

CANADA / JUDGMENT

A.D.J. v. F.J.

2020 BCSC 1980

COURT

Supreme Court of British Columbia

DECIDED

15 December 2020

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2020 BCSC 1980 A.D.J. v. F.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.D.J. v. F.J.,

2020 BCSC 1980

Date: 20201215

Docket: E132356

Registry: Vancouver

Between:

A.D.J.

Claimant

And

F.J.

Respondent

Corrected Reasons for Judgment: These Reasons have been amended throughout to anonymize the parties and other factual information that may discern the identifies of the parties on May 2, 2022

Before: Master Muir

Reasons for Judgment

Counsel for the Claimant, appearing by teleconference:

S. Jamal

Counsel for the Respondent, appearing by teleconference:

J. Desilets

Place and Date of Hearing:

Vancouver, B.C.

November 5, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 15, 2020

introduction

[1] There were cross-applications before me in this family law matter.

The Claimant's Application

- [2] The claimant's notice of application filed on April 7, 2017 seeks orders for retroactive and ongoing child support, although counsel for the claimant suggested that the retroactive child support be adjourned if the cross-application for spousal support was not allowed.
- [3] In addition, the claimant seeks orders that my orders of July 15, 2016 and "August 19, 2017" (which was actually August 19, 2016) be enforced, in particular that the respondent be ordered to pay the costs awarded. He seeks a fine payable to him by the respondent for failing to pay those costs awards.
- [4] In addition, the claimant seeks a fine for the respondent's conduct in speaking to one of the children about the litigation over the lunch break, in contravention of a conduct order.
- [5] Paragraphs 1, 4, and 5 of the claimant's notice of application were adjourned generally during the hearing.

The Respondent's Application

- [6] As to the respondent, in her notice of application filed August 14, 2020, she seeks an order that Gary Mynett of Blair Mackay Mynett Valuations Inc. be appointed a joint valuator to value the claimant's Book of Business from his employment at RBC Dominion Securities Inc. ("RBC DS"). On application, this was changed as Mr. Mynett is not available and the parties had, prior to the hearing, agreed that Mr. Kiu Ghanavizchian of that office would do the valuation. However, that is now opposed. The respondent seeks an order that the claimant pay for the valuation at the first instance. The claimant says that the respondent should pay for the valuation.

- [7] The respondent is also seeking interim spousal support of \$4,000 per month or, alternatively, spousal support in accordance with the Spousal Support Advisory Guidelines [SSAG].
- [8] In addition, the respondent seeks an order that the parties withdraw \$20,000 from the children's Registered Education Savings Plan ("RESP") to pay to the eldest child, Q., for his college tuition and living expenses for the 2020/21 school year.
- [9] Both parties seek costs.

Background

- [10] The parties' were married on June 30, 1996 and separated on March 30, 2011.
- [11] There are three children of the Marriage:
 - a) Q., born May 27, 2000 ("Q.") (20 years);
 - b) M., born May 16, 2003 ("M.") (17 years); and
 - c) J., born April 23, 2005 ("J.") (15 years).(Collectively, the "children")
- [12] The parties entered into Minutes of Settlement on June 30, 2011 dealing with parenting and child and spousal support ("MOS").
- [13] The MOS provides:

These minutes constitute a full and final settlement of the issues referenced and delineated herein and arising out of the spousal status of the Parties.

It is a term of this settlement that the substance of these minutes will be incorporated into a final Separation Agreement and uncontested Divorce Order.

It is a further term of this settlement that the agreements reflected herein will be binding on the Parties subject only to review as specified or as permitted by the Family Relations Act, (the "FRA") and/or the Divorce Act (the "DA") and amendments thereto.

The Parties hereby agree:

- 5. Spousal Support
 - a. Commencing August 15, 2011 [A.D.J.] shall pay to [F.J.] by way of post dated cheques \$4000 per month as spousal support;
 - b. Spousal support of \$4000 per month shall continue to be payable monthly by [A.D.J.] to [F.J.] unless [F.J.'s] income meets or exceeds \$100,000 in a calendar year as indicted on her Income Tax Return;
 - c. Spousal support shall cease in August 2020 in the ordinary course; and

- d. Spousal support shall be included as income to [F.J.] and shall be a tax deduction to [A.D.J.] and [F.J.] agrees to sign the necessary documentation to allow [A.D.J.'s] deductions at source.

