
CANADA / JUDGMENT

Harrison v. Harrison

2011 BCSC 1139

COURT

Supreme Court of British Columbia

DECIDED

22 August 2011

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2011 BCSC 1139 Harrison v. Harrison

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Harrison v. Harrison,

2011 BCSC 1139

Date: 20100822

Docket: 12505

Registry: Duncan

Between:

Lynda Harrison

Claimant

And

David Charles Harrison

Respondent

Corrected Judgment: The text of the judgment was
corrected at paragraph 142 on August 24, 2011.

Before: The Honourable Madam Justice S. Griffin

Reasons for Judgment

The Claimant, Lynda Harrison:

Appearing on her own behalf

The Respondent, David Charles Harrison:

Appearing on his own behalf

Place and Date of Trial:

Victoria, B.C.

May 10-13, 2010

June 6-8, 2011

Place and Date of Judgment:

Duncan, B.C.

August 22, 2011

Introduction

- [1] This is a matrimonial proceeding. The claimant, Lynda Harrison, and respondent, David Harrison, were married in May of 1992, approximately ten months after they began cohabiting. They are both originally from England, where they were married. They moved with their three children to Canada in 2006.
- [2] There are three children of the marriage: two boys, one age 17 and one age 15, and a girl who is almost 13 years old.
- [3] The claimant told the respondent that she wanted a divorce on April 26, 2009. The respondent was very angry, but they continued to live together, occupying separate bedrooms for a short time. However due to conflict, the claimant left the family residence on July 29, 2009. She eventually returned based on a Court Order made September 22, 2009, giving her exclusive occupancy of the house.
- [4] On February 15, 2010, this Court declared that there was no reasonable prospect of reconciliation between the parties, pursuant to s. 57 of the Family Relations Act, R.S.B.C. 1996, c. 128.
- [5] This trial proceeded in two stages, first in May 2010, then in June 2011.
- [6] A significant event that must be considered in the determination of the issues was the respondent's removal of over £500,000 from a bank account located in Jersey, U.K., and putting this out of reach of the claimant, once he learned that the claimant wanted to divorce him. The respondent then failed to make full disclosure of the bank account statements and information in regards to this disposal of assets. At the mid-trial adjournment I ordered the respondent to produce this information to the claimant. The adjournment also provided the claimant with an opportunity to attempt to investigate potential tax liabilities for which the respondent asserted they were both responsible but for which he had not previously made full disclosure of relevant documents, despite demands

for the same.

- [7] The issues between the parties concern division of assets; child custody, guardianship and support; and spousal support.

Circumstances of the Parties

- [8] In order to consider the issues, I will first review the circumstances of the parties.
- [9] The claimant is 47 years old and was born in England. Prior to her marriage to the respondent, and up to the birth of their second child in 1996, she had a career as human resources manager. She said this was a successful career in the U.K. However, when she gave birth to the couple's second child in 1996, she gave up her career and took on the role as full time caregiver to the children and homemaker.
- [10] The respondent is 48 years old and was also born in England. He studied math in university and then worked for several years for software development companies. He went on to graduate school to obtain a master's degree in computing, doing that part-time while he continued to work, and obtaining that degree in 1997.
- [11] In approximately July 1997, the claimant and respondent started their own business, DCH Software Ltd. The respondent was the sole director of the company and the claimant was the company's secretary. This was a company that built on the respondent's career as a software engineer. He performed a variety of contracts for different companies and financial institutions. He also worked on inventing his own software for sale. The claimant's role in the company was more administrative: she completed invoices, completed the returns for Value Added Tax ("VAT"), and dealt with the accountants for the company. The accountants for the company provided payroll services and end of year financial statements for each year for the company except its last year, when the couple moved to Canada.
- [12] While it was clear that it the respondent's abilities as a software engineer provided the basis for DCH's revenue, the company was structured to split income and so the claimant and respondent were paid the same salaries initially. Some revenues also remained in the company and were not distributed to them.
- [13] In 2003, the respondent was in a car accident together with their two sons. The respondent was seriously injured. However, eventually he overcame his injuries and also received a large settlement or judgment in respect of the other motorist which included compensation for loss of income.
- [14] In 2003, the couple applied to immigrate to Canada. When they were finally accepted, they closed down their business, DCH, in approximately February 2006. They sold their home in the U.K. and moved to Vancouver Island.
- [15] One of the entities that the respondent had been providing services to, through DCH, prior to leaving England, was a company based in Dubai, called Transputec.

- [16] After the family moved to Canada in 2006, the respondent continued to work on contracts for Transputec. The respondent arranged for the revenue from the contracts to be paid directly into a bank account he established in Jersey, the Channel Islands, in his name only. There were two different accounts over time, but for present purposes it is sufficient to refer to this as the "Jersey Account". The Jersey Account also held the couple's proceeds of sale from their family home in the U.K., and their combined savings. When they moved to Canada, the account held roughly the equivalent of CAD \$1.1 million.
- [17] The claimant was no longer informed of the details or involved in the respondent's earnings after they moved to Canada. The respondent controlled the Jersey Account and directed all payments for his software services to this account. However, funds from this account were used for family purposes, to support the family and buy things for the family.
- [18] The respondent did not disclose this income to Canadian tax authorities until after the couple separated, when he self-disclosed tax evasion on the income he had earned and had directed to be placed in the Jersey Account. The respondent claims that the resultant Canadian tax liability is a joint liability of the claimant and respondent.
- [19] Transputec also made payments into the respondent's Jersey Account in relation to work done by the respondent in the first few months of 2006, when DCH was still operated in the U.K. and prior to DCH being shut-down. This income was not disclosed to U.K. tax authorities when DCH filed its last year financial statements (which were signed off by the respondent as director).
- [20] After the parties separated, the respondent self-disclosed to U.K. tax authorities what was done in 2006 in relation to DCH to evade taxes. He claims that he and the claimant owe equivalent debts to U.K. tax authorities in relation to this tax liability, and that DCH also owes a tax liability.
- [21] Less than a month after the family moved to Canada, the respondent suffered a heart attack. He has since had a device implanted in his chest to regulate his heart. He was initially very bitter about the fact that he had moved to Canada to enjoy a physically active lifestyle, and then had a heart condition which imposed some limits on him.
- [22] The claimant claims that following the respondent's heart attack and recuperation, a pre-existing problem that he had with anger escalated. The respondent became increasingly angry and they began to have frequent conflicts, sometimes in front of the children. The claimant decided to separate from him and told him so on April 26, 2009.
- [23] At that stage, the respondent was completely financially reliant on the claimant. She was not working and had no employment history in Canada. She was in the dark as to the details of the Jersey Account and as to the respondent's income. He told her that he was earning about \$20,000 per month.

