

CANADA / JUDGMENT

L.E.S. v. C.A.S.

2025 BCSC 1203

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1203 L.E.S. v. C.A.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.E.S. v. C.A.S.,

2025 BCSC 1203

Date: 20250626

Docket: E31603

Registry: Cranbrook

Between:

L.E.S., also known as L.E.W.

Claimant

And

C.A.S.

Respondent

Before: The Honourable Madam Justice Lyster

(appearing by videoconference)

Reasons for Judgment

Counsel for the Claimant:

K. Tse, K.C.

Counsel for the Respondent:

B. Knight

Place and Dates of Hearing:

Nelson, B.C.

September 13,

December 6 and 13, 2024

Place and Date of Judgment:

Cranbrook, B.C.

June 26, 2025

Table of Contents

Introduction.. 3

Background Facts. 4

Parenting History and Parenting Schedule. 4

Holiday Parenting Schedule. 8

Exercise of Parental Responsibilities. 10

Date Upon Which the Parties Began Living in a Marriage-Like Relationship. 12

Child Support. 13

Health and Dental Benefits. 17

Children's Activities and Special and Extraordinary Benefits. 17

Claiming the Children as Dependents. 20

Spousal Support. 21

Family Property and Debt. 21

Former Family Home. 21

Vehicles. 24

Miscellaneous assets. 27

Financial assets. 28

Divorce. 33

Conclusion.. 33

Introduction

- [1] L.E.S. applies pursuant to Rule 11-3 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] for summary trial in this family law dispute. She seeks a comprehensive final order addressing parenting issues, including parenting time, child support, the division of family property and debt, and a divorce.
- [2] Some matters, including guardianship of the children of the marriage and parenting responsibilities, and a number of conduct orders, were resolved by a consent order pronounced on September 13, 2024 (the "Consent Order"). The parties are to be commended for resolving these issues.
- [3] The parties agree the matter is suitable for summary trial, although C.A.S. expresses some concerns about having had insufficient time to put together his responding materials. To the extent C.A.S. has failed to respond fully, that is his responsibility. This application was filed on May 23, 2024, and he did not file his response and affidavit until August 30, 2024. He failed to file an updated financial statement Form F8 as required under Rule 5-1(18) of the Rules; the only financial statement he has filed in these proceedings was on November 12, 2023. I did not find C.A.S.'s evidence that it was impossible to respond to all the things he disagreed with in L.E.S.'s materials persuasive, given the time he had available to respond. Notwithstanding his stated concerns, C.A.S. said in his affidavit that he wants the matter to be decided as he cannot afford to wait longer and incur more legal costs.
- [4] I find that this matter is suitable for disposition by way of summary trial. I am able to find any necessary facts in dispute on the basis of the affidavit evidence. Like Justice Fleming in *McManus v. McManus*, 2019 BCSC 123 at para. 23:

I have resolved any material conflicts by assessing the quality of each party's evidence, considering its internal and external consistency, the extent to which it aligns with the probabilities affect the case and its reasonableness.

- [5] The further delay that would result from having to proceed to full trial would not be in either party's financial or emotional interests. Given the nature of the issues in dispute, and the amount of family property in issue, it is efficient and proportionate to decide this case on the basis of affidavit evidence.

Background Facts

- [6] The parties were married on June 21, 2008. The date upon which they earlier began living in a marriage-like relationship is in dispute: L.E.S. says that they did so on or about August 1, 2006, and C.A.S. says that they did not do so until April 1, 2007. I will return to this issue later in this decision.

- [7] The parties are the parents of two children: A., born in July 2009, and 15 at the time of this hearing, and D., born in April 2012, and 12 at the time of hearing. D. has a moderate intellectual disability and some medical conditions.
- [8] The parties separated on January 17, 2022.
- [9] L.E.S. is a licensed practical nurse, and has been employed at a senior living facility in Fernie, British Columbia since 2006. C.A.S. is a truck driver employed by a contractor at Teck in Sparwood. At the time of this hearing, C.A.S. was not working, and was on sick leave from his work.

Parenting History and Parenting Schedule

- [10] During the parties' relationship, both parties were actively involved in caring for the children. L.E.S. took 12-month maternity leaves for both children. She says that she was the primary care-giver, including making and taking the children to all medical appointments, making all childcare arrangements and signing them up for activities. In the case of A., L.E.S. says that she was the parent who organized her disability support, and attended her many medical appointments. She acknowledges that C.A.S. attended appointments when his work schedule allowed.
- [11] C.A.S. says that during their relationship they each took on roles that their respective work schedule allowed. He acknowledges that L.E.S. took on a greater role in dealing with the children's medical needs, in particular A.'s special needs, given her professional expertise. He says that he did most of the cooking and helped with household chores as an equal partner.
- [12] Post-separation, L.E.S. says that the parties agreed to have a shared parenting schedule and to try to maximize the time each of them would spend with the children. Both parties continue to believe a shared parenting schedule is in the children's best interests. They disagree about the specific schedule to be followed, which I will address below.
- [13] At the time of separation, both parties worked four-on/four-off schedules. C.A.S. worked four day shifts, 7:00 a.m. to 7:00 p.m., in a row, followed by four days off. L.E.S. worked two day shifts, 7:00 a.m. to 7:00 p.m., followed by two night shifts, 7:00 p.m. to 7:00 a.m. Their schedules were offset by one day, with C.A.S. beginning his shift set one day before L.E.S. did. They each mostly had the children when they were not working.
- [14] L.E.S. moved in with her parents in Fernie in January 2022, while C.A.S. remained in the former family home in Sparwood. The children spent half their time in Fernie with L.E.S. and her parents, and the other half with C.A.S. in Sparwood.
- [15] L.E.S. says that the children have had some difficulties, but have slowly adjusted to the parties' separation. The children attended the Elk Valley Prevention, Education, Advocacy, Counselling and Empowerment (PEACE) program for about a year with some success.

