
CANADA / JUDGMENT

D.T.L. v. E.M.L.

2013 BCSC 558

COURT

Supreme Court of British Columbia

DECIDED

2 April 2013

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2013 BCSC 558 D.T.L. v. E.M.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.T.L. v. E.M.L.,

2013 BCSC 558

Date: 20130402

Docket: 0729185

Registry: Prince George

Between:

D.T.L.

Claimant

And

E.M.L.

Respondent

Corrected Judgment: The cover page was corrected and the text of the judgment was corrected at paras. 91, 92 and 94 on April 2, 2012

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for the Claimant:

J.H. Cluff

Appearing on her own behalf :

The Respondent, E.M.L.

Place and Date of Hearing:

Prince George, B.C.

February 20 and 21, 2013

Place and Date of Judgment:

Prince George, B.C.

April 2, 2013

Introduction

- [1] This is an application for review of spousal support payable by the claimant, D.T.L., to his former spouse E.M.L.
- [2] This matter has a lengthy history before the courts with some 14 applications having been heard between the date of the parties' separation in 2006 and today's date.

Background

- [3] The claimant is 45 years of age; the respondent is 43. They married February 22, 1999, and separated for the final time in August 2006, after seven and a half years of cohabitation.
- [4] Both prior to, during and post-cohabitation, the claimant has worked as a process supervisor for FMC, a producer of hydrogen peroxide in the Prince George area. Since the date of separation, the claimant's income has remained relatively static. On the basis of his 2012 T4 slip, produced during these proceedings, I am persuaded that his current income, for support purposes, is \$109,284.
- [5] The respondent has a diploma from B.C.I.T. in computer systems/technology. She graduated in approximately 1992-1993 and worked successfully in the technology industry until approximately the end of 1998. In that year, she was laid off from her employment with a local Prince George technology firm as a result of a shortage of work.
- [6] The respondent was economically independent at the time of marriage. Her job loss was unrelated to the marriage.
- [7] The respondent became pregnant with their first child, in October 1998. Following her layoff in December 1998, she did not return to work throughout her cohabitation with the claimant other than part time contract work in the technology field. A second child was born February 28, 2003.

- [8] It is a matter of contention between the parties as to whether there was an agreement that the respondent would stay home with the children. The claimant says he was opposed to the respondent staying home and says his mother was prepared to assist with the care of the children. The respondent disagrees.
- [9] Without recording the whole of the tumultuous relationship between the claimant and the respondent, it appears there were issues between them surrounding the use of alcohol and drugs which led to their separation in or around 2005. Issues of past conduct have no relevance to this application.
- [10] The first separation resulted in the drafting of a marriage agreement which contained terms upon which the respondent would accept the claimant back into the former matrimonial home.
- [11] The marriage agreement provided for asset division, child support and spousal support as well as other matters, in the event the reconciliation did not endure. The marriage agreement stipulated child and spousal support totalling \$2,500 per month payable were the parties to separate, with provision for review in 2009. It also provided a formula for the purchase of the claimant's interest in the former matrimonial home by the respondent.
- [12] That home is situated on acreage containing a residence, barn and riding facilities. Both during cohabitation and afterwards, the respondent owned a number of horses and ponies. She has claimed farm losses of over \$20,000 in certain taxation years in relation to the operation of the 'farm'. Both the respondent and the children appear to be avid equestrians.
- [13] As to the support provisions in the marriage agreement, the respondent says she believed the \$2,500 figure was too low. She says she agreed to this low amount because the claimant agreed that he would not have the children overnight.
- [14] The reconciliation of 2005 was ill fated and the parties separated for a final time in August 2006.
- [15] Following separation, the respondent had custody of the children and the claimant had access to the children as per the marriage agreement. The claimant, however, felt he had the children in his care for less time than was fair. In the fullness of time, Dr. Michael Elterman prepared a s. 15 report containing recommendations as to the custody and parenting arrangements for the two children. Those recommendations, which favoured the claimant spending more time with the children, were incorporated into the consent order pronounced by Mr. Justice Butler in December 2010.
- [16] Since then, the parenting arrangement provides that the children spend three days out of every eight with their father based upon an eight day cycle. School holidays are shared equally. There is a potential issue as to whether or not this constitutes a shared parenting arrangement under s. 9 of the Federal Child Support Guidelines [FCSG]. The respondent denies this is shared parenting. The claimant, however, seeks no variation from the child support provisions contained in December 2010 order and is content to pay the full table

amount of support for the two children.

