

CANADA / JUDGMENT

Koch v. Underhill

2013 BCSC 1889

COURT

Supreme Court of British Columbia

DECIDED

17 October 2013

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2013 BCSC 1889 Koch v. Underhill IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Koch v. Underhill, 2013 BCSC 1889 Date: 20131017 Docket: D104631 Registry: Vancouver Between: Laura Helen Koch Claimant And: Graham Dacre Underhill Respondent Before: The Honourable Mr. Justice Groves Reasons for Judgment In Chambers Acting on her own behalf: L.H. Koch Counsel for the Respondent: P.A. Boles Place and Date of Hearing: Vancouver, BC April 19-20, 2012 and June 6, 2012 Place and Date of Submissions: Vancouver, B.C. March 26, 2013 Place and Date of Judgment: Vancouver, B.C. October 17, 2013

- [1] This complicated and longstanding family law matter has both a short explanation and a long one. Starting with the short explanation, this application came on for hearing before me as a result of directions made on the 9th of December 2011. At that time, I directed that there be a two-day viva voce hearing, initially set for February 2012, to determine the issues outstanding between the parties, which were issues related to s. 7 expenses for the parties' two children from the beginning of 2009 to the date of application and a determination of child support that is payable from 2009 through to the date of application.
- [2] The children reside primarily with their father, the respondent. There is, however, a somewhat an unique order of the court, the details of which will be explained later, which requires Mr. Underhill to pay an offset amount of child support based on his income for the summer months while the children, the court clearly intended, would reside equally with their mother in her home. The mother was to pay child support for the balance of the ten months of the year based on her income.
- [3] On the 9th of December 2011, I determined s. 7 expenses to the end of 2008 at \$4,000 and require the parties to contribute equally towards them. By an earlier order on the 21st of January 2011, I require Ms. Koch to pay \$2,500 towards the eventual determination of s. 7 expenses. Those funds had been paid and as such, she begins this process, the process of determining s. 7 expenses due and payable from 2009 on, with a \$500 credit. That is the short explanation.

- [4] Underlining this difficult family law matter is what has been referred to by the case law as the "cancer" of non-disclosure. Ms. Koch represents herself and she and the court have sought financial information from Mr. Underhill which he has regularly refused or neglected to provide. On the 9th of December 2011, I took the unusual step of fining Mr. Underhill the sum of \$5,000 pursuant to s. 92 of the then Family Relations Act, R.S.B.C. 1996, c. 128 [FRA] in regards to his failure to complete a financial statement as was required by the Rules and ordered by the court. It was noted at the time that a document was filed, but it was substantially more non-disclosure than disclosure.
- [5] Getting back to the short explanation, to determine s. 7 expenses, the court has to analyze what the expenses are claimed and whether or not they are appropriate to be s. 7 expenses and thus expenses shared by the parties.
- [6] Additionally, the court has to determine what the parties' respective incomes were for the years 2009, 2010, 2011, 2012 and 2013 in order to allocate the expenses as the law requires.
- [7] On the issue of child support, the determination of Ms. Koch's income is an important consideration, as is Mr. Underhill's income, because the current court order obliges him to pay an offset of child support, based on his income, to Ms. Koch over the summer months.
- [8] These issues noted raise a number of ancillary questions. This begins the long explanation. It seems clear on the facts that the children did not and have not, through the relevant years of 2009 to 2013, spent half of the summer with their mother as the court clearly intended.
- [9] The mother claims that the children's lack of doing so is effectively as a result of "overholding", my term, in that Mr. Underhill purposely and willfully arranged the children's lives and activities such that the children did not and would not stay at their mother's home despite the court order requiring them to do so. She claims he did so to avoid his obligation to pay her offset support based on his income and so as to enhance his argument that he should be paid support for the summer months.
- [10] In regards to Ms. Koch's income, the primary question is whether or not she is under-employed. Ms. Koch's position is that she has a limited ability to earn due to mental health issues, and has been working to the extent of her ability during the entire time. Mr. Underhill is of the view that income should be imputed to her and that she is purposely and willfully under-employed.
- [11] Mr. Underhill's income determination is still somewhat confusing. I do find, that despite a fine under s. 92 of the then FRA and despite numerous court orders requiring him to provide financial information, he has shown no wilfulness to provide information in this regard and his compliance is still sadly lacking. The question then becomes what are the consequences to a person who seeks support from another and seeks a contribution to s. 7 expenses, when they have failed to properly disclose their own financial information.

- [12] Turning to the real tragedy of this case, the long history. Attached as Appendix 1 to this decision is a summary created after a thorough review of the court file and internal court records of the litigation history between these parties. This summary was not compiled by the parties, but was in fact compiled with the assistance of a law clerk, Sascha Paruk.
- [13] What this summary shows, in addition to attendances before Registrars, is that the parties have attended before Masters or Justices of this court in excess of 50 times. By my review, the parties have attended before 6 different Masters of the court and 22 Justices of the court from 1997, when their litigation began through their last attendance before me on the 25th of March 2013.
- [14] The litigation began when their eldest child, Tristan, was not quite three years old and their daughter, Katrina, was not quite one year old. Tristan is now, as of April 15, 2013, 19 years old and Katrina, as of April 14, 2013, is 17 years old. With the exception of a period of time between November 1999 and October 2002, the British Columbia Supreme Court has, in each and every year, since 1997 issued orders involving the dispute between these parties.
- [15] This litigation history is unfortunate, and is a fine example of two facts. One fact is the difficulties that individuals face in marriage-breakdown when they take an aggressive and blindsided approach to litigation. One cannot help but reflect on how different these parties' lives would be, and the lives of their children would be, if they had not constantly chosen to attend before the courts in regards to their extended personal battle.
- [16] The second fact that is shown, unfortunately, is the difficulty in a court system when family cases are dealt with by a series of presiders as opposed to the same presider. I am not being critical of "the system" because I am aware, from working in it for a number of years, that the possibility of having the same presider is a remote one, especially in a large judicial centre such as Vancouver where on any day, 30 or more presiders can be working in one building. That is unfortunately a reality that these people have faced. The result has been, no doubt, considerable wasted time and expense, as the parties have had to explain their personal circumstance and the complex litigation history to a different presider during each court attendance with the limitations that imposes.
- [17] In order to resolve the dispute between the parties and adjudicate on the issues before the court and as I have noted above, a number of things must be decided. The issues as such are as follows:
1. What is the income for the claimant Ms. Koch for the years 2009, 2010, 2011, and 2012 and ongoing?
 2. What is the income for the respondent Mr. Underhill for 2009, 2010, 2011, 2012 and ongoing?
 3. What are the s. 7 expenses claimable by the petitioner and respondent? Should there be an apportionment of these expenses? If so, how should the expenses be apportioned between the parties? A. The Claimant's Income

- [18] Ms. Koch has been forthright in regards to the disclosure required for the purposes of determining her income. There had been numerous applications in the past to determine income and in fact, as the Appendix 1 notes, there had been different determinations during various years. For example, in May 2007, one judge set income for Ms. Koch at \$66,623. Three weeks later, another judge set that order aside and set her income at \$100,000. Ten weeks later another judge set that order aside and restored a level of income to her of \$66,600. Ultimately in September 2008, by consent, Ms. Koch's income in 2007 was set at \$39,750, and income for 2008 was set at \$66,600. Finally, if such a term exists in this context, in 2010 a judge set Ms. Koch's income for 2008 and 2009 at \$55,000. That is the last time a court has spoken on this issue.
- [19] The largest issue in regards to Ms. Koch's income is the claim made by the respondent that she is under-employed, essentially a claim that she has an ability to earn a much higher income than she does.
- [20] Having heard from Ms. Koch and reviewed the materials, I see no merit in the argument that she is under-employed or that her real income is different from that stated on tax returns. Specifically, Ms. Koch articulates her inability to work beyond the capacity that she currently works. She has some geographical restraints. She is a scientist, she resides on Bowen Island and she is self-employed. I find her efforts at earning income consistent with her abilities. I do not find that she is under-employed.
- [21] Ms. Koch suffers from stress and/or related depression. She represented herself in court and has represented herself in court for a number of years. She has done so adequately, she takes direction well, and responds to the court's requests in a timely manner. However, her demeanour in court shows that she does suffer from stress. On a number of occasions breaks had to be taken while she had an episode of stress which prohibited her from continuing on. I do find these episodes contrived in any way.
- [22] I find that Ms. Koch has worked to the extent of her abilities during the years in question and I accept that her declared income for tax purposes is the income that she can reasonably earn and I would not vary from that. This is particularly true because of the time she has had to dedicate to court appearances, many of which were required or made more time intensive due to the failure of Mr. Underhill to meet his obligations to financially disclose.
- [23] I fixed her 2009 income at \$46,630 which is her Line 150 income. In 2010, her Line 150 income was \$34,399, and I fixed her income for that year at \$34,399. In 2011, her Line 150 income was \$43,026.44, however, that included cashing in RRSPs in the amount of \$7,752.78. I would deduct that capital collapse from her Line 150 income for the purposes of determining the amount that she should pay for child support and would fix her income for child support purposes for 2011 at \$35,273. In 2012, her Line 150 income was \$27,522. I fix her income for 2012 at \$27,522.

