

CANADA / JUDGMENT

H.P. v. C.T.P.

2014 BCSC 2024

COURT

Supreme Court of British Columbia

DECIDED

28 October 2014

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2014 BCSC 2024 H.P. v. C.T.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

H.P. v. C.T.P.,

2014 BCSC 2024

Date: 20141028

Docket: E44834

Registry: New Westminster

Between:

H.P. aka B.P.

Claimant

And

C.T.P. aka C.T.M.

Respondent

Before: The Honourable Mr. Justice Fitch

Reasons for Judgment

Counsel for the Claimant:

Pawanjit S. Joshi

Counsel for the Respondent:

Jacqueline Sowa

Place and Dates of Trial:

New Westminster, B.C.

September 22-26, 2014

Place and Date of Judgment:

New Westminster, B.C.

October 28, 2014

- [1] This is a family law case. H. P. (the "claimant") and C. P. (the "respondent") met in 1979. They began cohabiting in 1988. They were married on December 5, 1990. They have two children: I.P. (born February 3, 1982) and G.P. (born December 24, 1988). Neither child meets the definition of "child of the marriage" under s. 2 of the Divorce Act, R.S.C. 1985, c. 3, or "child" under ss. 1 and 146 of the Family Law Act, S.B.C. 2011, c. 25.
- [2] The claimant is 62 years of age and employed as a foreman in the automotive department of Delta School District. The respondent is a 55-year-old certified dental assistant. She is Jehovah's Witness. She has been on medical leave from her work since September 17, 2013.
- [3] Serious difficulties in the marriage began surfacing in 2010. Although the parties continued to live under the same roof until at least October 2013, they have, for the purposes of this proceeding, agreed on a separation date of April 15, 2013.
- [4] The parties also agree on the identification of family property and family debt and both take the position that family property and family debt should be divided equally. In addition, the parties agree that, with the exception of the matrimonial home, their financial assets should be valued and equalized as of June 30, 2013.
- [5] With respect to the former matrimonial home, it was appraised at the end of July, 2014 and determined to have a fair market value of \$485,000. The parties are prepared to proceed on the footing that the appraisal represents an accurate and current estimate of the property's fair market value. Both parties seek the opportunity to purchase the other's one-half interest in the former matrimonial home.
- [6] The central issues for determination are:
- the amount of spousal support the claimant should pay the respondent from October 1, 2013 to the present day, and from the present day moving forward. There is no issue with respect to the respondent's entitlement to spousal support. The parties agree the respondent has a claim for non-compensatory support. Given the length of their union, the parties also agree that any spousal support award should be for an indefinite duration. The respondent says she has been incapable of doing any work since she went on medical leave on September 17, 2013 after having been diagnosed with anxiety and depression-related problems she says are attributable to the disintegration of her marriage. Further, the respondent asserts she is incapable of returning to

the workforce at the present time in any capacity. The claimant submits the respondent has been capable of working as a dental assistant, on at least a part-time basis, since January 2014. He claims she is intentionally unemployed. He says that any spousal support order should reflect her capacity to work then and now. The claimant also says the respondent earns undeclared income by working with her sister cleaning houses. The respondent counters that the claimant earns undeclared income doing automobile and vacuum cleaner repairs on the side. She invites me to impute income to him in the amount of \$6,000 per year to take account of these earnings;

- the disposition of the matrimonial home and, in particular, whether the claimant or respondent should be given to the first right to acquire the other's one-half interest;
- the grounds upon which divorce should be granted. While the parties agree that they have lived separate and apart for more than one year, the respondent, for faith-based reasons, seeks a judicial pronouncement that there has been a breakdown of the marriage within the meaning of s. 8 of the Divorce Act as a consequence of the commission of adultery by the claimant. The respondent testified that Jehovah's Witnesses only recognize the legitimacy of divorce on grounds of adultery; and
- whether the claimant is entitled to an award for occupational rent from February 2014, the date he says he formally vacated the matrimonial home, when the respondent changed the locks and deposited his personal belongings in the garage.

B. The History of the Relationship and its Breakdown

- [7] The parties met in Winnipeg in 1979 and started dating. Unbeknownst to the respondent, the claimant was married at the time. She discovered the marriage in 1980 when told about it by the claimant's brother. The respondent testified, and I accept, that when she confronted him about this, the claimant told her that he was no longer sleeping with his wife. The respondent chose to continue her relationship with the claimant and did so after she became aware the claimant had not been candid with her about this or about the number of children he had with his previous wife.
- [8] The respondent gave birth to I.P. on February 3, 1982.
- [9] The claimant had three children by his first wife. The children were born November 20, 1977, March 31, 1981 and December 24, 1983. Two of the children the claimant had with his first wife were born after he commenced his relationship with the respondent. The third was born after I.P.
- [10] The claimant was divorced from his first wife in 1984 or 1985.
- [11] In 1987, he moved to Vancouver after losing his job in Winnipeg.

- [12] In 1988, the respondent, who was then pregnant with G.P., followed the claimant to Vancouver with I.P. The three of them began cohabiting with the claimant's parents in an apartment on East Broadway. From July to November 1988, the respondent worked as a cashier for the Liquor Control Board.
- [13] G.P. was born December 24, 1988.
- [14] In 1989, the claimant secured work as a custodian for the Delta School District.
- [15] When G.P. was seven months old, the respondent began a 10-month course of study to become a certified dental assistant. She completed the course in June 1990 and started working in September of that year.
- [16] The parties married on December 5, 1990.
- [17] They purchased the matrimonial home, located in Delta, British Columbia, in 1990 or 1991.
- [18] The claimant testified that the mortgage on this property was paid off in 2008. The respondent's recollection is that the mortgage was paid off in 2006.
- [19] The respondent testified that she developed a dependency on alcohol starting in December 2010. She said she would go for stretches where she would drink every day or every other day, but sometimes only once a week. She said that on no occasion did she have more than two or three drinks a day. She said this pattern of drinking persisted for about two years. By January 2013, she had come to the realization that alcohol was not solving her problems, but contributing to them. She decided she no longer wanted alcohol to be part of her life. She testified she now has her drinking problem under control.
- [20] The respondent attributes her alcohol consumption to the development of problems in her marriage. She testified she went with the claimant to Hawaii in December 2010 to celebrate their 20th wedding anniversary. She testified the claimant did not want to spend any time with her in Hawaii and, when she had a particularly troublesome bout of sciatica during the trip, expressed no concern about her and declined to offer her assistance. She started drinking after that trip.
- [21] The respondent testified that as the marriage continued to break down in 2011 and 2012, the parties became increasingly distant and she became depressed and anxious. She also suffered from bouts of insomnia, stomach pain, hair loss and weight loss. She testified she lost between 35 and 40 pounds over the course of the year and attributed this to the stressors associated with the disintegration of her marriage. She testified the claimant would not talk to her, stopped kissing her, and stopped expressing any concern about her welfare, including when she was ill.

