
CANADA / JUDGMENT

C.M. v. M.N.

2022 BCSC 205

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 205 C.M. v. M.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.M. v. M.N.,

2022 BCSC 205

Date: 20220211

Docket: E182222

Registry: Vancouver

Between:

C.M.

Claimant

And

M.N.

Respondent

Before: The Honourable Justice D. MacDonald

Reasons for Judgment

Counsel for the Claimant:

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The Respondent, appearing in person:

M.N.

Place and Dates of Trial:

Vancouver, B.C.

June 28-29, July 2, 5-9, 12,

September 17, and

October 15, 2021

Place and Date of Judgment:

Vancouver, B.C.

February 11, 2022

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Introduction

- [1] This is a family law dispute. M.N., the respondent, and C.M., the claimant, have already obtained a divorce. With one exception, the parties are content with their current parenting arrangements. The primary issues at trial are the division of family property and debt, spousal support, child support, and s. 7 expenses.
- [2] M.N. owns and operates successful RV parks in Cranbrook, BC. The parties have direct and indirect interests in several corporations. These corporate interests add complexity to this family claim. For example, the parties receive dividends from their interests in the corporations and occasionally receive capital gains so their Federal Child Support Guidelines, SOR/97-175 [Guidelines] incomes are in issue. The parties also live in different jurisdictions and have a split parenting arrangement, with some children living full-time with the claimant and other children living full-time with the respondent. All these factors present challenges in determining how to resolve the issues in a manner fair to both parties.

Facts

- [3] The parties began cohabitating in 2001 in Cranbrook. They were married on August 22, 2011. The parties separated in April 2018. They divorced on February 13, 2020.
- [4] Initially, the parties disagreed about the date on which they began cohabitating. However, they resolved this disagreement during the trial. The parties began living together on October 31, 2001, and separated on April 1, 2018.
- [5] C.M. is currently 48 years of age. M.N. is 62.
- [6] The parties have four biological children:
 - 1) M.A.M. was born in 2002. He is currently 19 years old and graduated from high school in June 2020.
 - 2) P.M. was born in 2004. She is currently 17 years old and attends high school.
 - 3) The parties' twins, A.M. and B.M., were born in 2008. They are currently 14 years old and attend middle school.
- [7] Currently, M.A.M. and B.M. live with their father in Cranbrook, British Columbia. P.M. and A.M. live with their mother in Naples, Florida, USA.
- [8] Both M.N. and C.M. were previously married. C.M. separated from her previous husband, L.S., in 1999 and was divorced in early 2003. M.N. separated from his previous wife, B.A.M., in 2001.
- [9] C.M. has one adult child from her previous marriage, K.S. K.S. was born in 1999. K.S.' biological father, L.S., resides in Alberta. K.S. was a toddler when the parties began their relationship. M.N. treats K.S. like his own daughter but expects L.S. to contribute to her support.
- [10] From 2002 through 2011, the parties lived in Cranbrook where M.N. worked full time, operating his businesses. From 2011 through 2014, the family lived in Florida for ten months of each year. The children attended school in Florida from September to June. The family returned to Cranbrook for the summer months of July and August.
- [11] In 2014, the parties began to experience matrimonial problems. As a result, M.N. began spending most of the year in Cranbrook. C.M. and the children continued to spend ten months in Florida followed by two summer months in Cranbrook. This pattern continued until the parties formally separated in April 2018.
- [12] After the date of separation, the two boys, M.A.M. and B.M., lived with M.N. in Cranbrook on a full-time basis. The three daughters, P.M., A.M., and K.S., lived with C.M. in Florida.

- [13] M.N. has a partner with whom he lives. C.M. remarried on March 16, 2020. Her husband, S.H., and his daughter live with her. C.M. testified that S.H. is the finance manager at an orthopedic hospital and makes approximately \$70,000 USD per year.
- [14] The parties' assets are tied up in multiple businesses. The parties jointly obtained a business valuation and income calculation report which was prepared by Daum Valuation and Financial Services. It was finalized on June 23, 2021 (the "Daum Report"). The parties also jointly retained a number of appraisals regarding the value of their real properties and some chattels.
- [15] At the time of trial, the relevant companies that were owned, entirely or partially, by M.N. include:
- i. Company A was incorporated on May 25, 1981. It is an operating enterprise. M.N. owns 95% of the company and his brother owns the other 5%. M.N. is the sole director and primary shareholder. M.N. is restoring vehicles through Company A under the tradename M... Motors. Company A owns M... Motors and real property from which the RV retail business operates, in addition to various other capital assets. Company A entered into an option agreement whereby a third party had the right to purchase the property from which the RV retail business operates for \$3 million on or before July 14, 2023. Company A took a deposit related to this option to purchase and effective June 8, 2020, the third party company exercised this option.
 - ii. Company B is a holding company that was incorporated on August 7, 2012. M.N. and C.M. are both directors of Company B and they each own 50% of the shares. Company B is one of three shareholders in Company C. Company B generates income primarily through dividends from Company C.
 - iii. Company C was incorporated on October 21, 1998. It is owned by three shareholders: Company B (37.5%), Shan-Tack Construction (37.5%), and J.P. (25%). Company C owns and operates an RV park near Cranbrook, the E RV Resort. The company earns the majority of its revenues through leasing pads at this RV Resort. Company C also purchased 100% of the shares of Company D during the 2018 fiscal year.
 - iv. Company D was incorporated on February 9, 2004. It owns one of several RV parks, the O RV Resort. Company D earns most of its revenue through sales of sites and site improvements.
- [16] Company A and Company C were incorporated prior to the parties' relationship. Company B and Company D were incorporated after the parties began living together in 2001. In 2012, M.N. transferred the shares and property he owned in Company C to Company B.
- [17] Between 2001 and 2011, when the parties lived in Cranbrook, C.M. had limited involvement in the companies. She has not been involved in any of the companies since she moved to Florida.

- [18] Since separation, M.N. has continued to work for his companies full-time and maintains and develops RV properties in the Cranbrook area. He also owns a buffalo farm, the Ferrell Creek Property ("Ferrell Creek"), in Hudson's Hope, BC. This farm consistently loses money and appears to be set up largely for tax purposes.

Proceedings to Date

- [19] C.M. commenced this action on August 16, 2018.
- [20] There have been a number of interim orders made prior to trial, mostly addressing interim financial matters. There are no orders in place addressing the children's residence, parenting time, or the allocation of parental responsibilities.
- [21] Since the parties separated, M.N. has paid child support for P.M. and A.M., who reside with their mother in Florida, in the sum of \$4,000 per month by Court Order. M.N. also made a \$22,770 lump sum payment for s. 7 expenses for the children in Florida for the period of August 1, 2020 to June 28, 2021, calculated at \$2,070 per month.
- [22] In lieu of spousal support, M.N. has provided dividend income to C.M. in the sum of \$10,000 per month. This was ordered by Master Muir following an application heard on April 2, 2019.
- [23] There have been no orders granted for the interim distribution of any properties since the parties separated, other than an advance of \$200,000 for C.M.'s legal fees in April 2019.
- [24] In October 2020, C.M. obtained a Court Order precluding M.N. from using the sale proceeds of his business (R RV) to develop the L RV Park, near Moyie, BC, which is owned by Company A.

Issues

- [25] The issues before me are:
- a) Parenting responsibilities;
 - b) Calculation of Guidelines income;
 - c) Child support;
 - d) Section 7 expenses;
 - e) Division of family property, personal property, and family debts; and
 - f) Spousal support.

General

- [26] Both parties testified. I found both parties were forthcoming with their evidence and admitted shortcomings when they were put to them. While they have their differences, I found both C.M. and M.N. to be credible witnesses.
- [27] There is no dispute between the parties that at the time of separation in April 2018, the parties' four biological children, M.A.M., P.M., A.M., and B.M., were children entitled to child support pursuant to s.147 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. However, the parties disagree with respect to K.S.; I will address K.S.' entitlement to support separately.
- [28] As already stated, from 2011 through 2014, the entire family lived in Florida for ten months of each year. The family returned to Cranbrook for the summer months of July and August. In 2014, when the parties experienced matrimonial problems, M.N. began to spend approximately ten months each year in Cranbrook. This arrangement continued until April 2018 when the parties formally separated.
- [29] After separation, the two boys, M.A.M. and B.M., lived with M.N. on a full-time basis. The three daughters lived with C.M. in Florida. M.A.M. temporarily resided with C.M. between January and July 2021 so that he could receive medical treatment.
- [30] Pursuant to s. 39(1) of the FLA, the parties remain guardians of P.M., A.M., and B.M., who are all still under the age of 19. In July 2021, M.A.M. turned 19 and began working full time for M.N. C.M. therefore seeks a declaration that M.A.M. ceased being a child of the marriage for child support purposes effective July 1, 2021. M.N. stated in argument that M.A.M. is attending college but he provided no other evidence of college enrolment.
- [31] I find that M.A.M. is no longer a child entitled to child support under s. 147 of the FLA. However, if M.N. provides documentation to C.M. that M.A.M. is attending school full-time, he will be deemed to be a child of the marriage while he is attending school. If, despite documentation being provided, the parties are unable to agree, I will remain seized.

Parenting Responsibilities

- [32] Pursuant to s. 40(2) of the FLA, unless an agreement or court order allocates parental responsibilities differently, as guardians of the three youngest children, each party has all parental responsibilities with respect to the children in consultation with the other party.
- [33] Parenting responsibilities are set out in s. 41 of the FLA. Parenting responsibilities may be allocated to one parent entirely, shared equally between both parents, or specifically allocated in various ways to each parent. Pursuant to s. 37 of the FLA, the court may only consider the best interests of the child when making orders for parenting arrangements.
- [34] Section 45(1)(a) of the FLA provides that the court may allocate certain parental responsibilities to one parent rather than the other. The Court of Appeal has held that a trial judge is not to engage in choosing specific options regarding a child. Rather, the court is to

resolve specific disputes surrounding the exercise of parental responsibilities by selecting one parent over the other upon consideration of which parent is most likely to make the specific decision that best serves the child's interests: N.R.G. v. G.R.G., 2017 BCCA 407 at para. 40.

- [35] C.M. seeks decision-making authority with respect to B.M. regarding vaccination, reading tutors, and dental/orthodontic matters.
- [36] M.N. and C.M. disagreed about whether B.M. should be vaccinated for COVID-19. Despite C.M.'s wishes, M.N. was hesitant to have B.M. vaccinated. Ultimately, M.N. did have B.M. vaccinated this past summer.
- [37] C.M. also testified about B.M.'s reading deficits. C.M. is concerned that B.M. is falling behind in school and she believes tutoring is necessary. M.N. had no objection to tutoring, but said he could not arrange it this past year. M.N. was not aware of the online tutoring program C.M.'s counsel put to him in cross-examination. Online tutoring was put in place during COVID-19.
- [38] C.M. also testified about B.M.'s dentistry/orthodontic needs. She feels that B.M. needs braces, however, M.N. disagrees. M.N. testified that B.M.'s teeth are not crooked and he will get B.M. braces only if his dentist recommends it.
- [39] I understand that C.M. is sincerely concerned about B.M.'s vaccinations, orthodontic care, and educational supports. However, C.M. did not seek sole parenting responsibility for these areas in her pleadings. Regardless, in my view, the parties appear able to communicate and cooperate in regard to decisions about their children. If C.M. has a concern about B.M.'s vaccinations, orthodontic care, or educational supports going forward, she has leave to bring an application before this Court. Subject to scheduling, the parties may bring the application before me.
- [40] C.M. seeks an order that M.N. not relocate B.M. except in accordance with the relocation provisions in the FLA. This is a reasonable request given that there has been a suggestion that M.N. might move to the farm at Ferrell Creek. Of course, both parties must follow the provisions in the FLA.
- [41] The parties agree to facilitate reasonable travel for the children to visit the other parent.

Guidelines Income

- [42] To determine child support, I must first determine the parties' Guidelines incomes.
- [43] The starting point is the parties' Line 150 incomes on their tax returns adjusted in accordance with Schedule III: Guidelines s. 16. There is no dispute about the parties' Line 150 incomes. However, I must consider the parties' incomes with respect to RRSP withdrawals, capital gains, farming losses, and so forth to determine if I should adjust either party's income.

