
CANADA / JUDGMENT

K.D.M. v. T.M.L.C.

2015 BCSC 1509

COURT

Supreme Court of British Columbia

DECIDED

27 August 2015

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2015 BCSC 1509 K.D.M. v. T.M.L.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.D.M. v. T.M.L.C.,

2015 BCSC 1509

Date: 20150827

Docket: E40642

Registry: New Westminster

Between:

K.D.M.

Claimant

And

T.M.L.C.

Respondent

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for the Claimant:

J. Hittrich

A. Grewal

Counsel for the Respondent:

P. Daltrop

J. Johnson

Place and Dates of Trial:

New Westminster, B.C.

April 7-10, 13-17, 2015

Place and Date of Judgment:

New Westminster, B.C.

August 27, 2015

Introduction

- [1] The principal issues in this matrimonial litigation are the division of the parties' assets and a determination of their respective incomes for spousal and child support purposes. The former is complicated as a result of the post-separation sale of family assets, specifically the shares in Rite-Way Metals Ltd. ("RWM") and the husband's disposal of assets following the commencement of these proceedings in 2012. As well, there are taxation issues which potentially affect the net value of the parties' estate.
- [2] The claimant wife is 43 years old and the respondent husband is 41 years old. They married on August 19, 1995, following a brief period of cohabitation, during which their oldest child, a son, was born. He is now an adult, and does not figure in this litigation. In 2000, the parties' second child, B., was born. She remains a child of the marriage in the primary care of the claimant.
- [3] At the trial's commencement, I was advised that the parties had agreed to an order of joint custody and joint guardianship under the Divorce Act, R.S.C. 1985, c. 3, and that B.'s primary residence would be with the claimant. The respondent was to have reasonable parenting time as agreed between him and B.
- [4] Since the parties' separation in 2011, the respondent has commenced a relationship with another woman, T.P. They have cohabited since December 2011 at her residence. Subsequent to the commencement of their relationship, T.P. incorporated a business called Altium Building Corporation ("Altium"), which performs substantially the same type of work done by the respondent prior to the sale of RWM.
- [5] The respondent now works as a salaried employee of Altium at a compensation level considerably below that which he earned during the latter stages of the marriage.

- [6] After separation, the claimant secured employment in an entry-level retail position paying modestly above the minimum wage. She took a second job at a private liquor store. At trial, she was in receipt of workers compensation benefits as a result of injuries sustained during a workplace accident.
- [7] In June 2013, a consent order was made requiring the respondent to pay child support of \$1,364 and spousal support at \$3,083 per month. Prior to that order, support was paid on an ad hoc basis from the time of separation.
- [8] In early 2013, the former matrimonial home was sold and the proceeds were placed in trust. In August 2013, the parties' interest in RWM was sold to D.M. for \$400,000 cash and \$65,000 worth of equipment. The cash was deposited into trust. The equipment, primarily an automobile, was transferred into the respondent's name.
- [9] The sale of RWM resulted in the cessation of the respondent's employment income and the receipt of dividend income from RWM into Engage Holdings Ltd. ("Engage"), a company created as a result of accounting advice so as to split income between the respondent and the claimant.
- [10] The respondent has fallen significantly into arrears of support pursuant to the June 2013 order. As at trial, arrears were said to be in excess of \$80,000.
- [11] In the latter part of 2013, the respondent filed and served a Notice of Application seeking to reduce his support obligation, cancel arrears and vary the support payable. That application was adjourned and was never reset.
- [12] Each of the parties alleges an entitlement to compensation for assets disposed of by the other of them post-separation. The claimant encroached upon her RRSP by making a withdrawal of \$20,000. The respondent converted approximately \$40,000 of Engage funds into personal assets or for payment of personal expenses, including legal fees. He, too, withdrew funds from his RRSP following separation.

Issues

- [13] The following are the issues for determination:
1. What are the family assets to be divided, and is the claimant entitled to an unequal division based upon any of the enumerated factors in s. 65(1) of the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA]?
 2. Is either of the parties entitled to a compensation order in respect of assets disposed by the other of them post-separation?
 3. What, if any, debt should be considered in the apportionment of assets?

4. What are the respective incomes of the respondent and the claimant for the purposes of determining support obligations of child and spousal? Should either of the parties to have income imputed to them, and, if so, in what amount?
5. Are the outstanding arrears of child and spousal support enforceable as against the respondent or are they to be cancelled in whole or in part?
6. Should the divorce order be delayed pending determination of possible tax issues arising as a result of tax avoidance plans initiated parties' accountant?

Background

- [14] Both parties are high school graduates with minimal post-secondary education. Neither obtained a post-secondary degree or diploma.
- [15] Prior to marriage, the claimant held a number of entry-level jobs, including counter work in retail sales and working at a Costco warehouse. Her father operated a roofing business, which was the predecessor to RWM. RWM is a sheet metal and cladding company that was later operated by the respondent and the claimant's brother, D.M.
- [16] Prior to marriage, the respondent was employed as a drywall installer.
- [17] Since the birth of their son, C., in 1994, the claimant has had little by way of remunerative employment outside of the home. Prior to separation, she occasionally babysat for friends or family, earning a modest income.
- [18] After they began cohabiting, the respondent began working with the claimant's father and brother.
- [19] Sometime in the late 1990s, or perhaps early 2000, the respondent, together with D.M., began operating RWM.
- [20] The respondent's primary role was fieldwork, including estimating and supervising RWM's projects. D.M. focused primarily on the administrative side of the business.
- [21] While not instantly successful, the business grew and became increasingly profitable, such that by 2007 or 2008 the corporate accountant suggested a tax plan involving a series of transactions which resulted in the creation of Engage and a family trust known as the C. Family Trust.
- [22] A similar tax planning regime was established by the M. family.
- [23] The major benefit of the tax plan was that RWM's revenues could be paid into the respective holding companies on a tax neutral basis, allowing dividends to be paid to the lower earning spouse.

