuant to the consent order (a total of \$6,000 per month, for all three children) has not been reduced. However, a shortfall remained, in total, even after January 1, 2024. The respondent's child support payment only approximated the guideline payment after K.'s equal parenting time ended in October 2024.
- [219] The respondent argues that the amount of support for J. has exceeded his needs, based upon the respondent's assessment of the claimant's expenses as set out in her form F8 financial statement. However, the claimant has been required to budget her expenses to meet her income, which has been constrained. Therefore, her actual expenses have little or no bearing on this issue. The respondent's submission once again ignores the principle that the amount of child support is not limited to the amount required to satisfy the child's basic needs.
- [220] In summary, the respondent is liable to pay retroactive child support, which is to be calculated in accordance with these reasons. The amount of support payable must reflect the fact that M. was no longer dependant after December 31, 2023, and that shared parenting of K. ended in October 2024.
- [221] The parties agree that no table child support is payable for J. as of September 2025, when he will begin residing on campus.
- [222] Child support is of course subject to variation if there is a material change in circumstances.

C. Special and Extraordinary Expenses - FCSG S. 7

- [223] The children attend or attended a private religious school. The respondent has been solely paying the tuition. The parties agree that the tuition is an extraordinary expense under s. 7(1)(d) of the FCSG, to be shared in proportion to their respective incomes, pursuant to s. 7(2), after taking into account all applicable tax benefits that the respondent has received.
- [224] The parties made no particular submissions as to any order relating to payment of s. 7 expenses. They may consent to such an order, or failing that, they have liberty to apply.

VI. Spousal Support

A. Entitlement, and Issues

- [225] The claimant asserts entitlement to spousal support, on compensatory and needs bases. The respondent concedes the claimant's entitlement to spousal support but submits that no retroactive spousal support is payable. He contends that based upon the interim spousal support payments he made, and the fact that he paid all expenses relating to the FFH, the claimant's needs were met. In the alternative, he submits that retroactive spousal support be off-set by the expenses he paid relating to the FFH.
- [226] The authorities direct that the court should first make the appropriate division of assets before considering the issue of support, because a person's asset base is relevant to support: *Foster v. Foster*, 2007 BCCA 83 at para. 50. However, that is not completely possible in this case. The parties, both represented by experienced family law counsel, have chosen to bring this case to trial despite the uncertainty with respect to XYZ. I accept that, insofar as possible, decisions regarding spousal support are required at this time in order to assist the parties. As I will explain, these circumstances are one of the reasons why a future review of spousal support is necessary in this case.
- [227] The parties raise various issues as to the incomes of the parties for child and spousal support purposes, and determination of the spousal support amounts, both past (retroactive) and prospective.
- [228] Spousal support orders are dealt with in section 15.2(1) of the DA. The relevant subsections are as follows:

Factors

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and

- (c) any order, agreement or arrangement relating to support of either spouse.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) 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;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[229] In *McGrail v. McGrail*, 2016 BCSC 104, I stated:

[96] All of the factors referred to in s. 15.2(4) and all four of the objectives under s. 15.2(6) must be taken into account. No single objective is paramount. The four objectives set out in s. 15.2(6) can be viewed as an attempt to achieve an equitable sharing of the economic consequences of marriage or marriage breakdown: *Moge v. Moge*, 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813 [*Moge*].

[97] Section 161 of the FLA is substantially the same as s. 15.2(6) of the Divorce Act.

[98] The relevant principles regarding spousal support were reviewed and summarized by Madam Justice Rowles, for the Court, in *Chutter v. Chutter*, 2008 BCCA 507 at paras. 45 to 61. Madam Justice Rowles at para. 47 states that the Supreme Court of Canada has identified three grounds for entitlement to spousal support: (1) compensatory support, which primarily relates to the first two objectives of the Divorce Act; (2) non-compensatory support, which primarily relates to the third and fourth objectives; and (3) contractual support, citing *Bracklow v. Bracklow*, 1999 CanLII 715 (SCC), [1999] 1 S.C.R. 420 at paras. 15, 41-42.

