

CANADA / JUDGMENT

Lacoff v. Hartt

2025 BCSC 1082

COURT

Supreme Court of British Columbia

DECIDED

11 June 2025

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2025 BCSC 1082 Lacoff v. Hartt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lacoff v. Hartt,

2025 BCSC 1082

Date: 20250610

Docket: E115586

Registry: Kelowna

Between:

Leona Marie Lacoff

Claimant

And

Michael Ronald Hartt and 1096601 Alberta Ltd.

also known as 1096601 Alberta Ltd., Inc. No. 1096601

Respondents

Before: The Honourable Justice Hardwick

Reasons for Judgment

The Claimant, appearing on her own behalf:

L. Lacoff

The Respondent, M.R. Harrrt, appearing on his own behalf:

M. Hartt

No other appearances

Place and Date of Trial:

Kelowna, B.C.

April 15-17, 2025

Place and Date of Judgment:

Kelowna, B.C.

June 11, 2025

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Overview

- [1] These lengthy reasons for judgment follow a short trial wherein the only matter in issue is spousal support. The parties were never married and so the Family Law Act, S.B.C. 2011, c. 25 [FLA] governs.
- [2] At the crux of the dispute is an interim order made by (then) Master Schwartz in the absence of the personal respondent, Michael Ronald Hartt ("Mr. Hartt") on May 5, 2021, ordering Mr. Hartt to pay the claimant, Leona Marie Lacoff ("Ms. Lacoff") interim without prejudice spousal support in the amount of \$2,500 per month commencing May 1, 2021 (the "Schwartz Order"). I will return to the precise terms of the Schwartz Order in due course.
- [3] Mr. Hartt has been categorically opposed to paying Ms. Lacoff spousal support since the Schwartz Order was made. Mr. Hartt has voluntarily paid \$0 in spousal support in the past 50 months.

- [4] The result of the foregoing is that, as of March 25, 2025, the spousal support arrears owing by Mr. Hartt pursuant to the Schwartz Order as calculated by Saskatchewan Maintenance Enforcement ("SME") are \$113,465.71. Somewhat peculiarly, the arrears owing as of March 17, 2025 as calculated by the BC Family Maintenance Agency ("BCFMA") are \$113,055.61.
- [5] Added to that amount will be \$2,500 for the months of April, May and June 2025 for a total of either \$120,965.71 or \$120,555.61. Neither the statements from SME nor BCFMA appear to include any interest or default fees. The difference between them is even more difficult to reconcile given that BCFMA credits Mr. Hartt with payments (obtained through enforcement and/or attachment) of \$4,835.69 whereas SME credits Mr. Hartt with payments (obtained through enforcement and/or attachment) of just \$1,232.03.
- [6] Upon comparison of the two statements, I consider the BCFMA statement to be more reliable. It also is fairer to Mr. Hartt as Ms. Lacoff, who is the one who submitted the BCFMA statement as part of her case, did not tender any evidence to refute that she received the \$4,835.69.
- [7] In terms of the relief sought, Mr. Hartt seeks the cancellation and/or reduction of all the support arrears owing pursuant to the Schwartz Order, return of monies garnished through enforcement measures and a termination of any spousal support obligation to Ms. Lacoff. Ms. Lacoff opposes any cancellation and/or reduction of the support arrears and seeks ongoing spousal support in the amount of \$2,500 per month or such other amount as this Court may determine appropriate through to and including May, 1, 2027 (six years from the commencement date of support under the Schwartz Order).

Spousal Support: The Statutory Framework and Basic Principles

- [8] Neither entitlement to spousal support, nor quantum if entitlement is established, has ever been determined on its merits in this case, even on an interim basis, as the Schwartz Order was made on an entirely without prejudice basis.
- [9] The objectives of a spousal support order are set out in s. 161 of the FLA, which provides that in determining entitlement to spousal support, the court must consider the following objectives:
- a) recognizing any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - b) apportioning between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - c) relieving any economic hardship of the spouses arising from the breakdown of the relationship between the spouses; and
 - d) as far as practicable, promoting the economic self-sufficiency of each spouse within a reasonable period of time.

- [10] Pursuant to s. 162 of the FLA, the amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including:
- a) the length of time the spouses lived together;
 - b) the functions performed by each spouse during the period they lived together; and
 - c) an agreement between the spouses, or an order, relating to the support of either spouse
- [11] No single objective set out in s. 161 is paramount, and all must be considered by the court.
- [12] The first two objectives primarily relate to compensatory support, and the last two objectives relate to non-compensatory support. Compensatory entitlement will arise where, as a result of the parties' roles during the relationship, one spouse has suffered economic disadvantage or has conferred economic advantages on the other. Most often, such entitlement will arise where one spouse has sacrificed career opportunities to take on more of the family's household or, if applicable, child-rearing responsibilities. Upon the dissolution of the relationship, the spouse who has given up opportunities may be entitled to spousal support, either to compensate for diminished earning capacity or to share in the augmented earning capacity of the other spouse: see *Parton v. Parton*, 2018 BCCA 273 at para. 39.
- [13] Non-compensatory support entitlement focuses on the needs of the spouses and on their respective means. It is based on the idea that spouses, by virtue of relationship, have some ongoing responsibility to care for one another. The degree to which non-compensatory principles will apply will depend on a close examination of not only the means and needs of the spouses, but also of the nature of the marital relationship and its duration: see *Parton* at para. 39-40.
- [14] The other provision of the FLA which is potentially relevant in this matter is s. 174 which addresses the reduction or cancellation of support arrears. Specifically, ss. 174(1) and (2) which provide that, on application, a court may reduce or cancel arrears owing under an order respecting spousal support if satisfied that it would be grossly unfair not to reduce or cancel the arrears after considering:
- a) the efforts of the person responsible for paying support to comply with the agreement or order respecting support,
 - b) the reasons why the person responsible for paying support cannot pay the arrears owing, and
 - c) any circumstances that the court considers relevant.
- [15] Subsections 174(3) and (4) establish the court's jurisdiction to address the issue of interest on cancelled arrears.

Factual Background

- [16] The parties commenced a relationship somewhat later in life. When they started living together in a marriage-like relationship in or about November 2009, shortly after commencing dating in or about July of that same year, Ms. Lacoff was 53 years of age and Mr. Hartt was 47.
- [17] The parties separated at the end of 2015.
- [18] It was accordingly a marriage-like relationship of almost exactly six years in duration. There is no controversy over this.
- [19] At the outset of the relationship, Ms. Lacoff resided in a home in Edmonton, Alberta that she had owned jointly with her sister for approximately seven years. It was modestly encumbered. Ms. Lacoff had an adult daughter who was financially independent. Ms. Lacoff was not a wealthy person but managed her finances such that she was able to sustain her lifestyle on her quite modest income. She prioritized her work/life balance over monetary possessions.
- [20] In or about 2010, Ms. Lacoff sold her interest in the Edmonton, Alberta residence to her sister. Ms. Lacoff netted approximately \$160,000 from this transaction. This represented effectively all of her personal net worth at that time save for her personal belongings and her Canada Pension Plan benefits.
- [21] The only evidence with respect to any debt which Ms. Lacoff had (other than the secured debt paid off with the sale of her interest in the Edmonton residence to her sister) pertained to some historical obligation that was in some way connected to a criminal or quasi-criminal matter which apparently impacted Ms. Lacoff's ability to enter the United States of America without a waiver and which Ms. Lacoff admits Mr. Hartt paid. Mr. Hartt's evidence was the debt was some \$13,400 and Ms. Lacoff did not challenge him on this assertion so I accept this to be true.
- [22] Mr. Hartt was previously married for over 20 years before separating from his spouse in 2004. At that time, he had two adult children who were financially independent. Mr. Hartt was eventually divorced in 2009, the year he commenced his relationship with Ms. Lacoff.
- [23] Mr. Hartt did not own any real property when he commenced his marriage-like relationship with Ms. Lacoff but was the sole shareholder, director and officer of the corporate respondent, 1096601 Alberta Ltd. (the "Company"). He had been so since the Company was incorporated on March 13, 2004.
- [24] Of significance, Mr. Hartt previously declared both personal bankruptcy and corporate bankruptcy shortly before the breakdown of his marriage in 2004. He was personally discharged from bankruptcy after nine months and the corporation he then controlled (different from the Company) was discharged from bankruptcy after 12 months.

- [25] According to Mr. Hartt, this first bankruptcy (both personal and corporate) resulted from a failed purchase of an electrical instrumentation business, which he had previously been a salaried branch manager for.
- [26] As a result of the above circumstances, Mr. Hartt had limited assets beyond what might have existed in the Company and very restricted access to credit facilities. What Mr. Hartt did have, however, was a marketable skillset that was able to generate a satisfactory income through consulting work in the oil and gas industry.
- [27] I accept that the parties' lifestyle was financially comfortable as a result of this income stream. However, despite this, there were relatively limited assets acquired during the course of the relationship beyond depreciating assets and most assets that were acquired were significantly financed.
- [28] Further complicating matters was Mr. Hartt's inclination to blur the distinction, if any, between personal and corporate finances. Even at trial, Mr. Hartt still did not fully recognize the difficulties arising from this practice and its relevance to this proceeding.

Acquisition of Assets

- [29] As noted in the overview section of these reasons, there are no issues relating to family property or family debt remaining to be adjudicated in this proceeding. The parties are *ad idem* on this. However, by virtue of the somewhat unique circumstances of this case, it is necessary to still detail, in a summary fashion, certain assets that were acquired during the relationship as their subsequent disposition does have relevance to understanding the background to the ongoing dispute between the parties regarding spousal support. To be clear, this summary is not intended to be, and accordingly is not, exhaustive.
- [30] In the earlier portion of the relationship, the parties purchased various recreational or recreational-type vehicles. The most significant purchase was a 1999 Prevost Coach (a luxury motorhome generally referred to as the "Coach") acquired in or about September 2011. According to a post-separation advertisement prepared by Mr. Hartt, the original bill of sale for the Coach in 1999 was for \$885,000. The parties, however, paid significantly less for the Coach. Specifically, the Coach was purchased, in part, using the trade-in values of certain vehicles that Ms. Lacoff had purchased using the portion of the proceeds from the sale of her interest in the Edmonton residence that she did not invest. The remainder of the purchase price for the Coach was vendor financed with the Company making some 16 payments of approximately \$10,000 each for a total of approximately \$175,000 (or slightly more having regard to the interest on the financed portion of the purchase).