- [24] Following the creation of Engage, the claimant began to receive an income which, when coupled with the respondent's employment income of approximately \$90,000 from RWM, totaled in excess of \$200,000 annually.
- [25] Additionally, RWM provided benefits, including use of a corporate vehicle by the respondent, cellular phones for the entire family, occasional meals out for the parties or their family and, in addition, travel expense as against RWM as business travel.
- [26] Despite the substantial income they earned, it was less than what the parties spent. Each admitted to living beyond their means, although each blamed the other, expressly or impliedly, for the excess spending.
- [27] To assist with cash flow and as part of the tax strategy initiated by their accountant, the parties transferred ownership of the then matrimonial home located at 19099 87A Avenue, Surrey, British Columbia ("87A Avenue") into Engage, thus creating a shareholders loan account through which they could draw funds from Engage without immediate tax consequences.
- [28] The downside of that strategy was the loss of any capital gains exemption on the accretion to 87A Avenue's value, as well as the deferred tax consequences of getting the eventual sale proceeds out of Engage and into the hands of its shareholders.
- [29] 87A Avenue is still owned by Engage and has an agreed value of \$600,000, some \$75,000 in excess of its adjusted cost base at the time of its transfer into Engage. The parties are in agreement that it should be sold and that some modest repairs should be done prior to its listing. The outstanding mortgage on 87A remains a joint personal liability of the parties to be paid from the net proceeds of sale after tax.
- [30] The respondent says that his parents are still owed \$40,000 in respect of a loan made at the time 87A Avenue was purchased and that the division of assets needs to account for that debt. The claimant, while acknowledging money was borrowed from the respondent's parents at the time of purchase, testified that the respondent had told her the loan had been repaid.
- [31] Neither of the respondent's parents testified at trial, nor was any documentation produced respecting the original loan or its partial repayment.
- [32] At or near the time of the transfer of 87A Avenue into Engage, the parties purchased a home at 8666 Fruno Place ("Frunko Place"). The purchase price exceeded \$1 million, and the property was heavily encumbered.
- [33] All the while, the parties acquired other "toys". The respondent has a fully restored vintage 1957 Chevrolet estimated by the parties to be worth between \$45,000 and \$85,000. He also has a Harley-Davidson motorcycle, a dirt bike and several pieces of equipment associated with RWM's business.

- [34] The parties also purchased a shell of a 1949 Ford truck was purchased with a view to restoring it for the claimant's use, but they separated prior to the restoration occurring.
- [35] In the fall of 2011, the parties separated. Initially, the respondent went to live with a friend. Later he moved in with his parents. Eventually, in December 2011, he moved in with T.P., his current common-law spouse.
- [36] They currently reside on a 10 acre piece of property owned by T.P. She is currently constructing a 7,000 ft.² home on the property at an estimated cost of \$1.2 million. The funding is apparently all from T.P., who, according to her testimony, has 'family money'.
- [37] For a period of time following separation, banking arrangements between the parties remained the same as before. The respondent deposited both his salary from RWM and the biweekly deposits that Engage received into the joint family bank account at BMO. The monthly total deposits were in excess of \$12,000. Both parties accessed the account until sometime after the commencement of this litigation in 2012.
- [38] Following the commencement of proceedings, the respondent began making deposits of \$3,000 biweekly to the joint account, but nothing more. Through counsel, the claimant complained of the amount. According to her, the mortgage on Fruno Place, coupled with other fixed expenses, made the \$3,000 biweekly payments inadequate to meet her and B.'s expenses.
- [39] In or about March 2012, Engage received an extraordinary payment of \$50,000. This was in addition to the regular biweekly payments of \$4,000 made by RWM and channeled through to the parties' joint account throughout the preceding several years.
- [40] The respondent did not make this deposit known to the claimant and quickly spent the bulk of the \$50,000 for his own purposes. He bought equipment, loaned money to his common-law partner's daughter, paid legal fees and other expenses unrelated to the family or the operation of Engage.
- [41] Engage funds were also used for the down payment on a Kubota excavator used in T.P.'s property. As well, a series of payments on the excavator were made using Engage funds. This was said to be in error, but the funds have never been repaid to Engage. In total, Engage paid something in the order of \$8,000 on account of the Kubota.
- [42] The respondent also disposed of a 2008 Blazer trailer in March 2012 for \$5,000.
- [43] While in occupation of Fruno Place post-separation, and after the respondent reduced monthly payments to approximately \$6,000 per month, the claimant ceased making mortgage payments on 87A Avenue. She did not advise the respondent, who only learned of the default when a demand letter was sent by the bank's lawyers threatening foreclosure.

- [44] In the result, the respondent paid just over \$17,000 in November 2012 to Lawson Lundell LLP so as to bring the mortgage payment back into good standing. For the next three months, during December 2012 and January and February 2013, he withheld the \$6,000 monthly payment that he had previously been making to the claimant.
- [45] The source of the payment is not clear. I presumed that the payment came from the funds which would otherwise have been paid to the claimant (\$6,000 a month). However, it's possible they were removed by the respondent from the C. Family Trust.
- [46] In response, no doubt, to the respondent's failure to supply her with support, the claimant withdrew \$20,000 from her RRSP. The respondent has cashed in \$7,500 in RRSPs since separation.
- [47] Fruno Place has since been sold. The net proceeds of sale, after payment of all encumbrances and payment of some joint debt by agreement resulted in approximately \$75,000 being placed in trust.
- [48] Amongst the debts paid were approximately \$45,000 owed by the parties to Canada Revenue Agency ("CRA"), a joint debt to BMO, a judgment as against the claimant in respect of her TD Visa, payment of their son's tuition and approximately \$5,600 to the BMO on account of mortgage arrears in respect of 87A Avenue. The respondent admits that the mortgage arrears arose as a result of his failing to make payments on account of it, as was agreed to between the parties.
- [49] Disclosure has been an issue in these proceedings. Un-redacted banking records for Engage were not produced until just prior to trial, despite an order of the court requiring their production in August 2013.
- [50] Despite the significant income coming into Engage, the respondent complained that he was falling behind in debt repayment. Specifically, he says that he has allowed Medical Service Plan of B.C. ("MSP") premiums to accrue over the post-separation period such that he claims the current indebtedness of approximately \$5,300 should be seen as 'family debt', warranting reapportionment or adjustment of the division of family assets. He also seeks payment of other debts in his name; notably, Fortis BC, legal fees to McQuarrie Hunter and accounting fees in respect of Engage.

The Litigation History

- [51] These proceedings were commenced in 2012. At a Judicial Case Conference in August of that year, a declaration under s. 57 of the FRA was pronounced by consent. Parenting arrangements were agreed to and the parties agreed to obtain a valuation of the corporate assets.
- [52] Although a valuator was engaged, the valuation of the corporate assets was never completed.

