
CANADA / JUDGMENT

K.A.L. v. K.J.L.

2017 BCSC 651

COURT

Supreme Court of British Columbia

DECIDED

21 April 2017

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2017 BCSC 651 K.A.L. v. K.J.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.A.L. v. K.J.L.,

2017 BCSC 651

Date: 20170421

Docket: E46396

Registry: New Westminster

Between:

K.A.L.

Claimant

And:

K.J.L.

Respondent

Corrected Judgment: The text of the Judgment was corrected at paragraphs 1, 163 and 184 on July 11, 2017

Before: The Honourable Madam Justice Young

Reasons for Judgment

Counsel for the Claimant:

M. Campbell

Respondent Acting on Own Behalf:

K.J.L.

Place and Dates of Trial:

New Westminster, B.C.

January 16-20 and 23-27, 2017

Place and Date of Judgment:

New Westminster, B.C.

April 21, 2017

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Introduction

- [1] This is a family law proceeding in which parenting time, child support and the division of family property are in issue. The claimant seeks security for child support. The claimant received an inheritance during the marriage and seeks to exclude the inheritance from the division of family property. She also maintained the family residence from the date of separation to the date of trial and seeks to value the family residence at the date of separation. The division of family debt is in issue.
- [2] On the first day of trial the respondent was represented by counsel who applied to adjourn the trial. I dismissed the application to adjourn the trial. The respondent filed a notice of intention to act in person and proceeded to represent himself throughout this 10 day trial.

The Parties

- [3] The parties were in high school when they first met. They were both born in 1972 and were 16 years old when they met and started dating. They married in August 1994. The claimant is now 44 years of age and the respondent is now 45 years of age.
- [4] They have two children of the marriage who both have the same initials and so I will refer to them as the First Child and the Second Child. The First Child was born in 2002 and the Second Child was born in 2005.
- [5] There was initially an issue about when the date of separation was. Mid-trial, the respondent agreed with the claimant that their official date of separation was November 1, 2013.
- [6] The claimant was employed for many years by a bank in various capacities. She is currently employed by a school district in the Lower Mainland in a clerical position. In addition, she works at a second job as a self-employed mortgage broker. She has a grade 12 education plus some additional training as an investment adviser. She has a mutual funds license and a mortgage broker license.
- [7] The respondent had a difficult time in school and did not graduate from high school. He struggled with literacy and did not learn how to read until he was in his 20s when he received individualized instruction from a teacher and mentor. He has had various occupations including working at a gas station, for AirCare, at a freight company, installing insulation and doing farm labour work. In his mid-20s he was hired as a literacy peer support worker for a school board. He left that position after taking a leave of absence for stress. He has had significant periods of unemployment during the marriage. Between 2008 and 2013, the respondent ran a restoration construction business which was quite successful in the early years. The respondent claims to be unemployed and unemployable since 2014. It is the claimant's belief that the respondent has been selling illegal drugs during this time.

Children**Post Separation Parenting Issues**

- [8] During the marriage, the parties co-parented the children and were both very involved in the children's extracurricular activities. Up until 2012, the respondent played a prominent role in the children's lives. The parties divided household chores in the traditional way. The claimant did the inside work and the respondent did the yardwork and home maintenance.

The claimant's evidence about the respondent's behaviour

- [9] The claimant says that starting in 2012 the respondent had many unexplained absences from the family home. Without telling the claimant, the respondent rented an apartment in Vancouver and would stay there for three or four days at a time and then come home. The claimant found a copy of a rental contract in the respondent's papers. The claimant believes that the respondent was dealing drugs from this apartment in Vancouver.
- [10] The restoration business declined after 2012. The respondent did not follow up on contracts and he was making mistakes and blaming others. The last job he got was in the fall of 2013 and he did not finish it.
- [11] In 2014, the respondent announced that he was dying of cancer. It was not true.
- [12] He spoke frequently of dying. On one occasion he came to the family home and was yelling at the claimant "I am dying and it has spread". The children were there and heard this and were upset and asking questions.
- [13] The claimant says that in 2014 and 2015 the respondent looked very sick and she believed he was dying. He had lost a lot of weight. In the late spring of 2014 she let him move back in the house so that he would have some time with his children. She observed him twitching and "convulsing" during his sleep and he frequently fell down. He had some blackouts. His behaviour was at times bizarre; for example, one day he was dancing in his underwear out on the lawn. He brought pills with him to the home but his pill bottles had the labels scratched off.
- [14] One night the respondent called the claimant and told her that he had just crashed his car. She called 911. An ambulance was sent to the location where the respondent had said the incident occurred but they could not find him. The claimant drove around the same area and found the respondent crawling on the sidewalk on his hands and knees. She wanted to take him to the hospital but he refused.
- [15] On another occasion they made an appointment to go see his family doctor but the respondent disappeared before they were to go.

- [16] The claimant said that the children overheard the respondent talking about dying. One day the Second Child was counting days on the calendar and told his mother he was counting the days until his father died. The First Child wrote a speech about smoking and the fact that her father had cancer and that was making him go crazy.
- [17] The claimant finally went to the respondent's family doctor and broke down in tears saying she did not know what to do because the respondent had cancer and was dying. As a result of what the doctor said, she came to realize that the respondent did not have cancer.
- [18] The respondent also had extravagant spending habits during this time which led the claimant to believe that he was earning money illegally.
- [19] The claimant has provided a list of items that the respondent purchased during a time when he said he was unemployed. They are all expensive items and there is no explanation for how the respondent could afford these items.
- [20] The claimant saw some evidence of illegal drugs around the home but she never saw the respondent consume illegal drugs. She saw baggies of white powder and more than one combination safe in the garage.
- [21] The claimant testifies that her brother H. lived with her and the respondent on and off over the years and that her brother was a drug addict at the time. She concluded that her brother and the respondent were both selling drugs between 2012 and 2014 because the respondent told her that he was selling drugs to help her brother pay a debt to a supplier.
- [22] The claimant had serious concerns about the respondent having any unsupervised contact with the children or driving the children anywhere. He was behaving erratically, having blackouts, allegedly had seizures, had some incidents with his car, and she believed that he was either suffering from a mental illness or using illicit drugs.

The respondent's evidence regarding his behaviour

- [23] The respondent never had cancer. When forced to produce medical disclosure, it was revealed that he has been diagnosed with chronic obstructive pulmonary disease ("COPD") which at times requires him to use oxygen and an inhaler. He does become short of breath. He also has some hernias which cause him pain. He walks with a cane. He explained to the Court that this was because of the hernias.
- [24] He denies telling the children that he was dying.
- [25] When asked why he would lie about having cancer, he said he thought at first that he did have cancer because there were black spots on his lungs. He was sick. He had stomach problems and he did lose a lot of weight. He is not aware of having any blackouts. He did not have surgery although he did tell the claimant that he was having surgery.

- [26] The respondent also suffers from gastroesophageal reflux disease and has medication for that. He says he is also taking heart medication. The combination of slow heart rate and low blood pressure causes him to have blackouts. He had a blackout two weeks before trial. He says that he does get tired and sometimes confused if his oxygen is low. He did have lumps under his armpit but it turned out it was an infection.
- [27] The respondent denies having erratic behaviour. He denies smashing his car against a pole.
- [28] The respondent downplays the price he paid for gifts that he bought for the children and says that he got the money from his girlfriend K.
- [29] After the separation, the respondent said he had no one supporting him. He felt abandoned by the family and he felt helpless.
- [30] The respondent agrees that he did spend time away from the home after 2012. He said that after the claimant got a legal opinion about her inheritance their relationship worsened to the point where he did not want to spend time with her.
- [31] The respondent denies dealing drugs. His explanation for renting the Vancouver apartment is that he had a friend who was dying and so he rented him an apartment in his (the respondent's) name. The friend's name was M. He has since passed away. The respondent claims that he put the apartment in his own name for the first six months. M.'s cousin moved into the Vancouver apartment and eventually the lease was put in the cousin's name. The respondent did not call anyone to corroborate this evidence.
- [32] The respondent explained that the method of estimating a restoration job changed in 2012 and 2013 so that contractors had to use a computerized estimate system and assign a price for everything done on the job. He could no longer make any money in the business. He agreed he did a kitchen renovation in November 2013 and that was the last job he did through the business.

Family violence

- [33] The claimant says that the respondent was volatile and aggressive at times during the marriage. They argued a lot. She described an incident when they were in their early 20s where the respondent punched the driver's window of the car she was driving. The window smashed right beside her head.
- [34] When the respondent's unofficial foster father died, the respondent quit working and became very frustrated and would fly into rages.
- [35] On one occasion, the respondent smashed the phone in front of the children when he was angry. On another occasion, he drove his car into the claimant's Hummer and drove away with his bumper dragging. When he came back, he said his head was exploding. He was taken to the hospital (the children were in the car) and treated for what sounded like an anxiety attack.

- [36] The respondent explained the Hummer incident. He says he was late for work and he was on the phone while he was backing his car out of the driveway. His car brushed the side of the Hummer by accident. He kept driving because he was late. He could hear the claimant yelling. He admits that he did become very stressed after that. He does agree that he went to the hospital to get checked out.
- [37] The claimant's step-mother, P.P. gave evidence at trial. She works as a project manager for an organization that deals with victims of domestic violence. She has a very close relationship with the claimant and the children and, prior to the parties' separation, she had a friendly relationship with the respondent.
- [38] P.P. recalled the day in April 2011 when the respondent drove his car into the claimant's Hummer. She did not see that event but later that day she received a call from the claimant that the respondent was driving around distraught and was texting the claimant from the car. P.P. and her husband did speak with the respondent to calm him down. The respondent was taken to Langley Hospital by the claimant's father (P.P.'s husband) and admitted overnight. The respondent was very agitated and had not been eating. She noted him as being edgy and shaky and he did talk to them about his internal anger. The respondent does not deny this but said that he was not admitted overnight to hospital.
- [39] On October 23, 2013, sometime after 7:00 p.m., the respondent came to P.P.'s house to talk to P.P.'s husband. The two children were in his grey Honda in the driveway. He told her and her husband that the claimant's brother was selling drugs and was in debt with this dealer for \$10,000. He asked P.P.'s husband for \$10,000 or for the claimant's brother's BMW. He told them that he was also selling drugs but he was doing this to help the claimant's brother to pay off his debt. He warned P.P. and her husband that they could be in danger because the Hells Angels mafia could trace their home. He said he had been very careful and cautious in his dealings and only used the grey Honda and the apartment in Vancouver for those dealings. P.P. noted that the two children were sitting in the grey Honda as he was telling them this. The children had to come in and use the washroom during this conversation. They appeared to P.P. to be frightened.
- [40] As the parties' relationship was unraveling, P.P. observed the respondent's unstable behaviour. She could not determine whether it was due to illegal drug use or mental illness. She provided ongoing support for the claimant.
- [41] As a result of a complaint made by the respondent, P.P. was investigated by her employer. The nature of the complaint was that she had accessed the respondent's RCMP file which she was not authorized to do. She did receive a letter of reprimand.
- [42] P.P. was visibly hostile toward the respondent during her cross-examination. I would not consider her to be a neutral independent witness. She is clearly aligned with the claimant and has been assisting the claimant in preparing her case for trial.

Parenting time

[43] As a result of the respondent's bizarre conduct, the claimant restricted his contact with the children to supervised visitation. The respondent accused her of parental alienation and joined an organization called Fathers 4 Justice which describes itself as an organization that fights for the rights to equal parenting.

[44] In October 2014, he wore a Fathers 4 Justice t-shirt to the children's soccer game. He had a t-shirt made up for his dog. He had decals for his car. He posted pictures on Facebook of himself in a Fathers 4 Justice t-shirt and tagged references to the claimant and her mother by name on the post. He posted pictures of the children on Facebook and said they were missing.

[45] He posted large signs on the fence at the children's soccer field which read:

Stop the War on Fathers - fighting for fathers rights, child alienation is the ultimate hate crime and child abuse

You can never STOP a fathers love and

A father has a right to be in his children's life.

[46] The claimant says that the children were embarrassed by the signs.

[47] The respondent posted signs or posters for the claimant to see on her way to work and on her running route. He posted decals on stop signs which read "child alienation" under the word "Stop".

[48] The claimant says that in 2014 the respondent would, on some days, send her 100 emails a day. In one week he called and left voice messages four hundred times.

[49] The respondent does not deny sending multiple emails but says she is exaggerating. When the claimant reported him to the RCMP she could only produce 81 emails.

[50] When the claimant started dating, the respondent found out who she was dating and called the man and told him to stop dating her. On another occasion, she received a greeting card from a man named S. Somehow the respondent got a copy of the card, took a picture of it and sent a letter to another S.'s wife and asked her if she knew that her husband was sleeping with the respondent's ex-wife.

[51] The claimant attempted to obtain a protection order from the Provincial Court without success. It was not clear to me why. Eventually she reported the respondent's behaviour to the police. The respondent was arrested in October 2014 and was charged with criminal harassment. Those charges were eventually stayed in May 2016. Prior to the stay, the respondent was arrested for breaches of his interim release conditions.

