CANADA / JUDGMENT

Jones v. Jones

2023 BCSC 1070

COURT
Supreme Court of British Columbia

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2023 BCSC 1070 Jones v. Jones IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jones v. Jones, 2023 BCSC 1070 Date: 20230622 Docket: E14575 Registry: Campbell River Between: Angela Lynn Jones Claimant And Kevin Cameron Jones, All-Pro Diesel Ltd., All-Pro Power and Marine Ltd. and 1143789 BC Ltd. Respondents Before: The Honourable Madam Justice E. McDonald Reasons for Judgment The Claimant, appearing in person: A. Jones Counsel for the Respondents: M. McCubbin Place and Date of Trial/Hearing: Campbell River, B.C. July 12-14 and 20, 2022 October 20-21, 2022 May 4, 2023 Place and Date of Judgment: Vancouver, B.C. June 22, 2023 Table of Contents Introduction.. 3 Issues.. 4 Evidence.. 4 Background. 4 Parties' Education and Employment 5 Litigation History. 7 Application to Reopen the Summary Trial.. 9 Is the matter appropriate for Summary Trial?.. 14 Has there been adequate financial disclosure?.. 19 Dividing family assets and debt.. 20 All-Pro Businesses. 24 The Family Home. 31 Family Debt 31 CIBC Loan.. 34 Wells Fargo Loan.. 34 Summary of Property and Debt Division.. 35 Income of the Parties.. 38 Ms. Jones. 41 Mr. Jones. 44 Support Issues.. 49 Length of the Relationship. 50 Care and Time with Children. 51 Child Support 52 Child Support Payable. 53 Spousal Support 56 Spousal Support Payable. 60 Support Paid. 63 Divorce.. 68 Costs.. 68

Introduction

[1] In early 2013, the parties separated. At the time, they had two children attending grade school. For many years, the parties operated a business together related to Mr. Jones' heavy duty mechanical services.

[2] The family law claim was commenced in February 2013. Since then, no final order has been made. However, there have been many interim orders, including an interim order requiring Mr. Jones to pay Ms. Jones child and spousal support based on his imputed income.

[3] The children have been independent adults for some time now. The issues between the parties are mainly financial, concerning support issues and how to divide family assets and debts. These issues require consideration of circumstances that existed nearly a decade ago.

[4] While there has been extensive disclosure of financial information regarding the business and the parties' income, Ms. Jones takes the position that Mr. Jones has undervalued the business and his income. Ms. Jones is concerned that Mr. Jones failed to disclose information about his income and the business. She alleges he dissipated assets and harmed the business.

[5] Mr. Jones is concerned that Ms. Jones deliberately avoided working after separation. He submits he overpaid child and spousal support for many years.

[6] Mr. Jones applies pursuant to the summary trial rule for a final order resolving all matters including the following:

a) An order rescinding, varying, and suspending, retroactively and prospectively, orders dealing with child and spousal support and granting new orders, including retroactively, that redress each parties' child and spousal support obligation to the other, including a determination of retroactive and future child support owed by Ms. Jones to Mr. Jones;

b) Orders and declarations of the varied retroactive annual obligations and entitlement of each party to pay and to receive child and spousal support from the other;

c) Orders and declarations of the payments made by Mr. Jones to Ms. Jones and determinations of overpayments and their application to future obligations;

d) An order for equal division of family assets, pursuant to Part 5 of the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA];

e) An order granting a divorce; and

f) An order that any matters not resolved under this summary trial application be referred back to the trial list with liberty to reset as a subsequent summary trial upon additional evidence.

[7] Ms. Jones opposes determining the issues in a summary trial.

[8] For reasons that I will explain, I have determined the matter is appropriate for summary trial.

Issues

[9] There is a threshold issue of whether the matter is appropriate for summary trial. If it is, the main issues are the child and spousal support payable and how the family assets and debt should be divided. Evidence

Background

[10] Ms. Jones and Mr. Jones are currently 54 and 55 years old, respectively.

[11] The parties began living together in the late 1990s. The parties were married on August 22, 1998. During the relationship, the parties had two children together, J.R., born August, 2000, and D.S., born January, 2002. Neither party takes the position that either J.R. or D.S. remain children of the marriage.

[12] The parties lived in a small coastal town on Vancouver Island, British Columbia. The parties operated a business through which Mr. Jones provided heavy duty mechanic services (the "Business"). Ms. Jones looked after the bookkeeping and office administration for the Business.

[13] The parties had a prior separation. The prior separation began around May 2003 and ended in approximately October 2006 (the "First Separation"). The parties reconciled in approximately October 2006. Eventually, the parties separated again on January 26, 2013 (the "Final Separation").

[14] At the time of the Final Separation, it is alleged that Ms. Jones assaulted Mr. Jones. Ms. Jones was arrested and charged following this incident and subsequently told not to attend at the family home. Ms. Jones denies that she assaulted Mr. Jones. Instead, she alleges that she was the victim of assault by Mr. Jones. In September 2013, the Crown directed a stay of the charges against Ms. Jones shortly before the trial was to take place.

[15] At the time of the Final Separation, J.R. was 12 years old and D.S. was 11 years old. Initially, the children lived primarily with Mr. Jones, but, eventually, there was either shared parenting or the children lived primarily with Ms. Jones. In 2017, the children began living primarily with Mr. Jones. Parties' Education and Employment

[16] Mr. Jones is a heavy-duty mechanic. Mr. Jones has largely been self-employed, providing mechanic services through small businesses that he has operated over the years.

[17] Regarding Ms. Jones' education and training, she went to college in 2004 or 2005, taking Applied Business Technology Certification 1 and 2 courses and completing these courses in a year. Ms. Jones also took a course in payroll accounting, but she never completed or got her certification.

[18] Later, following the Final Separation, Ms. Jones attended college to study for an upgrade of an office administration course. During this course she upgraded her business administration skills, including in Excel and Simply Accounting software.

[19] Ms. Jones has training and experience working as a bookkeeper and an administrative assistant. During the relationship, Ms. Jones was employed by the Business doing office administration and bookkeeping. She received a salary from the Business, and post-Final Separation, the Business continued paying her a salary for a short period of time.

[20] Ms. Jones was also employed outside the Business. For example, at one point, she worked for the provincial government. In 2011, she obtained full-time employment as a finance clerk with the municipal government of the town where the parties lived. Ms. Jones also has experience working as an employee for various other businesses.

[21] While Ms. Jones was employed by the municipal government, she took a stress leave around the time of the Final Separation. However, she was eventually terminated. Ms. Jones then began an approximate four-year period of unemployment. Since 2021, Ms. Jones has been employed as a secretary at a law firm.

[22] During the relationship, Mr. Jones pursued training and education as a heavy- duty mechanic. The parties used their education and training to operate the Business. Ms. Jones also used her training and education to pursue other employment endeavours both during the relationship and following the Final Separation. Litigation History

[23] Ms. Jones commenced this family law claim on February 8, 2013 (the "Claim"). She last amended the Claim on January 18, 2022. In the Claim, Ms. Jones seeks an order for divorce and orders relating to child support, spousal support, parenting time, exclusive possession of the family home, and the division of family property and debt.

[24] Mr. Jones commenced a counterclaim on March 18, 2013 (the "Counterclaim"). He last amended the Counterclaim on December 21, 2021.

[25] In the Counterclaim, Mr. Jones seeks similar relief to that sought by Ms. Jones, except that he does not seek spousal support. Mr. Jones also seeks an order respecting children, including for child support.

[26] While there have been a large number of applications and documents filed by the parties, these are the main events in the litigation to date that are relevant to the present application:

a) On April 24, 2013, Justice Sigurdson made an interim order (the "2014 Interim Order") providing, among other things, that the children would reside primarily with Mr. Jones but providing Ms. Jones with access and parenting time with the children during specific periods. The 2014 Interim Order also required Mr. Jones to pay Ms. Jones spousal support of $1,800 per month commencing April 1, 2013, and continuing on the first of each month until further order. The payment of child support was to be dealt with pending further financial disclosure upon the application of either party.

b) On July 7, 2013, the parties signed an agreement stating, among other things, that from July Mr. Jones would increase support paid by $700, making the total monthly support payment $2,500 with a further increase effective August 1, 2013, to make the total support payment $3,000 per month. In this agreement, there is no allocation as between child and spousal support.

c) On October 25, 2013, the parties signed an agreement that Mr. Jones was to pay $1,200 each month for child support to Ms. Jones commencing August 1, 2013, in addition to spousal support of $1,800 each month. The agreement acknowledged that all support has been paid by Mr. Jones up to and including September 1, 2013.

d) On December 16, 2013, at a judicial case conference, Justice Halfyard declared that there was no reasonable prospect of reconciliation between the parties.

e) On April 9, 2015, Justice Cole made an interim order (the "2015 Interim Order") pursuant to the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) [DA], imputing a Guideline income of $150,000 per annum to Mr. Jones and requiring Mr. Jones to pay monthly child support of $2,104 and spousal support of $4,706 commencing on May 1, 2015, and continuing until further order.

f) On August 21, 2015, the parties filed a written agreement concerning parenting arrangements effective June 22, 2015. That parenting agreement provided, among other things, Ms. Jones had primary care of the children and Mr. Jones was to have reasonable parenting time.

g) On December 2, 2020, Master Dick made an order by consent approving the sale of the family home and directing that the net sale proceeds be held in trust pending agreement or further order.

h) On January 13, 2020, Justice Gaul made an order advancing Ms. Jones $50,000 from the sale proceeds held in trust on a without-prejudice basis to either party. The order required the $50,000 to be applied "to past or future legal fees incurred by the claimant in this litigation". The order also adjourned generally Mr. Jones' summary trial application and all other applications of Ms. Jones.

[27] Eight notices of trial have been filed since 2014. On March 9, 2022, Mr. Jones filed an amended summary trial application which amended the application originally filed in 2020 (the "Summary Trial").

[28] The Summary Trial application was adjourned six times before it eventually came on for hearing before me on July 12, 2022. By amending the Summary Trial application, Mr. Jones sought to resolve all, not just some, of the matters raised in the pleadings.

[29] On April 8, 2022, Ms. Jones filed the last notice of trial which set the hearing date of the Claim for October 24, 2022. During the Summary Trial hearing before me, that trial date was adjourned by consent. Application to Reopen the Summary Trial

[30] Following the completion of the Summary Trial and while the decision was under reserve, I granted Ms. Jones leave to bring an application to reopen the Summary Trial. I directed Ms. Jones to include in her application, the details of the evidence that she proposed to adduce if her application was granted and the Summary Trial was reopened.

[31] On May 4, 2023, I heard Ms. Jones' application to reopen the Summary Trial. Ms. Jones expressed numerous reasons for seeking to reopen the Summary Trial, including her concern that she was not properly served with some of the material that Mr. Jones relied on during the Summary Trial.

[32] At the heart of Ms. Jones' concerns is a large volume of material sent to her by Mr. Jones on either June 24 or July 21, 2022. That material consisted of Mr. Jones' latest F8 financial statement and affidavit #27, both made June 24, 2022, and a letter with Mr. Jones' responses to Ms. Jones' examination for discovery requests made to Mr. Jones on May 11, 2022.

[33] The material was first sent by email on June 24, 2022. On June 26, 2022, Ms. Jones sent an email to counsel asking when she would receive the "hard copies" of the material attached to the email. Ms. Jones' address for service is her home address. She does not accept service by email.

[34] On July 21, 2022, the hard copies of the materials were delivered to Ms. Jones' home. By that date, the Summary Trial had begun. The Summary Trial was scheduled to continue on July 21 and 22, 2022. However, it did not continue on those dates because Ms. Jones was involved in an accident and she was unavailable to attend court. On July 22, 2022, the Summary Trial was adjourned over to continue on October 20 and 21, 2022.

[35] On October 20, 2022, following an approximate three-month adjournment, the hearing of the Summary Trial continued. On October 20, 2022, Ms. Jones advised the Court that on July 21, 2022, she received a large volume of documents which she had not reviewed. Ms. Jones submitted that it was unfair and prejudicial to have been served with these materials during the Summary Trial.

[36] However, while Ms. Jones opposed the Summary Trial throughout, she did not seek an adjournment on October 20, 2022, for example, to have time to review and respond to the material. The Summary Trial hearing continued on October 20 and 21, 2022, and at the completion of the hearing, the decision was placed under reserve.

