
CANADA / JUDGMENT

C.A.L. v. D.E.L.

2019 BCSC 1483

COURT

Supreme Court of British Columbia

DECIDED

4 September 2019

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2019 BCSC 1483 C.A.L. v. D.E.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.A.L. v. D.E.L.,

2019 BCSC 1483

Date: 20190904

Docket: E171130

Registry: Victoria

Between:

C.A.L.

Claimant

And:

D.E.L.

Respondent

Before: The Honourable Mr. Justice B.D. MacKenzie

Corrected Judgment: The reasons for judgment have been corrected
at para. 164 by changing a name to initials, on December 16, 2019.

Reasons for Judgment

Counsel for the Claimant:

M. Kinney

The Respondent, appearing in person:

D.E.L.

Place and Date of Trial:

Victoria, B.C.

July 22-26, 2019;

July 29-31, 2019;

August 1-2 and 6-9, 2019;

August 12 and 14-16, 2019

Place and Date of Judgment:

Victoria, B.C.

September 4, 2019

Introduction

- [1] This is a family law proceeding that attracts the label "high conflict", especially when one considers the allegations each party levels against the other and the unfortunate circumstances surrounding their children. The parties' daughter H. and son N. have been the centre of much of the dramatic discord and animosity between the parties, with the end result that the children have almost completely severed their relationship with their mother. Both children currently reside with Mr. L.
- [2] In this acrimonious litigation, Ms. L. is represented by counsel. Mr. L. is self-represented, although he had counsel acting on his behalf until a few months before trial. However, Mr. L. has acknowledged that throughout the trial he has been receiving out-of-court assistance from counsel in order to gather documents and produce several binders of materials, and to make detailed final submissions on the legal issues that are relevant in this case.
- [3] Many issues were initially contested in this proceeding, including the date of separation, parenting time and guardianship, retroactive and prospective child support, spousal support, special and extraordinary expenses, property division, and the effect of a cohabitation agreement the parties entered into in 2001 (the "Agreement"). Ms. L. was also seeking a protection order due to what she asserted was a legitimate fear for her safety, given what she described as Mr. L.'s past aggressive and harassing behaviour towards her.
- [4] The trial lasted almost four weeks, with vast amounts of material produced by both parties in an attempt to support their respective positions. In addition, Ms. L. says Mr. L. deliberately failed to complete timely and up-to-date financial disclosure, which made the trial longer and more difficult than it needed to be, and submits he should be penalized as a result.

Background

- [5] Ms. L. and Mr. L. started living together in a marriage-like relationship around December 1, 1999 (or 2000 according to Mr. L.), in Sudbury, Ontario. She was 20 years old and he was 32 years old. They entered into the Agreement on March 1, 2001 and were married on March 24, 2001. Ms. L. is now 39 years old and Mr. L. is 52. In the early years of their relationship, Ms. L. was employed at Costco. Mr. L. was not employed at that time as he had suffered serious injuries in a 1994 motor vehicle accident. He was in the midst of protracted litigation that only settled in 2004, providing him with lifetime disability income. The parties moved to Victoria in 2004. Ms. L. was unable to obtain a transfer from Costco at that time, so was unable to continue her employment with that organization, work that she says was just below managerial level.
- [6] There are two children of the marriage. The parties' 17-year-old daughter H. was born in Ontario in May 2002. Their son N., now 14, was born in Victoria in January 2005.
- [7] Both parties agree that in general they did not have a harmonious relationship. They disagree about their date of separation. According to Ms. L., they separated November 30, 2016, and lived separate and apart in the family residence until she moved out on January 25, 2017. Mr. L. says January 25, 2017 was the date of separation.
- [8] Ms. L. says the date of separation is significant, due to the fact that between November 30, 2016 and January 25, 2017, Mr. L. significantly reduced the pool of potential family assets by increasing two RBC lines of credit secured against the family residence and cashing in his RRSP, a savings account, an investment account, and the children's RESPs, all of which were solely controlled by him. Mr. L. does not dispute this, but says the parties "jointly" removed the funds prior to their separation on January 25, 2017 and that he gave Ms. L. \$122,000 in cash on January 15, 2017 so their separation would be "smooth" and "seamless."

Governing Legislation

- [9] The parties initially disagreed about which province's law should apply, given that they entered into the Agreement in Ontario. However, they ultimately agreed that British Columbia law was applicable, and primarily argued this matter in reference to the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Given their ultimate positions on this issue and the fact that they chose to proceed in this jurisdiction, I am prepared to determine this matter under B.C. law, notwithstanding Clause 9 of the Agreement, which states it "shall be interpreted pursuant to the laws of Ontario" and also provides that "the jurisdiction for any adjudication shall be the Ontario Court (General Division)."
- [10] At the same time, neither party suggested the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3, should supplant the FLA in these proceedings. Following *A.K. v. M.K.*, 2013 BCSC 1275 (at paras. 30-32) and *B.D.M. v. A.E.M.*, 2014 BCSC 453 (at paras. 113-114), I am satisfied it is appropriate to use the FLA framework to resolve most of the issues at stake.

[11] That being said, the Agreement addresses property division and dates from 2001. On this point, s. 252(2) of the FLA provides that in "a proceeding to enforce, set aside or replace an agreement respecting property division made before the coming into force" of the FLA in 2013, the property division provisions of the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA], govern unless the parties agree the FLA is to apply. As the parties have not agreed that the FLA should apply as to property division, the property provisions of the now rescinded FRA apply to this case, which has complicated somewhat the parties' respective submissions.

The Date of Separation

[12] The first issue is the date of separation. In this analysis, s. 3(4) of the FLA states:

- (a) spouses may be separated despite continuing to live in the same residence, and
- (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[13] In *Nearing v. Sauer*, 2015 BCSC 58, the Court made it clear that the law does not require a meeting of the minds with respect to the intention to separate. The legal framework for determining that spouses have lived separate and apart requires that the Court find, first, an intention of one spouse to repudiate or end the spousal relationship and, second, action consistent with that intention.

[14] In *S.A.H. v. I.B.L.*, 2018 BCSC 544, Shergill J. reviewed the law respecting when parties have separated. After reviewing the case law, she confirmed that physical separation is not necessary; parties can live in the same residence and still be considered separated, and the court may look at the pre- and post-separation behavior of the parties to determine the date of separation. Based on the case law, Shergill J. found (at para. 55) that the following questions, framed in the form of a "test", are useful when determining the date of separation:

1. Did at least one spouse have the intention to separate?
2. Was the intention to separate communicated to the other spouse?
3. Was the intention to separate acted upon? In other words, using generally accepted characteristics of marriage, did one or both spouses take action that is consistent with the separation, such as:
 - a. changing how they behaved with each other in public; and
 - b. changing how they behaved with each other in private.

- [15] Ms. L. submits that after several years of on-and-off discussions about separation and a divorce, the parties finally separated on November 30, 2016. Ms. L. says that even though she did not actually move out of the family home in North Saanich until January 25, 2017, she and Mr. L. were living separate and apart under the same roof in separate bedrooms from November 30, 2016. On this point, Mr. L. has acknowledged that he and Ms. L. had separate bedrooms by late November 2016, each with its own lock. That, in my view, is consistent with Ms. L.'s assertion they were living separate and apart under the same roof after November 30, 2016, although Mr. L. says they would occupy separate bedrooms from time to time in the past.
- [16] In addition to her testimony on this point, Ms. L. refers to a text or email sent in December 2016 from Mr. L. to Mr. Klassen, a family law mediator. In that email, Mr. L. referred to Ms. L. as his "ex-wife" on more than one occasion and advised Mr. Klassen he would retain experienced counsel and contest the various issues, especially child and spousal support, through "a long, drawn out battle" in court rather than through mediation. Ms. L. also points out that in early December 2016, Mr. L. searched advertisements for rental accommodation for Ms. L. because she would be moving from the family residence. She says this conduct by Mr. L. supports her position that she and Mr. L. were indeed living separate and apart under the same roof as of the end of November 2016 and the relationship was over at that time.
- [17] Ms. L. also refers to a text sent by Mr. L. on December 3, 2016, where he said "they are all yours you have sole custody." There are several texts sent in early December 2016 where Mr. L. said he was cashing in the children's RESPs because "I have no other way of paying you." On December 7, 2016, he texted, "understand your [sic] moving on to new chapter." I agree all of these texts are consistent with the parties living separate and apart under the same roof. In addition, Ms. L. points out that in December 2016 Mr. L. cancelled her phone service and removed her as a director of a small company they were involved in; again, this behaviour is consistent with their separation having already occurred.
- [18] Ms. L. also points out the uncontroverted evidence that between November 30, 2016 and January 25, 2017, Mr. L. dramatically increased the debt on the two RBC lines of credit secured against the family residence, and cashed the children's RESPs and several accounts in his name, as well as cashing in "miles" in exchange for a prepaid Visa credit of \$2,300. All of these accounts were solely controlled by Mr. L. Ms. L. says this is the conduct of a person who knows he and his spouse have separated.
- [19] Finally, Ms. L. confirmed that she had arranged to rent an apartment for February 1, 2017, which in the usual course of events would mean she would have had to make these arrangements well before the January 25, 2017 separation date alleged by Mr. L. This, too, is consistent with her assertion she removed herself from the relationship in late 2016.
- [20] On the other hand, Mr. L. says the parties separated January 25, 2017, when he called the police to report a "theft", due to the fact that Ms. L. had found and removed at least \$20,700 in cash that Mr. L. had "hidden" under the mattress in his bedroom. Mr. L. says it was

actually \$37,000 that was "stolen" by Ms. L. Ms. L. acknowledged that after consulting with the lawyer she retained in December 2016, and because she had not received any significant support from Mr. L. since the end of November, she removed the \$20,700 from his room and put it in her safety deposit box. Due to the volatility of the situation that night, with Mr. L. being so upset that the police report states he had difficulty communicating, the police advised Ms. L. to leave with the children "for a few days." Ms. L. left with the children and did not return.

