

CANADA / JUDGMENT

J.S. v. R.B.

2025 BCSC 1287

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Supreme Court of British Columbia

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2025 BCSC 1287 J.S. v. R.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.S. v. R.B.,

2025 BCSC 1287

Date: 20250710

Docket: E211583

Registry: Vancouver

Between:

J.S.

Claimant

And

R.B.

Respondent

Before: The Honourable Justice Greenwood

Reasons for Judgment

Counsel for Claimant:

A.M. Ouellet

Counsel for Respondent:

S. Specht

Place and Date of Trial:

Vancouver, B.C.

June 24-27, July 2-5,

July 8-12, October 15-18,

November 12,

December 2-5, 2024,

and January 7-10, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 10, 2025

Introduction

- [1] This is a family law decision following a 23-day trial. A father (J.S.) and mother (R.B.) were in a marriage like relationship for approximately ten years, and are the parents of three children: B.L.S., a fifteen-year-old girl, B.C.S., a thirteen-year-old boy, and M.S., a twelve-year-old boy.
- [2] To their credit the parties have resolved some issues by agreement, but there remain deep divisions in their approach to a variety of issues, and the orders that should result.
- [3] The issues that remain to be decided include:
- a) The date of separation;
 - b) Valuation and division of J.S.'s Law Corporation;
 - c) Division of the remaining family property and debt;
 - d) Child support including determination of income;
 - e) Spousal support including determination of income; and
 - f) Classification of special or extraordinary expenses.
- [4] Some background facts will put the issues into perspective.

Background

- [5] The parties met in 2005 at the law firm where they both worked. They began to socialize together, date, and by 2008 they were living together in a marriage-like relationship.

- [6] Initially they were doing well. J.S. was a very skilled lawyer and was on a partnership track at a major law firm in Vancouver. R.B. had clerked for the Court of Appeal, had a broad range of legal skills, and became an associate at the same firm. She supported the J.S.'s career, but she was a very skilled lawyer in her own right, working as a junior associate assisting in mergers and acquisitions. The law firm where the parties worked prized excellence, but the work environment was very challenging and involved extremely long hours.
- [7] In 2008, J.S. changed firms. It was an opportunity to play a leading role at a smaller firm and yet still achieve financial success. The parties discussed the pros and cons of his career change. J.S. became a partner in 2010 and still works at that firm.
- [8] In 2009, the parties decided to start a family. B.L.S., was born in September 2009, approximately a year and a half after R.B. had been called to the bar. R.B. took maternity leave for 12 months to care for B.L.S. When R.B. returned to work, she switched to part time work because full time work was not compatible with having a baby.
- [9] B.C.S. was born in September 2011 and had some early medical problems. R.B. went on maternity leave again, this time for 6 months. She did not take a top up from the firm because that meant she would have to pay it back if she did not return to her employment, and it was clear at this point that R.B. was going to change jobs.
- [10] In March 2012, R.B. began working for a firm that specialized in corporate governance as opposed to traditional legal work. At this stage, each of the parties were supportive of the other's career choices.
- [11] M.S. was born in June 2013. R.B. broke her foot shortly before giving birth and was on maternity leave again, this time for approximately 6 and a half months. The parties hired a live-in nanny. When R.B. returned to work, she was working full time again, and her work required her to travel approximately once a month.
- [12] R.B. took the lead in ensuring the children's needs were met when they were very young. She organized the nanny's role and assisted in the mornings and after work. J.S. worked long hours to establish his career.
- [13] In the summer of 2013, the parties rented a townhouse. They purchased a family home on Beach Crescent in Vancouver in 2015.
- [14] R.B. had experienced some mental health challenges before meeting J.S. She and J.S. both drank socially, at firm functions when they first met, and outside of the firm. R.B. described her time with J.S. as a young associate as working hard and playing hard, including the use of alcohol. Unfortunately, R.B.'s use of alcohol increased as the demands of the workplace and childcare increased.
- [15] Between 2015 and 2017, R.B. was having difficulties and alcohol became a coping mechanism. Her drinking increased. There were absences from the home, spending, and infidelity. R.B. herself described it as a downward spiral. In May 2016, she lost her job. After

that, her drinking only increased, including during the day. She describes herself as being in full addiction. She was trying to fulfill her responsibilities, but she was very sick. She was mentally and emotionally unstable by her own account and had suicidal thoughts. It was a very stressful period for the entire family. J.S. tried to get her help, but she was not ready for rehabilitation.

- [16] In June 2017, matters came to a head when the parties had a get together at the family home with the kids at the end of the school year. R.B. was drunk on the floor in the kitchen. The children were very concerned. The next morning J.S. spoke to R.B. and told her she could not be in the house and asked her to leave the home until she was sober.
- [17] At that point, R.B. found the strength to take an important step for her future, and for her children. With the help of others, she made the decision to attend Edgewood, a residential rehabilitation facility on Vancouver Island. She was there for over 5 months, and it changed her life.
- [18] J.S. brought the kids over to visit on 2 or 3 occasions while R.B. was at Edgewood. When R.B. returned to Vancouver in December 2017, she stayed at her parent's residence. She would attend the family home in the mornings, care for the children, and remain there until J.S. returned from work.
- [19] In September 2018, R.B. asked to move back into the family home and J.S. agreed. The parties stayed in different rooms. Around this time, they entered into a collaborative process in the hopes of reaching a final agreement of all issues arising from their separation.
- [20] In May 2019, J.S. moved out and rented his own one-bedroom apartment. The parties entered into a nesting arrangement. The children continued to live in the family home and each parent stayed in the family home when they had parenting time with the children. This was an informal arrangement.
- [21] Parenting time was adjusted over the life of the nesting arrangement. The evidence between the parties differs as to exactly how many nights J.S. had with the children, but both parties would see the kids outside of the times they were staying at the family home on occasion, for sleepovers and other occasions.
- [22] On July 20, 2020, the parties signed a family agreement. Since that time, J.S. has paid set monthly amounts of child and spousal support on a without prejudice basis. The collaborative process did not bear fruit and was terminated by J.S. in May 2021.
- [23] In the summer of 2021, J.S. filed a notice of family claim and sought to terminate the nesting arrangement. The parties could not agree on a path forward. R.B. continued to live in the family home with the children. J.S. stopped participating in the nesting arrangement and stopped paying for the mortgage and strata payments on the family home.

[24] In February 2022, R.B. agreed to list the family home for sale. In March 2022, she rented and moved into a two-bedroom apartment in Yaletown. The parties agreed to a modified "2-2-5-5" shared parenting schedule as joint guardians. That arrangement remains in place.

[25] In April 2022, the family home was sold and the proceeds placed in trust.

Did J.S. intentionally use financial issues to control or demean R.B.?

[26] Before discussing the main issues in dispute between the parties, it is necessary to address the general allegation made by R.B. that the manner in which J.S. dealt with financial issues was aimed at controlling or demeaning her. That submission imbued many of R.B.'s submissions on the substantive areas of dispute between the parties.

[27] In my view, the evidence does not support the contention that there was any intentional wrongdoing on the part of J.S.

[28] In the early stages after R.B.'s return from Edgewood, she was not provided with enough access to family funds. She did not have an account and used a credit card that the parties arranged for her, but it had a very low credit limit at first of \$1,000. This was insufficient. R.B. explained that she felt ashamed and like a burden, and would not tell J.S. about her financial circumstances. The low credit limit resulted in R.B. being refused at cash registers on occasion, and she borrowed money from her parents, and used a jar over the microwave that was money that belonged to the children. She would borrow it and leave an IOU in the jar.

[29] J.S. testified, and I accept, that he did not refuse requests for money, but that uncontrolled credit card spending had been a problem before Edgewood, and he was worried about money and the future. The credit limit was raised as time progressed. From an objective point of view, there should not have been any serious worry about money given J.S.'s income. However, I accept that a general concern over money was J.S.'s honestly held belief at the time, and he did not intentionally set out to punish R.B. financially.

[30] In my view, J.S. should have been more proactive in these early stages in ensuring that R.B. had greater access to their joint finances, but I do not find that the manner in which he dealt with financial issues was aimed at marginalizing or demeaning R.B.

[31] I am also unable to conclude that J.S. was intentionally concealing income or financial information from R.B. Some arguments of that type were based on non-disclosure of financial information in the context of family proceedings over the years. While there was certainly not what one might describe as perfect disclosure, there was ongoing disclosure, and no obvious or apparent deceit. There was also an unexpected fluctuation in J.S.'s income as a result of the Covid pandemic in 2020 and 2021 at a time when various family law processes were taking place.

- [32] Similarly, I do not accept that J.S. intentionally underpaid tax in order to get later refunds and conceal his actual income from R.B. There was often uncertainty from year to year about what J.S.'s draw from the law firm would be, and the situation would only become clearer once the year completed, the draws were paid, and taxes were filed. Tax advice was provided that affected the amounts received and the notices of assessment and reassessment. I can discern no pattern that this was intentional or related to the family proceedings. It appears to simply be a relatively normal pattern of payment, assessment and reassessment, with certain delays occasioned by CRA.
- [33] Finally, I do not think there was an intention on the part of J.S. to ensure that he had access to unrestricted discretionary income while R.B. was restricted. I accept his evidence that their finances were structured so as to receive \$11,000 each from the law corporation. J.S. prepared spreadsheets that he adopted in his evidence, to demonstrate that he did not receive appreciably more than R.B. during the relevant times. While the spreadsheets he prepared may not be forensically exact, I am satisfied based on his evidence, that there was no effort on his part to access and use more money than R.B.
- [34] In short, I do not accept any of the allegations of intentional wrongdoing, or financial manipulation that were made against J.S.
- [35] The reality is that the family situation was strained, the parties did not see eye to eye, and it was emotionally very difficult on both J.S. and R.B. I have seen first hand in their evidence how stressful the situation has been. Both felt their futures, and the future of their children was at stake.
- [36] Some of J.S.'s correspondence that was sent through counsel had a profound impact on R.B. emotionally, but it was not sent in bad faith as counsel contended. It simply outlined J.S.'s position, to be agreed or disagreed, and reflected a desire on J.S.'s part to move forward with the family law proceedings in light of the time that had passed.

What was the date of separation?

