
CANADA / JUDGMENT

Harrison v. Harrison

2020 BCSC 1203

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Supreme Court of British Columbia

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2020 BCSC 1203 Harrison v. Harrison

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Harrison v. Harrison,

2020 BCSC 1203

Date: 20200814

Docket: E46482

Registry: Kamloops

Between:

Deena Charlene Harrison

Claimant

And

Walter Ross Christopher Harrison

Respondent

Before: The Honourable Madam Justice MacNaughton

Reasons for Judgment

Counsel for the Claimant:

R. Lammers

Counsel for the Respondent:

J. Mariona

Place and Date of Trial/Hearing:

Kamloops, B.C.

July 15, 2020

Place and Date of Judgment:

Kamloops, B.C.

August 14, 2020

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The Parties' Relationship

- [1] The parties had an 18-year relationship. They began living together on May 1, 1993, and married on September 2, 1995. They separated on February 18, 2011, and, following a summary trial, were divorced by order of Justice Hyslop on April 19, 2013. Justice Hyslop issued written reasons for judgment indexed as 2013 BCSC 685 (the "Hyslop Reasons").
- [2] Based on their ages as set out in the Hyslop Reasons, Ms. Harrison, or Ms. Rabe, as she now prefers to be known, is currently about 45 years old, and Mr. Harrison is about 49.

The Hyslop Reasons

- [3] When the parties appeared before Justice Hyslop, Mr. Harrison was in a new relationship and living in Logan Lake, BC, where both he and his new partner worked for Teck Highland Valley Copper ("HVC"). Mr. Harrison worked as a machine operator. Ms. Rabe worked as a cook in a restaurant in Savona. Neither had post-secondary education.
- [4] The Hyslop Reasons dealt with divorce, retroactive and ongoing child and spousal support, and custody of the parties' two children (the "Children").
- [5] The property issues were dismissed on consent. It appears from the Hyslop Reasons that, apart from Mr. Harrison's pension, which was divided by an earlier court order, the parties had very little property to divide.
- [6] Ms. Rabe resided in the former family home, which was worth less than the mortgage registered against it. Ms. Rabe was not paying the mortgage, the bank had demanded payment of the full amount owing, and neither party was in a position to redeem the mortgage: para. 13. The parties had entered into a consumer proposal in December 2009 under which they were required to pay \$800 a month: para. 14.
- [7] The Children were residing with Ms. Rabe. The parties' daughter was almost 16 and in high school. Although the parties' son was 19, he was attending university on a part-time basis. Both were found to be "children of the marriage" for the purposes of child support.
- [8] In brief, and as relevant to the variation applications before me, Justice Hyslop determined that Mr. Harrison's income was \$107,063 for the purposes of child and spousal support and that Ms. Rabe's income was \$40,000 for the purposes of spousal support and her contribution to the Children's extraordinary expenses.
- [9] Based on his income, Mr. Harrison was ordered to pay monthly child support of \$1,569 for the support of the Children and an additional \$70 per month for his share of special expenses for the parties' daughter.
- [10] With respect to spousal support, before Justice Hyslop, Mr. Harrison sought an order that he pay retroactive spousal support so that he could deduct, for income tax purposes, amounts he said he paid to Ms. Rabe as child and spousal support after their separation.
- [11] As the parties did not agree about the amounts that Mr. Harrison had paid to Ms. Rabe, there was no order differentiating child from spousal support, and the parties had not brought interim applications for child and spousal support, Justice Hyslop declined to make a retroactive spousal support order to the date of separation: at paras. 16-17. She ordered child and spousal support retroactive to January 1, 2013, and gave Mr. Harrison credit for payments he had made to Ms. Rabe in 2013 as against arrears of child support.

