
CANADA / JUDGMENT

D.Z. v. M.Z.

2022 BCSC 706

COURT

Supreme Court of British Columbia

DECIDED

3 May 2022

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2022 BCSC 706 D.Z. v. M.Z.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.Z. v. M.Z.,

2022 BCSC 706

Date: 20220503

Docket: E202457

Registry: Vancouver

Between:

D.Z.

Claimant

And

M.Z., Company R,

Company C, Company 919 and Company 918

Respondents

Before: The Honourable Justice D. MacDonald

Reasons for Judgment

Counsel for Claimant:

M. Henricksen

Counsel for Respondents:

J. Lewis

Place and Dates of Trial:

Vancouver, B.C.

March 7-11, 2022

Place and Date of Judgment:

Vancouver, B.C.

May 3, 2022

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Introduction

- [1] This is a family law dispute. I have anonymized the names in the style of cause and in the body of these Reasons for Judgment because the parties have minor children. This anonymization is to protect the privacy of the children.
- [2] The claimant, D.Z., was born in 1965. She is currently 57 years of age. The respondent, M.Z., was born in 1965. He is currently 56 years of age.
- [3] The issues in dispute between the parties are:
 - a. The appropriate parenting arrangement;
 - b. The parties' Federal Child Support Guidelines incomes, SOR 97/175 ["Guidelines"];
 - c. Retroactive and prospective child support;
 - d. Section 7 expenses;
 - e. Retroactive and prospective spousal support;
 - f. Security for child and spousal support;
 - g. Division of family property, including the parties' interest in Company R; and
 - h. Costs.

Background

- [4] The parties began a marriage-like relationship on December 1, 2002 and were married on August 29, 2003. They separated on July 18, 2020 when D.Z. was 54 and M.Z. was 53 years of age. They are collectively referred to as the "Zs".
- [5] The parties have two children of the marriage: A.Z., born in 2005 (age 16) and L.Z., born in 2010 (age 11).
- [6] M.Z. is a director of Company C, together with his equal partner, M.C. M.C. and M.Z. have divided the tasks in Company C so that M.C. oversees Company C's financial affairs and M.Z. oversees sales and operations.
- [7] Company C's equal shareholders are corporate shells whose only assets are shares in Company C. These two shell companies are owned equally by companies that the Zs and M.C. own separately, Company R and Company 047, respectively. D.Z. and M.Z. own all of the shares of Company R and M.C. owns all of the shares of Company 047. M.Z. holds 50 Class A common shares of Company R and D.Z. holds 50 Class B common shares of Company R.
- [8] From separation until the end of October 2020, the parties used a shared bank account and M.Z. did not pay child or spousal support. M.Z. deposited all of his income into the joint account. M.Z. paid the mortgage and insurance on the family home from October 2020 until

March 2021 when the family home was sold. M.Z. also pays D.Z.'s car loan payments in the amount of \$390 per month. D.Z. remained in the matrimonial home until it was sold. The net proceeds of the sale of the family home are held in trust and several interim distributions have been made.

- [9] M.Z. paid child support of approximately \$1,000 per month from December 1, 2020 to June 2021 and spousal support of approximately \$1,000 per month from April 2021 to June 2021.
- [10] Since July 2021, M.Z. has been paying child support in the amount of \$1,781 per month and spousal support in the amount of \$247 per month. These amounts were based on a 2021 income for M.Z. of \$120,000 and \$57,000 for D.Z. Since May 2021, the children have resided primarily with D.Z.
- [11] The parties jointly retained Dan Sturgess from Crowe MacKay LLP to provide an expert opinion regarding M.Z.'s Guidelines income for support purposes. Mr. Sturgess was also retained to complete expert reports to determine the fair market value of the parties' shares in Company R and the fair market value of Company R's direct and indirect interests in Company C and its two shell companies.
- [12] Both parties sought a divorce. I granted the parties a divorce on the last day of trial. Pursuant to s. 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA], the divorce was to take effect on the 31st day after March 11, 2022.

Preliminary Issue

- [13] At trial, counsel for D.Z. sought to read-in certain statements made by the respondent during his examination for discovery. These questions and answers were regarding the possibility of Company C paying out dividends at the end of 2021. Counsel for M.Z. objected on the grounds that the answers given at the examination for discovery, although not objected to at the time, were inadmissible at trial as they fell under settlement privilege.
- [14] I did not allow D.Z.'s counsel to read-in these contested questions and answers, but I allowed D.Z.'s counsel to cross-examine M.Z. and M.C. on this issue. I stated that the parties could make further submissions on the admissibility of these comments in final argument.
- [15] In his final submissions, the respondent asked this Court to disregard that line of questioning for the following reasons:
 - a) They arose initially at mediation;
 - b) M.C. testified that he did not agree to pay dividends but considered it when he was told it could prevent a trial; and
 - c) A settlement and the payment of dividends did not materialize.

- [16] I do not consider the potential withdrawal of dividends in this context to be part of the underlying factual matrix of this family law dispute. Therefore, given that these discussions were held for the purpose of mediation, they fall under settlement privilege. As such, I will not take them into consideration.
- [17] I understand from other testimony that M.Z. and M.C. can agree to withdraw dividends from their business. However, M.Z. cannot unilaterally decide to withdraw dividends because he is not a sole, or majority, shareholder.

Parenting

Legal Principles

- [18] Section 37(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides that in making an order respecting guardianship and parenting arrangements the court must consider the best interests of the child only.
- [19] Section 37(2) of the FLA details what the court must consider in determining a child's best interests:
- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.
- [20] Parenting arrangements relating to older children must reasonably conform to the wishes of the child. A child's views, depending on their age and level of maturity, are regularly considered as part of the best interest analysis, which is at the core of any parenting decision: P.J.D. v. W.K.W., 2019 BCSC 1188 at para. 41. A child's views can be presented by either parent: B.J.G. v. D.L.G., 2010 YKSC 44 at para. 52. The interests of teenagers, while not determinative, are deserving of considerable weight: D.N.L. v. C.N.S., 2013 BCSC 809 at para. 50-51.

Parties' Positions

- [21] The parties agree to joint guardianship of the children with shared parenting responsibilities pursuant to s. 41 of the FLA.
- [22] D.Z. argues the children are almost 12 and 17 and their wishes should be respected. She testified that the children want to see their father but they do not wish to live with him.
- [23] In the parties' Agreed Statement of Facts, M.Z. agreed to the children's primary residence being with D.Z. However, at trial M.Z. took the position that he would like shared parenting on a week-on/week-off parenting schedule from Sunday at approximately 6:00 pm to the following Sunday at 6:00 pm. M.Z. submits that this schedule will ensure that the children are settled for the commencement of the school week.
- [24] In the alternative, M.Z. stated that he would be agreeable to the 2-2-5-5 parenting schedule which D.Z. said she could accept during her testimony. M.Z. stated that he will respect the wishes of the children but emphasized that both parents should encourage and support the other parent's parenting time. M.Z. argues that there needs to be a clear parenting schedule in place to provide certainty and consistency for the children.

Analysis

- [25] Immediately following separation, the parties had a shared parenting schedule of five days on and five days off. In December 2020, A.Z. began to live primarily with D.Z. In May 2021, after an alleged incident of family violence, L.Z. also began living primarily with D.Z.
- [26] Currently, the children see M.Z. frequently: every school day and once on the weekend. During the week, M.Z. takes the children to school. These weekday drives to school are not long instances of parenting time, but M.Z. continues this arrangement because he wants to see the children regularly. M.Z. is agreeable for this to continue in the short term.

- [27] D.Z. provided evidence that the children would like to see their father, but they do not want to live with him.
- [28] At trial, D.Z. testified that she would agree to equal shared parenting on a 2-2-5-5 schedule. D.Z. testified that she does not want a week-on/week-off parenting schedule as she would miss the children too much during M.Z.'s week.
- [29] It is important to note that the test for parenting arrangements is the best interests of the children, not the best interests of D.Z. or M.Z. If a week-on/week-off schedule were implemented, arrangements could be made for the parent who does not have parenting time to see the children during the time that they are with the other parent.
- [30] While D.Z. and M.Z. have conflict, they have also demonstrated that they are able to arrange additional parenting time for M.Z., such as at Christmas and during the children's summer vacation.
- [31] M.Z. was clear that he would like a specific parenting schedule so that there is no confusion. Currently the children are the ones with whom M.Z. communicates to arrange parenting time. In my view, this ad hoc schedule is not in the best interests of the children. I agree that the children would benefit from certainty in a schedule.
- [32] M.Z. would like to work toward equal parenting time but wants to respect the children's wishes especially since the older child is 16 years old. M.Z. testified that he does not want to force the children to come over, but he wants the "right" to have them over.
- [33] M.Z. is of the view that the children have been influenced by D.Z. and that she has drawn them into the litigation. He believes she has done so in spite of the March 2, 2021 Order that the parties not discuss the litigation with the children. M.Z. testified that one of the children expressed a concern to him that the police would be called to take her to him. M.Z. further submitted that one of the children asked him why he took a million-dollar dividend and hid it from D.Z. M.Z. argues that these are examples of D.Z. involving the children in the parties' disputes.
- [34] Prior to trial, D.Z. sought to obtain a Views of the Child Report. M.Z. made it clear that his preference was to spend that money on counselling with the children and have the children come to him when they are ready.
- [35] D.Z. does not oppose M.Z. having parenting time, but she does not want to force it on the children. She certainly does not want to be in a position where she may be found in contempt of court because the children will not attend at their father's house for his parenting time. I agree with D.Z. that she should not be exposed to additional litigation because the children, at times, may not want to see their father. They are old enough to have their views taken into account.