- [24] I am optimistic that once this litigation is resolved, that Ms. Koch would be able to work more effectively and, as such for 2013 and ongoing, I would determine her income at \$36,000 annually for child support purposes.
- [25] To summarize, noted below is the income I have determined, plus the applicable table amount for that income: Year Income for Child Support Purposes Table Amount of Support for Two Children Table Amount of Support for One Child 2009 46,630 708 2010 34,399 535 2011 35,273 546 2012 27,522 426 2013 36,000 554 327 B. The Respondent's Income
- [26] The major difficulty in dealing with anything financially related to Mr. Underhill is the lack of believability of his disclosure. As noted earlier, this respondent chose to ignore court orders in regards to his obligation to file financial information. When he does file financial statements and related documents, they result in more questions than answers. Examples of this include a handwritten financial statement filed by the respondent, in which he indicated that he was simply choosing not to disclose assets such as bank accounts and real estate holdings. When pressed, the information that he provided in regards to his real estate holdings was completely non-believable, both as to the income earned and the expenses claimed. The expenses claimed appeared to be rounded to the nearest hundred dollars or so on numerous occasions and few, if any, receipts were provided for the expenses. He initially indicated that he had four rental properties when in fact he had either six or seven at the appropriate time. The gross income for the six residential properties, for tax purposes, never appears to be over \$40,000 per year, and this seems hard to believe when one unit alone rents for in excess of \$2000 month.
- [27] What is particularly striking about Mr. Underhill's lack of disclosure is the contrast to his claim for s. 7 expenses. He is able to provide to Ms. Koch, and regularly did provide, updated and itemized claims, to the penny, for s. 7 expenses which he, for reasons uncertain, felt Ms. Koch was obligated to pay under the existing orders.
- [28] I say "obligated to pay under the existing orders" because it seems clear to me, and I will deal with this later, that as a result of the order of Madam Justice Allan, s. 7 expenses between the parties were defined and additional s. 7 expenses had to be agreed to. Mr. Underhill took this as his authority to make numerous claims against Ms. Koch for s. 7 expenses which she did not agree to.
- [29] At the end of the day, I frankly cannot believe the financial disclosure of Graham Underhill at all. His November 2011 "financial statement" is particularly enlightening. In that form, he makes no statement as to his annual income on page 4. On page 5 he declares net rental income of \$15,000 and self-employed income of \$35,000. He provides no backups for any of those documents. In terms of assets, he notes only three of his numerous rental properties as well as a bare lot on Bowen Island. Under the section financial assets, he indicates "do not wish to disclose". Under pensions and RRSPs he notes "do not wish to disclose". Under paragraph 5 of the property section - business interests, he notes "do not wish to disclose". One must take that as an acknowledgement that there is some business interests yet he says

on page 3 "I do not operate any business or have any operating company or corporations". As for debts under the debt section, he simply says "mortgage" and under amounts says "variable". The tax returns he attaches to his form do not include the 2008 and 2009 form. It includes a notice of assessment for 2010 showing income of \$101,588. This would be the last taxation year that he had prior to completing the "financial statement" on November 14, 2011. As such he has over \$100,000 in declared income in 2010 but in 2011, he claims his income is \$50,000, and he provides no explanation for that significant difference.

- [30] There is also a financial statement of Graham Underhill date-stamped January 27, 2012. In addition to a number of the concerns which existed in the November 2011 return, namely documents or any information to back up his sources of income, there is what one can only conclude as being hypothetical "Rental Summaries" attached on pages 14 to 18. They are hypothetical in the sense that it is, frankly, impossible to believe that, for example, in regards to a property owned on Pacific Street in Vancouver, that the property taxes are exactly \$200 per month. He provides no actual statement. Likewise for other properties, he has rounded off or guessed items like property taxes, renovations, and perhaps even strata fees. There is no explanation as to why most, if not all of the premises are not fully rented. Of note, in 2009, one of the premises in Whistler had a gross rental income of \$26,400, yet in subsequent years, there is no explanation as to why that has gone down and there is no explanation as to why if one of your six rental properties rents for \$26,000 annually, the total gross income for all properties is only \$40,000. I can and do conclude that these rental summaries are designed to mislead, and designed to imitate compliance.
- [31] The court is essentially left with an empty shell. Based on the documents provided by Ms. Koch, it is known to the court that Mr. Underhill has substantial real estate holdings. The court is aware from Ms. Koch that Mr. Underhill works as a ski guide in the winter months and appears to be busy in some capacity in the non-ski months.
- [32] Subsequent disclosure by Mr. Underhill is equally non-believable. His 2012 draft income tax return was provided at the hearing in April 2013. That return shows a professional income of \$57,000 netted out at \$19,000. One must assume that is his guiding income. His rental income is disclosed at \$40,650. That rental income, however, only relates to four of his rental properties. The gross rental income is \$40,650 and the net rental income is -\$101,000.
- [33] What Mr. Underhill appears to have done is write off against his rental income expenses in excess of \$130,000, it appears, for legal fees in defending himself in an unrelated matrimonial action, or perhaps this matter.
- [34] Whether the Canada Revenue Agency considers this a valid deduction is questionable, in my mind, but it is not a deduction that the court should consider for determination of income for child support and s. 7 expenses. It is inconsistent with the fundamental principles of the Child Support Guidelines. Additionally, the tax return shows that Mr. Underhill has investment income in excess of \$58,000. Despite filing numerous financial statements, it is impossible to determine, even after hearing from Mr. Underhill, what is the source of that

\$58,000. With some extrapolation, one can determine that it relates to a significant capital fund. For example, if one was to earn four percent income on capital, \$58,000 in interest would be generated from approximately \$1.45 million in capital. If, more realistically, one was earning a three percent return, there would be approximately \$1.93 million in capital. Additionally, Mr. Underhill has dividends from Canadian corporations of \$7600 annually, but the source and value of the securities that generate those dividends is unknown.

- [35] Based on the disclosure that is available, it would appear that Mr. Underhill's income in 2009 was \$144,546. For 2010, his Line 150 income was \$101,588. That is the income that I will determine for him for 2010. For 2011, I determine his income again at \$101,588.
- [36] For 2012 and ongoing, I determine his income in the following method. First off, a portion of his income is dividends from Canadian corporations of \$7600 annually. Secondly, he has interest income of \$58,000 annually. Thirdly, based on what has been shown, mostly by Ms. Koch, as to the extent of his real estate holdings, and based on the complete lack of believability of the disclosure he has provided in regards to his expenses associated with these properties, and more importantly, the income associated with these properties, and the complete lack of explanation as to why now five or six rental properties would generate only \$40,000 in gross annual income, I would determine his rental income at \$40,000 annually.
- [37] Finally, in terms of his professional income, Mr. Underhill is an able-body individual who in the past has earned in excess of \$36,000, from all sources for his professional income. He declared this in his 2011 financial statement. He also has the ability to work on an annual basis though he may not do so. I will determine his professional income at \$36,000 annually. That is the same figure I have ultimately chosen for Ms. Koch. The irony here is that he claims she can earn much more, yet he does not really admit to that level of "work" income himself.
- [38] Adding those sources of income, I will determine his income at \$140,600, for 2012, 2013, and ongoing.
- [39] I have specifically not made reference to Mr. Underhill's windfall in regards to a capital gain he made on a one-time basis by virtue of his purchase of his mother's property and reselling it immediately for in excess of \$1 million over the purchase price. This is likely the source of some of his capital. It was a one-time windfall and I will not consider it for income purposes. C. Child Support over the Summer
- [40] This is a particularly contentious point between the parties and to determine it, one must again look at the appendix to these reasons and the orders of the court.
- [41] Madam Justice Allan, when she made her order on the 19th of September 2006, ordered that the children were to be with Ms. Koch and Mr. Underhill on a week on/week off basis for the two summer months, and the parties were to pay each other support based on their respective incomes on an offset basis. I am satisfied that Madam Justice Allan was clearly

intending that the children would reside half-time with their mother over the summer and that during those months, the parties' obligations for child support would be offset based on their respective incomes. As noted above in these reasons, for every year that is before the court, 2009 to 2012, Mr. Underhill has had substantially higher income than Ms. Koch and that would result in him paying support to Ms. Koch.

- [42] What is of a particular note in this case and what I find on the evidence, is that Mr. Underhill undertook a pattern of behaviour with the clear intention and goal to ensure that the children did not spend time with their mother over the summer so as to relieve himself, in his mind, of the obligation to pay support and impose Ms. Koch an obligation to pay support. This is clear not only from the evidence of Ms. Koch, but also from the evidence of Ms. Nielsen, Mr. Underhill's second former spouse, who has filed an affidavit in these proceedings. She was his spouse during most of the relevant period of time. I accept this evidence and preferred it over that of Mr. Underhill, who on issues related to money has no credibility and a proven pattern of misleading.
- [43] Of note, Mr. Underhill enrolled the children in numerous sporting and summer activities which had the effect of making it impossible or impractical for the children to spend time with their mother. Additionally, it was a regular occurrence that the children would be sent out of the country over the summer to Europe, as an example, again so as to ensure that they would not be spending time with their mother. For weekends, Mr. Underhill I find enrolled the children in sports and other activities so they would be less available to spend time with their mother, and certainly could not spend time with her at her home on Bowen Island.
- [44] Mr. Underhill's actions, I am satisfied, were specifically designed to avoid a court order, and to avoid a financial imposition imposed upon him as a result of that court order.
- [45] Mr. Underhill's argument that somehow the order of Justice Curtis of the 30th of September 2008 changed the order of Madam Justice Allan in this regard is a fallacious argument. All Mr. Justice Curtis did in September 2008, by consent, was to determine the parties' respective incomes for 2007, provide a credit to Ms. Koch for overpayment of child support based on her 2007 income, and determine her income for 2008. Those were all issues resolved by consent. There was no application to vary that specific provision of Madam Justice Allan's order nor was it adjudicated on, I find, by Mr. Justice Curtis.
- [46] The reality, however, is that the children did not spend their time with their mother as anticipated in the order of Madam Justice Allan. Again, I find this was because of the direct and deliberate actions of Mr. Underhill. As a result, it would not be fair, in my view, to impose upon Mr. Underhill an obligation to pay child support based on his income when the children did not in fact spend time with their mother. Nor, however, would it be fair to award him support for his deliberate wilful flaunting of a court order.