- [22] The claimant testified the respondent's alcohol consumption affected their marriage and family life. He testified that she would not join the family for dinner, but would isolate herself in another room and drink. The respondent did not dispute that between 2011 and 2012 she did not eat with her family for a short time because she was becoming increasingly depressed. The claimant's evidence on this point is supported by G.P. who testified that her mother was drinking heavily at the time and excluded herself from family activities.
- [23] The claimant also testified that the respondent's increasingly strict adherence to the tenets of her faith led to serious problems in the relationship. He testified that as the respondent became more devout in her beliefs, neither birthdays nor Christmas Day could be celebrated in the home. The respondent countered that the claimant never put forth any effort to give his children or grandchildren a birthday card or Christmas gift.
- [24] The claimant also testified that in June 2012 the respondent told him if he was seriously injured she would not save him by ensuring he had a blood transfusion. The claimant testified that this conversation had a significant impact on him and that his feelings for her changed around that time. I would note that Dr. Mah, the respondent's employer and a family friend, appears to have been a guest in the parties' home when this conversation, or some variation of it, occurred. Dr. Mah's recollection of the conversation was that he asked the respondent if she would give a blood transfusion to someone who needed it. He testified she said "no" because it was against her religion.
- [25] Unfortunately, on July 29, 2012 an incident occurred causing a schism in the family and the alienation of the respondent from her two children and grandchildren. On that day, the respondent was babysitting her two grandchildren, I.P.'s children. When S.P. (I.P.'s wife) spoke with the respondent on the phone, she could tell the respondent was intoxicated. She drove to the respondent's home to pick up her children. When she arrived, she testified the house was in darkness. Her children were upset. She said the respondent was stumbling around with the lights off and that she could smell alcohol on her. S.P. understood that the respondent had fallen while holding her daughter and, in the course of the fall, had cut her own wrist on some glass.
- [26] The respondent acknowledged slipping and falling while holding her granddaughter in her arms and cutting her own wrist on a glass bowl. She testified that she had only two drinks that night between 9:30 and 10:30 p.m. and that she was not drunk.
- [27] After this incident, I.P. and S.P. would only agree to the respondent having supervised access to her grandchildren. Unfortunately, family relations have cooled even further since then. The respondent has had no contact with her grandchildren since May 2014.

- [28] The respondent testified that beginning in September 2012, the claimant started coming home between 11:00 p.m. and 5:00 a.m. When she confronted him with this behaviour, he told her he was working late. The claimant agreed he began coming home after midnight in 2012 and that he probably told the respondent he was working late. The explanation was not true. Since 2008, the claimant has worked a 7:30 a.m. to 4:00 p.m. shift.
- [29] The respondent asked the claimant to be home by 11:00 p.m. or she would lock the door. She testified he told her he would kick the door down if she tried to lock him out. The respondent testified that the claimant's late-night behaviour, and the marital tensions arising therefrom, caused her insomnia and anxiety-related problems to gradually worsen.
- [30] On May 1, 2013 the respondent attended at the office of her family physician, Dr. Marilyn Cameron, and disclosed family and work stressors, and a two-year history of alcohol abuse.
- [31] Later that month, the respondent reduced her hours of work from four days a week (28 hours per week) to three days a week (21 hours per week).
- [32] The respondent testified that by the spring of 2013, the relationship had further deteriorated. The claimant was not talking to her and she was having difficulty functioning, including at work.
- [33] Around this time, the respondent also began to suspect that something was not right. Although she wanted to believe it, she began to doubt the claimant was coming home very late due to work. He was reluctant to tell her where he was going. On one occasion, when he told her he was going to a particular field to play cricket, she went to that location only to discover he was not there. The respondent testified that she suspected the claimant was seeing another woman and became obsessed with this issue and when he was coming home.
- [34] To obtain confirmation of what the claimant was doing, the respondent purchased a tracking device in March 2013 and put it in the claimant's truck. The tracking device showed that the claimant was repeatedly attending at a casino and at the same house. She testified that on one occasion, when the claimant told her he was taking an out-of-town trip, she tracked his vehicle to this house.
- [35] In June, 2013 the respondent purchased a recording device and put it in the claimant's truck. She intercepted conversations between the claimant and his girlfriend and thereby obtained confirmation of her suspicions that he was having an extra-marital affair.
- [36] The respondent testified that when she realized the claimant was having an affair or, as she put it, that he "was a married man living a single life", it changed everything. She said she felt totally devastated. She testified that "betrayal is an awful thing to experience" and that "you could have stabbed me and it would not have hurt as bad." She testified she could not turn her mind off at night and she would wake up wondering if it was really happening. She became increasingly anxious and depressed.

- [37] The respondent realizes now she should not have installed the tracking and recording device in the claimant's vehicle. She discontinued her surveillance of him when instructed to do so by her lawyer.
- [38] The claimant acknowledges having an extra-marital affair with a woman he met at a casino. He testified that he started seeing this woman in the summer of 2013, but that he did not have sexual intercourse with her until after "I went through all of this". He said the affair commenced when he was separated and "on my own".
- [39] The respondent testified that she moved to a downstairs suite in the former matrimonial home in July 2013. She testified she did this because the claimant continued to come in at all hours of the night. The claimant agreed the respondent moved into the downstairs suite but said this occurred in June 2012. For the reasons expressed below, I accept the evidence of the respondent on this point.
- [40] On September 17, 2013 the respondent, who had been struggling to maintain her concentration at work, went on medical leave. She testified she felt like she was on the verge of a nervous breakdown. Dr. Cameron certified (for employment insurance medical benefit coverage purposes) that the respondent was then incapable of working.
- [41] After a two-week waiting period, and an initial deduction of vacation pay, the respondent began receiving \$742 every two weeks in employment insurance medical benefits. These benefits commenced in October 2013 and terminated in the middle of January 2014.
- [42] In October 2013, the claimant moved out of the matrimonial home. He continued, however, to come and go from the matrimonial home at odd hours and slept there on occasion. The respondent said the claimant continued to come to the house almost every day, that it was unsettling to have him coming in and out at all hours, and that she "slept with one eye open". She also testified the claimant would argue with and yell at her when he came home during this time. The claimant acknowledged raising his voice to make a point and having "heatful" arguments with the respondent. He denied, however, "yelling" at the respondent. He acknowledged probably telling the claimant in the course of one of their arguments that she would never be invited to her daughter's wedding or come to know her grandchildren. When asked whether he threatened to stop paying the utilities sometime between September 2013 and February 2014, the claimant replied that it "probably came up".
- [43] The claimant seriously understated the extent to which his behaviour became verbally abusive of the respondent following the disintegration of their relationship. He was reluctant to admit to the conduct or its seriousness. It is a factor that, in combination with many others, tells against his credibility.
- [44] On October 15, 2013, the respondent was prescribed Cipralext, an anti-depressant medication, by Dr. Cameron. She also began taking trazedone, a prescription medication, to assist her in obtaining restorative sleep.

- [45] In January 2014, the claimant was also prescribed Cipralex. He testified he, too, was stressed and unable to sleep. Unlike the respondent, however, the claimant continued to work on a full-time basis throughout the marital difficulties the parties experienced.
- [46] In February 2014, the respondent changed the locks on the doors of the former matrimonial home. The claimant testified that when he subsequently discovered the locks had been changed, he "pushed" on the back door, which he described as a cheap compressed wood door, causing the edge of the door to break. The respondent testified that he kicked the door in and that his footprint is still on the back door. Again, for reasons tied to my assessment of the credibility of the claimant and respondent, I accept the respondent's version of events on this point.
- [47] The claimant testified he did not return to the matrimonial home after the locks were changed in February 2014. When asked why he permanently moved out of the matrimonial home at that time, the claimant said, "because [the respondent] was stressed out and put a time for me to be home at 11 p.m. or she would bolt the door How long can I carry on like that? So I moved."
- [48] Between February and September 1, 2014 the claimant lived primarily with G.P. and her boyfriend, in Richmond. The claimant testified that he was "helping them with rent" by giving them \$1,100 per month in cash. G.P. also testified the claimant was paying to her boyfriend \$1,100 per month in rent.
- [49] On September 1, 2014 the claimant moved in with I.P.'s family. At the time of trial, he was not paying any rent but testified he would probably do so in the future. While this was still being worked out, the claimant suggested he might begin paying \$800 per month to I.P.'s family for rent.
- [50] In examination in chief, the claimant testified he stopped paying bills in relation to the matrimonial home in February or March 2014. In cross-examination, he testified that he stopped paying taxes and utilities (water, sewer, garbage collection, cable, hydro and gas) in September 2013. The respondent testified the claimant stopped paying property taxes on the matrimonial home in September 2013 and stopped making any contribution towards the payment of utility bills in February 2014.

C. The Employment History of the Parties

(a) The Respondent

- [51] The respondent first worked as a dental assistant for Dr. Mah in about 1991 when she covered a medical leave in his office. She returned to work for Dr. Mah in about 2002 and worked for him on a four-day, 28-hour-per-week basis. She testified that until 2013, she worked a four-day work week and that it was common to have such a schedule as a dental assistant.