- [31] In July 2014, the parties agreed to purchase a vacant lot located at 6848 Santiago Loop, Kelowna, BC ("Santiago Loop") for \$25,000, which Ms. Lacoff had sourced because she correctly thought it was a "really good deal". The original contract of purchase and sale dated July 13, 2014 (the "Santiago CPS") was in Ms. Lacoff's personal name. There were various subject conditions, including court approval. On July 16, 2014, an addendum was executed transferring the Santiago CPS into the name of the Company (the "Addendum").
- [32] The parties' evidence in respect of this transaction is conflicting. I do not consider it necessary to engage in a fulsome credibility analysis when one puts this conflict into the context of the evidence as a whole. Ms. Lacoff sourced the lot and so the purchase documentation was originally prepared in her name personally by the real estate agent. Mr. Hartt, consistent with his general practice of holding assets corporately and in anticipation of having the Company provide the funds required to complete, instructed the real estate agent to prepare an addendum to have the Santiago CPS assigned from Ms. Lacoff to the Company. Mr. Hartt provided the addendum to Ms. Lacoff for what appears to a digital signature (as I recognize it is different than the signature on the Santiago CPS). Ms. Lacoff trusted Mr. Hartt, a proposition she put to Mr. Hartt during cross-examination and to which he agreed, and signed the addendum.
- [33] Consistent with this was the lack of any evidence from Ms. Lacoff about making inquiries as to the necessity for her signature on any other documentation related to the purchase of Santiago Loop. Specifically, although I find Mr. Hartt was the more commercially sophisticated party, Ms. Lacoff had, at minimum, been involved in the purchase of the Edmonton residence and then sold her interest in that property to her sister. That would have necessitated some involvement from a lawyer or notary. If Ms. Lacoff's theory of the assignment to the Company being fraudulently procured by Mr. Hartt were correct, the only document she ever signed was the Santiago CPS.
- [34] Moreover, Ms. Lacoff acknowledges that she contributed no money personally towards the purchase of Santiago Loop and does not dispute Mr. Hartt's evidence that the funds required to complete came from the Company; a company of which she was not a shareholder.
- [35] In or about September 2014, a cottage located at 6701 Marbella Loop, Kelowna, BC was purchased (the "Cottage"). The Cottage is located in a bare land strata resort community known as "La Casa". The purchase price for the Cottage was \$258,500. One contract of purchase and sale for the Cottage was in the name of "Michael Hartt and Leona Hartt or Nominee". Another contract of purchase and sale was entered into by the Company (collectively, the "Cottage CPS"). Ultimately, title to the Cottage was registered in the name of the Company but there are no documents tendered to confirm this. I mention this because I consider it odd that the Cottage never shows on the Company balance sheets tendered into evidence unless it was classified as "inventory" and even then, the cost base does not accord with the Cottage CPS (even after assuming that Santiago Loop was classified as inventory based on its cost base of \$25,000).

- [36] In any event, the Company provided the deposit and down payment for the Cottage and the Company made all the financing payments for the Cottage. At first it appears it was a vendor takeback financing arrangement which allowed the vendor (a private Alberta company) to continue to maintain an existing mortgage registered on title. At some point, the date of which is unknown but appears to have been sometime prior to February 28, 2016, the Cottage was refinanced and a mortgage was registered in favour of Servus Credit Union (which does show as long-term financing on the Company's balance sheet for that fiscal year and on each fiscal year through to and including 2019). If the financing arrangements are somewhat different than can be gleaned from the hodgepodge of documents tendered, neither party gave evidence to explain this. In the result, what is clear is that the Company provided all the money to purchase the Cottage and serviced the secured debt.
- [37] In addition to servicing the financing and/or mortgage, the Company also paid for substantially all other expenses associated with the Cottage. Ms. Lacoff did indicate that after separation she recalls paying some of the strata fees for the Cottage but did not have any documents to support this and was candidly prepared to concede that the Company paid all of these fees because, at minimum, the Company paid substantially all of them for so long as the Company owned the Cottage.
- [38] Although it does not per se directly relate to the acquisition of an asset during the relationship, it is notable that around the same time that the Cottage was purchased, Ms. Lacoff used her own financial resources to pay off the outstanding financing on a 2012 GMC vehicle that was registered in Mr. Hartt's personal name. The total amount paid on or about September 8, 2014 to TD Auto Finance (Canada) was \$47,525. Mr. Hartt acknowledges Ms. Lacoff paid this sum and that he subsequently "gave" this vehicle to his former spouse. Ms. Lacoff says that she was supposed to be paid back but that this never happened. She describes this as part of Mr. Hartt's financial abuse of her. Mr. Hartt, for his part, denies being financially abusive but does admit that Ms. Lacoff paid off this vehicle, that Ms. Lacoff was not repaid and that he provided the vehicle to his former spouse. No evidence was tendered, either in direct or cross-examination, as to why Mr. Hartt "gave" this vehicle to his former spouse from whom he had separated from for a decade and been divorced from some five years prior.

Commencement of Litigation, Informal Support and Bankruptcies

- [39] In the initial period following separation, the parties' financial status quo remained in tact even though Mr. Hartt ceased residing in the Cottage.
- [40] Specifically, while Ms. Lacoff remained living in the Cottage, the Company paid both the mortgage and strata payments associated with the Cottage as I have already described above.

- [41] During this time, the Company also paid for the monthly financing payment on a 2013 Jeep Wrangler vehicle (the "Jeep") which was driven exclusively by Ms. Lacoff. The monthly payment was approximately \$700.
- [42] Also, during this time, the Company was paying a monthly fee for storage of the Coach in Peachland and paying for the strata fees associated with Santiago Loop. Ms. Lacoff was not receiving any greater benefit than Mr. Hartt was for this but the Company's payment of these expenses helped preserve these assets for a period of time. In the case of Santiago Loop, that proved to be to the financial benefit of the parties.
- [43] Starting in or about mid-2016, however, there were growing financial pressures. As a result, some effort was made to sell depreciable assets. Those efforts were generally unsuccessful. Both parties gave oral evidence that the other was less than cooperative and, at times, unreasonable. There is some degree of truth to both parties' evidence. However, it was Mr. Hartt who wanted to maximize the value of these assets, I find unrealistically so, while he was away working outside of the province. This left Ms. Lacoff to try and facilitate these sales. She was not very well equipped for this task and, as a result, she made fairly modest efforts to pursue it, particularly in face of the resistance from Mr. Hartt.
- [44] The most obvious example is the Coach. The parties listed the Coach for sale for \$155,000 in May 2017 and received a private arms-length offer for \$50,000 in early June 2017, which Mr. Hartt was not prepared to entertain, even to the extent of making a counter-offer. So, it continued to sit.
- [45] On June 5, 2017, Ms. Lacoff engaged a lawyer and commenced these proceedings. She did so within the limitation period required under the FLA. Mr. Hartt was not pleased that Ms. Lacoff started an action and, according to Mr. Lacoff, he made a comment to the effect that he intended to file for bankruptcy so that he would never have to pay her again. Mr. Hartt denies making that statement but, in a June 16, 2017 email to Ms. Lacoff, Mr. Hartt said that he was "sorry that [she was] screwing this up now." He further cautioned Ms. Lacoff to "be careful as you may end up with zero \$\$\$\$\$". I accordingly accept Ms. Lacoff's evidence in this regard as it has a distinct ring of truth.
- [46] Despite his threats, however, Mr. Hartt and/or the Company continued to make all the necessary payments for the Cottage and the Jeep. The Company also continued to pay the strata fees for Santiago Loop.
- [47] Coincident with the commencement of these proceedings, Ms. Lacoff filed certificates of pending litigation against the Cottage and Santiago Loop despite both properties being corporately owned.
- [48] On or about September 15, 2017, the Company sold Santiago Loop. The sale price was \$67,500. Mr. Hartt did not consult Ms. Lacoff about the sale price but notified her of the sale in due course. Ms. Lacoff had to remove the certificate of pending litigation in order for the sale to proceed. As a result, net sale proceeds of \$62,802.20 were deposited into trust (the

"Santiago Loop Proceeds"). The Santiago Loop Proceeds were in an interest-bearing trust account and by March 2018 amounted to \$63,401.82 available for distribution (subject obviously to the fact they were a corporate and not personal asset).

- [49] On or about September 11, 2017, Mr. Hartt sold a 2001 Sea Ray boat (the "Sea Ray") for \$16,000 plus GST for a total of \$16,800. Mr. Hartt notified Ms. Lacoff of the sale after the fact and she subsequently obtained a copy of the bill of sale from the purchaser (which purports to show the Company as the vendor although Mr. Hartt had purchased the Sea Ray in his personal capacity). Ms. Lacoff was not involved in the transaction and did not receive any share of the proceeds.
- [50] Of further significance regarding the Sea Ray is the fact that it was originally purchased in May 2012 from a Mr. Metz (the principal of the company who sold and vendor financed the Coach). The purchase was made in part based upon a cash payment from the Company and in part based upon the \$15,000 trade-in value of a BMW motorcycle that Ms. Lacoff asserts was her excluded property (on the basis it was indirectly acquired using her pre-relationship savings from the sale of her interest in the Edmonton residence). Notwithstanding this, Mr. Metz did not obtain physical possession of the BMW motorcycle and Ms. Lacoff remained unaware of this portion of the Sea Ray transaction. After Mr. Hartt sold the Sea Ray Ms. Lacoff provided Mr. Metz with the BMW in reliance upon the bill of sale dated May 16, 2012, showing that it had been traded in as part of the consideration for the purchase of the Sea Ray. Ms. Lacoff did not receive any compensation for the BMW.
- [51] Going back in the chronology for context, in or about June 2016, Ms. Lacoff took out a line of credit to pay down a credit card in her name which she says Mr. Hartt was using as his "business" credit card. Ms. Lacoff was the primary applicant and Mr. Hartt was the co-applicant. There is insufficient documentary evidence before me to establish what this "business" credit card was used for given the fact that Mr. Hartt did not maintain much, if any, distinction between corporate and business expenses. Ms. Lacoff also used the credit card at least occasionally, including for cash advances. In the result though, there was a balance of \$6,776.66 owing as of December 27, 2017, which Ms. Lacoff testified she paid off sometime in early 2018. Ms. Lacoff does not have a receipt for paying down this credit card but Mr. Hartt does not dispute that she did so.
- [52] The next step of significance in the litigation was the judicial case conference conducted on March 19, 2018 (the "JCC"). Both parties had counsel. In the order resulting from the JCC (the "JCC Order") it was agreed that:
- a) there would be an exchange of Lists of Documents and particulars of their excluded property claims;
 - b) the sum of \$6,500 be paid to Mr. Hartt and the Company's shared accountant from the Santiago Loop Proceeds to complete the 2016 and 2017 corporate financial statements and tax returns and Mr. Hartt's T1 personal income tax returns for those same years;

