

CANADA / JUDGMENT

C.L.P. v. N.A.D.

2023 BCSC 1135

COURT

Supreme Court of British Columbia

DECIDED

4 July 2023

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2023 BCSC 1135 C.L.P. v. N.A.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.L.P. v. N.A.D.,

2023 BCSC 1135

Date: 20230704

Docket: E01619

Registry: Abbotsford

Between:

C.L.P.

Claimant

And

N.A.D.

Respondent

Before: The Honourable Justice Funt

Reasons for Judgment

Counsel for the Claimant:

A.E. Hayes

Counsel for the Respondent:

S. Oberoi

K. Hodder

(November 28-30, 2022 only)

K. Gill, Articled Student

(October 24-27, 2022 only)

Place and Dates of Trial:

Abbotsford, B.C.

October 24-27, November 28-30,

December 1-2, 2022 and

January 23, 2023

Place and Date of Judgment:

Abbotsford, B.C.

July 4, 2023

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1. Introduction
 - [1] In this family law case, the parties have three young daughters. Sensibly, the parties have agreed to parenting arrangements, including the exercise of parenting time (50/50).
 - [2] The parties also agree that there should also be an order for divorce (the grounds for a divorce are readily met).
 - [3] The litigation involves financial matters, including child support (retroactive and prospective), spousal support (retroactive and prospective), and the division of family property and debt.
 - [4] The respondent father says that there is a binding separation agreement that served to resolve most of the financial issues arising from the parties' marriage.
 - [5] For the reasons that follow, I find that there is not a binding separation agreement. Accordingly, I will address the financial issues without regard to any purported agreement addressing financial issues (other than those to which agreement was reached during the course of trial).
 - [6] Having regard to the ages of the children, the re-partnering of each of the parties, and the current financial circumstances of each of the parties, I will also order that either party may seek a review of child and spousal support, after July 1, 2027.
2. Background
 - [7] The parties are each 36 years old. They were married in December 2006 after an approximately six months' relationship. The marriage was a traditional one with the claimant in a supportive role to the respondent and who was mainly responsible for household duties and child care.
 - [8] At the time of marriage in December 2006, each party was twenty years old. They had first met approximately six months earlier at a restaurant where each was employed.

- [9] After working at the restaurant for several months, the respondent worked in the construction industry and initially explored a career in aircraft maintenance by enrolling in an aircraft maintenance program (while continuing to work in construction).
- [10] Upon concluding that the aircraft maintenance industry was changing, the respondent pursued a career as a power-grid lineman. He undertook the requisite courses, completed his apprenticeship, and by early 2011, he had obtained his Red Seal. He became a member of the International Brotherhood of Electrician Workers, Local 258.
- [11] After the parties married, the claimant continued to work at the restaurant for approximately a year. She then had a variety of jobs, including being a receptionist, a bridal consultant, and as a retail salesperson.
- [12] In 2007, the claimant took several high school equivalent classes to upgrade her grades. At that time, she was considering a career in medical stenography.
- [13] Around early 2012, the parties decided to go to Nepal to undertake missionary work. The parties spent about 18 to 24 months in Nepal and had returned to Canada by early 2014. They had planned to return to Nepal.
- [14] Shortly after returning from Nepal, the claimant became pregnant with twin daughters. Accordingly, the parties decided not to return to Nepal. The twins were born in December 2014. The parties' third daughter was born in March 2017.
- [15] In or about July 2017, the parties purchased a condominium on West 1st Avenue in Vancouver. The parties sold the condominium in September 2019, shortly before the parties' separation. The net sales proceeds were \$133,209.56.
- [16] The parties have lived separate and apart since September 29, 2019. Initially, the separation was on a trial basis. It had become permanent by early 2020.
- [17] As a mother, the claimant is loving and caring with a determined focus on her daughters' best interests. As a spouse, the claimant was submissive.
- [18] At the insistence of the respondent, the claimant agreed to significant cosmetic surgeries. She testified that the respondent viewed her as "boyish" looking and "carrot-like". At least one of the surgeries resulted in an infection and related medical problems which required further remedial surgery.
- [19] I accept the claimant's testimony that she did not wish to have any of the surgeries (other than one which was not related to her body shape) and only did so to satisfy the respondent's insistent requests.
- [20] I also accept the claimant's testimony that when she asked the respondent why he had married her (if he was not satisfied with her looks), he replied that he saw her "potential". She testified that she understood she was not "what he wanted but could be".

[21] The respondent also had two cosmetic surgeries.

[22] At trial, the outstanding financing in relation to the surgeries was approximately \$18,000.

3. Not a Binding Separation Agreement

[23] On February 23, 2020, the parties executed two separate documents styled as separation agreements. The respondent prepared the agreements. Neither party had independent legal advice.