- [52] The respondent's release conditions were that he could only contact the claimant by email once a day regarding the children. He could not contact the claimant for any other reason and he was not to go within 20 meters of the house. Due to this condition, he refused to pick the children up at the driveway of the family home because he considered the driveway to be included in the definition of "the house". The one email a day condition created a difficult situation for both parties. The arrangement of parenting time required at least three emails; one to ask for parenting time; one to respond with a proposal; and one to reply to the proposal.
- [53] I do have concern about some of the claimant's conduct as it relates to parenting time which I will outline here.
- [54] The claimant frequently delayed responding to parenting time requests until the day of the proposed visit and then complained when the respondent did not breach his conditions and reply to her. An example occurred at Christmas 2014.
- [55] At Christmas 2014, the claimant offered parenting time from 11:00 a.m. to 2:00 p.m. on Christmas day. The respondent asked for more time, presumably through his lawyer. On December 23 he asked for a response. On December 24 he again asked for a response. The claimant responded to these emails at 5:10 p.m. on December 24, 2014 likely knowing that the lawyers' offices would be closed and that the respondent had already sent his one email for December 24 and would be in breach of his probation conditions if he sent a further email. She then prompted him to email her and say "yes" or "no" by the end of December 24 but of course he could not do so without breaching his conditions. The respondent went to pick up his children at 11:00 a.m. on Christmas morning and they were not there. The claimant confirms this in an email to the RCMP on December 27, 2014.
- [56] The respondent's evidence is that he and his girlfriend sat outside the meeting place on Christmas day in the car and cried. One wonders why he did not contact the claimant at 11:00 or 11:30 a.m. on Christmas day and tell her that he was waiting. He contacted her at 3:00 p.m.
- [57] It appears that the claimant was not prepared to go out of her way to make the parenting arrangements more effective. She could have consented to vary the one email condition or she could have responded to parenting time requests more promptly.
- [58] On another occasion, the claimant responded 19 minutes before the commencement of the parenting time. She says that her delay in responding was not by design but I was shown a number of examples when she did delay.
- [59] On the Second Child's birthday in 2014, the respondent was not told that the plans had changed until he arrived to pick the child up at Taekwondo.
- [60] The respondent says that the claimant sold the gifts he bought for the children and she did not give them greeting cards he had sent for them.

- [61] The claimant let everyone know, including his family, friends and the school, that there was a domestic dispute file or "K File" open on the respondent.
- [62] The respondent gave the claimant phones for the children but she would not give him a telephone number for the phones for months.
- [63] The claimant kept showing up during the respondent's limited parenting time.
- [64] The claimant has provided samples of communication between herself and the respondent. I have some concern about the documents she has provided because she has clearly highlighted and edited the documents so it is not clear to me whether she has deleted offensive paragraphs in her own documents. The respondent produced a copy of one financial letter from a third party where she clearly deleted a paragraph before producing the letter.
- [65] The claimant produced emails showing that she made numerous offers of parenting time but there were strict conditions. For example, she suggested regular parenting time on Friday night from 5:00 p.m. to 7:00 p.m. and would consider more regular time if the respondent provided a clean hair follicle drug test and that he supply his medical records indicating his health status.
- [66] On another occasion she offered Christmas parenting time but it was conditional on the respondent picking up and removing some old trailers from the property on a specific date immediately before Christmas. These two issues should not have been combined. The response to the respondent's request came too late for him to address the claimant's conditions.
- [67] The claimant is critical of the respondent for not agreeing to pick the children up at the driveway of the family home. I agree with the respondent that he would have been foolish to do so because more likely than not the claimant would have reported him for breaching his condition. On cross-examination the claimant was very evasive on this issue. She did not remember whether the respondent suggested an alternate pick-up and drop-off place. She did not remember asking the respondent to meet her at the school despite the fact that this was a breach of his condition.
- [68] When I asked the claimant why she could not agree to a neutral place for pickup and dropoff of the children, her response was "it is an awkward situation for the children and I can't always drive them to another location". This is evidence to me that she was not willing to go out of her way to accommodate parenting time.
- [69] The claimant complained of the respondent picking up the children at school and taking them out for lunch. The respondent made a request on March 2 or 3, 2015 to take the Second Child out of school at lunch. The claimant does not work at the Second Child's school but coincidentally was employed at his school on that particular day as a casual clerical employee. The respondent suggests that she organized this so that she could be there to interrupt his parenting time with his son. I do not have enough evidence to make that finding. When he

did come to pick up his son, the claimant asked the principal to approach him. Her evidence is that the respondent did leave with the Second Child that day. She received a letter of reprimand from the school for her conduct that day yet she blames the respondent for this. There was a written warning placed on her employment file.

- [70] My reading of the letter of discipline leads me to a different conclusion. It appears that the claimant was disciplined because of her behaviour and not because of the respondent's behaviour. The school disciplined the claimant because she allowed personal events to interfere with her work as an employee of the school district. She involved the principal in the event. When she was challenged with respect to her wrongdoing she told the interviewer that the principal was lying. She confronted the interviewer and said "think about if this was your child". She behaved aggressively during the interview with the interviewer using an aggressive tone and volume of voice and an argumentative nature. The letter suggests this was considered serious misconduct on behalf of the claimant and the claimant refused to acknowledge any wrongdoing. Due to her years of service at the school district she was only given a warning.

Criminal harassment charges

- [71] It is the respondent's position that the claimant pursued criminal harassment charges against him out of malice and that she caused him financial loss and loss of dignity. He believes this should be reflected in costs awarded against the claimant in these proceedings.
- [72] The respondent alleged that P.P. was the instigator behind the criminal harassment charges because of her animosity toward him and that she abused her employment position. He called Sgt. Shelley Jacobsen and Constable Joshua Becker as witnesses to support his claim that the claimant falsely accused him. He suggests that the claimant was told by P.P. to use the following words in her complaint: "erratic, fear, drug use and stalking" because these are the key words the police look for in a harassment charge.
- [73] The respondent alleges some kind of conspiracy because P.P. helped the claimant create a "matrix" to assist her in preparing for trial. My interpretation of what P.P. said about a "matrix" is that she prepared an evidence chart to help the claimant organize her evidence for trial.
- [74] Sgt. Jacobsen and Constable Becker were aware of an investigation into P.P.'s conduct being commenced. They confirmed that the complaint related to P.P.'s opening of a police file without authorization.
- [75] Constable Becker did attend during some parenting time exchanges between the parties at the respondent's request just to stand by and keep peace. He did recommend that the respondent be careful not to breach his probation terms.

- [76] The testimony of the police officers do not support the respondent's suggestion that there have been false complaints made against him or that there was a conspiracy to falsely charge him instigated by P.P.

Breach of release conditions

- [77] On March 19, 2015, the respondent's grandfather passed away. The respondent was very close to his grandfather. The respondent emailed the claimant at 8:30 a.m. and then again at 11:19 a.m. The first email appears to have been sent before he learned of his grandfather's death as it has nothing to do with his grandfather's death but relates to getting a contact telephone number for the children. The second email relates to the grandfather's death and wanting to see the children.
- [78] The claimant responded to the email saying that she was sorry to hear about the death of the grandfather. Her email said "I am choosing today to ignore your harassing email. Approaching this in another way would probably have had a more positive outcome for everyone." She then made proposals for dropping the children off.
- [79] The respondent says that the claimant then reported the two emails as a breach of his release conditions. The respondent used this as an example of how far the claimant would go to get him in trouble. It would have convinced me if that had been the full story.
- [80] In examination-in-chief, the respondent makes no reference to additional emails. In cross-examination, he is shown a further March 19, 2016 email sent by him at 12:04 p.m. threatening to seek full custody and report the claimant to the RCMP to address contempt proceedings. At 12:05 p.m. he emailed a fourth time calling the claimant disgusting. At 7:27 p.m. he emailed a fifth time but in a more subdued tone. I reject the respondent's evidence on this point given that he neglected to provide the Court with the full picture. The claimant reported the breach because the respondent's behaviour was clearly escalating. She had every right to report this.

Current Parenting Situation

- [81] When the parties finally ended up in court in December 2015 and parenting time was court ordered, most of the parenting time issues resolved themselves. In that order the respondent received parenting time every other weekend from Friday after school to dropping the children off at school on Monday morning.
- [82] The claimant says the respondent has exercised his parenting time consistently since the court order in December 2015. She does not have contact with the children when they are with him. She believes they have fun when they are with their father and they enjoy their time. They also like his girlfriend K.

- [83] The parties do not talk to one another and they show no ability to be flexible with the parenting schedule. It is apparent from the Views of the Child Report and from incidents which occurred immediately prior to the trial that the parties have discussed these proceedings in some detail with the children.
- [84] On the day the trial started, the children were with the respondent and were dropped off at home prior to school. The claimant received a call from the First Child who was in tears and said she did not want to go to school. The claimant arranged to have P.P. go to the home and find out what was happening. P.P.'s evidence is that the respondent told the children how stressed out he was by the burden of the trial and the financial trouble he was having. He told them he could no longer afford a lawyer and that all of these troubles were caused by the claimant. P.P. said he dumped the weight of the world on the two children and then left.
- [85] My observation of the respondent on the first day of trial was that he was distraught. He was making attempts to have the trial adjourned knowing that if it proceeded he would be representing himself. I have no reason to disbelieve P.P.'s evidence of what occurred on that Monday morning as it is consistent with my observations about the respondent's behaviour on that first day of trial.
- [86] The First Child is doing well in school and with her activities. The Second Child appears to have some speech and language delays. He is getting assistance at school through the learning assistance department and he attends a homework club. He does not have a diagnosis of learning disability yet. The claimant is considering having him tested to see if he does have a learning disability. The children did have some counselling after separation to cope with this high conflict separation.

Views of the Children

- [87] The children were interviewed by Mr. Robert Colby, registered psychologist, who prepared a Views of the Child Report dated July 6, 2014. Both children expressed a desire to see their father more than they were seeing him in 2014. Both children said their parents talk to them about this litigation. The First Child reported that her mother said her father is lying and her father said that her mother prevents her father from seeing them. Both children think the t-shirts and signs their father displayed advertising Fathers 4 Justice is a bad idea. The First Child's wish was that her mother and father would be civil with one another, communicate, and work out their stuff. She said she would like to be able to talk with each of her parents and see both of them on an equal basis. Although their mother told the First Child that her father was unstable, the First Child said she did not feel there was anything about her father that frightened her.

Decision on Parenting Time

- [88] I find that the respondent was behaving in a bizarre fashion from 2012 to the end of 2014 and beyond. His conduct suggests that he was engaged in illegal drug use but he was never seen consuming drugs. The claimant and P.P. say that he admitted to this activity. The claimant saw drug paraphernalia at the house. There was drug paraphernalia in the respondent's possessions. He had money but was not working. He had unexplained absences for up to two or three days at a time. I do not accept his explanation for the rental of the Vancouver apartment. If he was renting an apartment for a sick friend then there was no reason to keep this rental a secret. It is more likely than not that he was using this apartment for activities he did not wish the claimant to be aware of. He told P.P. that he was using the grey Honda and the apartment in Vancouver for his drug dealing. She was not effectively cross-examined on that point.
- [89] The respondent was an unbelievable witness. There are many inconsistencies in his testimony and he chose to call no one to corroborate his evidence. I find it most damaging to his case that he did not call his live-in partner K. who is apparently supporting him and willing to continue to support him but is not willing to give evidence to support his position at trial. I suggested several times during the trial that she would be an important witness for his case.
- [90] The respondent's health rapidly deteriorated from that of a strong, healthy young man who was working in construction and as a farm labourer to a young man who experienced dramatic weight loss, and suffered severe COPD, chronic infections, hernias, a heart condition, and reflux problems. There is no explanation for the rapid decline of his health. He has not produced any medical evidence to explain it. The respondent does not appear to be apologetic for frightening the claimant and the children with his untrue announcements that he was dying of cancer.
- [91] The respondent appears to have little insight into his behaviour. His main focus is on proving the ill intent of the claimant and deflecting any responsibility for his unacceptable behaviour.
- [92] The evidence of the respondent's large expenditures also raised the suspicion that he has a source of unreported income.
- [93] It is not necessary for me to make a finding in this trial that the respondent is a drug dealer. I find that the claimant had reason to be concerned about leaving the children in his unsupervised presence. I find that she did have good reason to be concerned and to request that his parenting time be supervised until she had some explanation for his bizarre behaviour. I also find that the respondent has unreported income.

