
CANADA / JUDGMENT

D.P.R. v. L.L.R.

2015 BCSC 2317

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 2317 D.P.R. v. L.L.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.P.R. v. L.L.R.,

2015 BCSC 2317

Date: 20151210

Docket: E44803

Registry: New Westminster

Between:

D.P.R.

Claimant

And

L.L.R.

Respondent

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Claimant Appearing in Person:

D.P.R.

Respondent Appearing in Person:

L.L.R.

Place and Dates of Trial:

New Westminster, B.C.

September 28-30, 2015;

October 1, 5, 2015

Place and Date of Judgment:

New Westminster, B.C.

December 10, 2015

I. Introduction

- [1] This is a family action in which the parties represented themselves at trial. The only witnesses were the parties themselves.
- [2] The parties began cohabiting in March 1998 and were married July 4, 1998 in Toronto, Ontario, where they resided at the time. They separated March 24, 2013. At that time they were living in Surrey, BC. They have one child, B., who is presently 12 years of age, born February 25, 2003. B. resides with L.L.R.
- [3] D.P.R. is a professional engineer. L.L.R. has recently returned to the workforce after a long absence. She has started a new career as a strata property manager.
- [4] The issues to be resolved are primarily financial.

II. Issues

- [5] The major issues are as follows:
 - 1. adjustments/compensation claims of D.P.R. relating to the period between separation and trial;
 - 2. division of assets and liabilities;
 - 3. spousal support;
 - 4. child support;
 - 5. custody, guardianship, parenting; and
 - 6. costs.

III. Background

- [6] D.P.R. is now 52 years of age. He is originally from Northern Ireland. He graduated as a chemical engineer in 1985. He worked as an engineer in Northern Ireland until 1988, then worked in South Africa until 1994, after which he immigrated to Canada. He is a registered professional engineer in BC and Ontario.

- [7] The family moved to BC from Ontario in 2011.
- [8] I will set out further details as to D.P.R.'s career below in the context of the support issues.
- [9] L.L.R. is currently 50 years of age. She grew up in Mississauga, Ontario. Her family remains there. She obtained a Bachelor of Journalism from Carleton University, Ottawa, in 1988. From 1990 to 1997, she worked with the Ontario Lottery and Gaming Corporation in Sault St. Marie, Ontario. While working for the Lottery Corporation, she earned an Executive Master of Business Administration degree from Lake Superior State University, Michigan. She earned the MBA in 1994 or 1995, she testified. She moved to Toronto in 1995 and obtained a job with the Ontario public television broadcasting service, called TVOntario. Her CV indicates that she began working for TVOntario in 1997. She worked there until 2000.
- [10] L.L.R. described her job with the broadcaster as being in the field of membership communications, particularly direct mail fundraising and marketing.
- [11] In 2000, she left her job with TVOntario, as she and D.P.R. moved from Toronto to Ottawa to accommodate a job change for D.P.R. Her last significant employed work was with TVOntario. D.P.R. has been the primary income earner since 2000.
- [12] A five day trial of this matter was scheduled to commence November 17, 2014. At the time D.P.R. was working for Spectra Energy, through his company Saoirse Process Consulting Inc., (SPCI). Very shortly before the start of the scheduled trial D.P.R.'s work with Spectra was terminated. Termination of D.P.R.'s work with Spectra caused an adjournment of the trial, on the day it was set to commence. At the time both parties had legal counsel. Several months later both parties became self-represented.
- [13] Upon separation, the parties owned and resided in a residence in Surrey. The residence was sold in early July 2015. Net proceeds of about \$300,000 were placed in a lawyer's trust account. Other than retirement savings accounts, the funds in trust are the most significant asset remaining to be divided.
- [14] Spousal and child support was informal until an interim order was made by Mr. Justice Saunders on September 25, 2013.
- [15] The issue of division of assets and liabilities is intertwined with and complicated by numerous issues relating to the claims and allegations the parties make with respect to their finances since separation, and past spousal and child support obligations.
- [16] There are very few areas of agreement between the parties in relation to the details of their finances since separation.

- [17] The parties have each adduced voluminous documents such as bank statements, credit card statements, brokerage statements and many other source documents. In preparing for trial, D.P.R. was under the misapprehension that documents to be adduced at trial should be organized and indexed with reference to the manner in which they were attached to prior affidavits in the proceedings. In the result, his documents are largely an unorganized jumble, with no useful index.
- [18] The starting point for asset division is a list of assets at the time of separation. L.L.R. provided such a list in her evidence and submissions. D.P.R. did not provide coherent, complete evidence in this respect. The accounting he provided is selective, and focused upon the claims he presented. He testified that prior to separation L.L.R. was responsible for the family finances. No doubt this hindered his ability to present his case in relation to financial matters.
- [19] I am required to do the best I can with a very difficult evidentiary record.

IV. Analysis

A. D.P.R.'s Compensation Claims

- [20] On separation (March 24, 2015) L.L.R. left the matrimonial home and lived in temporary accommodation. She returned to the home and D.P.R. departed in mid-April 2013, to rented accommodation. She remained in the home until it was sold. Possession was given to the buyers July 4, 2015. The net proceeds of the sale of the home (\$299,099.72) were placed in a lawyer's trust account.
- [21] There was no court order or agreement for sharing of expenses or for payment of spousal support or child support for several months after the parties separated on March 24, 2013, until the order of September 25, 2013. At the time, D.P.R. was working for Tonmoor International and Spectra Energy, through SPCI. L.L.R. was not employed and had no income. She did not begin earning an income until March 2015.
- [22] The order of September 25, 2013 utilized Guideline income of \$100,670 for D.P.R., reviewable at any time after December 6, 2013. On that basis the court ordered interim spousal support of \$2,800 per month and interim child support of \$935 per month. (In total, \$3,735 per month.) The court also ordered that D.P.R. be responsible on an interim basis for certain expenses: one-half of the mortgage payments, payment in full of the property taxes and house insurance, and payment in full of the loan payments, insurance and major repairs if any for the family's vehicle, a 2013 Hyundai Santa Fe. The interim order has remained in place for a longer period than was initially expected due to the adjournment of the trial scheduled for November 2014.

- [23] D.P.R. failed to comply fully with the order of Saunders J. Support payments were irregular. As of March 27, 2014, arrears were \$6,099. During most of 2014 there were large arrears at all times. While by the end of December 2014 the accumulated arrears stood at only \$842, the arrears grew rapidly after that, and stood at \$15,830 when the house was sold in early July 2015. No payments were made after that, prior to trial.
- [24] D.P.R. made the car loan payments on the Hyundai until February 2015, but then stopped making payments. The car was repossessed on behalf of the Royal Bank on May 7, 2015 (\$30,776.99 was owed). The amount of the indebtedness suggests that the debt was inflated by fees and penalties. There is no documentary evidence as to the amount, if any, of unpaid indebtedness after the seizure and presumed sale of the vehicle. In his evidence, D.P.R. guessed that there might be a shortfall of \$3,000 or \$4,000 owing on the vehicle loan, which he thought would be in his name. Documentary evidence should have been available in this respect and since there is none, I cannot find that there is any remaining debt.
- [25] D.P.R. paid some but not all of the vehicle insurance amounts.
- [26] The net proceeds from the sale of the house were notionally equally divided by the law firm, except for \$15,830 paid to L.L.R. for accumulated unpaid spousal and child support and \$550 paid to the Director under the Family Maintenance Enforcement Program (FMEP) for default fees and charges on the part of D.P.R. In the result, \$157,740 was allocated to L.L.R. and \$141,359 to D.P.R. At trial, D.P.R. had continued to fail to make support payments for the months following the house sale. I made an order for release of \$11,205 from the account as payment for support pursuant to the interim order for August, September and October 2015, and \$5,000 for D.P.R.'s own use. All funds so released were for the account of D.P.R., of course.
- [27] D.P.R. makes substantial claims for compensation. His claims add to \$125,149. A summary is as follows:
1. Occupation rent:
\$28,860
 2. Pre-interim order support expenses:
\$28,860
 3. Mortgage "overpayments":
\$9,322
 4. Veterinarian bills (50%) for dog:
\$800
- Subtotal:

\$67,582

[28] Payments made beyond spousal support and child support, pursuant to the interim order ("Extra third party payments" using D.P.R.'s description):

(a) Car payments:

\$8,600

(b) Car insurance:

\$2,530

(c) 50% of mortgage payments:

\$31,263

(d) Property taxes:

\$9,400

(e) House insurance:

\$2,733

(f) Interest on Scotia Bank line of credit (50%):

\$1,074

(g) Medical Services Plan:

\$1,967

Subtotal:

\$57,567

[29] The occupation rent claim consists of the rent that D.P.R. has paid to live elsewhere since April 2013 when he claims he was "ousted" from the home and forced to acquire other accommodation. There is no evidence of the rental value of the home, which would be a more typical basis for making such a claim. The pre-interim order support expenses are D.P.R.'s personal tabulation of the amounts that he says he paid for various household and domestic expenses before the interim order went into effect on October 1, 2013. The mortgage "overpayments" are payments D.P.R. says he made beyond the 50% share set out in the interim order. D.P.R. contends that he paid the entirety of the property taxes. The Scotia Bank line of credit interest claim concerns interest payable on a joint debt of the parties at the time of separation. The interim order stipulated that D.P.R. was to pay this interest. The rest of the claims are largely self-explanatory.

- [30] D.P.R. contends that the pre-order support amounts and the "extra third party payments" should be declared to be spousal support so that he can claim them as deductions for income tax purposes. To the extent that such payments are spousal support, this would provide a tax benefit to D.P.R. and impose a tax burden upon L.L.R..
- [31] In general terms, what D.P.R. seeks is a re-allocation of family expenses incurred post-separation and pre-trial. As is readily apparent, the effect of what D.P.R. seeks is to shift a large part of that burden onto L.L.R. The result would be that most of her share of the proceeds of the sale of the home would be allocated to D.P.R. D.P.R.'s claims could be interpreted as claims for unequal division (re-apportionment) of family property and family debt under s. 95 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], although he did not put his claims on this footing.
- [32] Under part 5 of the FLA, both spouses are entitled to family property and are responsible for family debt. On separation each spouse is entitled to an undivided half interest in all family property and is equally responsible for family debt. The FLA classifies property into either "family property" or "excluded property" the latter is excluded from the pool of family property that is divided. Family property is all real and personal property that becomes owned by either spouse after the date of cohabitation. Excluded property is generally property owned by the spouse before cohabitation, as well as certain property acquired after cohabitation.
- [33] Should an equal division of family property and family debt be significantly unfair as of the date of separation, the court may order an unequal division of family property or family debt, or both (s. 95). In *Remmem v. Remmem*, 2014 BCSC 1552, the court stated that the unfairness must be compelling or meaningful having regard to the factors set out in s. 95(2). The court need not exact "perfect fairness", but only when equal division would be unjust or unreasonable should a judge depart from equal division: *L.G. v. R.G.*, 2013 BCSC 983.
- [34] With one small exception, I reject these claims. My reasons for rejecting the claims are as follows:
1. The pre-separation family expenses carried on and could not be avoided. In the main, they were the inevitable consequence of obligations that both parties took on jointly prior to separation. The mortgage payment alone was \$2,314 per month (the mortgage was very large). The relatively new family vehicle was also financed. The car payment was \$478 per month. Nor could the other bills for property taxes, insurance, utilities be avoided. It is unfair to retroactively impose the full burden of these costs upon L.L.R.
 2. The interim spousal support order of \$2,800 per month was in line with the Spousal Support Advisory Guidelines [SSAG]. However, as a practical matter that amount of support was inadequate to cover the entire regular household and living expenses in the interim period, (as Mr. Justice Saunders obviously recognized), at least until the house could be sold, which did not occur until July 2015. D.P.R. was also ordered to pay child support of \$935 per month for B.'s care, but even adding in this amount does not substantially change the overall

picture.

3. L.L.R. had no real choice but to remain in the residence. She had no income, and nowhere else to go. I accept her evidence that both parties were of the view that she and B. should remain in the home in part for his benefit, in order to provide stability and proximity to his school nearby.
4. L.L.R. did not delay or obstruct the sale of the home, nor did she receive any special benefit from its use prior to sale. As of August 1, 2013 she was already urging D.P.R. to sell the house.
5. In addition to half of the mortgage payments, L.L.R. paid for the utilities and paid maintenance costs of \$2,681. In short, she paid her fair share of the ongoing costs of the home.
6. I accept L.L.R.'s evidence that she incurred expense and went to considerable effort to maintain the residence and to make it more saleable. Her efforts paid off, to the benefit of both parties. The home increased in value by some \$90,000 between the time of separation and sale. Some of this would be due to market forces, no doubt. But I accept that both parties benefited from the efforts of L.L.R. and from the delay.
7. D.P.R.'s evidence and submissions are not always reliable. For example, D.P.R. states that he paid \$6,044 in mortgage "overpayments" from October 2013 to March 2014. He makes a further claim for \$3,278 for October 2014 to April 2015, thus adding to \$9,322. He points to bank statements showing these payments. However, the bank statements are less than clear in this respect. They show the payments D.P.R. claims he made, to March 2014, but after that there is no clarity. L.L.R. does not accept his calculations. I accept the calculations of L.L.R. in preference to that of D.P.R. in this respect. I found her evidence as to financial matters generally reliable. L.L.R. states that she was unable to pay her half of the mortgage payment for a few months. She paid her share for 21 months, but missed payments for several months, because D.P.R. failed to make the required support payments. I accept that, as she states, she paid a total of \$21,762 towards the mortgage payments, a shortfall of \$2,430 in relation to the requirements of the interim order. In contrast, D.P.R. asserts he made total mortgage payments of \$55,652 (\$31,263 pursuant to the order plus \$24,389 in other payments of which \$9,322 are beyond 50%, therefore "overpayments"). I accept L.L.R.'s evidence that the amount "overpaid" by D.P.R. is only \$2,430, not \$9,322.
8. D.P.R.'s claim for property taxes is not fully supported by the documents and is therefore questionable. As a result of default in payment of taxes, the mortgage lender began to pay the taxes at some point and added the tax amount to the mortgage balance. I have no reliable accounting about any of this.
9. D.P.R.'s claim for occupation rent is based upon 100% of the rent he paid to reside elsewhere until the house was sold. The claim substantially duplicates his claim for half of the mortgage payments. Part of the claim covers a period of five months (April through

September 2013) when no support was paid. D.P.R. lists expenses of some \$43,929, for such things as the mortgage payments, ICBC, utilities, the car loan, and groceries. D.P.R. funded these costs by making payments to a joint bank account the parties used for household and living expenses. He derives his claim by allocating \$28,726 of these expenses to L.L.R. (i.e. 65%) on an item by item basis. However, his allocation is inappropriate. For example, he allocates all of the expense for the home including the mortgage payments to L.L.R., though he was also liable as a borrower and homeowner. If the claims are looked at realistically, the costs to maintain the household and support both L.L.R. and B. during that period are not unreasonable.

