

CANADA / JUDGMENT

K.R. v. J.R.

2022 BCSC 1856

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 1856 K.R. v. J.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.R. v. J.R.,

2022 BCSC 1856

Date: 20221024

Docket: 51523

Registry: New Westminster

Between:

K.R.

Claimant

And

J.R.

Respondent

Before: The Honourable Mr. Justice Schultes

Reasons for Judgment

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Counsel for the Respondent:

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F. MacLean

Place and Date of Trial:

New Westminster, B.C.

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Place and Date of Judgment:

New Westminster, B.C.

October 24, 2022

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1. Introduction

- [1] In this family law case the claimant K.R. seeks spousal support, arising from her 25-year marriage with the respondent J.R. She argues that her child care and other household duties when their children were young allowed the respondent to devote long hours to his medical practice, and restricted her ability to pursue her own practice as a physician. It also led to a very significant disparity in their incomes, which has increased since their separation, in

part because of her exclusion from the medical clinic that they formerly owned and operated together.

- [2] The respondent denies that there is any basis for such an award, either in the circumstances of their marriage or in the claimant's current needs, means and circumstances. In particular, he says that much of the child care was done by relatives and paid caregivers, and suggests that she is currently capable of earning a very significant income as a doctor, but has chosen instead to devote her time to her valuable real estate holdings.
- [3] Divorce and property division between the parties were dealt with in a previous trial in 2015, but the Court of Appeal then ruled (2016 BCCA 261) that the issue of spousal support had not actually been addressed in that trial, even though the resulting order provided that neither party would pay such support, or be obligated to contribute to support for their three children. As a result, the claimant was permitted to pursue spousal support in a new trial.
- [4] In response, the respondent seeks to have her share equally in the extensive payments he has made to support their children during post-secondary education, including medical school for all three of them, as well as the costs of completing their education. By the end of the trial these payments were in the range of \$2 million. In a novel submission, his counsel asks that her share of these costs be increased to reflect the opportunity to invest the amount that she should have paid in the rising real estate market.
- [5] He submits that she is intentionally underemployed as a physician, and that the very substantial capital gains she has earned through her real estate sales are properly included in her income for support purposes.
- [6] At the first trial, his then-counsel took the position on his behalf that he was content to absorb these costs himself. Those instructions were based on his assumption that he would not be ordered to pay any spousal support.
- [7] The claimant filed a new notice of family claim pursuing child support and spousal support in August 2016. She did not apply for any interim support before this trial.
- [8] The respondent filed his response to family claim, as well as the counterclaim in which he sought contribution for the children's expenses, in September of 2016.
- [9] The claimant does not ultimately oppose making some contribution to those expenses, but only based on the much lower income for herself that she maintains is accurate, and without including her capital gains. She also opposes the scope of the expenses that the respondent has covered for the children.
- [10] Two additional factual allegations by the respondent played a significant role in the evidence.

- [11] First, he alleges that the claimant has persistently engaged in harassing behaviour towards him and others who are connected to him, especially B., the manager of his clinic, with whom she suspects him of having had an extramarital affair. This was in keeping with the claimant's vow that she would "destroy [the respondent] professionally" when he refused to reconcile with her.
- [12] Second, he alleges that during the course of this trial she fabricated documents purporting to show that he and his brother own property the country of their birth, which he incurred considerable expense and inconvenience to refute.
- [13] Besides showing a level of hostility towards him that should undermine her credibility, the respondent says that the claimant's misconduct has affected his ability to pay spousal support, by subjecting him to a debilitating level of ongoing stress. He seeks orders governing her future conduct to prevent it from continuing. In addition, he argues that her fabrication of the property documents constitutes reprehensible conduct, which should result in an award of special costs.
- [14] The claimant denies engaging in any harassing behaviour or fabricating the documents. Although her counsel are not seeking to rely on the documents as genuine, she is not prepared to concede that they were fraudulent until she has completed her own investigation of them.
- [15] The progress of this trial was a bit unusual. It greatly exceeded its original time estimate, requiring continuation dates to complete the main body of evidence. The foreign property documents were disclosed when the respondent's case was almost complete. The respondent then called additional witnesses, and testified again himself, to prove that the documents were fraudulent, and applied, unsuccessfully it turned out, for a forensic examination of the claimant's electronic devices. He also recalled B., who had received some of the communications relating to the documents. The claimant was then recalled to address the allegations. This all took place over additional shorter continuation dates.
- [16] Because so much time had passed since the main body of evidence was called, the respondent also had to update his expenditures for the children's education, and B. and the claimant had to address new allegations of harassment of B. by the claimant.

2. Overview of the Evidence[1]

- [17] The claimant is 63 years old. The respondent is 65. They were married in 1988, separated in 2013, and divorced in 2015. Both are family physicians.
- [18] They qualified as doctors in 1988. After a short stint in another province, they moved British Columbia in 1989. At the time of their separation, they had been practising family medicine together for most of their careers.
- [19] They moved into what would become their family home for the rest of the relationship in 1993.

- [20] Their children are: R., who was born in May 1993; S., who was born in June 1994; and O., who was born in December 1996. As of the trial dates, all three children were at various stages of their medical training, the older two outside of Canada, and the youngest in Vancouver.
- [21] In approximately 1990 the parties rented space for a clinic and practiced there together. They eventually purchased property in the same area and had a medical clinic built on it. From 1995 onwards, they operated that clinic together. They rented space on the main floor of the building to the respondent's brother P., who is a pharmacist, and rented out part of the upstairs area to other professionals.
- [22] Until 2009, they had other family physicians working in their clinic from time to time, on the basis that a percentage of those physicians' billings were paid towards its overhead. This allocation of fees is known as the "split", and is the usual basis on which family doctors who do not operate their own clinics are employed. Such doctors are known as "associates" or "locums".
- [23] It is common ground that both parties have developed excellent reputations as physicians. They are fluent in the language spoken by many of their patients, with whom they share a common cultural community, which is a significant asset to their practices.
- [24] Because of the claimant's willingness to handle maternity cases, including deliveries, and the strong preference among female patients in their cultural community for a female doctor, a significant portion of her practice was devoted to such cases. A demographic study of her practice that was carried out in 1998-99 showed a very high proportion of women of childbearing among her patients, and this appeared to have continued throughout the time she and the respondent practiced together. The respondent tended to see more male patients overall.
- [25] During the relationship the parties each incorporated their medical practices and maintained holding companies to receive revenue and conduct investments. The claimant also had a numbered company that she used for real estate purchases. It is clear that over the last 20 years she has been a very successful buyer and seller of properties.
- [26] The parties' principal income as physicians comes from their billings to the Medical Services Plan ("MSP") for seeing patients. This is supplemented by payments for activities such as preparing reports in relation to patients' workplace and motor vehicle accident injuries.
- [27] MSP payments to family doctors depend on the type of patient being treated and service being provided. The evidence was that the payments do not depend on the level of experience of the doctor involved - a new doctor bills the same amount for a particular service or patient as an experienced one.

- [28] Although the available earnings of the corporations they controlled will ultimately be the most accurate source of information about their respective incomes for support purposes, each party used the other's MSP billings as a proxy for that party's income-earning ability at various relevant points.
- [29] The claimant argued that the respondent's billings began to greatly exceed hers from 1993 onwards because beginning in that year she was saddled with child care and household responsibilities.
- [30] The respondent pointed out her high billings during periods when the children were still relatively young - from 1998 to 2005 - to demonstrate the amount of support she received with those responsibilities. He attributed the recent decline in those billings to a lack of motivation on her part, and her greater involvement in real estate investment.
- [31] In 2002, the parties separated their finances. The catalyst was the claimant's unhappiness about the respondent's contribution to purchasing, together with some of his brothers, the share of inherited family land in the country of their birth that another of the brothers wished to sell.
- [32] As a result of this separation, the claimant stopped making deposits in the joint accounts for household and medical clinic expense, and pursued her real estate investments without the respondent's involvement.
- [33] She began to collect the rent from the upstairs tenants of the medical building directly, while the respondent received the rent from his brother P's pharmacy. He eventually began to collect the contribution towards the clinic's overhead of the associate doctor they were employing at that time. He continued to pay the expenses of the clinic and most of the family expenses, although there is a dispute about the extent to which the claimant may have contributed to the latter at her own discretion. This arrangement continued until their actual separation.
- [34] After she separated her finances, the claimant went on to buy and sell several properties in the lower mainland, in particular in Vancouver and Surrey.
- [35] Three properties that they had purchased jointly before this change to their finances were sold - one in 2001 or 2002 and the others in 2005 - and the proceeds were eventually divided between them.
- [36] The relationship between the parties deteriorated further in the ensuing years. In 2005 an incident of mutual pushing and shoving between them led to the respondent being charged with assault. He was required to live outside of the family home as a condition of his release, and the parties arranged their hours in the clinic so that they would not come into contact with each other. The charge was ultimately resolved without the respondent receiving a conviction, and he returned to the home and the parties' former overlapping clinic hours.

- [37] As each of the children completed elementary school at a school near the family home, they began to attend private schools located on the west side of Vancouver. Attending those schools entailed a significant daily commute, in which the respondent drove them to school in the morning, and the claimant brought them home at night. In 2009 (the claimant says it may have been a year earlier) she decided that she, the children and her mother would live at one of the houses she owned in Vancouver during the week, and return to the family home for weekends and holidays. This arrangement continued until O. completed grade 12 in 2014.
- [38] Before being admitted to medical school, all three children attended the same university in eastern Canada for their undergraduate programs. R. began there in 2011, S. in 2012 and O. in 2014.
- [39] The respondent began the first family action in 2013. Because of the claimant's failure to attend court appearances and her unresponsiveness to disclosure requests earlier in the litigation, her response to family claim was struck by a master. The trial took place August 2015. Her application to adjourn it to obtain counsel was dismissed, and because her claim had been struck, she was not permitted to cross-examine witnesses or lead evidence, although she would have been permitted to make final submissions if she had remained in attendance to that point.
- [40] The division of property ordered in that trial was that the claimant kept the two properties that she had purchased in Vancouver, as well as the one in Surrey.
- [41] The respondent kept the former family home and the medical clinic building, as well as an approximately 1/3 interest in a property in Surrey, which he co-owned with his brother P. and a friend.
- [42] The parties each kept their own bank accounts, corporate holdings and investments.
- [43] The claimant was required to make an equalization payment of approximately \$1.39 million, to achieve what was intended by the court to be an equal division of their property.
- [44] Pursuant to an order made in the first trial, the claimant was required to vacate the clinic. A similar order had been made against her by a master the preceding May, but she did not comply.
- [45] For several years before that, and especially after the respondent began the family action, she was alleged to have engaged in ongoing hostile and disruptive behaviour towards the respondent, his brother P., an associate doctor and the administrative staff, especially the office manager B. She denies any such conduct.
- [46] Regardless of the extent to which that misconduct acknowledged actually occurred, the respondent fairly acknowledged in his testimony that once he began the family action, it was inevitable that he and the claimant would be unable to work in the same clinic for the longer term.

- [47] She began working at a nearby clinic at the beginning of September of 2015, and as of the trial dates was still practising there. She also worked for about six months concurrently at a second clinic, to cover its owner's absences, but by the time the trial concluded she was no longer filling that position.
- [48] She had previously been prohibited from going to the former family home as a result of a pretrial application, but she continued to live there until the order was enforced by the police in September 2014. Her position was that she needed to continue living there because she was supporting the children in their various needs, and that after O. went off to university, she had to return periodically to retrieve her medical books and other essential items. She was subject to a criminal charge for breaching the order not to attend, but after she was required to make numerous appearances in provincial court, the charge did not proceed.
- [49] In 2017 the respondent resumed having associate doctors working in the clinic.
- [50] At the point that the trial concluded, R. had graduated from medical school (in June 2020, having also obtained a MSc degree at the start of his fourth year) and had begun a residency in his chosen speciality with a health care system in the United States. S. was scheduled to graduate from medical school in December 2021 and O. in June 2022. S. has recently expressed doubts about pursuing a medical career, and may pursue legal studies instead.

3. Responsibilities and Contributions During the Marriage

a. Claimant

- [51] As I have mentioned, the claimant's position is that during the marriage she was the main care provider for the children and maintained the household. She was assisted at times by her mother, who lived with the family between April 1993 and April 1994, and then from 1996 until her death in 2010. During the period after S.'s birth, when her mother was not available, she was assisted by her cousin's wife, who lived in the basement of the family home with her husband while they were claiming refugee status. She described her self and her cousin's wife as "juggling" their respective responsibilities between each other, in order to fulfil the overall domestic requirements.
- [52] Although at one point she described her mother as doing all of the cooking when she was there, she later clarified that they would do so cooperatively. At times she would do the preparation work for meals before leaving for work, at which point her mother would do the actual cooking.

- [53] She disagreed with an extensive list of tasks, including grocery shopping, cooking and numerous child-related activities, that the respondent attributed to her mother in a document that he prepared for the trial. She explained that these activities were mainly carried out by her or her mother, depending on which one of them was available at the particular time. She pointed out that the respondent would not have been able to observe the allocation of these duties in any event, because he was at work.
- [54] She also disagreed with the respondent's assertion that he had put her mother on his payroll from 1993-2000 for performing domestic tasks, or that she had done so herself from 2002 onwards. She denied that mother would ever have accepted money for doing so. She had only ever seen her mother on the payroll for administrative work at the clinic.
- [55] As in the case of her mother, the claimant disagreed with the amount of domestic work that the respondent attributed to her cousin's wife, who was also employed as an office assistant at the clinic, and did not accept that the duration of her cousin's wife's assistance was from 1994-2000, as he suggested. She eventually conceded that she had received this assistance until her mother returned in 1996.
- [56] She and the cousin's wife would share cooking because the cousin's wife lived in the basement, but the latter was not cooking "two hours per day", as the respondent suggested, and after 1996 she was focused primarily on her own baby. Any payments to the cousin's wife recorded by the respondent would have been for her clerical duties, the claimant said.
- [57] None of the other caregivers listed by the respondent made meaningful contribution to child care, according to her. One was a "cleaning lady" from the clinic, who did not work in their home and was paid only in relation to her office work. Another was an "office secretary" who was called on to babysit only in an emergency. A "temporary foreign worker" who was employed at the clinic lived in the family home for several months in 2009, but did not perform any domestic tasks.
- [58] B., who eventually became the office manager for the clinic, stayed in the basement for about a month to help out when the claimant's mother had to go back to the country from which she had emigrated. The claimant's cousin was still there, but could not look after all three children, hence the need for B.'s assistance. B. was paid for helping out by the claimant buying her a computer for her university studies.
- [59] The claimant was cross-examined on copies of cheques signed by the respondent to her cousin's wife, her mother, the cleaning lady, the office secretary, and B. In general, she expressed skepticism that these documents were genuine, in the absence of an opportunity to examine the originals and confirm that money had actually been transferred pursuant to them. She pointed out that the cheques were written on the office account and likely referred to work carried out there. Her cousin's wife also worked at the clinic and it was the principal place of employment of the other alleged domestic supports, except for her mother. Notably, some of the cheques written to the cleaning lady refer to "janitorial work", although others to her are blank.

- [60] The claimant was confronted with her answer at the examination for discovery that among the home support that was available to her, there was "one nanny". She clarified that this nanny was in fact her cousin's wife, and that if one wanted to use that particular term, she and her cousin's wife had served as each other's nannies, by sharing their duties.
- [61] Finally on the extent of her support at home, the claimant rejected the suggestion that the respondent's mother, who stayed with them "on and off", was of any significant help. His mother was in her mid-seventies by that point, frequently went off to participate in social engagements or visit other family members, and when she was there simply talked to the children or played with them, in her role as their grandmother. She had been sponsored by them to come to Canada as a "dependent non-worker", so it was not clear to the claimant how she could have been paid for working in any event. She did not work at the clinic because she could not read English.
- [62] The claimant was cross-examined on copies of cheques from 1994-96 that had been signed by her and were payable to the respondent's mother. Some had "salary" in the memo line and others had "childcare". She maintained that she had not completed any part of these cheques except the signature. Specifically, she had not written the services for which the cheques had been provided in the memo line. The only exceptions were cheques in January and February of 1995, which she acknowledged having completed, including the indication of "salary".
- [63] She explained that she would often sign cheques at the respondent's request "under pressure of circumstances". He may have simply told her that his mother needed money. At that stage of the relationship she was not as vigilant about what was being paid out of their joint account as she became later, she explained.
- [64] She raised the possibility that her mother may have received money from the parties so that she would have financial independence, but insisted that it was not for the performance of child care services. She ultimately clarified that the respondent's mother was paid a "stipend" in recognition of her position of respect in the family, and of her need for support.
- [65] According to the claimant, she did not take any actual maternity leave after the births of any of the children. She worked right up until their births, and then continued afterwards to attend to those maternity patients who insisted that she be the one to deliver their babies. She described herself as working whenever she could in light of her domestic responsibilities. Her life consisted of being at the hospital, the clinic, the family home, and the grocery store.

- [66] The effect of these home responsibilities was that she had to scale her practice back, and focus more on obstetrics. She tended to work in the afternoons and evenings, because by then she would have performed the necessary tasks at home and have "a few hours" to work. She would not necessarily be home for dinner, but would leave everything ready for her mother to do the final preparations. Deliveries of babies arose at all hours of course, including the middle of the night.
- [67] She later described having to pay considerable attention to her obstetrics practice, because it was "high risk" and her reputation in the community from which her patients were drawn would suffer if she made a mistake. She also said that she worked hard to establish the clinic and to give it a good reputation.
- [68] She said that as the children grew older she would rearrange her hours of work in order to take them to whatever schooling and activities they required. Once the children were all in elementary school, a practice developed in which the respondent would drive them to school before going to the hospital for his rounds. She was still responsible for all of the other requirements of the children's lives though, such as preparing their lunches and assisting them with their schoolwork.
- [69] Her work hours were generally 3:30-4:00 pm to 8:00-8:30 pm, although she adjusted them to accommodate any activities that the children required her to support. They generally went to bed at 9:00 pm. These hours were in addition to delivering babies at whatever time that might be required
- [70] In contrast, she described the respondent as working until 6:30 or 7:00 in the evening, or "until the patients stopped coming", then spending four or five hours writing up his medical charts. His practice was growing.
- [71] With respect to his involvement in the tasks of caring for the children when they were small, she said that "once in a blue moon, if by accident he was there and wanted to do it", he would carry out some of the tasks. At one point she conceded that the respondent may have soothed R. and changed his diapers when he was an infant, but denied that he fed S., who had a low birth weight and needed more attention, or changed S.'s diapers.
- [72] More generally, the claimant pointed out that seeing 60 patients a day, as the respondent routinely did, at fifteen minutes per visit, meant that he was occupied fifteen hours per day, without even considering the time needed to complete his charts. His driving of the children to school gave them "some idea of their father was", but he was not involved in their daily routine or extracurricular activities. She would not concede that he had dinner with the children, emphasizing that her mother would have been home at dinner time as well. She maintained that instead he would have been writing his charts, which consumed 5 to 6 hours a night, although she conceded he could speak to the children while he was completing them. He would still be engaged in completing those charts when she came home.

- [73] According to her, the respondent's one duty continued to be driving the children to school, once they attended schools that required it. When R. was the only one going to school in Vancouver, the respondent would drive him there. The claimant, assisted by her mother, was responsible for picking him up and getting S. and O. to and from the local school. Once S. began to go to school in Vancouver as well, the respondent would drive her in the morning as well. All of the responsibilities for household tasks and supporting the children's schooling still fell to the claimant.
- [74] In an effort to contradict her assertion that her domestic responsibilities affected her ability to practice medicine to the extent she wished, it was pointed out to her in cross-examination that in 1998, when the children were five, four and two years old, she billed \$244,678 to MSP. When it was pointed out the 1998-99 practice review (which I previously referred to in relation to the demographics of her patients) showed that her earnings were above the median for family doctors at that time she responded that "when my children [were] very, very young, my mom was helping me achieve these goals." She sought to explain having been an above-average biller for the years 1995 to 1999, as shown in the profile, by reference to baby deliveries paying more, an assertion that was not developed further in the evidence. Along the same lines, she was able to bill \$324,534 to MSP in 2002, when the children were nine, eight, and six years old. In 2004 and 2005, with the children still quite young, those billings were \$343,560 and \$325,123 respectively.
- [75] The claimant bought the house on the west side of Vancouver in which she and the children eventually lived during the week as a plan for addressing the commuting situation. She initially rented the Vancouver house out, but once the two older children were attending school in Vancouver and O. was in grade seven, she informed the respondent that she, her mother and the children would live there during the week and return home on weekends.
- [76] The respondent would drive R., O. and her mother to Vancouver on Monday mornings and the claimant would drive O. to and from her local school. During the week the claimant would do all of the driving of the children to and from school, including O. to her school near the family home and back to Vancouver again.
- [77] She explained that as a result of the challenges of the children starting their new schools and her responsibility for "getting groceries to" the Vancouver home, it was difficult to maintain her medical practice. Family obligations meant that she was only able to practice medicine on Friday afternoons, on the weekends, or "whenever she could". Later in her testimony, she added that she was able to work Friday evenings. Because she would have to help her children with their schoolwork and purchase any supplies for school projects, she did not have time to work on Saturdays, but would work on Sundays. If a patient specially needed to see her during the week, she would go into the clinic at other times. Otherwise she spent the week in Vancouver catching up on "paperwork" for her practice.