- [37] The first issue to be determined is what the date of separation was between the parties. J.S. contends that the marriage like relationship ended in 2017, when R.B. attended Edgewood. R.B.'s position is that the date of separation was not until July 2018.
- [38] I conclude that the date of separation was July 14, 2018. I accept that J.S. had no intention of continuing a marriage-like relationship with R.B., but that was never clearly communicated. Their relationship after 2017 was atypical, but that was attributable to R.B.'s ongoing recovery. Many generally accepted characteristics of a marriage-like relationship remained in place. It was only when J.S. wrote to R.B. and made it clear that their marriage-like relationship was at an end, that his actions demonstrated his intention to separate permanently.

- [39] One of the factors to consider in determining whether a relationship has come to an end, is whether or not the relationship includes "generally accepted characteristics of marriage." There is no specific checklist. Rather the focus is on the sort of behaviour that society associates with a marital relationship: *Der Woon v. Zadorozny*, 2020 BCCA 95, at paras. 9-10, or a marriage-like relationship.
- [40] Section 3(4)(b) of the Family Law Act, S.B.C 2011, c. 25 directs that a court may also consider a "communication, by one spouse to the other spouse of an intention to separate," and "an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently." A court must be satisfied that the spouse who initiated a separation had a settled intention to separate and acted in a manner consistent with that intention: *Z.A.S. v. T.S.*, 2024 BCSC 2205 at para. 51.
- [41] In this case, J.S. told R.B. in 2017 that she could not come in the house until she was sober, but he did not tell her that their relationship was over. His focus was on stabilizing the situation and ensuring that R.B. got better rather than ending their relationship. There was no clear indication, at that stage in June, that he intended to end the relationship.
- [42] Many of the generally accepted characteristics of a marriage were then in abeyance, but that was because R.B. was in Edgewood. J.S. was unhappy with R.B.'s infidelity and behaviour, and likely did intend to end the relationship, but that was never adequately communicated to R.B. Objectively speaking, the situation was consistent with taking appropriate steps to ensure the health of one party in the marriage-like relationship for the sake of the children.
- [43] J.S. brought the children to visit R.B. at Edgewood and there were no outward indications that the marriage-like relationship was over. J.S. testified, for example, that he would not tell R.B. that the relationship was over due to the focus on her recovery.
- [44] When R.B. returned to Vancouver, she stayed with her parents. J.S. testified the reason for that was that he was not willing to have her back. J.S. testified that he could not understand why R.B. would not have realized the relationship was over, but there is no evidence of any explicit communications, and R.B. testified that staying with her parents was, in part, to avoid taking on too much too quickly.
- [45] In terms of generally accepted characteristics of a marriage-like relationship all of the following factors were suggestive of a continuing relationship:
- a) The parties spent Christmas together with R.B. staying in the family home;
 - b) The parties celebrated other holidays and birthdays as a family;
 - c) R.B. had belongings in the family residence and cared for the children there;
 - d) R.B. would grocery shop for the family; and
 - e) R.B. used the family van with the kids during the day.

- [46] In June 2018, R.B. wrote to J.S. to address their future and said (under the heading "marriage") soon we need to decide if we are a family unit or co-parents. I am open on working towards reintegrating as a family unit. We have three amazing children and a family.
- [47] Approximately five or six weeks later, in July 2018, J.S. responded. After explaining that nothing was more important to him than the children, he wrote "Unfortunately, after all that has happened, I do not see a basis for attempting to resume a romantic relationship." He suggested they be friends and focus on co-parenting.
- [48] In my view, the evidence demonstrates that while R.B. always held out hope that they would repair any damage and resume their relationship, J.S. never intended to resume their relationship, but had acted carefully so as not to disrupt R.B.'s recovery or hurt her unnecessarily. When he did make it clear the relationship was over, he worked with a counsellor so as to ensure it was done in a respectful way, but also in a way that left no doubt that they were not working towards a relationship.
- [49] J.S. signed two agreements that acknowledged the parties had been living separate and apart "since July 14, 2018." While those agreements were apparently primarily for tax purposes and are less significant than the other evidence, they support the conclusion that the date of separation was not until 2018. I conclude that the date of separation was July 14, 2018.

Division of Property

- [50] The issues related to division of property include the valuation and division of J.S.' law corporation, what adjustments should be made to the funds from the sale of the family home to account for various other financial issues, and division of other family assets and debts.
- [51] Property division is governed by Part 5 of the Family Law Act. Family property includes all real property owned by at least one spouse on the date of separation which would include the family residence in this case. The general rule is that each spouse is entitled to an undivided half interest in all family property: FLA, s. 81, *Jaszcewska v. Kostanski*, 2016 BCCA 286 at para. 38.
- [52] The court may order an unequal division of family property if it would be "significantly unfair" to equally divide it: FLA, s. 95(1)(a), *Jaszcewski* at paras. 40-41.

How should the law corporation be valued and divided?

- [53] J.S. is the main shareholder of a personal law corporation that is family property and subject to division under the Family Law Act. The law corporation serves mainly as a vehicle through which J.S. earns professional income as a partner at this new law firm. The law corporation owns the partnership interest at J.S.'s firm. The law corporation's most significant assets consist of cash, receivables from the law firm, and term deposits. There are also a few minor securities of modest or nominal value.
- [54] The parties agree that the law corporation is family property, but do not agree on the date of valuation, adjustments for taxation, or how to reconcile the value of the law corporation and divide the property fairly.

What valuation date should be adopted?

- [55] In my view, the law corporation should be valued as of the date of trial, and an unequal division of the law corporation used to address the unfairness that would otherwise result from a straight division as of the date of trial.
- [56] The valuation date affects the resulting orders that are made in this case as it affects whether money that was earned through J.S.'s employment is treated as property to be divided or income, without counting the same money twice as outlined in *B.L.S. v. D.J.S.*, 2021 BCSC 1311 at para. 16 and *Sanai v. Mahmoud*, 2017 BCCA 155 at paras. 23 and 24.

Position of the Parties on Division of the Law Corporation

- [57] J.S.'s position is that equal division of the law corporation at the date of trial would be unfair since the increase of value is due primarily to the work of J.S. post-separation. He contends that if the law corporation is valued as of the date of trial, there should be an unequal division. Alternatively, J.S. says the law corporation should be divided as of the date of separation, and the earnings in subsequent years should be treated as income for retroactive support purposes, subject to adjustment in accordance with the Federal Child Support Guidelines, SOR/97-175.
- [58] R.B.'s position is that there is no basis for a significant reapportionment. She says that the law corporation was started as a joint family plan to generate income, they worked together to decide on the best opportunities that were available, and she continued to contribute to the business post-separation. She points out that the increased value of the shares post-separation was not solely as a result of J.S.'s labours, which remained consistent, but was also the result of market forces. In her submission, equal division of the corporation as of December 31, 2020, would be appropriate.

Discussion

- [59] It is well established that the presumptive date for the valuation of family property is the date of the hearing, and departure from that date is effectively a reapportionment or unequal division of property under s. 95 of the FLA. A court may only depart from the presumptive date if selecting it would create significant unfairness: *Zilic v. Zilic*, 2021 BCCA 107 at para. 13(e) and *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 59.
- [60] I am satisfied that it would be significantly unfair to divide the shares of the law corporation equally as of the date of trial. J.S.'s earnings are the primary basis for the increase in value to the law corporation. His skill and labour are responsible for the majority of the revenue and retained earnings in the corporation. One of the factors in section 95(1)(f) of the FLA is whether one spouse caused a significant increase in the value of family property "beyond market trends." I am satisfied that J.S. did that, though his labours were not the only reason for the increased value.
- [61] I accept that R.B. played a role early on in the law corporation, supported J.S.'s career, and continued to support it indirectly after they separated, for example, by providing childcare. There were also market trends that played a role in increasing the value of the law corporation. For example, there is an obvious bump in money earned by J.S. in 2020 and 2021. Based on the testimony of J.S.'s law partner and J.S. himself, that was the result of unexpectedly strong business activity during the Covid pandemic, and a reduction in the number of partners at the firm.
- [62] In my view, the fairest way to divide the law corporation is to divide it as of the date of trial, and to consider other mechanisms to address any unfairness that arises. Doing so accounts for the degree to which the law corporation began as a joint venture, indirect contributions made by R.B. post-separation, and the increased value of the corporation because of the skill and labour of J.S.
- [63] J.S.'s argument that the corporation should be valued as of the date of separation is based on a line of cases that are not entirely analogous. For example, in *Phillips v. Saunders*, 2018 BCSC 960, rev'd on other grounds 2020 BCCA 265, a doctor's corporation was divided as of the date of separation, but in that case the doctor had kept his pre and post separation earnings entirely separate, and there was no evidence of a contribution from his spouse or any market forces.
- [64] Unequal division of property under s. 95 of the FLA is sufficiently flexible to remedy unfairness resulting from the division of a corporation that is a vehicle for one party's earnings. For example, in *N.N.N v. D.E.B.*, 2021 BCSC 2433, the shares of a chiropractor's corporation were divided as of a date between the date of separation and trial, and divided unequally with 60% going to the respondent chiropractor.

- [65] In *Jaszczewska v. Kostanski*, 2016 BCCA 286, the court found that the facts supported unequal division of family property based on one party's efforts to increase the value of the property post separation. At para. 51, the court stated:
- [51] Considering whether to divide family property unequally because one spouse has caused an increase in the value of family property after separation is consistent with the overall excluded property scheme in which each spouse presumptively keeps what is theirs but shares in the value of family property accumulated during the relationship (and shares in increases in value afterwards resulting from market forces).
- [66] I do not accept R.B.'s suggestion that the law corporation should be valued as of December 31, 2020, and divided equally. In my view, that would be unfair to the claimant and the fact that the value that accrued to the law corporation was mainly the result of his skill and labour. It would also mean that R.B. would benefit from all of the increased value resulting from the high point of J.S.'s earnings, but would share none of the reduction in value when business slowed down again.
- [67] Accordingly, I have determined that the law corporation should be divided as of the date of trial, but unequally to ameliorate the unfairness that would otherwise arise.

What is the value of the law corporation, and should it include the partnership interest that the law corporation holds in J.S.'s current law firm?