- [47] The solution is to deprive Mr. Underhill of support for the months in question. As such, I determine that for July and August of 2009; July and August of 2010; July and August of 2011; July and August 2012; and July and August 2013; there is no child support payable from Ms. Koch to Mr. Underhill. D. Ms. Koch's Section 7 Expenses
- [48] Ms. Koch has claimed s. 7 expenses for these children in three categories. First off, she appears to have paid the BC Medical premiums for the children over a number of years. Secondly, she claims the cell phone expenses for the children. Thirdly, she claims her expenses associated with the Pemberton condominium owned by her current husband as expenses related to the children.
- [49] First, in regard to the cell phone expenses, these cell phone expenses were incurred as a result of a court order that required Ms. Koch to provide the cell phones. This was clearly done as a result of her inability to contact the children through the regular means, i.e., telephoning their home. There were, prior to the imposing of the cell phone obligation, a number of court applications related to blocking of her telephone number and providing a telephone number to reach the children. The court seems to have come upon the solution of providing a cell phone as a means of resolving that problem. In the somewhat unique facts of this case, I would find these costs to be extra-ordinary in the sense that some compensation should be given to Ms. Koch, as against perhaps her obligation to pay child support, because these are an extra-ordinary cost associated with her access to the children, namely court ordered telephone access, made otherwise impossible by the actions of Mr. Underhill.
- [50] That being said, for reasons which will hopefully become clear, I will not impose upon Mr. Underhill an obligation to contribute to the cell phone expenses.
- [51] In regard to the costs of the second home, this is a novel claim for a s. 7 expense. Ms. Koch found it convenient, based on the children being enrolled in numerous activities by their father in the Whistler area, to spend her time with the children in the Whistler area. To do so, Ms. Koch's husband purchased a home in Pemberton for the purpose of this access. That does not, in my view, meet the test of being a s. 7 expense, nor does it meet the test of being a reasonable expense necessary to incur access to children. The home was purchased a number of years ago. Ms. Koch and her husband have enjoyed the home and perhaps have watched it increase in value, although the evidence on that is unclear. I do not find that this meets the traditional test for a s. 7 expense.
- [52] Finally, Ms. Koch's claim for payment of medical premiums are a recoverable expense under s. 7(1)(b). The exact total of this expense is unclear. It was, however, not seriously challenged by Mr. Underhill. For reasons which again will hopefully become clear, I will not, in these unique circumstances, impose that obligation on Mr. Underhill. E. Mr. Underhill's Claim for Section 7 Expenses

- [53] As noted earlier, Mr. Underhill has shown no ability in the past, despite numerous court orders, to properly complete accurate financial disclosure as to his income, or as to the extent of his financial assets, or as to the extent of real estate holdings, or generally as to his ability to earn income. He has, however, to the penny, had an ability to make a massive claim for s. 7 expenses.
- [54] To summarize, the s. 7 expenses claimed are, to a great degree, overblown and appear consistent only with Mr. Underhill's desire to extract financial benefits from Ms. Koch in any way he can. I accept completely the analysis of these s. 7 expenses undertaken by Ms. Koch in her affidavit of April 2013. In that affidavit, attached as Exhibit A, Ms. Koch has itemized the claimed expenses and characterized them into a number of named columns. In this Exhibit, she shows, and I accept, that little of Mr. Underhill's s. 7 claim is realistic.
- [55] Analyzing Exhibit A, I agree with Ms. Koch's analysis that what is found in Column B, expenses totalling \$6271.27, are claims which are not s. 7 expenses. This includes the purchase of a home computer. In this day and age, this is not extra-ordinary. Column B also contains a number of ordinary sporting activities such as gymnastics and school programs and fees, things that are generally covered within the payment of child support. They go so far as to claim a banquet fee and a school trip fee. Some of the claims appeared to be clothing costs. These claims are all generally covered by regular child support and I would not allow those claims.
- [56] There is in Column C, a column titled "duplicate", some duplicated items, but there are also items such as bedding which are not a s. 7 expense. I find that the expenses in Column C, like these in Column B, would not be s. 7 expenses.
- [57] Columns D and E represents BCIT tuition and BCIT living expenses for the child, Tristan. The living expenses for Tristan are contributed to by Ms. Koch, in my view, by the payment by Ms. Koch of support to Mr. Underhill. I would not allow tuition in these circumstances because of the lack of disclosure by Mr. Underhill, despite a court order, of the value of the RESP for the children and whether or not that was used for tuition purposes.
- [58] In regards to Column F, there are modest tutor costs totalling approximately \$400 which would regularly be considered a s. 7 expense.
- [59] Column G includes \$1970 of expenses under the category of recreation which would also be expenses that one would regularly consider to be expenses included within a regular child support payment. The most notable of these expenses is a ski pass and there is simply no evidence that a ski pass is an extraordinary expense for extra-curricular activities in the circumstances of these children. It is true that they enjoy skiing but that does not make the ski pass a s. 7 expense. Additionally, like in Column B many of these expenses are the ones I have found were incurred so that the children would not be able to visit their mother. I would not allow these as a s. 7 expense.

- [60] Column H represents organized recreational activities for the children. These total approximately \$2200. Absent the incurring of this expenditure, as I find, for the primary purpose of interfering with the children's ability to spend time with Ms. Koch, these would generally be considered s. 7 expenses. But for that reason, I would not allow these expenses in this circumstance.
- [61] Column J includes \$1223 in medical expenses which would generally be apportioned between the parties, but again, for the reasons noted below, I would not allow these claims.
- F. Determination of the s. 7 expense claim
- [62] In regards to any claim for s. 7 expenses, one must start an analysis with any order that is in place between the parties. Here, the order of Madam Justice Allan of the 19th of September 2006 is clear. The parties are to pay as of the 1st of September 2006, fifty percent of the s. 7 expenses and the expenses must be approved by each party and receipts exchanged. The parties did agree in that order that medical, dental and MSP premiums, as well as Tristan's tutor and speech therapist costs would be s. 7 expenses. The net effect of Madam Justice Allan's order is that unless the parties agree, the s. 7 expenses would only be those noted, namely medical, dental and MSP, extended health, Tristan's tutor and speech therapy expenses.
- [63] For reasons which are unclear, Mr. Underhill has taken a broad and overly enhanced view of s. 7 expenses and the materials are replete with his regular demands for reimbursement. Again, it is surprising that these demands can be itemized to the penny when other information, readily available, balances on banking accounts, etc. are never disclosed. I agree with Ms. Koch's analysis and her position on this issue. I agree that Mr. Underhill has never gotten agreement for any of the s. 7 expenses from Ms. Koch. Her reasons for not agreeing are clear. She did want the children enrolled in activities that would interfere with her time with the children. She did not live in Whistler and, if the children were enrolled in activities which required them to remain in Whistler on the weekend, that took away from her time. As such, she never agreed to extensive gymnastics, extensive sports and other activities in or about the Whistler area which would interfere with her access, and which I find were used by Mr. Underhill to limit Ms. Koch's access.
- [64] Additionally, a number of the expenses are ordinary expenses such as a gym fee or a school fee, or a pool pass, and the like, none of which would fall into the category of being a s. 7 expense. Additional things like banquet fees, field trips, bedding, numerous other items are not traditional s. 7 expenses.
- [65] As noted, Tristan has been attending a trade program at BCIT. In the handwritten demand by Mr. Underhill, he on one occasion requests of Ms. Koch a lump sum of approximately \$15,000, one-half which she would be obligated to pay, for this trade program at BCIT. He eventually provided a receipt for \$3270.38.

- [66] I would not allow BCIT, tuition and living expenses, as s. 7 expenses. Mr. Underhill has refused, despite court orders, to disclose information on a balance of a RESP that he has for the children and the RESP should be the initial source of these s. 7 expenses. Again, his failure to do so is direct and a breach of his obligations to disclose and his obligation to abide by court orders. In that regard, he was ordered by me to provide details of the RESP on the 26th of March 2013. He did not do so. The court should not reward him for this by imposing an obligation on Ms. Koch. Additionally, I am imposing upon Ms. Koch an obligation to pay child support for Tristan while at school and not in Mr. Underhill's home. As he was at school, this means that Mr. Underhill did not have expenses in his home for Tristan.
- [67] The only claims for expenses that I will find legitimate and consistent with the order of Madam Justice Allan are the medical expenses claimed, as the parties have agreed to that under Madam Justice Allan's order, and perhaps the tutoring costs for Katrina. These medical expenses totalled, according to Ms. Koch's spreadsheet, which I accept, \$1223.03. In addition, \$150 is claimed for excluded medical expenses for which there is no indication of any insurance credit received. The maximum medical claimable by Mr. Underhill is, as such, \$1373.03. The total tutoring costs is \$400. As such, the final total is \$1773.03.
- [68] These amounts, in my view, are more than offset by Ms. Koch's payment of medical insurance premiums for the children for the years in question, which is not seriously disputed, but not clearly determined in the evidence.
- [69] Additionally, I note Mr. Underhill's income as I find it is greater than Ms. Koch's. In 2009, her income was approximately twenty-four percent of the family total. In 2010 and 2011, approximately twenty-five percent. In 2012 it was sixteen percent. In 2013, it is twenty percent. As such, in all the years in question, it would not be appropriate to require Ms. Koch to pay fifty percent of the s. 7 expenses. On average, her share would be approximately twenty-two percent. The total she would pay, based on that twenty percent, would be \$390.07. Her payment of medical premiums is likely far in excess of that.
- [70] I find there are, as such no s. 7 expenses payable by Ms. Koch to Mr. Underhill, and no s. 7 expenses payable by Mr. Underhill to Ms. Koch for 2009 to the 2013 hearing.
- [71] Ms. Koch has a credit of \$500 based on an interim payment which I ordered her to make and this \$500 is to be returned to her forthwith.
- [72] Tristan will be, by September of 2013, over the age of 19, and according to the evidence before me will have completed his program at BCIT and commence employment in the construction industry. He will as such no longer be a child of the marriage.
- [73] If I am wrong in regards to my analysis of Mr. Underhill and his expense claim and my analysis of the reasons for incurring many of the expenses he did, and if I am wrong in regards to my interpretation of Madam Justice Allan's order which states that additional s. 7 expenses must be agreed to by the parties, I would still not allow these s. 7 expenses for the

following reason. As Appendix A indicates, on the 25th of October 2011, I directed that Mr. Underhill was to file a financial statement with full income tax returns and notices of assessment for his properties by the 8th of November 2011. I noted at that time that if he did not do so, his s. 7 expense claim would be dismissed.

