

CANADA / JUDGMENT

## A.S. v. S.S.

2023 BCSC 1077

### COURT

Supreme Court of British Columbia

### DECIDED

22 June 2023

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2023 BCSC 1077 A.S. v. S.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.S. v. S.S.,

2023 BCSC 1077

Date: 20230622

Docket: E24106

Registry: Fort St. John

Between:

A.S.

Claimant

And

S.S.

Respondent

Before: The Honourable Madam Justice D. MacDonald

Reasons for Judgment

Counsel for the Claimant:

P.S. Boles

The Respondent, appearing in person:

S.S.

## Place and Dates of Trial:

Fort St. John, B.C.

September 26-29, 2022

October 3-7, 2022

November 29-30, 2022

December 9, 2022

February 9-10, 2023

## Place and Date of Judgment:

Fort St. John, B.C.

June 22, 2023

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## Introduction

- [1] This is a high-conflict family dispute as there is a significant amount of animosity between the parties. The dispute resulted in a 12-day family trial which took place between September 2022 and February 2023. The claimant, A.S., was represented by counsel. The respondent, S.S., was self-represented at trial, but he had counsel prior to the commencement of the trial.

- [2] It is unfortunate the parties were unable to settle their issues. Counsel, and subsequently counsel and S.S., were unable to communicate about matters related to the litigation and a disproportionate amount of time was spent dealing with side issues. Two examples are set out in the Preliminary Issues section. Nevertheless, the parties were able to settle one of the most contentious issues prior to trial, the issue of prospective parenting time. I commend them for doing so.
- [3] The other issues between the parties remained contentious at trial. At the end of the day, it came down to money and there is very little of that left to divide between the parties. As a result, neither party is likely to be satisfied with this judgment.
- [4] By way of background, A.S. and S.S. began living in a marriage-like relationship in the spring of 2006. The parties separated in June 2017.
- [5] S.S. and A.S. have two children: A.A.S., born in December 2007 and L.A.S., born in May 2011 (hereafter "the Children"). I have anonymized the names in the style of cause and in the body of these reasons because the parties have minor children and because they live in small communities. This anonymization is to protect the privacy of the Children.
- [6] On March 14, 2018, A.S. filed a notice of family claim seeking various orders under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. She also filed an amended notice of family claim on October 3, 2018. S.S. filed a response to family claim and counterclaim on May 1, 2018. He filed an amended response to family claim and amended counterclaim on October 20, 2020.
- [7] The contentious issues at trial were:
- a) past parenting time;
  - b) determination of the parties' incomes;
  - c) child support;
  - d) the apportionment of s. 7 expenses;
  - e) division of family property and debt; and
  - f) whether A.S. is entitled to spousal support.

#### Preliminary issues

- [8] There were a number of preliminary issues at the outset of this trial. I note the two that were most significant.

#### S.S.'s request for adjournment

- [9] The first preliminary issue was that S.S. applied for an adjournment of the trial on the ground that he did not receive a number of documents, which his former counsel had requested, and which were ordered to be produced at a trial management conference held on August 25, 2022. He stated he needed these documents to properly represent himself. S.S.

had legal counsel until a few days before the trial was to commence. He stated that he was unable to afford to have a lawyer represent him at trial. However, he requested an adjournment because he required time to review the documents and obtain legal advice regarding how the documents affected his case.

- [10] The claimant's counsel strongly opposed the adjournment on behalf of A.S. A.S. argued that she is in need of child support because she has lost her job and needs these matters resolved. Counsel for A.S. admitted that the requested documents were not produced to S.S. The reason for this was because counsel for A.S. demanded 50 cents per page to print the required documents. Counsel for S.S. at the time was only willing to pay 35 cents per page for the documents to be printed. S.S. agreed that this was the underlying problem.
- [11] A request for an adjournment requires that I consider the interests of justice as between the parties. Any prejudice to be suffered by either side must be considered. The parties are entitled to have their day in court and a fair chance to make out their case: *Navarro v. Doig River First Nation*, 2015 BCSC 2173 at para. 19.
- [12] In *Navarro* at para. 20, Justice Dillion set out other factors to consider:
- a) the expeditious and speedy resolution of matters on their merits;
  - b) the reasonableness of the request;
  - c) the grounds or explanation for the adjournment;
  - d) the timeliness of the request;
  - e) the potential prejudice to each party;
  - f) the right to a fair trial;
  - g) the proper administration of justice;
  - h) the history of the matter, including deliberate delay or misuse of the court process; and
  - i) the fact of a self-represented litigant.
- [13] Justice Dillon explained some reasons for not granting an adjournment:
- [22] The expeditious and speedy resolution of a matter raises the question of whether there has been a previous adjournment and, if so, the reasons for that prior adjournment. If the circumstances have not changed, a subsequent application will likely not be successful.
- [23] Timeliness of the request is a factor. An application made at the opening of trial on the grounds that a party cannot be present will be carefully scrutinized as to the effect upon other parties, whether the party's evidence is crucial, and what other recourse was available.

[Citations omitted.]

- [14] S.S. relied on *Raniga v. Poirier*, 2020 BCSC 780, where Justice Kent commented on why he granted an adjournment when the lawyer before him was not prepared for trial. *Raniga* is distinguishable from this case. *Raniga* was a motor vehicle personal injury action where the plaintiff applied for an adjournment, not the defendant. The plaintiff requested an adjournment because their lawyer had inadequately prepared for trial, and there was no indication that the plaintiff had caused or contributed to the inadequate preparation: *Raniga* at para. 15. Justice Kent also accepted the opinion of the plaintiff's counsel that an independent medical examination of the plaintiff was required so that expert medical evidence could be tendered at trial to advance and substantiate the plaintiff's personal injury claim.
- [15] *Raniga's* circumstances are not comparable to the dispute between S.S. and A.S. This is a family matter. The circumstances and justifications for adjourning a family matter to a later date are different from those considered in a motor vehicle personal injury claim.
- [16] I declined to grant the requested adjournment of the trial for five reasons:
- a) I balanced the interests of A.S. against those of S.S. I found an adjournment would cause substantial prejudice to A.S. A.S. was entitled to have the matter heard, especially since the determination of child support has been an outstanding issue for a lengthy period of time.
  - b) The issue over the cost of producing documents was problematic, but it was not a sufficient reason to adjourn a trial that had been set to commence since early January 2022.
  - c) S.S. terminated his lawyer on the Friday before trial, even though the trial has been scheduled since early January 2022.
  - d) It was S.S.'s choice to become self-represented and he had apparently been considering representing himself since September 12, 2022. Yet he waited and requested an adjournment at the last possible moment. S.S. took a risk, knowing that an adjournment would not necessarily be granted.
  - e) There had been two prior adjournments in this matter. If the trial was adjourned again, it would be the fourth time the trial was set down. Given this Court's schedule, there would be a significant delay before this matter could be heard again.

### **A.S.'s application to call a child witness**

- [17] The second preliminary issue of note was that A.S. wanted to call the parties' daughter as a witness at trial. S.S. strongly opposed the application. He said it would further traumatize their daughter who had already been through enough. He argued that if she was called as a witness he would not cross-examine her, which would put him at a disadvantage.
- [18] Counsel for A.S. made several arguments, but failed to provide me with any authority for calling a child witness to testify in this family matter. I had asked counsel to provide me with authority of a child testifying, especially when a concern of trauma had been raised by one

of the parties. Counsel relied on *R. v. Marquard*, [1993] 4 S.C.R. 223, 1993 CanLII 37.

*Marquard* is a case about the competency of child witnesses in a criminal case. The case addressed the competency and capacity of child witnesses under s. 16(1) of the Canada Evidence Act, R.S.C. 1985, c. C-5. In the case before me, there had been no suggestion that the daughter, who was 14 at the time, did not have the competency or capacity to testify.

- [19] In making my decision, I emphasized that the views of the child are important in parenting disputes, but they are usually obtained through a "Views of the Child" report in accordance with s. 211 of the FLA. Testimony of children is rare, but is at times permitted by courts. It is becoming more common to elicit the views of the child in parenting time and access cases.
- [20] I declined to allow the parties' daughter to testify. Since ongoing and future parenting time had been resolved between the parties, A.S. proposed to call their daughter only to testify as a fact witness regarding the parties' financial matters. In my view, this was not a proper reason to permit the parties' daughter to testify.

## Testimony

- [21] The following is a summary of the testimonial evidence. I make most factual findings when addressing the issues, and I note where the parties have disputes. Although I do not refer to all aspects of the evidence, I have considered the totality of the evidence in reaching my conclusions.
- [22] The parties met at work, at a mill in Fort St. John, BC (the "Mill"). At the time they met, A.S. was 19 years of age and S.S. was 29. A.S. was born in August 1986. S.S. was born in May 1976. A.S. was raised in Quesnel, BC and S.S. has roots in Fort St. John.
- [23] S.S. purchased and registered a home (the "Poplar" property) shortly before A.S. moved in. They began living together in the spring of 2006 in Fort St. John. The parties never formally married. The parties shared living expenses once A.S. began living at the Poplar property. Within a few years they purchased and moved to the family home in Charlie Lake, BC.
- [24] S.S. is a certified Red Seal journeyman electrician. He testified under examination for discovery that the certification qualifies him to practice commercial, residential, and industrial electrical work in Canada.
- [25] A.S. worked for her father prior to starting work at the Mill. A.S. loves horses and testified that she considered becoming a veterinary technician or possibly a veterinarian. She also considered a degree in animal science as "something to fall back on". There is no university or post-secondary institution in Fort St. John that offers courses in veterinarian technology, veterinary medicine, or animal science.

- [26] In early 2007, after a family trip to New Zealand, A.S. discovered that she was pregnant. A.S. testified that neither party used birth control measures, but she was nonetheless surprised and overwhelmed by the pregnancy. The parties had not previously discussed having children.
- [27] During her pregnancy, A.S. suffered health issues for which she was hospitalized. She was subsequently unable to work. Following the birth of A.A.S., A.S. did not work for a few years because the parties agreed she should stay home to take care of A.A.S. S.S. continued to work full-time at the Mill.
- [28] A.S.'s parents moved into the family home to help care for A.A.S. and to give A.S. the ability to go back to work. A.S.'s parents also helped with household chores and renovations. The parties avoided the cost of childcare and A.S.'s parents were not required to pay rent.
- [29] A.S. testified that S.S. was always very secretive about finances. The evidence established that after the parties had sold the Poplar property, the parties purchased a farm with a house on it located in Charlie Lake, BC (the "Family Home") in 2009 with proceeds of the Poplar property. The Family Home was placed solely in S.S.'s name.
- [30] A few months after returning to work, A.S. took a leave of absence from her employment because of her pregnancy with the parties' second child. L.A.S. was born in 2011. While A.S. was pregnant with L.A.S., the parties purchased a property belonging to A.S.'s parents in Quesnel. The Quesnel property was put in S.S.'s name. Together, the parties worked to improve and renovate the Quesnel property, with the intention of eventually moving into it. They did not move to Quesnel and later sold the Quesnel property for a profit.
- [31] According to A.S., L.A.S. did not do well when A.S. returned to work night shifts. A.S. changed her work schedule to day shift to accommodate L.A.S.'s needs. A.S. obtained a managerial position at the Mill prior to separation.
- [32] The parties separated in June 2017. S.S. remained in the home and A.S. moved out. A.S. first moved to an apartment owned by S.S.'s grandmother. However, by August 2017, she had moved to Pouce Coupe, BC to be with her new partner, T.R.
- [33] A.S. testified that in August 2017, S.S. refinanced the mortgage and availed himself of \$41,097 without consulting her or obtaining her agreement. S.S. testified that the parties agreed to refinance in order to pay off their debts. He claims that he paid A.S. \$14,000 of the \$41,097 so that she could pay off her debts.
- [34] Shortly after separation, the parties appeared to get along fairly well. A.S. would come to the family home to spend time with the Children. Despite the fact that by August 2017 A.S. lived in Pouce Coupe, some distance from Fort St. John, A.S. made efforts to see the Children on a regular basis. The relationship between the parties continued well into the fall; A.S. and her new partner joined S.S. and the Children at the Family Home at Christmas in 2017.

- [35] Unfortunately, in 2018 the relationship between the parties took a turn for the worse. In March 2018, A.S. filed a notice of family claim. A.S. testified she wanted more parenting time with the Children.
- [36] A.A.S. was hospitalized for two months between April and June 2018 after becoming seriously ill. Both parties stayed in Alberta near the hospital during this time. A.S. and her partner stayed at a Ronald McDonald House, a temporary residence for families seeking medical treatment for their ill or injured children. S.S. stayed with his sister who lived nearby. At one point during their stay, security for the Ronald McDonald House became involved in an altercation between the parties. S.S.'s conduct was considered aggressive during the altercation and he was asked not to return to the Ronald McDonald House premises.
- [37] A.S. testified that S.S. interfered with and prevented the Children from staying in Pouce Coupe when attending school. However, S.S. made an exception when he was holidaying in Hawaii, in September 2018.
- [38] On or about August 12, 2018, there was an altercation between the parties when A.S. came to the farm to pick up the Children to go and take possession of a new horse. That incident resulted in an assault charge against A.S. which was the subject of a five-day criminal trial between February 21 and April 29, 2019. A.S. was found not guilty of the assault charge on September 28, 2020. The decision is unreported.
- [39] Both parties lost their jobs at the Mill, due to its closure, in September 2019. Both parties received severance packages. S.S. stated at trial:

In September 2019 we all got laid off in August from the mill, after that her and [T.R.] were no longer working at the mill, and it gave them the option of unilaterally being able to come to Fort St. John and take the children and not follow the schedule that she had proposed that we had followed for the previous years.

[40] In October 2019, A.S. and T.R. had a baby girl.

[41] After the parties separated, S.S. sought to sell the Family Home without A.S.'s consent.

## Credibility

## Legal principles

- [42] Credibility and reliability are distinct but related concepts. Credibility is an assessment of whether the witness is telling the truth. The assessment of a witness's credibility involves a consideration of the trustworthiness of the witness's testimony based on the sincerity of their evidence. Reliability is an assessment of a witness's ability to observe, recall, and recount the events in question. Both credibility and reliability affect a witness's testimony.

[43] In *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, aff'd 2014 BCCA 414, Justice Adair helpfully articulated a number of factors that affect the assessment of credibility. These factors include:

- a) the witness's ability and opportunity to observe events;
- b) the firmness of the witness's memory;
- c) the witness's ability to resist the influence of interest to modify their recollection;
- d) whether the witness's evidence harmonizes with independent evidence that has been accepted;
- e) whether the witness changes their testimony during direct and cross-examination;
- f) whether the witness's testimony seems unreasonable, impossible, or unlikely;
- g) whether a witness has a motive to lie; and
- h) the demeanour of a witness generally.

[44] A similar analysis was articulated in *Lacasse v. Nowak*, 2022 BCSC 2219:

[8] The process for assessing credibility includes examining the evidence of each witness against hallmarks of truth and reliability, including whether the witnesses resist modifying their evidence based on the interests at play, firmness of memory, opportunity to observe the events, demeanour, and consistency between evidence in chief and cross-examination. If the trier of fact accepts evidence as being generally credible, then the trier of fact should determine whether it fits within the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, aff'd 2012 BCCA 296, citing *Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298, 1993 CanLII 7140 (Q.B.) at para. 13. While demeanour can play a role, it should not be the sole deciding factor in credibility assessments as it can be affected by a witness's lack of familiarity with judicial proceedings and culture: *R. v. N.S.*, 2012 SCC 72 at paras. 99-107, per Abella J.'s dissent, cited with approval in *L.C.T. v. R.K.*, 2017 BCCA 64 at para. 65.