- [68] The best evidence of the value of the law corporation comes from the expert report and testimony of Mr. Ghanavizchian who provided a valuation report. According to that report, the value of the law corporation as of December 31, 2023, which is the best available information for the value at the date of trial, is \$1,540,000 if the partnership interest in J.S.'s current law firm is included as an asset, and \$1,280,000 if it is not.
- [69] I have concluded that the value of the law corporations should not include the partnership interest based on the structure of the partnership.
- [70] Mr. Ghanavizchian testified that the increase to the value of the law corporation from the partnership interest was based on accounts receivable and payment for work in progress over \$50,000 that is a retirement benefit under the partnership. In other words, it was based on J.S. theoretically retiring as of the valuation date. Mr. Ghanavizchian increased the discount rate because there is a risk of non-collection, but he only applied the discount rate for two years. He testified that the discount rate would have to be much higher if retirement were not to take place for 20 years.
- [71] I would value the shares of the law corporation without the partnership retirement interest. Mr. Ghanavizchian acknowledged that his calculation was based on the hypothetical and immediate retirement or withdrawal from the partnership of J.S.'s law corporation. No benefit will crystalize until that time. In the meantime, those amounts would be captured as income in subsequent years.

[72] J.S. is currently 49 years old and has no plans of retirement on the horizon. In my view, inclusion of that amount would be to treat future income as family property to be divided today. That income has not been earned and is not certain.

[73] I find that the best evidence of the value of the law corporation as of the date of trial, without the partnership interest included, is Mr. Ghanavizchian's assessment that the corporation is worth \$1,280,000.

How should the value of the law corporation be divided?

[74] As noted, in my view it is necessary to divide the law corporation unequally because the main increase in the value of the corporation was due to J.S.' labour, professional expertise and commitment to work. I am satisfied that he had caused a significant increase in the value of the family property as outlined under s. 95(1)(f) of the FLA.

[75] Accordingly, I would divide the law corporation unequally to avoid significant unfairness and would grant J.S. 75 percent of the corporation and R.B. 25 percent.

[76] Mathematically, the share value of 25% of the company is \$320,000 before any consideration of distributive tax. In my view, as outlined in Sanai, I should consider the distributive tax issue, because money left in the law corporation will be subject to personal taxes when and if it is taken out of the company. I would adopt the figure of distributive income tax owing on each dollar taken out as being 39 cents as outlined in Mr. Ghanavizchian's report. Accordingly, the amount that J.S. must pay R.B. for her share of the value of the law corporation is \$195,200 ($\$320,000 \times 0.61$).

[77] As the law corporation continues to be used by J.S., he shall retain all his shares in the company, and R.B. shall transfer her non-voting shares in the corporation to J.S.

[78] I should note as well, that since retained earnings have been divided as family property and a portion awarded to R.B., I should not "double count" that money and simultaneously treat it as income. As a result, later in these reasons when I assess income for support purposes, I will only consider the actual income that J.S. received, and 75 percent of the available income that was left in the corporation.

[79] In this way, R.B. and children are not disadvantaged by failing to count the extra percentage of retained earnings in the law corporation when it comes to calculating J.S.'s income, though adjustments under the guidelines may still be made. Thus, when it comes to J.S.'s 75 percent share in the company, that will be treated as income rather than capital given that his law corporation is essentially a vehicle for collecting his earnings on a yearly basis.

What adjustments are necessary to the equal division of the proceeds from the sale of the family home?

- [80] There is no dispute that the townhouse sold in April 2022 was family property and is to be divided equally. The balance in trust as of November 26, 2024, was \$1,891, 296.12 and that amount has continued to earn interest.
- [81] The parties agree that certain adjustments must be made to the distribution of funds to account for various, loans, debts or amounts that were withdrawn from the funds in trust.
- [82] One point of contention is the division of family debt. Pursuant to s. 86 of the FLA, family debt includes all financial obligations incurred by a spouse during the relationship, or after if it is incurred for the purpose of maintaining family property.
- [83] J.S. argues that there are no family debts. R.B., on the other hand, says that the balance of the family credit card of approximately \$6500, when she left for Edgewood in July 2017 was a family debt. Additionally, she says that \$18,000 she had to borrow from her father to pay the mortgage and strata fees when J.S. stopped doing so should be treated as a family debt. She also argues that \$6500 she borrowed from her parents for the purposes of her first legal counsel should be treated as a family debt.
- [84] R.B.'s father testified in examination in chief and cross-examination with respect to money that he lent R.B. I am satisfied from his evidence, that \$18,000 can be directly traced to funds used to pay the mortgage.
- [85] I am satisfied that both the credit card debt which was incurred during the relationship (the balance pre-existed R.B.'s attendance at Edgewood), and the \$18,000 borrowed from her father for payment of the mortgage were family debts. The mortgage payments were clearly necessary to maintain family property.
- [86] I am not satisfied that the legal fees incurred after separation are properly considered family debt and would not treat them as such.
- [87] There are also other amounts that need to be accounted for and equalized, since they were primarily either expenses incurred by one side or the other related to the townhouse, or advances drawn or amounts that were agreed to be paid out of the proceedings in trust by one side or the other. Accordingly, the funds to be divided should be adjusted to accommodate all the following amounts:
- a) \$20,000 to be paid to J.S. out of R.B.'s share of the total as a repayment of the amount advanced by J.S. in August of 2021 that the parties agreed would be repaid as part of the final division of property;
 - b) \$8,173 to be paid to J.S. out of R.B.'s share of the total as payment for the purchase of the family van and to equalize the withdrawal of \$16,347 from trust that was used to pay the purchase price of the van that now belongs to R.B., the parties having agreed that the purchase price would be reconciled out of the trust proceeds;

- c) \$25,000 to be paid to J.S. out of R.B.'s share of the total to account for her share of a \$50,000 loan from the law corporation for the payment of R.B.'s legal fees. The law corporation was paid from the proceeds of the sale of the townhouse, and the parties agreed that R.B. would account for the funds she received out of the proceeds of the townhouse;
- d) \$2,300 to be paid to J.S. out of R.B.'s share of the total for his contribution to her initial rent payments;
- e) \$24,500 to be paid from the trust proceeds to R.B.'s father for the debt arising from the mortgage payment and payment of credit card R.B.'s name which I have found were family debts;
- f) \$3,139 to be paid to J.S. out of R.B.'s share of the total for her share of the property taxes and insurance during the period that R.B. paid the mortgage;
- g) \$15,747 to be paid to R.B. out of J.S.'s share representing his share of the mortgage payments for the townhouse over and above the \$18,000 reimbursed to R.B.'s father directly (half of \$3299.65 for 15 months less \$18,000);
- h) \$1,000 to be held in the general trust account of counsel for J.S. as security for payment of the required T3 Statement of Trust Income Allocations and Designations for the 2024 year;
- i) \$12,500 to be paid from J.S.'s share to R.B. on account of unpaid wages due to the law corporation as of 2018; and
- j) \$195,200 to be paid from J.S.'s share to R.B. in compensation to her for her interest in J.S.'s law corporation.

Division of Other Family Property

- [88] The parties agree that the claimant's RBC RRSP (403360886) with a value of \$449,601.62 as of May 13, 2024, and R.B.'s RBC RRSP (417369816) with a value of \$238,585.34 as of March 2024, should be equalized by way of a spousal rollover after which each party shall retain their respective RRSP accounts.
- [89] The parties also have an RESP account valued at \$163,741 as of March 31, 2024, for the children's education. That account is to be held for the children's post-secondary costs and to be used in priority to additional contributions from either party.
- [90] The parties agree that the funds in the children's bank accounts are the property of the children and are not family property to be divided. The accounts are currently joint accounts with J.S. because the children were too young to open their own accounts.

- [91] The parties both have TFSA accounts in their name, and J.S. has an RBC direct investing account. They agree that these accounts should be equalized. J.S.'s TFSA account is worth \$4,960.05 and his RBC direct investing account is worth \$7,047.24 as March 28, 2024. R.B.'s TFSA account is worth \$65,774.59 as of March 31, 2024. Those accounts will be equalized within 30 days of judgment.
- [92] There is also a significant number of credit card points associated with an RBC Avion Visa credit card and the parties are agreed that they should be shared equally.
- [93] The parties agree that all other bank accounts remain the separate and sole property of the person whose name is on the account free and clear of any claims by the other.
- [94] There is no dispute that either party may apply for the division of unadjusted pensionable earnings under the Canada Pension plan. For the purposes of such a division the parties began cohabitating on December 1, 2008, and separated on July 14, 2018.

Child Support

- [95] The first step in determining child support is to determine the payor spouses' income under the Federal Child Support Guidelines. The Court of Appeal outlined the process in *Brown v. Brown*, 2014 BCCA 152 at para. 16. The court begins under s. 16 of the Guidelines with the total income on the payor parent's tax return, makes whatever adjustments to that amount are required, then looks to s. 17-20 of the Guidelines to determine if any of the special considerations in those sections should be given effect on the facts.

What is J.S.' income for support purposes?

- [96] Mr. Ghanavizchian prepared guideline income reports that are a useful starting point as they consider income under s. 16 of the Guidelines, but also the potential effect of s. 17 and 18 depending on the court's findings. J.S. does not dispute the guideline income report, save and except as it pertains to a concern about double dipping which I address below.
- [97] Section 16 of the Guidelines directs as a starting point the use of total income from the payor's T1 tax return, as adjusted in accordance with schedule III of the Guidelines. Mr. Ghanavizchian's guideline income report for the years 2019-2023 inclusive calculates J.S.'s s. 16 income as follows:

2019

2020

2021

2022

2023

\$550,004

\$880,841.25

\$697,311.25

\$833,436.22

\$751,737.34

[98] Mr. Ghanavizchian provided slightly adjusted suggested totals in consideration of s. 17 of the Guidelines and income that may not be recurring as follows:

2019

2020

2021

2022

2023

\$550,004

\$874,841.25

\$697,311.25

\$822,900

\$711,589.64

[99] Those amounts are based on salary and dividends received. They do not include earnings left in the corporation. As such, Mr. Ghanavizchian's s. 16 figures with the minor adjustments under s. 17, represent the floor of J.S.'s income for support purposes.

[100] Mr. Ghanavizchian testified that where the payor spouse earns money through a corporation, and the company in question is essentially a corporate alter ego, the default assumption is that all the income is available unless special considerations are raised. Accordingly, he went on to assess the total income available using the pre-tax corporate revenue less expenses. His conclusion was that the figures of total available income, rounded up, were as follows:

2019

2020

2021

2022

2023

\$914,000

\$1,527,000

\$1,401,000

\$805,000

766,000

[101] Mr. Ghanavizchian's evidence was not called into serious question in relation to his calculations, or to his assessments of the revenue and income available. I accept his evidence, and in my view, the numbers he provides are a useful framework with which to assess income under the Guidelines.