[37] Ms. Jones submits that a reopening of the Summary Trial will allow her deal with this material, otherwise, she faces significant prejudice. Ms. Jones states that the material includes large volumes of financial information that she requested from Mr. Jones at his examination for discovery on May 11, 2022. She argues this material should have been served on her much earlier and she has had no opportunity to respond.

[38] In Vander Ende v. Vander Ende, 2010 BCSC 597 at para. 83 [Vander Ende], Justice Ballance considered a request made by a party during final arguments to reopen her case for the limited purpose of admitting certain evidence concerning a waiver of contractual rights. At para. 84, Ballance J. summarized the nature of the decision to permit or disallow reopening as follows:

[84] The decision to permit or disallow reopening is a matter of judicial discretion. The discretion of the trial judge presiding over a civil trial to reopen the trial before judgment has been rendered is wide. The scope of the discretion is generally narrower where judgment has been issued, and the test becomes even more rigorous depending on whether the order has or has not been entered: H. (G.C.) v. H. (H.E.), 2009 BCSC 4 (B.C. S.C.) [H. (G.C.)]; Clayton v. British American Securities Ltd. (1934), 49 B.C.R. 28 (B.C. C.A.) [Clayton]; Zhu v. Li, [2007] B.C.J. No. 2150 (B.C. S.C.). While the ambit of the judicial discretion is acknowledged as being unfettered, it must be exercised cautiously so as to prevent an abuse of process: Clayton; H. (G.C.); P. (K.F.) v. P. (D.J.), [2004] B.C.J. No. 782 (B.C. S.C.). In considering whether to reopen, the court should turn its mind to the relevance of the proposed evidence, the effect, if any, of reopening on the orderly and expeditious conduct of the trial at large, and most fundamentally, whether the other party will be prejudiced if the reopening is permitted: R. v. Hayward (1993), 86 C.C.C. (3d) 193 (Ont. C.A.).

[39] In terms of the evidence that Ms. Jones proposes to adduce if the Summary Trial is reopened, she submits that the affidavit of service of David Grainger made August 10, 2022, should be admitted into evidence, effectively to prove that the material "should have been made available to her prior to the trial commencing". In her affidavit #19 made December 30, 2022, Ms. Jones attaches, as Exhibit "C", a copy of Mr. Grainger's affidavit.

[40] It is important to note that Ms. Jones agrees that many large packages were delivered to her home on July 21, 2022. She did not review the contents. Ms. Jones states she set the material aside and forgot about it until right before the Summary Trial was scheduled to continue on October 20, 2022. Ms. Jones also states that it was not until after the Summary Trial finished that she reviewed the first package to find it contained Mr. Jones' affidavit #27.

[41] According to Mr. Grainger's affidavit, he served Ms. Jones at home on July 21, 2022, by leaving copies of Mr. Jones' June 24, 2022 F8 financial statement and affidavit #27, along with a letter from counsel containing responses and documents requested by Ms. Jones. After considering all of the evidence, I am satisfied that this material was emailed to Ms. Jones on June 24, 2022, and then delivered by Mr. Grainger in hard copy to Ms. Jones' home on July 21, 2022.

[42] Ms. Jones is very concerned that Mr. Grainger's affidavit does not attach full copies of the documents that he states he served. Instead, he attaches the first page of each exhibit. In my view, Mr. Grainger's affidavit conforms with Rule 10-4(9) of the Supreme Court Family Rules, B.C. Reg 169/2009 [SCFR], which does not require him to attach the full copy of each exhibit. Rule 10-4(9) only requires that an exhibit referred to in affidavit "be made available for the use of the court and for the prior inspection of a party".

[43] I find that on June 24, 2022, Ms. Jones received an email with Mr. Jones' affidavit #27 and his latest F8 financial statement made June 24, 2022, and a letter with responses to Mr. Jones' examination for discovery requests. Ms. Jones confirms that in her responding email asking for hard copies of the material.

[44] I further find that on July 21, 2022, hard copies of the documents emailed to her on June 24, 2022 were delivered to her home. Mr. Jones' counsel submits that Ms. Jones was aware of Mr. Jones' affidavit #27 and his most recent F8 financial statement made June 24, 2022, because he listed those documents on the index of the Summary Trial application record which was supplied to Ms. Jones in advance of the hearing. He also submits that there is no requirement to serve responses to requests made at examination for discovery.

[45] Counsel for Mr. Jones also notes that Ms. Jones refers to the documents, including the documents supplied in response to examination for discovery requests, in her evidence and in her submissions used at the Summary Trial.

[46] I can see no basis to order Mr. Grainger to create a new affidavit which attaches complete copies of the documents he attests to having delivered to Ms. Jones on July 21, 2022. Such evidence is unnecessary in light of my conclusion that Ms. Jones received the material when it was delivered to her home. Ms. Jones has offered no persuasive evidence to establish otherwise.

[47] Ms. Jones seeks an order requiring Mr. Grainger to file his "complete" affidavit of service with full copies of the material delivered to her on July 21, 2022. Once Ms. Jones has that affidavit, and if the Summary Trial is reopened, she states that she will tender additional evidence, for example, concerning the general ledgers that Mr. Jones provided to her in the material. She also intends to tender additional evidence to show that Mr. Jones' responses to her requests at his examination for discovery are incomplete.

[48] The first problem with Ms. Jones' position is that I directed Ms. Jones to specify the additional evidence she would adduce if I granted her application to reopen the Summary Trial. She has failed to sufficiently describe the evidence that she intends to adduce.

[49] The second problem is that Ms. Jones has also failed to establish that the additional evidence she proposes to adduce was unavailable to her before or during the Summary Trial. Rather, it appears that Ms. Jones wishes to adduce evidence that was clearly available to her before the Summary Trial began, or at the latest, that was available during the nearly three month break in the hearing.

[50] When I consider the potential relevance of the additional evidence as it was described by Ms. Jones, I fail to see the potential relevance. For example, whether Mr. Jones adequately answered examination for discovery requests is irrelevant at this stage. Ms. Jones examined Mr. Jones on May 11, 2022. On June 24, 2022, she received his counsel's letter containing his responses, along with a large volume of documents she had requested. I find that Mr. Jones' responses to those examination for discovery requests were provided within a reasonable period of time in all of the circumstances.

[51] The fact that Ms. Jones did not look at the documents until after the hearing had concluded is not a basis for finding that evidence was unavailable to her during the hearing. Courts should exercise discretion to discourage unwarranted efforts to introduce new evidence that was available at the trial: Moradkhan v. Modifi, 2013 BCCA 132 at paras. 28-31. As well, it may be trite, but worth noting, that each party must put their best foot forward on a Summary Trial application.

[52] Further, when I consider the effect of reopening the Summary Trial on the orderly and expeditious conduct of the trial at large, I conclude this factor militates against reopening. Adjudicating this Claim requires the court to consider events that occurred a decade ago. The prospect of a Summary Trial first arose in early 2020 and it was not heard until July 2023.

[53] Another issue that militates against reopening the Summary Trial is the absence of specific or sufficient information about the evidence that Ms. Jones seeks to admit. Ms. Jones has not proposed the type of focussed and narrow proposed additional evidence that was at issue in Vander Ende. Rather, Ms. Jones' proposal for additional evidence is ill-defined and open-ended. It mainly appears focussed on introducing evidence that was clearly available before, or at the latest during, a lengthy adjournment of the hearing.

[54] I conclude it is not appropriate to exercise my discretion to reopen the Summary Trial. I am concerned that it would prejudice Mr. Jones and that it would lead a disproportionate, disorderly process, due to ill-defined additional evidence that would further delay the resolution of the claim.

[55] Therefore, I dismiss Ms. Jones' application to reopen the Summary Trial. Is the matter appropriate for Summary Trial?

[56] Rule 11-3 authorizes the court to grant final judgment on all or part of a claim unless the court is unable, on the whole of the evidence, to find the facts necessary to decide the issues of fact or law, or the court concludes that it would be unjust to decide the issues on the application: Jeerh v. Jeerh, 2015 BCSC 1614 at para. 82 [Jeerh].

[57] In Council of Canadians with Disabilities v. British Columbia (Attorney General), 2020 BCCA 241 at paras. 61-66, rev'd in part 2022 SCC 2, which involved a summary trial under Rule 9-7 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, our Court of Appeal summarized the current legal principles related to summary trials: Summary Trials

[61] Rule 9-7 of the Supreme Court Civil Rules governs the procedure on a summary trial application. Pursuant to Rule 9-7(2), a party may apply to court for judgment in an action, either on an issue or generally. Pursuant to Rule 9-7(5), evidence in support or response to a summary trial application may be tendered through affidavits or in other specified forms, such as expert reports or admissions. The underlying purpose of the Rule is to reduce the expense and time required to achieve a final resolution where doing so summarily is both possible and just: Inspiration Management Ltd. v. McDermid St. Lawrence Ltd. (1989), 36 B.C.L.R. (2d) 202 (B.C. C.A.) at 214.

[62] The decision as to the suitability of proceeding by summary trial is subject to a broad judicial discretion. Although a summary trial is heard primarily on affidavits and may involve disputed issues of fact and law, the judge may render judgment unless the facts necessary to decide the issues cannot be found or it would be unjust to decide them in this way. Rule 9-7(15) provides:

(15) On the hearing of a summary trial application, the court may

(a) grant judgment in favour of any party, either on an issue or generally, unless

(i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or (ii) the court is of the opinion that it would be unjust to decide the issues on the application,

[63] The onus of proof that ordinarily applies does not shift regardless of which party moves for judgment on a summary trial application. As in any trial, the party asserting the affirmative of an issue must prove it on a balance of probabilities. For example, where the defendant brings a summary trial application seeking a dismissal of a claim, the plaintiff retains the onus of establishing the claim on a balance of probabilities

[64] To the extent reasonably possible, the parties must come to a summary trial prepared to meet their onus. As Justice D. Smith explained in Gichuru, a party cannot frustrate the benefits of the process by failing to take every reasonable step to put themselves in the best position possible to address the issues raised. Accordingly, a party who opposes a summary trial on the basis that those issues are unsuitable for determination on the available evidence runs a risk that the court may disagree and give judgment against them. As Chief Justice McEachern put it in Inspiration Mgmt., there is no room for a "respondent's veto" of a summary trial: at 214.

[65] In Bell v. Levy, 2011 BCCA 417 (B.C. C.A.), Justice D. Smith summarized the factors a judge should consider when assessing whether an issue is suitable for determination utilizing the summary trial process:

[64] Factors to be considered in deciding whether an action can be properly determined by summary trial were identified in Inspiration Management Ltd. v. McDermid St. Lawrence Ltd. (1989), 36 B.C.L.R. (2d) 202 (C.A.). They include: the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, and the course of the proceedings (para. 48). Additional factors may include the time required to hear the summary trial, whether the credibility of one or more of the parties is a significant issue, if the summary trial application adds a layer of unnecessary complexity, and if the application results in litigation of the action in slices: Dahl v. Royal Bank of Canada, 2005 BCSC 1263, 46 B.C.L.R. (4th) 342 at para. 12, aff'd 2006 BCCA 369, 272 D.L.R. (4th) 344. "Head on" conflicts in the evidence that go to the core issue in the action will generally provide an impediment to disposition of an action by way of summary trial, especially where findings of credibility are

a central issue in the dispute. See Jutt v. Doehring (1993), 82 B.C.L.R. (2d) 223; Canadian Energy Services Ltd. v. Gotaverken Energy Systems Ltd., [1990] B.C.J. No. 1976 (C.A.).

[66] Whether the necessary facts can be found and whether it would be unjust to decide the issues on summary trial are separate, but related, questions. If the necessary facts cannot be found it would not be just for the court to determine a matter on a summary trial. However, in some circumstances, even if such facts can be found on the whole of the evidence presented, it may not be just for the court to determine a matter summarily: Foreman v. Foster, 2001 BCCA 26 (B.C. C.A.) at para. 19. For example, a judge may conclude that a summary trial would not improve the overall efficiency of the trial process. The judge's discretion is broad and the summary trial process is only appropriate where justice can be done between the parties bearing in mind the requirements of Rule 9-7.

[58] In Main Acquisitions Consultants Inc. v. Yuen, 2022 BCCA 249 at para. 89, the Court reiterated that suitability for summary trial is a threshold issue and "judgment should not be given if the court is unable, on the evidence, to find the necessary facts or if it would be unjust to do so".

[59] A dispute on the facts or in the evidence does not make summary trial inappropriate and cases may be decided summarily if the court can find the facts necessary to decide the issues: Gichuru v. Pallai, 2013 BCCA 60, at para. 30 [Gichuru].