10. There is no evidence that L.L.R. has been overcompensated during the interim period, on a global basis. For example, there is no evidence that her savings have substantially increased or that she incurred extravagant expense.
 11. I will not waste time on the veterinarian bills issue. D.P.R. may have made a reasonable choice to incur the expenses for the benefit of the family dog, Molly, which he says he did in part for the benefit of B. But he cannot force L.L.R. now to pay part of the costs. D.P.R. now has the dog.
 12. The claim for interest on the Scotia Bank line of credit has to do with the ongoing post separation interest costs for a debt that stood at \$16,876 at separation. This was not a cost that L.L.R. personally incurred or had the ability to avoid.
- [35] D.P.R. makes the claim for occupation rent based upon a contention that he was "ousted" from the home. Quite appropriately however, the parties avoided going into much detail as to the particular circumstances that led to L.L.R. departing the residence in late March 2013 and then returning in mid-April, with D.P.R.'s departure to alternative accommodation. It would be of no benefit to anyone to require the court to assess blame or responsibility after the fact for such decisions, made in difficult and emotionally charged circumstances. I reiterate the comments about occupation rent I made in *Ross v. Ross*, 2013 BCSC 1716 at paras. 47 to 50, where I referred to *Casey v. Casey*, 2013 SKCA 58, among other authorities. The proper way to approach occupation rent is as a discretionary tool to achieve fairness: *Piderman v. Piderman*, 2015 BCSC 475 at para. 53 (McEwan J. citing *Ross* at para. 51). In the circumstances of this case, bearing in mind the factors set out in *Casey*, no order for occupation rent is justified.
- [36] The interim order is not binding upon me. Such orders are made on an imperfect record and typically provide rough justice at best, in order to preserve the status quo or to strike a fair balance between the parties until trial, where a more full and complete examination of the facts and issues may take place: *Leung v. Leung*, 1999 BCCA 485 at para. 11, *Newson v. Newson*, 1998 CanLII 6440 (B.C.C.A.), 65 B.C.L.R. (3rd) 22 (C.A.) at para. 11; *de Rooy v. Bergstrom*, 2010 BCCA 5 at para. 43. However, based upon all of the evidence, I am not persuaded that I should retroactively alter the effects of the interim order in this case. With the full benefit of hindsight and a full evidentiary record, the effects of the order strike an

appropriate financial balance between the parties.

- [37] In more general terms, none of the factors set out in s. 95(2) of the FLA apply to render equal division significantly unfair.
- [38] In conclusion, I reject the foregoing claims of D.P.R., other than for the sum of \$2,430, which L.L.R. concedes she did not pay, for mortgage payments.
- [39] In what could be interpreted as an alternative submission, D.P.R. seeks an order declaring the amounts he paid prior to the interim order and amounts he paid for other expenses pursuant to the order are spousal support for income tax purposes. As noted, this would presumably provide a tax benefit to him and impose a tax burden on L.L.R. pursuant to s. 60.1 of Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.) [ITA] where spousal support payments are tax deductible in the hands of the payor and taxable in the hands of the recipient.
- [40] I have no evidence as to the actual expected tax benefit or burden that would occur in this case.
- [41] It is doubtful whether these payments could be considered support amounts under the ITA as they do not come within the definition of "support amount" under s. 56.1(4) of the ITA:
- an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount
- [42] Here, L.L.R. had no discretion as to the use of these amounts. The payments were separate and apart from the periodic payments of child and spousal support ordered by Saunders J. in the September 25, 2013 interim order. These payments cannot be fairly characterized as periodic allowances.
- [43] In my view re-characterization of past amounts paid for purpose of retro-actively altering the tax consequences to the parties should only be done in exceptional circumstances where necessary to re-adjust the financial balance between the parties in the interest of fairness. I am not persuaded that such an extraordinary order is appropriate in the circumstances of this case.

B. Division of Assets and Liabilities

- [44] In their evidence the parties made no reference to personal or household belongings, so there appears to be no issue as to division of such assets.
- [45] The following table sets out the relevant financial assets of the parties at separation and at trial:

Assets

At separation

At trial

D.P.R.

L.L.R.

Joint

D.P.R.

L.L.R.

Joint

Interactive Brokers

60,000

250

Scotia RRSP D.P.R.

82,935

0

Questrade RRSP

51,477

Scotia LIRA D.P.R.

22,940

43,045

Scotia RRSP L.L.R.

43,395

55,397

Scotia RRSP L.L.R. (spousal)

43,221

51,212

Scotia LIRA L.L.R.

41,781

52,392

BMO chequing account (business)

17,507

BMO chequing (domestic)

3,365

Totals:

\$105,875

\$128,397

\$80,872

\$94,522

\$159,001

\$250

[46] In his evidence, D.P.R. provided higher values for the Scotia RRSP and LIRA investments in L.L.R.'s name. I have used the amounts shown on the latest statement, Exhibit 22. He also states that his LIRA account at trial is valued at only \$32,832. The amount of \$43,045 is shown on the July 31, 2015 statement in evidence. There is no more recent statement in evidence.

[47] In addition, in 2013 shortly after separation D.P.R. received a payout of his SNC-Lavalin pension in the amount of \$7,442, and he received a tax refund of \$8,794. SNC-Lavalin is a large engineering firm with which D.P.R. became employed in May 2012 (SNC). These amounts were paid into the joint bank account used for household expenses. Although these amounts would constitute family property under s. 84 of the FLA they have been spent by the parties and do not need to be divided or otherwise accounted for. As far as I can tell the BMO domestic and business accounts also were used for joint household and domestic expenses in the interim period and do not need to be divided or accounted for.

[48] The parties' 2013 Hyundai Santa Fe had no value beyond the loan amount.

[49] Leaving aside the mortgage and the car loan, their material debts at separation were minimal:

1. Scotia Joint Line of Credit (investments) \$16,877
2. Scotia Line of Credit (moving expenses) \$5,285
3. CIBC Visa \$2,425

Total: \$24,587

- [50] Of these only the Scotia Joint Line of Credit remains at trial. The moving expense debt of \$5,285 was paid out April 30, 2013 from the domestic BMO joint account being funded at the time by D.P.R. Likewise the CIBC Visa balance amount was paid as usual shortly after separation. I have to infer that the source of payment was funds provided by D.P.R. Therefore, D.P.R. is credited for both of these payments. D.P.R. borrowed a further \$17,000 on the Scotia Joint Line of Credit. It stands at \$32,000. I infer that about \$1,877 was paid down at some point. L.L.R. argues that the whole debt of \$16,877 should be the responsibility of D.P.R. I am not persuaded of that, and I conclude that it was a family debt at separation. On a net basis, D.P.R. is responsible for \$17,628 of Scotia Joint Line of Credit debt of \$32,000 at trial. L.L.R. is responsible for \$14,372.
- [51] L.L.R. removed \$42,047 from the Interactive Brokers (IB) account in July and August 2013, without the consent of D.P.R. At the time the account stood at about \$54,000 (prior post separation withdrawals must have been joint). She testified that D.P.R. was not funding the household expenses and that she needed the money to pay the bills. The interim order provided that L.L.R. shall retain these funds, but would be accountable to D.P.R. for these monies ultimately in the division of assets, and without precluding any adjustment or compensatory orders that may be ordered by the trial judge. D.P.R. acknowledges removing a further amount of \$16,750 on October 23, 2013. D.P.R. states that only about \$250 remained in the account.
- [52] The IB investment account was opened in 2012 with a deposit of \$20,000. A further \$28,000 investment to the account was made later in 2012 from an inheritance D.P.R. received. There was some growth in the account by the time of separation. D.P.R. states that interest earned from the account was used to pay the monthly loan for the family Hyundai of \$478 per month.
- [53] L.L.R. must account for the extra amount of funds she obtained, which is \$25,047. In addition, the \$28,000 is an excluded asset.
- [54] L.L.R. brought investment savings into the marriage in the amount of \$70,109. Of this about \$21,700 was in a LIRA, \$38,200 was in RRSP, and \$10,200 was unregistered. L.L.R. states that these savings were always kept separate from other family finances. However, while at separation L.L.R. continued to have RRSP and LIRA accounts in her name, there is no evidence of an unregistered investment account. I conclude that \$60,000 of L.L.R.'s RRSP and LIRA accounts are excluded assets.
- [55] D.P.R. contends that he also brought some savings into the marriage. There are no documents to support the contention. I put no weight on his contention in the absence of documents.

