

CANADA / JUDGMENT

Jones v. Jones

2025 BCCA 463

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 463 Jones v. Jones

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Jones v. Jones,

2025 BCCA 463

Date: 20251230

Docket: CA49227

Between:

Angela Lynn Jones

Appellant/

Respondent on Cross Appeal

(Claimant)

And

Kevin Cameron Jones

Respondent/

Appellant on Cross Appeal

(Respondents)

And

All-Pro Diesel Ltd., All-Pro Power and Marine Ltd.

and 1143789 B.C. Ltd.

Respondents

(Respondents)

Before:

The Honourable Justice Dickson

The Honourable Mr. Justice Butler

The Honourable Madam Justice DeWitt-Van Oosten

On appeal from: Orders of the Supreme Court of British Columbia, dated
June 22, 2023 and August 18, 2024 (Jones v. Jones, 2023 BCSC 1070,
2024 BCSC 88, Campbell River Docket E14575).

Counsel for the Appellant:

P. Cote

E.G. Duke

Counsel for the Respondents:

M.J. McCubbin

Place and Date of Hearing:

Vancouver, British Columbia

March 20, 2025

Place and Date of Judgment:

Vancouver, British Columbia

December 30, 2025

Written Reasons by:

The Honourable Justice Dickson

Concurred in by:

The Honourable Mr. Justice Butler

The Honourable Madam Justice DeWitt-Van Oosten

Summary:

The appellant challenges an order made following a summary trial in a family law proceeding. She argues the judge erred in finding the matter suitable for summary determination, in her findings on property division and spousal support, and in awarding fixed costs to the respondent.

The appellant also argues the judge proceeded unfairly by determining an issue that was not in the respondent's pleadings. The respondent's primary position on appeal is that the judge made no reversible error. In the alternative, the respondent has filed a cross appeal arguing the judge erred in excluding the expert report he sought to adduce. Held: Appeal and cross appeal dismissed. The judge made no error of law, fact or principle that would justify appellate intervention. It is clear from her careful and detailed reasons that the judge applied the correct legal test in deciding to proceed summarily, in determining property division and support obligations, and in awarding fixed costs.

Reasons for Judgment of the Honourable Justice Dickson:

Introduction

- [1] Angela Jones appeals an order made following a summary trial in protracted family law proceedings. She contends the judge erred in concluding the matter was suitable for determination by summary trial, in her findings on property division and spousal support, and in awarding fixed costs to the respondent, Kevin Jones. In addition, she says, the judge proceeded unfairly in determining the length of the relationship for spousal support purposes despite Mr. Jones' failure to provide advance notice that this was in issue. In consequence, she submits, we should set the order aside and remit the matter for a conventional trial, or alternatively, vary the order dividing property to correct the errors made by the judge.
- [2] Mr. Jones denies that the judge erred as Ms. Jones alleges or proceeded unfairly. However, if the appeal is allowed, he argues on cross appeal that the judge erred in excluding the expert report he sought to adduce.
- [3] For the reasons that follow, I would dismiss the appeal and the cross appeal.

Background

The Parties and Their Relationship

- [4] At the time of the summary trial, Ms. Jones and Mr. Jones were 54 and 55 years old, respectively. Mr. Jones is employed as a heavy-duty mechanic. Ms. Jones has training and experience in business and office administration.
- [5] The parties began living together in the 1990s, married in 1998, and had two children: J.R., born in 2000; and, D.S., born in 2002. In approximately May 2003, they separated, and Ms. Jones and the children moved into a townhouse (the "First Separation"). For several months after the First Separation, Mr. Jones paid Ms. Jones both child and spousal support.

- [6] In September 2003, Ms. Jones enrolled in an applied business technology program. In October 2003, she signed a document stating that she gave up her right to spousal support in exchange for Mr. Jones purchasing a computer for her. Mr. Jones purchased the computer and stopped paying spousal support.
- [7] Ms. Jones graduated from college in June 2004 and secured employment with the provincial government. In late 2005 or early 2006, after Mr. Jones began dating another woman, Ms. Jones started a family law claim in which she sought a divorce and other relief, not including spousal support (the "First Action"). On June 30, 2006, the court issued a declaration under s. 57 of the Family Relations Act, R.S.B.C. 1996, c. 128, that there was no reasonable prospect of reconciliation (the "2006 s. 57 Declaration").
- [8] In October 2006, the parties reconciled (the "2006 Reconciliation").
- [9] In January 2013, the parties separated again (the "Final Separation"). In February 2013, Ms. Jones commenced the underlying claim seeking orders for divorce, spousal and child support, division of property, and costs. In March 2013, Mr. Jones filed a counterclaim. On December 16, 2013, the court issued a declaration under s. 57 of the Family Relations Act that there was no reasonable prospect of reconciliation (the "2013 s. 57 Declaration").
- [10] At the time of the Final Separation, Ms. Jones was on medical leave from her job with the local municipal government, where she was earning approximately \$29,000 annually. Shortly after the Final Separation, that employment came to an end. Ms. Jones was unemployed from 2013 to 2016 and sporadically employed in the years that followed.
- [11] J.R. and D.S. were 12 and 11, respectively, at the time of the Final Separation. Initially, they lived primarily with Mr. Jones, followed by periods of shared parenting or living primarily with Ms. Jones. In late 2016, J.R. began living primarily with Mr. Jones. By June 2017, both children lived primarily with Mr. Jones. Mr. Jones stopped paying Ms. Jones child support pursuant to the interim order then in place after the children came to live primarily with him. Ms. Jones never paid child support to Mr. Jones.
- [12] Although the children no longer lived with her after June 2017, Ms. Jones continued to collect the Canada Child Benefit. She also obtained ex parte garnishing orders to collect child support from Mr. Jones for periods during which both children resided solely with him. At the time of the summary trial, neither J.R. nor D.S. remained a child of the marriage.