- [74] He did not file the financial statement I directed him to on the 25th of October 2011.
- [75] In addition, and as a further reminder to Mr. Underhill, in my order of the 9th of December 2011, it was specifically noted that the court reserved the right to dismiss Mr. Underhill's claim for s. 7 expenses due to his failure to file a financial statement as directed on the 25th of October 2011.
- [76] It would, in my view, be quite a different consideration if Mr. Underhill had, eventually, filed a full financial statement and a believable summary of his assets and believable income and expense statements from his rental properties. None of that has been forthcoming.
- [77] Court orders must have consequences. Failure to abide by court orders, when one is beseeching the court for a remedy, must have consequences. Because he did not comply with my order of the 25th of October 2011 as further articulated in my order of the 9th of December 2011, I would for that reason alone dismiss his claim for s. 7 expenses. G. Future Section 7 expenses
- [78] I will make the following order in regards to future s. 7 expenses. As I hope these reasons and Appendix 1 show clearly, the uncertainty, at least in Mr. Underhill's mind, about s. 7 expenses has been the source of continuous strife and conflict between the parties and has been a source of continuous litigation between the parties. Despite Madam Justice Allan's order being clear, that only certain limited items were s. 7 expenses and any additional claims had to be agreed to between the parties, Mr. Underhill has ignored that provision of the order and instead has undertaken what can only be described as an attempt at financial harassment of Ms. Koch. He had additionally incurred costs, as I have found, with the expressed intention of trying to defeat Ms. Koch's ability to spend time with the children and to gain economic advantage.
- [79] The disclosure, as limited as it is, shows that Mr. Underhill is an exceptional wealthy individual. His interest income suggests substantial cash reserves. He has significant securities which result in significant dividends. He has still five or six residential properties in addition to his own home. He is extremely well off financially. Ms. Koch on the other hand, has a modest income and other than her home, has little in the way of financial resources.
- [80] Tristan, according to the evidence before me, is now over the age of 19 and has completed an apprentice program at BCIT, with the intention of commencing work in the construction industry. Although he may, as part of his apprentice, need to return to school, I am of the view that he is now independent and as such is no longer a child of the marriage.

- [81] In regards to the daughter, Katrina, she may be involved in the pursuit of higher education. That remains to be seen. What is clear, however, is that despite court orders, Mr. Underhill will not disclose his real income and specifically as it relates to a claim for Katrina's education costs, has not and will not disclose the value of assets set aside for that, being a RESP.
- [82] In regard to s. 7 expenses in the future, I direct that Ms. Koch continue to pay for a cell phone for Katrina and is to continue to enrol Katrina on her medical and/or any extended health plans that she has available to her. That will be the extent of her contribution to s. 7 expenses and any other expenses which would otherwise be characterized as s. 7 expenses can and should, in my view, be borne by Mr. Underhill.
- [83] In regards to Katrina's education, if she is enrolled in full-time post-secondary education, she will not be living at home in Whistler. If that happens, and Katrina is away at school, Ms. Koch is to pay to Katrina directly the amount of child support payable for one child under the appropriate Child Support Guidelines based on her income at that time while she is at school. If Katrina lives with her dad on the "off school" months, Ms. Koch is to resume paying Mr. Underhill support for one child. That will assist Katrina in her education. The balance of education expenses, tuition, books and housing, should and will be borne by Mr. Underhill who has the undisclosed RESPs and extensive financial resources. H. Costs
- [84] In regards to costs, if it was not for the fact that Ms. Koch represents herself, this would in my view be an appropriate case for the court to consider special costs. Mr. Underhill's behaviour in the litigation from the time of Madam Justice Allan's order as it relates to s. 7 expenses, and as it relates to his overholding of the children, has been disreputable.
- [85] However, special costs is an unusual remedy. It is particularly unusual when a party potentially seeking it is self-represented. Noting, as I do, that Ms. Koch travels from Bowen Island to Vancouver for court and noting as I do that this matter was before the court on four days for hearing, I will fix costs payable by Mr. Underhill to Ms. Koch at \$4,000, representing \$850 in costs for preparation and attendance for each of the four days, plus \$150 for each day for disbursements. Ms. Koch had to travel from Bowen Island for court and has had to file numerous affidavits and make numerous copies of various documents for the purposes of proving her case which she has done, and that gives rise to my award of costs for disbursements.
- [86] To summarize:
1. The claimant's claim and respondent's claim for payment of s. 7 expenses for the year 2009 to the date of these reasons are each dismissed.
 2. The \$500 advance payment paid by Ms. Koch on account of s. 7 expenses is to be returned to Ms. Koch forthwith.
 3. Ms. Koch is to continue paying for Katrina's cell phone and her medical insurance benefits.

4. There are no further s. 7 expense claims to be made by the parties.
5. Tristan is, as of 1 Sept 2013, no longer a child of the marriage.
6. Ms. Koch's Guideline income for 2009 is determined at \$46,630 and she is to pay child support in the amount of \$708 for January to June of 2009. Madam Justice Boyd on 11 May 2010 ordered no support for either party for the children from September 2009 to June 2010. Ms. Koch will pay no child support for two months of that year, July and August, as I have directed.
7. For 2010, Ms. Koch's income is determined at \$34,399 and she is to pay child support in the amount of \$535 per month for four months of that year, September to December, and no support for two months of that year, July and August. The balance of 2010 is covered by Madam Justice Boyd's order noted above.
8. For 2011, Ms. Koch's income is determined at \$35,273 and she is obligated to pay \$546 per month for ten months of that year and no support for two months of that year, July and August.
9. For 2012, Ms. Koch's income is determined at \$27,522 and her obligation to pay child support is determined at \$426 for ten months of that year and no support for two months of that year, July and August.
10. For January to June 2013, Ms. Koch's income is determined at \$36,000 and she is to pay child support for two children for January to June in the amount of \$554 per month. Commencing in September 2013, Ms. Koch's income is again determined at \$36,000 and she is to pay child support for one child in the amount of \$327 per month. There is no child support payment due for July and August.
11. Commencing in 2014, Ms. Koch's obligation to pay child support shall be an obligation for all twelve months of each year.
12. The Family Maintenance Enforcement Program is to amend their records to reflect this order, and are to cancel any default fees, which may have arisen.
13. Costs are payable by the respondent Mr. Underhill to the claimant Ms. Koch in the amount of \$4000. These costs are payable forthwith. "The Honourable Mr. Justice Groves" Appendix 1 Chronological Summaries of Orders
 1. Master Doolan, 1 April 1997 Notes - ex parte application by Koch on same date; order entered 11 Apr. 1997
 - a. Koch awarded interim custody of Tristan and Katrina;
 - b. Koch awarded interim exclusive use/occupancy of Bowen Is. home;
 - c. Underhill restrained from communicating with/harassing/annoying Koch;

- d. Underhill restrained from entering any premises occupied by Koch and the children;
 - e. Underhill restrained from communicating with Koch except through counsel to arrange access to children;
 - f. Underhill restrained from dealing with/disposing of assets related to the marriage;
 - g. Underhill ordered to pay Koch \$1,500 forthwith;
 - h. "peace officer clause": any peace officer in BC who believes Underhill is in breach of this order shall immediately arrest him and bring him before Court;
 - i. Koch must file affidavit concerning "incident over Easter holidays";
 - j. Koch must serve Underhill with all documents within reasonable time;
 - k. all matters adjourned to 11 April 1997.
2. Master Brandreth-Gibbs, 11 April 1997 Notes - application by Koch on same date; order entered 6 May 1997
- a. 1 April 1997 order of Master Doolan continued until hearing on the merits subject to this order;
 - b. no possibility of reconciliation declared;
 - c. both parties restrained from disposing of/encumbering/transferring/etc. all assets at issue;
 - d. Koch's "Notice of Motion" shall be heard 28 April 1997;
 - e. Koch shall have affidavit material to Underhill's counsel by 22 April 1997;
 - f. commencing 12 April 1997, and pending a full hearing, Underhill awarded access to children (1) Saturdays from 5:00 pm to Sundays at 5:00 pm and (2) Tuesdays from 5:00 pm to Wednesdays at 5:00 pm;
 - g. both parties must inform the other (through counsel) if someone else is "assisting in the caregiving of children".
3. Master Barber, 24 April 1997 Notes - application by Underhill on same date; Koch was served but did not appear; no order entered
- a. within 7 days of receiving this order, Bowen Is. RCMP must send Underhill's lawyer certain reports re complaints made by Koch;
 - b. the rest of Underhill's application is adjourned.
4. Master Patterson, 2 May 1997 Notes - application by Koch on 28 Apr. 1997; order entered 14 Aug. 1997
- a. custody aspect of the 1 Apr. 1997 order of Doolan M. is set aside; no order for interim custody - parties shall have joint guardianship;

- b. Koch awarded interim primary care and control;
- c. either party can apply for custody after 1 Sep. 1997;
- d. Underhill is entitled to reasonable and generous access [a weekly schedule is then set out] and may apply for longer summer access;
- e. 11 April 1997 order of Brandreth-Gibbs M. is clarified as follows: if either party intends to leave the children with a caregiver, they must notify the other party of the caregiver's name;
- f. neither party may change residence of children from Bowen Is. without the other's agreement or court order;
- g. as of 1 May 1997, Underhill must pay \$508.10/month in interim child support; parties may apply to vary when they have new financial info.;
- h. Koch must give Underhill a copy of Katrina's Registration of Live Birth;
- i. Koch shall have exclusive occupation of family home on Bowen Is. until 31 Jul. 1997, when she must vacate (with liberty to apply);
- j. Doolan M.'s 1 April 1997 restraining orders are replaced with:
 - i. parties are restrained from communicating with/harassing/etc. each other, except for communication to effect access; ii. each party is restrained from entering the other's residence;
- k. "peace officer clause": any peace officer with reasonable grounds to believe either party is in breach of the restraining orders shall arrest that party and bring him/her before court the next day;
- l. 11 April 1997 order of Brandreth-Gibbs J. restraining the parties from disposing of family assets is varied to exclude real property;
- m. Koch's application for spousal support is adjourned.
- 5. Master Patterson, 16 June 1997 Notes - application by Underhill on same date; order entered 6 Aug. 1997
 - a. Underhill may go to the family home on Bowen (with an RCMP officer) to get his things and download his files; he must inventory what he takes and leave the inventory at the house.
- 6. Master Patterson, 15 July 1997 Notes - application by Koch and cross-application by Underhill on 14 Jul. 1997; order settled and entered 29 Sep. 1997
 - a. Underhill's application to vary the children's principal residence is dismissed;
 - b. 2 May 1997 order giving Koch exclusive occupancy of family home until 31 Jul. 1997 will terminate at 5 pm, 16 Jul. 1997, at which point Underhill shall have exclusive occupancy of the family home;