[45] Ultimately, the validity of the evidence depends on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296. As stated in the leading case *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.) at para. 11, the test of the truth of a witness's testimony is its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable" in the circumstances.

## Credibility findings

- [46] I have summarized the relevant evidence and make my factual findings when addressing the issues. I am guided in my assessment of the parties' credibility by the factors summarized in Bradshaw, Lacasse, Gichuru, and Faryna. The factors include: the ability of the witness to resist the temptation to modify their recollections; whether the witness's evidence harmonizes with independent evidence that I have accepted; whether the witness changes their evidence during direct and cross-examination, or between examination for discovery and trial; whether the witness's evidence is inconsistent; and whether the witness's evidence seems impossible, unreasonable, or unlikely. In essence, I must determine whether the evidence of each party accords with the probabilities affecting the case as a whole.
- [47] In family law cases, as in most litigation, each party has distinct interests from the other. In most family law cases emotions are high. The parties tend to assert their own interests and often have trouble making any concessions regarding the other's point of view. Here, I find that both parties exhibited this behaviour.
- [48] Both A.S. and S.S. are frustrated by the need to share parenting time and find the legal process to be unreasonably slow. S.S. is upset that his family has been torn apart. A.S. was traumatized by being put through a criminal trial where she was ultimately found not guilty. I mention all this because despite seeming to get along as well as could be expected in the early days, over time the parties became more confrontational and entrenched in their positions. This is unfortunate.
- [49] A.S. argues there are significant credibility issues in S.S.'s testimony. In particular, she argues that they affect the determination of past parenting time. I agree to a limited extent. S.S. had some discrepancies in his testimony and in the positions he took. At times, S.S. had difficulty remembering details that he perceived to be against his interests.
- [50] Similarly, I find that A.S.'s testimony on a number of points was not borne out by other evidence. At the end of the day, I have some concerns about each parties' versions of events. For example, I find that S.S. underestimates his current living expenses, whereas A.S. understates how much she spends on horses and vehicles. Her expenditures suggest a much higher standard of living than her current tax return suggests. I will address these concerns in my analysis.
- [51] Given my comments regarding credibility and reliability, I must approach the evidence before me with caution. I must examine the evidence for its consistency with other evidence presented at trial. I accept A.S.'s and S.S.'s evidence where that evidence is consistent with reliable documentary evidence or other reliable evidence before me. Where there is a conflict on a material point, I have looked for and placed weight on evidence that is in harmony with the preponderance of probabilities that a practical and informed person would readily recognize as reasonable in the circumstances. Put simply, the evidence must be tested against its harmony with other evidence, the preponderance of the probabilities, and with its reasonableness: Faryna at para. 11.

**Ongoing and future guardianship, parental responsibilities, and parenting time**

[52] The parties agreed to guardianship and parenting responsibilities orders. As a result, they are simply set out in the Disposition section of this judgment.

**Parenting time****Ongoing and future parenting time**

[53] The parties resolved the issue of ongoing parenting time prior to trial. The parties have agreed that A.S. will have primary parenting time with the Children. However, there remains a dispute regarding the parties' past parenting time.

**Parties' positions on past parenting time**

[54] A.S. takes the position that she had parenting time with the Children post-separation as follows:

- i. July 1, 2017 to March 1, 2020, there was a shared parenting regime; and
- ii. From March 1, 2020 to date, the Children have been residing primarily, if not exclusively, with A.S.

[55] S.S. argues that the parenting since separation was as follows:

- i. he had primary parenting time from July 1, 2017 to December 31, 2017 based on the Children residing primarily with him;
- ii. he had primary parenting time from January 1, 2018 to December 31, 2019 based on the Children residing primarily with him;
- iii. he had primary parenting time from January 1, 2020 to February 28, 2020 based on the Children residing primarily with him;
- iv. between March 1, 2020 and August 31, 2020, the Children were shared between the parties; and
- v. between September 1, 2020 and December 31, 2021, the Children resided primarily with A.S.

**Analysis**

[56] The parties agree that A.S. has had primary parenting time since September 1, 2020. However, I must resolve the conflicting accounts of past parenting time between June 2017 (the date of separation) and August 31, 2020.

- [57] A.S. testified that after separation S.S. actively obstructed the Children's parenting time with her. He refused to allow the Children to stay overnight with A.S. while she was resident in Fort St. John. She argues that S.S. prevented the property at which she was staying from being adequately furnished for the purposes of parenting. Notwithstanding this testimony, in direct-examination A.S. testified she had the Children 40 percent of the time from June 2017 to June 2019.
- [58] A.S. submitted into evidence a series of parenting time charts that she drafted. According to her, they outline the amount of time the Children spent with her between 2017 and 2022. The charts include information such as percentages of time spent with A.S., an account of school holidays and vacations, and a breakdown of whether one or both of the Children were in A.S.'s care. I note that the information in the charts for the disputed early years are far less detailed than the later charts. The 2017, 2018, 2019, and a portion of the 2020 charts, are all found on a single page; the 2020, 2021, and 2022 charts are each approximately an entire page in length. A.S. testified this was because her phone had been destroyed and she did not have access to her text messages prior to 2020.
- [59] A.S. submitted an accompanying document that she claims details the Children's parenting time on a daily basis. I observe that the detailed daily account begins in September 2019 and not in June 2017. A.S. submits that the detailed daily account document is based on text messages, which she updated as time went on. I will refer to both documents collectively as the "Charts" throughout these reasons.
- [60] The 2017 chart alleges that A.S. had 40 percent of the parenting time after the parties separated in June 2017. A.S. states in the chart that this amount is based on "parenting time coming into town to care for [the] Children during weekdays", Christmas holidays, and weekends.
- [61] The 2018 chart is slightly more detailed than the 2017 chart. A.S. alleges in the 2018 chart that she had 40 percent of the parenting time for most of 2018. A.S. states within the 2018 chart this amount was comprised of "15 days [per month] based off of three weekends [per month] and Wednesday[s] and Thursday[s]". A.S. notes that she had 50 percent parenting time during school breaks (i.e., Christmas break, Spring break, and Summer break). She further notes that she had 50 percent parenting time between April 20 to June 15, 2018 for the 57-day hospital stay in Alberta when A.A.S. was ill. In September 2018, A.S. states that she had 100 percent of the Children's parenting time while S.S. was in Hawaii on a vacation. S.S. was unable to dispute the amount of A.S.'s parenting time in 2018.
- [62] The 2019 chart is silent with respect to January to June 2019. Between September 2019 and September 2020, the charts indicate largely shared parenting time. After September 2020, the chart indicates that A.S. had primary parenting time with the Children.

- [63] I find that A.S. exaggerated her time with the Children in the early post-separation period. I do not agree that A.S. had at least 40 percent of the Children's parenting time between June 2017 and June 2019 due to the following inconsistencies in the evidence at trial.
- [64] First, A.S. testified that post-separation S.S. changed his schedule to work day shifts. S.S. testified that the change in his work schedule to day shifts was to ensure he had more time with the Children because they were living with him. A.S.'s father was still living with S.S. at this time. Between the father's assistance, and A.S. allegedly having the Children at least 40 percent of the time, it seems unlikely that S.S. would be required to change his shift.
- [65] Second, A.S. testified that in the summer of 2017 much of her parenting time was at the family home. A.S. testified that her parenting time in 2017 was restricted. She also testified that S.S. took the Children on a vacation in July 2017. At the end of August 2017, she moved to Pouce Coupe to be with her new partner. A.S. was working full-time at the Mill during this period. Putting all these factors together, I find that it is unlikely A.S. had at least 40 percent parenting time of the Children in the first few months after separation.
- [66] Third, A.S. testified that she filed her notice of family claim on March 14, 2018, because S.S. was restricting her time with the Children. In that notice of family claim, A.S. pleaded the following were the current arrangements for parenting:

The children reside primarily with [S.S.]. [A.S.] has parenting time with the children after work on weekdays and every second weekend.

- [67] She proposed the following arrangement for parenting going forward:

[A.S.] proposes that the parties remain the guardians of the children, that the children reside primarily with [S.S.] and that [A.S.] have parenting time with the children during the school year at least 3 days per week as the children's and her schedule allow and at least 3 weekends per month and, at least 50% of the time during summer and school breaks such as spring break and Christmas holidays.

- [68] The notice of family claim does not indicate that A.S. had the Children at least 40 percent of the time. The pleading was filed in March 2018. In addition, A.S. was not seeking to have equal parenting time, except during school breaks. This is not surprising since the Children attended school in Charlie Lake, and A.S. lived in Pouce Coupe, at least an hour away.
- [69] Fourth, it was put to S.S. in cross-examination that by September 12, 2018, A.S. had proposed an equal parenting regime with a Friday exchange. S.S. agreed that A.S. had proposed the arrangement when confronted with correspondence to his counsel. This strongly indicates that a shared parenting arrangement between the parties was likely not in place at that time.
- [70] Fifth, A.S. claimed that in September 2018 she had the Children 100 percent of the time. This was because S.S. went on a trip to Hawaii and used the parties' timeshare. He was not away for the entire month; he testified he was away for a week or ten days. In addition, A.S. admitted going to Nashville, Tennessee, in or around March 2018, but there is no deduction

from her parenting time to account for her trip in her 2018 Chart. I do not accept that A.S. had the Children 100 percent of the time in September simply because S.S. took a trip. I find there was a shared parenting regime that month.

- [71] Sixth, in testimony, S.S. agreed he could not dispute the specifics of the Charts because he did not have any memory of the daily whereabouts of the Children. He did not keep a written record of the Children's schedule for himself. Despite S.S. being unable to challenge the Charts based on his limited memory, I am unable to simply accept the Charts as the truth of the facts. The Charts were created by A.S. and were not corroborated by mutual calendars, text messages, or emails between the parties during the relevant period of time.
- [72] A.S. explained that her iPhone had been destroyed in or around 2020 and she therefore had no access to her cellphone. Given the inconsistencies in the evidence, I require some documentary evidence to corroborate a schedule put together by A.S. for the purpose of litigation. There was no indication A.S. tried to obtain the text records from her telecommunications provider. As a result, there are no text messages in evidence that substantiate A.S.'s parenting time Charts between 2017 and 2019.
- [73] I find that the parties were primarily in S.S.'s care in 2017 and for most of 2018. I accept S.S.'s version of events in 2017 and part of 2018, because it is more consistent with the other evidence presented at trial.
- [74] However, I accept the Children were shared while the parties were in Edmonton when their oldest daughter was in the hospital for almost two months. I also accept the parties shared parenting time for the month of September 2018.
- [75] A.S. also claims that the parties equally shared parenting time when the Children were on Summer break in 2019 (i.e., July and August). S.S. concedes there was a shared parenting arrangement in the fall of 2019 until December 31, 2020. However, he claims that he continued to have primary parenting for the remainder of 2019, including the summer of 2019.
- [76] In A.S.'s Charts, it was not until September 2019 that she provided a more detailed accounting of when the Children were in each household. This is the point at which S.S. accepts that the parties started to share parenting. I accept that until the summer of 2019, where there is some evidence of shared parenting, S.S. had primary parenting of the Children. This is consistent with the text messages written in September and October 2019 and entered into evidence.
- [77] The text message exchange indicates that the Children are wanting to spend more time with their mother and that A.S. is starting to take them to Pouce Coupe mid-week despite the objections of S.S. A.S. made this change unilaterally. The text exchanges demonstrate that A.S. believes there is no schedule in place whereas S.S. is trying to insist on the schedule that had been in place since 2017 (i.e., that A.S. had the Children some weekends and after school on Wednesday and Thursday). For example, in a text message on October 1, 2019, S.S.

states "[t]he girls will be staying in town on school days as per last years schedule. Have talked to [A.A.S.]." According to A.S., the initial schedule was unilaterally imposed by S.S. Whether or not it was unilaterally imposed or not, the testimony suggests that S.S. had primary parenting time until mid 2019 and that, over time, A.S. became unhappy with the schedule.

- [78] Apart from the two months in the spring of 2018, and in September 2018 when S.S. was on vacation in Hawaii, I find that S.S. was the primary parent of the Children from the date of separation until June 2019. This past parenting time arrangement is consistent with A.S.'s notice of family claim, and it aligns with the fact that the Children were attending school in the Charlie Lake area and A.S. was living an hour away in another town.
- [79] I accept that over the summers of 2018 and 2019 the parties had a shared parenting arrangement.
- [80] In terms of the fall of 2019, A.S.'s chart shows that from September to November 2019, A.S. claims she had the Children for at least 42 percent of the time and up to 67 percent. In December 2019, she acknowledges that she had the Children less than 40 percent. Although A.S. had the Children almost 67 percent of the time in September, S.S. had the Children over 60 percent of the time in December. These two months cancel each other out. I therefore find that there was a shared parenting schedule from September to December 2019.
- [81] In her Charts, A.S. claims she had the Children over 40 percent but not more than 60 percent of the time from January to May 2020. However, in her written submissions at trial A.S. claims that from March 1, 2020 to date the Children resided primarily, if not exclusively with her. A.S. testified that she home schooled the Children after Spring break 2020. She provided no independent documentation to establish that she did this, but S.S. did not challenge her on this point. At trial, A.S. also introduced a new chart claiming primary parenting time for ten months in 2020. The new chart is inconsistent with her own Charts discussed at length above.
- [82] In June 2020, A.S. claims she was the primary parent having the Children 63 percent of the time. S.S. reluctantly agreed with this when it was put to him in cross-examination.
- [83] I find there was a shared parenting regime from January to April 2020. In May 2020, one child was shared and one child resided primarily with A.S. In June 2020, both Children primarily resided with A.S.
- [84] A.S.'s Charts show that she had the Children 61 percent of the time in July 2020, and in August 2020 she had parenting time 48 percent of the time. Other evidence points to shared parenting time in the summer of 2020. Given my concerns about her Charts, I find that the parties shared parenting time of the Children in the summer of 2020.
- [85] In September, October, and November 2020, the Charts show A.S. having the Children between 80 and 86 percent of the time, which establishes that A.S. had primary parenting time of the Children. In December 2020, it shows both children in her care 65 percent of the

time. S.S. agrees that A.S. had primary parenting time of the Children during this period. I note that this is around the time when the Children were starting to prefer spending more time in A.S.'s home. Therefore, I accept that between September and December 2020 A.S. had primary parenting time of the Children.

[86] Both parties agree that A.S. has had primary parenting time since January 1, 2021.

#### Findings with respect to past parenting time

[87] My findings regarding past parenting time are as follows:

- i. Between July 1, 2017 and June 30, 2019, S.S. had primary parenting time with both children, except:
  - a. between April 20 to June 15, 2018, and July 2018 to September 2018, there was a shared parenting arrangement;
- ii. the parties shared parenting time from July 1, 2019 to December 31, 2019;
- iii. S.S. and A.S. had shared parenting time from January 1, 2020 to April 30, 2020;
- iv. S.S. and A.S. shared parenting time for one child in May 2020 and one child resided primarily with A.S.;
- v. A.S. had primary time with the Children in June 2020;
- vi. S.S. and A.S. shared parenting time in July and August 2020; and
- vii. since September 1, 2020 to the present, the Children have resided primarily with A.S.

[88] The child support calculations and setoff amounts will be based on the above findings.

#### Incidents of family violence and parenting time

[89] Family violence is broadly defined under s. 1 of the FLA as:

"family violence" includes, with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
  - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,

- (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
- (iii) stalking or following of the family member, and
- (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

[Emphasis added.]