All-Pro Businesses

- [13] During their marriage, the parties lived in a small town on Vancouver Island. They operated a business together through which Mr. Jones provided heavy-duty mechanic services and Ms. Jones provided bookkeeping and office administration. Mr. Jones operated the business as a sole proprietorship until 2009, when he incorporated All-Pro Diesel Ltd. ("Diesel Ltd."). In October 2012, he incorporated All Pro Power and Marine Ltd. ("Marine Ltd.") and moved

the assets and liabilities of Diesel Ltd. over to Marine Ltd. (collectively referred to as the "All-Pro Businesses"). In December 2017, he incorporated 1143789 B.C. Ltd. ("Numco").

- [14] At the summary trial, Mr. Jones acknowledged that Marine Ltd. should be considered a family asset divisible under the Family Relations Act. He deposed that he incorporated Numco in response to ex parte garnishing orders that Ms. Jones improperly obtained, and for the purpose of expanding his business, without success.
- [15] In September 2016, the XPS Group prepared a joint business appraisal of the All-Pro Businesses. The XPS report provided estimated valuations as of three dates: December 1, 2009 (\$23,000), January 23, 2013 (\$211,000), and October 31, 2015 (\$186,000). The report included various factual assumptions, including that two asset appraisals prepared by another appraiser represented Marine Ltd.'s "property, plant, equipment and inventory" as of October 31, 2015.
- [16] The \$186,000 figure included in the XPS report for the October 31, 2015 valuation incorporated a \$58,000 deduction for personal assets. Among other things, the report explained how XPS assessed goodwill and assigned goodwill valuations for each of the three dates: \$25,500 for December 1, 2009; \$93,000 for January 23, 2013; and \$169,500 for October 31, 2015.

Litigation History

- [17] The litigation was extremely protracted. Over the years, several judges made interim orders, including orders requiring Mr. Jones to pay Ms. Jones child and spousal support. Between 2014 and 2022, eight notices of trial were filed.
- [18] In 2020, Mr. Jones filed a summary trial application. The same year, Master Dick approved the sale of the family home and directed that the sale proceeds of \$174,267 be held in trust pending agreement or further order. In 2021, Justice Gaul made an order advancing \$50,000 from those proceeds to Ms. Jones to be applied to legal fees. Ms. Jones used some of the funds advanced for other purposes.
- [19] In March 2022, Mr. Jones filed an amended notice of application for a summary trial. He sought several orders, including orders determining retroactive and future support obligations, support overpayments, and property division. Under the heading "Background and Summary", he pleaded material facts, including facts related to the First Separation, the 2006 Reconciliation, and the Final Separation. As to spousal support, he pleaded that Ms. Jones was not entitled to spousal support on a needs or compensatory basis. He relied on various enactments in the amended notice, including R. 11-3 of the Supreme Court Family Rules, the Divorce Act, R.S.C. 1985 (2nd Supp), c. 3, and the Spousal Support Advisory Guidelines.

- [20] In April 2022, Ms. Jones unilaterally scheduled a ten-day conventional trial to commence in October 2022. The notice of trial did not identify anyone as counsel of record on Ms. Jones' behalf. At a case management conference conducted before Ms. Jones filed the notice, the parties' combined time estimate for a conventional trial was 17 to 18 days.
- [21] The summary trial application was adjourned six times before it commenced on July 12, 2022. Six days earlier, on July 6, Ms. Jones filed her first substantive response, supported by an affidavit of over 1,800 pages with 125 exhibits. She served her response materials on Mr. Jones four days before the summary trial commenced.

Summary Trial

- [22] Ms. Jones was self-represented at the summary trial. Mr. Jones was represented by counsel. At the outset, Mr. Jones objected to the admission of Ms. Jones' recently filed materials. However, the judge admitted them and granted him leave to seek an adjournment as necessary to remediate any prejudice caused by their late delivery.
- [23] The summary trial proceeded over seven days in July and October 2022. Much of that time was devoted to procedural matters and Ms. Jones' lengthy submissions. Both parties relied on several affidavits and documents, together with discovery evidence and the XPS report. Among other things, Mr. Jones' counsel read-in Ms. Jones' discovery evidence to the effect that prior to the 2006 Reconciliation she had achieved financial self-sufficiency.
- [24] On two occasions during the summary trial, Ms. Jones applied successfully to introduce additional evidence. For his part, Mr. Jones sought to adduce the report of Derek Lamb critiquing the XPS valuation method, but the judge upheld Ms. Jones' objection based on its late delivery and declined to admit the Lamb report.
- [25] Counsel for Mr. Jones concluded his submissions on July 13. At that point, Ms. Jones asked the judge to stand the summary trial down to the following week to give her an opportunity to consider and respond. The judge did not accept her request and required Ms. Jones to begin her submissions on July 14, noting that she would be able to continue in the following week. In response to Mr. Jones' argument that the length of the relationship was seven years, Ms. Jones emphasized that she had no prior notice Mr. Jones took issue with the length of the relationship until his counsel made submissions at the summary trial.
- [26] Ms. Jones began her response submissions on July 14 and July 20. Although the summary trial was scheduled to continue on July 21 and 22, Ms. Jones was involved in a car accident on the way to court and it was adjourned. As a result, she resumed her submissions on October 20 and concluded on October 21. On October 21, Mr. Jones made brief submissions in reply.
- [27] Ms. Jones contended the matter was unsuitable for determination by summary trial because there were conflicts in the evidence and credibility issues that required cross-examination for resolution. She also stated that she could not afford to pay counsel for both the summary

trial and upcoming conventional trial, at which she intended to have counsel, and that she was receiving piecemeal legal advice during the summary trial. As to the merits, Ms. Jones argued that the All-Pro Businesses should be valued at \$1,320,822 and the length of the relationship should be determined as either 20 or 23 years for spousal support purposes. Among other things, she also argued that she should be awarded \$32,000 or \$16,500 in compensation based on her evidence that Mr. Jones removed a net amount of \$16,500 from the Diesel Ltd. bank account in 2013.