[14] The MOS did not deal with all of the parties assets. It provides in para. 10:

Final settlement of outstanding matters such as additional Assets (Pensions, RRSPs, RBC Shares, Investment Accounts, Wine Club membership, Life and Disability Insurance) will be discussed in September 2011 and included (along with the terms herein) in a final and comprehensive Separation Agreement.

[15] Since then, this matter has been before me several times for orders, primarily regarding the children.

[16] The most recent of my orders, dated August 19, 2016, provided for the claimant to have final decision making regarding significant decisions, including education decisions, in para. 2 as follows:

- 2. The parties shall continue to be joint guardians of the Children in accordance with the Joyce model of guardianship, as follows:
 - c. the parties are obliged to discuss with each other any significant decisions that must be made with respect to the Children, including significant decisions concerning the health (except emergency decisions), education, religious instruction, and general welfare of the Children, AND the parties are obligated to try and reach an agreement on those significant decisions;
 - d. in the event that the parties cannot reach agreement with respect to any significant decisions affecting the Children despite their best efforts, the Claimant shall be entitled to make such significant decisions, and the Respondent will have the right to:

ii. apply for directions from this court.

[17] In the course of those prior applications, the claimant asserted that the respondent was intentionally alienating the children and the respondent asserted that the claimant was too rigid and authoritarian with the children. Dr. Michael Elterman provided a s. 211 report and an update. I made orders to attempt to solve the parenting issues, but ultimately it seems they were largely ignored.

[18] The parties have unsuccessfully attempted to resolve this matter by several mediations, the most recent of which was in 2018. The claimant alleges that the parties reached an agreement on all issues at that mediation. The respondent disputes that. In her view, the mediations have been unsuccessful. The terms of that alleged agreement were not before me due to an assertion of settlement privilege.

[19] There is now a trial set for November 2021.

Positions of the parties

Child support

- [20] The children have not had a consistent parenting regime. There are disputes about where the boys were living at any given time. Parenting time orders were not adhered to. At present, Q. is attending college in Toronto, living in rental accommodations. J. lives in Vancouver with the claimant. M. lives in Vancouver with the claimant's sister.
- [21] The respondent pays no child support. In her response to the claimant's notice of application, she consents to an order for ongoing child support, however, she disputes paying full child support for M., as the claimant only pays his sister \$500 per month for M.'s expenses. The claimant acknowledges that, however, he deposes that he also pays for all of M.'s other expenses directly.
- [22] The claimant says that child support for J. and M. should be payable by the respondent commencing July 2019 when she moved to Toronto.
- [23] The respondent alleges that the claimant intentionally underpaid child support for years. She resists any order for retroactive child support. She asserts that this is an issue that will require a full airing at trial.

Q.'s expenses

- [24] The parties have an RESP account that has a present value of \$138,000. It is managed by the claimant and his evidence is that he has made contributions regularly since separation.
- [25] In September 2018, Q. began attending Ryerson University in Toronto. The claimant paid \$20,000 of Q.'s tuition and room and board from the RESP, and I gather the claimant contributed an additional \$5,000.
- [26] The claimant says that after Q.'s 2018 school year, where he did not do well, Q. and the claimant agreed that he would return to Vancouver and get a job and try to get his life straight.
- [27] The claimant says that Q. was drinking and smoking marijuana and his life was in disarray. He says that after a time Q. managed to get himself together and the claimant says he has spent a lot of time with him talking about his future, and the need to be financially and academically responsible.
- [28] There is no dispute that Q. should attend college in Toronto this year. The respondent says, however, that funds should be taken from the RESP and be given to Q. directly in two tranches to allow him to pay for his expenses.
- [29] The respondent has apparently tried to engage the claimant in a discussion of this, presenting him with a proposed budget and suggesting how it should be dealt with. She says the claimant has simply refused to discuss things with her as he is required to do under the terms of my August 19, 2016 order.