[102] As noted earlier, some of the money left in the law corporation ended up becoming shareholder equity that I have determined should be divided with R.B. receiving 25 percent of the value of the law corporation as of the date of trial. It would be inappropriate to treat that money as having been available for support purposes, as that would amount to double counting. Thus, I will only consider 75 percent of the available money that was left in the corporation as income for support purposes.

[103] The difference between J.S. income based solely on his tax return as adjusted, and his income once money left in the corporation is included is set out in the following table:

2019

2020

2021

2022

2023

\$364,000

\$652,000

\$704,000

\$18,000

\$54,000

[104] Deducting 25 percent so as not to double count money leaves the following amounts of income that were available over and above J.S.'s s. 16 and s. 17 income.

2019

2020

2021

2022

2023

\$273,000

\$489,400

\$528,800

\$13,500

\$40,500

[105] Adding those figures to J.S.'s income from his tax return, I find that the total available income for support purposes rounded to the nearest thousand dollars is as follows:

2019

2020

2021

2022

2023

\$823,000

\$1,364,000

\$1,226,000

\$836,000

752,000

[106] In my view, that is the fairest calculation of the total available income. It reflects all of the money that could be used for the payment of child support in accordance with s. 16-20 of the Guidelines. Accordingly, J.S.'s income shall be determined to be \$823,000 in 2019, \$1,364,000 in 2020, \$1,226,000 in 2021, \$836,00 in 2022 and \$752,000 in 2023, with 2024 income yet to be determined.

[107] On a go forward basis, I find the easiest and method will be to calculate J.S.'s income under s. 18 of the Guidelines based on the revenue of the corporation less expenses, and based on the accounting transfers from J.S.'s firm to his law corporation. As Mr. Ghanavizchian testified, the amount of accounting transfers and actual transfers equals out over time and is the simpler basis of calculating any adjustments to support.

[108] The parties are agreed that support payments can be adjusted in accordance with income in the future. Accordingly, the parties can exchange financial information regarding J.S.'s income in 2024 by July 1, 2025, and if the calculation of support results in an amount owing above what has currently been paid, or less support than has been paid, then the resulting difference can be equalized against other amounts set out in the final order.

Is expert evidence from a psychiatrist admissible as it pertains to whether or not income should be imputed to R.B.?

[109] Before turning to the issue of whether income should be imputed to R.B, I will address the admissibility of expert evidence. R.B. called Dr. Tyler Oswald, a psychiatrist with experience in addictions, as a witness. J.S. objected to the admissibility of the evidence, and it was received subject to submissions on relevance and admissibility in the context of the parties' closing submissions.

[110] J.S. contends that the evidence should be found to be inadmissible because Dr. Oswald is an advocate for R.B., and his opinion lacks neutrality. He contends that the evidence is not relevant or necessary for the court to determine whether to impute income. Dr. Oswald is not a vocational expert, and his evidence is prejudicial and should not be admitted.

[111] For the reasons that follow, I am satisfied that Dr. Oswald's evidence is admissible.

Legal Framework

[112] The legal framework for the admissibility of expert evidence is not in dispute. It is summarized in *R. v. Bingley*, 2017 SCC 12 at paras. 13-17, *White Burgess Langille Inman v. Abbots and Haliburton Co.*, 2015 SCC 23, and *R. v. Sekhon*, 2014 SCC 15 at paras. 43-46.

[113] The authorities contemplate a two-stage inquiry. First the proposed evidence must meet the threshold Mohan factors which are (1) relevance, (2) necessity, (3) the absence of an exclusionary rule, and (4) a properly qualified expert with special expertise. Relevance at the threshold stage refers to logical relevance (*White Burgess* at para. 23).

[114] If the evidence does not meet the threshold criteria it should not be admitted. However, even if it does meet the criteria, the trial judge retains a discretion to exclude the evidence if the risks in admitting the evidence outweigh its benefits.

Dr. Oswald's Evidence

[115] There was no issue at trial with Dr. Oswald's general qualifications. He is an expert in general and forensic psychiatry including substance abuse and mental health issues. He has an extensive resume and has worked with individuals with mental health and substance abuse issues for many years. He has prepared opinions relating to addictions and mental health and their effect on employability, but the report he prepared in this case was the first report he has prepared for a family case.

- [116] Dr. Oswald diagnosed R.B. as having severe alcohol use disorder in sustained remission; severe sedative use disorder in sustained remission; generalized anxiety disorder that is partially treated, and a history of mood symptoms. He testified that R.B. is currently stable and capable of returning to some form of employment, but a return to her previous role as a private practice civil lawyer would increase her risk for relapse to alcohol and sedatives.
- [117] Dr. Oswald opined that given the state of R.B.'s mental health, she would be likely to be able to return to work, including work in the legal field. His recommendation was that R.B. engage in a graduated return to work plan with a focus on part time work to balance work, parenting and to ensure she remains engaged with her recovery support network to maintain her sobriety. His opinion was that she should aim for 50 percent employment and expand further from there on a gradual basis.
- [118] The factors influencing Dr. Oswald's opinion included R.B.'s intellectual capacity, her severe addictions history, and her difficulty managing stress. He testified that the trajectory of an alcohol use disorder can vary a lot depending on the individual. Where treatment is working and the addiction is in remission, an individual is ready to work, but the plan may differ for each person.
- [119] Dr. Oswald testified that R.B. had an alcohol disorder from an early age that reached a crescendo in 2017. Her case was severe, and her mental health was affected by the combination of alcohol and use of prescription medications that made her anxiety worse and led to depressive symptoms. In his opinion, R.B.'s anxiety was real and pre-dated her difficulties with alcohol.
- [120] Dr. Oswald's recommendation for a gradual return to work was based, in part, on the fact that historically work had been more than R.B. could manage, which contributed to her drinking. In his opinion, it would be unwise for R.B. to put herself in the same position again when she is trying to rebuild her life. He testified that it would be critical to pay attention, or a relapse would be possible.
- [121] Dr. Oswald testified that for R.B. it would be important to maintain balance. That would include a predictable schedule and holding on to things that are important to her such as her family, her role as a parent, and her sobriety supports. He testified that sobriety routines are essential for people who are newly recovering, but would be less essential now although still recommended.
- [122] Dr. Oswald's opinion was that a supportive work environment, with ongoing assessments, and some flexibility would be the best fit.

- [123] In cross-examination, Dr. Oswald testified that he felt he had sufficient information based on interviewing R.B. and speaking with her therapist to arrive at an opinion. He did not feel it was necessary to speak with J.S. or any other source, or to rely on objective testing. He acknowledged that R.B.'s therapist was biased but treated her information with that in mind. In his view, other perspectives were not necessary for him consider R.B.'s addiction issues and return to work.
- [124] Dr. Oswald testified that he had reviewed a report from Dr. Farnan in September 2018, that found R.B. fit to return to work as a practicing lawyer and member of the Law Society. He testified that a gradual return to work in 2018 outside of a traditional law firm as noted in Dr. Farnan's report seemed a bit premature to him, but since she had been out of Edgewood for several months it was not unrealistic for her to return to work at that point. He did not meet R.B. in 2018, but if she was stable, he did not consider that an unreasonable thing for Dr. Farnan to say.
- [125] He acknowledged that there is nothing about addiction that makes it necessary to stay out of the work force for a seven-year period. He agrees that employment generally gives purpose and meaning to a person's life such that it can be supportive to their recovery.
- [126] Dr. Oswald agreed that the fact that R.B. has maintained sobriety despite the stresses of negotiations, and the increasingly adversarial family law proceedings was a positive factor in terms of her return to the workplace from a psychiatric perspective.
- [127] Dr. Oswald was asked whether he would recommend reviewing how R.B. does in a few months as opposed to a longer timeline. He testified that once she returned to work after the legal case had concluded, and assuming part time work was going well, three to six months would be appropriate timeline before considering full time work. He thought that if R.B. was doing well at six months it would be worth considering expanding and if doing very well she could consider it earlier.
- [128] In re-examination, Dr. Oswald testified that he had not been asked to opine on R.B.'s ability to work before 2024 and had no direct observations of her before then.

Discussion

- [129] In my view, Dr. Oswald's evidence is admissible for the purpose of providing the court with a more nuanced and accurate understanding of R.B.'s mental health and alcohol abuse disorder as it relates to her capacity to work which is a disputed factual issue between the parties.
- [130] My findings with respect to the evidence can be summarized as follows:
- a) The evidence is relevant on the issue of R.B.'s capacity to work and the risk of a relapse depending on the level of stress associated with employment;

- b) The evidence is necessary for the court to understand recovery, and the effect and intersection of alcohol use disorder and anxiety disorder in an employment context;
- c) There is no exclusionary rule; and
- d) Dr. Oswald possesses specialized expertise in psychiatry, mental health and substance abuse beyond the court's own expertise.

[131] In my view, the benefits of admitting the evidence are not outweighed by the prejudicial effect of the evidence or the need to protect the trial process. The limited relevance and scope of the proposed evidence limits any harm to the trial process. I do not consider that the evidence usurps my role to balance all the relevant factors and arrive at a fair determination of the issue.

[132] I agree with J.S. that Dr. Oswald is not a vocational expert and cannot speak to jobs that might be available to R.B. given her law degree, but that is not what I understood the purpose of his evidence was. My understanding is that the evidence was tendered to provide important information related to R.B.'s mental health and recovery, that is relevant to any decision the court makes related to employment of R.B.

[133] In the same vein, his evidence is not being admitted as a substitute for my assessment of R.B.'s employability or my determination as to whether she is intentionally underemployed, or to usurp the ultimate question on the imputation of income, but on a relevant aspect of the analysis that is personal to R.B., and on which Dr. Oswald can offer a specialized opinion beyond the knowledge of the court.

[134] I do not agree that Dr. Oswald is an advocate for R.B., or that his evidence should be rejected on that basis. He was aware of his duty to the court, and I found him to be a balanced witness. For example, he acknowledged that it was not unrealistic to think that R.B. might have been able to return to work as of 2018, that there was nothing about addiction that makes it necessary to stay out of the work force for seven years, and that R.B. might be able to return to full time work as early as three to six months after she starts employment. In my view, these examples show that he was not merely an advocate for R.B.