- [28] For his part, Mr. Jones argued that the matter was suitable for summary trial, the All-Pro Businesses should be valued at \$18,616, and the length of the relationship for spousal support purposes was seven years.
- [29] While the summary trial decision was under reserve, the judge granted Ms. Jones leave to apply to reopen the summary trial to adduce further evidence and directed her to set out the details of the proposed new evidence. In the application to reopen, Ms. Jones objected to Mr. Jones' failure to notify her in advance of his position on the length of the relationship. However, she did not seek to adduce further evidence on the issue.
- [30] On May 4, 2023, the judge heard Ms. Jones' reopening application. On June 22, 2023, she released her reasons for judgment on the summary trial.

Reasons for Judgment: 2023 BCSC 1070

- [31] The judge noted the threshold issue was whether the matter was appropriate for summary trial. If so, she stated, the main issues were the child and spousal support payable and how the family assets and debt should be divided. After summarizing some of the background, she explained that she dismissed Ms. Jones' application to reopen on the basis that Ms. Jones had not adequately described the proposed new evidence or established that it was previously unavailable. In addition, she stated, the new evidence was irrelevant, and reopening the summary trial would lead to a disproportionate process and undue delay: at paras. 43-54.
- [32] Turning to the suitability issue, the judge reviewed R. 11-3 of Supreme Court Family Rules and related case authorities, including *Main Acquisitions Consultants Inc. v. Yuen*, 2022 BCCA 249, and *Gichuru v. Pallai*, 2013 BCCA 60 [Gichuru 2013]. She stated that judgment should not be given on a summary trial if the court is unable to find the necessary facts or it would be unjust to do so: at para. 58. She also noted that "[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": at paras. 59. Then she dealt with Ms. Jones' objections to proceeding by way of summary trial.
- [33] The judge was satisfied that she could address any issue related to Mr. Jones' credibility without cross-examination given that his discovery evidence was in the nature of a cross-examination: at para. 62. She emphasized the need for final resolution of the claim, the requirements of proportionality, and the object of the Supreme Court Family Rules: at paras.

63-64. As to the latter, she stated that "the course of this proceeding has strayed far from the object of the Rules", which had to be accounted for on the application. That said, she reminded herself that the "interests of efficiency do not outweigh the interests of deciding a case on the merits": at para. 65 citing *Kooner v. Kooner*, 2019 BCCA 188.

- [34] The judge identified the key issues as "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": at para. 69. After noting that parties to litigation commonly disagree on material facts and the mere existence of conflicts in the evidence does not mean a summary trial is unavailable, she concluded the matter was appropriate for determination by summary trial:
- [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.
- [35] Next, the judge considered the adequacy of the parties' financial disclosure. She found that while there were problems with both parties' disclosure early in the litigation, both had met their disclosure obligations. For example, she stated, Mr. Jones had "produced general ledgers, financial statements, invoices and banking records" regarding his personal and business income and assets, and Ms. Jones had met her disclosure obligations: at paras. 73-75. Then she turned to the division of family assets and debt.
- [36] The judge began this portion of her analysis by noting that the now repealed Family Relations Act applied to the division of property, citing s. 252(2) of the Family Law Act, S.B.C. 2011, c. 25. She reviewed the salient provisions of the Family Relations Act and guiding principles, identified the triggering event as the 2013 s. 57 declaration, and observed that neither party opposed an equal division of family property. She also outlined the parties' positions on the family assets and noted that neither party submitted she should "strictly adopt the XPS appraisal report to value parties' interest in the All-Pro Businesses": at paras. 90-91, 103.
- [37] The judge decided the appropriate valuation date for the family assets was October 31, 2015, being the date of the last XPS valuation: at para. 109. She went on to summarize the parties' key arguments, including their criticisms of the XPS report. For example, the judge noted that Mr. Jones submitted the XPS report failed to recognize that any sale price for the All-Pro Businesses would vary depending on whether he provided a non-compete agreement, which proposition Ms. Jones challenged. She also noted that Ms. Jones challenged the view expressed in the XPS report that the small-town location of the All-Pro Businesses negatively

impacted their value and argued the business took place wherever Mr. Jones travelled to provide his services: at para. 121.

- [38] After ruling the Lamb report inadmissible, the judge commented that Ms. Jones' submission on the location of Mr. Jones' business reinforced her view that the All-Pro Businesses were "essentially the vehicles through which Mr. Jones provides his services as a heavy duty mechanic": at para. 122. She concluded that: the businesses' value was "inextricably linked to Mr. Jones' personal labour, expertise and customer contacts"; any purchaser would likely require Mr. Jones to refrain from competing; and potential competition from Mr. Jones would likely have a negative impact on the sale price: at para. 122.
- [39] Based on all the evidence, the judge assessed the market value of goodwill for the All-Pro Businesses on October 31, 2015 as \$50,000 rather than accepting the XPS assessment of \$169,500 (which she misstated as \$168,500). With that adjustment accounted for, she concluded the fair market value of the All-Pro Businesses as of October 31, 2015, was \$67,000:
- [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.

