
CANADA / JUDGMENT

Butchart v. Pannell

2019 BCSC 599

COURT

Supreme Court of British Columbia

DECIDED

17 April 2019

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2019 BCSC 599 Butchart v. Pannell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Butchart v. Pannell,

2019 BCSC 599

Date: 20190417

Docket: E162687

Registry: Vancouver

Between:

Jodi Anne Butchart

Claimant

And

Damian Charles Pannell

Respondent

Before: The Honourable Madam Justice D. MacDonald

Reasons for Judgment

Counsel for the Claimant:

C.T. Ferguson

Respondent appearing in person:

D.C. Pannell

Place and Date of Trial:

Vancouver, B.C.

March 25 to 29, 2019

Place and Date of Judgment:

Vancouver, B.C.

April 17, 2019

Introduction

- [1] This is a high conflict family law case. The claimant, Ms. Jodi Butchart, and the respondent, Mr. Damian Pannell, began living together on August 1, 2002 and were married on August 18, 2007. They separated on January 14, 2016. The parties were divorced pursuant to an order of Justice Tammen dated August 30, 2018. Mr. Pannell has since remarried.
- [2] There are two children of their marriage:
- a) Kyren, born October 31, 2008; and
 - b) Evan, born September 7, 2010.
- (collectively "the children").
- [3] There is also a 21-year-old daughter, Zoe, who is not Mr. Pannell's biological child. Both parties agree that Mr. Pannell has raised Zoe as his own daughter.
- [4] The claimant seeks an order granting her sole custody and guardianship of the children, with a proposed parenting schedule to allow Mr. Pannell to see the children. The claimant also seeks an order imputing income to Mr. Pannell for the purposes of awarding retroactive and prospective child and spousal support. She seeks a recalculation of s. 7 expenses going forward as well as retroactive expenses, and a fine for Mr. Pannell failing to fully disclose financial information.
- [5] The respondent seeks an order to cease child support obligations for Zoe, who is over the age of majority, and retroactive credits from his payments for her since May 1, 2017. He requests an order that the parties use OurFamilyWizard, a co-parenting application ("app"), to communicate regarding the children, an order clarifying when child care is required and when school breaks start and stop. He seeks an order that the children not participate in extracurricular activities during the other parent's vacation time with them, consent for him to travel with the children to Las Vegas in May 2019, reimbursement for the amount paid for the last counselling session for the children, and an order that the claimant stop posting negative remarks about him and the children on social media.

- [6] The only property division issue before this Court regards \$50,000 the parties held back in trust before dividing the proceeds of the sale of the matrimonial home equally. The respondent seeks 50% of the monies held in trust.

Background Facts

- [7] I summarize the background facts that are relevant to my decision. There was testimony that I am not outlining because it was very personal or in conflict with the other party's testimony, and was not necessary to justify my conclusions. However I have considered the totality of the relevant evidence even where not set out in detail.
- [8] The parties met in Calgary in December 2000 and started living together in 2002. At the time they met, Ms. Butchart's daughter, Zoe, was three years old. Ms. Butchart was taking a medical laboratory assistant program. Shortly thereafter she began working as a medical laboratory assistant on weekends while she returned to school full-time to become a medical laboratory technologist. Mr. Pannell was working as a 3D modelling and texturing artist.
- [9] The parties were not committed to staying in Calgary. Mr. Pannell did not like his job and wanted to work in video game design. They moved to Vancouver in 2005 because Mr. Pannell obtained a position. He settled in the city first and Ms. Butchart and Zoe joined him after Zoe finished grade 2.
- [10] Initially the parties got along well. Ms. Butchart was happy to move to Vancouver to support Mr. Pannell's career.
- [11] After they moved to Vancouver, the parties decided to have more children. Kyren was born in 2008; Evan was born in 2010. The claimant was able to provide the primary care for the children and Zoe by working graveyard shifts and taking care of them during the days while Mr. Pannell worked. Mr. Pannell looked after the children and Zoe in the evenings when Ms. Butchart was at work. He often helped with lunches in the morning so she could sleep after working late.
- [12] Ms. Butchart testified that it was often difficult to communicate during the marriage, and they began to have heated arguments. Mr. Pannell testified that during her pregnancy with Evan, Ms. Butchart became very dark, she constantly thought she was going to lose the baby, their relationship became distant, and they were no longer intimate. They pursued help through a marriage counsellor. After about seven months, their relationship improved. They were happy for a bit and Mr. Pannell obtained an increase in salary. They bought a house in 2013.
- [13] Unfortunately, despite the marriage counselling their relationship started to deteriorate again and became more volatile. According to Mr. Pannell, Ms. Butchart got angry and frustrated with small things. They were not spending time together. Both parties agreed that they were often fighting.

- [14] Mr. Pannell had previously quit smoking but he started again due to the stress. He was not allowed to use the master bedroom ensuite because Ms. Butchart said she needed it as a safe place. He began to sleep apart from Ms. Butchart on the Murphy bed downstairs.
- [15] After several years of verbal conflict, Mr. Pannell and Ms. Butchart began to engage in family violence. They offered different and conflicting narratives about the violence but both agreed that it occurred and that it was not one-sided.
- [16] The parties' violence was directed at each other and not at the children. There is no evidence that the two boys were exposed to the violent behaviour. Unfortunately their older child, Zoe, was exposed to the violence on the last occasion, although it was not directed at her.
- [17] I am only aware of two incidents of family violence. The first incident occurred in November 2014. Ms. Butchart became very upset with Mr. Pannell for speaking to Kyren regarding some trouble he had gotten into at school. She felt that she was the one who should have dealt with the incident and she was angry that Mr. Pannell had spoken to their son. He thought this was unreasonable. According to Mr. Pannell, Ms. Butchart ran at him full tilt. He testified that she was very angry and he simply picked her up to move her away from him. Ms. Butchart testified that Mr. Pannell violently threw her on the bed. She admitted to kicking a hole in the wall on that occasion.
- [18] The parties sought further counselling after this incident. In the summer of 2015, Mr. Pannell moved out for one month to provide Ms. Butchart with some space. There was evidence at trial that she had suffered from some childhood trauma and that this affected their relationship. There was testimony that was not contradicted that she had conflict with the neighbours during this period.
- [19] The last incident of family violence occurred on January 13, 2016. Mr. Pannell said he was going to go have a smoke and Ms. Butchart became very upset with him for smoking. They argued and, according to her, he violently threw her aside. They both testified that she hit him in the face.
- [20] After the conflict was over he went downstairs to bed. According to Ms. Butchart, the next morning Mr. Pannell stated he was going to work and he would later move his stuff out. After he left she called her brother who suggested that she talk to the police. She spoke to a friend, who is an RCMP officer. As a result of this call, she reported Mr. Pannell to the police.
- [21] Mr. Pannell testified that around 3:00 p.m., while he was at work, he got a message from the receptionist that two police officers were looking for him. They arrested him for assault in front of his colleagues. He was taken to the Coquitlam police station where he was fingerprinted and held for 18 hours. He was then transferred to Port Coquitlam, but after an hour they released him. When he was released he was told that there would be no charges. He was never charged.