- [53] On June 4, 2013, while negotiations were ongoing for the respondent's sale of his interest in RWM, a consent order was pronounced which provided for payment by the respondent of \$1,364 in monthly child support and \$3,083 per month spousal support. The order was made "without prejudice to any future applications regarding spousal and child support by either Party whether prospective or retrospective."
- [54] The order also provided that spousal support was to be paid in part to the claimant and in part on account of the 87A Avenue mortgage so as to ensure the monthly mortgage payment was made.
- [55] On August 15, 2013, Saunders J. made an order mutually restraining the parties from disposing of, transferring or dissipating assets, as well as an order requiring \$5,641.81 to be paid from trust to BMO's lawyers so as to pay mortgage arrears in respect of 87A Avenue which the respondent acknowledges were his responsibility. The parties were also ordered to produce financial disclosure, including Engage's bank accounts.
- [56] The disclosure of Engage's accounts for the period in which the respondent used the \$50,000 extraordinary payment did not take place until shortly prior to the commencement of trial.
- [57] In November 2013, following the sale of the respondent's interest in RWM, the respondent applied to vary the existing support orders. Owing to the unavailability of the claimant's counsel, the matter was adjourned on condition that enforcement be stayed until the respondent's application was heard. A December date for the application's return was referenced in the order, but, to date, the application has not been heard.

The Sale of RWM

- [58] The parties' separation impacted the relationship between the respondent and the other owner of RWM, D.M.
- [59] As early as February 2013, the two had begun discussions about the sale of the respondent's interest in RWM to D.M. and/or his holding company.
- [60] Despite the passage of almost one year since the Judicial Case Conference, the valuation of corporate assets had not occurred.
- [61] It is unclear as to what, if any, accounting or legal advice either the respondent or D.M. received in the early days of those discussions. Nonetheless, by March of 2013, D.M. had offered the respondent \$1 million for his interest in RWM. That offer was communicated to claimant's counsel via a letter from the respondent's counsel, dated March 18, 2013.
- [62] It advised that the respondent wished to accept D.M.'s offer to purchase "[T.M.L.C.]'s interest in the business for \$1 million". No reference was made to a non-competition clause.

- [63] Claimant's counsel responded that she could not agree to a valuation of \$1 million absent a formal valuation. He noted in reply, "the other major problem with any buyout of your client's interest in Rite-Way is that it would render him without any income from which to pay support. Clearly your client's earning capacity is a major issue".
- [64] The respondent's counsel, in response to that letter, recognized that a buyout of the respondent's interest would indeed temporarily render him without income with which to pay spousal support. The answer, he suggested, was not a refusal of the proposed buyout, but a request that the claimant "make an offer that takes into account your client's needs for support in addition to the approximate sum of \$500,000 that she would receive from the sale".
- [65] By April of 2013, D.M. forwarded a letter of intent respecting the intended purchase which clearly specified that it was conditional upon the respondent agreeing to a non-competition clause for a period of two years. Payment of the \$1million was to be made in stages, with a substantial payment on completion and \$250,000 payable over time.
- [66] The respondent testified he never saw the letter of intent until much later in time, but, in any event, he would have never agreed to its terms given the restriction it would place on his ability to earn income.
- [67] Later, in April 2013, or perhaps May 2013, D.M. learned that the respondent had actively pursued clients or former clients of RWM through the vehicle of Altium and that Altium was competing with RWM for contracts.
- [68] As it turned out, the contracts being pursued by Altium were contracts D.M. had determined would not be performed by RWM. Nevertheless, at least in D.M.'s mind, the respondent was already competing with RWM. In the result, the \$1 million offer was withdrawn.
- [69] D.M. engaged a lawyer, Greg Palm, to represent his interests. A series of communications followed between Mr. Palm, the respondent's counsel, Mr. Daltrop, and claimant's counsel, Mr. Hittrich.
- [70] What can only be described as a series of sabre rattling exchanges ensued. The respondent suggested he was happy to proceed with the \$1 million offer, but not with a non-competition clause as part of what was being sold.
- [71] D.M. then suggested a valuation of RWM so as to determine a proper selling price. The alternative was a winding up of the company.
- [72] The respondent seemingly agreed to the valuation process but suggested he wanted an offer from D.M. He, too, threatened a winding up of RWM if the matter could not be resolved. By this time, in June and July 2013, the respondent was no longer attending on RWM premises, although he continued to receive full salary and Engage continued to receive dividend income from RWM.

- [73] Eventually, although no one seems entirely clear how the selling price was arrived at, a letter of intent prepared by Mr. Palm proffered an offer of \$465,000, comprised of \$400,000 cash and \$65,000 of automotive and other equipment.
- [74] Given the restraining order, the claimant's consent was required, absent the court application. The offer was communicated, through counsel, to the claimant.
- [75] Mr. Hittrich, without copying Mr. Daltrop, sought different terms: \$500,000, plus the respondent's truck, together with an assurance of the cooperation of D.M. in pursuing the respondent for claims he had stripped RWM of corporate opportunities as a result of competing with them. That offer was declined by D.M.
- [76] The claimant relented and provided her consent to the offer described above, and the sale went forward in August 2013. The \$400,000 cash was paid and placed in trust. In addition, the respondent received, in his own name, the truck that was previously leased on his behalf by RWM, together with \$15,000 of other equipment. The vehicle's lease of approximately \$50,000 was paid off by RWM.
- [77] Both parties to this action signed the agreement for sale. Upon completion of the sale, RWM discontinued payments of salary to the respondent and dividends to Engage.
- [78] In or about November 2013, respondent entered into a service contract with Altium, which provided for an initial salary of \$40,000 per year to be increased to \$54,000 after six months of employment and \$72,000 annually upon the one-year anniversary.
- [79] Thereafter, the respondent solicited former customers of RWM, promising those levels of customer satisfaction and quality of product similar or better to that which RWM had provided in the past.
- [80] Since the sale of the respondent's interest in RWM, he has, for the most part, made the mortgage payments on 87A Avenue, but none of the other payments required by the June 4, 2013 consent order.

Altium

- [81] Altium is the respondent's current employer. It does much the same work as does RWM, albeit according to its principal, T.P., its focus is on providing sheet metal and cladding services to the agricultural community.
- [82] T.P. has a long history in equestrian activities and her 10 acre property operates as an equestrian center which provides boarding and training for local riders. She testified as to extensive business experience, but acknowledged she had none in respect of metal roofing or cladding.