- [16] In March 2022, L.E.S. submitted a bid on a shift that was as close to being opposite C.A.S.'s shifts as possible. She won the bid and now has a work schedule that follows a 16-week rotation. She works two evening shifts, 9:00 a.m. to 9 p.m., followed by two night shifts, 7:00 p.m. to 7:00 a.m., then has four days off. On her next set, she works two day shifts, 7:00 a.m. to 7:00 p.m., followed by two evening shifts. This schedule repeats for eight weeks. She then works two sets back-to-back of two evenings and two nights. Her contract is for 37.5 hours a week, and if the schedule puts her above 37.5 hours, the scheduler cancels that shift.
- [17] With this schedule, L.E.S. works almost completely opposite to C.A.S. She says that on average there are four days a month when they are both scheduled to work and to have parenting time ("Both On days") and four days where they are both off ("Both Off days") work and do not have parenting time.
- [18] L.E.S. says that she and C.A.S. used to have disagreements about these Both On and Both Off days, and that he would demand that they each have exactly 50% parenting time each calendar month, while she did not care if the sharing was somewhat different. She says this caused a lot of conflict between them, with the parties spending significant time discussing whose time it should be and making agreements on a case-by-case basis.
- [19] The parties attended a judicial case conference ("JCC") on November 20, 2023. The JCC order provides the following with respect to parenting time:

Parenting Time

2. BY CONSENT, the Children's residence will be divided equally between the parties on a shared parenting schedule with each party exercising parenting time no less than 40% over the month, unless the parties agree otherwise. In particular, unless the parties otherwise agreed, and based on Lindsay and [C.A.S.'s] four-on-four-off work schedule:
 - a. on the days that the Mother is working and the Father is not working, the Father will have parenting time;
 - b. on the days that the Father is working and the Mother is not working, the Mother will have parenting time;
 - c. unless otherwise agreed, the parties will drop off the Children to the other parent in the evening prior to the other parent's first day off;
 - d. on the days that both parties are scheduled to work, the parties will divide those days in half by alternating turns taking those dates;
 - e. on the days that both [C.A.S.] and [L.E.S.] are scheduled to be not working, the parties will divide those days in half by alternating turns taking those dates; and

- f. if a party is unavailable to care for the Children during his or her parenting time for more than two hours and would need third party care, the other party shall be given the first opportunity to provide this care. One party will give the other notice of that opportunity as soon as practicable. However, that other party is under no obligation to take the Children upon being given that opportunity.
- [20] L.E.S. says that the JCC parenting schedule allowed them to have a flowing, approximately equal, predictable schedule, and alleviated the debate, stress and disputes between them. She believes this is in the children's best interests.
- [21] L.E.S. says that since the JCC both parties have been able to request to flex their schedules to reduce the number of Both On and Both Off days, which has further smoothed their parenting schedule. L.E.S. puts in requested changes and leaves as permitted by her collective agreement. All such requests are subject to approval, and she is not always able to get approval. She provides a letter from the manager at her employer dated April 23, 2024, addressed to whom it may concern. The letter confirms that requests for leave must comply with the collective agreement, and that vacation and accrued time off are allocated based on seniority and the availability of coverage.
- [22] C.A.S. does not agree that the JCC parenting schedule is working well. He says that the problem is that his days are locked in and cannot be fluctuated while L.E.S. has always been more flexible. He also says that he has recorded over 40 days between November 2023 and April 2024 when she should have worked according to her work schedule, but did not. He says he knows this from talking to L.E.S.'s co-workers, his parents, people visiting the care home and the children. According to C.A.S., L.E.S. then works days when she has parenting time and sends the children to her parents to look after them. He says the point is that L.E.S. has demonstrated that her schedule can be flexible, but his cannot.
- [23] C.A.S. proposes that the parenting schedule be set at four days each, following his work schedule. He thinks that L.E.S. can adjust her work schedule to accommodate this parenting schedule. This would mean the children would have a more stable schedule, which he thinks would be better for A. in particular.
- [24] In reply on this issue, L.E.S. says that C.A.S.'s proposed schedule would mean that she would have to trade one day per every four-day set that she is scheduled. She asked her employer about the feasibility of doing so and received a letter in response, dated September 6, 2024. It states that "schedules and rotations are designed to ensure operational efficiency and align with organizational needs. As a result, work lines and rotations cannot be adjusted based on personal preferences."
- [25] L.E.S. says that she finds C.A.S. questioning people who work at or visit the care home where she works about her very inappropriate. She also says that his record of when she was working is inaccurate, and provides details of same.

- [26] I agree with L.E.S. that it is highly inappropriate for C.A.S. to be questioning her colleagues and visitors to the care home about her whereabouts. I place no weight on the hearsay evidence he provides from these unnamed sources.
- [27] A shared parenting schedule where both parties have shift work is likely to present some scheduling challenges. I find that the parties' present parenting schedule, as set out in the JCC parenting schedule, is reasonable, and in the children's best interests. It maximizes the children's time with both their parents. The same cannot be said of C.A.S.'s proposal, which would maximize the children's time with him, but not with L.E.S. It is sufficiently certain to provide the children with stability. I, therefore, make a final order that the JCC parenting schedule continue.

Holiday Parenting Schedule

- [28] In the Consent Order, the parties agreed that the regular parenting schedule would continue through holidays such as Easter, Thanksgiving, Mother's Day and Father's Day. The parenting schedule during Christmas, Spring Break and the children's summer holidays was left to be determined in this summary trial.
- [29] L.E.S. says that, during their relationship, the parties travelled as a family, including internationally on two occasions for 14 days at a time, and that the children have also travelled to closer centres. She wants them to be able to continue to travel. To that end, she proposes that the parties split Spring Break equally and that during summer holidays each party takes a week set off and has the children for 12 days in a row. For Christmas, she says that for the past two years they have agreed for one parent to have parenting time Christmas Eve from 4:00 p.m. to 9:00 p.m. and then on Christmas Day from noon to 8:00 p.m., with each parent alternating years. She proposes that they continue to share Christmas in this way.
- [30] C.A.S. says the following in response in his affidavit. He says he does not take Spring Break off, so he proposes that the parties' regular parenting schedule continue in that period, but that either parent can take two one-week periods for holidays throughout the year. In his affidavit, he says that it would be hard for the children to not see the other parent for longer than a week. In submissions, his counsel submitted that C.A.S. would be open to each party having two consecutive weeks with the children in the summer. C.A.S. agrees with splitting both Christmas Eve and Christmas Day, but proposes that on odd numbered years he have them from 1:00 p.m. to 9:00 p.m. on Christmas Eve and from 1:00 p.m. to 9:00 p.m. on Christmas Day, and the reverse on even numbered years. He submits that this proposal would give more time to do things with the children on both days.