- [52] The respondent's job duties include assisting Dr. Mah with surgical procedures, including x-rays and extractions. She testified, and I accept, that her job is stressful and requires concentration, focus and attention to detail.
- [53] The respondent testified her performance at work began to suffer in 2013 and that Dr. Mah noticed this and raised his concerns with her. He said her co-workers were beginning to recognize that she was not pulling her weight at work. He gave her a few days off work.
- [54] In May 2013, the respondent went from four to three days of work per week because she was having difficulty coping with the stressors in her life and, as noted earlier, felt like she was close to having a nervous breakdown. The respondent's work schedule was thereby reduced from 28 to 21 hours per week.
- [55] By September 2013, the respondent had learned of the claimant's infidelity. Her relationship with the claimant further deteriorated and she was no longer able to function at work. As noted earlier, the respondent went on medical leave on September 17, 2013.
- [56] The debilitating emotional impact the breakdown of the marriage had on the respondent is confirmed by the evidence of Dr. Cameron, which is reviewed below. It is also confirmed by the evidence of her employer, Dr. Mah.
- [57] Dr. Mah testified that up to 2012, the respondent was "fine" at work and "a very efficient employee". He testified that he never had any problems with the way she went about her work.
- [58] Dr. Mah testified that in the latter part of 2012, he noticed a difference in the respondent's demeanour and overall happiness level, and that her focus at work noticeably decreased. He had not seen her this way before. He began receiving complaints about the respondent from her co-workers, something that had never occurred in the past. He testified that it was apparent to him that something was amiss and he talked with her about this on at least three occasions. He suggested that she go home early on a few occasions when she reported being stressed out.
- [59] When the problems persisted, the respondent tearfully confided in him that she was having difficulties with her marriage and in her life. Dr. Mah testified the respondent was very emotional and called in on at least two days between January and June 2013 to say she was too stressed out to come to work.
- [60] Dr. Mah was unsure of the time frames but testified that before these problems emerged, the respondent was working seven hours a day, four days per week. By September 2013, she was working three days a week.
- [61] On September 17, 2013 the respondent informed Dr. Mah she could no longer go on this way and needed time off work. He called her a few weeks later to see how she was doing. The respondent told him that she was not well enough to come back to work.

- [62] When the respondent went on medical leave, she was earning \$26 per hour.
- [63] Dr. Mah testified business is down across the dental industry at the current time and that he could not give the respondent 40 hours of work per week even if she was able to return to work on a full-time basis. He testified that the most he could give her now is one or two days per week.
- [64] Dr. Mah testified that full-time work for dental assistants is generally eight hours a day, four days per week.
- [65] G.P. is a full-time dental hygienist. She testified that she has experienced no problems finding work as a hygienist and that the current job market is favourable. It is noteworthy that the tasks performed by a hygienist are different from those performed by a dental assistant.
- [66] The claimant testified the respondent started working three days a week after the mortgage was paid off in 2008. The suggestion left by the claimant's evidence on this point is that the respondent made a lifestyle decision to work less as her debt load decreased. I do not accept the claimant's evidence on this point. The respondent went from four to three days of work per week in 2013, well after the mortgage was paid off. Further, I am satisfied that the respondent's decision to reduce her working hours in 2013 did not reflect a lifestyle choice in any meaningful sense. Rather, it was a response to the emotional and physical symptoms the respondent experienced as she realized her more than 30-year relationship with the claimant was coming to an end. I am also satisfied that when the respondent went on medical leave in September 2013, she did so because the stressors associated with the manner in which her marriage came to an end caused her to be incapable of doing the work she is trained to do.
- [67] The respondent's earning history over the past four years is:
- 2010 - \$40,397;
- 2011 - \$43,448;
- 2012 - \$38,312;
- 2013 - \$32,702 (\$4,277 of which represents the payment of employment insurance sickness benefits).
- [68] There is no explanation in the evidence for the drop in the respondent's income between 2011 and 2012.
- [69] The claimant testified the respondent earns additional undeclared income cleaning houses with her sister. He testified the respondent always has cleaning supplies in her trunk. G.P. also testified that up to October 2013 her mother was doing two to three days of cleaning work per week. She testified her mother told her this and that she personally saw her mother leaving the house in old clothes and knee pads and carrying cleaning supplies.

- [70] The respondent testified that in November 2012, while she was still working for Dr. Mah, she started helping her sister cleaning one house, once a month, for which she was paid \$25. She stopped doing so in November 2013 because she was frail, had lost weight and could not do the work.
- [71] The respondent's sister confirmed that commencing in November 2012 the respondent helped her clean one house per month for which she was paid \$25. She said the respondent helped her clean this house because she asked the respondent to come along. She testified the respondent is not helping her clean this house now. She said the respondent stopped helping her in about November 2013. By this time, she no longer wanted the respondent's help as the respondent was "skin and bone" and could not do the work.
- [72] I accept the evidence of the respondent and her sister on this point. For the reasons given below, the claimant is not a credible or reliable witness and I am unable to accept his version of events. Further, it is apparent to me that G.P. is closely aligned with her father. He lived with her for a considerable time after February 2014 and paid her rent. In addition, it is obvious that G.P. harbours a strong and continuing animus towards her mother. So strong is her animus that she was unable to acknowledge in her testimony that her mother, a long-term and valued employee in Dr. Mah's office, and a personal friend of Dr. Mah, had anything to do with her securing weekend work in his office. I wish to be clear that I do not suggest that G.P. would consciously seek to mislead the court on this issue. Rather, I have concluded that her evidence is the product of an unconscious desire on her part to assist her father. In addition, it is likely that her animus is a product of having experienced her mother's alcohol abuse, coupled with her mother's limited insight into the extent her abuse of alcohol personally affected other family members and impaired family life.
- [73] The respondent and her sister were, on the other hand, entirely credible witnesses on this point and I accept their evidence.
- [74] If the claimant is asking the court to impute income to the respondent on account of her cleaning work, the evidence before me that I accept would certainly not warrant this result.
- [75] If the purpose of the evidence was simply to establish the respondent is capable of working in some capacity, it did not assist the court on this point. In fact, it tends to establish the opposite - that the respondent was disabled as a consequence of the disintegration of her marriage from doing even menial tasks, much less the stressful and high concentration tasks required of a dental assistant.
- [76] The respondent testified that she is still far from 100% and considers herself to be incapable of doing any type of work at this time. She testified that she does want to return to work in the future because she aspires to regain some normalcy in her life.

(b) The Claimant

- [77] In 1989, the claimant started with Delta School District as a custodian. In 2008, he began working as a foreman in the automotive department. His job duties entail responsibility for the maintenance of Delta School District vehicles, including school buses, as well as cleaning equipment. Since 2008, he has worked 7:30 a.m. to 4:00 p.m. and rarely stays late.
- [78] The claimant testified that his health has been declining over the past two years. He said he had an operation in 2013 for a detached retina and that the vision in his right eye is bad. He testified he also has ongoing back problems, which prevent him from doing heavy-duty work. He testified he is likely to retire "pretty soon".
- [79] The claimant's earning history over the past four years is:
- 2010 - \$71,562;
- 2011 - \$70,639;
- 2012 - \$65,164;
- 2013 - \$65,234.
- [80] There is no evidence before me explaining the reduction in the claimant's earnings between 2011 and 2012.
- [81] As noted earlier, the respondent asks the court to impute an additional \$6,000 in income per annum to reflect estimated earnings the claimant realizes from doing automobile and vacuum cleaner repairs. She testified that for as long as she has known him, the claimant has done remunerative mechanical and appliance repair work for friends and colleagues. She testified she has seen a cheque from a school teacher. She further testified that on one occasion the claimant boasted in front of her and G.P. that he made \$700 for repair work. She said he put the money in a filing cabinet.
- [82] In support of her position on this point, the respondent gave evidence that vacuum cleaners would be left at their front door and, once they were repaired, envelopes with money would be left in their mailbox or given directly to her. The respondent also adduced photographic evidence depicting vacuum cleaners at the doorstep of the former matrimonial home and in the claimant's truck. She testified the photographs were taken recently, likely in 2014. In addition, the respondent adduced an undated receipt made out in the claimant's nickname in the amount of \$330 for vacuum cleaner repairs he undertook, as well as a small stack of business cards in the claimant's name, which describe him as a "certified cleaning equipment technician".
- [83] The claimant testified that in years past he did have a side business doing automobile and vacuum cleaner repairs. He testified that he continues, on an infrequent basis, to help friends by doing minor mechanical repair work, including in relation to vacuum cleaners, for which he is paid "coffee money". He denies currently having a second business. He testified that the business cards were created by his daughter a considerable time ago and he was not even aware that more than one of them existed. He further testified that the

undated receipt for \$330 is in relation to work he did 15 years ago.