[44] Section 17 of the Guidelines provides the court with broad discretion to make a fair determination of income and deals specifically with non-recurring income and losses:

Pattern of income

17(1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

Non-recurring losses

(2) Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

[45] Non-recurring amounts can inflate income in a particular year. Similarly, non-recurring losses can display an income picture that does not accurately show the income available for support purposes. As such, to obtain the fairest income determination, the court may average a party's income over a number of years, or it may exclude income. As held in *Harras v. Lhotka*, 2016 BCCA 246 at para. 35, "[g]enerally speaking, averaging will be applied where income fluctuates, or where the payor has not demonstrated a lasting decline in earnings. Ultimately, it depends on fairly calculating the amount of income reasonably available to pay child support "

[46] Justice Harvey in *Felts v. Silvestre*, 2021 BCSC 523, recently addressed s. 17 of the Guidelines:

[49] ... Section 17 of the Guidelines provides the court the discretion to include non-recurring income if doing so would be fair and reasonable: *Ewing v. Ewing*, 2009 ABCA 227 [Ewing]. In determining whether the court should exercise its discretion to include a non-recurring capital gain under the Guidelines income, *Ewing* at para. 35 sets out a non-exhaustive list of factors for the court to consider:

Is the non-recurring gain or fluctuation actually in the nature of a bonus or other incentive payment akin to income for work done for that year?

Is the non-recurring gain a sale of assets that formed the basis of the payor's income?

Will the capital generated from a sale provide a source of income for the future?

Are the non-recurring gains received at an age when they constitute the payor's retirement fund, or partial retirement fund, such that it may not be fair to consider the whole amount, or any of it, as income for child support purposes?

Is the payor in the business of buying and selling capital assets year after year such that those amounts, while the sale of capital, are in actuality more in the nature of income?

Is inclusion of the amount necessary to provide proper child support in all the circumstances?

Is the increase in income due to the sale of assets which have already been divided between the spouses, so that including them as income might be akin to redistributing what has already been shared?

Did the non-recurring gain even generate cash, or was it merely the result of a restructuring of capital for tax or other legitimate business reasons?

Does the inclusion of the amount result in wealth distribution as opposed to proper support for the children?

- [47] In *Vincent v. Vincent*, 2012 BCCA 186, the Court of Appeal outlined the steps to be taken when considering the exceptions set out in ss. 17-20 of the Guidelines and how they apply to determine Guidelines income:
- [35] All determinations of child support begin with finding the spouse's Line 150 income, a relatively straight-forward step one. The second step is to make whatever adjustments to that amount are required by Schedule III. Once these two steps are completed, the court must look to sections 17 to 20, to determine whether any of the exceptions set down in those provisions applies, and, if so, what effect they should be given on the facts of the case.
- [36] Section 17 gives the court discretion to deal with the problem of an income which fluctuates from year to year and with non-recurring income or losses such that the determination of a spouse's income under s. 16 is not the fairest determination of that income. As it relates to this case, this provision permits the inclusion of non-recurring capital gains and the exclusion of non-recurring dividends.
- [37] Section 18 provides discretion to deal with the situation where a spouse is in a position to manipulate income in his or her capacity as shareholder, director or officer of a corporation, such that a person's income under s. 16 does not fairly reflect all the money available to that spouse for the payment of child support. It permits the inclusion of pre-tax corporate income and benefits paid to non-arm's length persons.
- [38] Section 19 addresses situations where the spouse's disclosed income does not fairly reflect what should be paid in child support by permitting imputation of income. It permits the imputation of income in a variety of situations, including income which is tax exempt, under-utilized capital investments, and when there is a failure to provide income information.

- [39] Section 20 makes provision for non-resident payor spouses
- [48] While a party's Line 150 income as reported on their tax return is the starting point for determining income under s. 16 of the Guidelines, when a spouse is a shareholder, director, or officer of a corporation and derives income from that corporation ss. 18 and 19 of the Guidelines may apply.
- [49] As such, I must consider the pre-tax income that was available to M.N. through his companies. Justice Skolrood in *Younger v. Younger*, 2017 BCSC 363 at para. 24 cited *Hausmann v. Klukas*, 2009 BCCA 32, where the Court approved the following statement from *Jeffery v. Motherwell*, 2006 BCSC 140 at para. 13:
- [13] the onus is on the payor to provide the necessary evidence that the corporation's pre-tax income is not available to the payor. The court should not have to ferret out the necessary information from inadequate or incomplete financial disclosure...
- [50] This Court is not bound to accept a spouse's declared income for income tax purposes as the income on which to determine support obligations. The "task of the court is to determine what money is fairly available to support the children of the marriage": *Younger* at para. 25.
- [51] I have discretion regarding whether to include RRSPs and capital gains proceeds in the parties' Guidelines incomes. I also have discretion to impute income by adding back in unreasonable deductions such as farm losses. As explained by Justice Harris in *J.M.D. v. R.M.J.D.*, 2011 BCSC 1295 at para. 24, when addressing non-recurring income, "the ultimate question is whether a non-recurring capital gain should fairly be treated in substance as enhancing the income or financial means of a parent." Just because a cost is deductible under the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), does not mean it is an appropriate deduction for child support purposes.

Analysis

- [52] Daum Valuation and Financial Services was jointly retained to prepare an independent valuation for the parties. The purpose of the valuation was to calculate M.N.'s Guidelines income to assist in determining support payments and to value family assets to assist in dividing the family property.
- [53] The Daum Report was prepared by Patti Daum, a Certified Professional Accountant and a Chartered Business Valuator. She has 28 years of experience in public accounting and 21 years of specialization in business valuation and litigation support. Neither party challenged Ms. Daum's expertise, nor sought to cross-examine her at trial.
- [54] I accept Ms. Daum as an expert, qualified to provide opinions on the valuation of the parties' Guidelines incomes and the value of the various companies at issue. Her evidence was uncontroverted at trial.

[55] The Daum Report, dated June 23, 2021, addresses M.N.'s Guidelines income, but does not address C.M.'s Guidelines income. The Daum Report sets out M.N.'s Line 150 income as follows:

- 2018 - \$32,676
- 2019 - \$540,120
- 2020 - \$179,891

[56] C.M. submits that her income has been minimal over the relevant time period. She argues this is due to her responsibilities with respect to the five children and, more recently, her immigration status in the United States.

[57] C.M. has a business and marketing diploma from the College of the Rockies. She also attended Vancouver Community College where she trained as a hair stylist. Prior to her relationship with M.N., she owned and operated two hair salons in Cranbrook. More recently, C.M. obtained her real estate license in Florida. She worked part-time as a realtor in Florida until her visa expired in 2018. C.M. argues that her current immigration status has prevented her from working in the United States.

[58] M.N. has a grade 12 education. He has had a diverse career. M.N. has owned and operated car and recreational vehicle ("RV") dealerships. He has also had a successful business developing RV parks in the East Kootenays for the past 40 years. Most recently, he has also become involved in buffalo ranching.

[59] M.N. has some concerns regarding the jointly-retained Daum Report. For example, he argues that the actual income earned by him is inaccurate as it includes income from RRSPs and capital gains that should not be included in his income for support calculations. The Daum Report provides options for M.N.'s income both including and excluding certain streams of income.

[60] I address the parties' Guidelines incomes by year.

2018

[61] C.M. seeks a determination that the Guidelines income of the parties for 2018 was \$7,254 for her and \$183,624 for M.N.

[62] C.M.'s Line 150 income for 2018 was \$42,054.[1] While this was C.M.'s Line 150 income in 2018, I note that C.M. received the sum of \$338,000 from the redemption of the shares owned by Company D when it was sold to Company C in late 2017. Because of this sale, no dividends were paid from Company B from late November 2017 until the fall of 2018. Although the \$338,000 likely would be considered non-recurring income, C.M. had access to the money and was not living solely off \$42,054 in 2018. Also, M.N. paid 100% of the taxes in 2017 for the capital gains from the sale of the Company D shares.

[63] The Daum Report points out this issue. The Report notes that C.M. "looks to have received her share of the gain on a tax-free basis" (Schedule 1.1, Note 3). Ms. Daum further notes that M.N. realized capital gains related to the sale of the Company D shares in 2017 and 2018 (Schedule 1.1, Note 3). Ms. Daum states the following at p. 23 of her Report:

We have not been engaged to opine on [C.M.]'s available income. We highlight, however, that both of these income imputations would apply to income that [C.M.] received. We understand that she received dividends from [Company B] and received 50% of the proceeds from the sale of [Company D] on a tax-free basis. In order for [C.M.]'s income to be comparable to [M.N.]'s income, [C.M.]'s income should reflect an income imputation related to the tax advantaged and tax-free income received.

[Emphasis added.]

[64] C.M. argues the adjustment required to her Line 150 income arises from the removal of dividend income, given the attribution of the pre-tax Company B income to M.N. under Ms. Daum's Scenario 2.

[65] C.M. argues that her income in 2018 was \$7,254 for the purposes of determining child support. However, at para. 117 of her report, Ms. Daum emphasized that I should impute income to C.M. to reflect the tax advantaged and tax-free income received between 2017 and 2018. I accept that \$7,254 is C.M.'s Guidelines income for 2018. I come back to C.M.'s 2018 to 2021 income when discussing reapportionment of the family property.

[66] There are adjustments required to M.N.'s Line 150 income under ss. 18 and 19 of the Guidelines. At the bottom of page 1 of Schedule 1.1, Ms. Daum arrives at an available income figure of \$169,000. This is due to a capital gains adjustment of \$6,700 subtracted from M.N.'s Line 150 income (\$32,676).

[67] Based on the Daum Report, I accept that the capital gains income for M.N. is non-recurring. There was no evidence that he had to sell shares to support the family before the parties separated.

[68] I also accept Ms. Daum's suggestion that the farming losses should be disregarded and added back to M.N.'s income based on the buffalo farm business not reasonably being considered a profit-focused enterprise. If I did not do so, M.N. would be claiming virtually no income in some years: *L.A.K. v. A.A.W.*, 2005 ABQB 657 at paras. 30-32.

[69] I therefore conclude that M.N.'s Guidelines income in 2018 was \$183,624 (\$169,000 less \$6,700 plus \$21,324).

2019

- [70] C.M.'s Line 150 income in 2019 was \$114,856. C.M. seeks a determination that she had no Guidelines income for calendar year 2019. The adjustment C.M. seeks to her Line 150 income arises from the removal of dividend income, given the attribution of the pre-tax Company B income to M.N.
- [71] I accept that C.M. had no Guidelines income for 2019 for the purposes of child support. Again, I will factor this into my analysis when determining reapportionment.
- [72] C.M. seeks a determination that M.N.'s Guidelines income for 2019 be \$173,738.
- [73] The adjustments to M.N.'s Line 150 income that C.M. seeks are addressed in Schedule 1.1 of the Daum Report. Ms. Daum finds M.N.'s available income is \$848,000. Ms. Daum refers to three adjustments that could be made by the Court:
- reduction of \$381,667 based on net capital gains received and preferential tax treatment of capital gains related to the sale of a Cranbrook parcel of land by M.N.:[2]
 - reduction of \$455,715 on account of non-recurring RRSP income; and
 - add-back of \$163,120 of buffalo farm losses.
- [74] M.N. agrees he withdrew \$455,714 from his RRSP in 2019. M.N. testified that he had to pay C.M. \$200,000 and he withdrew \$285,714 in order to do so. M.N. further testified that he needed the balance of the funds to pay for expert reports, legal expenses, child support, and s. 7 payments. M.N. argues that the RRSP withdrawal should be considered additional non-recurring income for that year.
- [75] I have considered the Ewing factors cited in Felts in assessing what is fair and reasonable in these circumstances. I agree that the RRSP withdrawal was non-recurring. There was no evidence before me that it was common practice for M.N. to cash in his RRSPs prior to separation.
- [76] I find that the balance of these factors indicate that I should exclude the RRSP withdrawals and capital gains from M.N.'s income for the years in which they were received. For the reasons stated above, I will add back in the farming losses.
- [77] I therefore accept Ms. Daum's calculation that M.N.'s Guidelines income for 2019 is \$173,738 (\$848,000 - \$381,667 - \$455,715 + \$163,120).