- [83] The business of Altium was conceived after T.P. and T.M.L.C. became a couple. T.P. testified she approached the respondent in late 2012, following a year of cohabitation, with the idea of undertaking contracts which RWM had decided not to perform. The respondent was still an employee of RWM at the time.
- [84] According to both the respondent and T.P., the respondent's involvement was limited to providing contact information respecting those two projects. Altium obtained the contracts and performed them.
- [85] Altium was incorporated in February 2013 with T.P. as the sole shareholder and officer.
- [86] Earlier in the litigation, the respondent produced an early balance sheet of Altium in respect of his application for variation of support. At trial, over objection by T.P., Altium's statements for the year end November 2014 were produced. They showed revenues for the first full year of operation of just under \$5 million, with profit before tax of \$268,000.
- [87] T.P. acknowledged that the respondent had attended at Aldergrove Credit Union with her and co-signed a \$200,000 line of credit in Altium's favour. The respondent and T.P. also maintained a joint account at the Aldergrove Credit Union since no later than July 2012. The respondent, in the main, provides the deposits into the account. T.P.'s involvement is said to be to oversee his spending to ensure debt reduction.
- [88] What is clear from that account is that the respondent pays little, if anything, of his and T.P.'s joint expenses. Despite his evidence that he contributes to household accounts, specifically utilities or cable, there was no evidence that such payments came from the joint account or any other banking facility in the name of the respondent.
- [89] According to his employment contract with Altium, the respondent commenced employment on November 1, 2013 as a probationary employee earning \$40,000 annually. Following successful completion of his probationary period, his income was to be increased to \$54,000 per year and then increased to \$72,000 per year in November 2014.
- [90] The accuracy of the respondent's commencement date as an employee is belied by a letter signed by him, dated October 8, 2013, wherein he stated:

I would like to take this opportunity to inform you that as of September 1, 2013, my partnership at Rite-Way Metals came to close. I'm informing you of this change because I value the working relationship we have developed over the years, as well as my role in helping you grow your business. It is my hope that we can continue to support your business under a new company, Altium Business Corporation.

- [91] The role of the respondent's employment contract is further called into question by virtue of the fact the respondent's salary increases did not accord with the terms of the contract. Following his probationary period, the respondent received an increase to \$60,000. But contrary to the contract's terms, his income remained unchanged as at November 2014. His salary was only adjusted following his examination for discovery in April 2015, when it was

noted to him that he was receiving \$12,000 less than the contract called for. The adjustment was not retroactive.

[92] I note the contract was executed around the time the respondent sought a variation of the support terms contained in the June 2013 order.

[93] Given the profitability of Altium over its first year of operation, no satisfactory explanation was tendered as to why the respondent was not paid in accordance with the respondent's contract of employment.

[94] I also note that former RWM employees are now employed at Altium.

[95] The respondent is described as the owner of Altium on at least one website; albeit not Altium's. Nonetheless, both he and T.P. take the position he has no equity position in the business, although it is acknowledged by T.P. that this could change in the future.

The Claimant Post-Separation

[96] After the sale of Fruno Place in March 2013, the claimant and B. both moved back to 87A Avenue and have lived there with the claimant's parents ever since. Previously, the claimant's parents rented 87A Avenue from Engage. The rent they paid more or less equated to the mortgage payment.

[97] As part of the sale of Fruno Place, the claimant's debt in respect of her TD bank visa, approximately \$21,700, was paid off because a judgment had been registered in that amount as against the parties joint interest in the home.

[98] Other debts, including joint obligations to CRA, were paid by agreement from proceeds from the sale of Fruno Place.

[99] Both parties agree that 87A Avenue should be sold. However, its sale will be complicated by tax machinations created back in 2007 through 2009.

[100] CRA has notified the parties that it is reviewing the transfer of 87A Avenue into Engage. This could result in a reassessment that could significantly erode the cash value of 87A Avenue.

[101] No reassessment has occurred to date, and thus the potential liability has not been quantified. The delay, according to the corporate accountant, Wayne Lenihan, is likely attributable to the fact that similar tax avoidance schemes are under consideration by the courts and CRA is awaiting the outcome of that litigation before determining a course of action.

[102] Mr. Lenihan suggested three possible outcomes, dependent upon the result in the litigation. Firstly, CRA might pursue the proposed reassessment resulting in significant tax being visited upon the parties. Alternatively, the transactions may be allowed to be reversed, with the consequence that a sizable shareholders loan account within Engage,

approximately \$390,000, will be erased. This would subject the entire sale proceeds from 87A Avenue to distributive taxes when the funds are paid out of Engage. Lastly, the current litigation may result in an outcome upholding the tax planning scheme initiated by Mr. Lenihan, thus resulting in the removal of the threat of a reassessment.

- [103] The transaction was done such that Engage owns the residence but the parties remain personally responsible for the outstanding mortgage. Any increase in the property's value at the time it was transferred into Engage will be subject to capital gains tax. Presently, \$390,000 of the sale proceeds will be distributed free from tax. The remainder will be subject to distributive taxes of an unknown amount.
- [104] If, in fact, CRA proceeds with the reassessment, the after-tax value of 87A Avenue to the parties may be minimal given the amount outstanding on the mortgage.
- [105] As noted before, the claimant has made some efforts to seek employment. She briefly worked for Costco as a seasonal worker in 2012. In 2013, she secured jobs with Urban Barn and a private liquor store. Her work there provided her with a combined income of approximately \$22,000 annually.
- [106] In late 2014, the claimant sustained a workplace injury while lifting a couch. As at trial, she was on a work hardening program with a view to a graduated return to her previous work.
- [107] When she is fully back at work, her income, according to her counsel, will be \$25,000 annually.
- [108] The claimant expressed an interest in retraining, either as a legal secretary, requiring a one-year course, or as a paralegal, requiring a two-year course. If she pursues those educational opportunities, it is dubious she could be expected to earn any income during her training.