- [78] Other child-related demands on her time that she referred to were arranging tutoring for the children in the subjects for which they required it, taking them to and from those sessions and their extra-curricular activities, and generally supporting their academic pursuits, so that they would be able to gain entry to their university of choice. Her position was that except for attending parent-teacher conferences, the respondent was not involved in any of these efforts.
- [79] She rejected the suggestion that the close proximity of the Vancouver home to the children's schools meant there was nothing stopping her from going to work at the clinic for the day and returning to that home at dinnertime. She had to support the various activities of the children, as well as carry out a litany of other small tasks that they might need to have done for them. On Mondays she had to clean up at the family home after the weekend, shop for groceries and then bring them to the Vancouver home. She maintained this position even for 2010, when the children would have been 18, 17 and 15 years old.
- [80] With respect to 2014, when the older two children were away at university, she resisted the suggestion that even if she was assisting O. in "getting through grade 12", as she described, she still had time between 9:00 am and 3:00 pm to work (and to see lawyers in relation to the family action that the respondent had begun by then). O.'s school hours were not as straightforward as that, she explained, and she had numerous extracurricular activities.
- [81] Once her mother died, all of the household responsibilities fell on her, she explained. She denied employing any cooks after this, but was challenged on her answer from her examination for discovery that "for a while" they had a cook who made "three or four dishes once a week" and left them in the fridge. After initially avoiding a direct answer, she eventually clarified that this service would only have been used for a short period, likely early in the relationship, immediately following the births of the children.
- [82] The time commitments that the claimant described remained the same until all of the children had graduated from high school and gone off to university. She remained involved in their activities to an extent after their high school graduations as well, for example by supporting R. to earn the volunteer hours he needed to be admitted to medical school.
- [83] When she was referred to the records of her MSP billings by her own counsel, she identified several low points in them as corresponding to particular child-related demands: 2007 (the children were attending different schools, resulting in more demands on her time); and 2011-2013 (she was only able to work Friday afternoons and weekends, her mother had passed away so she did not have as much help, S. was taking advanced placement courses and S. and O. were engaged in significant extracurricular activities).
- [84] She denied any relationship between the respondent beginning the family action in 2013 and the decline in her billings in the following year.

[85] Looking at the nature of the relationship more broadly, the claimant agreed that there was never an agreement between her and the respondent that she would be a stay-at-home mother. Not only did the respondent never ask her to work less, she said that he wanted her to "keep working and give him the big money". She also agreed that she had taken all of the courses that were required of her as a doctor regardless of her home responsibilities. She did make a passing comment that she would have become a gynecologist if she had not married, but the suggestion that this was an opportunity lost as a result of her responsibilities within the marriage was not pursued further.

b. Respondent

[86] The respondent's position was that, while there was no explicit agreement between them on the point, he and the claimant had an "understanding" that they were pursuing a "modern marriage" (in contrast to the traditional kind engaged in by some members of their cultural community) between two professionals, who would both pursue their careers, and hire the outside help necessary to do so. There was never any suggestion by him that the claimant should work less and focus on being a homemaker. Her ability to pursue her career was "not really" ever interfered with by her duties in the home, he maintained, and in particular there were no career paths that she did not pursue, or training or professional upgrades that she could not take advantage of, as a result. In fact, when she began reducing her hours to pursue other interests later in their relationship, he was unhappy that he had to see some of her patients to pick up the slack.

[87] As an additional example of her full participation in professional matters, he described her being equally involved in all of the business decisions relating to the operation of their joint practice, including the construction and leasing of the medical building. This was despite the children being very young when the building was being organized.

[88] His evidence of their domestic support arrangements placed a much greater emphasis on the roles of their caregivers.

[89] The claimant's mother took the lead following R.'s birth, both in caring for R. and preparing the family's meals. The claimant may well have helped in food preparation, he acknowledged, but with her mother having the main responsibility.

[90] When the children were older and still attending local schools, her mother would pick them up. She had a drivers' licence and complete use of a family vehicle for driving the children around or carrying out other duties.

[91] The claimant's mother was certainly not a "paid servant" in any respect, but he and the claimant decided to pay her because she was a great help to them, they could afford to do so, and she had no other source of income. Cheques from their joint account for that purpose signed by him formed part of the evidence.

- [92] Once the claimant's cousin and his wife began to live with them in 1994 and the wife assisted with household duties, her mother was placed in more of a supervisory role.
- [93] The respondent's own mother's ability to assist was somewhat compromised due to her advanced age, he acknowledged, but she still could care for the infant children in ways that could be accomplished while she was sitting down, such as feeding them. Like the claimant's mother, she had more of a supervisory role. As the cheques to her signed by the claimant indicate, she was paid for performing those duties. The respondent rejected the suggestion that she was paid for working in the clinic - among other things that made her unsuitable for such a role, she was illiterate.
- [94] With respect to the claimant's cousin's wife, the respondent explained that the whole idea behind having her and her husband stay in their basement, beginning in March 1994, was for the wife to do child care, enabling the parties to work. This was a joint decision between him and the claimant.
- [95] The cousin's wife proved to be very competent and "a great asset". She had been a teacher in the country of her birth, spoke English and had a drivers' licence. She did both childcare and cooking. When the claimant's mother returned before O.'s birth, the cousin's wife's contributions allowed the mother to assume the supervisory role that he had previously described, after working very hard in their home previously.
- [96] If he had to pick a "main nanny" for the children in addition to the claimant's mother, it would have been the cousin's wife. His cheques to her were written by him from the joint expense account for the clinic, but he said that the claimant had agreed that the cousin's wife should be paid from that account. His position was that she worked for them in this home support capacity until 2000.
- [97] The cleaning lady and the office secretary, as the claimant described them, did in fact provide help in the home as well from time to time, he explained. The cleaning lady assisted the claimant's mother when R. was a baby, cleaned the home on an ongoing basis, and helped out with other duties occasionally, if required. The respondent identified cheques that he had written to her for domestic duties. The office secretary, a recent immigrant who was hired by the claimant to work in the clinic while she was still in high school, also provided help in the home if needed, from 1998-2002.
- [98] B., the eventual office manager and main object of the claimant's hostility, began working at the clinic while she was still in high school, mainly assisting the claimant. With respect to child care, the claimant had her accompany the children to various activities, such as programs at the YMCA or their volunteer activities. She also did some home cleaning, once the cleaning lady and the claimant's cousin's wife were no longer around. As the claimant had described, the respondent agreed that B. stayed in their home for six weeks to look after the children while the claimant's mother was away.

- [99] Contrary to the claimant's recollection, the temporary foreign worker she had spoken of was extensively involved in domestic tasks, working long hours, seven days a week, according to the respondent. Like the claimant's mother and her cousin's wife, this worker would do "whatever need[ed] to be done" in the home.
- [100] In addition, the claimant's cousin immigrated to Canada in 2002 and stayed in the family home until 2005. She was employed outside the home, but after work she would help the claimant's mother in the kitchen, or with the children.
- [101] Finally, at one point, sometime in the 1990s the claimant hired a cook for the home, whom she then fired after about six months.
- [102] According to the respondent, the effect of all of this outside support, the providers of which frequently overlapped with each other, was that he and the claimant "didn't have to worry about household business and could concentrate in the office."
- [103] His position was that once these essential duties had been subtracted from their home responsibilities, he and the claimant shared the remaining duties on an approximately 60/40 basis, with the 60% in the claimant's favour. When this allocation was raised again in cross-examination, he modified it to 51/49 in her favour. He conceded that he worked longer hours than she did, and when it was put to him in cross-examination that he was able to do so in part because of what she was doing back in the home, he answered, "Yes, she was - - she was doing some home work, too, yes."
- [104] Although he estimated that he worked about 60 hours per week before any of the children began attending university, he rejected the claimant's testimony that he was too consumed with his duties to interact meaningfully with them. He participated fully in their care as infants, including extra feedings for S. when she was born underweight; was involved in their morning and bedtime routines as they grew older; enjoyed numerous enjoyable family traditions with them (such as weekly pizza nights, watching Jeopardy together, and taking them to the hospital for his Sunday rounds); attended most of their extracurricular activities; and, once they were attending the private elementary school in their area, invariably drove them to school.
- [105] He had a particularly close relationship with R., for whose nighttime routine he was completely responsible, and with whom he shared a bed throughout R.'s childhood (S. and O. routinely shared a bed with the claimant).
- [106] Perhaps most significantly, he sat down for dinner with the children every night, along with the claimant's mother. This was at around 7:30 pm. The claimant was usually working or otherwise engaged at that point, he said. He later explained that there was some "staggering" of their respective work hours in that regard.

- [107] In his view, there was little to prevent the claimant from going to work once the children were attending their private schools in Vancouver. S. and O.'s school was 500-700 metres from the Vancouver home and R.'s school was a ten-minute bus ride from it. The children's lunches, which the claimant made much of having to prepare, were actually provided for them in their school's cafeterias, which he knew because he was responsible for paying for them.
- [108] As I referred to previously, the claimant's counsel pursued the growing disparity in the parties' MSP billings in the years following the birth of the children as an indication of the claimant's greater involvement in child care. After the children were born the respondent described her as working "different hours, slightly less hours". He elaborated that he did not know exactly, but when the children were little she may have come in slightly later than his 10:00 am starting time and would probably go home a little bit earlier. When it was put to him that her responsibility for the children and the household impacted on her ability to spend time on her practice, he said that she did spend more time with the children. As for the household, they had a nanny and her mother living with them so "there wasn't a lot for the household she had to do". He then conceded that child care was primarily her responsibility, and accounted for her lower billings. After S.'s birth she came back full-time but was "maybe" seeing fewer patients and working more slowly. He agreed that this second pregnancy affected her work "to a certain extent".
- [109] However, later in his evidence he elaborated that the associate doctor who joined their practice in 1993 was working for the claimant, as was a second doctor who joined them later, and that she was receiving the clinic's share of their billings directly - 40% for the first doctor and later 35% from each once there were two of them. In re-examination he estimated that she would have received \$120,000-\$130,000 per year from the first doctor and \$200,000 per year from both. Their presence enabled her to work less, and her own billings fell off as a result. He said that "she did not feel the need to work as much".
- [110] Given the increase in his billings over the years, he agreed that whatever was going on at home, he was still able to focus on his work as a doctor. He attributed a brief decline in them in 1997 - to \$345,000 from \$478,000 to the previous year - to the fact there were now three very young children, requiring greater involvement by him in their care.
- [111] Addressing the post-separation period and its effect on the claimant's work, he rejected the suggestion that she had been "debilitated and emotionally affected" by the divorce. She is a very strong person, he explained, and she did not seem to be affected. He also rejected the notion that she has any physical problems that restrict her from working. Although he recalled her having "some kind of procedure" done on her ear in the 1990s, she was able to hear everything during their years together, he said.
- [112] He also addressed other self-imposed distractions from the claimant's medical practice, in addition to her looking for properties to buy.

- [113] With respect to the sewing business, which he recalled had been set up in the later 1990s, he said that she actually purchased three industrial-grade machines for it, and hired an employee to carry out the sewing. He did not know the financial details, but she represented to him that she was making "good money", and that it was a flourishing business.
- [114] Her business of teaching math and english to children of her patients began around 2007, he recalled. All he knew was that there was a business licence for it, and people were coming in to participate. When he asked her how much she was earning from it she would say "a lot".
- [115] Both this business and the sewing one were carried out in cash.
- c. Other Evidence
- [116] B., the office manager of the clinic, testified that, she began working as a support person in the family home in 2002, after first working as a cleaner at the clinic. She worked in the home on Friday afternoons and evenings and all day on Saturday and Sunday. The total was 20 hours per week, plus the five hours of cleaning she continued to do at the clinic. She was still in high school at this time.
- [117] Her duties in the home were wide-ranging, and consisted of whatever the claimant needed her to do, from preparing meals for the week to accompanying the children to activities. The family's "nanny" as of the time B. began there was the person whom the claimant had described in her evidence as the "office secretary". That person was pregnant, and B. understood that her own role was to replace her. She could not speak to the duties performed by the claimant's cousin's wife or the respondent's mother, because they no longer lived in the home by the time she was hired.
- [118] B.'s perspective was that the claimant's mother was the "boss" in the home, performing whatever tasks were required to ensure that the claimant and respondent could both work, but also spend quality time with their children. This included tasks such as cooking, cleaning, grocery shopping, ironing and driving the children various places, in particular picking them up from the local elementary school.
- [119] B. confirmed that she lived in the home for six weeks during the winter of 2003-4 while the claimant's mother was away. During the summer of 2003, while the claimant's mother was away again, she looked after the children for part of the weekdays, when they were not at summer camp. She described the purpose of her assistance (during this period, I took it) as being so that the claimant "could remain free to work". In cross-examination she added that she worked there full-time for a year in 2005.
- [120] She recalled the claimant spending Friday evenings and most of the day on Saturday and Sunday working, while the respondent was home by 3:30 pm on Fridays, worked a half-day on Saturday and did about three hours of hospital rounds early on Sunday.

- [121] In contrast to the claimant's description of the respondent's level of involvement with the children, B. described him as a very "hands on" father, and very involved in the children's lives. Among the activities he engaged in with them, in addition to eating breakfast and dinner together, were helping with their homework and, as he had described in his evidence, watching Jeopardy with them.
- [122] Her observation was that beyond the work that was done by caregivers, the claimant and respondent split the domestic duties equally. For example, if the claimant made a dish for dinner, the respondent would do the dishes. If she did the laundry, he would do the ironing. As B. put it, "[T]hey were mindful of the fact that the other person should not be doing more than them, so it was very balanced, equal." Overall, she described the parties as being "more into spending time with their children". The effect of the caregivers was to free them up so they could do so, she said.
- [123] She last worked in the family home in 2009. Despite their previous positive relationship, she had a falling out with the claimant that year, which began when she was unable to do heavy yard work at the Vancouver home because of a problem with her wrist, which the claimant had originally diagnosed. It came to a head when she was 15 minutes late for their arranged time to travel to Vancouver, because she had fallen in the bath earlier. The claimant fired her (from her household responsibilities, I took it) because she was "not going to wait for some little secretary".
- [124] Their relationship in the clinic, where B. worked full-time from 2010 onwards, also deteriorated, to the point that the claimant did not want B. handling her work. B. ultimately reduced her involvement with the claimant to booking her appointments, if required.
- [125] The respondent's brother P. lived with the family twice during the period in which the amount of supporting care in the home is in issue - for a month in September 1994, and seven months the following year, when he was studying to qualify as a pharmacist in this province, after having practiced in Ontario. Both of the parties' mothers were in the home during these periods, as was the claimant's cousin's wife.
- [126] He recalled that the claimant's mother and her cousin's wife were doing the child care and the cooking. The claimant did not do much cooking as a result, he noted. His and the respondent's own mother, whom he recalled was about 75 at the time, performed a more limited range of duties, such as playing with the children, taking them out in the stroller, and occasionally changing their diapers and soothing them when they cried.
- [127] P. recalled the respondent being very close to his children. For example, he would "take a break from writing his files to play with them", as well as performing necessary tasks, like changing their diapers. The claimant's activities with the children were "almost the same", he said.

- [128] Overall, P.'s evidence, like B.'s, was that whatever work was not done by the caregivers was shared equally by the parties. The example he gave was that if the claimant had fed them, the respondent would give them baths. (Given the time periods when he was living in the home his observations would have related to the care of R. and S. as infants and toddlers - O. would not have been born yet.)
- [129] The claimant's brother J., who is a doctor in eastern Canada, testified on her behalf. He sought to undermine the suggestion that the claimant's mother was employed by the parties for child care or other duties around their home.
- [130] He referred to an investment account that contained about \$150,000 as of the year of their mother's death, representing investments that he made on her behalf each time he made his own investments. She had bank accounts in addition to this account, he advised. The implication appeared to be that she was not in any need of financial support from the parties.
- [131] Their mother provided assistance with J.'s young children as well as the claimant's, he said, but the claimant needed "a bit more help". He rejected the suggestion that their mother lived with the parties in B.C. continuously for the 14 years before her death.
- [132] He never paid their mother for her assistance in his family. In his view, she would have found it demeaning to be paid, and in their culture it would be unheard of for a grandparent to ask for payment for childcare.
- [133] When he visited the parties' home, he observed his mother taking a supportive role, as she did in his home, but stressed that she was performing tasks there through "free will", and that she was ultimately there "for her own enjoyment". She would cook if something needed to be made, but it was not her "duty" to make it.
- [134] Similarly, he rejected the proposition that the claimant's (and his) cousin's wife was employed to provide assistance in the parties' home. She lived there, and had tasks to "pitch in with", in keeping with that. Living rent-free, she may well have felt guilty and wanted to help out, he theorized. He also characterized B., the eventual office manager of the clinic, as spending a minimal number of hours in the parties' home, "if any". Her job was to work at the office.

4. The Parties' Incomes, Assets, Earning Abilities and Overall Situations

a. Claimant

- [135] In 2017 the claimant's numbered company sold one of the two Vancouver properties that she had received in the property division of the 2015 trial for \$4.6 million. This represented a capital gain of \$2.96 million. In 2020, her holding company sold the Surrey property that she had received in the property division for \$9.25 million, a capital gain of \$7.27 million. She had previously received a non-refundable deposit of \$1.28 million towards its purchase in 2019.

- [136] As of the trial dates she was living in the other Vancouver property, which had an assessed value in 2020 of \$2.61 million. Two properties in Washington State that she purchased in an ill-fated attempt to assist the children in obtaining work visas in the U.S., which I will discuss, were worth a total of \$4.46 million, according to her 2019 financial statement in this litigation.
- [137] Taking into account her remaining property holdings, the proceeds of sales that she has retained, the significant retained earnings in and shareholders loans from her corporate entities, the resident's counsel calculated her net worth to be \$19.25 million.
- [138] From her perspective, an important influence on her capacity to earn income was her lack of proficiency in using the electronic medical records ("EMR") system, which is now widely used by family physicians. Before it became available, patient records were manually recorded by doctors on paper charts.
- [139] She experienced difficulty in adapting to that system. She cannot type quickly enough to input information as a patient is speaking to her - she needs to speak to the patient and then type it subsequently. Completing the records after seeing a reasonable number of patients in a day takes her an excessive number of additional hours.
- [140] When she joined her current clinic and told them that she was not proficient on the computer, she was told she could handwrite her charts and the records would be scanned into the system, but then the other doctors at the clinic complained that they could not read her writing.
- [141] Like most other medical clinics, the one she operated with the respondent instituted an EMR system, in its case in 2014. She was not told in advance that the system would be implemented, and was limited to "read only" access to it by the respondent, so she refused to participate in using it. She felt it was a trap, was not content with "half a peek" at the electronic records and, because she had no idea what "read only" meant, she did not try to use the system.
- [142] Beginning in 2018 she was subject to a peer review by the College of Physicians and Surgeons (the "College") and as part of the review was told that she needed to "come up the standard" for EMR, because she was not using it properly. In 2019 she was told that she had "improved a lot" in that regard. Despite understanding how it works, her typing is still "slow as a slug" she said, inhibiting her ability to use it effectively. The College suggested that she take a one-day EMR course, which she had taken by the time the trial concluded.
- [143] She said that she had tried using speech-recognition software to take her notes but that it was not suitable for her. She speaks extensively to her patients during their appointments and does not find it workable to have to repeat all of the same information when she is completing her charts later. In addition, she said that it "did not fit with [her] psychology", and that, "I don't want to talk into a machine". Further concerns she had with the software was that it did not work with her accent, made numerous errors, could not be edited, and

that a medical-legal report prepared using it would not stand up to scrutiny.

- [144] When she was cross-examined on the initial trial dates in January 2020 about why she had apparently not billed anything for 2019, she said that she was teaching herself EMR skills during that time - she had bought two laptops and was watching training videos. She had not yet taken the course recommended by the College by that point, explaining that the self-instruction worked better for her. She said that she also had to get ready for this trial.
- [145] She then said that she did "work some" in 2019, but was unsure whether the amount she had billed was sufficient to trigger the MSP threshold for indicating that she was working. The records could also have been affected by the dates when the billings were submitted. Her point was that her billings "were not zero". She referred to having received a cheque for \$4000, which may have been for work the previous January (that is, 2019).
- [146] Although the old and new clinics are located only a few blocks apart, she said that she was not able to get her former patients over from her former clinic because the new one was cutting back on secretarial support and wanted the patients to make their appointments on the website. Many of her former patients do not speak English or know how to use a computer. She is also not in charge of the current office set-up, so she cannot accommodate patients who walk in without an appointment but have an urgent matter, as she customarily did in her own clinic. In response to suggestion that all of her old patients must have come with her, she said, "They're not goats and sheep that I can herd them wherever I am going".
- [147] Further difficulties have been caused by the different demographics of the patients in the new clinic, and working in a walk-in clinic, where patient-doctor relationships may take longer to establish. These new patients are more "risk takers", instead of being rooted in family and following norms of social behaviour. Her previous clients were families and were in a "more stable kind of social situation". The new patients are still very connected to the country from which they emigrated, and are able to obtain medications from that country even if she declines to prescribe them. Other difficulties include the phenomenon of "polypharmacy" (the use of multiple medications by patients), the opioid crisis, and "young people thinking they are invincible", or who believe that they have learned enough from Google searches that they are just going to get a second opinion from her.
- [148] In contrast to the former emphasis of her practice, she has not delivered a baby since her mother died in 2010. She let her privileges at the local hospital lapse in 2018, concluding that the fees for procedures she was performing there were not worth the cost of parking.
- [149] She is on an 80/20 split at her current clinic.
- [150] She was cross-examined on an extensive body of advertisements for family physicians at clinics in the same area. The fee splits offered ranged from 75/25 to the doctor keeping 100% of their billings, which is offered by clinics that are associated to pharmacies. The most frequently offered split was 80/20, and many of the splits were described as being negotiable. The majority expressed the doctor's potential earning as being in the range of

\$400,000 per year. Several clinics expressed a preference for doctors who speak the second language in which the claimant is fluent, and one sought a doctor with experience with women's health issues. A notable point, in light of the claimant's struggles with EMR, was that two clinics advertised that doctors could continue using paper charts. Notably, the same clinic where she is currently employed was advertising for a full-time position, which appeared to be an indication of excess demand in its patient load. By the end of the trial, the clinic had hired a female physician from the same cultural community as the claimant.

