

CANADA / JUDGMENT

H.H. v. D.H.

2025 BCSC 946

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 946 H.H. v. D.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

H.H. v. D.H.,

2025 BCSC 946

Date: 20250521

Docket: E04976

Registry: Abbotsford

Between:

H.H.

Claimant

And

D.H.

Respondent

Before: The Honourable Mr Justice Crerar

Reasons for Judgment

Counsel for the Claimant:

A. Florescu

Counsel for the Respondent:

K. Naslund

Place and Dates of Trial:

Abbotsford

May 5-9, 2025

Date of Written Submissions:

May 12, 2025

Place and Date of Judgment:

Abbotsford

May 21, 2025

I. Introduction

- [1] These deliberately brief reasons seek to provide a timely resolution to this family law dispute, to allow the parties and their children to proceed with their lives.
- [2] The husband is 54; the wife is 51. They began dating as teenagers and married in 1996. They agree that the relationship ended on January 1, 2022, after 25 years of marriage. They have two children, now aged 20 and 23.
- [3] Both children have resided exclusively with the wife since April 1, 2022, when all three departed the family home, for a rental property paid for by the wife. The husband remained with exclusive occupation of the family home until it was sold in January 2025.
- [4] Pursuant to the March 11, 2024 order of Justice Caldwell, each party received an interim distribution of \$100,000 from the net sale proceeds of the family home.

II. Credibility

- [5] As expanded below, the Court was unable to place much weight on the husband's testimony. His answers in cross were often evasive, argumentative, conclusory, and exaggerated. At the same time, his memory was spotty, and his testimony short on detail. He frequently employed stock phrases that sounded rehearsed in advance to address the many difficulties in his testimony: "we chose a harder road" (the husband staying at home, rather than the family hiring a Filipina nanny); "I've been busy the last twenty years raising kids"; "you have to do what you have to do"; "my job was being present for the children" (particularizing his tasks and duties as a putative stay-at-home parent); "it's been a long road"; "that takes a toll and I was helpless"; "I'm on a healing path" (explaining that the separation made him depressed and prevented him from seeking work); "it took a lot of effort to seek help" (for his asserted depression preventing a job search); "nothing offhand"; "I have not pursued anything as of yet" (when asked if he had applied for any work post-separation, and after his apparent substantial recovery from depression). In both direct and cross, his eyes darted down in delivering answers on the most controversial topics: for example, denying his wife's

allegations about his long-term cannabis grow-op business and his minimalist contributions to the family, household, and finances. As set out below, many areas of his evidence are unsupported by documents, where supporting documents would exist and be readily accessible. On several central points in dispute, including his history of employment, his evidence on cross contradicted evidence provided earlier in his direct examination and in his affidavits.

- [6] The Court generally found the wife to be credible. Her testimony was, for the most part, restrained, straightforward, and steady. She recalled facts carefully, precisely, and accurately. She was unshaken on cross-examination, with no contradictions exposed. Her evidence was consistent with that provided by her own witnesses. She made appropriate concessions, even where potentially harmful to her case: she admitted, for example, that the husband may not have known of all of the bank accounts or family financial arrangements. She had free rein to provide exaggerated evidence about the value and circumstances of the family corporate shares she sought to exclude as property, with no ability of the husband to counter--she did not, and readily admitted that she did not personally know their exact value. Where the wife's testimony contradicted that of the husband, which it frequently did, I prefer her account.