- [36] Currently, M.Z. sees the children during the week and on weekends. He would like to have the children spend more time with him. He hopes that once the litigation is over, the children will feel less tension and his parenting time will increase.
- [37] I heard testimony about an alleged incident of family violence between M.Z. and the parties' daughter L.Z. in April 2021. According to this testimony, during this incident M.Z. grabbed L.Z.'s elbow in order to remove something from her grip. M.Z. testified that following the incident he immediately arranged for counselling for himself and L.Z. Based on the evidence adduced at trial on this issue, I am satisfied that this was a one-time event and does not fall under the definition of family violence in s. 1 of the FLA. In my view, this incident does not impact the children's safety when in M.Z.'s care.
- [38] In my view, it is in the children's best interests to spend time with both their parents and have certainty in a parenting schedule. As such, I find that it is in the children's best interests to have the following parenting schedule: subject to the children's wishes, the parties should be moving toward a 2-2-5-5 schedule. If the parties cannot achieve a 2-2-5-5 schedule within six months of this Order, especially with respect to their younger daughter, they can apply to the Court to resolve their dispute. I shall remain seized of the matter.

The Parties' Incomes

Legal Principles

- [39] Section 150(1) of the FLA requires that child support be determined in accordance with the Federal Child Support Guidelines (the "Guidelines"). Section 1 of the Guidelines sets out the objectives of the Guidelines:
- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
 - (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
 - (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
 - (d) to ensure consistent treatment of spouses and children who are in similar circumstances.
- [40] Section 2(3) of the Guidelines directs that the most current financial information must be used in applying the Guidelines.
- [41] Section 16 of the Guidelines sets out the default method for calculating a party's income and mandates that parents are to provide their children with the benefit of any increase in lifestyle and available money: *Boucher v. Boucher*, 2018 BCSC 2191 at para. 39

- [42] A determination of income for child support purposes begins with finding the spouse's Line 150 "total income" in the party's T1 General tax return: Guidelines, s. 16. The second step is to make whatever adjustments to that amount are required by Schedule III of the Guidelines. Once these two steps are completed, the court should look to ss. 17 to 20, to determine whether any of the exceptions set down in those provisions apply and, if so, what effect they should be given on the facts of the case: *Vincent v. Vincent*, 2012 BCCA 186 at para. 35; Guidelines s. 16.
- [43] The Court of Appeal in *Vincent* discussed the application of the exceptions listed in ss. 17-19 of the Guidelines:
- [36] Section 17 gives the court discretion to deal with the problem of an income which fluctuates from year to year and with non-recurring income or losses such that the determination of a spouse's income under s. 16 is not the fairest determination of that income. As it relates to this case, this provision permits the inclusion of non-recurring capital gains and the exclusion of non-recurring dividends.
- [37] Section 18 provides discretion to deal with the situation where a spouse is in a position to manipulate income in his or her capacity as shareholder, director or officer of a corporation, such that a person's income under s. 16 does not fairly reflect all the money available to that spouse for the payment of child support. It permits the inclusion of pre-tax corporate income and benefits paid to non-arm's length persons.
- [38] Section 19 addresses situations where the spouse's disclosed income does not fairly reflect what should be paid in child support by permitting imputation of income. It permits the imputation of income in a variety of situations, including income which is tax exempt, under-utilized capital investments, and when there is a failure to provide income information.
- [44] In *Brown v. Brown*, 2014 BCCA 152, the Court described the importance of advancing the objectives set out in s. 1 of the Guidelines when exercising its discretion:
- [23] Sections 17-20 of the Guidelines allow courts a degree of flexibility in specific circumstances where parties have unusual forms or patterns of income, or where they are able to manipulate their income for tax purposes in a manner that might frustrate the goals of the Guidelines. It is important, however, in interpreting and applying those sections, that courts recognize the need for consistent and predictable results. Courts should interpret ss. 17-20 of the Guidelines with a view to advancing the objectives set out in s. 1
- [45] In *Kowalewich v. Kowalewich*, 2001 BCCA 450 at para. 43, Justice Huddart cited Justice Martinson's decision in *Baum v. Baum* (1999), 182 D.L.R. (4th) 715 at 723, 1999 CanLII 5387 (B.C.S.C.), for the principle that s. 18 of the Guidelines enables the court to "lift the corporate veil" in appropriate circumstances in order to ensure that the money the payor claims as income actually reflects all of the money available for child support.

- [46] If the court believes a spouse's T1 does not fairly reflect all the money available to the spouse, it may:
- a) consider the spouse's income pattern over the previous three years: s. 17(1);
 - b) include in the spouse's total income all or part of the corporation's pre-tax income: s. 18(1) (a) (the "corporate income method");
 - c) fix an amount that accords with the services the spouse provides the corporation, so long as the amount does not exceed the corporation's pre-tax income: s. 18(1)(b) (the "personal services method"); or
 - d) impute such amount of income to a spouse as it considers appropriate in the circumstances: s. 19(1).

Parties' Positions

- [47] D.Z. takes the position that M.Z. chooses to pay himself a salary from Company R, but it is open to him to withdraw dividends. She notes that the business was more profitable in 2021 than it was when M.Z. and M.C. were taking dividends. She emphasizes that Mr. Sturgess found a combined economic remuneration for M.Z. and M.C. to be \$400,000, or \$200,000 each. Further, Mr. Sturgess found M.Z. could be benefitting to the amount of \$330,000 a year from Company C. He estimated M.Z.'s available income in 2021 to be \$350,000.
- [48] D.Z. proposes that M.Z. is able to take out at least \$250,000 a year from Company C for the following reasons:
- a) Company C has recovered financially from the pandemic and had its best year so far;
 - b) The company has also paid off its debt which was the main reason M.Z. and M.C. started withdrawing additional dividends in 2019;
 - c) M.Z. told D.Z. he could double his income once the company was paid off, which would be approximately \$240,000 a year;
 - d) M.Z. received \$245,000 in 2019 from Company C and at least \$10,000 in personal expenses through Company C and Company R, when Company C was in a relatively worse financial position than it is now; and
 - e) Mr. Sturgess used a salary of \$200,000 in determining what would be reasonable to pay someone in M.Z.'s position.
- [49] D.Z. proposes that M.Z.'s Guidelines income for 2021 be \$220,000, made up of \$50,000 in salary from Company C and \$70,000 from Company R as well as \$100,000 in dividends M.Z. could have withdrawn in 2021.

- [50] D.Z. proposes that M.Z.'s Guidelines income for 2022 and prospectively be \$200,000. This provides \$50,000 a year available for capital distributions to D.Z. until her interest in Company R has been paid. D.Z. argues that this Guidelines income determination would allow Company C to keep \$160,000 a year in the company.
- [51] M.Z. disputes Mr. Sturgess's Income Determination Report. M.Z. asks the Court to find that his income available for support purposes is \$120,000 based on his income from Company C (\$50,000) and Company R (\$70,000). M.Z. asks that I not consider dividend income since no dividends have been paid since the COVID-19 pandemic was declared in March 2020. M.Z. testified that when the COVID-19 pandemic was declared, M.C. advised him that, due to the uncertainty of the pandemic on the business, they could no longer take out \$10,000 per month in dividends.
- [52] M.Z. contends that the decision to stop paying the dividends was prudent because Company C suffered a loss of \$75,844 in fiscal year 2020. Had they not received the Canada Emergency Wage Subsidy ("CEWS") government relief of \$57,485, the loss would have been \$133,329.
- [53] M.Z.'s position is that M.C., the "numbers person", is strongly of the view that money needs to be kept in the company. M.Z. and M.C. testified that money needs to be kept in Company C for the following reasons:
- a) There are still concerns about the financial impact of the pandemic;
 - b) Company C has new supply chain issues that are causing orders to be delayed and resulting in increased costs;
 - c) M.Z. and M.C. have been working long, unsustainable hours, which require them to hire additional staff, thereby increasing the company's expenses;
 - d) M.Z. and M.C. need to hire new staff to grow the company, increasing the company's expenses; and
 - e) There are new capital expenditures, such as improving the company's website, developing new product lines, upgrading to a cloud-based ERP system, purchasing other companies, and even expanding the company into Alberta.
- [54] D.Z. argues that M.C.'s evidence should be given little weight. D.Z. argues that M.C. described Company C as always being in a state of crisis, which is inconsistent with the company's financial performance and his ongoing involvement in the company.

Analysis

- [55] My task is to ensure that M.Z.'s Guidelines income reflects the money reasonably available for child support purposes: *Younger v. Younger*, 2017 BCSC 363 at para. 25.