- [22] Mr. Pannell testified that when he returned to work everything changed. He was the manager but people treated him differently. He finished the project they were working on because it would have been very difficult to replace him. On November 9, 2016, once the project completed, he was terminated and escorted out of the building. He pursued a wrongful dismissal claim through a lawyer. The case settled and he was given a few weeks of additional pay, which he had to use to pay back Employment Insurance benefits he applied for prior to the settlement.
- [23] When the parties first separated, Mr. Pannell paid Ms. Butchart \$2,000 per month, \$1,000 from each of his paychecks. After three months he said he could not sustain that amount of assistance, partially because he had to set up his own place. He began paying half of the mortgage amount instead. When he was terminated in November 2016, Mr. Pannell stopped making payments to Ms. Butchart because he was unemployed.
- [24] Despite numerous job applications, one the very day after his termination, Mr. Pannell did not obtain employment until May 2017. He did engage in some freelance work at the beginning of 2017. Mr. Pannell testified that it was difficult to obtain employment because his reputation had been damaged as a result of his arrest.
- [25] In September 2017 Ms. Butchart applied for child support. Master Harper ordered payments in the amount of \$398 per month for the children and \$300 per month for Zoe, backdated to June 1, 2017. Mr. Pannell has made these payments, although some have been late.
- [26] Both parties testified that it has been difficult to communicate since separation and to the impact this has had on the parenting arrangements. Both parties agree that they are in a high conflict separation.
- [27] Ms. Butchart testified that the respondent has often been unreasonable. She testified that he gets angry and is often not agreeable to parenting times. Ms. Butchart testified that the lack of communication skills has made it difficult to arrange sports gear exchanges, timing of pickups and drop-offs, and other logistics regarding the children.
- [28] Ms. Butchart testified that the attempts to be civil and effectively co-parent the children have been unsuccessful. This has put stress on the children, particularly the youngest child.
- [29] Zoe no longer speaks to her father. They have been estranged since the separation.
- [30] Mr. Pannell testified that Ms. Butchart is controlling and that she has buried him with litigation and affidavits. In those affidavits she has stated that he was not feeding the children, not bathing them and so forth. It was untrue and extremely stressful. He gave an example of trying to pick the children up one weekend. He pulled his vehicle into Ms. Butchart's driveway. He phoned the children but no one answered. Instead, the police were presumably called because shortly thereafter they arrived. Mr. Pannell was very upset about the look on the boys' faces. Mr. Pannell testified that the officer had no issue with him being in the driveway and allowed him to leave with the two boys.

- [31] Mr. Pannell has recently remarried. His new partner is 46 years old and does not work. She is on Canada Pension Disability Insurance and makes approximately \$6,000 per year. She is able to take care of the children when in their care, does cooking and cleaning, packs lunches, and takes the children to school and brings them home. She also takes the children swimming after school on Thursdays. Mr. Pannell testified that she has a good relationship with the children.
- [32] Ms. Butchart testified that the children have been attending counselling, and that she has a strong desire for this to continue. Both Ms. Butchart and Mr. Pannell take the children to their counselling sessions. There have been disputes regarding payment of counselling invoices.
- [33] In March 2017 the parties attended mediation but it was not successful. Following this Ms. Butchart posted negative comments about Mr. Pannell on Facebook that he says affected his reputation. He had to send her a cease and desist letter. Ms. Butchart removed the posts and tightened her privacy settings so that he could no longer see her posts. Ms. Butchart testified that she posted the comments because she was reaching out to her community for support.
- [34] After much back-and-forth, the house was sold on May 15, 2017.
- [35] Mr. Pannell testified that in November 2017 he saw his doctor. He was concerned about anxiety caused by harassment from Ms. Butchart in the form of the litigation and the negative Facebook posts. He was also not coping with having been arrested at work. He was having heart palpitations and suffering from significant stress. His doctor provided him with a note dated November 15, 2017 stating that he was unable to work. Mr. Pannell was off work for almost one year. During that year he made his child support payments which were enforced through the Family Maintenance Enforcement Program ("FMEP").
- [36] Mr. Pannell now works at a new company as a senior 3D artist. His salary is \$85,000 per year and there is no overtime work. He has worked there for approximately six months and is negotiating with management to obtain a permanent position. He likes his new position, they are working with some top studios, and it is exciting work. He has no desire to find a different employer.
- [37] In 2018 Mr. Pannell successfully applied for a parenting schedule. He testified that prior to the schedule being imposed, Evan had anxiety because he was living out of a backpack and there was much conflict between the parties over parenting days. Master Muir imposed a parenting schedule.
- [38] Approximately three weeks after the parenting schedule was imposed, Mr. Pannell was reported to the Ministry of Children and Family Development on the basis that he was abusing the children. Representatives from social services talked to the children and interviewed Mr. Pannell at their office downtown. He testified that he was advised that they would not take his "beautiful boys" away from him, and they would close the case in a month or two. While this is hearsay, I note that no further action has been taken against Mr.

Pannell and he continues to parent the children.

- [39] After Master Muir's parenting order, both boys' stress levels improved as evidenced by an email from their counsellor. When Ms. Butchart was asked in cross-examination to agree that it has been positive for the children to have a consistent parenting schedule, she replied "I do not like it." She refused to agree that it was positive, stating that she would like sole custody.
- [40] Mr. Pannell has recently purchased a two-bedroom condominium and he, his wife and the children will be moving in at the end of May. They have given the boys the master bedroom because it is bigger and they have to share the room when Mr. Pannell has parenting time.

Summary of Factual Findings

- [41] The parties have had a difficult separation and there is unnecessary conflict over many issues, including minor ones. Their communications are often hostile.
- [42] Despite the conflict, it is clear from the evidence that both parents love their children and are competent parents. However when it concerns issues between them, they are unable to rise above the conflict and act in their children's best interests.
- [43] Both parties are to blame for this high conflict relationship. Mr. Pannell understands how unhealthy this is for their two children and the need for it to stop. Ms. Butchart testified that the entire situation is "nuts" and "so unnecessary" and acknowledged that it is not good for the children. However she has little insight into how her behaviour, such as her negative Facebook posts, has taken a toll on her post-separation relationship with Mr. Pannell and how this affects the children.