- [12] Justice Hyslop concluded that Ms. Rabe was entitled to compensatory spousal support as she did not work in the early years of the marriage and, between 1995 and 2005 when the Children were young, worked in low-paying and part-time employment to accommodate the needs of her family. She began working full time in 2005.
- [13] Justice Hyslop found, based on the parties' incomes of \$40,000 and \$107,063, that the range of spousal support pursuant to the Spousal Support Advisory Guidelines [SSAG] formula was: low - \$749; mid - \$1,084; and high - \$1,420 for an indefinite (unspecified) duration, subject to variation and possible review, with a minimum duration of eight-and-a-half years and a maximum of 17 years from the date of separation: para. 44. Although Mr. Harrison's counsel relied on a different SSAG calculation in his submissions, I am bound by Justice Hyslop's finding in that regard, which was not appealed.
- [14] Mr. Harrison was ordered to pay monthly spousal support of \$1,000 under the SSAG, commencing January 1, 2013. Although the Hyslop Reasons are silent as to whether the spousal support was calculated on a "with child support" basis, I presume that this was the case. If the order had been made on a "without child support" basis, the Reasons would have explained why.
- [15] In the Hyslop Reasons, Justice Hyslop did not specify the duration of spousal support; it was an indefinite order. Nor did she explain why the spousal support was set at less than the mid-range of the SSAG, although she implies that she took into account the fact that Mr. Harrison did not receive tax deductions, and Ms. Rabe did not pay tax, for amounts he paid toward spousal support prior to January 2013: paras. 46-47.
- [16] At para. 40 of her reasons, Justice Hyslop required the parties to exchange their income tax information annually, commencing June 2014:

Mr. and Mrs. Harrison must provide each other with a copy of their tax return filed for the previous year, together with all assessment notices and re-assessment notices. They shall immediately re-calculate, if necessary, the child support payable under this order or subsequent orders which shall include special and extraordinary expenses. Commencing the following month, and on July 1, 2014, child support shall be increased or decreased accordingly. In addition, Mr. Harrison will file with the court a copy of his 2011 and 2012 tax returns, and he will provide copies to Mrs. Harrison.

- [17] As drafted, the formal order read, at para. 10:

On June 1 of each and every year, commencing June 1, 2014, the parties will exchange copies of their income tax returns, Notices of Assessment and/or Reassessment and the parties must make adjustments to child support as necessary, including the contribution towards the extraordinary expenses of the Children.

- [18] As outlined below, this term of the Hyslop Reasons became a contentious issue between the parties.

The Donegan Reasons

- [19] About a year after the Hyslop Reasons, Mr. Harrison applied to vary or cancel spousal support and to cancel child support for the parties' son, or to pay it directly to his son. Mr. Harrison also sought to have accumulated arrears of child and spousal support reduced or cancelled.
- [20] Mr. Harrison submitted that there was a material change in Ms. Rabe's circumstances. He asserted that Ms. Rabe had been living in a common-law relationship with Clint Harper since August 2013 and that she benefitted from shared living expenses and an additional household income.
- [21] In reasons for judgment, indexed as 2014 BCSC 1220, Justice Donegan dismissed Mr. Harrison's applications and ordered him to pay costs (the "Donegan Reasons"). She concluded that the evidence did not establish that Ms. Rabe and Mr. Harper were in a common-law relationship and determined that the parties' son continued to be a child of the marriage: paras. 17, 53. Justice Donegan also declined to order that child support be paid directly to the parties' son: para. 55.
- [22] When the Donegan Reasons were issued, Mr. Harrison was in arrears of both child and spousal support and Ms. Rabe was enforcing his obligations through the Family Maintenance Enforcement Program ("FMEP"). Justice Donegan declined to reduce or cancel Mr. Harrison's arrears of support: para. 62.

Events following the Donegan Reasons

- [23] Since the Donegan Reasons, both of the Children "aged-out" of child support and are no longer children of the marriage. They live independently, and Mr. Harrison is no longer paying child support.
- [24] The parties' son stopped attending university in December 2014. Ms. Rabe advised FMEP of the change and that she no longer sought enforcement of the child support order with respect to him.
- [25] The parties' daughter graduated from high school in June 2015 and turned 19 on April 15, 2016. She did not pursue post-secondary education and started working full time in February 2017. Ms. Rabe advised FMEP of the change and that she no longer sought enforcement of the child support order with respect to her daughter.
- [26] Mr. Harrison stopped sharing his tax returns with Ms. Rabe once he was no longer required to pay child support. Prior to these applications, he last provided his tax information for the year 2015 despite repeated requests from Ms. Rabe that he do so. Mr. Harrison took the position that the order with respect to the disclosure of annual tax information was solely for the purpose of calculating his child support obligations. When read in conjunction with the Hyslop Reasons, I conclude that he was wrong in his interpretation. Ms. Rabe has continued to provide her tax returns in compliance with the Hyslop Reasons.