- [56] There are no issues regarding D.Z.'s income. D.Z. was employed at Simon Fraser University ("SFU") until August 2021 when she moved to employment with the University of British Columbia ("UBC"). As laid out in the parties' Agreed Statement of Facts, in 2020 D.Z. received employment income of \$47,510 from SFU and in 2021, she received employment income of \$31,299 from SFU and \$15,803 from UBC. D.Z. proposes that her Guidelines income for 2021 and 2022 is \$46,282 and \$46,572 respectively.
- [57] The issue is M.Z.'s current income available for support purposes.
- [58] M.Z. has an annual salary from Company C in the amount of \$50,000 (gross). Company C also pays to Company R management fees of \$7,000 per month or \$84,000 per year. This is a combination of salary of \$5,833.33, Canada Pension Plan ("CPP") payments of \$165.82 for the corporate portion and \$165.82 for the employee portion, and a \$1,000 vehicle allowance. M.Z.'s salary from Company R is therefore \$70,000 gross per year. M.Z. has also received discretionary dividends from Company R in the past.
- [59] As set out in the Agreed Statement of Facts, M.Z. has been able to consistently draw between \$140,000 and \$245,000 from his business in the last five years. This stable income stream is based on the T4s of Company C and Company R, and the T5s of Company R showing actual dividends as:

Source

2016

2017

2018

2019

2020

T4 - D.Z. (Company C)

61,991.68

51,991.60

69,091.68

41,716.68

29,326.40

T4 - M.Z. (Company R)

70,000.00

70,000.00

70,000.00

70,000.00

70,000.00

T4 - M.Z. (Company C)

15,000.08

15,000.08

-

9,375.00

20,857.30

T5 - M.Z. (Actual Dividends - Company R)

-

17,000.00

23,500.00

123,500.00

60,000.00

146,991.76

153,991.68

162,591.68

244,591.68

180,183.70

[60] It was clear from his testimony that M.C. is very reluctant to take money out of Company C. If M.Z. withdraws dividends then so must M.C. In 2018, after Company C's debt was paid off, M.Z. and M.C. began paying themselves dividends in the amount of \$10,000 per month in September, October, November, and December. In 2019, M.Z. and M.C. received dividends of \$10,000 per month. In 2020, M.Z. and M.C. took dividends of \$10,000 in February and in March. M.Z. and M.C. have not taken any dividends since March 2020.

[61] Some of M.Z.'s reasons for not withdrawing dividends do not make sense from a business perspective. For example, M.Z. has proposed hiring six new people for Company C and M.C. proposed hiring five. This would be a 50-60% increase in staff. The evidence was that the increase in staff is not to increase sales, but to maintain Company C's current revenue. However, had these positions existed in previous years, the combined salaries would mean Company C would not have made a profit in at least the last four years. Further, no evidence

was led on actual efforts undertaken to hire additional employees.

- [62] Mr. Sturgess noted that Company C is remarkably stable compared to other companies he reviews. When it came to hiring additional people, Mr. Sturgess stated it would have made more sense to hire additional staff when the company had greater revenue in 2018, but no additional staff were hired at that time. Mr. Sturgess was not aware that the management fees of Company R included a car allowance, CPP, and possibly GST. That information came from the invoices from Company R to Company C but would also have shown up on Company R's financial statements. During cross-examination, Mr. Sturgess agreed that his income estimation was made up of the income M.Z. received from Company C, the management fee (the whole \$7,000 per month), and half of the pre-tax corporate income without any adjustments.
- [63] In my view, it is not consistent for a company that is allegedly financially precarious to be considering a major expansion plan. Further, Company C's financial position did not prevent M.Z. and M.C. from paying themselves a bonus in 2008 following the financial recession when the company was in arrears, nor from paying out an extra \$240,000 in total dividends while undertaking major leasehold improvements in 2019.
- [64] D.Z. argues that I should find M.Z.'s base income for support purposes to be \$200,000. I accept that this proposed Guidelines income is an attempt to strike a balance between any needs Company C may have to keep money in the company, M.C.'s stated reluctance to pay out dividends, the historical distributions made, and Company C's current financial position.
- [65] Mr. Sturgess examined Company C's pre-tax income. However he did not analyze whether all of Company C's pre-tax income was available to its principals. At paragraph 49 of his Income Determination Report dated March 1, 2022, Mr. Sturgess stated that "[his] conclusions above ignore any amounts of income which may need to be retained in Companies for legitimate business reasons... Notwithstanding the foregoing, when preparing my calculations, [he] did not identify any relevant reasons for retaining funds with respect to companies".
- [66] Given M.Z.'s history of withdrawing dividends from Company C, it is clear that the total income on M.Z.'s T1 General form does not fairly reflect the amount of money available to him for the payment of child support. Although both the corporate income method and the personal services method under s. 18 of the Guidelines are available to me to determine M.Z.'s Guidelines income, the Court of Appeal has suggested that the corporate income method may be more appropriate where the payor parent is the sole shareholder in a corporation: *Quinton v. Kehler*, 2020 BCCA 254 at para. 85; *Kowalewich* at paras. 47-49.
- [67] Here, given that M.Z. shares ownership and control of Company C with M.C., I find that the personal services method is the most appropriate means for determining the money available to M.Z. for the payment of child support: *J.A.C. v. V.R.C.*, 2015 YKSC 36 at paras. 38-39. I rely on Mr. Sturgess's report in this regard. After applying the Economic Research Institute's Salary Assessor database, and considering M.Z. and M.C.'s respective roles in the

business, Mr. Sturgess opined that if M.Z. were working as an employee at a similar company, he would be compensated \$200,000 for his services.

[68] I find M.Z. has \$200,000 in income available to him. Based on the available \$200,000, I impute an income of \$170,000 to M.Z. for support purposes since July 1, 2021 going forward. I address the remaining \$30,000 of available income under property division.

Child Support

Legal Principles

[69] The purpose of child support is "to ensure a fair standard of support that ensures children continue to benefit from the financial means of both spouses after separation. If a payor parent's means increase, their obligation to pay child support increases accordingly": J.M.D. v. R.M.J.D., 2011 BCSC 1295 at para. 23.

[70] Child support orders are made under either s. 149 of the FLA or s. 15.1 of the DA. Both the DA and the FLA provide that child support must be calculated in accordance with the Guidelines: s. 150(1) of the FLA and s. 15.1(3) of the DA. Under the Guidelines, the presumptive rule requires payment of the "table" amount of child support based on the parties' annual income: Guidelines s. 3(1)(a).

[71] In D.B.S. v. S.R.G., 2006 SCC 37, at paras. 99-116, the Supreme Court of Canada outlined the appropriate analytical framework for assessing retroactive support awards. The Court identified the following factors to be considered in deciding whether to order a retroactive award:

- a) the reason for the recipient's delay in asking for child support;
- b) the conduct of the payor parent;
- c) the circumstances of the child; and
- d) any hardship the payor might suffer as a result of a retroactive award.

Parties' Positions

[72] Based on a Guidelines income for M.Z. of \$200,000, D.Z. seeks the following order:

Commencing March 1, 2022 and continuing until further court order or written agreement between the parties, [M.Z.] will pay to [D.Z.] child support in the amount of \$2,749 per month.

[73] D.Z. also seeks retroactive child support for 2021. She submits that, based on a Guidelines income of \$220,000, M.Z. should have paid \$2,985 per month in child support for 2021. D.Z. proposes that M.Z. pay lump sum retroactive child support for January 1, 2021 to February 1, 2022 in the amount of \$20,179.

[74] M.Z. agrees to an order that he pay prospective child support for as long as the parties' children are children of the marriage. However, M.Z. submits that there should be no retroactive child support order and there are no child support arrears owing. M.Z. bases this submission on the fact that in October 2020 he commenced paying child and spousal support on his income of \$120,000. In addition, he paid the mortgage on the family home in the amount of \$5,695 per month and the claimant's vehicle loan in the amount of \$390 per month.

Analysis

Prospective Child Support

[75] I have imputed a Guidelines income to M.Z. in the amount of \$170,000. Based on M.Z.'s Guidelines income of \$170,000 and D.Z. having more than 60% of the parenting time with the children, I order that commencing March 1, 2022 and continuing until further court order or written agreement between the parties, M.Z. pay child support in the amount of \$2,395 per month to D.Z.

[76] However, as determined above, I expect that M.Z.'s parenting time with the children will increase. As such, based on both parties' Guidelines incomes, once the children are spending at least 40% of their time with M.Z., child support payments to D.Z. will be a set-off amount of \$1,664 (\$2,395 for M.Z. and \$731 for D.Z.).

Retroactive Child Support

[77] M.Z. made the following child support payments in 2021:

January 2, 2021 \$1,023

February 2, 2021 \$1,023

March 1, 2021 \$1,023

April 2, 2021 \$1,044

April 30, 2021 \$1,044

June 1, 2021 \$1,044

June 17, 2021 \$ 690

July 2, 2021 \$1,781

August 2, 2021 \$1,781

September 2, 2021 \$1,781

October 2, 2021 \$1,781

November 2, 2021 \$1,781

December 2, 2021 \$1,781

Total: \$17,577

[78] According to the parties' Agreed Statement of Facts, A.Z. resided primarily with D.Z. from December 2020 onwards and L.Z. resided primarily with D.Z. from May 2021 onwards.

[79] I am not ordering retroactive child support payments prior to July 1, 2021 as M.Z. paid the mortgage until the family home was sold in March 2021 and he continued to make D.Z.'s car payments up until trial. He also had the children 50% of the time until December 2020 (both and May 2021 (L.Z.)). Based on M.Z.'s July 1, 2021 Guidelines income in the amount of \$170,000, he should have been paying child support as follows:

July 1, 2021 to February 2022 \$2,395 per month

(x8 months)

Total: \$19,160

[80] As such, M.Z. owes \$1,583 in retroactive child support for 2021 (\$19,160 minus \$17,577).