D. Medical Evidence Respecting the Respondent's Emotional Health

[84] As noted earlier, the respondent began seeing Dr. Cameron for stress and depression-related symptoms on May 1, 2013. Dr. Cameron has 33 years of experience as a family doctor and sees patients on a daily basis who present with mental health issues, including symptoms of anxiety and depression. Dr. Cameron has been the respondent's family physician since 1991. She was called by the respondent at trial, qualified as an expert in family medicine, and permitted to give opinion evidence respecting the diagnosis and treatment of physical and mental health issues including depression, anxiety and their related symptoms.

[85] The respondent saw Dr. Cameron on eight occasions between May 1, 2013 and November 19, 2013.

[86] On May 1, 2013, the respondent was easily upset, agitated and tearful. Dr. Cameron also observed that the respondent was having difficulty concentrating. She testified that anxiety and insomnia affect one's ability to concentrate.

[87] In her first report dated November 19, 2013 Dr. Cameron said:

[The respondent] has been emotionally unwell the past six months, experiencing constant anxiety, emotional lability, insomnia, and anorexia associated with generalized abdominal pain and weight loss [The respondent] has been unable to concentrate and function properly at work as a dental assistant which has resulted in her being off work since September 16/13 having worked in the same dental office for more than 10 years. This has aggravated her condition with the additional financial stressor.

[The respondent] has no past medical history of similar complaints. Cipralext was prescribed for [the respondent] October 15, 2013.

At present, [the respondent] remains medically unfit for work, with a return-to-work date unknown. Her prognosis for return to her previous full-time work is excellent once her stressors have been alleviated.

[88] As noted earlier, on September 17, 2013 Dr. Cameron provided the respondent with a medical certificate documenting her incapacity to work. This certificate entitled the respondent to receive short-term employment insurance sickness benefits.

[89] Dr. Cameron noted the respondent to be tearful on examination. She had lost weight and was not caring for her appearance as she had in the past. The symptoms Dr. Cameron noted, and the responses she received from the respondent, suggested the existence of a depressive illness associated with anxiety and Dr. Cameron diagnosed her accordingly.

[90] On February 13, 2014 Dr. Cameron provided the respondent with a further medical certificate documenting her continuing incapacity to work. Despite this, it would appear the respondent was not eligible for the receipt of employment insurance sickness benefits after mid-January, 2014.

[91] In a follow-up report dated June 30, 2014 Dr. Cameron said:

Since November 14, 2013 [the respondent] has been seen in consultation by me on 5 occasions. She is on Cipralex 20 mg. daily and Trazodone 50 mg. at bedtime.

[The respondent's] emotional health is essentially unchanged from November 19, 2013 with her remaining extremely emotionally fragile. She has low energy, constant anxiety, anorexia with lack of desire to prepare meals though she has maintained her weight, and insomnia with very disturbing dreams every night. Trazadone has been somewhat helpful for her sleep.

She has marked difficulties with concentration and staying on task. She is extremely distraught over the loss of contact with her daughter and son. She has diminished interest in her usual activities, though she has been trying to get back into walking despite finding it very difficult to even get out the door.

In order for [the respondent] to return to work she has to be emotionally stable to interact professionally with her co-workers and patients. She also requires cognitive efficiency with sustained attention and concentration.

At present her emotional lability, and her difficulties with concentration and staying on task prevent her return to work. When fit to return to work, it would be beneficial for [the respondent] to return initially on a part-time basis as a dental assistant with the gradual transition to full time worker she regains her confidence.

She should definitely return to work for a different employer than her former [employer], Dr. Mah. A return to his office would be extremely detrimental to [the respondent's] physical and emotional well-being.

[92] The recommendation that the respondent not return to work for Dr. Mah is sourced in the personal relationship that exists between Dr. Mah the parties and the friendship he has maintained, particularly with the claimant.

[93] Dr. Cameron testified that, more recently, she discussed with the respondent a graduated return to work but that no specific date has been targeted. Dr. Cameron testified she has encouraged the respondent to consider future job possibilities as she recovers.

[94] Dr. Cameron further testified that the respondent's abdominal complaints were likely stress-related, but acknowledged in cross-examination that abdominal pain can be caused by excessive alcohol consumption. Dr. Cameron also agreed in cross-examination that insomnia, depression and loss of appetite can be caused by excessive alcohol consumption. She testified, however, that the respondent has no past history of alcohol abuse and her reliance on alcohol appears to have been a response to the situational difficulties she was

then facing in her life.

- [95] Dr. Cameron said the respondent lost about 20 pounds between 2012 and 2013 but regained all of the weight she lost by May 2014.
- [96] Dr. Cameron testified she never referred the respondent to a psychiatrist because she did not believe that psychiatric intervention was required.
- [97] In re-examination, Dr. Cameron confirmed alcoholism to be a disease and agreed that mental health issues can lead to alcohol abuse. Specifically, individuals with mental health issues sometimes seek to escape from the challenges of their daily existence by consuming excessive quantities of alcohol.
- [98] Dr. Cameron testified the respondent should be able to return to work once the stressors associated with this litigation are alleviated. As noted above, she recommended the respondent to return to work on a part-time basis at first in order to regain her confidence.
- [99] I was impressed by Dr. Cameron's evidence and the care with which she gave it. She is clearly knowledgeable about and current on mental health issues. Indeed, a large percentage of her practice relates to treating patients who are experiencing anxiety and depression-related symptoms. In addition, Dr. Cameron has been the respondent's physician for close to 25 years and was able to contextualize the symptoms the respondent experienced following the breakdown of her marriage. I accept Dr. Cameron's diagnosis and her opinion respecting the root cause of the problems the respondent has experienced leading up to and following the marital breakdown. Her conclusions are confirmed by Dr. Mah and the observations he made regarding the respondent's atypical behaviour in the workplace after serious problems emerged in the marriage.

E. Credibility Findings

- [100] The claimant was not a credible witness. His evidence was internally inconsistent and inconsistent in many respects with evidence he gave on his April 23, 2014 examination for discovery. I am satisfied the claimant avoided answering difficult questions by falsely claiming to have no recollection of events. His evidence on other issues was improbable and designed to portray himself in the best possible light.
- [101] What follows are some examples taken from the evidence given by the claimant that illustrate why I am unable to credit his account.
- [102] When asked in examination-in-chief when he started having an intimate relationship with the respondent, the claimant testified that he broke up with his ex-wife and started a relationship with the respondent in 1981 or 1982. I am satisfied that the relationship between the claimant and respondent started well before 1981. Moreover, it is clear the claimant did not break up with his ex-wife in 1981 or 1982. In fact, he had a third child by his ex-wife on December 24, 1983. I am satisfied that his evidence on this point was designed to portray himself in a favourable light.