- c) each party would receive an interim advance of \$5,000 from the Santiago Loop Proceeds;
 - d) Ms. Lacoff would provide an accounting for the net sale proceeds of a 1977 Corvette vehicle; and
 - e) the parties would have joint conduct of sale of certain vehicles, including the Coach.
- [53] Notwithstanding the JCC Order, efforts to sell assets were generally unsuccessful despite the fact the assets were quite obviously wasting.
- [54] Most notably, no further offer was received on the Coach after the JCC until an offer from the original vendor of the Coach in or about November 2018 for \$30,000. Mr. Hartt refused to entertain that offer. Ultimately, the Coach never sold before the Company filed for bankruptcy (as described below). Rather, as part of the bankruptcy the Coach was liquidated for approximately \$18,000, after some \$3,800 was advanced to repair it.
- [55] The collective financial situation of the parties was, as described, clearly deteriorating in the years following separation. This escalated following the JCC. However, due to the fact that the Cottage was owned by the Company, Ms. Lacoff was somewhat unaware of the true extent of the financial crisis until the Company made an assignment into bankruptcy pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA] on or about May, 15, 2019 (the "Company's Assignment"). This was followed quite shortly thereafter by Mr. Hartt making a personal assignment into bankruptcy under the BIA on or about July 8, 2019.
- [56] The Company's Assignment resulted in the sale of the Cottage, leaving Ms. Lacoff effectively homeless but for the generosity of several friends who were on extended stays out of the country and allowed Ms. Lacoff to stay in their residences during their absence. The sale of the Cottage as part of the liquidation of the estate resulted in \$158,855.60 for distribution to the Company's secured creditors.
- [57] The remaining Santiago Loop Proceeds as of the date of the Company's Assignment, some \$13,619, were also subsequently remitted for distribution to the Company's secured creditors.
- [58] Ms. Lacoff filed a proof of claim in her personal capacity in the Company's bankruptcy for \$319,800 in December 2019. It was disallowed in May 2020.
- [59] In or about 2021, Ms. Lacoff's then counsel reached a settlement with the Company's trustee, Goth & Company Ltd. ("Goth"), in which any remaining proceeds after paying all proven creditors, the "OSB levy" and incidental costs incurred in administration of the estate would be split between Mr. Hartt's personal bankruptcy and Ms. Lacoff. Goth warned, however, that it was not anticipated there would be any remaining proceeds.
- [60] As Goth anticipated, Ms. Lacoff testified that she received nothing as a result of the Company's Assignment.

- [61] Somewhat consistent with his approach to this litigation, Mr. Hartt apparently never followed up with Goth to confirm if the Company was discharged from bankruptcy and assuming so, to obtain the resulting final documentation outlining how the estate funds were ultimately distributed. Having failed to do so, Mr. Hartt is not in a position to challenge Ms. Lacoff's evidence that she did not receive anything as a result of the Company's Assignment.
- [62] Mr. Hartt also claims to be unaware if he retained his RRSPs after his discharge from personal bankruptcy. Legally speaking one would assume they were not distributed under the BIA given that Mr. Hartt's tax returns do not show any RRSP contributions after 2012, but that is merely an assumption. Their last known value, according to Mr. Hartt's Form 79 Statement of Affairs (his "SOA"), was \$9,860 as of June 26, 2019.
- [63] Continuing with Mr. Hartt's personal bankruptcy, Goth allowed Ms. Lacoff to pay off the existing financing of approximately \$8,500 on the Jeep and retain the vehicle. She subsequently sold for Jeep in or about 2020 for \$27,000, which she testified she used to subsidize her living expenses. Mr. Hartt suggests that he should receive some type of credit for the benefit that Ms. Lacoff received as a result of the sale of the Jeep. I disagree. Based on the evidence before me, had the trustee sold the Jeep, any monies received over and above the amount required to discharge the outstanding financing would have been paid to the benefit of Mr. Hartt's proven creditors. To the extent Ms. Lacoff realized more value for the Jeep than Mr. Hartt claimed on his SOA (some \$15,000) that was to the detriment of his creditors and not him personally.

The Interim Support Application

- [64] On April 15, 2021, Ms. Lacoff's then counsel filed a notice of application returnable May 5, 2021 (the "Application"). The Application sought, in summary form, the following relief:
- a) A determination that Mr. Hartt had an effective Guideline income of \$500,000 or alternatively an interim order imputing to Mr. Hartt an income [not specified] pursuant to s. 19 of the Federal Child Support Guidelines;
 - b) An interim order that Mr. Hartt pay interim spousal support to Ms. Lacoff retroactive to June 5, 2017, and continuing prospectively until further court order or written agreement.
- [65] The Application was supported by the Affidavit #1 of Ms. Lacoff sworn April 6, 2021 ("Ms. Lacoff's Affidavit #1"). I return to Ms. Lacoff's Affidavit #1 shortly.
- [66] Mr. Hartt was self-represented at the time the Application was filed.
- [67] The Application was purportedly served via email on Mr. Hartt in his personal capacity and on the Company via both regular mail and email to Goth as the Company was still in bankruptcy at that time. As no relief was sought against the Company in the Application, Goth provided no response on the Company's behalf.

- [68] More significantly, Mr. Hartt did not tender any response material to the Application and did not attend the hearing of the Application before (then) Master Schwartz on May 5, 2021, which occurred via MTeams.
- [69] In this regard, I ultimately accept Mr. Hartt's evidence that Ms. Lacoff's counsel inadvertently served the Application and Ms. Lacoff's Affidavit #1 on an incorrect email address and that he did not receive them. Mr. Hartt's actual email address was very close to but not identical to that listed on the Application and, importantly, there is no evidence before me that the error was identified by Ms. Lacoff's counsel and the materials were properly served to the correct email address. Consistent with this, I find I must accept Mr. Hartt's evidence that he would have opposed the Application if he had been served with it. In this regard, although the litigation had been limping along since June 2017, that was as a result of the conduct of both parties, and there is no evidence that Mr. Hartt had fallen off the proverbial grid or had been consistently non-responsive to communications. The litigation was periodically active such that, in the absence of evidence to the contrary and in the presence of evidence of apparent service to an incorrect email address providing a reasonable explanation for his failure to respond, I accept that he did not intentionally ignore the Application.
- [70] Turning now to the evidentiary basis for the relief sought in the Application.
- [71] In Ms. Lacoff's Affidavit #1 she affirmed, at para. 20, that "prior to separating from [Mr. Hartt], I was aware that he had earned approximately \$550,000. I am aware of this fact as I did the books on [Mr. Hartt's] trucking business".
- [72] Building on this, Ms. Lacoff further affirmed, at para. 55 of that same affidavit, that "as a result of Mr. Hartt's past income earning capacity, and the fact that he moved to Texas, I believe Mr. Hartt is still earning the high salary he did while we were in a relationship, in the amount of around \$500,000 per annum".
- [73] At the trial, Ms. Lacoff gave no specific evidence about doing the books for the Company. I address her evidence about her role as the Company's "business administrator" below. More significantly, until sometime in 2015, the business of the Company was consulting in the oil and gas industry. The parties separated in late 2015 and so the opportunity for Ms. Lacoff to have ever "[done] the books" in relation to the Company's trucking operations was extremely limited.
- [74] Further, and very importantly, the documentation relied upon by Ms. Lacoff to support the above statements were the financial statements for the Company for the fiscal years ending February 28, 2017 and February 28, 2018 which had been prepared following the JCC Order. The 2016 fiscal year information was also included for comparative purposes in the 2017 financial statement. Those statements (which were incorrectly described as corporate income tax returns in Ms. Lacoff's Affidavit #1) showed that:

- a) In fiscal 2016, the Company had gross revenue of \$279,612 with a cost of sales of \$97,469, leaving a gross profit of \$182,143. Against that were claimed expenses of \$232,467. However, included in those expenses are salaries and benefits of \$60,000 paid to Mr. Hartt which must be added back. That would leave a corporate pre-tax income of \$9,676. Importantly, that is accepting that all other expenses deducted are properly claimed for Guideline income determination purposes; something which would be arguable given there are, for example, some \$41,045 for claimed automotive and travel, \$87,300 for amortization (primarily on certain earth moving equipment), and \$11,327 in combined rent and office expenses which may relate to the Cottage: see *Egan v. Egan*, 2002 BCCA 275 generally in this regard. Absent adding back some or all of those expenses to the corporate pre-tax income or other imputation, Mr. Hart's Guideline income for 2015 (having regard to the difference between the fiscal year end and the calendar year end) was \$60,000;
- b) In fiscal 2017, the Company had gross revenue of \$440,825 with a cost of sales of \$277,395 leaving a gross profit of \$163,430. Against that are claimed expenses of \$298,164. However, included in those expenses are salaries and benefits of \$57,444 paid to Mr. Hartt which must be added back. With just with add-back, the Company is operating at a loss. However, other expenses could again arguably added back, as the amortization alone claimed is \$152,610 and there are \$12,631 in combined rent and office expenses which may relate to the Cottage. Absent such add-backs or other imputation, Mr. Hart's Guideline income for 2016 was \$57,444; and
- c) In fiscal 2018, the company had gross revenue of \$561,719 with a cost of sales of \$373,488 leaving a gross profit of \$188,231. Against that are claimed expenses of \$242,814. There are no salaries and benefits of paid to Mr. Hartt to be added back. There is no corporate pre-tax income to include unless, again, other expenses are added back. This fiscal year the amortization claimed was reduced to \$106,193 but there were \$31,469 in combined rent and office expenses deducted which may relate to the Cottage. Somewhat remarkably, there is also \$23,976 in expenses deducted for "telephone and utilities" - a more than four times increase over the amounts claimed in 2016 and 2017. Absent such add-backs or imputation, Mr. Hart's Guideline income for 2017 was \$0.
- [75] Also attached to Ms. Lacoff's Affidavit #1 were Mr. Hartt's 2016 and 2017 T1 personal income tax returns in which he claimed a Line 150 income of \$54,900 in 2016 and \$0 in 2017. As indicated above, all salaries and benefits paid/attributed by the Company after separation were to Mr. Hartt and so the utility of Mr. Hartt's T1 personal income tax returns was to simply confirm that Mr. Hartt did not have income from sources outside of the Company during those taxation years.