[135] I see no difficulty in the fact that Dr. Oswald did not explore other perspectives or speak to J.S. His role was not to offer an opinion on disputed issues of fact between the parties, nor could he have been qualified to do so. His opinion was limited to R.B.'s mental health and its potential effect on her ability to work. It stands to reason that an interview of her, and her medical records and history were the most important sources of information.

[136] With respect to the necessity of the evidence, the general issue of employability and intentional under employment are within the competence of the court. However, there is no question in my mind that Dr. Oswald has specialized knowledge regarding the intersection of mental health, substance abuse issues, and how they affect the capacity of recovering individuals. I find that his evidence is necessary to enable me to properly appreciate how those issues might affect R.B.

[137] A thorough understanding of the effect of addiction and mental health issues that are specifically based on R.B.'s history, are especially important given her role as a parent of three children. In my view, the very worst thing that could happen for all parties involved would be for R.B. to relapse. Expert evidence that provides insight into the environmental factors that may cause or contribute to a relapse, can only help ensure that the court has all the relevant information in order to make the best decision that it can.

Should income be imputed to R.B.?

[138] There is no dispute on the facts that R. B. has not earned any income in any of the relevant years, or presently. She is currently focused on moving forward beyond the stress of family litigation and the needs of her recovery, and she has expressed a clear desire to look for suitable employment.

[139] J.S.'s position is that R.B. should have an imputed guideline income of \$178,158 starting on January 1, 2020, and continuing to the present and on an ongoing basis until her actual income exceeds that amount. He bases that argument on statistical information provided by an expert economist providing estimates of the average earnings of a lower mainland female with a law degree, or a lower mainland female lawyer.

[140] J.S. maintains that once R.B. had been through recovery at Edgewood, and a reasonable time had passed, she was declared fit to practice law and has chosen not to work. J.S. says R.B. is intentionally underemployed and that the figure of \$178,158 is conservative in that it approximates her salary when she left the workforce in 2016. J.S. stresses R.B.'s intelligence, sobriety, superb legal skills and general employment abilities.

[141] R.B.'s position is that there should not be any imputation of income to her retroactively or prospectively. R.B. says the attempt to impute income to her is for a job that led to her addiction and near destruction. She is no longer a practicing member of the Law Society and now has an eight-year gap of any work experience, as well as limitations related to mental health and addiction that will have to be explained to prospective employers. R.B. says she is not resistant to work, but she has been the primary caregiver for the three children. She also needs a structured and part-time return to a supportive workplace to accommodate her mental health.

[142] I have concluded that income should be attributed to R.B. starting in 2021, though not as much as J.S. contends should be imputed.

The Legal Principles Applicable to Imputing Income

[143] Section 19 of the Guidelines is applicable to the issue of imputing income to an intentionally under-employed spouse:

Imputing income

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;

[144] It is trite law that the imputation of income is broadly discretionary: *Zilic* at para. 19 and *Marquez v. Zapiola*, 2013 BCCA 433 at para. 36. When determining whether to impute income, the court must look to whether the payor parent is earning what they are capable of earning, in light of all their relevant circumstances, such as age, education, health (physical and mental), work history, and work availability (including childcare responsibilities): *Zilic* at para. 19, *Van Gool v. Van Gool*, 1998 CanLII 5650 (BCCA) at paras. 26-28, and *Barker v. Barker*, 2005 BCCA 177 at para. 19. The test is one of reasonableness, having regard to the parties' capacity to earn income: *Marquez* at para. 37.

[145] The court is not required to find that a party intended to bolster support claims, for a finding of intentional underemployment or unemployment: *Barker* at para. 19.

[146] A spouse is not required to work long or overtime hours to earn a specific income commensurate with their previous lifestyle: *J.H. v. D.M.*, 2025 BCPC 37 at para. 49. If they choose to work less hours than a regular work week, that party must "justify the choice by the needs of the children or suffer the loss personally:" *Barker* at para. 18.

Discussion

[147] In this case, I am satisfied that it is appropriate to impute income to R.B., though not as much as the claimant suggests. The evidence is undisputed that R.B. is a person of exceptional ability. She was an excellent law student, excelled at writing papers, clerked for the court of appeal, and has experience and skill in corporate governance, and is very intelligent.

[148] At the same time, the reality of her situation must be considered. In 2018, R.B. was parenting full time. She testified that when she wrote to J.S. and said her intention was to rejoin the workforce in the next six months, she was "cloaked in shame" and at that stage would willing to say anything to prove she was "worthy and of value," and she knew that work was a priority for J.S.

- [149] R.B. also submitted to a process run by the credentials committee of the Law Society in 2018 and agreed to an independent medical exam. That was undertaken by Dr. Farnan, an occupational addiction medicine consultant and a clinical associate professor at UBC. The focus of that interview was on her fitness to practice law as opposed to the development of a return-to-work plan. She was found fit to practice law if she were to continue with per ongoing recovery activities, and with a recommendation that she gradually return to the profession and ideally work outside of the high-intensity environment associated with a downtown law firm.
- [150] R.B. ultimately chose not to pursue reinstatement with the Law Society. She explained that her life was falling apart in different ways at the time, and after consultation with her recovery community, she felt it would be insane to step back into the same world, with three children, that caused the problems to begin with. In my view, that was a reasonable approach.
- [151] I accept that there was no realistic prospect that R.B. could have returned to work right away in 2018. As she testified, it was not even on her radar at the time. It would have been unreasonable. Her focus was rightly on sobriety, staying alive, re-establishing a relationship with the kids, and childcare, which she provided full time, and which was an arrangement that was agreed to by and benefited both parties.
- [152] In my view, there continued to be a lot of turmoil for R.B. in 2019 and 2020 and an uncertain future. To her credit, she maintained her sobriety despite feelings of anxiety, and feelings of being overwhelmed from time to time. R.B. continued to attend AA meetings and therapy sessions to support her rehabilitation.
- [153] In 2019, R.B. was spending considerable time parenting, including driving the children to school, activities, organizing hours for the nanny, and essentially acting as a full-time parent. She was still actively involved in recovery and began to turn her mind to a job that she described as a "side-hustle" that would allow her to be the primary home support for the children, but also bring in some income. She had a few ideas for online businesses, but beyond some initial research did not pursue them. She testified she did not have time to work outside the home at this point due to childcare responsibilities.
- [154] In 2020, the Covid pandemic hit. R.B. spent four months with her children in Cultus Lake and stayed with them during the week. It was not possible to pursue employment during the pandemic. Even when the pandemic eased, R.B. remained with the children most nights.
- [155] I find that by late 2020 or early 2021, there was more stability and organization as it related to parenting. J.S. would spend two nights with the children one week and three the next, before they moved in 2022 to the arrangement that remains in place which is a modified 2-2-5-5 where J.S. spends six out of fourteen nights with the children.

- [156] I conclude that by 2021, there was sufficient stability in R.B.'s life that she could have obtained some employment but remained unemployed by choice.
- [157] It is clear to me that R.B. was beginning to consider the work force. She looked at being a recovery coach, considered a master's program, considered her own business, spoke to a former employer and looked for non-traditional law jobs and government jobs on various websites. During that period, she applied for only one job, but said she was grateful she was not successful as it would have been a high-pressure job involving long hours. In my view, those efforts and courses that R.B. took demonstrate that she could have obtained employment of some kind if she had chosen to, and it would have been reasonable to have done so.
- [158] As of the date of trial, R.B. left no doubt that she wants to work. She testified that she needs some mental stressors associated with the family litigation to diminish, but when they do, she will be able to put more energy to use in the workplace. She does not feel capable of working full time, as she is fearful it would blow up her life, but she hopes to expand her hours over time.

Conclusion on Imputation of Income

- [159] In summary, I am not satisfied that it would be appropriate to impute income to R.B. between 2018 and 2020. Between her childcare responsibilities, her ongoing recovery, and her mental health, I do not find that she had the capacity or availability to work. However, I am satisfied she had the capacity to work beginning in 2021 and that income should be imputed to her from that point forward. The remaining issue is how much income should be imputed.
- [160] Given that R.B. had been away from the workforce for an extended period of time and would have needed to re-enter the workforce gradually, I would impute the relatively modest amount of \$40,000 per year for the first year and gradually larger amounts thereafter. In the following years, beginning in 2022, R.B. would have had greater capacity to take on work, despite her continuing efforts at recovery, and the stress associated with family law proceedings.
- [161] In my view, the sum of \$172,158 suggested by the claimant is not a realistic salary given all of the relevant factors, including R.B.'s age, work history, and in particular, her mental health. The figure of \$172,158 is based on average earnings for females with a law degree. It does not account at all for R.B.'s individual capacity, or her mental health in the past, present or future.
- [162] In my view, it is appropriate to consider R.B.'s mental health, her anxiety and her alcohol use disorder in determining a reasonable amount of imputed income. Underemployment or unemployment is not intentional if the only "choice" on the evidence is to choose a form of employment that would have disastrous personal consequences. R.B.'s own evidence and the evidence of Dr. Oswald persuade me that R.B.'s employment must allow her to balance

work, parenting and her ongoing commitment to sobriety. However, that scenario could have included beginning with part time work and gradually increasing over time.

[163] Dr. Oswald did not examine R.B. prior to 2024 but testified that it was not unrealistic for R.B. to return to work at an earlier stage if she was stable. He also testified that her maintenance of sobriety during various stages of family proceedings was a positive factor in her return to the workplace from a psychiatric perspective.

[164] Dr. Oswald also testified that a three to six-month period might be an appropriate period after which R.B. could increase to full time work, if part time work was going well. Thus, had R.B. entered the workforce earlier, for example in 2021 and 2022, it is likely she would have been able to increase her hours earlier as well. Needless to say, this is not an exact science, and it is premised on R.B. finding an appropriate job, an employer who is willing to accommodate her unique needs, and an employment relationship that is going well.