- [103] When asked whether he told the respondent he was married when the two of them began having an intimate relationship in Winnipeg, the claimant replied, "No. I didn't get into it at the time." When asked whether he did not think it was important to tell the respondent this, the claimant said, "I didn't tell [the respondent] - only vaguely - not in detail." I am satisfied that the claimant did not disclose, even "vaguely" as he suggested, the fact that he was married when he began a relationship with the respondent.
- [104] The claimant acknowledged in cross-examination he was still married to his first wife when I.P. was born. On examination for discovery, the claimant professed to be unable to recall the year I.P. was born or whether he was then married to his first wife. I am satisfied the claimant knew the year I.P. was born and knew he was still married to his first wife when he gave this evidence.
- [105] The claimant testified he was living with the respondent in Vancouver when G.P. was born. On examination for discovery, the claimant inexplicably testified he could not recall whether he was living with the respondent when his daughter was born.
- [106] In examination-in-chief, the claimant confidently asserted he met his new girlfriend only after filing his Notice of Family Claim at the end of August 2013. In cross-examination he testified that he started seeing his girlfriend in the summer of 2013 and maybe as early as June. I accept the respondent's evidence that she discovered the affair in June 2014. I am satisfied the claimant gave this evidence to leave the impression that his extramarital relationship began only after the breakdown of his marriage to the respondent.
- [107] The claimant testified that when the respondent asked him to come home by 11:00 p.m. he usually complied with her request but was sometimes late due to traffic. I am satisfied that the claimant made no effort to comply with respondent's request to be home at a reasonable hour and that his explanation for occasionally being late was a fabrication.
- [108] I reject the claimant's evidence that he just pushed on the back door of the matrimonial home when he found himself locked out and the edge of the door happened to break. I am satisfied that he was angry at being locked out of the matrimonial home and kicked the door in to gain entry.
- [109] In examination-in-chief, the claimant testified that in February 2014, after he moved in with G.P. and her boyfriend in their basement apartment in Richmond, he "helped them" with the rent by giving them \$1,100 per month. He testified he did not know what G.P. and her boyfriend paid the landlord in rent per month, but that he just decided to help them out. On his examination for discovery, the claimant testified the total rent for the basement apartment was \$1,100 per month and that he was paying the rent for all three of them. He said G.P.'s boyfriend paid for other things like hydro and groceries. The claimant testified he knew what the total rent for the basement suite was at the time of his examination for discovery but not at trial. I am satisfied that the claimant's evidence on this issue is wholly unreliable.

- [110] Despite testifying he was only responsible for the rent on the basement suite, and that G.P. and her boyfriend paid for groceries and hydro, in his financial statement sworn September 15, 2014 the claimant lists as expenses: \$500 per month for food; \$100 per month for household supplies; and \$200 per month for meals outside the home. In addition, the claimant lists utility expenses totaling \$325 per month, including expenses related to heat and electricity. The claimant offered no convincing explanation for the inconsistency between his viva voce evidence at trial and sworn financial statement. Indeed, in re-examination, he reiterated the position that payment by him of the total rent bill also covers his food costs.
- [111] I would also note that the claimant lists on his financial statement monthly expenses of \$177 for property taxes. By his own admission, the claimant stopped paying property taxes on the former matrimonial home by September 2013, or at least by February 2014; in other words, at least seven months before the financial statement was sworn. The claimant characterized this expense claim as a "mistake". I do not accept it was an innocent mistake. The inaccuracy does not stand alone and the claimant's evidence as a whole is untrustworthy.
- [112] Despite testifying at trial that he lived with G.P. and her boyfriend in their basement suite apartment in Richmond after leaving the matrimonial home in February 2014, the claimant testified on examination for discovery that G.P. was not living with him as of April 23, 2014 and that he did not know where she resided. He attempted to explain the inconsistency on grounds that G.P. did not want her mother to know where she lives. Whether or not this is true, it is apparent the claimant is prepared to mislead under oath if he feels the circumstances warrant it. His preparedness to do so taints the entirety of his evidence.
- [113] I reject the claimant's testimony that he did not yell at the respondent as their relationship disintegrated but simply raised his voice to make a point. I am satisfied on the respondent's evidence that as the relationship disintegrated, the verbal arguments became very loud and that he yelled at and berated her. The claimant was prepared only to say that he "probably" told the respondent she would never be invited to her daughter's wedding and would never come to know her grandchildren, and "probably" threatened to stop paying utilities on the matrimonial home after the respondent had gone on medical leave and was financially and emotionally vulnerable. I am satisfied that he did both.
- [114] Similarly, the claimant was only prepared to acknowledge that he "probably" told the respondent he was working late to account for his late-night hours beginning in 2012. I am satisfied that the claimant well knows he provided this excuse to her. I also reject the claimant's evidence that he cannot remember whether he was coming home very late beginning in 2012 because he was with his girlfriend. It is likely the claimant's late-night hours coincided with the commencement of his extramarital relationship. This, in itself, undermines the claimant's contention that that relationship did not start until the summer of 2013.

- [115] The respondent's credibility as a witness was also seriously undermined by her unwillingness to acknowledge the extent of her alcohol abuse and the impact it had on relationships within the family.
- [116] The respondent testified that her alcohol problem began after the trip to Hawaii in December 2010. It is apparent from the evidence put before me that the respondent's excessive consumption of alcohol likely began well before the trip to Hawaii.
- [117] In addition, the respondent minimized the extent to which she was abusing alcohol between 2010 and 2013. I do not accept her evidence that she never consumed more than two or three drinks per day. Her alcohol purchasing pattern as reflected on her credit card and bank statements reflects much more substantial consumption than she was prepared to admit. G.P. testified that her mother's consumption of alcohol was heavy during this period and estimated that she was drinking a bottle of rum every two days. The respondent's purchasing pattern is such that I am prepared to accept G.P.'s evidence on this point as a reliable estimate of how much alcohol the respondent was consuming during this time.
- [118] I also reject the respondent's contention that she threw away a good portion of the alcohol she purchased. It is contrary to human experience that someone addicted to intoxicants would waste the amount of alcohol the respondent says she dumped down the sink.
- [119] Finally, I reject the respondent's contention that she was not intoxicated on July 29, 2012 when she fell while holding her granddaughter. The respondent's explanation of these events is implausible and contradicted by the evidence of I.P.'s wife, which I accept.
- [120] The respondent's unwillingness to acknowledge the full extent of her alcohol use between 2010 and 2013, and the impact it had on her family, reflects what appears to be a pattern of denial not uncommon amongst those who struggle with substance abuse. I do not view the respondent's unreliable evidence on this point as a product of any conscious desire on her part to deceive the court. Rather, it is likely a product of the respondent's inability to acknowledge and take responsibility for the extent to which her own behaviour contributed to the breakdown in communication between family members. I would also add that it is much to the respondent's credit that she appears to have her alcohol abuse under control.
- [121] There are other aspects of the respondent's testimony that tend to undermine her credibility.
- [122] First, she testified in chief that she lost 35 to 40 pounds over the course of a year. While I have no doubt that the respondent became emotionally derailed as she began to process the reality that her marriage was coming to an end and that her depression and anxiety related-problems had physical consequences for her, there is no evidence to support the respondent's claim on this point. In fact, Dr. Cameron's records suggest that the respondent lost about 19 pounds between February 2012 and July 2013. Those records also suggest that by May 2014, the respondent had regained virtually all of the weight she lost.

- [123] Second, I cannot credit the respondent's testimony in cross-examination that she does not know whether the extent of the claimant's obligation to pay her spousal support is influenced at all by what she earns. The respondent testified she does not know how this works and has never been in this situation before. The respondent is an intelligent, experienced woman. I am satisfied she is well aware that the extent of the claimant's obligation to pay spousal support is affected by what she is able to earn.
- [124] Third, the respondent testified that she is incapable of doing any kind of work at this time. While I do not question the sincerity of the respondent's belief, it is likely that the respondent feels unmotivated to look for work and immobilized at present by the stressors associated with this litigation and the uncertainty as to how it will be resolved. I am optimistic the respondent will be able to return to work as a dental assistant within a reasonable period after the issues at play in this litigation are sorted. I note that Dr. Cameron has already raised a return to work with the respondent and encouraged her to consider future job possibilities as she recovers. I can only conclude that Dr. Cameron broached these issues because she is of the view that the respondent is capable of a graduated return to work once the stressors associated with this litigation are alleviated. Indeed, nothing in Dr. Cameron's evidence detracted at all from her original assessment that the respondent would likely be able to return to her previous full-time work once the stressors associated with the litigation passed.
- [125] Having expressed these reservations about the credibility of the respondent as a witness and the reliability of her account on the issues identified, I am nevertheless satisfied that her evidence regarding the devastating emotional and financial consequences she experienced as a result of the breakdown of the marriage is accurate and reliable. I am fortified in this conclusion by the fact that the respondent's account of the impact the disintegration of the marriage had on her health, and its economic consequences, was supported by the evidence of Dr. Cameron, Dr. Mah and, to a lesser extent, by the evidence of her sister.