[90] In making an order respecting guardianship, parenting arrangements or contact with children, the court must consider the best interests of the children only: FLA, s. 37(1). In determining what is in the best interests of children, all of the children's needs and circumstances must be considered, including the impact of any family violence on the children's safety, security or well-being and whether the family violence is directed toward the children or another family member: FLA, s. 37(2)(g). This also requires a consideration of whether the actions of a person responsible for family violence indicate that the person may be impaired in their ability to care for the child and meet the child's needs: FLA, s. 37(2)(h). The best interests of the children also require the court to consider any civil or criminal proceeding relevant to the child's safety, security or well-being: FLA, s. 37(2)(j). In assessing family violence which may impact the best interests of the children under ss. 37(2)(g) and (h), a court must consider the non-exhaustive list of factors found in s. 38 of the FLA.

[91] Section 38 of the FLA is as follows:

38 For the purposes of section 37(2)(g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

- [92] An order respecting care of and time with children is in the best interests of the children if it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being: FLA, s. 37(3). In making an order respecting care of and time with children, a court may consider a parties' conduct only if it substantially affects the factors listed in s. 37(2) and only to the extent that it affects that factor: FLA, s. 37(4).
- [93] I have considered the bests interests of A.A.S. and L.A.S. in making the parenting time orders above.
- [94] The parties brought my attention to two incidents between the parties that give rise to some concern. One incident took place on or about March 1, 2018 and the other, on or about August 12, 2018.
- [95] The incident on March 1, 2018, involved A.S. kicking in the door to the bedroom S.S. was using at the time. A.S. was no longer sharing the bedroom, as she was living with her new partner in Pouce Coupe.
- [96] The incident on August 12, 2018, resulted in a criminal charge against A.S. A five-day criminal trial took place between February 21 and April 29, 2019, before Judge Thomas of the Provincial Court of British Columbia. A.S. was found not guilty of the charge. As indicated in Judge Thomas' unreported decision, the incident was " precipitated by an apparent conflict about their parenting time with their children, the parenting time agreement, and on this particular day, the specific time to pick up and drop off the children" (para. 2). At para. 33, Judge Thomas notes that at the time of the incident, there was no court order in place respecting parenting time or arrangements and that "the parties were still in negotiations about parenting time."
- [97] Unfortunately, the Children have witnessed family violence due to the incidents between their parents. Any form of family violence is unacceptable and should be condemned. However, the evidence before me indicates that these incidents are isolated, and neither incident was directed at the Children. Moreover, the two incidents of family violence did not have an affect on either parties' parenting time, nor did it impact their ability to parent the Children. Neither party led reliable evidence establishing that the other parent is an unfit parent as a result of the incidents. In fact, the evidence suggests the contrary. For example, a month after the August 12, 2018 incident, in September 2018, S.S. took a trip to Hawaii. During this time, A.S. had primary parenting time with the Children with S.S.'s consent.
- [98] I also note that throughout the relationship, A.S. alleges she was subject to family violence as defined in the FLA in the forms of physical, sexual, and emotional abuse, as well as financial control. According to S.S., it was only after A.S. was charged with assault following the August 2018 incident that she began claiming that he had been violent and controlling throughout their relationship. He argues A.S. did not call any witnesses to corroborate her inflammatory claims, including her parents, who lived with the parties for years.

- [99] Although the parties have had difficulty navigating parenting schedules, on the evidence there is no suggestion that this was as a result of family violence. Moreover, given my concerns with both parties' testimony, there is simply not enough evidence for me to make a finding of family violence that would affect the Children going forward. I decline to make a finding of family violence apart from the two isolated incidents that has not affected S.S.'s or A.S.'s ability to parent prospectively.
- [100] In summary, the incidents that occurred between the parties is unacceptable, but I find that they were isolated incidents and were not directed at the Children. Family violence did not further impact the parties' parenting time. Based on my findings above, the parenting time Charts submitted by A.S., the shared parenting between the parties in 2018 and a good portion of 2019, and the testimony of both parties, I find that both parties are good parents. Consequently, I find it is in the Children's best interests to continue to have parenting time with both their parents going forward.

Income determination

Legal principles

### Support obligations and adequate financial disclosure

- [101] Parents are obligated by statute to provide for their children to the extent that they are capable of doing so: FLA, s. 147(1). Section 150(1) of the FLA provides that child support orders must be determined in accordance with the Federal Child Support Guidelines, SOR/97-175 ["Guidelines"].
- [102] It is well established that the most current information regarding a party's income must be used when calculating support: Guidelines, s. 2(3); Fuzi v. Fuzi, [1999] B.C.J. No. 2263, 1999 CanLII 4073 (S.C.). For this reason, the Guidelines, the FLA, and the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] all require parties to a family law dispute to make full and complete financial disclosure and set out certain legal consequences for when disclosure obligations are not met: Este v. Esteghamat-Ardakani, 2018 BCCA 290 at para. 90.
- [103] For example, R. 5-1 requires full financial disclosure from parties in a family law dispute. A party completing a Form F8 is required to swear or affirm that the information set out in the financial statement is "true and complete to the best of my knowledge". Where a party to a family dispute fails to comply with financial disclosure obligations, the FLA and the Rules provide certain mechanisms to the court. Rule 5-1(28) provides that if a party fails to comply with a requirement to file a Form F8 financial statement or any applicable income document, the court may take a number of different actions including drawing an adverse inference against a party or attributing income to a party.

- [104] The statutory provisions allow the court to use all available evidence, including circumstantial evidence, to impute income to a non-disclosing party at an amount it considers appropriate. The court may do so even where there is little evidence from which to assess the party's income. This principle was set out by the Court of Appeal in *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453:
- [23] In the absence of complete income tax returns and other financial information of a spouse the court must look to other evidence, including circumstantial evidence, for the purpose of imputing income, *A.G. v. B.R.*, 2005 BCSC 96 at para. 57.
- [24] The judge relied on the little evidence available concerning the defendant's ability to obtain a mortgage and his shareholding in Lucky 9, to impute an income of \$75,000. She did not accept the explanation offered for the defendant's shareholding in Lucky 9 or for the basis on which he obtained a mortgage on his home.
- [25] There was some evidence to support that conclusion and the judge was permitted to draw an adverse inference against the defendant because of his inadequate disclosure. The defendant cannot be heard to dispute the level of income attributed to him, nor permitted to escape his support obligations because of his failure [to] adequately disclose income information.

### Determining annual Guidelines income

- [105] The court determines a spouse's annual income for child support purposes in accordance with ss. 15-20 of the Guidelines. In addition to proper financial disclosure, the court may consider a written agreement between the spouses on the annual income of a spouse: Guidelines, s. 15(2). A spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency ("CRA") and is adjusted in accordance with Schedule III: Guidelines, s. 16. Schedule III of the Guidelines provides further deductions and additions to the total income of a spouse. The deductions include employment expenses, taxable child support received, spousal support received from the other spouse, and Universal Child Care Benefit lump-sum payments. Some of the additions include capital gains and capital losses and net self-employment income.
- [106] The court may impute a spouse's income as it considers appropriate in the circumstances. Section 19 of the Guidelines provides guidance on the types of circumstances which could give rise to income imputation:

### Imputing income

19(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

### Reasonableness of expenses

- (2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.

[Emphasis added.]

[107] The court is not bound to accept a party's declared income for income tax purposes as the income on which to determine support obligations. A party's tax statements may not be a true indication of their available income. The "task of the court is to determine what money is fairly available to support the children of the marriage": *Younger v. Younger*, 2017 BCSC 363 at para. 25.

### Parties' positions on imputation of income

[108] Both parties dispute the other's income that is available for support obligations.

[109] A.S. takes the position that S.S.'s income should be imputed to \$140,000 to \$180,000 based on undeclared income and/or underemployment. She asked that I make an adverse inference because S.S. did not provide sufficient financial disclosure within the time limits set by the Rules.

[110] A.S. suggests that I impute \$30,000 to herself. S.S. requests that I impute \$50,000 to A.S. based on her prior income.

[111] S.S. concedes that I should impute an income of \$58,497 to him. I note that during the trial he stated that I could impute \$65,000 to him.

#### Parties' positions on income disclosure

A.S.

[112] A.S. filed a Form F8 financial statement on September 2, 2022. The financial statement indicates that she is currently employed by Decisive Contracting Ltd. in Pouce Coupe. This new employment is with her current partner's business. A.S. provided her most recent statement of earnings from Decisive Contracting Ltd. where she earned \$2,600 gross income between August 1, 2022 to August 31, 2022. As of August 31, 2022, A.S. only earned \$2,600 in gross pay for the 2022 taxation year from this employment. A.S. states on the first page of her Form F8 that she had only recently started this employment because she "was a homemaker up until August 1, 2022".

[113] A.S. indicates in the "documentation supplied" section of the Form 8 that she has provided every notice of assessment and reassessment, personal income tax return, including all attachments, for the three most recent tax years. Attached to the financial statement is her notice of assessments for 2019, 2020, and 2021. A.S. provided a 30-page T1 General form for 2021. However, for the 2019 and 2020 taxation years, she only provided the T1 General condensed versions which were only five pages long each. At the end of the financial statement, A.S. provided her statement of farming activities for only 2019.

[114] According to A.S.'s T1 General forms, her new partner's net income for the past three years was: \$44,486.97 (2021), \$40,000 (2020), and \$138,917.87 (2019). I note that 2019 would have included T.R.'s severance payment from the Mill. The CRA documents reveal no information beyond T.R.'s net income and does not include a breakdown of his income sources or any applicable deductions. As T.R. is self-employed, this disclosure does not provide a full picture of his current financial circumstances.

[115] In her Form F8 financial statement filed September 2, 2022, A.S. lists that her child support Guidelines income is \$12,500. This is based upon annual employment income of \$12,500. According to her financial statements, her monthly expenses are \$7,198.53. A majority of these expenses are for housing, household expenses, transportation, horse care, and the Children. Her monthly expenses far exceed her income.

S.S.

[116] S.S. filed a Form F8 financial statement on August 26, 2022. The financial statement indicates that he is currently employed by his family's electronics store business. S.S. did provide his most recent statement of earnings from his employment, where he earned \$1,729.10 gross income between August 1, 2022 to August 15, 2022. The statement of

earnings indicates that as of August 15, 2022, S.S. had earned \$25,732.62 in gross pay for the 2022 taxation year from this employment. In his Form F8 financial statement filed into this Court on August 26, 2022, S.S. only provided his notice of assessments for 2019, 2020, and 2021. Apart from the notice of assessments, he provides a single cover page summary of the T1 General form for those same years. This is not adequate financial disclosure as required by the Form F8 financial statement. I do note that S.S.'s counsel did eventually provide T1 General forms for the 2017 through 2021 taxation years to A.S.'s counsel, albeit right before trial on September 23, 2022.

- [117] According to S.S.'s 2021 T1 General document, as of December 31, 2021, S.S. claims "separated" on his taxes. He did not file his taxes together with his new partner. Despite A.S.'s demand for documents, S.S. has not provided any financial documents about his new partner's financial circumstances. He testified that his wife is a widow, she has five children, and she relies on child tax benefits for income. He claims to have borrowed \$4,000 from her and he also testified that he lives with her and she pays many of the household bills.
- [118] As of August 26, 2022, S.S. lists his Guidelines income as \$50,940. This is based upon annual employment income of \$49,605, as well as registered retirement savings plan (RRSP) income of \$1,334. S.S.'s financial statement indicates that he has \$2,997.30 in monthly expenses. Most of these expenses are for housing and food.

## Analysis

### Farming losses and RRSP income

#### Whether farming losses should be included

- [119] The party seeking to impute income on the opposing party has the evidentiary burden to establish the basis for the imputation of income: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 36.
- [120] S.S. states in his closing submissions that if I do impute an income to A.S. I should consider s. 19(1)(g) of the Guidelines and find A.S.'s farming losses are an unreasonable expense for her to use as a deduction against her total income. S.S. argues that the farming losses are not reasonable deductions against her income that is available for child support purposes because A.S. keeps horses largely as a hobby. He argues this was to the benefit of herself, the Children, and her parents. S.S. furthers that A.S. has benefitted from these deductions, and has attempted to claim some of these deductions as special and extraordinary expenses.
- [121] I do not agree with S.S. A.S. claimed farming losses against her total income for 2017, 2018, and 2019. According to S.S.'s 2017 notice of assessment, he also received a deduction on his total income due to farming losses. From 2020 on, neither party claims farming losses on their tax returns. Although A.S. benefits from a significantly higher reduction in her total income compared to S.S., I find the farming losses to be a reasonable deduction against

A.S.'s total income given the horse keeping was meant, at least in part, for the benefit of the Children. As for S.S.'s concerns regarding A.S. claiming horse keeping expenses as s. 7 expenses, I address this later in these reasons under the s. 7 expenses section.

Whether RRSP income should be excluded

[122] Both parties seek to have their RRSP income excluded from the calculation of their total income available for support obligations.

[123] A.S.'s total income in 2019 would be reduced by \$15,540.45 due to her significant RRSP income that year. S.S. submits that A.S. "cashed in" her RRSP through her employment with Louisiana Pacific. A.S. submits that she withdrew the RRSP's to pay her lawyer, Richard C. Gibbs. I fully consider the family property and debt issues that arise as a result of A.S.'s RRSP withdrawal later in these reasons. Here, I am only considering whether A.S.'s RRSP income in 2019 should be included to determine what money is fairly available to support the Children. A.S. is not entitled to exclude the income simply because it is a non-recurring amount. A.S. cannot seek to exclude RRSP income that she used to pay for a lawyer to defend herself in criminal proceedings that occurred after separation. I find it is fair to include the \$15,540.45 in RRSP income to A.S.'s total income in 2019 because it forms part of the assessment of how much of A.S.'s total income was available for support obligations in that year.

[124] S.S. testified that his \$1,334 in RRSP income payable each year is a yearly amount to pay back the RRSP that he used to purchase the Poplar home. He argues it should be excluded from the calculation of his total income. As part of his 2019 CRA notice of assessment, S.S. includes a Home Buyers' Plan statement from the CRA. The statement indicates that S.S. withdrew \$20,000 from his RRSP in 2005. As of the 2019 tax year, the statement indicates that \$17,331 has been repaid, cancelled, or included as income. S.S.'s balance left to repay was \$2,669 with a minimum repayment obligation of \$1,334 for 2020. S.S.'s T1 General forms show that he has increased his total income by \$1,334 between 2017 and 2021 due to RRSP income. According to the statement, 2021 will be the last year S.S. adds \$1,334 in RRSP income to his total income. He has not provided the Home Buyers' Plan statement for 2021. If the RRSP income is excluded, S.S. will benefit from a \$6,679 reduction in his total income over the span of five taxation years.

[125] I do not agree with S.S. that his RRSP income should be excluded from his income. Even though S.S. would gain the benefit of a \$1,334 reduction in his total income each year by excluding his RRSP income, it will be a modest reduction in his income available for support obligations. In addition, as set out later in these reasons, it is likely that S.S. repaid a substantial portion of the Home Buyers' Plan loan with family monies or, if not repaid, then he used RRSP income inclusions annually and paid the tax associated with them from family monies.

[126] I find it preferable to include both parties' RRSP income in order to obtain a clearer picture of their total income that is available to pay support obligations.

### **Income determination and imputation**

[127] Based on the evidence before me, I face a challenging task with respect to income determination. There are numerous factors involved in determining the fair amount of money available to satisfy both parties' obligations to pay child support. As stated above, both parties dispute the other's income and earning ability. Both parties seek to have the other's income imputed to higher amounts based on allegations of undeclared income and deliberate underemployment, or inadequate or late financial disclosure. Neither party has provided me with a complete picture of their financial situation and earning capacity, including the income or wealth of each party's new partner. All of these factors taken together put the court in the difficult position of determining what is reasonably available from both parties to meet their support obligations.