The Cross Applications

[27] In her notice of application, Ms. Rabe seeks the following orders:

1. an order varying the final order in the Hyslop Reasons, increasing the spousal support payable by Mr. Harrison to an amount in accordance with the SSAG on a without child support basis;
2. an order fixing an amount of spousal support arrears owing by Mr. Harrison; and
3. her costs.

[28] In his notice of application, Mr. Harrison seeks the following orders:

1. that Ms. Rabe attend an examination for discovery;
2. subject to item 3, below, that his obligation to pay spousal support be cancelled, or that the amount payable be reduced as of January 1, 2020;
3. that the issue of whether his spousal support obligation should be cancelled or reduced, be adjourned to the trial list;
4. his costs; and
5. such further and other relief or directions as deemed just by the court.

Mr. Harrison's Preliminary Application to Adjourn to the Trial List

[29] The parties agreed that it was appropriate for me to deal first with Mr. Harrison's application to adjourn Ms. Rabe's application to the trial list.

[30] After hearing the submissions, I delivered oral reasons declining to make that order.

[31] I concluded that Ms. Rabe had attended the requested examination for discovery. Despite making a request for her bank records and credit line statements, which was taken under advisement, Mr. Harrison did not follow up on his requests for those records even by way of correspondence to Ms. Rabe's counsel.

[32] Applying the factors from *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, [1989] B.C.J. No. 1003 at para. 48 (C.A.), for assessing whether a matter should proceed summarily, I concluded that the application to vary was not complex, as evidenced by the fact that Mr. Harrison had brought an earlier unsuccessful chambers application to vary or cancel his spousal support obligation on the grounds that Ms. Rabe was in a common-law relationship with Mr. Harper.

- [33] In the application before me, Mr. Harrison's evidence in relation to the alleged nature of the relationship between Ms. Rabe and Mr. Harper was entirely based on unattributed speculation and hearsay. Although Mr. Harrison filed an affidavit from his daughter, attaching a statement from her describing the nature of Ms. Rabe's relationship with Mr. Harper, the statement does not provide any information about the financial aspects of that relationship.
- [34] Ms. Rabe denied that she was in a financially integrated relationship with Mr. Harper or that she benefitted financially from him. According to her affidavit evidence, she and Mr. Harper have entirely separate finances and she pays him \$800 in monthly rent to live in the home he owns. Her rent includes the use of household utilities. They have no joint bank accounts, investments, credit cards, loans, or property. They do not share particulars of their income or assets.
- [35] Ms. Rabe described their arrangement as convenient for both of them. Mr. Harper works out of town on pipeline construction and is sometimes out of town for two to three months at a time, and she maintains the house for him. She describes that they are not in an exclusive relationship and says that they are in a "friendly, dating-like relationship which is largely driven by convenience." Ms. Rabe says that she does not believe that her relationship with Mr. Harper will change.
- [36] Although Ms. Rabe was examined for discovery, Mr. Harrison did not rely on the transcript in argument before me. Mr. Harrison did not seek to cross-examine Ms. Rabe on her affidavits. As a result, Mr. Harrison did not point to any inconsistency between Ms. Rabe's sworn evidence on these applications and any other evidence, including her discovery transcript, giving rise to a credibility concern. Thus, there was no evidence to contradict Ms. Rabe's evidence about the financial aspects of her relationship with Mr. Harper.
- [37] I concluded that there was no prejudice to the matter proceeding on the chambers list. Support variation applications are frequently dealt with in chambers. Even when the total of Ms. Rabe's request for increased support is calculated over an indefinite duration, it did not warrant a three- or four-day trial.
- [38] I proceeded to hear arguments on the competing applications with respect to the variation of the Hyslop order.

The Test to Vary a Final Spousal Support Order

- [39] There is no dispute that the court may vary a support order pursuant to s. 17(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA]. In fact, both parties seek such an order.
- [40] Subsections 17(4.1) and 17(7) of the DA set out the factors and the objectives a court must consider in an application to vary a final spousal support order. Those sections provide:

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

(7) A variation order varying a spousal support order should

- (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
- (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

[41] As a result, a variation of a final support order may only be made if the applicant has established that there has been a material change in the circumstances of either party since the original order.

[42] In his variation application, Mr. Harrison relies on the fact that Ms. Rabe has re-partnered as a material change in her circumstances. To a lesser extent, Mr. Harrison submits that Ms. Rabe has been adequately compensated for her contribution to the family and, since the Hyslop Reasons, has had ample time to become economically self-sufficient.