- [21] Mr. L. also says that because Ms. L. stated on her 2016 income tax return, filed in 2017, that her status was "married," this undermines her submission that they separated in 2016. In response, Ms. L. says her accountant completed her tax return and that this designation should have little impact in this analysis. I agree with Ms. L. on this point.
- [22] Regarding the various texts and emails that Ms. L. says support her position that the parties were living separate and apart after November 30, 2016, Mr. L. submits that some emails and texts messages were "solely created by or altered by the claimant." However, in cross-examination, Ms. L. testified she never altered any such messages, nor did she create false ones. Given the direct contradiction between the parties on these suggestions of fabricated texts and emails, I am unable to conclude that there has indeed been any fabrication of these communications.
- [23] Given the totality of the evidence, and applying the principles set out above, I agree with Ms. L. that there is ample evidence to support her submission that the parties' behaviour after November 30, 2016 was consistent with separation. I find the parties separated on November 30, 2016.

Guardianship and Parenting

- [24] The family dynamics in this case are most unfortunate, due to several altercations and allegations of abuse between these two parents and their children. The parties are generally in agreement about the existence of these family dynamics, while disputing which of them may be more at fault, who may have called the police on whom, and whether or not some of the details are accurate. The family problems were such that in late 2017, Mr. L. faced criminal assault charges involving his daughter H., who later recanted her allegations, resulting in the charges being stayed by the Crown.
- [25] Be that as it may, even though the children left the family home with Ms. L. on January 25, 2017, their relationship with their mother has deteriorated to the extent that they have virtually no relationship with her at this time.
- [26] While Ms. L. is of the view that Mr. L. has now "poisoned" the children's relationships with her, she realizes that as her daughter H. is now 17 years old and her son N. is 14 years old, the children "will essentially decide with their feet with respect to their living arrangements." At this point in time, Ms. L.'s chances of any "reconnection" with N. seem extremely remote, given the several disrespectful texts he has sent his mother over the last

four or five months. However, Ms. L. says she sees a glimmer of hope that H. might be amenable to some relationship with her mother after two years without any meaningful contact.

- [27] As a result of the realistic position taken by Ms. L., at the present time it is not necessary for me to review the significant amount of evidence and other material that was adduced regarding guardianship and parenting issues. The evidence consisted of various police reports, allegations and charges that resulted in Mr. L. facing the assault charges against H. until she recanted, as well as hundreds of texts and emails between the parties, the children, and the Ministry of Children and Family Development ("MCFD"), all of which took up a great deal of court time. Suffice to say, this family has been experiencing much physical and emotional trauma since early 2017.
- [28] The intense difficulties the parties have suffered and inflicted on each other have resulted in periods where H. did not see her father, periods of time where N. did not want to see his sister, periods where N. was living with Ms. L. and did not want to see his father, and many months where H. did not see her mother. Things have evolved and both children now live with Mr. L. in the family residence in North Saanich, again with little desire to see their mother.
- [29] Given that H. has been living with Mr. L. since May 2017 without any significant incidents, and N. has been living with Mr. L. and his sister since March 2019 and is apparently doing relatively well, I order that the children's primary residence will be with Mr. L. Ms. L. may have parenting time with H. and N. at a time and place of the children's choosing and for whatever length of time the children choose. That is, Ms. L.'s parenting time with the children will be in accordance with their views and wishes. I am satisfied that in these circumstances this order is in the children's best interests and, as far as possible, protects their physical, psychological, and emotional safety. As Ms. L.'s counsel put it, "it may not be in anyone's best interests to force anything."
- [30] Both parents will remain guardians pursuant to s. 39 of the FLA, with s. 41 parental responsibilities to be exercised by Mr. L. Pursuant to s. 41(j), Ms. L. will be entitled to receive information concerning significant matters respecting the children, such as schooling and any significant health issues. Ms. L. is entitled to contact the children's school to obtain information as to their educational performance, and to seek health information from third parties as necessary.
- [31] In an attempt to reunite with her children, Ms. L. had initially sought an order that the children and both her and Mr. L. attend counselling or a family reunification program, for at least a three-month trial. I fully understand the spirit in which this proposal was made; Ms. L. clearly would love to be able to reconnect with her daughter and son. However, given the totality of the unfortunate circumstances surrounding this family and the children's clear resistance to professional counselling in the past, I am not persuaded it is in the children's best interests to order them and/or their parents to attend counselling or a "reunification

program" as suggested by Ms. L. At the same time, I see no basis to order Ms. L. to take psychiatric counselling as requested by Mr. L. before having future contact with the children, when and if the children choose to see their mother.

- [32] Finally, Ms. L. asks that there be an order that each parent will support the children in having a positive relationship with the other parent. Given the family dynamics in this litigation, this is a logical suggestion. However, I decline to make this a specific order. I will simply state that I hope that, as time goes on, both Mr. and Ms. L. will do this of their own accord and realize that it will be in the best interests of the children if they can have a reasonable relationship with both of their parents.

Income

Ms. L.'s Income

- [33] Ms. L.'s income from the date of separation until early 2019 is now not in dispute. The evidence has established that as a Registered Nurse with the Vancouver Island Health Authority ("VIHA"), a job she obtained in May 2016 after two years of upgrading a Grade 10 education and then commencing a four year nursing program, Ms. L. was earning \$65,965 in 2018. This is roughly the same income that was used by Power J. in November 2017 and Steeves J. in June 2018 to determine Ms. L.'s interim child support obligations and any proportionate share of s. 7 expenses.
- [34] Despite a brief period in mid-2017 when Ms. L.'s full-time position was eliminated and she accepted a regular part-time job at \$32,000 in order to keep her benefits, she does not seek a readjustment in her income or her support obligations during that time frame as she was able to return to full-time employment relatively quickly.
- [35] Since April 23, 2019, however, Ms. L. has been on medical leave for anxiety and in receipt of medical EI, which was due to expire on August 17, 2019. As a result, Ms. L. initially said that her support obligation should reflect this significant decrease in income. She testified she anticipates returning to work in the fall. If not, she would have to apply for long-term benefits from VIHA. Her income on EI has been approximately \$2,200 a month during these last few months.
- [36] Mr. L. submitted that there was insufficient medical evidence to support Ms. L.'s contention that her anxiety has precluded her from working as an RN since April 23, 2019. Nevertheless, as the trial progressed, Ms. L. agreed to have her 2019 income set at \$65,965 in order to simplify the support calculations. As a result, this is no longer an issue.
- [37] At the same time, in the midst of the trial, Mr. L. resiled from his original position that income of \$75,000 should be imputed to Ms. L. based on her supposed earning capacity as a registered nurse. He now has agreed to have her income set at \$65,000 "by consent."

- [38] Based on Ms. L.'s most recent tax return, I find her income for support purposes is \$65,965. This figure will be used to calculate her child support obligations for 2017, 2018, and 2019, and for any spousal support calculations, if I conclude Ms. L. is entitled to spousal support.

Mr. L.'s Income

- [39] Since 2004, Mr. L.'s primary source of income has been disability annuity income he receives through the structured settlement component of his Ontario motor vehicle settlement. The Ontario Court of Appeal explained structured settlements in *Hunks v. Hunks*, 2017 ONCA 247:
- [51] A structured settlement is created when some or all of a personal injury settlement is deposited with a life insurance company in exchange for guaranteed tax-free payments for a specific number of years or for the recipient's lifetime [I]t is usual to structure the payments so that the recipient receives them monthly The Canada Revenue Agency ("CRA") does not view payments from a structured settlement as income.
- [40] Mr. L. initially submitted that the payments from his structured settlement, which gives him \$89,879.64 a year tax free pursuant to his latest Form F8 financial statement, should not be considered income when calculating his support obligations because the CRA does not view them as income. He submitted his annual income should be set at \$54,870, representing his income from sources other than his structured settlement.
- [41] However, in *McKenzie v. Perestrelo*, 2014 BCCA 161, our Court of Appeal confirmed that non-taxable disability payments are to be included as "income" for support calculation purposes. Moreover, these non-taxable payments are to be "grossed up", given their non-taxable status, in order to arrive at an appropriate figure for support purposes. See also *M.S. v. E.J.S.*, 2017 BCSC 564, which applied *McKenzie* and confirmed that non-taxable benefits are to be included as income and grossed up for support purposes.
- [42] Similarly, the Ontario Court of Appeal in *Hunks* determined that a structured settlement annuity is "income" for support purposes (at para. 4).
- [43] In light of these authorities, I am satisfied that the structured settlement payments Mr. L. receives are to be treated as income and grossed up for the purposes of calculating any support obligations he may have, additional to his other sources of income.
- [44] Mr. L.'s position on the issue of whether structured settlement payments are income for support purposes changed in closing submissions, presumably after consulting counsel during the trial and submissions. He set out two additional, in-the-alternative scenarios which he said could be used to calculate his income for support purposes. The first incorporated 30% of his annuity income for support purposes, and the second included 100% of his annuity income when calculating his support obligations. However, these in-the-alternative positions remained subject to his submission that he should have \$45,000 to \$75,000 deducted annually for medical expenses, due to health issues arising from needing a

prosthetic leg and other medical issues surrounding his compromised health, including trips to Vancouver for appointments and the like. In response, Ms. L. says there is insufficient evidence to support Mr. L.'s claim that there should be such a significant deduction for medical expenses, when Mr. L.'s tax return deductions for medical expenses are in the \$5,000 to \$6,500 range. She does, however, submit a reduction of \$20,000 per year for medical expenses would be more than fair. I agree with Ms. L. on this point. Whatever Mr. L.'s income is for 2017, 2018 and 2019, it will be reduced by \$20,000 for medical expenses.