[99] With respect to orders for retroactive spousal support, in *D.B.S. v. S.R.G.*, 2006 SCC 37 (CanLII), [2006] 2 S.C.R. 231 [*D.B.S.*] the Supreme Court of Canada states that in determining whether to make a retroactive award of child support, the court should strive for a holistic view of the matter and decide each case on the basis of its particular factual matrix: page 275-276.

[100] In *Kerr v. Baranow*, 2011 SCC 10 (CanLII), [2011] 1 S.C.R. 269 [*Kerr*] the Supreme Court stated that while *D.B.S.* was concerned with child as opposed to spousal support, similar considerations are also relevant to deciding the suitability of a "retroactive" award of

spousal support. Specifically, these factors are the needs of the recipient, the conduct of the payor, the reason for the delay in seeking support and any hardship the retroactive award may occasion on the payor spouse. However, in spousal support cases, these factors must be considered and weighed in light of the different legal principles and objectives that underpin spousal as compared with child support; Kerr, para. 207. Nonetheless, the same flexibility and regard for a holistic view of the matter on its merits is appropriate in the case of retroactive spousal support: Kerr, para. 212.

- [230] As noted in *Chutter v. Chutter*, 2008 BCCA 507 at para. 46, citing *Moge v. Moge*, [1992] 3 S.C.R. 813 at 850-853, 43 R.F.L. (3d) 345, courts must examine all four of the objectives set out in s. 15.2(6), and having regard to those policy objectives, courts must consider the condition, means, needs and other circumstances of each spouse, with regard to the factors set out in section s. 15.2(4).
- [231] There is no claim for contractual support in this case.
- [232] As noted in the SSAG, chapter 8.1, where there are dependent children, the primary rationale for spousal support is compensatory. In a marriage with children, where one spouse has become a full-time homemaker or has worked outside the home part time or has worked as a secondary earner, there will be disadvantage and loss at the end of the marriage, usually warranting compensatory support.
- [233] This compensatory rationale is encompassed by the first and second of the four objectives of spousal support, in s. 15.2(6) of the DA: *Chutter* at paras. 45-61, quoted above.
- [234] In *S.R.M. v. N.G.T.M.*, 2014 BCSC 442, Justice Butler stated:
- [141] Compensatory support is meant to compensate the recipient spouse for sacrifices made throughout the marriage that impacted his or her ability to attain financial security. This factor is especially relevant in situations where the recipient spouse has either reduced their working hours or completely left the workforce to care for the children of the marriage and in doing so has jeopardized his or her income security and economic well-being. It is relevant to consider under this ground of entitlement the standard of living enjoyed by the parties throughout the marriage and the economic impact of the marriage breakdown on the parties; however, this factor should be weighed in light of the length of the marriage, as longer marriages often include a higher level of interdependence between spouses: *W. v. W.*, 2005 BCSC 1010 at para. 11; and *Bell v. Bell*, 2011 BCSC 212 at para. 20.
- [142] This ground of entitlement to spousal support also recognizes that the payor spouse received a benefit from the recipient spouse by being able to participate in the workforce because of the support provided by the recipient spouse. In *Chutter v. Chutter*, 2008 BCCA 507 at para. 51, the court quoted the Supreme Court of Canada in *Moge* to this effect:

the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse"