- [94] I have seen enough correspondence between the parties and Facebook posts to conclude that the claimant was justified in seeking criminal harassment charges. The respondent was clearly harassing her with repeated emails, posting signs, contacting people she was dating and taunting her. She has not proven that he sent 400 emails but she has proven that he sent a large volume of emails, some of which were aggressive and threatening.
- [95] Although there is some evidence that the parties each speak poorly of each other to the children and involve the children in this litigation, there is no evidence whatsoever that these children have been alienated from their father. In fact, they love their father very much and want to spend time with him. In the Views of the Child Report they indicated they wish to spend more time with their father. That was in 2014. Since then they have spent every other weekend with their father consistently and have not shown any hesitation in going for visits. This would not be the case if the claimant was making a concerted effort to alienate the children from their father.
- [96] The claimant freely admitted that the respondent loves the children and they love him. Her counsel has shown evidence of many attempts to set up regular but safe parenting time. This matter broke down over a disagreement as to what each parent considered reasonable parenting time to be. I have found the claimant had reason in 2014/2015 to be concerned about the children's safety if left in the unsupervised care of the respondent.
- [97] The respondent did not take reasonable steps to enforce his right to parenting time with the children. He continued to post banners and signs around town including at the children's soccer field. This must have been embarrassing for them. It strikes me that the respondent was more interested in grandstanding to prove a point than he was in having parenting time with his children.
- [98] I have no criticism for the way the claimant has cared for children. They are healthy, happy, and engaged in extracurricular activities. She is providing assistance for the Second Child who has some difficulty in school. She is attending to the children's medical and dental needs and has provided them with shelter without the assistance of the respondent for over three years.
- [99] The respondent has not satisfied me that he is capable of supporting the children or providing for them while they are in his care. He could have proven this through the evidence of K. but chose not to. I am not satisfied that he could handle 50% parenting time. I am not satisfied that it would be in the children's best interest.

Guardianship and Parenting Orders

- [100] The parties are both guardians of the children pursuant to the Family Law Act, S.B.C. 2011, c. 25 ("FLA") at s. 39(1). Each party shall be entitled to all parental responsibilities pursuant to the FLA, s. 41 during the time the children are in their care except where provided below.

- [101] Given the parties' complete inability to communicate, I find it is in the best interests of the children to have the claimant be solely responsible for enrolling the children in extracurricular activities provided that she notify the respondent in advance of her intention to do so and that she seek his consent if the extracurricular activity will affect his parenting time or if she is seeking reimbursement for the cost of the activity.
- [102] Also, because of the parties' inability to communicate and the evidence of their inability to exchange documentation for extended health care benefits, I also find that it is in the best interest of the children to have the claimant be solely responsible for attending to their health-related treatments. She will, however, be obliged to keep the respondent informed of any health-related treatments. The respondent will retain the right to seek out emergency health-related treatment on condition that he advises the claimant as soon as possible of the details of the treatment. I will speak more of the cost of health and dental care under child support.
- [103] I am satisfied that the children shall primarily reside with the claimant and continue to have parenting time with the respondent from Friday after school to Monday morning every other weekend. On alternate weeks, during the week the children will not have a weekend with the respondent, the respondent will have parenting time Wednesday after school until Thursday morning.
- [104] The children will be picked up at school unless the pick-up days are on a non-instructional day, in which case they will be picked up at the claimant's home. Dropoff will be in the driveway at the claimant's home before 8:00 a.m. on a school day or at school. The alternating weekends will commence on the day to be agreed between the parties which is synchronized with the respondent's previous weekend with the children.
- [105] In the event that the Monday attached to the respondent's weekend is a statutory holiday or the Monday or Friday is a professional development day, the weekend will be expanded to include that non-instructional day.
- [106] The parties will each have parenting time with the children for one half of all school holidays.
- [107] In odd-numbered years, the claimant will have the first week of the winter school holidays from Friday afternoon on the day school gets out for the holidays until 4:00 p.m. the following Friday. In even-numbered years, the respondent will have the first week of school holiday from Friday after school on the day school gets out until 4:00 p.m. the following Friday. The parties are at liberty to reverse this order if they consent in writing.
- [108] On Christmas day, the parties will split the day between them so the children will have Christmas Eve and morning with the parent whose parenting week that year contains Christmas day. The other parent will pick the children up at 2:00 p.m. at the first parent's home and will return them to the first parent's home by 9:00 p.m. Christmas night.

- [109] The parties will each have one-week parenting time during the school spring break with the claimant having the first week of school break in odd years and the respondent having the first week of school break in even years.
- [110] The parties will each have four weeks parenting time with the children in the summer to be split into 2 two-week vacations. Such visits are to be separated by at least two weeks. Proposals for summer holiday requests are to be exchanged in writing by May 1 of each year.
- [111] The regular parenting rotation schedule will be suspended during the school breaks and resume when school returns.
- [112] Any additional parenting time must be agreed to in writing. The respondent is not at liberty to attend at the children's school during the day and remove them without the consent of the claimant.
- [113] Each parent is at liberty to call the children one time per day when the children are in the care of the other parent between 7:00 and 7:30 p.m. These calls are not to be taped or monitored by the other parent. The children are at liberty to phone or text each parent at will from their own phones.

Conduct Order

- [114] I am not prepared to make a non-expiring protection order at this time given the problems the bail conditions and protection orders have created for these parties. I find that the parties' difficulties relate to communication. Hopefully most of the communication issues will be resolved now that there is a permanent order related to parenting responsibilities and parenting time.
- [115] I find it would not be more appropriate to make a protection order under Part 9 of the FLA.
- [116] I will, however, make a conduct order under s. 225 of the FLA. I will order that the parties will limit their communication to email communication using respectful language and restricting their communication to issues affecting the children. In the case of an emergency, the parties may communicate directly with one another or by telephone. At no time will the respondent enter the claimant's residence unless he is invited to do so by the claimant.
- [117] If at any time the claimant feels she is being threatened or intimidated she is always free to dial 911.

Child support

Income

- [118] The respondent agrees that the restoration business went downhill by the end of 2013. He deposited the last cheque for \$10,000 into the joint account for the claimant's use in January 2014. He was asked why he did not continue the business and he blames the claimant for not giving him his trailer and his tools so that he could do so.
- [119] The respondent said this is the last income he has earned because of his poor health but he provided no medical evidence to substantiate a disability from employment.
- [120] The respondent did not finish high school so this creates a limitation. He claims that he is unskilled which does not appear to be the case given the variety of jobs he held prior to the parties' separation. He said he cannot pump gas all day as he gets too tired because of his illness.
- [121] When challenged about his intentional underemployment, the respondent said that he will have to do what he can do.
- [122] The respondent says that his girlfriend K. supports him. She works for a fitness company on an hourly rate plus commission and earns a decent income so they can survive. He does not pay child support but he buys clothes for the children.
- [123] The respondent denies dealing drugs and says that all of this money comes from K. which was not corroborated.
- [124] I questioned the respondent about the work he did for the school board. He explained that he was fairly illiterate until he was in his 20s and then met with a literacy advocate and teacher who provided him with assistance to learn to read. The literacy advocate designed a program where the respondent would provide peer support for other young people who were having trouble in school as he did. It was a position created for him at the time. He worked at a pretrial centre. He expressed some interest in doing similar work now. In order to get a position at the school board he would need to work on his grade 12 and such a position would depend on the availability of funding. I understand he is still in contact with the literacy consultant.
- [125] When asked why he did not support his children, the respondent said that he could not contribute to the mortgage because the bank account was closed. He offered a certified cheque to the claimant because his counsel advised him to document everything. She refused to pick it up. This occurred on one occasion in the summer of 2014.
- [126] He made further offers to pay child support in the amount of \$1,200 on July 21, 2014. The claimant did not respond and therefore he did not pay anything.
- [127] I note that the claimant never applied to court for an order for child support.

[128] On August 7, 2014, the respondent swore what I believe to be his only Form F8 financial statement. He declared he was unemployed and that his current income was zero. He stated he did not anticipate significant changes. In this financial statement he declared monthly expenses of \$9,330. I find this to be an exaggeration.

[129] The claimant submitted a list of the expensive gifts the respondent bought for the children including a 72-inch flat screen television, four hover boards, a smaller television for the Second Child, two iPhones, an iPad, multiple pairs of Ugg boots, various video games and a gaming system, virtual-reality goggles, a drone, a motorized scooter, Lululemon outfits, sheepskin boots, Canucks' hockey tickets, a Guess watch, a Michael Kors watch, snow boots, and Victoria's Secret lingerie. He purchased all of these gifts for the children while claiming that he has no income.

Law on imputing income

[130] Section 19 of the Federal Child Support Guidelines [Guidelines] confers a broad discretion of the Court to impute income. Section 19(a) confers the discretion on the Court to impute income to a party who is intentionally under employed or unemployed:

Imputing income

19 ...

(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;

[131] When considering whether it is appropriate to impute income, the Court must bear in mind the objectives expressed in s. 1 of the Guidelines to establish child support based on the means of the parties in an objective manner that reduces conflict, ensures consistency and occurrences resolution.

[132] In *Bak v. Dobell*, 2007 ONCA 304 [Bak], the Ontario Court of Appeal considered the argument that income should be imputed to a payor parent based on the payor parent's lifestyle and based on the gifts received by the payor parent from his parent. The court concluded that lifestyle is not income, but rather evidence from which an inference may be drawn that the payor has undisclosed income that may be imputed for the purpose of determining child support.

[133] As for the gifts from a parent to a payor spouse, the court looked carefully at the types of gifts made. The first type was funds advanced to finance the respondent's training and proposed business; the second fund was used to provide the respondent with a home and a car, and the third fund was to cover the respondent's professional fees. The court found that none of these funds created disposable income to the respondent and should not be imputed as income. The final type of gift was a monthly stipend to cover the respondent's

living expenses. The respondent's father maintained complete control over this fund.

- [134] The court noted that the legislature did not include gifts in the definition of presumptive income or as an appropriate circumstance under s.19(1) but the court concluded that it was still open to a judge to consider whether the circumstances surrounding the gift are so unusual as to constitute an appropriate circumstance in which to impute income.
- [135] In doing so, the court is directed to consider certain factors including the regularity of the gifts; the duration of their receipt; whether the gifts were part of the family's income during cohabitation that entrenched a certain lifestyle; the circumstances of the gifts that earmark them as exceptional; whether the gifts do more than provide a basic standard of living; the income generated by the gifts in proportion to the payor's entire income; whether they are paid to support an adult child through a crisis or periodic disability; whether the gifts are likely to continue; and the true purpose and nature of the gift.
- [136] In *Bak*, the respondent was disabled. That was not disputed. The trial judge found that the monthly stipend was in the nature of basic support for an adult child and did no more than support a basic lifestyle. The court did not impute this stipend as income and the Court of Appeal upheld that decision.
- [137] In *Shih v Shih*, 2015 BCSC 2108, Madam Justice Warren imputed additional income to the claimant in recognition of regular gifts she received from her mother because the nature of the financial assistance she received from her mother significantly enhanced her means and was likely to continue. This decision was appealed (2017 BCCA 37) but not with respect to the imputing of income.
- [138] In *Campbell v Campbell*, 2014 MBCA 104, the Manitoba Court of Appeal gave some direction for what a court should consider when imputing income due to underemployment quoting from Dr. Julien D. Payne, *Imputing Income*, "Determination of Income, Disclosure of Income", *Child Support in Canada*, Danrab Inc., August 3, 1999:
- ..
2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.
 3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at the lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.

[139] In *Dallas v Dallas*, 2015 BCCA 147, the British Columbia Court of Appeal allowed an appeal and imputed a modest income to the respondent mother who had remarried into an affluent family and had chosen unemployment. That choice did not absolve her of her responsibility to pay support for her child. It was found to be immaterial that the father was also wealthy as each parent is obliged to support their child. The mother did declare some taxable dividends in an amount that was similar to the amount she had earned prior to remarriage. That was the figure imputed to her as income.

Analysis

- [140] In the case before me, I have no clear evidence of gifts being made by K. to the respondent. He says that he lives in an apartment with her and that she pays all of the bills; however, there is no evidence from her. There is no indication that K. is committed to continue to make these payments on behalf of the respondent nor should she be responsible for making the respondent's child support payments.
- [141] I have not determined from the evidence whether the respondent is intentionally under-employing himself or is employing himself but not declaring income. Either way I find that he has an obligation to support these children and he has not proven that his under-employment is as a result of his health needs.
- [142] He is 45-years old with a modified grade 11 education. He is described as good with his hands and has done farm labour work and restoration construction work. He is a status First Nations person and worked as a literacy support worker for a school board many years ago. His status and this experience may provide future opportunities in the school system. When asked about applying for a similar position, he said he would have to get his grade 12 to get back working at the school board. He said the type of job he could get would pay \$12-\$13 an hour. If the respondent made \$13 an hour full-time, he would earn an income of \$27,000 a year. He proposed that I match his income to the claimant's income at the school board. She earned \$24,062.33 from the school board but had other sources of income.
- [143] I am satisfied that based on his oral testimony and my observations of his health condition, the respondent is no longer able to do heavy labouring jobs. He has some form of hip injury and hernias which require him to use a cane to walk. He has COPD which makes him short of breath periodically. I certainly saw evidence of this in the courtroom. His limited education and his physical challenges restrict the type of employment he can pursue. I have watched him endure the stress of a two-week trial where he represented himself and I conclude that he has stamina and is clever.
- [144] Although he is capable of doing a sedentary to light job, he likely will need to upgrade his education to find such employment.
- [145] I have no idea what work would be available to the respondent because he clearly has not looked for any.