- [24] The couple had a joint bank account in Canada that held a balance of \$40,000 which the respondent then emptied.
- [25] Initially after the announced separation they both continued to reside in the family home. The claimant says that for a while the respondent placed \$500 per week into the joint account for living expenses but when she withdrew \$100 in cash he reacted by reducing the weekly deposit to \$400 and demanding that she only use a debit card for any withdrawals. She said that he was increasingly intimidating in his behaviour towards her. He accuses her of using some of the money for alcohol and of being an alcoholic, which she vehemently denies.
- [26] A confrontation between the couple escalated on July 24, 2009. The claimant says that the respondent accused her of stealing a chequebook to one of his personal accounts, something that she had no knowledge about. She said he confronted her in their bedroom and was verbally berating her and blocking her exit. She finally left the room and tried to drive away, and for awhile he tried to block the car, but eventually she was able to leave. A few days later, the claimant says that the respondent falsely accused her of assaulting him and their son, reporting this to the RCMP. She says that the son denied this when investigated by the RCMP, although he was not called as a witness in this trial. In any event, those accusations were not investigated further by the RCMP.
- [27] Because of the volatility of the situation, Ms. Harrison moved out of the home. She was able to stay at a friend's home in a nearby town. She spoke to her children separately and allowed them to make a choice of where they wished to stay. The two youngest children moved with her immediately but the eldest told her he wished to stay behind until she found her own place to live.
- [28] After that, the respondent decreased his weekly payment into the joint account to \$300 per week in August 2009.
- [29] The claimant says the respondent continued to show anger towards her which escalated into dangerous situations. For example, taking a roof rack from her car, he banged it into her car door, damaging it. When she complained about the damage, she says that he then drove his SUV into the rear of her car, pushing it forward through a rail at the end of the carport.
- [30] The claimant says on another occasion, she was driving one son to his friend's home when the respondent drove up behind her on the highway and was following too close to her bumper. He followed her off the highway, parking near the driveway of the home she was visiting. When she went to pick up her eldest son from the family home, the respondent berated her and screamed at her. Later that day, when she returned the eldest son to that home, the respondent banged and hammered on the rear window of her car and ripped off the rear wiper and smashed the rear window. This incident was reported to the police and the respondent faced charges in relation to it, which the claimant eventually did not press in the hopes that he would become more reasonable. That son then decided to stay with the claimant.

- [31] The respondent denies these incidents of aggressive behaviour.
- [32] The claimant sought legal advice about the matrimonial situation. She retained counsel for a while, who on her behalf obtained an interim order of this Court on September 22, 2009 (the "Interim Order"). That order, made by Walker J., required the respondent to pay child support of \$3,348 per month commencing retroactively on September 1, 2009. As well, the Court ordered the respondent to pay the claimant \$4,461 per month for spousal support, commencing retroactively on September 1, 2009.
- [33] The Interim Order granted the claimant interim sole custody and guardianship, to be reviewed after resolution of the respondent's outstanding criminal charges.
- [34] The Interim Order restrained and enjoined the respondent from disposing, encumbering, assigning, or dealing with family assets, or any assets, including assets in the U.K., in which the claimant has or may have an interest, pending final determination of the action, without the written consent of the claimant or further order of the court. A parallel order was made with respect to the claimant.
- [35] In addition, the Interim Order granted the claimant exclusive occupancy of the family home.
- [36] At the hearing before Walker J., the respondent was also represented by counsel. On the granting of the Interim Order giving the claimant exclusive occupancy of the family home, the respondent's counsel advised the Court that the respondent had a number of motor vehicles and things stored in the barn on the property, and for this reason asked for exclusive occupancy of the barn to store the respondent's personal possessions. The Court agreed, and the Interim Order granted the respondent exclusive occupancy of the barn located on the same property as the family home, in order to store his personal possessions, and he was given access to the barn to be arranged through the parties' respective counsel.

Property Division

- [37] I will first address property division.

The Respondent's Transfer of over £500,000 Post-Separation

- [38] It is clear that the respondent has a history of arranging his finances so as to try to avoid his obligations. For example, on his own evidence, he arranged the finances of his business for the last year in the U.K., and his income earned in Canada, to be hidden from the relevant tax authorities so that he would not have to pay tax. He arranged for his income, earned while he was living in Canada, to be paid into the Jersey Account.
- [39] When the claimant and respondent separated, the respondent arranged to have all of the offshore funds in the Jersey Account transferred out of the reach of his wife.

- [40] In June 2009, the balance in the Jersey Account was £509,316.00. Using the exchange rate of 1.73, which was the exchange rate in July 2009 according to the respondent's foreign exchange account records placed in evidence, this was roughly equivalent to CAD \$881,116.68.
- [41] The respondent testified that of the British pounds in the Jersey Account, he took steps in June 2009 to transfer £450,000 to an account in the U.K. held by his parents. Using these funds and the balance in the Jersey Account he did the following:
- a) he set up a trust for his children in the amount of £325,000.00, held in the U.K. (the "Trust Fund");
 - b) he used £148,934.37 to purchase a money order from the Royal Bank of Scotland dated September 9, 2009, in the amount of CAD \$250,000, which he paid to Canada Revenue Agency in relation to his voluntary disclosure of previously evaded taxes in September 2009;
 - c) the balance of what was originally in the Jersey Account he used himself, which on the above calculations was £35,381.63 (£509,316 less £325,000 less £148,934.37). Some of this he transferred to himself in July 2009 in Canadian dollars, at the above mentioned exchange rate of 1.73. Applying this exchange rate, the amount he took for himself was approximately CAD \$61,210.22.
- [42] The above details only came out in the second-half of trial, after the respondent had been ordered to and finally did produce bank records. His bank records were not complete, and some of these large transfers were not directly traceable. In any event, the respondent submits that none of the money that was in the Jersey Account is available any longer.
- [43] Dealing first with the trust for the children, the respondent's actions put the funds out of the reach of his spouse. He also designed the trust to limit and undermine the claimant's ability to make decisions regarding the children.
- [44] A copy of the trust deed establishing the Trust Fund, entitled "The David Charles Harrison Discretionary Settlement 2009", made August 5, 2009, and naming Edward Harrison and Elizabeth Jane Marshall as "the Original Trustees" (the "Trust Deed") was belatedly produced by the respondent in these proceedings. The trustees are Mr. Harrison's father and sister. There are five other beneficiaries of the trust, in addition to Mr. Harrison's children. However he claims that these other beneficiaries could only benefit in the event the three Harrison children were to die.
- [45] The respondent says that by clause 7 of the Trust Deed, the trustees, located in the U.K., are prohibited from paying out any amounts to either spouse. This is the respondent's interpretation, and also the trustees', apparently. For this reason, the trustees refuse to reimburse the claimant when she has incurred an expense on behalf of the children, and will only pay the expense directly if she has not paid it first. The trustees and the respondent maintain that the trustees will not reimburse the claimant for any expenses she legitimately incurs on behalf of the children, such as school fees, extracurricular activities fees, or

orthodontist expenses.

