

CANADA / JUDGMENT

J.A.T.P. v. H.M.

2023 BCSC 1484

COURT

Supreme Court of British Columbia

DECIDED

24 August 2023

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2023 BCSC 1484 J.A.T.P. v. H.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.A.T.P. v. H.M.,

2023 BCSC 1484

Date: 20230824

Docket: E211620

Registry: Vancouver

Between:

J.A.T.P.

Claimant

And

H.M.

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraphs 1, 29, 44, 69, 70, 133, 142, 143, 153, 163, 199, 202 and 203 on August 29, 2023.

Before: Master Bilawich

Reasons for Judgment

Counsel for the Claimant:

L. A. Cruickshank

Counsel for the Respondent:

T. R. Bell

R. Safartabar

Place and Date of Hearing:

Vancouver, B.C.

June 6-7, 2023

Place and Date of Judgment:

Vancouver, B.C.

August 24, 2023

Introduction

- [1] Before me are cross-applications, both of which seek orders fixing interim child support, spousal support and allocation of financial responsibility for various expenses pending trial. The respondent also asks that a recreational property and a yacht registered in the claimant's name be sold. The parties previously consented to an interim without prejudice order which was intended to address financial issues which arose immediately after separation, but it has proven to be problematic. Both parties now agree a new arrangement is necessary.
- [2] An unusual feature in this case is the respondent's income. In 2022 his net Federal Child Support Guidelines income was about \$13,222,049. This puts him well above the "ceiling" specified in both the Federal Child Support Guidelines ("Guidelines") and the Spousal Support Advisory Guidelines ("SSAG"). The living expenses claimed are likewise exceptional. The claimant's financial statement identifies expenses of roughly \$190,000 per month or \$2,287,000 per year. The parties have very different views regarding how much interim support is appropriate.

Background

- [3] The parties disagree regarding the date of their cohabitation started. The claimant says it was May 1, 2016, around the time they began dating. The respondent says it was March 1, 2017, around the time they became engaged. It is not necessary to decide this issue for purposes of this application.
- [4] The parties were married on October 29, 2017 and separated on June 30, 2021. They have one child of their marriage, "Z" (age 4).

- [5] The claimant is 44 years of age and is a duly qualified lawyer. She was called to the BC Bar in 2015. Her last legal job was as an associate with a prominent downtown Vancouver law firm. She was on a medical leave when the parties separated, and has not worked outside the home since the date of separation.
- [6] The claimant entered the relationship with relatively modest assets. In this proceeding, she seeks a division of family property and the increase in value of the respondent's excluded property. In argument, counsel suggested that, depending on what the date of cohabitation is found to be, her property claim could be in the order of \$12-30 million or more.
- [7] The respondent is 56 years of age and works as a senior executive with a national investment firm. He was previously a senior executive and shareholder in a boutique investment firm that was acquired by his current employer. He has worked in his profession for about 34 years and has indicated that he wishes to retire by the end of 2025. His recent financial statement discloses assets with an estimated value of \$125 million and debts of about \$17.6 million.
- [8] The respondent has three children from his first marriage to "ZS" ("Ms. S"). They had three children; "J" (age 21), "A" (age 20) and "R" (age 17). J and A have been attending post secondary institutions in the USA. R currently lives with Ms. S, but will start post-secondary studies in the USA in fall 2023. The respondent currently pays Ms. S basic child support of \$34,500 per month, plus 85% of the children's special and extraordinary expenses, currently a further \$17,500 per month, for a total of \$52,000 per month.

Parties' Incomes

- [9] The claimant has not worked since the parties separated. She currently has nominal income. The respondent asks that she be imputed as having an income of \$175,000, based on intentional unemployment.
- [10] The respondent's line 15000 income on his T1 Income Tax returns in recent years have been as follows:

Year

Amount

2022

\$14,100,061

2021

\$14,332,747

2020

\$11,573,337

2019

\$9,752,812

[11] After deducting carrying charges of \$863,536, his net 2022 Guidelines income was about \$13,222,049.

Parties' Relationship

[12] The parties started dating in early 2016. The claimant says they became serious and inseparable immediately. She says the respondent gave her a bank card, they began trying to conceive a child and they were actively searching for a new family home. The respondent says initially their relationship was tumultuous and uncertain.

[13] In about July 2016, the claimant began working as an associate with a prominent Vancouver law firm. She began developing her own clientele somewhat earlier than normal for a new associate.

[14] In February 2017, the respondent transferred \$500,000 to the claimant as a "financial cushion". The respondent says the claimant had requested a show of faith and commitment from him.

[15] At the beginning of March 2017, the parties became engaged. The respondent says the engagement did not stabilize their relationship and there was significant conflict between the claimant and at least two of his children. In September 2017, the parties called off their wedding plans. They subsequently reconciled and eloped on October 29, 2017.

[16] The respondent says the conflict between the claimant and his children continued, with J, A and the claimant all indicating they could not live under the same roof. The respondent purchased a second home in West Vancouver (the "Bellevue Property") where he could exercise parenting time with his children, apart from the claimant.

[17] In or around August 2018, the claimant received IVF treatment at a clinic in Colorado. Z was conceived. In May 2019, the claimant went on maternity leave. In August 2020, the claimant returned to work part-time at her law firm.

[18] In January 2021, the respondent sent the claimant an excel spreadsheet he had prepared regarding their family finances. The claimant says shortly thereafter, the respondent transferred \$3,000,000 out of a joint investment account without her knowledge or consent and asked her to sell her excluded property - land in Uruguay she co-owns. She speculates that he did all of this in contemplation of separating from her.

[19] In May 2021, the claimant began a pre-arranged medical leave from her law firm in anticipation of embarking on IVF treatments to try to conceive a second child.

[20] On June 30, 2021, the parties separated.

History of Proceedings

- [21] On July 7, 2021, the claimant filed her notice of family claim.
- [22] Shortly after separation, the parties negotiated an "interim-interim without prejudice" agreement which formed the basis of a consent order that was pronounced by Master Elwood on August 6, 2021 (the "Elwood Order").
- [23] The Elwood Order provides that Z would reside primarily with the claimant, it provides for specified parenting time for the respondent and several mutual conduct orders. It also includes a mutual s. 91 of the Family Law Act, S.B.C. 2011, c 25 ("FLA") property restraining order. The support-related provisions in the order include:
8. On an interim, without prejudice basis, the parties shall maintain the financial status quo that existed prior to their separation, which, for further clarity, shall include the following:
 - a. The Respondent shall continue to pay for all reasonable expenses for both parties and [Z], including but not limited to the Respondent's prior contractual family support obligations, the parties' properties, vehicles, medical, staff, pets, food, household items, vacations, the parties' credit card purchases, expenses incurred by both parties prior to their separation and to the date of this order, and travel; BY CONSENT.
 - b. The Respondent shall continue to provide \$20,000 per month to the Claimant, for her discretionary use, on the first day of each month commencing August 1, 2021 and until further order of the court or written agreement of the parties; BY CONSENT.
 - c. The Respondent shall also be at liberty to expend up to \$20,000 per month for his own discretionary use; BY CONSENT.
 - d. If the Respondent is unable to pay for the expenses set out in this Order with his income, on a temporary basis pending receipt of his income, the Respondent shall be at liberty to draw from existing lines of credit ; BY CONSENT.
 - e. The Respondent shall ensure that the balance in the parties' joint chequing account at RBC (# [redacted]) remains at a minimum of \$50,000. If the balance of the account falls below \$50,000.00, the Respondent shall forthwith replenish it to a value of \$50,000.00. Neither party shall use this account to pay for any expenses except those that are set out in this Order; BY CONSENT.
 - f. The parties, their assistants and their nannies shall all continue to use the credit cards that they used prior to separation to pay their usual respective expenses. The balances owing on all the credit cards will be paid in a timely fashion to ensure their continued usage; BY CONSENT.
- [24] The order also:

- a) Grants the respondent exclusive occupancy of the Bellevue Property and a strata property located in Vancouver ("3602 West Cordova");
- b) Grants the claimant exclusive occupancy of a second residence in West Vancouver (the "Radcliffe Property"), a second strata property located in Vancouver ("3007 West Cordova"), a recreational property on Nelson Island (the "Cottage") and interim exclusive use and possession of a Princess V50 yacht (the "Yacht"); and
- c) Provides that the order is made on an interim-interim without prejudice basis and either party can apply to vary it on giving the other 15 business days' notice, without the need to prove a material change in circumstances.

[25] On August 11, 2021 the parties attended mediation.

[26] On October 8, 2021, the parties attended a judicial case conference. They also entered into Minutes of Settlement, which had been agreed through mediation.

[27] Respondent's counsel says starting in August 2021, he began making efforts to schedule an application to vary the Elwood Order. For various reasons, the parties were not able to secure a hearing date between September 2021 and May 2022. They eventually did secure a date for a 3-day long chambers hearing, returnable in June 2022.

[28] In January 2022, the claimant learned her estranged father was terminally ill. She reconnected with him and began flying out to Toronto for weeks at a time to reconcile and support him in hospice. He died in August 2022.

[29] On May 2, 2022, the respondent served his application materials for an application to vary the financial terms in the Elwood Order. The claimant advised him that she would not be able to provide responding materials in time for the June hearing due to her father's illness. She requested a brief adjournment, to which the respondent agreed. The respondent complains, however, that subsequently the claimant was not responsive to his efforts to reset the application and she failed to deliver her responding materials by the agreed new deadline, July 11, 2022.

[30] On September 1, 2022, the parties consented to an interim order varying provisions in the Elwood Order dealing with the respondent's parenting time with Z. This incorporated the Minutes of Settlement. One of the terms was that Dr. Peggy Koopman prepare a s. 211 FLA report.

[31] The respondent says that due to the passage of time, he decided to focus on preparing for trial, then scheduled for April 3, 2023, rather than trying to reset his application to vary the financial terms in the Elwood Order.

[32] On February 7, 2023, Master Nielsen ordered that the respondent pay the claimant an advance of family property of \$250,000. This was intended to help fund the claimant's litigation expenses for this action.

- [33] The respondent alleges that the claimant thereafter intentionally delayed preparation of Dr. Koopman's report. The claimant initially said she would provide documents before Dr. Koopman's interviews began, but failed to provide them between January 2022 to October 2022. In October 2022, the claimant advised that Dr. Koopman should proceed without reviewing her documents. She subsequently sent Dr. Koopman a large volume of documents and a voluminous affidavit shortly before the anticipated report completion date.
- [34] The respondent also alleges the claimant began making serious allegations about him to Dr. Koopman as well as complaints to the Vancouver Police shortly before the report deadline. The respondent says the allegations were false and Dr. Koopman ultimately concluded they lacked merit.
- [35] On March 14, 2023, the parties appeared before Justice Loo who ordered that, except as set out in his order, neither party could provide any other documents to Dr. Koopman for her s. 211 report. The respondent says due to the delays, the report was not ready in time for the April 3, 2023 trial date.
- [36] On March 31, 2023, Master Vos granted the claimant's application that the trial be adjourned. He also ordered that the respondent's application to vary financial terms in the Elwood Order be heard in the first week of June 2023. The dates eventually set were June 6-7, 2023.
- [37] On April 30, 2023, Dr. Koopman issued her s. 211 report.
- [38] On May 12, 2023, the claimant filed her application, also returnable June 6-7, 2023.
- [39] The trial of the action is now set for March 25, 2024, for 30 days.