2020

- [78] C.M.'s Line 150 income for 2020 was \$154,937 comprised of 'other income' of \$4,000 and taxable dividends in the amount of \$150,937 from Company B. C.M. seeks a determination that the Guidelines income for herself for calendar year 2020 was \$4,000.
- [79] The adjustment C.M. seeks to her Line 150 income arises from the removal of dividend income, given the attribution of the pre-tax Company B income to M.N.

[80] I accept that C.M.'s income for child support purposes in 2020 was \$4,000. However, C.M. concedes that any obligation for past spousal support has been satisfied so this number is used only for retroactive child support.

[81] C.M. seeks a determination that the Guidelines income for M.N. in 2020 was \$245,089.

[82] The adjustments C.M. seeks to M.N.'s Line 150 income are addressed in the Daum Report at Schedule 1.1. Ms. Daum arrives at an estimated available income figure of \$273,000 and then refers to two further adjustments that could be made by the Court:

- a. A reduction of \$120,500 on account of non-recurring RRSP withdrawals; and
- b. an add-back of \$92,589 of buffalo farm losses.

[83] Based on these two adjustments, with which I agree for the reasons already articulated, I find M.N.'s Guidelines income for 2020 was \$245,089 (\$273,000 - \$120,500 + \$92,589).

2021

[84] I must determine the parties' Guidelines incomes going forward.

[85] C.M. argued that I should simply apply the parties' Guidelines incomes from 2020 to child support calculations in 2021. While I have accepted C.M.'s Guidelines income calculations for the years 2018, 2019, and 2020, I am concerned about C.M.'s efforts to earn an income since the parties' separation in 2018. I am also concerned about the significant fluctuations in M.N.'s Guidelines income over the past three years.

M.N.

[86] In *Reid v. Reid*, 2017 BCCA 73 at para. 122, the Court of Appeal explained that s. 17 provides the court with "broad discretion to average income over a period of years , though this is generally used to smooth out fluctuating incomes rather than to account for extraordinary gains in a single year."

[87] Here, M.N.'s Guidelines income fluctuated between \$173,738 and \$245,089 between 2018 and 2020. Based on this significant fluctuation, I find that it is fairer to determine M.N.'s income for child support purposes moving forward based on an average of his income over the past three years, rather than based on his income in any single year. The average of M.N.'s income over the past three years is \$200,817. I find that to be M.N.'s Guidelines income for 2021.

C.M.

[88] Parents are obligated by statute to provide for their children to the extent that they are capable of doing so: Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA], s. 26.1(2). Where the court finds that a spouse is intentionally under-employed or unemployed, s. 19(1)(a) of the Guidelines provides that the court may impute such amount of income to a spouse as it considers appropriate.

[89] *Drygala v. Pauli* (2002), 61 O.R. (3d) 711, 219 D.L.R. (4th) 319 (O.N.C.A.) is the leading case addressing income imputation under s. 19(1)(a) of the Guidelines. It sets out three questions that the court should consider when deciding whether to impute income to a spouse:

- 1) Is the spouse intentionally under-employed or unemployed?
- 2) If so, is the spouse's intentional under-employment or unemployment required by virtue of the spouse's reasonable educational or health needs or the needs of a child of the marriage?
- 3) If not, what income is appropriately imputed in the circumstances?

[90] The courts have held that a spouse is intentionally under-employed where they choose to earn less than what they are capable of earning; *Drygala* at para. 28. It is not necessary that the spouse be under-employed with the intent of avoiding support obligations.

[91] Post-separation, C.M. chose to continue to reside in Naples, Florida. While C.M. argued that work visa issues have prevented her from working, she has not adduced any documentary evidence detailing the extent of her work restrictions. C.M. has chosen to remain in Florida since separation, despite being unable to work. For this reason, I find that C.M. is under-employed for the purposes of s. 19(1)(a) of the Guidelines.

[92] I further find that C.M.'s under-employment is not required by virtue of her reasonable educational or health needs or the needs of the children of the marriage. While C.M. remained at home with the children when they were younger, the children are all in full-time schooling and no longer require constant supervision. Further, C.M. did not advance any argument that her failure to find employment since separation was by virtue of her educational pursuits. She has no health issues or limitations that would prevent her from working. Given C.M.'s education, her experience owning and operating two hair salons in Canada, and her real estate license, I find it likely that she would have retained paid employment had she not chosen to remain in Florida where she was unable to work.

[93] Therefore, I impute an income to C.M. for 2021 in the amount of \$60,000 CDN.

Summary

[94] In summary, the parties' Guidelines incomes for the relevant years are as follows:

M.N. C.M.

2018 \$183,624 \$7,254

2019 \$173,738 \$0

2020 \$245,089 \$4,000

2021 \$200,817 \$60,000

[95] Throughout the Guidelines income analysis, C.M.'s income has been significantly lower than M.N.'s income. However, the calculations above do not reflect the money C.M. received from dividend income which Master Muir ordered in lieu of spousal support. I will further address C.M.'s income when determining whether or not to order equal division of the family property.

Child Support

Legal Principles

[96] The parties agree that child support should be paid in accordance with the Guidelines. As such, there is no need for me to set out the legal principles in detail.

[97] Child support orders are made under either s. 149 of the FLA or s. 15.1 of the DA. Both the DA and the FLA provide that child support must be calculated in accordance with the Guidelines unless an exception applies: s. 150(1) of the FLA and s. 15.1(3) of the DA.

Parties' Positions and Background Facts

[98] After the date of separation, the parties' two boys, M.A.M. and B.M., returned to Cranbrook to live with M.N. on a full-time basis. There is some dispute as to why B.M. remained in Cranbrook after the summer of 2018, but it is not relevant to the issues before me. The parties disagree regarding whether M.A.M. continues to be a child of the marriage. There is also an issue regarding how much C.M. should pay for retroactive child support for M.A.M. and B.M. because since December 1, 2018, M.N. has been paying \$4,000 per month in child support to C.M.

[99] M.A.M. finished high school in June 2020 when he was 17 years old. Since completing high school, M.A.M. has lived with M.N. in Cranbrook and has been working. The exception to this was the period of January through July 2021 when M.A.M. resided with C.M. and his sisters in Florida. He was in Florida for a medical procedure.

[100] C.M. provided DivorceMate calculations for the years 2018 to 2020 setting out the amounts owed by M.N. as follows:

April 1, 2018 to July 31, 2018: \$3,960 payable for four months based on an income of \$183,624 and four children residing with C.M. (K.S., P.M., A.M., and B.M.) for a total of \$15,840;

August 1, 2018 to December 31, 2018: \$3,327 payable for five months based on an income of \$183,624 and three children residing with C.M. (K.S., P.M., and A.M.) for a total of \$16,635;

2019: \$3,172 payable based on an income of \$173,738 and three children residing with C.M. (K.S., P.M., and A.M.) for a total of \$38,064;

2020: \$4,285 payable based on an income of \$245,089 and three children residing with C.M. (K.S., P.M., and A.M.) for a total of \$51,420;

January 1, 2021 to June 30, 2021: \$5,116 payable for six months based on an income of \$245,089 and four children residing with C.M. (K.S., M.A.M., P.M., and A.M.) for a total of \$30,696; and

July 1, 2021 to September 1, 2021: \$4,285 payable for three months based on an income of \$245,089 and three children residing with C.M. (K.S., P.M., and A.M.) for a total of \$12,855.

[101] According to C.M., M.N. has paid \$140,000 in child support to the date of trial (\$4,000 x 35 months). C.M. has calculated that M.N. should have paid \$165,510. According to C.M., the difference of \$25,510 is owed by M.N.

[102] M.N. emphasizes that since the parties separated in 2018, C.M. has paid no child support for M.A.M. and B.M. M.N. has paid all of the expenses for the two boys during the time they have resided in his care full-time. M.N. argues that past child support for M.A.M. and B.M. would be \$1,781 per month based on C.M.'s dividend income of \$120,000 per year. Going forward, for B.M., M.N. argues that the child support would be \$1,113 per month.

Analysis

[103] M.N. has been paying interim child support in the amount of \$4,000 per month for A.M., P.M., and K.S. since December 1, 2018. This amount was based on an imputed income to M.N. of \$300,000 and no income imputed to C.M.

[104] The amount payable for the children by M.N. and/or C.M. is in issue. I split these into two categories. First, I will determine the prospective child support. As part of this determination, I must assess whether K.S. remains a "child of the marriage" entitled to child support from M.N. Having found that M.A.M. is no longer a child entitled to child support, I must calculate the prospective child support for P.M., A.M., and B.M.

[105] Second, I will determine the retroactive amount payable for the four children, M.A.M., P.M., A.M., and B.M., which both parties agree were all children entitled to child support at the relevant time. Since separation, P.M. and A.M. have resided primarily with C.M. in Naples, Florida and M.A.M. and B.M. have resided primarily with M.N. in Cranbrook.

Prospective Child Support

[106] For 2021, child support should be based on M.N.'s Guidelines income of \$200,817, and C.M.'s 2021 imputed income of \$60,000.

[107] At issue here is whether K.S. remains a child of the marriage entitled to child support.

Does K.S. remain a "child of the marriage"?

Legal Principles

- [108] Section 146 of the FLA defines a child entitled to child support as including "a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians". Section 2 of the Divorce Act defines a "child of the marriage" similarly to the FLA.
- [109] Although post-secondary education is not explicitly mentioned in the FLA or the DA, there is a body of case law which accepts that a child may be unable to withdraw from their parents' charge because of their enrolment in full-time university studies. However, the case law for such support during an adult child's second university degree is significantly more mixed.
- [110] In *Aquila v. Aquila*, 2016 MBCA 33, the Manitoba Court of Appeal held that child support should not continue during the transitional period after completion of one post-secondary program without a clear path of entry into another. This case dealt with a 23-year old adult child who had completed their undergraduate degree, but continued to live with their mother with plans to apply to law school. The Court made the following remarks:
- [31] Child support for an adult child due to a dependency for pursuit of post-secondary education is meant to be transitional only. There is no presumption in favour of child support for a brief grace period while the adult child enters the workforce, or is between studies, after some form of post-secondary education.
- [111] In *R.J.N. v. P.M.F.*, 2018 ONSC 959, the Ontario Superior Court found that a 22-year old adult child was no longer a child of the marriage under the DA. The adult child had graduated from her undergraduate degree and was living with her mother while she applied for admission to a graduate program. In coming to this conclusion, Justice Faieta stated that "[t]he prospect that an adult child might be admitted to a graduate program in the future does not constitute 'other cause'": at para. 141.
- [112] When deciding whether an adult child is entitled to child support during their second university degree, the courts have taken into consideration the parties' expectations during the marriage about the career aspirations of their children and the education and means of the parents. For example, in *M.A.B.A. v. F.A.*, 2011 MBQB 245, a father sought to terminate child support for his 23-year old adult child who was attending law school in England. In refusing to terminate child support, the Court considered the fact that the father himself was a judge who had obtained two Bachelor's degrees and a Master's degree.
- [113] M.N. acknowledges that he is K.S.' stepparent. Section 147 of the FLA specifically addresses a stepparent's obligation to provide child support:
- 147(5) If a stepparent has a duty to provide support for a child under subsection (4), the stepparent's duty

- (a) is secondary to that of the child's parents and guardians, and
- (b) extends only as appropriate on consideration of
 - (i) the standard of living experienced by the child during the relationship between the stepparent and his or her spouse, and
 - (ii) the length of time during which the child lived with the stepparent.

Parties' Positions

- [114] M.N. and C.M. have raised K.S. together since she was a toddler. C.M. argues that K.S. remains financially dependent on the parties as she continues to pursue full-time higher education. C.M. is not requesting child support per se for K.S., but she is requesting that M.N. contribute to K.S.' university expenses. C.M. seeks an order that M.N. contribute 75% of K.S.' university expenses for the current academic year, with funding obligations for subsequent academic years being subject to review.
- [115] M.N. argues that K.S.' biological father, L.S., should be contributing to her education. M.N. argues that L.S. has not paid any child support or s. 7 expenses for K.S. since she began her university education in 2018. M.N. points out that C.M. has not requested any financial disclosure from L.S. or pursued any child support claims against L.S. since K.S. began her first degree. M.N. further argues that although K.S.' stated wish is to commence a Master's program and/or study for the medical school entrance exams, she has not yet been admitted to any such program. For this reason, M.N. argues that K.S. is capable of working to contribute to her university costs.