[24] With respect to child support, each of the purported separation agreements provided that the respondent would pay the claimant \$1,400 in monthly child support. With respect to spousal support, neither party claimed and each waived any future claim to spousal support "regardless of any change in circumstances".

[25] The key differences between the two purported agreements was that, under the first agreement ("Agreement #1"), the claimant would have "sole custody" of the children and "90/10" parenting time. Under the second agreement ("Agreement #2"), the parties "share custody" and parenting time is "50/50". Agreement #2 also provides that it "supersedes and voids" Agreement #1.

[26] The respondent testified that the purpose of Agreement #1 was to enable the claimant to maximize a claim for Canada Child Benefit ("CCB"). Agreement #1 could be shown to the Canada Revenue Agency ("CRA").

[27] With respect to Agreement #2, the respondent testified that it was to be used if the claimant attempted to rely on Agreement #1 to try to "take the kids" from him.

[28] In cross-examination, the respondent acknowledged that the creation of the two agreements for the purpose of maximizing the CCB "was wrong and we shouldn't have done that".

[29] The claimant did claim the CCB (and the parallel provincial benefit) based on Agreement #1 and received greater benefits than to what she was lawfully entitled. The CCB legislation is set forth in Subdivision A.1 of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) [ITA Canada]. The parallel provincial legislation is set forth in sections 13.07 to 13.09 of the Income Tax Act, R.S.B.C. 1996, c. 215 [ITA BC].

[30] The respondent submits that Agreement #2 should still be recognized and not set aside.

[31] I consider Agreement #1 and Agreement #2 as one agreement under which the claimant and the respondent wished to "cheat" their fellow Canadians by claiming CCB (and the parallel provincial benefit) beyond what the law provided: *Knox Contracting Ltd. v. Canada*, [1990] 2 S.C.R. 338 at 349 to 350.

- [32] If the Court were to condone rather than condemn the parties' conduct by not setting aside both Agreement #1 and Agreement #2 as one artifice, the administration of justice would be brought into disrepute. The setting aside of Agreement #1 and Agreement #2 will support "the long-term sense of maintaining the integrity of, and public confidence in, the justice system": R. v. Grant, 2009 SCC 32, para, 68.
- [33] I also note that the \$1,400 in monthly child support was based on the overall financial circumstances which would include the improper claim respecting CCB (and the parallel provincial provision).
- [34] In a September 9, 2020 text message to the claimant, the respondent asserted (in part):
Half the money from the government is mine. So that's 1000 of the 2000. Plus 1400 is 2400.
Half custody means I get half the government money.
- [35] In other words, the respondent viewed that a portion of the CCB overclaim should be considered as satisfying part of his child support obligations.
- [36] I further note that if either party had sought independent legal advice before entering into Agreement #1 and Agreement #2, the party would have received the straightforward advice that the improper claim of CCB would be against the law and the parties could be subject, as knowing participants, to possible charges under s. 239(1.1) of the ITA (Canada) and s. 62 of the ITA BC, and other penalties.
- [37] Counsel would also have advised that he or she could not act for the party in the furtherance of the scheme, say, for example, by witnessing the signing of either Agreement #1 or Agreement #2 by either party.
- [38] At trial, I understood that the claimant had recently retained counsel to represent her with respect to her CCB claims. Each of the parties are in legal jeopardy. It is a real possibility that each could be charged under the ITA Canada and the ITA BC. With respect to the respondent's jeopardy, s. 239(1.1)(f) of ITA Canada refers to "conspiring with any person to commit an offence under this subsection".
- [39] The parties' scheme to overclaim CCB (and the parallel provincial benefit) does not redound to the credibility of either party.
- [40] The repayment of the overpayment, financial penalties, and related legal fees are dealt with separately further below with respect to property division.
4. Child Support
- a) General Findings
- [41] I must consider both retroactive and prospective child support. Several general findings must be made.

- [42] For simplicity, I will use a separation date of October 1, 2019 (although the actual date was several days earlier).
- [43] I also find that equal parenting time did not start until on or about October 1, 2020. In September 2020, the twins started elementary school.
- [44] Prior to October 2020, although the exact percentage is disputed, the claimant had over 60% of parenting time. The respondent says that he had the children on the weekends and overnight on Wednesdays.
- [45] I find that, although the respondent would often have parenting time on Wednesday evenings, only occasionally would he take the children overnight. Such would be consistent with the respondent's work commitments. With respect to weekends, I also find that the respondent would ask the claimant to take the children for part of the weekend so that he could have some time for himself and his social life. Such is also consistent with his full-time work.
- [46] By August 2020, the respondent and his new partner had bought a new home. The respondent testified that a relationship with his new partner beyond that of a co-worker started in April 2020. The respondent did not call his new partner as a witness to confirm the parenting time he asserts.
- [47] In sum, during the period from October 1, 2019 to September 30, 2020, I find that the claimant had over 60% of the parenting time but less than 90% of the parenting time as set forth in Agreement #1.