- [46] As an aside, this seems to me a particularly narrow interpretation of the Trust Deed, which at clause 7 simply prohibits payment to "the benefit of the Settlor or the spouse or Civil Partner of the Settlor". It seems odd that a payment reimbursing the spouse for an expense incurred on behalf of the children would be treated as a payment to "the benefit" of the spouse. It is to the benefit of the children that the spouse be able to pay these expenses when they arise, without having to wait to obtain the trustees' approval first (the time zone difference and the fact the trustees are not always available adds to the prospect that they will delay in responding). It is also inconvenient to try to arrange with third parties to accept payment from overseas, rather than simply have the claimant pay the expense directly and be reimbursed. Be that as it may, the respondent and the trustees made it clear to the claimant that funds from the trust are never to touch the claimant's hands, even to repay her for expenses legitimately incurred on behalf of the children.
- [47] Elsewhere in the Trust Deed, the trust allows the trustees to pay income to the minor's parent or guardian on behalf of the minor, without inquiring into the use of the income (clause 2.1). The respondent gave no explanation as to why this could not be relied upon to pay the claimant sums to support the children. The respondent insists that the trust prevents either parent from obtaining funds to spend on the children. This of course is designed to make life difficult for the claimant.
- [48] I also note as an aside that it is conceivable that if the trustees are truly independent, and the trust is not collapsed, that they will recognize that as soon as the claimant is divorced from the respondent, she will no longer be his spouse nor will she be his civil partner, and clause 7 will not apply to her so as to prevent the trust from reimbursing her for expenses she incurs on behalf of the children. However, given past history, there is no reason to expect the trustees to take an interpretation of the Trust Deed that would make it easier for the claimant to pay for the children's expenses.
- [49] According to the Trust Deed, the respondent has discretion to have other beneficiaries added to the trust. The respondent also may consent to the trustees transferring the property to any other trust fund, in which case they are free to do so. Apparently the respondent's father and sister are both professional accountants. The Trust Deed also allows them to charge professional fees to the trust.
- [50] The claimant has no ability to make decisions as to how the Trust Fund monies should be spent to benefit the children as she is not a trustee. The claimant has been frustrated in dealing with the trustees, and has felt she has been unable to obtain funds to support the children from the trustees.
- [51] The respondent takes the position that under the trust he created, the trustees are not required to consult with the claimant, or defer to her, or inform her, with respect to any expenses they elect to pay or not to pay in respect of the children. He takes the position, and has told the children this, that they can ask for money directly from the trustees without

having to inform either parent. The respondent has told the children that he set up a trust which allows them to go to their grandfather and get money when they want it, regardless of whether or not their guardian, their mother, approves or knows about it. Clearly this is designed to buy favour with the children and to undermine the claimant's parental influence and authority.

Credibility

- [52] This is a convenient point to address credibility of the parties. I found that the respondent's evidence and conduct regarding the trust undermined his credibility generally. He maintained at trial that the trust had been agreed to by the claimant. I did not believe him. His story was internally inconsistent and contrary to common sense. It is not believable that the claimant would ever have agreed to such a trust placing her own life savings out of reach and making her have to go "cap in hand" to her ex-father-in-law and ex-sister-in-law, giving them the complete power to decide what expenses for the children were appropriate or not. The terms of the Trust Deed are not something she ever would have agreed to as it is so obviously impractical and slanted to cause difficulties for the claimant. I accept her evidence that she did not agree to it.
- [53] The respondent asserts that he believes he and the claimant had come to a "kitchen table agreement" early on, where the claimant and he agreed on how to divide the assets and had agreed not to seek legal advice. I do not accept the claimant and respondent had anything more than a very general settlement discussion and not an agreement, in a situation where there had not been full disclosure by the respondent to the claimant. The respondent made it clear at trial that he was extremely angry that the claimant then sought legal advice. This anger is irrational. It can hardly be offensive that the claimant wished to know her legal rights and legal options. It appears that by seeking professional help she needed and was entitled to, the claimant stepped away from the respondent's control and this fuelled his anger.
- [54] In speaking to a psychologist who prepared a "views of the children report" dated May 13, 2011, the respondent described his anger score towards the claimant in September 2009 as 150 on a scale running from a low of 1 to a high of 10. While he claimed at trial that this was a short-lived peak in his anger, it was my observation that he was still very angry and was trying to control and punish the claimant. For example, in the first stage of the trial he tried to intimidate her by suggesting that she was a tax fraud subject to substantial tax liabilities and penalties, potentially even criminal penalties, all the while not producing to her the information in his possession that she would need to assess and to understand these tax liabilities and her own possible exposure.

- [55] Even though the respondent remained composed for most of the trial, he did get easily irritated at the claimant and when I ordered the respondent to distribute \$6,000 to the claimant at the mid-trial adjournment, he threw the cheque at her in an angry way, unable to control his demeanour towards her even in front of the Court.
- [56] The respondent was also provocative in the way he interpreted court orders.
- [57] For example, after the Court in the Interim Order granted the respondent exclusive possession of the barn at his counsel's request, to store his vehicles, the respondent subsequently took vehicles and a boat out of the barn and put them in the carport. When the claimant showed up at the family home to take possession, the carport was not empty but was filled with these vehicles, with the wheels removed so that they could not be moved. The boat was on a trailer with the wheels removed. The respondent asserts that no order prevented him from doing this but clearly it was contrary to the purpose for which the Court had given him access to the barn at the time of the Interim Order.
- [58] The claimant said that when she told the respondent she wanted a divorce, he threatened her that he would see to it that she would end up with nothing. He denies having said this. I note that often things can be said in the heat of a personal crisis which are improvident but not truly intended. Yet in this case I accept the claimant's evidence and find that it unfortunately accords with the respondent's conduct.
- [59] I also found that the respondent's evidence was often exaggerated and mischaracterized to serve his own interest. I further found that the respondent was very manipulative in terms of how much information he was willing to disclose pre-trial, and during the trial.
- [60] Where the claimant's and respondent's evidence was in conflict, I preferred the claimant's evidence. She came across as straightforward and she did not attempt to manipulate the facts or the evidence. It is fair to say that she was somewhat vague in her evidence about what she knew had happened in the past to give rise to the tax liabilities, but when she was questioned by the respondent about these subjects he had not produced all the related documents to her and he was clearly trying to sand-bag her. I have no difficulty in concluding that the respondent was dominant and controlling in the marriage relationship and the business of DCH and that the claimant may not have known what exactly he was doing in terms of the business and the income he was earning. The evidence was clear that she did not have a good grasp on financial matters, as she erroneously even overstated her own income at present, which overstatement would clearly be against her interests in the litigation. In any event, the claimant readily conceded that the tax liabilities were incurred in relation to monies that were used for a family purpose, and so could be considered a "family debt" to be taken into account by the Court on the division of assets.