- [151] Despite the apparent advantages they offered, the claimant was adamant that she would not apply for any of these positions. In essence, she has a job already, she explained, and has no interest in changing, even though the current situation was not of her own choosing. Her view is that is unethical to practice in clinics in which the full retention of fees by the doctors is supported by their association with pharmacies, because of the lack of an arms-length relationship between the doctors and the pharmacists. Similarly, the promises of high earnings come with the strings attached of having to see a very high number of patients per day, which in her view inconsistent with sound medical practice. She also pointed out that projected earnings of \$400,000 per year are only realistic for physicians whose typing and EMR skills are up to date.
- [152] When she was referred to job ads that offered the physician the option of continuing to use paper charts, she explained that problems arise when some doctors in a clinic use that approach and others are on EMR, as she learned when she first transitioned to her current clinic.
- [153] She was not prepared to accept the proposition that there is a general shortage of family physicians, either in the city where she practices, or generally in the province. She suggested that that in other areas of the lower mainland, such as the west side of Vancouver, there may be an abundance of such doctors.
- [154] She described having to practice in a different clinic than the one she had established with the respondent with a good deal of resentment. For example, when asked about her delay in removing her property from the former clinic she asked rhetorically, "Why should have I be out doing locums when the other cofounder gets his complete assets and he's able to bill whatever amounts or hire more doctors?" As she later put it, "My ability to earn as a medical doctor has been severely hampered since I was told to leave my 26 years of practice." When the average billings of doctors within a 10 km radius of her office (\$376,000 per year) were put to her, she noted that those doctors were working "in their convenient locations", and that a truer comparison would be to someone of her age, who was pushed out of the clinic where they had been working for that lengthy period.
- [155] When she testified she had not yet decided if she was going to pay the fee necessary to continue her licensed physician status. When she was asked what her plan was she said, "It's some muddle in my mind. Eventually I will figure it out slowly".

- [156] She described the decline in her MSP billings for 2013-2015 (\$113,792, \$85,531 and \$64,092 respectively) as relating to the difficulties she was experiencing at the old clinic. She had been served with the notice of family claim and was not being allowed full access to EMR. She also had to go regularly to her Vancouver properties to supervise the renovations to them, which consisted of a number of small jobs that the contractors were reluctant to do. She denied having artificially suppressed her billings to buttress a spousal support claim.
- [157] She also explained the significant rise in her billings in 2016 and 2017 (\$216,965 and \$256,804). She went to live with her aunt and cousin, who were "doing everything" for her - cooking, laundry etc. - so that she could work more in the new clinic and "try to learn the computer". She said that the repairs to her properties were finished by then, and she found the "inner energy" to "swallow her pride" and ask her aunt if she could live at their house. In addition, she was required to make the equalization payment as a result of the judgment in the first trial, and she needed to fund the appeal. Her bank accounts were empty and her properties were all under certificates of pending litigation ("CPLs") imposed by the respondent, so she could not access them for financing purposes.
- [158] After two years of working hard in this manner, she felt "burned out" because there were so many complainants to the College by patients who had requested their charts from her, or in relation to reports for WorkSafe or ICBC claims. She said that patients are now much more "tech savvy", and will make complaints more readily in these situations. I took her to be attributing her delays in producing these materials to her lack of technological skill.
- [159] In 2018, the last year for which her MSP records were available, she billed \$86,765.
- [160] When she was recalled during the January, 2021 continuation dates, she said that she was then only working to "keep COVID under check", and seeing the patients who were totally dependent on her. She did not want to be thought of as someone who "abandoned the field" when the community needed her, so she was "just doing what [she] can". In terms of office hours, her cellphone number was "out in the community" so she would go in to the clinic when someone really needed to see her. She tried to attend regularly on Friday afternoons (this had expanded to include half day on Thursday as well by the time of her testimony in March, 2021), to ensure that there were no important matters left outstanding over the weekend, when the clinic is closed. She was not doing any form of telehealth.
- [161] Overall her practice has dwindled, she said. During the preceding summer, she had been able to see more patients, because the weather allowed her to meet with them in the parking lot, thus reducing the risk of COVID infection.
- [162] She reiterated that unlike the respondent, she does not have the advantage of seeing her "familiar patients" in this situation.
- [163] She also indicated that she was considering retirement, and referred to the restrictions on the types of services that could be provided to patients during COVID.

- [164] A further effect of COVID was that she was not able to complete some additional medical education that the College had required of her under one of its reviews.
- [165] She described a bizarre situation with respect to her income for 2020. The secretary responsible for MSP billings in her office had been working from home, presumably because of COVID, and for some unknown reason had not submitted her billings. This left her with "zero income". The owner of the clinic was at home for the same reason, and the claimant originally thought that she was just "late with the cheque". Once the situation was discovered, the claimant had to make an application to MSP, which was considering the application when she gave her evidence. She initially thought that the amount involved could be \$100,000, but later modified that to an expectation that she will receive around \$70,000.
- [166] At one point in her testimony, she purported not to be aware of the amount that family doctors were being paid per patient seen in 2020 exceeded the amount in 2004. After some difficulty in providing a clear response, she conceded that in general the amount has gone up.
- [167] In their opening statement, her counsel had described the claimant and her mother as engaging in buying and selling real estate to earn income for the family. When this was put to her in cross-examination, she said that while the goal was to make a profit, it would be unknown at the outset whether a particular purchase would be successful. She denied that she worked less in her medical practice in order to devote more time to real estate however. Looking for properties was something she like to do in her spare time. She rejected the characterization of her activities by the respondent's counsel as a "real estate empire".
- [168] As I have indicated, the respondent's ultimate position is that the claimant should have employment income imputed to her and have her companies' capital gains from the sale of property included in her income. Shortcomings in her reporting of income and expenses were not the focus of that position. Nevertheless, it is worth pointing out, for credibility assessment purposes, that numerous such shortcomings were identified.
- [169] For example, in her financial statements for this litigation she claimed property insurance as a personal expense, when it had been paid by the companies that owned the properties in question, and in amounts much smaller than what had been claimed.
- [170] However, there is one such error that ends up being significant to the determination of the claimant's income for support purposes. According to the testimony of the respondent's accountant, who reviewed her financial statements, the capital gain on the sale of her Vancouver property had been underreported by 50% in the 2017 financial statement of the company that sold it (the numbered company), which would have led to a very significant underpayment of taxes. Under "Revenue" her accountant reported a "Gain on sale of assets" of \$1,529,319. In fact, the entire capital gain from this property of \$2,961,296 should have been reported. When the claimant's management bonus of \$300,000 and amortization of \$10,911 are added back in, this would mean that the numbered company's pre-tax income

for support purposes for that year is \$2,648,702.

- [171] The claimant's response to cross-examination on these and other similar problems was to indicate that she did not know why particular figures had been entered, and to facetiously invite counsel to report her to the Canada Revenue Agency if he had any concerns.
- [172] As of the end of trial, financial statements were not yet available for her holding company in 2019 and 2020, when the large deposit and the payment for the sale of the Surrey property were received.
- [173] In 2016 and 2017, the last year for which financial statements were available, her counsel calculated the income from her medical corporation (pre-tax income plus shareholder's loans) as \$104,102 and \$250,117 respectively.
- [174] To illustrate her alleged lack of commitment to earning income as a doctor during the relationship, which the respondent says has carried over into the post-separation period, his counsel questioned her about the two side projects that she was involved before separation.
- [175] Her position was that she embarked on the sewing project as a learning activity, in order to make clothes for herself and her children, in light of the declining quality of available fabrics at the time. When she was asked in cross-examination asked if the business made a profit, she said, "Not really, no".
- [176] She said that the mathematics and english learning centre was established around 2002 in a vacant room in the upstairs part of the medical building. Her cousin, who was trained as a teacher, had immigrated to Canada around that time, and the claimant wanted her to see how teaching was done in Canada. They began to hold classes in these two subjects, with her cousin taking the lead, and R. volunteering at times. The claimant and her cousin created exercise books for the classes. A nominal fee was charged. Although a business licence was obtained, as the respondent indicated, the claimant said that was just in case it was required. Although there was "maybe an attempt to tun it into a business", that did not turn out.
- [177] The respondent's counsel challenged the claimant on her professed lack of technological skills by reference to her extensive online searches. Her ability to perform them is potentially relevant to her claimed inability to transition to EMR as an impediment to her current billings.
- [178] Her online activities included searches of sites for looking up people's backgrounds in the U.S., creating customized legal documents, and conducting reverse telephone number lookups; the BC Land Title and Court Services online services; and property and related information sites in the U.K., Hong Kong and Australia. According to her credit card records, she had performed 195 such searches, at a cost of slightly more than \$6,000, between October 2019 and December 2020.

- [179] The claimant maintained that performing these searches involved a very basic use of the computer, and was in no way comparable to the typing skills that would be needed to use EMR effectively.
- [180] In her direct evidence, she was referred to a letter from her doctor, which led her to describe having had "a problem in my right ear". It required surgery, which did not really improve it, she said. However, the letter from the doctor did not actually describe the condition or its treatment. It was sent to advise her that tissue from the BC Ear Bank was used in her surgery, which was described as having taken place in the early to mid-1990s. When she was asked about her physical ability to work in cross-examination, she described having had "an ear infection" and as a result being in pain even from the mild cold that she was currently suffering from. That was the extent of any medical evidence.
- [181] She also declined to share any personal mental or emotional health issues affecting her work, despite cross-examination on that point, explaining that, "I have my mental state I deal with it".
- b. Respondent
- [182] With respect to his own earnings, the respondent reviewed the financial statements of his incorporated medical practice and holding company in detail. He also called his accountant, as a witness to explain any details that went beyond his own knowledge.
- [183] He acknowledged that the calculation of his income for support purposes should include the pre-tax income of these corporate entities, as contemplated by s. 18(1)(a) of the Federal Child Support Guidelines (the "Guidelines"). In final submissions, his counsel candidly acknowledged that one of the deductions from that pre-tax income - a self-directed pension plan - was discretionary and could arguably be included income as well.
- [184] After considering that additional income, and withholding what the accountant has advised him is a prudent amount of working capital per year of \$60,000, his average total income from 2013 to 2019 has been \$527,933 per year. For 2020 his income was \$427,767.
- [185] As of the final submissions the most recent assessed values for his property holdings were \$2.38 million for the former family home, \$2.05 million for the medical building (owned by his holding company), and \$1.15 million for his 1/3 share in the intended investment property. His counsel calculated his net worth as being \$12.67 million.
- [186] In support of his position that there are abundant opportunities for the claimant to be fully employed and earn a substantial income as a family doctor, as suggested in her cross-examination, the respondent described the current job situation in their area.

- [187] It has been designated by the Ministry of Health as an under-served area in family medicine. To attempt to increase the number of practitioners, the regional health district will sponsor foreign medical graduates to work under the supervision of an experienced doctor, guaranteeing the graduate a salary of \$279,000 in their first year, with freedom to bill amounts in excess of that.
- [188] When he and the claimant began employing associate doctors in their clinic, the normal fee split was 60/40. Now it is 80/20 and, as indicated in the cross-examination of the claimant, some clinics that are associated to pharmacies are offering positions on the basis that the associate doctors do not have to contribute any of their billings to overhead.
- [189] The respondent had recently reduced his share of the fees of his current associate to 83/17 in an effort to convince him to stay. When he was recalled to address some additional issues during the continuation dates in January 2021, the split was now 85/15. He said that he was "not making much money" on the 15% and that it was "not a decision based on financial sense". That doctor wants to return to Alberta because the fee schedule is more favourable there. He began at the clinic in 2017 and within six months was not accepting any new patients. The respondent did not pass on a significant number of existing patients to him, and the only assistance that the clinic provided to him was some advertising in local newspapers.
- [190] It is now very much an associate's market, the respondent said. An international graduate who was sponsored at the clinic for a year and half is now leaving for one of the pharmacy-related clinics that will allow him to keep 100% of his billings. That associate was able to earn \$300,000 at the clinic in his first year. Like the other associate, after some initial local advertising he was at full capacity in six months. A female international graduate recently turned down the respondent's offer of employment for when he assumed were more favourable financial arrangements at another clinic.
- [191] The respondent said that he has been trying to hire a female doctor to address the health concerns of female patients for years. There is an overall shortage of female doctors in the area, where the population of young patients of that gender has "exploded". Doctors who speak the first languages of the predominant cultural community in the area, as he and the claimant do, are also at a premium.
- [192] In 2016 two elderly doctors who are spouses began working part-time at the clinic, but the husband eventually retired and the wife reduced her hours to half a day per week, restricted to examining female patients. After the COVID-19 pandemic hit, she was unable to continue attending at all.
- [193] Compensation per patient has gone up considerably over the last 20 years, but overhead is also higher. The respondent's earnings have increased only because of the increase in his hours.

- [194] Crucially from the respondent's perspective, the clinic is not an asset that he can sell. Given the current demand, a new doctor can make the same money immediately as they would if they purchased an existing practice.
- [195] The respondent also addressed his experience with the EMR system. He described it as not being very difficult to use, but slightly more time-consuming than paper records. He uses speech-recognition software, which took him about a month to learn. He understands that it has about a 95% accuracy rate.
- [196] Further addressing the claimant's concerns with the introduction of the system in 2014, he pointed out that the existing paper files were not converted into the system, but still remained available to her. He did not discuss bringing her into the system because, as I will discuss, once the family action had started in 2013 she began engaging in bizarre behaviour in the workplace, which was intended to embarrass him. And, having spent \$50,000-\$70,000 to install it, he also did not want her involved in a process that she was not going to contribute to.
- [197] Despite this position, he maintained that he did not want he did not want the claimant out of the clinic "per se" - if the marriage was coming to an end there was no way they could work together in the same clinic, so the two issues were connected. He rejected the suggestion that it was important to "get her out of the clinic", explaining that either she would go or he would go, and he did not know at that time what the result of the family litigation would be (with respect to the allocation of the clinic in the property division, I took him to mean).
- [198] Describing his current work situation, the respondent explained that he had to increase his hours to 80 per week once the children's post-secondary schooling needed to be funded. In the long run, this pace has proved to be unsustainable for him, and when combined with the strain caused by this protracted litigation he feels exhausted and anxious. At one point in his testimony he described having recently been prescribed anti-anxiety medication by his own family doctor.
- [199] As an immediate step to lighten his work responsibilities, he has given up his hospital privileges, which he held for 30 years. This will cost him about \$100,000 per year in income. Beyond that, he would like to reduce his working hours further when he can afford to do so, in light of the remaining educational expenses. In his view, a 40 hour work week will result in an income of about \$400,000 per year for "a decent doctor with a good skill set". One of his current associates earns that amount for that number of hours. Another possibility he raised would be to sell the clinic and work as an associate doctor elsewhere, which would give him even greater control of his hours and eliminate his administrative responsibilities.

c. Other Evidence

- [200] B. described the claimant as "not working as much" starting in 2006, and the respondent having to add to about an hour a day to his working hours to take up the resulting slack. He had previously ended his work at 3:00-3:30 in the afternoon, having started at 10:00 am, after dropping of the children and doing his hospital rounds. Until then the claimant's hours had been 8:30 am-9:00 am to 3:00 pm, home for an hour and then 4:00pm-8:00 pm.
- [201] According to B., from 2009 onwards the claimant was not interested in working in the clinic as much as she was in pursuing her real estate opportunities. This took the form of meeting realtors at the clinic, going to city hall to make inquiries, and blocking off her usual patient appointment times for real estate-related activities. B. recalled new listings coming in on the office fax machine. She would accompany the claimant to collect rent from tenants in situations where the claimant did not wish to go alone. Her overall estimate was that the claimant spent approximately 15 hours per week engaged in this pursuit, although at that point in her testimony she dated that level of involvement back to 2002.
- [202] B.'s description of the claimant's sewing business placed it later in the sequence of events than the claimant and respondent had. According to B., it began in 2002 and encompassed the production of numerous different kinds of items, such as blankets and t-shirts, and grew to include a large machine to imprint logos, which was kept in one of the examination rooms.
- [203] The tutoring business began in 2005-2007, she said, after the claimant had spent about four hours per day, during which she was not seeing patients, over a two-year period, writing and editing the exercise books. For the actual courses, the claimant charged \$5 per hour for each student. She taught a maximum of 40 students per session and according to B. often had to turn students away. B.'s estimate was that this endeavour earned about \$1200 per week in cash. The claimant would ask her to help on some of the nights that she was at the clinic cleaning. She described the respondent as being frustrated with the situation, but only being able to take so much fighting with patients who were not getting in to see the claimant (before he gave in and saw them on her behalf, I took it).
- [204] B. also provided evidence that was capable of contradicting the claimants' position that she lacks sufficient technological skills to adjust to EMR. During their time working together, she found the claimant to be very "tech savvy" - she had a personal computer in her examination room with a separate internet connection, typed with both hands, and knew the billing software "inside and out", including how to transmit claims to MSP.
- [205] Perhaps most significantly, B. concluded that the claimant had sufficient skill to hack into email accounts. Someone purported to send an email on her behalf, advising the College that she did not wish to participate further in its investigation of a false report that the claimant was suspected of making. She also found an email in the drafts folder of the respondent's email account, purporting to inform the respondent's counsel that he no longer wanted to be represented by them. B.'s further investigations revealed that this draft originated in Vancouver, where the claimant lives.

- [206] The claimant's brother J. reviewed copies of cheques that he had provided to her just before and after she and the respondent separated: \$100,000 in May 2021 (which he said initially was related to her family problems, but that he did not know any more than that); \$10,000 in 2013, twice on the same date in 2015, and in 2016; and \$50,000 in 2018. As the claimant had testified, he also guaranteed a \$1.2 million loan to allow her to make the equalization payment to the respondent following the first trial, which she repaid once her properties were freed up from the CPLs.
- [207] In cross-examination he struggled to explain his explanation that the \$100,000 was for legal fees, after it was pointed out that the separation did not occur until the following year. He agreed that that it was clearly "not just for legal fees". He then said that that just "generally" what the money was for - the claimant told him that she needed money to live on and for "possible legal action". Later in the cross-examination he retreated from the suggestion that the money would have had anything to do with the current litigation. Instead, there might have been "something about a property" and she "might have needed to hire a lawyer for closing the deal."
- [208] When he was asked why the claimant would need to borrow \$100,000 from him that year, when she had a capital gain of \$800,000 for a real estate sale the year before, in addition to her earnings as a doctor, he said that "one would assume that she would also have debt".

5. The Children's Post-Secondary Expenses

a. Respondent

- [209] The respondent said that during the relationship he and the claimant agreed that the children should attend "the best schools", and that the university in eastern Canada that they eventually attended was the best one for their undergraduate studies.
- [210] He provided detailed records of his payments towards the children's education and support since 2013. Charts summarized each child's use of a VISA card provided by him for their living expenses on a monthly basis, and his payments for specific items such as tuition, airfare, leases for apartments etc. were separately listed. The summaries in the chart were supported by credit card receipts and other banking documents.
- [211] As I have mentioned, the claimant's counsel disputes some of the items on the basis that they go beyond what is permitted by s.7 of the Guidelines and the respective incomes on the basis of which the expenses should be divided, not that the respondent did not incur the expenses for the purposes set out in the summaries. As a result of that more focused issue, it is not necessary to reproduce the summaries.
- [212] The total amounts paid by the claimant for the children to June 2021 was \$2,074,031. Before any deduction for the claimant's contribution of providing credit cards for the children, which I will discuss, or increases to reflect the respondent's lost ability to invest her share for his own benefit and interest on the arrears, her 50% share would be \$1,087,624.

- [213] In addition to R.'s actual graduation from medical school in 2020, and S. and O.'s anticipated graduation dates as of the conclusion of the trial, there were some other events that affected the amount and nature of these expenses.
- [214] In a welcome development from the respondent's perspective, a philanthropist agreed to pay the tuition of all fourth-year students in R.'s medical school, thus relieving the respondent from that burden.
- [215] S. was on "hiatus" between her graduation from her first degree in the summer of 2016 to her admission to medical school in another country in December of 2017. The respondent's evidence was that she spent the time living in the family home, preparing for and writing various exams in order to gain entrance to medical school. There is no suggestion that she was capable of withdrawing from her parents' care during that period.
- [216] When he was recalled as a witness during the January 2021 continuation dates to address additional issues, the respondent provided some updates on the children's requirements.
- [217] R.'s salary in his residency, was \$72,000 per year by that point, but the respondent testified that his income was not enough to look after his needs. After paying for his apartment, R. had only \$2000 per month to cover "everything else" and as a result could not afford a car. The respondent had made attempts to ship R. one of his own vehicles, but when proved to be complicated to arrange he purchased one for him in R's location.
- [218] He has also purchased a new vehicle for O.
- [219] The children have continued to return to the former family home to spend school breaks with the respondent. Once they were in medical school their breaks contained more academic commitments, and O. now has an apartment in Vancouver (to reduce her commuting to a manageable level and live near her friends), but they were still spending a meaningful amount of time there as of the conclusion of the trial. O. returned home to live when her classes switched to online during COVID.
- [220] B., who is listed only as the "cooking lady" in the summary of expenses, prepares meals for the children while they are staying in the family home, which the respondent picks up from her.
- [221] The respondent and his accountant also explained the structure of the family trust, which was the vehicle for his funding of the children's education until 2018, when a change in government policy removed the tax benefit of doing so.
- [222] The only concern expressed by the claimant's counsel about the family trust was the possibility that some portion of the payments from it were originally funded by pre-separation income, so once again it is sufficient for present purposes to explain its operation at a high level.