b) Imputing Income

- [48] The respondent says that the claimant should be imputed with gross annual income of \$35,000. I will not impute income to the claimant for several reasons. First, until October 2020, the claimant had the primary care of the three very young children. With the parties' separation, I am satisfied that there would have been particular emotional needs for each child. A child's well-being is affected by the uncertainty a separation brings. With the uncertainty, a child may worry, with a worry surfacing at unpredictable times. I find that it was in the best interests of each child that the claimant was nearby and attentive.
- [49] Second, I find that the respondent was and could be very harsh towards the claimant as he was to others. In a January 26, 2020 text message to his own mother, where the respondent felt that his mother had reneged on an agreement to sell to him a fourplex, he wrote (in part):

As the other night was your finally [sic] word on the matter and my pleas for aid have fallen on indifferent ears and you have no remorse I say to you that I want no reconciliation. In the future we will not be at the same events. If we are forced into it I don't want to talk to you. You are not to talk to me or my children. If they come to you do not pick them up. If you do I will come and take them from you and leave. What would we have to talk about now? Nothing is as burning and

pressing as my financial situation and what I can no longer provide for my kids. Do you want to talk about that every time we meet? And YES, this is your fault Lynn.

[50] In March 2022, the respondent handwrote a letter to the claimant. The letter reflects some self-insight and a wish to redeem himself. It reads (in part):

Let me start by saying how sorry I am. I've come to realize that I have mistreated you in aspects of our life together and apart.

[51] It lies ill in the respondent's mouth for him to ask that the claimant be imputed income during a period in which he admits he mistreated the claimant. Especially where young children are involved, a separation is a particularly emotional time and one's separated partner may be mentally vulnerable.

[52] Third, I am satisfied that the pandemic and the uncertainties and difficulties it brought hampered the claimant's effort to generate income. In October 2019, she obtained her eyelash extension certification. The pandemic frustrated beauty treatments involving close personal contact. The pandemic also frustrated the use of daycare. The pandemic was a particularly difficult time for any mother with young children. The youngest daughter started kindergarten this past Fall.

[53] This past Fall the claimant was able to enroll in studies involving psychology and science. She testified that she enrolled in only one course having regard to the trial which was scheduled to begin last October.

[54] Depending on the circumstances, with a possible future review in four years, income may be imputed to the claimant if she is not, by that time, earning income. In sum, I find that it is premature to impute income at this time.

c) The Respondent's Income for Support Purposes

[55] The claimant says that the respondent's income for 2019, 2020, and 2021 should be averaged in order to determine his income for support purposes. The claimant submits that, around the time of the trial separation, the respondent took steps to change his position at work in order to reduce his income.

[56] In January 2020, the respondent became a general foreman based in Abbotsford. His position involves the supervision of foremen and sub-foremen under his charge. He now works primarily from an office.

[57] The respondent is no longer in the field dealing with the repair of power lines. He testified that the managerial position allows him to spend more time with the children. There is considerably less overtime work.

[58] I am not satisfied that the respondent changed positions to orchestrate a decrease in his income in order to reduce his support obligations. First, the position of a general foreman represents a promotion from his previous position as a foreman. A promotion would not be

in his exclusive control. Second, I accept that he wished to spend more time with his children, especially as parenting time moved towards equal parenting time. Third, the respondent had re-partnered by April 2020. The respondent and his new partner purchased a home in August 2020. The purchase was financed with a large mortgage. Extra income would have helped to reduce the financial obligation. I find that he was motivated by wishing to spend more time with his children.

[59] The claimant also seeks to include in the respondent's income 50% of the rental income derived from a basement suite in the house that the respondent and his new partner own. The respondent explained that his new partner made a greater down payment and manages the rental.