The Parties' Positions

- [109] The claimant submits that the family assets ought to be re-apportioned significantly in her favor. She seeks 100% of the funds held in trust, approximately \$477,000, together with 80% of the remaining family assets. She suggests that respondent's 20% share of the remainder is sufficient to pay the arrears of maintenance that accumulated under the June 4, 2013 order.
- [110] Assuming she is successful in achieving the reapportionment she seeks, the claimant seeks spousal and child support based on an income of \$100,000 attributed to the respondent. She acknowledges that she has capacity to earn approximately \$25,000 annually, with the result that spousal support should be set at the high end of the Spousal Support Advisory Guidelines [SSAG]. She suggests that \$1,900 per month in spousal support is appropriate, with child support for B. set at \$921 per month.
- [111] The claimant's submission would see the respondent retain the chattels transferred to him as a result of RWM's sale without further claim upon them by her.

- [112] The respondent, for his part, submits that an equal division of all of the family assets would not be unfair. He includes in those assets the Corvette and the Solstice he purchased upon trading in the Ford F350 he received as part of the sale proceeds from RWM.
- [113] He seeks an adjustment for the remaining outstanding debt in his name, including the MSP debt, Fortis BC, Telus, undetermined amounts owing to the accounting firm of Myers Norris and Penny and legal fees owing to McQuarrie Hunter, as well as \$40,000 said to be owed to his parents. Lastly, he seeks an adjustment to the division of assets so as to compensate him for \$26,000 said to be owed by him to CRA in respect of his 2013 income taxes. According to the respondent, the debt arises because of the claimant's refusal to sign a receipt in respect of approximately \$21,000 paid to her in compliance with the June 4, 2013 order.
- [114] The respondent points to the wording of the June 2013 order, and says that it is within the jurisdiction of the Court to retroactively vary the consent order so as to accord with his income. He asserts that his income was \$40,000 from November 1, 2013 until April 2014, and then \$60,000 until April 2015 when it was increased to \$72,000 annually. The result, he says, is that there are no arrears of support owing, given the payments of \$1,189 made monthly on the mortgage. He also submits his future payments, premised on an income of \$72,000 for himself and \$25,000 for the claimant, result in a child support award of \$673 per month and a range of spousal support from a low of \$361 to a high of \$909. The respondent suggests the lower amount.
- [115] Each of the parties acknowledges the potential tax problems associated with the proposed reassessment noted in CRA's correspondence.
- [116] Each suggests there ought to be liberty to apply once the outcome is known.

Discussion

Property Division

- [117] Property division is governed by the FRA. Under this framework, an equal division of family assets is presumed unless the same is found to be unfair pursuant to the enumerated factors within s. 65(1) of the FRA.
- [118] Family assets and liabilities are determined as at the date of the triggering event, which is August 28, 2012 in the present case: *Blackett v. Blackett* (1989), 40 B.C.L.R. (2d) 99 (C.A.).
- [119] Debt, while not specifically referenced in the FRA, is a factor to be considered in the division of assets where it can be established that the debt arose in furtherance of a family purpose: *Mallen v. Mallen* (1992), 65 B.C.L.R. (2d) 241 (C.A.).
- [120] Where assets have been disposed of prior to trial, as is the case here, s. 66(1)(c) of the FRA allows the court to make a compensation order as against the spouse who disposed of the property, thus depriving the other spouse of their vested interest in it: *N.M.M. v. N.S.M.*, 2004 BCSC 346.

[121] Unfairness, if it exists, must be determined with reference to the enumerated factors set forth in s. 65(1) of the FRA.

[122] The relevant provisions of the FRA are set out below :

Judicial reapportionment on basis of fairness

65 (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

Determination of ownership, possession or division

66 (1) In proceedings under this Part or Part 6 or on application, the Supreme Court may determine any matter respecting the ownership, right of possession or division of property under this Part, including the vesting of property under section 65, or under Part 6 and may make orders that are necessary, reasonable or ancillary to give effect to the determination.

- (2) Without limiting subsection (1), the court may do one or more of the following in an order under this section:
 - (a) declare the ownership of or right of possession to property;
 - (b) order that, on a division of property, title to a specified property granted to a spouse be transferred to, or held in trust for, or vested in the spouse either absolutely, for life or for a term of years;
 - (c) order a spouse to pay compensation to the other spouse if property has been disposed of, or for the purpose of adjusting the division; [and]
 - (g) if property is owned by spouses as joint tenants, sever the joint tenancy.

- (3) If the Supreme Court, on application, is satisfied that a spouse has made or intends to make a gift of property to a third person, or has transferred or intends to transfer property to a third person who is not a purchaser in good faith for value, for the purpose of defeating a claim to an interest in the property the other spouse may then or in the future have under this Part, the Supreme Court may make an order under this section to restrain the making of the gift or transfer, or vest all or a portion of the property in, or in trust for, the other spouse.

[123] There is no dispute as to the identification of the family assets as at the triggering event. They consisted of the following:

1. The parties' respective shareholdings in Engage (which owned all issued shares in RWM);
2. Hollis Wealth non-registered account in the joint names of the parties;
3. the C. Family Trust;
4. 1957 Chevrolet automobile;
5. 1949 Ford truck;
6. 1979 shovel head Harley-Davidson;
7. RRSPs in the name of each party;
8. Miscellaneous automotive equipment including a car trailer, Yamaha dirt bike and Bobcat;
9. Household contents from Fruno Place; and
10. The residence at Fruno Place.

[124] Subsequent to the triggering event, both Fruno Place and Engage's interest in RWM were sold. In their stead, there is approximately \$477,000 in trust representing the after tax value of the cash proceeds, as well as \$65,000 of equipment received by the respondent as a result of the sale.

[125] Much of the joint debt existing as at the triggering event has been paid by agreement from funds received from the sale of Fruno Place. Other debts, mostly in the name of the respondent, have been paid down by the respondent following separation.

[126] According to the respondent, he has paid off his TD Visa of approximately \$3,200, his BMO MasterCard of approximately \$10,300, Sears debt of \$1,400, Diner's Club debt of \$5,500 and a TD Visa of \$1,200 following separation.

[127] The claimant says her MBNA MasterCard has a current unpaid balance in excess of \$10,000, and that \$7,000 was outstanding on the card at separation. No historical evidence of the debt was produced at trial. I know only its current balance.