- [40] In reaching her conclusion, the judge noted that the XPS report did not consider the value of the All-Pro Businesses after October 31, 2015. She concluded that October 31, 2015 was the appropriate valuation date as it represented a time when value could be fairly assessed: at paras. 127-128.
- [41] As to family debt, the judge outlined the parties' positions and reviewed the evidence. In doing so, she noted that Ms. Jones did not provide supporting documentation to assist in quantifying the alleged family debt, whereas Mr. Jones directed her to evidence to support his allegations: at para. 137. She also said this:
- [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.
- [42] Based on her review of all the submissions and evidence, the judge valued the total family debt as \$78,580. Subject to a final accounting, she divided the family assets equally: at paras. 149-152.
- [43] The judge went on to determine the parties' respective incomes. She imputed varying levels of income to Ms. Jones over the years, found Mr. Jones' income was as reported in his tax returns except for 2013, and imputed additional income to Mr. Jones for that year. The judge stated that she was satisfied Mr. Jones had "produced the financial documents and information he was required to produce, including in general ledgers for the All-Pro Businesses" and accounted for corporate benefits except for the 2013 issue: at para. 185. As to the latter, she said this:
- [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.
- [44] After determining the parties' incomes, the judge addressed support issues. She began with the disputed question of the length of the parties' relationship. In answering that question, she found that "[d]uring the First Separation, the parties agreed to an amount of support to be paid by Mr. Jones" and "Ms. Jones confirmed in writing that in exchange for the purchase of a computer, she gave up her right to seek spousal support": at para. 194. She also noted

that the period from the 2006 Reconciliation to the Final Separation was approximately seven years and summarized the parties' competing positions:

[196] 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.

[45] The judge concluded that the length of their relationship for spousal support purposes was seven years:

[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.

[46] The judge calculated Ms. Jones' entitlement to compensatory spousal support based on various factors, including a seven-year relationship. She concluded that Ms. Jones was entitled to mid-range compensatory support for a five-year duration, commencing as of the first day of the month following the Final Separation, and that she was not entitled to needs-based support: at paras. 222-226. Then she dealt with the amounts of support payable, granted a divorce, and gave the parties leave to make submissions on costs.

Supplementary Reasons for Judgment: 2024 BCSC 88

[47] In December 2023, the judge conducted a supplementary hearing to address issues of debt calculation and costs. In Supplementary Reasons released in January 2024, she found Mr. Jones was the substantially successful party and his unaccepted offer to settle provided a better outcome for Ms. Jones than the outcome achieved at trial: at paras. 18-25.

- [48] Turning to the question of costs, the judge observed that Mr. Jones had provided a draft bill of costs totalling more than \$92,000 but sought a reduced award of \$75,000 in fixed costs and that Ms. Jones took the position costs should be assessed by the registrar. As to the latter, the judge stated that Ms. Jones' response to the costs issue revealed her detailed disagreement with Mr. Jones' costs claim. For example, she noted, Ms. Jones "requests that Mr. Jones prove the outcome of each court application, of which there are many over the decade of litigation" and "challenges even the most basic aspect of the disbursements claimed, such as the number of photocopies Mr. Jones made for this decade-long legal proceeding": at para. 27.
- [49] Given the lengthy and unusual history of the litigation, the judge concluded that a registrar's hearing "would represent an unwarranted and excessive use of judicial resources", and that the object of the Supreme Court Family Rules would be best served if she fixed lump sum costs: at para. 28. She found the draft bill of costs represented a reasonable and fair assessment, stated it was very unlikely that Mr. Jones would be awarded less than \$75,000 "in light of the evidence and based on my familiarity with the issues and the course of this proceeding to date", and awarded Mr. Jones \$75,000 in fixed costs: at paras. 29-30. Although she acknowledged the claim was hard-fought, she denied Mr. Jones' request that costs be assessed at more than ordinary difficulty: at para. 31.

On Appeal

- [50] The issues for determination that emerge from the reasons, the factums, and the oral arguments are:
- Did the judge err in finding the matter suitable for determination by summary trial?
 - Was Ms. Jones denied procedural fairness with respect to the length of the relationship issue?
 - Did the judge make factual errors with respect to property division?
 - Did the judge err in finding the length of the relationship was seven years for spousal support purposes?
 - Did the judge err in awarding lump sum fixed costs?
 - Should we grant the cross appeal?

Discussion

Did the judge err in finding the matter suitable for determination by summary trial?

- [51] Ms. Jones contends the judge erred in finding the matter suitable for determination by summary trial based on her preference for expedient decision-making over decision-making on the merits. In doing so, she says the judge exercised her discretion improperly. According to Ms. Jones, a summary trial was not efficient, proportionate or just given that she was self-represented, she would be represented at the upcoming conventional trial,

there were credibility concerns and conflicts that arose on the evidence, and the issues were complex and unusual. All things considered, she submits the matter was manifestly unsuitable for summary trial.