[60] I will not include 50% of the income. First, the only figures I have were for the gross income and not the net income (although as the claimant notes, the respondent's new partner's income tax statement of rental income was not produced). Second, the gross income was approximately \$1,200 per month which may not result in significant net income (especially if 50% were to be attributed to the respondent). Third, the rectification of the CCB overpayments and his late filing of his 2021 tax return (discussed further below), will probably result in the CRA auditing the respondent (and his new partner). If changes result, including the inclusion of 50% of net income in the respondent's income, such can be considered as part of a review in four years.

d) Calculation of Child Support

[61] For the years 2019, 2020, and 2021, the respondent had the following employment income and paid the following union dues:

Employment

Income

Union

Dues

2019

\$210,283

\$3,156

2020

\$142,282

\$468

2021

\$156,008

\$2,638

[62] Using the foregoing figures with no further actual or imputed income for the claimant, the following monthly child support (with no other further adjustments) was payable by the respondent:

Monthly Child Support

October 2019 to December 2019

\$3,693/month x 3 months = \$11,079

January 2020 to September 2020

\$2,674/month x 9 months = \$24,066

October 2020 to December 2020

\$2,674/month x 3 months = \$8,022

January 2021 to December 2021

\$2,855/month x 12 months = \$34,260

Total

\$77,427

[63] As noted, the parties had equal parenting time as of October 2020. I have considered s. 9 of the Federal Child Support Guidelines, SOR/97-175 [FCSG]. With respect to s. 9(b), there are the usual increased costs of shared parenting arrangements borne by both parents but no extraordinary costs such as travel between cities.

[64] With respect to s. 9(c) of the FCSG, the respondent has the greater means. During the parties' relationship, the respondent was able to receive the technical qualifications to become a power-grid lineman. He now enjoys well-paid employment as a general foreman. As a result of a traditional marriage and the other reasons set forth above, the claimant has not been able to establish a well-paying and secure career for herself.

[65] Each party noted that the other has re-partnered. The respondent re-partnered in 2020 and bought a home in August 2020 with his new partner. The claimant, shortly before trial, started to reside full-time with her new partner. Prior to this time, the claimant and her new partner had a close relationship which evolved to their now residing together full-time.

- [66] The respondent also noted that the claimant lived rent-free for a year in a rental unit owned by his mother. It is unsurprising that the respondent's mother, the grandmother of the parties' three young girls, would wish to help them and their mother by providing certainty and security as to housing. In my view, the associated financial benefit reflects the greater disparity in need as recognized by the respondent's mother. Accordingly, I will not make an adjustment on this basis.
- [67] With respect to re-partnering, I will also not make an adjustment. Each of the new partners may have their own commitments. For example, the respondent's new partner has a 11-year-old child. The Court should not financially impinge on a new partner by awarding greater or lesser child support based on the income that the new partner may enjoy or other financial aspects, such as assets.
- [68] In sum, I will not adjust further from "the amounts set out in the applicable tables" as guided by s. 9(a) of the FCSG and as set forth above.
- [69] From October 2019 to December 2021, the respondent paid \$29,564 in child support (\$0 in 2019, \$8,400 in 2020, and \$21,164 in 2021). Accordingly, the respondent owes the claimant \$47,863 (\$77,427 - \$29,564) in retroactive child support for the period.
- [70] For 2022, the parties shared parenting time equally. Child support should be calculated using the respondent's 2022 income from employment (and any other "Line 15000" income) with union dues factored into the calculation.
- [71] For 2022, the respondent paid \$2,033 to the claimant in monthly child support. Accordingly, the total child support paid for 2022 is \$24,396 (\$2,033/month x 12 months).
- [72] At trial, I understood that each party planned to file their respective 2022 income tax returns on a timely basis. Accordingly, counsel can undertake the necessary calculations using July 1, 2023 as the first adjustment date. If a difficulty arises, there is liberty to apply.
- [73] For 2023 and subsequent years, child support will be calculated using the same approach. Parties will exchange copies of their respective income tax returns by June 1 of the year following the taxation year and implement any adjustment as of July 1 (e.g., the adjustment date of July 1, 2024 will use the 2023 income tax returns).
- [74] As noted above, either party may seek a review of support (child or spousal or both) after July 1, 2027.
5. Spousal Support
- [75] The respondent's employment income (and any other Line 15000 income) and union dues will be used to calculate spousal support. As the claimant starts to earn income, her income will be included in the computation.