- [45] Ms. L. initially suggested that Mr. L.'s present income for support calculations is approximately \$220,000. However, her position on this issue evolved during submissions, resulting in a lower proposed income for Mr. L.
- [46] However, Ms. L. continues to say Mr. L.'s income is significantly higher than the \$100,000 figure that has been used to calculate his interim support obligations to date. She submits that since the last interim order was made in June 2018, Mr. L. has disclosed that he has additional long-term disability income from an entity called SSQ. That additional income amounts to approximately \$3,794 gross a month, which, unlike his annuity income, is taxable. Ms. L. also points out that Mr. L. received a "back payment of over \$53,000" from SSQ due to the fact that it took three years to obtain this income, at the same time acknowledging that legal fees eroded a significant portion of this lump sum payment. On this point, I accept Ms. L.'s calculations pertaining to Mr. L.'s SSQ income, when calculating Mr. L.'s 2017, 2018, and 2019 income.
- [47] In addition, Ms. L. continues to assert that Mr. L. has annual income of about \$9,000 from renting out a unit to his present "girlfriend" and her son, as well as undisclosed earnings from a business he has recently started called Nationwide Asbestos Removal ("Nationwide"), which she submits has a webpage and contact information, suggesting it is a viable operation. Mr. L. says he has no business income from Nationwide, as the company is unable to bid on any contracts for the removal of asbestos from First Nations' properties until it has been a registered entity for at least three years, which will be sometime in the next year or two. I accept Mr. L.'s evidence that Nationwide has no value or income at this point in time. Turning to the rental income, Ms. L. acknowledged there are reasonable expenses related to this rental and suggests that 50% of the rental income should be included in Mr. L.'s annual income calculation. Mr. L. eventually agreed that half of this income should be included in his income calculations, even suggesting \$5,000 would be agreeable to him. Notwithstanding this concession by Mr. L., I find it reasonable and appropriate to include rental income of \$4,500 in Mr. L.'s income calculations for 2018 and 2019, and \$3,400 for 2017, as suggested by Ms. L.
- [48] In the final analysis, based on the totality of the evidence, including Mr. L.'s financial documentation, and Ms. L.'s updated submission, I accept Ms. L.'s calculations as to Mr. L.'s income for support purposes based on the sources of income Ms. L. has relied on in her submissions. Pursuant to the Spousal Support Advisory Guidelines ("SSAG"), Mr. L.'s 2019

income for support purposes should be \$206,699. I have arrived at this amount by adding half of Mr. L.'s rental income (\$4,500), his taxable CPP disability (\$10,084) and his taxable SSQ income (approximately \$45,500), to his non-taxable annuities under the structured settlement, which he says total \$88,879, and calculating the appropriate gross up in accordance with the SSAG. After deducting \$20,000 for medical expenses, I find Mr. L.'s 2019 income for support purposes is \$186,699.

- [49] I use the same sources of income and SSAG gross up calculations to set Mr. L.'s 2018 income for support purposes at \$181,213.
- [50] For 2017, I accept Ms. L.'s suggestion that Mr. L.'s rental income can be set at \$3,400 and his SSQ income reduced for legal fees. Ms. L. initially submitted Mr. L.'s 2017 income for support purposes should be \$156,400 under the SSAG. However, she has since recalculated his SSQ income and arrived at an income of \$163,268 for 2017, less \$20,000 for medical expenses, for a final income of \$143,268 for 2017 when calculating Mr. L.'s support obligations. I accept this is a proper calculation.

Child Support

- [51] Both parents acknowledge they have had, and as far as Ms. L. is concerned, will have, ongoing child support obligations. On a relatively positive note, the one thing the parties can generally agree on in this hotly contested litigation is when the children were living with either parent, with the exception of certain particulars of N.'s transition in early 2019 from the care of one parent into the care of the other.
- [52] In this regard, N. left the family home with Ms. L. on January 25, 2017. He remained in the primary care of Ms. L. until sometime in January 2019 when he began to see his father on the odd weekend. I am satisfied that in or about the middle of March 2019, he began residing with Mr. L. on a full-time basis. Since then, N. has continued to live full-time with his father.
- [53] H. lived with Ms. L. from January 25, 2017 until May 31, 2017 when she left Ms. L.'s care to live with Mr. L. after a relatively violent physical altercation between herself and her mother. Around the end of June 2017, H. left her father's residence and lived with a "friend" of Mr. L.'s. This lasted for the months of July and August 2017. In September 2017, H. returned to live with her father until October 24, 2017, when Mr. L. was charged with assaulting H. Mr. L.'s bail conditions precluded him from having contact with his daughter. As a result, and because H. had no desire to live with her mother and resisted assistance from MCFD, H. lived on her own in the family residence from late October 2017 to late May 2018. In due course, H. recanted her allegations against Mr. L. As there was no longer a no-contact condition after the assault charges were stayed by Crown counsel in May 2018, H. returned to live with her father. H. has continued to live with Mr. L. since May 2018.

- [54] With this background, Ms. L. says Mr. L. has paid \$14,411 in child support to date, pursuant to interim orders. She says this figure includes set-off support for months when she also had child support obligations.
- [55] During the time Mr. L. was obligated to pay interim child support, Ms. L. says he missed five payments. Mr. L. acknowledges he made out two cheques in Ms. L.'s maiden name, which precluded her from cashing them. Mr. L. did say, however, that he could produce three cancelled cheques to refute Ms. L.'s suggestion that he had missed three other payments. Mr. L. did not produce these cheques. I accept Ms. L.'s evidence that Mr. L. missed five support payments, and I accept her submission that he has paid \$14,411 to date.
- [56] Because H. was living on her own in the family residence in late 2017 and early 2018, Steeves J. ordered Ms. L. to pay Mr. L. 50% of the table amount of child support for one child for the period October 2017 to May 2018. This monthly amount is \$2,325.
- [57] Ms. L. has not yet paid this ordered child support, which she agrees amounts to \$2,325, because she says Mr. L. owes her child support arrears. At the same time, Ms. L. acknowledges she will owe full table set-off child support for H. from June 2018, when H. returned to live with Mr. L. with N. still living with Ms. L., until March 2019. Ms. L. agrees she is responsible for the full table amount for two children from April 2019 going forward, based on an income of \$65,965.
- [58] At the same time, Ms. L. seeks a retroactive child support order against Mr. L. Her child support calculations purport to address all net obligations between the parties from February 2017 to August 2019, and do not clearly distinguish between the arrears owing by either party and the adjustments she says are appropriate in light of their revised incomes.
- [59] Having regard to the principles in *D.B.S. v. S.R.G.*, 2006 SCC 37, I am satisfied that a retroactive support order is appropriate in the circumstances. While both parties were required to comply with valid interim support orders, at this stage and on the evidence before me, I am prepared to order retroactive child support based on the Federal Child Support Guidelines and my income findings above, less the child support I find has actually been paid to date.
- [60] In normal circumstances, where spouses are able to reach a reasonable and responsible decision on their respective child support obligations once incomes are determined and once there is an agreement or a determination as to where the children have lived and in what capacity, I could simply refer the matter to the parties for precise calculations. In this case, however, both parties have suggested they are incapable of reaching consensus when it comes to finalizing this issue. I therefore am required to deal with the various mathematical calculations taking into consideration the parties' evolving positions as to each other's income.

- [61] From February 2017 to May 2017 both children lived with Ms. L. As a result, Mr. L. should have paid table support for two children for these four months. Based on Mr. L's income of \$143,268, he should have paid \$2,077 per month, for a total of \$8,308 for these four months.
- [62] From June 2017 to March 2019, inclusive, only N. lived with Ms. L, so Mr. L.'s support obligation was for one child. Based on 2017 income of \$143,268, he should have paid \$1,303 per month, for a total of \$9,121 over seven months in 2017. On 2018 income of \$181,213, he should have paid \$1,599 per month, for a total of \$19,188 for these 12 months. On 2019 income of \$186,699, he should have paid \$1,642 per month, for a total of \$4,926 for three months.
- [63] As H. stopped living with Ms. L. at the end of May 2017 and lived with Mr. L.'s friend for July and August 2017, Ms. L. should have paid child support for H. for June and September 2017 at \$625 per month, for a total of \$1,250. In addition, as I have noted, Ms. L. was ordered by Steeves J. to pay 50% of table support for H. from October 2017 to May 2018, when H. was living alone, in the amount of \$2,325.
- [64] As H. resumed living with Mr. L. in late May 2018, Ms. L. should have paid child support of \$625 per month from June 2018 to March 2019, inclusive, for a total of \$6,250 over this ten-month period.
- [65] Ms. L.'s child support obligations increased as of April 2019, when N. started to reside full time with Mr. L. Based on her 2019 Guidelines income of \$65,965, her support obligation for the two children is \$1,024 per month. The total owing for the two children from April 2019 to August 2019, inclusive, is \$5,120 for these five months.
- [66] In sum, for the period from February 2017 to August 2019 inclusive, Ms. L. should have paid total child support of \$14,945 and Mr. L. should have paid total child support of \$41,543. I am satisfied these figures are appropriate.
- [67] As above, Ms. L. says Mr. L. did in fact pay \$14,411 pursuant to interim orders, and I have accepted this figure. Ms. L. says Mr. L. is therefore obligated to pay the remainder of \$27,132 to Ms. L. However, the sum of \$14,945 that Ms. L. has not paid to Mr. L. has to be deducted from the \$27,132. Mr. L. therefore owes Ms. L. \$12,187 for retroactive child support up to and including August 2019.
- [68] As for the future, commencing September 1, 2019, Ms. L. will pay child support of \$1,024 a month based on income of \$65,965, for the support of two children. That support will be payable on or before the first of each month, subject to any adjustment relative to Ms. L.'s annual income in future years.