III. Discussion and decision

A. The division of labour

- [7] Many of the issues before the Court flow from the relative contributions of the parties to their family, and to family finances.
- [8] Both parties agree that the wife was by far the primary income source for most of the relationship. It is not disputed that the wife paid all of the family expenses, including mortgage payments, groceries, and utilities.
- [9] In the early 2000s, the wife worked in a variety of modest bookkeeping roles, taking considerable time off with the birth of each child. During this time, the family largely lived on their line of credit. She returned to full-time work in 2006. In 2011, she worked her way up towards a role as an accountant for film productions, on a contract-by-contract basis. In that role, she reviewed all expenses related to each individual production, keeping daily track of the budgeted items, and performing other roles such as calculating tax credits. She described the role as gruelling, and really the task of two full-time employees: necessitated by the real-time pressures of tight and finite film production schedules. When she started, she would work eight to ten hours a day. By 2018, she was working 16- to 20-hour days, including on the weekends, often starting work at 3 or 4 in the morning. She often had to travel to and stay at out-of-town filming locations. The pandemic-inflicted slow down in the industry lowered her workload to 12 hour days in 2020. Despite its arduousness, the role paid well: between \$260,000 and \$322,000 annually, between 2018 and 2022.

- [10] The husband does not dispute that the wife worked very long hours: his affidavit #2 acknowledges that "[a]fter the children were born, [wife] was always working an average of 14-16 hour days." He presented this evidence, canvassed at trial, in order to establish the necessity of him serving as the stay-at-home parent.
- [11] The husband asserts that after the birth of the second child, the couple expressly discussed and agreed that he would serve as the stay-at-home parent: that he would sacrifice his career in order to care for the children, based on the wife's more stable and promising ability to provide financially for the family. The wife denies any such agreement.
- [12] I accept the wife's testimony for several reasons. While the wife's career did blossom into a steady and lucrative source of income, this did not occur until a decade after the arrival of the children, and it would not have been foreseeable in 2005-2006. The wife took long maternal leaves for each child. It would not have been clear at the end of those maternal leaves that she would or should become the main breadwinner of the family, or, conversely, that the husband would or should serve as a stay-at-home parent, and eschew all employment.
- [13] On the other side of the ledger, at the time of the birth of the children, the husband had considerable experience in several fields. At trial, the husband repeatedly described himself as entrepreneurial. He took an early interest in the Internet in the 1990s, and engaged in a variety of tech-related ventures, including construction of computers, IT sales and support, and drafting of scripts to allow different software applications to interact with each other. He had studied technical writing. He had sales experience in areas ranging from technology to lumber to furniture. He had run his own roofing, power-washing, and industrial painting companies, with several employees. He had also worked in more low-level positions in fields such as stocking a bicycle warehouse.
- [14] The overall tenor of the evidence, including that provided by the husband himself, was that this arrangement evolved over time, as a practical default rather than any conscious arrangement or agreement. The wife worked hard and was able to sustain employment: the husband made no efforts to do so. I reject the proposition that the husband sacrificed an otherwise promising career in order to become a stay-at-home parent, or that this flowed from a decision or request from the wife: she would have been delighted to have had him contribute generously to the household finances.
- [15] In any case, while the husband stayed at home and the wife served as the family breadwinner, the husband did not play the role of a traditional homemaker. The wife still did most of the cooking, shopping, cleaning, and laundry for the family, managed (and paid) all of the family finances, and took the children to their doctor and dentist appointments, squeezing in these roles in the rare moments that she was not working. She organised holidays and activities for the children, in which the husband generally did not participate. While the husband played a greater role in driving the children to and from school and activities, the wife also did considerable familial driving, including when the husband had

his licence suspended after a DUI charge. Further, other family members living in the household--including, at times, each spouse's mother, as well as a brother of each spouse--also contributed to domestic tasks and driving. When they were old enough, the children often made their own lunches, and did chores. The husband's mother confirmed that the father ordered in food around three times a week (a pattern repeated after the couple's separation: credit card statements reveal that the husband ordered Skip the Dishes food deliveries almost every day, sometimes twice a day), despite his professed love of cooking, and his assertion that he frequently cooked. The husband's description of the tasks he did for the family were vague: barbecuing, changing light bulbs, cleaning the roof gutters, buying the children occasional ice cream cones, hamburgers, and slurpies, and mowing the grass (until this duty was transferred to the wife's younger brother: "in order to give him a sense of responsibility"). Reflecting his limited role as caregiver, he could not even recall whether his children had attended preschool.