- [31] In reply on this point, L.E.S. notes that Sparwood is a remote community and it takes time to travel from there to any international location. As a result, she does not agree that holiday time should be limited to one-week periods. She does not believe the children would have any difficulty not spending time with the other parent for seven to 12 days, as she proposes. She did not respond in her reply affidavit to C.A.S.'s proposal for Christmas, but she included his proposed Christmas schedule in her revised draft order.
- [32] I find that it is in the children's best interests to have the longer holiday periods with both parents proposed by L.E.S. for Spring break and summer holidays. Sparwood is remote, and it takes time to travel to Calgary to be able to fly internationally. Limiting holiday times to four to seven days, as C.A.S. proposes, at least in his affidavit, would significantly limit the amount of vacation time the children would enjoy with both parents. There is no reason given in the evidence for why C.A.S. cannot take a week off work at Spring Break to enjoy seven days with the children. The evidence does not substantiate that the children would have difficulty being away from the other parent for seven or 12 days at a time, particularly in light of the regular videoconferencing the parties have agreed to in the Consent Order.
- [33] I find that the Christmas holiday schedule proposed by C.A.S., and adopted by L.E.S. in her revised draft order, is reasonable and in the children's best interests, as it will enable each parent to have a sufficiently lengthy period with the children for them to enjoy seasonal activities.
- [34] I further agree with L.E.S. that it is important that both parties exercise some flexibility around holiday parenting schedules where a few hours or an extra day may be required for travel with the children, and order that the parties accommodate the other party's request for such additional time where reasonably necessary, with make-up time to be scheduled following the trip.

Exercise of Parental Responsibilities

- [35] In the Consent Order, the parties agreed to shared parental responsibilities. The one area of continuing controversy is how they will address disagreements. L.E.S. proposes that in the event the parties disagree about a major decision, she have decision-making authority, with C.A.S. having the right to seek a review if he disagrees. C.A.S. opposes this proposal. He proposes that in the event of disagreement, that neither party be entitled to make the decision, and either party may apply to court for direction.
- [36] The evidence shows that the parties have had relatively frequent disagreements about matters such as enrollment of the children in activities, a matter I address below. C.A.S. frequently fails to respond to L.E.S.'s texts asking whether he agrees to a given course of action. An example has to do with A. requiring glasses. L.E.S. took the children to the optometrist. On February 13, 2024, she texted C.A.S. to advise him that A. needed glasses and asking how he would like to deal with payment. He did not respond. She followed up on February 21, 2024, and again received no response. She followed up yet again on February

23, 2024, and received no response. She decided to buy the glasses and sent him a receipt on March 4, 2024. He did not respond or reimburse her for his share of the cost.

- [37] C.A.S. says that they discussed this issue in person, and that L.E.S. bought the glasses before he could respond to her last text. He complains that the glasses she bought were lower quality and more expensive than what they could have obtained with his medical benefits.
- [38] A similar incident occurred with respect to D. needing to have a tooth extracted in December 2023. C.A.S. failed to respond to L.E.S.'s texts about scheduling the appointment, which resulted in a delay in D. having the necessary dental work done, and her being left in pain longer than necessary as a result.
- [39] In *K.P.B. v. K.E.*, 2019 BCCA 152 at para. 22, the Court of Appeal said the following about granting one parent final decision-making authority:
- [22] A provision granting one parent final decision-making authority is not uncommon, particularly in high conflict relationships. It provides a mechanism whereby the parties do not have to apply to the court to determine every parenting issue on which they may disagree. The purpose of the provision is to minimize the negative consequences of ongoing litigation. An alternative measure sometimes employed is the appointment of a parenting co-ordinator pursuant s. 15 of the FLA; however, that is at a cost to the parties and may not always be an affordable option.
- [40] There are degrees of "high conflict". These parties do not have the most high conflict of relationships, but they do display an inability to make timely decisions about matters affecting the children in consultation. They cannot afford a parenting co-ordinator. Nor can they afford to be frequently returning to court to have the court determine every parenting decision on which they disagree. C.A.S.'s proposal would likely result in decisions being delayed or just not made at all, and increased frustration and cost for the parties, none of which is in the children's best interests. I find that where the parties are unable to agree on major decisions, following their best efforts to do so, it is in the children's best interests to grant L.E.S. final decision-making authority, with C.A.S. having the right to seek a review in court should he disagree that a decision is in the children's best interests.

Date Upon Which the Parties Began Living in a Marriage-Like Relationship

- [41] As mentioned, the parties disagree about the date they began living in a marriage-like relationship.
- [42] L.E.S. says that she moved in with C.A.S. at his residence in Sparwood, British Columbia in August 2006. Her evidence is that immediately prior to doing so, she had been residing in an apartment complex in Cranbrook to attend nursing school, and that she moved in with C.A.S. to commence her final preceptorship in Fernie. She also began applying for jobs in the Elk Valley.

- [43] In support of her position, L.E.S. provides a letter dated August 20, 2006 that she wrote to apply for a nursing position in Fernie. She used a PO Box in Sparwood as her return address, and says that was the PO Box assigned to C.A.S.'s Sparwood residence. L.E.S. was hired by the senior's residence she applied to and, on September 20, 2006, she completed a health review form for her new employer. On that form, she gave C.A.S.'s address as her address.
- [44] L.E.S. says that the parties continued to live at C.A.S.'s Sparwood residence until it was sold in 2014.
- [45] C.A.S. says that the parties began living together in a marriage-like relationship on April 1, 2007. He says that L.E.S.'s evidence about them starting to live together in August 2006 is not true. He says that she lived in Cranbrook while she was going to nursing school, and for a while after graduating. He says that L.E.S. might have used his address during this time because she did not have a stable residence of her own. In support of his position, C.A.S. provides a customer information document from the CIBC dated November 20, 2014. On the form, it states that L.E.S. has lived at the Sparwood address since April 1, 2007.
- [46] In reply on this point, L.E.S. says that after she started working in Fernie in September 2006, she never commuted to work from Cranbrook. Her apartment lease had expired, and she had nowhere else to live other than at the Sparwood residence owned by C.A.S. L.E.S. says that she does not recognize and does not remember completing the CIBC form relied on by C.A.S. She notes that her signature is not on the form.
- [47] I prefer L.E.S.'s evidence on the issue of when the parties began living together in a marriage-like relationship. Her evidence is concretely rooted in her educational and employment history, which is well-documented. There is no direct evidence that L.E.S. completed the CIBC form relied upon by C.A.S. She did not sign it, does not recognize it and does not recall completing it.
- [48] I find that the parties began living together in a marriage-like relationship in August 2006.

Child Support

- [49] L.E.S. seeks orders for retroactive and prospective child support. C.A.S. opposes any retroactive child support order being made.
- [50] There is no dispute about L.E.S.'s Federal Child Support Guidelines [Guidelines] income. In 2021 her line 150 total income was \$84,010.80; in 2022 it was \$77,920.82; and in 2023 it was \$82,790.11. She pays union and professional dues; once those are deducted she has a Guidelines income for 2021 of \$81,828; for 2022 of \$75,907; and for 2023 of \$80,604. Given the dates of hearing, I do not have evidence of L.E.S.'s 2024 income.