- [17] After the 2006 separation, the respondent engaged sporadically in various forms of remunerative work. She attempted to return to the field of computer training which was what she had been doing prior to her layoff in 1990. She had done some contract computer training throughout the late 1990s into the year 2004 with modest earnings each year. In June 2006, she obtained a contract position with UNBC earning between \$600 to \$1,000 per day, four days per month, on a contract position. However, her total earnings over the course of 2006/2007 were only \$15,000.
- [18] The terms of the marriage agreement allowed her to retain this income without any reduction in spousal support.
- [19] In addition to the contract work, the respondent has been a Mary Kay cosmetic representative and horse breeder. Neither pursuit has proved financially successful.
- [20] The marriage agreement provided for variation of the spousal support provisions at the expiry of three years. In the summer of 2009 the respondent filed an application seeking variation of her spousal support. In her supporting affidavit she stated that she had taken occasional computer training courses after Jacob's birth but had basically stayed home full-time and, as such, there was erosion of her skills during the term of cohabitation.
- [21] At the hearing before me, she testified that she had 'upgraded' those skills in anticipation of the contract with UNBC. That contract, however, dried up with budget cuts and a change in UNBC's hiring policies. That meant the contract work was no longer available to her. After seeking various other computer training positions, the respondent rightly concluded that the field of computer training offered little opportunity for full time employment in the Prince George area.
- [22] In her 2009 application the respondent deposed as follows:

That I am unable to find work teaching in Prince George, I have decided to upgrade my education. I intend to obtain an education assistant certificate which will permit me to work as a teacher's assistant in the school. I am able to take this course online, which commences in or about August 2009 and continues for four semesters. I therefore believe that I will be able to complete this course in or about December, 2010, after which time I will qualify to obtain employment as a teaching assistant. I have looked into job opportunities and feel fairly confident that I will be able to obtain employment somewhere in the range of 25 to 30 hours per week at a rate of approximately \$25 per hour during the school year. I therefore anticipate that I will be able to earn an annual income of somewhere in the range of \$30,000 upon completing my upgrading and obtaining the relevant employment.

- [23] Mr. Justice Williamson heard the application in the fall of 2009. He determined the claimant's income was \$118,665 and the respondent's \$3,600. He varied spousal support to \$2,252 per month from \$700. That result, presumably, prompted the claimant to set the matter for trial. The original trial date was set for eight days to commence February 2010. It was subsequently adjourned or bumped to December 2010.
- [24] In the summer of 2009, the respondent enrolled in the online course to qualify her as a teacher's assistant. She enrolled in two of the required eight courses. The result was she would have graduated in May 2011 if she took two courses in each of the four semesters it was offered.
- [25] Instead of continuing with two courses per semester, the respondent dropped one course in January 2010. This adversely impacted, the date upon which she was scheduled to complete her course work and thus qualify for employment. She received A+ in the two courses she took in the fall semester of 2009. She similarly received an A+ in the one course she took in the spring semester of 2010. She again enrolled in one semester in the fall course of 2010 resulting, once again, in an A+.
- [26] At or near the date of the trial the matter was settled. A consent order was spoken to before Butler J. on December 7, 2010. The relevant provision giving rise to this application is found at para. 3 of the order, which reads:

The Claimant shall pay to the Respondent spousal maintenance in the amount of \$1,900 per month with a review date for such spousal support in two (2) years;

- [27] All property matters were settled and the respondent purchased the claimant's interest in the former matrimonial home based upon the formula contained in the marriage agreement. The respondent testified that after paying out the claimant some \$200,000 and paying her lawyer fees she realized that a job paying her \$30,000 a year was insufficient for her needs. Without telling the claimant, she dropped out of the courses leading to accreditation as a teacher's assistant in January of 2011.
- [28] At that time, the respondent began considering other options. The only option she pursued was the purchase a Kumon franchise in Kamloops. This would require a move to Kamloops together with the children and her boyfriend, Mr. Gandy. According to submissions made by the respondent to Mr. Justice Curtis at the mobility hearing in April 2012, Mr Gandy is her long time boyfriend and a person of means. Mr. Gandy, according to the material, keeps clothing, horses and equipment at the respondent's residence and spends three nights per week or more at her home. He has taken the respondent and her children on vacations to Mexico.