Analysis

- [116] At issue here is whether M.N. should be responsible for paying child support and s. 7 expenses for K.S. as she prepares to continue her university education.
- [117] By the last day of trial, K.S. was 22 years old. Since the date of separation, K.S. has been financially dependent on the parties while she pursued full-time university studies.
- [118] There is no dispute that K.S. was a child entitled to child support on the date of the parties' separation; she was under 19 years old and M.N. had been supporting her for the majority of her life. For example, in 2019 M.N. withdrew \$49,000 from an RRSP to assist with K.S.' university expenses.
- [119] K.S. is not M.N.'s biological daughter, although he has raised her as his stepchild since she was approximately two years old. They have a good relationship. K.S.' biological father, L.S., has contributed to child support intermittently over the years. Unfortunately, the relationship between K.S. and her biological father is strained.

- [120] K.S. completed her Bachelor of Science degree in July 2021. K.S. has expressed a desire to commence a graduate program or apply to medical school. She has good grades and it is likely she will be admitted. However, by the last date of trial, she had not been admitted to any such program.
- [121] Relying on Aquila and Negin, I find that there is insufficient evidence before me to order that M.N. contribute to K.S.' second university degree. Although K.S. has stated her intention to pursue a second post-secondary degree, she has not yet been enrolled in such a degree. As stated in Negin at para. 141, the "prospect that an adult child might be admitted to a graduate program in the future" is insufficient for the court to find that the adult child is unable to withdraw from their parents' care (emphasis added).
- [122] In coming to this determination, I have also considered M.N.'s and C.M.'s reasonable expectations during their marriage about the career aspirations of their children and their level of education and means. It is clear that M.N. is a very business-minded individual. This is borne out through his success in owning and operating several successful RV parks. However, M.N. has no post-secondary education. C.M. has experience running a business and has some post-secondary education. However, neither party has a level of education comparable to the professional or graduate degrees K.S. intends to pursue. For this reason, the parties likely did not have an expectation when they were together that they would be financially supporting K.S. through a second post-secondary degree. If there was such an expectation, there was no evidence of it at trial.
- [123] I am also mindful of the guidance in s. 147(5)(a) of the FLA which specifically states that a stepparent's obligation to provide child support is secondary to that of the child's biological parents.
- [124] L.S. testified at trial. He has remarried and has other children. He owns two hair salons in Calgary and Cochrane, Alberta. L.S. testified that he has paid sporadic child support, but has not paid any child support for K.S. since she was 11 years old. L.S. testified that he initially contributed to K.S.' post-secondary education costs by giving her a credit card. He took it away because he thought she was spending irresponsibly. L.S. also testified that he has offered to give K.S. a job many times. L.S.' income and assets were not disclosed at trial.
- [125] In my view, given the guidance in s. 147(5)(a) of the FLA, C.M. should exhaust all avenues for support from L.S. before looking to M.N. to contribute to K.S.' second university degree.
- [126] Therefore, I find that K.S. ceased being a child of the marriage entitled to child support when she completed her university degree in July 2021. Unless new facts come forward such as evidence that C.M. has unsuccessfully pursued support from L.S., M.N. is under no obligation to support K.S. financially from July 2021 forward.

Prospective Child Support for P.M., A.M., and B.M.

[127] Having found that, as of July 1, 2021, M.A.M. and K.S. ceased being children of the marriage entitled to child support, I must now determine the prospective child support payable for P.M., A.M., and B.M. from July 1, 2021, onwards.

[128] These child support calculations are based on P.M. and A.M. living full-time with C.M. and B.M. living full-time with M.N.

[129] Based on the parties' 2021 incomes as determined above, the monthly child support moving forward is as follows:

Payable by C.M. Payable by M.N. Set-off

\$567 \$2,759 \$2,192

[130] As such, I order that M.N. pay C.M. child support in the amount of \$2,192 per month on the first day of each month going forward.

[131] An annual review of the parties' income is to take place through exchanges of income documents by May 31, 2023, and by May 31 each year thereafter. Adjustments to the child support would become effective on July 1, 2023 and on July 1st of each year thereafter.

Retroactive Child Support

[132] I must determine the amount of child support, retroactive to April 2018 and going forward to the date of trial payable to C.M. for P.M. and A.M., and any set-off amounts to what M.N. is to pay as a result of M.A.M. and B.M. being in his care.

[133] For child support purposes, M.A.M. should be considered to have resided primarily with M.N. from April 1, 2018 to December 31, 2020 and primarily with C.M. from January 1, 2021 to June 30, 2021. M.A.M. ceased being a child of the marriage on July 1, 2021.

[134] C.M. has not paid any child support for B.M. since April 2018, nor has she paid any child support for M.A.M. for the period of April 2018 to January 2021. M.N. has paid \$140,000 in child support since 2018.

[135] M.N. requests lump sum retroactive support.

[136] I find that the children resided as follows:

- 1) From April 1, 2018 to July 31, 2018: A.M., P.M., B.M., and K.S. lived with C.M. and M.A.M. lived with M.N.;
- 2) From August 1, 2018 to December 31, 2018: A.M., P.M., and K.S. lived with C.M. and M.A.M. and B.M. lived with M.N.;
- 3) From January 1, 2019 to December 31, 2019: A.M., P.M., and K.S. lived with C.M. and M.A.M. and B.M. lived with M.N.;

- 4) From January 1, 2020 to December 31, 2020: A.M., P.M., and K.S. lived with C.M. and M.A.M. and B.M. lived with M.N.; and
- 5) From January 1, 2021 to June 30, 2021: A.M., P.M., K.S., and M.A.M. lived with C.M. and B.M. lived with M.N.

[137] Therefore, I find retroactive child support to be as follows:

Period

Payable by C.M.

Payable by M.N.

Set-off

Total Payable

April 1, 2018 to July 31, 2018

\$0

\$3,960

\$3,960

(x4 months)

\$15,840

August 1, 2018 to December 31, 2018

\$0

\$3,327

\$3,327

(x5 months)

\$16,635

January 1, 2019 to December 31, 2019

\$0

\$3,172

\$3,172

(x12 months)

\$38,064

January 1, 2020 to December 31, 2020

\$0

\$4,285

\$4,285

(x12 months)

\$51,420

January 1, 2021 to June 30, 2021

\$567

\$2,759

\$2,192

(x6 months)

\$13,152

TOTAL:

\$135,111

[138] Given that M.N. has already paid \$140,000 in child support since 2018, I find that M.N. has over-paid by \$4,889. As such, C.M. owes M.N. \$4,889 for his over-payment of child support.

Section 7 Expenses

Legal Principles

[139] Section 7 of the Guidelines provides that the court may order a spouse to pay an amount to cover all or any portion of a child's special and extraordinary expenses, taking into account the necessity of the expense in relation to the child's best interests, the reasonableness of the expense in relation to the means of the spouses, and the family's spending pattern prior to separation. These expenses may include:

- 1) child care expenses incurred as a result of the employment, illness, disability, education, or training for employment of the spouse who has the majority of parenting time;
- 2) that portion of the medical and dental insurance premiums attributable to the child;
- 3) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling, physiotherapy, occupational therapy, speech therapy, prescription drugs, hearing aids, glasses, and contact lenses;
- 4) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- 5) expenses for post-secondary education; and

6) extraordinary expenses for extracurricular activities.

[140] These special and extraordinary expenses are to be shared by the spouses in proportion to their respective incomes.

Parties' Positions

[141] In an Order by Master Elwood dated October 23, 2020, M.N. was ordered to pay C.M. \$22,770 for s. 7 expenses for the period of August 1, 2020 to June 28, 2021. This was 75% of the allowed s. 7 expenses, which was \$2,070 per month.

[142] In terms of retroactive s. 7 expenses, C.M. seeks an order that M.N. pay her \$2,070 per month for A.M. and P.M. from and including July 1, 2021 to September 1, 2021 (a total of \$6,210). However, in recognition of (a) the 2019 payment of \$49,000 towards K.S.' expenses from M.N.'s TFSA, (b) M.N.'s \$22,700 contribution to the children's s. 7 expenses for the period of August 1, 2020 to June 28, 2021, and (c) the \$10,000 per month dividend payments paid to C.M. by Company B, C.M. seeks an order that (a) waives M.N.'s obligation to pay further retroactive s. 7 expenses to her to June 30, 2021, and (b) waives M.N.'s obligation to pay her any retroactive child support. However, as I have determined above, M.N. overpaid child support in the amount of \$4,889.

[143] In terms of prospective s. 7 expenses, C.M. seeks an order that M.N. pay her \$2,070 per month on the first day of each month for special and extraordinary expenses for A.M. and P.M.

[144] M.N. seeks retroactive s. 7 expenses for M.A.M. and B.M. and prospective s. 7 expenses for B.M. Unfortunately, M.N. does not have a record of or invoices for these retroactive expenses, but he estimates that he spent approximately \$500 per month on special and extraordinary expenses for the two boys between 2018 and 2020. He also paid B.M.'s s. 7 expenses in 2021.

[145] M.N. also has a concern that some of the expenses included by C.M. are not reasonable or necessary.

Retroactive s. 7 expenses

[146] I found the s. 7 expenses presented by C.M. at trial to be somewhat inflated. However, in recognition of M.N.'s \$49,000 contribution toward K.S.' expenses, his \$22,700 contribution toward the children's s. 7 expenses from August 1, 2020 to June 28, 2021, and the \$10,000 per month dividend payments to C.M. from Company B, I waive any obligation of M.N.'s for s. 7 expenses up to June 30, 2021.

[147] Based on the October 23, 2020 Order of Master Elwood, I find that C.M. was responsible for 25% of M.A.M. and B.M.'s special and extraordinary expenses from 2018 to July 2021 while they lived with M.N. To date, C.M. has not made any s. 7 expense payments to M.N. Although C.M.'s Guidelines income for the time periods in question was low, she was receiving \$10,000 per month in dividend income. As such, I rely on Master Elwood's Order and will only adjust the parties' s. 7 proportions going forward.

[148] While it is unfortunate that M.N. does not have invoices for B.M. and M.A.M.'s retroactive s. 7 expenses, s. 7 of the Guidelines provides that these expenses may be estimated. I find M.N.'s estimation of B.M. and M.A.M.'s retroactive special and extraordinary expenses in the amount of \$500 per month to be reasonable. Therefore, I find that C.M. owes M.N. the following for M.A.M. and B.M.'s s. 7 expenses:

- 1) April 1, 2018 to July 31, 2018: \$62.50 ($\$500/2 \times 25\%$) per month for M.A.M.'s s. 7 expenses, for a total of \$250;
- 2) August 1, 2018 to December 31, 2018: \$125 ($\$500 \times 25\%$) per month for M.A.M. and B.M.'s s. 7 expenses for a total of \$625;
- 3) January 1, 2019 to December 31, 2019: \$125 ($\$500 \times 25\%$) per month for M.A.M. and B.M.'s s. 7 expenses for a total of \$1,500;
- 4) January 1, 2020 to December 31, 2020: \$125 ($\$500 \times 25\%$) per month for M.A.M. and B.M.'s s. 7 expenses for a total of \$1,500; and
- 5) January 1, 2021 to June 30, 2021: \$125 ($\$500 \times 25\%$) per month for M.A.M. and B.M.'s s. 7 expenses for a total of \$750.

[149] In total, C.M. owes M.N. \$4,625 in retroactive s. 7 expenses for M.A.M. and B.M. from April 1, 2018 to September 1, 2021.

Prospective s. 7 expenses

[150] The parties are to share the children's special and extraordinary expenses from July 1, 2021, going forward. These expenses must be reasonable and should not include items such as food, Uber fares, Netflix subscriptions, nail salons, and so forth. Going forward, M.N. should pay s. 7 expenses for A.M. and P.M. As B.M. remains living with M.N., C.M. must contribute towards his s. 7 expenses. Each party is to pay s. 7 expenses in proportion to their respective incomes as I have determined them above.