- [76] Accordingly, leaving aside the identified live issue of possible add-backs to corporate pre-tax income, which I return to, it is apparent that Mr. Hartt did not earn an income approaching the range of \$500,000 to \$550,000 per annum as deposed to by Ms. Lacoff. Nor was there any apparent evidentiary foundation to have a Guideline income of \$500,000 per annum imputed to Mr. Hartt as sought in the Application. Such an imputation would not have just been speculation, it would have been fanciful.
- [77] I do not have the benefit of a transcript of the proceedings before (then) Master Schwartz or the resulting oral reasons for judgment to understand how this was dealt with in submissions by counsel. What we have is the order. The terms of the Schwartz Order, as entered, are as follows:
1. An order pursuant to [s.] 165 of the [FLA] that on an interim and without prejudice basis, [Mr.] Hartt will pay to [Ms.] Lacoff spousal support in the amount of \$2,500 per month commencing on May 1, 2021, and the first of each month thereafter.
 2. An order pursuant to Rule 5-1 of the Supreme Court Family Rules that [Mr. Hartt] is to file and serve an updated Form F8 Financial Statement no later than Friday, June 4, 2021.
 3. An order that [Ms. Lacoff] has liberty to reset this application after June 4, 2021, or after receipt of [Mr. Hartt's] updated Form F8 Financial Statement, whichever comes first.
- [78] Of note, the Schwartz Order does not set or impute a Guideline income for Mr. Hartt even on an "interim without prejudice" basis. Accordingly, all that can be done is to reverse engineer the calculations to determine that (then) Master Schwartz most likely used a Guideline income of at least \$250,000 per annum for Mr. Hartt. Specifically, for reference purposes, if Mr. Hartt was found to have or be imputed a Guideline income of \$250,000 and Ms. Lacoff was found to a Guideline income of \$0, the very highest end of the range provided for under the Spousal Support Advisory Guidelines [SSAG] in 2021 was \$2,500 per month. For comparison, if one continues to utilize a Guideline income of \$0 for Ms. Lacoff per her materials tendered for the purposes of the Application, the mid-point of the SSAG in 2021 recommended support of \$2,494 per month based upon Mr. Hartt having a Guideline income of \$285,000 per annum.
- [79] Importantly, despite my conclusion regarding the failure to properly serve the Application on Mr. Hartt, I am satisfied that Mr. Hartt was aware of the Schwartz Order by May 11, 2021. That is less than a week after it was pronounced. Specifically, the evidence establishes that Mr. Hartt sent the following email to Ms. Lacoff's then counsel's legal assistant in response to being served that same day with a copy of the entered Schwartz Order:

Hello,

This is all 'Bullshit'!!! How can she received [sic] money after receiving more than her fair share during our 6 year relationship. With COVID and inaccessibility over the last year, I've not had access to any info. This is robbery in the worst way. And you are only acting on one side of history.

Thank You,

Mike Hartt

[phone number omitted]

- [80] Of note, the May 11, 2021, email exchange does not actually say what email address was used by Ms. Lacoff's counsel to serve the entered order. The timely (albeit impolite) response is, in my view, consistent with my acceptance of Mr. Hartt's evidence that he would have responded to the Application had he received a copy of it and Ms. Lacoff's Affidavit #1 in advance of the Application hearing.
- [81] Notwithstanding Mr. Hartt's emphatic email of May 11, 2021, and despite the interim spousal support being ordered on a "without prejudice basis", Mr. Hartt did not bring on an application to set aside or vary the Schwartz Order at any time until he filed a notice of trial on December 5, 2024. Nor did Ms. Lacoff elect to bring the issue of interim support back before the court to obtain a interim order on the merits (namely, not a "without prejudice" interim order) despite para. 3 of the Schwartz Order specifically giving her leave to do so by June 4, 2021 at the latest. The result of their combined procrastination is a trial that was far more complicated than it needed to be.

Ms. Lacoff's Evidence Regarding Income and Current Financial Circumstances

- [82] Throughout most of her working life, Ms. Lacoff focused her career around ballroom dancing. Initially starting as a dance instructor, Ms. Lacoff subsequently opened her own studio and operated that studio for approximately 15 years. While operating this studio, Ms. Lacoff earned approximately \$25,000 to \$30,000 per annum in self-employment income after expenses.
- [83] By the time that Ms. Lacoff entered into a relationship with Mr. Hartt she had given up the physical space for her studio for financial reasons and instead rented time at other studios to teach her remaining students. It was, I find, only part-time work. She was, however, still working despite Mr. Hartt's quite condescending assertion on cross-examination that she was only earning \$60 per week.
- [84] Ms. Lacoff continued working in this part-time capacity through 2010 but ultimately ceased her operations as a self-employed dance instructor entirely and retired by 2011.
- [85] This coincides generally with the parties move to Ft. McMurray, Alberta. Despite the timing, I do not find that Ms. Lacoff gave up her dance instruction work as a result of the relationship. Rather, it appears that she was already significantly winding down by the time she started cohabitating with Mr. Hartt. Further, Ms. Lacoff gave no evidence about any efforts she made to find outside employment or self-employment in the dance industry, or any other industry, in Ft. McMurray.

- [86] Rather, after the move to Ft. McMurray, the Company started notionally paying Ms. Lacoff a salary. Ms. Lacoff did not provide any meaningful evidence regarding services she provided to the Company apart from describing herself as a "business administrator". Her limited evidence was effectively that she occasionally assisted Mr. Hartt with administrative tasks that might be somewhat related to the Company but did so, I find, simply in her role as Mr. Hartt's spouse.
- [87] Consistent with this I find that the letter Mr. Hartt authored dated July 17, 2015, referencing Ms. Lacoff being employed by the Company since 2011 and her being "entrusted" with company bank accounts and corporate documents was intended as a character reference as opposed to a letter confirming Ms. Lacoff's employment with the Company. Specifically, and consistent with this, the letter continues by describing her as, amongst other things, a "very mellow, soft and enduring [sic] person" with a heart "as large as her smile" who maintains a "solid health regiment".
- [88] Ultimately, I conclude that Mr. Hartt decided it was financially beneficial to have the Company pay wages to both himself and Ms. Lacoff, as the wages attributed to Ms. Lacoff were taxed at a lower rate than if all of the wages were declared as taxable income by Mr. Hartt. The general arrangement was that Mr. Hartt would be attributed approximately \$29,000 and Ms. Lacoff approximately \$21,000 in wages for a cumulative total of approximately \$50,000. Consistent with this, the Company paid the tax on the wages attributed to Ms. Lacoff and also made the required Canada Pension Plan ("CPP") remittances. The exception to this was for the 2015 taxation year when Ms. Lacoff had to personally pay the income tax on her wages from the Company when those came due after the parties had separated. Those taxes, which came about as a result of a reassessment in 2017, were \$1,738.59.
- [89] Ms. Lacoff places considerable emphasis on this issue of her income from the Company. Specifically, Ms. Lacoff asserts that she should be given credit for wages that were attributed to her and not received. I accept Ms. Lacoff honestly holds this belief. I find, however, that Ms. Lacoff is mistaken. Firstly, she did not earn these wages by working for the Company, as I have found she provided no services for the Company. Moreover, after the parties moved to Ft. McMurray, Ms. Lacoff had no outside income. Mr. Hartt was responsible for paying all of the day-to-day expenses of their household. To assist in doing so in a tax effective way that apparently did not attract the scrutiny of the Canada Revenue Agency, at least until after separation, Mr. Hartt caused the Company pay wages to both him and Ms. Lacoff. Those monies were then used to pay household and living expenses which Ms. Lacoff had the benefit of. Stated another way, had Ms. Lacoff's wages from the Company been paid to her directly, she would have by necessity, I find, had to contribute them back into the household as the Company was the sole source of income to support both parties.

- [90] Moving forward in the chronology, the parties move to the Okanagan was motivated primarily by Ms. Lacoff's desire to be near her daughter who resided in the region. The intention was that Mr. Hartt would continue with his consulting work in the oil and gas industry (which involved travel) and that Ms. Lacoff would remain out of the workforce. That was the case until about mid-2015 when, as I address below, Mr. Hartt decided to leave the oil and gas industry.
- [91] Sometime prior to the parties separating, the evidence was not precise on this point, Ms. Lacoff's daughter had a baby. Thereafter, Ms. Lacoff was actively involved in supporting her daughter and her spouse with this child. She was, to paraphrase her testimony, the "happy grandma/helper/babysitter". Ms. Lacoff did not pursue any outside employment during this time and that remained the case until separation. She received modest CPP benefits of approximately \$150 per month once eligible to do so.
- [92] Following separation, Ms. Lacoff continued residing at the Cottage and assisting her daughter and her family. La Casa, where the Cottage is located, is situated on Westside Road approximately halfway between cities of Kelowna and Vernon on the western edge of Okanagan Lake.
- [93] Ms. Lacoff testified that she initially sought part-time employment in Kelowna after separation but found the commute in from La Casa too treacherous, particularly in the winter. Ms. Lacoff did, however, make the trip into Kelowna usually twice per week to assist her daughter but felt this was all she could manage.
- [94] Ms. Lacoff's evidence regarding any efforts to be economically self-sufficient after separation was very weak. In saying that, I do recognize that she was approximately 59 years of age, had been out of the workforce for approximately five to six years and her resume was effectively limited to employment/self-employment in the dance industry. Her job prospects may have been limited accordingly, but she did not make meaningful efforts to see what was available given she was in good health and did have some transferable skills from having operated her own studio. Further, while her dedication to helping her daughter and her family was no doubt appreciated, that did not take priority over her obligation to make reasonable efforts to be self-sufficient.
- [95] Further, during this period of time Ms. Lacoff had the benefit, as I have outlined, of having her most significant monthly living expenses paid by the Company and/or Mr. Hartt, which I conclude disincentivized her from pursuing employment while living at the Cottage.
- [96] Ms. Lacoff's financial circumstances obviously changed significantly when the financial support from the Company and/or Mr. Hartt abruptly ceased as of May 2019. Ms. Lacoff did not find employment at this time but relied on some savings she had retained and the generosity of friends to provide her free housing.
- [97] During the COVID-19 pandemic in 2020, Ms. Lacoff secured work at La Casa on a casual basis as a "pool supervisor". It was limited hours for limited wages.