- [51] In C.A.S.'s case, L.E.S. says that his 2021 line 150 income was \$105,663; C.A.S. does not dispute this in his affidavit. He paid union dues of \$1,959, resulting in a Guidelines income of \$103,750. The parties agree that his 2022 line 150 income was \$100,449. He paid \$1,883 in union dues, resulting in a Guidelines income of \$98,566. In 2023, C.A.S.'s line 150 income was \$108,225. He paid union dues in the amount of \$1,765, resulting in a Guidelines income of \$106,460.
- [52] C.A.S. says that on November 28, 2023, his job was transferred from Teck's Line Creek operation to Elkview Coal. He says he used to be a lead hand, but due to restructuring at his job site they got rid of all lead hands. Lead hands are now only used if a supervisor is away, which does not happen very often. As a result, he says his hourly wage is now less. He says he used to earn \$51.00 an hour but now earns \$42.00 an hour.
- [53] C.A.S.'s Guidelines income for 2024 is an issue in dispute. C.A.S. says that due to the stress of dealing with this family law matter, and the financial strain of dealing with all the family bills, he has been on stress leave since May 27, 2024 and was not working at the time of hearing.
- [54] In his affidavit, made August 30, 2024, C.A.S. says that he earned \$2,760.40 in sick pay for the two-week period ending on July 14, 2024, and \$2,415.35 for the two-week period ending July 28, 2024. He says that as of the date of making his affidavit he was on sick leave and was not earning anything, but he was working to get sick pay. His year-to-date income as of July 28, 2024 was \$55,113.89, inclusive of sick pay totalling \$17,078.70.
- [55] In reply on this point, L.E.S. noted that she had received no information from C.A.S. or his doctor about him being on sick leave. There is no medical evidence, nor any information about the type of leave, the anticipated length of the leave or any return to work plan.
- [56] At the conclusion of the first day of the hearing of this summary trial, C.A.S. applied for an opportunity to file an additional affidavit to provide evidence about these matters. L.E.S. opposed that application. I declined to permit C.A.S. to file additional affidavit material to address these issues. This application for summary trial was filed on May 23, 2024. It was originally scheduled to be heard in Cranbrook on the June 10, 2024 assize. The parties agreed to adjourn the hearing, and to have it heard during the September 12, 2024 assize in Nelson. C.A.S. did not file his affidavit and application response until September 3, 2024. He had a full opportunity to provide evidence with respect to his stress leave, and I held that it would be unfair to delay the hearing of this summary trial to give him a belated opportunity to buttress his evidence.
- [57] L.E.S. questions whether C.A.S. has been experiencing stress sufficient to require him to take a leave of absence from work. She notes that it was only after she filed her application for summary trial that he went on stress leave, and says that he has been able to golf, camp and travel.

- [58] L.E.S. also says that C.A.S. is a unionized employee and is entitled to short term disability leave and employment insurance. He has provided no information about any forms of income replacement while he has been on leave.
- [59] L.E.S. also disputes that C.A.S. was transferred to a new job. She says that he bid on the new position within a week of the JCC. According to her review of the relevant collective agreement, the wage for truck drivers in 2024 should be \$45.27 in 2024.
- [60] At the continuation of this hearing on December 6, 2024, counsel for C.A.S. provided an update with respect to his circumstances. According to counsel's submissions, C.A.S. obtained a lump sum to catch up on his sick pay, and his year-to-date earnings were now \$70,641. C.A.S. was reported to be working on his issues, and hoped to be back to work soon. He was also reported to have now paid child support pursuant to the JCC order through to August 2024. These submissions were not supported by any affidavit evidence, but I accept, for the purposes of this decision, that they generally reflect C.A.S.'s circumstances in December 2024.
- [61] I find that it is appropriate to average C.A.S.'s Guidelines income for 2021, 2022 and 2023 to arrive at his Guidelines income for 2024. That results in a Guidelines income of \$102,925. The evidence does not support that any reduction in income C.A.S. experienced in 2024 was sufficiently significant, long lasting and not of his choice to reduce his income for the purposes of determining his child support obligations. Given the stated reasons for his stress leave, being financial stress and the stress of this litigation, it is reasonable to believe that, with this matter being concluded, C.A.S.'s stress should resolve and his ability to earn to his full potential restored.
- [62] Based on their current Guidelines incomes, and in light of A. being disabled, C.A.S. is required to pay L.E.S. child support in the amount of \$1,561, and L.E.S. is required to pay child support in the amount of \$1,248. The two amounts are to be offset, resulting in a monthly payment by C.A.S. of \$313 beginning July 1, 2025.
- [63] I turn to the question of retroactive child support. C.A.S. opposes any retroactive award being made on the basis that the parties had an agreement that he would keep up payments to keep the children on his medical and dental benefits plan in exchange for no ongoing child support because the payments were almost equal. He also says that he was not requested to pay any child support until the matter was raised by L.E.S.'s counsel at the JCC.
- [64] In reply on this point, L.E.S. says that C.A.S. was put on notice of her claim for child support by her notice of family claim. She notes that C.A.S. did not plead in his response to family claim or counterclaim that there was any agreement about child support. She also says that since this summary trial was scheduled, C.A.S. unilaterally stopped paying child support as required under the JCC order. L.E.S. says that she has requested proof of the cost of extended health and dental benefits for the children. On his financial statement filed November 14, 2023, C.A.S. had stated that he paid \$1,200 per month for these benefits. On January 10, 2024, C.A.S. advised through his counsel that this was incorrect and the cost was

\$324. L.E.S. says that she has requested proof of the cost of these benefits, but none has been provided.

[65] L.E.S. has established that retroactive child support is payable by C.A.S. He has been on notice since the notice of family claim was filed that child support was claimed. I find that there was no agreement between the parties that he would not pay child support in exchange for keeping the children on his extended health and welfare benefits. For the period February 2022 to June 2023, offsetting child support is payable on the basis of the parties' 2021 Guidelines incomes. For the period July 2023 to June 2024, offsetting child support is payable on the basis of the parties' 2022 Guidelines incomes. For the period July 2024 to June 2025, offsetting child support is payable on the basis of the parties' 2023 Guidelines incomes. Any child support paid by C.A.S. pursuant to the JCC order are to be deducted from these retroactive amounts. I trust that counsel will be able to calculate the amounts payable. Should they be unable to do so, counsel are at liberty to request to appear before me within 30 days of the date of this judgment to settle the quantum of retroactive child support payable. C.A.S. is required to pay the total retroactive child support payable within 30 days of the date of this order.

[66] The parties agreed in the Consent Order to exchange financial information by June 1 of each year, with any adjustments to child support payable commencing July 1 of each year. Given the timing of this hearing and decision, while the parties were required to share their financial information by June 1, 2025, I consider it reasonable to order that, subject to their agreement to the contrary, the first adjustment to child support shall commence on July 1, 2026.