- c. the order restraining Underhill from attending at the family home is revoked at 5 pm, 16 Jul. 1997;
 - d. Underhill is restrained from attending at Koch's residence in North Van;
 - e. 2 May 1997 order restraining the parties from changing the children's residence from Bowen Is. is varied: the parties are restrained from changing the residence of the children from Bowen Is., North Vancouver, and West Vancouver;
 - f. [Underhill's access schedule is set out;]
 - g. Koch's applications (a) to be authorized to use the driveway crossing the property of Max and Frances Frost and (b) to be authorized to enter and remove items from the Gambier cottage are both dismissed;
 - h. Koch's application for delivery of certain chattels is adjourned;
 - i. the order restraining the parties from disposing of family assets is varied to allow Koch to cash her RRSP to a max. of \$10,000; those funds must be taken into account in dealing with the family assets at trial or settlement;
 - j. the "USC Education Scholarship Funds" in the children's names must be transferred to Underhill "as subscriber" on the condition they're not to be cashed;
 - k. a psychologist must prepare a full custody and access report for the purpose of making recommendations to the court;
 - l. Koch must pay for the report, initially (but the cost will ultimately be dealt with by the trial judge along with costs of the action);
 - m. Koch must pay Frances Frost costs of \$250.
7. Justice Curtis, 3 September 1997 Notes - appeal by Underhill of Patterson M.'s 15 July 1997 order; entered 2 Feb. 1998
- a. 15 July 1997 order of Patterson M. is varied: [an amended access schedule is set out];
 - b. exchanges must take place at Snug Cove ferry terminal; Koch must deliver children to and pick them up from Snug Cove.
8. Master Patterson, 9 December 1997 Notes - application by Underhill on same date; order entered 5 Feb. 1998
- a. Underhill's application to vary 2 May 1997 order of Patterson M. re (1) child support and (2) costs of psychological report is adjourned to trial;
 - b. a pre-trial conference must be held by 15 Jan. 1997 and it must address the parties' readiness to proceed to trial.

-
9. Justice Clancy, 26 January 1998 Notes - trial started on same date, but adjourned to 13 Jul. 1998; order entered 27 Jan. 1998; all orders herein are "by consent"
 - a. parties have joint custody and guardianship of children;
 - b. joint guardianship includes the following rights:
 - i. joint guardianship of the estate of the children; ii. if one parent dies, the remaining parent will be the sole guardian of the person of the children; iii. to be informed of the children's doctors/dentists; iv. to contact doctors/dentists and obtain children's records;
 - v. to obtain information re children directly from third parties; vi. to be consulted re children's significant health issues or changes in the children's social environment;
 - c. children must reside equally with each parent;
 - d. Koch must relocate to Bowen Is. A.S.A.P.;
 - e. children must reside and attend school on Bowen Is.;
 - f. parties must attend mediation with agreed third-party to resolve conflicts; cost of mediation must be shared equally, but not more than \$500 per person per year;
 - g. if parties cannot resolve issues re children, they must make best efforts to resolve them via mediation before applying to court;
 - h. [parenting schedule is set out, including holidays and extended summer visits; parent starting time with children is responsible for pick-up].
 10. Justice Brandreth-Gibbs, 4 March 1998 Notes - application by Underhill on same date; order entered 1 Apr. 1998
 - a. Underhill's application to vary the 2 May 1997 child support order of Patterson M. is adjourned to trial;
 - b. his application to vary the 15 July 1997 order of Patterson M. re payment of the psychological report is adjourned generally;
 - c. Underhill must pay Koch her costs of this application.
 11. Justice Cole, 17 April 1998 Notes - action from 14-17 April 1998; "settled in these terms on 1 Oct. 1998"; order entered 5 Nov. 1998
 - a. Koch and Underhill are divorced, effective 31 April 1998;
 - b. Underhill's interest in property at 38876 Buckley Ave, Squamish is not a family asset;
 - c. balance of proceeds of sale [from that property, presumably] currently held in trust shall be paid to Margaret England;
-

- d. judgment reserved on the remaining issues, to wit: child support, valuation of family assets, reapportionment, child tax credit, medical coverage, educational savings plan, cost of custody/access report.
- 12. Justice Cole, 23 April 1998 Notes - action from 14-17 April 1998; order entered 17 Mar. 1999
 - a. the following are declared family assets:
 - i. 1771 Eaglecliff Rd., Bowen Is. - \$650,000 ii. 13 - 2301 Cavendish Way, Whistler - \$193,000 iii. share in Daisy Bay Estates Ltd, Gambier Is - \$240,000 iv. RRSPs registered to Koch - \$36,879
 - v. RRSPs registered to Underhill - \$93,272
 - b. the total value of these assets, less the \$65,621 mortgage on the Whistler property, is \$1,147,530
 - c. family assets reapportioned 80% in favour of Underhill;
 - d. Underhill keeps his interest in the Bowen Is. and Gambier Is. properties, Daisy Bay Estates, and the RRSPs in his name, free of any claims by Koch;
 - e. Koch must transfer her interest in Whistler property to Underhill free of any further claim by Koch;
 - f. Koch keeps her interest in the RRSPs in her name free of any claim by Underhill;
 - g. Underhill must pay Koch \$192,627 within 60 days as compensation for her interest in the family assets retained by Underhill;
 - h. cars, boat, household items, family heirlooms are also declared family assets and apportioned; [generally, the registered owner/party in possession retained possession;]
 - i. cost of custody/access report by Dr. Ley shall be shared equally;
 - j. no order for child support;
 - k. Underhill must pay and keep current the medical insurance premiums for the children;
 - l. Koch is entitled to receive child income tax credits; any of these payments received by Underhill are held in trust for Koch;
 - m. Underhill must make payments to the education funds for the children;
 - n. Koch's income is \$30,000;
 - o. parties may make written submissions re costs.
- 13. Justice Cole, 22 May 1998 Notes - action from 14-17 April 1998; order entered 24 Feb. 1999
 - a. Koch entitled to costs on scale 3; costs include removal of Certificate of Pending Litigation registered by Underhill against Squamish property owned by Koch and England.

14. Justice Coultas, 5 November 1998 Notes - application by Koch on same date; order entered 3 Dec. 1998
 - a. Koch's application to vary 20 Jan. 1998 order of Clancy J. is adjourned generally; [I believe this was supposed to refer to the Clancy J. order from 26 Jan. 1998;]
 - b. Koch's application for child support is adjourned to a date to be fixed.
15. Justice Ralph, 1 December 1998 Notes - application by Koch on same date; order entered 31 Dec. 1998
 - a. both parties must attend at "Conciliation Services" to resolve communication and parenting conflicts;
 - b. Conciliation Services must prepare a section 15 report if parties cannot resolve matters;
 - c. Koch's application for child support is dismissed (Koch's guideline income found to be \$45,000, Underhill's \$20,000);
 - d. Koch awarded 50% of her costs of this application on scale 3.
16. Justice Cole, 23 February 1999 Notes - application by Koch to settle the orders dated 23 Apr. 1998 and 22 May 1998; no order entered.
 - a. Koch awarded \$516 in costs for this application;
 - b. by consent, there shall be a reference to the Registrar to conduct an inquiry under Rule 32 re distribution of assets in accordance with paras. 42 - 45 of Cole J.'s 23 April 1998 reasons for judgment.
17. Justice Macaulay, 24 November 1999 Notes - application by Underhill on same date; order entered 27 Mar. 2000
 - a. 26 Jan. 1998 order of Clancy J. is varied: children shall spend alternate weekends with each parent, starting with Koch on 25 Nov. 1999 (unless they otherwise agree);
 - b. exchanges must occur on Thursdays at Bowen Is. School, Daycare or Preschool; children must be dropped off by 12:30 pm and picked up by 2:30 pm;
 - c. if schools are closed on a Thursday, exchanges must take place with an agreed upon neutral third party at Snug Cove General Store;
 - d. [the Christmas 1999 parenting schedule is set];
 - e. the non-residential parent shall have phone access 3 times/week between 9 am and 7 pm;
 - f. [during summer break, each parent gets certain two week periods with the children;]
 - g. parties must bear their own costs of this application.

18. Justice Lowry, 24 October 2002 Notes - application by Koch on same date; order entered 22 Nov. 2002
 - a. "peace officer clause": peace officers are empowered to enforce Clancy J. order of 26 Jan. 1998 and Macaulay J. order of 24 November 1999 (and arrest breaching party and bring him/her before court) if they have reasonable grounds to believe orders are being breached;
 - b. since Koch agreed to forego mediation, Dr. Ley is ordered to prepare an updated section 15 report analyzing if parenting arrangement ought to be changed and why;
 - c. each party may send a letter to Dr. Ley (and the other party) setting out their concerns;
 - d. within 14 days, Koch must send to Underhill:
 - i. her medical records (since 1998); ii. her psychiatric and psychological records (since 1998); iii. her employment records re medical/stress leave (since 1998); iv. her counselling records (since 1998);
 - e. relief requested by Underhill in his 18 Oct. 2002 motion is adjourned; it will be heard on a date to be set;
 - f. Underhill must pay for Dr. Ley's report ("subject to his right to claim costs herein for this report");
 - g. Justice Lowry is not seized of this matter.
19. Justice Oppal, 20 December 2002 Notes - application by Underhill on same date; order entered 23 Dec. 2002
 - a. Within 10 days of this order, the following people/institutions must produce all their records re Koch to her counsel:
 - i. Ron Angress; Adam Schneid; Georgiana Drew; URS Corporation; UNUM and Manulife Insurance (from 1991 to present); Drs. Cline, Hurlburt, Bueckart, Buchel, Sniderman, Wiebe, Jenkins, Nitz, and Kiraly;
 - b. the documents must be certified by the holders to be accurate and must be forwarded to Underhill's lawyer within 72 hours of being sent to Koch's lawyer;
 - c. Koch may object to production to Underhill within 72 hours of receipt; she must give notice of the objection to Underhill's lawyer in writing with a description of the document and the reasons for objecting;
 - d. if Koch objects, Underhill must apply to this Court for disclosure within 72 hours of receiving notice;
 - e. by 24 Dec. 2002, Koch must provide to Underhill's lawyer the phone numbers, fax numbers, and addresses of the following people: Ron Angress; Adam Schneid, and Drs. Buchel, Wiebe, Jenkins, Nitz, Kiraly;