- [98] At some point Ms. Lacoff also became eligible for employment insurance benefits. She did not explain in her testimony how she came to be eligible but they are reported on her 2021 and 2022 T1 personal income tax returns. She also acknowledged receipt of these benefits in her Affidavit #1.
- [99] Sometime in or about early 2021, Ms. Lacoff started a retraining course in the hospitality industry through the Thompson Okanagan Tourism Association. Nothing appears to have come of this.
- [100] The above was the extent of Ms. Lacoff's employment and or/retraining efforts through to 2023, at least based upon the evidence tendered at trial.
- [101] Sometime in or about 2023, Ms. Lacoff started earning an income cleaning Airbnb units in a strata building in Vernon known as "Vita Vernon" where she now owns a unit and resides. Of note, when Ms. Lacoff gave her evidence as to her current employment, she described herself just as living at Vita Vernon. I only came to understand that Ms. Lacoff owns a strata unit at Vita Vernon upon review of her Form F8 Financial Statement.
- [102] In any event, at the end of 2023, Ms. Lacoff also secured a contract to clean the common areas of Vita Vernon. Pursuant to the contract with the strata corporation, Ms. Lacoff is paid \$1,500 per month for her services. It is part-time work. Ms. Lacoff still continues to do some Airbnb cleaning of units at Vita Vernon in addition to her contract work with the strata corporation. Ms. Lacoff deposes that all of the income she receives is reported on her T1 personal income tax return and denies that she receives unrecorded cash income. Her Line 15000 income for the years 2021 to 2023 was as follows:
- a) 2021 - \$29,142.26;
 - b) 2022 - \$12,602.48; and
 - c) 2023 - \$32,731.01.
- [103] In her Form F8 Financial Statement affirmed on April 1, 2025, Ms. Lacoff claimed annual expenses to be \$26,033.04. As with Mr. Hartt, she was not cross-examined on these expenses. However nothing seems, on its face, to be worthy of any scrutiny. To the contrary, her expenses seem extremely modest.
- [104] Ms. Lacoff did not provide any information as to her 2024 income in her Form F8 Financial Statement, including, importantly, whether she anticipated any change from her 2023 income. In this regard, Ms. Lacoff presented in court as appearing to be in good physical condition for her age. Far more significant than my non-expert observation, Ms. Lacoff gave no evidence that she was having any difficulties carrying out the duties associated with either her contract with the strata corporation for Vita Vernon or her supplementary Airbnb income.

- [105] I accordingly find that Ms. Lacoff's current Guideline income is \$32,731 per annum. This is generally consistent with her earning capacity prior to the commencement of the marriage-like relationship with Mr. Hartt and I do not find that she is underemployed. Further, as apparent from the above, Ms. Lacoff has returned to living modestly and her income presently somewhat exceeds her modest claimed expenses.
- [106] In terms of her overall financial position, Ms. Lacoff owns her strata unit in Vita Vernon which has a 2025 BC Assessment Value of \$245,900. She purchased it, it appears, on or about November 15, 2021, for \$221,000 and it has appreciated in value. The mortgage registered against the unity currently has some approximately \$80,670.70 owing on it. This mortgage is Ms. Lacoff's only claimed debt.
- [107] In addition to her strata unit, Ms. Lacoff has registered and unregistered investments totalling approximately \$108,000. She also has an older model vehicle and a very old catamaran boat.
- [108] Based on the foregoing, I do not accept Ms. Lacoff's submission that she lost her financial security in retirement as a result of the relationship and its breakdown. Ms. Lacoff is not living a life of luxury. Ms. Lacoff is, however, in a satisfactory financial position in all the circumstances. I reach this conclusion considering Ms. Lacoff's financial position when she entered the relationship, its duration, and the parties' respective ages.

Mr. Hartt's Evidence Regarding Income and Current Financial Circumstances

- [109] In or about 2003, and in any event before the parties' relationship, Mr. Hartt was diagnosed with bipolar disorder. Ms. Lacoff candidly acknowledged to the Court she was aware of this diagnosis, that she was aware Mr. Hartt took medication to manage his bipolar disorder during the relationship and that she could recall one episode during their relationship when Mr. Hartt required hospitalization as a result of a bipolar episode. Beyond these admissions from Ms. Lacoff, I have no admissible evidence before me as to Mr. Hartt's medical circumstances and its impact upon his employability. The document that Mr. Hartt purported to tender did not meet the requirements of an expert report under R. 13-6(1) of the Supreme Court Family Rules [Rules]: see *J.P. v. British Columbia (Children and Family Development)*, 2017 BCCA 308 at paras. 152-155.
- [110] Specifically, and as I articulated in my ruling from the bench refusing to admit the document, what Mr. Hartt attempted to tender as evidence of his medical circumstances was a summary that he had prepared himself which was purportedly signed by a "Dr. A." [full name omitted]. The summary was not sworn or notarized, nor was it even witnessed by a third party; there was no curriculum vitae for Dr. A.; there was no indication given of their area of medical specialty or their current licensing status; and there was no information provided as to how long Mr. Hartt has been a patient or when Dr. A. last saw Mr. Hartt (whether in person or virtually).

- [111] I turn now to Mr. Hartt's income during the relationship.
- [112] As I noted above, Mr. Hartt did contract work in the oil and gas industry through the Company until sometime in 2015. I do not have financial statements for the Company for this period of time. I do, however, have a Centrum Accord Mortgage Inc. application that Mr. Hartt tendered as part of his case. In that application, signed on July 25, 2014 in anticipation of the purchase of the Cottage, Mr. Hartt indicated he had an annual personal income of \$29,000 and additional corporate income of \$350,000. There is no indication of whether the claimed corporate income was gross or net.
- [113] In 2015, Mr. Hartt felt he needed a lifestyle change. Specifically, Mr. Hartt decided that he needed to get out of the high-pressure world of oil and gas. This was, of note, prior to the end of the relationship and Ms. Lacoff did not lead any evidence which suggested that Mr. Hartt's decision in this regard was not made with bona fides.
- [114] The new industry that Mr. Hartt elected to enter was long-haul trucking. He continued to use of Company to carry on his business operations. As part of his entry into this new industry, he purchased equipment. The cost base for this "earth moving equipment" and "automobiles" in the 2016 balance sheet for the Company total \$602,148 with equipment financing of \$307,309 recorded.
- [115] I already addressed the financial disclosure from Mr. Hartt and the Company that was before the court at the hearing of the Application by virtue of being appended to Ms. Lacoff's Affidavit #1. This covered fiscal 2016 through fiscal 2018.
- [116] During the course of the trial, Mr. Hartt swore an updated Form F8 Financial Statement (having never provided one in accordance with the Schwartz Order). I allowed it to be filed notwithstanding its tardiness because although Ms. Lacoff did affirm a current Form F8 Financial Statement in advance of the trial, she actually did not put it into evidence as part of her case (or include it in the trial record) and so I concluded there was equal prejudice to both parties that was outweighed by benefit to the court of having at least close to current financial information.
- [117] As a result, I now have Mr. Hartt's Notices of Assessment/Reassessment from 2019 through 2022 and the 2019 financial statements for the Company.
- [118] Mr. Hartt's T1 personal income tax returns disclose that:
- a) In his 2019 "pre-bankruptcy" T1 personal income tax return, Mr. Hartt had a Line 15000 income of \$31,500;
 - b) In his 2020 T1 personal income tax return, Mr. Hartt had a Line 15000 income of \$16,040;
 - c) In his 2021 T1 personal income tax return, Mr. Hartt had a Line 15000 income of \$3,600;
 - d) In his 2022 T1 personal income tax return, Mr. Hartt had a Line 15000 income of \$47,264; and