Respondent's Version - Parties' Lifestyle

- [40] The parties have tendered conflicting evidence regarding their lifestyle during their relationship.
- [41] The respondent says that despite his exceptional income and accumulated wealth, he has always tried to maintain a modest but comfortable lifestyle. He had modest financial means growing up. He was raised to live conservatively and save money irrespective of his earning power. He frequently eats at Tim Horton's and buys clothes from places like Winners. He rarely flies business class when travelling and tries to find good deals on hotels. When he met the claimant, he had one vehicle, a used BMW SUV, and was living in a relatively modest duplex in West Vancouver.
- [42] During his first marriage, he and Ms. S raised their children with only occasional help from one nanny. Ms. S was working during much of their marriage. He was cautious with spending during their 14-year marriage. He felt it was important to him to teach their children the value of money and the virtues of hard work. During 2008, the year his current employer purchased his former firm and he received a significant amount for his shares, he only spent \$60,000 on his personal Visa.

- [43] He says in the early stages of his relationship with the claimant, the parties did not take lavish vacations. They travelled to Los Angeles and flew on commercial economy flights. They drove the same cars they had when they began the relationship and only purchased nice clothing occasionally as treats to themselves. His Visa statements for the period May 1, 2016 to December 31, 2016 (8 months) show total charges of \$270,000 (\$33,750 per month). This is considerably lower than the claimant's post-separation spending pattern.
- [44] The respondent alleges in about 2018, the claimant was jealous and upset that he was paying Ms. S support. She demanded he give her an "allowance" of \$20,000 per month, in addition to paying all their household expenses. He agreed to do so, but says he later asked her to reduce this on several occasions. She would not agree. He says she justified her position by arguing much of his money was "leaking out" to Ms. S and their children.
- [45] Also in 2018, the respondent says the claimant insisted he give her a new sports car. The respondent purchased Porsche 911 convertible for her as a wedding present. In 2018 and 2019, the claimant began choosing more expensive vacation destinations, including trips to five-star luxury resorts in Maui, Turks & Caicos and St. Barth's.
- [46] In June 2019, following Z's birth, the claimant employed a team which includes two rotating nannies, a cleaner, a Spanish tutor, a part-time driver and a personal assistant. He says he told her he was unhappy with the lack of privacy in their home and pleaded with her to reduce the number of employees.
- [47] The claimant also insisted he open a joint investment account with her and deposit \$2,000,000 into it, as security in case the respondent died. He said she told him she was concerned A and J would contest his will.
- [48] The respondent argues that between April 2020 and June 2021, the claimant significantly increased her rate of spending by insisting on an increasingly lavish lifestyle, particularly during the last year of their marriage.
- [49] When the pandemic struck in 2020, the claimant demanded, on threat of divorce, that he purchase the Yacht for \$1.5 million and the Cottage for \$642,000, plus a further \$1.2 million in improvements. She wanted these in case the pandemic led to social unrest and they needed to escape. He says she insisted the Yacht and Cottage be registered in her name for estate planning purposes. The respondent's position is that he purchased them with his excluded property and did not gift them to her.
- [50] The respondent says the claimant's escalating spending was the primary source of conflict between them and ultimately one of the reasons they separated. In January 2021, he prepared a spreadsheet summarizing out how much they were spending. He told the claimant he thought her spending was unreasonable and unsustainable. Despite several discussions, the claimant failed to significantly change her spending behaviour.

- [51] The respondent says that post-separation, the claimant has abused the financial arrangements established by the Elwood Order, including by taking liberties with her status quo spending. He calculates that during 2022, she spent about \$1,700,000. This does not include the roughly \$556,800 in housing-related costs the respondent paid in relation to the Radcliffe Property. It does include:
- a) \$1,040,000 on their joint Visa card;
 - b) \$375,000 directly out of the joint bank account for nannies, Spanish tutor, housecleaners, drivers, photographers, party planners, dog care, personal haircare, yacht expenses and personal travel;
 - c) \$40,000 on the Visa card that the claimant allows her nannies and personal assistant to use; and
 - d) \$240,000 for her personal discretionary spending allowance.
- [52] The respondent says that in no year during their relationship did the parties ever spend anything close to this amount on discretionary expenses. He calculates that the claimant's non-private travel expenses went from \$107,035 in 2019 to \$446,398 in 2022. Her "miscellaneous" spending went from \$250,599 in 2019 to \$491,424 and 2022.
- [53] Other alleged financial "abuses" include:
- a) The claimant made clothing purchases on the joint credit card rather than paying for them from her \$20,000 monthly discretionary allowance;
 - b) Extensive 2022 travel costing about \$445,000, including flights and hotel stays. On each trip she took one or more nannies. During 2022, her trips included Uruguay, Los Angeles, Necker Island, Napa County, Malibu, Orlando, Colorado, Bahamas, Aspen, Whistler, Toronto, Calgary, Banff, New York and Tofino. She took a major trip almost every month during the year;
 - c) She charged to their joint credit card expenses for shopping, boat trips, expenses for her previously estranged father, new charitable donations and conferences;
 - d) She charged her legal counsel's bills for this action to the joint credit card, coming to about \$280,000 since separation. This is in addition to the \$250,000 advance ordered by Master Nielsen;
 - e) The claimant has charged other legal expenses to their joint credit card, including an employment law firm and a second firm which appears to have been retained to pursue a defamation claim.
- [54] The respondent says by contrast, for 2022 he spent approximately \$225,000 on his own discretionary expenses. This includes tuition payments for his older children and a house rental in Whistler, which he booked primarily for the benefit of the claimant and her guests.

- [55] The respondent also complains that the term in the Elwood Order which requires him to keep a minimum balance of \$50,000 in their joint chequing account has been abused. The claimant has accused him on numerous occasions of being in breach of the order by not topping up the account "instantaneously" when the balance has fallen below \$50,000. At times he has had to monitor the account more than once per day to determine whether the claimant had drawn on the account. This process has been chaotic and stressful for him.
- [56] Another concern he has with the Elwood Order is that the allowable expenses are not clearly defined. This has allowed the claimant to apply a broad and liberal interpretation of status quo and what are "reasonable expenses". This, combined with the requirement that he constantly monitor and top up the balance in the joint chequing account, has effectively provided the claimant with a limitless amount of funds per month. The Elwood Order also provides he is solely responsible for maintaining their five real properties and the Yacht.

Claimant's Version - Parties' Lifestyle

- [57] The claimant disputes that the respondent lived a relatively modest lifestyle during his first marriage. He told her he had raised his children with Ms. S in a 16,000 SF home on Roseberry Avenue. It had a live-in nanny wing with multiple bedrooms, living room and kitchen for two live in nannies. He described flying on private planes several times during his first marriage. When she first met the respondent, there were two full-time nannies employed to assist with his teenage children in Ms. S's household and who assisted him during his parenting time with them. He told her he had purchased expensive jewelry for Ms. S throughout their marriage and they vacationed extensively via private charter. She goes into some detail regarding some of the respondent's luxury expenditures for special expenses for his three older children. She says the respondent enjoys luxury purchases for himself, including having an extensive luxury watch collection, eating at expensive restaurants and frequent travel.
- [58] The claimant says the respondent told her he was deliberately living below his financial means to avoid having his ex-wife seek a variation in support and that he had not disclosed his significant increases in income to her for several years.
- [59] The claimant says at the beginning of their relationship, the respondent paid for the majority of their expenses including luxury vacations. In 2016, within the first six weeks of them meeting, the respondent took her on a lavish vacation to a hotel in Beverly Hills and top end restaurants. Within the first few months of meeting, he took her on a luxury week-long vacation to a spa retreat at Canyon Ranch, a second vacation to Beverly Hills for a work retreat and various other holidays. Within their first year of meeting, the respondent paid for a luxury vacation to Uruguay, where they stayed at Vik retreats costing around \$50,000 for accommodation alone, as well as other luxury trips.

- [60] They hosted various parties and events which ranged in cost from \$30,000-\$350,000 to host, including catering, entertainment, décor and yacht charters. The respondent employed two full-time live-in nannies to assist with his children and had various assistants. She describes various other staff and vendors, weekly spa appointments and other service providers.
- [61] The claimant denies she demanded a clothing allowance due to the respondent's support obligations to Ms. S. She encouraged the respondent to settle with Ms. S and voluntarily increase the level of support he was paying her. She suggests he had created a liability for himself by failing to report his significant income increases for many years. She says it was the respondent who initiated the \$20,000 per month payment to her, as a clothing allowance. He wanted her to dress appropriately and at a level commensurate with their neighbours and peers. She says he criticized her clothing and said she was dressed shabbily when they first met. Early in their relationship she asked the respondent whether she was spending too much on clothing. He responded that he wanted her to have nice clothing.
- [62] The claimant says throughout their relationship, she used the clothing allowance to purchase clothing for the respondent as well. On average she spent \$10,000-\$15,000 per shopping session on the respondent, at stores like Harry Rosen and Holt Renfrew. The items she purchased were very expensive, so \$20,000 did not go very far. She says it is common in their social circles, with friends of similar economic standing, to extensively utilize luxury designer clothing.
- [63] The claimant denies she began choosing more expensive vacation destinations as the relationship went on. She says the respondent organized and paid for a number of luxury vacations, most of which were destinations she had never been to prior, but which the respondent had stayed at with his ex-wife.
- [64] The respondent paid for items such as pet expenses (pet daycare, boarding, walkers and trainers), payroll for assistants, nannies, cleaners, personal trainers and masseuses, counsellors and coaches, charitable donations, entertainment costs, including luxury parties they hosted each year, accommodation and living expenses, cell phone and utilities, transportation costs, the claimant's membership to the Copeman Medical Clinic and the cost of luxury clothes and accessories.
- [65] The claimant says the vacations they took included some one-off destinations, but there were also specific vacations incorporated into their lifestyle which were repeated at specific times each year. These included trips to Uruguay each January, California in the fall and spring, Whistler during ski season and Tofino several times per year. She describes trips which involved accommodation costs of \$52,000 for two weeks stays. Post-separation she stayed at one of these locations for three weeks at a cost of about \$48,000. In 2019, the respondent suggested they rent a luxury home in Malibu which cost about \$85,000 for November and an additional \$50,000 for three weeks in December. The respondent subsequently re-rented the same property for \$228,000 plus a \$100,000 security deposit for mid-March to end of May 2020, but with the onset of COVID-19 she insisted they cancel it.