- f. the affected third parties may, upon 4 days notice to each party, apply to vary the terms of this Order;
 - g. Underhill must pay reasonable copying costs to the affected third parties (but can try to claim costs from Koch at the end of the matter);
 - h. none of the documents produced may be used outside of this matter.
20. Justice Warren, 4 April 2003 Notes - application by Underhill on 3-4 April 2003; order entered 4 April 2003
- a. by consent: West Van Police Department ("WVPD") authorized to "find" documents relating to 22 March 2003 incident concerning Koch;
 - b. WVPD must make copies of the records available to Underhill (with "law enforcement information", see Freedom of Information and Protection of Privacy Act);
 - c. Underhill's lawyer must enter this order forthwith and deliver it to WVPD and all other parties;
 - d. within 7 days of receiving the documents from WVPD, Underhill's lawyer must provide all parties with copies;
 - e. reasonable costs incurred by WVPD in finding documents must be paid by solicitor for party requesting the documents (forthwith);
 - f. by consent: Director under Child, Family & Community Service Act must deliver to Underhill's lawyer copies of all documents in his/her control relevant to matters at issue, except the following information:
 - i. names of informants; ii. child protection information provided by third parties on the basis that it would not be disclosed; iii. information to which a claim of privilege is advanced; iv. information re any child in care who is not involved in this proceeding (if production would be an unreasonable invasion of his/her privacy);
 - v. videos of interviews with children; vi. information re past criminal record under the YCJA.
 - g. by consent: the Director must deliver the documents within 45 days;
 - h. by consent: Underhill's lawyer must reimburse Director for reasonable costs incurred in finding/delivering said documents;
 - i. by consent: documents produced by Director must not be used outside this litigation without consent of Director or court order;
 - j. by consent: Underhill's lawyer must give Koch copies of all documents requested; Koch must pay for copying;
 - k. hearing of defendant's application set for 15 April 2003 adjourned to date to be fixed;

- l. until the aforementioned hearing, the orders of Clancy J. (26 Jan. 1998) and Macaulay J. (24 Nov. 1999) are varied; children will be with Koch as follows:
 - i. [certain dates in April and May 2003]; ii. starting 31 May 2003: weekends from 9 a.m. Sat. to 7 p.m. Sun.; and iii. each Thurs. from the end of school to 7 p.m. (or, "if a monitor is available", until the beginning of school the following day);
- m. children will be with Underhill at all other times;
- n. when children are with Koch, a mutually agreeable third-party must be present and have signed the "monitor's undertaking" in Schedule A;
- o. when children are with Koch, she must not consume alcohol/illicit drugs, and when Koch has alcohol in her body, she must not operate vehicle with children;
- p. Koch must submit to alcohol/drug testing as requested by Ministry of Children and Family Development and her lawyer must tell Underhill's lawyer of any positive tests.
21. Justice Slade, 9 October 2003 Notes - application by Underhill on 26 Aug. 2003; order entered 28 Oct. 2003
 - a. the order of Clancy J. dated 26 Jan. 1998 and the order of Macaulay J. dated 24 Nov. 1999 are varied re custody and access;
 - b. the children must be in the sole custody of Underhill and have their primary residence with Underhill;
 - c. Koch gets unsupervised access (1) alternate weekends and (2) with one child each week, on Wed. after school to Tues. before school; or any other access that is agreed upon;
 - d. if the children are not being dropped off/picked up from school, exchanges must take place at Snug Cove General Store (unless otherwise agreed);
 - e. if the children cannot attend school at the end of Koch's access, she must return them by 9 am;
 - f. Koch must not drink alcohol while with the children and 24 hours before they arrive;
 - g. Underhill may use an intermediary to exchange the children; he can choose the person from the list of "supervisors" in the 4 Apr. 2003 order of Warren J.;
 - h. if Koch seems intoxicated during a transfer, the intermediary will record his/her observation and send it to both parties forthwith;
 - i. Koch must not attend at the children's school when the children are there unless it's her access period;
 - j. Koch must not drive the children in a car between 6 pm and 7 am;

- k. Koch gets 4 days with children during 03/04 Christmas break; parties can apply if they can't agree on the dates;
 - l. parties get joint guardianship on the Joyce model, including the right:
 - i. to be joint guardians of the estate of the children; ii. if one parent dies, to be sole guardian of the person of the children; iii. to be informed of children's doctors/dentists; iv. to contact doctors/dentists to get children's records;
 - v. to obtain information from third parties about the children directly, including teachers, counsellors, etc; vi. to be consulted re the children's significant health issues; vii. to be consulted re significant changes in the children's social environment;
 - m. "peace officer clause": any peace officer who reasonably believes Koch is in breach of this order is empowered to enforce it and arrest Koch and bring her promptly before the court;
 - n. Underhill's application that Koch is in contempt of the Clancy and Macaulay JJ. orders is adjourned generally.
22. Justice Kirkpatrick, 5 November 2003 Notes - application by Underhill on same date; order entered on same date
- a. income of \$55,000/year imputed to Koch for child support purposes;
 - b. Koch must provide income tax returns for 2001-02 to Underhill;
 - c. Koch must provide evidence of employment and all future income tax returns to Underhill by 30 May of each year;
 - d. Koch must pay \$761/month for child support starting 1 Oct. 2003 and retroactive to 1 April 2003;
 - e. Underhill awarded costs of \$712.
23. Unspecified presider, 6 October 2004 Notes - No order entered.
- a. parties to attend today to set a date after 9 Nov. 2004;
 - b. parties to mail documents by regular mail;
 - c. Koch must file and send to Underhill, in affidavit form, a detailed financial statement, 2003 income tax return, rental agreement and all expenses, statement of income from employer, and property management contracts;
 - d. Koch must obtain a short update from Dr. Leys, initially funded by Koch;
 - e. [Koch's telephone access schedule set out;]
 - f. Koch's in supervised, in-person access set out;
24. Unspecified presider, 17 November 2004 Notes - No order entered.

- a. Koch must produce income tax returns for the past 3 years, T4 statements, statement from employer, and any other supporting documents regarding Koch's employment.
- 25. Justice Cole, 2 December 2004 Notes - applications by both parties on same date; no order entered.
 - a. Koch's access must be supervised until further order; only the first and last hour of her access must be supervised; access can occur on the mainland; access is on Sundays, twice per month for 8 hours, plus one additional 4 hour access visit on Bowen;
 - b. Koch is responsible for all costs of supervision;
 - c. parties must share costs of transportation to/from Bowen equally;
 - d. Koch must immediately participate in intensive psychotherapy for Borderline Personality Disorder with Dr. Vlashev, Sochtin, or Bradley twice/month; Koch is responsible for the costs;
 - e. Koch must continue counselling once/week and pay the costs;
 - f. Koch must not have overnight access until "Detailed Feedback in Professional Progress Reports" is received from psychotherapy and counselling and there is further court order;
 - g. [the Christmas 2004/05 access schedule is set;]
 - h. Koch must put children on her Employer Dental Plan and pay for necessary dental work;
 - i. Koch must complete full financial disclosure of all household income by 1 Feb. 2005, including employment terms and rental income;
 - j. hearing set for 13 June 2005 at 4 pm to arrange summer/fall access.
- 26. Justice Cole, 4 May 2005 Notes - No order entered.
 - a. Koch to pay increased child support starting 1 Jun. 2005; Koch's income found to be \$48,625;
 - b. Judge Cole is seized;
 - c. parties must file proper material. Ms. Koch must file "sworn affidavit together with Income Tax Returns, a signed copy, cancelled cheques and provide copies to Underhill and FMEP."
- 27. Justice Cole, 14 June 2005 Notes - applications of parties on same date; order entered 4 Jan. 2006; SCSS indicates the order was settled in these terms on 22 Nov. 2005
 - a. Underhill is not to block [six different telephone numbers];
 - b. children must be present for telephone access between 8-8:30 pm daily; the parent with the children at that time must make phone available and not eavesdrop;
 - c. if phone access is not possible at that time, the other parent must be informed forthwith and other phone access must be arranged;

- d. starting 1 Apr. 2005, Koch must pay \$973/month in child support based on guideline income of \$75,000;
 - e. Koch must give 12 post-dated cheques to BC Family Maintenance Enforcement Program;
 - f. 3 May 2005 order of Cole J. for child support of \$679/month is set aside;
 - g. 26 Aug. 2003 order of Slade J. prohibiting Koch from attending children's school is set aside;
 - h. [interim child access for 19 Jun. - 28 Aug. 2005 is set out;]
 - i. exchanges of children must occur at Bowen Is. General Store;
 - j. access shall be reasonable and generous after 28 Aug. 2005;
 - k. Dr. Schallow will act as mediator to arrange for further access and in all issues re care of the children; costs of mediation must be shared;
 - l. neither party may apply to court unless Dr. Schallow provides a letter stating that mediation will not be successful on the issue.
28. Justice Cole, 12 April 2006 Notes - application by Koch on same date; order entered 28 Apr. 2006
- a. Koch's application to vary custody and primary residence of Katrina set for a full day hearing on 24 Apr. 2006;
 - b. expedited custody report to be prepared by Dr. Ley; parties must each pay half of estimated cost forthwith;
 - c. maintenance order of 14 Jun. 2005 is suspended;
 - d. from 12 Apr. to either 15 or 16 Apr. 2006, Katrina must visit with Diana Neilson; after, Katrina must be made available for pick-up by Koch;
 - e. by consent, Koch gets access to Tristan for Easter Sun. and Mon.;
 - f. Koch gets interim custody of Katrina until further order;
 - g. Cole J. no longer seized of this matter;
 - h. Katrina's attendance at counselling through the Ministry of Family and Children must be facilitated by the parties;
 - i. the entire file of Dr. Schallow related to this proceeding must be produced; Dr. Schallow's evidence must be presented via affidavit.
29. Justice Cullen, 24 April 2006 Notes - application by Koch on same date; order entered 28 Apr. 2006
- a. Koch granted adjournment of her application for custody of Katrina;