[151] Given my findings of the parties' incomes, M.N. will pay 77% and C.M. will pay 23% of the children's special and extraordinary expenses from July 1, 2021 onwards.

[152] After 2021, there should be annual reviews to determine the parties' respective annual incomes. The review should take place through exchanges of income documents by May 31, 2023, and by May 31 each year thereafter. Adjustments to net s. 7 expenses would become effective on July 1, 2023 and on July 1 each year thereafter.

Identification and Value of Family Property and Family Debt

Legal Principles

[153] The concept of family property is set out in s. 84 of the FLA and reads as follows:

Family property

- (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:
 - (a) on the date the spouses separate,
 - (i) property that is owned by at least one spouse, or
 - (ii) a beneficial interest of at least one spouse in property;
 - (b) after separation,
 - (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either, or
 - (ii) a beneficial interest acquired by at least one spouse in property if the beneficial interest is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either.
- (2) Without limiting subsection (1), family property includes the following:
 - (a) a share or an interest in a corporation;
 - (b) an interest in a partnership, an association, an organization, a business or a venture;
 - (c) property owing to a spouse
 - (i) as a refund, including an income tax refund, or
 - (ii) in return for the provision of a good or service;
 - (d) money of a spouse in an account with a financial institution;
 - (e) a spouse's entitlement under an annuity, a pension plan, a retirement savings plan or an income plan;

- (f) property, other than property to which subsection (3) applies, that a spouse disposes of after the relationship between the spouses began, but over which the spouse retains authority, to be exercised alone or with another person, to require its return or to direct its use or further disposition in any way;
- (g) the amount by which the value of excluded property has increased since the later of the date
- (i) the relationship between the spouses began, or
- (ii) the excluded property was acquired.

(2.1) For the purposes of subsection (2)(g), any increase in value of a beneficial interest in property held in a discretionary trust does not include the value of any property received from the trust.

- (3) Despite subsection (1) of this section and subject to section 85 (1)(e), family property includes that part of trust property contributed by a spouse to a trust in which
 - (a) the spouse is a beneficiary, and has a vested interest in that part of the trust property that is not subject to divestment,
 - (b) the spouse has a power to transfer to himself or herself that part of the trust property, or
 - (c) the spouse has a power to terminate the trust and, on termination, that part of the trust property reverts to the spouse.

[154] Family property is all real and personal property, other than excluded property, owned by one or both spouses at the date of separation: FLA, s. 84(1)(a). If the asset is excluded, only the increase or growth in the value of the asset during the relationship is considered family property: s. 84(2)(g).

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

Excluded property

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

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

[156] Section 87 of the FLA provides that family property values must be based on fair market value. Both family property and family debt values must be determined as near in time as possible to the date of trial.

- [157] Under the former Family Relations Act, R.S.B.C. 1996, c. 128 [FRA], the court was required to consider property division before it considered spousal support. The FLA takes a different approach and links the division of family assets and the payment of spousal support.

Corporate Properties

- [158] There are a number of corporations that are characterized as family property. Daum Valuation and Financial Services was jointly retained to prepare an independent calculation of the fair market value of the parties' interests in the issued and outstanding shares of Company B, inclusive of its direct interest in Company C and its interest in Company D. Daum Valuation also valued the shares in Company A. The Daum valuation is as at October 31, 2001, and June 23, 2021. Ms. Daum did not testify at trial. C.M. relies on the Daum Report to calculate the value of family property and M.N. accepted the calculations apart from the concerns I outline below.

Company A

- [159] I accept C.M.'s submission that Company A is an operating business, which attracts a methodology of treating Company A as a going concern. The Daum Report provides the valuation based on Company A being sold as a corporate entity. Therefore, the distributive taxes should be calculated assuming Company A would be sold as a corporate entity.
- [160] There is an issue between the parties with respect to valuation of the motorized equipment (the "inventory") that is on the lot of M Motors. This business sells used automobiles and parts. There is a joint Appraisal Report by Active Personal Property Appraisals Ltd. dated January 24, 2020 (the "Appraisal Report"). The author of the Appraisal Report is Shawn Hildebrandt, a Canadian Personal Property Appraiser. The Appraisal Report was to determine the fair market value and liquidation value of the inventory. The Appraisal Report found the fair market value was \$694,505 and the liquidation value was \$470,630.[3]
- [161] Unfortunately, the Appraisal Report did not distinguish between the inventory owned by Company A and the inventory owned by M.N. personally. The appraisal also did not provide an inventory impairment charge, the amount the vehicles depreciate over time. This led to a dispute between the parties, taking up a significant amount of trial time. I will explain this in some detail since this was a very contentious issue between the parties.
- [162] M.N., through his accountant, calculated an inventory impairment charge of \$375,694. C.M. argues that M.N. was trying to take advantage of her by adding a \$375,000 inventory impairment charge. C.M. originally said the inventory impairment charge is \$50,993. The inventory impairment charge arose as Ms. Daum was preparing her Report. The parties agreed to jointly instruct Ms. Daum to complete her Report using the two alternate figures for inventory values for Company A.

- [163] C.M. tried to resolve the issue through a Notice to Admit (as to both ownership and value) but there was no response to the Notice to Admit dated and delivered June 1, 2021, within the time permitted in the Supreme Court Family Rules, B.C. Reg. 169/2009.
- [164] M.N. attempted to introduce new documents at trial that were not previously disclosed and which were not included in the Notice to Admit. C.M. objected to these documents being admitted into evidence and I reserved my ruling. However, in final submissions C.M. accepted M.N.'s new documents because after reviewing them she calculated that they increased the value of the motorized equipment by \$31,952.
- [165] C.M. argues the value for the motorized equipment personally owned by M.N. is \$121,250. This figure was arrived at after taking into account the documents submitted by M.N. at trial and adjustments to the Company A inventory listing in accordance with the Appraisal Report.
- [166] M.N. owns 95% of the shares of Company A and his brother owns 5%. Ms. Daum calculated the en bloc (full) value and then subtracted 5% to arrive at a value between \$3,376,000 and \$3,684,000.
- [167] C.M. calculates the shares of Company A as being worth \$2,517,187 after accounting for an inventory adjustment of \$979,494 (increase of \$31,952 from the original \$50,993 based on M.N.'s new documents)[4], subtracting the excluded amount M.N. brought into the relationship (\$763,000), and accounting for distributive taxes.
- [168] At Schedule 1.3, Ms. Daum estimates distributive taxes[5] for M.N. will, at a mid-point share value, total \$597,000. This converts the \$597,000 to \$610,432 when increased by 2.25% to take into account the increased share value. The increased share value is based on Company A being sold as a corporate entity rather than a liquidation of the underlying corporate assets. C.M. adds the distributive taxes on a ratio basis between the excluded amount of \$763,000 and the remaining share value of \$3,766,945, a 2.25% increase from the Daum Report.
- [169] The final step to arrive at the appropriate family property value for M.N.'s shares in Company A is to allocate the distributive tax sum of \$610,432 on a ratio basis between the excluded value of \$763,000 and the remainder of the overall share valuation figure of \$3,766,945. The calculation leads to a final family property value of \$2,517,187 for the Company A shares of M.N. [$\$3,766,945 \text{ less } \$763,000 = \$3,003,945$; $79.74\% + 20.26\%$ of $\$610,432 = \$486,758$ and $\$123,647$; $\$3,766,945 \text{ less } \$763,000 \text{ less } \$486,758 = \$2,517,187$].[6]
- [170] Accepting C.M.'s underlying assumptions, the present value of the shares in Company A is \$2,517,187.

Company B

- [171] C.M. submits that the Daum Report identifies a present fair market value of \$3,131,000 for the full 100% interest in Company B. This figure is the mid-point en bloc amount.[7] The Daum Report addresses distributive taxes for Company B. The mid-point tax figure is \$838,000 (\$652,000 + \$186,000). The final family property value for all Company B shares is \$2,293,000 (\$3,131,000 less the \$838,000 distributive tax figure).
- [172] Company B owns 37.5% of Company C. M.N. argues the excluded value of the shares owned in Company C in 2001 is not accurate. M.N. argues Company C was worth more than the \$273,857 value in the Daum Report because he and his former wife did not have the property assessed in 2001.
- [173] I accept C.M.'s figures of \$2,293,000 for Company B. To the extent that Company C and other properties were undervalued in 2001, I take that into account when I consider whether I should reapportion the corporate properties.

Ferrell Creek

- [174] This property, the buffalo farm in Hudson's Hope, was purchased by M.N. in 2008. The property was appraised by a jointly retained appraiser, Anne Clayton, on December 27, 2019 and has been valued at \$1,169,300. An updated appraisal of the property and buildings has not been requested by either party.
- [175] There is a dispute about a mortgage against title. M.N. alleges G.J. holds a mortgage against the property in the amount of \$453,000. C.M. does accept that M.N. granted a mortgage over part of the lands to secure a running account,[8] but she strongly opposes the amount of this mortgage. The buffalo farm consists of six separate parcels of land that were purchased by M.N. between 2008 and 2015.
- [176] M.N. testified that the running mortgage account is \$453,000 in favour of G.J. Unfortunately, he had insufficient documentation to establish the amount of the running mortgage. G.J. testified at trial but he was unable to persuasively articulate how much was owing on the mortgage or why. G.J.'s testimony was not helpful. Both G.J. and M.N. state that the outstanding amounts due and owing to G.J. are required to be paid by M.N. upon disposition of the property, at which time the mortgage will be discharged.
- [177] I find that the evidence did not establish the value of the mortgage held by G.J. The \$453,000 encumbrance was not proven, but I accept there is an encumbrance on the property. I accept that there is an existing mortgage based on the documentation provided by M.N. as well as his testimony. The mortgage is similar to a line of credit. I say more about this when addressing reapportionment.

Park Model

- [178] The Park Model is a manufactured home in a prime leased space in E RV Park. There is no appraisal regarding its value. C.M. would like to own this asset and the associated licence to occupy or lease the lot.
- [179] C.M. values this asset and the rights to it at \$200,000. M.N. accepts the value is \$200,000 and agrees that it can be purchased by C.M. for this amount.

Miscellaneous Family Property

- [180] M.N. argues that consideration must be given to the \$200,000 advance to C.M. from M.N. in April 2019. The funds were acquired as a result of M.N. cashing in his RRSPs in excess of \$285,000 (gross). I note that C.M. has included this as her family property in the Scott Schedule so this money is accounted for.
- [181] In 2019, approximately \$49,000 in Tax-Free Savings Account ("TFSA") was cashed in by M.N. to pay for K.S.' university. C.M. has addressed this when considering retroactive child support and s. 7 expenses.
- [182] M.N. argues that there needs to be a determination as to whether any monies should be paid to equalize the amounts held in the parties' personal bank accounts at separation. M.N. claims that the monies held by the parties in joint bank accounts at the date of separation was largely withdrawn by C.M. and a detailed accounting has not been undertaken. He is prepared to forgo any claims with respect to the bank accounts, assuming I accept reapportionment. Since I consider this under reapportionment, I accept that he is not requesting an accounting of these amounts.
- [183] M.N. raises the \$338,000 tax-free monies C.M. received in early 2018, from the sale of shares held in a family company (Company D). The parties split the monies that were obtained from this sale but M.N. paid taxes on the full amount. I take this into account when I discuss reapportionment.
- [184] In the motorized equipment there is a red Volkswagen Beetle which C.M. testified belonged to her mother. The parties agree that it should be transferred to K.S. This was not a contentious issue and M.N. should take whatever steps are within his control to facilitate this transfer.
- [185] M.N.'s home is worth \$750,000 and C.M.'s home is worth \$661,500. M.N.'s home is worth \$88,500 more than C.M.'s home. However, M.N. paid the sum of \$66,889.76 for the expert reports obtained in these proceedings. In 2019, C.M. sold her motor vehicle (the Escalade) for \$13,000 USD. M.N. is willing to forfeit his half of this family property. M.N. argues that he paid \$150,000 in early 2018 for a loan due and owing to Company A after he received his \$338,000 from the sale of shares in Company D. He emphasizes that C.M. retained one hundred percent of her proceeds.

[186] In my view, given these factors, the parties are to retain their own family homes without further adjustments.

Scott Schedule - Outstanding Family Property

Bank Accounts and Other Assets

M.N.