Section 7 Expenses

[81] There is no real dispute over s. 7 expenses.

[82] The children incurred \$724 of s. 7 expenses in 2020. The parties agree that M.Z. shall pay 50% of those expenses, in the amount of \$362.

[83] The children had \$3,344.87 of s. 7 expenses in 2021. Based on M.Z.'s Guidelines income in 2021 of \$170,000 and D.Z.'s Guidelines income in 2021 of \$46,282, M.Z. shall pay 79% of these expenses (\$2,642).

[84] From January 1, 2022 and going forward, the parties are to share reasonable s. 7 expenses in proportion to their Guidelines incomes. The s. 7 special and extraordinary expenses that are to be paid are:

- (a) A.Z.'s flute and piano lessons and L.Z.'s trumpet lessons;
- (b) childcare expenses incurred as a result of either parent's employment;
- (c) the portion of medical and dental insurance premiums attributable to the children;
- (d) any other health related expenses that exceed insurance reimbursement by at least \$100 annually;
- (e) post-secondary tuition, books, and reasonable room and board expenses;
- (f) other post-secondary related expenses as are agreed upon in writing by the parties; and
- (g) other extracurricular activities agreed upon in writing by the parties.

[85] Based on my determination of M.Z.'s 2022 Guidelines income of \$170,000 and D.Z.'s 2022 Guidelines income of \$46,572, M.Z. shall pay 78% of the children's s. 7 expenses moving forward.

[86] The parties are to reconcile prospective s. 7 expenses every three months.

Spousal Support

Legal Principles

[87] Marriage is regarded as a "joint endeavour". The "longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, 99 D.L.R. (4th) 456.

[88] There are three separate bases for spousal support: compensatory, contractual, and needs-based. Need alone may be sufficient to establish entitlement to spousal support: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 43, 63 B.C.L.R. (3d) 77; *Chutter v. Chutter*, 2008 BCCA 507 at para. 54, leave to appeal ref'd [2009] S.C.C.A. No. 41 (S.C.C.).

[89] Compensatory spousal support addresses the economic advantages enjoyed by one partner as a result of the other partner's efforts during the marriage. It also addresses the contributions of a spouse to the marriage and their losses upon its breakdown. A long marriage does not, in and of itself, support an award of compensatory support. A long marriage supports an order for compensatory spousal support if the court concludes that such an order is necessary to achieve a parity of living standards between the parties: *Zacharias v. Zacharias*, 2015 BCCA 376 at para. 48.

[90] Compensatory spousal support is based on the principle that spouses must share the economic consequences of marriage breakdown. This includes recognizing that one spouse may have foregone employment opportunities to care for the children. In such circumstances, an order for compensatory spousal support will generally be appropriate to compensate the spouse for the value they brought to the relationship, as well as the economic loss they suffered as a result of the relationship: *Bracklow*. Spousal support awarded on compensatory grounds continues for a specified period of time whether or not the payee spouse has reached a degree of self-sufficiency: *Tedham v. Tedham*, 2005 BCCA 502 at para. 33.

[91] Non-compensatory support is needs-based. It recognizes the economic hardship and loss of the marital standard of living that arises as a result of economic interdependency during the marriage. Non-compensatory support is based on the economic disadvantages generated by the dissolution of the marriage, not contributions made during the marriage: *Bracklow* at para. 41. The degree to which non-compensatory principles apply will depend on a close examination of the means and needs of the parties. It also depends on the nature of the marital relationship: *Bracklow* at para. 53.

- [92] The Supreme Court of Canada in *Moge* confirmed, at 852, that when determining entitlement to spousal support, the objectives in s. 15.2(6) of the DA must be considered and no single objective is paramount. These objectives are to:
- (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.
- [93] Compensatory support relates primarily to the first two objectives whereas non-compensatory support relates primarily to the third and fourth objectives: *Bracklow* at para. 41. Many claims involve aspects of both compensatory and non-compensatory principles. I need not decide on one basis for support to the exclusion of the other. Rather, I am to "[apply] the relevant factors and strik[e] the balance that best achieves justice in the particular case ": *Bracklow* at para. 32.
- [94] The doctrine of equitable sharing of the economic consequences of the marriage is the overarching principle that must be borne in mind: *Bracklow*, at para. 34.
- [95] The methodology for determining income for child support and spousal support purposes are similar. The Guidelines have a comprehensive code for determining income, while the Spousal Support Advisory Guidelines ("SSAG") do not. The authors of the SSAG have confirmed that the Guidelines rules for calculating income should be used for spousal support: SSAG, c. 6.1. "The starting point for the determination of income under the [SSAG] is the definition of "income" under the [Guidelines]": *R.M.S. v. F.P.C.S.*, 2011 BCCA 53 at para. 73; *Megson v. Megson*, 2014 BCSC 2467 at para. 165.
- [96] As a result, I use the parties' Guidelines income for both spousal and child support.

Parties' Positions

- [97] In terms of quantum of spousal support, based on the parties' Guidelines incomes as determined above, D.Z. argues the SSAG indicates a range of spousal support as follows:

M.Z.

D.Z.

Low

Mid

High

\$200,000

\$46,572

\$2,565

\$3,211

\$3,887

[98] D.Z. argues that the facts of this case should entitle her to a quantum of spousal support closer to the high-point of the SSAG range. D.Z. proposes that I order spousal support in the amount of \$3,549 per month, which is the average between the mid-point and the high-point of the SSAG range.

[99] In terms of the duration of spousal support, D.Z. argues the "rule of 65" applies, because her age at separation (55) plus the years of the relationship (17.6) total 72.6 and therefore the SSAG suggest that spousal support should be set at indefinite. D.Z. argues that spousal support duration should certainly not be based on M.Z.'s desired retirement date.

[100] M.Z. agrees that D.Z. is entitled to spousal support and acknowledges that the "rule of 65" applies. However, he submits that spousal support should only continue until his retirement date, or until he turns 65, whichever is later.

[101] D.Z. seeks not only prospective spousal support, but retroactive spousal support for 2021. D.Z. submits that, based on a 2021 Guidelines income of \$220,000 attributed to M.Z., he should have paid \$4,161 per month in spousal support. D.Z. proposes that M.Z. pay lump sum retroactive spousal support for the period of January 1, 2021 to February 1, 2021 in the amount of \$28,727 (net of tax).

[102] M.Z. submits that there should be no retroactive spousal support order.

Analysis

Prospective Spousal Support

[103] The parties began a marriage-like relationship on December 1, 2002 and were married on August 29, 2003. They separated on July 18, 2020. Their marriage-like relationship lasted 17.6 years.

[104] After the parties' first daughter was born in 2005, D.Z. stayed home. D.Z. was only able to perform part-time work outside the home for three months of the year. This freed up M.Z. to purchase and run Company C. He could work long hours to ensure the business prospered. M.Z.'s career and business flourished during the parties' relationship. He was able to purchase Company C and, by mortgaging the family home, has since paid off all of

its outstanding debt. The family home was repeatedly remortgaged to allow M.Z. to keep money in Company C while maintaining the parties' preferred lifestyle. The parties' interest in the company is now worth approximately \$1,435,000.

- [105] The parties did not change their parenting arrangements after their second daughter was born in 2010. In 2012, L.Z. was diagnosed with neuroblastoma. D.Z. stopped her part-time work to focus on L.Z., which included taking L.Z. to her medical appointments. M.Z. acknowledges that he supported D.Z. being a stay-at-home mother during the parties' marriage.
- [106] D.Z. returned to work part-time in 2015. In December 2016, D.Z. started full-time contract work. Unfortunately, D.Z. was in a car accident in March 2017, which interrupted her work. D.Z. was off work until February 2018. Since February 2018, D.Z. has consistently worked full-time.
- [107] During the parties' marriage, there was a significant disparity in the parties' earned incomes. For a long period of time, M.Z. was the sole income earner. When D.Z. returned to work, M.Z. earned more than twice as much as D.Z.
- [108] D.Z. has experienced both economic disadvantages and economic hardship arising out of the marriage breakdown. Her career prospects are limited given her age and work experience. Since separation, she has had to cash in various registered investments to maintain a standard of living comparable to that which she and the children enjoyed during the parties' relationship.
- [109] The parties' marriage, and close economic union during their relatively long marriage, gives rise to a responsibility on M.Z. to support D.Z. to continue their marital standard of living. The parties must equitably share the economic consequences of their marriage breakdown.
- [110] Outside of their interest in Company R, the parties have few assets. D.Z. had a limited amount of RRSPs at separation. She had to cash most of it in. She had little in her personal bank account. While D.Z. has pensions from UBC and SFU, those are to be divided as family property. In addition, D.Z. will not receive her entire interest in Company R all at once. Overall, she has very few assets to draw upon.
- [111] In the circumstances of the parties' relationship, I find that D.Z. is entitled to spousal support on both compensatory and non-compensatory grounds. The fact that she stayed home to care for the parties' children, foregoing her own career advancement, allowed M.Z. to grow his business and advance his career. As such, I order spousal support at the mid-range of the SSAG in the amount of \$1,894 while D.Z. has the children more than 60% of the time and \$2,276 when the parties have implemented the shared parenting schedule. I was not presented with sufficient evidence to justify support above the mid-range of the SSAG.

[112] Given D.Z.'s age, the "rule of 65" applies. As such, spousal support shall continue for an indefinite duration.

