

CANADA / JUDGMENT

Frigon v. Frigon

2024 BCSC 1511

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Supreme Court of British Columbia

DECIDED

19 August 2024

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2024 BCSC 1511 Frigon v. Frigon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Frigon v. Frigon,

2024 BCSC 1511

Date: 20240819

Docket: E68468

Registry: New Westminster

Between:

Patricia Michelle Frigon also known as Patty Frigon also know as Patricia Michelle Frigon

Claimant

And

Wilfrid Joseph Frigon also known as Joseph Wilfrid Albert Frigon

and 0903472 BC Ltd.

Respondents

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Claimant:

S. I.M. O'Mahony

Counsel for the Respondents:

S. Sihota

Place and Date of Hearing:

New Westminster, B.C.

March 12, 2024

Place and Date of Judgment:

New Westminster, B.C.

August 19, 2024

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Introduction

[1] These are reasons for judgment in a family law proceeding in Chambers. The applicant seeks the following orders:

- a) pursuant to s. 90(2)(a) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], that the claimant shall have interim exclusive occupancy of the residence located at 2372-132 St., Surrey, BC, V4A 9B2, legally described as PID: 024-609-510, Lot 2 Section 17 Township 1 New Westminster District Plan LMP43585 (the "Family Home"), until further order of the court or written agreement between the parties;
- b) pursuant to s. 91 of the FLA, that the claimant shall have interim exclusive use of the household goods and chattels located at the Family Home with the exception of the respondent's personal effects;

- c) that the respondent immediately deliver to the claimant all keys, access cards and codes, garage door openers and other devices to provide access to the Family Home; and
 - d) that the respondent have income imputed for the purpose of calculating spousal support and that the respondent pay interim spousal support to the claimant pursuant to s. 192 of the FLA and in accordance with the Spousal Support Advisory Guidelines.
- [2] The claimant also seeks costs.
- [3] Counsel for the respondent requested that the court hear two additional applications brought by the respondent seeking the sale of the Family Home. Counsel for the respondent asserted that Justice Girn had ordered that this court might also hear the respondent's applications on this date. The assertion made by counsel for the respondent is not reflected in the order of Justice Girn and the suggestion that this court ought to hear the two applications of the respondent is not correct. More details of the hearing before Justice Girn are set out below.
- [4] Counsel for the claimant provided a brief history of this proceeding which commenced last fall. The claimant made various attempts to serve the notice of family claim and related documents on the respondent without success.
- [5] A without notice application brought by the claimant was heard on November 24, 2023, by Associate Judge Nielsen, who made a substituted service order and asset disposition restraining order which provided an exception for \$14,000 per month for business and personal use by the respondent. The claimant complied with the substituted service order.
- [6] Associate Judge Nielsen also ordered, pursuant to s. 226 of the FLA, that the respondent maintain and pay the mortgage and household expenses including property taxes, property insurance, utilities and other expenses for the Family Home as well as the rental strata unit property located at 363-15850 26 Ave., Surrey, BC (the "Rental Property"). The order also provided that on no less than five days' notice to the claimant's solicitor, the order may be varied or set aside.
- [7] The respondent was also ordered to file his response to family claim by December 24, 2023, but he did not do so. The respondent eventually served his response to family claim on January 30, 2024.
- [8] The respondent then filed and served an application to set aside the restraining order, but set the hearing of that application for a date that the respondent's counsel was aware the claimant's counsel was out of the country. Counsel agreed that the respondent's application would be reset for February 22, 2024. On February 5, the respondent adjourned its applications generally. A Judicial Case Conference ("JCC") followed on February 20, 2024. At the JCC, Associate Judge Nielsen, by consent, ordered that the claimant's application for spousal support and exclusive occupancy of the Family Home would be heard on March 5, 2024, on a pre-emptory basis.