B. Retroactive Spousal Support

1. Entitlement to Retroactive Spousal Support

- [235] The D.B.S. considerations applicable in the context of child support which I previously referred to are also relevant to deciding the suitability of a retroactive award of spousal support: *Kerr v. Baranow*, 2011 SCC 10 at para. 207; *Reis v. Bucholtz*, 2010 BCCA 115 at paras. 66. However, as Justice Cromwell explained in *Kerr*, these factors must be considered and weighed in light of the different legal principles and objectives that underpin spousal as compared with child support: *Kerr* at paras. 207-209. As Cromwell J. noted, there is no presumptive entitlement to spousal support, and unlike child support, the spouse is in general not under any legal obligation to look out for the separated spouse's legal interests. Thus, concerns about notice, delay, and misconduct generally carry more weight in relation to claims for spousal support.
- [236] In this case, there is no concern about notice or delay. The claimant's Notice of Family Claim was promptly filed on July 8, 2022, and included a claim for spousal support. The respondent quite properly concedes entitlement to spousal support. It was clear from the beginning that the claimant had a strong claim to spousal support. The claimant's application for spousal support was filed April 27, 2023.
- [237] The respondent's payment of support prior to the claimant's application was ungenerous. The "top-up" payments the respondent paid after separation from June 2022 through April 2023 in the amount of \$4,000 to \$4,400 per month were less than the amount of child support that was payable for those months, which he calculates at \$8,800 per month. That calculation takes into account the claimant's salary that she continued to receive from XYZ during that time. Given the priority of child support, the respondent's top up payments should be attributed to child support for this analysis: see DA, s. 15.3(1). In short, the respondent paid no spousal support until the claimant brought an application seeking support, which resulted in the consent order.
- [238] On the evidence overall, I infer that the respondent's greater disposable income and resources have allowed him to maintain a standard of living for himself and for the children when in his care that materially exceeds the standard of living that the claimant has enjoyed.

[239] The respondent's contention that no retroactive spousal support should be paid because he was solely responsible for the expense of the FFH is not consistent with his claim that the claimant should retroactively pay for those expenses. In accordance with these reasons, the claimant is contributing to the expenses of the FFH. Her payment will be deducted from her share of the sale proceeds of the FFH.

[240] There is no hardship to the respondent in ordering payment of retroactive spousal support as the money will be paid from the proceeds of sale of the FFH, the sale of which will be necessary (subject to the respondent being able to buy it).

[241] I conclude that payment of retroactive spousal support is appropriate in the circumstances of this case.

2. Respondent's Income Over \$350,000

[242] The respondent's income exceeds \$350,000, which is the "ceiling" for spousal support under the SSAG. However, the term "ceiling" can be misleading, as there is no absolute ceiling.

[243] Chapter 11 of the SSAG states:

Above the ceiling and below the floor, the formulas do not operate, leaving these very high and very low income cases to be dealt with like "exceptions", which we discuss next in this Chapter. But these situations are not really "exceptions", as they lie outside the typical income levels for which the formulas were constructed.

After the payor's gross income reaches the ceiling of \$350,000, the formulas should no longer be automatically applied to divide income beyond that threshold. But the \$350,000 is not a "cap" either, as spousal support can and often will increase for income above that ceiling, on a case-by-case basis.

To repeat, the ceiling is not a "cap" on spousal support, nor does it bar the continued use of the formulas as one method of arriving at an amount in a particular case

[244] The "with child support" formula applies in this case until September 2025. After that, the "custodial payor" formula applies. At that time, J. will be in post-secondary student residence, with no child support being paid or received, and the respondent will be paying spousal support while K. continues to reside with him.

[245] In their DivorceMate calculations, the parties have appropriately used the "with child support" formulas for spousal support under the SSAG for the time prior to trial. Both recognize that post-trial, as of September 2025, the "custodial payor" formula is appropriate.

[246] The SSAG authors comment as follows about most custodial payor cases, and including this one:

Most of these cases will involve older children and longer marriages, where the husband is the higher-income payor and the parent with primary care. In many of these cases, the non-custodial wife may have a sizeable compensatory claim from her past role in child-rearing, which will be reflected in the range for spousal support, and the location of any amount within that range. In these cases involving older children and longer marriages, the children will cease to be children of the marriage within a few years and the wife will cross-over into the without child support formula, as is explained below in Chapter 14 on variation and review.

[247] With respect to incomes over \$350,000, the authors suggest two possible approaches in "with child support" cases: SSAG at ch. 11.3. The first approach is called "minimum plus". It starts with the formula amounts at the ceiling of \$350,000, then adjusts for child support. The other approach is referred to as "pure discretion", in which there is no "minimum" spousal support. The authors add:

What is clear is that the larger stakes at these income levels and the complexities of the individual cases mean that the Advisory Guidelines will have less significance to the outcomes above the ceiling, whether negotiated or litigated.