[128] The Guidelines state that the starting point for determining a spouse's available annual income for support purposes is to look at the party's total income. The parties' limited Canada Revenue Agency documents provided indicate the following total income for each party prior to and following separation:

Year

S.S.

A.S.

2015

\$165,425

\$78,049

2016

\$175,017

\$84,661

2017

\$159,103

\$105,671

2018

\$97,910

\$114,576

2019

\$141,255

\$129,737

2020

\$53,758

\$85,818

2021

\$50,941

\$11,240

[129] It is important to note that the values above only indicate both A.S. and S.S.'s total income found on line 150/15000 of their tax documents. The calculation from the CRA includes the parties' employment income, RRSP income, farming gains or losses, employment insurance and other benefits, as well as other income. In addition, as mentioned above, both parties received severance packages in 2019. This resulted in their incomes being higher than usual for that year.

[130] Imputing income for underemployment does not require a finding of bad faith on the part of the payor. It does not require deliberate avoidance of child support responsibilities. It merely requires that the payor is not earning to their capacity. To assess whether there is underemployment, I must examine the parties' ability to earn an income in light of their education and experience. I must also consider the parties' health and their availability to work. Job opportunities should also be considered.

[131] I noted that S.S. provided his financial disclosure through his former counsel on August 26, 2022. This was very late in the day and made preparation for the trial difficult for A.S. However, as mentioned at the outset, both parties were being difficult and fighting over the photocopying fees before providing documents. At the end of the day, I have S.S.'s financial disclosure, but it does not answer the question of whether he is underemployed.

[132] As the trial progressed, it became clear that both parties point to the other as living a lavish lifestyle with a new partner. I do not accept those submissions. However, I am at a disadvantage because neither party provided me with the full picture of their current earning capacity. In addition, neither provided me with sufficient information regarding their new partner's earnings and wealth. As a result, I am working with limited evidence from which to assess the appropriateness of both parties' current income.

A.S.

- [133] A.S. suggests that I impute \$30,000 to her. I do not accept this amount based on her past earning history. In her last full year at the Mill, A.S. made \$122,923 in salary alone. She now claims \$12,500 based on employment income.
- [134] In my view, A.S. is underemployed. I accept that A.S. suffered emotional trauma and financial harm due to the criminal charges against her, and I take this into account when I consider her earning capacity. However, as her counsel emphasized when addressing S.S.'s 2018 income, one needs to produce medical evidence if they attempt to rely on health issues as a reason they cannot work to their former capacity. A.S. has not provided medical evidence to substantiate her claim that she cannot work at the former level of her managerial position at the Mill.
- [135] A.S. continued to work full-time until the Mill shut down in 2019. I do not have a crystal ball to determine what she would be earning today if the Mill had not shut down. Although the shutdown roughly coincides with the end of her criminal trial, it was only after losing her job that her income decreased drastically. She also gave birth to her daughter with T.R. in October 2019. On direct examination, A.S. stated that she was on maternity leave between October 2019 and October 2020. She testified that she applied to several managerial and entry level positions at the same Mill at which she was previously employed after it re-opened in 2021. She also applied to entry level positions at the "union mill" in Dawson Creek. She testified that neither mill contacted her for an interview. She did not submit evidence of applying to these jobs, but I accept her testimony on this point. A.S. did not obtain employment and she testified that she was a homemaker until she began working in T.R.'s business on August 1, 2022.
- [136] It is not entirely clear to me what work A.S. currently does in her partner's business and for how many hours per week. She testified that she works as a book keeper, part-time, and that her hours are flexible. I do not know to what extent she claims to be working part-time due to trauma, due to her childcare responsibilities, due to her horse hobby, or due to living in a relatively remote area where job opportunities are limited. Again, A.S. has not provided any medical evidence to substantiate her inability to work claims due to stress or trauma.
- [137] I must impute income to A.S. based on the very limited information I have before me. Therefore, as of 2020 I impute \$50,000 per year income to A.S. This is considerably less than what she was making at the Mill and accounts for her current employment in her partner's business. It considers that she has limited education, and only three years of management experience. This imputation also takes into account that A.S. has suffered some trauma through this process, that she lives in a relatively remote area where job opportunities are likely limited, and that she cares for a young child, as well as two older children who are now primarily in her care.
- [138] Going forward, this imputation of income will apply in any year in which A.S.'s line 15000 (i.e., total income) falls below \$50,000.

S.S.

- [139] S.S. gave detailed testimony regarding how he worked overnight shifts and how he worked significant overtime at the Mill to make additional income to support his family prior to separation. He testified that he no longer works night shift or overtime hours post-separation. S.S. stated the reason for this was to spend more time with the Children, who were living with him at that time. I do not interpret S.S.'s change in the number of hours he worked or his scheduled hours as an attempt to avoid his child support obligations. This finding is reinforced by the fact that he was the primary parent in the first few years following the separation and his hours would not affect any child support payments he would have to make.
- [140] Like A.S., S.S. lost his job at the Mill when it closed in 2019. He quickly found employment in his parents' business but for a much lower salary. He has the use of a truck and the gas is paid for by the company. Although he should work to his earning potential, I do not find that he should have to work night shifts or excessive overtime to ensure his income is close to the amount he earned before separation.
- [141] S.S. did not provide testimony, nor was he cross-examined, regarding the breakdown between his base salary and any additional salary based on accepting overtime work. He did admit that he works fewer hours and less overtime than he did prior to separation. S.S. testified that his past hourly wage increased by \$1 due to working night shifts. By my calculation, based on a 40-hour week and based on 48 weeks per year, the increase would be approximately \$2,000 annually without accounting for overtime. I assume that with his past overtime this amount would be worth more than \$2,000, but how much more would be pure speculation.
- [142] A.S. was critical that S.S. had not applied for different electrical jobs where he could make more money. A.S. argues that S.S. is a Red Seal electrician, with some education on instrumentation, and could make more than his current salary. S.S. testified that he did not want to work elsewhere because he prefers to have time off to spend with his family. He admitted that he could make more money, but that he prefers the flexibility of his current job.
- [143] Unfortunately, there is no expert evidence or any evidence before me to provide me with guidance on how much a Red Seal electrician can make in the Fort St. John area. There was no evidence before me regarding what Red Seal electricians make generally. S.S. stated that many of the higher paid positions require the workers to move to a camp out of town, which he is not willing to do. His position is reasonable because he has two children and a new wife with five children of her own children who live with them. I do not think it is reasonable to require him to relocate for employment. Further, prior to separation S.S. was not working out of town to increase his income, so to insist on this now would drastically change S.S.'s circumstances.

[144] With the limited information before me I must determine the appropriate income for S.S. As set out in the next section, children are entitled to a standard of living that is consistent with their parents' ability to earn an income. S.S. is a Red Seal electrician and I accept that he is capable of making more money than he currently makes. As a result, I find that S.S. is underemployed.

[145] Based on his prior income at the Mill, I impute an income of \$95,000 to S.S. from 2020 forward. This imputation of income will apply in any year in which S.S.'s line 15000 (i.e., total income) falls below \$95,000.

[146] In summary, I am confident that the parties' total income prior to separation, and up and until 2019, is an accurate picture of their total income. However, as stated above, I impute a higher income to both parties where their total income falls below the stated amounts. In making these imputed income determinations, I have considered the limited evidence before the court, the parties' pattern of income over several years, their testimony and submissions regarding their ability and availability to work, and the best interests of the Children. I did not rely on the parties' inflated incomes in 2019, due to the severance packages, in making these findings.

[147] The following total income amounts will be used to calculate child support and spousal support obligations:

Year

S.S.

A.S.

2017

\$159,103

\$105,671

2018

\$97,910

\$114,576

2019

\$141,255

\$129,737

2020

Imputed income: \$95,000

\$85,818

2021

Imputed income: \$95,000

Imputed income: \$50,000

2022

Imputed income: \$95,000

Imputed income: \$50,000

[148] The parties shall exchange financial information as required by s. 21 of the Guidelines, no later than May 31st of each year.

[149] For future years, the parties are to apply the imputation of income in any year in which their line 15000 income (i.e., total income found on CRA tax assessments) falls below the imputed amount of \$95,000 for S.S. and \$50,000 for A.S. Adjustments should be made if a party's income goes above the income imputed in this judgment.

Child support

## Legal principles

[150] Parents have a joint and ongoing legal obligation to support their children in a way that is commensurate to their income. Section 147(1) of the FLA states that "[e]ach parent and guardian of a child has a duty to provide support for the child" subject to the exceptions in s. 147(1)(a) and (b). Section 147 codifies the case law respecting when child support obligations end.

[151] Section 149 of the FLA allows the court to make an order requiring a child's parent to pay child support. In making an order for child support, s. 150(1) of the FLA provides that the court must use the Guidelines to determine the appropriate amount. The objectives of the Guidelines are set out in s. 1:

- a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[152] Section 9 of the Guidelines provides that where parenting time is shared equally, the amount of the child support order must be determined by taking into account:

- (a) the amounts set out in the applicable tables for each of the spouses;

- (b) the increased costs of shared parenting time arrangements; and
- (c) the conditions, means, needs, and other circumstances of each spouse and of any child for whom support is sought.

[153] Section 9(c) of the Guidelines directs the court to consider the resources and needs of both the parents and children. The court is especially concerned with the standard of living of the children and the ability of each parent to absorb the costs required to maintain the appropriate standard of living in the circumstances: *Contino v. Leonelli-Contino*, 2005 SCC 63 at paras. 68-70. In *Contino* at para. 69, Justice Bastarache for the Supreme Court of Canada endorsed the following factors to consider under s. 9(c) of the Guidelines:

1. Actual spending patterns of the parents;
2. Ability of each parent to bear the increased costs of shared custody (which entails consideration of assets, liabilities, income levels and income disparities); and
3. Standard of living for the children in each household.

[154] A goal of the Guidelines is that children should not experience a significant variation in the standard of living as they move from one household to another: *Hadjioannou v. Hadjioannou*, 2013 BCSC 43 at para. 140; *Contino* at para. 51.

[155] Orders with set offs of child support must clearly state that both parties have an obligation to pay child support to ensure that both parties receive child tax benefits: *Latoria v. Canada*, 2015 TCC 221 at paras. 13-16.

#### Parties' Positions

[156] S.S. does not dispute that he needs to pay child support. He states that child support should be payable as follows:

- i. by A.S. to S.S. from July 1, 2017 to August 31, 2019, based on the Children residing primarily with S.S.;
- ii. in the set off amount from September 1, 2019 to December 31, 2020, based on a shared parenting arrangement; and
- iii. by S.S. to A.S. from January 1, 2021 to present, based on the Children residing primarily with A.S.

[157] A.S. disputes this retroactive child support arrangement, as she claims she had shared parenting and primary parenting responsibility of the Children for much of the time since separation.

[158] Both parties cast dispersions regarding the other's parenting time. On the one hand, A.S. repeatedly emphasized that S.S. has not paid child support to her. However, A.S. has paid no child support to S.S. when the Children were primarily in S.S.'s care. I find that although this is a high-conflict post-separation relationship, both parties obviously love their children and have been very involved in their care. Nevertheless, neither party comes before me with completely clean hands.

## Analysis

[159] There was no delay in making a claim for child support.

[160] Although the parties have submitted several documents and submissions to this Court regarding what the other party should pay for child support, they are not helpful because the submissions are premised on assumptions about parenting time that are different than my findings. Parenting time arrangements are crucial in calculating the obligations a parent owes for child support.

[161] The amount of retroactive and ongoing child support payable should be based on the parenting time findings as set out above, as well as my findings with respect to income determination as set out above in these reasons.

[162] I leave it to the parties to calculate the precise amount of retroactive child support payable based on the findings above. The \$800 S.S. has been paying for child support since September 2022 should be offset by this amount.

[163] If the parties come to an agreement, an order may be forwarded to me for signature. If the parties are unable to agree, the parties may set an appointment before the Registrar to determine the final amount payable. I refer the parties to R. 15-1 of the Supreme Court Family Rules.

## Section 7 expenses

## Legal principles

[164] Section 7 of the Guidelines outlines what constitutes a special or extraordinary expense. I need not set out the legal principles regarding s. 7 expenses in detail because neither party disputes they should be paid. Their disagreement revolves around their incomes, what are appropriate expenses, and whether S.S. agreed to expenses before they were incurred.

[165] In *L.A.M. v. S.C.M.*, 2020 BCSC 67 at para. 29, Justice Weatherill laid out a two-pronged approach to assessing whether an expense ought to be considered a s. 7 expense:

- a) First, the court should determine whether the expense claimed under section 7(1)(f) of the Guidelines is an extraordinary expense or extracurricular activity by considering the following factors:
  - i. the combined income of the parties;

- ii. the nature and amount of the individual expense;
  - iii. the nature and number of the activities;
  - iv. any special needs or talents of the children;
  - v. the overall cost of the activities; and
  - vi. any other similar factor that the court considers relevant.
- b) Once the court determines that an expense falls within section 7(1)(f) of the Guidelines, a court must then determine whether the expenses are necessary in relation to the child's best interests and reasonable in the circumstances having regard to the following factors:
- i. the means of the spouses and those of the child; and
  - ii. the family spending pattern prior to separation.

[166] For an expense to be considered an eligible extra curricular activity, it must meet the threshold of being necessary, reasonable, and affordable. The expense must be necessary as defined in relation to the child's best interest. It should also be reasonable as measured against the combined financial means of the parents at the material time, as well as family spending prior to separation: S.H. v. L.H., 2016 BCSC 353 at para. 84.

[167] The court must consider if the recipient of child support can reasonably cover the expense out of their income, including from the child support they receive. If so, the expense will usually not be considered an extraordinary expense: L.A.M. at para. 30; S.H. at para. 84.

### **Parties' positions on s. 7 expenses**

[168] A.S. argues that S.S. shall pay to her his proportionate share of s. 7 expenses claimed in the schedule attached to her submissions. A.S. seeks retroactive s. 7 expenses from January 1, 2018 to the present, proportionate to the Guidelines incomes determined by this judgment. She argues as follows:

- a) Commencing January 1, 2018 and continuing for so long as the children remain children under the Family Law Act the parties shall share the children's section 7 Special and Extraordinary expenses proportionate to their Guideline incomes.
- b) Section 7 Special and Extraordinary expenses shall include but not be limited to any health-related expenses which exceed Insurance reimbursement of and to the parties for so long as and when the parties have coverage available through their respective employment.
- c) Commencing with the date of the Reasons for Judgment of the trial herein, Section 7 Special and Extraordinary expenses shall be the subject of communication between the parties prior to being incurred, however, agreement by a party not incurring the expense initially to that expense being incurred shall not be unreasonably withheld.

- d) Each party shall provide the other with the necessary documents and information to make claims for such expenses under extended health insurance of the other party and each parent shall forthwith reimburse to the other any monies owing to that other party as a result of having made such claim under the policy or plan of the other.
- e) Each party shall pay to the other his or her proportionate share of a s. 7 Special and Extraordinary expense no more than 30 days after the date upon which the document or document of expense is provided to the other.
- f) [S.S.] shall pay to [A.S.] his proportionate share forthwith after the Court has determined the parties' respective Guideline incomes for each of the years 2018 to 2022 respectively.