- [66] Typical accommodation costs for their other trips to California locations they stayed at were \$2,000 - \$3,000 per night. She describes multiple vacations to Kauai and Maui, staying in Four Seasons hotels which cost \$3,000-\$5,000 per night for deluxe ocean view rooms. The respondent organized and paid for multiple vacations to the Caribbean, Turks & Caicos and St. Barth's, including private Oceanside bungalows costing up to \$5,000 (US) per night. She had never stayed in this type of accommodation prior to meeting the respondent.
- [67] The respondent organized stays at luxury spa retreats, including Canyon Ranch in Arizona in 2017 and ranch luxury retreats in 2018. She estimates that some of these cost over \$20,000 (US) for the week. He paid for her to attend a spa resort in Bali on her own in October 2017, at a cost of about \$11,000. He paid for her to attend other vacations on her own or with friends including trips to Morocco, Ibiza, Spain, Monaco, Cap Ferrat, France and multiple yearly trips to Paris.
- [68] The claimant now travels with Z, which involves additional costs including flights and additional hotel rooms for nannies. They usually travelled with two nannies. Prior to separation she had never shared a room with a nanny on vacation, and only did this post-separation due to pressure exerted by the respondent.
- [69] The claimant says they flew business class for the most part, except for shorter flights under three hours, such as Los Angeles. They chartered private planes on more than one occasion. This included the respondent booking private Learjet flights to Los Angeles to accommodate travel with dogs. Those flights cost about \$24,000 each direction. She says they chartered over 60 private flights between 2019 to 2021, to locations such as Tofino, Hardy Island, Dent Island and Salt Spring Island.
- [70] The claimant says their joint investment account was opened based on legal advice while preparing joint wills leading up to Z's birth. They discussed and agreed that the funds would be accessible to her in the event of divorce, so that she would not be prejudiced by the financial imbalance between them and could have funds available for day-to-day living and legal fees in the event of any conflict or divorce with him. The account initially had \$2 million and this was later increased by a further \$3 million. In 2021, the respondent unilaterally withdrew \$3 million from the account.
- [71] The claimant denies she threatened divorce if the respondent did not purchase the Cottage and Yacht. She says that he gifted them to her.
- [72] The claimant denies her spending was a significant factor in their separation.
- [73] With respect to staff, she says throughout 2017 to 2019, prior to Z's birth, they maintained a live-in nanny and a live-out nanny full-time as well as other support staff who assisted with the respondent's three children. The respondent was also paying for Ms. S to have two full-time nannies and a driver for the teenage children, despite the fact she was not working. They continued the same pattern with Z.

- [74] The claimant denies the respondent ever complained about nannies throughout their relationship. He filled out the LMIA's [Labour Market Impact Assessments] for the live-in nannies. She says the respondent told her before they had Z that he was too old to deal with a small child and would only allow her to have one if she took on all the work, which he would support through nannies. He also insisted on nanny care for his teenage children rather than doing the work himself. She says the respondent only started complaining about nannies and staff after they separated.
- [75] The claimant says having staff support despite not working accords with the lifestyle the respondent had in his previous marriage to Ms. S and which they enjoyed during their marriage. She says he encouraged her not to work and never took issue with their having staff.
- [76] With regard to the Spanish tutor for Z, the claimant says Spanish is her first language and she wants Z to speak it. The respondent did not take issue with Z having Spanish tutors to expose him to the language and only began raising issues about this post-separation. She suggests the respondent paid for other types of tutor for his first three children at a significantly higher cost.
- [77] The claimant says the parties used a minimum of two nannies since Z's birth, as well as a driver and Spanish tutors since he was at least 1.5 years of age. Nothing she is proposing in relation to ongoing staffing support for Z is outside their status quo.
- [78] The claimant says Z has significant exposure to socialization in a myriad of ways, including attending classes for dance, sculpture, painting and music at Arts Umbrella. These require an adult to attend with him. He attends swimming classes and soccer classes, both of which require that an adult be present. She attends many of the classes with him. On some occasions his nannies attend with him.
- [79] The claimant says the spreadsheet the respondent prepared confirms they had a high standard of living and significant monthly expenses. It indicates they had spent approximately \$2 million per year in "consumables". The respondent told her they had lost 40% of their investments due to Covid-19 and had to reduce their spending. Ms. S had also recently negotiated a higher level of child support. He wanted them to review their budget to see where they could lower monthly costs. He asked her to sell her excluded asset, a 50% interest in beachfront property in Uruguay, and said he would not be able to retire due to the investment losses. She told him her Uruguay property had a modest value and she did not understand how selling it would help. He said it would symbolically make a difference to him. The respondent also asked her to agree to reduce her monthly clothing allowance. She declined because she did not want to lose the financial freedom it provided her. She says she did agree to cut back on other discretionary expenses, such as spa visits.
- [80] The claimant does not believe the respondent lost money on investments during the pandemic. He was also giving her mixed signals. Approximately a month later, in February 2021, the respondent rented a luxury home in Whistler at a cost of over \$50,000 for two

weeks, and did so again in March for the same amount. A few months later he proposed they purchase a larger home and took her to view properties ranging value between \$16 - \$30 million. She says she told him that in view of their new restrictions on spending, she did not want to purchase a larger home. The contradictory behaviour on his part made her suspicious that he was intentionally trying to reduce their monthly spending in anticipation of separation, to artificially reduce their status quo spending.

- [81] The claimant denies the respondent questioned her spending throughout the relationship. There were very few occasions on which he brought up concerns with purchases she made. It was not until January 2021 that the respondent began sending her a series of emails and texts questioning their status quo spending, as well as asking her to confirm line item costs for things such as Yacht insurance, Wi-Fi costs at the Cottage and other utilities, for no apparent reason. She believes the respondent had already decided to end their relationship and was trying to artificially create evidence of him raising concerns regarding her spending.
- [82] Post-separation, the claimant denies she has asked the respondent to pay for anything outside of their pre-separation status quo. She only threatened court applications when he refused to comply with the Elwood Order and failed to consistently maintain the balance in their joint account at the minimum \$50,000 level required by the order.
- [83] She says the respondent's assertions about her post-separation spending on travel are misleading. The majority of the cited expenses are related to their joint holidays with the respondent, Z, the claimant, the au pair, nannies and babysitter. She offers numerous specific examples.
- [84] Claimant says the respondent's view on spending is inconsistent. In February 2022, he rented them a home in Whistler where they stayed together for two weeks for approximately \$70,000. Later in March 2022, he described the cost of her accommodation in Toronto for her first trip to visit her father as outrageous despite it being a cost of \$6,000 for a week stay for herself, Z and two nannies. With regard to her various other travels, she says the costs involved were well within status quo spending levels established during their relationship.
- [85] With regard to expenses and staff payments, she says that based on the respondent's own calculations, monthly spending is near \$200,000 for non-discretionary charges. The respondent's failure to keep their joint account topped up to the \$50,000 level was a chronic problem which occasionally put her in a difficult financial position in terms of keeping up with fixed expenses. When he did top it up, he frequently only did so up to the \$50,000 level. This meant that as soon as she used the account it once again fell below the court ordered minimum balance.

Claimant's Expenses

- [86] The claimant swore an F8 financial statement on May 10, 2023. Her total monthly expenses claimed are \$190,631; or \$2,287,572 annually. This includes:
- a) Her annual Guidelines income is \$0.
 - b) Housing expenses include 3007 West Cordova at \$9,192 per month, Radcliffe Property at \$44,988 per month and Cottage at \$5,137 per month.
 - c) Utilities for these three properties are \$3,985 per month.
 - d) Household expenses are \$10,805 per month, including food at \$2,500, household supplies at \$2,000, meals outside the home / takeout at \$3,500, furnishings and equipment of \$2,000, flowers at \$350 and décor and art maintenance at \$500.
 - e) Transportation is \$16,365 per month, including taxis and Ubers for Z and nannies at \$500, gas and oil at \$600, insurance and license for a total of 5 vehicles (1 claimant, 2 at Cottage, 1 Mercedes SUV used by driver to transport Z and nannies and 1 used by nannies), vehicle repairs and maintenance at \$700, float planes at \$2,500 and various Yacht-related expenses at \$10,515 per month.
 - f) Other expenses of \$15,735 per month, including donations at \$2,000, charitable event tickets and auction items of \$1,500 per month, vacations at \$10,000 (noted as being an under-estimate), pet care at \$1,000, vet bills, newspapers and publications, Hollyburn and Royal Vancouver Yacht Club memberships.
 - g) Health expenses of \$6,700 per month. Larger items include massage therapy at \$1,200, personal trainer at \$1,600, counselling of \$1,500, therapy programs and retreats at \$500, and Invisalign/orthotics at \$1,000.
 - h) Personal expense of \$30,892 per month, including clothing at \$20,000, hair care at \$1,700, toiletries, cosmetics and perfumes at \$1,300, Law Society of BC fees at \$342, dry cleaning at \$500, entertainment and recreation at \$1,500, hosting and catering parties for Z at \$3,000, gifts at \$500, family photographer at \$300, facials at \$300, dermatologist at \$400, pedicures and manicures at \$350, personal grooming at \$250 and massages and spa at \$400. I note that massage therapy of \$1,200 was also included under "health expenses".
 - i) Child Expenses of \$44,887 per month, including child care by nanny/au pair of \$4,160, second nanny at \$4,800, cleaner at \$4,160, nanny suite rent (at 3006 West Cordova) at \$3,075, employer costs of \$992, overtime of \$1,550, food and restaurant expenses for nannies at \$2,000, clothing at \$2,000, savings at \$5,000, hair care at \$40, anticipated school fees for Z to attend Collingwood in fall 2023 at \$2,500, entertainment/recreation and toys at \$900, activities at \$2,500, sports equipment at \$1,000, gifts at \$200, part-time driver for Z and nannies at \$1,500, Spanish tutor at \$2,000 and vacation expenses (extra costs for nannies to accompany on trips) at \$6,000.

[87] The claimant swore an earlier F8 financial statement on August 20, 2021, in which she claimed her monthly expenses were \$191,547 and annual were \$2,298,575. Expenses under the "Child" category totalled \$34,512 per month, i.e. about \$10,000 per month lower than in her more recent statement.

Respondent's Expenses

[88] The respondent swore an F8 financial statement on March 3, 2023. He claims monthly expenses of \$504,770; or \$6,057,240 annually. This includes:

- a) Housing expenses of \$135,134 per month, for 5 properties.
- b) Utilities expenses of \$2,000 per month, for 5 properties.
- c) Household expenses of \$4,400 per month, which includes food at \$600, household supplies at \$300, meals outside the home at \$2,500 and furnishings and equipment at \$1,000.
- d) Transportation expenses of \$4,265 per month, including insurance on 5 vehicles, repairs and maintenance on 3 vehicles and a lease payment for a Porsche Targa.
- e) Other expenses at \$12,000 per month, including charitable donations at \$1,000, vacation at \$10,000 and professional fees at \$1,000.
- f) Health expenses at \$800 per month.
- g) Personal expenses at \$2,100 per month, the most substantial of which is clothing at \$1,000.
- h) Child expenses for Z at \$9,550 per month, including multiple nannies at \$8,000 and clothing for Z at \$500.
- i) Child support payments and special and extraordinary expenses for J, A and R at \$52,000 per month

Variation of Elwood Order

[89] The Elwood Order was made on a without prejudice basis and provides that it can be varied without having to prove a material change in circumstances. Para. 23 of the order is as follows:

23. After August 11, 2021, either party is at liberty to apply to vary this order upon 15 business days' notice to the other party whether or not a Judicial Case Conference has taken place and without a need to prove a material change in circumstances; BY CONSENT.

Imputation of Income

[90] The respondent asks that the claimant be imputed as having a Guidelines income of \$175,000 per annum, due to intentional unemployment. The claimant is a qualified lawyer. She was called to the BC Bar in 2015 and has been maintaining her Law Society of BC membership. Her most recent legal job was as an associate with a prominent downtown

Vancouver law firm. After Z's birth, she worked part time briefly before taking a medical leave in contemplation of undergoing IVF for a second child. When she indicated she wanted to extend her leave, her position was terminated in or around October 2021. She has not worked since the parties separated.

[91] Section 19(1)(a) of the Guidelines allows the court to impute income to someone who is intentionally under-employed or unemployed:

19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

[92] In *Shapiro v. Simpson*, 2016 BCSC 211 (*Shapiro*) at para. 173, Justice Adair noted that parents have a joint and ongoing obligation to provide reasonable and necessary support for children of the marriage:

173 Parents have a joint and ongoing legal obligation to provide reasonable and necessary support for children of the marriage. In order to meet his or her child support obligation, each parent must earn what that parent is capable of earning within the specific context and circumstances of the family. See *Shapiro No. 1*, at para. 42 (citing *Vlek v. Graff*, 2013 BCSC 1906, at para. 34).