- [9] Two business days before March 5, 2024, the respondent served applications seeking an order for the sale of the Family Home. When the file came on for hearing before Justice Girn, the Court ordered the following:
1. The Notice of Application filed by the claimant on February 26, 2024 for the exclusive use of the property and interim spousal support is adjourned to March 12, 2024 for the duration of one hour and 55 minutes and is pre-emptory:
 2. By consent, Empire CPA Accounting and its principal, Darryl Morris, shall provide each party with all financial documents including financial statements, general ledgers, wage payouts, tax filing returns relating to Frigon Enterprises Limited and 0903472 BC Ltd. For the years 2020, 2021, 2022 and 2023 by March 7, 2024 by 4 PM.
 3. The respondent will provide the claimant with one response affidavit relating to the exclusive possession and spousal support by March 11, 2024 by 4 PM;
 4. The respondent's applications filed on February 29, 2024, are adjourned generally.
 5. The respondent's counsel will draft the order.
 6. The parties will bear their own costs at today's appearance.
- [10] Given that only the applications for exclusive use of the property and interim spousal support were adjourned to March 12, 2024, for the duration of one hour and 55 minutes on a pre-emptory basis, and the respondent's applications filed on February 29, 2024, were not reset with Supreme Court Scheduling; only the claimant's applications can be heard today.
- [11] Contrary to the submissions of respondent's counsel, Justice Girn did not order that this court consider the hearing of the respondent's applications.

History

- [12] The parties began living together on March 31, 1979, and married on July 6, 1985. They lived together for a period of approximately 44 years. They separated on July 17, 2023, and have lived separate and apart since that date. The parties have an independent adult son, who is no longer a child of the marriage as defined in the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp).
- [13] During their relationship, the parties resided in the Family Home, which is registered in the Land Title Office in joint tenancy to both parties. The parties shared a traditional marriage.
- [14] The claimant asserts that the respondent was abusive and coercive to the claimant throughout the marriage.

- [15] The respondent was employed as a boilermaker until he retired. He is now self-employed on a contract basis through Frigon Enterprises Ltd. ("Frigon Enterprises"). 0903472 B.C. Ltd. (the "Numbered Company") was incorporated to acquire, manage and sell real property and other forms of investments. Frigon Enterprises and the Numbered Company will be referred to collectively as the "family businesses". The Numbered Company owns the Rental Property.
- [16] In 2016, the claimant was diagnosed with multiple-sclerosis ("MS"), a degenerative disease of the central nervous system. The claimant was retired and disabled relying on annual disability benefits of \$14,000 for income. Prior to her diagnosis, she was employed in the banking business and provided active guidance and management to the family businesses. She holds the positions of officer and director in the family businesses. At separation, the respondent removed financial records, cheque books and bank cards related to the family businesses from the Family Home. As a result, the claimant no longer had access to, nor was involved in the daily operations of the family businesses.
- [17] Given her age and medical conditions, the claimant does not have capacity to earn income. In particular, she cannot independently stand, walk or climb stairs. In the Family Home, the facilities required by the claimant are all on the main floor.
- [18] She requires the assistance of a walker, scooter or wheelchair for mobility. She left the Family Home in July 2023. She gave evidence that she felt unsafe due to the respondent's chronic verbal abuse, which included threats of financial hardship. Her evidence was that she "could not take it anymore", moved out of the Family Home, and moved in with her sister for a period. While at her sister's home, the respondent arrived unannounced and dumped a plastic bag containing her clothing on the lawn. He also deposited her scooter and walker on the lawn. Both the claimant and her sister found this behaviour by the respondent to be intimidating.
- [19] Thereafter, she moved into a basement suite occupied by her son and others. The claimant has a pet cat with whom she has a strong emotional bond, but the cat had to remain in the Family Home, because her son has a dog.
- [20] The Family Home was approved by the Fraser Health Authority, and has features on the main floor which assist with her disability and improve her mobility including a swimming pool useful for exercise, wide halls and doorways, a large bathroom which includes a walk-in shower and moulded seat to assist her bathing, and other medical and exercise equipment which she used regularly. The Family Home was also located within a short distance of medical practitioners who treated the claimant.
- [21] Her sister's home had stairs which the claimant could not climb. As a result, the claimant had to install a stair-lift.