The Family Home

- [61] The largest exigible asset of these parties in Canada is the family home located in Cobble Hill, B.C.

- [62] There was no appraisal evidence at trial, but there was evidence of the property assessment and the lack of success in selling the home.
- [63] The home was assessed for property tax purposes at \$720,000 in 2010. The home had been listed for sale in this past year at \$699,000 but no offers were received. It was since reduced to \$659,000 but again no offers have been received.
- [64] Since the home was listed for sale, the respondent has come on to the property to remove the carports and completed other work on the property which, according to the claimant, has left it looking less attractive. He undertook this work without any advance notice, just showing up on the property. The respondent claims that he is simply following municipal orders. He claims he does not know how, but that the municipality has come to learn that the carport and barn structures he built on the property were not built in accordance with by-laws or environmental laws. He says that because of this he must also remove a septic tank that he installed without appropriate approvals, in relation to the barn.
- [65] The respondent values the home at \$600,000. I am prepared to accept that as the net value of the home given the apparent problem with work having been done on the property in the past that may not have conformed to applicable regulations.
- [66] There is no mortgage on the property. However, Canada Revenue Agency registered a judgment in the amount of \$324,638.61 against the respondent's half-interest in June 2010. This was registered after the claimant filed a certificate of pending litigation, and so her interest in the property will take priority.

Other Assets

- [67] The other family assets include the following items, valued roughly by the parties as follows:

Description	Approx. Value	In Possession of
Household furnishings	\$30,000	both parties
Jewellery	\$2,000	claimant
Kayaks (6)	\$8,000	

respondent

Ride on mower

\$1,000

respondent

Laptop computers

unknown

both parties

Televisions

unknown

both parties

Printers

unknown

respondent

Blue ray disc player

unknown

respondent

Trailer for kayaks

\$2,000

respondent

2006 Campion Explorer boat with Yamaha outboard motors and trailer

\$30,000

respondent

Springbok boat with Johnson outboard motor and trailer

\$2,200

respondent

2008 Kioti compact tractor with implements

\$19,000

respondent

2009 Kawasaki KLR650 motorcycle

\$7,000

respondent

1990 Honda 125T motorbike

\$200

various Land Rovers and parts collected by the respondent

unknown

pensions in U.K.

\$52,416

respondent

pensions in U.K.

\$42,272

claimant

[68] In addition, the claimant has a 2006 Ford Freestyle which she uses as her motor vehicle, and the respondent has a Land Rover 110 station wagon, which he purchased in 2006 and uses as his motor vehicle. Both are roughly of equivalent value.

[69] The respondent has a consulting company by the name of Attrisoft Consulting Limited, of unknown value. There was no disclosure with respect to whether this is the entity the respondent uses for his consulting services now, and whether or not it has any retained earnings or assets.

[70] The respondent took \$40,000 from a joint bank account, but replaced \$10,000 just in advance of the claimant's court application in September 2009. Thus, the claimant has had the benefit of \$20,000 more than the claimant of the couple's savings in Canada.

[71] At the adjournment of the trial on May 14, 2010, I ordered that some of the assets be offered for sale. Included in this order was an order for sale of some used motor vehicles in the respondent's possession for \$6,000, and provision of the proceeds of the sale to the claimant. This sale did take place and the claimant did receive the \$6,000.

Debts

[72] The respondent says that the two largest liabilities facing the couple are joint liabilities.

- [73] Dealing with the U.K. tax liability, the claimant has been informed that the U.K. authorities believe she has a liability of £24,500 but she has not been able to confirm this nor has she yet had the time to challenge it, despite arguments that may be available to her. The respondent says that he owes only £7,500 and their former company DCH owes £67,550.
- [74] The amount of the respondent's outstanding Canadian tax liability is \$354,943.05 as of his 2011 assessment, with interest accumulating daily. This debt includes interest. For ease of reference, I will refer to it as \$355,000.00.
- [75] Other debts include:
- a) there is outstanding property tax on the family home totalling \$5,508 for 2010 and 2011;
 - b) the claimant has borrowed money from her family in the amount of \$8,000 post-separation;
 - c) each of the parties have some credit card bills although the details were not explained in evidence;
 - d) the respondent claims to have borrowed \$15,000 from his father;
 - e) each of the parties has professional fees to pay in relation to advice in respect of the tax liabilities.

Property Division

- [76] The FRA provides that each spouse is entitled to a one-half interest in family assets as of certain triggering events set out in s. 56. Here, the applicable triggering event was the Court's s. 57 declaration on February 15, 2010.
- [77] A family asset is property owned by one or both spouses and ordinarily used by a spouse or minor child of either spouse for a family purpose: s. 58(2) of the FRA.
- [78] Here, the parties do not seem to contest that all assets in this jurisdiction owned by them are family assets. The largest such asset is the former matrimonial home located in Cobble Hill, B.C.
- [79] The second largest asset owned by the couple, at the time of separation, was the approximately £500,000 in funds held in the Jersey Account, the value of which was approximately CAD \$881,116.68. There is no question that if these funds were still in that account as of February 15, 2010, the date of the triggering event, they would be a family asset. The funds were ordinarily used for family purposes, and represented savings of both parties, as well as income being earned by the respondent, some of which was used for family purposes.
- [80] The fact is that the respondent removed these funds out of reach of the claimant after separation, without her consent. What remains of the funds from the Jersey Account is outside of this court's jurisdiction in the sense that the Court cannot make orders as against the funds. It strikes me that the claimant may have a claim to advance in the U.K. that the

Trust Deed is invalid, and that she has a proprietary interest in the funds subject to that trust, traceable from her interest in the Jersey Account. It is possible that the claimant even has a claim to advance against the trustees, who are likely to have known of her interest in those funds. However, all of this would require additional costly litigation by the claimant in another jurisdiction. It is fair to conclude that the claimant will be faced with considerable barriers if she seeks to recover a proprietary interest in the Trust Fund.

[81] In addition to the approximately CAD \$881,116.68 taken from the Jersey Account by the respondent, the respondent also had the benefit of an additional \$20,000 more than the plaintiff which he took from their local joint account. The total of dissipated assets by the respondent is therefore approximately \$900,000.

[82] This Court has power to adjust the equal division of family assets pursuant to s. 65 of the FRA, where equal division would be unfair. Section 65(1) establishes the factors that may be considered by a court in reapportioning family assets:

65(1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[83] In reapportioning family assets, the court may take into account the disposition of family assets or of property by a spouse that would have been a family asset but for the disposition: *Newson v. Newson* (1986), 3 B.C.L.R. (2d) 1, 27 D.L.R. (4th) 738 (B.C.C.A.).