[60] Ms. Jones opposes the Summary Trial. In her view, there are significant conflicts in the evidence and credibility issues that make this matter inappropriate for Summary Trial. Ms. Jones is also concerned that she ought to have the opportunity to cross-examine Mr. Jones at trial.

[61] In her submissions, Ms. Jones relies on substantial portions of Mr. Jones' examination for discovery evidence. I find that this evidence is in the nature of a cross examination. For example, at question 321 of the May 11, 2022 transcript of Mr. Jones' examination for discovery which Ms. Jones relies on, Ms. Jones asks Mr. Jones the following question and she elicits the following answer: 321 Q. All right. So in your notice to admit, you denied that this was what you reported on your income tax return. However, in seeing these documents before you now, do you admit this was your reported income and what you reported on your 2014 return? A. According to all the paper you put in front of me it is, yes.

[62] I am satisfied that due to the particular circumstances before me, including because the examination for discovery evidence relied on is in the nature of a cross examination, that any issue related to Mr. Jones' credibility can be assessed without observing his cross examination: Newhouse v. Garland, 2022 BCCA 276 para. 130.

[63] The summary trial rule is to be "interpreted broadly favouring proportionality and fair access to affordable, timely and just adjudication of all claims": Jeerh at para. 83 citing Hyrniak v. Mauldin, 2014 SCC 7 at paras. 5-6. As stated in Jeerh, at para. 84, "proportionality includes consideration of the appropriateness of the procedure, costs, its impact on the litigation given the complexity of the litigation, and its timeliness."

[64] I am mindful of the parties' long overdue need to access justice in circumstances where a final resolution of the Claim has not happened for nearly a decade. Rule 1-3 describes that the object of the SCFR is to help the parties to resolve legal issues fairly, taking into account the impact of the litigation on children and minimizing conflict and promoting cooperation and to secure a just, speedy and inexpensive determination of the claim on its merits, which is to include, if practicable, conducting the case proportionately to the children's' interests, the importance of the issues, and the complexity of the case.

[65] In my view, and based on the history so far, the course of this proceeding has strayed far from the object of the Rules. The object of the Rules must be taken into serious account on this application. Having said that, I remind myself that the "interests of efficiency do not outweigh the interests of deciding a case on the merits" and, unless I am able, on the whole of the evidence, to find the facts necessary to decides the issues of fact or law, judgment ought not to be granted: Kooner v. Kooner, 2019 BCCA 188 at paras. 51-52.

[66] To determine whether a summary trial pursuant to SCFR 11-3(15) is appropriate, the court consider factors such as the amount involved, the complexity of the issues raised, urgency, the likelihood of prejudice if there were delay in resolving the issues raised, the cost of a full trial in relation to the amounts at issue; the history of proceeding to date and any other relevant circumstance or issue: Inspiration Management Ltd. v. McDermid St. Lawrence Ltd. (1989), 36 B.C.L.R. (2d) 202 at para. 49, 1989 CanLII 229 (C.A.). Additional factors include, for example, whether credibility is a key matter in issue and whether a summary trial would result in the proceeding being litigated in slices: Dahl v. Royal Bank, 2005 BCSC 1263 at para. 12, aff'd 2006 BCCA 369.

[67] Parties must take every reasonable step to prepare their cases for summary trial: Everest Canadian Properties Ltd. v. Mallmann, 2008 BCCA 275 at para. 34; Brown v. Douglas, 2011 BCCA 521 at paras. 29-30.

[68] A decision as to whether an action ought to be determined by summary trial is a matter of discretion and the onus of proof remains unchanged on a summary trial application: Gichuru at paras. 34-35.

[69] The key issues are whether the affidavits relied on for the summary trial raise a conflict in evidence, and whether the conflict is so relevant that it justifies proceeding to a full trial. It is common for parties engaged in litigation to disagree about the material facts surrounding their dispute. The mere existence of conflicts in the evidence, or disagreements about the material facts, are not disqualifiers to the availability of a summary trial procedure. Even with conflicts in the evidence, an important consideration for deciding whether a summary

trial is appropriate in the circumstances is whether the court is able to find the facts necessary to decide the issues: Gichuru at para. 30.

[70] Mr. Jones submits that the summary trial procedure under SCFR 11-3(15) is appropriate in the circumstances. Given that nearly ten years have elapsed since this family law proceeding was commenced, the straight-forward nature of the issues and the relatively low value of the family assets subject to division and the anticipated costs of a lengthy trial, he submits deciding the matter by summary trial accords with the objectives of proportionality and access to justice.

[71] In light of all of the circumstances and based on the whole of the evidence, I conclude that this matter is appropriate for determination by summary trial. While there is some conflict on the evidence and Ms. Jones challenges Mr. Jones' credibility, as will be explained later in these reasons, I am able to find the facts necessary to decide the issues of fact and law and I have concluded that it is not unjust to decide the issues.

[72] The amounts at issue are not large and, in my view, there are no significant or complex issues, including regarding assessing credibility. I find that overall, the conflicts in the evidence are resolvable by reference to the documentary evidence. Has there been adequate financial disclosure?

[73] Ms. Jones is concerned that Mr. Jones allegedly failed to produce all of the relevant financial information and that he inadequately responded to requests she made at his examination for discovery, leaving her without the necessary information to make complete submissions regarding the issues at Summary Trial. I have considered whether the parties adequately disclosed relevant information, especially concerning assets and income.

[74] In the early years of this litigation, it does appear that Mr. Jones was slow to provide his financial information. That led to the Court issuing the 2015 Interim Order based on Mr. Jones' imputed income. Mr. Jones likewise alleges that Ms. Jones failed to disclose financial information, for example, in 2017 to 2019. Mr. Jones submits that she only complied when specifically ordered to produce such information. I find that at certain times, both parties delayed in producing their relevant financial information.

[75] However, when I consider all of the information which Mr. Jones has produced to Ms. Jones in the course of this litigation, I have no difficulty concluding that Mr. Jones has met his disclosure obligations. He provided Mr. Jones with extensive financial information related to his personal income and assets and the income and assets of the corporations. For example, he produced general ledgers, financial statements, invoices and banking records. Likewise, I conclude that Ms. Jones met her obligations to disclose documents and information.
Dividing family assets and debt

[76] Since the Claim was commenced prior to the repeal of the FRA, the FRA applies to property division: s. 252(2), Family Law Act, S.B.C. 2011, c. 25.

[77] In closing submissions, Mr. McCubbin, who is counsel for Mr. Jones, provided a useful summary of the relevant provisions of the FRA, which I find accurately summarized the relevant points of law. I have drawn from counsel's summary in the paragraphs below.

[78] The interest of spouses in family assets is as tenants in common with their interest crystallizing upon the occurrence of a triggering event: s. 56(1) and (2), FRA. Importantly, the spouses' interests is in the assets themselves, not the value of the assets: Ghurani v. Ghurani (1993), 46 R.F.L. (3d) 48 at para. 89, 1993 CanLII 1028 (B.C.C.A.).

[79] In the present case, it is submitted, and I agree, that the triggering event is Halfyard J.'s December 16, 2013 order declaring "no reasonable prospect of reconciliation" pursuant to s. 57 of the FRA.

[80] There is a presumption that family assets will be divided equally, unless that claim is opposed, in which case the spouse opposing the claim must prove the property in question is not ordinarily used for a family purpose: s. 56, 60, FRA.

[81] The FRA defines "family assets" as "property owned by one or both spouses and ordinarily used by a spouse for a family purpose ": s. 58(2), FRA. Subsection 58(3) adds to the definition of "family assets" as follows:

(3) Without restricting subsection (2), the definition of family asset includes the following:

(a) if a corporation or trust owns property that would be a family asset if owned by a spouse,

(i) a share in the corporation, or (ii) an interest in the trust owned by the spouse;

(b) if property would be a family asset if owned by a spouse, property

(i) over which the spouse has, either alone or with another person, a power of appointment exercisable in favour of himself or herself, or (ii) disposed of by the spouse but over which the spouse has, either alone or with another person a power to revoke the disposition or a power to use or dispose of the property;

(c) money of a spouse in an account with a savings institution if that account is ordinarily used for a family purpose;

(d) a right of a spouse under an annuity or a pension, home ownership or retirement savings plan;

(e) a right, share or an interest of a spouse in a venture to which money or money's worth was, directly or indirectly, contributed by or on behalf of the other spouse.

[82] Section 59 of the FRA provides for excluded business assets: 59(1) If property is owned by one spouse to the exclusion of the other and is used primarily for business purposes and if the spouse who does not own the property made no direct or indirect contribution to the acquisition of the property by the other spouse or to the operation of the business, the property is not a family asset.

(2) In section 58 (3) (e) or subsection (1) of this section, an indirect contribution includes savings through effective management of household or child rearing responsibilities by the spouse who holds no interest in the property.

[83] Section 65(1) provides the court with discretion to reapportion the presumptive one-half interest in all family assets: 65(1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

(a) the duration of the marriage,

(b) the duration of the period during which the spouses have lived separate and apart,

(c) the date when property was acquired or disposed of,

(d) the extent to which property was acquired by one spouse through inheritance or gift,

(e) the needs of each spouse to become or remain economically independent and self sufficient, or

(f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse, the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[84] It is the circumstances in existence as of the date of the triggering event, i.e. December 16, 2013, that is to be considered when determining whether the presumptive equal division would be unfair. However, the court may also reapportion to account for events following the triggering event if it would be unjust or unfair to ignore those later events: M. (N.M.) v. M. (N.S.), 2004 BCSC 346 at para. 76 [M. (N.M.)].

[85] As a general rule, unless there is a reason to the contrary having regard to the issue of fairness, the valuation date for family assets is the date of trial: Gilpin v. Gilpin (1990), 29 R.F.L. (3d) 250 para. 4, 1990 CanLII 1576 (B.C.C.A.).

[86] In Janis v. Janis, 2016 BCCA 364 at paras. 54-55, Justice Garson provides the following summary of the authorities relating to reapportionment and the presumptive valuation date:

[54] When considering reapportionment under FRA s. 65, the presumptive valuation date is the date of the triggering event. When considering a compensation order under s. 66, the presumptive valuation date is the date of trial. However, the court retains the discretion to determine a different valuation date for the purpose of achieving fairness between the parties. Setting a different valuation date may be appropriate where there has been an increase or decrease in the value of a family asset between the triggering date and the date of trial. The conduct of one party as it relates to an increase or decrease in value may be a relevant consideration.

[55] I emphasize, however, that the ultimate goal is achieving fairness. Lotzkar [Lotzkar v. Lotzkar, 2003 BCCA 581] indicates that a mechanical application of any of these principles is not desirable and may be antithetical to achieving a fair result.

[87] Where a family asset involves, for example, a personal services business, a professional valuation is not necessary in every case and it is not an exact science to assess compensation: Lloyd v. Lloyd, 2007 BCSC 349 at para. 47; M. (N.M.) at para. 93.

[88] When dividing businesses, it is generally the value of the shares, not the assets owned by the corporation, that is divisible under Part 5 of the FRA: Balic v. Balic, 2006 BCCA 335 at para. 26.

[89] Even though both parties suggest that certain amounts should be offset against the other party's share of the family home sale proceeds, neither opposes the presumption that family assets and debts will be divided equally. For example, Ms. Jones submits that she is generally seeking an equal division of family property.

[90] Mr. Jones submits that the family assets are comprised of the sale proceeds of the family home, being $174,267, and the value of the All-Pro Businesses, which he submits should be valued at $18,616, for total family assets of $192,883.

[91] Ms. Jones submits that the family assets total is $1,495,089, which is comprised of $174,267 for the sale proceeds of the matrimonial home, $462,683 for business value, $273,000 for income available to owners, $423,000 for income available to shareholders, and $162,172 for tangible assets. All-Pro Businesses

[92] As previously mentioned, Mr. Jones is a heavy duty mechanic who worked for the parties' business. While Mr. Jones provided his mechanic services, Ms. Jones provided bookkeeping and office administration services to the businesses.

[93] Initially, Mr. Jones operated as a proprietorship known as "All Pro Diesel Repair" (the "Proprietorship"), but in 2009, Mr. Jones incorporated All-Pro Diesel Ltd. ("Diesel Ltd.").