- [16] Even when his children began attending school full-time, the husband made no attempt to obtain even part-time work, as would most young parents living in the Lower Mainland, out of economic necessity or preference. The husband's technology and sales skills and experience in particular would have lent themselves well to a remote part-time position.
- [17] A central point of dispute at trial was whether the husband was primarily engaged in illegal cannabis grow operations and drug dealing while he claimed to be focused on raising the children. The wife testified that the husband repeatedly informed her of his ongoing drug business, and that she insisted that none of those illicit funds be directed towards the family home, lest the home risk seizure. Early in their relationship, the husband shrugged off his termination from the bicycle distribution company, by telling her that he would make ends meet by dealing drugs with his cousin.
- [18] The husband vehemently denies any illegal cannabis growth operations or sales. He testified that his only involvement in cannabis production was when he engaged in a legal and licensed venture in 2015-2016, to provide cannabis to terminally ill patients: he and a partner grew the product in a barn near Williams Lake, under the watch of a caretaker. This apparently required him to drive to and spend several days a month in Williams Lake: itself undermining his claim to have served as an on-call, stay-at-home husband. He testified that that enterprise ultimately failed as the prospect of cannabis legalisation loomed.
- [19] As with many other aspects of the husband's testimony, his claims of legal cannabis production are oddly uncorroborated by any documentary evidence. A government-licensed cannabis growth operation would have generated a bounty of documentation. His story that he extemporaneously launched a substantial cannabis cultivation operation solely after reading a book, with no prior cultivation experience, is far-fetched. Similarly far-fetched was his evidence that various established individuals, including the son of a federal cabinet minister, sought his advice about their own prospective cannabis ventures, in anticipation of legalisation: odd and remarkable that they would seek out the husband's wisdom, based solely upon his recent book-learning about cultivating cannabis.

- [20] On the other hand, it is uncontroverted that police raided the husband's property in Mission, rented out to his good friend Shane. Earlier, when he lived in Richmond, a cannabis grow operation was carried out in a barn on the property. The wife's brother, who lived with the family for several years, confirmed the smell of cannabis in the family home garage, as well as the husband's truck. The wife testified that the husband spent much of his time in the evenings and weekends away from the house attending to his cannabis business. In his testimony, the husband tellingly let slip that the wife did not approve of his cannabis grow operations, "either legal or otherwise." The preponderance of the evidence indicates that the husband was involved in illegal cannabis grow and sales operations for most of the marriage, diluting the time and focus that he professed to have spent tending the home and children. The evidence also indicates that he kept any proceeds for those operations for his own use, rather than using them for the family, apart from the occasional ice cream cone.
- [21] I generally accept the wife's description of the husband's approach to his domestic role. He drove the children begrudgingly. He slept for much of the day, and spent many hours behind closed doors in the bedroom or basement. He spent considerable amounts of time playing video games online and in person with friends such as Shane. He spent long hours outside of the family home at night.
- [22] All of these assertions by the wife dovetailed with the husband's own evidence of his activities and interests, albeit presented by him in a more positive light. For example, he justified his long hours playing video games: "once [the children] became teenagers they needed me less." His online and in-person videogame playing provided him with necessary human interaction: "it was the only way I was getting it."

B. Division of property

1. Introduction

- [23] The parties do not materially differ over the identification and quantification of the family assets and debts and, in any case, the Court received few or no submissions on the topic. I will deal with the central dispute--excluded property--in the next section. I will briefly address three of the husband's arguments about family property.
- [24] The husband noted that the wife was in charge of all household finances and accounts, and sought to raise suspicions with respect to the multiple bank accounts opened by the wife, as well as transfers between those accounts. In his testimony, the husband argued that the wife had "such a vast number of accounts." I accept the wife's explanation that, as a bookkeeper, she liked to track funds for specific purposes (such as saving for a vacation, or mortgage payments) through separate accounts. The bank account records indicate clearly the source and destination of all of the transfers. The husband was unable to identify any transfers to undisclosed or unexplained accounts. I place no weight on this unsupported argument and insinuation.