Guardianship/Custody

- [44] The Claimant seeks sole custody under s. 16 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [Divorce Act] and an order for sole guardianship of the children under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The respondent seeks shared guardianship.
- [45] Ms. Butchart submits that she is the more experienced parent and is better suited to provide ongoing care for the children. She emphasizes that she was the at-home parent during their marriage and that she has always arranged and taken the children to their medical appointments and school activities.
- [46] Ms. Butchart testified that since separation the respondent has often been unreasonable and has made her feel that everything has to be "his way". As I have noted above, both parties have engaged in unreasonable behavior and have failed to put the children's interests first.

Legal Principles

- [47] An order for custody is made pursuant to s. 16 of the Divorce Act. In making such an order, s. 16(8) provides that the only consideration for the court is the best interests of the children of the marriage. The test for considering the "best interests" of a child is set out in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 [Gordon],
- [48] In *Orring v. Orring*, 2006 BCCA 523, the Court of Appeal at para. 40 quoted Gordon in the context of determining the best interests of two children in a relocation case:
- [40] Sections 16(10) and 17(9) of the Divorce Act establish a principle of maximum contact with each parent. With respect to that principle, McLachlin J. said:
- [24] The second factor which Parliament specifically chose to mention in assessing the best interests of the child is maximum contact between the child and both parents. Both ss. 16(10) and 17(9) of the Act require that "the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child". The sections go on to say that for this purpose, the court "shall take into consideration the willingness of [the applicant] to facilitate" the child's contact with the non-custodial parent. The "maximum contact" principle, as it has been called, is mandatory, but not absolute. The Act only obliges the judge to respect it to the extent that such contact is consistent with the child's best interests; if other factors show that it would not be in the child's best interests, the court can and should restrict contact: *Young v. Young*, [1993] 4 S.C.R. 3, at pp. 117-18, per McLachlin J.
- [49] Section 37 of the FLA contains similar language to the Divorce Act and confirms that all orders for guardianship, parenting arrangements, or contact with a child must be made considering only the child's best interests. As set out in the above quotation, a primary assumption is that the children have maximum contact with both parents where possible: Divorce Act, s. 17(19).
- [50] Section 39 of the FLA presumes both parents are the guardians of the children. The allocation of parenting responsibilities is made under s. 40 of the FLA. Only guardians may have parental responsibilities and parenting time vis-à-vis the children: FLA s. 40(1).

Analysis

- [51] The claimant has provided no evidence regarding why she is entitled to sole guardianship. There was no evidence that Mr. Pannell is not a good parent and there is no s. 211 report for me to consider. A high conflict separation, for which both parties are equally to blame, is not a justification for sole custody/guardianship.
- [52] I decline to grant this order. It is in the children's best interests for them to have maximum contact with both parents.

Parenting Time

- [53] Ms. Butchart seeks an order for the full allocation of parental responsibilities as listed in s. 41 of the FLA.
- [54] To justify full allocation of parental responsibilities Ms. Butchart emphasized her extensive involvement in raising the children and being the secondary breadwinner. She testified that she has been the primary caregiver of the children and Zoe since they were born and she has been largely responsible for organizing their appointments and activities. She testified that she is better suited to provide ongoing care for the children and to make the parenting decisions.
- [55] Ms. Butchart proposes the following parenting arrangement for the children:
- a) The children shall reside with the claimant, and the respondent shall have parenting time every second weekend from Friday after school until Sunday at 7:00 p.m. The Respondent shall pick the children up at the claimant's residence at the commencement of his parenting time, and the claimant shall pick the children up at the respondent's residence at the end of his parenting time.
 - b) The children's holidays shall be shared between the parties. Christmas Eve and Christmas Day shall be alternated each year. Easter and Thanksgiving shall be alternated each year. The children shall spend Mother's Day and Father's Day with the relevant party. The parties shall work together to celebrate the children's birthdays as a family, including Kyren's birthday, which falls on Halloween.
 - c) Each party may travel internationally with the children so long as they have provided the other with 30 days' notice and an itinerary of destinations and contact information. Two weeks in advance of such travel, the non-traveling party shall provide the other with a travel authorization. Travel within Canada, but outside of British Columbia, shall require 10 days' notice, contact information, and an itinerary of destinations. The party traveling with the children shall allow and provide Skype, FaceTime, or phone access to the children every second day at a reasonable time.
- [56] It is Ms. Butchart's position that her proposed parenting plan creates stability for the children and fewer interactions between the parties. It will benefit the children to decrease the number of exchanges to which they are currently subjected.
- [57] The respondent seeks shared parenting time. He testified that he has a good relationship with the children, as does his wife, and he tendered photos of them enjoying many family activities with the children. He proposes one week on, one week off, with exchanges happening on Mondays. He argues this will relieve the tensions and lessen the amount of communication needed between the parties. He argues this is in the children's best interests pursuant to s. 37 of the FLA.

Legal Principles

- [58] Parenting responsibilities are set out in s. 41 of the FLA. They may be allocated to one parent entirely, shared equally between both parents or specifically allocated in various ways to each parent: *Rashtian v. Baraghoush*, 2013 BCSC 994; *A.B.Z. v. A.L.F.A.*, 2014 BCSC 1453; and *Hansen v. Mantei-Hansen*, 2013 BCSC 876.
- [59] According to s. 37 of FLA, the court may only consider the best interests of the child when making orders for parenting time or contact. Section 37(4) mandates that, in making an order, a person's conduct may only be considered if it substantially affects a factor set out in s. 37(2). The factors in s. 37(2) are:
- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- [60] While there is no presumption that the status quo is the preferred position, it is certainly a factor I must consider: *Nunweiler v. Nunweiler*, 2000 BCCA 300.
- [61] Section 37(2)(g) specifically requires the court to consider family violence when considering the best interests of the child. Section 38 sets out how to assess family violence in this context:

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.

Analysis

- [62] The parties have had shared parenting time since separation. The parties have both exercised approximately 50% of the parenting time with the children. Both parties agree that the shared schedule has increased the interactions between them and that co-parenting has been difficult. Both parties agree that the family violence was never directed at the children.
- [63] Ms. Butchart argues that the parenting arrangements need to change, not only for the parties' sake, but because the hostility between the parties and the frequent exchanges are not in the best interests of the children.
- [64] I agree that the frequent exchanges of the children is not in their best interest. However I do not agree that Mr. Pannell should be confined to parenting time every second weekend. It will benefit the children's health and emotional well-being to have maximum contact with both parents. The children have a solid relationship with both parents as both parents have been significantly involved in their care.
- [65] I order the following parenting schedule:
- a) The parties shall have one week on, one week off, parenting the children. The exchanges will occur on Sundays at 4:00 p.m. The party beginning their parenting time will pick up the children at the end of the other party's parenting time. Pickups are to happen at the curbside or in the driveway of the other parent's home. If this is not agreeable, the parties may agree to an alternate, but consistent, neutral location.