Special and Extraordinary Expenses

- [69] There was initially significant disagreement between the parties regarding amounts owing for past s. 7 expenses, with a great deal of evidence and argument advanced by both parties on this issue, again occupying a considerable amount of court time.
- [70] In this regard, Ms. L. claimed that after she left the family residence on January 25, 2017, she incurred child care expenses for N. in the amount of \$12,290, until N. started living at his father's home in March 2019. In support of this aspect of her claim, Ms. L. provided invoices for child care expenses when she was working, especially expenses when she was working a nightshift.
- [71] Mr. L. disputed some of these expenses by submitting that Ms. L. was not in fact working on some of the days she says she incurred child care expenses or that he would have been able to take care of N. when Ms. L. was at work. Mr. L. says he should not have to pay for child care expenses that could have been avoided if he was able to provide that care.
- [72] On this latter point, Ms. L. says N. had no desire to be with his father, an assertion hotly contested by Mr. L., who says he was told by N. that he would be happy to be with his father. However, Mr. L. has provided insufficient admissible evidence to undermine Ms. L.'s testimony, which is supported by documentation that she did in fact incur these expenses.
- [73] At the same time, Mr. L. claimed s. 7 expenses for H.'s tutoring, based on invoices and documentation he provided to Ms. L. Ms. L. agrees she owes her proportional share of whatever Mr. L. spent on H.'s tutoring. However, and most significantly, Mr. L. also claimed that Ms. L. should contribute to the significant expense he says he incurred in having third parties care for H. when Mr. L. was unable to see H. due to his bail conditions. Mr. L. also argued that Ms. L. should compensate him for medical and dental claims he says Ms. L. failed to send to her extended health care provider.
- [74] However, all of this became academic when, after almost three weeks of trial, the parties reached an agreement whereby Ms. L. agreed she will owe Mr. L. the sum of \$1,455 in full and complete satisfaction of each party's claim for past s. 7 expenses. Moreover, as Mr. L. owes Ms. L. \$12,187 for retroactive child support, the parties agree it is appropriate to deduct the \$1,455 retroactive adjustment that Ms. L. has agreed to pay Mr. L. for past s. 7 expenses from Mr. L.'s retroactive support obligation, such that Mr. L. owes Ms. L. the net sum of \$10,732 for retroactive child support and past s. 7 expenses, up to and including August 2019.
- [75] In addition, the parties have agreed that from August 2019 forward, Mr. L. will be solely responsible for all s. 7 extraordinary or special expenses, with no contribution from Ms. L. It should be noted this proposal was advanced by Mr. L. without any demand for an offset on any other issue.

- [76] Mr. L. has also stated that he is agreeable and prepared to pay for the children's post-secondary education, if they so choose to continue their education, without the necessity of any financial contribution from Ms. L.
- [77] Mr. L.'s acceptance of sole responsibility for ongoing s. 7 expenses, including the children's post-secondary education expenses, will be incorporated in the final order.
- [78] Mr. L. will pay the \$10,732 to Ms. L. by October 1st, 2019.

Division of Property

- [79] While the parties have been engaged since separation in a most unfortunate, expensive, and emotional dispute as to parenting issues, a dispute which still played a significant role at trial, their primary focus during the trial was on the various financial issues and the effect the 2001 Agreement has on the division of property.
- [80] When it comes to money, both parties seek to have the property terms of the Agreement enforced, thereby triggering s. 252(1)(a) of the FLA. Consequently, as noted above, the FRA property division framework applies. While some of the parties' submissions considered this outcome, both parties overlooked some of the more significant differences between the FRA and FLA property provisions.

The FRA Property Division Framework

- [81] Under s. 56(1) of the FRA, each spouse becomes entitled to an undivided one-half interest in each family asset when the first of four possible "triggering events" occurs:
- a separation agreement,
 - a declaratory judgment under s. 57,
 - an order for dissolution of marriage or judicial separation, or
 - an order declaring the marriage null and void.
- [82] A triggering event is a pre-condition for a division of family assets, which are defined in s. 58(2) as "property owned by one or both spouses and ordinarily used for a family purpose." The triggering event "transforms the nature of ownership of property held in joint tenancy to a tenancy in common and crystallizes the family asset pool for division": *P.L.D. v. R.M.D.*, 2003 BCSC 607 at para. 7. However, the triggering event does not "dictate how the assets are to be divided" (*Rutherford v. Rutherford* (1981), 30 B.C.L.R. 145 (C.A.)). The undivided half interests in family assets created by s. 56(1) remain subject to the terms of a marriage agreement or separation agreement (s. 56(3)). Moreover, the property division contemplated by s. 56(1) or an agreement may also be judicially reapportioned on the basis of fairness (s. 65) or adjusted via a s. 66(2)(c) compensation order.

- [83] Family assets are valued as of the triggering event: *Cotter v. Cotter*, 2015 BCCA 289 at paras. 25-27. Any "potential" family assets that were unfairly dissipated or disposed of prior to the triggering event cannot be divided under s. 56, but can be addressed through a s. 66(2)(c) compensation order: *Jin v. Cheng*, 2018 BCSC 763 at paras. 66-68.
- [84] To date, there has been no triggering event in this case. As a result, the triggering event will be the dissolution of the parties' marriage by way of the divorce I grant them later in these reasons.
- [85] Under s. 56(1) of the FRA, each party would be entitled to an undivided one-half interest in each family asset remaining at the time of my order and valued at the time of the order. However, under s. 56(3) that statutory entitlement is subject to the terms of the Agreement, which I am satisfied is a "marriage agreement" within the meaning of s. 61 of the FRA. Although the Agreement purports to "provide for [the parties'] rights and obligations during cohabitation or on ceasing to cohabit," it complies with the formal requirements of s. 61(3) and clearly states that the parties intended it "to be binding upon them after marriage." As a result, the terms of the Agreement will govern the parties' interests upon the triggering event, subject to the fairness analysis prescribed by s. 65.

The Terms of the Agreement

- [86] Clause 1 of the Agreement addresses ownership and division of property as follows:
- a) All real and personal property (i) held by one party at the time of the agreement, (ii) acquired in one party's sole name after the agreement, (iii) inherited by one party, (iv) received as income by one party, (v) gifted to one party, or (vi) received by one party as damages (collectively defined as "One Party Property") "shall be and remain the sole and exclusive property of the other party through the period the parties cohabit and in the event that they cease to cohabit "
 - b) Neither party has a right to division of, or an interest in, or compensation for any One Party Property.
 - c) Either party may nevertheless gift property to the other, provided that any gift over \$1,000 is made in writing and signed by the other party.
 - d) 90 days after a cohabitation breakdown, all property that is not One Party Property will be divided equally after adjusting for tax consequences.
- [87] The parties appear to agree that the One Party Property regime also applies to debts acquired in one party's sole name. Although the Agreement does not explicitly provide for each party to retain their own debts, Clause 2(b)(iii) provides that the parties will not be compensated for "disproportionate assets or liabilities." That language is consistent with an unequal division of debt as well as property. I accept the parties' shared interpretation of the One Party Property regime's scope.

- [88] Both parties seek to have the Agreement enforced such that neither party will be responsible for the other's debts and neither party will be entitled to a share of (or compensation for) One Party Property. Their primary disagreement relates to the classification of the family residence in North Saanich, which had an assessed value of \$931,000 at the time of the trial.
- [89] Mr. L. acquired the family residence in 2004 in his name alone, which would suggest it is One Party Property under Clause 1(a)(ii). However, Mr. L. transferred a half interest in the home to Ms. L in early 2016 before undergoing major surgery, and she remains on title. Ms. L. submits this transfer of title qualifies as a gift within the meaning of Clause 1(c) of the Agreement, and says she is therefore entitled to half the value of the family residence. Mr. L. disputes Ms. L.'s characterization of the transfer as a gift, and says the family residence remains One Party Property. In closing submissions, he argued that Ms. L. holds her half interest in the family residence "in trust" for him and he is the sole beneficial owner of that property. It is Mr. L.'s position that Ms. L. should be required to transfer back to him her one-half interest in the family residence.
- [90] Complicating matters further is the fact that the family residence is significantly encumbered by three lines of credit in Mr. L.'s sole name. As of the date of separation on November 30, 2016, \$394,465 of line of credit debt was secured against the family residence, and by the time of trial, that debt had risen to almost \$700,000. Ms. L. points out that this increase in debt was due solely to Mr. L.'s actions after their separation in November 2016. Ms. L. wants the Agreement enforced such that she is entitled to half of the assessed value of the house and has no responsibility for the corresponding line of credit debts. Mr. L. also wants the Agreement enforced such that he will be wholly responsible for the line of credit debts, but only if I find he is the beneficial owner of 100% of the family residence.
- [91] In support of his position, Mr. L. says his transfer of half of the family residence was meant to only be temporary, and was made in case he did not survive his open heart surgery, which was scheduled sometime after the transfer. He says he transferred the house under "duress," but I do not accept that suggestion on the part of Mr. L. He also says he asked Ms. L. to transfer her half interest back to him but she refused, while Ms. L. says there was no such request.
- [92] Ms. L. says the transfer of title was the logical result of the parties' co-dependent 16-year relationship. On this point, Ms. L. points out that the parties used a lawyer to prepare the necessary documentation. She notes that if Mr. L. really did not intend to permanently transfer half the house to her, he could have easily arranged with their solicitor to prepare documentation that would permit Ms. L. to remain in the family residence in the event of his death but pass full ownership on to the children. As he did not, she submits the transfer was properly a gift within the terms of the Agreement. In response to Mr. L.'s "trust" argument, she says the presumption of advancement would support the conclusion that he gifted her a half interest in the home, and he has not rebutted the presumption.