- [56] The evidence as to D.P.R.'s RRSP accounts is highly unsatisfactory. After separation, D.P.R. closed his Scotia RRSP account and moved all of the funds to the Questrade account. Why he chose to do so is unclear, and the decision is troubling. Clearly, separated parties should not deal with family property unnecessarily prior to trial. There is no clear consistent documentary record with respect to his RRSP account.
- [57] D.P.R. withdrew substantial funds from his RRSP account. He admits to several withdrawals totaling about \$71,000. L.L.R. submits that the amount is actually \$80,000. Taxes reduced the net amounts available. Clearly, D.P.R. must account for these withdrawals, which I take to be in the range of \$75,000.
- [58] A further complicating factor is that the withdrawals eliminated the growth that would have otherwise occurred. L.L.R.'s RRSP and LIRA accounts have increased in value since separation by about 23.84% on average. I infer that D.P.R.'s RRSP would have experienced similar growth had he not made withdrawals. On this basis, the \$105,875 that D.P.R. had at separation would have grown to \$131,115. Despite withdrawals of some \$75,000, D.P.R.'s accounts at trial total \$94,522. He says they have in fact diminished from that amount due to market retreats after the latest available figures. There is no clear evidence about that. Speculatively, some of the withdrawals made by D.P.R. from his RRSP would have been the result of growth in the investments. As the facts are impossible to sort out with confidence on the evidence, and the fault lies entirely with D.P.R. in this respect, I will impute a value of \$150,000 to D.P.R.'s RRSP at trial. L.L.R.'s RRSP and LIRA accounts are valued at \$99,000 after taking into account \$60,000 of excluded pre-marital investments of a similar nature. Thus, D.P.R. is obliged to equalize the RRSP and LIRA accounts by payment of about \$25,000. As transfer of RRSP funds may be impractical, a payment of \$20,000 out of the funds in trust (that is, discounted by 20% for future taxes) is fair.
- [59] The IB account could also have grown in value by the time of trial but the parties liquidated that account by each removing funds at about the same time so no adjustment from actual withdrawals is required in relation to that account.
- [60] L.L.R. contends that much of D.P.R.'s RRSP withdrawals were used by D.P.R. to pay legal bills. Indeed, the records show that he has spent about \$84,000 for legal costs. L.L.R.'s total expenditure is unknown to me, but she indicates she owes \$38,000 to her former counsel.
- [61] The net proceeds of the sale of the house were \$315,480, after payment of the mortgage amount of \$634,966.39, and other charges. The mortgage debt at separation was \$655,304. Thus, the mortgage debt was paid down about \$20,000 post separation. As noted previously both parties contributed to the payments although D.P.R. paid somewhat more than one half. From the proceeds of sale \$15,830.47 was paid out of D.P.R.'s notional share to L.L.R. for past due support. A fee of \$550 was paid to FMEP. D.P.R. removed a further \$11,205 for past due support and \$5,000 for his own use pursuant to an order I made at the end of the trial. Thus, approximately \$282,895 remains in the trust account, after D.P.R.'s expenditures of \$32,585.47.

[62] In summary:

1. L.L.R. will make an equalization payment out of the amount of money in trust of \$69,849. This is comprised of:
 - a) Her share of the debt at separation: \$14,372;
 - b) IB account: \$25,047;
 - c) D.P.R.'s inheritance: \$28,000;
 - d) Mortgage payments: \$2,430.
2. D.P.R. will pay \$20,000 out of the trust account in order to notionally equalize the parties' RRSP and LIRA accounts.
3. This leaves L.L.R. with \$107,891 from the trust account, and D.P.R. with \$175,004.

[63] The parties will retain the RRSP and LIRA accounts presently in their names.

[64] D.P.R. will be solely responsible for payment of the Scotia Joint Line of Credit account, (#4538163071983). The law firm is directed to pay this debt directly from D.P.R.'s share of the funds in trust. It is a condition of payment out to D.P.R. of any further trust funds that he provides satisfactory proof to L.L.R. that the debt has been discharged and that she is no longer liable for it.

[65] SPCI has no value. L.L.R. is a shareholder. L.L.R. shall transfer her share or shares to D.P.R., and do all things necessary to transfer complete ownership and control of the company to him.

C. Security for Payment of Support

- [66] As noted, section 95(1) of the FLA allows the court to order unequal division of family property or family debt where an equal division would be significantly unfair, on the grounds set out in s. 95(2). Section 95(3) allows the court to also consider the extent to which the court's determination as to spousal support may fail to meet the objectives of spousal support under s. 161.
- [67] L.L.R. argues that the assets (i.e. in effect the money in trust) should be reapportioned in her favour. She makes no specific submission regarding the amount or degree of re-apportionment. She contends that D.P.R. cannot be depended upon to make the spousal support and child support payments they need, as his payments have been unreliable in the past, and he may leave the jurisdiction, such as by choosing to return to his native Ireland to live and work. He denies any such intention. He states and I accept that he would prefer to remain in BC for the sake of his relationship with his son, B. That relationship has been strained since the separation, but has shown improvement recently.

- [68] Nonetheless L.L.R.'s concerns are valid. While in very general terms, D.P.R. has fulfilled his obligations to provide support to L.L.R. and B., there have been notable exceptions. D.P.R.'s unreliable payment record began well before he lost his job in November 2014.
- [69] By July 2015, D.P.R. was again significantly in arrears. Payment of the arrears was compelled by FMEP against his share of the proceeds of sale of the home. He did not pay anything at all after the payment through FMEP at that time, until my order of October 5, 2015.
- [70] In October 2013, D.P.R. purchased a new vehicle for his own use, a VW Golf GTI, for at least \$29,000, largely financed. After losing his job, he failed to make the payments on the Hyundai that L.L.R. was using, contrary to the order of Saunders J., while continuing to make the loan payments on his vehicle. This is a glaring example of D.P.R. preferring his own interests.
- [71] I accept that D.P.R. would prefer to remain in B.C., but the fact is that he may not be able to do so. He could, as L.L.R. suggests, move to a jurisdiction where enforcement of B.C. support orders is difficult or impossible. The Republic of Ireland is not a reciprocating jurisdiction with B.C. under the Interjurisdictional Support Orders Act, S.B.C. 2002 c. 29. Thus, the process for enforcement of a BC support order in the Republic of Ireland would depend upon local law, which is unclear to me, but could be problematic. In addition, D.P.R. continues presently to be only partially employed and can, therefore, be expected in the very near term to have difficulty funding support payments from his current limited income. Payment of support orders must take priority over D.P.R.'s other needs.
- [72] However, L.L.R.'s concern is more appropriately dealt with by an order for security rather than an order for reapportionment. Section 15.2 of the Divorce Act allows the court to make an order for provision of security for spousal support. Section 12 of the Federal Child Support Guidelines, SOR/97-175 [FCSG] allows the court to order security for payment of child support. I am satisfied there is evidence to conclude there is a very real risk that D.P.R. will not pay spousal support or child support in compliance with the order of the court. Therefore, security should be provided. Accordingly, I order that of D.P.R.'s share of the monies presently held in trust, the sum of \$100,000 shall be paid to the Director of Maintenance Enforcement under the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127 [FMEA] as security for payment of spousal support and child support as ordered by the court. The terms upon which the funds may be released will be as follows:
1. The Director is authorized to pay to L.L.R. any arrears of support from the funds held as security if there is default in payment extending beyond 30 days;
 2. Provided D.P.R. has made payment in full of the support amounts required, on each yearly anniversary of this order the Director is authorized to pay to D.P.R. \$12,500, upon application by him to the Director. Thus, if D.P.R. makes all payments due, over the course of eight years D.P.R. is eligible to have the full amount of security released to him.