Health and Dental Benefits

[67] As requested by L.E.S., I order both parties to maintain the children on their respective medical, dental and health coverage through their employment so long as it remains available. Each party will be solely responsible for the cost of their respective plans. Each party will promptly submit receipts given to them by the other to the insurer and immediately endorse reimbursement cheques from the insurer to the other.

Children's Activities and Special and Extraordinary Benefits

[68] There is some disagreement between the parties about what extracurricular activities the children wish to engage in. The parties disagree about the extent to which D. wishes to ski, and in particular whether she wants to race with the Fernie Alpine Ski Team, and whether A. wishes to ski with the Fernie Adaptive Ski Program and to participate in the Special Olympics swimming team. L.E.S. says that both children love these and some other named activities and that C.A.S. refuses to support the children in doing them. C.A.S. says that he has asked D. about skiing, and that she says she does not want to continue ski racing and only wants to ski with her school or occasionally with her mom. C.A.S. says that he asked A. about Adaptive Skiing and Special Olympics swimming and that she told him she did not

want to go. C.A.S. also says that he has never agreed to buy ski equipment or ski passes for the children because there has never been any agreement that these should be s. 7 expenses and he cannot afford the cost.

- [69] In reply with respect to these issues, L.E.S. says that C.A.S. is often non-responsive to her requests to agree to s. 7 expenses, and that she cannot afford to go to court every time they cannot agree to a particular s. 7 expense. It is for these reasons that she proposes an order that specifically lists qualifying special and extraordinary expenses.
- [70] There is no evidence directly from either D. or A. about their preferences with respect to extracurricular activities. Given A.'s intellectual disability, it may be difficult for her preferences to be expressed to the court. At 12, D. is certainly old enough to have and express preferences about what extracurricular activities she wishes to engage in. I am unable to place much weight on what either party says about the children's preferences. L.E.S. is a proponent of skiing and swimming, and C.A.S. is not, and that likely affects both of their perceptions of the children's preferences. I place greater weight on the documentary evidence provided by L.E.S., such as reports from the children's ski instructors and an email from A.'s Special Olympics coordinator. These third parties support that both children enjoy and benefit from these activities.
- [71] The evidence from both parties establishes that they have had significant conflict about the children's activities. For example, L.E.S. provides numerous text messages in which she asked C.A.S. about activities such as skiing, swimming and medical issues, and which C.A.S. failed to respond to. C.A.S. says that these were all issues that he had already talked to L.E.S. about in person and given her his response. He says that he did not want to deal with the issues again. He says that he finds all the conflict extremely stressful and that he needs to reduce his stress.
- [72] I find that it is in the children's best interests for there to be certainty about the activities they will participate in, with due consideration given to their individual preferences. I also find that both children enjoy and benefit from participation in extracurricular activities, especially in the case of A.
- [73] I, therefore, order that, commencing on the date of this order, the parties will share all of the children's special or extraordinary expenses in proportion to their respective Guidelines incomes. Given their current Guidelines incomes, C.A.S.'s share is 56% and L.E.S.'s share is 44%. Their percentage share will be reviewed annually commencing July 1, 2026.
- [74] The following are qualifying special and extraordinary expenses:
- a) Medical, dental and other health expenses net of coverage for the children. "Medical" expenses include all reasonable and necessary mental and physical health needs, including prescriptions, vision care, psychological counselling, dental and orthodontic costs, chiropractic costs, speech therapy, occupational therapy, physiotherapy, acupuncture and massage therapy;

- b) Skating, basketball, volleyball, swimming, dance, Special Olympics swimming, Branch Out Learning programs and all related costs, including competition fees, travel, costumes and equipment;
- c) Ski passes, lessons and necessary equipment;
- d) Any other expenses agreed to in writing by the parties; and
- e) Other activity expenses contemplated below in this order.

[75] I order that should D. or A. tell both parents that she does not want to participate in any activity, due consideration will be given to her preferences, given her age and stage of development. Should the parties be unable to agree whether D. or A. should continue in a given activity, given her stated preferences, and despite their best efforts, L.E.S. may decide whether to register D. or A. in that activity, and if does not agree C.A.S. may seek direction from the court pursuant to s. 49 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].

[76] Subject to the foregoing, I order that L.E.S. may continue to register both children in skiing and A. in Special Olympics swimming.

[77] Each party will make their best efforts to take the children to skiing and Special Olympics swimming and any related competitions during their respective parenting time. Should either party be unable or not wish to do so, that party will provide the other party with the opportunity to take the children to those events.

[78] With respect to other activities, such as events, trips or other extracurricular activities, if L.E.S. sends a message to C.A.S. to discuss the activity, C.A.S. must respond in writing in a timely manner, and in any event within 48 hours. Should C.A.S. fail to respond, L.E.S. may make the decision whether to register the child for the activity in question. In that event, the costs associated with that activity will be deemed to be an approved special or extraordinary expense to be shared as contemplated above in this order.

[79] With the exception of skiing and Special Olympics, should either party schedule an activity for the children without the agreement of the other, the non-scheduling party is not required to take the children to that activity during their parenting time.

Claiming the Children as Dependents

[80] As requested by L.E.S., I order that, commencing the date of separation, L.E.S. will claim the children as dependents on her tax returns and A.'s disability tax credit on the odd-numbered tax years, and the respondent will make the claims on the even-numbered tax years. Should any tax re-filing be required to comply with this order for the years 2022, 2023 or 2024, the parties will do so forthwith.

Spousal Support

- [81] L.E.S. claimed spousal support in her notice of family claim, but did not seek spousal support in this summary trial. I order that neither party is required to pay spousal support given their respective Guidelines incomes and the amount of child support payable. L.E.S. requested an order that she be entitled to set a review of spousal support should there be a material change in circumstances. I decline to make such an order. In the circumstances, I consider it appropriate to simply adjourn this request generally.

Family Property and Debt

- [82] The parties agree that family property and debt should be divided equally. They disagree about how to deal with expenses related to the former family home post-separation and the value of some assets, in particular a 2017 Ford Explorer. There is also a considerable amount of disagreement about the excluded portion of certain financial assets held by C.A.S.
- [83] Subject to any exceptions provided below, I declare that each party is entitled to a one-half share of the family property and debts as described in this decision.