[169] S.S. argues that the Children's special and extraordinary expenses shall include:

- (a) Extended medical and dental premiums;
- (b) Health-related expenses which exceed insurance reimbursement of the parties and any insurance available to the Children from the parties' spouses.
- (c) Any additional expenses enumerated under s. 7 of the Federal Child Support Guidelines that have been agreed upon between the parties in advance of the expense being incurred.

[170] S.S. contends that neither party shall unreasonably refuse agreement to a special or extraordinary expense enumerated under s. 7 of the Guidelines. He further submits that the courts have regularly denied claims for contribution to exorbitant horse-related expenses, where the amounts claimed are not reasonable based on the payor's income: *Ackland v. Brooks*, 2001 BCSC 877 at paras. 5-14; *Morissette v. Ball*, 93 A.C.W.S. (3d) 1068, [2000] O.J. No. 73 (Ont. S.C.J.) at paras. 12-3.

[171] S.S. takes the position that A.S. did not approach him with s. 7 expenses before she incurred them and that there should be agreement before either party claims a s. 7 expense.

## Analysis

[172] Section 7 expenses must be necessary, reasonable, and affordable. Between 2017 and 2021 inclusive, only medical, dental and counselling (including premiums for extended health plans) expenses or expenses that were agreed to between the parties, or should have been agreed to because proper notice was given, are to be included.

[173] A.S. argues that the terms of criminal release in place, due to the assault charge, between 2018 and 2019 prevented her from communicating with S.S. The terms of criminal release specifically state that A.S. may communicate with S.S. to, inter alia, "address any issues relating to guardianship of your children". Moreover, in her final submissions at p. 19 she submits "there were express provisions for contact relating to the guardianship and parenting issues."

[174] This language is broad and I do not agree that A.S. was prevented from communicating with S.S. to receive his agreement prior to incurring s. 7 expenses during this period. Certainly A.S. had the ability to communicate through her lawyer. A.S. argued she did provide s. 7 expenses through legal counsel.

[175] From 2022 forward, the Children's special and extraordinary expenses shall include:

- (a) extended medical and dental premiums;
- (b) health-related expenses which exceed insurance reimbursement of the parties and any insurance available to the Children from the parties' spouses;
- (c) orthodontic and vision expenses;
- (d) counselling;
- (e) necessary, reasonable, and affordable extracurricular activities provided they are agreed to in advance; and in particular, any future horse-related expenses shared between the parties must be agreed to in advance and are required to be necessary, reasonable, affordable, and proportionate to the parties' income available at that time; and
- (f) any reasonable expenses enumerated under s. 7 of the Guidelines that have been agreed upon between the parties in advance of the expense being incurred.

In addition:

- (g) the Children's extracurricular activities should be comparable to the activities the children participated in during the parties' relationship;
- (h) neither party shall unreasonably refuse agreement to a special or extraordinary expense enumerated under s. 7 of the Guidelines;
- (i) each party shall provide the other with the necessary documents and information to make claims for such expenses under extended health insurance of the other party and each parent shall forthwith reimburse to the other any monies owing to that other party as a result of having made such claim under the policy or plan of the other;
- (j) the expenses should be exchanged, along with receipts, every three months; and
- (k) each party shall pay to the other his or her proportionate share of a s. 7 expense no more than 30 days after the date upon which the document or document of expense is provided to the other.

[176] Since their separation, the parties' child support Guidelines income available for s. 7 expenses have changed substantially. Complete financial disclosure and the accurate determination of available income between the parties continues to be a concern. It is not in the best interests of the Children for the parties to continue to share s. 7 expenses in proportion to their respective incomes under the Guidelines, as this has been and continues to be a major source of contention. The parties are to share past s. 7 expenses in

proportion to their respective incomes and in light of my income imputation findings. To avoid further conflict, the parties are to share future s. 7 expenses on a 70 percent (S.S.) / 30 percent (A.S.) basis. However, adjustments should be made if a party's income goes above the income imputed in this judgment.

[177] Consequently, s. 7 expenses calculations are to be based on the following conditions:

I. between 2017 and 2022 inclusive, the s. 7 expenses are to be shared in proportion to the parties' income; and

II. in terms of 2023 going forward, the parties must share the s. 7 expenses on a 70/30 percent basis. However, adjustments should be made if a party's income goes above the income imputed in this judgment.

[178] I leave it to the parties to calculate the precise amount of s. 7 expenses owing for past years, based on the findings above. If the parties come to an agreement, an order may be forwarded to me for signature. If the parties are unable to agree, they may set an appointment before the Registrar to determine the final amount payable.

Property division

## Legal principles

[179] Property division is governed by the FLA. Upon separation, each spouse is presumptively entitled to an undivided one-half interest in all family property: FLA, s. 81. The value of the family property must be based on its fair market value at the date of trial, subject to agreement or as otherwise ordered: FLA, s. 87. Section 97(1)(b) of the FLA provides that the court may make any order that is necessary, reasonable, or ancillary to give effect to a division of property or division of family debt.

[180] Family property is all real and personal property, other than excluded property, owned by one or both spouses at the date of separation: FLA, s. 84(1)(a).

[181] While the presumption is for equal division of family property and debts post-separation, this Court may order an unequal division of family property and debt based on the criteria for reapportionment set out in s. 95(2) and (3) of the FLA. This includes, inter alia, the duration of the relationship and whether one spouse contributed to the other's career.

[182] Section 84 of the FLA details what constitutes family property. Section 84 provides:

84(1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
- (i) property that is owned by at least one spouse, or
- (ii) a beneficial interest of at least one spouse in property;

[183] Section 85 of the FLA defines excluded property:

#### Excluded property

85(1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

[184] The court may order an unequal division of family property or debt, or both, if it would be "significantly unfair" to divide the asset(s) equally: FLA, s. 95(1).

[185] The party that wants an unequal division bears the onus of demonstrating that the property should be divided unequally: FLA, s. 85(2). Oral evidence is acceptable, subject to an assessment of credibility.

[186] The FLA does not demand precision or mathematical certainty when establishing a claim to excluded property as this would risk defeating legitimate claims. The challenge that confronts litigants is that in relationships of any significant length, documents may have been destroyed and memories decline over time. The proper test for establishing a claim to excluded property under s. 85 of the FLA is therefore on a balance of probabilities, based on clear and cogent evidence. A trial judge may draw reasonable inferences from evidence that is less than precise in order to do justice between the parties: *Shih v. Shih*, 2017 BCCA 37 at para. 44.

[187] When some property is excluded, the family property will include the increase in value of the excluded property since the relationship between the spouses began or the excluded property was acquired, whichever was later: FLA, s. 84(2)(g).

#### Family Home

##### Parties' positions with respect to the Family Home

[188] A.S. seeks an equal division of the Family Home. She also seeks an equal division of the family debt.

[189] S.S. takes the position that the Family Home should be divided unequally, in favour of him, to account for his excluded property he contends that he brought into the relationship. S.S. argues the net sale proceeds from the Family Home can be traced back to his funds withdrawn from his RRSPs under the Home Buyers' Plan and other investments that he brought into the relationship in 2006. He further argues that he put those funds toward the purchase of the Poplar property, which was then used to purchase the Family Home, and that those funds should be excluded from the property division of the Family Home. If I

find that the Family Home is family property, S.S. seeks that I divide the net proceeds unequally in his favour so that he receives 100 percent of the net proceeds based on his maintenance of the family property while he lived in the family home post-separation. The net proceeds after the sale of the family home, are \$20,367.02.

- [190] A.S. disagrees that any money should be excluded or that the family home should be divided unequally in S.S.'s favour. She testified that the parties jointly paid back the RRSP monies S.S. used under the Home Buyers' Plan to purchase the Poplar home. Moreover, both parties maintained the Family Home until A.S. moved out and was required to pay rent elsewhere. S.S. had the benefit of staying in the Family Home post-separation.

## Analysis

- [191] S.S. bases his claim for an unequal division on his excluded property claim and his maintenance of the property post-separation.
- [192] When the parties began their marriage-like relationship in the spring of 2006, A.S. moved into the Poplar property which S.S. owned. It remained in his sole name. In 2009, the parties sold the Poplar property and purchased the Family Home in Charlie Lake. The Family Home was registered solely in S.S.'s name.
- [193] The only evidence S.S. offers in support of his excluded property claim for the Family Home is a single page Home Buyers' Plan statement from his 2019 CRA documents. S.S.'s Home Buyers' Plan statement indicates that he withdrew \$20,000 from his RRSP in 2005. As of the 2019 tax year, the statement indicates that \$17,331 has been repaid, cancelled, or included as income. According to the 2019 statement, S.S.'s repayment obligation under the Home Buyers' Plan would be fully repaid by 2021. He has not provided the Home Buyers' Plan statement for 2021. S.S. did not produce the documents associated with the Poplar property purchase. In addition, S.S. did not provide any banking statement accounting for the RRSPs he withdrew under the Home Buyers' Plan in 2005. S.S. agreed that the parties repaid the amounts back to his RRSPs during their relationship.
- [194] Given this lack of evidence, I am not satisfied that S.S. has established his excluded property claim with a clear and cogent evidentiary basis, nor has he established that it would be significantly unfair to divide the Family Home equally. S.S. has failed to establish on a balance of probabilities that \$20,000 from his RRSP that was used to purchase the Poplar property should be excluded. I find it more likely that his RRSPs were substantially repaid by family monies from the date of cohabitation until the parties separated. As for A.S.'s concerns, I acknowledge that S.S. lived in the Family Home from separation until it was sold. However, he paid the mortgage and other household expenses during this time.

- [195] This Court has found that rent paid by the departing spouse may be offset against expenses paid by the occupying spouse: *McFarlen v. McFarlen*, 2017 BCSC 1737 at paras. 20-22. This is a discretionary tool and it is particularly helpful to achieve fairness in cases where one spouse is ousted from the property. While ouster is not a pre-condition to a claim for occupational rent, there is no suggestion that A.S. was ousted from the Family Home.
- [196] Another way to account for an injustice in the amounts paid is to apply principles of spousal support to compensate the non-occupying party if they were forced to pay substantially more than the occupying spouse paid in expenses toward maintaining the family home (e.g., the mortgage, and expenses relating to maintenance of the home, insurance costs, and property taxes).
- [197] According to S.S.'s BMO re-financed mortgage agreement dated August 21, 2017, he re-mortgaged a principal amount of \$472,000 with regular monthly payments in the amount of \$2,210.96 starting on October 1, 2017, for 25 years. The instalments are inclusive of principal payments, interest, and creditor insurance premiums. Although S.S. did have the benefit of remaining in the family home after the parties separated, A.S. did not bring me to any amount paid in rent or other expenses incurred as a result of being displaced from the Family Home. There is no evidence before me that she paid substantially more than the \$2,210.96 paid by S.S to maintain the Family Home.
- [198] Another factor is whether the occupying spouse has increased or decreased the value of the property post-separation. Here, there was no evidence that S.S. increased or decreased the value of the Family Home. It did go down in value, but that was a result of market forces rather than any conduct on the part of S.S.
- [199] The family home was sold in April 2021. After paying off the mortgage, and realty fees and legal fees, the net proceeds of sale were \$20,367.02. These funds are being held in trust by North Shore Law LLP (S.S.'s former lawyers).
- [200] Section 95 of the FLA provides that the court may order an unequal division of family property if it would be significantly unfair to equally divide the family property. In determining whether an equal division would be "significantly unfair", the court may consider the factors listed in s. 95(2).
- [201] In summary, I find the family home should be divided equally. The parties' Family Home is family property to which both parties are entitled to an undivided one-half interest. I am not persuaded that it would be significantly unfair to order an equal division of the Family Home. While S.S. had some money invested in the Poplar home at the time of cohabitation, he has not provided any clear or cogent evidence to establish that it would be significantly unfair to divide the Family Home. Both parties worked to improve and increase the value of the Poplar home. Some improvements to the property included staining decks, building fences, landscaping, and painting. Both parties contributed to the renovations and upkeep of the Family Home. Although S.S. made the mortgage payments, A.S. paid other expenses related to the property and to the Children. Moreover, A.S.'s parents also contributed to the

improvements and upkeep of Family Home, as well as the support of the Children, without compensation.

[202] In these circumstances, I am unable to accept that it would be significantly unfair to divide the family home equally. I order an equal division of the family home. I order that the net proceeds of sale in the amount of \$20,367.02 be divided equally between A.S. and S.S.

#### Other assets

##### General

[203] The other assets which I must divide between the parties are:

- a) monies remaining in bank accounts;
- b) investment accounts including RRSPs and the Children's registered education savings plan (RESPs);
- c) pensions accrued during the relationship;
- d) vehicles;
- e) horses;
- f) the Hawaiian timeshare;
- g) Air Miles; and
- h) furniture and other personal or household effects.

[204] Both parties submitted a "Scott schedule", a schedule of property and debts to the Court. The schedule is intended to contain information regarding what are family assets or debt, the value of each family asset or debt at separation, and the proposed method of asset valuation. The schedule is not a prescribed form, but is created by litigants to guide the trial judge when navigating issues of family property and debt, as well as any claims of excluded property.

[205] Both parties' Scott schedules are based on assumptions about which assets and debts that they believe should be shared and which should be excluded. In S.S.'s schedule, his calculations assume that the family home is excluded property. A.S.'s schedule assumes the family home is family property. S.S.'s schedule includes the value of the assets and debts in question at the time of separation in June 2017, their current value, along with a helpful guide on finding corresponding supporting documents in the court material. A.S.'s schedule does not include dates for the value of the assets or debts in question at the time of separation, or their current value. It also does not indicate any corresponding supporting documentation. Most of the items listed in her schedule simply state the potential assets and debts she seeks to divide and with a dollar value assigned to them. In addition, her schedule does not account for the \$14,000 given to A.S. to pay off her portion of family debts following the re-financing of the Family Home.

[206] I have worked from both parties' Scott schedules. However, I found S.S.'s schedule to be more helpful.

### Bank accounts

[207] S.S. asks that I order A.S. to pay him \$21,822.33 to equalize bank accounts, debts, and personal property that constitute family property. S.S. arrived at the amount of \$21,822.33 in the schedule he provided to the court. The equalization calculation he performed assumed the family home would be excluded property, and it combined the calculation of other property such as horses, vehicles, furniture, household effects, bank accounts, and unsecured debts. I have dealt with the division of many of these property claims separately throughout these reasons. Therefore, I cannot rely on his calculation for the equalization of accounts and debts between the parties.

[208] As of June 2017, the parties had several bank accounts.

[209] According to S.S.'s Scott schedule, only two accounts are the subject of property division because the remaining accounts had no value in them when the parties separated. S.S. contends that upon separation that his BMO primary chequing account (ending in 668) had a balance of \$10,833 and that BMO Self-Directed InvestorLine TFSA account (ending in 304) had a balance of \$320. S.S. attached a printout of the account ending in 304 from BMO's website. The printout indicates that on August 15, 2022, the account continued to maintain a balance of \$320.

[210] According to A.S.'s Scott schedule, she agrees that S.S.'s BMO primary chequing account (ending in 668) had a balance of \$10,833 and that BMO Self-Directed InvestorLine TFSA account (ending in 304) had a balance of \$320. However, she states that S.S. had an additional chequing account with a balance of \$15,764. In her Scott schedule, A.S. simply states the following with respect to the account: "Chequing acct balance 15764.36". She does not list an account number or any accompanying documents to substantiate this claim. I was unable to locate this account in the exhibits.

[211] The total monies in these accounts, \$11,153, is family property and is subject to equal division. At separation, S.S. disproportionately held the \$11,153 in family monies in his accounts while A.S.'s chequing account held a negative balance (I deal with A.S.'s chequing account in the debt division section below). S.S. owes A.S. \$5,577 from the amount of money that remained in the bank accounts S.S. controlled after separation.