[93] In *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 36-38, the court of appeal summarized the principles applicable to imputation of income in cases of intentional under-employment or unemployment:

36 For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.

37 The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work.

38 Although the legal foundation for awarding spousal support is different from that of child support, the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: "Means" has been interpreted to include all capital and other sources of income

[citations omitted]

[94] In Shapiro at para. 176, Justice Adair summarized the principles applicable to imputing income as follows:

- (a) there is a duty to seek employment where a parent is healthy and there is no reason why the parent cannot work;
- (b) when imputing income on the basis of intentional unemployment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work and other obligations;
- (c) a desire simply to stay home with a child is not sufficient to invoke the exception in s. 19(1)(a) of the Guidelines. A parent who chooses to work less than full-time must justify that choice by evidence of the needs of the children;
- (d) bad faith is not required, and a parent is intentionally under-employed if the parent chooses to earn less than he or she is capable of earning.

[95] A party seeking to impute income to the other bears the burden to establish an evidentiary basis for same: *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para 35. Significant disputes regarding imputation of income are often best left to be resolved at trial, where parties can fully canvas their respective earning capacities and contested evidence can better be assessed: *Kouznetsova v. Kouznetsov*, 2014 BCCA 160 at para 45.

[96] The claimant formerly worked as an associate lawyer. She took a medical stress leave in 2017. She worked part time in 2018 and 2019, at 60% of hours and salary, to accommodate IVF procedures and surgeries. She also took a medical leave in 2021, in anticipation of undergoing IVF for a second child. When she told her firm that she wished to extend her medical leave, her employment was terminated in or around October 2021. She says she explored potential new employment opportunities in January and February 2022. Her job search was cut short when she learned her estranged father was terminally ill. She made several trips to Toronto to reconcile with him and support him. While this action remains pending, she has chosen to focus on caring for Z, her mental health and getting through the stress of this litigation.

[97] The claimant's desire to stay home with Z is not sufficient on its own to be considered an exception in s. 19(1)(a) of the Guidelines. Her desire to have a second child does not excuse her from her obligation to provide support. Z is healthy and active. He has no special needs which could justify the claimant not working. He is old enough to attend pre-school and is used to being cared for by others.

- [98] The respondent tendered an expert report of Stephanie Hacksel of Hunter West Legal Recruitment. She was asked to consider how much someone with the claimant's background and experience could expect to earn working full time as a lawyer in the Lower Mainland for an arms-length third party employer. Ms. Hacksel initially based her analysis on the claimant being at the 8+ years of call level.
- [99] The claimant tendered a report of Dr. Quee Newell, a registered clinical counsellor and vocational rehabilitation consultant. Her opinion included her view that prospective employers would not view the claimant's legal experience as equivalent to an 8th year call lawyer who had worked full time since being called to the BC bar in 2015.
- [100] Ms. Hacksel subsequently issued a supplemental report providing income data for lawyers with 1-8 years of call. Respondent's counsel argues that the claimant ought to be considered as equivalent to a 5th year call and says she is capable of landing a position at either a national/international/premier boutique firm or a major Vancouver-based firm. According to Ms. Hacksel, the former would have an average income range of \$175,000 to \$190,000, while the latter would average \$145,000 to \$175,000. Counsel argues the claimant should be attributed as having an income of \$175,000.
- [101] The claimant does not take issue with the average salary ranges set out in Ms. Hacksel's report, but does dispute whether she could actually obtain and retain such employment and salary range given her historical employment and income pattern. Counsel notes Ms. Hacksel did not meet with the claimant and did not consider her personal circumstances. She argues the claimant does not have a track record of maintaining employment with a particular employer for extended periods and has had to take several leaves from work.
- [102] The claimant says her interest is no longer in working in a traditional law firm environment, but rather continuing her education and pursuing a career as a legal educator or working in the non-profit sector. She says she is better suited to those options. Counsel argues she is not obligated to return to a full-time position at a national, international or premier boutique firm. She is entitled to use her legal qualifications in another manner.
- [103] Alternatively, counsel argues that if the court decides it is appropriate to impute income to the claimant, her highest income-earning year was in 2017, when she earned \$107,534. If she is to be imputed an income, it should be \$100,000 and be on an interim without prejudice basis.
- [104] The claimant clearly has the education, skills, experience and qualifications to pursue a significant legal career. I agree it would not be reasonable to assume she could step into an 8th year call or similar associate position given her work history. Her desire to continue the frequent travel schedule she argues she enjoyed pre-separation is likely incompatible with the time commitment expectations associated with a full-time associate position in a traditional law firm. It is also frankly not clear how a prospective legal employer would view her as a candidate given her work history or how that might impact her starting remuneration.

[105] While I agree the claimant is clearly capable of earning a substantial income and that she likely should be imputed as having some level of income based on intentional unemployment, I do not have sufficient uncontested evidence to properly assess quantum on an interim application. Imputed income will have to be addressed at trial, where the trial judge will have the benefit of a more fulsome evidentiary record. The support orders I make below in these reasons will be without prejudice to the respondent's ability to seek a retroactive adjustment of support based on income being imputed to the claimant.

Interim Child Support

Amount Sought

[106] The respondent asks that his obligation to pay basic child support for Z be set at \$13,765 per month commencing July 1, 2023.

[107] The claimant seeks an order that the respondent pay her the Table amount of basic support based on the respondent's 2022 net Guidelines income (\$13,222,049), which is \$103,318 per month. Alternatively, she seeks basic support of \$65,000 per month commencing July 1, 2023.

[108] Section 7 special and extraordinary expenses are addressed later in these reasons.

Applicable Law

[109] Section 149 and 150 of the FLA allows the court to make orders for child support:

Orders respecting child support

149 (1) Subject to subsection (3), on application by a person referred to in subsection (2), a court may make an order requiring a child's parent or guardian to pay child support to a designated person.

(2) An application may be made by

(a) a child's parent or guardian

Determining child support

150 (1) If a court makes an order respecting child support, the amount of child support must be determined in accordance with the child support guidelines.

(2) Despite subsection (1), a court may order child support in an amount different from that required by the child support guidelines if

(a) the parties consent under section 219 [persons may consent to order being made] or have an agreement respecting child support, and

(b) the court is satisfied that reasonable arrangements have been made for the support of the child.

- (3) The court must consider the child support guidelines for the purposes of subsection (2), but must not consider arrangements made for the support of the child to be unreasonable only because the amount required under the child support guidelines differs from those arrangements.
- (4) Despite subsection (1), a court may order child support in an amount different from that required by the child support guidelines if satisfied that
 - (a) an agreement or order respecting the financial duties of the parents or guardians or the division or transfer of property, other than an agreement respecting child support, benefits the child directly or indirectly, or that special provisions have otherwise been made for the benefit of the child, and
 - (b) applying the child support guidelines would be inequitable on consideration of the agreement, order or special provisions.
- (5) If a court makes an order respecting child support in an amount different from that required under the child support guidelines, it must give reasons for doing so.

[110] See also s. 15.1 of the Divorce Act ("DA")

Child support order

15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.

Interim order

- (2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to pay for the support of any or all children of the marriage, pending the determination of the application under subsection (1).

Guidelines apply

- (3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.

Terms and conditions

- (4) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as it thinks fit and just.

Court may take agreement, etc., into account

- (5) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied
 - (a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
 - (b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

[111] Section 3 of the Guidelines sets out the presumptive rule:

Presumptive rule

3 (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

[112] Section 4(b)(ii) of the Guidelines provides that where the income of a spouse against whom child support is sought is over \$150,000 and the court considers the Table amount to be in appropriate, it may set child support at the amount it considers appropriate, having regard to the condition, means, needs and other circumstances of the child who is entitled to support and the financial ability of each spouse to contribute to the support of the child.

Incomes over \$150,000

4 Where the income of the spouse against whom a child support order is sought is over \$150,000, the amount of a child support order is

- (a) the amount determined under section 3; or
- (b) if the court considers that amount to be inappropriate,
 - (i) in respect of the first \$150,000 of the spouse's income, the amount set out in the applicable table for the number of children under the age of majority to whom the order relates;
 - (ii) in respect of the balance of the spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children; and

(iii) the amount, if any, determined under section 7.

[113] In *Francis v. Baker*, [1999] 3 S.C.R. 250 [Francis] at para. 41, the Supreme Court commented on child support in cases involving high income earners:

41 I add one final comment. As noted above, Abella J.A. was concerned with the differential treatment of children. In my respectful opinion, a broad interpretation of the word "inappropriate" in s. 4 does not deny children of high income parents any of the intended benefits of the Guidelines. The plain wording of s. 4(b)(i) dictates that these children can predictably and consistently expect to receive, at a minimum, the Table amount for the first \$150,000 of their parents' income. They can further expect that a fair additional amount will be awarded for that portion of income which exceeds \$150,000. Indeed, even this latter figure lends [page271] itself to a degree of predictability and consistency in that the closer the paying parent's income is to the \$150,000 threshold, the more likely it is that the Table amount will be awarded. In my opinion, child support undeniably involves some form of wealth transfer to the children and will often produce an indirect benefit to the custodial parent. However, even though the Guidelines have their own stated objectives, they have not displaced the Divorce Act, which clearly dictates that maintenance of the children, rather than household equalization or spousal support, is the objective of child support payments. Section 26.1(2) of the Act states that "[t]he guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation" (emphasis added). While standard of living may be a consideration in assessing need, at a certain point, support payments will meet even a wealthy child's reasonable needs. In some cases, courts may conclude that the applicable Guideline figure is so in excess of the children's reasonable needs that it must be considered to be a functional wealth transfer to a parent or de facto spousal support. I wholly agree with the sentiment of Abella J.A. that courts should not be too quick to find that the Guideline figures enter the realm of wealth transfers or spousal support. But courts cannot ignore the reasonable needs of the children in the particular context of the case as this is a factor Parliament chose to expressly include in s. 4(b)(ii) of the Guidelines. Need, therefore, is but one of the factors courts must consider in assessing whether Table amounts are inappropriate under s. 4. In order to recognize that the objective of child support is the maintenance of children, as well as to implement the fairness and flexibility components of the Guidelines' objectives, courts must therefore have the discretion to remedy situations where Table amounts are so in excess of the children's reasonable needs so as no longer to qualify as child support. This is only possible if the word "inappropriate" in s. 4 is [page272] interpreted to mean "unsuitable" rather than merely "inadequate".