[146] I impute income of \$27,000 to the respondent based on earnings of \$13 an hour which I find reasonable in all circumstances. He is ordered to pay the claimant \$420 per month child support for the two children. I will deal with the commencement date below.

Special and Extraordinary Expenses

Dental and orthodontic

[147] The claimant has incurred special expenses for the children since the date of separation. She has dental insurance coverage which covers 50% reimbursement of orthodontic expenses to a \$2,500 per person, per lifetime maximum. She has received an estimate of fees for the First Child's orthodontic treatment. The initial fee was \$1,200. The treatment fee is \$4,000. The \$1,200 had to be paid up front and the balance of \$4,000 is to be paid in monthly instalments of \$200 over 20 months.

[148] The claimant incurred a \$100 expense for a checkup and cleaning for the children in October 2016. Her dentist submitted a claim against her insurance plan and she must pay the balance owing up front. She submitted the bill and paperwork to the respondent so he could make a claim on K.'s dental insurance. The respondent advised her that K. would not sign the paperwork in its current form because it says the payment should be made to the dentist and K. wants the payment made to her.

[149] The First Child had to have two teeth pulled and then required oral surgery which cost over \$1,500. The claimant paid this amount but could not get the respondent's cooperation to submit the claim for reimbursement. The claimant refuses to hand over her receipt and the respondent refuses to submit a claim to K.'s insurance using the required form.

Counselling

[150] The children attended counselling for 26 sessions post-separation which cost a total of \$1,286 for counselling for the two children.

Decision

[151] It is appropriate for the parties to share special expenses in proportion to their incomes. I accept the claimant's income for the purpose of determining special expenses at \$65,144 and the respondent's income at \$27,000.

[152] I order the respondent to pay 30% of special and extraordinary expenses and the claimant to pay 70% of those expenses. This will commence on May 1, 2017 and I will deal with retroactive support below.

[153] Special and extraordinary expenses will be defined in the order as it is in s. 7 of the Guidelines as:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;

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

[154] I have no faith that these parties can coordinate benefits therefore I order that the claimant provide proof of any medical, dental or orthodontic expense to the respondent and that he be required to pay her 30% of her out-of-pocket expenses net of any insurance coverage she receives from her plan. The claimant will provide any documentation needed for the respondent to make a claim against K.'s medical and dental plan. The claimant is not responsible for modifying that document in any way. I will leave it up to the respondent and K. to deal with their own insurer on the method of payment.

Retroactive Support

[155] The leading authority for an application for retroactive child support is D.B.S. v. S.R.G., 2006 SCC 37 [D.B.S.]. In that case, the court set out what the court should consider in addressing retroactive child support at paras. 100 to 116 which I am paraphrasing below:

- a) Is there a reasonable excuse for the claimant's delay in seeking support?
- b) Was the respondent guilty of any blameworthy conduct?
- c) What are the circumstances of the children? and
- d) What hardship might the respondent incur because a retroactive order is made?

[156] In this case, there is no explanation for why the claimant delayed in applying for child support. The parties were in court on more than one occasion and did not address child support or parenting time.

[157] The conduct of the respondent has been blameworthy. He has not paid any child support since the summer of 2014. The claimant is not a wealthy person and has struggled to maintain a home for the children and had to incur debt in order to do so. The children are in need of support.

[158] A lump-sum retroactive child support will decrease the amount of property the respondent will receive but I do not consider that undue hardship.

- [159] I will backdate the commencement of the child support order to the date the first notice of trial was filed in these proceedings as that is the first clear step the claimant took to pursue child support. The notice of trial was filed on June 8, 2015. I will therefore backdate child support to June 1, 2015.
- [160] I note that the respondent made a \$10,000 payment to the claimant in December 2013 or January 2014. That \$10,000 more than adequately covers the first 18 months of separation.
- [161] By the time this decision is released, I anticipate the child support will be in arrears for 22 months and the respondent will owe \$9,240 to the claimant for child support. This amount will be paid from the respondent's share of the division of family property.
- [162] I have details of medical and dental expenses but not for extracurricular expenses.
- [163] The respondent will reimburse the claimant his proportionate share of her out-of-pocket dental, dental surgery, and orthodontic costs incurred for the children from January 1, 2014 to the present. I understand the total cost of the orthodontic work for the First Child is \$5,200 and that the claimant's dental plan will cover a maximum of \$2,500 leaving her with \$2,700 in orthodontic expenses. The respondent is responsible for 30% of that expense in the amount of \$810. The child underwent dental surgery. The costs were covered by the claimant's dental plan. She paid \$506.37. The respondent is responsible for 30% of this expense in the amount of \$151.91.
- [164] The respondent will reimburse the claimant's proportionate share of her out-of-pocket expenses for Brookside counselling for both children. The respondent paid a total of \$1,286 for counselling for the two children. The respondent is responsible for 30% of this expense in the amount of \$385.80.
- [165] The claimant incurred \$157 for the purchase and repair of a flute for one of the children. The respondent is responsible for 30% of that expense in the amount of \$47.10.
- [166] The total outstanding special and extraordinary expenses which the respondent owes to the claimant come to \$1,696.40 [810 + 454.50 + 385.80 + \$47.10]. I order that the respondent reimburse the claimant this amount from his share of the division of family property.

Security for Child Support

- [167] Section 170(c) of the FLA says the court may make an order for payment of lump-sum child support directly or in trust. Section 170(d) permits a court to register a charge against specific property to secure payment. Section 170(e) permits the court to order a party who has a contract of life insurance to designate his/her child as a beneficiary irrevocably for the period designated by the court and section 170(g) permits the court to order that the duty to pay child support continue after the death of a person.
- [168] Section 11 of the Guidelines says support can be ordered in a lump-sum and s. 12 says that security for the payment of child support can be ordered:

11 The court may require in a child support order that the amount payable under the order be paid in periodic payments, in a lump-sum or in a lump-sum and periodic payments.

12 The court may require in the child support order that the amount payable under the order be paid or secured, or paid and secured, in the manner specified in the order.

[169] Lump-sum child support orders have generally been restricted to cases involving special circumstances and seem to be more commonly ordered when children are within two to three years of becoming self-supporting. Section 11 of the Guidelines empowers the court to order a lump-sum in place of periodic support for children but the lump-sum must reflect the support otherwise due under the Guidelines.

[170] There are exceptional circumstances where the courts have found lump-sum orders to be appropriate. For example, where a parent has failed to discharge financial responsibility in the past or is likely to do so in the future, where no voluntary payments were made during the period of separation, or where the payor has a history of irresponsible money management.

[171] The courts have been reluctant to award lump-sum child support where the lump-sum would strip a party of all of their property acquired during the marriage: *LeBlanc v LeBlanc* (1998), 203 N.B.R. (2d) 369 (Q.B.).

[172] In *Greenwood v. Greenwood*, 1998 B.C.J. 72; 37 RFL (4th) 422 (B.C.S.C) [Greenwood], Mr. Justice Burnyeat notes that under s. 11 of the Guidelines that the court must first determine what the periodic payment is for making an order for lump-sum support.

[173] Courts appear more willing to make a lump-sum child support order for s. 7 expenses. In *Greenwood*, Burnyeat, J. ordered a lump-sum for s. 7 expenses saying that lump-sum support is restricted to cases involving special circumstances such as animosity between the parties, the parties inability to make periodic payments, difficulties enforcing orders for support, the risk that available monies will be otherwise squandered or dissipated, and where there is a real risk that periodic payments would not be made

[174] Security may be ordered if there is evidence of a payor deliberately disobeying orders or that he is likely to do so in the future: *M.E.L. v. B.G.L.*, 2012 BCSC 1841; *Cohen v. Cohen* (1995), 4 B.C.L.R. (3d) 201 (C.A); *Greenwood*; *Brown v. Brown* (2004), 6 R.F.L. (6th) 43 (Ont. S.C.J.); and *Kollmuss v. Kollmuss*, 2012 BCSC 709.

[175] In *Mansoor v. Mansoor*, 2012 BCSC 602 [Mansoor], Madam Justice Gropper ordered lump-sum child support for past and future child support and known and anticipated s. 7 expenses. Mr. Mansoor had been transient since the sale of the family home and rarely lived in Canada. He was not looking for work in Canada. He was looking for work in Bahrain. Bahrain could not enforce child support and Mr. Mansoor had not paid child support nor had he demonstrated a willingness to comply with court orders. There were anticipated s. 7 expenses for the child including dental work and post-secondary education.

- [176] At paragraph 107, Gropper J. said lump-sum support should only be made where there is a specific need or where special circumstances render it appropriate citing *Myatt v. Myatt*, (1993) 45 R.F.L. (3d) 45 (B.C.S.C.) [Myatt] and *K.V.D.P. v. T.E.*, 2004 BCSC 537. She accepted the reasons provided by Ms. Mansoor as listed in the preceding paragraph and ordered that Mr. Mansoor pay retroactive and future child support in a lump-sum payment from his share of the proceeds of sale of the home. Gropper J. also ordered that Mr. Mansoor deposit \$10,000 out of his share of the proceeds into an interest-bearing trust account to which Ms. Mansoor was to be given access for s. 7 expenses. Additionally, \$28,000 was placed in an interest-bearing trust account for the child's post-secondary education to which Ms. Mansoor will also have access.
- [177] In *Myatt*, Madam Justice Kirkpatrick, as she then was, ordered lump-sum child support in very unusual circumstances. Mr. Myatt had breached numerous orders for child support and had been found in contempt. An order was made to attach his salary. He was suspended from his employment when he was found to be trafficking cocaine. He was convicted and resigned from his employment. At the time of the application, he was collecting income assistance. The mother was living on student loan funding and Kirkpatrick J. found that they were both living in poverty. The only funds from which to draw or secure child support was a pension fund.
- [178] Kirkpatrick J. provided an extensive review of previous lump-sum child support cases. She found the continued animosity between the parties was further justification for securing child support by lump-sum payment. There was some evidence that the periodic payment would not be complied with in a timely fashion. The oldest child was 28 months from his 19th birthday and the youngest was 62 months from his 19th birthday.
- [179] Having regard for Mr. Myatt's reduced ability to pay maintenance and the likelihood that his ability to pay would not increase in the near future, Kirkpatrick J. was of the view that a lump-sum should be paid for each child. The lump-sum was obtained by withdrawing money from the pension fund and was paid into the trust account of the counsel for the applicant.

Analysis

- [180] On the facts of this case, the respondent has not been in a breach of a court order to pay child support. The claimant did not apply for one. That means the respondent's failure to pay child support until trial is not as egregious as the previous cases I have reviewed. I have a concern that the respondent will not pay child support, although he has made a proposal to do so. He will have liquid assets only, which he may withdraw and may have no reportable income. It will be difficult for the Family Maintenance Enforcement Program to enforce an order. The fact that I have imputed income to him does not mean that he will go out and earn that income legitimately. He has not reported any income for some period of time. The case law speaks of animosity and this is a case where I have found profound animosity between parties and an inability to resolve disputes. I find that this is a case with

special circumstances.

- [181] In this case, the First Child is 49 months from her 19th birthday and the Second Child is 91 months from his 19th birthday. For 49 months the respondent will be required to pay \$420 a month and then for the following 42 months, when the respondent may only be supporting one child, he would be obliged to pay \$239 per month. A fund of \$30,618 would cover those payments. I have not made a present value calculation or taken into account any interest earned. This means that there may be an accumulation of interest and a surplus in the fund after 91 months. If so, that surplus can be applied to special and extraordinary expenses for the children with notice to the respondent.
- [182] This case is similar to Myatt in that the only fund of cash available is the RRSP which the claimant is ordered to divide with the respondent. I believe this RRSP is not locked in. The claimant wishes to keep the family home and so that asset is not going to be liquidated to produce cash for support.
- [183] In order to secure payment for child support, the respondent, upon receiving the transferred funds, shall execute documents authorizing the financial institution to withdraw from the RRSP, an amount sufficient after-tax to allow him to pay the sum of \$30,618 into an interest-bearing account in the claimant's name in trust for the children. I see no reason why the claimant could not use one of the existing bank accounts she holds in trust for the children. On the first of each month the claimant is authorized to withdraw \$420 for the first 49 months and \$239 for the remaining 42 months for the support of the children.
- [184] I order that the respondent execute documents authorizing the financial institution to withdraw a further amount sufficient after-tax to allow him to pay a further \$10,000 into an interest-bearing account in the claimant's name in trust for the children to pay for special and extraordinary expenses. The claimant is required to request reimbursement from the respondent first as set out above but if after 60 days the respondent has not reimbursed her, she is authorized to withdraw his contribution from the \$10,000 held in trust by her for this purpose. If there is any surplus in this fund when the children are no longer eligible for child support, the surplus will be returned to the respondent. The claimant shall provide to the respondent, a copy of proof of payment documentation such as a receipt setting out any medical, dental or orthodontic expense or special expenses for which she is seeking reimbursement.
- [185] I have not provided for post-secondary education which is too far in advance to speculate. In the event that either child wishes to pursue post-secondary education and in the event the respondent has the means to assist, then an application would have to be brought at that time.
- [186] Either party is at liberty to apply to vary the amount of monthly maintenance in the event the respondent earns in excess of \$27,000 a year.