- [52] In support of her submission, Ms. Jones says there were several credibility concerns and disputes on the evidence that cried out for cross-examination. For example, she says the judge needed to hear cross-examination to resolve the disputes on whether she was under-employed and what income should be imputed. The same is true, she says, regarding the parties' relationship during the First Separation.
- [53] Ms. Jones also submits the judge could not evaluate the XPS evidence on the goodwill in the All-Pro Businesses without hearing the expert cross-examined. In support of this submission, she relies on *Mortifee v. Harvey*, 2022 BCSC 275 and *Marchant v. Marnow*, 2017 BCSC 1138, emphasizing that in *Mortifee*, Justice Horsman, as she then was, stated "[c]onflicts in expert evidence also weigh against suitability for resolution at a summary trial": at para. 71. Moreover, Ms. Jones says, the issues regarding the length of the relationship and valuation of the businesses were unusual and complex, which also weighed against the suitability of a summary trial.
- [54] Ms. Jones concedes the judge correctly stated the test for suitability but says that she failed to apply the test. For example, she submits, the judge described the evidence, but she did not grapple with the conflicts and credibility concerns that arose or explain how she resolved them in the absence of cross-examination. She also says the judge failed to acknowledge key gaps in the evidence, such as missing financial information and the absence of a final resolution on the spousal support issue following the First Separation. Instead, Ms. Jones submits, the judge made cursory, conclusory findings and arbitrarily overruled the expert on the valuation of goodwill based on her own views, which were unsupported by the evidence.
- [55] According to Ms. Jones, given all the foregoing, we should find the judge erred in determining the matter by summary trial, set her orders aside, and remit the matter to the court below for a ten-day conventional trial.
- [56] Despite counsel's forceful and able submissions, I am not persuaded the judge erred in finding the matter suitable for determination by summary trial.
- [57] The object of the Supreme Court Family Rules is to secure the just, speedy and inexpensive determination of cases on their merits: R. 1-3(1)(b). As explained in *Hudema v. Moore*, 2021 BCCA 482, this object is achieved "by conducting proceedings that are proportionate to the importance of the issues and the complexity of the matter": at para. 47. If the process undertaken to determine a dispute is disproportionate to its nature and the interests involved, that process will not achieve a fair and just result: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 29.
- [58] Rule 11-3(15)(a) of the Supreme Court Family Rules 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,
- [59] Proportionality is relevant to both considerations set out in R. 11-3(15)(a), namely, whether the facts necessary to resolve the dispute can be found and whether it would not be unjust to proceed summarily: *Hudema* at para. 51. In assessing suitability, the court considers factors such as the amount involved, the complexity of the issues, urgency, the likelihood of prejudice caused by delay, the cost of a conventional trial, the history of the proceedings, and any other relevant circumstances including whether credibility is a key issue and whether proceeding by summary trial would result in litigating in slices: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 36 B.C.L.R. (2d) 202 at para. 49, 1989 (CanLII 229 (C.A.)); *Dahl v. Royal Bank*, 2005 BCSC 1263 at paras. 11-12, *aff'd* 2006 BCCA 369.
- [60] As this Court has repeatedly observed, where there are disputed facts or credibility issues, cases may nevertheless be decided by summary trial if the necessary facts can be found on the affidavit evidence: *Gichuru* 2013 at para. 30; *Newhouse v. Garland*, 2022 BCCA 276 at paras. 120-131; *Amacon Alaska Development Partnership v. ARC Digital Canada Corp.*, 2023 BCCA 34 at para. 40. As we have also observed, when facing a summary trial, parties must put their best case forward and come prepared to prove their claim or defence: *Gichuru* 2013 at paras. 32-33.
- [61] A decision on whether a matter is suitable for determination by summary trial is discretionary. Accordingly, it attracts a deferential standard of review. This Court will not interfere with a judge's decision to proceed by way of summary trial unless it is clear the discretion was wrongly exercised in that no weight or insufficient weight was given to relevant considerations: *Gichuru* 2013 at para. 34.
- [62] I see no error in the judge's discretionary decision to determine this protracted litigation summarily. She expressly reminded herself that the interests of efficiency do not outweigh the need to decide a case on its merits and was obviously aware of the fundamental importance of doing so. In my view, it is clear from her careful and detailed reasons that the judge both stated and applied the correct legal test in concluding that she could find the necessary facts on the whole of the evidence and that it would not be unjust to determine the matter by way of summary trial.
- [63] The record reveals that the parties disagreed on the weight and implications of the evidence, but there were no significant disputes on key factual questions or evidentiary conflicts that required cross-examination for resolution. For example, there were no material conflicts on where Ms. Jones and the children resided over the years, or where Ms. Jones was employed and for what salary. Nor were there conflicts regarding the facts surrounding the First

Separation, the 2006 Reconciliation, and the Final Separation, including that the parties signed the written agreement regarding spousal support and Ms. Jones made no claim for spousal support in the First Action. Rather, the key issues for determination were the inferences to be drawn and the legal consequences.

- [64] In addition, as the judge noted, Mr. Jones was examined for discovery and Ms. Jones relied on his discovery evidence in challenging his credibility. Further, although Ms. Jones complained that Mr. Jones' production of financial information was inadequate, the judge did not agree and found that she could resolve any conflicts in the evidence based on the documents provided. The fact that Ms. Jones wished to cross-examine Mr. Jones and was not satisfied with his document production did not create conflicts or gaps in the evidence that rendered the matter unsuitable for summary determination.
- [65] As to the expert evidence, this was not a case like *Mortifee* or *Marchant* where conflicting expert evidence was adduced on fundamental factual issues. In *Mortifee*, the plaintiff sought remedies for remediation of a flume and a bridge, and "dueling experts" disagreed on the magnitude of the risks and remediation steps required: at para. 30. Similarly, in *Marchant*, the plaintiff claimed for remediation costs and damages regarding an allegedly contaminated site, and the experts disagreed on key factual points, including whether the site was contaminated: at para. 38. Unsurprisingly, in light of those conflicts, the court determined in both cases that the matter was unsuitable for summary trial.
- [66] In contrast, there was no conflict in this case in the expert evidence. Nor did either party seek to cross-examine the expert on the XPS report. Rather, the issues for determination regarding the expert evidence were the weight to be attributed to it given the assumptions and reasoning upon which it was based and the inferences that should be drawn.
- [67] Moreover, in making her suitability determination, the judge considered and accounted for relevant factors identified in the jurisprudence. For example, she noted that the amounts in question were not large, and the issues were not complex. I agree with Mr. Jones that the First Separation, 2006 Reconciliation, and Final Separation were factually unusual and, as a result, the outcome on spousal support was difficult to predict. However, that did not mean the matter was unsuitable for summary determination.
- [68] I also agree with Mr. Jones that it was unlikely the conventional trial that Ms. Jones unilaterally scheduled could have concluded in ten days in October given Ms. Jones' approach to the litigation. Nor is it clear that Ms. Jones would have had counsel at a conventional trial. In any event, Ms. Jones' decision to allocate her resources to a possible future conventional trial and self-represent on the summary trial she was facing did not render the matter unsuitable for determination by summary trial.
- [69] It follows that I would not accede to this ground of appeal.

Was Ms. Jones denied procedural fairness with respect to the length of the relationship issue?