[43] In her variation application, Ms. Rabe relies on the fact that Mr. Harrison is no longer paying child support as a material change in his circumstances. To a lesser extent, Ms. Rabe relies on the increase in Mr. Harrison's income from HVC since the Hyslop Reasons.

[44] Section 15.3(3) of the DA provides:

Where, as a result of giving priority to child support, the amount of a spousal support order is less than it otherwise would have been, any subsequent reduction or termination of that child support constitutes a change of circumstances for the purposes of applying for a variation order in respect of the spousal support order

[45] More generally, what amounts to a material change in circumstances has been defined as a change that, if known at the time of the original order, would likely have resulted in different terms: *Willick v. Willick*, [1994] 3 S.C.R. 670 at 688; *L.M.P. v. L.S.*, 2011 SCC 64 at para. 32.

[46] In *Walters v. Walters*, 2011 BCCA 331 at para. 48, Justice D. Smith reaffirmed the court's earlier decision in *Oakley v. Oakley* (1995), 48 R.F.L. (2d) 307 (B.C.C.A.):

An application to vary or rescind maintenance payments will proceed on the basis of the following principles: the court is to take the amount of maintenance originally ordered as the correct amount at the time the order was made and then to consider to what extent the circumstances of the parties have altered or changed since the decree nisi was granted. The onus to show that such changes have occurred lies on the applicant. Maintenance will be varied where the balance between the parties has become so distorted that it has become unjust. Where a decree nisi is obtained by consent or where the decree nisi has incorporated maintenance provisions contained in the separation agreement made between the parties the court should not lightly disturb the order and the party seeking the variation must show not only some changes in circumstances, but conditions which arouse the conscience of the court and call for action.

Does Mr. Harrison's change in income amount to a material change?

[47] On the evidence in this case, I do not find that Mr. Harrison's change in income amounts to a material change in his circumstances.

[48] Mr. Harrison still works for HVC, doing the same job as he did when the Hyslop Reasons were issued. He is a unionized employee. In 2013, Justice Hyslop found his income to be \$107,063. According to his 2019 T4, he earned \$130,345.26, which, net of union dues of \$1,808.78, results in an income of \$128,536.48 for spousal support purposes.

[49] The fact that Mr. Harrison received pay increases between 2013 and 2019 is not a surprise to either party; raises are to be expected in unionized employment.

[50] Mr. Harrison's income has increased approximately 20% from 2013 or, when averaged, about 4% a year.

[51] Ms. Rabe also works at the same job for the same employer as she did when Justice Hyslop made her order.

[52] Between 2013 and 2019, her income has increased from \$40,000 to \$44,368.13. Ms. Rabe's income has increased approximately 11% from 2013 or, when averaged, about 2.2% a year.

[53] In my view, the changes in the parties' incomes has not resulted in the balance between the parties becoming so distorted that it has become unjust. It is not a change that, if known at the time of the Hyslop Reasons, would likely have resulted in different terms. Both parties would have anticipated that Mr. Harrison's income would increase as his union negotiated pay increases on his behalf as part of the normal bargaining process. Mr. Harrison is doing the same job at HVC and there is no evidence that the increases Mr. Harrison received were based on anything other than the regular increases available to all employees.

Does the cessation of Mr. Harrison's child support payments amount to a material change in the parties' circumstances?

[54] The starting point for the analysis of this question is s. 15.3(3) of the DA. As explained in the SSAG at Section 14.5 (page 146):

As children get older, finish their education or otherwise cease to be children of the marriage, then the child support obligation ends. What happens at that point? In our view, it should be possible for either spouse to apply to cross over from the with child support formula to the without child support formula, by way of application to vary or review. This crossover would be entirely consistent with the approach and language of s. 15.3 of the Divorce Act, especially s. 15.3(3). Section 15.3(3) provides that in cases where spousal support was reduced or not ordered because of the priority given to child support, any subsequent reduction or termination of child support constitutes a change of circumstances for the purposes of bringing an application to vary spousal support.

[55] In *Willms v. Willms*, 2020 BCCA 51, the Court of Appeal considered whether the fact that child support is no longer being paid amounts to a material change in circumstances.

[56] In *Willms*, the parties were the parents of two children. Based on the parties' respective incomes, child support was set, payable until the children were no longer children of the marriage, or until further adjustment. Spousal support was assessed using the SSAG "with child support" formula. Over time, child support was varied as the children changed their primary residence and as Mr. Willms' income increased.