D. Spousal Support - Past and Future

1. D.P.R.

- [73] While for the most part, until recently, D.P.R. has been steadily employed, his work has been somewhat unstable, and has been characterized by frequent changes of employer and several geographic moves.
- [74] In South Africa, he worked for one employer for approximately two years and another for approximately three years, until April 1994. From June 1995 to April 1998, he worked in Blind River, in northern Ontario, as a production engineer for Cameco Corporation, a uranium refining company.
- [75] D.P.R. and L.L.R. lived in Toronto for two years after their marriage in 1998. For about one year, D.P.R. worked for Dick Engineering, a pulp and paper industry consulting firm. He was then laid off for lack of work. The couple moved to Ottawa in 2000 so that D.P.R. could take a job with Logen Corporation, working in the field of biofuels (specifically, bioethanol). That work lasted until January 2007, when his employment was terminated. During this period, in February 2003, their son was born. In January 2007, the family moved to Burlington Ontario so that D.P.R. could take a job with Zeton Inc. His work with Zeton involved process engineering for clients in the oil and gas industry. After two and-a-half years with Zeton, in July 2009, D.P.R. was laid off for lack of work. D.P.R. obtained a three month contract job with a company called Casco Inc., for work in connection with a corn processing facility in Ontario, for the period from February to May 2010.
- [76] D.P.R. felt that his prospects could be better in BC. He moved to Vancouver in late 2010 or early 2011. L.L.R. and B. followed in July 2011. He obtained contract work with consulting engineering firms. He worked in Vancouver with Solaris Management Consultants Inc., an engineering consulting firm, from December 13, 2010 to May, 2012, providing services to EnCana Corporation in relation to natural gas and LNG projects in Northern B.C. and Alberta. L.L.R. testified that the Solaris job was supposed to last ten years, but it did not work out that way.
- [77] In December 2010, D.P.R. incorporated his company, SPCI. D.P.R. is the sole director. D.P.R. and L.L.R. are equal shareholders.
- [78] He had a four month contract with Ecodyne Water Treatment from February 2011 to May 2011.
- [79] In May 2012 he obtained a full time employed position as an engineering manager with SNC, to work on a gold mining project. When that project ended in April 2, 2013 (coincident with the separation), he was laid off.
- [80] About six weeks after his lay-off from SNC he began working for Tonmoor International Inc. He worked for Tonmoor from August 2013 to December 2013 (five months). Tonmoor did feasibility studies for oil and gas projects, primarily in Nigeria and Ghana. This work overlapped to some extent with work he did for Spectra Energy, beginning in May 2013 and ending in November 2014. For Spectra Energy, he worked as a project manager on

maintenance projects for the company's oil and gas pipeline and processing facilities in Northern BC and Alberta. His work with Spectra ended in November 2014, when his employment was terminated for lack of work.

- [81] With the exception of one week in April 2015, he was unemployed from November 2014 until August 15, 2015, just a few weeks before the commencement of the trial in this matter on October 5, 2015.
- [82] As noted, he is a registered professional engineer in BC and Ontario, and a chartered engineer in the United Kingdom and Ireland. In his job applications, he refers to himself as a process engineer and project manager.
- [83] As of August 15, 2015, D.P.R. obtained part-time contract work with Clean Energy Consulting Inc., a consulting firm based in Prince George and Vancouver. So far, he has worked from 10 to 20 hours per week. The initial contract rate of pay was \$100 per hour, but D.P.R. has had to accept a reduction in pay to \$85 per hour. He is presently 52 years of age. He continues to look for work. He hopes to obtain more work locally either with Clean Energy Consulting or other firms. He states that there are opportunities for him for work overseas. Just several days before the trial began he declined an offer of full time work with Rockwell Automation for a project management job in Cork, Ireland, which would have paid an annual salary of 85,000 euros, or about \$110,000. The job was declined due to the location. D.P.R. does not want to be separated from his son and so would prefer to continue working locally.
- [84] He projects that his employment earnings for 2015 will be \$50,428. Most of this is based upon projected work with Clean Energy Consulting at 28 hours per week at \$85 per hour. Twenty-eight hours per week represents a modest increase in his weekly hours of work. The forecast does not anticipate obtaining full-time work in 2015. He contends that on a going forward basis, it is reasonable to expect that he will earn \$100,000 per annum. He suggests this amount as appropriate for FCSG and spousal support purposes.
- [85] L.L.R. contends that his evidence as to his income is not reliable, and is understated. She argues that his income should be imputed at \$152,492 per annum. She bases this on her contention that his actual income for 2012, 2013 and 2014 was respectively \$149,058, \$159,692, and \$148,727. However, I do not accept her submissions in this regard.
- [86] The situation is confusing due to several factors: changes in the nature of D.P.R.'s employment, being paid as an employee (e.g. for SNC) and income earned through SPCI, timing issues, and claimed corporate expenses.
- [87] In relation to D.P.R.'s pay, he was at somewhat of a loss at trial to explain the relationship from year to year between corporate gross and net income, employment income earned through SPCI and otherwise, and the amounts shown on his tax returns as income. He deferred to information provided by his accountant in Toronto, who was not a witness at the trial. Although as I said the matter is confusing, I accept that D.P.R. is not guilty of hiding or distorting his income information as is alleged by L.L.R..

[88] The evidence of D.P.R. is that his income through SPCI is paid to him as employment or dividend income in the following year. The documents (income tax returns and financial statements) support this. The calculations of L.L.R. do not take this into account. They also rely in part on her analysis of bank statement deposits in preference to the income tax returns and financial statements, and ignore all corporate expenses.

[89] A starting point for assessing his income for support purposes is D.P.R.'s income tax returns. Ignoring RRSP withdrawals made in 2014 and 2015, (which are not, of course, income earned in those years), the tax returns show line 150 income for D.P.R. in the past several years as follows:

Year

2009

2010

2011

2012

2013

2014

Line 150

120,254

38,987

72,959

82,709

124,076

79,000

[90] Little detailed information is available as to the make-up of the amounts for 2010 and 2011.

[91] As noted, D.P.R. incorporated SPCI in December 2010 coinciding with the start of his work in BC with Solaris.

[92] SPCI's gross income for 2011 was \$223,571. The corporate financial statement indicates moving expenses of \$47,588. For some unexplained reason, the corporate financial statement for SPCI for 2011 does not show any payroll expense item for payment of salary to D.P.R., as is shown in later years. Obviously, a tax plan was put into place, the details of which are not clear to me, and changes were made after 2011. For 2011 the net income before tax of the company was \$151,709. L.L.R. states that in 2011 the corporate income was split between them for tax purposes. L.L.R. received dividend income from SPCI of \$60,657

that year. In practical terms then, the company paid out \$133,616 to the parties in 2011, even after paying the substantial costs of the move or moves.

- [93] As noted, in May 2012, D.P.R. obtained a full time employed position as an engineering manager with SNC. His 2012 T4 indicates that he was paid \$82,683.70 by SNC in 2012. Extrapolating this income amount to twelve months, it appears that his annual salary from SNC was approximately \$124,000.
- [94] I consider D.P.R.'s declared 2012 income understated because income earned in 2012 through SPCI was declared as income and dividends to D.P.R. in 2013 rather than 2012.
- [95] The 2013 income of \$124,076 includes \$41,650 that was paid by SPCI to him as money earned by the company through his efforts in 2012, and dividends of \$12,238, grossed up for tax purposes to \$15,297. It also includes SNC pay for the first three months of 2013, prior to his lay-off at that end of March 2013, and SNC severance pay in the amount of \$12,656. On the information available I am unable to confidently assess what I might consider D.P.R.'s "normalized" income for 2013, that is, excluding the effects of one time payments and the timing and other effects of SPCI. At a minimum, income for 2013 would include the \$79,000 he received as pay through SPCI he declared in 2014, and his SNC pay for three months, which I infer would have been approximately \$10,350 per month. Thus, I estimate his 2013 income on a normalized basis was approximately \$110,000.
- [96] The figure for 2014 of \$79,000 is depressed. That amount is only the SPCI pay from 2013. D.P.R.'s SPCI income earned in 2014 of \$120,693 will be declared on his 2015 income tax return, less about \$2,500 of Canada Pension Plan payments. Thus, in 2014 he earned approximately \$118,000, but was unemployed by the end of the year. His actual last day of work is unclear on the evidence.
- [97] As of sometime in November or December 2014, D.P.R. was unemployed and remained so until August 2015, as noted previously. Leaving aside the distorting effects of the timing of SPCI pay, D.P.R.'s actual earnings in 2015 are likely to be in the range of \$50,000 as he contends.
- [98] The income amount used for support purposes in the order of Saunders J. of September 25, 2013 was \$100,670. In summary, that amount was probably somewhat low for 2013 and 2014, but is higher than his anticipated earnings for 2015.
- [99] D.P.R. is currently earning \$85 per hour for his work with Clean Energy. Based upon his estimate of 28 hours of paid work per week yields weekly earnings of \$2,380. Multiplied by 49 weeks this would yield gross earnings before employment expenses of \$116,620. If he achieves 35 hours per week at \$85, gross income would be \$145,775. However, this would amount to full time work, which D.P.R. may or may not be able to achieve. His employment history gives ample reason to conclude that his income will continue to be somewhat unstable and his earnings highly variable.