- [25] The husband noted that a \$3,970 TFSA that the wife claims to be for the elder child does not bear that child's name on the bank records: only that of the wife. I accept the wife's evidence that the account is for the child, in parallel to the similar account established for the other child.
- [26] Finally, at least in her calculations, the husband suggests that the wife's new condominium has appreciated in value since its purchase in November 2023, and that this amount should be counted as family property. Evidence and argument on this point were scant. The Court declines to count or divide whatever appreciation, if any, may have occurred: any potential appreciation can be conceptually offset against not requiring the husband to pay back the interim spousal support received from the wife to date.
- [27] As set out below, the Court generally agrees with the amounts and methodology of the wife's division of family assets, as set out in the revised calculations document provided on May 12, 2025: any line item or calculation not expressly discussed in these reasons will adopt and follow that methodology.

2. Excluded property

- [28] The wife seeks to exclude two items of property, received from her father, from division as family property: Family Law Act, SBC 2011, c. 25, s. 85(1)(b.1) ("FLA"). In final argument, the husband accepted the basis for both exclusions, but contested the extent of the second exclusion.
- [29] The first exclusion is the \$86,554 provided to the wife by her father in 2004 for the down payment on the family home. The husband acknowledged the gift, and acknowledged that he agreed to his father-in-law's demand that he renounce any claims to that amount. That amount is excluded property.
- [30] The second exclusion is shares in her father's Paraguayan company gifted to the wife in 1996.
- [31] The only difficulty with the excluded value of the shares is uncertainty about the appreciation in their value over the course of the marriage, the value of which appreciation is family property to be divided: s. 84(2)(g). The company was a small closely-held family company, with no objective means of valuing the shares at receipt or upon sale. Paraguayan hyperinflation, and currency conversion at the times of receipt and sale, further complicate its original value. There are no valuations in evidence; given the amount in question and the complexity, obtaining such a valuation may be a disproportionate exercise. The wife understood the value of the shares at the time of receipt to be USD \$63,839, albeit based on an unsubstantiated letter from her brother, when he served as president of the company. In 2019, the wife sold those shares for USD \$96,316, to an employee of the company: the fact that the buyer was neither a family member nor a friend, but at arm's length, provides some objective reassurance of the value of the shares at sale.

- [32] The party seeking to have the increase in value of excluded property divided as family property (that is the husband) bears the onus of establishing the amount of the increase: JSF v. WWF, 2015 BCSC 2375 at para. 161.
- [33] The husband argues that the increase in value of these shares is CDN \$76,491, because that is the amount that the wife declared as a capital gain in her 2020 and 2021 income tax returns. Such an approach, however, would make the initial shares, as received, of modest worth.
- [34] I accept the wife's evidence that the capital gains declared on her tax filings do not reflect an appraised increase in value, but were her manner of declaring the dividends from the shares received from time to time over the years: a method that she confesses was likely not correct. I also accept the wife's proposal that CDN \$77,991 (that is, USD \$61,700 converted to Canadian dollars at the time of separation) serves as a rough estimate of the original value of the shares, to be excluded: a lower amount than that initially asserted by the wife and her brother, and one that proposes a roughly 50% appreciation, which appreciation will be treated as shared family property.
- [35] As recognized in *Shih v. Shih*, 2017 BCCA 37 at paras. 40-44, mathematical certainty is often elusive with historical family gifts, and the Court may "draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties." In *Asselin v. Roy*, 2013 BCSC 1681 at paras. 198-199, the Court did the best it could with limited evidence, and no appraisal evidence, to assess the original value of a house sought to be excluded on the basis of a gift. In *Parton v. Parton*, 2016 BCSC 1528 (cross-appeal allowed on another issue: 2018 BCCA 273) at para. 53, the Court estimated the excluded property value of one spouse's pre-relationship RRSPs, stating: "I appreciate this is an estimate and is not capable of definitive proof. However, an excluded property claim should not be defeated simply because the exclusion was earned more than 35 years ago and it is difficult or impossible to obtain records to establish the precise amount of the exclusion."