Property

Real Property

- [187] The parties purchased a home in Langley in 2008 for a recorded value of \$990,000 and obtained a mortgage for \$800,000. The appraised value of the house in 2014 was \$950,000. In 2014 the outstanding mortgage owed was \$780,952.
- [188] The current appraisal at the time of trial was \$1,110,000 and the outstanding mortgage at the time of trial was \$747,145.
- [189] Since the parties separated, the claimant has continued to pay the mortgage in the amount of \$3,888 per month plus costs for property tax, insurance, and maintenance for the house.
- [190] The claimant rents out a suite in the house to a tenant for \$1,000 per month. In addition, she houses two international students and she receives a stipend of \$950 per student, per month. She is required to provide food and some supervision to the students and does not need to declare the stipend as income on her income tax return.
- [191] The claimant has used the rental monies and some portion of the stipend to assist her in paying the mortgage and has not shared any portion of the rent or stipend with the respondent since the date of separation.
- [192] The claimant wishes to stay in the family home with the children and to pay out the respondent's interest in the family home and to have his name removed from the mortgage registered on the family home. The respondent is in agreement with the claimant remaining in the family home and the only dispute is over the appropriate valuation date and how this property is to be divided.

Housing costs paid by the claimant post-separation

- [193] The claimant prepared a spreadsheet showing the expenses she covered for the house between 2014 to 2017 which shows that she covered the following expenses:
- a) Mortgage principal and interest
- [194] In 2014 the claimant paid \$45,827 in mortgage payments for the family home. In 2015 the claimant paid \$46,657. In 2016 the claimant paid \$46,657. In 2017 before trial, the claimant paid \$3,881. Total mortgage payments paid by the claimant from 2014 to the date of trial were \$143,022.
- b) Property taxes

[195] In 2014 the claimant paid \$5,172 in property taxes for the family home. In 2015 the claimant paid \$5,316. In 2016 the claimant paid \$6,336. In 2017 the claimant had saved \$105 for the 2017 payment which is not due till July. I have not included this amount which has not yet been paid. Total property taxes paid by the claimant from January 1, 2014 to trial are \$16,824.

[196] In addition, the claimant paid a glass policy of \$45 per year in 2014/2015 and \$40 in 2016.

c) House insurance

[197] In 2014 the claimant paid \$1,554 for house insurance for the family home. In 2015 the claimant paid \$1,508. In 2016 the claimant paid \$1,536. In 2017 the claimant had saved \$105 for the purpose of paying property insurance when due. I am not including that amount which has not yet been paid. Total insurance paid by the claimant from January 1, 2014 to the date of trial is \$4,598.

d) Maintenance and repair costs

[198] In 2014 the claimant paid \$3,938 for a new septic pump for the family home. In 2015 the claimant purchased a new washer and dryer for the home in the amount of \$2,392.

[199] The claimant incurred expenses for a permit for the rental suite in the amount of \$909. In 2016 the claimant paid the municipality for a permit for the rental suite in the family home in the amount of \$691. The claimant says that someone reported her rental suite as being illegal. The two houses beside the family home also have suites and they were not reported. The suggestion is that the respondent was the one who reported her but there is no proof of this. Nonetheless I find this to be a legitimate joint expense given that the rental income helps to pay the mortgage payment. In 2017 the claimant had expended \$350 toward the suite. Expenditures paid by the claimant for maintenance and repair costs for the house from January 1, 2014 to the date of trial are \$8,280 (\$3,938 + 2,392 + 909 + 691 + 350).

Life insurance policies

[200] The parties agreed to take out term life insurance policies rather than obtain mortgage insurance for the purpose of paying out the mortgage in the event that one of the parties died and the children were still dependent. The claimant continued to make these insurance payments after the date of separation and has provided the totals of payments that she has made on her behalf and on behalf of the respondent. They had three policies. Each had one Sunlife policy and two Royal Bank of Canada ("RBC") policies. During this time period, the claimant paid \$7,827 in premiums on the respondent's policies and \$3,824 in premiums on her own policies.

[201] There is a cash surrender value on the claimant's policy. As of December 2016, the cash surrender value was \$1,922 on the policy ending in the numbers 3763 with RBC Insurance. As of December 2015, the cash surrender value on the respondent's policy was \$3,040 on the policy ending in the numbers 3766. She is uncertain what happened to this balance and did not have a more current statement.

Utilities

[202] The claimant has provided a breakdown of all utilities she paid for while occupying the family home after separation. Given that she was an occupier of the premises and the respondent was not, I do not need to review those expenses and find that the claimant to still be responsible for all utilities.

Bank Accounts

The claimant's accounts

- [203] The claimant has an RBC general chequing account ending in the numbers 6078 from which the mortgage is withdrawn and into which her paycheques are deposited.
- [204] During the marriage the parties had a joint chequing account ending in the numbers 0464 at the RBC. This was the main account they used for paying the mortgage. Prior to 2014, the claimant paid the mortgage out of this joint account. After 2014 she decided to open her own account. She has provided statements for the account ending in the numbers 0464 from October 31, 2012 to March 12, 2014 when the account was closed. There was less than one dollar in this account as at the date of separation and the account was closed prior to trial.
- [205] The claimant has a United States bank account ending in the numbers 1565 also at the RBC. The balance of this account at the date of separation was \$601. This amount was withdrawn sometime after December 2013 and the current balance is \$33.

The children's bank accounts

- [206] The claimant has provided proof of the balances in various bank accounts held in trust for the children. The children each have a tax-free savings account ("TFSA") which is in the claimant's name in trust for the children given that they are minors. Each child has a registered education savings account ("RESP"). Each child now has one savings account.
- [207] I am satisfied that at a date closest to trial, the First Child had \$15,435 in a TFSA and the Second Child had \$13,376 in a TFSA.
- [208] The respondent has alleged that the claimant has used the children's funds for her own purposes. I am satisfied that the claimant has not withdrawn any funds from the children's TFSA's since the date of separation.

- [209] As at September 30, 2016, the First Child had a balance in her RESP account of \$15,806. As at the same date, the Second Child had a balance in his RESP account in the amount of \$12,778. I am satisfied that no funds have been withdrawn from these accounts.
- [210] The claimant has provided account statements for the children's savings accounts covering the time period from January 1, 2012 to January 9, 2017. When the accounts were first set up for each child, the claimant put child tax benefit cheques and birthdate cheques into their savings accounts. There were some withdrawals from the savings account that went into investment accounts for each child. The claimant had set up an automatic deposit for child tax benefit cheques to go into the First Child's savings account. She would then transfer one-half of the deposit to the Second Child's account.
- [211] After separation, the claimant needed child tax benefit money to buy groceries given that the respondent was not helping with the mortgage or paying child support. The First Child had a balance of \$1,682 in her savings account around the date of separation. As at September 20, 2016, there was \$57.31 in this account. The Second Child had the amount of \$1,471 in his savings account as of the date of separation. The claimant stopped transferring one-half of the child tax benefits into his account in July 2015 given that she was relying on this money to pay bills. By September 18, 2015, there was \$1 in this savings account. The claimant gave evidence that since September 2015 she has used the tax benefits to pay bills and there has been no activity in the Second Child's account since that date.

Inheritance investment account

- [212] The claimant received an inheritance from her great-aunt in 2012. The first portion was received in March 2012 in the amount of \$128,760.27. The residual balance of \$11,847.51 was paid in August 2012. The claimant placed the inheritance money in a RBC investment account ending in the numbers 9675 in her sole name and seeks to have this investment declared to be excluded property.
- [213] The claimant has not produced every statement for this account since the date of the deposit in 2012, however, she has produced statements showing the deposits and year-end statements for 2012 to 2015 and a statement dated September 30, 2016. Those year-end statements provide a summary of the amounts paid in and amounts paid out each year. I am satisfied that the disclosure of the investment account is adequate and shows that two deposits were made and that no withdrawals were made from the principal amount.

Income from inheritance investment

- [214] Income of 0.0435000 changing in July 2016 to 0.0375000 per unit share was paid to the claimant out of the inheritance investment monthly. The number of unit shares and the cost of unit shares vary from year to year depending on market fluctuation.

[215] The claimant says that she used these income payments to pay family bills. Income payments in 2012 were \$732.05 per month. The payments fluctuated that year between \$732.05 and \$801.78 per month. Income payments in 2013 and 2014 were \$801.78 per month. Income payments in 2015 were \$811.99 per month. Income payments in 2016 were \$758 for the first eight months of the year and \$382 per month after the \$65,000 was withdrawn which I describe in the next paragraph.

Interim advance paid to respondent

[216] On August 18 and September 8, 2016, when the claimant was self-represented, the respondent obtained an interim court order for the release of \$65,000 of the inheritance funds for the respondent to use for his litigation fees. In addition, he obtained an order freezing all of the claimant's and the children's bank accounts except for one. Prior to withdrawing the \$65,000, there was \$129,944 in the investment account which is less than the original deposit.

Balance remaining in the respondent's counsel's trust account

[217] The respondent's former counsel has provided a letter confirming that she did receive deposits totalling \$65,000 in trust. As at December 21, 2016 she held \$25,499.52. On November 2, 2016 she issued a cheque for \$4,000 to the respondent.

[218] On December 21, 2016, claimant's counsel obtained an order freezing any inheritance funds remaining in the respondent's counsel's account.

[219] The \$4,000 was returned by the respondent to his counsel on January 16, 2017. The balance she now holds in trust is \$29,499.52 and it is still frozen by court order.

Respondent's bank accounts

[220] The claimant produced bank statements from the respondent's RBC account ending in the numbers 8958. It shows a balance of \$387.51 on the date of separation. On the last day of his testimony, the respondent produced statements for the business bank account ending in the numbers 3599 covering the period from December 15, 2011 to September 15, 2014. On the date of separation the balance in this account was \$186.19.

Pensions and Registered Retirement Savings Plans

[221] The parties have pensions and RRSPs. Each party has an employment pension. The claimant has a locked-in RRSP with the approximate value of \$22,000 arising from her RBC pension earned during the marriage. The respondent has a superannuation pension from his employment with the school board which has a balance in the range of \$21,000-\$27,000.

[222] As of the date of separation, the claimant had an RRSP in the amount of \$261,074.22 in her name in an RBC account ending in the numbers 8109. These monies were invested during the marriage and the claimant agrees that this is family property. The balance in the RRSP closest to the date of trial is \$392,278 (from the plaintiff's counsel's submissions). No withdrawals have been made from this account since the date of separation and no further investments have been made in this account since the date of separation.

Vehicles

[223] The claimant drives a Dodge Caravan and the respondent a Honda. The claimant agrees that the values are comparable and so each party should retain their own vehicle without any accounting to the other party.

Personal Property

[224] The respondent has left clothing, personal effects, tools, and three trailers at the family home. Numerous attempts have been made by the parties to have these items transferred to the respondent and none have been successful. Efforts were made to deliver personal property to the respondent at his examination for discovery. This was after he had failed to pick up several boxes of personal items from the claimant's counsel's office. He, in fact, did attend at counsel's office the same day. The office was closed for lunch with a note to deliver parcels next door. The office next door is the office of the respondent's former counsel which then raised concerns in his mind that plaintiff's counsel may have a conflict of interest.

[225] While the claimant's counsel's legal assistant, H., was itemizing the contents of a box of the respondent's personal possessions, she located a syringe with a white substance in the barrel of the syringe. The syringe was capped. There was no needle in the contents. There was also a straw with tape wrapped around it and an empty pill bottle. When H. saw these items it upset her. She took photos on her cell phone and waited for her boss's instruction. The syringe and the straw were entered as Exhibit 8 in these proceedings.

[226] In examination-in-chief, H. said the respondent never appeared at the office to pick up his items. In cross-examination she agreed that during her break she put a sign on the door asking for items to be dropped off at the office next door. She also agreed in cross-examination that somebody did tell her that the respondent went to their office to pick things up when she was out.

[227] H. and the claimant prepared a list of the contents of the respondent's personal possessions. Although H. kept referring to "dirty needles", I confirm Exhibit 8 contains no sharp needle. It is a capped syringe with a white substance inside the barrel of the syringe. The contents of the syringe were never tested.