- e) In his 2023 T1 personal income tax return, Mr. Hartt had a Line 15000 income of \$187.
- [119] In terms of the Company's financial statements, there were two financial statements prepared in 2019. One for the Company's standard year end of February 28 and the other was a stub financial statement prepared for the period ending May 15, 2019, to coincide with the Company's Assignment. Those statements disclose that:
- a) In fiscal 2019, the Company had gross revenue of \$327,672 with a cost of sales of \$219,356 leaving a gross profit of \$108,316. Against that are claimed expenses of \$92,522. That left a corporate pre-tax income of \$15,794 (leaving any possible add-back of office and rent expenses which totalled \$43,125). There was also an additional gain on the disposal of property and equipment of \$91,454; and
- b) In stub 2019, the Company had gross revenue of \$74,521 with a cost of sales of \$43,095 leaving a gross profit of \$31,426. Against that are claimed expenses of only \$4,566 leaving a corporate pre-tax income of \$26,860.
- [120] Mr. Hartt is presently living in Moose Jaw, Saskatchewan based upon the claimed financial generosity of Mr. Terrance Wolfe and his wife. Mr. Wolfe is a friend of Mr. Hartt who worked for him approximately 20 years ago. According to Mr. Hartt, Mr. Wolfe and his wife provide him with an apartment over their garage, with a truck to drive, pay for his phone and pay for most of his groceries in return for him "volunteering" his services on Mr. Wolfe and his wife's property. The expenses covered by Mr. Wolfe and his wife are essentially Mr. Hartt's only real expenses as a "single man". Consistent with this, Mr. Hartt's Form F8 Financial Statement listed monthly expenses of just \$1,085 per month, of which \$985 is allocated to rent, food and cellular phone (expenses he says he does not pay but earns through his volunteering). Mr. Hartt did not call either Mr. Wolfe or his wife as witnesses at the trial to corroborate his evidence as to the financial arrangements between them.
- [121] Mr. Hartt also did not give any evidence to reconcile the above description of his very modest living and financial arrangements with his reported income of \$47,264 in 2022. He was also not cross-examined on this. Further, since I only have the benefit of a notice of assessment for that year, I have no documentary record to assist in identifying the nature or source of this income. The only conclusion that can be drawn is that Mr. Hartt had income from some source in 2022 which he elected not to explain.
- [122] Ultimately, I have concluded that I am entitled to draw an adverse inference about the reliability of Mr. Hartt evidence regarding his lack of employment since the Company's Assignment beyond him "volunteering" his services to Mr. Wolfe and his wife. In this regard, I find this to be a distinguishable situation from *Armstrong v. Armstrong*, 2012 BCCA 166 where the Court of Appeal dealt with the difficulties about drawing adverse inferences based on interpretations of financial documentation tendered where issues are raised in the course of submissions. *Armstrong* was a summary trial wherein the evidence was all in affidavit form. This was a conventional trial where the court gave Mr. Hartt, as well as Ms. Lacoff, multiple prompts to attempt to ensure they provided relevant evidence

to the court.

- [123] Dealing with cross-examination, Mr. Hartt repeatedly rejected Ms. Lacoff's propositions as "false" statements or "false" information. In contrast, Mr. Hartt did not expressly reject Ms. Lacoff's suggestion that a minimum salary position for him with his skillset is around \$80,000. His evidence was rather that he has been trying to take care of himself; that he effectively threw in the towel after the Bankruptcies in 2019; and ultimately, that Ms. Lacoff had already received enough from him.
- [124] In terms of his overall financial position, Mr. Hartt testified that he is accumulating debt to Mr. Wolfe. The debt primarily consists of \$10,000 that Mr. Wolfe loaned him for obtaining legal advice on a limited retainer basis for the purpose of this proceeding as well as covering his travel costs to attend the trial. Mr. Hartt acknowledges that he will have to go back to work in order to repay Mr. Wolfe and his wife. This is the only claimed debt on Mr. Hartt's Form F8 Financial Statement. Mr. Hartt's only "possibly" claimed asset apart from \$600 cash in his bank accounts is the RRSP(s) I noted above which may or may not continue to exist and if so, the value is unknown but modest.
- [125] In the result, I conclude that Mr. Hartt has been intentionally unemployed and/or underemployed since the Schwartz Order in an effort avoid any obligation to pay spousal support to Ms. Lacoff. His current needs, albeit modest, are being met without declaring any taxable income and thus avoiding, to the greatest extent possible, attachment of any income by either provincial enforcement agency to satisfy the arrears owing under the Schwartz Order. I further do not accept, in the absence of admissible medical evidence, that Mr. Hartt is unable to work as result of his bipolar disorder. That conclusion is consistent with Mr. Hartt's stated intention to return to work to repay Mr. Wolfe and his wife; a financial obligation which, unlike spousal support, he is motivated to attend to.
- [126] Mr. Hartt's return to work may now be somewhat more challenging, notwithstanding his skillset, given the length of his absence from the workforce. That, however, is a consequence of Mr. Hartt's decisions following the Company's Assignment.
- [127] Notwithstanding my above conclusion, I do accept that Mr. Hartt's present financial circumstances are bleak. He has no assets of any monetary significance. And it is not a situation where there is any evidence to suggest undisclosed or concealed assets. The reality is that Mr. Hartt declared both personal and corporate bankruptcy twice in a span of 15 years and now, at age 63, has no retirement savings but for his Canada Pension Plan credits.

Legal Analysis

- [128] As will likely be apparent from the extent to which I have reviewed and weighed the relatively limited and, at times, incomplete evidence I received at trial, I consider this case to turn primarily on its facts. That is because:

- a) Mr. Hartt effectively conceded that Ms. Lacoff was entitled to non-compensatory spousal support by paying, or causing the company to pay, all of the Cottage expenses and the monthly financing payment for the Jeep from the date of separation through to in or about May 2019;
 - b) Although Ms. Lacoff commenced these proceedings in June 2017, it was not until April of 2021 that she filed the Application seeking an order for interim spousal support;
 - c) The Application was not properly served on Mr. Hartt;
 - d) The Schwartz Order, made in the absence of Mr. Hartt, ordered "interim without prejudice" support. The order was thus made, as I detailed at the outset of these reasons, without determining that entitlement to support had been established even on an interim basis and if entitlement was established, that the quantum of support was tied to an application of the SSAG to any particular Guideline income. It was very obviously, from a plain reading of the terms of the Schwartz Order, a purely true rough justice order that was not intended to be left in place for some 50 months;
 - e) The necessity for the very rough justice was the very unsatisfactory state of the evidence regarding Mr. Hartt's Guideline income at the time of the Application. As I have articulated:
 - i. There was no apparent evidentiary basis to support Ms. Lacoff's statement in her Affidavit #1 that Mr. Hartt had an income of \$550,000. Nor can I ascertain how Mr. Hartt could have been found to have a Guideline income justifying a support award of \$2,500 per month given the financial disclosure which Ms. Lacoff appended to her Affidavit #1;
 - ii. In contrast, Mr. Hartt's Guideline income was clearly not simply the approximately \$29,000 in income that he declared on his T1 personal income tax return in the years prior to separation as he asserts. Determination of Mr. Hartt's Guideline income requires, at absolute bare minimum, a consideration of the available pre-tax income of the Company after adding back the salaries and benefits received by/paid to Mr. Hartt; and
 - iii. Further, in my view, the determination of the Company's pre-tax income required some analysis as to what expenses should be added back expenses notwithstanding that they were allowed by the CRA for taxation purposes, such as but not limited to the grossly disproportionate telephone utilities in 2018 and the apparent deduction of expenses relating to the Cottage when it was primary residence of Ms. Lacoff.
- [129] Turning now to the matter of relevant legal authorities, Ms. Lacoff initially tendered no caselaw in support of her position at trial. Mr. Hartt did have a binder of some five cases that his limited retainer counsel prepared for him, but Mr. Hartt was unable to make any submissions as to the specific application of the ratios of those authorities to the case at bar. I did review them and concluded, apart for standing for certain quite basic principles, they were not terribly helpful to the Court. As a result, during the course of closing submissions, I gave the parties time to visit the law library on the third floor of the Kelowna Courthouse to determine if there were additional authorities which they could locate to bring forward

to the Court. Unfortunately, that did not have the desired result and the Court was left in the position of having to rely upon its own research. I advised the parties of the Court's intention to do so and both were content to proceed in that manner.

- [130] In this regard, a decision which covers many of the interrelated issues regarding calculating/recalculating support, including a without prejudice order in arrears, is the decision of Mr. Justice Williams in *Pereverzoff v. Pereverzoff*, 2017 BCSC 687. I recognize that the parties in *Pereverzoff* were previously married for some 16 years, had been divorced approximately five years prior to the summary trial and had four "children of the marriage" as defined by the Divorce Act. Notwithstanding these distinguishing features, certain portions William J.'s analysis regarding Mr. *Pereverzoff*'s request to recalculate the interim without prejudice support paid to Ms. *Pereverzoff*, which he was in arrears of at the time of the summary trial, are instructive.
- [131] At para. 48 of *Pereverzoff*, Williams J. reviewed the Court of Appeal decision in *Tedham v. Tedham*, 2003 BCCA 600 at paras. 57-62, where the Court of Appeal allowed an appeal following a trial where the presiding justice did not order a retroactive variation of support back to the date of an interim order. At para. 63 of *Tedham*, Prowse J.A. stated that where a payor's income at the time of the interim support bears little resemblance to their actual annual income, "an interim award is subject to adjustment at the time of the trial or final order to ensure that the children are adequately supported and that their support is fairly shared between parties."
- [132] Applying the principles from *Tedham* in *Pereverzoff*, Williams J. retroactively varied the support owing based on Mr. *Pereverzoff*'s actual Guideline income during the term covered by the interim without prejudice order (including an analysis of the expenses to be added back to Mr. *Pereverzoff*'s corporate pre-tax income) and subsequently set off any overpayment in support during the period against his arrears: see paras 62-72 and 90.
- [133] In *Burchhardt v Geismayr*, 2019 BCSC 1850, the parties were in a marriage-like relationship, there was a "child" as defined by the FLA and the "interim without prejudice" order was a desk order which imputed income for the purposes of calculating support where, it appears, entitlement was not contested. In that context, Master Elwood (as he was then) endorsed similar language regarding the de novo aspect of applications to vary without prejudice interim consent orders:
- [30] Interim consent orders that are made on a "without prejudice" basis are approached on a somewhat different basis than contested orders or consent orders that are not expressly without prejudice to the parties' rights to take a different position at a later date. As Mr. Justice Pearlman explained in *Sandhu v. Bhullar*, 2016 BCSC 59:
- [42] In *D.P.G. v. V.M.G.*, 2015 BCSC 1038, the parties attended a JCC where they consented to an order which expressly provided that on an interim without prejudice basis they would equally share parenting time. Mr. Justice Rogers heard an application by the claimant father for an interim order varying the consent order pronounced at the JCC by granting him

exclusive parenting responsibilities. The Court considered whether it should treat the claimant's application as a motion to vary an existing order, or deal with it as an initial application. At paragraph 37, Rogers J. held the "without prejudice" term of the consent order meant the order was not to be used as either a sword or a shield in later litigation on the same issues. A without prejudice JCC order was "no more than a Band-Aid provision" which did not impede the parties' freedom to argue for a different result without being hampered by "earlier agreements made extemporaneously for purposes of expediency". Accordingly, the court approached the application as if it were an initial application. [Emphasis in original.]