3. Division of property

- [36] FLA, s. 81, presumes that spouses are equally entitled to family property, with an equal responsibility for family debts.
- [37] The husband seeks an equal division of property, noting the 25-year marriage, and the purported (now rejected) agreement that the husband would serve as the stay-at-home parent and not work.
- [38] Under s. 95(1), the wife seeks an unequal division of the property--75%--based on having contributed the vast majority of funds to the family, including all funds for the family home, including utilities and taxes, and almost all of the daily expenses, during the relationship.

- [39] The party seeking to clear the high hurdle of significant unfairness, and obtain unequal division must show "marked, prolonged, and intentional or unexplained disparities in contribution to family burdens". It requires "something objectively unjust, unreasonable, or unfair in some important or substantial sense": *Singh v. Singh*, 2020 BCCA 21 at paras. 133-34; *Chang v. Chang*, 2020 BCSC 1783 at para. 108; *Khan v. Gilbert*, 2019 BCCA 80 at para. 32.
- [40] In *Chang*, the Court awarded a 75 percent-25 percent division of property in favour of the wife, who contributed far more towards family property and family expenses, even in light of the husband's contributions to the household, family, and finances, and even in light of their 27-year marriage. The Court noted, *inter alia*, the husband's bouts of intentional unemployment and under-contribution to the household.
- [41] Taking the exclusions into account, I agree that that the wife's overwhelmingly unequal contribution to the family finances, and the husband's corresponding minimal contribution to both the finances and the maintenance of the family, would render equal division "significantly unfair", as per FLA, s. 95(2). The present facts resemble those in *Chang*. The Court orders a 75 percent-25 percent division in favour of the wife.
- [42] Subtracting debts from assets, and deducting the two items of excluded property, leaves \$694,766 to be divided: \$521,074 to the wife, and \$173,691 to the husband

C. Division of pension

- [43] Neither party has any specific pension flowing from employment: only their entitlement under the Canada Pension Plan. The husband seeks an equal division of pensionable earnings under s. 55.1 of the Canada Pension Plan, RSC, 1985, c. C-8.
- [44] Neither party made substantive submissions on the point, and the evidence was limited to a brief assertion by the wife that the pension division process would not be financially efficient or desirable.
- [45] Absent an agreement that there be no division of unadjusted pensionable earnings under s. 55.1 (s. 55.2(3)(a)), the default under the legislation and jurisprudence is division of the pensionable earnings, under the formula set out in the statute. The Court orders equal division of each party's Canada Pension Plan earnings.

D. Imputed income

- [46] Each party seeks to impute income to the other.
- [47] The husband accuses the wife of deliberately underearning since the separation, in two specific ways.

- [48] First, the husband criticises the wife for not seeking alternative work during the Screen Actors Guild and Writers Guild of America strikes in 2023, when her earnings as a production accountant dropped considerably, to \$72,000: those strikes shut down most productions. I find reasonable the wife's explanation that those strikes could have ended at any time, making commitment to other employment impracticable.
- [49] Second, he accuses her of underemployment by not continuing to work as a production accountant in the film industry. In October 2024, she completed her last production accounting contract, and has not worked in that role since. She felt burned out and exhausted. After a few months, she started looking for work in earnest, sending out 70 applications. She will start a new position later this month, serving as an in-house accountant and business manager for a Lower Mainland architectural firm.
- [50] The wife's decision is not unreasonable. As set out above, she worked exhausting 16-hour days, often on weekends, and often away from home, out of sheer necessity. Her husband was making no attempt to earn money for the family. Now that both of the children have graduated, and now that the marriage is over, it is reasonable for her to pursue more stable and sustainable employment. Her new employment is a real full-time job, that still pays reasonably well: \$105,000. Nothing at trial undermined the legitimacy of the employment agreement, nor her widespread job search efforts.
- [51] The husband also questions whether the wife will plausibly stay in the new position, in part given that she anticipates annual expenses of \$190,000 in her financial affidavit. She explains that she will address these expenses in part from her portion of the interim distribution. She also anticipates that these expenses will soon diminish, as the children, both in their twenties, grow more independent. She is also now living with her new partner, and sharing expenses. I accept these explanations and decline to impute income to the wife.
- [52] The wife seeks to impute an income of \$40,000 to the husband. As recited above, the husband has a wide range of experience and skills. While he protests that technology changes rapidly, he also boasted of his ability to swiftly teach himself new areas, whether it be the burgeoning Internet and other computer technologies in the 1990s and 2000s, or cannabis cultivation. He spoke of his entrepreneurial and managerial skills. He has a wide range of vocational experiences. Any failure to burnish his résumé through experience, training, or employment, was solely his own choice. The Court is confident that he can soon apply his multifarious talents and experience to a role that garners at least a modest income.
- [53] In the end, the husband did not seriously contest that he should be imputed the low annual income of \$40,000: just slightly above the minimum wage. This was the interim income imputed by Justice Caldwell on September 25, 2024. The Court imputes the husband's income at \$40,000.