[84] Furthermore, section 66 gives the court discretion in fashioning a remedy in respect of property apportionment, including permitting the court to order that one spouse pay compensation to the other:

66(1) In proceedings under this Part or Part 6 or on application, the Supreme Court may determine any matter respecting the ownership, right of possession or division of property under this Part, including the vesting of property under section 65, or under Part 6 and may make orders that are necessary, reasonable or ancillary to give effect to the determination.

- (2) Without limiting subsection (1), the court may do one or more of the following in an order under this section:

...

- (c) order a spouse to pay compensation to the other spouse if property has been disposed of, or for the purpose of adjusting the division;

[85] Unfortunately a compensation order is unlikely to be obeyed by the respondent, as he claims to now have very little assets.

[86] A portion of the funds from the Jersey Account was also used by the respondent and was spent by him after separation but before the triggering event. He used \$250,000.00 towards his tax liability with Canada Revenue Agency; and took the balance of approximately \$61,210 for which he has not accounted.

[87] I conclude that the facts of this case require some form of relief in favour of the claimant in relation to property division, due to the respondent's disposition of approximately \$900,000 in what would have been family assets just after the claimant announced she wanted a divorce. The claimant would have had a reasonable expectation in sharing these funds on division of property upon their divorce, given the accumulation of the funds over the course of the parties' long marriage. It would be unfair to provide for equal division of family assets in these circumstances.

[88] Furthermore, the claimant has a greater need than the respondent for assistance in becoming self-sufficient and in reaching anywhere close to the standard of living the family used to enjoy. For a considerable time she sacrificed her career in favour of playing a supportive role for the family. She was a full-time caregiver for the family and children from 1996 until the parties separated in 2009, some thirteen years. While during this period, for about eight or nine years when they lived in the U.K., she assisted the respondent's career as a software engineer by playing a role in the business they established, DCH, this was clearly a minor or supportive role and not one on which she could said to have been building her own résumé or career.

[89] Since separation the claimant has had to look for paid employment for the first time in Canada. She has sought and obtained employment but not until after two years of financial hardship and her present employment would not likely be of the same level she might have attained if she had not put her own career aside for the family. Yet during the couple's relationship, the respondent, on the other hand, had been steadily building his own career and experience in his chosen field.

[90] These facts relating to the claimant's need to achieve self-sufficiency also would make equal division of family assets unfair.

- [91] The liabilities of a spouse can be taken into account in determining whether or not equal division of family assets would be unfair, pursuant to s. 65(1)(f) of the FRA. In *Stein v. Stein*, 2008 SCC 35 at para. 16, the Supreme Court of Canada held:

Many trial courts have recently determined that "family debts", which are incurred for maintenance costs relating to the family, should be considered when determining reapportionment of assets. I agree that, where a debt has been incurred for use within the family unit, it is more likely appropriate to reapportion assets to account for that debt than if it were accumulated solely for use outside of the marriage. The presence of debt (regardless of whether it is "family debt") is only one factor mentioned under s. 65(1); however, and it is, in my view, necessary for a judge to consider all of the relevant factors in order to determine whether or not the presumptive division of assets leads to unfairness.

- [92] The respondent argues that the liabilities, largely the tax debts, should be taken into account by notionally equally dividing them.

- [93] I consider it fair to simply ignore the U.K. tax liabilities in the apportionment of assets, and in a sense, let the U.K. tax liabilities fall where they may. According to the respondent, they each should owe the same amount to the U.K. tax authorities. If the U.K. tax liabilities are owed by each, then each can pay their respective liabilities as they see fit. Even if this was not the case and the respondent were to owe more than the claimant, I would consider it appropriate to let him bear that liability given all of the above-mentioned circumstances which would make equal division of family assets unfair.

- [94] As for the Canadian tax liability, while the respondent insists that the claimant must share this liability equally with him, I consider that this would be unfair for the same reasons which would make equal division of family assets unfair. I appreciate that this liability was based on income the respondent earned which he did not report, when he resided in Canada. It is not disputed that the income was used for a family purpose, which is an important factor to take into account. It is also not disputed that the respondent took \$250,000 from the Jersey Account and ultimately paid it towards his debt to Canada Revenue Agency. What is unknown is how much of the current outstanding liability is based on accumulated interest due to non-payment of the underlying debt. I find that the accumulated interest on the principal amount of this debt is entirely the fault of the respondent and was not incurred for a family purpose: he failed to disclose information to the claimant and put funds out of her reach, preventing her from making an informed decision and having the resources with which to help deal with this liability early on. This is an additional reason why it would be unfair to treat this debt as something to be taken into account as though it should be shared equally between the parties.

- [95] I therefore conclude that while equal division of family assets would be unfair in all the circumstances, what would be fair and reasonable would be to order:

- a) re-apportionment of 100% of the family home to the claimant, as well as all contents of the home remaining in the home which the respondent did not already take, and 100% of the 2006 Champion Explorer boat with associated motor, trailer and related equipment, all kayaks and kayak trailers, all lawn tools, ride on mower, and Kioti tractor; and all contents of the barn, or garage, other than the items expressly awarded to the respondent below;
- b) re-apportionment to the respondent of 100% of the Land Rovers, car parts stored in the barn, motorbikes or motorcycles, Springbok boat with associated motor and trailer, and the many household possessions and home electronics that he already took from the home and has in his possession (furniture, televisions, DVD player, etc.);
- c) each party can keep the motor vehicles which they currently use for their own personal transportation (the claimant's 2006 Ford Freestyle and the respondent's Land Rover 110 station wagon);
- d) reapportionment to the claimant of the \$6,000 she was previously distributed on the basis of this Court's order of May 14, 2010;
- e) each party can keep the U.K. pension accounts in their own names as disclosed on their Financial Statements filed herein under the heading "Pensions and RRSPs", and mentioned above; and,
- f) each party can otherwise keep the assets in their possession and be responsible for their own liabilities in their own names.

[96] The respondent argues that the claimant ought to have paid occupation rent on the family home while she has lived there post-separation, and so her failure to do so ought to be taken into account. I do not consider this appropriate. The claimant was required to maintain the family home while she lived there. She was required to pay for the home insurance on the home, which the respondent refused to pay. The value of her re-apportioned 100% interest in the home will be reduced by outstanding property taxes that she was unable to pay during her occupation, with the effect that she will also be the one who ends up paying those taxes. Further, if the trial of this action had not been delayed due primarily to the respondent's failure to produce relevant documents prior to trial, then the claimant's entitlement to 100% of the home would have been decided earlier.

[97] My reference to the family home is a reference to the following property: 965 Aros Road, Cobble Hill, British Columbia, V0R 1L4, legally described as PID 024-614-122, Lot 1, Section 16, Range 8, Shawnigan District, Plan VIP69680 (the "Proerpty").

Issues Regarding the Children

Custody and Access

[98] The claimant has had interim sole custody and guardianship from the date of the Interim Order of Walker J. made September 22, 2009.