- [128] What remains outstanding is \$5,500 owed to MSP, the aforementioned Fortis bill and a Telus account for \$1,500. The debts for legal and accounting services are presumably debts of Engage and not the parties personally.
- [129] The respondent subsequently traded in the Ford F350 transferred to him as part of the sale of RWM and purchased two other vehicles: a Corvette and a Solstice. That transaction was done without any consultation with the claimant.
- [130] The claimant's submission in support of the significant reapportionment in her favour is founded, in part, on the mistaken belief that Engage's interest in RWM was sold at below its market value, and that the claimant was effectively coerced into agreeing to the sale at \$465,000.
- [131] I disagree with that submission. There is no basis on which to conclude the value of Engage's interest in RWM was sold at below market value, other than D.M.'s subjective conclusion that it was worth \$1 million, provided the respondent did not compete with RWM for a period of two years.
- [132] The respondent says he never agreed to a noncompetition clause, although implicit in his counsel's letter to the claimant's solicitor in March 2013 is the acknowledgment that the respondent will be without an income for a period of time. Reading between the lines of this letter, it seems clear that some proffer of an unequal apportionment of the sale proceeds was being suggested.
- [133] Nonetheless, what in fact was sold to D.M. or his holding company was Engage's interest in RWM's assets; not any goodwill personally attributable to the respondent.
- [134] The respondent consciously chose to retain that goodwill which was no doubt built up over the course of the marriage. That it had a market value is undeniable. In my view, despite D.M.'s offer it would be inappropriate to conclude that its value was \$535,000, which is the difference between the final price agreed upon and D.M.'s original offer. Clearly, D.M.'s perception that the respondent was already competing with RWM had an impact upon his willingness to buy goodwill from the respondent.
- [135] Just as clearly, I conclude that the respondent was unwilling to agree to a noncompetition clause because he was actively considering the establishment of a competing business with the assistance of T.P.
- [136] I reject any notion that T.P., absent the essential involvement of the respondent, would have been able to get Altium up and running, let alone thriving as it is apparently doing.
- [137] The resultant situation leaves the respondent in possession of a significant, albeit non-transferable, asset. As noted, that asset developed over the course of the marriage with the support, both direct and indirect, of the claimant.

- [138] The respondent is left with significant earning capacity, premised upon the retention of his goodwill, whereas the claimant, without retraining, is likely destined to remain in entry-level jobs for the remainder of her working career. Further, the claimant will not fully realize her entitlement to spousal support given the relationship between the respondent and his employer. Support, alone, will not provide adequate redress in these circumstances.
- [139] I find that the claimant is unlikely to participate in the future stream of income generated by the respondent's expertise acquired during the marriage. His relationship with T.P., both business and personal, makes it unlikely he will ever receive income commensurate with his value to Altium.
- [140] In my view, such will be to the long term detriment of the claimant's financial future unless redressed by an unequal division of the assets.
- [141] As was noted by our Court of Appeal in *Lodge v. Lodge* (1993), 79 B.C.L.R. (2d) 360 (C.A.), in circumstances not unlike this, an equal division of assets is unfair in circumstances where one spouse, here, the claimant, has remained at home while the other, by virtue of work experience, has expanded his or her knowledge and experience in work related areas such as to have a higher earning potential than the other spouse.
- [142] In *Lodge*, Prowse J.A. recognized that spouses, usually women, suffer economic disadvantage as a result of roles assumed by them during the marriage, which is not always capable of being cured by support orders.
- [143] I note, parenthetically, that even had the respondent accepted the original offer tendered by D.M., along with the noncompetition clause which would have impacted his earning capacity, he likely would have earned as much or more pursuing other employment options than what he claims his income to be from Altium.
- [144] Instead, the respondent has retained a significant asset from the marriage, specifically goodwill that is used now and likely in the foreseeable future in a fashion such that the claimant will be unable to share its benefit. Such, in my view, warrants a reapportionment based upon the needs of the claimant to become and remain economically independent.
- [145] The appropriate reapportionment is that the claimant will be entitled to the whole of the cash proceeds which remain from the sale of Engage's interest in RWM.
- [146] The respondent will retain the \$65,000 of the chattels received as part of the sale. I appreciate they have changed character and are now primarily represented by the Corvette and Solstice.
- [147] The remainder of the assets are to be divided equally, including whatever net funds are available through Engage after the sale of 87A Avenue and the funds in trust from the sale of Fruno.

- [148] The RRSPs in the names of each of the parties are to be divided equally after notionally adding the \$20,000 withdrawn by the claimant and the \$7,500 withdrawn by the respondent. The division will occur by way of a spousal rollover pursuant to the relevant provisions of the Income Tax Act, R.S.B.C. 1996, c. 215 so as to avoid the payment of tax.
- [149] The 1957 Chevrolet and the 1978 Shovelhead Harley-Davidson motorcycle are to be sold and the proceeds to be equally divided. There will be joint conduct of sale with liberty to apply.
- [150] Each of the parties shall be responsible for any indebtedness in their name alone as at the date of these reasons. If I am wrong in my conclusion that the legal and accounting fees are corporate liabilities, the parties are at liberty to apply in respect of those debts, provided the specifics of the invoices are made available to me.
- [151] Any funds in the C. Family Trust are to be divided equally subject only to claims by CRA. There was reference in the evidence to the sum of \$15,000 remaining in the Trust. However, I note that the respondent's most recent Form 8 indicates that those funds were withdrawn by him so as to make the payment to Lawson Lundell referenced earlier.
- [152] If the latter is the case and the respondent did indeed use joint funds to pay the accumulated mortgage, then he shall repay one half the sum withdrawn from the Trust to the claimant. I make that order because of his failure to pay the \$6,000 monthly to the claimant for the months of December 2012 and January and February 2013.
- [153] Engage is, of course, a family asset. Given that 87A Avenue is owned by Engage, the parties are in agreement that it should be sold.
- [154] In keeping with that agreement, I order that 87A Avenue be listed for sale forthwith. The claimant shall be at liberty to spend no more than \$5,000 so as to improve the property and will be reimbursed for the costs of improvement from the sale proceeds. The parties are to have joint conduct of sale with liberty to apply.
- [155] While the property is for sale, the claimant shall be responsible for the payment of the mortgage. Further, she will maintain the home in good repair and cooperate with the realtor for the purpose of affecting a sale.
- [156] Upon sale of the property, if the parties are unable to agree, there will be liberty to apply as to the distribution of funds and any tax planning, if necessary, can be spoken to at that time.
- [157] I anticipate the parties will avail themselves of tax advice to ensure the most efficient distribution of the sale proceeds.
- [158] Otherwise, except as set out herein, each party is to retain those assets currently in their name or possession as at the date of these reasons for judgment.