[165] I am not overlooking some of the personal challenges described by R.B., but in my view she was capable of working in the relevant periods and chose not to. She is highly intelligent, articulate, and has valuable employment skills that would be an asset in a great many workplaces. In all the circumstances, I would impute income to her as follows:

2021

\$40,000

2022

\$60,000

2023

\$80,000

2024

\$80,000

Prospective

\$100,000

[166] R.B. testified that while she no longer has the nuances of the law at her fingertips, her legal training has given her the ability to research, to write, and to distill large amounts of information. She is well suited for the kind of jobs she expressed interest in when testifying, including consulting work, the not-for-profit sector, or a government job where she can assist people or perform a public service. I am confident she will succeed.

Calculation of Child Support

[167] There is no dispute between the parties as to the court's jurisdiction to make an order relating to child support that has retroactive effect. As Bastarache J. noted, in *D.B.S. v. S.R.G.*, 2006 SCC 37 at para. 77, "a payor parent who adheres to a separation agreement that has not been endorsed by a court should not have the same expectation that (s)he is fulfilling his/her legal obligations as does a payor parent acting pursuant to a court order."

[168] In this case, the only child support paid has been under the separation agreement, and accordingly the amount payable must be adjusted to reflect this court's findings on income at the relevant time.

[169] The table amount of child support under s. 3(1) of the Guidelines, without consideration of s. 4 of the guidelines addressing incomes over \$150,000, would be as follows:

year

J.S. Income

R.B. Income

J.S. Amount

R.B. Amount

Child Support Payable

2019

\$823,000

\$0

2020

\$1,364,000

\$0

2021

\$1,226,000

\$40,000

\$19,588

n/a

\$19,588

2022

\$836,000

\$60,000

\$13,504

\$1223

\$12,281

2023

\$752,000

\$80,000

\$10,574

\$1619

\$8,955

2024

TBD

\$80,000

TBD

\$1619

TBD

[170] Section 4(b) of the Guidelines provides that a court has a discretion in cases where the payor spouse has income over \$150,000 to depart from the straight table calculation for child support if it is of the view that using the table amount would be inappropriate.

[171] J.S. argues that I should consider reducing the child support payable as a result of his income being over \$150,000 on the basis that under s. 4 of the Guidelines, it might be inappropriate to apply the guideline amount. Legally, there is a presumption in favour of the guideline amount and guideline figures can only be reduced if the party seeking such a deviation has rebutted the presumption of appropriateness: *Contino v. Leonelli-Contino*, 2005 SCC 63 at para. 23.

[172] I am not satisfied, looking at the situation globally, that it is inappropriate to use the guideline amount. J.S.'s guideline income ends up being very large in 2021, but it then goes down in each subsequent year, and the bump in 2021 simply reflects the large amount of money that J.S. earned and was available for support purposes. I do not consider the amounts inappropriate. It is not unreasonable that the children and their support would benefit from a banner year on the part of J.S.

- [173] Turning to the question of arrears, J.S. has been paying \$9822 per month in child support on a without prejudice basis. Thus, the difference between what he paid, and the s. 3 table amounts is \$117,192 in 2021, \$29,508 in 2022, and an overpayment of \$10,404 in 2023. The total that must be paid by J.S. to R.B. to make up the difference is \$136,296 which will bring child support up to date as of December 31, 2023. I would leave it to the parties to calculate any further adjustment in 2024 once J.S.'s income is determined.
- [174] I would set prospective child support payable based on J.S.'s income being calculated in accordance with these reasons and R.B.'s imputed income being \$100,000 per year, subject to any changes upon review. Given the natural fluctuations in J.S.'s income, I consider it appropriate to order that the parties guideline incomes can be reviewed annually and based on exchange of accurate and complete financial information.
- [175] This is a case of "shared custody" where each parent has the children for 40 percent or more of the time. Section 9 of the Guidelines mandates that a court consider the amounts set out in the applicable tables for each spouse, the increased costs of shared parenting arrangements, and the conditions, means, needs and other circumstances of each spouse and any child for whom support is sought.
- [176] As outlined in Contino, there is a discretion to depart from a simple set-off. Bastarache J. explained how that might arise at para. 51:
51. This is where discretion comes into play. The court retains the discretion to modify the set-off amount where, considering the financial realities of the parents, it would lead to a significant variation in the standard of living experienced by the children as they move from one household to another, something which Parliament did not intend. As I said in Francis v. Baker, one of the overall objectives of the Guidelines is, to the extent possible, to avoid great disparities between households. It is also necessary to compare the situation of the parents while living under one roof with the situation that avails for each of them when the order pursuant to s. 9 is sought. As far as possible, the child should not suffer a noticeable decline in his or her standard of living
- [177] With one minor exception, I would not exercise my discretion to depart from a set-off on the facts of this case, as in my view it is not necessary to do so.
- [178] I am satisfied that based on the efforts of both parents, the children's needs are being well met, and they enjoy a good standard of living that many children would envy at both households. I do not see a significant variation in the standard of living as the children move from one household to the other. Overall, they enjoy a relatively high standard of living at both households, and I would not characterize it as a significant decline from what they experienced when their parents were under one roof.

- [179] The one exception that I would make to the set-off amount is to direct the way certain significant but ordinary expenses be shared, and tie that to the relative incomes of each party. These expenses are sufficiently unique not to be fully captured by the monthly child support based on the set off amount, but do not qualify as special or extraordinary expenses under s. 7 of the guidelines. I will address this issue further when I discuss s. 7 expenses.
- [180] I would add that when it comes to my determination of guideline income, and my division of property, I have been guided by an effort to be fair to both parties, rather than approach matters by accounting for every penny of every expense, or accounting for every dollar that was earned or spent. In my view, the complexity of the financial situation between J.S. and respondent would have made such an effort impossible. Accordingly, I have focused on the best interests of the children, the need for finality, and an attempt to adjudicate the main issues fairly such that the parties can move on with their lives with a reasonable degree of certainty.

Spousal Support

- [181] The parties agree that R.B. was entitled to spousal support on compensatory and non-compensatory basis as of the date of separation in July 2018.
- [182] The main dispute between the parties is whether R.B. continues to be entitled to spousal support on an ongoing basis and for how long. J.S. says that he has satisfied his spousal support obligations by supporting R.B. directly and indirectly for seven years, and that upon division of property she will be economically self-sufficient. Alternatively, if there is a spousal support order, it should be for a limited duration.

Legal Basis for an award of spousal support

- [183] Section 165 of the Family Law Act provides that a court may make an order for spousal support in an amount the court considers appropriate if it finds a spouse is entitled to spousal support under s. 160. When determining if a spouse is entitled to spousal support, the court must consider the objectives of spousal support that are set out in s. 161 of the Family Law Act:
- 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; and

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

[184] There are three bases for an award of spousal support: compensatory, non-compensatory, and contractual. However, a single indivisible award may address more than one basis for a spousal support claim at the same time: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 and *Zacharias v. Zacharias*, 2015 BCCA 376 at paras. 25-27 and 3939. The longer a relationship endures and the closer the economic union, "the greater will be the presumptive claim to equal standards of living upon its dissolution:" *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870.

[185] In *Bracklow*, the court recognized that even when there is an illness or other circumstances that are not the consequences of economic sacrifices, spousal support may be ordered on a non-compensatory basis, to recognize that not all separating couples will be able to move on cleanly from the mutual support they used to enjoy, and that the burden of support for a needy partner who cannot attain self-sufficiency should be put on the partners of the relationship rather than the state (paras. 31-32).

[186] In *Cphoon v. Stobo*, 2023 BCCA 479, the Court summarized the jurisprudence with respect to the compensatory basis of spousal support. Voith J. noted, at para. 31, that the underlying goal of compensatory support is the equitable sharing of the economic consequences of a breakdown in the marriage or marriage-like relationship. That of course includes diminished earning capacity and sacrificed career opportunities.

Entitlement to spousal support

[187] I have no hesitation finding that R.B. is entitled to spousal support. She has a non-compensatory claim and a strong compensatory claim. The parties were in a marriage-like relationship for ten years. During that time, R.B. made significant financial sacrifices, most notably assuming the vast majority of the responsibility for child-care, including three maternity leaves, caring for the children, and taking care of appointments, educational needs and their schedule. It is evident that the parties chose to prioritize J.S.'s career. The result is that R.B. has been economically disadvantaged.

[188] I do not accept J.S.'s argument that he has fully compensated R.B. by virtue of support he has already provided, by various expenses he has paid, including the not insignificant fees from Edgewood, his payment of the mortgage until he stopped, or other money provided for living expenses, which as I have indicated was not always sufficient relative to the parties' means in any event.

[189] I am mindful of the comment in *Hartshorne v. Hartshorne*, 2010 BCCA 327 at para. 60 that the absence of an award for compensatory support would have left the respondent "in a diminished state at a time when she had the greatest financial need ." In my view, R.B. continues to be in a position of need based on the breakdown of the relationship though not as great as in the initial stages. However, she would be left in too diminished state if no support were awarded prospectively.

Quantum and Duration of Spousal Support

[190] Once entitlement to spousal support has been found, the court must determine the amount and duration of spousal support.

[191] In my view, given the parties have three children, who are still in school, and a medium length marriage-like relationship of approximately ten years, an indefinite award is appropriate. As explained in the Spousal Support Advisory Guidelines (SSAG), indefinite does not necessarily mean permanent support, or that support will continue at the amount set indefinitely - it simply means that support will continue at the amount set for an indefinite period of time. Thus, the order is subject to the normal process of variation and review.

[192] In my view, given what is likely to be the upward trajectory of R.B.'s employment history, it is appropriate to provide for a review of the quantum of spousal support after three years, and to review the duration of the spousal support order after five years.

[193] Turning to the amount of spousal support that should be ordered, the Court of Appeal noted in *Yemchuk v. Yemchuk*, 2005 BCCA 406, that the SSAG's are a useful tool to assist judges in assessing the quantum and duration of spousal support." They have been said to provide what is effectively a "range" within which the awards in most cases should fall: *Redpath v. Redpath*, 2006 BCCA 338.

[194] As I understand the SSAG's, they are based on a formula that is designed to create a range of possible awards based on a sharing of net disposable income. However, the SSAG's themselves say, in article 11.1, that "after the payor's gross income reaches the ceiling of \$350,000, the formulas should no longer be automatically applied to divide income beyond that threshold: *Nicholl v. Nicholl*, 2020 BCCA 173 at para. 47.