- [100] The corporate financial statements show non payroll expenses for 2012, 2013 and 2014, respectively, at \$4,947, \$13,395, and \$16,277. These expenses are for such things as office expense, automotive expense, meals and entertainment, professional fees, business licenses and memberships, telephone, and rent. L.L.R. contends that some part of these expenses should not be taken into account as deductions against income for support purposes. Indeed some of these expenses appear to have some personal component. However, details are not available to me. On the evidence such as it is, I conclude that some of the expenses have a personal benefit component, such as the meals and entertainment, and perhaps the automobile and telephone expense. Precision is not possible.
- [101] L.L.R. questioned his lack of work since November 2014. She contends that he has not applied himself fully. He emphatically denies this. I accept the evidence of D.P.R. in this respect. He has made thorough, ample efforts to find alternative employment since losing his work with Spectra Energy in November 2014. He has produced many job applications. He has had every incentive to find work. He has always been industrious and adaptable in the past. In my view, he will continue be so in the future.
- [102] D.P.R. readily acknowledged that in the past he has been able to earn over \$150,000 per annum, and states that he hopes to return to earnings of that nature in future. If he had been unable to obtain work locally he would if necessary have taken the overseas job in Ireland. Currently, he hopes that the work with Clean Energy will become equivalent to full time, or that he will obtain other contracts. His health is good and he has no retirement plans at present. However, he suggests that in his present circumstances \$100,000 per annum is a realistic assessment of his earning potential.
- [103] In my view, imputing an income of \$100,000 somewhat understates his earning capacity. On the other hand, L.L.R.'s contention that I should impute income of \$152,492 is based upon an erroneous assessment of his recent earnings and takes too little account of the unstable nature of his employment, and his recent unemployment. He remains partly unemployed at this time in that he has only been able to obtain part-time work so far and has had to reduce his hourly rate. However, he continues to seek full time work and he expresses hope for the future in that respect. D.P.R. also has some employment expenses such as for a vehicle and professional dues although it is difficult to determine these amounts with confidence; I find that \$10,000 is a reasonable allowance for this.
- [104] In all of the circumstances and based upon the whole of the evidence, I impute income to D.P.R. of \$125,000 per annum, commencing January 1, 2016.

2. L.L.R.

- [105] As noted, L.L.R. last worked as an employee in 2000, in Ontario, when she worked with TVOntario. She left that job when the parties moved to Ottawa. In 2001 and 2002 she did some part time work in freelance writing. In 2002, she also operated a dog-walking business. She did not work outside the home in 2003 and 2004. B. was born in 2003. In 2005, she began a home day-care business. She restarted a home day-care business after the

family moved to Burlington in January 2007. That business ended when the family moved to BC. As noted D.P.R. moved to BC in late 2010 or early 2011. L.L.R. and B. followed in July 2011.

- [106] During 2011 to 2013, L.L.R. performed bookkeeping and administrative support for SPCI, and also volunteered with community organizations in the White Rock and South Surrey area, where the family was residing.
- [107] She testified that after the separation in March 2013, she had to reevaluate her career options. She felt that her communications and marketing experience from 1990 to 2000 with Ontario Lottery and TVOntario was obsolete, as her expertise was primarily in printed marketing materials, whereas as today such marketing is largely online and through the internet. She would require retraining. She considered training as a teacher's aide. The \$14,000 cost of the training was a problem. She applied for numerous jobs. She provided a list of 41 jobs applied for, in a variety of fields. She was unsuccessful.
- [108] She decided to pursue a new career in strata property management. In 2014, she volunteered in property management with a strata property management company, Crossroads Management Ltd., based in Newton, Surrey in order to gain experience. In June 2014, she enrolled in the Strata Management Licensing course with the Sauder School of Business. The tuition was \$1,075. She completed the course in February 2015. In March 2015, she obtained licensing as a strata property manager. The two year licensing and insurance fees she had to pay were \$1250. Beginning in March 2015, she began to work for Crossroads Management as a strata property manager. She receives a non-refundable advance of \$3,000 per month against fees that she earns. So far she is earning less than \$1,000 per month in fees from strata corporations, not enough to cover the advance that she is paid. Fees are typically split evenly between the employed property manager and the employer. She has two clients so far, but would need eight or nine clients to cover her advance. Her work is probationary, in the sense that if she cannot earn sufficient fees, she will be let go.
- [109] She faces challenges in obtaining clients, such as the lack of a local business network, and the demands of child care. She would prefer to continue to work in Surrey and White Rock to be able to attend to B.'s needs. The geographic limitation may be a limiting factor for her. Nonetheless, her employer is being patient, and recently indicated that she is doing "OK" and has no complaints.
- [110] She remains personally responsible for licensing fees. She needs a reliable vehicle for her work, which involves regular attendance with strata project clients, often in the evenings. She also needs a vehicle for personal transportation and transportation of their son, who plays hockey.
- [111] In 2012, the parties purchased a new vehicle for family use, a 2013 Hyundai Santa Fe. The cost was financed. At separation, L.L.R. was using this vehicle. The Saunders J. order of September 25, 2013 provided that D.P.R. was responsible for payment of the vehicle loan

payments, insurance and non-warranty major repair costs. However he failed to continue to make these payments. L.L.R. discovered that she was driving without insurance, and made some insurance payments, but could not make the loan payments. The vehicle was repossessed by bailiffs acting on behalf of the lender, the Royal Bank, on May 7, 2015. This left L.L.R. without a vehicle.

- [112] She recently purchased an old and heavily used vehicle, a 2005 Pontiac Sunfire, for \$500. It is not reliable. She was recently left stranded when the vehicle broke down. I accept her evidence that she needs a reliable vehicle for work purposes, as well as for personal use including transportation of their son. The vehicle recently required repairs costing \$1,500. As between her and her employer, she is personally responsible for vehicle expense except for a \$200 monthly fuel allowance. Insurance cost is \$116 per month. She suggests that vehicle costs of \$500 per month is a reasonable estimate of her vehicle expense for employment purposes. This estimate is somewhat high given her employer's contribution to fuel costs. Some cost must be allocated to personal use. I accept that vehicle costs for employment purposes should be accepted as a reduction in her income for support purposes in the amount of \$400 per month, or \$4,800 per annum.
- [113] She is unsure as to her income earning potential as a strata manager. In answer to my questions, she suggested that she hopes to earn \$46,000 to \$48,000, possibly within five years. However she expressed considerable doubt about what she might be able to earn and presented no evidence in that respect.
- [114] Clearly, then, her future earning capacity is very uncertain. On the other hand, she is very well educated, intelligent and resourceful. I was very impressed with the quality of her written materials prepared for the court and the degree of organization she displayed. In the period of just over two years since the separation, she has made remarkable progress in re-establishing a career despite the ongoing conflict, litigation, child care duties, no local family, connections or resources, and severe financial constraints. I think it is likely that she will succeed in re-establishing a career, whether in property management or otherwise. As noted, her earning potential is very hard to gauge with confidence or precision.
- [115] I assess her current income for spousal support purposes at \$30,000 per annum, consisting of her current salary (in a sense an advance, as noted) less a factor for the costs of operating a vehicle and ongoing professional licensing, insurance and educational costs.