[57] When child support ended, Ms. Willms applied to increase spousal support retroactively to the date on which the parties' youngest child reached 19 years of age. Mr. Willms applied for an order reducing his spousal support obligation, arguing that Ms. Willms was underemployed and additional income should be imputed to her.

[58] The trial judge dismissed Mr. Willms' application to impute income to Ms. Willms. He ordered an increase in spousal support to an amount in the SSAG mid-range assessed on the "without child support" formula, retroactive to the date on which the youngest child reached 19 years of age and thereafter for an indefinite period.

[59] In so doing, the trial judge reviewed a number of cases, including *Wooldridge v. Wooldridge*, 1999 ABCA 124; *McIntosh v. McIntosh*, 2007 BCSC 1331; and *Goodkey v. Goodkey*, 2015 ABCA 394. All of these decisions stood for the proposition that the SSAG determines ranges for spousal support taking into account the amount of child support that is paid and that the termination of child support is a change in circumstances allowing for a variation in spousal support. At para. 28 of *Wooldridge*, a successful appeal from the termination of spousal support on a review contemplated by the parties' separation agreement, the Alberta Court of Appeal said:

[28] Recognizing the economic disadvantages to the wife as a result of the marriage and the marriage breakdown, as well as the financial consequences of caring for the children of the marriage on the wife, we consider it appropriate to set the quantum of spousal support at \$2,500.00 per month. We consider this amount to be relatively low, bearing in mind that this

amount is tax deductible by the husband and included in the income of the wife, but we recognize that the husband is still paying child support (though now for only three children). As that obligation is reduced, and if the wife's circumstances have not allowed her to attain any real economic self-sufficiency, she may be eligible for a more substantial increase. In that regard, the cessation of child support in any amount would ordinarily be a sufficient change in circumstance to allow a variation.

[60] Further, as Justice Chamberlist explained in McIntosh:

[58] The Divorce Act clearly gives priority to child support and indicates in s. 15.3 that, if spousal support is less than it would otherwise have been as a result of the child support, then when the child support terminates, it is a change of circumstances which allows for a variation in the spousal support order.

[61] As relevant to this case, the Court of Appeal in Willms upheld the trial judge's variation of spousal support based on the termination of child support amounting to a material change in circumstances: at para. 47.

[62] Mr. Harrison's counsel argues that s. 15.3(3) of the DA does not apply because the Hyslop Reasons did not reduce the spousal support to which Ms. Rabe was entitled in order to prioritize child support. As I understand his submission, the required reduction in spousal support would be applied after determining the appropriate with child support calculation under the SSAG.

[63] There are two difficulties with this argument. First, Justice Hyslop did reduce, albeit slightly, the mid-range spousal support to which Ms. Rabe was entitled. Second, and more fundamentally, that submission does not consider the priority given to child support already built into the SSAG calculation of the quantum of spousal support on a with child support basis. That priority is demonstrated in examples set out at Section 14.5 of the SSAG at page 147.

[64] In this case, once Mr. Harrison was no longer required to pay child support, his financial means increased, and the financial means previously available to Ms. Rabe's household decreased. That amounts to a material change in circumstances putting Ms. Rabe in the crossover situation described in the SSAG. Spousal support should be calculated on a without child support formula.

Has Ms. Rabe re-partnered, and what effect should that have on spousal support?

[65] Section 14.7 of the SSAG reads, at 148-49:

The remarriage or re-partnering of the support recipient does have an effect on spousal support under the current law, but how much and when and why are less certain. There is little consensus in the decided cases. Remarriage does not mean automatic termination of spousal support, but support is often reduced or suspended or sometimes even terminated.

Compensatory support is often treated differently from non-compensatory support. Much

depends upon the standard of living in the recipient's new household. The length of the first marriage seems to make a difference, consistent with concepts of merger over time. The age of the recipient spouse also influences outcomes.

In particular fact situations, usually at the extremes of these sorts of factors, we can predict outcomes. For example, after a short-to-medium first marriage, where the recipient spouse is younger and the support is non-compensatory and for transitional purposes, remarriage by the recipient is likely to result in termination of support. At the other extreme, where spousal support is being paid to an older spouse after a long traditional marriage, remarriage is unlikely to terminate spousal support, although the amount may be reduced.

[66] The issue of the effect of re-partnering on a spousal support order has been considered in a number of cases in this Court, none of which were referred to by Mr. Harrison in his written submissions.