[248] In instances where the payor's income is substantially more than \$350,000, a pure discretion approach is generally used: *S.R.M. v. N.G.T.M.*, 2014 BCSC 442 at para. 148.

[249] The suggested approaches attempts to account for child support payments being paid and received. The commentary is therefore not specifically applicable to the custodial payor context.

[250] The SSAG were published in July 2008. In April 2016, the authors of the SSAG published the Revised User's Guide to the SSAG (the "RUG"). In the RUG, the authors cite the decision of the Court of Appeal in *Hathaway v. Hathaway*, 2014 BCCA 310 and provide the following helpful summary of principles derived from the case law:

There are some clear principles enunciated in the case law, even if the actual outcomes are discretionary and sometimes conflicting. In [*Hathaway*], there is a careful review of the law for cases above the ceiling, where some of these principles are stated.

- The formulas for amount are no longer presumptive once the payor's income exceeds the "ceiling".
- The ceiling is not an absolute or hard "cap", as spousal support can and usually does increase for payor incomes above \$350,000.
- The formulas are not to be applied automatically above the ceiling, although the formulas may provide an appropriate method of determining spousal support in an individual case, depending on the facts.

- Above the ceiling, spousal support cases require an individualized, fact-specific analysis. It is not an error, however, to fix an amount in the SSAG range, as was done in [Hathaway] above. Evidence and argument are required.
- Where the payor's income is not too far above the ceiling, the formula ranges will often be used to determine the amount of spousal support, with outcomes falling in the low-to mid range for amount. How far is "not too far above" is still not clear. Somewhere between \$500,000 and \$700,000, it seems.
- Once the payor's income is "far" above the ceiling, then the amount of support ordered will usually be below the low end of the SSAG range, but SSAG ranges are still calculated and sometimes the outcome will fall within the SSAG range.

In light of these principles, it is critical that counsel do SSAG calculations even in high income cases. It is wise to calculate the ranges for alternative income levels: for the \$350,000 ceiling (as a minimum) and for the full income (as a maximum), as well as for a range of intermediate incomes (to assist the court in triangulating an outcome).

[Emphasis added.]

[251] The foregoing passage from the RUG (not including the final paragraph) was cited with apparent approval by the Court of Appeal in *Sea v. He*, 2024 BCCA 161 at paras. 143-147.

[252] I observe that, according to the Bank of Canada's CPI inflation calculator (available online), the sum of \$350,000 in 2008 (when the SSAG was published) is equivalent to \$498,613 in 2025. The "not too far" above the range of \$500-\$700,000 referred to in the RUG is equivalent to \$636,715 to \$891,402 in 2025.

[253] The respondent's 2022 and 2023 income is "not too far" above the top end of this range, if it is adjusted for inflation.

[254] As I previously mentioned, the submissions of the parties as to the respondent's income for FCSG purposes from 2022 to the present are quite similar. The actual amounts calculated in accordance with these reasons remains to be determined. For illustrative purposes, however, the respondent's submission regarding his FCSG income is as follows:

2022: \$640,710

2023: \$782,438

2024: \$957,844

3. Quantum of Retroactive Spousal Support

[255] The parties have not provided me with spousal support assessments based upon "an individualized, fact-specific analysis". Their submissions differ only as the appropriate range under the SSAG. Both parties submit that low range spousal support is appropriate for 2022 and 2023. The claimant submits that mid range support should be ordered for 2024

and for 2025, prior to September, and that high range support should be ordered beginning at that time, and prospectively. The respondent submits that if spousal support is ordered, the low end of the range should be ordered throughout.

[256] The claimant has a strong compensatory spousal support claim. During the marriage, her career was subordinated to that of the respondent. He has been extremely successful, although his success is tied to the success of XYZ and his position with it. The respondent's career has benefitted greatly from the marriage.