- b) The parties are entitled to regular telephone access to the children once per day, other than on exchange days, when the children are not in their care.
- c) Each parent is responsible to ensure that the children get to school, to their extra-curricular activities and to any medical appointments during their parenting week.
- d) The children's Christmas and Spring Break holidays shall be shared between the parties as follows:
 - i. In 2019 and each odd year, Mr. Pannell will have parenting time with the children in the first half of these holidays and Ms. Butchart will have the second half. The holidays begin and end on Sundays at 4:00 p.m.
 - ii. Mr. Pannell will have parenting time with the children from December 24 at 4:00 p.m. until December 25 at 12:00 p.m. and Ms. Butchart will have parenting time with the children from December 25 at 12:00 p.m. until December 26 at 4:00 p.m.
 - iii. In 2020 and each even year, it will be the opposite.
- e) Easter and Thanksgiving shall be alternated each year. New Year's Eve and New Year's Day will fall to whichever party has parenting time with the children on those days. The children shall spend Mother's Day and Father's Day with the relevant party. The parties shall work together to celebrate the children's birthdays as a family, including Kyren's birthday, which falls on Halloween. Where the parties cannot cooperate on Halloween, the time will be spent as specified in item 5 of Master Muir's March 26, 2018 order.
- f) I carry forward item 8 of Master Muir's March 26, 2018 order. Each party shall have the right to have the children for two consecutive weeks during the summer holidays. These two-week vacation periods will begin and end on Sundays at 4:00 p.m. Ms. Butchart has first choice of choosing her summer weeks in 2019. She will advise Mr. Pannell of her choice by May 31, 2019. Mr. Pannell will reply with his choice by June 7, 2019. The parent with "first choice" will alternate annually.
- g) Each party may travel internationally with the children so long as they have provided the other with 30 days' notice and an itinerary of destinations and contact information. Two weeks in advance of such travel, the non-traveling party shall provide the other with a properly notarized travel authorization. Travel within Canada, but outside of British Columbia, shall require ten days' notice, contact information, and an itinerary of destinations. The party traveling with the children shall allow and provide Skype, FaceTime, or telephone access to the children every second day at a reasonable time.

- [66] Mr. Pannell requested that parenting time exchanges occur on Mondays after school. Ms. Butchart, in requesting that the children be with Mr. Pannell only every second weekend, requested that the exchanges occur on Sundays at 7:00 p.m. In the interests of ensuring the children be settled at the "new" home before the school week begins, and to allow for ease of transporting any belongings between households, I have ordered these exchanges occur on Sundays at 4:00 p.m.
- [67] I have also ordered the exchanges during Christmas and summer vacation times to be on Sundays. However, I hope the parties will be flexible if, for example, one party wants to book flights on a Saturday or Sunday morning on the weekend leading into their vacation, keeping in mind the best interests of the children.
- [68] Mr. Pannell is permitted to take the children on a vacation to Las Vegas in May 2019. Ms. Butchart will provide him with a properly notarized travel authorization two weeks in advance of the trip. Besides the itinerary of destinations and contact information, Ms. Butchart is not entitled to additional details as to each excursion Mr. Pannell plans to take the children on.
- [69] In my view, effective co-parenting requires each party to place trust in the other regarding the children's well-being while in their care. There is no reason to suggest Mr. Pannell has exercised or will exercise poor parenting judgment such that Ms. Butchart must be made aware of vacation details to the degree she requests.

Imputing Income

- [70] The claimant takes the position that Mr. Pannell was intentionally unemployed following his termination in November 2016 and remains under-employed.
- [71] Ms. Butchart seeks that the income of the respondent be imputed at \$113,000 for the purposes of calculating child and spousal support obligations, both retroactive and prospective. This amount is calculated based on Mr. Pannell's average income in 2014 and 2015.
- [72] At trial, the respondent disclosed the following income:
- a) \$80,297 in 2011;
 - b) \$100,749 in 2012;
 - c) \$116,432 in 2013;
 - d) \$116,432 in 2014;
 - e) \$110,250 in 2015;
 - f) \$97,475 in 2016;
 - g) \$71,951 in 2017; and

- h) \$85,000 in 2018.
- [73] Ms. Butchart argues that prior to separation Mr. Pannell was gainfully employed and earning significant pay with a global company, Capcom. Capcom is a world renowned company that makes video games.
- [74] Ms. Butchart maintained the position throughout trial that the respondent is highly employable and qualified to find equal or greater employment to the employment he had at Capcom. She argues that based on the respondent's financial disclosure, he has been able to consistently earn a six-digit income prior to separation. Given the history of Mr. Pannell's employment, he remains intentionally under-employed.
- [75] Mr. Pannell testified that he is currently employed as a senior artist earning an annual salary of \$85,000. He agrees that he was employed as a lead artist at Capcom at the time of separation. The company had a bonus structure and he made a high income. However he testified that after being reported to the RCMP, and being arrested at work, his reputation suffered. After he finished the project on which he was working at the time of his arrest, he was wrongfully terminated from his employment in November 2016. Mr. Pannell argued that he has suffered financially, has been unable to get work at his former salary, has had to take time off work due to stress and anxiety, and has had to set up a separate household.

Legal Principles

- [76] Support payments are based on earning capacity, not on what a parent actually earns. Pursuant to s. 19(1) of the Federal Child Support Guidelines, SOR/97-175 [Guidelines], this Court may impute income it considers appropriate in the circumstances:
- 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.
- [77] Income may be imputed where the disclosed income does not fairly reflect what should be paid in child support: *Vincent v. Vincent*, 2012 BCCA 186 at para. 38.
- [78] This Court has broad discretion to impute income but there is also a presumption of self-sufficiency within a reasonable period of time. As stated in *MacCarthy v. MacCarthy*, 2015 BCCA 496, at para. 34:
- [34] Of course, the court has a broad discretion to impute income to either or both spouses for the purposes of determining child and spousal support. The ability of a court to impute income recognizes that, insofar as it is practicable, and having regard to all the circumstances, spouses seeking support must also make reasonable efforts to support themselves. That requirement should not be confused with the burden of proof. There is no burden of proof on the party seeking support to prove a negative: that they could not become self-sufficient.