[67] In *Morigeau v. Moorey*, 2013 BCSC 1923 at para. 26, aff'd 2015 BCCA 160, Justice Savage, when a member of this Court, summarized the principles he derived from the authorities on a s. 17 application to vary spousal support on the basis of re-partnering. He said at para. 26:

1. The threshold question in each case is whether there has been a material change in circumstances from the date of the previous order, i.e., a change which, if known at the time, would have resulted in a different order: *Willick v. Willick*;
2. Because of the different tests involved, cases involving initial applications for spousal support under s. 15.2 of the Divorce Act are of limited value in deciding an application to vary under s. 17 of the Divorce Act: *L.M.P. v. L.S.*, *Fargey v. Fargey*;
3. Although the focus of the analysis is on the original order and the circumstances in which it is made, the court will not consider the correctness of the original order, nor will the original order be departed from lightly: *Willick v. Willick*;
4. Remarriage or re-partnering is not, in and of itself, sufficient to trigger a material change in circumstances: *G. (L.) v. B. (G.)*, *Kelly v. Kelly*;
5. If the applicant knew that the former spouse was seeing a third party and cohabitation was foreseeable at the time of the original order, cohabitation may not trigger a material change in circumstance: *G. (L.) v. B. (G.)*, *J.W.J.M. v. T.E.R.*;
6. The circumstances of the re-partnering may have a bearing on the analysis: *Rakose v. Rakose*, *Redpath v. Redpath*.

[Citations omitted in original.]

[68] In this case, the third, fourth, and sixth principles are most relevant.

- [69] At para. 32 of Morigeau, in obiter, Justice Savage cited para. 103 of J.W.J. McC. v. T.E.R., 2007 BCSC 252, and explained that compensatory support is based on the equitable sharing of the economic consequences of a marriage and its breakdown, and should continue until adequate compensation has been made, even if the recipient spouse has achieved a degree of self-sufficiency.
- [70] In Moge v. Moge, [1992] 3 S.C.R. 813, the Supreme Court of Canada rejected the concept that promoting self-sufficiency is the primary goal of a spousal support order with the ultimate objective of a clean break between the spouses. Self-sufficiency is just one of the four objectives of spousal support in s. 17(7) of the DA, and it is qualified by the wording, "in so far as is practicable".
- [71] In his affidavit material, Mr. Harrison relies on Facebook postings by his daughter, Ms. Rabe, and Mr. Harper to support his conclusion that Ms. Rabe and Mr. Harper are in a marriage-like relationship. Those pages are almost illegible and appear to date back to 2012 and/or 2015. They do not establish that Ms. Rabe and Mr. Harper are in a marriage-like relationship. Mr. Harrison's affidavit is replete with unattributed hearsay and argument: see, for example, paras. 12, 14, and 15. He does not set out the basis for his knowledge about the nature of Ms. Rabe and Mr. Harper's relationship. Presumably, this would have been a focus of questions on Ms. Rabe's examination for discovery, but I was not taken to any inconsistency between her discovery and affidavit evidence.
- [72] He also relies on an undated statement from the parties' daughter, which is attached to an affidavit dated February 26, 2020. The affidavit is not helpful as it does not address the financial aspects of her mother's relationship with Mr. Harper and I accept that Ms. Rabe would not discuss private and intimate details about her relationship with her daughter.
- [73] Ms. Rabe sets out the nature of her relationship with Mr. Harper in her affidavit. As I set out above in my discussion of Mr. Harrison's adjournment request, Mr. Rabe's relationship with Mr. Harper is not one of economic co-dependence and, although she receives some benefit from it in the form of reduced accommodation costs, she is not financially supported by him. While recognizing that economic dependency is not an essential characteristic of a marriage-like relationship, I find that Ms. Rabe's circumstances have not, in fact, materially changed since the parties separated or since the Donegan Reasons.
- [74] There is no evidence to contradict Ms. Rabe's affidavit, and I find that she has not achieved self-sufficiency.

The Quantum of Spousal Support

- [75] The next issue is the appropriate spousal support order given the material change in circumstances and the objectives of a variation order set out in s. 17(7) of the DA.