[114] In *Hathaway v. Hathaway*, 2014 BCCA 310 [Hathaway] at paras. 26-29, the court of appeal summarized the factors to be considered when a payor's income exceeds both the Guidelines and SSAG ceilings:

- [26] In cases where a payor earns more than \$150,000, s. 4 of the Federal Child Support Guidelines, SOR/97-175 [FCSG], authorizes the court to deviate from them if it considers the prescribed amount to be "inappropriate", having regard to the condition, means, needs and other circumstances of the children.
- [27] Whether a court should depart from the FCSG is a matter of discretion. This Court will only interfere with such an exercise of discretion where the judge "acted on a wrong principle, or failed to give sufficient weight to all relevant considerations": *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2010 BCCA 439 at para. 38, citing *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3; *Harekin v. University of Regina*, [1979] 2 S.C.R. 561; and *Mining Watch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2.
- [28] The leading authority on the principles governing a judge's discretion under s. 4 of the FCSG is *Francis v. Baker*, [1999] 3 S.C.R. 250. Madam Justice Newbury provided a concise summary of these principles in *Metzner v. Metzner*, 2000 BCCA 474 at para. 30:
- 1) It was Parliament's intention that there be a presumption in favour of the Table amounts in all cases (para.42);
 - 2) The Guidelines figures can only be increased or reduced under s. 4 if the party seeking such a deviation has rebutted the presumption that the applicable Table amount is appropriate (para.42);
 - 3) There must be clear and compelling evidence for departing from the Guidelines figures (para.43);
 - 4) Parliament expressly listed in s. 4(b)(ii) the factors relevant to determining both appropriateness and inappropriateness of the Table amounts or any deviation therefrom (para.44);
 - 5) Courts should determine Table amounts to be inappropriate and so create more suitable awards only after examining all circumstances including the factors expressly set out in s. 4(b)(ii) (para.44);
 - 6) Section 4(b)(ii) emphasizes the "centrality" of the actual situation of the children. The actual circumstances of the children are at least as important as any single element of the legislative purpose underlying the section (para.39). A proper construction of s. 4 requires that the objectives of predictability, consistency and efficiency on the one hand, be balanced with those of fairness, flexibility and recognition of the actual "condition, means, needs and other circumstances of the children" on the other. (para.40)

- 7) While child support payments unquestionably result in some kind of wealth transfer to the children which results in an indirect benefit to the non-paying parent, the objectives of child support payments must be kept in mind. The Guidelines have not displaced the Divorce Act which has as its objective the maintenance of children rather than household equalization or spousal support (para.41).
- 8) The court must have all necessary information before it in order to determine inappropriateness under s. 4. If the evidence provided is a child expense budget, then "the unique economic situation of high income earners" must be considered.
- 9) The test for reasonableness of expenses will be a demonstration by the paying parent that the budgeted expense is so high "as to exceed the generous ambit within which reasonable disagreement is possible": *Bellenden v. Satterthwaite*, [1948] 1 All E.R. 343 at 345.

[29] I would add to this list the comment from *Hollenbach v. Hollenbach*, 2000 BCCA 620 at para. 45, in which this Court interpreted *Francis* as creating a "formidable onus" for wealthy payors seeking to establish that the FCSG amount is inappropriate.

[115] In *S.R.M. v. N.G.T.M.*, 2014 BCSC 442 at paras. 119-122, Justice Butler, then with this court, considered how to assess whether the table amount is unreasonable:

119 Of course, to assess appropriateness or suitability, the court must consider the "condition, means, needs and other circumstances of the children." Before concluding that the Guidelines amount is inappropriate, there must be "some articulable reason for the court to conclude that the Table amount is improper or unreasonable in the unique circumstances of the case": *Plester v. Plester* (1998), 56 B.C.L.R. (3d) 352 at para. 153 (S.C.).

120 In determining whether the amount of support is inappropriate, a court should have before it all relevant information, including expense budgets. Expense budgeting is not an exact science and a court should not be too critical of a custodial parent's estimates unless the payor parent is able to demonstrate that the child expenses are so high as to "exceed the generous ambit within which reasonable disagreement is possible": *Bellenden v. Satterthwaite*, [1948] 1 All E.R. 343 (C.A.), at 345 as cited in *Francis* at para. 49.

121 The high burden a payor parent must meet to sustain a conclusion that the Guidelines amount is inappropriate was demonstrated in *C.L.L. v. S.W.J.*, 2013 BCSC 917. Justice Punnett determined that the \$1,000 by which the Guidelines amount exceeded the budget expenses of the payee was not enough for the court to conclude the child support payments amounted to a functional wealth transfer. He stated at para. 29, "notwithstanding the apparent use of the support as a principal source of income for the claimant and her children the fact that the amount is not otherwise inappropriate is determinative."

122 The starting point of the analysis here is the observation that the respondent's income is substantially above the discretionary threshold in the Guidelines of \$150,000 per year. As noted by Sewell J. in *S.G. v. K.G.*, 2012 BCSC 1937 at para. 121, "the authorities suggest that the greater the excess of the payor's income over the discretionary threshold the greater the need for a careful analysis of the actual means, needs and circumstances of the parties and the children to arrive at a fair award."

[116] The respondent bears the onus of rebutting the presumption that the Table amount of child support is payable: *Hathaway* at para. 34.

Respondent's Position

[117] The respondent says even the claimant's own budget for child-related expenses involves a substantially lower amount than she seeks in basic child support. Her financial statement of May 10, 2023 claims monthly child-related expenses, including section 7 expenses at \$44,887 per month.

[118] Counsel refers to *Macdonald v. Macdonald*, 2002 BCCA 46, where the plaintiff sought the Table amount of child support of \$59,500 per month, in circumstances where her entire annual budget was \$207,932. The court of appeal, at para. 24, approved the chamber's judge's reasons, which included the following excerpt:

[35] The children's budgets in this case are a mere fraction of the table amount. Although I accept the plaintiff's argument that she may want to take the children to Paris, have them educated abroad, or take them on an expensive holiday, there are no reasonably contemplated expenses for the children that can approach \$59,500 a month or \$714,000 a year, an amount more than three times the plaintiff's entire 2001 annual budget of \$207,932. In my view, the table amount has reached that point described in *Francis v. Baker* at para. 41 where "the applicable Guidelines figures is so in excess of the children's reasonable needs that it must be considered to be a functional wealth transfer to a parent or de facto spousal support".

[119] The respondent also relies on *Cross v. Batters*, 2016 SKCA 71 [Cross], in which the Saskatchewan Court of Appeal upheld an interim child support order of \$20,000 for two children despite the fact that the payor father's income was \$6.4 million, which corresponded to a table amount of \$79,791. In the court below, the mother sought child support of \$139,923. There was also evidence that despite their wealth, the parties had been living a relatively modest, small town lifestyle during the marriage. The mother argued the amount awarded was an extremely low percentage of the father's total income. The court of appeal said this argument was misdirected and failed to reflect the basic purpose of child support, which was to ensure maintenance of children, not equalization of household incomes or wealth transfers. At paras. 20-22:

20 In this case, the Chambers judge had the benefit of financial statements prepared by both Ms. Cross and Mr. Batters. In light of them, it was clearly open for him to find that Mr. Batters had rebutted the presumption that the Table amount of child support should be awarded. Ms. Cross's original financial statement, sworn in September 2015, put total monthly costs associated with the children at \$14,242. Her revised financial statement, sworn in October 2015, dramatically revised these estimates upward to \$27,522 per month. However, this latter figure is nowhere near the \$79,791 Table amount that would be payable even if Mr. Batters' income is taken to be at the low end of the available possibilities, i.e., the \$4,834,642 he suggests is appropriate.

21 The Chambers judge found that interim support payments of \$20,000 per month would allow the children to have the same standard of living they had enjoyed before their parents' separation. In light of the evidence before him, that was an entirely reasonable conclusion. Further, I note there is no evidence that, post-separation, either Mr. Batters or Ms. Cross has assumed a lifestyle any different than the one they lived pre-separation.

22 As a bottom line, the Chambers judge made no mistake in concluding that the Table level of child support was inappropriate. He properly found that Table-level payments would be far higher than what was necessary to meet the needs of the children and would amount to an effective transfer of wealth from Mr. Batters to Ms. Cross. I am unable to see any error in the conclusions of the Chambers judge on this front.

[120] Counsel notes that basic support notionally includes a contribution towards housing costs: *R.C.T. v. A.K.T.*, 2023 BCSC 654 at para. 195. The relief sought by the respondent on his application involves him agreeing to continue paying housing related expenses for the child's primary residence, the Radcliffe Property, over and above the basic support figure he proposes.

[121] Counsel argues there is an observable pattern of departure from the Table amount in the Guidelines once a payor's income reaches the \$1.7 million per year level. He bases this argument on a limited survey of nationally reported cases which consider section 4(b)(ii) of the Guidelines, which appears in a paper he co-authored, *Child Support Tips (and Traps) and Updates: 11th Annual Biennial Family Law Conference 2017, Continuing Legal Education Society of British Columbia*, by Bell and Dundee. The survey results suggest there is generally a tendency to adhere to the Table amount for payor incomes below \$1.7 million and a tendency to depart from it for incomes above \$1.7 million. Some examples of cases near this threshold which adhered to the Table amount included *Loesch v. Walji*, 2008 BCCA 214 (\$1.6 million), *Selleck v. Selleck*, 2011 ABCA 374 (\$1,531,472), *Potzus v. Potzus*, 2017 SKCA 15 (\$1.4 million), *Qaraan v. Qaraan*, 214 ONCA 401 (\$1.3 million), *D.M.D. v. R.L.D.*, 2015 BCSC 2332 (\$1-3 million) and *Hathaway* (\$1 million). Examples where the court chose to depart from the Table amount include *Cross* (\$3.5-\$6.3 million) *H.S.S. v. S.H.D.*, 2016 BCSC 1300 (\$3,615,266), *Reid v. Reid*, 2017 BCCA 73 (\$2,246,732), *Ewing v. Ewing*, 2009 ABCA 227 (\$2,134,975), *Viric v. Blair*, 2016 ONSC 49 (\$700K to \$2 million) and *Schick v. Schick*, 2008 ABCA 196 (\$1,744,000).

- [122] He says when the claimant was examined for discovery, she testified that she required staff which included a series of part time nannies (2.5 days per week), an au-pair who lives at the guest house at the Radcliffe Property, a cleaner (9 am to 4 pm, 4 days per week), a Spanish tutor (2 pm - 10 pm, 5 days per week) and a part time personal assistant. She has a part time driver who assists in driving Z a few times per week to classes because the nannies do not drive and the claimant chooses not to drive him herself. The respondent objects to the claimant's use of so much staff to fulfill the needs of one four-year-old child.
- [123] The claimant seeks to justify many of the expenses claimed on the basis that they represent the status quo established prior to separation. The respondent says her version of status quo is not supported by the evidence. Her attempts to establish a standard of living via assertions regarding what she believes he and Ms. S spent on their children during his earlier marriage is also speculative. In any event, he and Ms. S had three young children and Ms. S worked during the majority of their relationship.

Claimant's Position

- [124] The claimant says the respondent's own evidence regarding their pattern of spending prior to separation is that they had annual expenses of more than \$2 million per year. He acknowledges spending lavishly on vacations. This is the parties' status quo. His post-separation decision to live more conservatively does not alter her status quo.
- [125] The respondent has assets in excess of \$100 million at his disposal. The claimant does not have any liquid assets on which to draw. Her excluded property includes a 50% interest in land in Uruguay and a 2015 Jeep Wrangler. She has not yet received her share of family property. She estimates that, depending on what the cohabitation date is found to be at trial, that will be somewhere between \$15 million - \$35 million.
- [126] The claimant says the respondent does not dispute her evidence regarding their use of support staff, vacations and spending; rather he tries to argue she dictated that. To the extent there is a dispute regarding lifestyle, she argues the is still a demonstrable pattern of spending in excess of \$2 million per year during the relationship. Interim support should be based on that.
- [127] Counsel notes trial is only a few months away, so the court should err on the side of maintaining the lavish level of a spending pending trial. Imposing significant reductions would alter the claimant's status quo and be severely prejudicial to her.
- [128] The respondent bears the formidable onus of demonstrating the Table amount, which is \$103,318 per month, is inappropriate. The claimant's financial statement sets out the condition, means, needs and other circumstances in relation to Z. The parties were living an extremely privileged lifestyle. The claimant is now totally reliant upon the respondent for financial support. Given the respondent's income, the Table amount is not inappropriate in this case.