Analysis

- [79] Mr. Pannell's reputation suffered after his arrest and he has since been unable to find work at the same level and salary as he had at Capcom. He provided evidence of numerous job applications following the wrongful termination. He did not obtain employment until May 2017 but he did some freelance work at the beginning of 2017. I note that Mr. Pannell was candid that he is still interested in earning better pay, including through managerial positions, in the future.
- [80] Mr. Pannell testified that in November 2017 he went to his doctor because he was suffering from extreme stress and anxiety. His doctor provided him with a note dated November 15, 2017 that he was unable to work. He remained off work for almost one year but he continued to make his child support payments. Occasionally his payments were late.
- [81] I am persuaded that Mr. Pannell has been unable to obtain a "lead" position similar to the one he had at Capcom due to his diminished reputation after being arrested at work. Although the police did not press charges, it is reasonable to assume that his colleagues would talk and his reputation in the professional community would suffer. This assumption is strengthened by Mr. Pannell's wrongful termination from Capcom following his arrest, albeit after the completion of the project on which he was working at the time of separation. In these circumstances, I am unwilling to impute additional income to Mr. Pannell. His income is set at \$85,000.

Child Support for Zoe

[82] Mr. Pannell seeks an order to cease child support for Zoe because she is no longer a child of the marriage. Ms. Butchart disagrees.

Legal Principles

[83] Section 146 of the FLA defines a child of the marriage to include "a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians".

[84] 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 147(1)(a) and (b). Section 147 codifies the case law respecting when child support obligations end. It includes where a child has voluntarily withdrawn from a parent's charge: *Shaw v. Arndt*, 2016 BCCA 78; *M.A. v. F.A.*, 2013 BCSC 1077; *Henderson v. Bal*, 2014 BCSC 1347; *V.C.K. v. R.W.*, 2015 BCSC 1418.

[85] Section 2 of the Divorce Act defines a "child of the marriage" similarly to the FLA.

Analysis

[86] Zoe is currently enrolled in a four-year electrical program with the British Columbia Institute of Technology. She works full-time in an apprenticeship program but also goes to school for part of the year. That she was working full-time as of April 2018 is confirmed by the FMEP form filled out by Ms. Butchart on April 11, 2018, although the details of her employment were not made entirely clear at trial. I note that in a letter dated June 15, 2018, FMEP was no longer enforcing Mr. Pannell's payments to Zoe.

[87] Also importantly, Zoe is 21 years old and currently lives with her boyfriend. She moved out of Ms. Butchart's residence effective September 1, 2018.

[88] In these circumstances, because Zoe was working full time and because she no longer lives with a parent, as of September 1, 2018 Mr. Pannell is no longer required to pay child support for Zoe. Under Master Harper's order of September 26, 2017, Mr. Pannell was paying \$300 per month for Zoe. The payments made between September 1, 2018 and the date of this order should be subtracted from the money Mr. Pannell owes Ms. Butchart from the funds in the trust account.

Child Support for the Children

[89] Ms. Butchart argued that prospective child support should commence April 1, 2019. Pursuant to the Guidelines it should be calculated in the amount of \$2,200 for three children based on imputing income to the respondent of \$113,000. Ms. Butchart's also argues that there should be no set-off between the parties. The \$2,200 reflects no set-off.

[90] Mr. Pannell opposes this amount of child support.

Legal Principles

[91] 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.

[92] Child support in a shared parenting arrangement is governed by s. 9 of the Guidelines, which provides:

9 Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, 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 custody arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[93] Section 9 was interpreted in the oft-cited case of *Contino v. Leonelli-Contino*, 2005 SCC 63 [Contino]. Child support in situations of shared custody may be determined by a two-step approach. The first step is to determine whether the 40% threshold has been met. The second step is to determine the amount of support by considering the factors set out in subsections (a), (b), and (c).

[94] Pursuant to s. 150(1) of the FLA, child support must be calculated in accordance with the Guidelines unless one of the exceptions applies. A set-off based on the federal child support tables set out in Schedule 1 of the Guidelines (the "tables") is presumed in a shared parenting arrangement.

Analysis

[95] Both "[p]arents have a joint and ongoing legal obligation to support their children": *Sedlmair v. Sedlmair* (1999), 3 R.F.L. (5th) 294 (B.C.S.C.) at para. 12.

[96] Here the parties do not dispute that child support is owed. The primary issue is what income Mr. Pannell does or can earn. There is also the issue of whether there is co-parenting based on each parent having the children approximately 50% of the time or whether Ms. Butchart is granted sole guardianship.

- [97] I have already determined that Mr. Pannell's income is set at \$85,000 for the purposes of calculating support. Ms. Butchart argued that her income should be set at \$58,000. Ms. Butchart did testify however that she will be receiving a raise of approximately \$3 per hour over the next three years. Mr. Pannell did not dispute the amount of \$58,000, although he believes she can work more hours. I therefore impute \$58,000 per year to Ms. Butchart.
- [98] I have also determined that only Kyren and Evan remain children of the marriage.
- [99] Here I have ordered that the parties share parenting time equally. Ms. Butchart argued that while a set-off based on the tables is the starting point, it is only one factor to consider when determining an appropriate amount of support: Contino at para. 49.
- [100] I have considered the increased costs of shared custody arrangements and the conditions, means, needs and other circumstances of both parties and the children, as required by s. 9 of the Guidelines. I am satisfied that a set-off of the child support amounts in the tables is appropriate in the circumstances.
- [101] The tables Master Harper relied upon in making the September 26, 2017 assessed Mr. Pannell's child support obligations for the children at \$398 per month (with a set-off). The tables were updated on November 22, 2017.
- [102] Reviewing the "new tables", Mr. Pannell's monthly child support obligation is \$1,314. Ms. Butchart's obligation is \$900. I therefore order that Mr. Pannell pay Ms. Butchart the offset amount of \$414 in child support each month going forward.
- [103] I order that Ms. Butchart be credited with \$272, that being the difference between the applicable child support amount under the "old tables" and the "new tables" from December 2017 to the date of this order.

Retroactive Child Support

- [104] Ms. Butchart has made a claim for retroactive child support for the children based on her calculations with no set-off.

Legal Principles

- [105] The discretion to make an order of retroactive child support is found in ss. 15.1 and 17 of the Divorce Act and ss. 152 and 170(b) of the FLA. The circumstances in which retroactive child support may be awarded were addressed in *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.]. In *D.B.S.*, the Supreme Court of Canada directed trial judges to adopt a broad and holistic approach in the application of four factors, summarized at para. 133, none of which is determinative on its own:
- Is there a reasonable excuse for why support was not sought earlier?
 - Was there any blameworthy conduct on the part of the payor parent?