[94] In October 2012, a few months prior to the Final Separation, Mr. Jones incorporated All Pro Power and Marine Ltd. ("Marine Ltd."). Mr. Jones stopped performing work through Diesel Ltd. and began operating Marine Ltd.

[95] Ms. Jones suspects that Mr. Jones began taking business and diverting income from Diesel Ltd. prior to the Final Separation in an effort to reduce the value of the business. For example, Ms. Jones points out that certain pre-Final Separation invoices were issued by Marine Ltd., rather than Diesel Ltd. However, there is evidence in the general ledger that payments for the invoices were credited to Diesel Ltd. and the revenue is accounted for in the corporate records. It must also be remembered that Mr. Jones agrees that both companies are family assets. In my view, this addresses Ms. Jones' concern about assets and income moving between the businesses.

[96] In December 2017, Mr. Jones incorporated 1143789 B.C. Ltd. ("Numco"). Mr. Jones states that he created Numco for the purpose of expanding the business into another region. However, Mr. Jones states that the hoped-for business expansion did not occur.

[97] Another reason provided for the creation of Numco was apparently due to Ms. Jones serving garnishing orders in 2017 for alleged arrears of child and spousal support. Mr. Jones says the garnishing orders made it is impossible to meet Marine Ltd.'s day-to-day expenses or to carry on normal business operations.

[98] Ms. Jones made extensive submissions regarding her concern that by starting new businesses, Mr. Jones was trying to harm her financially, for example, by moving assets from one business to another and deliberately deflating the value of the business. For example, Ms. Jones provided evidence that based on her knowledge including because she was working as the bookkeeper of the business, Mr. Jones failed to track his parts inventory when he operated the Proprietorship and this practice allegedly continued with Diesel Ltd. and Marine Ltd.

[99] However, given Ms. Jones' past involvement in the recordkeeping for the businesses, it seems that the parties would both bear some responsibility for these types of alleged shortcomings.

[100] I find that Ms. Jones' concerns are largely dealt with by Mr. Jones' position that Marine Ltd. ought to be considered a family asset divisible under Part 5 of the FRA. Again, Mr. Jones does not dispute that the assets and liabilities of Diesel Ltd. were simply moved over to Marine Ltd. (collectively referred to as the "All-Pro Businesses"). Further, Mr. Jones does not claim that he personally owned assets that were not used for a family purpose.

[101] On September 21, 2016, XPS Group ("XPS") prepared a joint business appraisal of the All-Pro Businesses. The XPS appraisal was an estimate valuation as at the valuation dates of December 1, 2009, January 23, 2013 and October 31, 2015.

[102] The XPS appraisal concludes that the fair market value of the All-Pro Business on each valuation date is as follows: Valuation Date Fair Market Value December 1, 2009 $23,000 January 23, 2013 $211,000 October 31, 2015 $186,000

[103] Included in the XPS appraisal is the factual assumption that two other appraisals prepared by Accurate Appraisals and Marine Surveys Ltd., from January 12 and 19, 2016, appraising certain assets are "representative of All-Pro Power and Marine Ltd.'s property, plant, equipment and inventory ("PP&E") as at October 31, 2015." In other words, the PP&E is factored into the XPS Appraisal. I do not accept Ms. Jones' submission that the total family assets, should add the total PP&E from the Accurate Appraisals to the XPS appraisal amount(s). In any event, neither party takes the position that the court should strictly adopt the XPS appraisal report to value parties' interest in the All-Pro Businesses.

[104] Ms. Jones expressed many concerns and disagreements with the XPS report. Ultimately, Ms. Jones submits that the fair market value assessed by XPS as of the Final Separation on January 26, 2013 is the appropriate valuation date.

[105] Mr. Jones submits that the court is not entitled to use the Final Separation date as the date for valuing the All-Pro Businesses. That is because the triggering event is December 16, 2013 as provided by Halfyard J.'s Order.

[106] I agree with Mr. Jones on this issue. While the court has discretion to choose a valuation date that is earlier than the trial date, it may not choose a date that is earlier than the triggering event: M. (N.M) at para. 76.

[107] Mr. Jones submits that the most appropriate date to use for valuation is October 31, 2015, being the date of the last valuation. According to Mr. Jones, valuing the All-Pro Businesses as of October 31, 2015 is appropriate because that date reflects the absence of any contribution by Ms. Jones, it accounts for her conduct in harming the All-Pro Business operations by garnishing bank accounts used for their operation, and the impact on the earnings of the All-Pro Businesses caused by the children eventually residing exclusively with him.

[108] I am aware that the usual valuation date for family assets is the date of trial. However, I find there are a number of reasons related to the issue of fairness that militate against using the date of trial and in favour of using the date of the last valuation.

[109] In my view, those fairness-related reasons include that a lengthy period of time has passed during which Ms. Jones' has had no involvement in the All-Pro Businesses; and because the operations are closely intertwined with Mr. Jones' labour on behalf of the business. Therefore, I find the appropriate valuation date for the family assets is the date of the last valuation, being October 31, 2015.

[110] Ms. Jones submits that the value of the All-Pro Businesses ought to be determined as $462,683, which is arrived at by using the Percentage of Revenue Method of $1,136,724, which she also describes as the "average revenue between the two companies", multiplied by 37% +/- 10% for an estimated selling price range ranging from $420,621 to $462,683.

[111] In addition to the $462,683 amount which Ms. Jones characterizes as the value of the All-Pro Businesses, she submits the court should add:

a) $273,000 as "income available to owners";

b) $423,000 as "income available to shareholders"; and

c) $162,173 as "tangible assets"; to arrive at a total value of the All-Pro Businesses of $1,320,856.

[112] Ms. Jones further submits that she is entitled to be compensated for either $32,000 or $16,500, which she alleges Mr. Jones appropriated from the bank account of Diesel Ltd. in 2013. Ms. Jones also submits that, as a result of Mr. Jones transferring and disposing of

corporate assets and funds and forcing the closure of Diesel Ltd. and Marine Ltd., he failed to act in the best interests of the All-Pro Businesses. Due to this culpable conduct, Ms. Jones submits that the corporations ought to be valued at their highest possible value to compensate for that.

[113] In my view, Ms. Jones' submission that $1,320,822 is the total value of the All-Pro Businesses is inaccurate and unfair. That is because Ms. Jones appears to selectively pick certain amounts from the XPS report and add them to the total value contrary to how the amounts are treated in the XPS report. For example, Ms. Jones simply adds the income available to shareholders and owners from Schedule 7 of the XPS report to the total value of the All-Pro Businesses and I do not accept that there is a principled basis for doing that.

[114] Mr. Jones also has a number of criticisms of the XPS report. In May 2022, Mr. Jones retained Mr. Derek Lamb, a chartered accountant, to provide an opinion about the valuation method utilized by XPS. Mr. Lamb's report is dated June 15, 2022.

[115] Mr. Lamb is critical of the valuation method utilized by XPS, especially as it relates to the goodwill, which is the largest component of the value of the All-Pro Businesses. Mr. Lamb submits that a more appropriate valuation method given the circumstances of the All-Pro Businesses due to, for example, being located in a small town with a resource-based economy, would be to use asset value. According to Mr. Lamb, when using an asset value as the basis for the valuation, the value of the All-Pro Businesses is $18,616.

[116] Ms. Jones objects to the admissibility of Mr. Lamb's report. She was not served with it until June 18, 2022. Ms. Jones is concerned that she had insufficient time to respond to the report and no opportunity to cross examine Mr. Lamb.

[117] I agree with Ms. Jones that Mr. Lamb's report is inadmissible. Mr. Lamb is not a jointly appointed expert under SCFR 13-4. Further, SCFR 13-6(4) states that a party intending to introduce a responding expert report must serve the report at least 42 days before the scheduled trial date. As Ms. Jones was served with Mr. Lamb's report on June 18, 2022, it clearly was not served within 42 days of the scheduled trial date. Therefore, I have not considered Mr. Lamb's report.

[118] However, Mr. Jones is entitled to make submissions about the assumptions in the XPS report and to criticize the XPS report even though I have concluded that Mr. Lamb's report is inadmissible.

[119] Mr. Jones submits, for example, that in addition to factors related to the remote location of the All-Pro Businesses, the XPS report fails to recognize that any price realized for the sale of the All-Pro Businesses would vary depending on whether Mr. Jones provides a non-compete agreement.

[120] Ms. Jones disagrees that a non-compete agreement from Mr. Jones affects the value of the All-Pro Businesses. She states that, in the past, several former employees of the All-Pro Businesses started competing without negative impacts.

[121] Ms. Jones also disagrees that the small-town location of the All-Pro Businesses negatively impacts value. In Ms. Jones's view, the location is irrelevant, since the business takes place wherever Mr. Jones travels to provide his services. She submits that Mr. Jones commutes throughout coastal areas to perform services on behalf of the All-Pro Businesses.

[122] Ms. Jones' submissions reinforce my view of the evidence regarding the All-Pro Businesses, which is that they are essentially the vehicles through which Mr. Jones provides his services as a heavy duty mechanic. In other words, the value of the All-Pro Businesses is inextricably linked to Mr. Jones' personal labour, expertise and customer contacts. I find it more likely than not that any purchaser would require Mr. Jones to refrain from competing. I also find it more likely than not that potential competition from Mr. Jones would have a negative impact on the sale price achievable for the All-Pro Businesses.

[123] After taking all of the evidence into account, I conclude that the implied market value of goodwill for the All-Pro Businesses is accurately and fairly assessed at $50,000 rather than $168,500. That is because $50,000 is approximately double the $25,500 mid-point of the low and high fair market value of goodwill discussed in the XPS report at para. 114 of the report in relation to the December 1, 2009 valuation date.

[124] At para. 114 of the report, XPS states that the implied goodwill is below the low end of the typical range "for goodwill for small privately operated diesel-engine mechanic service operations, but appears reasonable given the very small size of the business, low profitability and the reliance on key personnel in the business".

[125] In my view, these considerations discussed in the XPS report continue to apply beyond the first valuation date (i.e. beyond December 1, 2009) because they reflect that the All-Pro Businesses are highly dependent on offering Mr. Jones' personal services. While $25,500 is below the low end of the typical range for a valuation date of December 1, 2009, I find that a goodwill value of $50,000 as of October 31, 2015 achieves overall fairness, including because it recognizes the passage of time and the importance of these factors. It also reflects that assessing value and compensation for the parties is not an exact science

[126] When this adjustment is taken into account, I conclude that the fair market value as of October 31, 2015 of the All-Pro Businesses ought to be assessed as $67,000, which I have rounded up to the nearest $1,000. For clarity, this is based on an enterprise value of $200,000, minus $75,941 and $58,000, for working capital adjustment and debt and personal assets, respectively.

[127] I am aware that the XPS report, dated September 21, 2016, does not consider the value of the All-Pro Businesses at any time after the last appraisal date of October 31, 2015. I am further aware that the XPS report does not include any consideration of the value of the Numco business commenced after the report date.

[128] However, as I have concluded that the triggering date is December 16, 2013 and the appropriate valuation date is the date of the last valuation, i.e. October 31, 2015, I find it is appropriate that post-October 31, 2015 changes to the All-Pro Businesses are not included in the valuation. For the reasons that I have already explained, I have concluded that this is appropriate because a valuation date of October 31, 2015 represents a time by which value can be fairly assessed. The Family Home

[129] The parties lived in a family together during the relationship. Pursuant to a court order, that home was sold many years ago.

[130] The net sale proceeds from the sale of the home, being $174,267, less a $50,000 litigation advance to Ms. Jones, have been held in trust. Equal entitlement to the net sale proceeds, taking into account the advance to Ms. Jones, would result in a payment to Mr. Jones and Ms. Jones of $87,133.50 and $37,133.50, respectively.

[131] Mr. Jones submits that pursuant to s. 56(2) of the FRA, the court ought to reapportion the division of the net sale proceeds, to the extent that Mr. Jones overpaid Ms. Jones spousal support, or to the extent Ms. Jones owes Mr. Jones child support, to account for these liabilities. Mr. Jones also submits that Ms. Jones' entitlement to any share of the net sale proceeds should also account for her share of family debt. Ms. Jones takes a similar position, arguing that Mr. Jones' share of the net sale proceeds in the family home ought to be paid out to her, either on account of her share of the All-Pro Businesses or for arrears of child and spousal support owing to her. Family Debt

[132] Mr. McCubbin submits, and I agree, that since there is no FRA provision authorizing the reapportionment of family debts independently of the division of family assets, the proper approach is to deduct the total value of family debts from the total value of family assets prior to apportioning their net value: Karisik v. Chow, 2010 BCCA 548.