[257] The parties married at relatively young ages, and had a long marriage, with children. As in most cases of this kind, what the claimant might have done career-wise but for the marriage and her childcare responsibilities is unknowable. She might have continued to work primarily as a piano teacher, in which case her earnings would have continued to be modest. Or she could have taken up some other career entirely. She leaves the marriage with limited marketable skills.

[258] The claimant also has a strong needs-based claim. She is not capable of earning anything close to the amount needed to enable her to approximate the marital standard of living.

[259] As observed by Butler J. in S.R.M.:

[144] Non-compensatory support is awarded in an attempt to "narrow the gap between the needs and means of the spouses upon marital breakdown" (Chutter at para. 54). "Needs" as understood in this context refers to more than the basic necessities of life. The assessment of the recipient spouse's need should be informed by the standard of living enjoyed by the parties prior to separation (Chutter at para. 55). This factor has been given more weight where the parties have had a longer marriage: *Tedham v. Tedham*, 2005 BCCA 502 at para. 55. In considering non-compensatory support awards, the court should also focus on the ability of the recipient spouse to become self-sufficient. Self-sufficiency was explained by the Ontario Court of Appeal in *Fisher v. Fisher*, 2008 ONCA 11 at para. 53:

53 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.

[Emphasis added.]

[260] I accept that the SSAG low amounts are appropriate for retroactive spousal support for 2022 and 2023, as the parties both submit.

[261] For 2024 and following, a discretionary approach is appropriate, but the SSAG formula may still provided helpful guidance.

- [262] On the respondent's calculations, the SSAG low amount for 2024 is \$13,852 per month, until October 2024 when equal parenting of K. ended. This amount results in equal sharing of NDI. Thereafter, the low SSAG amount is \$18,356 per month, with equal sharing of J., which continues until the end of August 2025. This amount gives the claimant 45.7% of NDI.
- [263] "NDI" in these calculations refers to family net disposable income, as explained in chapter 8.2 of the SSAG. The with child support formula is based upon "Individual Net Disposable Income" ("INDI"), which takes into account child support factors, taxes, deductions, and benefits: SSAG at ch. 3.3.4, and Executive Summary. For 2024, the SSAG low provides the respondent with 33.8% of INDI. The concept of INDI no longer applies in the custodial payor scenario.
- [264] However, as the SSAG authors note, sharing of income does not mean equal sharing: at ch. 3.1.
- [265] The respondent has been carrying the large expenses of the parties' joint mortgage payments and the expenses of the FFH. His June 2, 2025 F8 financial statement indicates that the monthly housing expenses are \$20,330. I have ruled that the respondent is responsible for the majority of these expenses. He has also paid all of the substantial s. 7 expenses of the children for education, pursuant to the interim consent order.
- [266] The respondent's F8 indicates that he is able to (just) cover his monthly expenses, including high income taxes, very high housing costs, and payment of interim combined support of \$17,500 per month. Similarly, the claimant's F8 indicates that she is able to cover her monthly expenses with the amount of combined support she has been receiving, of \$17,500. Her monthly expense is \$16,629. Of course, she has had to tailor her expenses to her income.
- [267] I conclude that in relation to retroactive spousal support, the SSAG low amount is appropriate for 2024, and extending through to August 2025.
- [268] The actual amount of the payment will need to be calculated by the parties, with reference to my conclusions in these reasons.

C. Prospective Spousal Support

- [269] The parties will be selling their major asset, the FFH. Their SFT and XYZ property interests remain to be divided, and the respondent's relationship with XYZ may change. As I will explain, a future spousal support review is appropriate.
- [270] As noted, the \$350,000 ceiling under the SSAG is equivalent to approximately \$500,000 in 2025 dollars. The respondent's income is well above the ceiling. The minimum plus approach is technically inapplicable in the custodial payor situation, but may still be of use conceptually, in my view.