- c) Is a retroactive award appropriate in light of the child's past and present circumstances?
- d) Will a retroactive award cause hardship to the payor parent or to his or her other children?

Analysis

[106] Ms. Butchart made her claim for child support on September 16, 2016, approximately eight months from the date of separation. I find this to be reasonable. Mr. Pannell has paid child support based on his income of \$85,000 since June 1, 2017. To the extent that he did not pay child support between November 2016 and May 2017, it was because he was unemployed. However he made \$26,000 doing freelance work in early 2017. Based on this income and pursuant to the factors in D.B.S., I award a lump sum of \$3,000 to Ms. Butchart for retroactive child support from January to May 2017.

Spousal Support

[107] The claimant argues that she is entitled to spousal support on both non-compensatory (needs-based) and compensatory grounds.

[108] Mr. Pannell takes the position that Ms. Butchart could work full-time and is not entitled to spousal support.

[109] Spousal support orders may be made under either the FLA or the Divorce Act. The objectives and factors that must be considered for spousal support mirror each other in both pieces of legislation: *Li v. Liu*, 2014 BCSC 1110.

[110] The objectives of spousal support are set out in s. 161 of the FLA:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[111] The definition of "spouse" is set out in s. 3 of the FLA. There is no dispute here that the parties were spouses.

[112] The general rule is that a proceeding for spousal support must be brought no later than two years after (a) the order for divorce is made (if the parties were married) or (b) the date of separation (if the parties were not married): s. 198 FLA. There are no issues of delay here.

Legal Principles: Needs-Based Support

[113] The principles for non-compensatory support on a needs basis are set out in *Chutter v. Chutter*, 2008 BCCA 507 [Chutter]:

[55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole." Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[114] As stated in *Chutter*, "[n]on-compensatory support is grounded in the 'social obligation model' of marriage, in which marriage is seen as an interdependent union": para. 54. Upon marriage dissolution, it falls on the former partner rather than the state to meet the needs of a disadvantaged spouse. Need alone may be sufficient to ground a claim for spousal support: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, at para. 43.

Analysis: Needs-Based Support

[115] Ms. Butchart testified regarding her financial struggles since separation. She argues that she has had a number of increased costs and the children's standard of living has suffered.

[116] Ms. Butchart testified that during the marriage finances were not a concern and that the parties were often ahead of their bills. Post-separation, she has been in significant debt. Once she received funds from the sale of the matrimonial home, the funds were spent to clear her debts. In contrast, Mr. Pannell was able to buy a new condominium.

[117] I agree that the claimant's living conditions are worse than before separation. However Mr. Pannell's living conditions have also suffered. Given his new income and the need to support two households, neither party will achieve the same living conditions as prior to separation.

[118] Ms. Butchart currently makes \$58,000 per year and anticipates working more in the future. Her income is not drastically lower than that of Mr. Pannell. I decline to award Ms. Butchart spousal support based on needs.

Legal Principles: Compensatory Support

[119] Compensatory spousal support functions to compensate the recipient arising from an economic disadvantage due to the breakdown of the marriage: *Chutter*; and *Moge v. Moge*, [1992] 3 S.C.R. 813.

[120] The fact that a spouse can maintain their job post-separation is not indicative that spousal support should not be awarded. In Chutter, the Court of Appeal stated:

[71] ... [T]he fact that the support-seeking spouse was employed outside the marriage, or engaged in the same career at the end of the marriage as at its start, does not necessarily preclude entitlement to spousal support on compensatory grounds. What was said by McLachlin J. (as she then was) in concurring reasons in Moge, at 882, is apposite:

Even women who have worked outside the home during the marriage may find that their career advancement has been permanently reduced by the effort which they devoted to home and family instead of their jobs, whether the woman be a janitor like Mrs. Moge or a well-trained professional.

[121] In other words, a woman may continue to suffer economic disadvantage despite working during the marriage if she made sacrifices to her career and supported her husband's career advancement.

[122] A compensatory award should continue until compensation is achieved even if the spouse has achieved self-sufficiency: Chutter at para. 79; Tedham v. Tedham, 2005 BCCA 502 [Tedham] at para. 60; and Morigeau v. Moorey, 2015 BCCA 160 at para. 37.

Analysis: Compensatory Support

[123] Both parties testified that they moved to Vancouver for the respondent's career. Ms. Butchart worked part-time during the marriage after the children were born. She testified that she worked night shifts and put her career on hold full-time in order to raise the three children during the day. Mr. Pannell worked during the day. Ms. Butchart testified that she had to forego career opportunities due to the children's schedules.

[124] Ms. Butchart argued that during the marriage, Mr. Pannell was able to maximize his income because Ms. Butchart took on a disproportionate share of childrearing responsibilities. Ms. Butchart focused on raising the children and did not have the same career advancement opportunities. Her support during the marriage allowed the respondent to build up his reputation and create a highly respectable portfolio.

[125] I agree that Ms. Butchart supported Mr. Pannell's career. Mr. Pannell agreed in cross-examination that he is highly employable, has received accolades for his work, and has kept up with the technological advancements in his field. Unfortunately, despite his achievements, Mr. Pannell's job prospects diminished after he was arrested in his workplace.

- [126] Since separation, Ms. Butchart has not returned to work full-time and works between 70% and 80% of full-time. Regarding not working full-time, Ms. Butchart testified that her schedule is created by a centralized department. Because she is a union member, seniority may not transfer with her if she accepted a position at another hospital with more hours or different opportunities.
- [127] Based on the benefits to the respondent, and the disadvantages suffered by the claimant, I am satisfied that compensatory grounds in this case have been met.

Application of the Spousal Support Advisory Guidelines

- [128] Once entitlement to spousal support is established, to determine the appropriate level of spousal support on an initial application, the Spousal Support Advisory Guidelines [SSAG] should be used as a guide in determining both the quantum and duration of support: *McEachern v. McEachern*, 2006 BCCA 508; *Redpath v. Redpath*, 2006 BCCA 338 [Redpath]; *Tedham*; and *Yemchuk v. Yemchuk*, 2005 BCCA 406.
- [129] In *Redpath*, the Court of Appeal held that an award which substantially differs from the range set by the SSAG might constitute an error of law, unless the judge provides a reasonable explanation for the difference.
- [130] The authors of the SSAG point out that the most difficult aspects of determining spousal support arise in "medium length marriages" (six to 19 years), and where illness or disability are involved: SSAG at 64-66 and 121-124. It is ultimately for the court to determine, based on all the circumstances of the particular case, the appropriate amount and duration of spousal support.
- [131] The length of the relationship will usually have an impact on the amount of the spousal support award. Shorter marriages attract shorter awards: *Foster v. Foster*, 2007 BCCA 83 at para. 57.
- [132] As stated above, I am satisfied that Ms. Butchart was entitled to compensatory spousal support. DivorceMate calculations provide that appropriate spousal support for Ms. Butchart during the period from January 14, 2016 to November 9, 2016, while there were three children of the marriage and Mr. Pannell was making \$113,000 per year, was \$510 per month on the mid-range.
- [133] Mr. Pannell's bank statements establish that he initially paid Ms. Butchart approximately \$2,000 per month following their separation and reduced that amount to \$1,510 per month after the first three months. This continued until he lost his job.