- [22] The claimant requires daily exercise and weekly physiotherapy, massage therapy and acupuncture treatments to maintain and regulate her physical functionality and improve her level of positive movement and comfort. The therapy used by the claimant requires emotional focus and physical energy.
- [23] The basement suite rented by her son is small, difficult for her to navigate due to its narrow doors and halls, and is poorly ventilated. The location of the basement suite is approximately one hour each way to travel to her medical practitioners.
- [24] The respondent opposes the claimant's return to the Family Home, even though he is not resident there. The respondent works outside of the Lower Mainland and has not been resident in the Family Home since the end of January or the first week in February 2024. His evidence was he would not return until May 2024. The respondent has not filed any evidence that he has attempted to find alternate accommodation.
- [25] The respondent was unable to attend the JCC on February 20, 2024, because he was working out of town. While he was working out of town, he contracted with a person whom he solicited online to house-sit the Family Home. The respondent and the house sitter met for the first time in a mall food court. They arranged for her to live in the Family Home from February 4, 2024 until May 2024. He arranged for maintenance of the Family Home's landscaping while the house sitter was in the Family Home. The lot upon which the Family Home sits is approximately 14,000 square feet which the respondent has maintained consistently, regardless of who occupies the property.
- [26] The claimant was not involved in any discussions about the house sitter, and did not consent to any arrangement between the respondent and the house sitter. While there are references to a contract with the house sitter and the respondent, no written document has been produced. There has been no evidence proffered by the respondent of any cost for the presence of the house sitter. From the date of the notice of family claim, the respondent was aware that the claimant was seeking exclusive possession of the Family Home.
- [27] The claimant retained a process server who made eight unsuccessful attempts between October 12, 2023, and October 30, 2023, to serve the notice of family claim on the respondent at the Family Home, at a place of business occupied by the respondent and at a gymnasium used by the respondent.
- [28] As noted, on November 24, 2023, Associate Judge Nielsen made a without notice order for substituted service of the notice of family claim and the notice of judicial case conference, pursuant to Rule 6-4(1) of the Supreme Court Family Rules, B.C. Reg. 169/2009. The order permitted service by posting on the door of the Family Home and by email. The respondent was required to file a response to family claim 30 days after service.

- [29] In addition, the Court ordered pursuant to s. 91 of the FLA, that the respondent was prohibited from disposing of, transferring, converting, pledging, encumbering, assigning or exchanging into another form, or in any similar manner dealing with family property and/or any property in respect of which the claimant may have an interest in this proceeding (pending final determination by the court), without prior written consent of the claimant or further order of the court, except in the ordinary course of business.
- [30] The Court made further orders pursuant to s. 91 of the FLA prohibiting the respondent in his capacity as a director, officer or shareholder the family businesses, from disposing of, transferring, converting, pledging, encumbering, assigning or exchanging into another form, or in any similar matter dealing with family property and/or any property in or to which the claimant may have an interest in this proceeding (pending final determination of the court), including money, dividends, property, goods, loans or things of value, without the prior written consent of the claimant or further order of the court except in the ordinary course of business as set out in the order.
- [31] Further, the respondent was prohibited from investing in other companies, businesses or ventures; using corporate lines of credit or credit cards for personal use, or for any cash advance no matter the purpose; transferring money or assets to any person or business other than to purchase goods or services for the purpose of ordinary business operations; or withdrawing monies, whether designated as "salary", "dividend", "shareholder draw" or in any other matter, except as to the extent required to cover necessary family expenses.
- [32] The order also provided that the respondent was restrained and enjoined from doing anything which might depreciate or dissipate the value of any corporate or business asset in the name of either company which may be family property or which the respondent or the claimant have an interest.
- [33] The phrase "ordinary course of business" is defined in the order. The order also provided for third parties, such as banks to claim interest, to levy service charges in existence prior to this order coming into force. Applications to obtain orders or directions to give fuller effect to this order were also permitted.
- [34] Further, pursuant to s. 226 of the FLA, the respondent was ordered to maintain and pay the mortgage and household expenses including but not limited to, property taxes, property insurance, utilities and other expenses as they come due for each of the Family Home and the Rental Property until further court order or agreement of the parties.
- [35] On March 5, 2024, Justice Girn adjourned the application of the claimant for exclusive use to the property as well as spousal support to March 12, 2024 at 9:45 am for one hour and 55 minutes and is pre-emptory. The applications filed on February 29, 2024, by the respondent were adjourned generally.