- [76] The claimant is entitled to spousal support on both a compensatory and a non-compensatory basis. As noted, the parties had a traditional marriage under which the claimant supported the respondent as he obtained his electrical certification and developed his skills as a lineman and now as a general foreman. As a young mother, the claimant assumed primary childcare and household responsibilities.
- [77] The claimant's needs and her means reflect a significant gap from those of the respondent. Spousal support on this basis is also justified.
- [78] For the months of October 2019 to December 2019, the claimant subsequently received CCB (and parallel provincial provisions) as having separated from the respondent (see Exh. #2, p. N5-003). For these three months, I will use the Spousal Support Advisory Guidelines [SSAG]'s low-range. The result is \$2,329 in monthly spousal support. The total spousal support for October 2019 to December 2019 is \$6,987 (\$2,329 x 3).
- [79] For 2020, 2021, and 2022, the claimant received CCB (and parallel provincial benefits) on the basis that she did not share custody of the children with the respondent (the respondent having 40% or more of parenting time). Until the beginning of October 2020, the claimant's CCB claim was accurate. She was not sharing custody (the respondent did not have 40% or more of parenting time of the children). Starting October 2020, the parties had equal parenting time, but the claimant continued to receive CCB as if the parenting time had not changed. Such would accord with the respondent's wishes as reflected in Agreement #1, which he drafted.
- [80] At trial, counsel told me that for the CCB, there is not a "voluntary disclosure" programme as there is for most income tax matters. In my view, this places each party in a particularly legally difficult position which will require the assistance of counsel with special experience and expertise.
- [81] As of and after October 2020 when equal parenting time started, the claimant continued to receive CCB on the basis that she was the primary caregiver. Equal parenting time and parenting arrangements were formalized in minutes of settlement dated November 9, 2021, filed with the Provincial Court (the "November 9, 2021 MOS"). She continued to receive CCB until December 2022, the month after the trial started.
- [82] Having regard to the legally difficult position for each of the parties respecting the improper CCB (and parallel provincial provisions) claim, I will not make findings as to any discussions the claimant may have had with CRA with respect to CCB.
- [83] For 2020 and 2021, I will also use the SSAG low-range. Starting with October 2020 using the SSAG low-range with CCB properly claimed (i.e., shared equal parenting), the net disposable income for each party is equal.

[84] For the earlier period of January 2020 to September 2020, I will also use the SSAG low-range. With CCB properly claimed, the claimant's net disposable income is greater than that of the respondent's (\$5,917 versus \$4,866 monthly) which is appropriate having regard to the fact that the claimant was the primary caregiver during this period.

[85] The total spousal support for the period from October 1, 2019 to December 31, 2021 is calculated as follows:

October 2019 to December 2019

\$2,329 x 3

=

\$6,987

January 2020 to September 2020

\$1,314 x 9

=

\$11,826

October 2020 to December 2020

\$1,417 x 3

=

\$4,251

January 2021 to December 2021

\$1,506 x 12

=

\$18,072

Total

\$41,136

[86] Relying on Agreement #2 and the November 9, 2021 MOS, the respondent has not paid spousal support. The November 9, 2021 MOS left spousal support to be addressed by mediation or by the Supreme Court. At trial, the respondent submitted that Agreement #2 should be "given a considerable weight in determining whether an order for spousal support should be made". As described above, I have set aside both Agreement #1 and Agreement #2. Accordingly, for the period from October 2019 to December 2021, the respondent must pay the claimant \$41,136 in spousal support.

[87] As with child support, for 2022, with the parties' income tax returns now available, I ask counsel to do the necessary calculations using the SSAG low-range formula with shared (50/50) parenting time. If any difficulty arises, there is liberty to apply. For 2023 and the subsequent taxation years, spousal support will be calculated in conjunction with the calculation of child support.

[88] In addressing the current CCB overpayments, I will order that:

- a) any CCB (and the parallel provincial provisions) the respondent receives as a result of the recalculation of CCB based on shared parenting time will be paid by the respondent to the claimant to help fund the repayment of the CCB overpayment (and the parallel provincial provisions) to her;
- b) the claimant and the respondent will share equally in funding the repayment of the overpayment of the CCB (and the parallel provincial provisions) to the CRA (after deducting the amount, if any, under (a));
- c) any interest charges, fines, or penalties imposed on the claimant will be shared equally by the parties;
- d) all reasonable legal fees and disbursements (including those for the assistance of an accountant) undertaken to address the overpayment of CCB (and the parallel provincial provisions) to the claimant will be borne 80%/20% by the respondent and the claimant respectively; and
- e) the respondent will be solely responsible for his own legal fees and disbursements (including accountants) and any interest charges, fines, or penalties imposed upon him.

[89] In the above order, the 80%/20% allocation of costs is roughly reflective of the respective Guideline Income of each of the parties and the fact that the respondent devised the CCB artifice.

[90] In his written submissions, the respondent stated:

Agreement 1 was never supposed to be the parties' true agreement. The sole purpose was for the Claimant to be able to represent to the CRA that she had sole custody of the Children.

[91] As noted, the respondent drafted both Agreement #1 and Agreement #2 and in his closing submissions, he continued to rely on Agreement #2 as the true agreement. As the designer of the scheme to overclaim CCB, I find that it is appropriate that the respondent is solely responsible for his own fees and disbursements, interest charges, fines, or penalties.

[92] If there becomes a need for an ancillary order with respect to addressing the overpayment of CCB (and the parallel provincial provisions), there is liberty to apply.