- [99] The children's primary residence has been with their mother since separation (except for approximately the first few months or so when the eldest son stayed with the father), and the evidence is that she has provided a safe and stable environment for them. The father has had reasonable access which he exercised by making arrangements directly with the children. The claimant has never stood in the way of the respondent exercising access, however, the children have continued to spend the vast majority of their time living with her (well more than 60%).
- [100] The respondent has virtually ignored the claimant's role as sole guardian, and has treated her as not even worth the courtesy of consultation over important matters regarding their children. A stark example of this has to do with the middle child. The respondent decided on his own that he would like that son to attend private school; took him to investigate the school and meet with school administrators; then enrolled him for the session starting in the Fall of 2011, all without any consultation with the claimant. This has put her in the awkward situation of having to deal with her son's expectation of attending the school when she has not even been consulted or had a chance to investigate whether or not this would be right for him, let alone whether or not it is affordable (regardless of whether or not the trustees will pay for it from the Trust Fund).
- [101] A "views of the children" report was prepared by Dr. Gloria Burima, a Registered Psychologist, dated May 13, 2011 and entered as an exhibit at trial. This report was ordered by the Court. She interviewed the parents and the children. Dr. Burima emphasized more than once in her report that she was not providing a custody or access assessment. The report indicated that prior to Dr. Burima's interviews of the children, the respondent met with them and took them to dinner, and proposed a new access schedule where the children would live with him two weeks, then with their mother for two weeks, and so on. Dr. Burima's report indicated that research has shown that in such circumstances, the children often support the parent's wishes, so as to reduce the conflict between the parents. Thus, while the children seemed to be agreeable to a schedule of two weeks with each parent, alternating, the father's suggestion that this is what he would prefer probably had a significant impact on their views according to Dr. Burima.
- [102] Dr. Burima noted in her report that it is clear that the parents have great difficulty communicating and cannot make joint decisions about the children. She said that it is therefore not likely that they could co-parent. She noted that Mr. Harrison has stated how "angry" he has been at Ms. Harrison, describing her as having "destroyed" their lives, and that he cannot "forgive" her. As such, Dr. Burima stated that:

It appears that neither joint custody nor equal access are in the children's best interests -- unless, once a Parenting Agreement has been developed, the parents work with a Parenting Coordinator to reduce their conflict, improve communication, keep in touch with the children and their needs, and mediate or make decisions concerning the children and their care.

- [103] Dr. Burima recommended, based on the views of the children, that there be a short three month trial of the respondent's preference of a two weeks on/off alternating schedule, and that Dr. Burima interview the children again after that time. She then recommended that a Parenting Agreement be developed for the family, a Custody and Access Assessment Report be completed if necessary, and that once that is done, a qualified Parenting Coordinator be considered to assist in the parenting schedule and in keeping in touch with the children and their needs.
- [104] The claimant is open to a trial period of the children spending two weeks with their father, and then two weeks with her, on an alternating schedule, if this is what the children want. However, she would like this to be scheduled so that she has the children on the weekends that she does not work, and she requests a specific schedule be arranged for holidays.
- [105] The claimant does seek sole guardianship. She testified that it was too difficult to communicate with the respondent to make joint guardianship workable.
- [106] The respondent would like this Court to order joint custody and joint guardianship, with the children spending equal time with each parent on a two week on/off alternating basis. He supports hiring an independent mediator, such as a certified Parenting Coordinator, to resolve issues that the parents cannot otherwise resolve, and also to help in creating a Parenting Agreement. Of course, the problem with this is that the claimant may not be able to afford such measures.
- [107] I am satisfied that the respondent loves the children and is capable of caring for them.
- [108] However, I am very concerned that the respondent's interest in spending equal time with the children is only recent, and he has made no attempt to spend significant time with the children up to the time of trial. I am therefore concerned that the fact that his obligations to pay child support will be reduced if the children spend equal time with him may be motivating his stated interest in such an arrangement. Furthermore, I find that he has not demonstrated an ability to communicate with the claimant with courtesy, openness, and fairness when it comes to matters affecting the children. His conduct suggests that he will do everything to undermine the claimant's parental authority and guardianship.
- [109] It is not in the best interests of the children that their relationship with their mother or her parental authority be undermined by the father, or that the parents be joint decision-makers on important matters affecting them, if the father cannot communicate objectively and reasonably and without an overriding motive to hurt the mother.
- [110] I am therefore not prepared to make an order for joint guardianship. I am also not prepared to order that the claimant provide any specified custody and access to the respondent. Based on the evidence, I conclude that the only workable arrangement is for the claimant to continue to have primary residence of the children, and sole guardianship of the children but that she shall share joint custody with the respondent on the basis that she will grant him reasonable and generous access. She has never limited his access in the past and I am

satisfied she will facilitate and encourage it.

- [111] For the benefit of the children, I recommend that if the parties can find and agree on a source of funding for it, that they follow the recommendations of Dr. Burima with respect to the following:
- a) obtaining an updated Views of the Children report three months after any significant increase in access by the respondent. However, the respondent should not make the same mistake of telling the children his views on the parenting schedule in advance of Dr. Burima's further assessment of them as this will undermine the value of any such assessment;
 - b) a Parenting Agreement be developed for the Harrison family with the help of a professional to be agreed upon by the parties, such as Dr. Burima or a qualified Parenting Coordinator or family mediator; and,
 - c) the parties agree to hire a qualified family mediator or Parenting Coordinator to provide them with ongoing support, to keep in touch with the children's needs, and to assist with resolving parenting issues.

Child Support

- [112] There are considerable issues with respect to child support as the claimant contends that the respondent is not reporting all of his income or is deliberately not earning as much income as he is able, so as to subvert his child support obligations. If I find this to be the fact, then I must impute income to the respondent for purposes of determining his child support obligations. The respondent denies this and states he has honestly reported his income which does reflect his true earnings ability.
- [113] In interlocutory proceedings the respondent was imputed income of \$200,000 per year pursuant to the Interim Order. He was ordered on that basis to pay the claimant \$3,348 per month child support effective September 1, 2009.
- [114] The respondent has had a long history of making over \$200,000 per year prior to separation. In 2008 he earned \$466,729. He told the claimant that he was earning \$20,000 per month when she first told him she wanted a divorce. While in 2009, the year of separation, he made only \$64,500, this was because he quit working after separation which occurred in July 2009 and then according to him, Transputec refused to pay some of his earlier invoices.
- [115] The respondent has argued all along that since separation he has been able to make no more than \$60,000 a year. He therefore refused to pay the amount of child support ordered in the Interim Order and instead he paid on a sporadic basis some lump sums of child support over the last approximately two years. There is therefore an issue of whether or not the respondent should be ordered to pay arrears in child support, or should be relieved of this obligation. In this regard, the respondent did give adequate notice that he would be seeking to cancel arrears, and the claimant gave adequate notice that she would be claiming

arrears, and it is because of delays in the trial that the issue has not been determined before now.