Respondent's Submissions

- [36] The respondent made a number of submissions which were irrelevant to the applications before the court, involving with regard to financial matters regarding the parties' son. The respondent also referred to the claimant's complaints concerning financial transactions detailed in exhibits produced by the respondent. It was alleged that the respondent disposed of assets or failed to maintain assets in a business-like fashion. The claimant's allegations did not appear to be supported by the produced bank records. The respondent also suggested that the alleged dumping of clothing and other belongings of the claimant on the lawn of her second residence were friendly acts of delivering the claimant's property to her.
- [37] Ultimately, these competing submissions did little to assist the court, except to demonstrate that these parties were extremely unhappy and disturbed in the presence of the other.

Issues

- [38] There are two issues to be decided in this application. The first is the application of the claimant for exclusive possession of the Family Home, pursuant to s. 90 of the FLA. The second is the claimant's claim for spousal support. While the respondent initially disputed the claimant's entitlement to support, he later resiled from that position and took issue only with the amount of spousal support.
- [39] Before dealing with the issues of occupancy and spousal support, it is necessary to first consider an issue related to family debt raised by the respondent's materials.

Family Debt

- [40] At paragraph 29 of the respondent's first affidavit, dated January 29, 2024, the respondent refers to a 2018 dispute which he says the claimant is using to "paint [him] as an evil person, or one that is capable of dissipating funds from her". I note that the respondent's reference to the date of this incident is an error, which was in fact in 2016. The respondent was charged criminally with assault causing bodily harm contrary to s. 267(b) of the Criminal Code, R.S.C. 1985, c. C-46, for an event which took place on April 1, 2016. On January 10, 2018, the respondent was convicted of that assault causing bodily harm. He was sentenced on May 18, 2018, to 30 days in custody followed by one year of probation. A victim fine surcharge of \$200 was also imposed. The respondent's appeal of his conviction was dismissed: *R. v. Frigon*, 2020 BCCA 315. His subsequent application for leave to appeal to the Supreme Court of Canada was refused: 39535 (29 September 2021).