Retroactive Spousal Support

[113] In assessing D.Z.'s entitlement to retroactive spousal support, I must consider the factors laid out by the Court in D.B.S.: (a) the reason for the delay in asking for support, (b) the conduct of the payor spouse, (c) the circumstances of the recipient spouse, and (d) any hardship the payor might suffer as a result of a retroactive award.

[114] D.Z. submits that she is entitled to a retroactive award on the basis that, since separation, she has had to make sacrifices due to a lack of financial support from M.Z. However, in my view, it is not appropriate to characterize D.Z. as having received "a lack of financial support" from M.Z. since separation.

[115] Since separation, M.Z. has paid spousal support to D.Z. However, he paid only \$5,574 in spousal support in 2021. This was because M.Z. paid the mortgage and insurance on the family home until it was sold in March 2021. M.Z. has also continued to pay D.Z.'s car loan in the amount of \$390 per month. Further, M.Z. took on a larger portion of the family debt since separation. He paid \$1,000 per month towards the parties' joint Visa card debt until it was finally paid off with the proceeds of the sale of the family home.

[116] Further, prior to trial, D.Z. received the following interim distributions:

March 2021: \$50,000

August 2021: \$40,000

December 2021: \$50,000

Total: \$140,000

[117] Given M.Z.'s other payments, and applying the D.B.S. factors, I am not persuaded that D.Z.'s circumstances necessitate a retroactive spousal support award in the amount of \$28,000. D.Z. delayed seeking spousal support and she has not advanced any evidence of poor conduct on the part of M.Z.

[118] I find M.Z. should pay \$10,000 in retroactive spousal support to D.Z. I believe this amount is fair in all the circumstances.

Security for Support Obligations

Legal Principles

[119] Section 12 of the Guidelines provides that the court may require that the amount payable under a child support order be secured in a specified manner.

[120] Section 15.1(4) of the DA provides that when making a child support order, the court may impose terms, conditions, or restrictions in connection with the order as the court thinks fit and just. Section 15.2(1) of the DA provides that, on application by either or both spouses, the court may make an order requiring a spouse to secure periodic spousal support as the court thinks reasonable for the support of the other spouse.

[121] Section 170(e) of the FLA provides:

170 In an order respecting child support or spousal support, the court may provide for one or more of the following:

- (e) that a person who has a contract of life insurance within the meaning of Part 3 of the Insurance Act
- (i) designate his or her spouse or child as a beneficiary, irrevocably or for the period designated by the court, and
- (ii) either pay all premiums on the policy, or authorize his or her spouse to pay all premiums on the policy and to compensate the spouse for doing so;

[122] In *R.E.Q. v. G.J.K.*, 2019 BCSC 1116, rev'd in part 2020 BCCA 254, Justice Kelleher emphasized that the decision to require a payor to maintain a life insurance policy as security for child support is discretionary: at para. 140. Justice Kelleher went on to provide a detailed analysis of the legislative framework for ordering that a spouse maintain a life insurance policy. While evidence of delinquency is not required for the court to make an order under s. 170(e) of the FLA, there must be a basis in the evidence for such an order: at para. 142.

[123] Relevant factors include whether the payor has complied with court orders in the past, whether the payor is presently in arrears, and the payor's health: at para. 143.

Parties' Position

[124] The parties have a joint first-to-die Empire Life Policy with a face value of \$600,000. The premiums are being paid for by M.Z. He wants to maintain this policy for the benefit of the children in the event either party dies.

[125] D.Z. submits that she is not in a position to fully financially support herself or the children without assistance. If M.Z. were to die, D.Z. submits that she would need life insurance proceeds in order to care for the children. She submits that this security provides a safety net for the children. D.Z. seeks security for M.Z.'s support obligations in the form of an order that he maintain a life insurance policy naming her as irrevocable sole beneficiary for so long as support is payable.

Analysis

[126] Applying the R.E.Q. factors, although the parties' children are still relatively young, D.Z. has not advanced any evidence that M.Z. has failed to comply with support obligations in the past. Further, D.Z. has not advanced any evidence that either she or M.Z. are in poor health.

[127] In my view, M.Z.'s submission that he will maintain the life insurance policy with the parties' children as beneficiaries is sufficient to provide a safety net for their future security.

[128] As such, I decline to order that M.Z. maintain his life insurance policy with D.Z. as the sole irrevocable beneficiary. Instead, I order that M.Z. maintain this policy with the children listed as beneficiaries. M.Z. shall continue to pay the premiums.

Property Division

Matrimonial Home

[129] The former matrimonial home was situated in Port Moody, BC. It was sold in March 2021 for \$1,674,070.08. After payment of conveyancing fees, the mortgage, a line of credit, and Visa bills, the net proceeds of sale were \$355,081.30. From those monies the parties have paid out the following:

- a) To Mr. Sturgess, as a retainer: \$19,000
- b) To D.Z., interim distribution in March 2021: \$50,000
- c) To M.Z., interim distribution in March 2021: \$50,000
- d) To CRA for tax on dividends: \$16,000
- e) To D.Z., interim distribution in August 2021: \$40,000
- f) To M.Z., interim distribution in August 2021: \$40,000
- g) To Mr. Sturgess: \$3,750
- h) To D.Z., interim distribution in November 2021: \$50,000
- i) To M.Z., for mediation costs: \$3,000

[130] There remains \$82,806.25 in trust. M.Z. is entitled to the first \$47,000 to equalize prior distributions. The parties still owe \$9,450 to Mr. Sturgess and \$3,675 to R.K. (Company C's accountant). M.Z. owes \$3,586.50 to Gayle Raphanel for mediation fees.

Cars

[131] D.Z. has a 2017 Honda CRV. Up until the date of trial, M.Z. paid the loan on this vehicle, in the amount of \$390 per month. As of March 2, 2022, there is \$777 owing on the vehicle. The market value of the vehicle is \$23,000.

[132] M.Z. leases a vehicle which is paid for by Company R as it is mainly used for his work. The monthly lease payments are \$869.09.

[133] The parties agree that D.Z. will retain her 2017 Honda CRV. M.Z.'s interest in the vehicle is \$11,111.

Personal Injury Settlement

[134] D.Z. was involved in a car accident during the parties' relationship.

[135] D.Z. received \$77,000 in February 2022 from ICBC. The parties agree that \$19,817.24 of the ICBC money is a family asset. M.Z.'s interest is \$9,908.

[136] D.Z. had elective surgery shortly before separation which cost \$15,000 and was paid for on the credit card. D.Z. has said that she would pay for the surgery from her ICBC payout. I order that she do so.

RRSPs

[137] The value of the parties' RRSPs as at the date of separation is as follows:

RRSP

Balance as of July 18, 2020

D.Z.

CIBC RRSP Account -957

\$19,717.00

SFU RRSP Sunlife Financial Account -622

\$2,402.73

Total: \$22,119.73

M.Z.

CIBC RRSP Account -855

\$17,345.60

Empire Life RRSP Policy -191

\$7,189.01

Total: \$24,534.61

[138] Since separation, D.Z. has withdrawn her RRSPs and \$20,000 from the children's RESP. She has repaid the \$20,000 into the RESP.

[139] The parties have agreed to retain the RRSPs in their names without further division.

Pensions

- [140] From the beginning of the parties' relationship until 2005, D.Z. was employed by UBC. D.Z. began working at SFU in 2016, however she returned to UBC in August 2021, where she is still employed.
- [141] D.Z.'s UBC pension is divisible as family property from December 1, 2002 to July 18, 2020. D.Z.'s SFU pension is divisible as family property from November 11, 2019 to July 18, 2020.
- [142] In her Form F8 financial statement, D.Z. stated that her UBC pension is worth \$62,439.89 and that her SFU pension is worth \$4,294.82.
- [143] The parties have agreed that the pensions accumulated by D.Z. during their relationship will be divided in accordance with Part 6 of the FLA. The parties' CPP will also be divided according to Part 6 of the FLA.

Guitars

- [144] D.Z. seeks an order that M.Z. retain the Taylor acoustic guitar (valued at \$2,000), the Gibson Les Paul guitar (valued at \$4,000), and the Fender electric guitar (valued at \$1,800) and pay to D.Z. the sum of \$3,900 for her interest in these assets. I decline to make such an order. Presumably both parties retained items that were purchased during the marriage.

Aeroplan Points

- [145] D.Z. submits that, at the time of separation, M.Z. had approximately 368,858 Aeroplan points. D.Z. seeks an order that M.Z. transfer half of those points to her. In the alternative, if the points cannot be transferred, D.Z. seeks an order that M.Z. hold half of those points in trust for D.Z. and utilize them as directed by her.
- [146] I order M.Z. to transfer 50% of his Aeroplan points to D.Z. If that is not possible he must hold half of those points in trust for D.Z. and utilize them as directed by her.

The Businesses

- [147] M.Z. is the principal of Company C along with his equal partner, M.C. They own Company C through share holdings.
- [148] Company C's equal shareholders are Company 918 and Company 919. These companies owned Company C when M.Z. and M.C. purchased Company C from its founders in October 2006. Company 918 and Company 919 are corporate shells whose only assets are shares in Company C.