Former Family Home

- [84] The former family home was appraised pursuant to the JCC order. It has an appraised value of \$662,000. As of the beginning of this hearing, there was a mortgage on the former family home with a total amount owing of \$173,762.89.
- [85] The parties purchased the former family home in 2014, using the proceeds from the sale of the Sparwood residence that C.A.S. bought prior to the commencement of the parties' marriage-like relationship. The parties agree that C.A.S. has an excluded property claim of \$17,500, which was the amount of his down-payment on the earlier Sparwood residence. The parties agree that the family asset portion of the former family home is \$470,737.11.
- [86] The parties disagree about the treatment of the expenses associated with the former family home post-separation. The parties shared expenses for a couple of months post-separation, but thereafter C.A.S. bore the expenses, including utilities, property taxes, insurance and mortgage payments. L.E.S.'s position is that those expenses should be used to offset her occupational rent claim. C.A.S.'s position is that L.E.S. should compensate him for one-half of the expenses he incurred.
- [87] L.E.S. claimed occupational rent in her notice of family claim, filed October 19, 2022. She did so on the basis that she was the one to leave the former family home, as her parents' home in Fernie had more living space to accommodate her and the children than C.A.S.'s parents' home. Her parents did not charge her rent and covered the cost of the additional utilities associated with her and the children living there.
- [88] C.A.S. has had exclusive possession of the former family home since January 2022.

- [89] L.E.S. made a number of proposals post-separation to C.A.S. for him to buy her out of the former family home, but he has not agreed to any. As a result, L.E.S. has not had access to the equity in the former family home. When she initially sought to buy a home for herself, she was denied a mortgage. Eventually, her parents took out a line of credit against their home and loaned her \$153,000, and she took out a higher interest line of credit of \$19,000, which she used to purchase a lease on a townhouse in Sparwood in December 2022. She had to purchase bedroom sets for the children, furnishings and other items necessary for the townhouse, which she estimates cost approximately \$5,000. According to her counsel, by the time of the December 13, 2024 continuation in this matter, she had paid \$38,438 on the line of credit and other housing-related expenses.
- [90] Prior to the JCC order, which requires C.A.S. to pay child support on an interim and without prejudice basis of \$325.00 per month starting December 1, 2023, C.A.S. did not pay any child support to L.E.S. He has never paid spousal support, nor is any claimed by L.E.S.
- [91] Prior to purchasing the lease on the townhouse in Sparwood in December 2022, L.E.S. had to commute from Fernie to Sparwood on a daily basis to take the children to school and other activities. She says that most school days she drove at least two hours a day, 30 minutes each way in the morning and after school.
- [92] As a result of these factors, L.E.S. submits that she has suffered significant financial hardship, and is entitled to occupational rent from C.A.S.
- [93] L.E.S. says that between January and April 2022, she continued to pay some expenses related to the former family home: water, sewer and garbage totalling \$774.79, and gas, hydro, TV and internet and both parties' cell phones, totalling \$1,865.08. She says she also paid for insurance on C.A.S.'s truck until April 2022, and annual insurance on the parties' Ford Explorer. She also paid for daycare and after-school care for A. until May 2022. After March or April 2022, C.A.S. became exclusively responsible for all expenses associated with the former family home.
- [94] C.A.S. acknowledges that L.E.S. paid \$398.71 in utilities for the former family home post-separation.
- [95] In his affidavit, C.A.S. calculates the total amounts paid by him post-separation as follows; \$58,038.42 for mortgage payments and taxes, \$4,177 for utilities, and \$3,933.11 for property insurance up to May 2024. His counsel provided updated calculations during the continuation of the hearing on December 6, 2024: \$62,713.98 for mortgage payments and taxes, \$5,184 for utilities, and \$4,780.71 for property insurance.
- [96] In reply on this point, L.E.S. says that she could not stay in the former family home with C.A.S. post-separation because it was too difficult for her mental health, and C.A.S. told her he wanted to remain there and buy her out. She says that about six months after she moved out they talked about her moving back into the former family residence and assuming responsibility for the bills so she could have a place to live as she could not find a rental and

had not yet obtained a loan from her parents to purchase her townhome. She says C.A.S. refused to let her return. She further submits that to accept C.A.S.'s position would mean she would be paying one-half of his housing-related costs, while she pays all of her own. She submits that this would be significantly unfair.

- [97] In McManus at paras. 73-76, Fleming J. discussed the factors relevant to a claim for occupational rent. Considering the evidence as a whole, including the circumstances under which L.E.S. left the former family home, her attempts to be bought out by C.A.S., the lack of any spousal support and only belated child support, and the housing costs incurred by L.E.S. post-separation, I find that L.E.S. has established a good case for occupational rent. In the circumstances, I find that it is just and equitable for C.A.S.'s contributions to the mortgage and other expenses related to the former family residence post-separation to be offset against L.E.S.'s occupational rent claim. C.A.S. is not entitled to any compensation from L.E.S. for those expenses.
- [98] L.E.S. seeks an order providing C.A.S. with an opportunity to buy her out of the former family home. If he is unable to do so within 60 days of the date of this order, then she seeks an order that the parties have joint conduct of sale of the former family home. C.A.S. wants to buy L.E.S. out if possible. I make the orders sought by L.E.S. in this regard.

Vehicles

- [99] The parties own a 2009 Ford F-150 truck which C.A.S. wishes to retain. They agree that its market value is \$7,125. I order that C.A.S. will retain the Ford F-150. L.E.S. is entitled to one half of the market value, which will be included, as will all similar values, in the calculation of the ultimate asset equalization payment.
- [100] The parties own a 2013 R Vision Trial Sport camper. Neither party appears to wish to retain the camper. The parties agree that its market value is \$14,395. I order that the camper be sold, and the proceeds are to be divided equally. The parties agreed in the Consent Order to pay back in equal measure the amount owed by them to A.'s account used to purchase the Sport camper.
- [101] The parties own a 2012 Polaris RZR800 which C.A.S. wishes to retain. The parties agree that its market value is \$10,385. I order that C.A.S. will retain the RZR800.
- [102] The parties own an ATV trailer. The parties agree that the ATV has a market value of \$1,500. It was bought in 2013. C.A.S. wishes to retain the ATV, and says that it was purchased with \$1,500 gifted to him by his grandparents as part of an "early inheritance". On this basis, he claims the ATV is his excluded property. L.E.S. does not reply to this claim. I find that the ATV is C.A.S.'s excluded property and not subject to division.
- [103] The parties own a quad which is used by the children. The parties agree that it should be retained for use by the children. If it is ultimately sold, the proceeds of sale are to be divided equally.