- [271] At \$500,000, using the custodial payor formula, the SSAG range is approximately \$9,749 to \$12,999 per month. At \$963,219, which includes \$7,500 of undeclared employment benefits, s. 7 educational expenses of \$21,443, and income imputed to the claimant of \$30,845, the range is \$19,963 to \$26,617. The mid point is \$23,290. At the mid point, NDI is shared 66/34%.
- [272] As the RUG points out, in a number of cases, including cases from B.C., the courts have fixed spousal support within SSAG ranges in high income cases: at page 58.
- [273] The RUG reiterates that mid-range support is not the default: RUG at page 24, referencing SSAG ch. 9.
- [274] The claimant contends that if XYZ is sold or she is otherwise given access to her capital interest in the value of XYZ, spousal support should be high. She contends that in current circumstances, through his control of XYZ, the respondent is able to prevent the claimant from getting any benefit from her beneficial interest in the SFT or her interests in the XYZ Class A or B shares.
- [275] The respondent contends that the SSAG low figure should continue to apply, in the circumstances of this case. He also contends that high range support would be counter to the DA objective of promoting economic self-sufficiency and would eliminate the claimant's incentive in that regard.
- [276] There is merit in both of these submissions.
- [277] In general, according to the SSAG, relevant factors in considering the amount within the suggested range may include, non-exhaustively: the strength of any compensatory claim, the recipient's needs, the needs of the children (in the with child support scenario), the needs and ability to pay of the payor, work incentives for the payor, property division and debts, and self sufficiency incentives: SSAG at ch. 9.
- [278] The claimant has a strong compensatory claim, and substantial needs, as that term should properly be understood in the context of a family with a very high standard of living. Her work incentive is accounted for only in part by imputation of a very modest income, but remains a consideration. It is in the interests of both parties that the respondent is incentivized to continue to work hard in a demanding occupation and to earn a high income. The influence of property division remains substantially unclear.
- [279] An important consideration is fairness, in relation to the share of the available income. Consideration of sharing of NDI is not inappropriate: *Roeske v. Roeske*, 2023 BCCA 358 at para. 84.
- [280] In this case, the SSAG middle amount is for spousal support of \$23,290. The respondent continues to carry the bulk of the expenses of the FFH. The SSAG amounts recognize that he is supporting K. The calculations are also affected by the large s. 7 expenses applicable for K.'s private school and J.'s post-secondary education costs, which the respondent is

largely paying due to his large share of the income. In all the circumstance of this case, despite the fact that the respondent's income is well over \$350,000, even when adjusted for inflation, that amount is fair and reasonable. This will be the amount of monthly spousal support payable beginning September 1, 2025.

- [281] The duration of spousal support is indefinite, that is, unspecified, and subject to variation under s. 17 and review, in accordance with the following portion of these reasons.

D. Review of Spousal Support

- [282] The parties agree that a review of spousal support would be appropriate but differ as to the circumstances that would trigger a review. The claimant suggests that a review of spousal support quantum only (not entitlement or duration) could be ordered if there are changes to ownership and control of XYZ that affect the parties financially, including changes to the respondent's remuneration, or the receipt by the claimant of capital reflecting her interest in XYZ. The respondent submits that there is genuine and material uncertainty at this time and seeks an order for review of spousal support entitlement, quantum and duration, in the event that he ceases being a director of XYZ, or operating or being employed by XYZ, or any changes in his ownership of shares in XYZ.
- [283] I agree with both parties that a review of spousal support is appropriate upon the occurrence of any of the circumstances they have suggested. In addition, a review of spousal support will be appropriate once division of the parties' interests in XYZ occurs.
- [284] The review should not be limited in the manner suggested by the claimant. It is possible that the relevant circumstances in future could be vastly different than at present, so the review should relate to all matters relating to spousal support. This would naturally include consideration of the steps the claimant has taken towards achieving economic self-sufficiency, insofar as practicable.
- [285] Of course, either party may also apply to vary spousal support at any time based upon a material change of circumstances, in accordance with ss. 17(1) and 17(4) of the DA.