C.M.

FP 14 - HSBC

\$5,029.65

FP 15-17 (BMO)

\$1,310.36

FP 11 - Cranbrook Property sale proceeds

\$137,068

FP 18 (Bank of America)

\$1,170.52

FP 22 - 2017 Chevy Silverado

\$22,000

FP 19 (Bank of America)

\$1,192.75

FP 10 Shareholder loan due to M.N. from Company A

\$71,240

FP 20 (Bank of America)

\$7,857.11

FP 21 (Bank of America)

\$92.57

Total Bank Accounts and Other Assets

\$235,337.65

Total Bank Accounts and Other Assets

\$11,623.31

RRSPs

M.N.

C.M.

FP 7 - RRSP

\$1,155,508

FP 8 - RRSP

\$59,852.56

FP 9 - RRSP

\$221,343.14

FP 9A - RRSP

\$285,714 (the rollover from M.N.)

Total RRSPs

\$1,155,508

Total RRSPs

\$566,909.70

[187] Sharing the RRSPs equally, both are entitled to \$861,208.85. M.N. owes C.M. \$294,299. This can be done as a spousal rollover to C.M.

[188] In terms of the other outstanding family property, the total is \$244,961 and sharing equally each is entitled to \$122,481. Therefore, M.N. owes C.M. \$110,857.

Family Debt

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

[190] M.N. argues the parties' debts and liabilities include the following:

- i. Joint debts as at the date of separation; and
- ii. Personal debts as at the date of separation.

[191] M.N. also questions whether the tax liabilities for the sale of the shares in Company D should be shared and whether the debts incurred since separation are personal or joint.

- [192] According to C.M., the family debt of M.N. is \$81,262 which consists of a shareholder loan due to Company B, money owing on his Visa and MasterCard, and a Scotiabank loan for a Chevy Silverado. C.M.'s debt consists of credit card debts in the amount of \$24,318.
- [193] I accept the accounting of the parties' debts as articulated by C.M. in her Scott Schedule. However, I note that the debts listed as M.N.'s debts in C.M.'s Scott Schedule do not add up to the stated total of \$81,262. Rather, the debts listed add up to only \$48,578.
- [194] I therefore accept there is family debt incurred by M.N. in the amount of \$48,578. I accept that C.M. has incurred family debt in the amount of \$24,318. Shared equally, and assuming both parties paid off their share, C.M. owes M.N. \$12,130 for her share of the family debt.

Reapportionment of Family Property

Legal Principles

- [195] Section 81 of the FLA provides that each spouse is entitled to an undivided half interest in all family property as tenants in common upon separation, with limited exceptions. Family debts are also subject to equal division: FLA s. 81.
- [196] The regime for property division found in the FLA is based on an excluded property model. Section 85 sets out which categories of property are excluded from family property. Generally, property brought into the relationship by a spouse, inheritances, gifts by third parties, court awards, and insurance proceeds are excluded property.
- [197] Section 95(1) of the FLA provides:

Unequal division by order

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
- (b) divide family property as required under Part 6 [Pension Division].

[198] While the presumption is for equal division of family property and debts post-separation, this Court may order an unequal division of family property and debt based on the criteria for reapportionment set out in s. 95(2) and (3) of the FLA:

95 (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1);
- (c) a spouse's contribution to the career or career potential of the other spouse;

- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[199] Section 95(3) enables the court to consider the extent to which the financial means and earning capacity of each spouse has been affected by the responsibilities during the relationship and the objectives of spousal support under s. 161 of the FLA: *Parton v. Parton*, 2016 BCSC 1528 at para. 101, rev'd in part 2018 BCCA 273.

[200] The FRA permitted an unequal division of family property if an equal division would result in unfairness. The FLA raises that bar. A court is only permitted to reapportion family property if an equal division would be "significantly unfair". Justice Brown explained this difference in *L.G. v. R.G.*, 2013 BCSC 983:

[71] In my view, the term "significantly unfair" in s. 95(1) of the FLA essentially is a caution against a departure from the default of equal division in an attempt to achieve "perfect fairness". Only when an equal division brings consequences sufficiently weighty to render an equal division unjust or unreasonable should a judge's order depart from the default equal division.

[201] Hence, the court may order an unequal division of family property or debt, or both, if it would be "significantly unfair" to divide the asset(s) equally.

- [202] M.N. bears the onus of demonstrating that family property should be divided unequally: FLA s. 85(2). Oral evidence is acceptable, subject to an assessment of credibility. In addition, the value of excluded property may be estimated: Parton at para. 53.
- [203] The FLA does not demand precision or mathematical certainty when establishing a claim to excluded property as this would risk defeating legitimate claims. The challenge that confronts litigants is that in relationships of any significant length, documents may have been destroyed and memories decline over time. The proper test for establishing a claim to excluded property under s. 85 of the FLA is therefore on a balance of probabilities, based on clear and cogent evidence. A trial judge may draw reasonable inferences from evidence that is less than precise in order to do justice between the parties: *Shih v. Shih*, 2017 BCCA 37 at para. 44. For example, in *Venables v. Venables*, 2019 BCCA 281, the property that had been brought into the marriage had lost its character as excluded property: at para. 73. This was a basis for an unequal division of property under s. 95(2)(i) of the FLA.

Parties' Positions

- [204] M.N. argues that I should reapportion Company A and Company C in his favour. He argues that his primary occupation since the 1980s has been as a businessman, purchasing and developing property in the East Kootenays. He has operated businesses involving the sale of motor vehicles and recreational vehicles. He has also been involved in purchasing, developing, and operating several RV campgrounds, also in the East Kootenays.
- [205] M.N. emphasizes that the significant assets that he had in 2001 are identified in the Separation Agreement between him and his first wife. These are assets that M.N. owned prior to his relationship with C.M. The identification of the property owned by M.N. and the "assessed values" are specifically identified in Schedule E and paragraph 3.4 of M.N.'s 2002 Separation Agreement with his former wife, B.A.M. They include the following:
- 11 separate parcels of property with an assessment value of \$1,556,700;
 - A shareholder loan in Company A in the sum of \$336,430;
 - A shareholder loan in Company C between \$280,000 and \$360,000 as a result of developing E RV Resort;
 - Three separate bank accounts held at the Bank of Nova Scotia in the total sum of \$45,146;
 - RRSP Investments of \$148,000;
 - A mortgage granted to K.K. in the amount of \$59,404.75 as at May 1, 2002. This mortgage was registered on October 27, 1998; and
 - A mortgage granted to W.L. in the amount of \$59,878.14 as at May 1, 2002. This mortgage was registered on October 27, 1998.

- [206] These assets add up to almost \$2.5 million. The total debts and liabilities that M.N. assumed as part of the Separation Agreement was \$807,300 as at October 3, 2002 (Schedule E of the Separation Agreement). Subtracting this amount from the \$2.5 million results in approximately \$1.6 million.
- [207] M.N. contends that the property and assets that he owned prior to his relationship with C.M. should be excluded. M.N. contests the value of the assets owned by him at the time of cohabitation as set out in the Daum Report.
- [208] M.N. argues that Ms. Daum reduced his share in Company C as of 2001 assuming the company would be liquidated. It was not. He states the following in his submissions:
- a) Prior to 2012, [C.M.] had no interest in the shares in [Company C] and made no financial contributions to the property. The \$3,375,000.00 value of shares as at 2012 was 100% attributable to [M.N.]'s involvement in the business between 1998 and 2002;
 - b) The shares which were transferred from [Company C] to [Company B] were done on the advice of an accountant for tax planning. There was no consideration given by [C.M.] for the shares as they were gifted to her;
 - c) For all intents and purposes any assets owned by [Company C] from the period 2002 - 2012 remained the exclusive property of [M.N.]. There may be a claim by [C.M.] for an indirect interest in the shares prior to that date, however, she made no contributions directly to the company;
 - d) The lands which are owned by [Company C] were purchased in the year 2000 by [M.N.] and his business partner, and were developed into what is now known as E RV Resort;
 - e) The zero value attributed to the shares in [Company C] as at 2001 by Ms. Daum is inaccurate and misleading. At Schedule 3.6 of her report [Note 3], Ms. Daum confirms that the shareholder loan [M.N.] had outstanding was \$283,025.87 of which after adjustments was still in the range of \$262,248 and \$277,272;
 - f) [M.N.] has an interest in [Company C] based upon the value of his shareholder loans in the sum of at least \$283,025.87, which would have been allocated to him if the company was liquidated at that time;
 - g) The value of the interest in [Company C] was also part of [M.N.]'s divorce settlement with [B.A.M.] in 2002;
 - h) In determining the value of the shares in [Company B] a Court should consider the 2001 shareholder loans held by [M.N.] with his two partners in the sum of \$1,028,000 (divided by 37.5% = \$385,500);
 - i) The transfer of the approximately \$3.3 million dollars to a joint holding company for tax planning purposed in 2012 without considerations of payment by [C.M.] should also be considered as important evidence to consider as part of the reapportionment claim; and

- j) From the period 2012 to the present date, [C.M.] has had no involvement in any capacity with [Company C] other than receiving dividends paid to her from the company.
- [209] Based on these excluded properties and assets, M.N. argues it is appropriate to reapportion the family property and assets in his favour. M.N. contends that reapportionment is also supported by his significant contributions to these companies prior to, during, and after the parties' relationship and C.M.'s minimal contributions to these companies. His involvement with these businesses has spanned more than 40 years.
- [210] M.N. argues he is not able to pay C.M. cash from Company C because he holds a minority interest in the company.
- [211] M.N. states that he is prepared to enter into a shareholder agreement with C.M. to address the allocation of dividends and division of the shares in Company A and Company B. First, there will need to be a determination of C.M.'s entitlement after deducting the excluded values and any reapportionment. In the meantime, M.N. proposes that C.M. should receive up to \$5,000 per month in dividends until her shares in Company A and Company B are purchased by M.N. or a third party.
- [212] C.M. argues that an equal division of property and debt is appropriate in this case. She bases this on the change from the FRA to the FLA. The FLA is now explicitly an excluded property regime which presumes an equal division of family property and debt. Her calculations recognize M.N.'s excluded property in the amount of \$763,000 based on the Daum Report.
- [213] C.M. seeks finality, meaning a realistic and clear division of family property that provides her with some liquid assets now and a compensation award that is a fixed sum payable within a fixed period, with adequate security in place while she waits for compensation. C.M. also seeks adequate means to enforce payment of the compensation payment should payment not occur in full by a fixed deadline. C.M. seeks to be cashed out of Company B and Company A based on a 50/50 division.

Analysis

Excluded Property

- [214] M.N. argues that his property was worth more in 2001 than he was given credit for in the Daum Report. However, M.N.'s properties were not appraised at the time. Instead, the Daum Report gave these properties their book value that the company spent to originally purchase the land. As a result, M.N. is advancing a claim for an exclusion of the value of the shares he owned in 2002 and a reapportionment of his interest in Company C and Company A 70/30 in his favour. He also asked for a reapportionment of Company B but he is not clear on the reapportionment percentage.