- [228] The respondent says that his items were sitting in the back alley behind the court reporter's office for two hours. Eventually the claimant returned his items to her van when he refused to retrieve them.
- [229] In December 2016 at the trial management conference, a court order was made for the respondent to pick up his personal items within 21 days. The 21 days expired on Thursday before the trial. There were issues about who was permitted to attend at the house to pick up the personal items. It was also necessary for the claimant to transfer a trailer into the respondent's name so he could insure it and remove it from the property.
- [230] On day three of the trial, I ordered that registration papers be signed to transfer the trailer he wanted to the respondent and that he make arrangements to licence the trailer. On January 26, 2017, I ordered the respondent to pick up the cargo trailer on January 31, 2017 at 3:45 p.m. and that he attend on February 5, 2017 at noon to pick up his personal items from the family property. That date was subsequently changed to February 8, 2017 at 4:00 p.m.

Debts

Mortgage

- [231] The balance owing on the mortgage as of the date of separation was \$780,952. The balance owing on the mortgage at the date of trial was \$747,145 (these figures are taken from the plaintiff's submissions).

Credit Cards

Joint Visa

- [232] At the date of separation, the parties had a joint Visa account ending in the numbers 6276 for the claimant and 6284 for the respondent. The claimant believes the outstanding balance at the date of separation was \$32,000. She provided a statement for June 3, 2014 which shows a balance at that point of \$33,709. The respondent was not making any payments on this credit card. The claimant made the minimum payment of \$600 a month. She paid \$6,177 in interest in 2014 up to the end of October 2014.
- [233] In November 2014, the claimant approached the RBC to see if she could be released from this Visa debt. The claimant paid \$15,000 to the RBC in order to have her name removed from the joint Visa account.
- [234] The claimant produced a copy of an email she received on December 11, 2014 from Steve Magnante, Litigation Manager at the RBC which acknowledges receipt of the \$15,000 payment on the Visa account ending in the numbers 6284. That email confirms that the claimant was removed from the joint Visa account and as far as the RBC was concerned, she was no longer responsible for making any further payments on that account.

[235] The claimant admits that the respondent was not notified by her of this arrangement with the RBC to pay \$15,000 to have her name removed from the joint Visa.

[236] The respondent says that the RBC has started collection proceedings against him for the balance owing on this Visa account. He has not provided evidence to support this. He did produce two demand letters but none make reference to this account number.

Undisclosed credit cards

[237] The claimant says that the respondent obtained a secret credit card in 2014. He came home early to get the statement from the mail before she saw it even though she was still the businesses' bookkeeper. She says he put personal items on this credit card. The respondent denies this. He says there was no secret credit card. He had a Home Depot card for a project and it was paid off.

[238] He produced a demand letter dated January 4, 2017 for an RBC Visa account ending in the numbers 6062 for a balance of \$25,062.46. No other documents were filed in these proceedings that correlate to that account number.

Claimant's credit cards

[239] The claimant owed \$493 on her Visa and \$251 on her American Express at the date of separation.

Claimant's Personal Line of Credit

[240] The claimant owed \$5,000 on her RBC Royal Credit Line at the date of separation.

Business Debt

[241] The respondent claims that the past business debt in the approximate amount of \$65,000 is a family debt. The parties received advice during the marriage that the business should remain in the respondent's name and the house should be placed in the claimant's name in order to protect the house from any collection actions related to the business.

[242] On September 5, 2014, the respondent received a demand letter from counsel for the RBC to him personally (the "September Demand Letter") by registered mail demanding the following:

RBC Credit Line Agreement ending in the numbers 9001

\$20,700.74

RBC Credit Line Agreement ending in the numbers 5001

\$10,131.65

RBC Visa ending in the numbers 0294

\$32,371.79

Overdraft balance on business chequing account ending in the numbers 3599

\$908.40

Total Debt

\$64,112.58

[243] The September Demand Letter was sent by the respondent's counsel to the claimant's counsel and the claimant was well aware of these debts.

[244] On January 2, 2015, the RBC obtained a default judgment against the respondent in the amount of \$63,712.58 together with interest of \$2,500.82 and costs of \$1,345.75. (the "Default Judgment")

[245] The evidence as to what constituted the principal balance of the Default Judgment is not clear. The respondent produced bank statements for his business account ending in the numbers 3599 and they show a service charge reversal on this account of \$905.60 closing out the account with a zero balance. Although the numbers are not identical, they are close enough for me to conclude that the Default Judgment is for all of the items listed in the September Demand Letter except the overdraft on the account 3599.

[246] There is no dispute that the family business supported the family for five years during the marriage and it was on the basis of this business income that the parties were able to purchase the family home.

[247] In examination-in-chief, the claimant says she was not aware of the amount of business debts yet in cross-examination she admits that the September Demand Letter sent from the RBC was sent to her counsel.

[248] The claimant admits that she continued to pay any debts that were joint and ignored any debts or in the respondent's name after the date of separation. She did not notify him that she was no longer making payments. The respondent also took no responsibility to pay these debts or to ascertain whether the claimant was still paying these debts.

[249] The claimant hacked into the respondent's email account for the restoration business and changed the password for the email to "numberoneasshole". The respondent could not access his email because of this password change. The claimant says that she notified the respondent within a week of the change she made to the password. I include this evidence to show that the animosity cut both ways.

- [250] Each party blames the other for the accumulation and lack of servicing of these debts. I think it is fair to say that they each ignored the debts. The claimant is very precise when it comes to her own debts and uncharacteristically vague when it comes to the business debts. I found her quite evasive when answering questions about the business and the business debt.
- [251] The respondent has produced three further demand letters. The first demand letter is dated July 2, 2014 ("Demand Letter No. 1") from the RBC to the restoration business. It was mailed to the family home on July 2, 2014 demanding payment on the credit card ending in the numbers 0286. The amount owing was \$31,112.44. The only evidence I received in support of this exhibit is that this was a document the respondent found in a box of papers delivered by the claimant. He could not produce any other documents or clarify whether this was a separate account or one included in the Default Judgment. I note the account number is different than the accounts in the September Demand Letter.
- [252] The second demand letter is from ARO Inc., a collection agent for the RBC. It is dated January 4, 2017 and is to collect \$25,062.46 on the account ending in the numbers 6062. The respondent has not produced any documentation to support this demand letter and I have no way of ascertaining whether this is a pre- or post-separation debt. Given that it is a debt from the RBC and it was not included in the September Demand Letter, I have to conclude that this is a post-separation debt.
- [253] The third demand letter the respondent produced at trial is also from ARO Inc. It is also dated January 4, 2017 and it is for collection of \$10,973.09 on the account ending in the numbers 5001. This is the same RBC credit line which was included in the September Demand Letter and which I have decided was included in the Default Judgment. I cannot ascertain whether this is a new balance after the Default Judgment. I find it highly unlikely that the RBC would allow the respondent to continue to use the credit line after receiving a judgment against him.
- [254] The respondent is responsible for proving family debts. I cannot find that the balance demanded in Demand Letter No. 1 is an additional debt over and above the September Demand Letter and the Default Judgment. Given that it is not referred to in the September Demand Letter, I question whether it was paid out prior to the other accounts going to collections. The remaining two demand letters do not establish that the debt referred therein was incurred prior to the parties' separation. As a result, I find that the respondent has not proven that the debts referred to in these three new demand letters are family debts.

Debt to W.

- [255] The parties borrowed money from the claimant's mother throughout the marriage. W. gave evidence at trial. She obtained a line of credit in her name in order to help the parties. She loaned money to the parties by withdrawing money from her line of credit and they would pay it off and then borrow more money. She kept track of all the monies borrowed by the

parties. W. did not ever question what she was lending the money for. She has made interest payments on this line of credit and says that the outstanding balance is \$85,000. Fifteen thousand of that amount was loaned to the claimant on December 1, 2014 to pay off her portion of the joint RBC Visa debt.

- [256] After the date of separation, \$31,770 was borrowed. There is no explanation for how this money was used, however, I can surmise that it was used to pay the family mortgage and household bills during a time when the respondent was not paying any support. After the date of separation, the parties were not making any payment toward interest and so W. had paid interest costs which she says amounts to \$800.

PROPERTY ISSUES

Disclosure

- [257] The respondent has made an issue about the claimant's lack of disclosure. He was convinced that she was removing funds from the children's accounts. He ordered disclosure directly from the bank and during the trial a large packet of documents was delivered to him. After that delivery I heard very little more about lack of disclosure. Disclosure is never perfect in any case but I find that the claimant has provided adequate disclosure to satisfy me that the only account she was removing funds from was the children's savings account. She was using the child tax credit to pay family bills. These child tax benefits are intended to assist parents with their child-related expenses. It is quite appropriate for the claimant to use this money to pay household bills. It is only when families have surplus money they can afford to save child tax benefits for their children and I suspect that is rarely the case.
- [258] The respondent's disclosure has been lacking, late, and selective. He blames this on the fact that he is self-represented but he was not self-represented for several months prior to and up to the first day of trial. There is no excuse for his delivering a binder of documents in the middle of the claimant's cross-examination. As a result, I did let the claimant take this binder of documents home to review with care. If the respondent's documents had been properly disclosed the claimant would have had that opportunity prior to trial.
- [259] There are two areas where the respondent's lack of disclosure has caused difficulty. The first is in attempting to assess what his actual income is and I have dealt with that above. The second is dealing with what his current liabilities are. Where I have no documentary proof of a liability I will draw an adverse inference against the respondent: *Cunha v. da Cunha* (1994), 99 B.C.L.R. (2d) 93 (B.C.S.C.) at paras. 9 and 11; *Motyka v. Motyka*, 2001 BCCA 18; and *Mansoor*.

What Property is Family Property?

- [260] Section 84 of the FLA says that subject to s. 85 (excluded property), family property is all real and personal property which is owned by at least one spouse on the date the parties separate.
- [261] Section 85 of the FLA says that property acquired by a spouse before the relationship between the spouses began is excluded from family property. Inheritances to a spouse are excluded from family property.
- [262] In this case, the family home, RRSPs, pension, vehicles, and personal property are family property. The inheritance received by the claimant from her great-aunt is excluded property. This point was conceded by the respondent at trial.
- [263] The evidence is that the investment from the inheritance did not increase in value from the date it was received to the date of separation or to the date of trial. The investment did, however, pay out between \$700 and \$800 a month every month to the claimant and the claimant used that money to pay the mortgage on the family home or for other family expenses. I do not have evidence regarding whether or not the investment would have increased in value if that money had been reinvested rather than paid out.

How Should Income From Excluded Property be Dealt With?

- [264] Pursuant to s. 84(2)(g) of the FLA, family property includes the amount by which the value of excluded property has increased since the later date of the date the spouses' relationship began or the date the excluded property was acquired.
- [265] Section 85(1)(g) of the FLA is a tracing provision that is meant to clarify that any property derived from excluded property or the disposition of excluded property continues to be excluded property. Since the inheritance was invested in a mutual fund, it can easily be traced and the mutual fund itself is still excluded property.
- [266] Where a party uses funds from excluded property to pay down a shared mortgage, the courts have considered this a gift to the other party.
- [267] Previously there was conflicting authority from the British Columbia Supreme Court about whether a gift of excluded property loses its status of "excluded property" when it transferred from one spouse to another.
- [268] In *V.J.F. v. S.K.W.*, 2016 BCCA 186 [V.J.F.], the Court of Appeal found that the FLA was not a complete code and, as such, common law principles, such as the presumption of advancement for gifts between spouses, apply. In that case, Mr. F. received an inheritance of \$2 million during his marriage to Ms. W. which he deposited into his personal bank account. Mr. F. used the funds to purchase property that was placed in the name of Ms. W. and to pay off family debts. Ms. W. argued that the \$2 million inheritance was a gift that "lost its status as excluded property" almost immediately after Mr. F. received it because nearly all of it had been gifted to her to be used to provide a new family home and to pay for some of the pre-construction costs. Mr. F. argued that the \$2 million had not been gifted

to Ms. W. because she could not rely on the presumption of advancement between spouses after the invented mentation of the FLA scheme.

[269] The court held that the property became the property of the wife before separation as it was a gift from the husband. Notably, the court said at paras. 74 and 75:

[74] With all due respect to the contrary view, I conclude that the new FLA scheme does not constitute a "complete code" that "descends as between the spouses" and eliminates common law and equitable principles relating to property. Rather, the scheme builds on those principles, preserving concepts such as gifts and trusts, and evidentiary presumptions such as the presumption of advancement between spouses. Thus I find that the gift of (slightly less than) \$2 million made by Mr. F. to Ms. W. became her property and was "property owned by at least one spouse" under s. 84, as opposed to "property derived from the disposition of [excluded] property" within the meaning of s. 85. At the time the definitions are applied - the date of separation - the fact Mr. F. had originally received the \$2 million as a gift was no longer relevant. He lost the exclusion when he voluntarily and unreservedly directed that the West 33rd property be transferred to Ms. W. and 'derived' no property from that disposition.