- [29] Despite requests from the claimant as to the respondent's progress in school, she didn't advise the claimant she had abandoned the online course work for accreditation as a teacher's assistant. The respondent remained silent as to her career plans in relation to the Kumon franchise until she brought forward her mobility application to permit her to move from the Prince George area with the children.
- [30] I pause to note that the order of Butler J. contains a provision that the respondent "will not relocate the residence of the children of the marriage from the city of Prince George without further order of the court or agreement between the parties."
- [31] The respondent's mobility application was heard in April 2012 by Curtis J. In written reasons dated June 7, 2012, he dismissed her application.
- [32] In dismissing the application, Curtis J. said at para. 29:
- [29] I find that at the present time the interests of the L. children are best served by them remaining in Prince George under the existing custody and access order. E.M.L. did a very competent job of representing herself in this application, and clearly has skills which would be desirable for employers. She has arranged her financial circumstances competently to date and if there is a review of the spousal support in December, the court order will have to be one which is realistic and practical for the parties – it may be that in their children's interests, E.M.L. may not be able to move as she wants, nor D.T.L. reduce or cancel the spousal support as he wishes, until some more appropriate time.
- [33] From the date of the consent order to the dismissal of her application in June 2012, it would appear that the respondent had all of her eggs in one basket; that is the Kumon franchise.
- [34] Once her mobility request was denied by the court, the respondent re-focused her efforts on obtaining employment.
- [35] In the interim, she has had surgery on both her shoulder and wrist. Both surgeries appear to have been successful although the respondent complains of continuous pain in her wrist. No medical evidence was presented indicating a disability affecting employment within the respondent's skill set.
- [36] At time of the application, the respondent was short listed for a position as an operator at the RCMP 9-1-1 call centre in Prince George. The position offers a starting salary of \$48,000 after a training period. Within five years, lock step adjustments will result in annual compensation of \$63,000 annually assuming the applicant successfully completes a one year probationary period.
- [37] At the hearing in February 2013, I was advised the respondent is one of ten remaining candidates for seven positions with the RCMP. She was awaiting advice that she has medical clearance. Training is to commence in April 2013.

- [38] Her backup plan was to enrol in a two-year course at Caledonia College which would allow her to become a radiology assistant, dental or healthcare assistant.
- [39] It is a prerequisite to the diploma course that she have Math 11 and Math 12, Physics 11 and Physics 12, and Biology 11 and Biology 12. She does not have all of the required courses; however she was able to 'challenge' the Grade 11 math test and has successfully taken two of the courses with the required passing grade. She is taking the two remaining courses at the present time. If she passes, which it would appear she will from her academic records, she will be able to enter the course at Caledonia College in September 2013 and will graduate in May 2015.
- [40] Each of the chosen occupational fields offers reasonably high compensation and, presumably, benefits. The respondent offered as a reason for abandoning her earlier educational pursuits, the fact that she needed more than \$30,000 annually to service the mortgage payment required to buy out the claimant's interest in the former matrimonial home and still provide properly for she and the children.
- [41] At the conclusion of the hearing before me, I directed that the respondent advise counsel for the claimant of any changes to her employment status pending release of my judgment. Specifically, whether she was offered the position of call center operator with the RCMP.
- [42] On February 28, 2013, the respondent notified claimant's counsel that she "had completed all necessary steps to be hired as a Telecommunications Officer" for the RCMP and was beginning orientation March 4, 2013.
- [43] On March 7, 2013, the respondent directed a further letter to claimant's counsel advising that she has "been hired as TCE-Temporary Civilian Employee.' There is a six month training period wherein she will work approximately 500 hours at an hourly wage of \$22.50. Upon completion of her training, she will be offered a contract of no less than thirty hours weekly at a wage of \$23.40 hourly.
- [44] There is a probationary period of one year after which the respondent is eligible to apply for a position as a Civilian Member of the RCMP.
- [45] Her letter states that one half of TCEs do not "make it through the process". An 80% average is required on all tests.
- [46] The claimant currently lives in a mobile home of an extremely modest nature. The respondent lives on acreage, in the former matrimonial home, with the children. There she boards horses and has horses and/or ponies of her own. She has recently purchased a new truck for \$32,000 of which \$22,000 is financed. She testified this was necessary because her old truck was near the end of its useful life and she needed a vehicle with an automatic transmission because of her shoulder surgery.

- [47] The respondent suggests that the claimant lives in modest circumstances because of the fact that he pays lawyers for all of the applications which have ensued to date, leaving him with no money for anything else. She, on the other hand, has represented herself throughout many of the proceedings and in particular those since the date of the consent order.