- b. Katrina shall live with Underhill in Whistler during the week during the school year;
 - c. from "today" until 16 Jun. 2006, Katrina shall live with Koch on [specified weekends];
 - d. by consent, Katrina will be permitted to travel with Grandpa Underhill to Europe from 16 Jun. - 13 Jul. 2006;
 - e. upon Katrina's return, parties shall share parenting (1 week at a time) for the rest of the summer; exchanges shall occur on Sundays, alternating between Squamish and Horseshoe Bay;
 - f. this matter will be set for trial by counsel.
30. Unspecified presider, 19 June 2006 Notes - No order entered.
- a. Adjourn application to trial date on 14 Aug. 2006 at 10am with liberty to apply.
31. Master Hyslop, 19 July 2006 Notes - application by Koch on same date; order entered 20 Jul. 2006
- a. Diane Nielsen shall be examined under oath.
32. Justice Goepel, 1 August 2006 Notes - without notice application by Koch on same date; entered same date
- a. Diane Nielsen shall be examined under oath on 8 Aug. 2006 [at a specified location];
 - b. the subpoena to Ms. Nielsen dated 1 Aug. 2006 shall be substitutionally served by mailing it [to a specified address] and taping it to her apartment door;
 - c. service requirement in Rule 28(4) is waived;
 - d. a copy of this order must be served on Underhill by 11 am, 4 Aug. 2006.
33. Master Bolton, 31 August 2006 Notes - application by Koch on same date; no order entered.
- a. Koch's 30 Aug. 2006 Notice of Motion will be heard on 14 Sep. 2006;
 - b. Underhill must deliver Katrina to Koch for access on [two specified dates];
 - c. Koch's application for a "peace officer clause" is dismissed;
 - d. Underhill must deliver responding materials to Koch's lawyer by 5 pm, 6 Sep. 2006;
 - e. Koch's reply thereto must be delivered by 5 pm, 12 Sep. 2006;
 - f. parties may respond to Dr. Ley's report by 5 pm, 12 Sep. 2006;
 - g. other than what is specified above, parties may not deliver further reply materials to each other without leave of the court;
 - h. pending the 14 Sep. 2006 hearing, Katrina will go to school in Whistler.

34. Justice Allan, 19 September 2006 Notes - applications by parties on same date; order entered 6 Oct. 2006
- a. parties shall have joint custody and guardianship of children;
 - b. children's primary residence shall be with Underhill;
 - c. Koch's 2006 guideline income is \$80,000; if her income changes, child support issues shall be first addressed in mediation;
 - d. in full satisfaction of all Underhill's claims for retroactive child support, Koch must pay \$3,000 (if he has not been paid for May 2006) or \$1,800 (if he has been paid for May 2006);
 - e. based on \$80,000 income, Koch must pay child support of \$1,186/ month from 1 Sep. - 1. Dec. 2006
 - f. if Koch's 2006 income is not \$80,000, parties shall reconcile the child support ordered above by 15 Jun. 2007;
 - g. starting 1 Jan. 2007, Koch must pay \$1,440/month in child support as long as both children reside primarily with Underhill and are "children of the marriage", except for Jul. and Aug. each year when parties will have "week on/week off parenting time" (see next para.);
 - h. starting Jul. 2007, Koch must pay \$1,440 in child support each Jul. and Aug. and Underhill must pay \$800 each Jul. and Aug.;
 - i. [Koch gets specified parenting time, generally every other weekend and certain holidays;]
 - j. children must not be required to attend activities in Whistler on Koch's weekends;
 - k. Koch must ensure, to the best of her ability, that the children attend all extracurricular activities they're enrolled in in Squamish if the activities have been approved by both parties;
 - l. neither party may schedule extracurricular activities for children unless all parties agree; disagreements shall be mediated;
 - m. Koch must pay for and provide children with cell phones to call her in private; children must be told they can only use cell phones to call Koch; Underhill must not unreasonably interfere with use of them;
 - n. parties shall communicate via email once/week (on Thursdays) to update each other re children unless there is an emergency;
 - o. except as provided, Underhill's application for retroactive and prospective s.7 expenses is dismissed;
 - p. Underhill's application that Koch contribute, in the future and retroactively, 50% of children's scholarship trust fund is adjourned;

- q. starting 1 Sep. 2006, and except as otherwise stated, the parties must each pay 50% of the s.7 expenses; expenses must be approved by each party and receipts exchanged;
- r. agreed expenses include:
 - i. uninsured medical/dental and MSP expenses; the children's portion of extended health and extended health premiums; Tristan's tutor and speech therapist;
 - s. Ms. English (or another agreed counsellor) shall mediate disputes and parenting decisions; Ms. English's fee is to be shared;
 - t. parties shall attend 2 sessions of mediation with Ms. English by 31 Dec. 2006; every year after, they shall attend mediation quarterly unless they agree to forego mediation;
 - u. mediation is binding on both parties;
 - v. children shall be covered under Koch's medical/dental plan as long as it is available;
 - w. "peace officer clause": any peace officer with reasonable grounds to believe one of the parties is in breach of parenting time order may immediately arrest that party;
 - x. parties may vary the terms of this order by written agreement (with witnesses to their signatures);
 - y. parties must bear their own costs.
- 35. Justice Powers, 8 May 2007 Notes - application by Koch on same date; order entered 24 May 2007
 - a. the Allan J. order of 19 Sep. 2006 is varied: instead of paying \$1,440/ month in child support, Koch must pay \$1,005, retroactive to 1 Feb. 2007 (based on estimated guideline income of \$66,623);
 - b. the Allan J. order is also varied by deleting the sentence "the mediation is binding on both parties" from para. 18;
 - c. parties must provide each other with copies of their Income Tax Returns and Notices of Assessment by 31 May of each year.
- 36. Justice Edwards, 1 June 2007 Notes - application by Underhill on same date; order entered on same date
 - a. order of Powers J. dated 8 May 2007 is set aside;
 - b. Koch's guideline income for child support is set at \$100,000/year;
 - c. Koch must pay child support of \$1,444/month (retroactive to 1 Feb. 2006);
 - d. costs awarded to Underhill.

-
37. Justice Slade, 18 September 2007 Notes - application by Koch on same date; order entered 13 Dec. 2007
- a. order of Edwards J. dated 1 June 2007 is set aside in its entirety;
 - b. Koch must pay child support of \$1,005/month (retroactive to 1 Jan. 2007);
 - c. Koch's income is set at \$66,600/year;
 - d. Land Title Office must remove "the charge" against Koch's property ("Lot 7, DL 2619, Plan 14205");
 - e. Family Maintenance Enforcement Program must take account of Underhill's obligation (set out in Allan J.'s order of 19 Sep. 2006) that credits Koch with \$800/month for Jul. and Aug. 2007; Koch owes \$205 for those 2 months;
 - f. both parties must file "Form 89 financial statements" within 60 days and must disclose all sources of received/anticipated income for 2007;
 - g. both parties must disclose all grants received in relation to any property in which they have an interest;
 - h. both parties must produce tax returns and notices of assessment for 2007;
 - i. Koch must provide statement of business activities listing all contracts active in 2007 within 60 days;
 - i. statement should include summary of business expenses;
 - j. Underhill must pay \$1,000 in costs for 8 May 2007 application before Powers J. and this application.
38. Justice Curtis, 30 September 2008 Notes - application by Koch on same date; order entered 30 Oct. 2005
- a. by consent, Koch's guideline income for 2007 set at \$39,750;
 - b. by consent, Koch must pay \$606.50/month in child support for 2007;
 - c. by consent, Koch is credited with \$4,782 for overpaid child support in 2007;
 - d. by consent, Koch's monthly payment is reduced by \$400 until her credit has been recovered;
 - e. by consent, Koch's guideline income for 2008 is \$66,600;
 - f. by consent, Koch must pay \$1,005/month in child support for 2008, subject to adjustment for what Koch actually earns;
 - g. the amount of child support Koch must pay in each calendar year must be adjusted to reflect her actual income for each calendar year;
 - h. Curtis J. is not seized of this matter;
-

- i. each party shall bear its own costs.
39. Justice Brown, 17 November 2008 Notes - application by Underhill on same date; order entered 5 Nov. 2009
- a. within 14 days, Koch must provide Underhill with the following (from Jan. 2006 - Sep. 2008 unless otherwise stated):
 - i. monthly bank account statements for personal/business chequing/savings accounts that Koch has access to; ii. monthly mortgage account statements re real property owned by Koch or that Koch has an interest in; iii. monthly account statements for RRSPs or similar accounts; iv. monthly credit card statements for all personal/business credit cards the Koch has access to;
 - v. monthly line of credit statements for ball lines of credit that Koch has access to; vi. invoices by Koch for professional services; vii. invoices by Van Huizen Consultants Ltd. ("Van Huizen") for professional services (from 14 Mar. 2007 - 30 Sep. 2008); viii. list of unbilled work in progress for Van Huizen as of Sep. 2008; ix. list of unpaid accounts of Van Huizen as of Sep. 2008;
 - x. list of money paid by Van Huizen to Gregory Van Huizen or other non-arms-length individuals (from 14 Mar. 2007 - 30 Sep. 2008); xi. documentation showing how much money was paid by Van Huizen to Koch for wages/services rendered; xii. documentation showing how much money was paid by Van Huizen to Gregory Van Huizen for wages/services rendered; xiii. list of all payments made by Van Huizen (from 14 Mar. 2007 - 30 Sep. 2008) and an explanation for those payments; xiv. particulars of all contracts that Koch or Van Huizen have or anticipate in the next two years, plus an estimate of revenue/ expenses from each contract;
 - b. within 14 days, Koch must provide Underhill with:
 - i. documents confirming Koch's terms of employment with WorleyParsons Canada Ltd., plus hours worked and income from that company; ii. documents confirming Koch's terms of employment with Trow Associates Inc., plus hours worked and income from that company; iii. certified true copy of 2004-2007 income tax returns with attachments; iv. certified true copy of 2007 corporate tax return for Van Huizen with attachments;
 - c. Underhill's lawyer must deliver a draft Order to Koch;
 - d. the balance of relief is adjourned;
 - e. Koch must file a Notice of Change of Address for Delivery;
 - f. Koch's "signature is herein dispensed with".
 - g. costs will be dealt with at the hearing for the balance of the relief.
40. District Registrar (Garnishing Order), 30 January 2009