### Investment accounts - RRSP accounts

[212] There are three RRSP accounts at issue between the parties. The RRSPs at issue in this section are separate from the RRSPs under the Home Buyers' Plan that S.S. seeks to exclude as discussed above.

[213] There are two BMO RRSP investment accounts in S.S.'s name (ending in 718 and 812) and one Louisiana Pacific Sunlife RRSP account in A.S.'s name (ending in 302).

### **Parties' positions with respect to the investment accounts**

[214] S.S. argues that he should transfer, as a tax-free spousal rollover from his RRSP to a RRSP or LIRA in A.S.'s name, \$54,788. S.S. states that this amount accounts for S.S.'s portion of A.S.'s \$15,540.45 in RRSPs disposed of after separation to pay her lawyer. He further argues that if A.S. is unable to pay to him the amount potentially owing to him for retroactive child support and/or equalization of other family property, the amount owing to S.S. could be grossed up and deducted from the RRSP rollover.

[215] S.S.'s Scott schedule summarizes the disputed RRSP accounts as follows:

- Account ending in 718 (S.S.): \$140,656.25 (valued as of August 2, 2022)
- Account ending in 812 (S.S.): \$5,450.01 (valued as of August 12, 2022)
- Account ending in 302 (A.S.): \$15,540.45 (valued at the date of withdraw)

[216] S.S.'s Scott schedule concludes that the total amount he owes to A.S. in order to equalize the parties' RRSP accounts is \$54,788. However, in coming to that value, S.S. assumes that \$25,000 in RRSPs (which he argues is excluded inheritance given by his grandfather) and \$3,000 in RRSPs (which he argues he brought into the relationship) is excluded property and is therefore not subject to the tax-free spousal rollover.

[217] In his submissions, S.S. concedes that he has a lack of evidence with respect to these RRSP accounts:

I have done the best I can to demonstrate that I had substantial amounts in my RRSPs before the relationship. However, I am willing to accept less than I believe I am entitled to, based on the lack of documentation.

[218] A.S. testified that she cashed in her \$15,540.45 RRSP to pay for her legal fees associated with the criminal charges she was facing at the time. A.S. also lists the \$15,540.45 RRSP amount as an asset subject to division in her Scott schedule.

### **Analysis**

[219] The \$15,540.45 in RRSPs that A.S. withdrew in 2019 from the account ending in 302 was family property and subject to equal division between the parties. As set out in the debt division section below, using family monies to defend against criminal charges is not a financial obligation incurred after the date of separation for the purpose of maintaining family property, and is therefore not properly considered family debt.

[220] According to S.S.'s Scott schedule, he seeks to exclude \$25,000 in RRSPs from the division of the \$140,656.25 RRSPs available in account 718. As evidence, S.S. produced a one-page BMO transaction history report dated May 1, 2019 at trial. The report details S.S.'s transactions from January 1, 2011 to December 31, 2012. It indicates that in August 2011, S.S. received two RRSP deposits from a Transamerica account in the amounts of \$4,741.47 and \$21,695.50. The total amount is \$26,436.97. The single page report is S.S.'s only proof that he inherited this amount from his grandfather. At trial, S.S. testified the following with respect to the single page transaction report:

if you look down at the bottom, I was told that I had no proof of my grandfather's inheritance money, if you look at August 2011, that was my only proof there of when I got the BMO account transferred over from my grandma to me at that time.

[221] He further noted that he kept the inheritance in his RRSP account and never withdrew them for himself or a family purpose. He also stated that if he had withdrawn the RRSPs that he inherited from his grandfather, that they would be reflected in his tax documents as an income inclusion for that year. This is not helpful because the Court only has S.S.'s tax documents and financial disclosure dating back to 2017, not 2011. Unfortunately, S.S. has no other corroborating evidence, such as a copy of his grandfather's will or any documentation showing that the transfers came from his grandfather's estate. The onus of proving that property is excluded property is on the party asserting it: s. 85(2), FLA. While there is limited documentary evidence, I believe S.S. on this point. This is because his evidence about his assets and debts, as well as his Scott schedule, were generally reliable. I therefore find that the \$26,436.97 deposited in S.S.'s account in August 2011 is an inheritance from his grandfather and is excluded property.

[222] According to S.S.'s Scott schedule, he seeks to exclude \$3,000 in RRSPs from the division of the \$5,450.01 RRSPs available in account 812. S.S. claims he brought these RRSPs into the relationship. S.S. produced several personal RRSP statements from BMO for the account ending in 812. The statements are dated between April 1, 2017 to June 30, 2022. The BMO statements indicate that the personal RRSP account was opened on September 5, 2000. The statement only indicates the changes to the account for the period between April 1, 2017 to June 30, 2022. However, each statement includes a graph, that appears to be generated by BMO and included with each statement, which shows the changes in value of the account between December 2000 and June 2017. Neither the graph nor the statement provides an exact value of S.S.'s RRSPs in the account between December 2000 and December 2005. It does indicate that the amount invested did not change and that the value is somewhere between \$0 and \$7,000. S.S. claims the value is \$3,000. The graph indicates, with little precision, that between December 2005 and December 2013 the account received deposits which peak at around \$28,000. The account maintained that balance for sometime, but on or around December 2013 almost all of the deposits were withdrawn. The final page of the statement indicates that as of August 12, 2022 the account maintained a balance of \$5,460.01.

- [223] It is difficult to precisely determine how much money the account ending in 812 had prior to the parties' entering into a relationship in the spring of 2006 based on the financial statements provided by S.S. I accept that S.S. had some RRSPs in the 812 account, but the lack of accounting and financial statements clearly indicating the value of RRSPs in the account prior to the parties' relationship places the Court in a difficult position. I order that \$1,000 of the RRSPs in account 812 were held by S.S. before the spring of 2006 and are excluded property.
- [224] In summary, I find that S.S.'s RRSPs held for \$1,000 prior to the spring of 2006 and the \$26,436.97 that he inherited from his grandfather in August 2011 is excluded property. The \$15,540.45 in RRSPs withdrawn by A.S. in 2019 were family assets subject to equal division. S.S. is to transfer the remaining RRSPs held in these accounts, less \$35,207, as a tax-free spousal rollover from his RRSP to a RRSP or LIRA in A.S.'s name. This will equalize the RRSP investment accounts at issue, less half of the amount A.S. disposed of after separation and S.S.'s excluded RRSPs.

## Pensions

- [225] There are two pension accounts in dispute. S.S. has a Sunlife defined contribution pension plan (account ending in 907) from his employment with Louisiana Pacific. A.S. also had a Louisiana Pacific Sunlife defined contribution pension plan, but she transferred it into a Primerica locked-in registered retirement savings plan (LIRA) (account ending in 670CA).
- [226] S.S.'s Scott schedule lists his pension account ending in 907 as maintaining a current value of \$463,019.83 as of August 2, 2022. S.S. Scott schedule states that the account held a \$281,441.08 value at separation. He lists A.S.'s Primerica account as having a value of \$89,024.97 as of September 2, 2022 and a value of \$61,694.95 when the parties separated.
- [227] A.S.'s Scott schedule lists her pension account ending in 670CA as maintaining a current value of \$99,880.39 as of December 31, 2022. She lists S.S.'s account at \$463,019.83 with no date.
- [228] S.S.'s submits that he contributed to his pension account prior to the relationship, during, and after. He states that A.S. only contributed to her account during and after the relationship. He notes in his submissions that "neither [A.S.] nor my pension have been valued for the period of the relationship." In other words, no accounting has been done by either party to trace the amounts of the parties' contributions to their pensions before, during or after the relationship.
- [229] A.S. argues that all pensions and pension credits of the parties, including from employment pensions, regardless of what form they may have been changed, should be divided equally, at the source, for the period between June 1, 2006 to June 1, 2017. Specifically:

1. Those benefits and credits accrued to each of the parties during the relationship, that is, between June 1, 2006 and June 1, 2017 under their respective Sun Life Louisiana-Pacific Pension Plans, including those transferred by the claimant to Primerica account 11221670 CAS shall be divided equally pursuant to Part 6 of the Family Law Act.
2. The expense associated with the division of the pension plan credits charged by the respective institutions or plans shall be paid equally and immediately by the parties to effect the division.
3. The parties respective unadjusted pensionable earnings under the Canada Pension Plan shall be equalized for the period June 1, 2006 to June 1, 2017 pursuant to sections 55, 55.1 and 55.2 of the Canada Pension Plan Act.
4. The parties shall do all things necessary including executing documentation in order to affect the divisions and/or equalization of pension credits as contemplated in the above paragraphs herein.

[230] I accept A.S.'s method as an appropriate way to divide the parties' pensions. They are to be so divided.

#### Children's RESPs

[231] With respect to the Children's RESPs, S.S. argues:

- i. The Knowledge First Financial RESPs shall each be held by the parties for the benefit of the child for whom the account is held, and shall be used for that child's post-secondary expenses.
- ii. Any funds remaining in a RESP that has not been used for post-secondary education by the time the child for whom the account is held turns 25, the funds in the account, net of any taxes or repayment of government contributions, shall be transferred to that child, unless otherwise agreed upon by the parties.
- iii. If the parties are required to share a child's post-secondary expenses, any post-separation contributions by either party to the RESP will be considered a contribution to that party's proportionate share of these expense.

[232] A.S. takes no position on how the RESPs should be managed.

[233] In my view, the Knowledge First Financial RESPs should be kept in both parties' names. The RESPs shall each be held by the parties for the benefit of the child for whom the account is held, and shall be used for that child's post-secondary expenses. Going forward, any disbursements from either RESP account shall require the consent and signature of both parties. Any funds remaining in a RESP that has not been used for post-secondary education by the time the child for whom the account is held turns 25, the funds in the account, net of any taxes or repayment of government contributions, shall be transferred to that child, unless otherwise agreed upon by the parties.

## Vehicles

- [234] At the time she moved in with S.S., A.S. had just purchased a Hummer H2 for \$57,885.98. She borrowed money toward the purchase, but made a down payment of \$30,000 from her own savings.
- [235] A.S. testified that S.S. wanted the Hummer post-separation and paid her \$15,000 for it. She points to a bank transfer in August 2017 where there is a transfer to her of \$14,000 and subsequently \$1,000. She testified that both these payments were for the Hummer. According to A.S., just before the parties separated, they acquired a Dodge Ram in March 2017. Although the truck was acquired just prior to the parties' separation, A.S. submits banking records to indicate that she made biweekly payments in the amount of \$637.25 commencing on April 21, 2017. According to her submissions, the truck had to be "return[ed] as [A.S.] could no longer afford [the 2017 Dodge Ram truck] without support being paid by [S.S.]" Her Form F8 states that the truck has been repossessed.
- [236] S.S. testified that he did not transfer \$15,000 to A.S. for the Hummer. Rather, he paid A.S. \$14,000 on August 24, 2017 to pay off her outstanding debts from the money received after he remortgaged the home post-separation. S.S. argued that after he and A.S. separated, they each had credit card debt and they each needed money. S.S. states they agreed to refinance the mortgage to pay off their debts from the mortgage proceeds, the previous mortgage balance was repaid and there was \$41,097 remaining. He transferred A.S. \$14,000 to pay off her debts. He further testified that he received no money for the Hummer but acknowledges that it was transferred into his name. He also paid A.S. \$1,000, on August 14, 2017, to help her purchase a new bed. A.S. accepts that S.S. bought her a bed in the summer of 2017.
- [237] A.S. testified that S.S. refinanced the mortgage and availed himself of the \$41,097 without consulting her or obtaining her agreement. I have serious concerns about A.S.'s version of these events.
- [238] First, the transfer of ownership papers for the Hummer shows that it was a gift to S.S. and that no money was transferred to A.S. In addition, there was no explanation as to why S.S. would pay for the Hummer in two separate payments.
- [239] Second, there is no dispute that post-separation A.S. took the 2017 Dodge Ram truck. It appears that there was an agreement that each party would take one of the larger vehicles. The 2017 Dodge Ram would have been worth significantly more than a 2003 Hummer, but there was still most of the principal balance remaining at the time of separation. It was purchased on March 23, 2017 for \$117,358.51.
- [240] Third, the bank account statement dated September 22, 2017 shows a transfer of \$430,507. This is consistent with the refinancing of the mortgage in August 2017 (the time period in which the \$14,000 payment was made), which both parties agree occurred.

- [241] Fourth, in the notice of family claim dated March 13, 2018, A.S. lists the 2003 Hummer as joint property in which she is entitled to compensation. If she had already been compensated \$15,000 for the Hummer just months earlier, then I assume she would not claim this amount in a court document.
- [242] I accept that S.S. refinanced the Family Home to assist the parties in paying off their debts. This is a much more plausible explanation for the transfer of \$14,000 on August 25, 2017. Each party took a vehicle post-separation. Neither was worth much. The Hummer would have depreciated over time and the Dodge Ram was not paid off. A.S. was making biweekly payments in the amount of \$637.25. S.S.'s financial statement states he owns the 2003 Hummer, which he values at \$7,000. In A.S.'s Form F8 financial statement filed on September 2, 2022, she claims to own no vehicles.
- [243] In summary, the ownership of the 2003 Hummer will remain with S.S. A.S. is not entitled to any further compensation for it. A.S. received the Dodge Ram truck. Although she had to make payments post-separation for the Dodge Ram, this was no longer family property. In addition, A.S. had a good income until 2020 and presumably could afford the payments.

## Horses

- [244] The parties owned a number of horses throughout their relationship. A.S. brought a number of horses into the relationship. I referred to this contribution when discussing the Family Home.
- [245] In 2015, a joint loan was taken out with the BMO to purchase horses. While A.S. complained that she left the house without taking many personal effects, a couple of months after she left she took the horses to her new property where she lived with her new partner.
- [246] I appreciate that A.S. spent a considerable amount of time at trial testifying about the value of each horse. Her total estimated net value for the horses is approximately \$11,000. However, we do not have a comparable bluebook value for horses like we do for vehicles. Without better paperwork regarding sales of the horses I can give their values only limited weight. Moreover, the value of horses will fluctuate due to many factors including their age, fitness, and whether they are performing well. Determining the value of horses is certainly not a science.
- [247] Without better evidence, I am unable to determine the value of the horses at the time of co-habitation. In any event, A.S. did not make an excluded property claim. In addition, A.S. took the horses with her when the parties separated. As a result, A.S. is not to be separately compensated for the value of the horses. S.S. is also not entitled to compensation for the horses A.S. took with her after separation.

## Hawaii timeshare

- [248] In December 2016, a Hawaii timeshare was purchased with joint funds for \$30,000 USD. After separation, A.S. testified that she was blocked by S.S. from even accessing information about the time share and that she had no ability to use it. S.S. has used it on two or three occasions and has paid the maintenance fees since separation.
- [249] Neither party appears to want the timeshare. The timeshare shall be sold and any proceeds shall be divided equally between the parties. To the extent S.S. paid the maintenance fees since separation, this was offset by the fact that he alone enjoyed the benefits of the timeshare in this period.

## Air Miles

- [250] A.S. claims that S.S. owes her Air Miles points which they received from spending on their BMO World Elite Mastercard. S.S. argues that he used those points prior to separation for a family trip to Hawaii in 2017. The only evidence provided by the parties pertaining to the Air Miles points balance are monthly BMO credit card statements for several years indicating the amount of points earned each month based on the parties monthly spending. There is no documentation directly from Air Miles indicating the initial points balance, any transactions such as redeemed points for the Hawaii trip, or any sort of accounting of the points during the relevant time period.
- [251] Based on the lack of evidence before me, I decline to award either party any value for the Air Miles points.