- [223] The medical corporation, which received the respondent's earnings as a doctor, issued dividends to the holding company and the family trust, which then issued payments to the child in question, with the respondent recovering the portion of such payments that exceeded the child's immediate needs and distributing them to the child as needed. Because of a quirk in the organization of the first trust in 1995, 76 cents had to be paid to the holding company for every 24 cents that funded the trust, which at times required dividends to the holding company that depleted the capital of the medical company. The second version of the trust, which was created in 2015, did not have this difficulty.
- [224] The respondent also dealt with his decision not to seek compensation for the children's expenses in the 2015 trial.
- [225] That trial was an unusual one in that the claimant, although present, did not participate to any great extent, because of her claims having been struck and the refusal of her last-minute request for an adjournment to retain counsel. As a result, the main submissions proceeded as an extended colloquy between the respondent's counsel and the trial judge, who carefully scrutinized the positions being put forward on the respondent's behalf.
- [226] The respondent had testified in that trial that while "it would be nice" if the court ordered that the claimant pay half of the children's post-secondary expenses, he would continue covering them even if that did not occur. His counsel's submission on child support was that a combined payment by the claimant of support and s.7 expenses of \$1,000 per month for each child, retroactive to 2013, would be appropriate. The trial judge expressed the tentative view that the court should review the claimant's ability to pay support after giving her a period of time in which to re-establish her medical practice in another clinic, and begin earning more substantial amounts.

[227] The next day the respondent's counsel advised the court that:

After listening to Your Lordship's comments yesterday on the issue of child support and the possibility of having to review the issue in six months or twelve months, or down the road, [the respondent] spoke to me yesterday afternoon and asked if he might reconsider the issue of child support and the issue of s. 7 expenses to the point where he might abandon those claims, just not pursue the issue.

I asked him to reflect on it overnight and let me know his thoughts this morning, and as [the respondent] advised Your Lordship in his evidence, [the claimant]'s commitment to her medical practice has been declining in the last several years, and frankly, [the respondent] does not see any change in [the claimant]'s desire or interest to practice medicine in a more meaningful or committed way. It seems, in his view, that she's more interested in buying and selling property, renting out property, and perhaps managing and operating her little manufacturing business. At present, of course, all of the office expenses and overhead that are at the medical clinic are largely paid for for her and she comes in a couple of days a week, sometimes to practice medicine, sometimes just to be there.

[The respondent] explained to me he really doesn't want to get into an ongoing dispute with [the claimant] over the children's expenses and he's also of the view that they're not really children any more, they're young adults, well into their university education. As he indicated in his evidence, he has not complained about, or objected to, supporting his children's educational goals or their career ambitions. He never has and it's something that he indicated he's prepared to continue and he has shared that commitment with the court.

So in light of those comments, [the respondent] confirmed to me this morning that he would be prepared to abandon his claim and not pursue child support, either retroactive or prospective support, or s. 7 expenses and asked me to advise the court and invite the court to understand his sentiments on that issue.

[228] There was no claim for spousal support before the court at that time.

[229] In his testimony in this trial the respondent explained that "at that time I did not ask her to pay the children's expenses because I thought she was not going to get anything from me [that is, spousal support], and that will just finish everything and that will be the end of the litigation process." He added that at the time he made this concession only R. was in medical school, so the full extent of the required post-secondary expenses for all three children was not yet known.

[230] As I will discuss further, the claimant has made significant investments in a U.S. immigration program, with the goal of securing work visas for R. and S. in the U.S (O. has already decided that she only wants to practice in Canada). The respondent pointed out that R.'s program has already agreed to cover the cost of obtaining an "HB1" visa for him during his residency. This is a much more beneficial visa than the "J1" that is usually issued to foreign students carrying out medical residencies in that country. The respondent's understanding is that unless there is some unforeseen problem, it is certain to lead to permanent residency - the so-called green card. He added that assuming S. also obtains a residency in the U.S., which she had not yet even decided, a sufficient work visa to allow her to complete the program will inevitably be provided to her as part of her employment arrangements.

[231] In contrast, the investor visa being pursued by the claimant has a minimum processing time of almost three years, he has learned, which would not suit S.'s required timing for a residency. A further requirement is that the applicant has to actively participate in the project being funded by the investment, which would not be feasible while the children are in the course of intensive medical residencies. Finally, he has learned the invested funds go into escrow and the applicant only receives permanent residency if ten full-time jobs for US residents are provided for two years, after which the project has to be shown to be sustainable and profitable.

b. Claimant

- [232] She testified that once she had sold the Collingwood property and had money available to her, she set up VISA cards for them on her account, each with a limit of \$15,000. It was not disputed that this began in 2018 and that as of the conclusion of the trial the children had charged a total of \$101,218 to the cards for their needs. The respondent's counsel fairly conceded that this amount should be deducted from whatever child support obligation is ultimately imposed on her.
- [233] As I indicated previously, to further assist the children, after her other Vancouver property sold in 2017 she followed the advice of an immigration lawyer and bought two properties in Washington State, incorporating a U.S. company for that purpose. She had been advised that purchasing such property would assist the children in qualifying to work in the U.S., which was a particular interest of R.'s. at that time. She said that these properties generate only a small amount of rent, because of the unreliability of the tenants.
- [234] A second immigration lawyer then advised her to invest in a program that would lead to work visas for the child or children involved based on the creation of jobs in the U.S. She "gifted" \$500,000 to S. for that purpose, as well as \$60,000 to hold a spot for R. in the program. With legal fees and U.S. currency exchange rates added in, she had invested \$823,000 in this program, funded by a mortgage secured by the then-outstanding contract to sell her Surrey property, by the time the trial concluded.
- [235] The claimant rejected the suggestions in cross-examination that this was a futile exercise, because of the requirement of hands-on participation in the business by the putative investor, which would not be possible for a medical resident, and that R. already had a sufficient work visa by virtue of his residency, just as S. would if she chose to do a residency in the U.S. She also rejected the suggestion that the money invested would all come back to her at the end of the exercise in any event, so that it could not really be described as benefitting the children.
- [236] While the claimant did not ultimately rely on this investment as representing a contribution to child support, it is potentially illustrative of the depth of her financial commitment to support for the children, albeit in a manner of her own choosing.
- [237] During her cross-examination in March 2021, in what might be seen as her unfiltered position on the subject of contributing to the children's educational expenses, she had the following exchange with counsel:

Q: And you are willing to pay?

A: And if my -- all my resources weren't cut off by putting CPLs on my property then just basically cutting my hands off financially, I would have done what I could.

Q: And so you don't mind now that your money has been freed up, paying your fair share that's owed from the past?

A: I'll pay whatever is needed.

[238] She said that she did not dispute the veracity of the expenses claimed for the children, except that she did not think that she "should be paying for [the respondent's] cooking lady".

6. Misconduct by the Claimant

a. Respondent

[239] The claimant's behaviour in relation to the clinic and its occupants was the subject of two protection orders, one made by a master in April 2014, and one by the trial judge in the first trial. The respondent testified that her behaviour after the notice of family claim was filed in 2013 included:

- Sending two letters to the clinic, which were opened and read by staff members, alleging that the respondent was communicating with 10 to 12-year-old girls for his sexual pleasure, and was associating with a "hot sex trade worker". He identified the claimant's handwriting on the letters, based on his familiarity with it during their marriage, such as from reading her handwritten charts at work. Similar correspondence was sent to his brother P and the associate doctor who worked in the clinic. The allegations concerning the respondent were also sent to the College and the hospital where he had his privileges, requiring him to address the allegations with those institutions.
- Around the same time, sending a video recording of the respondent holding the hand of B's 10-year old niece on the way to a restaurant to a social worker at the child's school, alleging that the respondent was engaged in "child molestation". This required the respondent to give a statement to the police in order to exonerate himself.
- Writing to at least five families who were patients of the clinic, warning them that he was a "predator" and a risk to female patients. These families, who were upset by this correspondence, showed it to him.
- Removing the hard drive from the office fax machine and then claiming that the machine had broken, replacing it with a machine that she had installed herself. The technician who attempted to service the "broken" one found that the hard drive was missing.
- Removing the tops from the stove elements in the kitchen area of the clinic, which prevented the elements from lighting. The respondent said that the claimant did not want him, his brother or staff members having their lunch together in there.
- Leaving her dirty underwear in the staff washroom after showering there at night, about 20 times over several months.
- Leaving a comb full of her hair in the office fridge, near the food that staff members kept in it.
- Eating papayas and then leaving the seeds scattered around the fridge and front reception desk area.

- Frequently sleeping in the office and then leaving her portable bed unfolded in the kitchen or reception areas, which required the staff to put it away when they came in.
 - On at least ten occasions, leaving items that signified bad luck in the folk culture of the staff members at the front desk area, which frightened them and required the respondent to remove the items.
 - Installing three hidden cameras in the ceiling - in the kitchen, the front lobby and the printer area. The one in the kitchen had a microphone attached. These were discovered in 2015 when the respondent had the alarm system upgraded. A photo taken by the kitchen camera of an EMR demonstration involving the staff, which required them to stay after work, was sent to the clinic along with a note accusing the respondent of engaging in unprofessional activities with the staff.
 - Removing the video recorder above the pharmacy from the existing security system and, after P, reported its theft to the police, holding on to it for a further six months before returning it.
 - Leaving recording devices, which were designed to resemble chargers and USB storage devices, in the printer area, the kitchen and in the pocket of P's lab coat, which was left hanging in the kitchen. A transcript was sent to the College of a conversation between the respondent and P, which had been captured by the device in P's lab coat, about a hearing at the College dealing with her complaints that the respondent had just attended.
 - Locking the associate doctor out of the examination rooms on Sundays, thereby preventing him from seeing patients. The respondent said that the claimant was upset that she was no longer receiving her share of the associate's billings, after she stopped contributing to the office expenses.
 - Sending a man to the backyard of the former family home to take photos of it. When the respondent confronted the man, he said he was there on behalf of the claimant. The respondent saw the claimant's vehicle nearby. When the respondent demanded that the man produce identification, the man told him to get out of his way and pushed him, causing him to fall to the ground. He next saw the man walking on the street, speaking on his cellphone and accusing whoever he was speaking to of abandoning him. The respondent called 911, but before the police arrived the claimant returned in her car, the man got in, and they drove away. The respondent then received a call from a person, on a blocked number, who represented himself as being the claimant's brother. This caller referred to the claimant as having had an altercation with his "man", urged the respondent to reconcile with the claimant and, when the respondent said he had called 911, threatened to kill him. He received further calls from this person in the ensuing weeks, including one in the middle of the night that featured another death threat. The calls stopped after the point at which he understood the police had spoken to the claimant about the original incident.
- [240] Previously, in 2013, the claimant contacted the police to allege that he had sexually assaulted her in 1993, when she was pregnant. He retained counsel to address the allegations, and the police eventually discontinued the investigation.

- [241] Also in 2013 or 2014, there was a complaint to the College from Ontario, which the respondent also attributed to the claimant or her brother, alleging that he and the associate doctor were writing false prescriptions for Xanax and other controlled substances, which were filled by P. in his pharmacy and then sold on the black market by B. The College ultimately concluded that the complaint was unsubstantiated.
- [242] Yet another complaint to the College, I infer during the same general time period, purported to be made on behalf a female patient, whose identity turned out to be fictitious, alleging an inappropriate relationship between her and the respondent. It was dismissed once it was found that the complainant did not exist.
- [243] The most recent complaint to the College was filed in January 2020, on the Monday following conclusion of the first two weeks of this trial. It brought to the College's attention a bylaw violation investigation concerning the property of which the respondent is a 1/3 owner, along with his brother P. and a friend. The tenant of the property had stored a large number of wrecked vehicles on it, which the city had ordered the owners to remove. The respondent and his co-owners were unable to comply within the required period, so they were charged with breaching the order. The matter was ultimately resolved by each of the partners paying \$10,000 - it was not clear from the evidence whether this was a fine upon conviction, or payment as a form of alternative resolution of the charge.
- [244] The respondent highlighted certain distinctive features of the handwriting on the complaint form, which was represented to have been sent by a person with quite a common name within his cultural community, and compared those to very similar features in a document that was known to have been written by the claimant's brother J. As I will discuss, J. denied having been the author of the complaint. The respondent asks me to infer that he made it at the claimant's instigation, pursuant to her ongoing vendetta against him.

b. Other Evidence

- [245] B., the office manager, confirmed the various incidents of harassing behaviour in the office that the respondent had described.
- [246] She added certain details to those incidents, such as that when the hidden cameras were discovered in the office, wires led from them to the area of the office where the claimant had her own separate internet connection, and that she recognized the claimant's handwriting on the letters accused her and the others of trafficking in Xanax.
- [247] She described additional incidents that she observed or experienced herself, such as the claimant taking her cellphone and giving it away to another person (which she reported to the police, who then apparently informed the College) and writing to patients advising them that the respondent was B.'s pimp and to "eat a lot of Viagras" when they came to the clinic.

- [248] In general, the claimant treated the staff rudely and subjected them to arbitrary demands, B. said. Examples of this behavior were telling them to stay out of the lunchroom because male physicians were in there, and not to be friends with each other; and ordering them not to come into work one day because she was upset that the respondent had woken her up to tell her that a patient was in labour. The associate doctor who had been locked out of the examination rooms on Sunday eventually left in search of a friendlier working atmosphere, B. said. Aside from resenting no longer having access to a percentage of his billings, the claimant did not like him because he was friendly with the respondent.
- [249] The overall theme of B.'s testimony on these issues was that it was the claimant who created the intolerable atmosphere in the clinic, rather than having been excluded from it by the respondent.
- [250] B. described more recent experience with harassing behaviour by the claimant, in the form of the claimant repeatedly driving past B.'s house in her vehicle, sitting in that vehicle while it was parked at the nearby corner and staring at the house and any occupants who happened to be outside, or getting out of the vehicle and staring in that manner, sometimes under the pretence of stretching.
- [251] In her initial testimony, B. provided four photos of what she described as the claimant's vehicle near her house, relating to incidents in May and July 2020. She also provided a list of 21 other attendances of this kind since October 2019, several of them on the same day. She added that that for the preceding two years these attendances by her had "almost been like a daily thing" - sometimes two or three times per day.
- [252] When she was recalled during the January 2021 continuation dates, she provided updates on this behaviour. She had eight additional photos of the vehicle, some of which she took herself and some of which were stills from her home's video security system from July 27 to September 8, 2020. One of them, taken on August 6, quite clearly showed a dent above the driver's side front wheel of the claimant's vehicle, which B. is familiar with as being present on that vehicle. B. last saw the claimant in the area in November of 2020, late one night. The claimant was standing outside her vehicle wearing a black coat. B. approached her and waved, which caused the claimant return to her car and drive off.
- [253] To bring home the lack of any innocent explanation for these repeated attendances, B. provided a map showing that her house is in not on an arterial route, and is three miles in the opposite direction from the route that the claimant would have to take between her own home to her current clinic. It is also in the opposite direction from the route that the claimant would have to take between either of those locations and her cousin's house in Surrey. She conceded in cross-examination that she does not know "100%" that the claimant has no friends or family members in her area however.

[254] In 2015 or 2016 someone sent notes to her neighbours, written partly in the language spoken by many members of their cultural community. It provided her cell phone number and the licence plate of a vehicle that frequently parked in her driveway, and referred to a "sex trade worker" by a diminutive version of B.'s first name.

[255] On July 26, 2020, an account on a disposable email service called Guerilla Mail, sent an email to B.'s niece that read:

After multiple girl foetus abortions she was still yearning for a boy so she went to abort you but was unable because of complications you are unwanted child and your very loved one supported her

[256] B. said that in the past she had accompanied her niece's mother (her aunt) to the aunt's appointments with the claimant, who was the aunt's doctor. She was in the room when her aunt's previous abortions were discussed with the claimant and asserted that only the claimant that could have known about the information contained in this email[2].

[257] B. conceded that after her niece received this email, she called the claimant and spoke to her angrily about it, using abusive language in the process[3].

[258] The respondent's brother P. also conformed many of the alleged incidents of misconduct, such as the removal of the security video recorder, the installation of pinhole cameras (which, similarly to B.'s evidence, he said had wires tracing back to the claimant's personal computer) and the recording and transcription of a private conversation he had with the respondent. These actions were in addition to the general negative attitude in the workplace that he said was caused by the claimant's rudeness to everyone.

[259] He had to endure an inquiry with the College of Pharmacists after the letter was sent alleging that he was prescribing Xanax for the trafficking operation with the respondent, the associate doctor, and B.

[260] Following up on the respondent's evidence that the handwriting on the complaint to the College about his bylaw infraction closely resembled that of J, the claimant's brother in Ontario, J. was also confronted with that similarity in his cross-examination. The "known" samples were two handwritten fax cover sheets addressed to the claimant from him, apparently sent on April 25, 2001 and August 24, 2012. As I have described, the respondent had circled certain letters he maintained were very distinctive in these source documents and the College complaint.

[261] J.'s primary response was to point out repeatedly that the respondent's counsel was not an expert in handwriting comparison. Beyond that, he was unable to be sure whether the writing on the 2012 sheet, which he agreed emanated from the fax in his home office, was his. He explained that he sometimes has his children or his assistants "write stuff" - there are several people living in his house and he sometime receives assistance at his home office.

- [262] He said that he had no idea if he had written the 2001 sheet. One alternative explanation he offered was that he could "get [his] kids to be printing so that [they] will learn something." It emerged that his oldest child was three years old in 2001, and when he was asked if that child could be safely excluded as the author, he responded that it could have been written by an assistant, but that he could not remember what had occurred 19 years earlier.
- [263] The writing in question is mainly in block letters. J. conceded that he does tend to write in such letters, but when the presence of them in the complaint was put to him, he emphasized that he knows cursive writing and so there is "no need" for him to print anymore.

c. Claimant

- [264] As I have mentioned, she denied all of the harassing behaviour that has been attributed to her, including authoring or instigating any of the complaints to the College. The only incident for which she admitted carrying out the act in question was removing the vide recorder from the ceiling above the pharmacy, which she said she did because she did not know who had installed it.
- [265] She denied ever having told the respondent that she would destroy him if they did not reconcile. She explained that destroying him will "serve no useful purpose" and that now that his affair with B. "is out in the open", his reputation has been destroyed already. Although she had said earlier in the trial that she did not know if she wished to reconcile with the respondent and that the situation was "very confusing", in her final re-examination in March 2021, she said that it would be "extremely difficult" for them to do so and that "too much has happened".
- [266] On her lack of compliance with the order prohibiting her from attending the family home, she explained that after being served with it she had continued to return there because the RCMP were unable to give her "clear direction" on what the order meant. After returning from dropping O. off at university in September of 2014, she asked the respondent why he was pursuing the protection order and he called the police, who then told her that she had to leave. She was arrested for later phoning the respondent about retrieving some medical books that she needed from the house.
- [267] As I have mentioned, she was eventually charged criminally for this breach. She explained that she had to attend court 29 times, and it took over a year before the case was resolved, I infer by the prosecution being discontinued. She refused to enter into a recognizance to keep the peace as a means of resolving it, which resulted in this large number of appearances. Having to make all of them "destroyed" her work, she said, because a lot of patients saw her at the courthouse and she had to spend hours at a time waiting for her case to be called.

- [268] When she was recalled to testify in the January 2021 continuation dates she said that she "could be familiar" with the area where B. lives, but that she is not interested in that area and doesn't "particularly know here she resides right now".
- [269] She was shown a letter from her to B. in 2014, telling B. not to go into the clinic (pursuant to their dispute at the time). It was sent to the same address where B. currently lives. The claimant eventually conceded that she could have written this letter, but emphasized that she does not commit letters that she wrote seven years ago to memory, and that B has had several addresses over the years.
- [270] When her cross-examination continued on another day, she added that she had written this letter banning B. after finding out that B. "could have been a minor" at the time she began a relationship with the respondent. No one told her that they were having an affair; instead it was "bits and pieces and little things" that led her to come to that conclusion. She later elaborated that finding out in 2012 that B. was "maybe 15 when this was going on has broken my soul and affected my mental health."
- [271] She acknowledged that there "could have been" an incident in which her car became stuck in the snow in front of B.'s house after she followed the respondent there, and the police were called (this incident was not canvassed in B.'s or the respondent's testimony). She said that she did not know that it was B.'s house and that the police did not tell her that, but when counsel suggested that B. came out of the house at one point, the claimant agreed, and said that B. was swearing at her.
- [272] In response to the evidence that she has no reason to be in B.'s neighbourhood, she explained has "connections" all over the city, and sees friends and family and shops there. She was invited in cross-examination to give examples, and referred to a family living in the same general area as B. The wife in that family was a friend of hers and the adult son was a mechanic whose advice she had sought about cars. She also patronized a fabric store and a produce store in that general area. Of potential interest on her business pursuits, she added that an architect who has prepared plans for a townhouse project for her lives around there too. The project has not progressed beyond those plans, she explained.
- [273] She agreed that it could be her vehicle that is shown in the photos, although its licence plate is not visible in any of them. In cross-examination she agreed that her vehicle has a dent over the driver's side front wheel, and when B.'s photo showing such a detail was shown to her she said that it "could be my vehicle".
- [274] More generally, she professed to have no ill will towards B., and in fact wished her good luck. As B. admitted in her evidence, she was actually the one who phoned the claimant after the email was received by her niece. The claimant also said that B. swore at her in that call.

[275] She denied having sent B.'s niece that offensive email. She stressed that she would be subject to discipline from the College if she were to reveal such sensitive information. She would not have assisted B.'s aunt in the manner described in the email in any event, because she is opposed to abortions for the purpose of gender selection, to the point that she will not reveal the gender of an unborn child to expectant parents. In addition, she is unfamiliar with Guerilla Mail as a means of sending emails, and does not use the British spelling of foetus. Of her medical training, only six weeks of it was spent in the U.K..

[276] Later in her cross-examination, she explained the interaction she actually had with B.'s niece's mother on the topic of abortions. She was asked by B.'s father to assist the mother having a male child. Rather than comply with this request in any way, she simply referred the mother, who had had a c-section in the country from which she had emigrated and therefore required specialized care, to a gynecologist. When B. pointed out to her that they could go back to their country of origin to find out the gender of the child, she said, "Let them go".