- [41] In a separate civil action brought by the victim on February 1, 2018, the plaintiff alleged that on or about April 1, 2016, at Castlegar, BC, the respondent wrongfully assaulted, battered and caused bodily harm to the plaintiff. The plaintiff suffered significant injuries including a traumatic brain injury as a result of a physical attack by the respondent. In that civil proceeding, the plaintiff obtained a Mareva injunction restraining him from dissipating his assets.
- [42] On January 8, 2024, Mr. Frigon entered into a consent order with the plaintiff, subject to the advice of his counsel, which required Mr. Frigon to pay damages of \$625,000 and costs of \$50,000 to the plaintiff.
- [43] Despite the respondent's conviction and unsuccessful appeals, and the consent order in the civil proceeding, the respondent swore in his first affidavit at para. 29, the respondent swore that he "was not guilty in the criminal matter and appealed it, albeit it was unsuccessful" and that he denied having "a tendency for violence and reckless behaviour". In apparent conflict with that statement, in his third affidavit, made on February 28, 2024, at para. 20, the respondent swore that he "was convicted of a guilty charge (sic) related to the assault". Despite the contradiction, counsel for the respondent did not address this issue in argument.
- [44] The respondent's assertion in his first affidavit that he is not guilty of the assault, despite the conviction and unsuccessful appeal, appears to be an attempt to relitigate a finding of guilt in a subsequent civil proceeding. This is an abuse of process. In *Toronto (City) v. C.U.P.E.*, 2003 SCC 63, at paras. 51-55, the Supreme Court of Canada held that a person who was criminally convicted cannot re-litigate their guilt in a subsequent civil proceeding except in exceptional circumstances, for instance:
- (1) when the first proceeding is tainted by fraud or dishonesty;
 - (2) when fresh, new evidence, conclusively impeaches the original results; or
 - (3) when fairness dictates that the original result should not be binding in the new context.
- [45] None of those exceptional circumstances are present in this case. See also *British Columbia (Director of Civil Forfeiture) v. Wolff*, 2010 BCSC 774 at paras. 43-44; and *R.T. v. Lowe*, 2021 BCSC 590 at paras. 23-34.
- [46] In *Toronto (City)* at para. 54, the Supreme Court further noted that "[c]asting doubt over the validity of a criminal conviction is a very serious matter". Courts have also noted that the presumption of innocence no longer applies after a conviction is entered: see e.g., *R. v. Cuddeford*, 2023 BCSC 1865 at para. 14, citing *R. v. Oland*, 2017 SCC 17.
- [47] These principles are longstanding. In *R. v. Henry* (1940), 3 D.L.R. 270 at 271, 1940 CanLII 564 (N.S.S.C.), the Court noted "It is accepted law that until a man is found guilty by a competent tribunal he is presumed to be innocent; after conviction, however, it is otherwise and he has to be regarded as guilty while the conviction remains in force".

[48] The respondent's denial of his conviction adversely affects his credibility. His denial of the conviction is listed amongst other denials in his affidavits such as denying "a tendency for violence for reckless behaviour". The credibility and reliability of these denials are diminished by their proximity to his denial of the conviction. The quantum of the damages of \$625,000 for personal injuries is significant, which, together with a jail sentence and probation order, supports the conclusion that the assault causing bodily harm was a serious offence causing severe damage to the victim.

[49] Although it is not entirely clear from the content of the respondent's affidavits, he seems to consider the \$675,000 in damages and costs as a "family debt".

[50] The term "family debt" is defined in the FLA as follows:

86 Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property.

[51] In this case, the debt was incurred after the date of separation, and was clearly not incurred for the purpose of maintaining family property, being instead for the payment of damages for physical injuries caused by Mr. Frigon and associated litigation costs. As a result, I am satisfied that no part of the \$675,000 is a family debt, and no part of this debt is payable by the claimant herein. Further, even if the debt had been incurred prior to the date of separation, I am satisfied that it would be significantly unfair, under s. 95 of the FLA, to divide the debt between the respondent and the claimant.

[52] I now turn to the two issues to be decided: exclusive occupancy and spousal support.

Exclusive Occupancy

[53] In *McMaster v. Knutson*, 2022 BCSC 2149 at para. 50, Associate Judge Bilawich reiterated the test for exclusive occupancy of a family residence. The applicant must show that: (1) shared use of the property is practically impossible; and (2) that, on a balance of convenience, the applicant is the preferred occupant.

[54] Associate Judge Bilawich then made the following comments:

[52] Part (b) is an objective test. Amongst the factors considered are:

- a) Any acquiescence or delay;
- b) Conduct of the parties;
- c) Economic position of the parties;
- d) Alternate living accommodation available to either of the parties; and

- e) Other relevant circumstances such as health.

See *Sun v. Cook*, 2007 BCSC 2045 at para. 16.