6. Section 7 - Special and Extraordinary Expenses

- [93] The respondent did not seek contribution from the claimant for past s. 7 special and extraordinary expenses ("S&E Expenses") at the time they were incurred. He now seeks contribution for approximately \$3,200 in past S&E Expenses.
- [94] Without either party seeking to address S&E Expenses in the past, albeit the claimant's S&E Expenses were small, I find that S&E Expenses should be addressed only on a prospective basis. To avoid unnecessary complexity and having regard to current income, I find that prospective S&E Expenses should be shared 20%/80% by the claimant and the respondent respectively (subject to review after July 1, 2027).
- [95] I will adopt claimant's counsel's proposed language for an order to address S&E Expenses to be incurred. August 1, 2023 should be used as the commencement date. The order will read:
- a) For the purposes of S&E Expenses, reference to an "annual basis" is the period of August 1 to July 31 for each successive year.
 - b) No later than July 1 (July 15th for 2023) of each successive year, the parties will review the S&E Expenses for the upcoming annual basis to determine in which activities they will enroll the Children starting August 1.
 - c) Neither party will incur any S&E Expenses exceeding \$200 on a cumulative annual basis for each Child (the "Allowable Amount") without the prior written agreement of the other party, which agreement may be by text or email.
 - d) A party may exceed the Allowable Amount without the prior written agreement provided that party does not seek contribution from the other party and provided the said activity(ies) does not interfere with the other parent's parenting time unless that other parent has provided written agreement to the activity(ies), which agreement may be by text or email.
 - e) Where a party seeks prior written agreement from the other party, the other party must respond within seven (7) days of the request being made.
 - f) The parties will pay their respective proportion of S&E Expenses by way of e-transfer within seven days of receiving proof of the incurred expense or proof of due payment.
 - g) If by July 31 of each successive year, the parties are unable to agree upon the S&E Expenses for the upcoming annual basis or agree on any S&E Expenses exceeding the Allowable Amount, either party refer the matter(s) to the Family Justice Counsellors ("FJCs") who will assist the parties to resolve the matter.
 - h) If the parties are unable to resolve the matter through the FJCs, either party is at liberty to apply to the court for determination of the S&E Expenses and must include this order in his/her application.
7. Property Division
- a) Net Sale Proceeds (West 1st Avenue)

[96] The claimant and the respondent generally agree as to the application of the \$133,209.56 net sale proceeds from the sale of the West 1st Avenue condominium.

[97] The claimant set forth the application of the West 1st Avenue net sale proceeds as follows:

Full Amount

The

Claimant's Portion

The Respondent's Portion

Net Sale Proceeds West 1st

\$133,209.56

\$66,604.78

\$66,604.78

Holdback Amount

\$794.09

\$397.05

\$397.05

Less Visa Payment

(\$24,000.00)

(\$12,000.00)

(\$12,000.00)

Less LOC Payment

(\$10,000.00)

(\$5,000.00)

(\$5,000.00)

Less Debt to Allan (the respondent's father)

(\$6,000.00)

(\$3,000.00)

(\$3,000.00)

Less Debt to Cheryl (the respondent's stepmother)

(\$15,000.00)

(\$7,500.00)

(\$7,500.00)

Less LOC Payment

(\$6,000.00)

(\$3,000.00)

(\$3,000.00)

Total for Division

\$73,003.65

\$36,501.83

\$36,501.83

[98] The respondent says that \$20,000 was also paid to the respondent's brother as repayment of debt to him.

[99] I reject the respondent's repayment claim. At trial, he testified that the \$20,000 was respect to a \$10,000 bank draft for a loan in relation to the purchase of a 2008 Range Rover and \$10,000 for expenses his brother had incurred for him in relation to the business in Nepal.

[100] Several months earlier, at his October 5, 2022 examination for discovery, the respondent testified: "we had borrowed some money from my brother for some of our renos".

[101] The respondent's brother testified that the \$10,000 was with respect to a dairy processing facility that he and the respondent owned together in Nepal. The respondent's brother testified cattle and dairy equipment for approximately \$24,000 (USD) had been purchased for the dairy facility. At the time, according to the respondent's brother, the respondent could not fund his share and, therefore, \$10,000 was advanced by the respondent's brother with the understanding that the respondent would repay him at some future date.

[102] The respondent testified at trial that this \$10,000 was to repay his brother for his share of repairs resulting from the 2015 earthquake damage to the then Nepal operations. Having regard to the business nature of the transaction, I would expect that documentation would be available. The respondent did not provide any related documents to help substantiate his claim at trial.

[103] With the change in testimony and the lack of documentation, the respondent has not presented "sufficiently clear, convincing and cogent" evidence to satisfy the Court that there was an outstanding debt to the respondent's brother of \$20,000 that was repaid: *F.H. v. McDougall*, 2008 SCC 53, para. 46.