- [30] The claimant says that he is dealing with Q.'s expenses. He says he has already paid Q.'s tuition and first and last months rent and that no order is required as he will look after Q.'s needs using the RESP and contributions from him and Q. as appropriate. To the extent that Q. is telling the respondent a different story, the claimant asserts that this is simply an attempt by the boy to play one parent against the other.
- [31] He submits that the respondent's application should be dismissed. Otherwise, he submits an order should go allowing the claimant to take whatever funds are necessary from the RESP to cover Q.'s costs of tuition, books, and rent for the 2020/21 school year, with discretion for other withdrawals as the claimant determines are necessary.

Business Valuations

- [32] The Respondent was employed in public relations, community relations, and marketing, but she did not work for several years prior to the separation, staying home to care for the children.
- [33] After separation, she apparently had established a company called Success 4Kids Inc., through which she made an investment in a real estate project in Calgary, Alberta with the claimant's brother. She says that property is in foreclosure and she expects to lose her investment. The claimant disputes that and submits that if a valuator is appointed, that the order should include a valuation for Success 4Kids Inc.
- [34] The claimant is a Vice President, Portfolio Manager, and Wealth Advisor with RBC DS. The claimant has client accounts at RBC DS known as his Book of Business. The respondent asserts that the Book of Business has significant value and is family asset that requires valuation.
- [35] The claimant opposes the appointment of Mr. Ghanavizchian, as apparently in conversation Mr. Ghanavizchian suggested that Success 4Kids Inc. likely had little or no value. The claimant submits this indicates that he has prejudged this issue and that a different valuator should be appointed by allowing one party to submit three names and the other party to select the valuator.
- [36] Both parties assert that the other should be responsible for paying for the business valuations, at least at the first instance, with liberty to argue for a different allocation at trial.

Spousal support

- [37] In his most recent Form F8 financial statement, the claimant declares his income to be approximately \$500,000. According to his tax returns, his income for 2019 was \$574,000.
- [38] Prior to separation, the respondent had ceased working after the birth of the youngest child and stayed home to look after the children.

- [39] Since separation, the respondent has been receiving the \$4,000 per month spousal support provided for in the MOS. In addition, she used funds that the parties shared from the sale of the former family home to purchase some investment properties. In 2013, she embarked on a business called 4Cats Art Studio.
- [40] In November 2014, however, the respondent was diagnosed with colon cancer. She required two surgeries, chemotherapy, and radiation treatments. Her evidence is that she was unable to work any significant amount of time until the end of 2015.
- [41] She says she was unable to make sufficient income from her 4Cats Art Studio and sold that in the spring of 2016.
- [42] In 2017, the respondent obtained a certificate in Social Media and Digital Marketing from the BC Institute of Technology. After she completed her studies, she was able to obtain several contract positions. She was unable, however, to reach the \$100,000 annual income level that would have terminated her spousal support under the MOS.
- [43] Eventually the respondent expanded her job searches to Toronto and in April 2019, she was hired as the Enrolment Management Outreach Specialist at the Bishop Strachan School in Toronto. Her salary is presently \$68,000 per annum.
- [44] She advised the claimant that she wanted to relocate with M. and J., however, the claimant refused to agree and the children stayed in Vancouver and she moved to Toronto in July 2019.
- [45] The respondent brought on her application for spousal support in anticipation that the claimant would stop paying spousal support in August as provided for by the MOS.
- [46] In support, she has sworn an updated Form F8 financial statement showing that her expenses are significantly greater than her income, and indeed are greater than what her income would be including the spousal support sought.
- [47] As noted, the respondent seeks an order for interim support of \$4,000 per month, the amount of spousal support established by the MOS. She argues spousal support should continue on an interim basis until the trial of this matter. Alternatively, she seeks interim support in accordance with the SSAG, which would range from about \$8,000 to \$11,000 per month.
- [48] She argues that the MOS will be overturned at trial because:
- a) she was not given sufficient financial information prior to entering into the MOS;
 - b) the spousal support provided for her in the MOS does not meet the objectives of the Divorce Act, R.S.C. 1985, c. 3, with respect to spousal support;
 - c) the final settlement contemplated by the MOS was never achieved; and