- [53] In *Evans v. Mahtoy*, 2015 BCSC 2141 at para. 30, Justice Sharma found that when assessing balance of convenience, the court is to weigh the disadvantages of the applicant if she is not successful against the disadvantages to the respondent if she is. This requires an examination of the circumstances of both parties. Factors considered in that case included ability to earn income, mental and physical health, and other financial considerations.
- [55] In *Seong v. Kim*, 2021 BCSC 1255 at paras. 46-54, the Court found that the balance of convenience clearly favoured the claimant, in part due to the respondent's resistance to paying spousal support and the claimant's more tenuous financial position. The claimant was awarded exclusive occupancy of the family home based on her "greater need to reside [there] on an interim basis": at para. 54.
- [56] The claimant submitted that both legs of this test have been made out on the facts of this case. I agree.
- [57] At the first stage, continued cohabitation is a practical impossibility, based on the evidence of fear and distrust created by the respondent's behaviour. At the second stage, the balance of convenience weighs in favour of the claimant occupying the Family Home. I have considered the parties' economic positions, available alternate living arrangements, and health.
- [58] The claimant's alternate living arrangements are disadvantageous and tied to her economic position and significant health needs. For his part, the respondent appears able to work as a boilermakers' supervisor with significant income and has the capacity to occupy accommodation other than the Family Home.
- [59] The claimant's current housing, brought on in part by the failure of the respondent to pay spousal support, is inadequate to meet her medical and physical needs. The respondent has not been living in the Family Home. As noted, he has instead obtained the services of a house sitter to occupy that space.
- [60] To reiterate, the claimant has been retired from the workforce since 2010 and was diagnosed with MS in 2016. MS is a debilitating illness. She is 61 years old and has been out of the work force for at least eight years due to her physical disability.
- [61] Her financial statement, sworn in October 2023 when the action began, shows the extent of her income from disability. The parties own two family businesses: Frigon Enterprises and the Numbered Company detailed above. The Numbered Company owns the Rental Property, a single condominium unit which is rented out and pays for the mortgage and other related expenses. A second condo unit held by the Numbered Company was sold in 2022, but the parties did not receive dividends from the Numbered Company.

- [62] Frigon Enterprises is the going concern through which the services of the respondent are contracted as a boilermakers' supervisor to customers outside of the Vancouver area on a regular basis.
- [63] The claimant has been relying on her inheritance and disability pension. In the past, she has enjoyed income splitting with the respondent and any declared dividends. The balance of funds not distributed are held in an investment account which presently amounts to \$1.4 million. Recently, the claimant withdrew \$20,000 from that account. Counsel advised that the claimant has no objection to the respondent withdrawing the same amount which might assist him to pay for alternate accommodation.
- [64] Further, as I note below regarding the imputation of income, the respondent is at a significant financial advantage, which weighs in favour of the claimant having exclusive possession of the Family Home.
- [65] Ultimately, given the claimant's medical needs, the respondent's financial advantages, and the fact that the respondent is rarely in the Family Home, the balance of convenience favours the claimant. The claimant shall be permitted to return to the Family Home and have exclusive possession of the Family Home together with all necessary keys, and codes. The camera link accessible by the respondent shall be disconnected so that the respondent no longer has access to it. Mr. Frigon will also be responsible to cover the cost of landscaping the property.
- [66] Pursuant to s. 90 of the FLA, the claimant is granted exclusive occupancy of the Family Home effective 14 days from the date of publication of these reasons. Additionally, pursuant to s. 91 of the FLA, the claimant shall have interim exclusive use of the household goods and chattels located at the Family Home with the exception of the respondent's personal effects.

Spousal Support

- [67] The claimant seeks spousal support on a needs basis as well as a compensatory basis based on a relationship exceeding 40 years. The claimant submits that she arranged her working hours in order to accommodate care for the children when they were young.
- [68] The respondent concedes the claimant's entitlement to spousal support, but contests the amount. The claimant submits that, given her profound medical needs, spousal support should be higher in the range for support. The claimant needs support to attend a number of medical appointments and to pay for a house cleaner, formerly hired prior to separation.
- [69] No spousal support has been paid by the respondent since separation.