[129] The claimant notes that Cross, relied on by the claimant, has not been referred to in a BC decision and it is distinguishable on its facts. She urges that I follow the approach taken in *Devathanan v. Devathanan*, 2017 BCSC 1010, where Justice Fitzpatrick ordered the Table amount of \$20,143 per month on an application for interim child support, based on the father's income of \$2,693,177. At paras. 112-115:

112 In my view, a strict application of the Guidelines in relation to the Respondent's income, as determined above, would not be inappropriate despite the income amounts being in excess of \$150,000: see Guidelines, s. 4.

113 In *Hollenbach v. Hollenbach*, 2000 BCCA 620, the Court stated that the Guidelines amount will presumptively apply, unless the payor spouse provides "clear and compelling" evidence as to inappropriateness: paras. 36.

114 The comments of Master Caldwell in *Williams v. Williams*, 2015 BCSC 112 are apposite:

[20] ... I am satisfied from [*Hathaway v. Hathaway*, 2014 BCCA 310] that, while there may be consideration of a \$350,000 ceiling, the court need not depart from the Child Support Guidelines or the Spousal Support Advisory Guidelines. In that regard I am respectfully of the view that where the parties have the type and length of relationship as is present in this case the interim support relief should seek to provide a realistic sharing of the available income or cash flow so that they may move forward in their dealings and the litigation on a somewhat equal footing. Failure to provide such equitable sharing unfairly slants the overall playing field and places one party at a distinct disadvantage in terms of their ability to pursue an appropriate outcome; on the other hand, if the interim order turns out, in the fullness of time and evidence at trial, to have been inappropriate, there are ample assets and sources of income which may serve to remedy that temporary situation and put matters right.

115 The Respondent does not appear to contest this approach; he certainly has not attempted to meet the onus discussed in *Hollenbach*, which in *Hathaway* at para. 29, the Court also described as a "formidable onus".

[130] The claimant's alternative position is that basic child support in the amount of \$65,000 per month is appropriate. She seeks to justify this figure by adding housing expenses for the three properties for which she has exclusive occupancy, her food and outside meals expenses, taxis and Ubers for Z and nannies, vehicle expenses relating to the 2015 Mercedes SUV used to transport Z, the nanny vehicle, Hollyburn membership, RVYC membership, hosting and catering expenses and all expenses under the Children's category. From these she deducts amounts the respondent would be paying as special expenses on an ongoing basis. She arrives at a figure of \$63,000 per month.

- [131] With respect to the increase in child care expenses between the claimant's 2021 financial statement and her 2023 financial statement, she notes that in 2021, Z was two years old and he is now four years. As he gets older, his expenses increase as he gets involved in school and additional activities.
- [132] The claimant denies she somehow directed the respondent's financial life. The respondent works at the highest level in the financial world and the decisions the parties made during their relationship were made based on advice from professionals, discussion with each other and were ultimately approved by the respondent, as he controlled the parties' finances.

Analysis

- [133] The Table amount for basic support based on the respondent's Guidelines income is \$103,318 per month. This far exceeds even the claimant's most elaborate proposed budget for Z related expenses.
- [134] In the claimant's May 10, 2023 financial statement, items included under the Children category total \$44,887 per month. This includes expenses for two nannies (\$8,960), a full-time cleaner (\$4,160), rent for a nanny suite (\$3,075), employer costs (\$992), overtime pay, bonuses and transportation for nannies (\$1,550), food and restaurant expenses for Z and nannies (\$2,000), clothing (\$2,500), savings (\$5,000), haircare (\$50), anticipated Collingwood school fees (\$2,500), entertainment and recreation (\$900), activities and lessons (\$2,500), sports equipment and toys (\$1,000), gifts (\$200), part time driver for Z and nannies (\$1,500), Spanish tutor (\$2,000) and extra travel expenses to have nannies accompany the claimant and Z on vacations (\$6,000).
- [135] The claimant argues that certain expenses under other categories should also be included as Z-related expenses. This involves attributing to Z essentially 100% of property related expenses for the three properties she has exclusive occupation of under the Elwood Order. I do not agree allocating these to Z is appropriate. I also note the respondent has been paying all property-related expenses for the Radcliffe Property and intends to continue doing so.
- [136] In my view, the Table amount of \$103,318 is inappropriate in this case, having regard to conditions, means, needs and other circumstances. It is so far in excess of what Z's reasonable needs are that it would constitute a functional wealth transfer or de facto spousal support. I decline to order the Table amount.
- [137] Many of the expenses under the Children section of the claimant's financial statement are properly characterized as s. 7 special and extraordinary expenses. The claimant includes many of them in her claim for interim s. 7 support. Among those are Spanish tutor (\$2,000), anticipated Collingwood school fees (\$2,500) and activities and lessons, which includes Hollyburn membership fees (\$2,500). She also includes nanny-related expenses under her s. 7 claim. It would be double-counting to also include those when deciding what the appropriate level of basic support is.

[138] I also do not agree it is appropriate to include the full-time cleaner's salary (\$4,160) as a Child related expense. Z undoubtedly benefits from a clean home, but this is properly allocated to the claimant. I also do not agree it is appropriate to include savings for Z (\$5,000) for purposes of an interim order.

[139] In the circumstances, I order that the respondent pay the claimant interim basic child support of \$15,000 per month. Given the timing for release of these reasons, payments will commence September 1, 2023 and continue on the first day of each subsequent month until further order.

Special and Extraordinary Expenses

Relief Sought

[140] The respondent seeks an order that he pay 100% of agreed-upon special or extraordinary expenses for the parties' child, and that these include:

- a) Agreed-upon childcare expenses incurred as a result of employment, illness, disability, education or training for employment of the parties;
- b) In any event, that there be a global annual cap of \$90,000 on childcare expenses in any given year, inclusive of any childcare provider housing and disbursements;
- c) That portion of the medical and dental insurance premiums attributable to Z;
- d) Agreed-upon health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- e) Agreed-upon extraordinary expenses for primary and secondary school education or for any other educational programs that meet the child's particular needs;
- f) Agreed-upon expenses for extraordinary activities or lessons.

[141] The claimant seeks an order that the respondent pay 100% of the following special or extraordinary expenses:

- a) Z's anticipated Collingwood tuition fees and associated expenses (uniforms, school supplies and any other related costs associated with his attendance at Collingwood);
- b) Child care expenses including nanny and nanny-related expenses, including payroll and overtime/bonuses, vehicles, transportation, driver, G-Wagon and related expenses, and rent for 3006 West Cordova (nanny accommodation);
- c) That portion of medical and dental insurance premiums attributable to Z;

- d) Health-related expenses which exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy, prescription drugs, hearing aids, glasses and contact lenses;
- e) Agreed-upon extraordinary expenses for primary and secondary school education or for any other educational programs that meet Z's particular needs;
- f) Z's Spanish tutoring;
- g) Hollyburn Country Club membership fees and associated charges; and
- h) The following extracurricular activities and associated expenses: ski lessons and related equipment, music classes, art classes, Arts Umbrella, soccer, swim classes and Tumble Down; and
- i) Z's childcare and associated payroll expenses, including rent for the nanny suite ("3006 West Cordova").

Applicable Law

[142] Section 7 of the Guidelines is as follows:

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

Analysis

[143] The nanny related expenses sought by the claimant are the most significant special or extraordinary expense claimed. This includes salaries for two full-time nannies (\$4,160 + \$4,800), rent for a nanny suite (\$3,075), employer costs (\$992), overtime and bonuses (\$1,500), food and expenses (\$2,000) and nanny-related vacation expenses (\$6,000). The monthly total is thus about \$22,527. Her primary justification is that the nanny arrangements were created during the relationship and represent the status quo.

[144] The respondent argues that total nanny expenses claimed are neither necessary nor reasonable for a 4-year-old, particularly when the claimant is intentionally not working. In September, Z will be starting pre-school, so presumably he will require even less supervision.

[145] In *Forzley v. Forzley*, 1997 CanLII 1830 (BCSC), Justice Shaw considered a claim by a husband for the cost of a live-in nanny as a special and extraordinary expense. He disallowed it, stating at para. 68:

[68] Dealing specifically with the cost of a full-time live-in nanny, I do not consider that that expense fits any of the criteria set out in s.7(1)(a) of the Guidelines. The nanny is not needed to allow Mr. Forzley to be employed (he chooses not to be), nor does he have any disability which warrants the employment of a nanny.

[146] In *Hsieh v. Lui*, 2017 BCCA 51, the court of appeal considered a husband's appeal from a final order in which the presiding judge had concluded that a nanny was an appropriate expense for the child. The court concluded the judge had erred in characterizing the nanny as a shared expense in the absence of evidence that the wife incurred it as a result of her employment, illness, disability or education, or as an extraordinary expense for the child's extracurricular activities. At paras. 65-67:

65 An order for contribution to special and extraordinary s. 7 expenses is discretionary. The court may order payment of an enumerated expense taking into account its necessity relative to the child's best interests and the reasonableness of the expense relative to the means of the spouses and the family's pre-separation spending pattern: *Bodine-Shah* at para. 66. In cases involving high-income earners, expenses that may not be considered reasonable for many people may, in context, be reasonable, so long as the award does not enter the realm of wealth transfer rather than support: *Francis v. Baker*, [1999] 3 S.C.R. 250; *Sirdevan v. Sirdevan*, 2010 ONSC 2375.

66 The judge considered it reasonable for Mr. Hsieh to share in the cost of a nanny/housekeeper because the family circumstances previously included a nanny and Olivia continued to engage in a multitude of activities. In reaching this conclusion, she rejected Mr. Hsieh's contention that the nanny's tasks were more in the nature of housekeeping than child care, but made no specific findings as to the breakdown of her duties. In particular, the judge made no findings as to which of Olivia's extracurricular activities involve the nanny's services or the nature of her current child care duties. Nor did she identify the subsection of s. 7 she considered applicable or the extent, if

any, to which Mr. Hsieh contributed to the nanny expense prior to the parties' separation (paras. 25-26).

67 In my view, the evidence does not support the conclusion that the cost of the nanny/housekeeper is an expense within s. 7 of the Guidelines. There was simply no evidence that Ms. Lui incurs the nanny expense for child care purposes as a result of her "employment, illness, disability or education or training for employment" (s. 7(1)(a)). In particular, as Mr. Hsieh points out, there was no evidence that Ms. Lui suffers from an illness or disability and she does not work outside the home so does not require child care for purposes of employment. Nor can the nanny/housekeeper's services be characterized as "extraordinary expenses for extracurricular activities" (s. 7(1)(f)). In the circumstances, despite the fact that Mr. Hsieh is a high-income earner and Ms. Lui was assisted by a nanny prior to separation, in my view the judge erred in awarding the nanny cost as a shared expense under s. 7 of the Guidelines.

[147] In the present case, the claimant is able to work but has opted not to do so. She has mentioned possible further legal studies as a step towards pursuing a new legal career path, but she is not currently attending a graduate program. She does not have a disability which would make nanny assistance appropriate. There is also no need for a nanny based on Z's activities. Accordingly, there is no basis on which the claimant can justify claiming nanny expenses as a special or extraordinary expense for Z.

[148] I also do not agree that \$2,000 per month for a Spanish tutor is necessary. I have doubts about how much benefit a four-year old child can derive from a Spanish tutor. In any event, the claimant is fluent in Spanish. She is well able expose Z to that language herself.