[75] I do not interpret the FLA as reversing the gift or requiring that it be ignored because of the spouses' separation. Nor do I agree that the FLA effectively 'prohibits' gifts between spouses, as Mr. F. suggested. (See para. 56.) Gifts between spouses can continue as they have through the ages. It would take much clearer wording to render them suddenly revocable or null or illegal. (See the comments of Chief Justice Farris in a slightly different context in *Duncan v. Duncan* (No. 2) [1950] B.C.J. No. 50 at para. 13 (S.C.), *aff'd* [1950] B.C.J. No. 41. (C.A.).)

[Emphasis added]

[270] In this case, the house was purchased in the claimant's name using joint funds from the sale of a former family home. The mortgage was in joint names so the respondent was bound by the mortgage covenant. The claimant could not have obtained the mortgage without the respondent's income and covenant.

[271] The presumption of advancement between married spouses applies to monetary transfers between spouses as invested in property. In the case at bar, the mortgage is in joint names. Therefore the transfer of the monthly interest payment to pay the mortgage could be considered an advancement to the respondent because it reduced the mortgage debt.

[272] That is not to say that I intend to divide these interest payments between the parties. I do however consider it fair to consider that monthly interest payments to be joint funds which the claimant used to pay a portion of the mortgage prior to and after the date of separation.

What Valuation Date Should be Used for Family Property?

[273] The claimant says that I should value the property as at the date of separation rather than as at the date of trial because of the special circumstances of this case.

[274] Section 87 of the FLA says:

Valuing family property and family debt

87 Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,

- (a) the value of family property must be based on its fair market value, and
- (b) the value of family property and family debt must be determined as of the date
- (i) an agreement dividing the family property and family debt is made, or
- (ii) of the hearing before the court respecting the division of property and family debt.

[275] In this case, it is agreed that the value of the family home has increased between the date of separation and the date of trial and the balance owing on the mortgage has decreased. The claimant says that she has been solely responsible for the preservation and maintenance of the properties in the payment out of debt. It is true that the respondent did not make mortgage payments or support payments after early 2014 but the claimant's position does not take into account indirect contributions he made to the preservation of this property.

[276] Firstly, there is no accounting for the fact that the claimant occupied the respondent's half of the family property since the date of separation and therefore he does have a claim against her for occupational rent. The claimant rents out the basement suite for \$1,000 per month. Presumably the upper two floors could be rented for \$1,500 to \$2,000 per month. Notionally, her occupational rent would be \$1,000 a month given that she owns half of the property.

[277] In addition to renting out the basement suite in the family residence for \$1,000 per month, the claimant rents two rooms to two international students for \$950 a month each. She is receiving \$2,800 a month from the rental of these rooms. I understand that the international students require room and board and therefore it would be reasonable to discount the students' payment by half.

[278] I find that \$1,950 of rental income is earned by the claimant and applied to the joint mortgage. Since the respondent has a claim to half of this family property, one half of that contribution notionally comes from him.

[279] In addition, the claimant received \$800 a month income from the excluded inheritance investment which I have determined was family income in that she applied this sum of money to the mortgage.

[280] The claimant borrowed monies from her mother to pay the mortgage and household expenses and seeks to divide those debts equally with the respondent. This can be considered a further contribution made by the respondent to the maintenance and upkeep of the family home.

- [281] I conclude that the respondent did make contributions toward the preservation of the family home in the amount of \$2,375 per month, being one-half of the notional rent for the upper two floors, one-half of the rent from the suite, one-quarter of the total payment from the students and one half of the income advanced from the excluded investment.
- [282] At the time the family home was purchased, the respondent was working and earning income for the family and it was on the basis of his income that the parties were able to upgrade to this expensive home. It is true that the respondent's contributions toward the maintenance and upkeep of the home dropped by the end of 2013 and since then there have only been indirect contributions listed above.
- [283] In *Slavenova v Rangelov*, 2015 BCSC 79 [Slavenova], Mr. Justice Savage ordered that real property be valued at the date of separation rather than the date of trial because immediately after separation the respondent left for Bulgaria. The family property was either in Canada or the United States. The claimant managed all of the family property since separation by paying the mortgage, taxes, arranging rentals, and collecting rents. These efforts of the claimant were of value.
- [284] In that case, the claimant owned a home and investments at the time of the marriage and then purchased a number of revenue properties during the marriage both in Canada and the United States. It appears from the facts of the case that she was primarily responsible for these purchases. She had a well-established business before she met the respondent. The respondent lost large sums of money trading in the stock market after the parties' marriage. The claimant says the source of the funds were from her line of credit. The parties had a disagreement over the stock trading. The respondent did not disclose his debts and obligations in Bulgaria to the claimant. The claimant had excluded property including her business and her home which she owned prior to the marriage. The trial judge found the claimant should be credited with \$400,000 of excluded property.
- [285] I find the *Slavenova* case distinguishable on the facts.
- [286] In the case at bar, I find the date of trial to be the fairest valuation date. In my view, there should be compelling evidence to depart from the standard valuation date as the date of trial thereby disentitling one property owner the benefit of the increase in value of property which is brought about by market forces and not as a result of direct effort of the other party.
- [287] In *Blair v. Johnson*, 2015 BCSC 762, Madam Justice Fleming discussed this issue and concluded that the court should be satisfied that there would be significant unfairness arising from the awarding of equal shares of the property valued at trial before the court departs from the date of trial as the valuation date pursuant to s. 87 of the FLA. To conclude otherwise would allow for an earlier valuation date resulting in a radical departure from an equal division as of the date of trial in circumstances where the significant unfairness threshold under s. 95 is not met.

- [288] I am persuaded by these comments to conclude that a change in valuation date from the norm should certainly be the exception and should only be ordered if it would be significantly unfair to do otherwise.
- [289] Also, in *Jaszczewska v. Kostanski*, 2016 BCCA 286, at para. 39, the British Columbia Court of Appeal discusses the general rule that parties should share in post-separation increase in value of property independent of the parties' respective contributions to post-separation increase in value.
- [39] Also, because family property is generally valued on the date of the hearing, the parties will presumptively share in any post-separation increases in the value of family property. Once again, because of s. 81, this entitlement exists independent of the parties' respective contribution to the post-separation increase in value.

[Emphasis added]

Division of Family Property

- [290] The equity in the family home as at the date of trial should be divided equally between the parties. I have considered the claimant's request to value the family home at the date of separation and I have rejected that request. The alternative is to consider whether it would be significantly unfair to equally divide the proceeds of sale of the family home. I do not find that it is significantly unfair to equally divide the equity in the family home.
- [291] The valuation of the family home at the date of trial is \$1,100,000. The balance owing on the mortgage at the date of trial is \$747,145. The equity in the family home is \$352,855. Each party should receive \$176,427.50.
- [292] The claimant wishes to remain in the family home and pay out the respondent's interest. There will be some deductions from his interest in the equity in the family home before the division occurs.
- [293] It is clear that the inheritance the claimant received from her great-aunt is excluded property. The respondent received an advance on his division of family property from this excluded property fund. He will repay the full \$65,000 to the claimant out of his share of the equity in the family home thus reducing his share to \$111,427.50. Having paid the amount back in full from his share of the property, he is free to retain the balance in his former lawyer's trust account.
- [294] From this balance of \$111,427.50, the respondent will pay his arrears in child support and special and extraordinary expenses totaling \$10,936.40 reducing his share to \$100,491.10. There will be a further reduction of the debt equalization payment in the amount of \$4,292.50 which I will explain below. This reduces his share of the family home to \$96,198.60.

- [295] Upon confirmation that the claimant has those funds in a trust account, and upon receiving confirmation that the claimant will have the respondent removed from the RBC mortgage registered against the family home within 60 days and will indemnify him for any liability arising from that mortgage, and on counsel's undertakings to pay that amount to the respondent, the respondent will release his interest in the family home to the claimant.
- [296] I understand that the house is registered in the claimant's name solely but that there is a Certificate of Pending Litigation registered on title by the respondent's former counsel, Scott Taylor. The respondent will have to sign a letter permitting its release. That letter will be prepared by the claimant's counsel and the respondent is ordered to sign and return the letter once he has confirmation that the funds are available to pay out his interest. Upon receipt of the signed Release of Certificate of Pending Litigation, the claimant's counsel will provide the respondent with a certified cheque in the amount of \$96,198.60.
- [297] In the event that the claimant is not able to release the respondent from his obligations under the mortgage registered against the family home, the family home will be listed for sale on an MLS listing service. The parties will have joint conduct of sale and have liberty to apply to court for further direction.
- [298] The claimant will retain the RBC investment account ending in the numbers 9675, being the inheritance investment account as her own property and any order restraining her from using this fund is set aside.
- [299] Subject to orders for security for child support, one-half of the RRSP acquired by the claimant during her employment with the RBC, currently held in RBC account ending in the numbers 8109 in the approximate amount of \$392,275, will be transferred by way of spousal rollover into an account in the respondent's name within 60 days of the release of this decision. The respondent's interest in the RRSP is charged with the obligation to transfer the lump-sum child support and s. 7 amounts referred to previously, into an interest-bearing account in the claimant's name in trust for the children.
- [300] Each party shall retain possession of all right title and interest in all bank accounts, investments and insurance policies in their name. Any order restraining the use of bank accounts is set aside.
- [301] Each party shall keep their own employment pension. The claimant will be the sole owner of her former RBC pension now held in a locked RRSP being account ending in the numbers 8190. The respondent shall be the sole owner of his employment pension with the school district.
- [302] All bank accounts opened by the claimant in trust for the children shall remain the property of the children and the claimant will continue to be trustee of these accounts. These accounts are listed below:

Child One - TFSA

RBC Account Number ending in 4307

Child Two - TFSA

RBC Account Number ending in 3513

Child One - RESP

RBC Account Number ending in 9135

Child Two - RESP

RBC Account Number ending in 8801

Child One - Youth Account

RBC Account Number ending in 6779

Child Two - Youth Account

RBC Account Number ending in 6787

[303] At the trial of this matter, I made certain orders with respect to personal property and while I prepare this decision I am assuming those orders have been complied with although I did receive a request to appear before me again. Out of an abundance of caution I will set out these orders here and make a further order. I ordered that on January 31, 2017 at 3:45 p.m. the respondent attend at the family home to pick up the cargo trailer which he had insured during the trial. I further ordered that the respondent attend at the family residence at 4:00 p.m. on February 8, 2017 to remove 30 boxes of his personal property.

[304] Finally, I ordered that by January 31, 2017, the claimant download the remainder of the children's pictures and provide a copy of the pictures on a flash drive to the respondent.

[305] Once these orders have been complied with I then order the parties shall retain their personal property and vehicles in their own possession.

What Debts are Family Debts?

[306] The family debt is defined as all financial obligations incurred by a spouse during the period beginning when the relationship between the spouses begins and ending when the spouses separate and after the date of separation if incurred for the purpose of maintaining family property.

[307] It is no longer necessary to prove that property and debt were acquired for family purposes: *Asselin v. Roy*, 2013 BCSC 1681 at para. 240 and *Bilawchuck v. Bilawchuk*, 2014 BCSC 2067 [Bilawchuk].

- [308] Madam Justice Fenlon, as she then was, comments in Bilawchuk that s. 87 of the FLA provides that debts, like assets, are to be valued at the time of trial but this general rule cannot be applied rigidly, without regard to what has transpired since the date of separation. For example, in that case, Ms. Bilawchuk had paid down her student loans. If that debt was valued at trial, Ms. Bilawchuk would have received no credit for having significantly reduced family debt post-separation.
- [309] I have before me an additional problem and that is one of disclosure. I have some evidence of what the date of separation debt level was but the current debt level is less clear. Some debts were frozen around the date of separation and went into collections and other credit vehicles have used post-separation.
- [310] To create the fairest result possible, I agree that a flexible approach is required. In this case a determination of the appropriate valuation date on a debt-by-debt basis is required because some debts were paid down, some debts were added to in order to preserve and maintain family property, and some debts were increased for personal reasons.
- [311] I find that the mortgage is a family debt. Its valuation date should coincide with valuation date for the family home given the findings I have made with respect to the claimant's occupational rent and the respondent's indirect contributions toward the payment of this mortgage. The mortgage balance at trial is \$747,145.
- [312] The joint Visa is a family debt. The best evidence I have for valuation is at June 3, 2014 showing a balance of \$33,709. This is the closest valuation I had to the date of separation and I will rely on that value.
- [313] The claimant's Visa balance of \$493 and American Express balance of \$251 are family debts. The claimant's personal line of credit of \$5,000 is a family debt.
- [314] The Default Judgment totaling \$67,559.15 is a family debt. The balance owing on these accounts was incurred prior to the date of separation. The use of the money is immaterial under the FLA. The claimant has not rebutted the presumption that they are family debts. It was clear that she and the respondent ignored these debts post-separation but I find that they were debts incurred by the family or the family business prior to separation.
- [315] The fact that the claimant claims to be unaware of the level of the business debts is irrelevant. She was aware of the amounts owing as set out in the September Demand Letter. She has not proven that the respondent used the business credit card and line of credit for anything other than business purposes. The business is what allowed parties to buy their home and in combination with the claimant's income, supported their lifestyle. It would be unfair to exclude any of these debts.
- [316] The respondent's account ending in the numbers 6062, showing an outstanding balance as at January 4, 2017 of \$25,062.46, is not a family debt and is the respondent's sole responsibility. The 2017 balance credit line account ending in the numbers 5-001 in the amount of \$10,973.09 is either a post-separation debt and not a family debt or has already

been included in the default judgment. This additional amount will not be divided between the parties. If it is a new debt then it is the respondent's sole responsibility. If it is included in the default judgment then it has already been divided.