Imputation of Income

- [70] The claimant asks the Court to impute an annual income of \$219,000 to the respondent based on his boilermaker's pension of \$34,000 and further income received from Frigon Enterprises which is available to the respondent.
- [71] An affidavit of the respondent was served on March 11, 2024, unfortunately the day prior to the hearing of this matter. In that affidavit on page 6, the respondent set forward the income generated by Frigon Enterprises from 2020 (total income: \$94,536.60), 2021 (total income: \$94,829.51) and 2022 (total income: \$59,674).
- [72] On page 7, under the heading net earnings for the year ending April 2023, Frigon Enterprises had net income of \$326,298.00. Any net amount is understood to flow into the investment account to which each of the parties is entitled to one half. The claimant's counsel submitted that one half of that amount is available to the respondent, and larger than the amount reported to Revenue Canada. His means are greater than the amount reported. In Tab 11, the respondent's filed financial statement refers to income of \$21,955.88.
- [73] In this Tab 11, there are two pages marked "2" which are inconsistent. The second refers to an income of \$59,000, while expenses are declared as \$70,471, without any balancing or explanation.
- [74] Sections 18 and 19 of the Federal Child Support Guidelines, SOR/97-175, allow the Court to include income of a corporation in determining a spouse's income, or to impute income to a spouse. In the respondent's evidence, the respondent submits that the parties did not receive any dividends from the Numbered Company until the tax year end of 2023.
- [75] Claimant's counsel noted that in the respondent's affidavit filed February 7, 2024, unfortunately with unnumbered pages, the respondent sets forth a number of cheques drawn on the parties' joint account, all signed by the respondent, collectively marked Exhibit "O", cheques issued to the parties jointly, to the respondent and to the accountant. At the date of separation, there was a substantial balance in that bank account.
- [76] Exhibit "D" in the claimant's third affidavit contains the financial information of Frigon Enterprises starting at page 14. Pages 15 and 16 confirm that accounting for the revenues, expenses, and other earnings, the net earnings of the company were \$326,298 and the retained earnings of the company in 2023 were \$1,450,180. Pages 20 to 25 contain statements of business account activity of Frigon Enterprises starting in July 2023. On page 26, the most recent account activity of Frigon Enterprises, when this application was brought, shows a balance of \$109,450. Most of the funds flowing into that account came from a single customer.

[77] The respondent's evidence, as argued by counsel for the claimant, shows that he has at least \$14,000 per month available for his use. This is significantly more than that available to claimant. He has had access to over \$60,000 since the restraining order was made in this case in November 2023. He also has other funds available to him if this Court were to order the same. Notwithstanding the shortfalls in the evidence, the annual income of the claimant is fixed at \$109,000.

Quantum of Spousal Support

[78] As noted, the respondent conceded that the claimant is entitled to spousal support and that the respondent is prepared to pay spousal support. Therefore, the claimant's entitlement is not an issue. In terms of quantum, however, the respondent argued that any spousal support award should be at the low end of the range.

[79] Unfortunately, both sides presented minimal evidence to support an amount for interim spousal support. Counsel for the respondent referred to the determination of interim spousal support as "rough justice". Counsel for the respondent suggested that interim support since 2020 could be calculated at a figure between \$2,900 to \$4,300 per month. Counsel for the respondent suggested that the quantum of interim spousal support should be at the lower end of the range.

[80] Counsel for the claimant noted that the respondent had very recently provided some of his financial records and had not yet provided his list of documents; making it very difficult for the claimant to provide calculations for interim spousal support. Counsel for the claimant noted that the calculation of support should not require the claimant to first exhaust her existing family. Claimant's counsel also submitted that the CERB debt was not a proper deduction by the respondent because the respondent had in effect created the debt.

[81] In these circumstances, this Court is satisfied that interim spousal support should be calculated at \$4,000 per month commencing October 3, 2023, on the first of every month thereafter until further order of the Court or agreement by the parties in writing. October 3, 2023 is the date the proceedings were commenced. The arrears of spousal support are \$36,000. All sums of spousal support which are now in arrears shall be paid immediately and otherwise all monthly payments shall be paid aforesaid.

Costs

[82] Given that the claimant has been successful on the two issues before this Court, the claimant is entitled to her costs of this application pursuant to the Supreme Court Family Rules, Appendix B, as a matter of ordinary difficulty, payable forthwith after assessment by the Registrar.

"Ball J."

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