E. Security for Spousal Support

- [286] The claimant seeks security for her ongoing spousal support payments, pursuant to ss. 170 and 171 of the FLA. She seeks an order that the respondent's estate remain obligated to pay spousal support in the event of his death, and that the obligation to pay support is a debt of his estate for a period to be fixed by the court, under s. 170(g), and for the spousal support obligation to be secured by a contract of life insurance, pursuant to s. 170(e).
- [287] The claimant has strong compensatory and needs based claims for spousal support. She is relatively young, and her needs can be reasonably expected to carry on for many years. In all likelihood, her own earnings will never be sufficient to approach the marital standard of living. At present, she does not have substantial assets to fall back upon.

- [288] The parties have a "joint life first to die" policy of insurance with Empire Life that provides \$1,000,000 of coverage. The current premium is \$140.40 per month. Therefore, if the respondent dies, the claimant receives \$1,000,000. This policy should be maintained in order to provide some security for the claimant, for as long as the respondent is liable to pay spousal support. The premiums are to be paid by the respondent. This order is subject to further order of the court. I note that I have no information as to what this insurance could cost to maintain in the future. At some point, the cost may outweigh the benefit.
- [289] I also order that the respondent's duty to pay spousal support survive his death, in accordance with s. 170(g). Section 171(1) stipulates that before making that order, I must consider the factors set out in s. 171(1) (a) to (c). Those factors are:
- (a) that the person receiving child support or spousal support has a significant need for support that is likely to continue past the death of the person paying child support or spousal support;
 - (b) that the estate of the person paying child support or spousal support is sufficient to meet the need referred to in paragraph (a) after taking into account all claims on the estate, including those of creditors and beneficiaries;
 - (c) that no other practical means exist to meet the need referred to in paragraph (a).
- [290] I have already addressed factor (a), which is the weightiest factor. With respect to factor (c), there is no evidence of any other practical means to meet the need in question. The insurance policy of \$1,000,000 is likely to fall well short of securing the amount of spousal support that could remain due if the respondent dies prematurely. Moreover, this is an existing policy of insurance that benefits both parties. It was obtained by the parties during the marriage. It was not intended to secure spousal support.
- [291] As to factor (b), I have no means to assess this presently, and therefore I can give it no weight. I observe that the respondent's personal representative could apply to change, suspend or terminate the order, under s. 171(2). On such an application the court should be in a position to consider whether the order I make is unfair in relation to the claims of other creditors or beneficiaries.

VII. Sale of the FFH

- [292] I order that the FFH be sold, and the net proceeds after payment of the usual expenses of sale and payment of the \$500,000 owing to the respondent's parents are to be divided equally between the parties. The parties will have joint conduct of the sale. They have liberty to apply in the event that they cannot agree on matters relating to the sale.
- [293] The respondent would like to purchase the property. I decline to order that he has a right to match the price and terms offered by a third party. Such a right could complicate the marketing and sale of the property or depress the price. As noted, the FFH is the major asset of the parties, aside from their business interests. The claimant has a vital interest in

achieving the highest market price possible for the property. If the respondent has a right to match a third party offer, he will not share the claimant's interest in obtaining the highest market price possible. Of course, the parties are free to mutually agree to any sale, including a sale to the respondent.

- [294] At trial, the claimant agrees that payment of retroactive support and equalizing adjustments between the parties may be deferred until the sale completes. However, this deferral of these payments is subject to the continued mutual agreement of the parties.