[133] According to Ms. Jones, the family debts as of the date of separation are as follows: Item Amount Ford credit for Ms. Jones' vehicle loan $42,274.74 MBNA Mastercard in Ms. Jones' name $8,926.21 CIBC Visa in Ms. Jones' name $4,634.44 Capital One Mastercard in Ms. Jones' name $1,078.75 The Brick card in Ms. Jones' name $2,199.93 Capital One Mastercard in Mr. Jones' name $4,598.74 Total $63,712.81

[134] Ms. Jones did not take me to evidence supporting her allegation regarding the amount of family debt as of the date of separation. In Ms. Jones' first F8 financial statement after Final Separation, which was made February 7, 2013, she identifies the following debts:

a) Mortgage $300,000;

b) Car loan for 2011 Ford Expedition $48,000;

c) Respondents' TD Visa $3,000;

d) Claimant's CIBC Visa $2,000;

e) Claimant's MBNA Mastercard $11,000;

f) Wells Fargo Loan $24,232; and

g) CIBC Loan $75,000.

[135] In Ms. Jones' second F8 financial statement after Final Separation, which was made September 10, 2015, she identifies the following debts:

a) Mortgage $182,650;

b) Car loan for Ford $19,044;

c) MBNA Account 3718 $14,380;

d) MBNA Account $2,822;

e) CIBC Visa $12,505.51; and

f) Capital One $2,846.

[136] I was not directed to, for example, documents showing the balance of the credit cards in Ms. Jones' name. In her affidavit made August 31, 2020, Ms. Jones disputes Mr. Jones' evidence concerning the family debts as of the date of separation and she states, at para. 34: "... All the family debt at separation was on my credit cards from doing house hold renovations and my vehicle loan of approximately $50,000 at the time of separation. It was me that was left to carry all of the family debt with no income coming in " Ms. Jones states in numerous affidavits that since separation she had been carrying all of the family debt.

[137] I saw no supporting documentation in the record to assist me in identifying and quantifying the family debts alleged by Ms. Jones. On the other hand, Mr. Jones directed me to evidence supporting his allegation of family debt. That evidence includes bank statements, a credit agreement and copies of the judgment granted to CIBC.

[138] In her affidavit Ms. Jones submits that she paid $58,114.07 towards the family debt that was in her name, resulting in Mr. Jones owing her $29,057.54 for his share of that debt. Ms. Jones submits that of the family debt claimed by Mr. Jones, she is only responsible for a half share of the Capital One Mastercard debt of $4,598.74.

[139] Mr. Jones submits that there are two main family debts that must be accounted for: (1) a loan from CIBC; and (2) a loan from Wells Fargo. CIBC Loan

[140] Mr. Jones submits the CIBC Loan, which was secured against the family home, should be valued at $54,830.13, as at October 2013, which is the closest month to the triggering event for which records are available. Both parties have at some point listed the CIBC Loan in their F8 financial statements.

[141] There are documents from Mr. Jones showing that the CIBC Loan was granted on October 12, 2011. The credit agreement describes the business name as the Proprietorship and the borrower as Mr. Jones. There is evidence that Mr. Jones continued paying the CIBC loan after the triggering event. However, by September 10, 2014, the CIBC Loan was in default and the CIBC registered its judgment for $45,573.69 including costs against the matrimonial home.

[142] Ms. Jones submits that the CIBC Loan is not a family debt because it is a debt incurred for business purposes. Ms. Jones is concerned that the CIBC debt has reduced the value of the All-Pro Businesses and, since Mr. Jones kept the All-Pro Businesses, he should be fully responsible for the CIBC Debt.

[143] I find that the CIBC Loan is a family debt since it was used by the parties for the purpose of operating the All-Pro Businesses. The parties accept that the All-Pro Businesses are family assets and I find that the CIBC Loan is to be treated as family debt just as the All-Pro Businesses are treated as family property.

[144] I find that the CIBC Loan is to be valued at $54,830.13, as of the triggering event which value is based on the records available in the month closest to the triggering date. The parties are equally responsible for the CIBC Loan. Wells Fargo Loan

[145] The Wells Fargo Loan was a business loan to All-Pro Businesses. The records show that at the time of the triggering event, the Wells Fargo Loan balance was $23,750.58. Mr. Jones has continued paying down this debt and, as of trial date, the balance is approximately $15,439.28.

[146] Ms. Jones submits that the Wells Fargo Loan is not a family debt. For the same reasons alleged in respect of the CIBC Loan, she states that liability for the Wells Fargo Loan should be the exclusive responsibility of Mr. Jones.

[147] After reviewing all of the evidence and considering the submissions, I am satisfied that the family debt to be divided includes the Wells Fargo Loan valued at $23,750.58. That means the total family debt is valued at $78,580.71.

[148] I am aware that Ms. Jones submits that she held family debt totalling $58,114.07. However, there is insufficient evidence in the record to support her submission regarding the nature of the debt and the amount she was carrying. In Ms. Jones' 2013 and 2015 financial statements, she refers to certain debt amounts and in other affidavits she refers to carrying the family debt, but there are no supporting documents showing the details of these debts, such as the balance at the time of Final Separation or any other time. In my view, Ms. Jones has not established that these amounts are family debt nor has she established the amounts

of these alleged family debts. Summary of Property and Debt Division

[149] The following summarizes the family property and debt that I have determined: Item Value Family Home Sale Proceeds $174,267 All-Pro Businesses $67,000 Property Subtotal: $241,267 [$241,267 ÷ 2 = $120,633.50 each] Minus Debts CIBC Loan ($54,830) Wells Fargo Loan ($23,750) Debt Subtotal: ($78,580) [$78,580 ÷ 2 = $39,290 each] Net Family Property $162,687

[150] I conclude that it is appropriate and fair in all of the circumstances, including based on the totality of the evidence, to make an order pursuant to s. 66(1) of the FRA as a means to achieve equal division of family assets as follows:

a) Mr. Jones' equal interest in the net sale proceeds of the family home (i.e. $87,133) should be used to pay the CIBC judgment;

b) Upon payment of the CIBC judgment, the remainder of Mr. Jones' interest should be paid towards the CRA judgment (i.e. approximately $41,559.81);

c) Mr. Jones shall retain his interest in the All-Pro Businesses (his equal interest is valued at 50% of $67,000 = $33,500) and he shall compensate Ms. Jones for that amount;

d) Mr. Jones shall retain the Wells Fargo debt; and

e) Ms. Jones shall pay Mr. Jones an equalization payment of $5,790 from her share of the net sale proceeds to compensate Mr. Jones for satisfying the CIBC Loan and the Wells Fargo Debt, valued respectively as $54,830.13 and $23,750.48, leaving Ms. Jones with $25,553 from the remaining sale proceeds in addition to the $50,000 already advanced to her.

[151] What follows is a chart describing the outcome of the division of family property and debt, but subject to a final accounting of post-judgment interest owed on the CIBC judgment: Payment Mr. Jones Ms. Jones Parties' share of proceeds of family home property $87,133 $87,133 Less CIBC Debt $45,573 Less CRA Judgment (to extent of Mr. Jones' interest in sale proceeds) $41,560 Less Advance for Legal Fees $50,000 Balance of respective shares of proceeds $0 $37,133 Adjustments: Ms. Jones to Mr. Jones - 50% of Wells Fargo Debt $11,875 Ms. Jones to Mr. Jones - 50% of CIBC Debt $27,415 Mr. Jones to Ms. Jones - 50% of All-Pro Businesses $33,500 Total: ($33,500) ($2,157)

[152] When the $2,517 amount owed to Mr. Jones is set off against the $33,500 amount owed to Ms. Jones, the result is a net payment by Mr. Jones to Ms. Jones of $31,343 resulting from division of family assets and debts, subject to a final accounting of post-judgment interest owing on the CIBC Judgment. Income of the Parties

[153] In Wiebe v. Treissman, 2017 BCSC 1523 at paras. 92-94 [Wiebe], Justice Kent stated as follows regarding determining the income of the parties:

[92] It is of course central to any determination of a spouse's income for child support purposes that the spouse make full and proper disclosure of all financial information necessary for that determination. Non-disclosure has often been called the "cancer" of family litigation. Insofar as child or spousal support claims are concerned, s. 19(1)(f) permits imputing income to any spouse who fails to make proper disclosure of his or her income information.

[93] The disclosure requirements set out in the Guidelines are supplemented by Rules 5-1 and 9-1 of the Supreme Court Family Rules which pertain to financial disclosure and discovery of documents respectively. Among other things, these rules provide for: · mandatory production of detailed financial statements and supporting documentation; · ongoing and updated disclosure where information becomes inaccurate or incomplete by virtue of later changed circumstances; · production of corporate documentation and information both by the spouse holding the corporate interests and by the corporation itself; and · in the event of non-disclosure, imposing fines, drawing adverse inferences and/or attributing income in such amount as the court considers appropriate.

[94] The burden of proving the reasonableness of deductions from business income, whether in the context of self-employment or within a wholly-owned corporation, lies with the spouse making the deduction. It is the obligation of that spouse to fully disclose the financial information and documentation relied upon to justify the deduction of each expense. It is not the other party's responsibility to hire, nor is it the court's obligation to appoint, an accountant or other professional to assess and challenge the reasonableness of the deduction, although of course both are at liberty to do so in appropriate circumstances. For a recent affirmation of these principles, see Cunningham v. Seveny, 2017 ABCA 4.

[154] In Wiebe, at para. 87-91, Kent J. summarized the process for calculating a spouse's income for purposes of child support under the Federal Child Support Guidelines, SOR/97-175 [Guidelines]:

[87] The starting point is provided by s. 16, namely the "total income" set out on line 150 of the spouse's income tax return. That amount is then to be adjusted in accordance with Schedule III of the Guidelines which, among other things, deals with deduction of certain employment expenses, deduction of spousal support and universal child care benefits, capital cost allowance for real property, et cetera.

[88] Section 18 of the Guidelines addresses situations where a spouse is a shareholder, director or officer of a corporation. If such a spouse's annual income as determined under s. 16 (i.e., his line 150 income, as adjusted) "does not fairly reflect all the money available to the spouse of the payment of child support", the court can review corporate pre-tax income and impute all or part of that income to the spouse for child support purposes.

[89] Section 21 of the Guidelines requires a spouse who controls a corporation to disclose the financial statements of the corporation and its subsidiaries as well as a "statement" of all amounts or benefits paid to persons who were not "at arm's length" to the corporation. Section 18(2) of the Guidelines requires all such non-arm's-length payments to be added back to corporate pre-tax income unless the spouse "establishes that the payments were reasonable in the circumstances".

[90] One of the "benefits" enjoyed by a spouse who is able to structure his financial affairs through a wholly-owned corporation is the ability not only to "income-split" with third parties, and to distribute income by way of a mixture of salary and dividends, but also to have what are essentially personal expenses paid by the corporation. To the extent such expenses are personal and not bona fide corporate expenses, they are properly "added back" to the corporation's pre-tax income, all or part of which can then be imputed to the spouse for Guideline income purposes.

[91] Section 19 of the Guidelines also permits the court to impute income to a spouse for child support purposes in a wide variety of circumstances. Among other things, this section permits adjustments where a spouse has derived tax advantages by structuring his or her affairs to attract a lower overall tax rate than the rate contemplated by the Guidelines. For example, subsections 19(1)(g) and (h) include situations where a spouse has unreasonably deducted expenses from income and/or where a spouse derives a significant portion of income from dividends, capital gains or other sources which are either exempt from tax or taxed at a lower rate.

[155] Section 19 of the Guidelines authorizes the imputation of income to a spouse in certain circumstances: 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; ...

(d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;

(e) the spouse's property is not reasonably utilized to generate income;

(f) the spouse has failed to provide income information when under a legal obligation to do so;

(g) the spouse unreasonably deducts expenses from income;

(h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; . Reasonableness of expenses

(2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.

[156] There is broad discretion to impute income to one or both spouses for purposes of determining child and spousal support, and where under-employment is alleged, the test is "reasonableness, having regard to the parties' capacity to earn income in light of their age, education, work history and work availability: Marquez v. Zapiola, 2013 BCCA 433 at para. 37 [Marquez].