[195] The SSAG's set out two possible approaches for high income earners. The first approach is the "minimum plus" approach where a calculation is performed based on a notional income of \$350,000 that then represents the minimum spousal support range that might be appropriate. The second approach is one of pure discretion taking into account the child support paid and other relevant factors.

[196] In *Sea v. He*, 2024 BCCA 161, Marchand C.J.B.C pointed out, at para. 144-145, that there is no question that the SSAG's and associated revised user guide provide helpful guidance to trial judges in their assessment of spousal support, but also no question that the guidelines themselves are not binding and do not determine the outcome in any particular case. An individualized and fact-specific analysis is required.

[197] In this case, I would award spousal support based on discretion and the statutory factors, but I have found that certain calculations under the SSAG's are a useful starting point to demonstrate various possibilities.

[198] For example, despite considerable fluctuation in J.S.'s income, it is always clearly above \$350,000, and in some years, far above that amount. Divorce Mate Calculations applying the formula in the SSAG's based on the incomes I have found would lead to the following ranges of possible spousal support per month:

Year

Low

Mid

High

2022

\$6,103

\$14,819

\$16,566

2023

\$5,456

\$12,559

\$14,172

2024

\$5,456

\$12,578

\$14,144

[199] The low end of the range in that scenario contemplates a 50 percent split in net disposable income.

[200] For comparison purposes, if one were to consider the minimum plus approach, the SSAG formula (based on a notional \$350,000 ceiling on income) would lead to the following amounts before any increase in accordance with the court's discretion:

Year

Low

Mid

High

2022

\$2,599

\$4,988

\$5,901

2023

\$2,462

\$4,464

\$5,426

2024

\$2,499

\$4,423

\$5,402

[201] I have considered those numbers only as examples that shed light on what an appropriate award per month should be. In my view, the award is driven by the facts of the case and by my discretion. Although, I have considered how far above the minimum spousal award the result should be, and how it compares to the result that might be contemplated by the range based on income without reference to the high-income rule.

[202] Returning to the statutory criteria and the relevant factors in this case, I am considering all of the following factors:

- a) R.B.'s career was sacrificed to a considerable extent by the joint decision of the parties during the relationship to prioritize J.S.'s career;
- b) The economic disadvantages she suffered are likely to continue for some time into the future;

- c) The vast majority of the child care responsibilities fell to R.B. during and in the immediate aftermath of their separation once she returned from Edgewood;
- d) The parties currently enjoy relatively similar standards of living but as a result of the marital relationship and the role played by R.B., even accounting for income that I have found should be imputed to her, it is reasonable to assume that without a sufficient award of spousal support her standard of living will suffer relative to J.S.;
- e) J.S. will be paying significant child support and has over 40% of the parenting time, leaving less need for spousal support to cover any indirect costs of child-care responsibilities; and
- f) R.B. faced the greatest need in the earlier stages of the breakdown of the relationship but has a continuing need for support to become fully self-sufficient economically.

[203] In all the circumstances I would award spousal support of \$8500 a month for the period between August 1, 2020, and December 31, 2021, an additional \$7,000 per month for 2022, and \$5000 per month commencing on January 1, 2023, and on a continuing basis.

[204] In my view, this combination of monthly payments is the best means of addressing R.B.'s strong compensatory claim, the fragility of her position in the early stages of the breakdown of the relationship, her continuing need for spousal support, and the temporary financial bump in income that took place due to the Covid Pandemic.

[205] Turning to the question of arrears, J.S. must pay the difference between what has been ordered and what he has already paid. He paid a total of \$71,128 in spousal support between August 1, 2020, and December 31, 2021, and therefore must pay R.B. an additional \$73,372 for that period, an additional \$33,792 for 2022, and an additional \$25,296 for the period between January 1, 2023, and July 31, 2025. The total arrears to bring J.S. up to date come out to \$132,460.

Special or Extraordinary Expenses

[206] The parties have agreed to reconcile amounts for special and extraordinary expenses before the registrar, but they disagree on what should be included as a s. 7 expense.

[207] R.B. seeks to have the following included as s. 7 expenses:

- a) Childcare costs including the cost of the child care assistant that the parties and respondent hired to assist them;
- b) Medical and dental expenses;
- c) Tutoring and educational costs including any psycho educational special needs, as well as such things as school fees, field trips, books, planners, bus passes, year books, photos, and band;
- d) High school graduation costs of each child up to a maximum of \$2,000;

- e) Driving lessons up to a maximum of \$2500 per child;
- f) Extracurricular expenses for the children's sports, tournament fees and travel; and
- g) Summer and spring break camps.

[208] J.S.'s position is that many of the claimed s. 7 expenses, are not extraordinary, and should be considered normal expenses given the parties incomes and spending pattern prior to separation.

[209] Under s. 7 of the Guidelines, as part of a child support order, a court may provide for an amount to cover all or any portion of what are referred to as special or extraordinary expenses.

[210] In *Bodine-Shah v. Shah*, 2014 BCCA 191 at para. 66, the Court of Appeal clarified the difference between special and extraordinary expenses as follows:

[66] Special expenses listed in ss. 7(1)(a)-(c) and (e) are distinct from extraordinary expenses referred to in ss. 7(1)(d) and (f). Special expenses are defined as relating to child care, medical or dental insurance premiums, health-related costs, and post-secondary education. They must be found to be reasonable and necessary. Extraordinary expenses are not defined. Their extraordinariness is determined in the context of the combined income of the spouses, as well as other considerations, including the nature and amount of the individual expense, the nature and number of the activities, any special needs or talents of the child, and the overall cost of the activities. They also must be found to be reasonable and necessary. Relevant considerations for the tests of necessity and reasonableness include whether the expenses are necessary in relation to the child's best interests, and reasonable having regard to the means of the spouses, the child, and to the family's spending pattern prior to separation .

[211] As noted by Baird J. in *Clarke v. Clarke*, 2014 BCSC 824, at para. 53:

[53] There is no straightforward definition for "extraordinary" although section 7.1, recently added to the Guidelines, provides some guidance; it requires a sort of proportionality inquiry, looking at the nature and number of activities, any special needs or talents of the child, the overall cost of the activities, and any other similar relevant factors: see *D.M.C.T.* at para. 32.

[212] In my view, the medical, dental, and orthodontic expenses that exceed insurance coverage, clearly qualify as s. 7 expense and are both reasonable and necessary. I would also include any tutoring or learning assistance costs for the children. Two of the children have had issues with dyslexia and have needed additional learning support, which is in their best interest and is both reasonable and necessary. These are s. 7 expenses on a retroactive and prospective basis.

- [213] I would not include basic school supplies, books, planners, bus passes, year books, photos, band or "other similar expenses" as s. 7 expenses, as I do not consider them extraordinary.
- [214] I would include the childcare expenses relating to payment of the nanny from separation up to the date of judgment. In my view, this was a necessary and extraordinary expense during a time of high stress, and vulnerability of R.B., based in part on her alcoholism and the need to maintain sobriety at various meetings, while at the same time managing all three children and their activities. However, the children are now all more well settled in high school, more independent, and can rely on others for rides and to help manage their activities sufficiently. R.B. herself is also in a better place. Accordingly, I do not consider it a necessary expense on a prospective basis.
- [215] In my view, given the spending patterns prior to separation and the overall means of both parties, the remaining expenses do not qualify as s. 7 expenses. Sports fees, summer camps, sports camps, tournament fees, graduation expenses, and driving lessons are ordinary expenses in the context of these children and the resources of both parents.
- [216] Even though many of the expenses outlined by R.B. are not strictly s. 7 expenses, as outlined in Contino at para. 53, one parent may simply assume a larger share of responsibility for paying for school related activities, supplies, and sports activities in shared parenting situation. Based on the evidence, it appears that R.B. has historically assumed responsibility for enrolling the children in various activities that come with costs. As contemplated by the Supreme Court of Canada, those expenses can be apportioned between the parties in accordance with their respective incomes.
- [217] Thus, I would exercise my discretion under s. 9 of the Guidelines, to list certain expenses over and above the monthly support payments that should be shared as part of child support.
- [218] For simplicity's sake, I would order that J.S. and respondent share the following expenses, with J.S. paying 75 percent of each expense and R.B. paying 25 percent of each expense:
- a) Driving lessons for each of the children;
 - b) Graduation costs for each of the children; and
 - c) Enrollment fees and travel expenses for organized sports activities or organized arts related activities that the children are involved in.
- [219] I would not include an order related to summer or spring camps generally. It is unclear on the evidence and given the age and circumstances of the children that they will be going to general camps, and if the camps are sports or art related, they will be captured in any event.

Summary of Orders

[220] I make the following orders which reflect areas of consent and the disputed orders that are addressed in these reasons:

Separation Date

- 1) J.S. and R.B. separated on July 14, 2018.
- 2) J.S. and R.B. shall equally divide the funds held in trust at Dunnaway, Jackson, Ouellet and Associates (with a balance of approximately \$1,891,296.12 as of November 26, 2024) from the sale of the former family home subject to the following adjustments:

Property Division

- a) \$24,500 to be paid from the trust proceeds directly to R.B.'s father for funds used to pay off a credit card and to pay the mortgage, strata fees and special levy between September 2021 and the sale of the condo;
 - b) R.B. will pay \$20,000 to J.S. out of her share of the total as a repayment of the amount advanced by J.S. in August of 2021;
 - c) R.B. will pay \$8,173 to J.S. out of her share of the total as payment for the purchase of the family van;
 - d) R.B. will pay \$25,000 to J.S. out of her share of the total to account for her share of a \$50,000 loan from the law corporation for the payment of R.B.'s legal fees;
 - e) R.B. will pay \$2,300 to J.S. out of R.B.'s share of the total for his contribution to her initial rent payments;
 - f) R.B. will pay \$3,139 to J.S. out of her share of the total for payment of property taxes and insurance;
 - g) J.S. will pay \$10,747 to R.B. out of his share of the total for mortgage payments over and above the funds reimbursed to R.B.'s father;
 - h) J.S. will pay \$12,500 to R.B. out of his share of the total for unpaid wages due to the law corporation as of 2018;
 - i) J.S. will pay \$195,200 to R.B. for her interest in J.S.'s law corporation; and
 - j) \$1,000 is to be held in the general trust account of counsel for J.S. as security for payment of the required T3 Statement of Trust Income Allocations and Designations for the 2024 year.
- 3) R.B. shall transfer her non-voting share in J.S.'s law corporation to J.S. or the law corporation, and thereafter J.S. will retain all shares of the law corporation as his sole property.