3. Conclusions - Spousal Support

- [116] It is unnecessary to dwell upon the relevant principles and objectives of spousal support. The statutory basis is set out in Section 15.2 of the Divorce Act. Subsections (4) and (6) are as follows:

Section 15.2(4):

In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

Section 15.2(6):

An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (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.

[117] Section 161 of the FLA is substantially the same as s. 15.2(6) of the Divorce Act.

[118] The relevant principles regarding spousal support were comprehensively reviewed and summarized by Madam Justice Rowles, for the court, in *Chutter v. Chutter*, 2008 BCCA 507 at paras. 45 to 61.

[119] The SSAG indicate that support may fall within a range of \$1,685 (low) to \$2,080 (mid) and \$2,476 (high), with \$3000 in s. 7 expenses shared annually. Child support payable is \$1,127 (base) and \$250 per month of special expenses shared. Duration is unspecified (that is, indefinite) but suggested duration is from 7.5 to 15 years from the date of separation.

[120] L.L.R. has a strong claim for compensatory spousal support. She is now 50 years of age and faces an uncertain financial future. In 2000, when she was 35 years of age, she left her career in marketing communications in order to support D.P.R.'s career when the parties moved to Ottawa for D.P.R.'s work there, and later, to support their child. There have been two further moves to support D.P.R.'s career since then: first to Burlington Ontario in 2007 and then to BC in 2011. I accept her evidence that her former expertise is largely obsolete and that re-training for a new career was prudent. The low level of earnings presently available to her is troubling to me, in view of her education, experience and ability. However, there is no adequate evidentiary basis for me to question her choice of new

career. On the evidence, I am not prepared to impute a higher income to her than the amount she is actually earning at present.

- [121] Had she not subordinated her own career to that of her husband and the needs of the family, she would likely have continued working in marketing communications, but could have adapted to changes in the work environment as they occurred. She would likely have continued to be employed at a salary well exceeding her current salary, and likely more than she can reasonably expect to earn in the foreseeable future. In 1998 and 1999, the final years of her full time work before the parties moved to Ottawa, she was earning a good income. She earned \$46,854 in 1998, and \$48,741 in 1999. Given her skills, I infer that had she continued in the work force without marrying, she would today be earning a present day income commensurate with these amounts, or perhaps better. The RRSP and other savings she had already accumulated when the parties were married suggest that she would likely have continued to save and invest and would likely enjoy significant savings and financial assets at this point. She would have been in a comfortable financial position.
- [122] On the other hand, it was a joint decision to subordinate her career. If the marriage had survived, the cost of that decision would have been shared. Similar consequences should continue to pertain. In other words, D.P.R. is not obliged to compensate L.L.R. fully for the loss. It must be shared, equitably.
- [123] B. will be 13 years of age in February 2016. He wishes to become a veterinarian. Whether that ambition or some other one takes its place, he is likely to continue to be a dependent for more than the six plus years until he reaches the age of majority.
- [124] Now, she has uncertain income earning prospects and very modest financial assets. On the other hand, she has marketable skills. There is no evidence of any health concern. There are grounds for optimism as to her chances of establishing a good career and income.
- [125] Clearly she is also entitled to needs-based spousal support.
- [126] A strong compensatory claim is a factor that favours a support award at the higher end of the ranges for both support and duration: SSAG, s. 9.1. There are several other factors discussed in section 9, and I have considered them all.
- [127] D.P.R. contends that spousal support should be set based upon his income of \$100,000 per year and hers of \$36,000. He contends that spousal support should be time-limited, and should end in 2020, 7.5 years after separation.
- [128] L.L.R. argues that the spousal support should be based upon respective incomes of \$152,000 and, I infer, approximately \$30,000, for "the maximum term."
- [129] For the reasons stated above, I impute income of \$125,000 per annum to D.P.R. and \$30,000 to L.L.R. for spousal support and child support purposes.

- [130] Spousal support is set at \$2,278 per month. This is roughly half-way between the SSAG mid and SSAG high range. The primary factor driving the amount towards to higher end of the range is the strength of L.L.R.'s compensatory claim, coupled with a strong needs-based claim.
- [131] There should be some readjustment of past support obligations, to reflect the fact that as of March 2015 L.L.R. has been earning a modest income, while at the same time D.P.R. was unemployed from approximately November 2014 to August 2015. D.P.R. will be credited with a reduction of \$4,500 against the spousal support obligations under the interim order, to be received by way of reducing his spousal support obligations under the order effective January 1, 2016 by \$500 per month for the first nine months.
- [132] Therefore, spousal support shall be paid at the rate of \$1,778 per month for each month commencing January 1, 2016 until October 1, 2016, when the payment shall rise to \$2,278 per month.
- [133] The order is for an indefinite duration. "Indefinite" is not "permanent". The order is subject to variation in accordance with the provisions of S. 17 of the Divorce Act. The suggested range for duration under the SSAG is 7.5 to 15 years from the date of separation. According to the SSAG, s. 8.5, the duration suggested "will inform the process of review and variation." Therefore duration of spousal support is to be determined by the court in future on an application to vary or review spousal support.
- [134] As the future earnings of the parties are uncertain, and in particular the future earnings of L.L.R. are uncertain, either party will be at liberty to apply to court for a review of the quantum of spousal support at any time after two years from the date of these reasons, but not later than six years from that date. On the review, the court may also consider the duration of spousal support.
- [135] I adopt the discussion of review set out in the decision of Greyell J. in *Cotter v. Cotter*, 2015 BCSC 1730 at paras. 26-30.

V. Custody, Guardianship, Parenting

- [136] B. resides with L.L.R. He is now 12 years of age. He is a healthy normal child. He attends a public school currently. Previously he was at a Catholic school. He is an above average student scholastically. The separation of his parents was difficult for him. He has had difficulty adjusting, and has suffered from anxiety. His condition is improving.
- [137] On November 17, 2014 the court ordered a s. 211 FLA views of the child report, and ordered a parenting schedule involving parenting time with his father every second weekend from Friday to Sunday evenings, and several hours one day in the intervening week. This did not work out well. B. developed severe anxiety. He has received counselling. No s. 211 report was prepared.

- [138] In view of this, D.P.R. does not seek any specific order for parenting time at this juncture. His view is that the relationship is improving and that a specific court-ordered parenting schedule is not likely to be helpful. Lately B. has been seeing his father 3 or 4 times per week. Overnight stays began for the first time just before trial. They have engaged in activities together such as badminton, watching television, and playing computer games. B. is interested in history and perhaps martial arts. D.P.R. would like B. to become interested in golf and his Irish heritage. D.P.R. would like to take him to Roman Catholic Mass. He hopes that B. will want to stay with him at least once a week. D.P.R. does not seek a change in primary residency.
- [139] L.L.R. has no objection to B. spending time with his father including overnight stays. She has no objection in principle to the present ad hoc arrangements for parenting time with his father but she would prefer a schedule for weekend parenting time that she can rely on and make plans around, such as at least one weekend per month. She would like to be able to take B. on trips outside the province for hockey tournaments or vacations without express consent. She has no objection to providing reasonable prior notice.
- [140] B. plays hockey at the house level. He plays violin and trumpet and takes music lessons. He attends various youth camps at Spring Break and in the summer.
- [141] As experience has shown, there is no utility in a court order specifically allocating parenting time between the parties. While I understand and appreciate L.L.R.'s wish for a schedule for weekend parenting, it seems that this arrangement will have to be left to the parties and B. to derive.
- [142] The parties will have joint custody of B. under the Divorce Act.
- [143] Both parents will continue to be guardians of B. under the FLA.
- [144] The parties will share equally all of the s. 41 parental responsibilities for B. under s. 40(2) of the FLA on the following terms:
- a. each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the child;
 - b. during a guardian's parenting time, that guardian may exercise the parental responsibility of making day-to-day decisions affecting the children provided however, that such guardian must advise the other guardian of any matters of a significant nature affecting the child occurring during his or her parenting time;
 - c. each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;

- d. the guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
- e. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child (L.L.R.) will be entitled to make those decisions and the other guardian will have the right to apply for directions on any decision the guardian consider contrary to the best interests of the child, under s. 49 of the FLA; and,
- f. each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.