- [116] The respondent has paid child support of \$21,023 in total from after the date of the Interim Order of Walker J. up to June 2011. This was paid over 22 months and so equates to approximately \$955 per month. I do not include in this the amount of \$10,000 paid back to the claimant from the couple's joint account just before the hearing before Walker J. (the respondent retained \$30,000 of the \$40,000 he had taken from the account, and I have considered this in the division of assets). The \$10,000 payment was not child support but simply partial re-payment of a family asset which the respondent had unilaterally taken.
- [117] Returning to Mr. Harrison's income, his reported income is considerably less than it was before separation. He claims that he has been unable to find the same level of paid employment, or consulting contracts, as he used to obtain, as he lost his key client, Transputec. He says he was unable to work for them or find alternative work of equivalent value because of the stresses of the marriage breakdown, which affected his mental state. However, it appears from the evidence that Transputec takes the position that he in fact unilaterally quit working for Transputec after separation.
- [118] The respondent also says that his kind of qualifications are not suitable for someone based near Victoria, B.C., and although he has tried to find better paid work, he has been unable to do so.
- [119] Unfortunately, just as he did on other financial issues, the respondent was coy with respect to his production of documents on the issue of his income. He produced next to no information regarding his consulting contracts or stated attempts to obtain alternative employment. While he did produce his Canada Revenue Agency Notices of Assessment for 2010 and 2011, which show line 150 incomes of \$64,500 and \$57,362 in the last two years respectively, he did not produce the underlying documents which would indicate how his income has been calculated. For example, it is unknown to what extent he might have expenses buried in his business expenses for which he obtains a personal benefit. It is unknown what contracts he has entered into to provide consulting software engineering services. Nor did he produce any evidence which would corroborate his testimony that he is unable to earn more than what he is earning.
- [120] As the claimant presents the evidence, it appears that the respondent has had no difficulty spending money on himself or the children. The claimant says that the respondent took one son on a weekend trip to Seattle in September 2009, to see a professional football game; took a two-week vacation over Christmas and the New Year; has gone skiing several times, including with the children; took one son to an Olympic event at Whistler; purchased a new motorbike for himself at an estimated cost of \$10,000, according to his financial statement; and purchased a motorbike for one son and an expensive drum set.

- [121] I do not accept that the respondent is only able to earn \$60,000 per year, given his earnings history before the marriage breakdown. The respondent has very little credibility given his post-separation conduct and admitted willingness to hide income when it suits his purpose. I accept the claimant's evidence that the respondent told her that she would get nothing on separation, and I find that this has motivated him to earn or report less income than he is otherwise capable of earning. There was some suggestion in the respondent's evidence that he does not want to work to the same capacity as he used to do, and that he would like to pursue a career in teaching. Considering the respondent's past history, the lack of medical evidence that would suggest that he is unable to work to the same capacity as previously, the lack of supportive documentation that would explain the respondent's earnings, and the lack of independent evidence that would corroborate the respondent's suggestion that he is earning at his maximum capacity, I find that the respondent is deliberately under-employed or under-reporting his income, so as to subvert his obligation to pay child support and spousal support.
- [122] I consider it appropriate to impute income to the respondent of \$120,000 per year, which is still considerably less than what he has historically earned pre-separation, but double what he is currently reporting as his income.
- [123] This trial started in May 2010. Prior to that date, and at the time of the Interim Order, and even as at the start of trial, the respondent had not produced all relevant financial information, nor had he sought to appeal or vary the Interim Order. I therefore do not consider it appropriate to vary the Interim Order from September 1, 2009 to May, 2010.
- [124] However, I will consider that as of the start of trial, the respondent's income was in issue, and so I will vary the Interim Order as of May 1, 2010 forward. I impute the respondent's income to be \$120,000 per year as of May 1, 2010 and forward. Based on this income and the Federal Child Support Guidelines, SOR/97-175, the respondent's child support obligations would have been \$2,199 per month.
- [125] Thus, the amount of child support the respondent should have paid, up to July 1, 2011, can be calculated as follows:
- a) from September 1, 2009 to and including May 1, 2010 at \$3,348 per month, for a total of \$30,132;
 - b) from June 1, 2010 to July 1, 2011 at \$2,199 per month, for a total of \$30,786;
 - c) the above figures total \$60,918.
- [126] The respondent has paid child support of \$21,023 from the date of the Interim Order up to June 2011. Therefore, I find the respondent to be in arrears of child support in the amount of \$39,895 (\$60,918 less \$21,023 already paid) and award judgment to the claimant in this amount.

- [127] As for ongoing child support, as of trial the children were living with the claimant more than 60% of the time. There is the possibility in the future that the children will spend more time with the respondent, but until there is in fact a material change in this regard which is ongoing, the child support payments should continue. I order that the respondent pay child support to the claimant of \$2,199 per month as of July 1, 2011.
- [128] As for the claimant, in 2010 she earned \$19,147.17 from one job and \$2,121.62 from another job. She is now working full-time and earning \$40,090 per year.
- [129] If there is a significant change in the children's living arrangements for an extended period of time, for example, if the children spend over 40% of their time with their father for at least eight months, I recommend that the parties negotiate an appropriate amount of child support going forward, based on the claimant's income as reported at line 150 of her tax return and the respondent's imputed income of \$120,000 per year. If such a material change in the amount of time the children spend with their father occurs and is an established pattern over an extended length of time, such as eight months or more, and the parties cannot agree to vary child support, then of course the respondent is free to return to court and to seek a variation in the child support order.

Extraordinary Expenses

- [130] I find that it is appropriate to order that the parties share the extraordinary expenses of the children, pursuant to s. 7 of the Guidelines, in the same proportion as the respondent's imputed income of \$120,000 is to the claimant's income of approximately \$40,000, which is a 75%-25% split. I consider that the children's dental care, eye care, school fees, the cost of at least one extracurricular activity per child, and the cost of any other extracurricular activities agreed to by both parents, are extraordinary expenses to be shared on this basis.
- [131] The claimant says that she has in the past paid for extracurricular expenses for the children for things like music fees, gymnastics, and hockey, as well as fees for the children's dental care and for contact lenses for one child. These expenses total \$2,639.20 as set out in Exhibits 6-8 filed at trial. As well, the claimant has paid for orthodontic treatment for one child, in the amount of \$1,843 as her cost net of reimbursement by her employer's insurance. The total of these figures is \$4,482.20. I consider that these are extraordinary expenses and order the respondent to pay the claimant 75% of \$4,482.20 as his share, namely, the amount of \$3,361.65.

Issues Regarding Spousal Support

- [132] As noted above, on September 22, 2009, Walker J. ordered that the respondent pay spousal support of \$4,461 per month, effective September 1, 2009. The respondent has refused to pay any spousal support despite this Interim Order.