7. Fraudulent Documents

a. How the Issue Arose

[277] On July 22, 2020, while P. was giving his direct testimony as part of the respondent's case, the claimant's counsel advised that they had just received some additional documents, which they disclosed. P. was eventually cross-examined on them by the claimant's counsel.

[278] Those documents consist of:

- A "General Power of Attorney" purporting to have been granted by the respondent on July 3, 2014, to [M.K.K.], of a named borough of London, U.K, to enter into an agreement for the purchase and sale of a property in [city] in the respondent and his brother P.'s country of origin. The property was not described further. The document purported to have been signed by the respondent before a well-known notary in the city where the respondent lives, whose signature and seal were attached. The first and middle names of the intended attorney and the first name of her husband were redacted, apparently by a felt pen, as well as the details of the respondent's passport, which were included below his signature, presumably to confirm his identity. In the first of two numbered spaces for witnesses, there was a signature, with no other identifying details. The second numbered space was blank.

- Stamps of an officer on the Ministry of External Affairs of the country in which the property was located, and of a notary in that country, which were apparently attached to the power of attorney.

- An identical power of attorney in P.'s name, except that the middle name of the attorney was not redacted.

- Identical stamps to the ones affixed to the respondent's power of attorney, except that their positions on the page had been transposed.

- A "Stamp Certificate" from 2014 (the date and month of issue were redacted) showing the payment of stamp duty for the purchase of the property in the country where it is supposed to be located, with the respondent and P. shown as the "First Part[ies]", a person whose first name has been redacted shown as the "Second Party" (presumably the purchasers and sellers respectively), and a person whose first name has been redacted but has the same surname as the attorney listed as having paid the duty. The Consideration Price shown for the property would equal about \$11 million in Canadian funds, according to P. (although the respondent later described it as being about \$1 million). The document bore the stamp of a notary public in that country.
- A certified bank draft dated "08/07", 2014, for "Six Hundred Thousand Pound Sterlings" [sic] drawn on the Barclays Bank Branch in Southall, U.K.. It was payable to a person with the same middle and surnames as the attorney. The "Drawer's" signature appears to be the respondent's.
- A "Sale Deed" dated September 15, 2014 between a person with the same surname as the Second Party in the Stamp Certificate, as the vendor, and a person with the same surname as the attorney, as the "vendee", on behalf of the respondent and P., whose names were listed in full. The deed related to a "vacant plot" measuring 1450 square yards. Curiously, its east and north dimensions are 87 feet while the west and south ones were 150 feet. This would lead, as the respondent's counsel pointed out, to a lot in the shape of a kite. The purchase price was the same amount as the consideration listed in the Stamp Certificate.
- A "Valuation Certificate of Commercial Plot" prepared by a named person on behalf of a "building planner" on October 19, 2019. The present market value shown in it was considerably higher than the 2014 purchase price - about \$11 million in Canadian funds, according to the respondent. All of the identifying descriptions of the property had been redacted.

b. How the Claimant Said She Received the Documents

[279] The communications between her and the unknown person were summarized in my reasons for judgment on an interim application by the respondent to conduct a forensic examination of the claimant's electronic devices (2021 BCSC 104) For the sake of convenience, I will refer to the relevant portions of that summary (with additional anonymization of the named participants and the country from which the documents are alleged to have originated):

7 Shortly after the conclusion of the July [2020] continuation dates, the respondent's counsel demanded detailed disclosure from the claimant's counsel about the origin of these documents, including all available information showing the identity of the sender and the electronic means by which they were sent.

8 As part of the claimant's response, her counsel provided a supplementary list of documents that included text messages between the claimant and the unknown provider of the documents. In this initially disclosed version, the messages indicate the phone number from which they originated, the time of day that they were sent, and that they began on "Wednesday", but not the dates. They set out a sequence of exchanges between the sender and the claimant, which included the following:

- Beginning with the assertion that "your opponents are celebrating, they believe they have already defeated yo[ur]" the sender referred to having information about "his [presumably the respondent's] offshore company investment in the BVI [which may be a reference to the British Virgin Islands] as well. This can turn the whole case in your favour."
- The sender told the claimant that they had "some documents that can help you in a big way", and that they have sent copies of them to the claimant's email. They said that they have "clear uncensored copies" of those documents, "and more" and invited her to make a "considerable offer" for them, indicating that they would reply if they were interested in the offer.
- They elaborated that "the person working inside is big taking risk for us [to obtain the documents] because they can sue her" and that "[t]he opposing party's lawyer believe that if these documents get to court, then they might suffer a big loss and might have to pay a big amount".
- In response to the claimant's subsequent statement that "they are saying the documents are forged" the sender responded, "Yes of course they will say that because they know you cannot verify old [...] documents from [country of origin] easily. They may also get the notary to lie for them because he is their friend. And notary also doesn't keep any record so it's easy for them." The sender claimed that the notary would say he had no records because he is related to the aunt of the respondent's office manager. They added that if the claimant could pay a "good amount", "then my brother in [country of origin] can get the old property owner [G.] to give his statement for you through video".
- Perhaps in an effort to encourage the claimant to purchase the documents, the sender wrote, "Can you feel stress on their faces now? Because they hid it so well and now it's out in the open". To the same effect, they noted that the respondent's "lawyer is saying that he will prove the papers baseless because the main parts are blacked out. unless you submit full copies with full details. Just letting you kniw for your reference". When the claimant asked if they could get a "full copy from [country of origin]", the sender replied that they had it in their possession.
- Departing from the previous request for the claimant to make an offer for the documents, the sender asked for "Just \$50000".
- The sender rebuffed the claimant's request to speak to them, stating, "Let's not waste each other's time, only message if are you serious", and later, "Let me know when you are ready and I will send the payment method". When the claimant said that she was "not that good with computers" and did not have online banking, the sender explained that "you don't have to use computer for anything, you have to go to Vancouver to pay." The claimant then asked, "Where in

Vancouver these papers can help me they are no use to you so why do not use them", to which the sender replied, "There are many locations in Vancouver. Paper or [in context, this was likely meant to be "of"] no use to me, got them only because you requested for them last time".

- The sender also declined to provide further proof of their possession of the full documents. In response to her suggestion that she pay for what she had received already, they said, "That was a free proof that we have the full documents that you ask and now have you pay to get the full documents".

- The sender asked "ok when are you going to the address I message you before"? The claimant said she had to obtain the money from her bank but that there were long lineups due to COVID-19. The sender replied, "You have until 6pm no help will be offer [after?] that because look like you are trying to fool around". The claimant protested that she was not doing so but that the meeting place she had been given was "way in downtown" and that in order to obtain the funds she had to give notice to her bank in Surrey, "who know me". The sender responded, "ok no problem no pressure you can message if bank work out for you if not no problem have nice day".

- In the final exchange that was shown in these messages, the claimant wrote, "His lawyer said I blacked out the papers and I have the clear papers and I am doing fraud in court and should go to jail". The sender replied, "Sorry you fooled me and refused to pay so I contacted someone from the other side and they going give me even more money not to leak the papers and they are going to make payment morning tomorrow".

- Earlier in the exchange, the sender had offered information about the respondent's plans to remarry, offering details of "the divorcee women that he is interested in", "for a price". When the claimant asked the cost they replied "\$500000 for everything", although given the references to \$50,000 for the documents in the exchanges that followed, this may have been a typographical error.

9 In her affidavit, the claimant says that she received the property documents in an email from a "[K.G.]" on July 22, and that she forwarded them to her counsel.

10 She deposed that she had previously received an email, with two attachments, from the same email address on July 7, with the message, "I have passports and other legal and illegal documents of this family". However, she explained that she did not provide this email to her counsel "because the matter seemed unrelated to my current trial, and the documents were in [language of her country of origin]".

11 She said that she received the text messages I have referred to at the same time as the email, and first noticed them when she took her phone off of airplane mode (which she has on overnight to prevent interruptions) on the morning of July 22, "before court". (July 22 was a Wednesday, and the text messages begin with an indication of that day of the week, although they continue on subsequent days).

12 She has only rudimentary proficiency with text messages and emails, so she was unable to provide screenshots of these messages, as requested by her counsel. She instead gave her phone to her counsel's paralegal, who produced the copy of the messages that was initially disclosed.

13 After the respondent's counsel filed this application, the claimant's counsel retained an expert to conduct a forensic examination of her cellphone, laptop and the Gmail messages she received. He found 76 messages between her and the sender's cell number, during the period of July 22 to August 14. According to the report, the sequence of messages that I have summarized above ended with the sender's message claiming that [the claimant] had "fooled" them, at 5:49 am on July 24.

16 The text messages retrieved from the claimant's phone by [the expert] included additional messages within the sequence that was initially disclosed, but that were not shown in the document that the claimant's counsel provided. Of particular relevance, in response to the claimant's request that they "be more clear about location in Vancouver", the sender provided a specific address and suite number on Burrard Street for the payment of the money, and added that "[w]e provide you account number". After informing the sender that she was in Surrey at that time, and that the banks had long lineups, she questioned how she knew they would give her the documents and, once again, "how much" they would cost. She then offered, "You can put a guarantor person in between us I will pay you ten thousand dollars I promise but have to see the papers first..." The sender replied, "Sorry price was discussed before when sample given to you that is final price only message when you ready." This series of messages were sent on July 23 between 9:35 and 10:55 am.

17 In addition, on July 27 the claimant wrote thanking the sender for "all your help" and advising that "if the details of what you gave me are correct I still want to pay you". On July 31 she wrote, "We can still talk". Her message on August 14 asks that the documents be mailed to a post office box in Delta. Although she described these messages as "mutual exchanges of greetings" in her affidavit, there were actually no responses to them from the sender.

[280] The communications summarized above formed part of the evidence in this trial.

[281] The theory of the respondent is that the claimant created the documents and is actually the author of both sides of these communications (or alternatively, that her brother J. simulated the unknown person in those conversations).

[282] There was an additional exchange between the claimant and the unknown person that I did not include in the summary above, because it did not appear to relate to the question of whether her devices should be examined. However, it turned out to play an important role in the respondent's theory.

[283] Following the message from the unknown person, "'Can you feel stress on their faces now? Because they hid it so well and now it's out in the open", the claimant wrote back with four consecutive messages:

"Thanks you are helping me so much"

"They seem confused"

"[apparently in response to the previous indication that the notary is related to B's aunt] Which aunt [lists three of B's aunts as possibilities]"

"Can you tell me about bvi [the alleged property holding of the respondent described in the initial messages] where it is"

[284] At 3:20 pm on July 22, the person responded:

"[name of specific aunt]"

"Barclays has their banker links in Canada through which you can make drafts here, you do not have to go to U.K."

"[apparently in response to the request for more "bvi" information] I can but told you somebody risked it for us so not free.

Thanks"

[Emphasis added]

[285] Before the afternoon court break on July 22, which the respondent's counsel confirmed through DARS began at 3:13 pm, P. had testified that neither he nor the respondent were in England on July, 2014, when the bank draft was negotiated. In particular, he said he had looked at the respondent's schedule, which showed that the respondent had not travelled anywhere on that date.

[286] The important point, from the respondent's perspective, is that no one except the occupants of the courtroom at that time, which consisted of the parties, their counsel, the clerk of the court and me, would have heard P's testimony that the respondent could not have physically obtained the Barclays draft. Despite this, the unknown person immediately provided what could be interpreted as assurance to the claimant that the respondent's physical presence in the U.K. would not have been necessary to obtain it. Adding to its potential weight, there was no earlier message in the disclosed communications from the claimant that had inquired specifically about legitimacy of the draft.

[287] The mail that the claimant had previously received on July 7 contained an attachment that is written in the language spoken in the region of the parties' country of origin in which they were born. The document contains the ownership details of a specific piece of agricultural land in that country, and also provides what is said to be an excerpt from a voter's list that contains the names, genders and ages of six people. The respondent and B. identified those names as corresponding to members of B's family, who it appears now live in Canada.

c. Proof that the Documents are not Genuine

- [288] In cross-examination, P. denied having signed the power of attorney in his name and emphasized that he did not know the person to whom it purports to be granted. He met the local notary in question in 2011 when he was negotiating a loan, but was not in his office on July 3, 2014 to sign this document.
- [289] The respondent was recalled, and he offered the same denials with respect to the document in his name, as well as a denial of having purchased the property described in the material. Like P., he also had dealings with this notary - in 2011, in relation to a mortgage, and 2016, to have O.'s passport notarized to show her citizenship for her medical school application.
- [290] He has obtained a letter from a lawyer in the city where the property was alleged to have been purchased, who confirmed that no property conforming to the available descriptors was registered in the respondent and/or P.'s name in September, 2014, when the contract of purchase and sale was dated.
- [291] The respondent further testified that he has never had an account with Barclays Bank, and noted that a bank is unlikely to have made a draft payable in "pound sterling", since the proper term is "pounds sterling". The stamps in his passport go back as far as 2013, including one for Heathrow Airport that year, but there are no stamps indicating that he travelled to the U.K. in 2014, the date these various documents were supposedly executed or obtained.
- [292] Despite his own internet search efforts, he could find no business corresponding to the "building planner" who provided the valuation certificate for the property, and no person corresponding to the author. A letter to the address provided for it on the valuation certificate was returned to him with the indication on it that no such address exists. The listed phone number belonged to a person who indicated to him by text message that she has no knowledge of, or connection with such a person, and expressed irritation at being repeatedly contacted to reach him. The respondent provided the text exchange in which he obtained this information.
- [293] The respondent received text messages on the clinic's after-hours phone line on July 26, 2020, which appear to be linked to the documents. The unknown sender wrote that he had been told to make the "papers" by "a lady named [claimant's first name]" that they had "raw papers that I can provide for u".
- [294] B., whose job was to monitor that line for emergency calls, responded, apparently presenting herself as the respondent, by asking the person to send her the papers and inquiring who they were. They replied, "How much can you offer me?" and "Sry I cant tell u my name". B. told them to "stop contacting me" in that case, asserted that the papers were a forgery, and said that the police would be receiving the texts. The person's last response was "Ok no prb if un dnt want i thinking it useful for u". B. informed the person that she would not communicate with their number further, but provided the respondent's email, with an invitation to "email what you know and what you want from me".

- [295] On the same date, a robotic-sounding voice mail message was received on the after-hours line, advising "[the respondent's first and middle name] if you want to know truths about [city in which property located] papers then text me at [number provided]. This was after several calls from a blocked number had been received by the clinic.
- [296] Although he agreed that the claimant did not have much "technical acumen" six or seven years ago, the respondent pointed out that she was ending emails and text messages before their separation.
- [297] As to the possibility that someone other than the claimant was behind these offers, he conceded that it would be well known among their patients and the "general public" (within their cultural community, I took it) that he and the claimant have been in court fighting over the years, and that the two of them would be perceived as being wealthy by such people.
- [298] That notary whose signature and stamps appear on the powers of attorney confirmed, after searching his records, that he had not drafted or notarized these documents. In addition to the absence of any records corresponding to them, he testified that they contained several features that would not be found in genuine documents prepared by him, including that: the circular seals on the documents are much smaller than the ones he uses; there is an identical defect in both seals, which is unlikely to have been present in two separate original seals; his stamp has been reduced from its actual size; and his signature appears to have been copied and pasted on both documents. Further, he would have required two witnesses to such documents, instead of the single one that was presented here, and their names and addresses would have been printed on the documents below the signatures.
- [299] The respondent also called the general counsel for the Society of Notaries Public for British Columbia (the "Society"). He described the necessary procedures to have powers of attorney verified before they are sent onwards for use in the country for which these ones were seemingly intended. This includes a review by the Society and authentication by an office of the provincial government, before they are sent on to the consulate of the recipient country. Absent from these documents are the initials of the Society's reviewing officer, which would have been present on every page if they had passed through that process. The general counsel echoed the notary's concerns about the size of the circular seal, which is known as a "wafer seal". He explained that notaries also attach their "impression seal" (which, as the name implies, impresses the notary's information on to the paper) at various important points on a properly notarized document.
- [300] In the general counsel's experience, virtually all of the documents intended for this particular recipient country include photographs of the makers and witnesses attached to them, sealed with the impression seal of the notary. The photographs will be typically stapled to the document. No such photos are present here.

[301] Beyond the deficiencies in these documents that the notary testified about, the general counsel identified a small horizontal line to the bottom left of the seals, which appeared to him to be an "artifact of scanning". He also advised that if one does a Google search for powers of attorney to use in the country in question, the form used for these two documents is the first one to come up. (While this fact in itself did not concern the general counsel, it became a pillar of the respondent's arguments about the documents' origins.)

d. The Claimant's Response

[302] She described being in shock when she first saw the text messages on the morning of July 22, and taking some time to process their contents. However, she did not want to "lose" the person on the other side, so she kept providing replies to keep them engaged.

[303] She said that K.G. [the name of the sender of both the documents and the previous list relating to B.'s family] is a very common name (within her cultural community, I took it), and that "I could know several [K.G.]s. So I don't know which one or who, or do I know this particular [K.G.] or not I have no way of knowing that." She had tried to figure out which person with that name it could be, such as a patient or an acquaintance, and also discussed the question with her brother. In cross-examination, she professed not to be curious about which K.G. it was however, pointing out that the person may not have used their actual name in the email. Despite the same name being used for the sender in the July 7 and 22 emails, she did not know if they were from the same person. The use of the same name on July 22 did not alert her to the previous one, she said.

[304] She did not make the connection between the documents that K.G. had sent on July 7 and B.'s family, because the surnames of the people listed in them do not have the same surname as B. She never requested the additional documents relating to that family that the person offered in that email. The offer of those documents did not pique her interest, because she did not know what family they belonged to.

[305] She said that she tried to email the person back on July 22, and received a response of "message not sent" or "blank or something". She did not mention that attempt previously because she was not sure whether the result was due to a problem with her computer.

[306] When it was suggested to her that five of the six people listed in the document are her patients, she referred to how common their names were. For example, she had several patients with the same name as one of the people on the list.

[307] When her cross-examination continued in March, 2021, the claimant advised that she now had information that B.'s parents are not among the names included on the list. They actually have a different surname than B. uses, and for the balance of her testimony she continued to refer to B. by that other surname. In addition, she maintained that B.'s familial relationship to the people on the list was a different one than counsel had suggested. For example, the person represented as being B.'s brother is actually her uncle, and the niece to whom the claimant was alleged to have sent the email about being an unwanted child was

actually B.'s cousin.

- [308] When responding to her counsel's questions about the exchange in which the unknown person said that Barclays Bank can be accessed from outside of the U.K., she made what the respondent's counsel say was a significant Freudian slip.
- [309] Referring to the misspelling of the name of the aunt to whom the notary who prepared the powers of attorney was alleged by the unknown person to be related, she testified that her typing is not accurate, and that her fingers are "a bit fat". Her counsel then pointed out to her that this misspelling is contained within a message that is supposed to have been typed by the unknown person.
- [310] In cross-examination, after initially being unable to say whether she or the unknown person had typed that particular message, she firmly asserted that she had not typed it.
- [311] She did not really engage with the main proposition that only someone in the courtroom when P. testified would have known of his assertion that the respondent was not in the U.K. when the bank draft was obtained.
- [312] Also of potential significance, her counsel then asked her if there was "any question about Barclays" (before the unknown person mentioned it, I took counsel to mean). Her response was that "[t]here might have been previously because the other side was taking time in responding, and then Barclays--oh, I might have said something here that Barclays is in England " However, she also said that she did not think that she had any other communications with the person, other than what is shown in these messages, and that she "might have tried to phone them, but they may not have answered."
- [313] Despite the person's indication that they had obtained the documents "only because you requested for them last time", she did not remember having spoken to this person before.
- [314] She explained that she started driving to the city where her current clinic and the former family home are located, even though the messages instructed her to pay for the documents at a location in Vancouver, because she "thought they might be somebody-- somebody will tell me something, more chance I'll find something out in [name of city]." She informed the person about being in [name of city] and the long lineups at banks (this was in the first wave of the COVID pandemic, when the number of people allowed inside businesses at one time was frequently restricted), and offered to put a guarantor between them and pay \$10,000 up front, because she was worried about paying the amount being demanded but getting nothing in return.
- [315] Her offer on July 27 to pay for the redacted documents that she received to that point was made because she did not want the person to feel that she had cheated them. Her suggestion on August 14 that the person mail her the offered document was made in the hopes that the documents would be sent to her and "then maybe he'll leave me a message for what his bill is."