- [93] Apart from his testimony that he transferred a half interest in the home under duress, the only other "evidence" led by Mr. L. relates to a conversation he says he had with a manager at RBC who stated that as Ms. L. was now on title, the lines of credit would have to be in joint names as well. Mr. L. said he told the manager it was only a "temporary" transfer and RBC never insisted in Ms. L. being named on the credit lines. Mr. L. says Ms. L. was part of this conversation. She denies this allegation. Be that as it may, what RBC did or did not do with respect to having both parties on the three lines of credit is in no way determinative of the issue of Ms. L.'s interest in the house.
- [94] On all of the evidence, I am satisfied that Mr. L.'s transfer of an undivided half interest to Ms. L. was a valid voluntary transfer and a gift under the Agreement and the presumption of advancement. The "trust" argument Mr. L. advanced in his closing submissions was not properly pled in his counterclaim, and even if that argument was properly before me, Mr. L. has presented insufficient evidence to rebut the presumption of advancement and the resulting gift to Ms. L. of a half interest in the house. I therefore conclude the family residence is jointly owned by the parties and is subject to equal division under Clause 1(d) of the Agreement.
- [95] Relying on the Agreement, Ms. L. says she should receive \$465,500 for her half of the family residence, while Mr. L. should retain the other half of the value of the family residence, less the \$700,000 line of credit debts. In my view, this submission prompts a discussion as to whether enforcing the property terms of the Agreement would be unfair to Mr. L.

Unfairness and Reapportionment

- [96] Mr. L. submits that if Ms. L. is entitled to half the value of the family residence without bearing any responsibility for the lines of credit secured against the home, it would be unfair to enforce the Agreement, as it would saddle him with all the debt that accrued during their 17-year relationship, which he says they used to improve the family residence and finance a relatively high standard of living. In addition, the parties agree that Mr. L. received something in the range of \$142,000 to \$150,000 from the sale of his home in Sudbury to pay down one of the outstanding lines of credit on the family residence in or about 2006. Mr. L. says this should be recognized when considering whether division of property in accordance with the Agreement would be unfair.
- [97] The treatment of debt under the FRA differs from the presumptive equal division of family debt that now exists under the FLA. In *J.E.P. v. E.C.B.*, 2019 BCSC 786, Punnett J. summarized the applicable principles under the FRA regime:
- [217] In *H.C.F. v. D.T.F.*, 2017 BCSC 1226, Voith J. explained the FRA approach to debt in the following terms:
- [153] The FRA had not expressly provided for the division of liabilities or debts. Such liabilities could, however, be taken into account, under s. 65 of the FRA, in determining whether it was appropriate to reapportion family assets on the basis of fairness. Furthermore, though

s. 56(2) of the FRA created a presumption of equal division of property the driving consideration under the FRA was "fairness"; see *Mallen v. Mallen*, [1992] B.C.J. No. 648 (C.A.); *Hartshorne v. Hartshorne*, 2004 SCC 22 at paras. 10, 13 and 34; and *Mann v. Mann*, 2009 BCCA 181 at para. 46.

[218] In *Mallen v. Mallen* (1992), 65 B.C.L.R. (2d) 241, Lambert J.A. addressed family debt as follows:

The proper focus for the examination of a debt should be a focus on the nature and purpose of the borrowing and on the expenditure of the borrowed funds. If the funds were used to acquire a family asset, to maintain a family asset, to discharge a family burden, or to maintain the family members, then it is likely that equality and fairness will require an equal sharing of the debt or liability and its adjustment in the division of the assets in such a way to carry out the principles of equality and fairness.

[98] As an alternate position, Ms. L. does not seriously oppose reapportionment pursuant to s. 65 of the FRA. In this regard, she suggests an equal division of the value of the home and an equal division of the credit line debt incurred prior to separation, along with equal division of other family assets and s. 66(2)(c) compensation for "potential" family assets Mr. L. dissipated or disposed of between the date of separation and the triggering event.

[99] Section 65(1) of the FRA provides that:

65. (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to
- (a) the duration of the marriage,
 - (b) the duration of the period during which the spouses have lived separate and apart,
 - (c) the date when property was acquired or disposed of,
 - (d) the extent to which property was acquired by one spouse through inheritance or gift,
 - (e) the needs of each spouse to become or remain economically independent and self sufficient, or
 - (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[100] Regarding the proper method of conducting a s. 65(1) unfairness analysis, in *G.G. v. M.A.*, 2014 BCSC 1023, Butler J. (as he then was) stated:

[115] The leading decision on the application of s. 65(1) of the FRA is *Hartshorne v. Hartshorne*, 2004 SCC 22. A succinct summary of the proper approach to division of assets as explained in *Hartshorne* is set out at paras. 119-121 of *Hanan v. Anderson*, 2014 BCSC 96:

In *Hartshorne*, the Supreme Court of Canada stated that fairness is the primary policy objective guiding the court's role respecting the division of assets upon marriage breakdown. Fairness may be achieved by reviewing the presumptive division under the FRA or the marriage agreement, in light of the factors governing reapportionment (para. 8).

The majority accepted the proposition that courts should respect private agreements that parties make for the division of their property on the breakdown of their relationship, particularly if they negotiated the agreement with independent legal advice, but only so long as the agreements are fair (paras. 8, 9). The fact that such agreements lead to a different result than the statutory regime does not, by itself, constitute unfairness (para. 9). Fairness within the context of the regime also requires, however, that the agreement operate fairly at the time of distribution (para. 9). See also paras. 34-36.

Fairness is determined in two stages. First, the court applies the agreement in order to determine what financial entitlements would be provided to each spouse under the agreement. In the second stage, the court applies the factors from s. 65 of the FRA to determine whether the contract operates unfairly (para. 47). In doing so, the court must consider the way in which the parties' personal and financial circumstances evolved over the course of the relationship and determine whether the current circumstances were within the parties' contemplation when the agreement was signed. If they were, the burden to establish unfairness is heavier. Where the agreement is found to operate unfairly, the court may then reapportion the family assets, again by reference to the factors in s. 65(1).

[101] With respect to the first step in this analysis, Ms. L.'s financial entitlements under the Agreement at the time of distribution primarily consist of her entitlement to half the value of the family residence. Under the One Party Property framework, she would also retain a personal vehicle and student loan debt of approximately \$42,000. Meanwhile, Mr. L. would have no real financial entitlement under the Agreement, as he would be responsible for credit line debt greater than his half of the value of the family residence, and the value of his other One Party Property would not make up the shortfall.

[102] As Butler J. says at para. 118 of *G.G. v. M.A.*:

[118] The next step in the analysis is to apply the factors from s. 65 of the FRA to determine whether the contract operates unfairly. In doing so, I must consider the way in which the parties' personal and financial circumstances evolved over the course of the relationship and determine whether the current circumstances were within their contemplation when the Marriage Agreement was entered into

[103] At para. 120, Butler J. states:

[120] As noted in Hartshorne at para. 43, when deciding whether an agreement operates unfairly, the essential question is "whether the circumstances of the parties at the time of separation were within the reasonable contemplation of the parties at the time the agreement was formed, and if so, whether at that time the parties made adequate arrangements in response to these anticipated circumstances." This determination cannot be made without regard to the parties' perspectives. The court in Hartshorne describes how this is to be approached at para. 44:

If the parties' lives unfold in precisely the manner they had contemplated at the time of contract formation, then a finding that the contract operates unfairly at the time of distribution constitutes, in essence, a substitution of the parties' notion of fairness with the court's notion of fairness, providing that nothing else would suggest that the parties did not really consider the impact of their decision in a rational and comprehensive way. Thus, central to any analysis under s. 65(1) of the FRA is consideration of how accurately the parties predicted, at the time of contract formation, their actual circumstances at the time of distribution, whether they truly considered the impact of their decision and whether they adjusted their agreement during the marriage to meet the demands of a situation different from the one expected, either because the circumstances were different or simply because implications were inadequately addressed or proved to be unrealistic.

[104] Given the totality of the circumstances and applying the relevant legal principles and the factors enumerated in s. 65 of the FRA, I find that the Agreement operates unfairly to Mr. L. because pursuant to the division framework, it prescribes Ms. L. would receive half of the property's assessed value without any responsibility for the line of credit debt secured against the family residence, even the debt that had accrued prior to the parties' separation in 2016.