## Furniture, household effects, and miscellaneous assets

- [252] Both parties each retained some miscellaneous items and household effects when they separated.
- [253] S.S. submits the following list of the items that the parties each took with them:
- S.S. claims he took the bedroom set (\$1,200), living room furniture set (\$5,000), fire place (\$250), and deep freezer (\$1,000).
  - S.S. claims A.S. took water heaters (\$500), electric fences and wheelbarrows (\$2,000), dining room set (\$500), family photos (\$1,000), kid's dressers and trampoline (listed but not included in the calculation because they are for the benefit of the Children), elliptical (\$1,200), dishes (\$100), kitchen appliances (\$200), stove from the garage (\$100), dishwasher from the garage (\$100), water cooler (\$50), Christmas decorations (\$100), dog kennels (\$100), dog shock collars (\$100), and dog fencers (\$100), horse panels (\$1,000), barn panels (\$2,500), "Tack" (\$6,426), water troughs (\$388.22) and a water tank (\$380.79).
- [254] S.S. places a value on the items he retained after separation at \$7,450, and A.S.'s items at a value of \$16,845.01.

[255] S.S. argues that the parties should each retain all personal property and financial assets in their own names, free from any claims by the other.

[256] A.S. submits the following list of items that the parties each took with them:

- S.S. took the JD mower (\$4,000), Yamaha (\$6,500), tractor (\$18,000), and household items (\$12,000).

- A.S. claims she took horses (\$11,000), horse trailer (\$15,000), Tack (\$2,500), Stalls (\$3,000), household items (\$2,000), seized truck (\$0).

[257] A.S. places a value on the items she retained after separation at \$33,500, and S.S.'s items at a value of \$40,500.

[258] I decline to award either party any money for household effects or miscellaneous items. A.S. took most of the horse-related assets when she left. Although the value is difficult to ascertain, A.S.'s horse-related assets were significant. S.S. retained most of the household furniture and other items worth considerable value, such as the JD mower, tractor, and other items.

[259] In my view, each offsets the others and an attempt to further account for each item is too speculative. The parties shall each retain all personal property and other miscellaneous items already in their possession.

## Debt division

### Legal principles

[260] In terms of debt division, I repeat what Justice Griffin succinctly stated in *Zilic v. Zilic*, 2021 BCCA 107:

[13]

- a) As a starting position, spouses are entitled to equal division of family property and are equally responsible for family debt as at the time of separation, regardless of their relative contributions to the acquisition of the property: FLA, s. 81; *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38.
- b) Family property includes all real and personal property owned by at least one spouse on the date of separation: FLA, s. 84(1). It also includes property acquired by a spouse that is derived from family property and the value by which "excluded property" increased during the relationship: FLA, ss. 84(1)(b)(i), (2)(g).
- c) Some property held by a spouse is excluded from family property. Excluded property is property acquired before the relationship, inheritances, property derived from excluded property, and some additional categories of property: FLA, s. 85. The onus of proof is on the spouse claiming that property is excluded property: FLA, s. 85(2).

- d) Family debt includes all financial obligations "incurred by a spouse" during the period of the relationship before separation and debt incurred after separation if incurred for the purpose of maintaining family property: FLA, s. 86.
- e) The presumptive date for determining the value of family property and family debt is as of the date of the hearing before the court respecting division: FLA, s. 87(b)(ii). There must be compelling evidence to depart from that valuation date: *Rudyak v. Bekturova*, 2018 BCCA 414 at para. 35; *Namdarpour v. Vahman*, 2019 BCCA 153 at paras. 59-60. Departing from the presumptive valuation date is akin to reapportionment of property, and it thus requires consideration of the factors that would support unequal division pursuant to s. 95 and a finding that the presumptive valuation date would be significantly unfair: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76; *Namdarpour* at para. 59.
- f) The value of family property must be based on its fair market value: FLA, s. 87(a).
- g) The court may order an unequal division of family property, family debt, or both if it would be "significantly unfair" to equally divide it: FLA, s. 95(1)(a). The words "significantly unfair" impose a higher threshold for the exercise of judicial discretion than under predecessor legislation: *Jaszczewska* at para. 41. Significant unfairness requires something objectively unjust, unreasonable or unfair in some important or substantial sense: *Jaszczewska* at para. 42; *Singh v. Singh*, 2020 BCCA 21 at para. 134.
- h) Numerous factors can be considered when determining whether equal division would be significantly unfair. One factor that may justify unequal division of family property, which is particularly relevant in this case, is where a spouse after separation caused a significant decrease in the value of family property beyond market trends: FLA, s. 95(2)(f). This factor does not require a finding of a lack of good faith. A similar factor requiring a lack of good faith is "that a spouse, other than a spouse acting in good faith, substantially reduced the value of family property, or disposed of, transferred or converted property that is or would have been family property causing the other spouse's interest in the family property to be defeated or adversely affected": FLA, s. 95(2)(g).
- i) The court is given wide powers to effect a division of family property or family debt, including making orders as to who owns an asset, transferring title, or requiring a spouse to pay compensation to the other: FLA, s. 97.

[Emphasis added.]

[261] This case also raises the issue of the parties' legal expenses. Section 86(b) of the FLA provides that financial obligations incurred after the date of separation for the purpose of maintaining family property is properly considered family debt.

[262] Section 86 of the FLA details what constitutes family debt. Section 86 provides that family debt includes all financial obligations incurred by a spouse from the beginning of the relationship to the date of separation, or after the date of separation if the debt was incurred for the purpose of maintaining family property.

[263] A determination of whether legal fees are a family debt will depend, in each case, upon the circumstances in which that debt was incurred: *Semkuley v. Semkuley*, 42 R.F.L. (3d) 240, 1992 CanLII 866 (B.C.S.C.).

## Analysis

### Legal expenses

[264] Both parties have sustained legal expenses. All of the legal fees were incurred after separation. In order for lawyer expenses incurred after separation to be considered a family debt, the party must establish that the expenses were incurred for the purposes of maintaining family property.

[265] A.S. claims that she incurred \$50,000 in legal fees owed to her lawyer, Richard C. Gibbs, for the criminal proceedings as a result of the incident between the parties on August 12, 2018. Her evidence includes two brief pages which outline A.S.'s client summary and a billing and collections summary from her lawyer. A.S. also includes a table which she created herself which outlines the amounts she has paid to her lawyer. She also includes evidence that she made those transfers. A.S. does not argue that these debts are family debts and I find they are not family debt. The criminal case is not part of these proceedings and the debt does not relate to any legitimate family purpose. Consequently, A.S. is responsible for her own lawyer expenses as a result of the criminal charge proceedings.

[266] In his closing submissions, S.S. states that he was required to bring a court application for an order for sale of the family property because A.S. would not agree on the realtor or to the sale price. S.S. claims that he incurred legal expenses, among other expenses, as a result of this application. S.S. refers to his application filed on November 30, 2020. An order was made on December 17, 2020 by Justice Church that the house should be listed for sale and "the parties shall have joint conduct of sale". The order states:

The parties will make their best efforts to agree on a listing price. If the parties are not able to agree on a listing price they will immediately instruct an appraiser to create a report, the cost of which will be shared by the parties and the listing price will be set in accordance with the appraised value.

[267] The order indicates that all of the orders were agreed to and both A.S. and S.S. No order was made with respect to the costs of that hearing. S.S. has not provided a bill from any lawyer for the cost of the application. In any event, S.S. cannot claim the fees relating to the December 17, 2020 application before Madam Justice Church as a family debt.

- [268] S.S. provided an order to pay from a notary public, Beverley D. Richards, in the amount of \$1,270.06 for expenses related to his legal account. These legal expenses were for the sale of the family home; the net sale proceeds of \$20,367.02 includes the cost of the legal services. Therefore, the cost of the legal expenses for the sale of the family home has already been shared between the parties, as it was deducted from the family home's net proceeds.
- [269] Lawyer expenses were incurred by both A.S. and S.S. after separation. A.S. incurred lawyer expenses to defend her criminal charges. Neither party is entitled to claim their lawyer expenses as family debt.

### **Credit cards, lines of credit, and other unsecured debt**

- [270] The parties began living in marriage-like relationship in the spring of 2006 and separated in June 2017. As of June 2017, the parties had several types of unsecured debt in the forms of credit cards, lines of credit, and balances owed on chequing accounts.
- [271] According to S.S.'s Scott schedule, only three debt accounts are the subject of debt division because the remaining accounts either had no debt owed or were acquired after separation. S.S. shows that at separation A.S.'s BMO Air Miles World Elite Mastercard (ending in 671) owed \$6,126, her BMO personal line of credit (ending in 310) owed \$14,232, her BMO chequing account (ending in 493) owed \$706, and that his BMO Air Miles World Elite Mastercard (ending in 686) owed \$4,729. He argues that A.S.'s Choice Mastercard (ending in 738) was incurred after separation and is not a family debt.
- [272] According to A.S.'s Scott Schedule, on separation her BMO Air Miles World Elite Mastercard (ending in 671) owed \$6,339, her BMO personal line of credit (ending in 310) owed \$15,096, her BMO chequing account (ending in 493) owed of \$674, and S.S.'s BMO Air Miles World Elite Mastercard (ending in 686) owed \$2,886. A.S. further states that her Choice Mastercard (ending in 738) owed \$7,434.
- [273] According to A.S.'s BMO Air Miles World Elite Mastercard (ending in 671) statement dated June 3, 2017, she owed a balance of \$6,246 as of June 1, 2017. Her BMO personal line of credit (ending in 310) statement dated June 8, 2017 indicates a balance of \$14,977.21. A.S. does not provide the balance as of the date of separation. According to the statement, on June 2 and June 8, 2017, A.S. made a series of cash advances and fee payments totaling \$744.78. Therefore, on June 1, 2017, the account owed \$14,232. A.S.'s primary BMO chequing account (ending in 493) statement indicates that on June 1, 2017 the account maintained a negative balance of \$706. The Choice Mastercard (ending in 738) statement provided by A.S. is dated December 2017. The statement indicates that the previous month's balance on the account was \$0. The statement also indicates that since the previous month, A.S. withdrew a cash advance for \$11,679. Without sufficient justification, the Choice Mastercard debt is not family debt because it was incurred months after the parties separated in June.

- [274] S.S.'s BMO Air Miles World Elite Mastercard (ending in 686) statement dated June 14, 2017 indicates that on May 14, 2017 the account owed only \$67. However, between May 14, 2017 and May 31, 2017, \$4,304 in transactions were charged to the account. Therefore, the balance owed as of June 1, 2017 is \$4,371.
- [275] I find that the total debt was \$26,300 at the date of separation. Both parties are equally responsible for total debt of \$26,300. Each party is responsible for 50 percent or \$13,150 of the debt. At the time of separation, A.S. disproportionately held \$21,929 of the family debt and S.S. only held \$4,371. Therefore, \$8,779 of the debt is to be apportioned to S.S.
- [276] After the parties' separation in June 2017, S.S. refinanced the mortgage on the Family Home. S.S. put into evidence a Bank of Montreal ("BMO") re-financing mortgage agreement dated August 21, 2017. The agreement indicated that the family property was refinanced and the new mortgage amount was \$472,000. It had a 25-year amortization period, with payments beginning on October 1, 2017. According to S.S.'s BMO primary chequing account (ending in 668) statement dated September 22, 2017, S.S. received a \$472,000 deposit for the re-financed mortgage on August 24, 2017. On the same day, S.S. made a payment in the amount of \$430,507 to pay off the remaining balance on the previous mortgage, as well as \$396 in mortgage payout fees. The statement also indicates that S.S. sent a transfer for \$14,000 to a joint BMO Premium Rate Savings account (ending in 564) on August 25, 2017. In S.S.'s Scott schedule, he states that the value in the account on June 1, 2017 is unknown to him. He also states that the current value in the account is \$0. He further notes that A.S. used this account at the date of separation and it is now closed.
- [277] I agree with S.S.'s version of events about what transpired with the respect to the re-financing of the Family Home's mortgage. Therefore, I find that following the re-financing of the Family Home, A.S. received \$14,000 of the \$41,097 amount and S.S. received \$27,097 to pay off debts.
- [278] The following table summarizes my findings above and outlines the parties' debts at the time of separation, how much each party received from the re-financed mortgage in 2017 to pay off their debts, and any amount of debt that is outstanding:

Party and account #

Debt held in account on

June 1, 2017

Total debt held on

June 1, 2017

A.S. (ending in 671)

\$6,246

\$21,929 (A.S.)

A.S. (ending in 310)

\$14,232

A.S. (ending in 493)

\$706

S.S.

\$4,371

\$4,371 (S.S.)

Total debt between the parties' accounts = \$26,300

Party and account #

Equity after re-financed

mortgage received

Date Received

Equity remaining after refinanced mortgage = \$41,097

S.S. (ending in 668)

\$27,097

August 24, 2017

A.S. (ending in 564)

\$14,000

August 25, 2017

Party

Entitlement to equity

from re-finance

Debt obligation at

separation

A.S.

\$20,548.50

\$13,150

S.S.

\$20,548.50

\$13,150

Equalization of debt  
and equity

Party's disproportional  
amount of debt and  
equity

Outstanding amount  
owed from S.S. to A.S.

\$21,929 - \$13,150

(A.S.'s debt equalization)

\$8,779

(A.S.'s disproportionately held debt)

\$15,327.50

\$27,097 - \$20,548.50

(S.S.'s equity equalization)

\$6,548.50

(S.S.'s disproportionately held equity)

[279] In summary, S.S. owes A.S. \$8,779 to equalize the amount of debt that she disproportionately held at separation. S.S. further owes A.S. \$6,548.50 for the disproportional amount of money he received from the re-financed mortgage agreement. The \$14,000 S.S. gave to A.S. on August 25, 2017 has been taken into account in making these findings. Therefore, S.S. must pay A.S. \$15,327.50 to account for the family debts and re-financed mortgage agreement monies.

## Other debts

[280] In A.S.'s Form F8 financial statement, she submits that she owes a total of \$151,500 in unsecured post-separation debt. This debt was acquired for an MNP consumer proposal (\$22,500) incurred in 2021, and debt owed to her partner T.R., parents, and others. A.S. claims she has owed T.R. \$50,170 since 2017 and her father, L.S., \$19,565 since 2018. Although A.S. has provided a table of amounts loaned to her on particular dates from T.R.

and L.S., the table submitted indicates that the money given to A.S. from T.R. began on December 24, 2017 and the money from L.S. began on April 26, 2018. These are both after the June 1, 2017 date of separation. More importantly, I have limited information on these debts and their purposes for being incurred. Lastly, T.R. and L.S. never testified during the trial regarding whether these amounts were gifts or loans and for what purpose they lent the money.

[281] Without more information I find A.S. is responsible for these debts.

[282] In S.S.'s Form F8 financial statement, he submits that he owes a total of \$68,653.59 in unsecured post-separation debt. This debt is for \$4,653.59 owed on his BMO Mastercard (ending in 069), and money owed to family members in the amount of \$64,000. He does not indicate what date any of these debts were incurred, except he states that the \$60,000 owed to his parents was incurred after separation. The \$60,000 was to pay his lawyers. S.S. is responsible for the \$60,000 debt as it is for legal expenses. S.S. does not submit any credit card statements for the BMO Mastercard (ending in 069), nor does he include the division of this debt in his Scott schedule. He further does not list the date the debt was incurred in his Form F8.

[283] I find S.S. is responsible for these post-separation debts.