- 4) J.S. shall retain his shares in the law firm management company and 0931587 B.C. Ltd. and he shall take all necessary steps to remove R.B. as a shareholder, director, officer or other such position at his own expense.
- 5) Within 30 days of entry of this order J.S.'s registered RRSP at RBC Dominion Securities and R.B.'s registered RRSP at RBC shall be equalized on the day of transfer, by way of spousal rollover pursuant to s. 146(16)(b) of Income Tax Act, RSBC 1996, c 215 after which each party shall retain their RRSP account as their sole property.
- 6) The parties shall jointly maintain and manage the RBC RESP account for the purposes of funding the children's post-secondary education. The RESP and any interest accrued shall be used to fund each of the children's education in equal shares. Neither party shall withdraw funds from the RESP without a written agreement signed by both parties or a court order. The joint RESP will stand to the parties' joint credit at the time the first child commences his or her post-secondary education and until depleted.
- 7) Any post-secondary savings that either party acquires after the date of this order for the benefit of the children that are not on deposit to the joint RESP will stand to the credit of the party who has acquired them.
- 8) To the extent that the parties open new accounts to save for any additional post-secondary expenses, they will alternate annually as to which party may claim any government grants and shall share any such grants equitably.
- 9) Pursuant to s. 170 of the FLA, for so long as any of the children remains a "child" as defined by the FLA, J.S. will maintain in good standing and keep in force term life insurance with a face value of \$1,750,000 payable on J.S.'s death and J.S. will maintain R.B. as the irrevocable beneficiary of J.S.'s life insurance policy, in trust for the children. If J.S. fails to maintain the policy, J.S.'s obligation to pay child support and spousal support will bind J.S.'s estate.
- 10) Pursuant to s. 170 of the FLA, for so long as any of the children remains a "child" as defined by the FLA, R.B. will maintain in good standing and keep in force term life insurance with a face value of \$750,000 payable on R.B.'s death and R.B. will maintain J.S. as the irrevocable beneficiary of her life insurance policy, in trust for the children. If R.B. fails to maintain the policy, R.B.'s obligation to pay child support will bind R.B.'s estate.
- 11) Each party shall be solely responsible for the costs of premiums for the insurance policy they are required to maintain. If either party is unable to obtain the specified amount of insurance at a reasonable cost, the parties may agree to amend the amounts in writing or failing an agreement in writing seek a review of the insurance amount in court.
- 12) The parties will each provide the other with proof upon request, no more than once per year, that their insurance policy remains in good standing and that the other party remains the irrevocable beneficiary of the policy.

- 13) The parties shall equalize the following TFSA accounts that have been untouched since the commencement of this proceeding: (1) J.S.'s RBC trading account No. 66563108, (2) J.S.'s RBC TFSA Account ending in 1615, and (3) R.B.'s RBC TFSA Account No. ending in 4417. The resulting payment shall be made within 30 days of this order but may be offset by other amounts owing under the terms of this order.
- 14) The funds on account in the following accounts belong to and are the property of the child named on the account along with J.S.: (1) RBC young savers account No 5034251, (2) RBC young saver's account No 5057500, and (3) RBC young savers account No 5073119. J.S. will provide R.B. with statements for each account upon reasonable request and will remove his name from each of the accounts at the earliest opportunity in accordance with the bank's policies.
- 15) J.S. will transfer to R.B. 139,141 RBC Avion Visa credit card points in the manner permitted by RBC Avion visa.

Child Support

- 16) J.S. shall pay to R.B. child support arrears for the period January 1, 2021, to December 31, 2023 in the amount of \$136,296 plus any applicable pre-judgment interest for that period of time, calculated as follows:
 - a) January 1, 2021, to December 1, 2021, based on guideline income for J.S. of \$1,226,000 and a monthly child support obligation of \$19,588, less payment of \$9,822 per month for arrears of \$117,192;
 - b) January 1, 2022, to December 1, 2022, based on guideline income for J.S. of \$836,000 and monthly child support obligation of \$13,504, guideline income for R.B. of \$60,000 and a monthly child support obligation of \$1223, less payment of \$9,822 per month for arrears of \$29,508; and
 - c) January 1, 2023 to December 1, 2023, based on guideline income for J.S. of \$752,000 and a monthly child support obligation of \$10,574, guideline income for R.B. of \$80,000 and a monthly child support obligation of \$1619, and overpayment based on the interim payment of \$9,822 per month for arrears of (-\$10,404).
- 17) For the period of January 1, 2024, to December 31, 2024 once J.S.'s income is determined no later than July 1, 2025 pursuant to the method set out in this order, any child support arrears or overpayment shall be paid within 60 days.
- 18) No later than June 1st of each year, the parties will exchange all necessary financial information including copies of:
 - a) Their respective income tax returns including all attachments;
 - b) Their respective Notices of Assessment for the previous tax year;

- c) A statement of all non-arms length payments and benefits (at the fair market value) received by a party from a trust, partnership, or corporation in which a party has a controlling interest in the prior fiscal year;
 - d) A statement of any trust income from any trust that the party is a beneficiary of (including discretionary) for the prior fiscal year;
 - e) The financial statements, general ledgers, corporate income tax returns and notices of assessment for the most recent financial year, for all corporations in which a party has controlling or equal interest;
 - f) The most recent financial statements and income tax returns of a partnership in which a party has an interest, and any tax documents showing income of the party (distributed or undistributed), redacted as necessary to protect the confidentiality of any third parties; and
 - g) Any other relevant information requested to facilitate determination of the adjustment, if any, required to child support to ensure it meets the requirements of the guidelines.
- 19) If any of the information for review of child support has not been received by a party before June 1st of each year, it shall disclose the information within seven days of receiving it.
- 20) J.S.'s income shall be determined on an annual basis each year based on a calculation of the available pre-tax corporate income for J.S.'s law corporation (based on accounting transfers to the law corporation) pursuant to s. 18 of the Guidelines on or before July 1st of each year, commencing on July 1, 2025.
- 21) For the purposes of child support, R.B.'s income shall be set at \$80,000 for 2024.
- 22) In 2025 and subsequent years, R.B.'s income will remain imputed to be \$100,000 until such time as her income meets or exceeds that amount, after which her actual income will be used for the purposes of support calculations.
- 23) By consent, the parties will adjust child support on July 1st of each year commencing in 2025 based on the parties' respective total annual incomes calculated in accordance with this order.
- 24) J.S. will maintain the children on his extended medical and dental benefits plan for so long as he is able to do so through his employer and for so long as the children are eligible to receive benefits.
- 25) R.B. will include the children on any extended medical or dental benefits she receives through employment and shall maintain such coverage for so long as she is able to do so and for so long as the children are eligible to receive benefits.
- 26) If either party is reimbursed by their respective insurer for a health expense paid by the other party for the children, they shall immediately e-transfer the amount reimbursed to the payor parent.

- 27) Commencing January 1, 2025, and subject to the Income Tax Act, J.S. and R.B. shall share equally in any child tax benefits or other benefits or deductions for the children or their expenses that may be available from the Federal or Provincial government.
- 28) Each of J.S. and R.B. may claim the dependent tax credit for one child. J.S. will claim the older male child, and R.B. will claim the younger male child. When there are no longer two "children" as defined in the FLA J.S. and R.B. will alternate claiming the remaining child.

Spousal Support

- 29) R.B. is entitled to spousal support on both a compensatory and non-compensatory basis for an indefinite period, subject to review of the quantum of spousal support no earlier than 36 months from the date of this order.
- 30) Either party may review the duration of the spousal support order no earlier than 60 months from the date of this order.
- 31) J.S. shall pay to R.B. retroactive spousal support in the amount of \$132,460 for the period between August 1, 2020, and July 31, 2025, calculated as follow:
 - a) \$73,372 for the period between August 1, 2020, and December 31, 2021, based on spousal support payable of \$8500 a month, less the \$71,128 already paid by J.S. in that period;
 - b) \$33,792 for the period between January 1, 2022, and December 31, 2022, based on a spousal support award of \$7,000 a month less the \$4184 per month already paid by J.S. in that period; and
 - c) \$25,296 for the period between January 1, 2023, and July 31, 2025, based on a spousal support award of \$5,000 a month less the \$4,184 per month already paid by J.S. in that period.
- 32) Commencing August 1, 2025 and on the first day of each month thereafter J.S. shall pay R.B. spousal support in the amount of \$5,000 per month unless an adjustment is agreed to in writing by the parties, an application is made based on a change of circumstances, or a review is held in accordance with this order.

Special, Extraordinary and Shared expenses

- 33) The children's s. 7 expenses are:
 - a) Any medical, dental, orthodontic, counselling or vision care expenses that exceed insurance coverage;
 - b) Any tutoring or learning assistance costs for the children;
 - c) The costs associated with any psychoeducational assessment reports related to the children's education; and
 - d) Childcare expenses of the nanny from separation to the date of judgment.

- 34) The parties shall share the special and extraordinary expenses and will reconcile any retroactive s. 7 expenses in proportion to their income. Any disputed expenses shall be referred to the registrar.
- 35) J.S. shall pay 75 percent and R.B. shall pay 25 percent of the following ordinary expenses:
- a) Driving lessons for each of the children;
 - b) Graduation costs for each of the children; and
 - c) Enrollment fees and travel expenses for organized sports activities or organized arts related activities that the children are involved in until each child reaches the age of majority.
- 36) Any Expenses that are not specified as s. 7 expenses or as ordinary expenses to be shared 75 percent by J.S. and 25 percent by R.B. will be considered ordinary expenses for which each party is to be equally responsible.

Conclusion

- [221] The terms of the order summarized above have been anonymized in accordance with the application brought jointly by the parties. Any formal order drafted by the parties to reflect this judgment may include full names or other identifying data as the parties see fit for greater clarity. The parties may also include any necessary ancillary clauses they agree are required to facilitate implementation of the order.
- [222] I will remain seized on this matter for one year from the date of this judgment to decide any issues with respect to the implementation of these orders.
- [223] The parties have had mixed success in relation to the orders sought, and the financial issues at play. I would not order costs to either party, and subject to the receipt of additional written submissions within 30 days of judgment, would direct that each party bear its own legal costs.

"Greenwood J."

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