- a. \$1,250 garnished from Koch's TD Canada Trust to be paid to Koch.
- 41. Justice Greycliff, 6 October 2009 Notes - application by Underhill on same date; order entered on same date.
 - a. Underhill's application is set for hearing on 9 Oct. 2009, with liberty to Koch to apply to adjourn.
- 42. Chief Justice Bauman, 22 October 2009 Notes - application by Underhill dated 25 Sep. 2008; order entered 6 Nov. 2009
 - a. Underhill's applications dated 25 Sep. 2008 and 30 Sep. 2009 are set for a 1-day hearing on 15 Dec. 2009;
 - b. by 4pm on 24 Nov. 2009, Koch must provide Underhill's lawyer with a complete sworn Form 89 financial statement with necessary attachments
 - c. by 4 pm on 24 Nov. 2009, Koch must provide Underhill's lawyer with an Outline (10 pages max.) including a detailed list of the affidavits Koch is relying on;
 - d. approval as to the form of this order and Koch's signature are dispensed with;
- 43. Justice Brown, 5 November 2009 Notes - application by Underhill on same date to settle the order of 5 Nov. 2008; entered 20 Nov. 2009
 - a. Koch must pay costs to Underhill for the herein attendance.
- 44. Justice Goepel, 15 December 2009 Notes - application by Underhill on same date; order entered 14 Apr. 2010
 - a. by 29 Jan. 2010, Koch must deliver an affidavit in regards to items set out in Brown J. order (presumably from 17 Nov. 2008);
 - b. to the extent Koch cannot comply with that order, she must set that out in the affidavit;
 - c. Koch must not delete material from credit card statements or any names from invoices and ledgers;
 - d. Ms. Boles undertakes not to disclose any of the aforementioned information without a court order;
 - e. the Order of Brown J. is varied "in relation to the monthly mortgage statements and RRSP statements so that it will be the annual statement, last date past September 30 extended to January 30, 2009"
 - f. by 29 Jan. 2010, parties must exchange completed Form 89 financial statements, including financial statements up to 31 Dec. 2009 and produce documents re expenses claimed by any company they are employed by;

- g. parties must file/exchange Outlines by 10 Feb. 2010 re applications brought; by 8 Mar. 2010, parties must file any responsive Outline;
 - h. any applications for preliminary objections to documentation must be set for hearing before 25 Mar. 2010;
 - i. additional affidavits must be filed by 15 Feb. 2010; responsive affidavits must be filed by 8 Mar. 2010;
 - j. a 3-day hearing is set down for 6 Apr. 2010; Goepel J. is not seized;
 - k. Ms. Boles is to draft the order and send it to Koch; Koch is to send complaints to Ms. Boles; if parties can't agree, Ms. Boles must submit the Order to Goepel J. along with correspondence; Goepel J. will either sign the order or the parties will appear in front of him again.
45. Justice Dickson, 6 April 2010 Notes - applications by Underhill dated 24 Sep. 2008 and 30 Sep. 2009 and application by Koch dated 24 Nov. 2009; order entered 4 Jun. 2010
- a. by 23 Apr. 2010, Koch must deliver to Underhill's lawyer a supplementary affidavit to her 28 Jan. 2010 affidavit;
 - b. the supplementary affidavit must include:
 - i. unedited copies of all credit card statements, invoices, etc. previously provided in edited form; ii. responses to several paras. in an unspecified order of Brown J. iii. the name of the person who provided information regarding her employment records; iv. certified true copies of Koch's tax returns and (re)assessments for 2004-2008;
 - v. list of all documents produced in response to "the Orders" of Brown, Goepel, and Dickson JJ.
 - c. by 30 April 2010, both parties must provide updated Form 89 financial statements with 2009 tax returns attached plus documents re child expenses claimed against income of company they are employed by;
 - d. if parties have inadequate document disclosure to proceed on 11 May 2010, they can appear before Dickson J. on week of 3 May 2010;
 - e. the parties must exchange "Outlines" by 5 May 2010;
 - f. the parties must update to 2009 the documents ordered for production by Brown J. (as modified by Goepel J);
 - g. Koch must pay costs of \$500 to Underhill by 11 May 2010.
46. Justice Boyd, 11 May 2010 Notes - applications by Underhill dated 24 Sep. 2008 and 30 Sep. 2009 and application by Koch dated 24 Nov. 2009 heard on 11 May 2010; order entered 9 Jun. 2010

- a. Koch's 2008 and 2009 Guideline income set at \$55,000
 - b. no child support is payable by either party from 1 Sep. 2009 - 30 June 2010;
 - c. the \$1,250 paid into court by the Koch (pursuant to the garnishee dated 30 Jan. 2009) must be released to Underhill and neither party shall pursue recover of costs ordered to date;
 - d. Underhill must continue to pay the RESP contributions ordered by Cole J. on 23 April 1998 without contribution from Koch;
 - e. Koch has no entitlement to the RESPs or associated funds.
47. Justice Groves, 21 January 2011 Notes - application by Underhill; order entered 2 Mar. 2011
- a. Groves J. seized of any application in this matter for 3 years;
 - b. matter adjourned until April or May, to be determined by Underhill's lawyer and relayed to Koch by the end of January;
 - c. before 31 March 2011, both parties must file new financial statements (which must indicate all corporations in which the party is a shareholder, except publicly traded companies);
 - d. both parties must provide tax assessment notices for all property owned or all real property owned by corporation they control;
 - e. both parties must provide income tax returns for past 3 years, including statements of business activities and schedules re rental income;
 - f. before 31 Mar. 2011, Koch must pay \$2,500 for the eventual determination of s.7 expenses;
 - g. Koch must provide disclosure of Pemberton property (including assessed value and mortgage against it);
 - h. before 31 Mar. 2011, Koch must indicate which s.7 expenses she paid for and provide proof thereof.
48. Justice Groves, 25 October 2011 Notes - application by Koch; order entered 19 Jan. 2012
- a. a full day hearing of the parties' outstanding applications is scheduled for 9 Dec. 2011 before Groves J.;
 - b. the parties must exchange application materials by 21 Nov. 2011;
 - c. the parties must exchange responses to application materials by 28 Nov. 2011;
 - d. Koch must provide Underhill with a 1-page summary of s.7 expenses for which she claims reimbursement by 8 Nov. 2011;
 - e. Koch must provide Underhill with copies of her 2009-10 Notices of Assessment by 8 Nov. 2011;

- f. Underhill must file financial statement containing full Income Tax Returns and Notices of Assessment for properties by 8 Nov. 2011 (if not, his s.7 expense claims will be dismissed "with prejudice");
 - g. Underhill's lawyer must provide Koch with the Index to the Application Record by 30 Nov. 2011;
 - h. Koch must pay \$2,500 to Underhill's lawyer "for the credit of" Underhill by c.o.b. on 8 Nov. 2011.
49. Justice Groves, 9 December 2011 Notes - applications by Koch dated 20 Oct. and 21 Nov. 2011 and application by Underhill dated 30 Sep. 2009; no order entered.
- a. Underhill must pay fine of \$5,000 by 31 Dec. 2011 for failing to file financial statement pursuant to s. 92 of the Family Relations Act;
 - b. section 7 expenses of \$4,000 (to the end of 2008) must be paid equally by the parties; (Koch must pay Underhill \$2,000; since Koch had already paid Underhill \$2,500, Koch is left with \$500 credit;)
 - c. both parties must complete financial statements (all sections) by 16 Jan. 2012; statements must include tax returns and Notices of Assessment from 2008-10; if returns are unavailable, parties must file affidavit explaining why and detailing efforts made to replace them;
 - d. both parties must disclose all rental income and associated expenses for 2008-11; if the information is unavailable, parties must file affidavit explaining why and detailing efforts reconstruct a summary;
 - e. Court reserves the right to dismiss Underhill's application due to his failure to file a financial statement as directed on 25 Oct. 2011;
 - f. in her financial statement, Koch must include "interests and real property" Mr. Van Huizen owns, including mortgage amounts;
 - g. two days between 20-27 Feb. 2012 shall be scheduled to hear the applications, subject to availability of counsel.
50. Justice Groves, 31 January 2012 Notes - No order entered; applications of parties on same date;
- a. 2-day hearing shall be scheduled for 19-20 April 2012 before Groves J;
 - b. parties must file/exchange income tax returns by 19 Apr. 2012;
 - c. Underhill's lawyer must give Koch any revisions to Groves J.'s draft order 9 Dec. 2011;
 - d. Underhill's lawyer must give Koch a list of deficiencies in Koch's financial disclosure by 10 Feb. 2012;

- e. either party can set the matter before the Registrar if they cannot agree on the terms of the Groves J. order from 9 Dec. 2011.
- 51. Justice Groves, 6 June 2012 Notes - application of parties on same date; order entered 31 Jul. 2012;
 - a. Family Maintenance Enforcement Program is not to commence proceedings until the matters is resolved by the BCSC;
 - b. the matter is adjourned to a later date in June.
- 52. Justice Groves, 26 March 2013 Notes - No order entered.
 - a. "Ms. Boles to provide Mr. Justice Groves with list of expenses, with receipts, since October 2011 to date, if there is a claim for tuition provide documentation on the balance of the RESP for the child, and a copy of that tax return, by Thursday April 4th to Mr. Justice Groves and Ms. Koch. Ms. Koch has until April 11th to provide Mr. Justice Groves with written submissions on the appropriateness of them and Ms. Boles, I'll give you the last word until April 17th, 2013"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/13/18/2013BCSC1889.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/koch-v-underhill-2013>

Prepared on 29 October 2026 · Esheria