- [159] Given uncertainty as to the impact of tax upon Engage in the sale of 87A Avenue (as well as any other assets within Engage) there will be liberty to apply in the event of any disagreement as to the calculation of taxes payable, or the manner in which the benefit of the shareholders loan is applied.

Compensation Order

- [160] The jurisdiction of the court to make compensation orders in respect of the disposal of "potential family assets"; that is to say property disposed of prior to the triggering event, is clear: *Newson v. Newson* (1986), 3 B.C.L.R. (2d) 1 (C.A.).
- [161] In April 2012, prior to the pronouncement of the s. 57 declaration, Engage received an extraordinary payment from RWM in the amount of \$50,000. This was in addition to the regular biweekly payments of \$4,000. Engage's funds were historically devoted to family purposes.
- [162] The respondent did not advise the claimant of its receipt. Indeed, not until shortly before the trial of this matter were the banking records of Engage provided to the claimant so as to inform her of the \$50,000 payment.
- [163] The money received was primarily devoted to the respondent's personal expenses, including the purchase of equipment, payment of legal fees, a loan to T.P.'s daughter and the purchase of an ATV from a tenant of T.P.
- [164] The respondent had 'forgotten' at trial what had become of the excavator purchased for approximately \$20,000. It is no longer an asset of Engage.
- [165] In addition, Engage provided the down payment and a number of monthly payments towards the purchase of the Kubota excavator for exclusive use at T.P.'s residence.
- [166] The respondent also disposed of the Blazer trailer for \$5,000 in 2012.
- [167] Both parties made withdrawals from their RRSPs which reduced the legitimate expectations of the other to receive one half their value.
- [168] While acknowledging the compensation orders are not made in respect of every disposal or expenditure, where it is demonstrated that the disposal or expenditure deprived the other spouse of a reasonable expectation that "the potential family asset" would be available for division upon the happening of the triggering event, such creates an unfairness warranting the imposition of a compensation order as against the party who received the benefits of the disposition and or expenditure: *Newson* at pp. 18-19.
- [169] The court's jurisdiction to make the compensation orders in respect of assets disposed of after the happening of the triggering event is clear: *N.M.M. v. N.S.M.*, 2004 BCSC 346 [N.M.M.].
- [170] In *N.M.M.*, Joyce J. stated the following, at para. 92:

- [193] In my opinion, the assessment of appropriate compensation in a situation such as the present is not an exact science and is not a matter of precise accounting. The foregoing evidence gives some measure of the loss of capital suffered by the Wife but in the end it is difficult to determine with certainty the value of the Wife's one-half interest in the business if it had continued to operate. There might also have been issues of income tax to consider in that event. In all the circumstances, I fix the compensation order at \$250,000.
- [171] In setting compensation order payable by the respondent to the claimant in the amount of \$15,000, I take into account those assets disposed of by him prior to or after the triggering event, but also recognize that the respondent, albeit from separate funds, paid down debt which otherwise would have been family debt. Fairness, in my mind, as the term is understood within the meaning of *Newson* and *N.M.M.*, will be achieved by such a payment.
- [172] Additionally, the respondent shall pay to the claimant the missed mortgage payments on 87A Avenue which were paid from trust funds as per the order of Justice Saunders in August of 2013.
- [173] As to the disposal by each of the RRSP funds, such was dealt with above in the division of those particular assets by calculating the adjustment as between the parties as if the withdrawals have never occurred.

Debts

- [174] The respondent argues that the division of assets should be adjusted to reflect his outstanding liability to his parents arising from the purchase of 87A Avenue. He was uncertain as to what remained owing but suggested it was approximately \$40,000.
- [175] The claimant testified that she had been told the amount was repaid.
- [176] I am not persuaded that there is any amount still outstanding on the loan. The original arrangement was never reduced to writing. Nor were any of the payments made recorded. The respondent was uncertain in his testimony as to what repayment was made and what remained owing. His father sat in the courtroom throughout much of the proceedings, and offered no evidence in support of the contention that any money remained owing.
- [177] If the respondent's father has a legal entitlement to monies lent to both the claimant and the respondent, nothing in this judgment precludes him from taking proceedings to enforce that right.
- [178] As to the debts still owing to Fortis and MSP, these arose after the triggering event. I conclude that the respondent had sufficient funds throughout the period in which the debts were outstanding such that he ought to have paid them. I specifically refer to the sizable withdrawals made by the respondent from Engage after the receipt of \$50,000 in April 2012 by Engage.

- [179] In addition, I adopt the claimant's submission regarding the respondent's CRA debt incurred post-separation. To the extent the debt arose because of the failure of the claimant to acknowledge receipt of spousal support in 2013, it can be remedied by ordering that the respondent prepare and provide the necessary documentation for the claimant's signature evidencing her receipt of spousal support and that she is to sign it and provide it to the respondent or the CRA so that the tax said to arise from the 'lost deduction' can be reversed.
- [180] If there are any penalties or costs to the respondent which arise from the claimant's failure to provide proof of payment in the first instance, she will reimburse those costs to the respondent.
- [181] I note that the claimed tax payable; \$26,000, exceeds the \$21,000 of spousal support paid by the respondent in 2013. As such, it seems likely that some of the tax payable has nothing to do with the claimant's failure to provide confirmation to CRA of the spousal support paid.
- [182] As to the claimant's indebtedness to MBNA MasterCard, no historical information was provided so as to ascertain whether the debt meets the requirements set out in Mallen. I decline to make any further order adjusting the division of property between the parties.

Spousal and Child Support

- [183] The claimant focused significant trial time on historical events which she submits influence the determination of the respondent's current ability to pay support. Specifically, evidence was led of cash transactions involving RWM, thus inviting the conclusion that the respondent's historical income has been understated. In addition, she alluded to the respondent being in contact with unsavory associates involved in criminal activities inviting, presumably, the conclusion that such still occurs and results in greater income than the respondent acknowledges.
- [184] I agree with the respondent that the events referenced by the claimant were either so dated or integrally related to his employment with RWM that they cannot now inform the determination as to what the respondent's present earning capacity is, regardless of whether the events as described by the claimant are true or not.
- [185] I also agree with the respondent that it would be double counting to both reapportion the family assets and then attribute an income to the respondent similar to that which he made during the latter years of cohabitation premised on an ownership position in RWM. The June 2013 order specifically contemplated a re-visiting of the amount of support payable including retroactive variation.
- [186] Prior to August 2013, the respondent's income was derived from a combination of his salary and the owner's share of profit of the operation of RWM. In addition, from time to time, his income was augmented by unreported income from cash jobs. I disbelieve the respondent's testimony that he accounted to RWM for the expenses incurred by RWM for such jobs, retaining for his own use only the 'profit'.