[149] The respondent's proposed form of order is essentially an agreement to agree on most of the sub-categories set out in s. 7(1) of the Guidelines. Some portions of the claimant's proposed form of order are vague and non-specific. I am not inclined to pre-authorize expenditures in broad categories of expenses for child care, arts, music and sports activities, as opposed to specific programs and activities. If the parties want to establish limits on a category by category basis by agreement, they can do so.

[150] In my view, the appropriate interim order is that the respondent pay 100% of the following special and extraordinary expenses:

- a) Tuition, other fees and uniform expenses for Z to attend Collingwood School.
- b) That portion of the medical and dental insurance premiums attributable to Z;
- c) Health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses; and
- d) Hollyburn Country Club membership fees and related expenses attributable to Z.

[151] The parties are directed to confer and try to reach agreement on specific items which fall under s. 7(1)(a), (d) and (f) of the Guidelines, and failing agreement either party is at liberty to apply for an order based on specific activities and expenses.

Interim Spousal Support

Amount Sought

[152] The respondent seeks an order that his obligation to pay the claimant interim spousal support be set at \$30,000 per month, starting July 1, 2023, without conceding entitlement on compensatory grounds or as to duration. In addition, he proposes to continue to pay the mortgages on three of the parties' real properties: Radcliffe Property (claimant's residence), Bellevue Property (his residence) and 3602 West Cordova (his condo). This latter issue is addressed in a separate section below.

[153] The claimant seeks an order that the respondent pay her interim without prejudice spousal support of \$165,000 per month, starting July 1, 2023. Additionally, she seeks an order that the respondent pay all property-related expenses for all of the parties' properties (Radcliffe Property, Bellevue Property, 3602 West Cordova, 3007 West Cordova and the Cottage).

Applicable Law

[154] Section 15.2 of the DA sets out relevant considerations on an application for spousal support:

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Interim order

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

- (5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the 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 spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[155] Sections 161 and 162 of the FLA set out the objectives of spousal support:

Objectives of spousal support

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

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;

- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

Determining spousal support

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[156] In *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12, Master Keighley summarized principles relevant to an interim spousal support application:

12 On interim support applications, the application of these provisions must be qualified by certain established considerations:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
3. On interim support applications the court does not embark on an in- depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 1082; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
4. The courts should not unduly emphasize any one of the statutory considerations above others;
5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006 B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
7. Interim support should only be ordered where it can be said a prima facie case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B.*

[157] In *I.F. v. R.J.R.*, 2015 BCSC 793 at paras 122-126, Justice Ballance discussed the purpose for an interim order:

122 The main purpose of an interim order for spousal support is to bridge the period between when the action is commenced and the trial at which time the court will be in a position to make a decision on the merits: *D.R.M. v. R.B.M.*, 2006 BCSC 1921; *Goriuk v Turton*, 2011 BCSC 652.

123 Because interim orders are summary in nature and temporary, they provide a rough justice at best: *Newson v. Newson*, 65 B.C.L.R. (3rd) 22 (C.A.) at para. 11. The "rough justice" approach underlying the temporary order implicitly recognizes that the evidence before the chambers judge on the interim application is often insufficient to permit an in-depth analysis of the wide array of factors relevant to entitlement and quantum of support: *R.C.G. v. C.L.G.*, 2010 BCSC 1596, para. 11; *Johnson v Johnson*, [1993] B.C.J. No. 2140 at 16.

124 The legal test governing interim support is not necessarily the same as the test applicable in reaching the final order: *Goriuk*. This is because the full picture of many of the considerations under the applicable legislation will not be known until a fulsome inquiry on the merits is embarked upon a trial.

125 Relying on *Newson*, *Goriuk* confirmed that where the marriage is admitted and need is proved interim support should be ordered without adjudicating the issues, unless the action is frivolous or vexatious.

126 While the other relevant factors that inform the issue of spousal support are to be considered to the extent possible, the respective needs and means of the parties are ordinarily the central factors, if not the most prominent, on an interim application. The corollary is that considerations such as compensatory factors and the need to achieve self-sufficiency often hold less significance: *R.C.J. v. C.L.G.*, 2010 BCSC 1596 at para. 11; *Goriuk* at para. 33.

[158] Section 11 of SSAG identifies a "ceiling" in cases involving high income earners. The approach to this was addressed in *Hathaway* at paras. 45-47:

45 Section 11 describes a "ceiling" and a "floor", which is an "attempt to define the upper and lower bounds of the typical case, for which guideline formulas can generate acceptable results." In s. 11.1, the ceiling for a payor's income is set at \$350,000 gross annual income. This is not an "absolute" ceiling or a cap: *Smith v. Smith*, 2008 BCCA 245 at para. 31.

46 In s. 11.3, the SSAG suggest two approaches for circumstances where a payor earns more than \$350,000 and is also paying child support. The first is described as the "minimum plus" approach. Under this approach, the judge would first calculate the amount owed at the ceiling, and then adjust it "after taking into account the actual amount of child support being paid". This approach was suggested for circumstances where the payor's income is close to the ceiling.

47 The second approach is "one of pure discretion". Rather than calculating a minimum, the court would determine:

a dollar figure that would take into account the actual amount of child support paid, an amount which can be very large for high income cases. At some point, the large amounts of child support include a component that compensates the recipient spouse for the indirect costs of child-care responsibilities, leaving less need for spousal support to do so. This approach will become more important where the payor's income is well above the ceiling.

What is clear is that the larger stakes at these income levels and the complexities of the individual cases mean that the Advisory Guidelines will have less significance to the outcomes above the ceiling, whether negotiated or litigated.

[Underlining added in Hathaway]

Respondent's Position

- [159] The respondent argues that in order for interim support to be ordered, a prima facie entitlement must be established. He takes the position that the claimant has no entitlement to support on a compensatory basis. At best, she is entitled on a non-compensatory or needs basis. Counsel notes that income disparity alone does not create legal entitlement: see *Lee v. Lee*, 2014 BCCA 383 at para. 60 and *K.R. v. J.R.*, 2022 BCSC 1856 at para. 353.
- [160] In this case the claimant is not ill or disabled. She is not being "abandoned to destitution". She has an obligation to achieve self-sufficiency, which is magnified by the fact that she also has an obligation to support Z. She has simply chosen to remain unemployed.
- [161] Counsel argues there are key differences between the bedrock principles upon which compensatory and non-compensatory support are founded. The former addresses medium to long-term economic and domestic integration. The latter is sometimes referred to as "bridge financing" to keep a spouse on their own feet until they learn to run again. Here the claimant is intentionally unemployed and has no concrete plans to become independent and self-supporting. She has effectively had access to unlimited funds through her aggressive interpretation of the Elwood Order. What is required is a fixed interim spousal support amount which takes into consideration her immediate needs.
- [162] The respondent criticizes the claimant's approach to establishing the pre-separation status quo in three ways. One is her suggestion that her incurring one-time expenses during their short relationship created a status quo. Second, is that her approach of arguing status quo based on expenses she alleges were incurred during the respondent's first marriage. Third, even if the claimant's purported status quo lifestyle was achieved during their short relationship, it was unsustainable.

- [163] The respondent calculates that the claimant's discretionary spending in 2022 exceeded \$1.7 million. This does not include property-related expenses, because the respondent paid them. He contrasts this with what he says his own 2022 discretionary spending was, about \$225,000. He also points to his spending on Visa in 2013 (\$103,700) and 2014 (\$145,900) as being consistent with this. In no year during his relationship with the claimant did their joint spending on discretionary expenses reach \$1.7 million.
- [164] Counsel argues interim support should be tailored to meet the claimant's immediate needs, not the extravagant budget set out in the claimant's financial statement. Two examples where this kind of approach was taken include:
- a) *Goriuk v. Turton*, 2011 BCSC 652, where the husband had an annual income of \$9.7 million. The parties had been in a marriage-like relationship for 6.5 years. The SSAG recommendation was \$95,760 per month. MacKenzie A.C.J., as she then was, ordered spousal support of \$25,000 per month, based on the wife's monthly budget. She acknowledged this likely well below the status quo, but any potential unfairness could be remedied at trial.
 - b) *J.L.A. v. M.J.G.G.*, 2014 BCSC 1391, where Master Taylor ordered the husband to pay interim spousal support of \$12,000 per month, rather than mid-range spousal support of \$24,241 per month. He concluded the SSAG amount was excessive, as was the wife's budget at \$23,856. The fact that the wife was living rent-free had to be taken into account when assessing her needs and only her immediate needs were to be taken into account.
- [165] In this case, by virtue of the respondent voluntarily paying property-related expenses, the claimant has effectively been living property expense free in two residences and a Cottage, in addition to insisting on a rental property for the nannies.

Claimant's Position

- [166] The claimant takes the position that she is entitled to spousal support on both a compensatory and non-compensatory basis. Early in their relationship she provided care and support to the respondent's children and his mother. She took care of the respondent's daughter R every second week due to a dispute between R and A. She is also primarily responsible for Z's care.
- [167] Counsel says that the \$30,000 proposed by the respondent will not cover the claimant's monthly expenses. She contrasts this with the \$20,000 per month the respondent was giving her prior to separation for clothing alone.
- [168] The claimant critiques the respondent's evidence regarding his supposedly conservative spending, noting he uses figures set out in certain credit card statements, but does not include his spending from all sources. He has multiple bank accounts and credit cards at his disposal.

- [169] The respondent may now regret the lifestyle to which he introduced the claimant, but that is not the test. Within weeks of them meeting, the respondent took her on expensive vacations and to dine at high-end restaurants. He wanted her to have nice clothing. The evidence establishes the parties enjoyed a lavish lifestyle. That is their status quo and she and Z are entitled to continue in that lifestyle pending trial.
- [170] The claimant says the respondent's repeated noncompliance with the Elwood Order has resulted in her having to deplete her own savings to maintain the status quo. These were originally about \$360,000 in August 2021. She alleges that the respondent repeatedly failed to comply with the Elwood Order in an effort to financially limit her.
- [171] The claimant provides a summary of spending on a various credit cards and a joint account in 2018, calculating that the total for that year was \$1,363,219. This was prior to Z's birth and was early years in their relationship. This total does not include all accounts or mortgage payments made on the Radcliffe Property. Early in the relationship, the parties were spending at or near \$2 million per year on household expenses. The respondent's 2018 income was about \$16.5 million, so this was well within their means.
- [172] In 2021, the year the respondent created the spreadsheet identifying about \$2 million in annual expenses for the parties, he earned \$14.3 million in income. The suggestion that their spending was unsustainable is simply not borne out.
- [173] Taking into consideration that the claimant is also seeking table child support of \$103,318 or alternatively \$65,000, and considering that her expenses are approximately \$80,000 after deducting expenses has included under her Child expenses analysis, she says the appropriate level of spousal support, on an interim without prejudice basis, is \$165,000 per month.
- [174] Given the significant property at issue in the case, any potential over- or under-payment of support can be remedied at trial. There is significant prejudice to the claimant if interim support results in an under-payment. There is comparatively no prejudice to the respondent if he is found to have over-paid. Any over-payment can be adjusted using family assets.

Analysis

- [175] The SSAG recommended level of support, based on the respondent having a Guidelines income of \$13,222,049, the claimant having no income, is Low - \$290,231, Mid - \$312,554 and High - \$335,100. The DivorceMate calculation that was provided also suggested Guidelines Table basic child support of \$65,000 per month. I have concluded that the SSAG recommended amounts far exceed what is reasonable for spousal support.
- [176] The lifestyle enjoyed by the parties during their relationship is clearly well beyond norm for the vast majority of families. They decided to maintain four residential properties in Vancouver and West Vancouver, plus a Cottage. They had a household staff. They had

multiple cars. They enjoyed frequent luxury travel. Even accepting that, there is still considerable conflict in the evidence regarding the parties' standard of living. I am not in a position to resolve those conflicts on an interim application. That will have to be resolved at trial.