- [104] The most contentious vehicle is the parties' 2017 Ford Explorer. L.E.S. used the Ford Explorer post-separation. C.A.S. says that she did so without his consent. C.A.S. made five payments of \$324.59 post-separation, totalling \$1,622.95. Commencing April 1, 2022, L.E.S. assumed responsibility for all loan payments on the Ford Explorer going forward. She paid \$7,774.09 in total for the Ford Explorer, with the loan being repaid in full by November 18, 2022.
- [105] In March 2022, L.E.S. paid for a trunk repair on the Ford Explorer that cost \$1,200. L.E.S. says that the Ford Explorer started to malfunction in June 2023. At that time, she paid \$6,196.37 for repairs including to the transmission. She has received quotes for repairs to the head gasket and air conditioning which it does not appear she has had performed.
- [106] L.E.S. wants to sell the Ford Explorer. She has a trade-in report dated September 15, 2023 which indicates that a dealership in Cranbrook would have accepted \$17,194 as the trade-in value. The Ford Explorer has continued to depreciate since that time. L.E.S. provides a 2024 Autotrader.ca estimate for a 2017 Ford Explorer with a wholesale price range of \$13,875 to \$16,775.
- [107] C.A.S. has not been prepared to agree to sell the Ford Explorer. He says that L.E.S. has had the value of using the Ford Explorer, has not maintained it properly, and has put excessive mileage on it. They disagree about how many kilometres it had on it at time of separation: L.E.S. says 100,000 and C.A.S. says 84,000.
- [108] When the Ford Explorer broke down again in February 2024, L.E.S. decided it was no longer safe to drive with the children in it. She purchased a 2013 VW Jetta in order to have a reliable vehicle. She asked C.A.S. to either take over the Ford Explorer, or agree to sell it or trade it in. He did not agree with any of the options. He also refused to buy storage insurance rather than full insurance. At the time of hearing, the Ford Explorer was sitting unused, with full insurance, which L.E.S. has been paying.
- [109] L.E.S. submits that it would be significantly unfair to divide the Ford Explorer and the loan payments made on it post-separation evenly. She proposes that she have conduct of sale, and that the proceeds of sale be divided as follows: the first \$9,397.04 to be divided 82.7% and 17.3% in her favour, in consideration of the loan amounts paid by each party post-separation, with the remaining proceeds to be divided equally.
- [110] C.A.S. does not agree. He thinks the Ford Explorer is worth, or would be worth if properly maintained, approximately \$30,000. He asks the court to order that either L.E.S. pay him \$15,000 and she can keep it, or if it is sold that he receives the first \$15,000 from the proceeds of sale.
- [111] It is clear to me that the Ford Explorer needs to be sold. L.E.S. has already paid a considerable amount in repairs, and more would need to be paid to put it into safe, driveable condition. The evidence provided by L.E.S. about its market value is more reliable than that put forward by C.A.S., although until such time as it is sold no one can be certain

what its market value is. I do not accept C.A.S.'s argument that L.E.S. put excessive miles on the Ford Explorer. L.E.S. had to move to Fernie post-separation, and had to commute from there to Sparwood for work and the children's school and activities.

[112] At the same time, I do not agree with L.E.S.'s argument that the proceeds of sale of the Ford Explorer should be unequally divided. It is true that she made the lion's share of the loan payments post-separation, and she paid for the insurance, but she also had the use of the Ford Explorer.

[113] I, therefore, order that the Ford Explorer be sold, with the claimant having sole conduct of sale. The proceeds of sale are to be divided equally.

Miscellaneous assets

[114] Each party has retained some household assets post-separation. L.E.S. estimates the value of the household items retained by her at \$8,850, and the value of the items retained by C.A.S. at \$29,049. C.A.S. estimates the value of the items retained by L.E.S. at \$18,350 and the items retained by him at \$6,600.

[115] There is no objective third party evidence with respect to the value of the items retained by each party. It seems obvious that each party is under-estimating the value of the items they have retained and is over-estimating the value of the items the other party has retained.

[116] In the circumstances, I consider it just and equitable to order that each party is to retain the household items in their possession. Those items are deemed to have an equivalent value.

[117] L.E.S. also seeks an order that she be permitted to retrieve the following items from the former family residence: one of the smaller televisions with the wall mount, the tall wood dresser, her parents' treadmill, her personal items, and half of the canvas and wood photographs of the children. C.A.S. did not respond to this request in his affidavit. In submissions, C.A.S.'s counsel said that she had already taken the photographs and some televisions, but C.A.S. did not object to her taking the treadmill. I order that L.E.S. may retrieve her personal items and the treadmill, and if she has not already done so one-half of the photographs.

[118] L.E.S. sought an order dividing the parties' Aeroplan points at the date of separation equally. Neither party knows how many Aeroplan points they had at the date of separation. C.A.S. says that he has made inquiries, and it would cost \$3.00 per mile to transfer them, which is more than they are worth at approximately \$1.00 per mile. L.E.S. does not believe this is true.

[119] There is no documentary evidence before the court with respect to the parties' Aeroplan points. I am reluctant to leave this matter to be dealt with in future, but there is simply insufficient evidence before the court for me to be able to make a fair order with respect to the division of the value of the parties' Aeroplan points. C.A.S. is the primary account holder and, therefore, the person who has access to the relevant information. I order C.A.S.

to forthwith obtain from Visa and to provide to L.E.S. statements showing the number of Aeroplan points held by the parties at the time of separation, at the time of hearing, and the date of this order. I further order C.A.S. to forthwith obtain and provide to L.E.S. any information he can obtain from Visa with respect to the value of the points, and the cost of transferring them. Once that information is provided to L.E.S., the parties are to make reasonable efforts to agree to a method to equally divide the value of the Aeroplan points as of the date of separation. Should they be unable to agree, either party is at liberty to apply within 30 days of the date of this decision to appear before me to resolve the division of the value of the Aeroplan points.

Financial assets

[120] The parties have a number of financial assets in their respective names. All of these are subject to equal division, subject to any excluded property claims. C.A.S. claims a number of excluded property claims. However, C.A.S. has failed to provide complete disclosure of the financial assets in his name. It is impossible on the current evidence before the court for me to make just and fair orders regarding a number of the parties' financial assets. I will make such orders as I am able to make on the evidence before me, and I will make orders requiring further disclosure by the parties where necessary.

[121] L.E.S. has a CIBC TFSA account ending in 5172 in her name. It has a value of \$3,054. It is family property, the value of which is to be divided equally. L.E.S. will retain it in her sole name. One-half of the value of L.E.S.'s TFSA is to be included in the calculation of the asset equalization payment.

[122] C.A.S. had non-registered investments with CIBC with a total value of \$17,545.41 as at June 30, 2021. This is the only statement provided by C.A.S. with respect to these investments. C.A.S. does not make an excluded property claim with respect to these non-registered investments. They are family property, the value of which is to be divided equally. C.A.S. will retain them in his sole name. One-half of the value of C.A.S.'s non-registered investments is to be included in the calculation of the asset equalization payment.

[123] C.A.S. had TFSA investments with CIBC with a total value of \$3,604.49 on June 30, 2021. On his financial statement, he said that he had a CIBC TFSA with a value of \$3,400 and that it was from after the date of separation. Despite what is stated on his financial statement, C.A.S. does not make an excluded property claim with respect to these TFSA investments. C.A.S.'s TFSA is family property, the value of which is to be divided equally. C.A.S. will retain them in his sole name. One half of the value of C.A.S.'s TFSA investments is to be included in the calculation of the asset equalization payment.