- [70] Ms. Jones goes on to contend the judge erred in considering Mr. Jones' argument that the length of the relationship should not include the pre-2006 Reconciliation period for purposes of calculating spousal support. In doing so, she says, the judge breached the requirements of procedural fairness given that she had no notice that the relationship's duration was in issue prior to hearing Mr. Jones' argument on the point at the summary trial.
- [71] Specifically, Ms. Jones says, Mr. Jones agreed in his pleadings that the parties began a marriage-like relationship in 1990 and separated in January 2013, and he did not indicate that the length of the relationship was in issue. Nor did he include any caselaw, legislation, or argument on the point in his amended application or set out details of the orders he sought with respect to retroactive spousal support, imputed income, or the length of the relationship. In other words, Ms. Jones says, Mr. Jones' amended summary trial application did not conform to the requirements of R. 10-6(3) of the Supreme Court Family Rules. In the circumstances, she says, she could not have reasonably anticipated that the length of the relationship would be a disputed issue, and, had she known in advance she might have provided additional evidence and submissions.
- [72] According to Ms. Jones, it is not plain and obvious that the judge's procedural error in connection with this issue did not affect the outcome of the decision. As a result, she submits, this Court should refer the issue back to the court below for a new trial without considering the merits of the judge's reasoning.
- [73] I am not persuaded that the judge denied Ms. Jones procedural fairness in considering Mr. Jones' argument on the length of the relationship for purposes of calculating spousal support.
- [74] Parties have the right to reasonable notice of the case to be met and the relief to be sought in a chambers proceeding as a matter of procedural fairness: *Gupta v. Gadhri*, 2022 BCCA 75 at para. 37. Pursuant to R. 10-3(1)(e) of the Supreme Court Family Rules, a "chambers proceeding" includes an application for judgment under Rule 11-3.
- [75] Rule 10-6(3) of the Supreme Court Family Rules sets out the required contents of a notice of application. Rule 10-6(3) provides, in relevant part:
- (3) A notice of application must be in Form F31 and must
 - a) set out the orders sought or attach a draft of the order sought,
 - b) briefly summarize the factual basis for the application,
 - c) set out the rule, enactment or other jurisdictional authority relied on for the orders sought and any other legal arguments on which the orders sought should be granted,
 - d) list the affidavits and other documents on which the applicant intends to rely at the hearing of the application

- [76] Rule 10-3(7)(a) provides that on the hearing of a chambers proceeding, the court may "grant or refuse the relief claimed in whole or in part, or dispose of any question arising on the chambers proceeding". As this Court explained in Gupta:
- [38] Generally speaking, "any question arising" on a chambers proceeding will be limited to questions raised by the form of the notice of application and will not extend to questions which go substantially beyond the application: *A.L.M. v. K.H.*, 2004 BCSC 1420 at para. 31. Depending on the circumstances, however, on occasion in the course of an application a matter may arise regarding which an order may fairly be made although it was not sought in advance. In all cases, the key concern is one of natural justice, namely, whether the party affected by the proposed order has a fair opportunity to be heard and to respond: *Serban v. Serban*, 2018 BCCA 166 at para. 35.
- [77] Pursuant to s. 15.2(4) of the Divorce Act, the length of cohabitation is a factor for consideration when courts make spousal support orders. Section 15.2(4) provides:
- (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.
- [78] The standard of review on questions of procedural fairness is correctness: Gupta at para. 34. Where a procedural error is established, this Court will not consider the merits of the judge's reasoning unless it is plain and obvious that the error did not affect the outcome of a discretionary determination: *Boury v. Iten*, 2019 BCCA 81, at paras. 38-45.
- [79] In my view, the judge provided Ms. Jones with a fair opportunity to be heard on the length of the relationship for spousal support purposes and to respond to Mr. Jones' argument. Although I agree with Ms. Jones that Mr. Jones should have flagged his position in the amended notice of application, he cited the Divorce Act and Spousal Support Advisory Guidelines, both of which identify the length of cohabitation as a relevant factor for consideration in awarding spousal support. He also pleaded the material facts surrounding the First Separation, the 2006 Reconciliation, and the Final Separation. He pleaded further that Ms. Jones was not entitled to needs-based or compensatory spousal support and sought an order to that effect. It was neither necessary nor appropriate for him to seek a separate order with specific regard to the length of the relationship, as Ms. Jones appears to suggest.
- [80] In other words, the length of the relationship for spousal support purposes was a question raised by the form of the amended notice and it did not extend beyond the application. Rather, it was a necessary factor for consideration in the determination of spousal support. While Mr. Jones should have referred to his position and authorities on the length of the

relationship in the application notice, it was not a positive defence to the claim that needed to be specifically pleaded. The onus was on Ms. Jones to establish her spousal support entitlement based on, among other things, the length of cohabitation based on all the circumstances, which included the First Separation and 2006 Reconciliation: Gichuru 2013 at para. 35.

[81] Moreover, and most importantly, after Mr. Jones' counsel made his arguments, the judge provided Ms. Jones with an opportunity to consider her position, make responsive submissions, and apply to introduce additional evidence. As noted, having heard Mr. Jones' arguments on July 13, Ms. Jones sought a one-week adjournment to consider and formulate her response, and, as events unfolded, she had an additional three-months in which to do so. She went on to present thorough submissions, including responsive arguments regarding the length of the relationship for spousal support purposes and why she contended the cases upon which Mr. Jones relied were distinguishable. However, at no point did Ms. Jones attempt to adduce additional relevant evidence despite applying to reopen the summary trial, nor has she suggested what other evidence or argument she could have advanced had she been alerted earlier to Mr. Jones' argument. In my view, this is telling and supports the conclusion that the judge provided Ms. Jones with a fair opportunity to be heard and fully respond to the length of the relationship issue.

[82] I would not accede to this ground of appeal.

Did the judge make factual errors with respect to property division?