[177] I agree it is appropriate to take into consideration that the parties had a privileged lifestyle. I do not agree that it is necessary or appropriate to base the level of support on the claimant maintaining the most extravagant budget, on the basis that any over-payment will be made up at trial. The claimant's budget is unreasonably high in many respects for an interim order. For example, food expenses of \$6,000 per month, household supplies of \$2,000 per month, furnishings of \$2,000, décor and art maintenance of \$500 all appear excessive.

[178] It is also appropriate to take into consideration that part of the respondent's proposal and the claimant's application involve the respondent continuing to be responsible for paying 100% of certain mortgages and property-related expenses pending trial. That represents a very substantial benefit to the claimant which must be taken into consideration when fixing an appropriate level of spousal support. I address the respondent's responsibility for property-related expenses below.

[179] I have concluded that an appropriate level of interim spousal support is \$50,000 per month. Given the timing for release of these reasons, payments will commence September 1, 2023 and continue on the first day of each subsequent month until further order.

Payment of Property-Related Expenses

[180] The respondent seeks an order that he continue to pay the mortgages of three properties pending trial, namely (a) Radcliffe Property, (b) Bellevue Property and (c) 3602 West Cordova, without prejudice to his right to seek contribution and/or recovery from the claimant for those payments at trial and which may or may not be framed as occupational rent during submissions on reapportionment. The Radcliffe Property is the claimant's primary residence. The Bellevue Property is the respondent's primary residence. 3602 West Cordova is a strata property registered in the respondent's name.

[181] The claimant consents to this as far as it goes, but also seeks an order that the respondent be solely responsible for paying the mortgages and all associated expenses, including property taxes, property insurance, water and sewer, garbage (West Vancouver municipality), strata fees, landscaping utilities and maintenance and repairs for (a) the Radcliffe Property, (b) the Bellevue Property, (c) 3602 West Cordova, (d) 3007 West Cordova and (e) the Cottage. 3007 West Cordova is a strata property registered in the claimant's name.

[182] As noted, the claimant calculates housing expenses for Radcliffe Property to be about \$44,988 per month, 3007 West Cordova to be \$9,191 per month and Cottage to be \$5,137 per month.

[183] Section 226(a) of the FLA allows the court to require a party to make payments related to a residence.

Orders respecting residence

226 A court may make an order to do one or more of the following:

- (a) require a party to make payments respecting rent, mortgage, specified utilities, taxes, insurance and other expenses related to a residence;
- (b) prohibit a party from terminating specified utilities for a residence;
- (c) require a specified person to supervise the removal of personal belongings, by another person, from a residence.

[184] At the hearing, it is my understanding that the respondent consented to paying property-related expenses for the Radcliffe Property, but he seeks orders that the Cottage and Yacht be sold.

[185] The parties chose to acquire and maintain five properties during their relationship. Given the close proximity to trial, I have concluded that it is appropriate on an interim basis that the respondent continue being responsible for paying property-related expenses on each of (a) the Radcliffe Property, (b) the Bellevue Property, (c) 3602 West Cordova, (d) 3007 West Cordova and (e) the Cottage. That will ensure they are preserved until trial.

[186] Items for which the respondent is responsible will include mortgage payments, property taxes, property insurance, garbage, water and sewer rates and strata fees for the two strata properties. It does not include any renovations, utilities (telephone, electricity, heat, cable, internet) or expenses relating to boats and vehicles located at the Cottage.

Sale of Cottage and Yacht

[187] The respondent applies for an order that the Cottage and Yacht be sold. He relies on Rule 15-8(1) of the SCFR, which provides that a court can order that property be sold if it appears necessary or expedient:

Rule 15-8 - Sales by the Court

Court may order sale

- (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

[188] In *Kapoor v. Makkar*, 2020 BCCA 223, at paras. 30-31, the court of appeal summarized factors to be considered in an application for interim sale of a family asset:

30 In *Tomic v. Tough*, 2013 BCCA 355, this court considered an interlocutory order for sale of property under R. 15-8 in a family case and said:

[26] The criteria for an interlocutory order for sale of property are whether it is expedient and necessary. Those words were described in *Bodo* [*Bodo v. Bodo* (1990), 66 D.L.R. (4th) 700, 25 R.F.L. (3d) 295 (B.C.S.C.)] as encompassing, in family law proceedings, a number of factors: the needs of the children; the availability of alternative accommodation; the emotional condition of the spouses; external economic factors; wasting of the asset; and the capacity of both parties to maintain the asset. In *Reilly v. Reilly* [(1992), 99 D.L.R. (4th) 47 (B.C.C.A.)], the court adopted the word 'advantageous' in place of 'expedient', at para. 35:

At the risk of over simplification my own view is that what the rule requires, where necessity is not in issue, is that the proposed sale be advantageous to both parties.

31 In *Bodo*, referred to in *Tomic*, Madam Justice Huddart described the approach that should be brought to such an application:

... I consider that, on an interim application, the onus should be on the spouse seeking to change the status quo pending trial. Any doubts about the justice of an order for sale on an interim application should be resolved in favour of the status quo.

...

Given the wide variety of factual patterns in family law actions it would be singularly foolish of me to attempt a definitive listing of factors that might be relevant to the determination as to whether a sale is "necessary and expedient". However, those factors that have been considered in determining whether a sale should be ordered at trial will always be relevant. They include:

1. Children's need for stability and easy access to their school and friends, particularly in the period immediately following the separation of their parents;
2. The availability (including affordability) of alternative accommodation for each spouse and his or her dependents;
3. The emotional condition of the spouses, especially the parenting spouse;
4. External economic factors (e.g., a declining market);
5. Wasting of the asset, and
6. The capacity of the parties to maintain the asset.

It is appropriate for the court to turn its mind as well to questions of efficiency and expediency. A determination of the value of matrimonial property at or near the triggering event may facilitate the final resolution of the dispute.

This is particularly so in the vast majority of cases where the family home is the only asset with significant value. A judicial review of the evidence at an early stage may bring some reality to an emotionally laden conflict which can have only one outcome, the sale of the home and the equal division of the proceeds. Conversely, it may identify those situations in which there is a realistic expectation of a variation. Such a review can also focus the parties' attention on the needs of their children during the period of transition from a united to a divided family unit.

Potential prejudice to a party must always be a factor in determining an issue on an interim basis that irrevocably alters the status quo.

[189] In *Dosanjh v. Lalli*, 2021 BCCA 204 at para. 33, the court of appeal summarized as follows:

33 Rule 15-8 thus engages the exercise of judicial discretion. Whether it is "necessary or expedient" for property to be sold will depend on the circumstances of each case. In the family law context, when the court decides whether to order the sale of family property, relevant factors for consideration under Rule 15-8 include, among others, the needs of children, the availability of alternative accommodation and external economic factors. Where necessity is not in issue, to be "expedient" a court-ordered sale of property must be advantageous to both parties: *B.B.A. v. K.C.A.*, 2002 BCSC 1188 at paras. 14-16, citing *Bodo v. Bodo* (1990), 66 D.L.R. (4th) 700 (B.C.S.C.), and *Reilly v. Reilly* (1992), 74 B.C.L.R. (2d) 101 (C.A.).

[190] The respondent argues that in order to give effect to the division of property at trial, it will be necessary to sell certain assets. The Cottage and Yacht are luxury purchases that were made in 2020 to alleviate the claimant's anxieties during the pandemic. They are an unsustainable extravagance and there is no reason to retain them or continue incurring costs for their upkeep.

[191] The claimant calculates that monthly expenses for the Cottage are about \$6,702 per month and substantial renovations are still required to bring the property to a reasonable standard. Costs to keep and operate the Yacht are about \$10,514 per month.

[192] The claimant says that sale of the Cottage and Yacht is not necessary and would not be advantageous to both parties. These were both gifts to her. The respondent disputes that and says they were acquired using his excluded property and he never intended to gift them to her. The claimant wishes to continue to using them. There is no debt associated with them. They were purchased at an advantageous time in the market and she has made improvements to both.

[193] The claimant says she is an avid sailor and powerboater. In 2020, she used the Yacht for over 500 boating hours. She is also concerned the respondent wishes to force the sale of these assets as a way of pre-determining division of family property. If they are sold, she is denied the possibility of retaining them.

[194] While I suspect that it will ultimately prove to be impractical for the claimant to try to keep and maintain both the Cottage and Yacht, I am not persuaded that selling them prior to trial is necessary. The respondent appears to have sufficient financial resources available to preserve the real properties pending trial. Any necessary adjustments as between the parties can be made by the trial judge.

[195] I am also not persuaded that sale of the Cottage and Yacht would be expedient or advantageous to both parties. They disagree regarding the extent and value of family property in dispute, however, it appears to be a possibility that the claimant could retain one or both of them. As the claimant wishes to preserve the Yacht, she will be responsible for the expenses to preserve and maintain it pending trial.

[196] This aspect of the respondent's application is dismissed.

Transitional Issues

[197] The net effect of this order may be that some household staff cannot be maintained at current levels. If there are transitional issues which arise which have financial implications (for example, severance pay), the parties are to make best efforts to reach an interim agreement on how to address those, failing which either party is at liberty to apply. Any necessary final adjustments can be addressed at trial.

Orders Made

[198] The respondent's application to impute income to the claimant is dismissed, subject to the child and spousal support orders are made without prejudice to the respondent's ability to seek a retroactive adjustment of support based on income being imputed to the claimant.

[199] The respondent will pay the claimant interim basic child support of \$15,000 per month, commencing September 1, 2023 and continuing on the first day of each subsequent month until further order.

[200] The respondent will pay 100% of the following special and extraordinary expenses:

- a) Tuition, other fees and uniform expenses for Z to attend Collingwood School.
- b) That portion of the medical and dental insurance premiums attributable to Z;
- c) Health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- d) Hollyburn Country Club membership fees and related expenses attributable to Z.

- [201] The parties are directed to confer and try to reach agreement on specific items which fall under s. 7(1)(a), (d) and (f) of the Guidelines, and failing agreement either party is at liberty to apply for an order based on specific activities and expenses.
- [202] I order that the respondent pay the claimant interim spousal support of \$50,000 per month, commencing September 1, 2023 and continuing on the first day of each subsequent month until further order.
- [203] The respondent will continue to be responsible for paying property-related expenses on each of the following pending trial (a) the Radcliffe Property, (b) the Bellevue Property, (c) 3602 West Cordova, (d) 3007 West Cordova and (e) the Cottage. In particular:
- a) Items for which the respondent is responsible will include mortgage payments, property taxes, property insurance, garbage, water and sewer rates and strata fees for strata properties.
 - b) This will not include non-emergency repairs and renovations, telephone, cable, electricity, heat, internet, fuel and maintenance for boats and vehicles at the Cottage or insurance for vehicles kept at the Cottage.
- [204] The respondent's application to sell the Cottage and Yacht are dismissed.
- [205] If there are transitional issues which arise which have financial implications (for example, severance pay), the parties are to make best efforts to reach an interim agreement on how to address those, failing which either party is at liberty to apply. Any necessary final adjustments can be addressed at trial.
- [206] The parties have had divided success on these applications. Costs will be in the cause.

"Master Bilawich"

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