- d) there have been significant changes in the means of the claimant and the needs of the respondent since the MOS were signed.
- [49] The respondent points to the issues that she had dealing with cancer, the difficulties the parties had in resolving issues related to the children, and that the children resided largely with her in a difficult time. All of that, she deposes, has limited her ability to become financially independent and was not anticipated at the time the MOS were entered into.
- [50] The respondent points to the obvious means of the claimant, with annual income now likely greater than \$574,000 and, including the expense of spousal support, whose income exceeds his expenses.
- [51] In addition, the respondent says as much of the family property remains to be divided, that should the trial judge overturn the interim award of spousal support, there is ample ability for it to be repaid.
- [52] Counsel for the respondent referred to several decisions in support, including *I.F. v. R.J.R.*, 2015 BCSC 793 where Justice Ballance discussed the basis for an award of interim spousal support:
- [122] The main purpose of an interim order for spousal support is to bridge the period between when the action is commenced and the trial at which time the court will be in a position to make a decision on the merits: *D.R.M. v. R. B.M.*, 2006 BCSC 1921; *Goriuk v. Turton*, 2011 BCSC 652.
- [123] Because interim orders are summary in nature and temporary, they provide a rough justice at best: *Newson v. Newson*, 65 B.C.L.R. (3rd) 22 (C.A.) at para. 11. The "rough justice" approach underlying the temporary order implicitly recognizes that the evidence before the chambers judge on the interim application is often insufficient to permit an in-depth analysis of the wide array of factors relevant to entitlement and quantum of support: *R.C.G. v. C.L.G.*, 2010 BCSC 1596, para. 11; *Johnson v Johnson*, [1993] B.C.J. No. 2140 at 16.
- [124] The legal test governing interim support is not necessarily the same as the test applicable in reaching the final order: *Goriuk*. This is because the full picture of many of the considerations under the applicable legislation will not be known until a fulsome inquiry on the merits is embarked upon a trial.
- [125] Relying on *Newson*, *Goriuk* confirmed that where the marriage is admitted and need is proved interim support should be ordered without adjudicating the issues, unless the action is frivolous or vexatious.

- [126] While the other relevant factors that inform the issue of spousal support are to be considered to the extent possible, the respective needs and means of the parties are ordinarily the central factors, if not the most prominent, on an interim application. The corollary is that considerations such as compensatory factors and the need to achieve self-sufficiency often hold less significance: *R.C.J. v. C.L.G.*, 2010 BCSC 1596 at para. 11; *Goriuk* at para. 33.
- [53] Justice Ballance also considered the impact of a marriage agreement that excluded spousal support on the ability to make an interim award, and held:
- [169] I turn next to consider the impact, if any, of the impugned marriage agreement on an award of interim spousal support.
- [170] It is within the court's discretion to make an interim order for spousal support despite the existence of a marriage agreement that purports to disentitle the applicant from support, provided the applicant is seeking to have the agreement set aside at trial: *Thompson v. Thompson*, [1987] B.C.J. No. 2339 (S.C.); *Ziniuk v. Ziniuk* (1986), 2 R.F.L. (3d) 398 (BCCA). The twin factors that typically dominate the analysis, beyond the applicant's financial need and the payor's financial means and ability to pay, are the strength of the applicant's case to set aside the agreement and his or her capacity to repay the amount awarded on an interim basis.
- [171] The respondent concedes that this Court has jurisdiction to make an interim support order in the face of the parties' marriage agreement. He asserts that the discretion should be exercised cautiously, with particular emphasis in this case on the claimant's ability to repay in the event that her claim to set aside the marriage agreement fails at trial. His position is that, with this in mind, the current level of support of \$2,500 per month is appropriate and perfectly adequate to meet the claimant's financial requirements on an interim basis.
- [172] Drawing on the authorities, and placing particular emphasis on the instructive analysis of the Saskatchewan Court of Appeal in *Evashenko v. Evashenko*, 2011 SKCA 22, it is my view that an applicant is not required to demonstrate a strong *prima facie* case or a likelihood or probability of success of impeaching the marriage agreement. Those standards pose too high a bar to meet at the interim stage. Rather, the test is whether the preliminary evidence is sufficient to raise a substantial question about the enforceability of the impugned agreement. Stated another way but to the same evidentiary effect, the applicable threshold test is whether the evidence shows there is a reasonable prospect of success in impeaching the marriage agreement at trial.
- [173] The evidence concerning the circumstances surrounding the execution of a marriage agreement and its contents, to the extent it has been developed on an interim application, is to be examined through the lens of *Miglin v. Miglin*, 2003 SCC 24 and *Hartshorne v. Hartshorne*, 2004 SCC 22.