[124] C.A.S. has a Canada Life policy ending in 0529. There is some disagreement about the value of the policy and the value of C.A.S.'s excluded property claim with respect to it. It was purchased by C.A.S.'s parents for him in 1978. An annual policy statement dated November 21, 2016 states that on that date it had a base policy cash value of \$6,200, and a dividends on

deposit cash value of \$5,105.27, for a total cash value of \$11,305.27. The policy was transferred into C.A.S.'s name on or about March 12, 2017. A November 21, 2017 annual policy statement indicates a total cash value of the policy at that date of \$11,808.28. A November 21, 2021 annual policy statement indicates a total cash value as of that date of \$14,047.80.

- [125] L.E.S. claims that the increase in the value of the Canada Life policy is family property, which she values at \$2,492.03. C.A.S. disputes the value; he says that the increase in value amounts to \$2,116.26.
- [126] Doing the best I can on the evidence before me, I find C.A.S. is entitled to an excluded property claim for \$11,808.28, and that the increase in value of the Canada Life policy is \$2,239.52, which is family property. C.A.S. is to keep the Canada Life policy in his sole name. One-half the increase in value of the policy is to be included in the calculation of the asset equalization payment.
- [127] At the date of separation, the parties had a joint account ending in 032 at CIBC. It has been closed and the parties have divided the proceeds between them. No further order is required from the court with respect to this account. If there are any other joint accounts, they are to close them and divide any balance equally. They are also to close the joint line of credit which has a zero balance. The parties both opened up new bank accounts in their own names at the time of separation. They are to retain the balance in their own bank accounts in their own names.
- [128] Both parties have made payments to the Canada Pension Plan during the course of their relationship. They agree and I order that their credits with the Canada Pension Plan will be divided and equalized in accordance with Part 5 and 6 of the FLA. They will do so on the basis of the dates I have found that they began living together in a marriage like relationship, August 1, 2006, and that they separated, January 17, 2022.
- [129] C.A.S. has a pension with the Operating Engineers Pension Plan. Any benefits accrued during the parties' relationship are family property. Within 30 days of the date of this order, C.A.S. is to provide L.E.S. with the current and January 2022 statements for that pension plan and any other plan that supplements it. L.E.S. is entitled to an equal portion of C.A.S.'s pensions that accrued during the parties' relationship, determined and divided in accordance with Part 6 of the FLA. The parties will share equally any administrative costs charged by the Pension Plan for carrying out a pension division.
- [130] I turn to the other financial assets in C.A.S.'s name. On his November 14, 2023 financial statement, C.A.S. listed "RRSPs through B2B Trustco for MacKenzie Retirement Saving Plan from before the start of the relationship". He went on to state that some were from before the relationship, some during and some after separation. He listed the total value as \$55,0989.56.

- [131] C.A.S. attached to his affidavit a page from a statement for his MacKenzie RRSPs for the period January 1, 2021 to December 31, 2021. It shows a total market value of \$130,321.04. It also lists other MacKenzie holdings with a market value of \$2,651.09, \$2,136.36 and \$1,247.10. The page states it is 5/28. The remaining pages, except for 1/28, are not included. He also attached a statement for a MacKenzie Registered Retirement Savings Plan with a value as of April 1, 2007 of \$7,639. In his affidavit, he claims an exclusion in the amount of \$7,639.02 with respect to his MacKenzie RRSPs, which would appear to be based on this document.
- [132] C.A.S. attached statements for a CIBC bank account in his and his mother's joint names to his affidavit. This account was not listed on his financial statement, and it had not been previously disclosed. The account appears to have been opened on or about January 1, 2022. It is not family property.
- [133] C.A.S. attached to his affidavit a June 30, 2021 CIBC summary of investments. I have already referred to and addressed the non-registered and TFSA investments. It also lists registered investments in the amount of \$59,159.27. These investments were not listed on C.A.S.'s financial statement. In his affidavit, he claims an exclusion of \$15,074.63 of this amount. The documentary evidence offered in support of this exclusion is inadequate, consisting of a list of unknown provenance
- [134] I accept L.E.S.'s submission that the statements and information provided by C.A.S. with respect to his investments are insufficient for the court to determine their value at the date of separation. They are also insufficient to establish the extent of any excluded property claims. She submits that the onus is on C.A.S. to establish any excluded property claims, that he has failed to discharge that onus, and that they should therefore be dismissed. While I am reluctant to prolong this litigation, and notwithstanding the fact that the onus is on C.A.S. to establish his excluded property claims, I have concluded that the just thing to do is to order further disclosure, rather than trying to determine these issues on the sparse evidentiary basis available. In doing so, I am providing C.A.S. with one additional opportunity to provide disclosure supporting any excluded property claims with respect to these investments.
- [135] I, therefore, order that within 30 days of the date of this decision, each party is to provide the other with the August 2006, January 2022, and current complete statements for all registered investment accounts. If statements for those precise dates are not available, the statements closest to those dates are to be provided. Disclosure is to include but is not limited to:
- a) C.A.S. to provide disclosure of complete statements for his MacKenzie Financial Solution Holdings, MacKenzie Financial Other Holdings, and CIBC Registered Investments;
 - b) L.E.S. to provide disclosure of complete statements for her CIBC RRSPs and Canada Life RRSPs;

- [136] Subject to any valid exclusion for the value of these investment accounts at the date the parties began living together in a marriage-like relationship, the parties shall equalize every one of their registered investment accounts, in specie as at the date of separation, such that the current fair market value of those in specie holdings is equalized via spousal rollover.
- [137] Should there be any dispute about the amount of any exclusion or the value of these investments, either party is at liberty to apply to appear before me to resolve any disputes, such an application to be made within 30 days of the date upon which the parties were required to make disclosure.

Divorce

- [138] I am satisfied that the requirements of s. 11 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] have been met. I, therefore, order that, subject to s. 12 of the DA, the parties, who were married in Fernie, British Columbia on June 21, 2008, are divorced from one another, the divorce to take effect on the 31st day after the date of this decision.

Conclusion

- [139] I have specifically granted leave to the parties to apply to appear before me if they are unable to resolve the issues related to Aeroplan points, the quantum of retroactive child support, and the division of financial assets related to the further disclosure I have ordered. They may also appear before me if they are unable to agree on the calculation of the asset equalization payment. Both parties also sought their costs. Once all outstanding matters have been finally addressed, if they are unable to agree on costs, the parties may request to appear before me for half an hour to make submissions on costs.

"L.M. Lyster J."

LYSTER J.

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