[83] Next, Ms. Jones contends the judge made several factual errors in connection with the division of property. In particular, she says, the judge failed to account for: \$58,000 in Mr. Jones' personal assets listed in the XPS report and deducted from the value of the All-Pro Businesses; \$32,000 that Mr. Jones acknowledged having pulled from the All-Pro Businesses account; Mr. Jones' credit card debt of \$4,598; and Ms. Jones' debt of \$58,114. She also says the judge erroneously accepted Mr. Jones' criticisms of the XPS report regarding the value of the goodwill in the All-Pro Businesses without an evidentiary basis for doing so.

[84] In Ms. Jones' submission, we should correct these factual errors and vary the division of property award accordingly. Specifically, she asks us to adjust the order by using the \$186,000 figure in the XPS report for the value of goodwill in the All-Pro Businesses and require Mr. Jones to pay her share of the unaccounted-for assets and equalize the family debt at the time of separation.

[85] I do not accept these submissions.

- [86] The standard of appellate review of trial decisions on the division of family property in matrimonial litigation is well-established. As Justice Neilson explained in *Hallgren v. Fry*, 2013 BCCA 15, in such cases, the objectives of finality and certainty lead to a deferential standard of review. This Court will not interfere with orders dividing family property unless the judge "has made an error in principle, significantly misapprehended the evidence, or made an award that is clearly wrong": *Hallgren* at para. 8.
- [87] I see no error in the judge's factual findings. She did not fail to account for established facts with respect to the parties' property, as Ms. Jones alleges. Rather, Ms. Jones failed to provide sufficient evidence to establish the alleged facts. Nor did the judge value the goodwill in the All-Pro Businesses without an evidentiary basis. On the contrary, she considered and weighed all the evidence regarding the businesses, including the XPS evidence, drew available inferences, and assessed the value of the goodwill based on the evidence she accepted and the inferences she drew from the evidence.
- [88] As Ms. Jones notes, XPS deducted \$58,000 from its assessment of the value of the All-Pro Businesses as of October 31, 2015, to account for personal assets. However, Ms. Jones did not present evidence on the existence or value of such assets at the time of the summary trial. On the other hand, she did adduce evidence that the judge accepted demonstrating that Mr. Jones took a net amount of \$16,500 from the corporate bank account in 2013 prior to the triggering date without accounting for or repaying it. The judge dealt with that evidence in the only way possible, namely, by imputing the \$16,500 as income to Mr. Jones. She also dealt with Ms. Jones' allegations regarding family debt and found the evidence insufficient to support her allegations. I see no indication that the judge significantly misapprehended the evidence in this regard.
- [89] As to the expert evidence, the judge was entitled to accept some, all or none of the evidence, including the XPS evidence. She considered and weighed the XPS evidence together with other relevant evidence, including the small size of the community and importance of Mr. Jones' personal services. She went on to give detailed and cogent reasons for assessing the value of goodwill in the All-Pro Businesses on October 31, 2015 as \$50,000. Her conclusion in this regard was grounded in the evidence, error-free, and based on an assessment, not the determination of a scientific fact. It is entitled to appellate deference: *Brazinski v. Brazinski*, 2023 BCCA 359 at paras. 100-101; *Bamrah v. Waterton Precious Metals Bid Corp.*, 2020 BCCA 122 at para. 64; *Gill v. Lai*, 2019 BCCA 103 at paras. 46-48.

Did the judge err in finding that the length of the relationship was seven years for spousal support purposes?

- [90] Ms. Jones contends further that the judge erred in finding the length of the relationship was seven years for spousal support purposes. In her submission, the judge improperly relied on the s. 57 declaration made in the First Action in deciding the parties permanently severed their relationship in 2006 such that any subsequent relationship would be treated as a new relationship. Ms. Jones says the purpose of a s. 57 declaration is to establish a triggering date

for property division and it does not relate to the determination of spousal support. Moreover, she says, there was no evidence regarding the basis upon which the s. 57 declaration was made, nor was there evidence that the parties had reached a final agreement on spousal support.

- [91] According to Ms. Jones, the judge erred in applying the reasoning in *Odiorne v. Odiorne*, 2019 BCSC 1240 and *R.B.R.S. v. L.R.T.M.*, 2019 BCSC 1142, to determine the length of the relationship. She acknowledges that both *Odiorne* and *R.B.R.S.* involved marriage-like relationships where the parties separated and later reconciled, and that spousal support was awarded in both based on the length of the post-reconciliation relationships. However, she says, both cases are significantly distinguishable from this case. In particular, she emphasizes that the parties in *Odiorne* signed a separation agreement expressly settling all issues between them before they reconciled, and the parties in *R.B.R.S.* settled a prior action by a consent order resolving all issues before they reconciled.
- [92] In Ms. Jones' submission, there is no general legal principle that where parties intend finally to separate, but later reconcile, they are disentitled to spousal support for the pre-reconciliation period. However, she submits that is how the judge interpreted and applied *Odiorne* and *R.B.R.S.* She concedes that where a separation agreement or court order finally deals with all issues prior to a reconciliation, it would not be appropriate for spousal support to be based on the pre-reconciliation period. However, she says, where, as here, there is no final resolution, it is appropriate to consider the length of the relationship in its entirety for purposes of calculating spousal support. In her submission, if it were otherwise, parties attempting to reconcile would be forced to litigate the issue of spousal support to preserve their entitlement in the event of a subsequent separation, which would be a perverse outcome.
- [93] I do not accept this submission.
- [94] Trial decisions on spousal support, like property division, attract a deferential appellate review standard: *Hallgren* at para. 8. Support orders are both fact-based and discretionary, and appellate deference promotes finality and recognizes the importance of the trial judge's appreciation of the facts. It applies equally to support orders determined by summary trial: *Klann v. Klann*, 2018 BCCA 48 at paras. 26-27.
- [95] As noted, the onus was on Ms. Jones to establish her entitlement to spousal support. As also noted, the Divorce Act and Spousal Support Advisory Guidelines identify the length of cohabitation as a relevant factor for consideration when the court makes a spousal support order. Broadly speaking, compensatory spousal support provides redress for economic disadvantage arising from a marriage or the conferral of economic benefit upon the other spouse, and non-compensatory support is needs-based: *Odiorne* at paras. 85-86.
- [96] I agree with Ms. Jones that there is no general principle that where parties intend finally to separate, but later reconcile, they are disentitled to spousal support for the pre-reconciliation period. However, I do not agree that is how the judge interpreted and applied