[157] In Marquez, at para. 38, the Court of Appeal states as follows concerning the legal foundation for awarding spousal support and the test for imputing income:

[38] Although the legal foundation for awarding spousal support is different from that of child support (see Kerr v. Baranow, 2011 SCC 10, [2011] 1 S.C.R. 269 at para. 208), the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: Myers v. Myers (1995), 65 B.C.A.C. 226, 17 R.F.L. (4th) 298 at para. 10, Moge at 870, Bracklow at para. 36. "Means" has been interpreted to include all capital and other sources of income (Leskun v. Leskun, [2006] 1 S.C.R. 920 at para. 29). Ms. Jones

[158] According to the income tax filings and documents that were produced related to Ms. Jones' income, the following is her reported income starting the year before the Final Separation: Year Total income for year Source 2012 $69,276 [No breakdown in the records provided] 2013 $48,320 $16,600 employment income; $5,520 employment insurance benefits; $16,200 support payments received; and, $10,000 RRSP income 2014 $51,658 $21,600 support payments received; and, $30,058 RRSP income 2015 $32,548 $1,329 Child Care Benefit; $31,219 support payments received; and, $1,329 RRSP income 2016 $29,710 $29,518 support payments received; and, $192 other income 2017 $21,807 $7,790 employment income; $116 interest income; and, $13,901 support payments received 2018 $24,784 $14,554 employment income; $7,415 employment insurance benefits; $1,958 RRSP income; and $857 other income 2019 $33,887 $29,315 employment income; and, $4,572 employment insurance benefits 2020 $48,458 $42,155 employment income; and $6,303 employment insurance benefits

[159] For many years, Ms. Jones earned a salary working for the Proprietorship and Diesel Ltd. However, in approximately 2012, Ms. Jones also obtained a full-time job with the municipal government of the town where the parties resided. Unfortunately, she was terminated from that job around the time of the Final Separation. Prior to termination, Ms. Jones earned approximately $29,000 in employment earnings from that employment. Ms. Jones states that the termination was related to stress and anxiety caused by the marital breakdown.

[160] In 2013, Diesel Ltd. paid Ms. Jones to perform some bookkeeping work. However, besides that, she had no paid employment from 2013 to 2016. According to Ms. Jones, she did not seek paid employment during these four years because, initially, she was on medical leave for stress and anxiety, then in 2014, she spent time that year home-schooling one or both of the children.

[161] Ms. Jones also says she unsuccessfully looked for employment during this period. Ms. Jones states that her attempts to find employment were hampered by Mr. Jones telling people in their small town that she had assaulted him and stolen money.

[162] In mid-2016, Ms. Jones moved to Vernon along with the children. Ms. Jones says she made the move to Vernon because she was seeking a fresh start and she had family in the area.

[163] In 2017, Ms. Jones began her first paid employment position following the Final Separation working in part-time at a farm. However, Ms. Jones said that, in 2017, when Mr. Jones ceased paying support, she could not afford the rent and so she quit that job and moved back to Vancouver Island. Upon her return to Vancouver Island in 2017, Ms. Jones held a series of short-term, mostly part-time jobs doing things like data entry and waitressing.

[164] It was not until approximately 2019 that Ms. Jones secured full-time employment again. She started working at a gravel company doing administrative work but she did not hold this job for very long.

[165] Mr. Jones submits that Ms. Jones was deliberately unemployed or underemployed. Mr. Jones is concerned that Ms. Jones avoided working to her full capacity and in accordance with her training to increase her entitlement to support. Ms. Jones agrees that, except for a short period of stress leave, she had no medical problem that would have prevented her from working after 2013.

[166] Ms. Jones' evidence is that she attempted to look for work after the Final Separation but it was difficult including because there were false rumours in town about her that she alleges Mr. Jones started. In 2016, the parties were emailing each other about whether Mr. Jones would confirm to police that Ms. Jones did not assault him. When Mr. Jones refuses to do so, Ms. Jones replies that this was fine because she likes not working. While this exchange is not helpful to Ms. Jones, it does show that she was making efforts to deal with the allegations against her and it seems reasonable to conclude that this issue was detrimental to her attractiveness as a potential employee.

[167] Mr. Jones seeks imputation of income to Ms. Jones based on her ability to earn income and her deliberate decision to avoid working following the Final Separation. Mr. Jones submits that $45,000 of income should be imputed to Ms. Jones for 2013 to 2019.

[168] I conclude that in light of the evidence concerning Ms. Jones' education, training, work experience and the availability of jobs, it is appropriate to impute $25,000 as additional income to Ms. Jones for 2013 and 2014 and $30,000 for 2015 to 2018. While I accept that Ms. Jones had some ability to work in 2013-2014, and while she chose not to do so, I do not agree that her expected earnings would have exceeded $25,000 for those years.

[169] I have determined a lesser amount of income should be imputed to Ms. Jones in 2013 and 2014. That is because I accept her evidence that for part of those years she was not working due to medical reasons related to stress and, in 2014, she was home schooling one or both of the children.

[170] For the years from 2015 to 2018, I accept that Ms. Jones was deliberately unemployed or underemployed and given her earnings history, skills and work history, I find that $30,000 per year is an appropriate amount of additional income to impute. I have further concluded that $30,000 is an appropriate amount to impute because it is similar to the amount Ms. Jones would likely have earned through municipal government employment had she maintained that job or replaced that job with similar full-time employment. Mr. Jones

[171] According to the income tax filings and other documents that were produced related to Mr. Jones' income since the year before the Final Separation, his reported income is as follows: Year Total income for year Source 2012 $85,947 $63,000 employment income; $15,250 taxable amount of dividends; $1,047 RRSP income; and, $6,650 self employment business income (gross) 2013 $105,745 $80,740 employment income; and, $25,000 as taxable amount of dividends 2014 $230,195 $51,111 employment income; $159,300 taxable amount of dividends; and $19,783 RRSP income 2015 $184,639 $183,592 employment income; and, $1,047 RRSP income 2016 $195,300 $54,900 employment income; and, $140,400 as taxable amount of dividends 2017 $80,970 $33,000 employment income; and, $47,970 as taxable amount of dividends 2018 $87,000 $87,000 as taxable amount of dividends 2019 $90,000 $90,000 employment income 2020 $87,000 $66,500 employment income; and $2,080 other income (personal use of business vehicle) 2021 $54,000 $54,000 employment income

[172] Mr. Jones submits that 2014-2016 represent three years in which his income was exceptionally good. He submits that, otherwise, his average income has been around $84,000 each year.

[173] Ms. Jones is concerned that Mr. Jones' reported income is not a reflection of his actual income. Ms. Jones submits that income should be imputed to Mr. Jones because, based on the financial records for the businesses, he could have received a greater share of corporate income in the years following 2016.

[174] However, I accept that Mr. Jones' reported earnings in the years 2013 to 2016 were unusually large for reasons that he has satisfactorily explained, including because of dividends received in those years associated with transitioning from Diesel Ltd. to Marine Ltd. and closing the former corporation down. Since before the Final Separation, there appears to be a pattern of Mr. Jones receiving more dividends and salary from the businesses than was received by Ms. Jones.

[175] Ms. Jones submits that based on Mr. Jones' reported income, it is clear his earning capacity from the business is at least $180,000 per year. She submits that Mr. Jones has failed to establish why his income decreased from 2017 onwards and, for that reason, the court should continue to impute additional income to him for purposes of calculating support.

[176] Mr. Jones submits that his income decreased in 2017, 2018 and 2019, bringing his income back into line with what he typically earned in earlier years. Mr. Jones also says his income decreased as of 2017, partly due to the children residing primarily with him. I found Mr. Jones' evidence regarding the reason for his income declining, especially as it relates to changes after 2017 following his assumption of the role of primary caregiver for the children, to be credible and generally consistent with the documents, such as income tax records and corporate financial statements.

[177] Ms. Jones submits that I ought to add the net income of the corporations to Mr. Jones' income because, for example, Mr. Jones has not shown that more than $5,000 to $7,000 is required to operate the All-Pro Businesses. Ms. Jones' submission appears to be that if there were any retained earnings or amounts owing to shareholders, it should be included in Mr. Jones' income. However, I disagree that this is appropriate in light of all of the evidence, including where the All-Pro Businesses have been valued, including their retained earnings, assets and goodwill, and the family asset has been divided. I am not satisfied that in all of the circumstances, it would be fair to include the All-Pro Businesses' before tax income as Mr. Jones' income.

[178] Ms. Jones is also concerned that Mr. Jones received benefits from the corporations which are not properly reflected in his reported income. For example, she submits that he provided no breakdown of various legal, accounting, bookkeeping and administrative services. However, I note Mr. Jones supplied financial statements, bank records and the general ledgers.

[179] Ms. Jones also points out that the businesses' claimed amounts for cell phone, fuel, vehicle repairs and other travel expenses amount to personal benefits to Mr. Jones. However, Ms. Jones agrees that Mr. Jones travels to perform his services for the businesses. I find that corporate payments towards Mr. Jones' travel expenses, such as fuel, vehicle repairs, and cell phone are reasonable and I disagree they constitute personal benefits paid to Mr. Jones.

[180] Further, Ms. Jones alleges that, in 2017, Marine Ltd. paid $117,163 on behalf of Mr. Jones for his personal income tax debt and this payment is not properly accounted for. In support of this allegation, Ms. Jones relies on the shareholder loan account ledger for Marine Ltd.

[181] I am satisfied, based on my review of all of the evidence, that Marine Ltd. did not pay $117,163 towards Mr. Jones' income tax debt. I reach that conclusion including because Marine Ltd.'s balance sheet for its year-ended October 31, 2018, does not reflect a payment of $117,163. In other words, the balance sheet does not accord with the shareholder loan account ledger.

[182] The purported conflict in these records regarding an alleged payment for taxes is, in my view, resolved by various Canada Revenue Agency ("CRA") records produced by Mr. Jones. The CRA records do not show a credit to Mr. Jones' income tax balance of $117,163, or for any other amount close to that, for 2017.

[183] In fact, the CRA records confirm that Mr. Jones' tax account balance increased from 2017 to 2018 and, again, the balance does not reflect any large payment towards his tax debt. I find the CRA records refute that the payment alleged by Ms. Jones was made on behalf of Mr. Jones.

[184] In addition, I disagree that there are other expenses claimed by the All-Pro Businesses that ought to be treated as personal benefits to Mr. Jones. For example, Ms. Jones alleges that in 2012, Mr. Jones worked "under the table" and hid his income and she points to certain invoices in evidence to support that allegation. However, I am satisfied that those invoices were reported by Mr. Jones as $6,500 of self employment income in his 2012 tax return.

[185] Considering all of the evidence and submissions, I am satisfied that Mr. Jones produced the financial documents and information he was required to produce, including in general ledgers for the All-Pro Businesses. Except for an issue in 2013, which I will address, the preponderance of the evidence persuades me there is no basis to find that Mr. Jones failed to disclose income or that their corporate benefits were unaccounted for.

[186] For 2013, Ms. Jones has presented evidence, which I accept, demonstrating that Mr. Jones took $16,500 from the corporate bank account that was not accounted for or repaid.

[187] In my view, $16,500 should be imputed as additional income in Mr. Jones' 2013 taxation year to account for the appropriation of these funds. Once that happens, the support payable to Ms. Jones will reflect the increased income amount for 2013. This amount has been included in the above table setting out Mr. Jones' income in the relevant period. To be clear, I find Mr. Jones' total Guidelines income for 2013 is $122,240, rather than $105,740.

[188] After considering all of the submissions, I am satisfied on the whole of the evidence, including the documentary evidence, that the amounts reported as income by Mr. Jones in his individual tax returns represent his income and should be used for Guidelines purposes. With the exception of the 2013 year, I find no basis for imputing income to him based on his dealings with the All-Pro Businesses. Support Issues

[189] In his summary trial application, Mr. Jones seeks to cancel the interim support orders and any arrears of child or spousal support that may be owing. Mr. Jones seeks a fresh analysis of the issue of support to determine all spousal and child support payable from 2013 to the present, including identification of any overpayments or arrears.

[190] In the Claim, Ms. Jones seeks support pursuant to both the DA and the FRA. I note that the 2015 Interim Support Order was made pursuant to the DA. I will consider the request for support pursuant to the DA.

[191] Pursuant to s. 15.1 or s. 15.2 of the DA, the court is authorized to make an order requiring a spouse to pay child support and spousal support, respectively.