- [149] Both Company 918 and Company 919 are owned equally by companies that the Zs and M.C. own separately, Company R and Company 047, respectively. M.Z. and D.Z.'s 50% ownership interest in Company C is in the form of their shares in Company R. M.Z. holds 50 Class A Common Shares of Company R. D.Z. holds 50 Class B Common shares. M.C.'s 50% interest in Company C comes from his shares in Company 047.
- [150] The parties jointly retained Dan Sturgess to assess the value of the companies. He completed two reports: one dated June 4, 2021 using the year end of August 31, 2020 and the second dated December 17, 2021 using the year end of August 31, 2021.
- [151] Mr. Sturgess estimates the value of the parties' shares of Company R, inclusive of its direct and indirect interests in Company C, Company 919, and Company 918, to be between \$1,390,000 and \$1,480,000 with a midpoint of \$1,435,000. The parties have agreed that D.Z.'s one-half interest is \$717,500, based on the midpoint value of \$1,435,000.

Legal Principles

Division of Company R

- [152] Upon separation, each spouse is presumptively entitled to an undivided one-half interest in all family property: FLA s. 81. The value of family property must be based on its fair market value at the date of trial, subject to agreement or as otherwise ordered: FLA s. 87.
- [153] The shares of a company constitute the property that is at issue in a family law proceeding, not the assets of the company: *Devick v. Devick*, 2005 BCCA 329 at paras. 12 and 19, leave to appeal ref'd [2005] S.C.C.A. No. 382 (S.C.C.).
- [154] Section 97(1)(b) of the FLA provides that the court may make any order that is necessary, reasonable, or ancillary to give effect to a division of property or division of family debt. Section 97(2) of the FLA provides that, without limiting subsection (1), the court may make an order to do one or more of the following:
- (a) declare who has ownership of, or right of possession to, property;
 - (b) require that title to a specified property granted to a spouse be transferred to, held in trust for, or vested in the spouse, absolutely, for life or for a term of years;
 - (c) require a spouse to pay compensation to the other spouse if property has been disposed of, transferred, converted, or exchanged into another form, or for the purpose of dividing the property;
 - (d) require partition or sale of property and payment to be made out of the proceeds of sale to one spouse or both in specified proportions or amounts;
 - (e) require property forming all or a part of the share of either or both spouses to be transferred to, held in trust for, or vested in a child;

- (f) require a spouse to give security, in any form the court directs, for the performance of an obligation imposed by an order under this section, including a charge on property;
- (g) require a spouse to waive or release in writing any right, benefit or protection given by section 23 of the Chattel Mortgage Act, R.S.B.C. 1979, c. 48, section 19 of the Sale of Goods on Condition Act, R.S.B.C. 1979, c. 373, or section 58 or 67 of the Personal Property Security Act;
- (h) subject to subsection (3), declare that one spouse is responsible for payment of an item of family debt and must indemnify the other spouse for the item of family debt;
- (i) require the sale of property for the purposes of paying an item of family debt; or
- (j) transfer property to a spouse.

[155] In *Newson v. Newson* (1993), 78 B.C.L.R. (2d) 35 at para. 29, 1993 CanLII 316 (C.A.), the Court held that although there is a power under the Family Relations Act, R.S.B.C. 1996, c. 128 [now the FLA] to segregate assets out of a company into the hands of a shareholder, "it is a power to be exercised sparingly". This is because there may be adverse consequences to the company such as tax implications. Moreover, the security available to suppliers, lenders, and others not before the court may be put at risk.

[156] The law is clear that piercing a corporate veil should only occur in the rarest of circumstances. It should only be done when not doing so would yield a result "too flagrantly opposed to justice, convenience or the interests of the Revenue": *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 S.C.R. 2 at 10, 34 D.L.R. (4th) 208.

[157] Where property cannot be divided, or where it is "practically indivisible", the court may make a compensation order and leave ownership and possession of an asset in the hands of one party: *Kowalewich v. Kowalewich* (1998), 50 B.C.L.R. (3d) 12 at para. 16, 1998 CanLII 4424 (C.A.) [*Kowalewich* 1998]; *Blackett v. Blackett* (1989), 40 B.C.L.R. (2d) 99, 63 D.L.R. (4th) 18 (C.A.). In *Kowalewich* 1998, the family assets included the family home, shares in two holding companies, and the parties' respective RRSPs and motor vehicles. The trial judge awarded the family home to the wife, awarded the shares in the two holding companies to the husband, and equalized the parties' respective RRSPs by way of a spousal roll-over. The trial judge also granted the wife a compensation order of \$416,000 to equalize the property division due to the transfer of the wife's shares in her holding company to the husband. On appeal, the Court upheld the division subject to a 10% reduction in the compensation order to allow for the loss of a tax advantage to the companies by consolidating ownership in the husband.[1] There had been evidence of this tax disadvantage led at trial.

[158] In *Rattenbury v. Rattenbury*, 2000 BCSC 722, the husband was ordered to pay compensation of \$155,464 to the wife. The husband argued that he was unable to make that equalization payment and that the wife should retain an equitable proprietary interest in the shares of his company until he was able to pay her what was owed. He did not suggest a time period over which he could pay the compensation. Justice Romilly noted that there was no evidence before the court that the husband was unable to compensate the wife. Justice

Romilly emphasized that the company was well-established with significant working capital and increasing income. He further noted that the company had close to \$2.5 million in current assets, including over \$895,000 in cash and over \$800,000 in retained earnings. This compared to only \$1.1 million in liabilities. In addition, the company owed the husband approximately \$320,000 in shareholders loans. These factors had to be balanced against the principle that the husband should not be forced to remove assets from the company to satisfy his personal debt. Justice Romilly held there was "no doubt" the business had the capacity to make available funds to the husband to finance a compensation payment. He noted that the husband had not testified regarding a need to borrow the money or about the costs of doing so. Justice Romilly ordered the compensation payment and that it be paid within 60 days following his Reasons for Judgment. He found that to provide for installments over time would needlessly and unfairly result in a reapportionment of the assets in favour of the husband.

[159] Despite Rattenbury, compensation payments are a way in which to retain capital in corporations to avoid "killing the goose that lays the golden egg": Quinton at para. 74. Monies may be needed to maintain the business as a going concern. A compensation payment may be made in parts on a set schedule: *Allegretto v. Allegretto*, [1996] B.C.W.L.D. 2750, 1996 CanLII 1352 at para. 56 (S.C.); *Belway v. Belway*, 2000 BCSC 728 at para. 16.

[160] As stated in *Weintz v. Weintz*, 2014 BCCA 118 at para. 38, the jurisprudence suggests that courts should strive to:

- (i) ensure that the total family assets are maximized, which will generally involve maintaining the business as a going concern; and
- (ii) ensure that division of the family assets is not merely equal in a legal sense but that the actual benefit received by each spouse is also equal.

Distributive Taxes and Interest

[161] Corporate and distributive taxes may be considered under s. 97 of the FLA where a division of family property will attract tax consequences: *Maguire v. Maguire*, 2016 BCCA 431 at paras. 38-39; *Sanai v. Mahmoud*, 2017 BCCA 155 at para. 32. Contingent tax liabilities may be considered on an "if and when" basis: *Stein v. Stein*, 2008 SCC 35; *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 69-70.

[162] The principles that apply to distributive taxes were summarized by Justice Savage in *McKenzie v. McKenzie*, 2015 BCSC 241 at para. 8:

- (1) where there is sufficient evidence to satisfy the Court of tax consequences or other costs inherent in a compensation order the Court should take these into account in setting the compensation amount;

- (2) the onus is on the payor to provide the trial judge with the necessary evidence of the tax consequences arising from the division of assets or other consequences of having to acquire the funds to pay the payee;
- (3) there is no absolute rule as to how the compensation order might be calculated, depending, as it does, on the type of assets to [be] divided, timing, the parties involved and other orders in the action;
- (4) the matter should be considered as of the date of trial, not as of the date the matter comes back before the court; and
- (5) the overriding principle is fairness.

[163] The court can pick a percentage it thinks reflects distributive taxes. The proper amount is not a precise accounting nor an exact science: *Cochrane v. Cochrane*, 2013 BCSC 2114 at para. 40. In *Cochrane*, it was proposed that there would be distributive taxes of 34% but the court noted that there was a strong likelihood that only a portion of the value to be distributed would be taken immediately with the balance taken at some later indeterminate time. The court selected 20% for distributive taxes.

[164] In *L.F. v. B.F.*, 2012 BCSC 1073, the valuator opined that he expected distributions from the company to attract a tax of 33%, but the court selected a rate of 30%.

[165] Where a payor of a compensation payment has failed to discharge their onus to provide evidence on the issue of distributive taxes, the court may ignore the issue entirely. It is not open to the payor to require ongoing litigation because of a failure to provide the court with proper evidence. It may be an error for the court to include distributive taxes when such evidence is not led: *Weintz* at paras. 47 and 49.

[166] The court may order interest on an outstanding compensation payment, including interest at a rate plus prime and increase interest payable due to non-payment: *Allegretto* at para 57; *Devick* at para. 76. The court may also order the payor to hold shares in trust until the payee's interest in the company has been paid: *Jamieson v. Loureiro*, 2000 BCSC 1389 at para. 26.

Parties' Positions

[167] D.Z. seeks an order that she be compensated for her interest in Company R. To effect a compensation payment, D.Z. proposes that M.Z.'s Guidelines income for 2022 and going forward be \$200,000. D.Z. takes the position that M.Z. has \$250,000 available to him as income and this provides \$50,000 a year available for capital distributions to D.Z. until her interest in Company R has been paid.