- [316] Although her responses to the person could be described as very enthusiastic, she denied the suggestion that she was "ecstatic" upon receiving the documents. She simply considered herself to be doing the right thing by informing her counsel about them. She later explained that when she received them she "did not have time to sit and search and say is this real if this is true I was made to suffer so much, properties locked, no money to run the first trial. That just rocked my mind."
- [317] She agreed that on August 14 she received an email from her brother J., with whom she had been in contact about this property, enclosing two listings that potentially conformed to the information that could be gleaned from the redacted documents. J. indicated that one of them, which was the same size as the property referred to in the documents, was more likely to be the one they were searching for. The claimant elaborated in cross-examination that a lawyer in that country thought that he could read the same of the street through the redactions in the valuation certificate, so she and her brother pursued the inquiries through a real estate agent. It was not clear whether she had retained the lawyer in that country to assist her.
- [318] Although this email from her brother was not disclosed until the expert retained by her counsel reviewed her electronic devices, she maintained that she had not intended to conceal her efforts to locate the property.
- [319] She further explained that she needs the registry number and title number of the property in that country to look up the owner. She wants to obtain a registrar's certificate of ownership, which would be the most accurate source of ownership information of all, but has not been able to obtain it yet.
- [320] She rejected the suggestion that the search done by a lawyer in that country on the respondent's behalf shows that he does not own the property referred to in the documents, pointing out the absence of the title number of the property in question in the lawyer's letter. She later added that it refers to the wrong district (from the one described in the documents, I took her to mean).
- [321] Her position on the documents generally is that she does not know if she "disavows" them (as her counsel had expressly done in a colloquy with me earlier in the trial), or if they are fake. She did not create them, and simply passed them on to her counsel once she received them. She also denied being the person who contacted the respondent's clinic by text message and voice mail on July 26 to offer him the documents.
- [322] She agreed that she had not taken any steps to verify the authenticity of the documents, or examined their contents for signs of fabrication. She does not use powers of attorney herself and so is not conversant with their usual contents. She also does not know what the "copy and paste" function is when dealing with documents in electronic form, and so was not looking for signs of it having been used to create the seals of the powers of attorney. When it was suggested that she could have contacted the holders of the notarial seals in the recipient country that have been placed on the documents, she replied, "could have, would

have, should have "

- [323] She further claimed to be unaware of the procedures needed to bring those involved in dealing with the documents, such as the notary, to court to authenticate them. She left such matters in the hands of her counsel.
- [324] In the same vein, she did not regard the Society's general counsel's evidence of the missing procedural steps as being conclusive that the documents were not genuine. That process could have been bypassed, she pointed out, and in the city where this property is located "they are not worried about what B.C. is doing". She ultimately flatly asserted that "this [document] went to [that city]."
- [325] She similarly refused to accept that the person who prepared the valuation certificate did not exist - it might be that he was simply unwilling to put himself at risk for a court case in B.C. She was unable to recall whether she had attempted to call that person or done internet searches for him and his company, as suggested in her affidavit for the application to examine her devices. She speculated that the call had not connected or that she had not been unable to hear anything. In general, her "phone did not have much success" in that country.
- [326] She expressed skepticism about the other efforts undertaken by the respondent to show the documents were fraudulent. In particular, she said that she did not trust his internet inquiries about the person who prepared the valuation certificate, or his assumption of a false persona to interact by text message with the person at that phone number. She also disagreed that the "kite-like" shape of the property according to the dimensions in the sale contract necessarily meant that it was not real.
- [327] The claimant repeatedly asserted that the only legitimate approach to authenticating the documents would be for her to travel to the country where the property is said to be located, and conduct the necessary inquiries in person, including of the property registrar and the notaries who stamped the documents. She did not consider telephone, video or the internet to be suitable means of carrying those inquiries out - she did not know who she would be speaking to in the case of the former and she did not "believe in" the latter. She claimed to have a hearing impairment that makes it difficult to hear during the phone calls with a lot of background noise, which is present in calls to that city. In any case, when she has called that city in the past she has been asked by the person at the other end to communicate with them by WhatsApp. She added that two of the officials who stamped the documents are "highly placed" and one requires appointments to see them. Hiring lawyers in that country on her behalf to make the inquiries can only be done once she is there - she has to interview them and "see what they are capable of".
- [328] COVID has prevented her from making such an investigational trip to this point. She expected that would have "gone to [that country] and back three times by now", if it were not for that impediment.

- [329] She summarized this position by saying that "with my ability and my mental framework I feel I have to actually go there and then I will know maybe [whether the documents are genuine]." She also referred to the "gold standard" of "getting, going, doing".
- [330] The same in-person approach was appropriate for locating the person whose name appears as the attorney on the documents. She expected that there would be 50 people with that name in the area where the Barclays Bank is located, by which I took her to mean that online inquiries would not be of any use.
- [331] She has dealt with the office of the notary whose seals appear on these powers of attorney frequently in the past, although her specific contact was mainly with his son, whom I infer is also a notary.
- [332] She was referred to her assertion to the court in the first trial that the respondent owns property in other countries, and she confirmed that she will search for such property if she comes across any information concerning it. For example, in 2013 the respondent's brother in the U.K. told her that property was purchased by the respondent under another brother's name, and that the tax department was trying to find out where the money came from. More broadly, she questioned where all the money that was generated by the respondent by "working 80 hours per week for all these years" could have gone (if not into real estate, was the implication).
- [333] In addition to showing the claimant's computer abilities, the subject matter of some of her online searches indicated her ongoing interest in locating any property owned by the respondent that he has not yet disclosed.
- [334] The U.K. and Australian searches were of the respondent's brothers. She emphasized that she had "every right to find" property belonging to the respondent, and would be expanding her search to the city to which the fraudulent documents relate. She said that she will "take whatever number of hours it takes" to find such a property. Although the Hong Kong searches did not relate to the respondent (she has extended family there) she said that now that counsel had given her the idea, she would search there for property owned by the respondent as well.
- [335] She explained that the bulk of her domestic and U.S. online inquiries related to properties she was thinking of buying, or unusual calls that she wished to identify. She said that the legal document site was actually subscribed to in error - she thought it was the technical assistance service for an electronics retailer - and she has not used it to create any documents.

[336] In particular, she denied that any of her Court Services site searches were to look for the respondent's bylaw infraction. She recalled conducting searches for any lawsuits against the notary whose seals were used on the fraudulent documents or the people on the more extensive list of witnesses that the respondent had originally provided for this trial, "or just searches that I might find interesting." Her general response to questioning on her use of this site was to ask, "Why can't I do the public items?"

8. Governing Principles

a. Credibility Assessment

[337] L.M. v K.M., 2022 BCSC 689 helpfully summarizes:

277 The proper approach to assessing the truthfulness of any interested witness was articulated many years ago in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, [1951] B.C.J. No. 152 (C.A.) at 357, with these words:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

278 *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296 [Stenner], identified several factors that may be considered when assessing credibility^[4] which I summarize as follows: the ability of the witness to resist being influenced by their interest in recalling those events; internal and external inconsistency in the witness's evidence, meaning did their testimony change between direct and cross-examination, between prior statements, their discovery evidence and their evidence at trial; whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence; whether their evidence seems unreasonable, improbable or unlikely, bearing in mind the probabilities affecting the case; and the witness's demeanour, meaning the way they presented while testifying.

279 Regarding the last factor, *Faryna* and other authorities have discussed the dangers of relying too heavily on the demeanour of a witness to determine their credibility, recognizing the risk of misinterpreting the testimony of the better actor as truthful, and conversely, the poor presentation of an honest witness as deceptive (see: *R. v. Jeng*, 2004 BCCA 464 at para. 54; *R. v. Tyers*, 2015 BCCA 507 at para. 18).

280 The law also prohibits unsupported stereotypical reasoning and speculation about human behaviour, from affecting the assessment of credibility

282 Finally, I remind myself of the relationship between the civil burden of proof, on a balance of probabilities, and the assessment of credibility, as described in *F.H. v. McDougall*, 2008 SCC 53:

[49] In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event has occurred.

...

[86] However, in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case. ...

[338] I will elaborate on two points that have particular relevance in this case.

[339] First, although reliance on a witness's demeanour in assessing their credibility must be limited at best, there is an important distinction between demeanour and the witness's actual manner of answering questions. Unresponsive, evasive, illogical or confusing answers are not the hallmarks of a witness who is attempting to be truthful, and may well end up being very informative about their credibility.

[340] Further, indications of intense animosity towards the opposing party in a witness's evidence may adversely affect that witnesses' credibility: *R. v. Boomhour*, 2007 ONCA 716, at para. 10.

b. Circumstantial Evidence in Civil Cases

[341] Many of the acts of misconduct relied on by the respondent were not directly witnessed, and require inferences to be drawn in order to connect them to the claimant. As *Haack v Secure Energy (Drilling Services) Inc.*, 2021 ABQB 82 explains:

112 Evidence supporting a claim may be direct or circumstantial; it may on its own support the conclusion that the event occurred (re whether it was raining: "I saw it raining"), or it may do so only because it supports the inference that the event occurred (re whether it was raining: "I saw a person wearing a wet raincoat"): *R. v. Villaroman*, 2016 SCC 33, at para 23. Inferences must be reasonable, and they must be based on proven facts, and in considering whether to draw the invited inference the trier of fact must also consider other reasonable or plausible theories "based on logic and experience". The trier of fact must not use speculation either to support or reject the suggested inference: *Villaroman* at paras 32-37.

113 In criminal law, the issue is "whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty": *Villaroman*, at para 38.

114 In civil cases, where there is no presumption of innocence, the issue is less singular and can be articulated as: whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting the inference that it is more likely than not that the event occurred. In assessing the circumstantial evidence, the judge ought to take into account reasonable and plausible theories that support the invited inference, and those that contradict it, but must not use mere speculation to either reject or accept the invited inference. Cases that discuss or mention the use of *R v Villaroman* in civil cases include *R. v. Precision Drilling Ltd.*, 2016 ABQB 518 at paras 50-51; *Hutchinson v. R L Macdonald Investments Limited*, 2018 NSSC 248 at para 39; *E. Weyman Construction (1989) Limited v. Tutty*, 2018 NSSC 328 at para 203.

[Emphasis added]

c. Lay Opinion Evidence of Handwriting and Comparison by the Court

[342] As an example of circumstantial evidence potentially connecting the claimant to some of the alleged misconduct, the respondent purported to identify her handwriting on abusive letters that were sent to the clinic, and her brother J.'s handwriting on the complaint to the College about his by-law infraction. His counsel also invited me to conclude that J. was the author of the complaint based on the similarity of his writing to a known sample.

[343] The authors of *McWilliams' Canadian Criminal Evidence*, (5th Edition, Thomson Reuters, 2022), set out the principles for dealing with this kind of evidence, which apply equally in civil cases, at Chapter 12.4:

At common law, an ordinary witness, familiar with another person's signature or handwriting, could express an opinion as to whether a sample of writing was created by that individual. Familiarity with another's handwriting can be acquired by a variety of means including frequent out-of-court observation of the writing or regular correspondence with the identified party. Cross-examination is of course permissible to explore the features of the produced writing which recommend recognition to the witness. The less articulable the characteristics attested to, the more generally impressionistic the evidence, which in turn results in assignment of reduced weight to the testimony.

Jurisprudential authorities of some antiquity suggest that an ordinary witness may not testify to recognition of handwriting where acquaintance with out-of-court samples of the subject's handwriting arose exclusively in preparation or investigation of the case at hand. Thematic of these cases is the suggestion that the trier of fact is equally well positioned to make the necessary comparison where comparison samples exist in court for a trier's analysis and scrutiny.

[344] In addition, a trier of fact is permitted to "compar[e] disputed handwriting with admitted or proved handwriting in documents which are properly in evidence, and draw[] inferences therefrom [themselves]. In these circumstances, a trier of fact may make the comparison in the absence of witness testimony as to the genuineness or otherwise of the disputed writing. Depending on the distinctiveness of the writings in issue, the comparison does not necessarily require expertise or particular knowledge of the relevant handwriting." *R. v.*

Abdi, [1997] O.J. No. 2651 (C.A.) at paras. 22, 25. There needs to be a caution (or in the case of a judge sitting alone, a self-instruction) as to the care to be exercised in making such a comparison in the absence of expert assistance. In particular, the length and clarity of the samples for comparison, and any other difficulties that could affect the weight to be attached to the comparison, should be specifically considered:" para. 27.

d. Spousal Support

[345] The parties referred to the Divorce Act (the "DA") and Family Law Act (the "FLA") provisions dealing with spousal support interchangeably in their submissions. Given that this is an application for corollary relief that originally arose as part of a divorce action, I will treat it as one made pursuant to the DA: *Domirti v. Domirti*, 2010 BCCA 472 at para.7. In any event, as long as there is no conflict between the two pieces of legislation, the paramountcy of the DA does not preclude me from considering and applying the FLA where necessary: *B.D.M. v. A.E.M.*, 2014 BCSC 453, at para. 113.

[346] Section 15.2(4) of the DA requires a court to consider, when making an order for spousal support:

the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[Emphasis added]

[347] The means of each spouse includes "all pecuniary resources, capital assets, income from employment or earning capacity, and other sources from which the person receives gains or benefits": *Strang v. Strang*, [1992] 2 S.C.R. 112, at para.15.

[348] Section 15.2(6) of the DA provides that a spousal support order "should":

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

- [349] The two main bases of entitlement to spousal support are compensatory, which addresses the first two of these objectives, and non-compensatory (sometimes called "needs-based"), which addresses the second two.
- [350] The principles governing these bases were set out by the Supreme Court of Canada in *Moge v. Moge*, [1992] 3 S.C.R. 813, and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420. They were summarized in *Chutter v. Chutter*, 2008 BCCA 507:
- [50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (*Moge*, at 861-863; *Bracklow*, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868:

The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

- [51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse" ...

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

- [351] The "needs" of a spouse go beyond the basic necessities of life and relate instead to the marital standard of living before the breakdown. This is especially true in longer marriages. A spouse's economic self-sufficiency means their ability to support a reasonable standard of living, once again in light of the pre-breakdown marital standard: paras. 55-61.
- [352] The fact that a spouse has received substantial assets in the property division does not in itself disentitle them to spousal support: paras.80-82. What matters is whether the applicable objectives have been met.
- [353] It is important to note however, that a mere disparity in the spouse's incomes is not sufficient to create entitlement: *Lee v. Lee*, 2014 BCCA 383, at para.60. Instead "there must at least be some evidence of how the applicant's lifestyle has been diminished and, even then, other factors may have to be considered": *Madruga v. Madruga*, 2015 BCSC 1605.
- [354] Although s. 15.2(5) of the DA prohibits a court from taking any misconduct by a spouse into account when considering a spousal support award, *Leskun v. Leskun* [2006] 1 S.C.R. 920, at para. 21 makes it clear that the emotional consequences to a spouse from misconduct are distinct from the misconduct itself, and may well be relevant. Section 166 of the FLA essentially legislates this distinction, providing an exception to the general irrelevance of misconduct for that which "arbitrarily or unreasonably causes, prolongs or aggravates the need for spousal support, or affects the ability to provide" it.

e. Determination of Income

- [355] Pursuant to 6.1 of the Spousal Support Advisory Guidelines (the "SSAGs"), the determination of the spouses' incomes for support purposes is carried out pursuant to ss.15-19 of the [Federal Child Support] Guidelines: *McKenzie v. McKenzie*, 2014 BCCA 381, at para. 96. Therefore, the analysis of the parties' incomes in this case will be the same for the type of support that each party is claiming from the other.
- [356] Subject to adjustments pursuant to the succeeding sections, s.16 of the Guidelines provides that the income of a spouse is that shown under "total income" in their T1 General tax return, subject to the adjustments under Schedule III.
- [357] If s. 16 would not be the "fairest determination" of that income, s.17 permits a court to consider a spouse's income over the last three years to arrive at an amount of support that is "fair and reasonable" in light of, among other things, the spouse's receipt of a non-recurring amount, such as a capital gain, during that period.
- [358] In *Dunnett v. Dunnett*, 2018 BCCA 262, the Court approved a list of potential considerations when deciding whether to include non-recurring capital gains in income from *Ewing v. Ewing*, 2009 ABCA 227 at para. 35. Adapted for our circumstances, these considerations include:

Is the non-recurring gain a sale of assets that formed the basis of the payor's income?

Will the capital generated from a sale provide a source of income for the future?

Are the non-recurring gains received at an age when they constitute the payor's retirement fund, or partial retirement fund, such that it may not be fair to consider the whole amount, or any of it, as income for child support purposes?

Is the payor in the business of buying and selling capital assets year after year such that those amounts, while the sale of capital, are in actuality more in the nature of income?

Is inclusion of the amount necessary to provide proper child support in all the circumstances?

Is the increase in income due to the sale of assets which have already been divided between the spouses, so that including them as income might be akin to redistributing what has already been shared?

Did the non-recurring gain even generate cash, or was it merely the result of a restructuring of capital for tax or other legitimate business reasons?

Does the inclusion of the amount result in wealth distribution as opposed to proper support for the children?

[359] The Court in *Dunnett* also referred with approval to the comments in *Mariangeli v. Mariangeli*, (2003) 66 O.R. (3d) that:

[30] While the courts have differed in their approach when dealing with non-recurring income, the recurring theme is that the child of the marriage should benefit from a sudden increase in lifestyle and money available to the family.

[Emphasis added]

[360] Pursuant to s.18(1) of the Guidelines, where a spouse is a shareholder, director or officer of a corporation, and the court concludes that the spouse's income under s.16 does not fairly reflect the amount available to pay support, the court can "consider the situations described in section 17" and include in the spouse's income the corporation's pre-tax income, or the amount of the spouse's services to the corporation. Pursuant to ss.(2), this pre-tax income includes "salaries, wages or management fees, or other payments or benefit" to or from anyone with whom the corporation does not deal at arm's length.

[361] The pre-tax income method is the fairer one when the spouse wholly controls the corporation: *Kowalewich v. Kowalewich*, 2001 BCCA 450, at para.48. It will be assumed that such a corporation's pre-tax income should be included in the spouse's income, unless the spouse leads evidence that the income is not available to them: *Hausmann v. Klukas*, 2009 BCCA 32, at paras.51-52. The "general rule" is that that spouse's income for Guidelines purposes "should be set at the corporation's pre-tax earnings plus salaries, wages and benefits paid to the" spouse: *Quinton v. Kehler*, 2020 BCCA 254 at para. 98.

- [362] Section 19 permits a court to impute income for the purposes of a support analysis in a variety of situations. For our circumstances, the potentially relevant situations are where "(a) the spouse is intentionally under-employed ", "(e) the spouse's property is not reasonably utilized to generate income", and "(h) the spouse derives a significant portion of income from capital gains that are taxed at a lower rate than employment or business income".
- [363] In determining whether a spouse is intentionally underemployed, there is no need to prove an intentional evasion of support responsibilities. The court is simply concerned with whether the spouse is earning what they are capable of earning: *Barker v. Barker*, 2005 BCCA 177, at para. 19. The test for imputing income based on intentional underemployment "is one of reasonableness having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability": *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37.
- f. Support for Adult Children
- [364] There is no dispute that at the time of trial R., S. and O. were still "children of the marriage" according to the definition in s.1 of the DA. Despite all being over the age of majority, their post-secondary studies, which are obviously practical and realistic in light of their abilities, prevent them from being able to withdraw completely from their parents' "charge". Unlike many cases involving post-secondary studies, it was also not suggested that their academic obligations would have permitted them to take up part-time employment to contribute to their own support, or that they should have obtained such employment during school breaks.
- [365] Section 3(2) of the Guidelines provides two alternative means of determining support for children who are over the age of majority.
- [366] Under ss.(a) the table amounts of support for the income of the payor parent are used, plus any special or extraordinary expenses under s.7.
- [367] If the court proceeds under this table approach, a payor parent who has an income over more than \$150,000 faces a strong presumption in favour of the table amount for their income, which can only be departed from based on "clear and compelling" evidence: *Metzner v. Metzner*, 2000 BCCA 474 at para. 30.
- [368] Under ss.(b), the court awards "the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child" [emphasis added]. The reasonable needs of the child include accommodation, food, clothing and other similar expenses, as well as actual post-secondary expenses (of the kind that would otherwise have been captured under s.7): *Wesemann v. Wesemann*, (1999) 49 R.F.L. (4th) 435 (BCSC), at para. 21.

[369] The choice of which subsection to proceed under is matter of discretion, and is dependent on the particular circumstances: *De Beck v. De Beck*, 2012 BCCA 465. However, when an adult child is living away from home to attend school, s. 3(2)(b) will likely be appropriate: *P.R.M. v. B.J.M.*, 2012 BCSC 1795 at para. 121, *aff'd* on other grounds: 2013 BCCA 327.

g. Retroactive Support Awards

[370] Purely for the sake of convenience, I will reproduce the summary of the governing principles that I recently provided in *B.S.D. v S.K.D.*, 2021 BCSC 2327 at para.358:

- Orders for retroactive child support are governed by the principles set out by the Supreme Court of Canada in *D.B.S. v. S.R.G.*, [2006] 2 S.C.R. 231. Consideration must be given to four factors: whether there is a reasonable excuse for support not having been sought earlier; the conduct of the payor parent, including any blameworthy conduct; the circumstances of the child, both at the time of the application and when the support would have been paid; and any hardship to the payor parent that would result from a retroactive award (paras. 101, 106-113,115-116).

- The date of retroactivity will be the date that the payor parent received effective notice that child support should be paid. Such notice does not have to be provided in a formal manner, as long as the subject has been broached by the recipient parent. Unless there has been blameworthy conduct by the payor, an award should not go back more than three years from the date of [effective notice] (paras. 118,121, 123-4).

- The amount awarded must follow the Guidelines, but the court can avoid any resulting unfairness by applying the undue hardship provisions of the Guidelines or reducing the period covered by the award, despite the date of effective notice (paras. 127, 129-30).

[371] As the last bullet above implies, in determining the appropriate amount of a retroactive award, a court considers the actual Guidelines income of the payor over the period for which support is being claimed: *Sullivan v. Struck*, 2015 BCCA 521, at para. 8. It is appropriate to consider the payor's income for each year of the retroactive period in question, rather than averaging: *Hsieh v. Lui*, 2017 BCCA 51, at para. 49.

[372] In *Kerr v. Baranow*, [2011] SCR 269, the Supreme Court of Canada held that the D.B.S. factors are generally applicable to applications for retroactive spousal support, with certain modifications arising from the differences between the two types of support:

208 Spousal support has a different legal foundation than child support There is no presumptive entitlement to spousal support and, unlike child support, the spouse is in general not under any legal obligation to look out for the separated spouse's legal interests. Thus, concerns about notice, delay and misconduct generally carry more weight in relation to claims for spousal support...

209 Where the payor's complaint is that support could have been sought earlier, but was not, there are two underlying interests at stake. The first relates to the certainty of the payor's legal obligations; the possibility of an order that reaches back into the past makes it more difficult to plan one's affairs and a sizeable "retroactive" award for which the payor did not plan may impose financial hardship. The second concerns placing proper incentives on the applicant to proceed with his or her claims promptly (see D.B.S., at paras. 100-103).