- [215] I can only accede to M.N.'s request to reapportion the corporate assets in his favour if equal division of these assets would be significantly unfair: L.G. There is judicial discretion to depart from equal division, but there must be persuasive evidence that equal division would be objectively unjust, unreasonable, or unfair in some important or substantial sense: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 40-42.
- [216] M.N. had properties and assets that he acquired and owned during his first marriage from 1985-2001. He owned shares in Company A, incorporated in 1981, and Company C, incorporated in 1998. In 2002, these assets were worth over \$1.5 million.[9] In 2001, Company C and Company A both owned real property, and M.N. had savings and RRSPs. M.N. also had shareholder loans owing to him. These properties and assets are the subject of the excluded property claims in these proceedings.
- [217] Therefore, in 2001, when the parties commenced cohabitation, M.N. owned substantial assets. He owned real property, investments, and corporate assets that he had acquired in the 1980s and 1990s. These are the excluded properties. Ms. Daum determined that M.N. owned shares in Company A worth \$763,000 in October 2001 and deemed this to be "excluded property". I accept M.N.'s argument that this excluded property was undervalued. Ms. Daum flagged this issue at p. 8 of her Report:
- We were unable to obtain information on the value of assets held by [Company C] and [Company A] as at the October 31, 2001 valuation date. Both companies owned real property. We have assumed the fair market value of real property is equal to the book value of the property. We caution the reader that the fair market value of the assets of these companies could be substantially different than book value.
- [218] M.N. testified about the work he had done on his properties prior to the parties' cohabitation. He started his RV business in 1994. He bought many properties between 1985 and 2001 such as land around Moyie Lake which is the land owned by Company A today. Prior to the parties' relationship, he purchased what became Company C with a business partner. They were developed into what is now E RV Resort. As he stated in testimony, by the time he and C.M. began cohabitating, he and his business partner had much of the campground done (phase 1 and 2). They built up the land to be above the high-water mark, they built a marina, and had landscaped. There were 60 lots on each side. Phase 3 was putting in water, power, and sewer systems. Phase 3 was mostly completed at the time of cohabitation. He sold each lot for \$70,000 to \$75,000 when they were complete. Based on this amount of work and added value, I agree that to value the land at its purchase value three or four years earlier is incorrect.
- [219] In 2012, the company known as Company B was incorporated and M.N. transferred the shares that he owned in Company C at a value of \$3,375,000. M.N. argues that the \$3,375,000 value of the Company C shares as at 2012 when it was incorporated was attributable to his involvement and work between 1998 and 2002.

- [220] C.M. did not deny the excluded properties may be undervalued; she simply argued that they should have been assessed as to their worth in 2001.
- [221] Section 85(1)(a) of the FLA provides that property acquired before the relationship between the spouses began is excluded property. In this case, there is no dispute that there is excluded property but the value of the excluded property is very much in issue.
- [222] Unfortunately, the value of this excluded property has not been properly recognized in C.M.'s calculations because this property was not valued when M.N. and his first wife signed a Separation Agreement specifically identifying the assets owned by M.N. in December 2001. These assets add up to almost \$2.5 million. The total debts and liabilities that M.N. assumed as part of the Separation Agreement was \$807,300 as at October 3, 2002 (Schedule E). Subtracting this amount from the \$2.5 million results in approximately \$1.6 million.
- [223] The move to an excluded property regime is premised on excluded properties being properly valued and subtracted from family property. Once that is achieved, the division of family property should be equal, especially when the parties are financially interdependent and one party has primary responsibility for raising the children, freeing the other party to further their career. This fosters "certainty and predictability in property division": Jaszczewska at para. 37. However, the crucial component of this regime is that the assets brought into the relationship are excluded before the family property is to be divided equally.
- [224] I agree with M.N. that the property he brought into the relationship in 2021 was undervalued as acknowledged in the Daum Report. I agree that much of the 2012 value was built during the excluded period when M.N. and his business partner added value to Company C. Based on the undervalued excluded amount, I find that a reapportionment claim is justified.

Buffalo Farm

- [225] As already noted, a contentious issue at trial was the value of the buffalo farm, particularly the mortgage registered against title. This is the property at Ferrell Creek.
- [226] M.N. purchased the buffalo farm in 2008. He registered a mortgage against the property, and claims the balance owing for expenses between 2008 to present incurred by G.J. is \$453,000. G.J. testified that he made improvements to the home on the property. He testified that he spent \$75,000 doing so. He also testified that he built a large building near the hay shed at the cost of \$120,000. He also supplied farm equipment to be used on the farm. The mortgage includes the labour costs of G.J. and his wife working on the farm since 2014. He testified that he expects to get the money back from the mortgage when the property sells. There is no current plan to sell the property.

- [227] Unfortunately, the agreement between G.J. and M.N. was based on a handshake. There has been no accounting of the various purchases made by G.J. G.J. agreed in cross-examination that he may have overvalued the equipment that he listed to justify the mortgage and admitted he may have been guessing at the value of the equipment.
- [228] While I accept the farm is encumbered, the evidence was insufficient for me to determine the value of any mortgage registered against the buffalo farm. I do not accept that it is \$453,000 based on the testimony of G.J.
- [229] I have accepted there are costs associated with running a buffalo farm, even if it is being used for tax purposes. Improvements have been made to the farm since 2008. For example, the Aspen Grove property appraisals confirm improvement on the buffalo farm in the amount of \$254,100. In addition, there was a \$121,100 improvement for an equipment storage building. I therefore accept there is an encumbrance against the property.

Dividends

- [230] M.N. also testified that he was unable to withdraw dividends, despite having to take a dividend of \$10,000 to match that of C.M., between 2019 and 2021. He testified that he did not receive one penny because his share went into a shareholder loan to the company. In addition, he had to pay taxes on the monthly \$10,000 when he was not receiving the benefit of it.
- [231] Rather than withdraw his \$10,000 monthly, he withdrew significant amounts from his RRSPs (\$576,214), some of which were used to pay K.S.' university costs. The RRSPs were used to support the family. I have already discussed this in the Guidelines income section of these Reasons.

Contributions during the Marriage

- [232] In terms of C.M.'s minimal contributions to the business, the FLA directs this Court to recognize direct and indirect contributions to the marriage. From early in the relationship until 2018, C.M. was the primary caregiver of the children. She thus made a direct contribution to the businesses in that this allowed M.N. to focus on his career.

Conclusion

- [233] I have helpful evidence regarding valuations in the Daum Report. However, I have incomplete evidence regarding various financial matters, specifically the value of the excluded property. Property division does not require a forensic analysis: Shih.
- [234] I accept that M.N. brought significant assets into the relationship. The exact value of M.N.'s excluded property claim is impossible to calculate based on the information before me. I do find that it was significantly more than the \$763,000 amount that is currently reflected in the Daum valuation of Company A.

[235] I conclude that M.N. has met the onus of establishing that an equal division of family property would be significantly unfair in these circumstances. Although the FLA operates through an excluded property regime, the excluded property in this case was not accurately valued in 2001. The valuation was based on what the bare land was worth when it was purchased a number of years prior and did not take into account all the work done to develop an RV park on the property.

[236] I find that the family property should be reappportioned in M.N.'s favour for the following reasons:

- M.N.'s excluded property and assets were not properly valued in 2001. This includes the excluded property that was sold ([address redacted]).
- There is a mortgage on the Ferrell Creek property. Although its value was not proven at trial, I accept M.N.'s testimony and documentation that there is some encumbrance on the property that has not been accounted for in this proceeding. The debt associated with the farm equipment is family debt.
- Also with respect to the Ferrell Creek property, I added back in all the farming losses to M.N.'s income. While the farming losses were high, there would be many legitimate losses that should have been written off against M.N.'s income.
- In 2018, M.N. paid 100% of the taxes for the capital gains from the sale of Company D shares. C.M. received her 50% of the proceeds from the sale of Company D on a tax-free basis.
- No income was imputed to C.M. between 2018 and 2020 despite the presumption of self-sufficiency and her experience, business training, and real estate license.
- M.N. did not benefit from the \$10,000 per month dividends because he left his share of the dividends in the company.
- M.N. has made post-separation contributions to the corporate properties.
- C.M. is not yet 50 years of age. She has many years of work ahead of her, whereas M.N. is near retirement: *Bamford v. Mulyati*, 2017 BCSC 945.

[237] Based on s. 95(2)(i) of the FLA, I am reappportioning the value of Company A and Company B 60/40 in favour of M.N. This is an assessment and not a precise calculation. The value of the excluded property and the value of the mortgage against the Ferrell Creek property may have been significant enough to justify the reappportionment of 70/30 as sought by M.N. However, M.N. did not provide sufficient evidence to permit me to reappportion Company A and Company B beyond a 60/40 split.

[238] Even with the reappportionment, C.M. will be in a solid financial position from which to start her career in real estate.

Spousal Support

Legal Principles

- [239] Spousal support orders may be made under s. 165 of the FLA or s. 15.2 of the DA. The objectives and factors underlying spousal support orders mirror each other in the provincial and federal legislation: *Li v. Liu*, 2014 BCSC 1110 at para. 35.
- [240] When determining the amount of spousal support, the Spousal Support Advisory Guidelines ("SSAG") are an appropriate resource: *Lahdekorpi v. Lahdekorpi*, 2016 BCSC 2143 at para. 20, relying on *Redpath v. Redpath*, 2006 BCCA 338 at paras. 37-38.
- [241] The provisions relating to spousal support are found in s. 15.2 of the DA. Section 15.2(6) sets out the objectives of spousal support:
- (a) recognize any economic advantages or disadvantages to the spouses arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [242] The Supreme Court of Canada described the three grounds for entitlement to spousal support: compensatory, contractual, and non-compensatory (needs-based): *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at 422, 63 B.C.L.R. (3d) 77.
- [243] The mere fact of marriage does not automatically entitle a party to spousal support. As stated in *Moge v. Moge*, [1992] 3 S.C.R. 813 at 864, [1993] 1 W.W.R. 481, marriage is not a "general tool of redistribution."

Compensatory Entitlement

- [244] Compensatory spousal support addresses the economic advantages enjoyed by one partner as a result of the other partner's efforts during the marriage. It addresses the contributions of a spouse to the marriage and their losses upon its breakdown.
- [245] The importance of the marital standard of living in lengthy marriages is a consideration. The starting point for this analysis was discussed in *Moge* at 870:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement... Furthermore, great disparities in the standard of living that would be experienced by spouses in the absence of support are often a revealing indication of the

economic disadvantages inherent in the role assumed by one party. As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution...

[Citations omitted.]

[246] This principle was also addressed more recently in *Nustad v. Nustad*, 2020 BCSC 534:

[68] in long-term marriages there is an increased presumption that the partners should not be economically disadvantaged as a result of the separation. Nor should a partner be unjustly deprived of the standard of living enjoyed during the marriage. While spousal support does not guarantee that either party will continue to experience the standard of living enjoyed during the marriage, the parties are often entitled to roughly equal standards of living post-separation

Non-Compensatory Entitlement

[247] Non-compensatory support is needs-based. It occurs at the breakdown of the relationship. It recognizes the economic hardship and loss of the marital standard of living that arises as a result of the economic interdependency during the marriage.

[248] Non-compensatory support is based on the economic disadvantages generated by the dissolution of the marriage, not contributions made during the marriage: DA, s. 15.2(6)(c). It is not based on one spouse forfeiting a career opportunity or playing a supportive role in the marriage: *Lee v. Lee*, 2014 BCCA 383 at paras. 51-61. Non-compensatory support is based on the social obligations that arise when a partner is unable to support themselves following the breakdown of the marriage: *Bracklow*. It is often ordered when one spouse becomes ill or disabled and is unable to work following the separation.

Duration of Support and Self-Sufficiency

[249] A recipient of spousal support has an obligation to make reasonable efforts to become independent and self-sufficient. However, it is not an absolute duty: DA s. 15.2(6)(d); *Leskun v. Leskun*, 2006 SCC 25 at paras. 26-27; *Chutter v. Chutter*, 2008 BCCA 507 at para. 56. The court in *Tedham v. Tedham*, 2005 BCCA 502 explains the obligation as follows:

[33] ... [Section] 15.2(6)(d) of the [DA] does not require self-sufficiency, but simply seeks to promote self-sufficiency "in so far as practicable". In determining what is practicable, regard must be had to all of the circumstances, including the age and gender of the spouse, her/his skills and education, or lack thereof, the opportunities for retraining, and the realistic prospect of the spouse being able to find not just a job, but one which enables her/him to become self-sufficient, which may be quite a different matter.

- [250] The duration of spousal support is shaped by the basis of entitlement. In non-compensatory claims, support is more likely to be viewed as transitional with the expectation that the recipient attain self-sufficiency as soon as practicable: Moge at 383.