[134] However, after concluding that the payor's income should be imputed to a lower amount than provided in the without prejudice interim consent order, (then) Master Elwood elaborated on what the court has described as a mistake in simply recalculating the payor's arrears based on the revised Guideline income:

[39] . . . The reason for this was explained by Madam Justice Fenlon in *Beavis v. Beavis*, 2014 BCSC 422, quoting with approval from *L.B. v. J.K.*, 2012 BCPC 231, at para. 42:

[42] . . . I am of the view that if a payor's annual income falls below the income upon which the maintenance payments are calculated, then it is incumbent on the payor to bring the necessary application in a timely manner to have the maintenance payments adjusted. To accede to J.K.'s proposal would encourage payors to do nothing in the face of a reduction in income, disobey a court order over a period of several years and allow a significant sum of arrears of maintenance payments to accumulate, and then when it suits the payor, bring an application for an order which not only deprives the recipient of the maintenance she has a court order to receive, but also uses this retroactive recalculation to deprive the recipient and the children of future maintenance payments they are entitled to receive. I do not believe such an approach would do justice between the parties, nor do I believe such an approach accords with the law and the obligations the payor parent has to financially support the children.

[40] In *Beavis*, the consent order in issue required an exchange of financial information and an annual adjustment of child support in accordance with the Child Support Guidelines. On an appeal from an order recalculating the quantum of arrears, Madam Justice Fenlon held that:

[44] The starting point on an application to reduce or cancel arrears is thus the arrears as they stand under the order or separation agreement, not what they would be if the annual adjustments contemplated by the agreement or order had been made. The court may cancel or reduce the arrears as they stand, but only if it would be grossly unfair not to do so.

[45] A trial judge can assess the appropriate magnitude of any reduction in arrears by considering differences between the income on which the order or agreement is based and the payor's actual income in the same period. However, this analysis must take place after determining that it would be grossly unfair not to reduce arrears. In some cases (for example where a child has lived with the payor for an extended period) taking into account

actual income levels could be a principled basis upon which to determine a reduction in arrears. A more general assessment or percentage discount may be appropriate in other cases.

- [41] In *G.M.W. v. D.P.W.*, 2014 BCCA 282, at para. 42, the Court of Appeal adopted the factors from *D.B.S. v. S.R.G.*, 2006 SCC 37 (CanLII), [2006] 2 S.C.R. 231, for the retroactive variation of a child support order: (a) the circumstances surrounding the delay in bringing the application; (b) the payor parent's conduct; (c) the children's circumstances; and (d) any hardship caused by a retroactive child support order.
- [135] The last authority of significance which I will refer to is the recent Court of Appeal decision in *Hildebrand v. Hildebrand*, 2024 BCCA 395. In *Hildebrand*, Justice Newbury agreed with the characterization of interim without prejudice orders as "Band-Aid" measures that may be reviewed de novo during the pre-trial period: see paras. 63 and 64. Of particular relevance is Newbury J.A.'s acknowledgement of the difficulty of arguing with the truism of the chambers judge's reasoning that "'language in orders' (here the words 'without prejudice') must 'mean something'": see para. 63.
- [136] Again, however, there are important distinguishing facts in *Hildebrand* which do not make it on "all fours" with the case at bar. Most significantly, a decree of divorce had been granted back in 2015. It was accordingly no longer possible for Mr. Hildebrand to seek a determination of interim support. As held by Justice Horseman (as she was then) in *Small v. Small*, 2020 BCSC 707 the "pre-trial period" expired with the divorce decree. By virtue of same, the only means by which the chambers judge could make the order he did in *Hildebrand* was as a variation, suspension or cancellation under s. 17 of the Divorce Act.
- [137] Applying the foregoing principles to the facts of this case as I have found above, I am satisfied that the Schwartz Order should be reviewed de novo with the benefit of the "adjustment at the time of trial" guidance from *Tedham*.
- [138] That brings me in my analysis to the Court of Appeal decision in *Legge v. Legge*, 2021 BCCA 365. *Legge* was an appeal of an order dismissing a claim for spousal support made at trial some 10 years after the parties separated. There had been no interim order for spousal support ever made in this court or in related Provincial Court proceedings.
- [139] In allowing the appeal and ordering the husband to make pay \$27,000 in lump sum spousal support on account of the wife's retroactive entitlement, Justice Butler reviewed various authorities including *Kerr v. Baranow*, 2011 SCC 10, *B.S. v. S.R.G.*, 2006 SCC 37, *Lee v. Lee*, 2011 BCSC 286 and *Segura v. Segura*, 2020 BCSC 650 and ultimately concluded as follows at para. 40:
- [40] In my view, the approach taken in *Lee* and *Segura* to a spouse's delay in seeking spousal support is correct. A trial judge must consider the needs of the spouse seeking support both at the time the support should have been paid and at the time of trial. If a spouse has established a "clear entitlement" to spousal support, and that he or she underwent hardship

in the past and remains disadvantaged at the time of the hearing to determine spousal support, it would be unusual for a court to make no award for spousal support where financial resources permit, notwithstanding the delay. This is because a denial of spousal support in such circumstances could not meet the statutory objectives. In short, a court should strive to make an award that takes into account the payor's circumstances, but also gives effect to the objectives of spousal support. This can be done by awarding an amount--either by way of lump sum spousal support or reapportionment of property--that reflects a shorter duration of support. It can also be done by awarding prospective support instead of some amount for retroactive support. However, as emphasized in Kerr, a court should take a flexible approach when balancing the countervailing interests to arrive at an award that fulfills the objectives of spousal support and is sensitive to a payor's hardship.

[140] Having regard to all of the foregoing, I conclude that:

- a) Ms. Lacoff could never establish an entitlement to compensatory spousal support under the FLA as I do not find that she conferred any economic advantage upon Mr. Hartt and did not suffer any economic disadvantage as a result of the relationship or its breakdown beyond economic hardship after the company's assignment which is a factor addressed separately;
- b) Ms. Lacoff clearly had an entitlement to spousal support on a non-compensatory basis as at the date of separation. Mr. Hartt, I find, voluntarily recognized Ms. Lacoff's entitlement to non-compensatory support. Either he or Company, which he was the operating mind of, accordingly paid for all necessary expenses associated with the Cottage (which Ms. Lacoff had exclusive occupancy of) and the financing payments on the Jeep (which Ms. Lacoff had exclusive use of) until in or about May 2019. Although Ms. Lacoff prudently commenced these proceedings in June 2017 to avoid any limitation bar to her claims, I accept that Ms. Lacoff was satisfied with the financial arrangements as between her and Mr. Hartt until the Company's Assignment in May 2019. I thus do not consider it necessary to conduct a detailed retroactive analysis for this timeframe since neither party adduced anything approaching satisfactory evidence to complete same;
- c) Ms. Lacoff still had an ongoing entitlement to non-compensatory spousal support after May 2019. Ms. Lacoff was, to the knowledge of Mr. Hartt, not economically-self sufficient. Rather, she was still almost completely financially dependent upon him. Mr. Hartt further failed to adequately inform Ms. Lacoff about the precarious nature of their collective financial situation so that she could plan accordingly. The Company's Assignment in particular abruptly left her without housing;
- d) By virtue of the Company's Assignment and Mr. Hartt's personal bankruptcy, there was effectively no family property to divide, whether equally or unequally. What savings Ms. Lacoff did have could very likely have been quite simply traced back to what remained of the net sale proceeds from the disposition of her interest in the Edmonton residence and thus were at very minimal risk of exposure to a claim by Mr. Hartt;

- e) Ms. Lacoff's failure to make reasonable efforts to be economically self-sufficient after separation must result, in my view, with her being imputed income as of May 2019 for the purposes of determining the appropriate quantum of support. However, her failure to be economically self-sufficient does not disentitle her to spousal support in these circumstances given the fact that her historical income earning capacity was in the range of \$25,000 to \$30,000 per annum; an income level that she has since returned to. Said another way, had Ms. Lacoff returned to paid employment in 2019, I am not satisfied there is any evidentiary basis to support a finding that her income at present would be in excess of her current Guideline income of \$32,731 per annum. Ms. Lacoff's skillset is, I conclude, consistent with that level of remuneration, and it took some time to find a suitable position wherein she could earn that. For the purposes of determining support for the period commencing June 1, 2019, I shall impute Ms. Lacoff with a Guideline income of \$20,000 per annum as I think that is a fair determination of what Ms. Lacoff could have earned at that time had she put greater effort into securing some type of employment at that time;
- f) My conclusion to impute Ms. Lacoff a Guideline income of \$20,000 is also generally consistent with her reported income in 2021 and 2022 when her income from those years is averaged;
- g) Mr. Hartt's intentional unemployment and/or underemployment also requires him to be imputed a Guideline income for the purposes of determining the appropriate amount of support. By virtue of the Company's Assignment, reliance upon Mr. Hartt's historical income earning capacity must weighed and considered appropriately. Moreover, there must be an evidentiary foundation for the imputation of income. It cannot be mere speculation: see *Barnes-Morrison v Kolas*, 2024 BCSC 2033 at para. 87.
- h) However, based upon the financial records the Company during the relationship and up to the Company's Assignment, I am satisfied that Mr. Hartt either had an effective Guideline income of at least \$100,000 per annum or a skill set commensurate with earning such an income from an arms-length employer. Simply stated, I am satisfied there is an evidentiary basis to impute Mr. Hartt a Guideline income of \$100,000 per annum. Had Mr. Hartt made any meaningful effort to return to the workforce after the Company's Assignment (apart from his unexplained income in 2022), Mr. Hartt could put forward an argument to use his actual income but his decision to simply absent himself without bona fide reason from the workforce necessitates the court imputing him an income based on the evidence tendered at trial;
- i) In this regard, and expanding on the foregoing, it merits noting that Mr. Hartt's Guideline income was arguably higher than \$100,000 at times prior to May 2019 if the court were to take a robust approach to adding back expenses to the corporate pre-tax income of the Company. However, it was not on my analysis. below this threshold. Ms. Lacoff was also correct in suggesting to Mr. Hartt in cross-examination that \$80,000 was effectively his baseline income if he were to obtain a position from an arms-length employer. Mr. Hartt simply never pursued such a position after the Company's Assignment and continues to not

pursue one despite, I find, there not being any medical impediment to him returning to the workforce. As noted, this puts the court in the position of having, at law, to impute him an income on the basis of the evidence before the court. In all the circumstances and having regard to my review of the limited income documentation that was tendered for the purposes of trial, I conclude that for the period commencing June 1, 2019, it is appropriate to impute Mr. Hartt with a Guideline income of \$100,000 per annum;