9. Positions

a. Claimant

[373] Her counsel's essential points on spousal support can be distilled to the following:

- Her claim for compensatory support arises from the fact that she was the primary caregiver of the children throughout their years at home, and that it was necessary for her to fit her medical practice in around those responsibilities, to the detriment of her ability to earn income.
- While caregivers, especially her mother, supplemented her role, they did not replace it.
- The respondent conceded in cross-examination that the decline in the claimant's income in the years that the children were born resulted from those births and her need to spend more time at home caring for them, which "to an extent" affected her ability to carry on with work. Although he went on to add that with a nanny and her mother present "there wasn't a lot for her to do", he also conceded that she was the one who was primarily responsible for child care.
- The effect of that allocation of her time throughout the relationship was the respondent was able to devote long hours to his practice, thus conferring a benefit on him. The growing disparity of their incomes in the years following the children's births clearly illustrates that benefit.
- Even though the children were older by then, her need to live with them in Vancouver during the week because of their schooling continued to affect her ability to practice.
- A further impairment of her economic situation resulting from the end of the marriage was her exclusion by court order from the clinic that she had helped to build her patient base in, requiring her to attempt to rebuild it. An analogy was drawn to the exclusion of a lawyer from a law practice, requiring them to re-establish themselves as a sole practitioner. Further complicating factors in her situation, once the relationship broke down, were her eventual exclusion from the former family home, and the CPLs that were placed on the properties in her name, the latter of which prevented her from raising the necessary funds to retain counsel.
- She now finds herself with no medical practice, having to work as an employee, and needing to tailor her work situation to her limited skillset and advancing age, as well as her health. As her counsel put it, having been forced out she now needs to "reinvent herself".

- There is no basis on which to reject the claimant's denials of the harassment and other misconduct that has been attributed to her. Whatever the court ultimately makes of those allegations however, they are not relevant to her entitlement to support. It is also important to keep in mind that anything she is alleged to have done before 2015 has already been dealt with by the orders restricting her defence that were imposed in the first trial.
 - It is questionable whether she has the necessary skills to fabricate the documents that alleged foreign property ownership by the respondent. They were more likely the handiwork of a third party who was seeking to profit from this situation. Despite the circumstances under which she received them, she was under a duty to disclose them once they came into her possession. Regardless of the personal views she has expressed about the authenticity of this evidence, it is not being relied on to support her case. Like the other allegations against her, has no relevance to spousal support in any event.
 - Although it is common ground that pre-tax corporate profits should be considered when determining the amount available for support from the corporations that the parties control, the retained earnings in the respondent's professional corporation, which are higher than they need to be to allow for contingencies, as well as contributions to his individually-held pension plan and dividends paid out, should also be added in.
 - On the claimant's side, it is inappropriate to treat capital gains from the sales of her properties since the equal division of property in the first trial as income. The evidence does not support a finding that she intended to treat her property transactions in that manner, and doing so as part of the support analysis would be inconsistent with her reduced financial circumstances since the separation. Notably, such a potential use of the properties allocated to her did not form part of the analysis in the first trial. It is also still uncertain how income earned by her corporation will actually be used or distributed, making the process of attributing income based on it even more speculative.
 - Compensatory support is the main basis of this claim, but non-compensatory support can also be considered as a "back-up". In making that submission, the question of how the properties allocated to the claimant have done since the division in the first trial, which could just as easily be asked of the respondent's clinic, is not determinative of the claimant's need for income, in comparison to the respondent's need.
- [374] With respect to the claimant's potential contribution to child support and special and extraordinary expenses, the key points on her behalf were that:
- In general, she does not oppose an order that she contribute to the children's s.7 expenses going forward, for the reasonable purposes of tuition, educational supplies and accommodation while the children are away at school. This should be in proportion to her and the respondent's respective incomes.

- The claimant has had a low and at times negligible income in recent years, and the responsibility assumed by the respondent for these expenses reflects the significantly greater amounts of money that he has had available to him. Here investments in U.S. property to facilitate the children's ability to work in that country, while they are not being put forward as s. 7 expenses in their own right, show her doing what she can to assist them within her more limited means.
- To the extent that these expenses were paid from the family trust before the first trial, this amounted to the use of a family asset for that purpose, which should not be allocated to the credit of either party.
- This is the first time in the litigation that these expenses are actually being considered - the respondent abandoned his claim for them during the first trial, only to revive it solely in response to her spousal support claim in this one (I took counsel's point to be the unfairness to the claimant of reviving her liability for support at this stage).
- Before the children went away to school, they lived primarily with the claimant, and there is no "custodial parent" in their current situation as adults who are dependent because of their educational needs. It is therefore not a situation in which child support can be sought, as opposed to their s.7 education-related expenses. Their brief periods of residence in the former family home during school breaks cannot support such a claim.
- Assuming that any retroactive expenses are payable by the claimant, some of the expenses being claimed exceed what is reasonable for supporting the children's education, even for children of affluent parents. Even if the so-called budgetary approach for children over the age of majority under s. 3(2)(b) is used, the expenses still have to be reasonable.
- Of equal importance, the claimant was never consulted before any of these expenses were incurred. The point is that a well-off parent cannot simply lavish support on children and then automatically call on the other parent to contribute to it.

b. Respondent

[375] His counsel put forward the following points on spousal support (the submissions on the claimant's income and her credibility are also relevant to support of the children):

- The claimant did not suffer any deprivation as a result of her role in the marriage, because she had such extensive support from other caregivers, leading to only a slight disparity between her participation in domestic activity and the respondent's. He was an involved father who participated fully in his non-working hours. She admitted that her career was not compromised by the birth of her children.

- Before retreating from the concession, she said that her mother "took care of everything in the home". Notably, she took little or no time off following the birth of each child, and her earnings increased substantially during the years when they were still in elementary school. She had no explanation for her failure to continue to work full-time while the children were in school all day, or once they started to leave for university, although she was then able to work full-time while she was living with her cousin the following year.
- The concept of "merger" in the spousal support analysis, in which the spouses' financial affairs become progressively more intertwined over the course of the relationship, leaving one spouse in need of support when it ends, does not apply here. These parties' finances were separated in 2002 and pursued in that manner until their actual separation, and there was no dependency on the respondent's income that needs to be addressed now.
- The claimant is not in any worse situation with respect to earning as a result of her role in the marriage or its end. All family physicians bill the same amount for the services that they provide whether they have been qualified for one year or 30. There is no evidence that she was deprived of any training or career opportunities as a result of the marriage.
- The evidence is that family doctors are in extremely high demand in their area, with favourable splits of billings between the doctor and the clinic being offered as incentives. As a female doctor from a cultural community that forms a large segment of the local population, and as one who handles maternity cases, her prospects are even more favourable. Her need for additional education on the use of electronic medical records was not a significant impediment to this level of income.
- The best demonstration of that is that it emerged in cross-examination that she had been able to bill \$100,000 in 2020, working one day per week, although she had not actually submitted those bills, and was planning to do so when the trial ended. Extrapolating that to full-time work and considering the range of likely earning provided in the numerous employment ads for family doctors, it would be reasonable to impute an income of \$400,000 to her from her medical practice, which results in very significant income to her in the post-separation period.
- Once the separation of their finances occurred, the claimant began to focus on real estate investing, leaving the respondent to cope with the medical practice and home expenses. She was also assisted in her efforts to work less by receiving the rent from the upper floor of the medical building and the shares of the billings by the associate doctors. The investing allowed her to earn higher income with less effort, and pay a lower tax rate on the results.
- If one grosses up the claimant's capital gains from the separation onwards, which are approximately \$14 million, to reflect the fact that they are taxed at a lower rate, she earned more than \$21 million in that period. This includes the correction of her 50 percent underreporting of the sale of the Collingwood property.

- Her pursuit of buying and selling real estate as essentially an occupation makes it appropriate to include the capital gains that she achieved as part of her income. In her own counsel's opening statement, he described her, together with her mother, as concentrating more on real estate investing as a way to earn income for the family. Even if one were only to impute a reasonable rate of return of three or four percent on her \$20 million asset base, that would still result in up to \$800,000 per year on top of what she should be earning as a doctor.
- In addition to the claimant's income from MSP billings, the pre-tax profit of the corporations under her control - most significantly, the significant capital gains from her real estate investments, must be considered in the assessment of her means for spousal support purposes (and on the question of what money is available for her to pay support for the children).
- Failing to consider the claimant's assets would allow her to remain income-poor for the purposes of support assessment and then realize the assets at some later date (this pitfall applies equally to capital-rich parents who seek to evade paying support on the same basis.)
- This approach accords with the recommendations under the SSAGs for older spouses who have accumulated capital and are nearing retirement - consider what amount should be imputed to them as a reasonable draw on capital, in addition to whatever they are earning, then apply that total to the without-child support formula under the SSAGs.
- As a result, the range for the claimant's Guidelines income should be \$2,623,000 to \$3,958,000.
- The respondent has calculated his own income based on these pre-tax profits and the bonuses that he has paid himself. Contrary to the claimant's position, dividends and retained earnings do not form part of the pre-tax profit calculation. Since 2013 this results in an average income for him for support purposes of approximately \$527,933.
- When comparing the parties' incomes, their MSP billings are a red herring, because the claimant had so much income available from other sources.
- The history of her billings shows that the claimant has strategically chosen to earn less when (1) she began to sell properties after the separation of finances and (2) the family litigation began. Once she was excluded from the clinic she was able to quickly obtain employment at her current clinic and bill \$200,000 in six months, after she sold some property and essentially stopped working.
- If there was any actual financial need on her part, she would have made an application for interim support at some point since 2013. More generally, the ability to earn \$400,000 per year and ownership of assets of \$20 million dooms any application for needs-based support. Income disparity in itself is not a basis for non-compensatory support, and in any case the claimant actually had a better standard of living than the respondent after the separation, in terms of the assets she was able to generate.

- The wide range of harassing behaviour that she engaged in, which was described as "gross spousal misconduct", has negatively impacted the respondent's ability to work, leaving him emotionally exhausted and depressed. This behaviour led to her being excluded from the medical clinic. She extended her campaign of harassment to include B, the respondent's office manager, and member of B's family, as well as the respondent's brother P.
- This behaviour also undermines her credibility on the core issues, an effect that was compounded by her efforts to explain or evade them under cross-examination. These behaviours included spying, stalking, defamatory statements, false complaints, and searching obsessively for non-existent assets held by him in the country of his birth. Despite his denials, it is also clear that her brother J., whose evidence was completely unsatisfactory, participated in the creation of one of the anonymous complaints about the respondent to the College.
- In the litigation itself the claimant's financial disclosure has been inaccurate or misleading on several issues.
- The false property documents were fabricated by her once it became clear that there were no such assets. Even if she was not the creator of them, which the respondent's counsel does not accept, she and her counsel failed to carry out any due diligence before relying on them. The respondent's counsel were able to expose them as fraudulent with a few basic inquiries. The reason the claimant did not make those inquiries is that she already knew that they were fraudulent. Her explanation for failing to contact the notaries or other officials in the country where the documents originated made no sense. In reality, the documents she was provided with contained enough information for her to verify the property herself, if it actually existed, rather than having to pay this mysterious person.
- In particular, her claim to have received the documents from an unknown third party was undermined by the reference in them to testimony that had been given in the courtroom moments earlier, in which she but no their parties were present, and her acknowledgement of her error in typing part of the text conversation that was supposed to have been sent by the unknown person. In addition, she failed to disclose the excerpt of the list containing the names of B's relatives that this person had previously sent her, when it was obvious that it was connected to the offer of the property documents.

[376] On the issue of the children's expenses, his counsel submitted:

- The Court of Appeal deleted the term of the order from the first trial that dealt with spousal and child support, which allowed the parties to "start afresh" on these issues. Child support being the right of the child, it is not something that the respondent could have bargained away in the previous trial in any case, despite his statements about not pursuing it if spousal support was not ordered.
- It is clear that the children did not live with the claimant at any point during the breaks from their schooling. As she admitted, she had no place for them. They returned to the former family home, where they were supported by the respondent.

- The respondent considered it futile to ask the claimant to contribute to the children's expenses, because when he had asked her to contribute to expenses for particular items at the clinic she had told him that it was his problem. Given the restraining orders in place and her ongoing misconduct, he cannot be faulted for concluding that pursuing her for contributions would be waste of time. Regardless of any requests by him, she has known throughout the process that the children were attending university and medical school and that the respondent was paying for it, and the authorities show that a failure to request contribution in advance is not necessarily a bar to an award being made, especially when the history shows that consultation would have been meaningless.
- The support should be retroactive to 2013, when the respondent began the original family action. The filing of a notice of family claim seeking support is the clearest possible indication to a prospective payor parent that it is required. The claimant squarely put child support in issue by initially seeking it herself following the new trial being ordered.
- While the s.3(2)(b) Guidelines budgetary approach is preferable for adult children living away from home to attend school, there can also be a hybrid of that approach and resort to the table amount under s. 3(2)(a) for the months of the year in which the children returned home.
- A budgetary approach in this case would result in the claimant owing \$1,087,624 in combined support and educationally-related expenses. There is no danger of a functional wealth transfer in such an award, which the cases warn against, because that represents amounts that he actually paid.
- However, simply requiring the claimant to pay her half-share under the budgetary approach would still leave the respondent at a disadvantage, because he has lost the benefit of being able to invest that money profitably in the real estate market as she did. As a result, her contribution needs to be grossed up to reflect the increase in the value of the real estate market in the lower mainland over the period that she had the benefit of not paying. If this is not done, there will be no deterrent to spouses taking a "free ride" on the contributions to the children of the other spouse. The respondent's counsel characterize this as an attractive middle ground that does not operate as harshly for the claimant as the table amounts plus s.7 expenses under s.3(2)(a) would, but will still discourage payors from profiting at their children's expense.
- Despite her counsel's submission that the claims for retroactive support are exorbitant, the budgetary approach is actually much more favourable to the claimant. If she paid the table amount of child support plus s.7 expenses under s.3(2)(a), the total support would be \$4,205,000 in support and a range of \$590,000 to \$802,000 for the s.7 expenses. As shown in the authorities, judges of this court have made awards under s. 3(2)(a) against parents who have not discharged the high onus for incomes above \$150,000 per year of showing that it would be inappropriate to rely on the table amounts, either of the full table amount or a significant percentage of it.
- The claimant should also pay interest on these arrears of support, as required by s.11.1 of the Family Maintenance Enforcement Act.

- Going forward, she should pay 50% of these expenses as they arise.

10. Discussion

a. Credibility Assessment and Essential Findings of Fact

- [377] The claimant's evidence was not credible. As I have described, she was unwilling to concede obvious propositions, and repeatedly gave unresponsive or evasive answers when she appeared to perceive that a straightforward one would not be consistent with her position in the litigation. This led her to take numerous positions throughout her testimony that did not make sense within the factual context that she was describing at the time. She seemed determined at all costs never to be outfoxed by the questioner, with whom she quibbled incessantly even on minor points, even though there was nothing tricky or misleading in the questions she was asked. She was wary and strategic throughout, rather than open and straightforward, as credible witnesses usually are. Her attitude was one of barely repressed hostility, both to the respondent and cross-examining counsel, and she demonstrated a fixation on her belief in an improper relationship between the respondent and B., and the hiding of assets by the respondent, which permeated her testimony.
- [378] As a result of these shortcomings, I would be reluctant to accept any of her evidence in the absence of other credible and reliable confirmatory evidence.
- [379] Her brother J. certainly did not provide that. He struck me as being solely motivated by the need to support the claimant's position, with the truth and common sense being completely subordinated to that motivation. As I have described, his evidence about his mother's support for the claimant in her home, what his loans to the claimant were for, who sent the faxes containing the known samples of his handwriting, and the similarities between those samples and the bylaw complaint all eventually collapsed under the weight of his attempts to deny the obvious. His bombastic and hyper-sensitive manner of responding to cross-examination did not help matters. I would not place any weight on his evidence.
- [380] In contrast, I found the respondent's evidence largely credible. It is inevitable that he would have some degree of hostility towards the claimant in the circumstances, but he seemed able to put it aside in favour of a restrained and realistic description of the key events, even when they involved misconduct towards him by her. There was the odd gratuitous dig in his narrative, but overall I thought he was quite fair to her. He also became slightly touchy at certain points in his cross-examination, but the content of his answers remained straightforward and seemingly unaffected by that irritation. He was not contradicted on any important points.

- [381] On the whole, I found that his evidence painted a credible picture of an increasingly dysfunctional relationship, with numerous idiosyncratic details of the interactions between him and the claimant that I think would be impossible to invent. The overall impression he created was of a long-suffering and fairly patient former spouse, without being self-serving in that presentation. With one exception, which I will discuss, I think he has told the truth in his evidence, and described the relationship and its disintegration accurately.
- [382] To the extent that his evidence might require any support, his brother P. certainly provided it on the points where their observations overlapped. P. was refreshingly blunt in his responses, both in direct and cross-examination, and never seemed to be shading or elaborating his account to place the respondent in a more favourable light. He seemed more baffled by the claimant's actions than hostile. I had the impression that he was there to share what he knew about the situation, no more and no less, and it just so happened that the effect of his evidence is to support the respondent on certain issues.
- [383] B. was also quite straightforward and unaffected in her testimony and, like the respondent, her evidence contained numerous distinctive details, in her case about the claimant's conduct, that I do not think even the most resourceful person could invent. The only notes of caution are that she is strongly allied to the respondent's position in the litigation, both through her employment status and her friendship with him and, perhaps understandably, the behaviour of the claimant towards her leaked into her attitude when she was giving evidence to a greater extent than the respondent allowed in his. Her perhaps excessively glowing descriptions of his parenting and correspondingly negative portrayals of her behaviour in the office, aside from the actual misconduct, are good examples of each influence. I still largely accept and rely on her evidence, but must moderate its weight in support of the respondent's somewhat, in recognition of the effects of these respective degrees of sympathy and hostility.
- [384] To the extent that it also bears on the claimant's credibility, I am satisfied that it is more likely than not that the misconduct that has been attributed to her occurred as the respondent, P. and B. described, and that it was committed by her.
- [385] The overall body of circumstantial evidence is overwhelming, and leads to no other possible conclusion than that she was the architect of this ongoing harassment. This evidence paints a compelling picture of an angry and vindictive former spouse lashing out at the other spouse, and at times at the formerly favoured employee with whom she perceived him to be having an illicit relationship. No one but the complainant had the unique combination of access to the clinic and obsession with the respondent's sexual misbehaviour that would have been needed to produce this behaviour.
- [386] On the specific disputed factual issues, I am satisfied that the respondent is capable of identifying the claimant's writing on the "hot sex trade worker" notes, and that he accurately did so. I draw the inference that the communications with patients about the danger posed by the respondent, the complaints to the College about his supposed illicit

relationship with a patient and participation in a drug trafficking ring, and the complaint to the social worker that he has a sexual interest in children, were all created by her while operating under the same fixation.

- [387] After giving myself the necessary caution about the absence of expert evidence on the point, I am also satisfied, based on the striking similarity in the formation of various letters and the overall style of the writing, that J. was the author of the complaint to the College about the resident's bylaw infraction that was sent shortly after the initial trial dates ended, and that he did so at the claimant's direction, or with her agreement.
- [388] The various acts of uncleanliness, video and audio surveillance (including transcribing an intercepted conversation between the respondent and P. and submitting them to the College), sending emails on behalf of B. and the respondent from their own accounts, frightening the staff, and petty vandalism in the clinic all point inevitably to the claimant, who had both the necessary after-hours access and the motivation to harm the respondent and disrupt the operation of a business from which she felt herself being increasingly excluded.
- [389] My general preference for the respondent's evidence and the quite compelling manner in which he described the incident leads me to accept his account of confronting a lurking male in the back yard of the family home, who then pushed him, fled, accused someone on his cellphone of abandoning him and was then was picked up by the claimant. This includes the subsequent threatening calls on the claimant's behalf that the respondent described receiving.
- [390] Similarly, B's account of the claimant's repeated watching and besetting of her home was compellingly supported by the numerous photos of the claimant's vehicle passing by or stopped there, including one that the claimant acknowledged showed damage in the same fairly distinctive area that her vehicle has. The claimant's alternative reasons for being in the general area were vague and unconvincing, and in any event would not account for the extremely repetitive nature of these drive-bys, nor the acts of getting out and staring of the house that B. described, which resonate with the claimant's general obsession with her. The previous notes to B's neighbours pursued the same theme of sex trade workers that the claimant included in her letters to the clinic, and linked them to allegations of sexual misbehaviour by B. herself, an ongoing theme. I am satisfied that the claimant wrote those notes as well.
- [391] Finally in relation to harassing behaviour, I find that the claimant is the author of the email to B.'s niece about her mother having wished to terminate the pregnancy that resulted in her birth. Standing alone, a preference for the spelling of "foetus" would not be decisive, but I believe the respondent's evidence that the claimant routinely used that spelling. When that is combined with her confidential knowledge of that particular pregnancy, even though she disavowed any willingness to discuss gender-selective abortion with the parents, and the email's clear purpose of maligning B. for her encouragement of such an

abortion, within the overall context of her hostility to B., I am satisfied that she wrote it.