[192] The court is not bound by the interim orders and in making orders pursuant to ss. 15.1 and 15.2, the court is to conduct a fresh analysis of the support issues: Gill v. Gill, 2012 BCSC 1910 at para. 51; Whelan v. Whelan, 2005 NLCA 24; Grant v. Grant, 2012 NBCA 101 at para. 10 citing Sypher v. Sypher, [1986] O.J. No. 536, 1986 CanLII 6337 (C.A.). I further agree with counsel for Mr. Jones that a summary trial application is not a variation application and neither party is required to show a material change in circumstance. Length of the Relationship

[193] There is a dispute regarding the length of the parties' relationship. This dispute relates to the fact that the parties had a relatively lengthy separation before their Final Separation. Due to the First Separation, Mr. Jones submits that the length of the parties' relationship is shorter than what is alleged by Ms. Jones.

[194] During the First Separation, the parties agreed to an amount of support to be paid by Mr. Jones. On October 18, 2003, Ms. Jones confirmed in writing that in exchange for the purchase of a computer, she gave up her right to seek spousal support.

[195] In late 2005 or early 2006, Ms. Jones started a family claim. In her submissions, she said she started that proceeding because Mr. Jones commenced a new relationship and it became apparent they would not reconcile.

[196] From October 2006 to the date of the Final Separation is a relationship of approximately seven years. Mr. Jones submits that the court ought to treat the First Separation as a total break in the relationship which should not be counted in the total relationship length.

[197] However, Ms. Jones submits that the total length of the relationship should include the period before the First Separation, i.e. which totals a 23-year relationship. Alternatively, she submits that only the three year period between the First Separation and the Final Separation should be deducted from the total length of the relationship, i.e. which totals a 20-year relationship.

[198] In my view, the key issue to determining the length of the relationship is whether the parties had a common intention during the First Separation to finally sever their relationship, for example, by entering into a separation agreement or consent order: R.B.R.S. v. L.R.T.M., 2019 BCSC 1142; Odiorne v. Odiorne, 2019 BCSC 1240.

[199] In the present case, while there was no formal separation agreement, the parties agreed on the support that Mr. Jones would pay to Ms. Jones. Ms. Jones confirmed in writing that she would not claim spousal support. Furthermore, Ms. Jones commenced a family law claim and the parties were separated for a number of years before reconciling.

[200] However, the most persuasive fact supporting a common intention to finally sever their relationship is the court's June 30, 2006 declaration that there was no reasonable prospect of reconciliation.

[201] In light of all of this, I find the length of the parties' relationship is seven years, i.e. from approximately October 2006 to January 2013. Care and Time with Children

[202] Initially after the Final Separation, the children resided primarily with Mr. Jones. In an interim order made April 24, 2013, Sigurdson J. ordered that the children would reside primarily with Mr. Jones. At the time of the Final Separation, there was an allegation related to an assault by Ms. Jones on Mr. Jones. Ms. Jones denies the assault and says she was the victim of family violence.

[203] From September 2013 until August 2016, the parties had shared parenting time with the children. As mentioned before, in August 2016, Ms. Jones and the children moved to Vernon and the children resided primarily with Ms. Jones.

[204] In late 2016, J.R. ceased residing with Ms. Jones. J.R. returned to Vancouver Island where he lived primarily with Mr. Jones. In approximately June of 2017, D.S. ceased residing with Ms. Jones. D.S. also returned to Vancouver Island where he lived primarily with Mr. Jones. In other words, as of January 2017, one child lived primarily with Ms. Jones and by June 2017, both children resided primarily with Mr. Jones. Child Support

[205] In the Claim and Counterclaim, both parties seek child support pursuant to the FRA and the DA. However, with the repeal of the FRA, the FLA governs issues of spousal and child support. In addition to the FLA, the DA also provides that child support is payable for children under the age of 19 unless a child over 19 years old is unable to withdraw from the charge of their parents.

[206] Ms. Jones agrees that after July 2017, when both children resided with Mr. Jones, it is appropriate to recalculate the child support payable for this period. However, she submits that Mr. Jones' income for the purposes of the recalculation ought to remain the income amount that was imputed to him in the 2015 Interim Order.

[207] Mr. Jones seeks child support from Ms. Jones. Again, as of 2017, both children were residing primarily with him. Notwithstanding that, Ms. Jones did not pay Mr. Jones any child support. In fact, Ms. Jones continued taking steps to enforce the 2015 Interim Order by applying for and serving garnishing orders on bank accounts from bank accounts owned or operated by Mr. Jones. Monies were garnished pursuant to the garnishing orders.

[208] While the children resided primarily with Mr. Jones starting in 2017 and they continued to live with beyond their 19th birthdays, Mr. Jones does not assert they were children of the marriage past their 19th birthdays.

[209] Therefore, a key issue is which parent is required to pay child support for the children until their 19th birthdays.

[210] Ms. Jones agrees that she was not entitled to child support for the children after they began living full time with Mr. Jones in 2017. However, she opposes Mr. Jones' request for retroactive child support.

[211] Ms. Jones submits that Mr. Jones failed to pay the child support due to her under the 2015 Interim Order. Ms. Jones summarizes the child support that she alleges was paid and unpaid as follows: Year Child support ordered Child support paid Alleged Arrears May - Dec. 2015 (8 months) $16,382 [$2,104 x 8] $16,382 Nil 2016 $25,248 [$2,104 x 12] $25,248 Nil 2017 $25,248 $10,732.50 [collected through garnishment] $14,515 2018 $25,248 $7,610 [collected through garnishment] $17,638 2019 $25,248 $0 $25,248 2020 $25,248 $0 $25,248 2021 $25,248 $0 $25,248 2022 $25,248 $0 $25,248 Total: $133,145 Child Support Payable

[212] After considering the parties' submissions and the evidence, I am satisfied that child support is payable by Mr. Jones to Ms. Jones for the following periods:

a) For J.R. and D.S. From August 1, 2013 to January 1, 2017; and

b) For D.S. from January 1, 2017 to July 1, 2017;

[213] For the periods in which the children resided primarily with Mr. Jones, I am satisfied that child support is payable by Ms. Jones to Mr. Jones for the following periods:

a) For J.R. from February 1, 2013 to July 1, 2013 and January 1, 2017 to September 1, 2019, which is the first month after J.R.'s 19th birthday.

b) For D.S. from February 1, 2013 to July 1, 2013 and July 1, 2017 to February 1, 2021, which is the first month after D.S.'s 19th birthday.

[214] When I take into account the parties' incomes and where the children were primarily residing at the relevant time, the following sets out the calculations for child support from February 1, 2013 through February 1, 2021 that is payable by the parties: Month/Year Incomes Child residing with in household CSGL Amount Payable to Resp. Payable to Claimant Claimant Resp. Claimant Resp. February 1, 2013 - July 1, 2013 $41,600 $122,240 J.R. & D.S. $635 per month x 6 months $3,810 August 1, 2013 - December 31, 2013 $41,600 $122,240 J.R. & D.S. $1,763 per month x 5 months $8,815 January 1, 2014 - December31, 2014 $25,000 $230,195 J.R. & D.S. $3,114 per month x 12 months $37,368 January 1, 2015 - December 31, 2015 $35,000 $184,639 J.R. & D.S. $2,540 per month x 12 months $30,480 January 1, 2016 - December 31, 2016 $35,000 $195,300 J.R. & D.S. $2,675 per month x 12 months $32,100 January 1, 2017 - July 1, 2017 $37,790 $80,970 D.S. J.R. $418 per month x 7 months (CSG table amount is $774 for Mr. Jones and $356 for Ms. Jones = $418 set off) $2,926 August 1, 2017 - December 31, 2017 $37,790 $80,970 J.R. & D.S. $604 per month x 5 months $3,020 January 1, 2018 - Dec. 31, 2018 $54,784 $87,000 J.R. & D.S. $851 per month x 12 months $10,212 January 1, 2019 - Sept. 1, 2019 $33,887 $90,00 J.R. & D.S. $544 per month x 9 months $4,896 October 1, 2019 - Dec. 31, 2019 $33,887 $90,000 D.S. (J.R. no longer a child of marriage) $318 per month x 3 months $954 January 1, 2020 - Dec. 31, 2020 $48,458 $87,000 D.S. $455 per month x 12 months $5,460 January 1, 2021 - Feb. 1, 2021 $48,458 $54,000 D.S. $455 per month x 1 month $455 TOTAL: $28,807 Payable to Mr. Jones $111,689 Payable to Ms. Jones

[215] I do not accept Ms. Jones' argument that child support is not payable for J.R. up until his 19th birthday. In my view, the fact that J.R. graduated from high school and started working before he turned 19, does not override the statutory requirement to pay child support for a child who is under 19 years of age. In other words, I find child support is payable for each of J.R. and D.S. until the date of their respective 19th birthdays. Spousal Support

[216] Ms. Jones seeks retroactive and ongoing spousal support for an indefinite duration and she claims entitlement to spousal support on compensatory and non-compensatory grounds. Mr. Jones denies that Ms. Jones has made out an entitlement to spousal support and he submits that even if she is entitled to such support, given the length of the relationship, he has fully satisfied his spousal support obligation.

[217] Section 15.2 of the DA sets out the principles applicable to a claim for spousal support: 15.2(1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse. . . .

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

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

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

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

[218] The leading authorities regarding the proper application of the relevant principles were set out by the Supreme Court of Canada in Moge v. Moge, [1992] 3 S.C.R. 813, and Bracklow v. Bracklow, [1999] 1 S.C.R. 420 [Bracklow]. In Bracklow, the Court describes the conceptual models for entitlement to spousal support:

a) Compensatory, which redresses economic disadvantage as a result of the breakdown of the marriage;

b) Contractual; and

c) Non-compensatory, which is based on the needs of the recipient spouse.

[219] The relevant principles concerning the grounds for spousal support are succinctly summarized in Younger v. Younger, 2016 BCSC 990 at paras. 83-85 [Younger]:

[83] Compensatory support relates mostly to the first two objectives in s. 15.2(6): Chutter at para 47. It is rooted in the "independent" model of marriage and "is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse": Chutter at para 50.94

[84] The marital standard of living informs compensatory entitlement. It is particularly important in longer marriages because "[a]s marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": Moge at 870.

[85] This approach was discussed in W v W, 2005 BCSC 1010:

[11] In British Columbia this comment in Moge has been interpreted to mean that in long marriages the result will likely be a rough equivalency of standards of living. Doing so recognizes that the longer a marriage lasts, the more intertwined the economic and non-economic lives of the spouses become.

[12] Throughout the marriage, each spouse makes decisions that accommodate the economic and non-economic needs of the other. The decisions include the way in which child care and other family responsibilities will be handled and the way careers will develop. These decisions can have a significant impact upon the income earning ability of each at the time of separation. Yet it is not easy to determine exactly the relationship between these decisions and the consequent benefits and detriments to each spouse. The rough equivalency of standard of living approach has operated as a workable substitute to assess compensatory claims.

[220] For non-compensatory support claims, the Court summarizes the applicable principles as follows:

[97] Non-compensatory supports relates mostly to the third and fourth objectives in s. 15.2(6): Chutter at para 47. The Court in Chutter described non-compensatory support as follows:

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in Myers v. Myers (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10: "Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[98] Self-sufficiency and need are relative concepts informed by the marital standard of living: Chutter at paras 56 and 60. Need is also determined in relation to the other spouse's post-separation standard of living: Chutter at para 88.

[221] In considering all of the evidence, I find that Ms. Jones has demonstrated a moderate entitlement to compensatory spousal support, but she has not established an entitlement to non-compensatory spousal support.

[222] Regarding the claimant's entitlement to compensatory spousal support, the factors that I have considered to conclude that she is entitled to compensatory support are as follows:

a) The relationship length of seven years;

b) For parts of the relationship, Ms. Jones was a stay-at-home parent who took primary care of the parties' two children;

c) Ms. Jones adjusted her career plans to focus her work in the Proprietorship and Diesel Ltd. which allowed her to provide primary care for the children and the household;

d) Mr. Jones' work sometimes required him to travel as he provided heavy-duty mechanic services and the role taken by Ms. Jones facilitated Mr. Jones' success as a heavy-duty mechanic; and

e) Following separation, Ms. Jones experienced a lower standard of living and some economic disadvantages caused by the marriage, namely difficulty marketing her experience working for the Proprietorship and Diesel Ltd. in the arm's length employment marketplace; and

f) Ms. Jones' early role as the primary caregiver and her extensive experience working for the Proprietorship and Diesel Ltd. reduced her future prospects of financial success.