- [187] In determining the respondent's income since separation, I am mindful, given his relationship with T.P., that many of the perquisites which flowed from his former ownership in RWM remain available. For example, Altium enjoys seasons tickets to sporting venues and I have little doubt that personal expenses, including those of the respondent, are absorbed by Altium just as they were in RWM.
- [188] Whether Altium reports all of its income or for whose benefit unreported income is directed is speculative.
- [189] While I accept that the respondent currently has no ownership position in Altium, I reject the submission that the respondent's present or past income is reflective of his value to Altium.
- [190] His relationship to Altium is hardly at arm's-length, which is how an employer/employee relationship is usually characterized. Nowhere is that made clearer than by the disregard of his employer/common-law spouse when it came to abiding by the terms of his employment contract. As further evidence of the absence of an arms-length relationship, I note the respondent only availed himself of his entitlement to a raise as per his employment contract when the same was pointed out to him at his discovery in April 2015.
- [191] Additionally, it could be argued that part of the respondent's compensation package with Altium is the fact that he pays little or nothing towards his personal expenses related to housing, food and the like.
- [192] In my view, for so long as the respondent works for Altium, it is unlikely that he will be paid market wage for the services he provides. The services are of a managerial and executive nature. The whole of the evidence leads me to conclude that he, not T.P., is the directing mind of Altium, albeit I accept that she, not he, provided whatever necessary start-up capital that was required. I reject the notion that either the concept of the business or its day-to-day operation falls to T.P.
- [193] Altium's financial success is due, in no small part, to the retention of goodwill by the respondent, which was built up over his years of association with RWM and during his marriage to the claimant. As such, I find it appropriate to impute an income to the respondent of \$100,000 annually, so as to more properly reflect his historic earning capacity as an employee of RWM. His function is unchanged from that which it was with RWM prior to its sale.
- [194] In my view, it is appropriate to impute that income commencing September 1, 2013. The respondent's impending unemployment was known to them well in advance of the finalized sale of his interest in RWM. T.P. testified that the respondent began with Altium in mid-September when he ended his association with RWM. Such is consistent with his October letter to RWM's former clients.

- [195] In my view, steps were afoot in advance of that to secure contracts for business subsequently performed by Altium. I conclude the respondent was involved throughout.
- [196] When the claimant last worked, she had two part-time jobs, both of which paid close to minimum wage. Presumably, she has now returned to her employment with both the private liquor store and Urban Barn.
- [197] The claimant expressed an interest in returning to school to obtain greater qualifications. Given her relatively young age and the lengthy period of employment ahead of her, such is likely a prudent idea. However, based on current circumstances, I find the claimant's income to be \$25,000 annually; the amount submitted on her behalf by her counsel.
- [198] There is no argument but that she is entitled to spousal support both on the compensatory and needs-based model.
- [199] Applying the SSAG to the incomes of the parties as I have determined them, and factoring into the analysis the respondent's obligation to pay child support of \$921 monthly, I conclude the appropriate amount of spousal support is the sum of \$1,600 monthly. This amount is slightly in excess of the midpoint range.
- [200] Without retraining, it is unlikely that the claimant's income will increase her pay sufficient to warrant a review of the support obligation within the next several years.
- [201] As per the SSAG, support will be payable for an unspecified duration subject to variation in the event of a material change in the circumstances of either of the parties.
- [202] Child support will continue for so long as B. remains a child of the marriage as the term is defined within the meaning of the Divorce Act.
- [203] For so long as support is payable in respect of either the claimant or B., the parties are to exchange their T-1 general tax returns, together with the assessment by CRA, annually on or before June 30 of each year.

Extraordinary Expenses

- [204] No detail is provided as to the current extraordinary expenses for B. If there are such expenses, they are to be paid in proportion to the parties respective guideline incomes after deducting the amount of support payable to the claimant from the respondent's annual guideline income and adding it to the claimant's: S.J.M. v. J.L.M., 2010 BCSC 154.

Arrears of Support

- [205] The claimant calculates arrears of maintenance, both child and spousal, totaling just under \$86,000 if account is taken of the fact that only \$1,000 in support was paid to the claimant during the months of December 2012 and the first three months of 2013.
- [206] The order under which the arrears accumulated was not made until June 2013.

- [207] The respondent acknowledges responsibility for the unpaid mortgage on 87A Avenue for the summer months of 2013. However, with respect to the rest of the accumulated arrears, the respondent notes that the support order was premised on his employment with RWM.
- [208] The respondent last received any income from RWM in August, 2013.
- [209] I agree with the respondent that it would be double counting to both enforce the arrears as if the respondent were continuing to earn income at a level consistent with the compensation he generated from RWM and to reapportion the family assets in a significant fashion, as has been done.
- [210] From September 2013 onward, I have imputed income to the respondent of \$100,000 annually and ordered support of \$921 per month for B. and \$1,600 per month for the claimant.
- [211] Arrears should be calculated on the above support orders after deducting all sums paid by the respondent to the claimant or on her account by payment of the mortgage on 87A Avenue. Each of the parties submitted different schedules setting out the payments. The respondent's schedule is annotated with the origin of the payment, but I have not 'audited' those references to verify their accuracy. If there is disagreement as to the sum paid by the respondent, the parties are at liberty to apply to me in respect of that calculation.
- [212] Once calculated, arrears of support should be payable from the respondent's share of the family assets.

Custody and Parenting Arrangements for B.

- [213] The parties will share joint custody and guardianship of B. pursuant to the Divorce Act. The claimant shall have the day to day care of B. and the respondent shall have parenting time as arranged directly between him and B.

Divorce

- [214] The parties have been separated for in excess of one year and suitable arrangements are in place for the support of B. Engage remains a family asset to which each party is entitled to one half-interest in its net value. Accordingly, in these circumstances, no good reason has been advanced for deferring the divorce. Thus, subject to s. 12 of the Divorce Act, the parties are hereby divorced as at the date of these reasons.

Costs

- [215] Each of the parties sought liberty to address the matter of costs. They may either agree as to costs or set down a time through Trial Scheduling for a time to address the matter of costs and any other issue arising from these reasons.

"Harvey J."

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