- [134] There was discussion at trial about whether these amounts were intended to compensate Ms. Butchart for child support, spousal support, or to cover the mortgage payments on the matrimonial home, although this issue was not put squarely before me. The parties settled their family property and debt claims outside of this trial, aside from the \$50,000 held in trust. I am therefore proceeding on the basis that the payments Mr. Pannell made to Ms. Butchart were for the purposes of support.
- [135] Reviewing the DivorceMate calculations submitted by counsel, Ms. Butchart was entitled to \$1,300 in child support per month from Mr. Pannell during that period. Ms. Butchart was entitled to \$510 per month in spousal support. This totals \$1,810 per month or \$18,100 over the ten-month period. Mr. Pannell paid Ms. Butchart \$18,150 during this period. Accordingly, I decline to award any additional retroactive support to Ms. Butchart.
- [136] Mr. Pannell's job opportunities have not returned to his pre-termination level of achievement since he was arrested and his reputation was tarnished. The DivorceMate calculations list appropriate spousal support at \$0 on the low- to mid-range, or up to \$180 per month on the high end of the range for Mr. Pannell's reduced income of \$85,000 when there were three children of the marriage."

The calculations provide that with only two children of the marriage, the appropriate amount of support remains \$0 on the low- to mid-range, or up to \$376 per month on the high end of the range.

- [137] Having considered the SSAG and the particular facts of this case, I do not find that an award on the high end of the range is appropriate. Ms. Butchart is not entitled to spousal support from November 9, 2016 onwards because Mr. Pannell's income was reduced to the point that she was no longer entitled to support at the mid-range of the calculations.

Section 7 Expenses

- [138] Orders for extraordinary expenses such as daycare and extra-curricular activities are made under s. 7 of the Guidelines.
- [139] Here I need not set out all the legal principles because there is a consent order in place between the parties regarding s. 7 expenses. The respondent testified that there are no arrears owing to the claimant. He has paid in full and FMEP enforces these payments. The claimant did not contradict this testimony from Mr. Pannell.
- [140] In these circumstances I see no reason to disturb the order dated June 1, 2018 and entered on June 4, 2018. This order continues to govern the parties.

Facebook Posts

- [141] Mr. Pannell took me to Facebook posts where Ms. Butchart calls him a "deadbeat dad" and airs their issues, and some of the children's issues, to a large group of Facebook users. She admitted that she did not have privacy protections in place when she wrote these posts. This certainly undermined Mr. Pannell's reputation and contributed to his stress.
- [142] Instead of showing insight into the negative impact of the posts, Ms. Butchart testified that she has recently tightened her privacy settings. Today Mr. Pannell would have to look very deep to find her posts. She testified that there is no court order preventing her from talking about the trial. Her counsel pointed out that the Facebook comments were posted prior to a conduct order being in place.
- [143] These responses fail to recognize how troubling such posts are to the parties' ongoing relationship and the negative impact they have on their children. Such posts are certainly not in the best interests of the children. I order that Ms. Butchart cease posting comments about Mr. Pannell and about the children's counselling on Facebook or any other social media.

Fine for Non-Disclosure of Financial Information

- [144] Ms. Butchart seeks a financial penalty pursuant to s. 213 of the FLA against Mr. Pannell for flouting a court order: *Kubas v. Kubas*, 2017 BCSC 81; and *C.P. v. K.W.A.*, 2018 BCSC 332.
- [145] Ms. Butchart argues that Mr. Pannell was ordered to provide full financial disclosure by Master Harper on October 31, 2017. The Harper order states: "BY CONSENT; the Respondent shall produce full financial disclosure including the severance settlement package he received from his last place of employment and his 2016 tax return."
- [146] There is also an un-entered order of Master Harper following a hearing on February 15, 2019 which states: "The Claimant and Respondent shall exchange Financial Statements in Form 8 by March 1, 2019." Following this hearing, the respondent filed his financial statement on March 7, 2019 and possibly as early as March 1, 2019.
- [147] Ms. Butchart argues that Mr. Pannell failed to provide full financial disclosure. She points out that in cross-examination the respondent admitted that he was earning an income as a freelance artist in 2017 and confirmed that he had not disclosed the income received from his freelance work in his financial statements. At the date of trial, the respondent had not included any documents relating to his freelance work.
- [148] Mr. Pannell testified that he provided his 2017 notice of assessment which included his T4 earnings of \$45,000 as well as additional income from his freelance work. The total was \$71,951 income in 2017. He confirmed that this included all his freelance work. He did not understand that he needed to provide separate documentation, apart from the notice of assessment, to establish these earnings.

[149] I do not find that the respondent intentionally failed to provide his financial information pursuant to a court order. I decline to impose a fine on Mr. Pannell.

Life Insurance

[150] Mr. Pannell wants to cancel the life insurance policy jointly owned by the parties and Ms. Butchart does not want to cancel the policy. I agree with Ms. Butchart that the policy should not be cancelled.

[151] Pursuant to s. 171 of the FLA each parent has a duty to pay child support after their death. Therefore the life insurance policies that the parties own should designate the children as beneficiaries, irrevocably, until such time as neither of the children is a child of the marriage. The parties shall split the cost of the policy equally each year.

OurFamilyWizard Application

[152] Mr. Pannell seeks an order that the parties use the OurFamilyWizard app to reduce the direct communications between the parties. He states that this can be used to schedule appointments, address sports equipment, file school notices and so forth.

[153] Given the significant conflict between the parties when communicating, I order that the parties use the OurFamilyWizard app to address scheduling and appointments instead of emails and texts. They are to split the cost of the app. This will minimize direct contact between the parties and therefore minimize conflict.

[154] The parties may communicate outside of the OurFamilyWizard app only when they are in public spaces, to the extent the app does not support their required communications, and in emergency situations.

Child Care

[155] Mr. Pannell seeks an order that he be able to care for the children when Ms. Butchart has to work rather than paying for childcare. Mr. Pannell seeks an order that he be able to look after the children when Ms. Butchart must work on statutory holidays, professional development days and other school breaks.