Parties' Positions

- [251] M.N. emphasizes that s. 15.2 of the DA identifies the objectives for a court to consider when making spousal support orders. Subsection 6(d) requires the court to promote the self-sufficiency of each spouse within a reasonable period of time.
- [252] C.M. submits that she is entitled to spousal support on compensatory grounds. She contends that her pre-relationship status as a single mom who had interests in hair salons contrasts markedly with her circumstances in April 2018 when the parties separated. She had, by agreement, been a stay-at-home mother raising five children. C.M. did not work outside the home while the children were young, between 2002 and 2011, when the parties lived together in Cranbrook.
- [253] C.M. argues she is also entitled to spousal support on non-compensatory grounds. She argues that she is parenting two children and has work visa problems restricting her from starting a business as a realtor in Florida.
- [254] C.M. submits that in light of the dividends and retroactive s. 7 expenses, the fair outcome regarding spousal support is to treat M.N. as having satisfied his obligations for the period from April 1, 2018 to September 1, 2021.
- [255] Based on the SSAG, C.M. seeks an indefinite term of spousal support going forward. C.M. argues the dividend payments should cease and be replaced with an order for M.N. to pay spousal support to her in the mid-range amount of \$2,710 per month, until further order. This order would be subject to review regarding quantum anytime after M.N. turns age 65 on December 24, 2023.

Analysis

- [256] C.M. concedes that any obligation for past spousal support has been satisfied.[10] If spousal support is to be paid going forward, consideration must be given to the amount and duration.
- [257] At issue is whether spousal support should be paid by M.N. to C.M. once she receives her share of the family property. M.N. argues spousal support payments should cease at that time. M.N. stated that he is willing to pay C.M. up to \$5,000 per month until she receives compensation for her shares in Company B and Company A.
- [258] At the commencement of their relationship, C.M. was working full-time operating her hair salon businesses. The businesses were sold after M.A.M. was born. There is no evidence before me that the sale of these salons brought any money into the parties' joint finances.

- [259] The parties agreed that C.M. would not work when the children were young. The agreement between the parties does not appear to have extended beyond 2011 when the parties moved to Florida. When the parties moved to Florida, they were involved in purchasing and selling homes together. After 2014, M.N. began spending most of his time in Cranbrook and C.M. began working as a realtor in Florida. She had previously worked as a general contractor in Canada and had sold their own homes without a realtor's license.
- [260] C.M. has not secured any employment since the parties separated in April 2018. She testified she has been unable to obtain a visa permitting her to work in the United States.
- [261] C.M. remarried on March 16, 2020. She lives with her husband, S.H., and his young daughter in Florida. S.H.'s income is approximately \$70,000 USD per year.
- [262] There was no documentary evidence before me regarding C.M.'s difficulty with immigration. She testified that she has applied for her green card status in the US and expected to hear back from immigration the summer of 2021. She testified that she is eligible for a green card because she is married to a US citizen.
- [263] M.N. is also currently in a common law relationship, although his partner continues to own and sometimes reside in her own home.
- [264] C.M. has not worked since separation but she has strong work skills and training. She has a business and marketing diploma and obtained her real estate licence in Florida in 2016. She has no health issues or limitations that would prevent her from working. There is an expectation that parties become self-sufficient post separation. From the evidence before me, it is my view that C.M. has not taken any meaningful steps to become self-sufficient. C.M. chose to continue residing in Florida despite being unable to work.
- [265] C.M., at 48 years old, is relatively young and has the capacity to work outside the home. The children are getting older and do not need constant supervision. Lastly, C.M. should be receiving her green card soon which will allow her to work in Florida. This evidence all strongly supports ending spousal support once the family property is divided and C.M. has independent financial means.
- [266] Even with the reapportionment, C.M. will have a considerable amount of money following the division of property. The presumption in the FLA is that C.M. should work to support her children. Further, s. 12.6.2 of the SSAG provides that cases with high property awards may result in a spouse getting a spousal support award in the lower end of the range or for a shorter duration.
- [267] I find any economic disadvantage suffered by C.M. will be largely addressed by the parties' property division. However, the threshold requirement for entitlement is met on a limited basis.

- [268] Prior to receiving compensation for her shares, M.N. should pay to C.M. \$10,000 per month in dividends (which should be accounted for from her share of the property division). Once C.M. receives her shares (which she can take out in dividends to avoid large tax consequences), spousal support should continue for two years at the mid range of \$1,665 per month. At that point, in my view, C.M. should be self-sufficient. If she believes she is still entitled to spousal support, a review will be required to determine if further support should be ordered.

Orders

Parenting Arrangements

- [269] Pursuant to s. 39(1) of the FLA, the parties remain guardians of P.M., A.M., and B.M.
- [270] As of July 2021, M.A.M. (unless further documentation is provided) and K.S. ceased being children of the marriage entitled to child support.
- [271] P.M. and A.M. will continue to primarily reside with C.M. in Naples, Florida. B.M. will continue to reside primarily with M.N. in Cranbrook, BC. There is to be no relocation of B.M. except in accordance with the relocation provisions in the FLA.
- [272] The parties shall have unhindered electronic access to the children not primarily residing with them.
- [273] Pursuant to ss. 40 and 41 of the FLA, each party has parental responsibilities with respect to P.M., A.M., and B.M. in consultation with each other. If C.M. has a particular concern about B.M.'s vaccinations, orthodontic needs, or educational supports going forward, she has leave to apply to this Court for directions. Subject to scheduling, the parties can bring the application before me.
- [274] The children shall be free to travel from time to time between Cranbrook, BC and Naples, Florida, and elsewhere, as agreed upon by the parties. Both parties have liberty to apply to this Court for directions in the event of a disagreement over travel arrangements for P.M., A.M., and B.M. Subject to scheduling, the parties can bring the application before me.

Child Support and s. 7 Expenses

- [275] Based on the parties' Guidelines incomes of \$200,817 (M.N.) and \$60,000 (C.M.), I order that M.N. pay C.M. prospective child support in the amount of \$2,192 per month.
- [276] I order that C.M. pay to M.N. \$4,625 for retroactive s. 7 expenses for M.A.M. and B.M. up to June 30, 2021. I further order that C.M. pay to M.N. \$4,889 for his over-payment of child support.
- [277] Given my findings of the parties' incomes, M.N. will pay 77% and C.M. will pay 23% of the children's special and extraordinary expenses from July 1, 2021 onwards.

[278] After 2021, there should be annual reviews to determine the parties' respective annual incomes. The review should take place through exchanges of income documents by May 31, 2023, and by May 31 each year thereafter. Adjustments to net s. 7 expenses and child support become effective on July 1, 2023 and on July 1 each year thereafter.

Property Division and Spousal Support

[279] C.M. is to retain as her sole property the following assets:

- Her home on [address redacted], Naples, Florida, appraised at \$661,500;
- Her RRSP, valued at \$59,853 on June 2, 2021;
- Her RRSP, valued at \$221,343 on June 2, 2021;
- RRSP rollover of \$285,714 from M.N.'s RRSP pursuant to the April 2, 2019 Order;
- The Park Model, valued at \$200,000 (along with its associated rights of occupation and lease);
- Her BMO chequing accounts (949, 754, and 217);
- Her Bank of America accounts (6183, 5162, 1486, 2715); and
- Her Cadillac Escalade, valued at \$16,250.

[280] To equalize the parties' RRSPs, M.N. shall transfer the sum of \$294,299 from his RRSP to C.M.'s RRSP by way of the spousal rollover provisions of the Income Tax Act.

[281] M.N. is to compensate C.M. for her half of the value of the Ferrell Creek property (\$584,650).

[282] Company A and Company B are to be reapportioned 60/40 in favour of M.N.

[283] M.N. is to pay C.M. 10% of the total amount of compensation for the division of corporate properties as set out in this decision (the "Compensation Payment"), forthwith.

[284] I order that M.N. shall pay the remainder of the Compensation Payment amount, plus interest, within nine months after the Reasons for Judgment in this matter are released, with interest at the Court's posted post-judgment interest rate. The interest is to begin accruing 60 days after the release of these Reasons for Judgment.

[285] C.M. shall transfer beneficial ownership of her shares in Company B to M.N. forthwith, but will retain the shares nominally in her name as security for M.N.'s obligation to pay her the Compensation Payment ordered above. M.N. will indemnify C.M. with respect to any tax consequences to C.M. between the present date and the date of completion of the Compensation Payment to C.M. M.N. is restrained from in any way encumbering any of the issued and outstanding shares (common and preference shares) without the written consent of C.M. Such consent shall not be unreasonably withheld.

[286] C.M. is entitled to transitional support in the amount of \$10,000 per month in dividends in lieu of spousal support until she receives the Compensation Payment.

[287] Once C.M. receives her full Compensation Payment, she is entitled to spousal support \$1,665 per month for two years. At that point there will be a presumption of self-sufficiency and therefore a review will be required before further support is ordered.

[288] M.N. shall retain as his sole property the following assets under his name, subject to the Rollover and Compensation Payment obligations set out above:

- Shares of Company A;
- Shares of Company B;
- After compensating C.M. for her half of the value of the Ferrell Creek property, the Ferrell Creek property;
- The home on [address redacted] in Cranbrook, valued at \$750,000;
- Personal property and chattels identified in Notice to Admit #2 as modified by this Judgment;
- His RRSPs, with adjustments due to the Rollover;
- Shareholder loan due to M.N. from Company A, valued at \$71,240;
- Bank of Montreal TFSA, valued at \$49,521;
- HSBC account, valued at \$5,029.65; and
- Chevy Silverado truck, valued at \$20,000.

[289] An order that going forward each party shall remain solely responsible for their own debts and liabilities. They shall not pledge the credit of the other, and shall hold the other harmless for any debts in their name whether arising during the marriage or post-separation.

[290] M.N. is to transfer the Red Volkswagen Beetle to K.S. within 30 days of the release of these Reasons for Judgement. M.N. is to take whatever steps are within his control to facilitate this transfer.

[291] In the event I have missed an asset or debt, made a calculation error, or there are issues with respect to implementation of any order, the parties have leave to apply for further directions.

Costs

[292] If the parties are unable to agree on costs, within 60 days they may contact Supreme Court Scheduling to request to appear before me to speak to the issue.

"D. MacDonald J."

- [1] This is comprised of 'other employment income' of \$7,254 and taxable dividends in the amount of \$34,800 from Company B.
- [2] C.M. is claiming a portion of the net after-tax proceeds under Division of Family Property and is not seeking to double-count this non-recurring capital gain as being part of M.N.'s Guidelines income for support purposes. Therefore C.M. accepts that this adjustment should be made and the \$848,000 figure reduced accordingly by \$381,667.
- [3] The Report notes that no mechanical inspections were performed on the motor vehicles. The motor vehicles varied in years, makes, models and condition. Some of the motor vehicles are operative; others are for parts, restoration, or display. It was not known if the motor vehicles were compliant with the Motor Vehicle Act, R.S.B.C. 1996, c. 218 and Regulations, B.C. Reg. 26/58 or are road compliant.

- [4] C.M. explained this as follows:

Taking into account (a) all of [M.N.]'s substantiated and documented adjustments of corporate property moving into the [Company A] column in the Table found at Appendix A to the Notice to Admit (b) changes to the fair market value of certain items based on the actual sale price to third parties (c) reductions in 'inventory impairment' charges to reflect fair market values from the Appraisal rather than liquidation values (d) the elimination of 'inventory impairment' charges for inventory listed in Appendix B which are not cited in the Appraisal, the [Company A] inventory value found in Appendix B should properly be increased from \$947,541.54 by \$31,952 to \$979,493.54

- [5] According to the Daum Report, distributive taxes are those taxes that are paid when an owner of a company disposes of the company and realizes personal taxes. Distributive taxes were not included in the calculation of fair market value in the Daum Report. Ms. Daum did account for capital gains and taxes on gains, the adjusted cost base, the inclusion rate, the top marginal rate, and after-tax proceeds.
- [6] The 79.74% is the family property portion of the inventory and the 20.26% is M.N.'s personal portion of the inventory. Therefore \$3,766,945 less \$763,000 (excluded), less \$486,758 (family portion) equals \$2,517,187.
- [7] The difference of \$190,000 between the low en bloc figure and the high en bloc figure flows from the use of a 15% and 10% minority discount for the 37.5% interest of Company B in Company C.
- [8] January 10, 2020 Notice to Admit.
- [9] A Separation Agreement dividing the family assets M.N. then owned with B.A.M. was signed in December 2002. The Agreement specifically identifies the excluded property he owned and the values.

[10] By court order, C.M. has received funds of \$10,000 per month through dividends from Company B in lieu of interim spousal support. C.M. submits that these funds were an appropriate stream of revenue to her from the ongoing profitable operation of the RV parks while awaiting trial.

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