[168] D.Z. proposes that her interest in Company R be paid out at a rate of \$50,000 per year with the first payment to be made within 90 days of the order. M.Z. would then pay \$50,000 before December 31 of each subsequent year. Based on a compensation payment of

\$717,500, M.Z.'s last payment would be on or before December 31, 2033. In the alternative, D.Z. argues that if the Court orders that D.Z. must wait until the shares of the company are sold, she should receive either the value of her interest in Company R at the time they are sold or \$717,500, whichever is greater.

- [169] M.Z.'s position is that D.Z. must wait until the company is sold to receive her interest for the same reasons he submits that his income is only \$120,000 per year. He is not a sole shareholder and M.C. does not agree that the company can afford to pay dividends or higher salaries.
- [170] M.Z. testified that he has no current plans to sell the company. He testified, and provided documentary evidence, that he cannot obtain a loan because he has no collateral. He takes the position that the only way that D.Z. can be paid is for her to wait until he sells his interest in the company. M.Z. further argues that the parties need to share in any tax consequences such as distributive taxes or capital gains tax.
- [171] M.Z. argues that any compensation payment would lift Company C's corporate veil by requiring it to pay dividends to Company R. This would disregard M.C.'s interest in Company C. Neither M.C. nor Company 047 are parties in this proceeding.
- [172] D.Z. opposes M.Z.'s position of waiting until the business is sold for her to be compensated. She emphasizes that M.Z. is not suggesting that any increase in growth be shared with D.Z. Meanwhile, D.Z. would have access to none of the assets of the relationship. She would be effectively starting from scratch at age 57.
- [173] D.Z. argues that M.Z. is effectively asking her to provide him an interest-free loan such that he can continue to grow Company C while at the same time refusing to draw a higher income.

Analysis: Compensation Payment

- [174] The parties agree that Company R should be divided equally. Given the agreed upon value of the shares in Company R of \$1,435,000, I must determine how D.Z. is to realize her 50% share of the value of the company. I must also consider whether I should order security and interest payments if compensation is payable by M.Z.
- [175] Section 97 of the FLA grants this Court broad powers with respect to "giving effect to a division of property or family debt". I may make any order that is "necessary, reasonable or ancillary to give effect to the division".
- [176] Most of the parties' family property is held within Company R. A divisive reorganization, commonly known as a butterfly transaction, would negatively affect M.Z.'s business partner M.C. Although Company C has been named as a party in this family law dispute, the corporate assets of Company C are not family assets. Rather, M.Z.'s shares in Company C are family property. M.Z. does not control the corporation himself but is subject to his partner's consent prior to making decisions. D.Z. appreciates this and is not requesting that I divide

the corporate assets. However, she relies on Rattenbury and seeks a yearly compensation payment in the amount of \$50,000 to pay out her interest in the family property over time.

- [177] M.Z. contends an order that he make monthly payments would force Company C to issue dividends to Company R to fund the payment. He argues that this would offend basic principles of separate corporate identity laid down by *Salomon v. Salomon*, [1897] A.C. 22 (H.L.). The principle of separate corporate identity was adopted by the Supreme Court of Canada in *Kosmopoulos*.
- [178] M.Z. relies on *Rohani v. Rohani*, 2004 BCCA 605, in support of his position that I should not pierce the corporate veil. However, in my view, *Rohani* is distinguishable from the case at hand. In *Rohani*, to ensure the wife's compensation order was paid the trial judge ordered that the two corporations the husband wholly controlled not dispose of assets nor issue dividends, and that they secure the compensation order with mortgages on their assets.
- [179] Applying *Kosmopolous*, the Court of Appeal overturned these orders because they violated the *Salomon* principle. In *Rohani*, each company owned one parcel of real estate but had no other assets or revenue. The husband (and later his estate) owned no exigible assets. Despite the husband's history of using the corporations in irregular ways for his personal benefit, the Court of Appeal stated:
- [20] Applying this reasoning to the circumstances here, the use of Myfam as a corporate vehicle pre-dates the separation and it had legitimate business, succession, and tax planning objectives. It was a genuine incorporation. While the wife had no direct interest in Myfam she benefited from its existence during the marriage to the extent that it presumably provided a tax shelter for assets and income and was used by the husband to fund family living expenses and gifts to the wife. The use for family purposes was central to the conclusion that the Class A shares were family assets. While the husband's use of company funds may have been questionable by others, the wife was not defrauded or prejudiced on that account. To paraphrase Wilson J., the wife, having received the benefits of incorporation, should not be allowed to escape the burden of its existence by looking directly to its assets as if they were personal assets of the husband. Serious and far reaching implications could result from piercing the separate corporate existence of a company created and operated for legitimate business and tax planning purposes simply on the ground of irregular use of corporate funds for personal expenses of its principals.
- [Emphasis added.]
- [180] There is no allegation of fraud here, or any suggestion that M.Z. is attempting to avoid his support obligations or an equitable division of family property. Here, both Company R and Company C were incorporated for legitimate business, succession, and tax-planning objectives. In addition, unlike Ms. Rohani, D.Z. has a direct interest in Company R and took advantage of income-splitting through Company C to minimize the family's tax burden. There is no suggestion that Company C's principals engaged in any irregular financial dealings.

- [181] The Court of Appeal in Rohani addressed the trial judge's order which put a charge directly on the assets of the corporation. He ordered security to the wife against the assets of the husband's company. In making such an order, the trial judge pierced the company's corporate veil. The Court of Appeal found this not to be justified in the circumstances.
- [182] Conversely, the determination here that the shares are family assets does not pierce Company C's corporate veil. By making a compensation order, it is "the shares that are apportioned, not the underlying assets. The substitution of a compensation order for the shares does not eliminate that distinction": Rohani at para. 22. In my view, Rohani does not stand for the principle that a compensation order should not be made in the case before me.
- [183] M.Z. further argues that he has a lack of liquidity. He takes the position that he is unable to raise sufficient funds to make yearly payments to D.Z. in the amount of \$50,000.
- [184] Company C has been established for 16 years. In 2021, Company C had income greater than it had in 2018, 2019, and 2020. Nevertheless, in 2018 Company C was still paying off its debt so its income was artificially low. In 2019, Company C was paying out significant dividends and in 2021 Company C was paying fewer employees. Consequently, it would be inaccurate to simply compare these four years.
- [185] That said, Company C has \$2.5 million in current assets and over \$427,240 in cash with only \$700,182 in liabilities. In my view, while it is M.Z. and M.C.'s preference to keep money inside the company, there is some money available in the corporation for a compensation payment.
- [186] Based on the need to maximize the family assets, which involves maintaining the business as a going concern, I find that a compensation payment is the most appropriate remedy in the circumstances. Compensation payments made over time strike the balance between the need to continue the business as a viable enterprise and the need to provide D.Z. with partial payment toward her share of the family asset.
- [187] In determining M.Z.'s income available for support purposes, I accepted Mr. Sturgess's opinion that M.Z. had \$200,000 in income available to him. However, I imputed a Guidelines income of only \$170,000. Based on the \$200,000 of service that M.Z. provides to Company C, there is \$30,000 available. With this remaining money available, I order M.Z. to pay \$30,000 per year to D.Z. to compensate her for her interest in Company R. At this rate it will take over 20 years for D.Z. to be made whole. The outstanding amount of D.Z.'s interest in Company R must be paid when M.Z. sells his shares in Company R.

Analysis: Distributive Taxes and Interest

- [188] M.Z. owes D.Z. \$717,500 for her interest in Company R. This amount assumes no distributive taxes will be paid. I must consider whether this amount should be reduced to account for distributive taxes.

- [189] M.Z. argues I should take distributive taxes into account but provided limited evidence regarding the rate. D.Z. argues that no distributive taxes should be deducted from the amount payable to her.
- [190] M.Z. relies on *Drinkall v. Drinkall*, 2020 BCSC 964. In *Drinkall*, Justice Brown was asked to reconsider a \$600,000 compensation order made in the wife's favour, because the order did not consider the tax consequences to the husband of raising the funds through his shareholder interest in Drinkall Ranches Ltd. ("DRL"). The husband was a minority shareholder of DRL; his parents held a majority of its shares. Considering various options of funding the compensation order, Brown J. explained:
- [41] I do not anticipate that funds would be made available from Drinkall Ranches Ltd. by dividend. As Mr. Drinkall Senior has indicated, in his view, he and his wife, who are the majority shareholders in DRL do not want to declare dividends as that would have tax consequences for them.
- [191] Justice Brown found that she was unable, on the limited information before her, to say how much distributive taxes would be, but only that they would be "somewhere between 0 and 25%": at para. 40. Relying on the Court of Appeal's decision in *Sanai*, and being of the view that a failure to consider these tax consequences may lead to a miscarriage of justice, Brown J. gave Mr. Drinkall 30 days to provide her with an opinion as to the likely distributive taxes.
- [192] In my view, where a division of family assets will attract tax consequences an allowance should be made for taxes to ensure a fair property division. Assuming there is some evidence to support tax consequences, the parties are entitled to equality of treatment: *Stein* at para. 9. Therefore, it is necessary to consider the rate of taxation on the compensation payment.
- [193] The overriding principle is fairness. As a result, a compensation order should reflect the tax consequences that the disposing party will incur when making the compensation payment. R.K. testified that M.Z. is taxed at a little less than 33%. Without the benefit of more precise calculations (*Cochrane*), and relying on L.F., I order that the distributive taxes be 30%. That reduces D.Z.'s interest in the family shares to \$502,250 after M.Z. has paid the distributive taxes on any withdrawal of dividends from Company R. A 30% reduction balances the rights between the parties because if M.Z. does not withdraw dividends, his taxes will likely be higher or he could have interest payments on a loan.
- [194] D.Z. seeks an order that until she has been fully compensated for her interest in Company R, M.Z. will hold his Class A shares in Company R in trust for her. In particular, she requests an order that M.Z.:
- a) not dispose of, transfer, encumber, convert, or exchange into another form, the Class A shares;

- b) in his capacity as an officer, director, or shareholder of Company R, Company 918, Company 919, or Company C he be prohibited from causing any of the companies from disposing or transferring the shares of Company C without the written consent of D.Z. or court order; and
- c) any change in ownership of Company C will result in the remaining balance of the compensation payment and any interest becoming immediately due and payable.