[156] In an email exchange in August 2016, Ms. Butchart wanted the children on Mr. Pannell's parenting days if he needed to work, rather than putting the children in daycare. He agreed. However in another email exchange in December 2017, Ms. Butchart refused to allow him to drop off and pick-up the children from school during the period when he was not working. She had them go to daycare instead.

[157] Costs of child care would be largely avoided by allowing one parent to have the children when the other parent is unable to care for the children. Therefore if a parent is unable to care for the children during their parenting time, the other parent will have the right of first refusal to care for the children prior to the child care costs being incurred.

[158] Costs of child care or camps over the summer should be split in the same manner as the s. 7 expenses. Camps and extra-curricular activities should not be booked during the other party's vacation time with the children.

Counselling Sessions

[159] Mr. Pannell wants to be reimbursed for the costs of counselling sessions for which he is out of pocket.

[160] Mr. Pannell testified that his plan does not cover therapy for the children. Ms. Butchart testified that she wants to have confirmation of his insurance coverage, or lack thereof.

[161] Since the policy was not in evidence before me, I order that Mr. Pannell provide his benefit plan details to Ms. Butchart. The parties should split the costs of any outstanding amounts based on their s. 7 expense formula.

Funds Held in Trust

[162] Any amounts currently owing between the parties are to be withdrawn from the trust account. Once those funds are distributed according to this award, the remainder of the \$50,000 held in trust is to be split equally between the parties.

Conclusion

[163] I make the following orders:

Parenting Time

- a) The parties shall have one week on, one week off, parenting the children. The exchanges will occur on Sundays at 4:00 p.m. The party beginning their parenting time will pick up the children at the end of the other party's parenting time. Pickups are to happen at the curbside or in the driveway of the other parent's home. If this is not agreeable, the parties may agree to an alternate, but consistent, neutral location.
- b) The parties are to have regular telephone access to the children once per day, other than on exchange days, when the children are not in their care.
- c) Each parent is responsible to ensure that the children get to school, to their extra-curricular activities and to any medical appointments during their parenting week.
- d) The children's Christmas and Spring Break holidays shall be shared between the parties as follows:
 - i. In 2019 and each odd year, Mr. Pannell will have parenting time with the children in the first half of these holidays and Ms. Butchart will have the second half. The holidays begin and end on Sundays at 4:00 p.m.

ii. Mr. Pannell will have parenting time with the children from December 24, 2019 at 4:00 p.m. until December 25, 2019 at 12:00 p.m. and Ms. Butchart will have parenting time with the children from December 25, 2019 at 12:00 p.m. until December 26, 2019 at 4:00 p.m.

iii. In 2020 and each even year, it will be the opposite.

- e) Easter and Thanksgiving shall be alternated each year. New Year's Eve and New Year's Day will fall to whichever party has parenting time with the children on those days. The children shall spend Mother's Day and Father's Day with the relevant party. The parties shall work together to celebrate the children's birthdays as a family, including Kyren's birthday, which falls on Halloween. Where the parties cannot cooperate on Halloween, the time will be spent as specified in item 5 of Master Muir's March 26, 2018 order.
- f) Each party shall have the right to have the children for two consecutive weeks during the summer holidays. These two-week vacation periods will begin and end on Sundays at 4:00 p.m. Ms. Butchart has first choice of choosing her summer weeks in 2019. She will advise Mr. Pannell of her choice by May 31, 2019. Mr. Pannell will reply with his choice by June 7, 2019. The parent with "first choice" will alternate annually.
- g) Each party may travel internationally with the children so long as they have provided the other with 30 days' notice and an itinerary of destinations and contact information. Two weeks in advance of such travel, the non-traveling party shall provide the other with a properly notarized travel authorization. Travel within Canada, but outside of British Columbia, shall require ten days' notice, contact information, and an itinerary of destinations. The party traveling with the children shall allow and provide Skype, FaceTime, or phone access to the children every second day at a reasonable time.

Trip to Las Vegas

- h) Ms. Butchart shall provide an appropriately notarized travel document to Mr. Pannell authorizing him to take the children on vacation to Las Vegas in May 2019 within two weeks of the trip.

Child Support

- i) Mr. Pannell shall pay Ms. Butchart \$3,000 in retroactive child support for Zoe, Kyren and Evan for the months of January 2017 to May 2017 out of the trust account.
- j) Mr. Pannell shall pay Ms. Butchart \$272 from the trust account, that being the difference between the applicable child support amount under the "old tables" and the "new tables" from December 2017 to the date of this order.
- k) The child support payments made by Mr. Pannell for Zoe between September 1, 2018 and the date of this order are to be subtracted from Ms. Butchart's share of the monies in trust account.

- l) Mr. Pannell shall pay Ms. Butchart \$414 per month in child support for Kyren and Evan as long as they remain children of the marriage.

Section 7 Expenses

- m) The parties are to split the costs of any outstanding and future counselling amounts for the children under their existing s. 7 expense agreement.
- n) Costs of child care or camps over the summer are to be split under the parties' existing s. 7 expense agreement.

Insurance

- o) The parties are not to cancel their life insurance policy. The parties should designate the children as beneficiaries, irrevocably, until such time as neither of the children is a child of the marriage. The parties shall split the cost of the policy equally each year.
- p) Mr. Pannell will provide his benefit plan details regarding coverage or lack thereof for the children's counselling to Ms. Butchart within fourteen days of this judgment.

Miscellaneous

- q) Ms. Butchart shall cease posting comments about Mr. Pannell and the children's counselling on Facebook or any other form of social media immediately.
- r) The parties shall download the OurFamilyWizard app within fourteen days of this judgment to address scheduling and appointments instead of emails and texts. The parties may communicate outside of the app only when they are in public spaces, to the extent the app does not support their required communications, and in emergency situations. They are to split the cost of the app.
- s) If one party is unable to care for the children during their parenting time, that party is to make the other aware as soon as possible. The other parent will have the right of first refusal to care for the children on that date or those dates prior to child care costs being incurred.
- t) Camps and extra-curricular activities are not to be booked during the other party's vacation time with the children.

Funds Held in Trust

- u) The \$50,000 held in trust is to be split equally between the parties after any outstanding amounts owing are distributed.

[164] I decline to impute a higher income than Mr. Pannell currently earns, grant Ms. Butchart sole guardianship or full allocation of parental responsibilities, order retroactive or prospective spousal support, or impose a fine on Mr. Pannell for financial non-disclosure.

Costs

[165] Each party achieved a measure of success. There will therefore be no order as to costs.

"MacDonald J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/19/05/2019BCSC0599.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/butchart-v-pannell-2019>

Prepared on 27 October 2026 · Esheria