- j) Mr. Hartt will, I expect, consider this imputation of Guideline income as unfairly disregarding his reported taxable personal income in the years leading up to separation. I make this assumption because all of the DivorceMate calculations tendered by Mr. Hartt as part of his submissions were premised upon him having a Guideline income of \$29,000 per annum. Beyond all the other reasons I have provided for reaching my conclusion regarding Guideline income determination, what Mr. Hartt needs to appreciate in this regard is the inability of the court to reconcile that submission with his other evidence that he/the Company paid for virtually everything during the relationship while Ms. Lacoff did not work or otherwise contribute financially. Further, he/the Company continued to do so for an extended period of time after separation until the Company's Assignment. Mr. Hartt also cannot lay the blame on Ms. Lacoff for the Company's deteriorating financial performance after separation as explaining his decision to not pursue employment after the Company's Assignment when he was solely in control of the Company's finances and was unwilling to "fire sale" assets such as the Coach which would have put some much-needed cash into the Company's coffers;
- k) The parties' relationship was six years (72 months) in duration. Upon close consideration of the parties' ages at both the date of commencement and the date of separation, the "Rule of 65" is not engaged. Ms. Lacoff effectively concedes this in her relief sought. Accordingly, the suggested duration of support under the SSAG, given I have already confirmed that Ms. Lacoff has established entitlement, is between 3 years (36 months) and 7 years (72 months);
- l) Balancing the informal support arrangements that were in place until May 2019, the abrupt termination of those informal arrangements without sufficient warning to Ms. Lacoff, the lack of family property to divide, my decision to impute Ms. Lacoff a Guideline income of \$20,000 per annum as of June 1, 2019 and the lack of a compensatory entitlement to support, I am satisfied that Ms. Lacoff should receive support at the lower (not lowest) end of the range at three and one-half years (42 months). This duration of support, which has a significant transitional component, takes Ms. Lacoff to start of 2023 which roughly coincides with Ms. Lacoff achieving economic self-sufficiency through her self-employment at/for Vita Vernon;
- m) I recognize that justification for awarding Ms. Lacoff support at the high(er) end of the duration range could be drawn both from s. 162(c) of the FLA and the from the reasons expressed at paras. 39-41 of Burchhardt referenced above regarding a concern about encouraging payors to disobey court orders over a significant period and then bring an application to vary the order when it suits them to deprive the recipient of the support they

have a court order to receive. However, in my view an award on the higher end of the range that would give inadequate weight to the informal support arrangements that were in place prior to the Company's Assignment which Ms. Lacoff benefited from and fail to take into consideration the fact that as of the end of 2023, Ms. Lacoff's own evidence is that her modest needs were capable of being met by her modest income;

- n) Given that Ms. Lacoff's entitlement to support is entirely retroactive, it is necessary to consider the principles from Kerr. In this regard, Ms. Lacoff's case is stronger than that of Ms. Legge. Although it took almost nine and one-half years for the matter to come to trial, Ms. Lacoff went to court and obtained an interim support order in May of 2021. Ultimately, that order proved to be of very little value and I have, as indicated, proceeded with a hearing de novo. However, it does satisfactorily explain the delay. Further, Mr. Hartt's intentional disregard of the Schwartz Order constitutes very significant blameworthy conduct. I address the issue of hardship to Mr. Hartt when fashioning an appropriate award but I do not consider the hardship in the sufficient circumstances to disentitle Ms. Lacoff to retroactive support;
- o) If support was/is paid periodically, the range provided for under the SSAG based upon Mr. Hartt having an imputed Guideline income of \$100,000 per annum and Ms. Lacoff having an imputed Guideline income of \$20,000 per annum is between \$600 and \$800 per month. This periodic amount does not vary despite of any change to the calculation year using DivorceMate software;
- p) If four years of support were to be paid in a lump sum, the range of support using the 2019 calculation year formula is between \$18,756 and \$25,528. In contrast, if the 2025 calculation year formula is used (given the fact that Ms. Lacoff did not receive any lump sum in 2019) the range is between \$21,293 and \$27,506;
- q) Having regard to Mr. Hartt's failure to pay support pursuant to the Schwartz Order and the attractiveness of clean break when the support is being paid solely on account of a retroactive entitlement, a lump sum support payment would be very appropriate. However, Mr. Hartt has no assets which he could use to pay a lump sum award and accordingly, absent friends or family loaning Mr. Hartt the money to satisfy the lump sum award, enforcement would inevitably have to occur through periodic payments in any event;
- r) The reality is that Mr. Hartt is going to have to go back to the workforce not just to pay Ms. Lacoff but also to repay the monies already loaned to him by Mr. Wolfe and his wife. He acknowledges the latter. By making a periodic support order, Mr. Hartt will have the ability to deduct the spousal support payments from his income to his benefit and the corresponding tax burden on Ms. Lacoff is modest given her reported income; and
- s) Having regard to the circumstances, including the very limited assets Ms. Lacoff left the relationship with in her personal name, Mr. Hartt's awareness of her income earning potential and Mr. Hartt's acknowledgement of Ms. Lacoff's financial dependency upon him as a result of the relationship and the breakdown thereof, I conclude that support on the

high end of the range is warranted in this case. An award of less than the high end would not, I conclude, adequately address the means, needs and other circumstances of each spouse as required by s. 162 of the FLA.

- [141] On the basis of all the foregoing and for the reasons articulated, I have determined that Ms. Lacoff is presumptively entitled to spousal support from Mr. Lacoff in the amount of \$800 per month for a period of 42 months, which will commence on June 15, 2025.
- [142] If this were an application for reducing or cancelling arrears under s. 174 of the FLA, I would not give Mr. Hartt credit for the amounts garnished and/or attached pursuant to the Schwartz Order as he made no efforts to voluntarily comply with his obligations thereunder or bring the matter back to court in a timely way. The amount garnished and/or attached is also not grossly unfair, even having regard to Mr. Hartt's current financial circumstances.
- [143] However, given I have concluded that it was appropriate as a matter of law to treat this as a hearing de novo, it would be inconsistent to simply ignore payments received from Mr. Hartt pursuant to the Schwartz Order since there is no other way to characterize those payments other than as representing spousal support to Ms. Lacoff.
- [144] Mr. Hartt is thus entitled to offset the sum of \$4,835.69 against his ongoing prospective spousal support obligations to Ms. Lacoff.
- [145] Based upon Ms. Lacoff's presumptive entitlement to \$800 per month in support for a period 42 months, the offset of this credit results in a reduction of \$115.14 per month to the benefit of Mr. Hartt. The amount owing by Mr. Hartt, after the offset, is \$684.86 (rounded to \$685) per month.
- [146] Having regard to this offset credit and the fact that I am awarding periodic ongoing support in lieu of a lump sum payment for a retroactive support entitlement by necessity, the spousal support payable by Mr. Hartt to Ms. Lacoff shall be fixed and not subject to variation regardless of any material change in circumstances. There is also no review contemplated by my order.
- [147] Given there are no arrears of spousal support owing pursuant to the Schwartz Order, no orders under s. 172(3) or (4) of the FLA are required. Any failure to pay support in accordance with this order shall be subject to enforcement by the applicable maintenance agency/agencies in the normal course in accordance with the governing legislation, including interest.

Summary of Spousal Support Order

- [148] In summary, the terms of my spousal support order are as follows:

- a) Commencing June 15, 2025, and continuing on the 15th of each month thereafter for a period of 42 months, Mr. Hartt shall pay to Ms. Lacoff spousal support of \$685 per month. This spousal support shall be tax deductible to Mr. Hartt and taxable in the hands of Ms. Lacoff;
- b) The amount of spousal support payable by Mr. Hartt to Ms. Lacoff shall not be varied regardless of any material change in circumstances;
- c) Upon payment of 42 months of spousal support in the amount of \$685 per month, Mr. Hartt's obligation to pay spousal support to Ms. Lacoff shall be terminated; and
- d) There are no arrears of spousal support owing pursuant to the Schwartz Order and Mr. Hartt's balance owing with BCFMA and/or SME shall be set, as per this order, at \$0 as at June 15, 2025.

Costs

[149] Rule 16-1 and Appendix B of the Rules govern costs in family law cases. The general rule is that costs should follow the event. That is, they are awarded to the successful party unless the court otherwise orders: see R. 16-1(7).

[150] In the event a party is not successful on all issues, the court may still award costs on a party's substantial success: see *Marquez v. Zapiola*, 2014 BCCA 35. This analysis is done while considering substantial success on the majority of issues of substance and not the number of issues: see *Rattenbury v. Rattenbury*, 2001 BCSC 593. Substantive success is an objective measure of the parties' relative success or failure on the issues: see, again, *Marquez*.

[151] Within that framework, I conclude there was divided success between the parties. Specifically:

- a) Ms. Lacoff obtained an order for spousal support but the amount of the award, both in terms of quantum and duration, was substantially less than the amount which she was seeking.
- b) Mr. Hartt succeeded, as a matter of law, in having the issue of spousal support considered de novo. The result of that is my conclusion that no arrears of support exist under the Schwartz Order. However, Mr. Hartt does have a support obligation to Ms. Lacoff which shall continue for a period of 42 months commencing on the 15th of this month.

[152] On the basis of my finding of divided success, I conclude it is appropriate that parties shall bear their own costs of this proceeding.

[153] Ms. Lacoff shall be responsible for preparing the initial draft form of the final order. Upon receipt of Ms. Lacoff's draft form of final order, Mr. Hartt shall have 14 days to either return the signed form of order to Ms. Lacoff or indicate his proposed revisions to the draft order in writing. If the parties still cannot agree on the terms of the final order, either party may take out an appointment to settle the terms of the order before the registrar under the Supreme Court Civil Rules with the benefit of these written reasons for judgment.

"Hardwick J."

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