E. Spousal support

- [54] FLA sets out the objectives of spousal support order:

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[55] The husband seeks spousal support, both under ss. 160-162 and the Divorce Act, RSC, 1985, c. 3 (2nd Supp.), s. 15.2(1). He argues that he is entitled to spousal support based on both compensatory and non-compensatory grounds.

[56] With respect to the compensatory claim, as concluded above, the parties did not agree that the husband would sacrifice a career, or otherwise would serve solely as a stay-at-home parent. Nothing prevented him from taking on part-time work, or seeking employment that might allow him to contribute partly or substantively to the family finances. Indeed, again, the totality of the evidence indicated that he did conduct his own business, albeit one that was illegal at the time.

[57] With respect to the non-compensatory claim based on need, the husband argues that he is unable to work, because he has been out of the workplace for 20 years, has no current skills or experience, and suffers from depression. That said, he claims to be interested in work, and referred to a current résumé (which was also not listed or produced in evidence). That said, he acknowledged that he has not applied for a job in 20 years, including during the three years after the separation.

[58] Apart from the say-so of the husband and his own mother, there is no evidence to establish that he suffered or continues to suffer from depression, let alone untreatable depression that prevent him from seeking or obtaining employment. Although he claims to been diagnosed with depression, and to take medication for his depression, no documents--even a prescription form or medication bottle label--have been listed or adduced in evidence. The sole document in the record is a vague doctor's note indicating that he was unable to work at the time: the note makes no reference to depression or any psychological condition or even any medical condition. There is no expert testimony to the effect that he suffers or has suffered from depression, or that it affects his ability to work.

[59] In the circumstances, including the vast disparity in each spouse's contribution to the household during the marriage, the Court declines to order spousal support for the husband going forward.

- [60] In any case, the wife has already paid the husband \$29,400 in spousal support since the separation, pursuant to the interim, without prejudice September 25, 2024 order of Justice Caldwell, all the while paying for all of the expenses in the family home, which the husband solely occupied from April 2022 until its sale in January 2025, as well as the accommodations for herself and the children. She has also advanced the husband \$62,000, from January 2022 to May 2023. The husband will also receive \$173,691 from the division of assets (he has already received \$100,000 of that, in the interim distribution). These amounts have served and will provide transitional assistance to the husband in adjusting to his new normal of having to work and support himself financially, thereby promoting his economic self-sufficiency.
- [61] At the same time, in order to relieve any economic hardship suffered by the husband arising from the breakdown of the marriage, and to offset the denial of spousal support and the unequal distribution of the family property, the husband will not be required to pay back or account for the spousal support already received, or for the cash advances or family home expenses paid for by the wife after her departure, 25 percent of which he would be entitled to keep in any case. To order repayment would leave the husband in an immediate debtor position to the wife, and inflict undue immediate hardship: antithetical to the desirable outcome of a clean break and economic independence for both former spouses, and prejudicial to the husband's accustomed state of unemployment, regardless of the cause.
- [62] Given that the lump sum spousal support has already been transferred, there is no need to calculate any additional discounts for tax or contingency purposes. The amounts transferred can be considered already adjusted as per the Spousal Support Advisory Guidelines: The Revised User's Guide at Chapter 10(c), and *Robinson v. Robinson*, 2011 BCSC 1489 at para. 130, *aff'd* 2012 BCCA 497.