[104] In sum, I accept the claimant's schedule showing the application of the West 1st Avenue net sale proceeds.

b) Remaining Property and Debt

[105] There are several further properties (including proceeds from disposition) and debts that must be addressed. There are two properties: a vehicle (the 2008 Range Rover) and the respondent's Registered Retirement Savings Plan ("RRSP"). There are two liabilities: an IFinance loan and a Royal Bank of Canada ("RBC") joint line of credit.

[106] The claimant testified that her mother helped her dispose of the Range Rover for \$3,000. The respondent submitted that the Kelley Blue Book value for such a vehicle was \$12,000.

[107] The claimant testified that the Range Rover had a broken heating core with an estimated \$2,500 cost to fix. The claimant testified that the respondent was unwilling to help fix it. She testified that she drove it in the winter with the girls bundled up in winter clothes.

[108] Without a working heating core there would not only be no heat but also our West Coast chilling dampness would persist. Temperature alone is not the sole measure of discomfort.

[109] It was in the claimant's self-interest to receive as much as possible on the sale of the Range Rover. I will accept the \$3,000 as the Range Rover's value. The broken heating core may have been consistent with other problems or concerns.

[110] As of December 31, 2019, the value of the respondent's RRSP was \$7,756.79. I accept respondent's counsel's adjustment to value the RRSP at \$2,726.86 (rounded up to \$2,727) as of October 1, 2019. The reduction is based on three months of average monthly contributions of \$1,676.64.

[111] As of November 9, 2020, the IFinance loan (used primarily to fund the claimant's plastic surgeries expenses) was \$17,208.33. I will accept respondent's counsel's adjustment to show the balance of the IFinance loan as of October 1, 2019 to be approximately \$18,000.

[112] The RBC joint line of credit had a October 3, 2019 outstanding balance of \$33,597. I will use this balance.

[113] The summary of the remaining family property and debt is as follows:

Claimant

Respondent

Family Property

Range Rover

\$3,000

-

The Respondent's RRSP

-

\$2,726.86

Family Debt

RBC Joint Line of Credit

-

\$33,957

IFinance Loan

-

\$18,000

[114] Having regard to the relatively equal amounts and the tax attributes of an RRSP, I will set off the respondent's RRSP as against the claimant's Range Rover proceeds.

[115] The total family debt is \$51,957 (\$33,957 + \$18,000).

[116] The respondent says that the RBC joint line of credit and the IFinance loan have now been repaid. Accordingly, the claimant should pay the respondent \$25,978.5 (\$51,957 ÷ 2), rounded up to \$25,979.

[117] In addition to the foregoing, the claimant acknowledges that in February 2021, she withdrew without justification \$8,300 from the RBC joint line of credit. I will order that the \$8,300 should be repaid.

[118] The claimant also acknowledges that she withdrew \$11,000 and \$2,900 on January 4 and 28, 2022 respectively.

[119] In a 2022 handwritten letter to the claimant, the respondent stated (in part):

I will cover the additional 11,000.00 on the line of credit and 2900.00 from the chequing. I hope this can be a olive branch of sorts and a fresh start for us. []

[120] With respect to the \$13,900 (\$11,000 + \$2,900), the claimant has left it to the Court's discretion of whether these should be repaid. I will also order the repayment of \$13,900. Separation and divorce are emotionally difficult. I am satisfied that the respondent's statement that he would cover the \$13,900 was not a true gift (with considered intention) but more as one reflecting an emotional guilt.

[121] After separation and until May 2020, the parties continued to share a joint chequing and Visa account. The claimant's total charges (excluding some interest) was \$21,075.43. This amount should be deducted from the claimant's portion of the West 1st Avenue net sale proceeds set forth above. The result is that the claimant's entitlement to the West 1st Avenue net sale proceeds is reduced to \$15,426.40 (\$36,501.83 - \$21,075.43).

[122] All in, the claimant was indirectly and unknowingly drawing on her share of the West 1st Avenue net sale proceeds. It was not a form of child support as the respondent suggested.

8. Division of Canadian Pension Plan ("CPP")

[123] CPP will be divided based on the date of marriage (December 15, 2006) and the date of separation (October 1, 2019).

9. The Respondent's Disregard of the ITA Canada, the Supreme Court Family Rules, and the Court's June 1, 2022 Order

[124] On June 1, 2022, Master Krentz, for the Court, ordered (the "June 1, 2022 Order") (in part):

The Respondent must provide a complete copy of his 2021 T1 tax return and notice of assessment as soon as they are available. If he has not provided the 2021 T1 tax return by July 29, 2022, the Claimant has liberty to apply to the court to seek an order.