Position of the Parties

- [48] Without the benefit of knowing the respondent had found employment with the RCMP, the claimant submitted that spousal support by the claimant to the respondent should come to an end. Six and one half years have passed since the parties' separation with no change in the respondent's employment status. The claimant argues that the respondent's unemployment was a matter of choice.
- [49] Alternatively, the claimant says an income of \$30,000, being the amount she suggested she could earn from becoming a teacher's assistant, ought to be imputed to the claimant and support ordered at amount below the lowest end of the range under the Spousal Support Advisory Guidelines [SSAG] for a defined period of time.
- [50] The respondent acknowledged that there has been delay in her re-entry into the work force. Some of that she attributed to medical issues, specifically her shoulder and wrist injuries. Both are the result of injuries from horseback riding post-separation. She has had several surgeries since separation.
- [51] She acknowledged, some of the delay arose from the abandonment of the course work in 2009/2010 and 2010/2011. She said this was done upon the realization the teaching job would not provide sufficient funds to support her and the children's lifestyle once she had borrowed to pay out the claimant his interest in the former matrimonial home.
- [52] She suggested that support be terminated once she has passed her probationary period with the RCMP 911 Center or, alternatively, be payable until May 2015 in the event she has to retrain at Caledonia College in the course which allow her to pursue a career as a medical technician. She says because she receives no contribution towards the children's Section 7 expenses, her support ought to be ordered towards the high end of the range.
- [53] Both of the career paths will, she acknowledged, restore her self sufficiency and obviate the need for further spousal support.

The Scope of Review

- [54] While the order of Butler J. contains no direction as to the focus of the spousal support review, it is clear from the surrounding circumstances that the review arose because of uncertainty surrounding the respondent's career path and potential earnings at the time the review was agreed to by the parties. For reasons I shall come to, I reject the respondent's suggestion that the claimant was aware she had quit the online courses in early 2011.

[55] In *Leskun v. Leskun*, 2006 SCC 25, Binnie J. for the Court made clear, at para. 39, the following proposition:

Willick and Choquette establish that a trial court should resist making temporary orders (or orders subject to "review") under s. 15.2. See also: *Keller v. Black*, [2000] O.J. No. 79 (QL) (S.C.J.). Insofar as possible, courts should resolve the controversies before them and make an order which is permanent subject only to change under s. 17 on proof of a change of circumstances. If the s. 15.2 court considers it essential (as here) to identify an issue for future review, the issue should be tightly delimited in the s. 15.2 order. This is because on a "review" nobody bears an onus to show changed circumstances. Failure to tightly circumscribe the issue will inevitably be seen by one or other of the parties as an invitation simply to reargue their case. That is what happened here. The more precise condition stated in the reasons of the trial judge was excessively broadened in the formal order. This resulted in a measure of avoidable confusion in the subsequent proceedings.

[56] The respondent's unstable employment prospects created the uncertainty requiring the review two years forward from 2010. There was and remains no uncertainty as to the claimant's circumstances. He remains steadily employed at a consistent wage with the same employer.

[57] On a review such as this, there is no requirement to establish a material change in the circumstances from the date of the earlier order. Rather, the court must consider the relevant provisions of s.15.2 of the Divorce Act which read as follows:

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

...

(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.

...

(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.
- [58] I agree with the claimant that no one single factor in s.15(2) trumps the others. The section must be read as a whole.

The Evidence

- [59] In her application before the Court in 2009, the respondent set forth a detailed plan which, she said, became untenable when she had to borrow money to finance the buy-out of the former matrimonial home. I note that the purchase was a matter of choice and the formula for purchase was known to the respondent when she embarked on the course work in 2009. There was nothing unforeseeable about the re-financing of the home so as to acquire the claimant's interest
- [60] For the three years following separation, the respondent managed to maintain the home on a total of \$2500 per month; \$1800 for child support and \$700 for spousal support. She did this with only a modest mortgage of some \$13,000 on the home. She also had some small earnings during this period from UNBC and Mary Kay.
- [61] When her income came to an end in February 2009, she knew from early on that computer training was not going to provide her with a living wage. Despite this, it wasn't until shortly before the variation application she brought in respect of the spousal support payable under the marriage agreement that she decided upon a career as a teacher's assistant.
- [62] Her explanation for reducing her course load from two of eight required courses to one per semester is not believable. She excelled in the two courses she took despite the duties associated with care of the children and preparing for the February 2010 trial date. The reduction in course load had the effect of delaying her graduation, hence her employment, by two years.