F. Child support

- [63] The two children have exclusively been under the wife's care and support since separation.
- [64] Both are currently enrolled in post-secondary institutions. Both rely upon parental aid (specifically, from the mother) for most of their tuition and their daily expenses. It is not controversial that they remain children of the marriage, under s. 2(1) of the Divorce Act, and the *Nordeen v. Nordeen*, 2013 BCCA 178 jurisprudence, despite having attained the age of majority.
- [65] The father has paid nothing in child support. The father accepts his responsibility to pay child support, but claims, as above, that he is unable to contribute due to his lack of employment.
- [66] The Court confirms the husband's obligation to pay support for his two children, since the separation, and going forward. The imputed income of \$40,000 results in a monthly payment of \$635.

- [67] The Court also confirms that the husband must contribute his proportionate share of the children's section 7 expenses, specifically including any university tuition for each child not covered by the existing RESP accounts, as well as regular dental and medical costs for the children, as well as rent for the elder child, and voice lesson and choir expenses for the younger child. I accept the wife's calculations for his obligation towards past section 7 expenses, ranging from 30 percent to 39 percent. Going forward, the husband will contribute 33 percent of the children's section 7 expenses, based on the wife's annual income, and the husband's imputed income.
- [68] The wife will provide the husband, in a timely manner, invoices relating to those expenses, as well as documents confirming that any child whom she seeks to continue considered a child of the marriage is enrolled in at least 80 percent of a full time post-secondary education programme. One of the children has indicated a plan to pursue a professional graduate degree. The Court provisionally directs that if she does so, she will be considered to remain as a child of the marriage entitled to child support from both parents, including, specifically, section 7 expenses for tuition and otherwise.
- [69] Based on the husband's imputed income, child support and special expenses since the departure of the mother and children from the family home total \$35,059. That amount will be deducted from the husband's share of the family property.

G. Divorce

- [70] The requirements for divorce being established, the Court grants a divorce to the parties, effective 31 days after issuance of these reasons.

IV. Conclusion

- [71] The husband seeks leave to review these orders in the future.
- [72] The present orders are final orders after trial, with a full opportunity for each party to provide comprehensive evidence on their personal, economic, and vocational history and prospects: both sides have provided extensive evidence on all of these facets, and the Court has weighed that evidence. This relationship cries out for a clean break between the parties, and a concerted realisation by the husband that he must support himself financially from now on.
- [73] I decline to grant leave in advance. Final support orders under the Divorce Act will only be varied if there is a material change in circumstances: that is, "a change, such that, if known at the time, would likely have resulted in different terms": Divorce Act, s. 17(4), (4.1); *Mynio v. Mynio*, 2024 BCSC 544 at para. 21; *Willick v. Willick*, [1994] 3 SCR 670 at 688, 1994 CanLII 28. To meet this threshold, the Supreme Court of Canada has been clear that any change in income must be significant, have some degree of continuity, and not be one of choice; changes which are trivial or short-lived will not justify a variation: *Colucci v. Colucci*, 2021 SCC 24 at para. 61.

[74] The wife has been successful in these proceedings. She is awarded costs of the proceedings on the ordinary complexity scale.

[75] The husband argued that the wife should be penalised in costs due to late disclosure, as well as her failure to comply fully with the interim order for spousal support. Neither of these failures were substantial or prejudicial: the husband's counsel was able to pose questions based upon the documents with no apparent limitations, and the husband was able to, or should have been able to, draw upon the proceeds from the house sale, as well as the wife's generous cash advances, for his support. That said, neither of these failures should be countenanced: the Court orders that the wife pay the husband \$1,000 in costs for these failures, which amount may be offset against any amounts owed to her by the husband.

"Crerar J"

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