- [317] The parties agree that they borrowed money from W. prior to separation. The balance of this debt at separation was \$53,000. Post-separation, an additional \$16,370 was borrowed prior to December 1, 2014. I find this additional money was more likely than not used to support the claimant's household and to maintain the mortgage on the house. In that regard it is a family debt.
- [318] Fifteen thousand dollars was loaned to the claimant on December 1, 2014 to pay her portion of the joint credit card debt listed above. If this amount is included in the family debt owed to W., there will be a double accounting of this debt. I therefore find the balance of the family debt owed by the parties to W. is \$70,000 plus any interest earned thereon. W.'s evidence is that the interest was \$800.

Division of Family Debt

- [319] I find the fairest division of family debt is to equally divide the balance on the joint Visa as at June 2014 and to have the respondent pay the balance owing on the Default Judgment and the claimant pay the debt to W., her line of credit debt and credit card debts. This will create an imbalance in the respondent's favour. The respondent will therefore equalize the debt by paying \$4,292.50 to the claimant from the division of family property.
- [320] The respondent will be solely responsible for paying the balance owing on the joint Visa and is to indemnify and hold harmless the claimant for all charges associated with that account. This is in recognition of the fact that the claimant has already paid her share of this family debt and paid over \$6,000 of interest on this family debt post-separation.
- [321] The respondent is to pay the Default Judgment plus any interest accrued thereon and is to indemnify and hold harmless the claimant from all charges associated with that debt.
- [322] The claimant will pay the family debt owed to W. in the amount of \$70,800 plus any further interest thereon and is to indemnify and hold harmless the respondent from all charges associated with that debt.
- [323] The claimant will assume responsibility for her credit cards and line of credit owed at the date of separation.
- [324] I have set out here the value of the family debts to be divided:

Claimant

Respondent

Joint Visa - \$16,859 plus interest accrued

Joint Visa - \$16,859

Default Judgment - \$67,559 plus post-judgement interest

Debt to Ms. W. - \$70,800

Credit card balances and line of credit balance as at date of separation - \$5,744

Sub-total - \$84,818 plus interest

Sub-total - \$93,403

Equalization payment - + \$4,292.50

- \$4,292.50

Total - \$89,110.50

Total - \$89,110.50

[325] Each party shall be solely responsible for lines of credit, debts on credit card, and any debt to Revenue Canada in his or her own name.

summary of orders

Guardianship, Parenting Responsibilities and Time

[326] The parties are both guardians of the children.

[327] Each party shall be entitled to all parental responsibilities during the time the children are in their care except where provided below.

[328] The claimant be solely responsible for enrolling the children in extracurricular activities provided that she notify the respondent in advance of her intention to do so and that she seek his consent if the extracurricular activity will affect his parenting time or if she is seeking reimbursement for the cost of the activity.

[329] The claimant shall be solely responsible for attending to the children's health-related treatments. She will, however, be obliged to keep the respondent informed of any health-related treatments. The respondent will retain the right to seek out emergency health-related treatment on condition that he advises the claimant as soon as possible of the details of the treatment.

[330] The children shall primarily reside with the claimant and continue to have parenting time with the respondent from Friday after school to Monday morning every other weekend. On alternate weeks during the week when the children will not have a weekend with the respondent, the respondent will have parenting time Wednesday after school until Thursday morning.

- [331] The children will be picked up at school unless the pick-up days are on a non-instructional day, in which case they will be picked up at the claimant's home. Drop-off will be in the driveway at the claimant's home before 8:00 a.m. on a school day or at school. The alternating weekends will commence on the day to be agreed between the parties which is synchronized with the respondent's previous weekend with the children.
- [332] In the event that the Monday attached to the respondent's weekend is a statutory holiday or the Monday or Friday is a professional development day, the weekend will be expanded to include that non-instructional day.
- [333] The respondent shall have parenting time with the children during school breaks as follows: One week during winter school holidays. In odd-numbered years, the claimant will have the first week of the winter school holidays from Friday afternoon on the day school gets out for the holidays until 4:00 p.m. the following Friday. In even-numbered years, the respondent will have the first week of school holidays from Friday after school on the day school gets out until 4:00 p.m. the following Friday. The parties are liberty to reverse this order if they consent in writing.
- [334] On Christmas day, the parties will split the day between them so the children will have Christmas Eve and morning with the parent whose parenting week that year contains Christmas day. The other parent will pick the children up at 2:00 p.m. at the first parent's home and will return them to the first parent's home by 9:00 p.m. Christmas night.
- [335] The parties will each have one week parenting time during the school spring break with the claimant having the first week of school break in odd years and the respondent having the first week of school break in even years.
- [336] The parties will each have four weeks parenting time with the children in the summer to be split into 2 two-week vacations. Such visits are to be separated by at least two weeks. Proposals for summer holiday requests are to be exchanged in writing by May 1 of each year.
- [337] The regular parenting rotation schedule will be suspended during the school breaks and resume when school returns.
- [338] Any additional parenting time must be agreed to in writing. The respondent is not at liberty to attend at the children's school during the day and remove them without the consent of the claimant.
- [339] Each parent is at liberty to call the children one time per day when the children are in the care of the other parent between 7:00 and 7:30 p.m. These calls are not to be taped or monitored by the other parent. The children are at liberty to phone or text each parent at will from their own phones.

Conduct Order

[340] Pursuant to s. 225 of the FLA, I order that the parties will limit their communication to email communication using respectful language and restricting their communication to issues affecting the children. In the case of an emergency, the parties may communicate directly with one another or by telephone. At no time will the respondent enter the claimant's residence unless he is invited to do so by the claimant.

Child Support

[341] I impute income of \$27,000 to the respondent. He is ordered to pay the claimant \$420 per month in child support for the two children commencing on June 1, 2015 and continuing each and every month thereafter for as long as the children are children of the marriage. When the First Child ceases to be a child of the marriage, the respondent will pay the claimant \$239 a month for child support for the Second Child.

[342] Prospective child support will be secured by a lump sum fund as set out below.

Retroactive Child Support

[343] As at May 1, 2017, the respondent is in arrears of basic child support in the amount of \$9,240. This amount will be paid from the respondent's share of the division of family property.

Special and Extraordinary Expenses

[344] For the purpose of determining special expenses, I find the claimant's income is \$65,144 and the respondent's imputed income is \$27,000.

[345] The respondent shall pay 30% of special and extraordinary expenses and the claimant shall pay 70% of those expenses. This will commence on May 1, 2017.

[346] Special and extraordinary expenses will be defined in the order as it is in s. 7 of the Guidelines as:

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

- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

[347] The claimant shall provide proof of any medical, dental or orthodontic expense to the respondent. The respondent shall reimburse the claimant for 30% of her out-of-pocket dental expenses net of any insurance coverage she receives from her plan. The claimant will provide any documentation needed for the respondent to make a claim against K.'s medical and dental plan. The claimant is not responsible for modifying that document in any way.

[348] The respondent shall reimburse the claimant his proportionate share of retroactive special and extraordinary expenses in the amount of \$1,696.40 from his share of family property.

Security for Child Support

[349] In order to secure payment for child support, the respondent, upon receiving the transferred RRSP funds from the claimant, shall execute documents authorizing the financial institution to withdraw from the RRSP, an amount sufficient after-tax to allow him to pay the claimant the sum of \$30,618 to be placed by her into an interest-bearing account in the claimant's name in trust for the children. The claimant is entitled to withdraw monthly child support from that fund in an amount as set out in this order. Any surplus from interest earned on this fund shall be applied to special and extraordinary expenses for the children with notice to the respondent.

[350] The respondent shall execute documents authorizing the financial institution to withdraw a further amount sufficient after-tax to allow him to pay to the claimant a further \$10,000 to be placed by her into an interest-bearing account in the claimant's name in trust for the children to pay for special and extraordinary expenses.

[351] The claimant is required to request reimbursement of special and extraordinary expenses from the respondent first as set out above but, if after 60 days the respondent has not reimbursed her, she is authorized to withdraw his contribution from the \$10,000 held in trust by her for this purpose.

[352] If there is any surplus in either fund when the children are no longer eligible for child support the surplus will be returned to the respondent.

Variation of Child Support

[353] Either party is at liberty to apply to vary the amount of monthly maintenance in the event the respondent earns in excess of \$27,000 a year.

Family Property

- [354] The equity in the family home in the amount of \$352,855 is to be equally divided so that each party should receive \$176,427.50 subject to the adjustments set out below.
- [355] The respondent will repay the full \$65,000 advance to the claimant out of his share of the equity in the family home thus reducing his share to \$111,427.50. Having paid the amount back in full from his share of the property, he is free to retain the balance in his former lawyer's trust account.
- [356] From this balance of \$111,427.50, the respondent will pay his arrears in child support and special and extraordinary expenses totaling \$10,936.40 and a debt equalization payment in the amount of \$4,292.50. The balance the claimant is to pay to the respondent for his share of the family home is \$96,198.60.
- [357] Upon confirmation that the claimant has those funds in a trust account, and upon receiving confirmation that the claimant will have the respondent removed from the RBC mortgage registered against the family home within 60 days and will indemnify him for any liability arising from that mortgage, and on counsel's undertakings to pay that amount to the respondent, the respondent will release his claim to the family home.
- [358] The respondent shall sign a letter prepared by the claimant's counsel releasing the Certificate of Pending Litigation registered against the family home and return the letter to the claimant's counsel once he has confirmation that she has the funds available to pay out his interest. Upon receipt of the signed Release of Certificate of Pending Litigation, the claimant's counsel will provide the respondent with a certified cheque in the amount of \$96,198.60.
- [359] In the event that the claimant is not able to release the respondent from his obligations under the mortgage registered against the family home, the family home will be listed for sale on an MLS listing service. The parties will have joint conduct of sale and have liberty to apply to court for further direction.
- [360] The claimant will retain the RBC investment account ending in the numbers 9675, being the inheritance investment set account as her own property and any order restraining her from using this fund is set aside.
- [361] One-half of the RRSP acquired by the claimant during her employment with the RBC, currently held in RBC account ending in the numbers 8109 in the approximate amount of \$392,275 will be transferred by way of spousal rollover into an account in the respondent's name within 60 days of the release of this decision. The respondent's interest in the RRSP is charged with the obligation to transfer the lump-sum child support and special and extraordinary child support amounts referred to previously, into an interest-bearing account in the claimant's name in trust for the children.

[362] Each party shall retain possession of all right title and interest in all bank accounts, investments and insurance policies in their name. Any order restraining the use of bank accounts is set aside.

[363] Each party shall keep their own employment pension. The claimant will be the sole owner of her former RBC pension now held in a locked RRSP account ending in the numbers 8190. The respondent shall be the sole owner of his employment pension with the school district.

[364] All bank accounts opened by the claimant in trust for the children shall remain the property of the children and the claimant will continue to be trustee of these accounts. These accounts are listed below:

Child One - TFSA

RBC Account Number ending in 4307

Child Two - TFSA

RBC Account Number ending in 3513

Child One - RESP

RBC Account Number ending in 9135

Child Two - RESP

RBC Account Number ending in 8801

Child One - Youth Account

RBC Account Number ending in 6779

Child Two - Youth Account

RBC Account Number ending in 6787

[365] Once the orders made on January 27, 2017 related to personal property are complied with, the parties shall retain their personal property and vehicles in their own possession.

Family Debt

[366] The parties are equally responsible for the joint Visa owing as at June 2014. The respondent will be solely responsible for paying the balance owing on the joint Visa and is to indemnify and hold harmless the claimant for all charges associated with that account.

[367] The respondent is to pay the Default Judgment plus any interest accrued thereon and is to indemnify and hold harmless the claimant from all charges associated with that debt.

- [368] The claimant will pay the family debt owed to W. in the amount of \$70,800 plus any further interest thereon and is to indemnify and hold harmless the respondent from all charges associated with that debt.
- [369] The claimant will assume responsibility for her credit cards and line of credit owed at the date of separation.
- [370] As set out above, the respondent will equalize the debt payments by reducing his share of the division of the house equity by \$4,292.50.

COSTS

- [371] The parties may make arrangements through Supreme Court Scheduling to appear before me to address the issue of costs.

Seized

- [372] I will remain seized of this matter for a period of one year.

Signature on the Order

- [373] I dispense with the requirement of the respondent's signature on the order.

"Young J."

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