[195] I agree with D.Z. that if there is a change in ownership of Company C, the balance of the compensation payment becomes immediately due and payable. However, I do not believe the other orders are necessary. M.Z. has shown no indication that he will dispose of the shares prior to his retirement. At that point, the outstanding amount owed to D.Z. will be due.

[196] D.Z. further seeks an order that she will retain her shares in Company R until she has been fully satisfied for her interest in the company. Once M.Z. has fully paid D.Z. for her interest, she will then transfer her shares to M.Z. In my view, the appropriate way to secure her interest is for M.Z. to hold his Class A shares in Company R in a constructive trust for D.Z. until she is fully paid her 50% interest: *Kerr v. Baranow*, 2011 SCC 10.

[197] D.Z. also seeks an order that M.Z. pay the first compensation payment within 90 days of the release of these Reasons for Judgment, with subsequent payments to be made each year. I have found that the compensation payment shall be \$30,000 per year. Due to other monies owed to M.Z. as a result of this Judgment, he will have money available to make the first compensation payment to D.Z. immediately. I base this on the following findings of what each party is owed:

D.Z.:

- Retroactive child support: \$1,583
- Retroactive spousal support: \$10,000
- Retroactive s. 7 expenses: \$362 + \$2,642
- Share of remaining proceeds from family home: \$11,340.63[2]
- TOTAL = \$25,927.62

M.Z.:

- Equalization of prior disbursements: \$47,000
- Interest in D.Z.'s car: \$11,111
- Interest in D.Z.'s settlement: \$9,908
- Share of remaining proceeds from family home: \$11,340.63
- TOTAL = \$79,359.62

- [198] As a result of the additional money M.Z. is receiving, I order that M.Z. make the first payment of \$30,000 within 60 days of the release of this Judgment. The subsequent payments of \$30,000 should be made on or before January 1, 2023 and each subsequent year until D.Z. is fully compensated.
- [199] D.Z. also seeks interest on her compensation payments as they will be made over time. In my view, this is fair given that she will not receive a lump sum payment of the full amount.
- [200] D.Z. seeks three orders relating to interest. First, D.Z. argues that she should be compensated for M.Z. retaining her interest in Company R. As such, she seeks an order that M.Z. pay interest to her at a rate of 2% per year compounded semi-annually and calculated monthly from the date of the Order of the compensation payment until the compensation payment is fully paid. Second, D.Z. seeks an order that M.Z. pay to D.Z. interest at the prime rate plus 3% per year compounded semi-annually and calculated monthly on any instalment not paid on the date required. Third, D.Z. seeks an order that if M.Z. remains in default for 180 days in respect of any payment of interest or capital, the entire unpaid compensation payment together with accrued interest accelerates and becomes immediately due and payable.
- [201] Based on Devick, I order interest of prime plus 3% until the entire compensation payment is paid. If M.Z. defaults on his payments, either party may bring an application before me, subject to scheduling, to determine what steps should be taken at that time.

Summary of Orders

[202] For the reasons given above, I make the following orders:

- a) Guardianship
 - i. The parties are joint guardians of the children.
 - ii. The parties share all parenting responsibilities under s. 41 of the FLA.
- b) Parenting Arrangements
 - i. Subject to the children's wishes, the parties should be moving towards a 2-2-5-5 shared parenting schedule.
 - ii. If the parties cannot achieve a 2-2-5-5 schedule within six months of this Order, especially with respect to their younger daughter, they can apply to the court to resolve their dispute. I shall remain seized of the matter.
- c) Guidelines Income
 - i. M.Z.'s Guidelines income for support purposes from July 1, 2021 going forward is \$170,000.
- d) Child Support

- i. Commencing March 1, 2022, and continuing until further court order or written agreement between the parties, M.Z. shall pay to D.Z. \$2,395 per month in child support for the two children.
 - ii. Once the children are spending at least 40% of their time with M.Z., his child support payments to D.Z. shall decrease to \$1,664 per month.
 - iii. M.Z. shall pay to D.Z. \$1,583 in retroactive child support for 2021.
 - iv. Commencing May 31, 2023, the parties will exchange financial information, including notices of assessment, business records, and relevant corporate financial statements no later than May 31st of each year. The amount of child support payable is to be adjusted annually based on the parties' incomes.
- e) Section 7 Expenses
- i. Commencing March 1, 2022 and going forward, M.Z. shall pay 78% of the children's s. 7 expenses.
 - ii. The parties will reconcile s. 7 expenses every three months, commencing on the 1st of the month three months from the date of this Order. The party incurring the s. 7 expense shall provide the other party with a receipt for reimbursement and the other party will reimburse them the amount owing within 14 days of the request for reimbursement.
 - iii. M.Z. shall pay to D.Z. \$362 in retroactive s. 7 expenses incurred for the children in 2020.
 - iv. M.Z. shall pay to D.Z. 79% of the \$3,344.87 in retroactive s. 7 expenses incurred for the children in 2021 (\$2,642).
- f) Spousal Support
- i. Commencing March 1, 2022 going forward, M.Z. shall pay to D.Z. spousal support at the mid-range of the SSAG as articulated in these Reasons. Spousal support shall continue for an indefinite duration.
 - ii. M.Z. shall pay \$10,000 to D.Z. in retroactive spousal support.
- g) Security for Support Obligations
- i. I decline to order that M.Z. maintain his life insurance policy with D.Z. as the sole irrevocable beneficiary.
 - ii. I order that M.Z. maintain his Empire Life Insurance policy with the children listed as beneficiaries. M.Z. shall continue to pay the premiums.
- h) Property Division
- i. The funds held in trust from the sale of the family home shall be distributed as follows:
 - (1) \$47,000 to M.Z. to equalize prior distributions;

- (2) \$9,450 to Mr. Sturgess;
- (3) \$3,675 to R.K.; and
- (4) The remaining \$22,681.26 will be divided equally between the parties (\$11,340.63 each).
- ii. D.Z. will retain her 2017 Honda CRV. She will pay M.Z. \$11,111 for his interest in the vehicle.
- iii. D.Z. will pay \$9,908 to M.Z. for his interest in her personal injury settlement.
- iv. D.Z. will repay the \$15,000 on the credit card for her elective surgery.
- v. The parties will retain the RRSPs in their name without further division.
- vi. The parties will retain their bank accounts in their name without further division.
- vii. D.Z. M.Z. is to transfer 50% of the Aeroplan points to D.Z. If that is not possible, he must hold half of those points in trust for D.Z. and utilize them as directed by her.
- viii. D.Z.'s SFU pension is divisible as family property from November 11, 2019 to July 18, 2020. D.Z.'s UBC pension is divisible as family property from December 1, 2002 to July 18, 2020. The pensions will be divided according to Part 6 of the FLA.
- ix. The parties' CPP will also be divided according to Part 6 of the FLA.
- x. Company R Compensation Payment:
 - (1) M.Z. owes D.Z. \$717,500 for her interest in Company R. This amount shall be reduced by 30% to account for distributive taxes. Therefore, the outstanding Compensation Payment owing to D.Z. is \$502,250.
 - (2) M.Z. shall pay \$30,000 to D.Z. each year until her interest in Company R has been paid out. The first payment in the amount of \$30,000 is due within 60 days of this Judgment. After this payment, M.Z. should pay D.Z. \$30,000 on or before January 1, 2023 and each year thereafter until she has been fully compensated.
 - (3) If there is a change in ownership of Company C, the balance of the Compensation Payment becomes immediately due and payable.
 - (4) Until the Compensation Payment has been paid in full, I order that M.Z. hold his Class A shares in Company R in a constructive trust for D.Z.
 - (5) D.Z. is entitled to prime plus 3% interest on her remaining shares in Company R until they are fully paid out.
 - (6) If M.Z. defaults on his installments of the Compensation Payment, either party may bring an application before me, subject to scheduling, to determine what steps should be taken at that time.

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

Costs

[204] If the parties are unable to agree on costs, they may contact Supreme Court Scheduling within 45 days of this Judgment to request to appear before me to speak to the issue.

"D. MacDonald J."

[1] The Court of Appeal reversed the 10% reduction (2001 BCCA 451) when it became aware the husband knew at the time of appeal that he could retain the advantage by having his girlfriend replace his former wife in the corporate structure.

[2] There was \$82,806.26 remaining after the payments were made after the sale of the house. M.Z. is owed \$47,000 which then leaves \$35,806.26. After paying Mr. Sturgess and R.K. (\$13,125 combined) there is \$22,681.26, divided by 2 = \$11,340.63.

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