[105] Although I remain satisfied that Ms. L. holds a valid half interest in the family residence pursuant to the 2016 gift, for her to receive half of the property's assessed value while Mr. L. is left with a net loss is clearly not the outcome that was intended or predicted by the parties. I agree with Mr. L. when he says this outcome "completely ignores any concept of fairness in the distribution of assets." As I am satisfied the operation of the Agreement is unfair within the meaning of s. 65, I am at liberty to reapportion the parties' property into fixed shares as I see fit and make any s. 66 orders that are "necessary, reasonable or ancillary to give effect" to that determination.

[106] As noted, Ms. L. has suggested an equal division of the value of the home and an equal division of the credit line debt incurred prior to separation, along with equal division of other family assets and compensation for "potential" family assets dissipated or disposed of between the date of separation and the triggering event.

- [107] While Mr. L.'s submissions on this point are somewhat lacking in detail or specifics, he cites McEachern C.J.B.C.'s reasons in *Gold v. Gold* (1993), 82 B.C.L.R. (2d) 165 (C.A.), for the proposition that an equal division of property is not necessarily required to achieve fairness on reapportionment.
- [108] Mr. L. also emphasizes that under the FLA regime, the settlement funds he used to purchase the family residence would be considered "excluded property" that is not subject to division. Notwithstanding the fact that the property division analysis in this case is proceeding under the FRA, which does not recognize the new FLA concept of "excluded property," I am satisfied it is appropriate to take this particular contribution into account pursuant to s. 65(1)(f) of the FRA: "any other circumstanc[e] relating to the acquisition of property."
- [109] I also agree with Mr. L. that other factors that should be considered in reapportioning the family assets to achieve a fair division are "his future income earning capacity (or lack thereof); his financial responsibility for the cost of care of the children, and his cost of future care," all of which go to his "capacity and liabilities" under s. 65(1)(f).
- [110] Pursuant to *Cotter*, the valuation date for the family residence (and other assets) is the value at the date of trial, or the value closest to the date of trial. As the parties were unable to agree as to an appraised value, I will use the most recent notice of assessment, which valued the property at \$931,000. The total amount of line of credit debt secured against the home, based on the most recent figures provided by the parties, is \$675,515.
- [111] The current line of credit debt represents a significant increase from the \$394,465 line of credit debt secured against the property at the time of separation on November 30, 2016. As Mr. L. was solely responsible for this dramatic decrease in the net equity in the property following separation, and can be said to have dealt with the property "in a manner that necessarily had the effect of reducing the amount available for distribution" (see *Cotter* at para. 32), it would generally be appropriate to compensate Ms. L. for Mr. L.'s reduction of the equity in the home. However, I am also satisfied that some reapportionment in Mr. L.'s favour is justified given his financial contributions to the property prior to the 2016 gift of a half interest, and in light of his current capacity and liabilities.
- [112] Doing the best I can with all of the evidence and the submissions of both parties, I am prepared to conclude it would be practical and fair for each party to receive one-half of the current equity in the home, or \$127,742.50. Ms. L.'s share of this equity will be included in the compensation order I intend to make "for the purposes of dividing property" under s. 66(2)(c) of the FRA, and Mr. L. will ultimately receive full title to the property.

Other Family Assets and Debts

- [113] As I have found the Agreement's property division provisions operate unfairly, I will now reapportion the parties' other assets and any additional debt.

- [114] In addition to equity in the house, Ms. L. says she should also receive half the value of the assets in Mr. L.'s name alone that she says he acquired during their cohabitation and marriage, some of which he has disposed of or dissipated after separation.
- [115] It is acknowledged that Mr. L. still holds a Registered Disability Savings Plan (RDSP), which I value at \$75,068 in accordance with Ms. L.'s submission despite Mr. L.'s suggestion that it might now be slightly higher; a 2007 Honda Mini Van and a 2007 Kawasaki motorcycle. There is also a small Cessna airplane, the value of which continues to be mired in controversy.
- [116] Both parties agree the Cessna airplane is properly valued at \$65,000 if the flight log books are available. Without the log books, its value would be closer to \$15,000. Mr. L., who has a pilot licence, says Ms. L. took the logs when she left the home and refuses to return them. Ms. L. says she did not remove the log books, and after separation took a photo when she returned to the family home one day, which she says shows the log books were still in Mr. L.'s possession.
- [117] Leaving aside Mr. L.'s consistent submission that photos, videos and texts can all be forged or faked, the most compelling reason to accept Ms. L.'s testimony on this point is because, as she has articulated, it makes no sense for her to retain the log books and refuse to return them as all this does is significantly drive down the value of the plane, thereby reducing the value of her potential share of the asset. Conversely, Mr. L. benefits from a reduced valuation of the plane as this would reduce the value of whatever share Ms. L. might receive. I accept the logic of Ms. L.'s submission and accept her testimony that the log books remain in Mr. L.'s possession. Accordingly, the plane will be valued at \$65,000.
- [118] I am satisfied that Mr. L. disposed of the following assets between separation and the triggering event, for which Ms. L. will be entitled to some compensation:
- a) an RRSP that was valued at \$31,725 before Mr. L. cashed it in for approximately \$20,000, having paid taxes upon withdrawal;
 - b) a DI investment account valued at \$19,625;
 - c) Coast Capital savings account of \$75,011; and
 - d) RESP accounts for the children that were valued at around \$58,700 after government claw back upon withdrawal.
- [119] When Mr. L. agreed in his closing submission to be solely responsible for the children's post-secondary expenses, Ms. L. agreed to withdraw her claim to any portion of the children's RESPs. The value of the RESPs will accordingly play no part in a compensation order.

[120] Ms. L.'s assets are more modest and consist of a 2006 Honda Civic worth \$3,500 and the compensation she received when her 2007 motorcycle was written off following an accident after the parties' separation. On the other side of the ledger, Ms. L. bears student loan debt from her nursing degree, which I accept now has a balance of approximately \$42,000. I am satisfied this debt was incurred for a family purpose and should be shared equally between the parties, such that Mr. L. will bear \$21,000 of the debt.

[121] Being guided by the s. 65 principles I have already referred to, I find Ms. L. is entitled to compensation under s. 66(2)(c), for the purpose of adjusting the division of property and for property "disposed of," as follows:

No..

Ms. L.'s Share

Value

1.

One-half of the \$75,068 value of the RDSP.

\$37,534.00

2.

One-half of the \$65,000 value of the airplane.

32,500.00

3.

One-half of the \$20,000 net value of the RRSP.

10,000.00

4.

One-half of the value of the \$19,625 DI investment account.

9,812.50

5.

One-half of the value of the \$75,011 Coast Capital account.

37,505.50

6.

The one-half of the student loan debt that I have found Mr. L. is responsible for.

21,000.00

TOTAL

\$148,352.00

[122] I decline to deal with the "miles" and the prepaid Visa card.

[123] In this analysis, I am also satisfied it is appropriate to simply order that Mr. L. is to retain his van and motorcycle and Ms. L. is to retain her 2006 Honda Civic and the \$6,700 she received when her motorcycle was damaged beyond repair.

[124] Turning to the household contents, Ms. L. then submits that as Mr. L. has retained all the personal property that remains in the family residence in North Saanich, she should receive some compensation for this property, which in her submission is half the value of these assets. Conversely, Mr. L. says Ms. L. took everything she wanted and the issue of who should be compensated for these household contents should be a "wash". As counsel for Ms. L. has said, the issue surrounding any valuation of household contents is "difficult and controversial."

[125] The parties have compiled lengthy lists outlining in meticulous detail every item they say they brought into the relationship, every item Ms. L. took from the residence, and every item Mr. L. says he bought for the family during the marriage or purchased after January 2017 to support the children and maintain the property. In claiming compensation for half the household contents, Ms. L. is relying on the value of the many items as suggested by Mr. L. in his inventory list and on his financial statement. She says these items should be valued at \$147,620, given Mr. L.'s valuations, and she should receive about \$64,000 as a result.

[126] Mr. L. says his original valuations, as he estimated in his financial disclosure, are much too optimistic and should not be relied upon. He cites as an example the very modest amount he received for a Bateman print, as opposed to what he thought it was worth. An even more dramatic example of the divergent positions by the parties is their suggested valuations of a train set owned by Mr. L. prior to cohabitation and still remaining in the family home. Ms. L. says it is worth \$200,000, whereas Mr. L. says it might be worth \$20,000. Whatever the true value of the train set may be, I accept Mr. L.'s submission and find that his valuations are more akin to replacement value as opposed to what a motivated purchaser would actually pay for these various household items or objects.

[127] Given the lack of any accurate valuation as to the remaining household contents, I will assess their value at \$20,000. I am satisfied the fairest and most efficient way to deal with the array of personal items is to order that Mr. L. will retain the items left in the family residence and will pay \$10,000 in compensation to Ms. L.

[128] Ms. L. is therefore entitled to compensation of \$127,742.50 for her share of the equity in the family residence and \$148,352 for her share of the parties' other assets and debt, and \$10,000 for the remaining household contents, for a total of \$286,094.50.