F. Interim Spousal Support Order: January 2014

- [126] In January 2014 Mr. Justice Ball ordered the claimant to pay the respondent interim spousal support of \$1,817 per month from October to the end of December 2013. The amount of interim spousal support to be paid in these three months took account of the fact that the respondent was receiving employment insurance sickness benefits throughout this period. As the respondent no longer qualified for employment insurance benefits after January 2014, the claimant was ordered to pay the respondent interim spousal support from January 1, 2014 in the amount of \$2,645 per month. The respondent was granted costs associated with her interim spousal support application payable forthwith.
- [127] I was advised by counsel that the claimant appealed the interim order. Rather than incur the costs of an appeal pending trial, the parties agreed to an interim spousal support order obliging the claimant to pay the respondent of \$1,251 per month from March 1, 2014. The

agreement entered into between the parties is without prejudice to either party's claim at trial with respect to retroactive or prospective spousal support, the quantum of the award, and costs. As noted above, the respondent seeks an order for the payment of spousal support retroactive to October 1, 2013.

G. Analysis of the Issues

1. The Divorce

[128] The claimant seeks a divorce on grounds that the parties have lived separate and apart for more than one year.

[129] The respondent seeks a divorce on grounds that the parties have lived separate and apart for at least one year and on grounds that the claimant committed adultery.

[130] There is only one ground upon which divorce may be granted: breakdown of the marriage: Divorce Act, s. 8. Breakdown of the marriage is established if the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding, or if the spouse against whom the divorce proceeding is brought has, since the celebration of the marriage, committed adultery.

[131] In the usual course, it will be unnecessary for the court to pronounce on the existence of alternative grounds for divorce where the evidence clearly establishes that the parties have lived separate and apart for the requisite one-year period.

[132] In the case at bar, the respondent testified that Jehovah's Witnesses only recognize divorce on grounds of adultery and that, for faith-based reasons, it is important to her to have a judicial pronouncement that a breakdown of the marriage has occurred as a consequence of the parties living separate and apart for a one-year period and as a result of the claimant committing adultery.

[133] In light of the respondent's position on this issue I am, on an exceptional basis, prepared to find that a breakdown of the marriage has been established on both grounds.

[134] But I am also mindful of the claimant's privacy interests in this matter. In recognition of those interests I have determined to use initials throughout this judgment. Further, there is no need to reflect the finding of adultery in the formal order of the court, which should simply reflect the date the parties married, the date they separated, and that the divorce shall take effect 31 days after the date the order is granted.

[135] I am not interested in the claimant's "marital misconduct" per se nor am I concerned with the assignment of blame for the disintegration of the marriage. In *Leskun v. Leskun*, [2006] 1 S.C.R. 920 at para. 21, the court made clear that the policy of the Divorce Act as reflected in s. 15.2(5) is to focus on the consequences of the marital breakdown, not the attribution of fault. It takes only a little human experience to know that marriages come apart for a variety of reasons and that it is often the case that third parties become involved after the

essence of the marital bond has been eroded. I have addressed the evidence on this issue in my reasons only because: (1) the respondent's claim for divorce encompasses, for faith-based reasons, adultery; (2) the emotional and financial consequences to the respondent of the way in which her marriage ended must be considered in determining her claim to spousal support; and (3) the evidence surrounding this issue is generally relevant to my assessment of the claimant's credibility.

2. The Division of Family Property and Family Debt

(a) Disposition of the Matrimonial Home

[136] The respondent will have the first right to acquire the claimant's one-half interest in the former matrimonial home.

[137] I have come to this conclusion for the following reasons. First, the claimant made a decision to abandon the matrimonial home long before the locks were changed in February 2014. Second, I am satisfied that the claimant has no genuine interest in maintaining the former matrimonial home as his residence. In examination-in-chief, he testified that his plan for permanent accommodation moving forward was to buy a place and get his life on track. Later, he testified that while his children have encouraged him to keep the house, he is "okay" with selling it. Further, the respondent testified, and I accept, that the claimant said to her at the time of the joint appraisal that he wanted her to buy him out because the house was too big and he wanted to move away from the area. It is obvious the claimant has made no inquiries about obtaining financing to the end of purchasing the respondent's one-half interest in the home. I have concluded that the claimant's expressed interest in purchasing the respondent's one-half interest in the home is motivated more by a desire on his part to frustrate her aspirations to maintain the home than it is to live in the home himself.

[138] In contrast, the respondent, if permitted to purchase the claimant's one-half interest in the former matrimonial home, plans to have her mother live with her to offset the costs. Unlike the claimant, she has been to the bank to discuss a financing arrangement and testified that she is 99% sure that she will be confirmed for the financing she needs to acquire the claimant's one-half interest in the home if she is given the opportunity to do so. It is obvious to me that the respondent has a genuine attachment to the home the claimant does not have. This is reflected in the steps she has taken prior to trial to secure the necessary financing.

[139] As noted earlier, the parties agree that the fair market value of the former matrimonial home is \$485,000.

[140] The respondent shall have an option to purchase the claimant's one-half interest in the former matrimonial home based on the agreed upon fair market value.

- [141] The respondent's option to purchase must be exercised within 30 days of this order. In order to exercise the option to purchase, the respondent must (subject to adjustments the parties are at liberty to agree upon) pay to the claimant \$242,500. If the respondent does so within 30 days of the date of this order, the claimant will execute a Form A Transfer transferring all of his right, title and interest in the former matrimonial home to the respondent. The parties will share equally all of the costs (including conveyancing costs, registration fees and transfer taxes, if any) relating to the transfer of the former matrimonial home into the respondent's name.
- [142] If the respondent has not exercised her option to purchase the claimant's one-half interest in the former matrimonial home within 30 days of the date of this order, or by such later date as may be agreed upon by the parties or ordered by the court on sufficient grounds for an extension of time being shown, the claimant will have the option to purchase the respondent's one-half interest on the same terms.
- [143] If, within 60 days of the date of this order, or by such later date as may be agreed upon by the parties or ordered by the court on sufficient grounds for an extension of time being shown, the claimant has not exercised his option to purchase the respondent's one-half interest in the former matrimonial home, the home shall be listed for sale.
- [144] The listing price for the former matrimonial home will be fixed by agreement between the parties. In the event that the parties cannot agree on a listing price, the home shall be put on the market at a list price of \$500,000. The parties shall have joint conduct of the sale. In the event the parties cannot agree on any matter relating to the sale of the former matrimonial home, either party may apply for directions or for conduct of sale. Upon sale of the former matrimonial home to a third-party purchaser, the following liabilities and expenses shall be paid from the proceeds of sale before any distributions are made to the parties: real estate commissions and applicable taxes, including any property taxes then outstanding; the usual adjustments between vendor and purchaser; and reasonable, agreed-upon legal fees and disbursements relating to the conveyance of the former matrimonial home.
- (b) RRSPs and TFSAs
- [145] The parties agree that their RRSP and TFSA holdings with the Royal Bank of Canada ("RBC") are family assets and should be divided equally as of the agreed-upon valuation date. The claimant has more money in his RRSP and TFSA accounts than does the respondent. Accordingly, within seven days of the making of this order, the claimant shall take all steps within his power and shall sign all necessary documents to transfer from his RRSP and TFSA accounts to the respondent by way of spousal rollover amounts sufficient to equalize the values of their respective RRSP and TFSA holdings.
- (c) RBC Bank Accounts

[146] The parties agree that the RBC Bank accounts ending with the numbers 057 (the joint account), 460 (the claimant's account), 338 (the respondent's account) and 362 (the respondent's mutual fund investment account) are all family assets and that the balances held in these accounts as of the valuation date should be equalized. I direct the parties to take such steps as are necessary to accomplish this result within seven days of the making of this order.