VI. Child support

[145] Child support pursuant to the FCSG is \$1,127 per month at present.

[146] Child support is payable for as long as B. remains a child of the marriage within the meaning of the Divorce Act.

[147] Child support will be adjusted each year commencing July 1 in accordance with the incomes of the parties. (Unless there is a change in residency this would only affect the amount of base support paid by D.P.R. However, joint incomes will be relevant for s. 7 expenses.) The parties will provide each other with copies of their prior year income tax returns and notices of assessment on or before July 1st of each year for as long as any obligation to pay child support or spousal support continues.

[148] L.L.R. seeks an order for s. 7 FCSG as follows:

Baseball (with flexibility to choose another sport if he wants)

\$250

School supplies/expenses

\$300

Hockey Program (with flexibility to change to martial arts or other)

\$2200

Medical/dental

\$900

Violin lessons (with flex to try another instrument or join youth orchestra for a change of pace)

\$1350

Swimming Lessons

\$250

Summer Camp, Spring Break camps

\$1500

RESP, education savings

\$2400

TOTAL

\$9150

[149] The educational savings are not an expense, as desirable as they might be.

[150] L.L.R. has an extended health program through her work, but she must pay basic MSP premiums. Basic MSP premiums are therefore a special expense under s. 7. Any other uninsured necessary or reasonable medical or dental expenses are also declared to be special expenses for the purposes of s. 7.

[151] D.P.R. contends that the expenses to be incurred should be by agreement. D.P.R. does not object to hockey registration fees and other associated hockey expenses. He agrees that other sports expenses should be shared, but only where the parties agree in advance.

[152] In my view, in overall terms, the amounts L.L.R. suggests for extraordinary expenses is too large, having regard to the factors set out in s. 7(1) and (1.1) of the Guidelines, and in particular, the means of the parties.

[153] B. has played hockey since the age of four, and will be attending a high school with a hockey program. Both parents agree on the value of his participation in this sport.

[154] I order that hockey and other athletic expense up to \$3,000 per annum is an extraordinary expense for purposes of s. 7. All other expenses for extracurricular activities will be within s. 7 only by mutual agreement of the parties, or by further court order.

[155] Section 7 expenses will be shared in proportion to the incomes of the parties, as adjusted annually after July 1 of each year based upon their incomes for the prior year.

[156] The s. 7 expense of \$3,000 annually (\$250 per month) will be shared in proportion to the incomes of the parties. On the basis of the amounts utilized for the SSAG and the amount of spousal support ordered, the current proportions are 63% and 37%. Therefore, D.P.R. will pay base child support of \$1,127 per month and s. 7 expense of \$157 per month, and his share of basic MSP premiums for B.

VII. Life Insurance

- [157] At separation the parties had term life insurance (no cash value). L.L.R. testified that she continues to pay \$62.65 per month to keep in force a life insurance policy with Manulife Financial covering both of their lives for the benefit of B. in the amount of \$325,000. D.P.R. testified he continues to keep in force a policy in the amount of \$450,000 with Manulife, for which he pays \$61.02 per month. The details of the policies are not in evidence.
- [158] L.L.R. seeks an order that D.P.R. pay one-half of the cost of the \$325,000 policy that she is paying for. In my view, this is a factor that should be taken into account in setting the range and duration of spousal support and does not need to be dealt with separately. L.L.R. may keep the policy she has in force and pay the premiums if she deems it prudent to do so.
- [159] D.P.R.'s life insurance is important for the financial security of L.L.R. and also B. Section 170 of the FLA allows the court to order that a person designate his or her spouse or child as a beneficiary, irrevocably or for a period specified by the court, and to pay the premiums on the policy. I order that D.P.R. keep his Manulife life insurance policy in force, naming L.L.R. as the beneficiary, and that he pay the premiums for the insurance, for six years from the date of these reasons. I also order that D.P.R. provide documentary proof on July 1 of each year that the insurance remains in force.

VIII. Costs

- [160] L.L.R. has been substantially successful, and is awarded costs of the proceeding, to be assessed in accordance with Appendix B of the Supreme Court Family Rules, B.C. Reg. 169/2009, as a matter involving ordinary difficulty. However, as the parties were both self-represented at trial, and in order to preserve the financial balance intended by the orders made in these reasons, the costs payable will not include item 7 (costs of preparation and attendance at trial).

IX. Conclusion and Summary

- [161] In summary, I order as follows:
1. An order of divorce, effective 31 days after the date of these reasons, subject to s. 12 of the Divorce Act;
 2. All interim orders are terminated effective upon the entry of the order after trial.
 3. L.L.R. will make an equalization payment out of the amount of money in trust of \$69,849.
 4. D.P.R. will pay \$20,000 out of the trust account in order to notionally equalize the parties' RRSP and LIRA accounts.
 5. The parties will retain the RRSP and LIRA accounts presently in their names.

6. D.P.R. is solely responsible for payment of the Scotia Joint Line of Credit account, (#4538163071983). The law firm is directed to pay this debt directly from D.P.R.'s share of the funds in trust. It is a condition of payment out to D.P.R. of any further trust funds that he provides satisfactory proof to L.L.R. that the debt has been discharged and that she is no longer liable for it.
7. L.L.R. will transfer her share or shares to D.P.R., and do all things necessary to transfer complete ownership and control of the company to him.
8. The parties will share equally all of the s. 41 parental responsibilities for B. under s.40(2) of the FLA on the following terms:
 - a) each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the child;
 - b) during a guardian's parenting time, that guardian may exercise the parental responsibility of making day-to-day decisions affecting the children provided however, that such guardian must advise the other guardian of any matters of a significant nature affecting the child occurring during his or her parenting time;
 - c) each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 - d) the guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
 - e) in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child (L.L.R.) will be entitled to make those decisions and the other guardian will have the right to apply for directions on any decision the guardian consider contrary to the best interests of the child, under s. 49 of the FLA; and,
 - f) each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.
9. Spousal support will be paid at the rate of \$1,778 per month for each month commencing January 1, 2016 until October 1, 2016, when the payment shall rise to \$2,278 per month. Either party will be at liberty to apply to court for a review of the quantum of spousal support at any time after two years from the date of these reasons, but not later than six years from that date.
10. D.P.R. will pay base child support of \$1,127 per month and s. 7 expenses of \$157 per month plus his proportionate share of monthly MSP premiums effective January 1, 2016.

11. Any unpaid amount of spousal or child support for November and December will come out of the trust account against D.P.R.'s share.
12. From D.P.R.'s share of the monies presently held in trust, \$100,000 will be paid to the Director of Maintenance Enforcement under the FMEA, as security for payment of spousal support and child support as ordered by the court. The terms upon which the funds may be released will be as follows:
 - a) The Director is authorized to pay to L.L.R. any arrears of support from the funds held as security if there is default in payment extending beyond 30 days;
 - b) Provided D.P.R. has made payment in full of the support amounts required, on each yearly anniversary of this order the Director is authorized to pay to D.P.R. \$12,500, upon application by him to the Director. Thus, if D.P.R. makes all payments due, over the course of eight years D.P.R. may have the full amount of security released to him.
13. D.P.R. will keep his Manulife life insurance policy in force, naming L.L.R. as the beneficiary, and that he pay the premiums for six years from the date of these reasons. D.P.R. shall provide documentary proof on July 1 of each year that the insurance remains in force.
14. The parties will exchange on July 1st of each year copies of each party's income tax return for the prior year and all notices of assessment and all notices of re-assessment received etc. for as long as any obligation to pay child support or spousal support continues.
15. Costs to the respondent on the terms noted.

"The Honourable Mr. Justice Verhoeven"

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