- [129] Finally, and as noted at the outset, Mr. L. says he gave Ms. L. \$122,000 in cash on January 15, 2017 because "they had separated" and he wanted to make it a "smooth" separation. He also says she stole \$37,000 from under his mattress on or before January 25, 2017.
- [130] Ms. L. denies receiving \$122,000 and denies taking \$37,000. She admits she removed \$20,700 from his bedroom following their separation. Regarding the \$122,000, Ms. L. submits it is inconceivable that Mr. L. would not document in some fashion this considerable payment if it had in fact taken place, especially when he says it was specifically related to their separation.
- [131] Given the direct contradiction between the parties' evidence and in the absence of any corroborating evidence, I am unable to find Mr. L. has established that he gave Ms. L. \$122,000 or had \$37,000 under his mattress.
- [132] In the final analysis, Ms. L.'s compensation will necessarily be reduced by the \$20,700 she acknowledges she took from Mr. L.'s bedroom. Ms. L. is therefore entitled to a total compensation award of \$265,394.50.
- [133] I am prepared to give Mr. L. a reasonably lengthy period of time to comply with this order. Mr. L. is to pay this compensation to Ms. L. by February 1, 2020. Upon payment of this amount, Ms. L. will transfer her one-half interest in the family home to Mr. L. All line of credit debts and family assets will remain in Mr. L.'s name and all remaining household contents will remain in his possession.

Spousal Support

Entitlement, Waiver, and Significant Unfairness

- [134] The next monetary issue for determination is whether Ms. L. is entitled to prospective or retroactive spousal support, given that Clause 2 of the Agreement purports to waive either party's entitlement to spousal support:

Each of the parties, at all times during the period the parties cohabit, or they cease to cohabit, and after they are married, is responsible for supporting and maintaining himself or herself, there being no express or implied agreement that either party has a responsibility to support or maintain the other party in whole or in part.

- [135] Ms. L. seeks to have this term of the Agreement set aside, while Mr. L. says the waiver should be upheld.
- [136] Notwithstanding his primary position on this issue, Mr. L. made a rather unique claim for spousal support payable to himself but "held in trust for the children until they are 21 years old." Whether or not Mr. L. resiled from advancing this part of his claim in closing submissions upon the advice of his "advisor", he did not formally withdraw it and I must therefore address it. Briefly, I do not have jurisdiction to entertain such an application, which essentially amounts to an application for child support. In any event, given the

parties' relative circumstances at the present time, I would not find Mr. L. has any entitlement to spousal support from Ms. L.

[137] Turning to Ms. L.'s claim for spousal support from Mr. L., she says she has a strong compensatory and non-compensatory/needs-based claim for spousal support, while Mr. L. says she is not entitled to spousal support on either compensatory or non-compensatory grounds. Ms. L. further submits that the waiver clause of the Agreement should be set aside given the parties' reasonably long marriage, her significant child-rearing responsibilities during the relationship, her career disruption, and the current disparity in the parties' financial situations.

[138] Section 164(5) of the FLA provides that the Court may set aside an agreement respecting spousal support, or replace it with an order, if "the agreement is significantly unfair on consideration of the following":

- (a) the length of time that has passed since the agreement was made;
- (b) any changes, since the agreement was made, in the condition, means, needs or other circumstances of a spouse;
- (c) the intention of the spouses, in making the agreement, to achieve certainty;
- (d) the degree to which the spouses relied on the terms of the agreement;
- (e) the degree to which the agreement meets the objectives set out in section 161 [objectives of spousal support].

[139] The objectives of spousal support set out in s. 161 of the FLA read as follows:

In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (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.

[140] While spousal support orders can also be made under the Divorce Act, the analysis under s. 164(5) of the FLA requires the Court to consider essentially the same substantive factors that are contained in the Divorce Act's spousal support provisions. I will proceed under the FLA framework.

[141] The "significantly unfair" threshold for setting aside an agreement under the FLA is higher than the previous FRA threshold of mere unfairness. As Butler J. explained in *Remmem v. Remmem*, 2014 BCSC 1552:

The Concise Oxford English Dictionary defines "significant" as "extensive or important enough to merit attention." Significantly is understood to mean more than a regular impact - something weighty, meaningful, or compelling. In other words, the legislature has raised the bar for a finding of unfairness. It is necessary to find that the unfairness is compelling or meaningful having regard to the factors

[142] Nevertheless, the circumstances that led me to conclude the Agreement operated unfairly as far as division of property is concerned are relevant to the question of whether the waiver of spousal support in Clause 2 of the Agreement is significantly unfair to Ms. L.

[143] In my view, but for the waiver, Ms. L. would clearly be entitled to spousal support on both compensatory and non-compensatory grounds. The parties' relationship was reasonably lengthy, lasting approximately 17 years. Ms. L. left her employment to relocate across the country with Mr. L. and H. in 2004, and following N.'s birth in 2005, she primarily devoted herself to the raising of the children and domestic matters for a number of years. Despite Ms. L.'s involvement in a home-based consulting business that she acknowledges was profitable for a "couple" of years, without any further details, I am satisfied Ms. L. only re-entered the workforce on a full-time basis in 2016, shortly before the parties' separation. While Mr. L. says Ms. L.'s nursing career is on an upward trajectory, there is a significant disparity in their incomes, with Mr. L. receiving permanent disability benefits that will in all likelihood be enhanced by his planned return to employment with the First Nations Health Authority and his potentially lucrative asbestos-removal business, Nationwide. I appreciate income disparity is not determinative of the question of entitlement. It is however, a factor in the overall analysis.

[144] The question then becomes whether the term waiving spousal support should be set aside as significantly unfair.

[145] Having regard to the factors set out in s. 164(5) and s. 161 of the FLA, I am satisfied the term waiving spousal support is significantly unfair to Ms. L. In the eighteen years since the parties entered into the Agreement, the parties' condition, means, needs and other circumstances have changed dramatically. At the time the parties signed the Agreement, they had no children and Ms. L. had stable, full-time employment at Costco, while Mr. L. was involved in protracted and contentious litigation with an uncertain outcome. He also had significant injuries that were expected to impact his future employment opportunities. In addition, although Clause 1(b)(i) of the Agreement refers to the possibility of child care responsibilities in relation to property division entitlement, I reject Mr. L.'s unsubstantiated contention that Ms. L. was pregnant at the time the Agreement was signed, and I accept her evidence that she did not fully consider what the Agreement might mean if the parties had children.

- [146] Within a few years of the Agreement's creation, the parties' positions substantially reversed, with Mr. L. fortunately receiving significant, stable settlement income and Ms. L. becoming the primary caregiver for their two young children. In my view, the Agreement failed to adequately apportion the financial consequences of the parties' decision to have children and, in particular, the financial consequences of Ms. L.'s child care responsibilities, which prevented her from fully participating in the workforce for a significant period of time. The financial reversal that became evident in the mid-2000s has persisted, with Ms. L. emerging from the relationship at a disadvantage despite the nursing qualification she was able to obtain just prior to the parties' separation. I am satisfied their circumstances at the time of separation represent a significant departure from what they reasonably anticipated when they entered into the Agreement.
- [147] Given the totality of the evidence, the passage of time since the parties signed the Agreement, the fact that there was little ability to foresee their future circumstances given the uncertainty surrounding Mr. L.'s health and his personal injury action, the fact that their circumstances at the time of separation represent a significant departure from what they reasonably anticipated when they entered into the Agreement, and the Agreement's failure to meet some of the statutory objectives of spousal support, I am persuaded it would be significantly unfair to uphold the waiver of spousal support contained in the Agreement. Accordingly, I set aside Clause 2 of the Agreement, such that Ms. L. will be entitled to spousal support from Mr. L.

Retroactive Spousal Support

- [148] Having concluded Ms. L. is entitled to spousal support and having set aside the term waiving spousal support, I will first consider Ms. L.'s claim for retroactive spousal support, and then turn to her claim for ongoing spousal support.
- [149] Ms. L. submits she should receive retroactive spousal support as of February 1, 2017, having moved out that month, even though the parties began living separate and apart under the same roof in November 2016. Even though I have accepted Ms. L.'s submission regarding the date of separation, I am satisfied it is appropriate to accede to Ms. L.'s further submission and order that she is entitled to retroactive spousal support from February 1, 2017.
- [150] The next question is, what range should be used for quantum.
- [151] Similar to his submissions on the entitlement question, Mr. L. emphasizes that Ms. L. obtained her nursing degree with his support before the parties separated. As a result, he says, Ms. L. is now self-sufficient and economically independent, unlike many separated spouses who must embark on training or re-education after separation in order to offset the economic disadvantages of being out of the work force during a long-term relationship.

[152] I am unable to accept Mr. L.'s submission that Ms. L. is fully self-sufficient and economically independent at this point in time, and in any event, I have already found her spousal support entitlement is partially compensatory. However, because of tax issues surrounding Mr. L.'s structured settlement annuity and the fact that Ms. L. was able to graduate and embark on a nursing career prior to separation and at a relatively young age compared to other primary caregiver spouses who have been out of the workforce for many years prior to marriage breakdown, I find the low range of support is appropriate.

[153] As a result, Ms. L. is entitled to retroactive support from February 1, 2017 as follows, set at the low range and taking into account the evolving parenting arrangements:

- Based on Mr. L.'s income of \$143,268, from February 2017 to May 2017, inclusive, \$258 for four months, for a total of \$1,032;
- Based on Mr. L.'s income of \$143,268, from June 2017 to December 2017, inclusive, \$520 for seven months, for a total of \$3,640;
- Based on Mr. L.'s income of \$181,213, from January 2018 to December 2018, inclusive, \$1,232 for 12 months, for a total of \$14,784;
- Based on Mr. L.'s income of \$186,699, from January 2019 to March 2019, inclusive, \$1,342 for three months, for a total of \$4,026;
- Based on Mr. L.'s income of \$186,699 from April 2019 to August 2019, inclusive, where both children were living with Mr. L., \$1,654 for five months, for a total of \$8,270.