Odiorne and R.B.R.S. Reading her reasons generously and as a whole, in my view it is obvious the judge appreciated that determining the length of the parties' relationship for spousal support purposes was an intensely fact-driven exercise that required her to consider all the relevant evidence, of which the s. 57 declaration was one element. It is also clear that she made her determination based on the whole of the relevant evidence.

- [97] The judge was entitled to infer that the parties had a common intention finally to sever their relationship in June 2006 when the court made the s. 57 declaration. While I agree with Ms. Jones that the purpose of the s. 57 declaration was to establish a triggering date for property division, the fact it was made was circumstantial evidence of an intention to end the relationship. In addition, and importantly, the judge was also entitled to conclude, as she did, that Ms. Jones "gave up her right to seek spousal support" for the period preceding the 2006 Reconciliation: Reasons for Judgment at para. 194.
- [98] In my view, the evidence amply supported the judge's conclusion. For example, as she noted, in 2003, during the First Separation, Ms. Jones confirmed in writing that she would not claim spousal support, made no such claim in the First Action in 2006, and testified on discovery that by 2006 she was financially self-sufficient. In other words, contrary to Ms. Jones' submission, the judge concluded that the parties finally dealt with spousal support for the pre-reconciliation period such that it was appropriate to find the length of the relationship was seven years for compensatory spousal support purposes.
- [99] As to Ms. Jones' submission that, on the judge's approach, reconciling parties would be forced to litigate spousal support to preserve their entitlement in the event of a subsequent separation, I am unpersuaded. To repeat, every case must be determined on its own facts, including the length of a separation and extent, if any, to which parties resolved the issue of spousal support for the pre-reconciliation period.
- [100] I would not accede to this ground of appeal.

Did the judge err in awarding lump sum fixed costs?

- [101] Finally, Ms. Jones contends the judge erred in fixing lump sum costs summarily. In her submission, nothing in the circumstances justified such an extraordinary step. She says that many of the costs claimed by Mr. Jones related to steps taken long before the summary trial and the judge had no knowledge upon which to assess them. She also emphasizes her limited income, the fact that she challenged the costs claimed, and their significant quantum. Moreover, she says, Mr. Jones provided inadequate evidence to support the draft bill of costs and no evidence to support the disbursements.
- [102] Given the foregoing, Ms. Jones submits the fixed costs assessment was arbitrary and unprincipled. That being so, she submits the judge breached the requirements of natural justice by awarding \$75,000 in lump sum costs.

- [103] I am not persuaded by Ms. Jones' submission. I see no basis upon which to interfere with the judge's award of fixed costs.
- [104] Unless otherwise ordered, costs must be awarded to the successful party in a family law proceeding: Supreme Court Family Rules, R. 16-1(7). The award of costs involves an exercise of discretion and is therefore subject to deference on appellate review. This Court will not interfere with a costs award unless the judge made an error in principle or the costs award is plainly wrong: *Gichuru v. Smith*, 2014 BCCA 414 at para. 77 [*Gichuru* 2014].
- [105] A judge may award fixed costs in a family law proceeding, although the power to do so should be exercised sparingly: Supreme Court Family Rules, R. 16-1(14); *Gichuru* 2014 at para. 154. In exercising the discretionary power to fix costs, a judge must act in a manner consistent with the Rules and must not act arbitrarily or capriciously. In other words, a judge must follow the rules of natural justice in awarding fixed costs: *Gichuru* 2014 at paras. 100-106.
- [106] Parties are entitled to their objectively reasonable costs as determined in accordance with the costs scale awarded. In most cases, the court officer best placed to assess costs will be the registrar. However, an exception can arise where the judge is intimately familiar with the litigation or where the time and costs of a registrar's hearing cannot be justified: *Gichuru* 2014 at paras. 106-107, 154.
- [107] When a party asks a judge to assess costs summarily, the evidence necessary to make the award sought must be provided. As explained in *Herbison v. Canada (Attorney General)*, 2014 BCCA 461, "[i]n the case of party and party costs that would normally require an affidavit attaching a draft bill of costs": at para. 31.
- [108] In my view, the protracted nature of the litigation and Ms. Jones' extreme approach to challenging all aspects of the litigation distinguished this case from most others from a costs perspective. I see no error in the judge's exercise of her discretionary power to fix lump sum costs, which was directed at avoiding the undue expenditure of time and cost inevitably associated with a registrar's hearing. Moreover, Mr. Jones provided the judge with the affidavit evidence necessary to make the fixed costs award he sought, which was significantly discounted. In the circumstances, contrary to Ms. Jones' submission, the extraordinary step of awarding fixed lump sum costs was entirely justified.
- [109] I would not accede to this ground of appeal.
- Should we grant the cross appeal regarding the Lamb report?
- [110] Counsel for Mr. Jones advised us at the hearing that his primary goal is to achieve finality. For that reason, he stated that if we decide to dismiss Ms. Jones' appeal, he does seek a ruling on the cross appeal. Accordingly, we decline to determine whether the judge erred in excluding the Lamb report.

Conclusion

[111] For the foregoing reasons, I would dismiss the appeal and the cross appeal.

"The Honourable Justice Dickson"

I AGREE:

"The Honourable Mr. Justice Butler"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

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