Spousal support

## Legal principles

[284] A marriage-like relationship is regarded as a "joint endeavour". The "longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, 1992 CanLII 25.

[285] There are three separate bases for spousal support: compensatory, contractual, and needs-based.

[286] Compensatory spousal support addresses the economic advantages enjoyed by one partner as a result of the other partner's efforts during the marriage. It also addresses the contributions of a spouse to the "marriage" and their losses upon its breakdown. Compensatory spousal support is based on the principle that spouses must share the economic consequences of a breakdown. This includes recognizing that one spouse may have foregone employment opportunities to care for the children. In such circumstances, an order for compensatory spousal support will generally be appropriate to compensate the spouse for the value they brought to the relationship, as well as the economic loss they suffered as a result of the relationship: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 1999 CanLII 715. Spousal support awarded on compensatory grounds continues for a specified period of time whether or not the payee spouse has reached a degree of self-sufficiency: *Tedham v. Tedham*, 2005 BCCA 502 at para. 33.

- [287] Non-compensatory support is needs-based. It recognizes the economic hardship and loss of the marital standard of living that arises as a result of economic interdependency during the relationship. Non-compensatory support is based on the economic disadvantages generated by the dissolution of the marriage, not contributions made during the marriage: Bracklow at para. 41. Need alone may be sufficient to establish entitlement to spousal support: Bracklow at para. 43; Chutter v. Chutter, 2008 BCCA 507 at para. 54, leave to appeal to SCC ref'd, 33002 (May 28, 2009). The degree to which non-compensatory principles apply will depend on a close examination of the means and needs of the parties. It also depends on the nature of the marital relationship: Bracklow at para. 53.
- [288] The doctrine of equitable sharing of the economic consequences of the relationship is the overarching principle that must be borne in mind: Bracklow at para. 34.
- [289] The methodology for determining income for child support and spousal support purposes are similar. The Guidelines have a comprehensive code for determining income, while the Spousal Support Advisory Guidelines [SSAG] do not. The authors of the SSAG have confirmed that the Guidelines for calculating income should be used for spousal support: SSAG, c. 6.1. "The starting point for the determination of income under the [SSAG] is the definition of 'income' under the [Guidelines]": R.M.S. v. F.P.C.S., 2011 BCCA 53 at para. 73; Megson v. Megson, 2014 BCSC 2467 at para. 165.

## Analysis

- [290] After graduation from high school, A.S. testified she had a couple of jobs with horses, her primary interest, and then she began working for her father. A.S. was working for her father in Fort St. John in 2006 when she met S.S. They started dating in the spring of 2006 when she was only 19 years of age.
- [291] As previously noted, A.S. became pregnant in early 2007. From the commencement of their marriage-like relationship and up until A.A.S. was born, A.S. was primarily responsible for domestic duties within the home. The outdoor chores were shared equally between the parties.
- [292] I find that S.S. both diminished and was unwilling to admit the contributions A.S. made to the relationship as it pertained to the home and the Children. S.S. did admit in cross-examination that A.S. primarily attended to A.A.S.'s medical needs, when she had particular problems during the parties' relationship. I find A.S. primarily took care of the medical needs of the Children.
- [293] S.S. admits that A.S. was supportive of his desire of taking instrumentation technician education in order to further his career. Unfortunately, he was unable to finish the course. There is no evidence before me regarding how the two years toward the certificate, which he did not complete, may have towards enhancing S.S.'s employability. I accept that A.S. was precluded from such opportunities by her family obligations.

- [294] A.S. argues that her education level, and her career prospects, have been greatly affected by the parties' relationship. She testified that she wanted to obtain an education after high school. She testified that she wanted to become a veterinarian technician, and possibly a veterinarian, if her grades were sufficient.
- [295] I find that A.S.'s alleged career goals were not borne out by the evidence.
- [296] There is simply not enough evidence before me to find that A.S. was interested in pursuing post-secondary education of any type, even prior to becoming pregnant. Rather, the evidence before me is that having worked for her father since high school, by May 2006 A.S. had saved enough money to purchase a Hummer for almost \$60,000. She made a down payment of \$30,000 and her mother co-signed a loan for the balance to assist A.S. in securing a loan. No money was put aside to attend a post-secondary institution. No application was made to any post-secondary institution at any point. I would expect that if A.S. was serious about post-secondary education she would not be spending almost \$60,000 in a vehicle. There is simply no evidence that but for the marriage, A.S. would have become a veterinarian technician, much less a veterinarian.
- [297] I have no evidence before me, medical or otherwise, to award needs-based support. Nevertheless, the evidence established that A.S. is entitled to compensatory spousal support. The parties were together for approximately 11 years. Although they both kept separate bank accounts, there was financial interdependence during their relationship. A.S. contributed to S.S.'s career by becoming the primary caregiver for the Children. Moreover, having A.S.'s parents care for both children whenever it was needed was a substantial benefit to the family as a whole. While S.S. downplayed both A.S.'s contributions during their relationship, as well as those of her parents, these contributions allowed S.S. considerable personal freedom to pursue his own career goals.
- [298] Although A.S. worked on and off throughout the relationship, and worked her way up to a managerial position by 2016, she took on the primary childcare responsibilities during the parties' relationship. This resulted in economic advantages conferred upon S.S., and disadvantages to A.S., due to the roles the parties assumed during their relationship.
- [299] In my view, A.S. is entitled to spousal support on compensatory grounds. Although S.S. had obtained his Red Seal qualifications prior to the relationship, given the functions A.S. performed during the marriage, she has been placed at an economic disadvantage relative to S.S. and is entitled to compensatory support to equalize the parties' income: *Moge* at 861-863; *Lahdekorpi v. Lahdekorpi*, 2016 BCSC 2143 at para. 21.
- [300] I determine the mid-range level is appropriate in the circumstances. I also find that spousal support is owing by S.S. to A.S. for ten years. This should provide A.S., a relatively young woman, enough time to establish herself financially.

[301] In conclusion, A.S. is entitled to spousal support. In calculating any potential spousal support owed by S.S., A.S. is to include the following sources of income to be included for her spousal support claim:

- a) the income determination findings determining her total income;
- b) total child support received, or she expects to receive, based on the calculations for child support; and
- c) any Canada Child Tax Benefit and BC Family Bonus.

[302] If the parties agree on the amounts owing for past spousal, an may be forwarded to me for signature. If the parties are unable to agree, they may set an appointment before the Registrar to determine the final amount payable.

## Costs

[303] The general rule is that costs follow the event. Costs are awarded to the prevailing party after judgment has been given: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 at para. 20. "Costs" describes an order that an unsuccessful litigant party in litigation pay the successful party some amount in order to indemnify allowable expenses and services incurred that are relevant to the case or proceeding. Justice Abrioux (as he then was) described the presumptive rule in *Araya v. Nevsun Resources Ltd.*, 2017 BCSC 336:

[21] The general rule, therefore, is that, unless the court orders otherwise due to special circumstances, costs go to the successful party of a motion, but are not payable until after the conclusion of the trial, and only if that party is awarded costs at trial.

[304] In family law cases, costs are awarded to the party that has achieved substantial success. In this case, I find success was divided. Therefore, pursuant to R. 16-1(7), unless there are additional factors of which I am not aware, I order that each party bear their own costs.

## Disposition

I. By consent, future parenting time, guardianship, and responsibilities:

- (1) The parties shall each remain joint guardians of the Children pursuant to s. 39(1) of the FLA.
- (2) The parties shall each have all parental responsibilities for the Children and including those listed in s. 41 of the FLA.
- (3) The parties shall consult each other regarding any matters of a significant nature affecting the Children (which includes "or either of them") and they will make genuine efforts to reach an agreement with respect to any decision on such a matter being made.
- (4) If the parties are unable to reach an agreement with respect to a significant decision to be made regarding the Children, then A.S. shall make that decision.

- (5) If S.S. does not agree that a significant decision made by A.S. is in the best interest of the Children, then he is at liberty to apply to the Court for directions pursuant to s. 49 of the FLA.
- (6) The parties have agreed that going forward, unless they agree otherwise or the agreement is varied by court order, the Children will reside primarily with A.S.
- (7) S.S. shall have parenting time with the Children as agreed upon between the parties and the Children, taking into account the wishes and schedules of the Children.
- (8) Each parent shall notify the other directly and in writing as soon as reasonably practicable of any intended travel with the Children outside of British Columbia and Alberta, and each shall directly and in writing provide the other parent with relevant details including location of travel, accommodation, and contact information where in such instance the Children may be reached.
- (9) Neither party shall unreasonably refuse requests by the other party for travel with the Children outside of British Columbia or Alberta, and each party shall sign any necessary document authorizing such travel outside of British Columbia or Alberta with the Children that the other party requires.
- (10) Each parent shall sign all documents necessary to renew passports of the Children promptly when requested by the other parent, and shall equally pay forthwith on demand by the parent engaged in the renewal for fees and charges associated with such renewal.
- (11) The passports of the Children shall remain with A.S. and she shall immediately on demand, for travel outside of British Columbia and Alberta by him with the Children, provide the passport(s) to S.S., and when S.S.'s travel is completed with the Children, he shall return the passport(s) to A.S. for safekeeping.

II. In addition, I make the following orders:

- (12) The parties shall:
  - (a) put the best interests of the Children before their own interests;
  - (b) encourage the Children to have a good relationship with the other parent, and speak to the Children about the other parent and that parent's partner in a positive and respectful manner; and
  - (c) make a real effort to maintain polite, respectful communications with each other, and refrain from any negative or hostile criticism, communication or argument in front of the Children.

III. Past parenting time:

- (1) Between July 1, 2017 and June 30, 2019, S.S. had primary parenting time with both children, except:

- (a) between April 20 to June 15, 2018, and July 2018 to September 2018, there was a shared parenting arrangement;
- (2) the parties shared parenting time from July 1, 2019 to December 31, 2019;
- (3) S.S. and A.S. had shared parenting time from January 1, 2020 to April 30, 2020;
- (4) S.S. and A.S. shared parenting time for one child in May 2020 and one child resided primarily with A.S.;
- (5) A.S. had primary time for the Children in June 2020;
- (6) S.S. and A.S. shared parenting time in July and August 2020; and
- (7) since September 1, 2020 to the present, the Children have resided primarily with A.S.

#### IV. Income determination:

- (8) The parties must adhere to the following findings of their income when determining their respective child support Guidelines income and income to be included for spousal support:
  - (a) The parties' total income to be used for support obligation calculations in 2017 is \$159,103 for S.S. and \$105,671 for A.S.
  - (b) The parties' total income to be used for support obligation calculations in 2018 is \$97,910 for S.S. and \$114,576 for A.S.
  - (c) The parties' total income to be used for support obligation calculations in 2019 is \$141,255 for S.S. and \$129,737 for A.S.
  - (d) The parties' total income to be used for support obligation calculations in 2020 is imputed to \$95,000 for S.S. and \$85,818 for A.S.
  - (e) The parties' total income to be used for support obligation calculations in 2021 is imputed to \$95,000 for S.S. and is imputed to \$50,000 for A.S.
  - (f) The parties' total income to be used for support obligation calculations in 2022 is imputed to \$95,000 for S.S. and is imputed to \$50,000 for A.S.
  - (g) For future years (i.e., 2023 and onward), the parties are to apply the imputation of income in any year in which their line 15000 income (i.e., total income found on CRA tax assessments) falls below the imputed amount of \$95,000 for S.S. and \$50,000 for A.S.
- (9) The parties shall exchange financial information as required by s. 21 of the Guidelines, no later than May 31st each year. Adjustments should be made if a party's income goes above the income imputed in this judgment.

V. Child support, section 7 expenses, spousal support: In determining these amounts of support payable, the parties must adhere to the following orders:

- (1) Child support: The amount of retroactive and ongoing child support payable, with any appropriate setoffs, payable for each year and by which party should be based on:
  - (a) the parenting time arrangement findings set out above; and
  - (b) the income determination findings set out above.
- (2) Section 7 expenses: A.S. and S.S. are to share past s. 7 expenses, as set out in this judgment, in proportion to their income. Future s. 7 expenses are to be shared on a 70 percent (S.S.) and 30 percent (A.S.) basis.
  - (a) Between 2017 and 2022 inclusive, the s. 7 expenses are to be shared in proportion to the parties' income.
  - (b) In terms of 2023 going forward, the parties must share the qualified s. 7 expenses set out above on a 70 percent (S.S.) and 30 percent (A.S.) basis.
  - (c) The Children's future qualified s. 7 expenses, as set out in this judgment, should be comparable to expenses incurred during the parties' relationship and adjustments should be made if a party's income goes above the income imputed in this judgment.
- (3) Spousal support: A.S. is entitled to spousal support in the mid-range for a period of ten years. In calculating any past and future spousal support owed by S.S., A.S. is to include the following sources of income:
  - (a) the income determination findings set out above in determining her total income available;
  - (b) total child support received or she expects to receive based on the calculations for child support; and
  - (c) the Canada Child Tax Benefit and BC Family Bonus.

#### VI. Property division:

##### Assets

- (1) The Family Home: The Family Home is family property. I order that the net proceeds of sale, held in trust by North Shore Law LLP in the amount of \$20,367.02, be divided equally between A.S. and S.S.
- (2) Monies remaining in bank accounts at separation: \$5,577 is owed by S.S. to A.S. to equalize all bank accounts.
- (3) Investment accounts: S.S. is to transfer A.S.'s remaining half RRSPs held in these accounts, less \$35,207, as a tax-free spousal rollover from his RRSP to a RRSP or LIRA in A.S.'s name. This will equalize the RRSP investment accounts at issue, less half of the amount A.S. disposed of after separation and S.S.'s excluded RRSPs.
- (4) Pensions: The pensions are to be divided as set out in this judgment.

- (5) Children's RESPs: The Knowledge First Financial RESPs should be kept in both parties' names. The RESPs shall each be held by the parties for the benefit of the child for whom the account is held, and shall be used for that child's post-secondary expenses. Going forward, any disbursements from either RESP account shall require the consent and signature of both parties.
- (6) Vehicles: The ownership of the 2003 Hummer will remain with S.S., and A.S. is not entitled to any further compensation for it.
- (7) Horses: Neither A.S. nor S.S. is entitled to further compensation for any of the horses.
- (8) Hawaii timeshare: The Hawaii timeshare shall be sold and any proceeds shall be divided equally between the parties. S.S. is not entitled to any compensation for his payment of the maintenance fees since separation.
- (9) Air Miles: I decline to award either party any value for the Air Miles points.
- (10) Furniture, household effects, and other miscellaneous assets: I decline to award either party any value for any of the furniture, household effects, and other miscellaneous assets they each retained after separation.

#### VII. Debt division:

- (1) Lawyer expenses: Neither party is entitled to claim their lawyer expenses.
- (2) Credit cards, lines of credit, and other unsecured debt: S.S. owes A.S. \$15,327.50 in order to equalize the amount of debt that she disproportionally held at separation and for the disproportional amount of money he received from the re-financed mortgage agreement.
- (3) Other debts:
  - (a) A.S.'s unsecured post-separation debt in the amount of \$151,500 for the MNP consumer proposal (\$22,500) incurred in 2021, and debt owed to T.R., her parents, and others is her own responsibility.
  - (b) S.S.'s unsecured post-separation debt in the amount of \$68,653.59 owed to his parents and post-separation credit card debt is his own responsibility

[305] I am seized to the matter only to the extent that I may have made a mathematical error or the parties wish to seek clarification of any of the above orders. If so, the parties may seek to make submissions prior to entry of the final order.

[306] Unless there are additional factors of which I am not aware, I order that each party bear their own costs.

"D. MacDonald J."

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