[154] The total in retroactive spousal support that Mr. L. owes Ms. L. is \$31,752. This is to be paid by October 1st, 2019.

[155] I pause here to note that if my arithmetic is inaccurate, the parties are at liberty to correct any mistakes without the necessity of any further applications.

Duration of Spousal Support

[156] I now turn to the issue of how long Mr. L. should pay spousal support to Ms. L. given their personal and financial circumstances at this stage of their lives.

[157] Ms. L. notes that the SSAG state that the minimum duration range is 8.5 years and the maximum range is 17 years, with a mid-range of 12 years and nine months. As I have noted, these timeframes are generally from the date of separation. I have concluded that support should commence from February 1, 2017, when Ms. L. physically left the family residence. In any event, Ms. L. asks that mid-range duration be considered, and if I so order, this would mean Mr. L. would pay spousal support until November 1, 2029.

[158] Given the totality of the circumstances, I do not agree with Ms. L.'s submission as to the length of time spousal support should be paid. For the same reasons that I found the low range for quantum to be appropriate, especially because Ms. L.'s career as an RN is now

established, I will order low range duration. I am of the view that spousal support for Ms. L. for 8.5 years from February 1, 2017 will be fair and meet the statutory objectives of spousal support. Mr. L.'s spousal support obligations to Ms. L. will therefore end with the support payment made on August 1, 2025.

Other Claims by Mr. L.

[159] Mr. L. has made a number of other claims in his most recent counterclaim, which counsel for Ms. L. describes as "out of the ordinary." I agree with counsel's description of most of these unique claims.

[160] For example, Mr. L. is asking me to order that Ms. L. change her surname to her maiden name. I agree with Ms. L. that I have no jurisdiction to order another person to change their name.

[161] Pursuant to s. 61 of the FLA, Mr. L. seeks an order that Ms. L. pay a total of \$45,000 to each of the children and to Mr. L. "as they were all affected by the denial of parenting time" by Ms. L. This submission relates in part to his assertions that Ms. L. made false reports to the police and MCFD which were meant to preclude Mr. L. from seeing his children.

[162] As a threshold issue, I note that s. 61 refers to a denial of parenting time pursuant to an agreement or order. Here there is no agreement or order as to parenting time. In addition, and without descending into a detailed examination of the various allegations made by the parties, I am not persuaded that Mr. L. has provided sufficient admissible evidence for me to conclude that he has established that Ms. L. has "wrongfully denied" him parenting time. His application seeking fines and damages pursuant to s. 61 is dismissed.

[163] In a similar vein, Mr. L. also says:

The claimant and the claimant's lawyer violated the Children's and the Respondent's constitutional rights. Previous and false criminal charges including charges that the Respondent had already been found not guilty for, were used to keep the children from seeing each other and from seeing their father.

[164] As a result, Mr. L. states in his counterclaim that:

[N.'s] constitutional rights to see both parents and to see his sister were violated for 25 months. At \$5,000 per month, \$125,000 to be held in trust until [N.] reaches 21 years of age.

[H.'s] constitutional rights to see both parents were violated for 15 months. At \$5,000 per month, \$75,000 to be held in trust until [H.] reaches 21 years of age.

[H.'s] constitutional rights to see her brother were violated for 25 months. At \$5,000 per month, \$125,000 to be held in trust until [H.] reaches 21 years of age.

The respondent's constitutional rights to have parenting time with [N.] were violated for 25 months and to have parenting time with [H.] for 15 months, for a total of 40 months. At \$5,000 per month, \$200,000 to be held in trust equally in [H.] and [N.'s] names until they reach 21 years of age.

The claimant repeatedly [withheld] the Children from the Respondent, claiming it was MCFD's decision to do so.

It turned out MCFD never even had a file open for [N.], M.R. (first lawyer of claimant) had to receive extra training from the Law Society of BC not to repeat statements by a claimant until they are verified. M.R. [recommended] Michelle Kinney and Kinney repeated the same false statements. We now know it was the claimant that had an open file from MCFD [Peninsula] after beating my daughter [H.].

Since MCFD did not have a file for [N.] at any time, they could not accept a complaint from the respondent.

[165] Finally, Mr. L. seeks:

2. An order for compensation instead of an interest in the family property to be split 50/50 amongst both children in trust until they turn the age of 21 for violating their constitutional rights by the claimant and her counsel.

[166] As far as these particular claims are concerned, I agree with Ms. L. that the Court has no jurisdiction to consider these unique aspects of Mr. L.'s counterclaim. At the same time, Mr. L. made no mention of these claims in his final submissions. I have no idea whether or not this was because of advice from counsel. Be that as it may, given the totality of the evidence, or indeed the lack of evidence, I would find them without merit in any event. Nevertheless, much like his misguided application that he be awarded spousal support to be held in trust for the children, these various claims by Mr. L. for "constitutional damages" were not specifically withdrawn or abandoned by Mr. L., and as such I take the formal step of dismissing them.

Relocation

[167] In an earlier application, Ms. L. had sought permission to move to Ontario with N. This issue was not argued during the trial. Moreover, as N. has made it crystal clear he has no desire to live with his mother at this point in time, and Ms. L. has acknowledged both her teenage children will decide which parent they will live with, Ms. L. is not seeking to have this question addressed at this time.

A Penalty for Non-Disclosure

[168] Ms. L. seeks an order that Mr. L. pay a penalty of \$5,000 pursuant to s. 213 of the FLA because of his persistent lack of disclosure of his current financial circumstances. While I am satisfied that Mr. L. failed to fully comply with the relevant term of Steeves J.'s June 2018

order in a timely manner, during this trial he ultimately provided what appears to be full disclosure. Complicating this issue is the fact that Mr. L. has had counsel advising him and putting together several binders of copious amounts of material, some of which he admits he was unaware of, which he says led him to believe his disclosure was complete. In all of the circumstances, I decline to impose the suggested penalty for non-disclosure.

Orders

Exchange of Financial Statements

[169] The parties will exchange their tax returns and any other financial information necessary to determine their Guidelines incomes by July 1 of each year, so long as either party has support obligations. Any adjustment in support obligations will be prospective as of August 1 each year and payable commencing that month.

Conduct and Protection Orders

[170] Ms. L. has said she continues to be concerned about further harassment and the potential for family violence due to Mr. L.'s conduct towards her since their separation. I accept Ms. L.'s submission that the vast number of texts Mr. L. sent to her during their bitter separation can properly be described as "emotional abuse," leaving aside the actual content of these many texts.

[171] Ms. L. has confirmed, however, that fortunately there has been no direct physical violence on the part of Mr. L. towards her. Nevertheless, I do accept some of Mr. L.'s conduct over the last two and a half years has been aggressive and intimidating. However, given the present circumstances and the fact that it appears the situation has calmed down somewhat since both children started living with Mr. L., Ms. L. is now not seeking a formal protection order. She does, however, seek a number of strict conduct orders.

[172] Given the totality of the circumstances, I am satisfied it is appropriate to make the following orders:

- a) Both parties are prohibited from contacting the other directly by text message, email, phone, or in person except as follows:
 - i. The parties may email each other to set up parenting time, to advise on parenting matters, or to provide information with respect to medical issues;
 - ii. The parties may text, email or telephone each other in the case of an emergency involving the children;
- b) Neither party may attend at or near the other's residence or place of employment unless it is an emergency. Mr. L. may attend at the Saanich Peninsula Hospital for a bona fide medical reason involving himself or the children, but he is not to have any direct or indirect contact with Ms. L. while on the premises;

- c) Neither party is to call the other party's workplace except in the circumstances outlined in (b); and
- d) Neither party shall email, text or otherwise contact the other's legal counsel, except through their own legal counsel.

Retroactive Support

[173] Mr. L. will pay Ms. L. the net balance of \$10,732 owing for retroactive child support and s. 7 expenses up to and including August 2019. This amount is to be paid by Mr. L. to Ms. L. by October 1st, 2019. Similarly, the retroactive spousal support of \$31,752 is to be paid by October 1st, 2019.

Child Support

[174] As I have already stated, Ms. L.'s child support obligation commencing September 2019 is \$1,024. Ms. L. will continue to pay child support for two children so long as both children remain living primarily with Mr. L. and remain children of the marriage, and subject to any further readjustment based on income. Any change in the parenting arrangements will of course affect either party's child support obligations.

Section 7 Expenses and Post-Secondary Education

[175] By consent, Mr. L. will pay 100% of the children's special and extraordinary expenses from this date forward, including all their post-secondary education expenses, with no mandatory contribution from Ms. L.

Spousal Support

[176] Mr. L. is to pay spousal support to Ms. L. in the amount of \$1,654 commencing September 1, 2019, payable on or before the first day of each month, subject to any future recalculation based on any readjustments as to the parties' incomes. Spousal support will terminate upon payment of the August 2025 support payment. That is, Mr. L.'s last spousal support payment will be the August 2025 payment. Any change in Mr. L.'s spousal support payment to that point in time, due to changes in income, will commence August 1, 2020, and as of each August thereafter.

Divorce

[177] By consent, I grant the parties a divorce. The final order in these proceedings will serve as the triggering event for property division. The date of the final order is to be the date of these reasons.

Costs

[178] Notwithstanding Ms. L.'s acknowledgment that the children's clear wish to reside with Mr. L. was determinative of the parenting issue, given the numerous issues that have been raised in this litigation and their relative importance, I find Ms. L. has been substantially successful, and is entitled to costs at Scale B.

"The Honourable Mr. Justice B.D. MacKenzie"

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