- [54] The claimant argues that the respondent has not diligently sought to become self-supporting and that the MOS should be upheld. He submits that the respondent did not, in her response to family claim and counterclaim, plead that the MOS should be set aside or varied and that she is now out of time to do so.
- [55] In response, the respondent notes that her counterclaim seeks spousal support and, obviously, the MOS would have to be varied to allow such an order to be made. Thus, it is not necessary to plead that the MOS should be varied or set aside, as that is implicit in the present pleading. Further, the respondent points out that the claimant has been put on notice since the outset that the MOS were being challenged and that she was seeking spousal support.
- [56] The claimant asserts that where the entitlement to support is questioned and there are contested issues of fact, interim spousal support should not be awarded. Counsel referred me to *Robles v. Kuhn*, 2009 BCSC 1163, where Master Keighley summarized the considerations as follows:
- [12] On interim support applications, the application of these provisions must be qualified by certain established considerations:
1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
 2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
 3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances, which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
 4. The courts should not unduly emphasise any one of the statutory considerations above others;
 5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
 6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
 7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *LG.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);

8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: L.G.B.
- [57] The claimant points out that he has been paying \$4,000 per month spousal support since 2011. The SSAG calculation at the time would have resulted in a mid-range for the respondent of over \$4,000 and a duration of 7.5 to 15 years.
- [58] The claimant argues that he has more than met his obligation to support the respondent. Further, he brings serious questions about her credibility and suggests that her evidence cannot be relied upon.
- [59] He submits that her Form F8 financial statement does not support that she has need of spousal support in that she has significant assets.
- [60] Further, that despite concerted efforts on his part, she has refused to divide the Registered Retirement Savings Plans ("RRSPs") and had she done so, she would have had those funds available to her.
- [61] The claimant submits that to order interim spousal support for the respondent would reward the respondent for her delays, breaches of court orders, and misleading evidence. He points out that this matter has been set for trial seven times without success. He argues that the most recent mediation resulted in a settlement regardless of the fact that it was not memorialized and that to grant interim spousal support will allow the respondent to further delay and require the parties to go to the unnecessary expense of trial.

Analysis and conclusions

The Claimant's Application

Child support

- [62] The respondent does not oppose an order for child support, but takes the position that as M. resides with the claimant's sister, no support or only partial support should be awarded for him.
- [63] I am satisfied, however, that the claimant is covering all of M.'s expenses and is, therefore, entitled to receive child support for both M. and J.
- [64] The respondent's income for interim child support purposes is \$68,000. Using the Ontario child support tables, she is to pay child support of \$1,036 per month for two children.
- [65] Given the issues around where the children were residing at any given time, and the amounts of child support paid, it makes no sense for me to attempt an award of retroactive child support at this time. That issue is adjourned to the trial.

- [66] Interim child support of \$1,036 per month will be payable by the respondent to the claimant commencing September 1, 2020 and on the first day of each month thereafter until agreement or further order.

Fines

- [67] The claimant seeks a fine for the respondent's failure to pay costs in accordance with my two previous orders of July 15, 2016 and August 19, 2016.
- [68] As pointed out by the respondent, however, the costs awarded in my August 19, 2016 order were in the cause. As such, they are not payable until after costs are decided at trial, and then only if the claimant is awarded costs of the trial.
- [69] The respondent's evidence satisfies me that the costs awarded in my order of July 15, 2016, which were payable forthwith, have now been paid. No fine is warranted.
- [70] Counsel for the claimant alleged that the respondent spoke to M. during the lunch break, telling him about the trial and upsetting him. That would breach the order that prohibits the parties from speaking to the children about litigation matters. As there is no evidence before me, I will not order a fine for this alleged breach. There is liberty to apply before or at the trial.
- [71] Let me say, however, that this court order is in place for a reason. These children have been hurt by this longstanding acrimony. They need to be protected from the animosity that their parents bear towards each other. I would hope that the parties recognize this and stop disparaging the other and discussing the litigation with the children. Breaching court orders is a serious matter, particularly where the result is damaging the children.