[147] The claimant made two payments to the Corporation of Delta for property taxes in relation to the former matrimonial home after the agreed upon valuation date that total \$530. He seeks to be credited for this amount and I would do so.

[148] All other accounts held by the claimant and respondent are, by agreement between them, not family property and reflect assets or personal debt acquired after separation. These accounts, whether they reflect assets or debt, are not subject to division. The party holding such an account shall be solely entitled to any assets in the account free and clear from any claim of the other party and solely liable for any debt related to it. For clarity, each party shall be solely responsible for their personal line of credit and current credit card debts.

(d) Family Debt

[149] By agreement, the following debts are family debts for which the parties are equally liable: the RBC joint Homeline Credit Line ending with the account number 042 with a balance of \$16,755.97; and property taxes outstanding on the former matrimonial home and owing to the Corporation of Delta in the amount of \$2,717.27.

(e) The Claimant's Municipal Pension Plan

[150] The parties agree that benefits accruing to the claimant under the Municipal Pension Plan constitute family property and that the respondent is entitled to 50% of the claimant's pension that accrued between 1988 and April 15, 2013, the date the parties separated. The claimant's pension will be divided in accordance with the agreement of the parties pursuant to Part VI of the Family Law Act.

(f) Canada Pension Plan

[151] By agreement, the claimant's and respondent's unadjusted pensionable earnings under the Canada Pension Plan for the period from June 1, 1988 to April 15, 2013 shall be equalized under ss. 55, 55.1 and 55.2 of the Canada Pension Plan Act, R.S.C. 1985, c. C-8. Either party may apply for equalization of the other's unadjusted pensionable earnings.

(g) Household Articles and Jewelry

[152] By agreement, household articles and jewelry will be divided as set out in the confirming letter of Ms. Deschamps-Carlson dated October 23, 2013.

(h) Classic Automobiles

[153] The parties own two classic automobiles - a 1969 Corvette in the claimant's name and 1977 Camaro in the respondent's name. By agreement, the claimant will pay \$4,000 to the respondent to equalize the approximate value of these vehicles. The claimant will retain the Corvette and the respondent will retain the Camaro.

(i) Current Automobiles

[154] The claimant currently drives a 2009 Ford Ranger while the respondent drives a 2006 Chevy Cobalt. Both are rebuilt vehicles. The parties have been unable to agree on the value of these vehicles. Both parties will have their respective vehicles appraised by a certified dealer or accredited automobile appraiser. The appraisals are to be exchanged no later than 14 days from the date of this order. Each party will bear the cost, if any, associated with their appraisal. Any equalization payment will be based on the appraised value of the two vehicles.

3. The Claimant's Claim for Occupational Rent from February 2014

[155] The claimant alleges that he was essentially ousted from home on February 8, 2014 when the respondent changed the locks and placed all of his personal belongings in the garage. Between February 8, 2014 and the end of August 2014 he lived with G.P. and her boyfriend and paid \$1,100 per month to them for rent. By contrast, the respondent was, from February 2014, living in a fully furnished, four-bedroom, mortgage-free house. The claimant suggests the matrimonial home could easily have been rented out for a minimum of \$1,500 per month.

[156] The respondent counters that the claimant moved out of the matrimonial home in October 2013 by choice and has paid nothing towards property taxes since September 2013 and nothing towards utilities or home maintenance since February 2014. She says she changed the locks in February 2014 only because she was being harassed by the claimant's late-night comings and goings, which were emotionally unsettling and exacerbated her sleep disturbance.

[157] Resolution of this issue is complicated in this case because it is unclear, on the state of the record, when the claimant stopped making any payments in relation to the matrimonial home. The claimant's evidence was internally inconsistent on this point. He initially testified that he stopped making payments in relation to the matrimonial home when he moved out in February or perhaps March of 2014. He later agreed that he stopped making utility and tax payments on the matrimonial home in September 2013.

[158] The issue is further complicated because the claimant has proved himself to be an untrustworthy witness. On this latter point, I am disinclined to accept the claimant's evidence that he paid to G.P. and her boyfriend \$1,100 per month for his share of the rent commencing February 2014. First, there is no documentary evidence supporting his contention in this regard. Second, even though his evidence on this point is supported by G.P.'s testimony, G.P. is quite obviously closely aligned with her father and demonstrated in

her evidence a strong animus against her mother. She gave evidence that up to October 2013 her mother cleaned houses two to three days a week. She testified that she knew this because her mother told her she was doing so. I do not accept G.P.'s evidence on this issue. Her evidence on this point is likely motivated by a desire to assist her father in this litigation. My factual finding on this issue seriously undermines the reliance I can place on much of G.P.'s testimony. For this reason, I am not prepared to credit the claimant's evidence respecting the amount of rent he was paying after moving out in February 2014 simply because his position on this issue was supported by G.P. Finally, it eventually emerged in the cross-examination of the claimant that while he was paying \$1,100 a month in rent, this constituted the total monthly rent payable by all the three occupants of the basement suite.

- [159] I find that the claimant has made no contribution to property taxes since September 2013 and no meaningful contribution to the matrimonial home since February 2014. The respondent has, since that time, paid the insurance, utilities (water, sewer, garbage, heat and electricity) and maintained the home. From the respondent's financial statement sworn August 20, 2014, I estimate she incurred expenses attributable to the maintenance of the matrimonial home of about \$400 per month. She seeks no contribution from the claimant for the expenses she incurred while in sole occupancy of the matrimonial home.
- [160] Despite having contributed nothing to the upkeep or maintenance of the home since February 2014, if the respondent acquires the claimant's one-half interest in the matrimonial home or if it is sold on the market, he will benefit from the increase in value of the home since that time.
- [161] Further, I find that the claimant was not "ousted" from the premises in February 2014. He voluntarily left long before then.
- [162] While it has sometimes been said that an occupying owner will not be charged for her occupation unless she claims an allowance for her expenses, I accept the rule is not an absolute one to be applied without regard to all the circumstances. In addition, a claim to occupational rent does not necessarily turn on whether the claiming party has been ousted by the other. What is just and equitable will depend on the circumstances of each case. Occupational rent is not necessarily measured by either the rental value of the property or the rent which the allegedly "ousted" owner has had to pay for accommodation elsewhere. Rather, it is simply a form of compensation: *Dacyshyn v. Semeniuk*, 2007 BCSC 71 at para. 42.
- [163] In my view, it would be equitable and just in this case to allow the claimant one half of the total rent payable on the basement unit he shared with G.P and her boyfriend from mid-February 2014 to the end of September 2014 (\$550 per month) less one half of the costs incurred by the respondent in maintaining the matrimonial home during the same time period (\$200 per month). On this basis, I would credit the claimant \$2,575 in occupational rent to the end of October 2014.

4. Imputing Income

[164] The respondent invites the court to impute income of \$6,000 per year to the claimant to take account of income she says he earns doing automobile and vacuum cleaner repair work. The claimant denies having an ongoing business on the side that generates any significant income.

[165] In light of my credibility findings, I have approached the claimant's evidence that he currently does repair work only for "coffee money" with considerable caution. Having done so, I am still of the view that the evidence falls short of providing a sufficient foundation upon which additional income can properly be attributed to the claimant. The receipt for \$330 for vacuum repair work is undated. Although the respondent testified that she directly received money for repair work done by the claimant, she gave no evidence about how much money was being exchanged and no clear evidence about when these transactions occurred. She gave no evidence as to when the claimant boasted about making \$700 for repair work - whether this was a recent event or an event in the distant past. On the uncertain and undeveloped state of the record, it would be unfair to the claimant to impute additional income to him and I decline to do so.