- [63] I don't accept that the claimant knew about the abandonment of the program after settlement, nor do I accept her explanation as to why she abandoned the program. The *raison d'être* for the review two years following the consent order was because of the belief that the respondent's career path would be clear by then. Instead of taking these courses, the respondent was pursuing a court application to remove the children from the Prince George area.
- [64] I conclude that the two year review was as a direct result of the respondent's projected graduation at or near the end of December 2012, based upon the reduced course load of one course per semester.
- [65] The claimant rightly thought that the respondent, based upon her averments to the Court in 2009, would be earning \$30,000 annually shortly after graduation, with the result his spousal support obligation would be significantly reduced if not eradicated.
- [66] Instead, the respondent quit the program she chose, to pursue a career she knew would be opposed by the claimant because it required moving the children from Prince George to Kamloops. Given the history of this matter, I reject the notion that the respondent held an honest belief that the claimant would allow the children to move so as to eliminate spousal support.
- [67] As to why she didn't advise the claimant she had quit the online program despite his inquiry by email, I reject the proffered explanation that, "I may not have got that email."
- [68] I concur in the observations of Curtis J. as to the apparent skills and intelligence of the respondent. Both are apparent after two days of observing and hearing from her. She is a bright and articulate woman. Her continued unemployment cannot be explained on the basis of any deficiency in her abilities.
- [69] In the course work in furtherance of her Teacher's Assistant certification she received four A+s. It is hard to see how she could feel that she was not up to continuing with two courses per semester given her apparent success within the program.
- [70] Similarly, she has achieved the necessary B grade in Physics 11 and Math 12 which would have allowed her to pursue the program at Caledonia College had she not been offered the position with the 9-1-1 Call Center.
- [71] Despite the passage of over two years since the scheduled trial, the respondent's employment future remained unsettled at the time of the application. Subsequent events have now overtaken the situation which existed in mid-February 2013. The respondent has been offered a high paying position which, if she passes the one year probationary term, will provide her with secure, well paid employment.
- [72] All indications are that the respondent has the necessary intelligence, drive and social skills to succeed with the RCMP. Her academic achievements in both the online teaching assistant's course and the required high school courses taken in anticipation of entry into

Caledonia College leave me with no doubt that the respondent has the required skill set to succeed in the further testing requirements. If she does not, any failure to pass the probationary period is not as a result of any disadvantage to the respondent as a consequence of her marriage to claimant or the role she played during the marriage.

Conclusions

- [73] I anticipate that the respondent will have commenced her paid training period by April 1, 2013 as per the evidence I heard, clarified by 'submissions' received at my request after the application, I am satisfied that over the course of the next six months the respondent will earn approximately \$2,250 monthly together with a further 12% of salary paid in lieu of benefits.. For the following six months, commencing October 2013, her income will exceed \$3,000 monthly as her hours of work increase.
- [74] Thereafter, if she passes the probationary period, her income will be \$48,000 annually with increments thereafter for five years until she achieves annual income of \$63,000 annually.
- [75] The respondent acknowledges the figure of \$48,000 is sufficient to remove the need for further spousal support. I agree.
- [76] If the respondent passes her probationary period and attains full time tenured employment as a civilian member of the RCMP then support should clearly end no later than the end of March 2014. But how long, if at all, should support continue beyond March 2014 if, for any reason, the respondent is not offered a full time position?
- [77] Presently there exists a marked disparity in the lifestyles of the parties. The respondent enjoys a significantly higher of standard than does the claimant. Given the fact the children reside three days out of eight with the claimant, this disparity affects them; not just the parties. That disparity arises, in part, from the voluntary contributions of Mr. Gandy to the well being of both the respondent and the children. It arises, as well, from choices made by the claimant as to the use of the funds he received from the property division agreed to by the parties in 2010.
- [78] The relationship between Mr. Gandy and the respondent is of long duration and can be expected to continue given the fact that he was prepared to move to Kamloops and cohabit with the respondent. Currently Mr. Gandy's home is listed for sale and there is ongoing discussion between the respondent and him about cohabitating once it sells.
- [79] As to the length of marriage, this was a relatively brief marriage of seven and one-half years. The respondent worked part-time on occasion. While she likely did lose some computer skills as a result of not keeping up with change in her field, to a large extent, that has been ameliorated by the self training undertaken by the respondent in anticipation of the training work she was to perform with UNBC. But for the ages of the children, the SSAG would provide a range of duration of between four to eight years. As it stands, the duration of support indicated by the SSAG is from four to fifteen years from the date the parties

separated.