VIII. Parenting Issues

- [295] The claimant seeks the appointment of a parenting coordinator. She contends that the respondent has not complied with the terms of the parties' written parenting plan they agreed to, dated March 12, 2024. She contends that the parenting coordinator should be appointed to administer the parenting plan. The respondent opposes the appointment of a parenting coordinator. He contends that there are no decisions of a significant nature that the parties have been unable to agree on. However, he suggests that the appointment of a co-parenting counsellor for the parties could be helpful to the parties.
- [296] In order to preserve privacy interests, and because it is unnecessary to do so, I will not review the parenting evidence of the parties in detail in these reasons.
- [297] On the evidence overall, I conclude that there are three areas of particular concern that should be addressed.
- [298] First, the parties need to improve their communications with each other. For example, an area of major difficulty has related to scheduling of vacation times and activities involving the children. The activities that seem to have caused the most problems relate to multi day or multi week activities that require planning well in advance, such as trips abroad or ocean cruises. The claimant contends that the respondent has not complied with the letter and spirit of the parenting plan, in relation to planning such matters. The respondent contends that he does his best in this regard. He says he must plan well in advance in order to schedule around his work and the children's availability. He denies booking major activities of this sort without consulting with the claimant.
- [299] More generally, the claimant contends that the respondent prioritizes his time with the children over hers. She contends that the children do not see her parents as much as they see his parents.
- [300] Second, the claimant contends that the respondent does not always keep her apprised of important matters relating to the children, such as medical appointments. She says that he has not always consulted with her as required by the parenting plan. The respondent says he does his best to communicate important information to the claimant, but acknowledges that he could do better, and says he is committed to doing so.

- [301] Most importantly, the parties agree that the claimant's relationship with K. is not what it should be. The claimant is very distressed about this, understandably. K.'s stated reasons for choosing to reside only with the respondent are not credible to either party. However, I accept that the respondent is very supportive of the relationship between the claimant and K. The difficulty is that K. is now 15 years of age, has her own opinions, and generally makes her own decisions. She has declined joint counselling with her mother.
- [302] The parties have not had disputes that have resulted in a request for mediation as contemplated in the conflict resolution terms of the parenting plan, or for court applications. There is no current live parenting issue between the parties that could be the subject of a determination by a parenting coordinator.
- [303] I acknowledge that the role of a parenting coordinator is potentially very broad. It is not limited to making determinations. Under FLA s. 17, a parenting coordinator may assist the parties to build consensus, by various means.
- [304] The question is simply whether a parenting coordinator or a joint counsellor would be better, in the best interests of the children.
- [305] I am not persuaded that the appointment of a parenting coordinator is appropriate in the circumstances. I therefore decline to order the appointment of a parenting coordinator.
- [306] However, I accept that the appointment of a co-parenting counsellor could be beneficial to the parties, and hence, would be in the best interests of the children. The parties explored this option previously, but did not finalize any arrangements. In particular, the joint counsellor could assist the parties with communications, and regarding how the relationship between K. and her mother could be improved. It may be that the counsellor could suggest other steps that could be taken, such as individual parent coaches. I order that the parties jointly attend with a parenting counsellor, pursuant to FLA s. 224. The counsellor is to be chosen by mutual agreement, or to be selected by the court on application, if necessary. The expenses of the counsellor are to be shared in proportion to the FCSG incomes of the parties as determined in accordance with these reasons.

IX. Conclusion

- [307] Orders are made in accordance with these reasons.
- [308] The parties have liberty to apply if they are unable to agree on the terms of the court's order, including the amounts of spousal and child support payable.
- [309] In addition, the parties have liberty to apply in the event they are unable to agree on orders in relation to other matters not already dealt with in these reasons for judgment, or in relation to any issues I may have overlooked, or in relation to matters necessary to implement the orders contemplated by these reasons. I emphasize that this is not an invitation to re-argue matters that I have already decided.

[310] In my preliminary view, success has been broadly divided and therefore there should be no order as to costs. The respondent has successfully defeated the claimant's contention that he has hidden assets. This was a major issue. Neither party was completely successful in relation to the interest of his parents in the FFH, but the claimant was somewhat more successful on that issue. In relation to the FFH expenses, the respondent was somewhat more successful, but again, the overall result is mixed. The claimant did not obtain an order for occupational rent, a minor issue which was interrelated with other issues. The claimant succeeded in obtaining orders for retroactive child and spousal support, but the result is somewhat mixed. The result in relation to prospective spousal support is also mixed. The claimant has achieved orders for security for spousal support. I declined the claimant's request to appoint a parenting coordinator.

[311] However, as the parties have not had an opportunity to address costs, they are at liberty to apply in relation to costs, if necessary. Any application in relation to costs must be filed not later than 30 days after the date of these reasons.

"Verhoeven J."

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Prepared on 26 October 2026 · Esheria