[223] I have concluded in light of the relevant factors that Ms. Jones is entitled to compensatory support for a duration of five years commencing as of the first day of the month following the Final Separation. For clarity, Ms. Jones is entitled to spousal support on a compensatory basis from February 1, 2013 to January 31, 2018.

[224] As I mentioned, I am not satisfied that Ms. Jones has demonstrated an entitlement to spousal support on a non-compensatory basis. That is because I do not accept that she has an entitlement to spousal support based on need. In reaching this conclusion, I have considered the parties' standard of living during the relationship and their needs and means thereafter.

[225] For example, in balancing the various factors, I have taken into account that by 2017, it was Mr. Jones who was the primary caregiver for the children. I have also considered that since the Final Separation, Ms. Jones has pursued additional training and she has engaged in numerous employment opportunities, including while living in Vernon. Ms. Jones agrees that for most of the time since the Final Separation, there were no health barriers negatively impacting her ability to work. Spousal Support Payable

[226] After considering the parties' positions and the evidence presented to me regarding the spousal support paid, as well as my findings regarding the entitlement to spousal support, I have determined that Ms. Jones' award for spousal support should be at the mid-range of

the Spousal Support Advisory Guidelines [SSAG] for five years after Final Separation, as set out in the table immediately below: Month/Year Incomes SSAG Mid-Range Total for year Claimant Respondent February 1, 2013 - December 31, 2013 $41,600* *$16,600 employment inc. + $25,000 imputed inc. $122,240* *includes $16,500 imputed inc. $1,296 per month for 11 months [Using "with child support" formula] $14,256 January 1, 2014 -December 31, 2014 $25,000* *Imputed inc. $230,195 $4,441 per month for 12 months ["with child support" formula] $53,292 January 1, 2015 -December 31, 2015 $30,000* *Imputed inc. $184,639 $3,023 per month for 12 months ["with child support" formula] $36,276 January 1, 2016 - December 31, 2016 $30,000* *Imputed inc. $195,300 $3,071 per month for 12 months ['with child support" formula] $36,852 January 1, 2017 - December 31, 2017 $37,790* *$7,790 employment inc. + $30,000 imputed inc. $80,970 $404 per month for 12 months ["with child support" formula] $4,848 January 1, 2018 - February 1, 2018 $54,784 $87,000 $213 per month for one month ["custodial payor" formula] $213 TOTAL: $145,737

[227] In determining the spousal support payable by Mr. Jones to Ms. Jones in 2013 and 2017, Mr. Jones' spousal support obligation under the SSAG is impacted by where the children were primarily residing in those years. I have concluded that, for these two years, it is appropriate to calculate spousal support favourably to Ms. Jones by using the mid-range of support payable under the "with child support" formula, rather than pursuant to the "custodial payor" formula. In my view, calculating the spousal support as I have done recognizes that in 2013 and 2017, when the children were moving between residing primarily with one or the other party, Ms. Jones was entitled to a stable amount of spousal support to allow for the changing circumstances in those years.

[228] I note that based on the length of the parties' relationship and the other relevant factors, the application SSAG formula provides a duration for the spousal support of 3.5 to 7 years from the date of separation. As mentioned earlier, I conclude that a spousal support duration of five years from the date of separation is appropriate in all of the circumstances.

[229] Ms. Jones submits that, once the 2015 Interim Order was made, Mr. Jones did not pay all of the spousal support that he was required to pay. In her submissions, she summarized the amount of alleged arrears as follows: Year Spousal support ordered Spousal support paid Alleged Arrears May - Dec. 2015 (8 months) $37,648 [$4,706 x 8] $37,648 Nil 2016 $56,472 [$4,706 x 12] $49,257 $7,215 2017 $56,472 $32,415 $24,057 2018 $56,472 $3,500 $52,972 2019 $56,472 $0 $56,472 2020 $56,472 $0 $56,472 2021 $56,472 $0 $56,472 2022 $56,472 $0 $56,472 Total: $310,132

[230] Mr. Jones agrees that he stopped paying Ms. Jones support after the children came to live primarily with him. However, he submits that based on his income in the relevant years, he likely overpaid spousal support to Ms. Jones.

[231] Mr. Jones also submits that Ms. Jones failed to report all of the support that he actually paid to her following their Final Separation. Mr. Jones estimates that Ms. Jones failed to report an additional $70,985 of spousal support that he says he paid her up to 2018. Mr. Jones states that, because of this underreporting, he was prevented from claiming credits on his tax returns for all the spousal support he paid. Support Paid

[232] As mentioned, the parties disagree over the amount of child and spousal support that has been paid. There are some challenges in determining the support paid since 2013, including because, for some periods, the parties agreed on total support payments without allocating between child and spousal support.

[233] In light of the difficulties associated with determining what type of support was paid and collected over the years, I have concluded that the most efficient and just outcome is to first determine how much total support was paid or collected for each year. From the total paid or collected, the support will be allocated first to child support and, secondly, to spousal support. Once the total is determined, I will determine whether there are underpayments or overpayments of support in any given year.

[234] For 2013, I find that pursuant to the October 25, 2013 agreement, the parties acknowledge that Mr. Jones fully paid support payments of $3,000 per month up to September 1, 2013. In other words, the parties agree that Mr. Jones paid $3,000 per month from February 1, 2013 to September 1, 2013 for a total of support paid in that period of $24,000.

[235] Mr. Jones' evidence is that, after September 1, 2013, he paid Ms. Jones an additional $12,192 as support. Mr. Jones' evidence is that Ms. Jones withdrew those funds directly from an account he held at a credit union. Ms. Jones disagrees that by withdrawing funds, she was being paid support. In her view, when she withdrew funds from the account, she was simply accessing a family asset.

[236] The banking records produced by Mr. Jones confirm that debits from the account between September to December 2013 were largely funded from overdraft and not from a positive balance, except when Mr. Jones deposited funds to cover the overdraft and the debits he expected Ms. Jones to make. I am satisfied that the evidence shows that from September to December 2013, Mr. Jones paid Ms. Jones $12,192 in support that she withdrew from the account in Mr. Jones' name. Therefore, in 2013, Mr. Jones paid Ms. Jones total support of $36,192.

[237] For 2014, Mr. Jones supplied banking records and he attests to having paid Ms. Jones a total of $47,400 of support by way of cheques. I accept that evidence and it does not appear that Ms. Jones disputes receiving this amount of support from Mr. Jones in 2014.

[238] For 2015, Mr. Jones supplied banking records, cancelled cheques and records from the Family Maintenance Enforcement Program ("FMEP") indicating that $71,280 was paid to Ms. Jones as support. Of that amount, Mr. Jones' evidence indicates that in 2015, FMEP collected $40,860 as support for Ms. Jones, while he also paid an additional $30,420 of

support directly to Ms. Jones. Ms. Jones agrees that, in 2015, she received a total support of $71,280, $26,432 of which she says was child support and $44,848 of which she says was spousal support. Ms. Jones initially reported receiving spousal support of $56,472, but later requested a reduction to $44,848, as the spousal support she reported in her 2015 return. I conclude that the total support Mr. Jones paid in 2015 was $71,280.

[239] For 2016, Mr. Jones supplied banking records, cancelled cheques and records from FMEP, as well as records of garnished funds paid into court. He submits that he paid Ms. Jones a total of $81,410 in support that year.

[240] Ms. Jones submits that Mr. Jones missed payments in 2016. For example, the payment that Mr. Jones claimed to have made to her on March 16, 2016, she alleges was returned to him by FMEP on March 23, 2016. Ms. Jones also submits that Mr. Jones placed stop payments on cheques payable to her on December 1 and 15, 2016. Ms. Jones acknowledges that in place of these two December cheques, Mr. Jones sent her three e-transfers for $1,000 each.

[241] According to Mr. Jones' credit union statement, there was a deposit of $3,405 on March 23, 2016, which corresponds with the amount FMEP had debited as a bill payment on March 15, 2016. For the two December cheques of $3,405, the bank records show those cheques were either rejected by the bank or returned non-sufficient funds. Finally, the three $1,000 payments that Mr. Jones says were garnishment payments are shown in the bank records as e-transfers. I find this evidence consistent with Ms. Jones' submissions that, in 2016, Mr. Jones paid her total support of $74,505 consisting of $49,257 of spousal and $25,248 of child support. I find Ms. Jones was paid a total amount of support of $74,505 in 2016.

[242] For 2017, Mr. Jones supplied banking records and records of amounts paid into court. Based on the records, he submits that he paid Ms. Jones, whether directly or as a result of garnishment, a total of $43,147.50 in support that year. Ms. Jones submits that Mr. Jones voluntarily paid her support of $32,415 and she garnished a further $3,517.50 from his bank accounts. In total, Ms. Jones submits she received $35,932.50 in support in 2017. Ms. Jones acknowledges that in 2017, $10,732.50 was received pursuant to garnishing orders in 2017. However, she says some of that was attributable to amounts due in 2016.

[243] For 2017, I conclude that Mr. Jones is correct in calculating $43,147.50 as the total support he paid to Ms. Jones that year. I reach that conclusion because the records concerning garnished funds paid into court are consistent with Mr. Jones' submissions. His bank records are also consistent with his submission that he made e-transfers or payments to Ms. Jones as he alleges in 2017.

[244] For 2018, Mr. Jones supplied banking records and records of amounts paid into court. He submits that he paid Ms. Jones, whether directly or as a result of garnishment, a total of $11,110.63 in support that year. Mr. Jones submits he e-transferred Ms. Jones $3,500 and the balance of $7,610.63 was garnished from his accounts and paid to Ms. Jones. Ms. Jones says that, in 2018, the only support she received from Mr. Jones was $3,500 and she also garnished $7,610.03 from Mr. Jones' accounts in 2018. I find that the total support paid in

2018 was $11,110.63.

[245] For 2019, Mr. Jones submits he paid Ms. Jones support of $200 and Ms. Jones denies having received any support in that year. I am not satisfied that there is evidence capable of establishing that Mr. Jones paid support of $200 in 2019. I find no amount was paid by Mr. Jones as support in 2019.

[246] For 2020 to 2022, there is no allegation by Mr. Jones that he paid any support.

[247] Again, it is not disputed that Ms. Jones paid no child support to Mr. Jones at any time after the Final Separation.

[248] Based on my review of the evidence and after hearing the submissions of the parties, I have concluded that support was paid by Mr. Jones in the following amounts and in the following periods, which I have summarized in the following table: Period Actual Paid/ Collected Child Support Payable by Mr. Jones Spousal Support Payable by Mr. Jones Balance Feb. 1/13 - Dec. 31/13 $36,192 $8,815 $14,256 Jan. 1/14 - Dec. 31/14 $47,400 $37,368 $53,292 Jan. 1/15 - Dec. 31/15 $71,280 $30,480 $36,276 Jan. 1/16 - Dec. 31/16 $74,505 $32,100 $36,852 Jan. 1/17 - Dec. 31/17 $43,147.50 $2,926 $4,848 Jan. 1/18 - Dec. 31/18 $11,110.63 $0 $213 Jan. 1/19 - Dec. 31/19 $0 $0 $0 Jan. 1/20 - Dec. 31/20 $0 $0 $0 Jan. 1/21 - Feb. 1/21 $0 $0 $0 March 1/21 - July 1, 2022 (trial date) $0 $0 $0 Total: $283,634 $111,689 $145,737 $26,208 Overpayment by Mr. Jones

[249] As set out above, I conclude that, at all relevant times, Mr. Jones was required to pay Ms. Jones $111,639, as the total amount of child support. I further conclude that Mr. Jones was required to pay Ms. Jones $145,737, as the total amount of spousal support. I have determined that Mr. Jones paid Ms. Jones total support of $283,634 from 2013 to 2017, which means that Mr. Jones has overpaid support to Ms. Jones by $26,208.

[250] In addition, Ms. Jones was required to pay Mr. Jones child support of $30,015 and that amount is owing to Mr. Jones. When that $30,015 is added to the overpayment of support paid by Mr. Jones, this results in a credit to Mr. Jones for overpaid support totalling $56,223. Divorce

[251] Both parties seek an order for divorce. The parties have met the legislative requirements for a divorce as set out in the DA and they are entitled to a divorce. Costs

[252] Each party requests the opportunity to make submissions regarding costs following the release of the reasons for judgment. I grant the parties an opportunity to make submissions regarding costs. No later than 30 days from the date of these reasons for judgment, the parties must contact SC Scheduling to request a date and time to appear to address costs or any mathematical error in these reasons for judgment. "E. McDonald J."

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