- [133] The respondent argues that spousal support is unnecessary given that they have relatively close incomes, relying on the claimant's current income of \$40,000 per year and his of \$60,000 per year. However, I have found the respondent to be deliberately under-employed or to have under-reported his income. I also impute the respondent's income to be \$120,000 for purposes of spousal support.
- [134] The respondent was not earning her current income until 2011. In 2009 she made less than \$4,000 and in 2010 her income was approximately \$21,000.
- [135] The claimant gave up her own career growth for a significant period of time while she became full-time caregiver for the children, some 13 years, and for eight or nine of those years let her career take a back seat while she supported the respondent's career as a software engineer. She has had to start building a career in Canada from virtually nothing, after separation. While it is admirable that she has now managed to obtain employment earning approximately \$40,000 a year, her standard of living has dropped significantly since separation, and her earnings are less than what they would have been had she focussed on her career instead of the family. Furthermore, for at least two years post-separation, and into the conceivable near future, the claimant has continued to be the primary caregiver for the children, had trouble finding employment and had very low earnings. The claimant is 47 years old, and starting out on a career in Canada. These circumstances mean that the claimant will be not be as capable of earning as much income as the respondent.
- [136] In the circumstances, the claimant is entitled to spousal support, based both on compensatory principles and need: *Moge v. Moge*, [1992] 3 S.C.R. 813; *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420; *W. v. W.*, 2005 BCSC 1010; *Chutter v Chutter*, 2008 BCCA 507 at paras. 50 to 61. I expect that the claimant's needs will diminish over time as she may obtain some progress in her career.
- [137] Given the difficult financial circumstances the claimant found herself in post-separation, and the difficulties in finding suitable employment, the respondent's non-disclosure of relevant information at the time of the Interim Order, and the fact that he did not appeal or seek to vary that order pre-trial, I find it appropriate not to vary the Interim Order with respect to spousal support up to and including May 1, 2010. The arrears of spousal support during that period total \$40,149. I order that the respondent pay this amount as arrears of spousal support.
- [138] If I was to consider the parties circumstances, including their ages and length of marriage, on the basis of the claimant earning income of \$40,000 per year, the respondent earning income of \$120,000 per year, and the respondent paying monthly child support of \$2,199, the Spousal Support Advisory Guidelines would suggest that an appropriate range of spousal support would be from a low of \$666 per month, a mid-range of \$1,027 per month, and a high of \$1,378 per month, for an indefinite duration, with a minimum duration of 9.5 years and a maximum duration of 19 years.

- [139] In terms of spousal support from the date of the start of trial and into the future, I consider an appropriate amount of monthly spousal support payable by the respondent to the claimant, to be \$1,000 beginning June 2010 and continuing for 15 years. This means that the respondent has additional arrears of spousal support for the period June 2010 to August 2011, of \$15,000. The total arrears of spousal support which the respondent must pay the claimant is therefore \$55,149.
- [140] The respondent's monthly obligation to pay \$1,000 in spousal support will be payable on the first of every month, commencing September 1, 2011, and continuing until the last payment on May 1, 2025.

Divorce

- [141] I am satisfied that the requirements of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) have been established on the evidence and that the parties are entitled to a divorce.

Conclusion

- [142] To summarize, I have made the following Orders and declarations:
- a. re-apportionment of 100% of the Property to the claimant, as well as all contents of the family home remaining in the home which the respondent did not already take, and 100% of the 2006 Champion Explorer boat with associated motor, trailer and related equipment, all kayaks and boat trailers, all lawn tools, riding mower, and tractor; and all contents of the barn, or garage, other than the items expressly awarded to the respondent below;
 - b. re-apportionment to the respondent of 100% of the Land Rovers, car parts stored in the barn, dirt bikes or motorcycles, 1971 Springbok boat with associated motor, trailer and related equipment, and the many household possessions and home electronics that he took from the home (furniture, televisions, DVD player, etc.);
 - c. each party can keep the motor vehicles currently in their possession;
 - d. reappportionment to the claimant of the \$6,000 she was previously distributed on the basis of this Court's order of May 14, 2010;
 - e. each party can keep the U.K. pension or RRSP accounts in their own names as disclosed on their Financial Statements filed herein under the heading "Pensions and RRSPs", and mentioned above;
 - f. each party can otherwise keep the assets in their possession and be responsible for their own debts;
 - g. the claimant is to have sole guardianship of the children;

- h. the claimant and respondent are to share joint custody of the children, with their primary residence being with the claimant, and the claimant providing such reasonable and generous access to the respondent as she sees fit;
- i. the respondent is deemed to have an income of \$120,000 for purposes of calculating child support, and spousal support;
- j. the claimant has an income of approximately \$40,000 for purposes of calculating child support and spousal support;
- k. the respondent must pay the claimant \$39,895.00 as arrears of child support;
- l. the respondent must pay the claimant \$2,199 per month as child support;
- m. the respondent must pay the claimant \$3,361.65 for past extraordinary expenses incurred on behalf of the children;
- n. the respondent must pay 75% and the claimant must pay 25% of the out-of-pocket extraordinary expenses of the children which they incur, going forward;
- o. the children's dental care and eye care (net of any insurance reimbursement), school fees, the cost of at least one extracurricular activity per child, and the cost of any other extracurricular activities agreed to by both parents, are extraordinary expenses pursuant to s. 7 of the Guidelines;
- p. the respondent must pay arrears of spousal support to the claimant in the amount of \$55,149;
- q. the respondent must pay monthly spousal support to the claimant of \$1,000 per month, due on the first of every month, commencing September 1, 2011 and continuing until the last payment on May 1, 2025; and,
- r. subject to s. 12 of the Divorce Act, the parties are divorced from each other, the divorce to take effect 31 days after the date of these reasons.

[143] The claimant is also entitled to her costs of this proceeding.

[144] In order to facilitate the rulings I have made the parties must take steps to register sole ownership of the Property in the name of the claimant.

[145] For clarity, the result of this judgment means that the respondent is no longer entitled to access the barn on the Property without the permission of the claimant, as exclusive ownership of the Property is now that of the claimant.

[146] Subject to the parties agreeing otherwise, the respondent must at a time that is convenient to the claimant and no later than 30 days after this judgment, at his cost:

- a. remove any property which I have declared to be apportioned to the respondent, which is currently stored in the barn located at the Property, to a location of his choosing away from the Property; and
- b. return to the claimant any property which I have declared to be apportioned to her which is currently in his possession, to a location where she directs, no later than 31 days after this judgment.

[147] If one of the parties requires further direction of the court to enforce this judgment, that party may apply before any judge of the court for further directions or orders.

"S. Griffin, J."

The Honourable Madam Justice S. Griffin

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/11/11/2011BCSC1139cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/harrison-v-harrison-2011>

Prepared on 29 October 2026 · Esheria