- [80] I agree with the claimant that the imputation of \$30,000 income annually to the respondent is reasonable absent the recent information concerning her new found employment. This based upon the career trajectory projected by the respondent in her 2009 application.
- [81] Such, however, would not end the inquiry as to whether spousal support is still warranted.
- [82] Whether by agreement or not, the respondent assumed the lion's share of child rearing while the claimant was the breadwinner.
- [83] As to the enumerated factors in s. 15.2(6) of the Divorce Act, the only agreement affecting matters was the marriage agreement which provided for \$700 spousal support. That agreement contained a mechanism for variation which the respondent invoked in 2009. It is now of marginal, if any, assistance.
- [84] It is hard to conclude the respondent has been economically disadvantaged by the marriage. To the contrary, her financial position, after seven years of marriage appears much enhanced from that which it was prior to marriage. Any erosion of her computer skills was ameliorated by the self training in advance of the UNBC contract. She has since gained additional educational qualifications: the course work done online; the Grade 11 and Grade 12 courses she has successfully completed; and those currently underway.
- [85] The parties currently share the children's care in a balanced fashion such that it is not a determinative factor at the present time. Instead, the co parenting arrangement in place since the pronouncement of the consent order militates in a shorter duration for spousal support than might otherwise be the case where a spouse unfairly shoulders the burden of parenting time thus interfering with efforts to achieve self-sufficiency.
- [86] Each party has endured economic hardship since separation but, on balance, the respondent appears to have suffered the greater diminishment in his standard of living. While there is some merit in the respondent's suggestion that the claimant's current situation is, in part, a function of decisions he's made, I agree with the claimant's counsel that, even at the lowest end of the SSAG, the sum payable to the respondent, were she earning, \$30,000 annually, would mean that the respondent's household has less than 50% of the combined incomes.
- [87] Here, given it has been six plus years since separation, coupled with the obvious capacity of the respondent, it's my view that the obligation to promote economic self sufficiency becomes the dominant consideration upon this review.
- [88] I conclude the respondent has been dilatory in making sufficient efforts to achieve full employment. She is, from all appearances, a capable woman whose energies, until recently, seem focused on something other than attaining employment.

- [89] Here, I conclude that the respondent's entitlement to support is warranted on a non-compensatory basis as in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420. Non-compensatory support is awarded based on the relationship and the social obligation for economic consequences flowing from the marital breakdown even where direct loss cannot be established. There is no compensatory component of the respondent's entitlement.
- [90] Were it not for news of the respondent's recent employment, I would have imputed income to her utilizing the provisions of s.19 of the FCSG, I conclude that the respondent could easily have achieved the credential of teaching assistant within the time frame set out for review in the consent order. The result would be an income of \$30,000 annually as per the respondent's own estimate.
- [91] Based upon information received from the respondent, I am satisfied her present income is from \$2,250 to \$2,500 monthly depending upon the availability of hours while training. The higher figure assumes the addition of a 12% increment in income in lieu of benefits during the respondent's training period as referenced in the correspondence between her and Mr. Cluff.
- [92] Coupling the present information as to her actual income with the income she anticipated earning, from January 1, 2013 forward, I am satisfied that it is appropriate to use the sum of \$30,000 as the respondent's 'go forward income'. Coupled with the claimant's income of \$109,284 annually, the SSAG provides a range of from \$941 monthly (low) to \$1,643. Using the low end of the range results in the respondent enjoying 53.3% of the combined income of the two households after taking into account the respondent's receipt of benefits and credits associated with the children's primary residence being with her.
- [93] In concluding the appropriate support payable for the next six months is \$900 commencing May 1, 2013, I have taken into account the respondent's delayed entry into the workforce, which I visit which I attribute to her actions.
- [94] Given my conclusion the respondent's income will increase to over \$36,000 by October 1, 2014, based upon the availability of more hours of work as set out in her correspondence to Mr. Cluff, support will be further reduced to \$500 per month for a further six months, until April 1, 2014, after which time it will terminate. By May 1, 2014, the respondent will have received support from the claimant for in excess of seven and one half years. I expect she will have income of approximately \$48,000 annually. If she does not, the responsibility is hers alone. She has agreed that the starting income of \$48,000 will obviate the need for further spousal support. I agree.

Costs

[95] Unless there are offers which have been exchanged which affect the matter of costs, I am of the view that each party achieved some measure of success and order each party to bear their own costs. The knowledge that the respondent obtained employment at the time she did was fortuitous from the claimant's point of view as it results in a significant reduction in his obligation. If parties still wish to make submissions based upon offers that have been made, then such can be arranged through the registry.

"Harvey J."

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