- [392] However, I cannot find that it is more likely than not that the claimant was the author of the communications offering the fraudulent property documents, or of the text and voice mail messages to the clinic offering them to the respondent. I am also unable to find that she created the property documents themselves.
- [393] I think it would take a level of subtlety and sophistication far beyond what she has demonstrated in any other aspect of this case to craft such a peculiar and distinctive series of communications, including her own efforts to lay hands on the documents, (the eagerness and obsequiousness of which portray her in an extraordinarily bad light), and the growing frustration of the unknown person with her lack of immediate compliance with their demands.
- [394] It is also not clear how emailing herself documents relating to B.'s family under the same name a few weeks earlier, but then not disclosing them, at the risk of her credibility in the trial, would advance such a plot. It would likewise show a level of inventiveness that she has not been shown to possess to identify herself as the person behind the fabrication of the documents in the text messages to the clinic.
- [395] More fundamentally, one wonders why, if she was the one who created the documents in the first place, why her false persona never pulled the trigger on releasing unredacted versions to her, which she could just as easily have created, leaving her only with the less probative and incriminating versions of them.
- [396] In reaching this conclusion, have kept in mind the perplexing question of how the unknown person came to refer to the ability of a user in Canada to access Barclays Bank, when the need for such information had arisen only minutes before in the presence of a limited number of court attendees. Possible explanations include that the claimant passed the information on to the person in another manner, such as by texting or calling them on a phone that she has not disclosed. Given that the information is imbedded in a reply to the mundane question of which of B.'s aunts the notary who supposedly drafted the documents, another possibility is that it is a coincidence - merely the expression of a further thought by the unknown person. Regardless of its provenance, that particular message does not undermine my overall conclusion that the claimant could not have created these communications, in all their unusual detail, or the documents.
- [397] Similarly, while it seems bizarre that a third party would inject themselves into a family dispute with a fraud of this nature, that factor in itself does not outweigh the unlikelihood that the claimant could have impersonated such a third party so convincingly.

b. Entitlement to Spousal Support

- [398] As I have summarized, the claimant's main basis for seeking spousal support was compensatory - that her role during the marriage and her exclusion from the clinic after the first trial placed her at an economic disadvantage that needs to be addressed. The same view of the facts could also give rise to the argument that she conferred a benefit on the respondent when their children were younger, by permitting him to work the long hours necessary to build his medical practice, for which she was not compensated.
- [399] At the end of the day, there is no question that the claimant's mother played a major role in allowing her to work after the children were born and, in some years when they were still relatively young, to bill at a high level. The claimant admitted as much herself. I also generally prefer and accept the respondent's evidence, which was supported with respect to specific caregivers by P. and B., that the claimant's mother's role was supplemented by several others over the years, so that there was overall quite significant support available to the parties for housekeeping and child care.
- [400] Further, I am satisfied that the claimant's time living with and caring for the children during the week in Vancouver, while it imposed some constraints on her practice, did not restrict it to anywhere near the extent she claimed. Even high achieving children with multiple extracurricular activities like these ones still spend the bulk of each weekday in class, and do not require support as effectively a full-time occupation, as the claimant sought to portray.
- [401] In light of there being a family-related basis for the parties to support both of their mothers, quite aside from any services that the mothers performed, and the fact that several of the other support providers were employees of the clinic at the same time, I do not find the respondent's records of payments to them to be particularly helpful on this issue, especially since the cheques to almost all the caregivers were written on an office expense account.
- [402] As a matter of credibility, I do not accept the claimant's explanation that the respondent completed the cheques to his mother, including the nature of the services for which payment was being made, since they were cheques from a joint account that he could have signed himself, and she admitted completing and signing cheques to his mother that referred to "salary", which she said his mother never earned, herself.
- [403] On the other hand, I do not fully accept the respondent's description of the extent of his participation in household duties and child care when the children were young. I am satisfied that he was an interested and involved father, both on the basis of his own evidence and the support provided on this point by P. and B., and that he readily performed necessary tasks when he was able to do so. Nonetheless, the reality is that a 60-hour work week, which he admits pursuing during the years at issue, simply could not permit him to come close to an equal share with the claimant of the remaining tasks. Even with the robust support that I am satisfied she had available, and even in her high-billing years, I think her share of the remaining tasks must have been at least somewhat greater than 51/49

in her favour. Notably, however well she did in a given year, the respondent's billings were always that much greater.

- [404] Regardless, the precise apportionment of domestic responsibilities between the parties and the amount of support they received from others in carrying them out does not ultimately matter in the analysis, because the problem with the claim is more fundamental than that.
- [405] I am satisfied that whatever efforts and sacrifices the claimant may have made within the family, they did not leave her at any economic disadvantage, either as a result of the marriage or its dissolution. Her counsel's analogy to a lawyer who leaves a partnership is not apt - a family doctor bills the same amount whether they have been qualified for one year or 30, and the evidence was clear that a family doctor in the area where both parties practice can have a full roster of patients in a very short time. Even without the evidentiary record, the acute shortage of family doctors in this province is so notorious it would be the appropriate subject of judicial notice. The point is that the claimant left the relationship with exactly the same earning capabilities as she entered it with. The evidence is clear that her domestic role did not diminish them to any extent.
- [406] The same is true of any argument that she conferred a benefit on the respondent by assuming a greater share of the domestic tasks so that he could work a 60-hour week. He is in exactly the same position now as he would have been if she had not done so: a family doctor capable of attracting enough patients to reach maximum capacity, but entitled to bill for his services per patient at the same rates as a doctor who had not previously had a large practice. As he explained in his uncontradicted evidence on this point, there is no goodwill in his medical practice to sell, because new doctors can earn the same amount without having to obtain an established practice.
- [407] In this regard, the loss of the claimant's role as the co-owner of the medical clinic, while it may well have been an emotional blow, has not been shown to be an economic one. The respondent's evidence was that he was "not making much money" on the associate doctor in the clinic (above that doctor's contribution to overhead, I took it) and working to full capacity in another clinic under the many favourable splits that are now available would likely more than replace the rent that she had been receiving from the upstairs tenants. I accept that the claimant had an attachment to her regular patients there, but even assuming that they were unable to follow her in significant numbers to a new clinic a few blocks away, which I find unlikely, the evidence establishes that she could be full virtually immediately with new patients, if she wished to be. The fact that she finds the more recent generation of patients less fulfilling to deal with for a variety of reasons, is a matter of personal preference, not an actual impediment to more significant earnings. Put another way, an attachment to a particular work setting is not an economic disadvantage.

- [408] In any event I am satisfied, based on my findings of her outrageous behaviour in the clinic until she was ordered to vacate it, that she was the author of any disadvantages that such forced departure entailed. They did not result from the end of the marriage. In fact, I am satisfied that civilized behaviour on her part could have seen an orderly separation her practice from the clinic, with her existing list of patients completely intact.
- [409] The claimant's counsel wisely categorized non-compensatory support as a back-up argument. I do not think an entitlement to receive it has been made out on these facts either. This case could not be more different than those decisions in which a significant allocation of assets to a spouse still left that spouse with a significant decline in their standard of living. As I will discuss, the claimant's income-earning ability is the same as the respondents', and in addition to her valuable principal residence, she was able to parlay the two other significant assets that she received in the division of property into very large capital gains, to supplement her income through further investment or property purchases as she, as a sophisticated real estate investor, deems best. Indeed, the value of her assets significantly exceeds the respondent's.

c. Incomes of the Parties for the Support Analysis

- [410] First of all, I conclude that income needs to be imputed to the claimant because she is intentionally severely underemployed. I find that the decline in her billings over the years was due to a combination of her resentment at being excluded from the clinic she shared with the respondent, an obstinate refusal to adapt herself to the changing conditions of her employment, and a lack of urgency supported by the income from her real estate sales. Her higher billings in the years immediately following her exclusion from the clinic are an example of what she is reasonably capable of, and I reject her assertion that she requires 24/7 support for her material needs from her relatives in order to achieve it, as she suggested.
- [411] Her struggles with EMR are a complete red herring in this regard, I find. If she is unable to improve her typing, I feel comfortable taking judicial notice that large portions of the medical profession have mastered and thrived using voice recognition software. More to the point, the respondent, who is of the same generation was not portrayed in the evidence as having any advanced technological skills, learned to use it quite quickly. Her complaints about its shortcomings struck me as nitpicking.
- [412] If she legitimately cannot adapt even to that seemingly user-friendly technology, there are clinics who will allow her to use paper charts, as she prefers. I find it unlikely that, having recruited a doctor on that basis, a clinic would then raise impediments to the use of paper, which she appears to suspect.

- [413] As I have already noted when dealing with spousal support, it is a highly favourable market for doctors in the claimant's position, with generous fee splits, even if her ethics will not allow her to work in association with a pharmacy, and projected incomes in the \$400,000 range.
- [414] The claimant made a passing reference to a problem with her ear, which was not explored any further, and she declined to engage with the respondent's counsel's question about whether she had any mental or emotional barriers to practising at a fuller capacity. There is currently no evidentiary basis to find a medical or psychological ability to earn a greater income.
- [415] However, despite the respondent's evidence that his associates were able to earn \$400,000 working 40 hours a week, I am not convinced that such a figure should be imputed to the claimant. Some allowance should be made for her age and the declining energy levels that inevitably accompany it. It should be noted that she was never a particularly high biller even in her most productive days - approximately \$343,000 being the peak, albeit in 2004 dollars - and even in 2018, when the theory of the defendant is that she was going flat out, she earned only \$256,000. Balancing these various factors, I think a reasonable figure to impute for her work as a doctor now would be pre-tax earnings of her medical corporation of \$300,000 per year.
- [416] I also think this is a case in which the pre-tax earnings of the numbered company from capital gains of \$2,648,702 in 2017 and of the holding company of \$1.82 million in 2019 and \$7.27 million in 2020 should be included in her income. She has led no evidence to suggest that these funds, paid to corporations entirely controlled by her, are not available for child support. No financial statements were available in relation to the 2019 and 2020 gains but given how closely the pre-tax income of the numbered company conformed to the amount of the actual capital gain, it is safe to assume that something very close to those two amounts will be available to the holding company as well.
- [417] Because this income is being included pursuant to s.18(a) of the Guidelines, it is not strictly necessary to engage in the analysis of when to include non-recurring capital gains received directly by a payor in their income, pursuant to s. 17(2). Had it been necessary to engage in that analysis, the most influential factors would have been that the claimant has historically engaged in buying and selling properties in addition to her principal residence to earn income, and these capital gains were carried out according to the same approach; and that they generated cash rather than forming part of some overall restructuring of the claimant's capital. I also consider it necessary in all the circumstances that these very significant increases in the claimant's resources be made available to the children for their own very significant needs. It will not represent a wealth transfer to the respondent because he has actually paid the amounts that he is claiming, and will continue to do so for the rest of the children's education.

- [418] I am mindful of the point that these gains were realized on assets that were divided in the 2017 trial, but given their amounts in amount to the amount of support being sought, I do not see any risk of an effective revisiting of the original property division by including them.
- [419] With one exception, it is not necessary to look behind the respondent's calculations of the pre-tax income of the corporations he controls as funds available to him to pay support. In particular, I could see no basis on which to reject his accountant's determination of a reasonable amount to withhold each year for working capital.
- [420] The objections of the claimant about what should be included in pre-tax income that have been raised by the claimant's counsel are incorrect at the definitional level.
- [421] Dividends are paid from the after-tax income of a corporation, and will have been reflected in the respondent's personal income tax return. Retained earnings arise when not all of the pre-tax income is paid out, and the amount available to pay support is already identifiable based on the amount of that income in each year, before any of it ends up being retained.
- [422] The exception to this general acceptance relates to the amounts allocated to the retirement fund created within the respondent's medical corporation, which his counsel frankly acknowledged could be seen as a discretionary use of corporate earnings for his own benefit, analogous to bonuses. I agree that those amounts should be added back into that corporation's pre-tax income.
- [423] The respondent has taken the quite moderate position that the claimant should only share equally in the retroactive and prospective support, even if the inclusion of the capital gains leads to a much higher income for her, as his counsel have calculated. Although the proposed averaging of her income for the proposed retroactive period is not supported by the authorities, as I have indicated, the capital gains that have been included in her income for 2017, 2019 and 2020, plus the income I have imputed to her as a doctor in those and the intervening years, would lead to a share of the support that is much higher than 50%. Similarly, if prospective support is now payable, any fluctuations in the claimant's income since the very large capital gain of 2020 can be subject to averaging pursuant to s. 17(1) of the Guidelines.
- [424] The point is that whatever formula is applied, the claimant's income, based on the imputed earnings and capital gains I have identified, amply justifies a 50% share on her part of the child support, whether prospectively, retroactively or both.
- d. Contribution to the Children's Expenses (Retroactively and Prospectively)

- [425] First of all, this is unquestionably a case for support to be paid by the claimant pursuant to s. 3(2)(b) of the Guidelines, in accordance to the prevailing judicial approach when adult children attend school away from home. Although that is not a reason to adopt it, the approach under ss.(b) is also significantly fairer to the claimant than the table amount under ss(a), particularly since she has not rebutted the presumption that the table amounts should apply despite her income exceeding \$150,000 per year.
- [426] I would not adopt the hybrid approach suggested by the claimant's counsel of reverting to table support under ss.(a) for the periods that the children were staying at home, because other than the requirement of a cooking lady, which is already accounted for under the ss. (b) analysis, I cannot identify any meaningful change in the things that the respondent funded on their behalf. He simply saved the cost of their residences in the locations where they were attending school. This includes S.'s year at home preparing to be admitted to medical school.
- [427] Two of the objections of the claimant's counsel to the amounts being sought under ss.(b) can be dealt with readily. First, the claimed expenses exceed what are normally considered s.7 expenses for post-secondary education because s. 3(2)(b) is child support, in which s.7 expenses may be included. Second, there does not need to be a custodial parent in order to claim support under this section, because it envisions children who are (a) adults and (b) for the most part living away from home.
- [428] As I have previously indicated is common ground for the purposes of ss.(a) that the "conditions, needs, means and other circumstances" of the children do not require any contribution by them to their own support, in light of the onerous nature of their studies. As to "the financial ability of each spouse to contribute to" their support, I have found that in the case of both parents it is ample, and that the budget prepared and adhered to by the respondent is in keeping with the level of support that two very affluent professional parents would reasonably wish to provide.
- [429] Applying the criteria in D.B.S., I am satisfied that it is appropriate to order that the claimant pay 50% of the expenses incurred by the respondent. However, I consider it appropriate to make this order retroactive to the filing of the respondent's response to family claim in 2016, rather than to the commencement of the original action in 2013, as he seeks.
- [430] While it is unquestionably true, as D.B.S. makes clear at para. 38, that child support is the right of the child and cannot be bargained away by their parents, the actions of the recipient parent in relation to an existing obligation may make it unfair to later enforce that obligation against the payor. I am satisfied that that is what occurred here. Whatever his own assumptions in doing so, the respondent's representation to the court in 2015 that he was content to bear the children's support costs himself was not subject to any quid pro quo that the claimant would not seek spousal support. It was reasonable for her to assume at that point that he would not be pursuing retroactive support back to 2013 and, until he filed his response to family claim in 2016, that he would not be pursuing her for a share of

those costs going forward.

- [431] For the period of September 2016 to the date of these reasons, the D.B.S. criteria are amply met.
- [432] Since support was explicitly claimed in the 2016 response, there has been formal notice to the claimant of her potential obligation to pay it since then. An actual pleading seeking retroactive support is the clearest form of notice possible, and I am satisfied that any informal request short of it would have been ignored or rejected by the claimant, in keeping with her general animus toward the respondent. No question of reasonable excuse for not seeking it earlier arises, because it is retroactive only because of the amount of time that has passed since the claim was made. Correspondingly, since the claimant joined issue on her obligation to pay support and went to trial to resolve the question, there is no blameworthy conduct on her part. The children did not suffer in their ability to obtain high-level educations due to her failure to contribute, because the respondent was willing and financially able to bear the entire costs, and they are now close to achieving the objectives for which he made that sacrifice. There would be no hardship to the claimant in making such an award, given the ample means I have identified and her willingness to spend more than \$800,000 to advance the career prospects of two of the children in the U.S. The hardship to the respondent in failing to make an award, on the other hand, would be very substantial, given the burden that his financial sacrifices have placed on his working life.
- [433] I will therefore order, subject to certain deductions set out below, that the claimant pay the respondent 50% of the expenses of the children that have been paid by him, from the date that he filed the response to family claim in 2016 to the date of these reasons. The expenses documented by him in the trial evidence to the conclusion of trial will be paid in the amounts claimed by him in his final submissions. Expenses incurred from the end of trial to the date of these reasons will be paid by the claimant in the manner claimed by him, in accordance with the budget he prepared up to the conclusion of the trial. There is liberty to apply if the claimant considers any of the expenses claimed since the end of the trial to be unreasonable, but only if she has first paid the amount requested to the respondent, subject to it being repaid if she is successful in her application. In view of the claimant's past conduct and attitude, I consider this restriction be necessary to avoid frivolous and money-wasting objections to payment by her.
- [434] The first deduction, which has already been applied by the respondent in his calculations, is the claimant's contribution of \$101, 218, by permitting the children to charge to the credit cards that she provided to them.
- [435] Second, it is clear that R. ceased to be a child of the marriage when he began his residency program in July 2020, so no support should be payable in relation him after that point. There is a world of difference between a full-time student in a professional school program who is too busy to contribute to his own support, and a paid trainee working towards further professional qualifications who finds himself unable to get by on \$72,000 USD per

year. Assistance to the latter may well be undertaken by a loving and affluent parent, but it cannot reasonably be said in such circumstances that the child is any longer unable to withdraw from their parents charge because of their studies.

- [436] I can see no reason why the same analysis would not apply when S. and O. reached the stage of paid residencies. If, as anticipated, they reached that point in December 2021 and June 2022 respectively, and S. did not pursue a new professional program, no support will be payable in relation to them after those points.
- [437] I will rely on counsel to calculate the actual retroactive amount to be paid in light of the period for which I have granted it and these deductions. If they are unable to agree there can be a reference to the registrar, who will certify the results.
- [438] With respect to the claim for interest based on the respondent's lost opportunity to invest that amounts of support that the claimant should have contributed in the real estate market, I am unable to consider such an extraordinary request without some supporting authority that relates it to the objectives of retroactive support as set out in D.B.S.
- [439] With respect to the request for interest on the arrears of support, once a claim is registered the Family Maintenance Enforcement Act imposes interest on arrears at a rate set by regulation. As Justice Macaulay put it in *M.H.K.J. v. K.J.J.*, 2011 BCSC 1673 at para.113, "[i]t is not open to me, or necessary, to make any order for interest in the circumstances"; see also *Beavis v. Beavis*, 2014 BCSC 422, at para.50
- [440] Given my comments with respect to the effect of entering a paid residency program, the anticipated graduation dates of the remaining children and the regrettable amount of time it has taken for me to complete these reasons, it is not clear to me that any of the children remain "children of the marriage" for support purposes.
- [441] If any children of the marriage do remain, I will order on a prospective basis that, effective the date of this judgment, the claimant will pay the respondent 50% of the children's expenses, in accordance with the budget for such expenses that the respondent paid until the end of trial, until none of the children is a child of the marriage as defined in the DA. The respondent will invoice the claimant on no less than a quarterly basis, and the claimant will pay such invoices within 30 days of receiving them. As in the case of the retroactive amounts, there is liberty to apply if the claimant considers any of the expenses to be unreasonable, but only if she has first paid the amount requested to the respondent, subject to it being repaid if she is successful in her application.

e. The Necessity of Conduct Orders

- [442] I made an interim, without prejudice conduct order restricting the claimant's potential contact with B. in January of 2021 as part of my decision on the respondent's application to have the claimant's electronic devices examined. Since there remains a potentially outstanding family law dispute as long as there are children of the marriage, or orders in existence for which a review can be sought, I am satisfied that continuing to prohibit the

claimant from having any contact with B., or attending at her home or place of work will "manage behaviours that might frustrate" the resolution of those matter, as envisioned by s. 222(b) of the FLA. Accordingly, I will make a final order in the same terms as the interim, without prejudice order.

f. Costs

- [443] As I have mentioned, the respondent's counsel sought special costs, to address the claimant's reliance in this trial on the fraudulent foreign property documents, as well as those attempts to ruin him "professionally" that have arisen in the course of the actual litigation. They made full submissions on the issue at the end of the trial.
- [444] The claimant's counsel asked to make their submissions on special costs once the outcome of the trial was known, since the appropriateness of such an award would depend on my findings about the nature and extent of claimant's actions in relation to the documents. The respondent's counsel, very fairly, did not oppose that request.
- [445] If the respondent still wishes to seek special costs in light of my finding that the claimant was not the author of the fraudulent documents or the emails and text messages that provided them to her, his counsel may either stand on their existing submissions on that issue, or supplement those submissions in writing, as they prefer. Once they have either indicated their reliance on their existing submissions or have filed supplementary ones, the claimant's counsel will have 30 days to file a written response, with any reply by the respondent to be filed within a further 14 days.
- [446] If it assists, my preliminary view based on these findings is that the claimant's unreasonable insistence on the legitimacy of the fraudulent documents certainly undermined her credibility, but may not amount to reprehensible conduct, in light of her counsel's ultimate decision not to rely on them. Further, if there was any error in disclosing them and relying on them for initial cross-examination without making inquiries about their legitimacy, that would have been her counsel's error, rather than hers. Of course, I remain open to being persuaded that a different conclusion is appropriate.
- [447] In the event that special costs are not sought, are not ultimately granted, or are granted only in relation to some steps taken in the trial, my preliminary view with respect to overall costs is that the respondent has had substantial success on the significant issues and should receive his costs at the ordinary scale of difficulty. If counsel wish to make any submissions on those costs, they may also provide them in writing, according to the schedule described above.

Schultes J.

- [1] As will become obvious, the incendiary nature of some of the allegations made by the parties against each other required the use of initials to anonymize their identities, as well the identities of the young adult children and other significant participants in the narrative. The parties' previous working arrangements were quite distinctive and well-known within

their cultural community, and in an effort to avoid identifying them indirectly, I have omitted as many other non-essential background details as possible without rendering the narrative incomprehensible.

- [2] [1] On this point, the respondent testified that the claimant regularly used the spelling "foetus", which is common in the United Kingdom, in her practice.
- [3] There was a further allegation that an abusive email was sent to the niece in May of that year, making allegations that her father had been abusive to his first wife. However its connection to the claimant - B.'s determination that it was sent from ana rea near her brother's workplace in Ontario - depended on hearsay evidence of her inquiries that was not placed substantively before the court. As a result, I will not consider it further.
- [4] I have omitted the references to assessing the reliability of a witness's testimony in this internal quote, because in the present case there do not appear to be any witnesses who were attempting to tell the truth, but had the reliability of their recollections impaired by factors unrelated to that intention.

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