- [76] In this case, it is not disputed that Ms. Rabe's entitlement to spousal support is compensatory. The duration of spousal support of between eight-and-a-half and 17 years was driven by the 18-year length of the parties' marriage. The fact that Mr. Harrison was required to pay child support, and its priority over spousal support, resulted in Ms. Rabe receiving less spousal support than she would have if support had been calculated on the without child support formula in the SSAG.
- [77] The respondent argues that he has already paid spousal support for longer than eight-and-a-half years, the minimum duration contemplated in the SSAG. He makes this argument on the basis that the parties have been separated for over nine years. I do not agree. The Hyslop Reasons ordered spousal support retroactive to January 2013. Any payments Mr. Harrison made before that date were disputed and specifically not characterized as spousal support. Thus, Mr. Harrison has been paying spousal support for less than eight years, below the minimum duration, and considerably below the maximum duration, contemplated in the SSAG.
- [78] In this case, there are issues with the information provided in Mr. Harrison's Form 8 financial statement sworn on February 21, 2020. For example, in his monthly expenses, he sets out payments for rent or mortgage, property taxes and property insurance, house repairs and maintenance, but lists no real estate on his list of assets. He lists two cars as his property, with a total value of \$23,000, but says that he is making monthly debt payments of \$2,632.90 on two joint Bank of Nova Scotia truck loans and a loan for a Tricor vehicle. On his list of secured debts, he lists joint debt with his spouse on two vehicle loans in the total amount of \$156,500 and a further personal secured loan of \$26,550 on the Tricor vehicle. He does not list the Tricor vehicle as an asset or any interest in the trucks.
- [79] Mr. Harrison sets out his income as \$115,000, which was less than he earned in 2016-2018. In fact, his 2019 T4 indicates that he had income of \$130,345.
- [80] There are also issues with Ms. Rabe's financial information as set out in her Form 8 financial statement sworn on December 30, 2019. She refers to lease payments on a Toyota Tacoma as one of her monthly expenses, but does not list the Tacoma on her property schedule. Nor does she list the amount of debt secured against the Tacoma on her list of debts. Ms. Rabe lists \$48,500 in unsecured debts. Two of those debts, totalling \$23,000, are to a sister and a friend, but she does not say when the debts were incurred. Further, she does not list the disposal of any assets on her financial statement although, according to her counsel, she has cashed in investments.
- [81] Ms. Rabe's 2019 employment income was \$44,368, and she accurately recorded that on her financial statement. For income tax purposes, she declared that she received \$12,000 in spousal support.

- [82] Despite the gaps in the parties' financial statements, I conclude that there is a current disparity in the parties' standards of living which should not exist after an 18-year marriage. Ms. Rabe is still entitled to compensation for the role she assumed in the marriage as the primary caregiver to the parties' children, thereby permitting Mr. Harrison to pursue his employment with HVC.
- [83] As to the quantum of spousal support, I accept that Ms. Rabe's income is \$44,368.13 as set out in her financial statement. I set Mr. Harrison's income as \$128,536, based on his 2019 T4 income net of union dues. Based on mid-range spousal support, and the level of the original spousal support order, Mr. Harrison is to pay ongoing spousal support in the amount of \$2,209. The varied support is to be of indefinite duration.
- [84] As to the date of the commencement of the varied support, Ms. Rabe's counsel submits that I should take into account what she describes as Mr. Harrison's blameworthy conduct in failing to provide his income tax information as required by the Hyslop Reasons. I accept Ms. Rabe's interpretation of the Hyslop Reasons as to the ongoing obligation to disclose their income tax returns. Nevertheless, I think that Mr. Harrison's belief that the obligation was tied to his child support obligation was not unreasonable and does not amount to blameworthy conduct.
- [85] I am more concerned that Mr. Harrison's financial information is still not properly before the court. In all the circumstances, I find that it is appropriate to make the varied spousal support award retroactive to January 1, 2020. Ms. Rabe's application for a variation of spousal support was filed on December 30, 2019, and there was no evidence that Mr. Harrison had notice of her intent to seek a variation at an earlier date.
- [86] I order Mr. Harrison to provide a revised Form 8 financial statement within 30 days of the date of these reasons to include the necessary tax returns, including his tax return for 2019. If Mr. Harrison's income is different than as set out in his 2019 T4, Ms. Rabe may apply to revise the varied spousal support order accordingly.
- [87] The parties did not make submissions on costs. Ms. Rabe has been successful, and absent any other information that might affect a costs order, and that is not before me, costs would normally follow the event. If the parties are unable to agree on an appropriate costs order, they may seek to appear before me for submissions.

"MacNaughton J."

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