[125] In his September 23, 2022 Form F8 financial statement, the respondent swore:

I have recently filed my 2021 tax return but have not received my Notice of Assessment yet. I had not filed my taxes earlier because the Claimant is alleging that I have not paid her child support for the first four months after our separation. This is not true. After our separation, and for 4 months after the signing of the separation agreement, the Claimant and I were sharing the same bank account. The Claimant withdrew the support payments from our joint bank account for a period of 4 months after the signing of the separation agreement before opening her separate bank account. The Claimant is now falsely alleging that I did not pay her child support for those months and she filed the separation agreement with FMEP and is attempting to collect child support payments for that period. The FMEP has now told me that any payment they collect from my tax refund will be held by them in trust pending the court dealing with this issue at trial in October.

[126] The respondent's 2021 T1 income tax return attached to his September 23, 2022 Form F8 financial statement is dated August 17, 2022. The return is not signed. The filing of the return after July 29, 2022 was not challenged.

[127] By statute, the respondent was required to file his 2021 T1 tax return on or before April 30, 2022: ITA Canada, s. 150(1)(d).

[128] Under Rule 5-1(18) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR], the respondent was also required to file a Form F8 financial statement. The Form F8 financial statement requires copies of "every personal income tax return, including all attachments" which were "filed for the 3 most recent taxation years" be attached.

[129] Our Legislature has contemplated using filed income tax returns as a cost-effective manner in which to help ensure fulsome, reliable, and timely financial disclosure. The SCFR are premised upon the parties filing their respective personal income tax returns as required and by the requisite date. Non-compliance frustrates the prompt resolution of a dispute, especially important where young children are involved.

[130] The respondent's explanation does not justify either not filing his 2021 T1 tax return as required by statute by April 30, 2022, filing an incomplete Form F8 financial statement, or failing to comply with the June 1, 2022 Order.

[131] The claimant seeks an order that the respondent pay a fine of \$2,000 for failing to comply with the June 1, 2022 Order. I will order that the respondent pay \$1,500 to the claimant for her benefit (not as a fine): Family Law Act, S.B.C. 2011, c. 25 [FLA], s. 213(2)(e).

10. Summary of Financial Amounts Currently Payable, Offsets, and Division of Liabilities

a) Amounts Payable by the Respondent to the Claimant

[132] The amounts payable by the respondent to the claimant with respect to child and spousal support from October 2019 to December 2021 are:

Outstanding Child Support (October 2019 to December 2021):

\$47,863

Outstanding Spousal Support (October 2019 to December 2021):

\$41,136

Total:

\$88,999

[133] As noted, the respondent must pay child and spousal support for 2022, with the adjustments occurring as of July 1, 2022, based on the parties' 2022 income tax returns.

[134] The respondent must also pay \$1,500 to the claimant pursuant to s. 213(2)(e) of the FLA.

[135] The claimant is also entitled to \$36,501.83 in net sale proceeds from the sale of the West 1st Avenue property. From these proceeds, \$21,074.43 should be deducted due to the claimant's use of the RBC chequing and Visa accounts post-separation. The net amount of \$15,426.40, rounded down to \$15,426 is payable by the respondent to the claimant.

b) Amounts Payable by the Claimant to the Respondent

[136] The claimant is to pay the respondent for her withdrawals from the RBC's joint line of credit as follows:

February 2021 withdrawal:

\$8,300

January 4, 2022 withdrawal:

\$11,000

January 28, 2022 withdrawal:

\$2,900

Total:

\$22,200

[137] The claimant also owes the respondent \$25,979 (one-half of the IFinance loan and the RBC joint line of credit). The payment is premised on the respondent providing satisfactory evidence that the amounts have been paid or that the claimant is no longer financially liable to IFinance and RBC (including any interest or related charges).

c) CCB Overpayments

[138] The financial obligations with respect to the overpayment of CCB (and the parallel provincial amounts) are set forth above.

11. Order of Divorce

[139] I am satisfied that the divorce sought should be ordered. I will be guided by the parties as to the timing of the divorce order. I will make the necessary order when I receive the divorce order for my approval.

[140] As is common practice, and my preferred practice in many cases, the divorce order may be separated from the other relief ordered.

[141] I ask counsel to prepare and submit the form of vetted orders for my signature within 45 days of these reasons.

12. Other Matters

[142] If there is any matter I have overlooked or where I can otherwise assist the parties, I ask counsel to schedule a 55 minute 9 a.m. hearing before me. The parties may appear by MS Teams. If they wish to do so, they should advise Supreme Court Scheduling when they are setting the hearing.

13. Costs

[143] Within 60 days of these reasons, I ask that if either party wishes to address costs, to contact Scheduling to schedule a 55 minute 9 a.m. hearing before me. The parties may appear by MS Teams.

"Funt J."

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