[166] Although it is not clear to me that the claimant is inviting the court to impute income to the respondent to take account of earnings he says she makes doing housecleaning work, if such a claim is being advanced, it will stand dismissed. There is simply no evidence before me upon which income could be imputed to the respondent on this basis.

5. Spousal Support

[167] The respondent seeks spousal support under both the Divorce Act and Family Law Act. The objectives of a spousal support order are very similar under both enactments. I will address the respondent's claim for spousal support under the Divorce Act.

[168] There is no issue in this case about whether the respondent is entitled to spousal support. The parties agree she has a claim to non-compensatory spousal support to relieve the economic hardship she has experienced arising from the breakdown of the relationship and to promote her economic self-sufficiency. Given the length of the marriage, the spousal support award should be for an indefinite duration. The parties disagree on the quantum of the award.

[169] The respondent is entitled to spousal support retroactive to October 1, 2013. The claimant does not seriously contest this issue.

[170] While spousal misconduct is not a factor to be considered in awarding spousal support under the Divorce Act, its effect on a spouse's ability to work and achieve self-sufficiency may be a relevant consideration. The focus under the Divorce Act is not on the alleged "misconduct" per se, but on its effect as measured against the considerations and objectives that animate an award for spousal support.

- [171] I am satisfied on all the evidence that by September 2013 the respondent was emotionally overwhelmed by the circumstances surrounding the breakdown of her marriage and, as a consequence, incapable of working and earning a livelihood.
- [172] The direction in s. 15.2(4) of the Divorce Act is to consider the condition, means, needs and other circumstances of each spouse includes the capacity of the respondent to be self-sufficient. The order I make must relieve economic hardship arising from the breakdown of the marriage and, insofar as practicable, promote the respondent's economic self-sufficiency within a reasonable period of time.
- [173] For the period between October 1, 2013 and December 31, 2013 the respondent was in receipt of employment insurance sickness benefits totaling \$742 every two weeks. The claimant invites me to use the respondent's 2013 line 150 income (\$32,702) in determining the amount of spousal support he should pay over these three months. In my view, it would be unfair to use the respondent's line 150 income to determine the quantum of her entitlement to spousal support between October and December 2013. I agree with the respondent's counsel that the better approach is to calculate the notional income the respondent would have earned in 2013 based on receiving \$742 over 26 pay periods (\$19,292).
- [174] After allowing for union dues, the claimant's 2013 Guidelines income is about \$64,000.
- [175] Using these two amounts, the Spousal Support Advisory Guidelines (SSAG) suggest a mid-range of \$1,630 per month. I order the claimant to pay the respondent \$1,630 for the three months between October and December 2013, or \$4,890.
- [176] From January to the end of September 2014, the respondent was not in receipt of employment insurance sickness benefits and earned no income. I reject the claimant's position that she was capable of working at least 22 hours a week from January 1, 2014 onward. His position on this issue is contrary to the evidence of Dr. Cameron, which I accept, that the respondent continued to be incapable of working as of July 2014.
- [177] Assuming that the claimant's 2014 guidelines income remains about \$64,000 (an assumption likely favourable to him) and factoring in that the respondent has not been able to earn any income through to the end of September 2014, the SSAG suggest a mid-range of \$2,333 per month. I order the claimant to pay the respondent \$20,997 in retroactive spousal support for the nine-month period from January 1, 2014 to the end of September 2014. The claimant is entitled to an offset for the \$1,251 monthly spousal support payments he has been making since March 1, 2014, totaling \$8,757. He therefore owes the respondent \$12,240 in retroactive spousal support for the period between January 1, 2014 and September 30, 2014.
- [178] From October 1, 2013 to September 30, 2014, the claimant owes the respondent \$17,130 in retroactive spousal support (\$4,890 + \$12,240).

- [179] The respondent owes the claimant \$2,575 for occupational rent. In addition, I have credited the claimant with \$530 for property tax payments he made out of his bank account after the agreed-upon valuation date. The total of these two amounts is \$3,105. I would set off this amount against the total amount of retroactive spousal support owed by the claimant. In the result, the claimant owes the respondent \$14,025. This amount will be credited to the respondent as an adjustment in the disposition of the former matrimonial home.
- [180] I turn next to consider the amount of spousal support the claimant should pay the respondent moving forward.
- [181] Based on the evidence of Dr. Cameron, it is likely the respondent will be through the stressors associated with this litigation and in a position to begin a concerted search for work in January 2015. I agree with Dr. Cameron that the dynamics of the situation are such that it is not feasible for the respondent to return to work in Dr. Mah's office. In the result, she will have to search for work elsewhere and this will take some time. The respondent will, by then, have been out of the work force for about 16 months. She may also face age-related barriers in competing for positions in her field.
- [182] It is reasonable to suppose that by April 1, 2015 the respondent will have been able to secure work as a dental assistant on a part-time basis.
- [183] From October 1, 2014 to March 31, 2015 the claimant will continue to pay the respondent \$2,333 per month in spousal support payable on the first day of each month.
- [184] Assuming the respondent is able as of April 1, 2015 to work 22 hours per week, consistent with the graduated return to work contemplated by Dr. Cameron, her guidelines income will be about \$29,700. For the two-month period between April 1, 2015 and May 31, 2015 the claimant will pay the respondent \$1,251 in monthly spousal support representing the SSAG mid-range based on an annual guidelines income for the claimant of \$64,000, and an annual guidelines income for the respondent of \$29,700.
- [185] Based on the evidence of Dr. Cameron, it is likely the respondent will be fully recovered and able to secure what amounts to full-time employment for a dental assistant (32 hours per week) by June 1, 2015. Given her hourly income when she left work in September 2013, the respondent's guidelines income will be approximately \$43,260. I will assume that the claimant's guidelines income will continue to be \$64,000 per year. From June 1, 2015 forward, and based on these guidelines incomes, I order the claimant to pay the respondent the SSAG mid-range for spousal support in the amount of \$756 per month.
- [186] The order I make is designed to relieve the economic hardship the respondent experienced as a consequence of the marriage breakdown but also promote her economic self-sufficiency once the stressors arising from this litigation are in the past.
- [187] While the evidence would strongly suggest that the respondent will likely be able to return to work in accordance with the schedule contemplated above, I recognize that there are "genuine and material uncertainties" respecting the respondent's health and capacity to

return to work, and the timeframe within which she will be able to secure part-time and then full-time employment in her field. The uncertainties associated with the respondent's condition and successful return to work are such that it is appropriate to order pursuant to s. 15.2 of the Divorce Act that the spousal support order be subject to review after June 1, 2015: Leskun, at paras. 36-39. To be clear, the review is only in relation to quantum.

[188] Further, any review initiated by the respondent must be accompanied by medical evidence, preferably from Dr. Cameron, attesting to the respondent's incapacity to work, or work to the extent contemplated by this order, and (if applicable) documentary evidence respecting the respondent's efforts to secure full-time employment as a dental assistant.

[189] In light of my familiarity with this matter, I will seize myself of any review application.

[190] Section 170(e) of the Family Law Act provides that a court may order a person who has a contract of life insurance to designate his or her spouse as a beneficiary, either irrevocably or for a period of time designated by the court as security for spousal support. The claimant has a life insurance policy for \$100,000. The respondent invites me to make an order that so long as the claimant is required to pay spousal support, he maintain his insurance policy in the minimum amount of \$100,000 with the respondent as named beneficiary. An order of this kind may be appropriate where there is a history of non-compliance with spousal support orders. I have very little, if any, evidence before me to suggest that the claimant has disobeyed previous court orders for spousal support. In the absence of that evidentiary foundation, I am disinclined to make the order sought.

[191] Should it become necessary to do so, either party may apply to clarify the terms of this order.

6. Costs

[192] Both parties have leave to speak to the issue of costs.

"FITCH J."

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