The Respondent's Application

Appointment of a business valuator

- [72] There is no issue that a valuator should be appointed. The claimant agreed to Mr. Mynett's appointment long ago. Mr. Mynett is not available and the parties then agreed to Mr. Ghanavizchian.
- [73] The claimant now opposes the appointment of Mr. Ghanavizchian on the basis that he has prejudged that the respondent's business has no value.
- [74] While I do not believe that Mr. Ghanavizchian is in any way biased or pre-disposed to a particular outcome, I believe that the valuator appointed needs to have credibility with both parties.
- [75] Therefore, I order that a joint valuator be retained to value both the claimant's and the respondent's business interests. The parties will select a valuator by the claimant providing three names of qualified valuers to the respondent within two weeks of this order and the respondent selecting one of those valuers within two weeks of receipt of the names.

- [76] If either party fails to comply with the time limits, the other party has liberty to select any qualified valuator.
- [77] Both parties are to cooperate with the valuator and provide to the valuator whatever documentation or information the valuator requires that is in their possession or control.
- [78] The claimant is clearly more able to pay the fees of the valuator at the outset. Nevertheless, I have concluded that the parties should share the cost of the valuator, but not 50/50. The respondent will be responsible for paying 20% and the claimant 80% of the costs. There is liberty to the parties to argue for a different allocation of those costs at the trial.
- [79] If any issues arise in the valuation, there is liberty to apply.

Interim Spousal Support

- [80] The Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) provides for interim orders for spousal support and directs that the court consider the following:
- (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.
- [81] This was a fifteen-year marriage and the respondent left the workforce to look after the parties' three children. Her employment prospects were impacted accordingly. Absent the MOS, there is a prima facie case for interim spousal support.
- [82] In considering the MOS, I have considered the analysis set out in I.F. and concluded the respondent has made out a substantial question about the enforceability of the MOS.
- [83] I am directed to look at the MOS through the lens of Miglin v. Miglin, 2003 SCC 74. The fact that the spousal support agreed to was not based on up-to-date income information and was lower than the mid-range of the SSAG is an indication that the MOS might not have been fair when they were entered into.
- [84] In addition, the agreement contemplated by the MOS has never come to fruition. Significant amounts of family assets have not been divided since the separation, more than nine years ago.
- [85] The claimant's means have increased dramatically, while the respondent appears to have struggled. Further, I am satisfied that the respondent's health issues and the difficulties with the children were such as might constitute a significant change in circumstances after the MOS were agreed to.

- [86] Arguably, the spousal support provisions of the MOS do not conform to the objectives of the Divorce Act in the circumstances.
- [87] Where, as here, trial dates are set for November 2021, and where there remain substantial family assets to be divided, there is no real risk that such interim spousal support will not be repaid if it is found to be unwarranted.
- [88] There is no question that the claimant has significant means. He is more than capable of accommodating such an award. Equally, the respondent clearly has need. Her expenses far exceed her employment income.
- [89] I do not accept the claimant's argument that the respondent should be encroaching on capital to support herself. She is not required to accept a division of the RRSPs that she disputes nor is she required to add to her debt load.
- [90] Thus, the respondent's application is allowed. The claimant will pay interim spousal support, pursuant to the provisions of the Divorce Act, of \$4,000 per month, commencing September 1, 2020 and payable on the first day of each month thereafter until agreement or further order.

Q.'s expenses

- [91] There is a long history in this matter of the parties being unable or unwilling to communicate properly about the best interests of the children despite orders to the contrary.
- [92] Nevertheless, the claimant has the authority to make final decisions about Q.'s education, pursuant to my August 19, 2016 order.
- [93] The claimant tends to be hyper-controlling, and this has led to disputes in the past. Regardless, the evidence satisfies me that the claimant is acting in Q.'s best interests and will see that his expenses are paid.
- [94] Thus, the application of the respondent for payments to be made directly to Q. from the RESP is denied.
- [95] To the extent that it is necessary, the order will go that the claimant has leave to take whatever funds are required from the RESP to cover Q.'s costs of tuition, books, and rent for the 2020/21 school year, with discretion for other withdrawals as the claimant determines are necessary.
- [96] If any disputes arise, there is liberty to apply.

Costs

- [97] Given the mixed success on both applications, the parties will bear their own costs.

"Master Muir"

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