
CANADA / JUDGMENT

R.B.W. v. C.D.W.

2022 BCSC 1757

COURT

Supreme Court of British Columbia

DECIDED

7 October 2022

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

2022 BCSC 1757 R.B.W. v. C.D.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.B.W. v. C.D.W.,

2022 BCSC 1757

Date: 20221007

Docket: E51968

Registry: Vernon

Between:

R.B.W.

Claimant

And

C.D.W.

Respondent

Before: The Honourable Mr. Justice Hori

Reasons for Judgment

Counsel for the Claimant:

C.R. Christiansen

Appearing on her own behalf:

C.D.W.

Place and Date of Trial:

Vernon, B.C.

November 2-5, 2020, March 28-April 5 and April 7-8, 2022

Place and Date of Judgment:

Vernon, B.C.

October 7, 2022

Introduction

[1] The parties have pursued their remedies in this family law case in two separate trials. The court has already decided the property division issues. These reasons follow upon a trial to determine:

- a) parenting issues for two children of the marriage;
- b) child support for three children of the marriage; and
- c) spousal support.

[2] The parties began living together in 1991. They were married on May 14, 1995 and separated on April 13, 2018.

[3] When the parties began living together, the respondent had a son, H.C., from another relationship. H.C. lived with the parties when they began living together and the claimant assumed the role of father to H.C. H.C. is now 31 years of age.

[4] During their relationship, the parties had five children together:

- a) M.W., who is 27 years of age;
- b) T.W., who is 25 years of age;
- c) H.W., who is 21 years of age;
- d) C.W., who is ten years of age; and
- e) L.W., who is nine years of age.

In these reasons, I will refer to M.W., T.W., and H.W. as the older children, and C.W. and L.W. as the younger children.

[5] In 2004, the parties assumed the care of V.A. who is the daughter of the respondent's niece. The parties took over parental responsibilities for V.A. shortly after her birth and since then, they have treated V.A. as part of their family. However, V.A. no longer resides with either of the parties and no remedy is sought with respect to V.A.

[6] The parties seek parenting orders with respect to C.W. and L.W., including orders related to:

- a) Primary residence for the two children;
 - b) Parenting time with the two children;
 - c) Parental responsibilities, including ultimate decision-making authority with respect to education and medical care for the two children;
 - d) Parental communications; and
 - e) Parent counselling.
- [7] The respondent seeks both past and prospective child support as well as special and extraordinary expenses for H.W., C.W. and L.W.
- [8] The respondent also seeks past and prospective spousal support from the claimant.
- [9] With respect to support, the claimant seeks to attribute income to the respondent on the basis that she has not fulfilled her obligation to seek out and secure gainful employment.

Background

- [10] The claimant is 50 years of age and the respondent is 51 years old.
- [11] The parties met in December 1991. The trial judge in the property division trial found that the parties began living in a marriage-like-relationship in June 1991. They were married on May 14, 1995. In deciding the property division issues, the trial judge held that the parties separated on April 13, 2018.
- [12] The parties moved to Surrey, British Columbia in 1992. When they moved to Surrey, the respondent's son, H.C., began living with them. The claimant left the relationship for a period of time before their first child, M.W. was born, in 1994. Once M.W. was born, the parties reconciled and began living together once again.
- [13] During the parties' first separation, the respondent began attending a Christian church in Surrey. The claimant also joined the church after the parties reconciled. The claimant testified that his heart was not in it, but he did not mind going to church as their circle of friends revolved around the church.
- [14] In 1996, the parties moved to Salmon Arm, British Columbia. The parties' second child, T.W., was born in the same year.
- [15] Later in 1996, the parties moved from Salmon Arm to Williams Lake, British Columbia, because the claimant secured a job in a sawmill in Williams Lake.
- [16] When the parties moved to Williams Lake, they continued to attend church and to follow their religious beliefs.

- [17] However, while in Williams Lake, the relationship between the parties began to falter. The respondent found the claimant kissing a friend's wife and the claimant revealed that he had committed adultery with the respondent's niece in 1994. As a result of these revelations, the parties sought counselling through their church.
- [18] When the parties lived in Williams Lake, the claimant testified that the respondent pressured him to homeschool H.C. The claimant resisted the respondent's wishes and H.C. attended public school in Williams Lake.
- [19] In 1999, B.C. Hydro accepted the claimant into an apprenticeship program. However, the apprenticeship required the parties to move to Cranbrook, British Columbia.
- [20] The parties' third child, H.W., was born in Cranbrook in 2000. The school-aged children attended Christian school in Cranbrook because, according to the claimant, the respondent did not agree with the curriculum offered in the public schools.
- [21] During his apprenticeship, B.C. Hydro required the claimant to relocate from Cranbrook to Mission, British Columbia. Once in Mission, the respondent once again expressed a desire to homeschool the children. The claimant agreed to finish the school year in Mission by homeschooling the children. The claimant believed that homeschooling would be less disruptive for the children because he knew that they would be moving again when he completed his apprenticeship.
- [22] When the claimant completed his apprenticeship program, he obtained a job with B.C. Hydro in Vernon, British Columbia. As a result, in 2003 or 2004, the parties moved to the Vernon area and rented a residence in Armstrong, British Columbia.
- [23] While living in Armstrong, V.A. came to live with the parties.
- [24] The topic of homeschooling came up once again when the parties moved to Armstrong. The respondent wished to homeschool the children, but the claimant did not. The claimant testified that the parties had an argument over homeschooling and that eventually his position prevailed. Therefore, the respondent reluctantly enrolled the children in public school.
- [25] When they moved to Armstrong, H.C. was going into grade 10. During his first year of school in Armstrong, H.C. had issues at school near the end of the year. Therefore, the respondent removed H.C. from public school and began homeschooling him. However, M.W. and T.W. continued in public school and appeared to do well in that setting.
- [26] The claimant testified that the reason the respondent was insisting upon homeschooling was because of her religious beliefs. The claimant testified that the respondent had been communicating with Fundamentalist Christian families who were providing her with information that the teachings in public schools clashed with their Christian beliefs.
- [27] The claimant did not wish to have the children homeschooled because:

- a) he was not confident that the respondent could teach the children herself because she had not graduated from high school and, in the upper years such as grade 10 and onwards, the curriculum became more complex;
 - b) homeschooling would cause the children to miss out on many other activities such as sports, extracurricular activities and field trips;
 - c) the children would miss out on the daily interactions they would have with other students in school;
 - d) the children could stay in public school and continue to be educated in their religious beliefs; and
 - e) the expectations of their religious beliefs were that girls would not take post-secondary education because they were directed to be housewives. This was an issue for the claimant because he had four daughters.
- [28] The topic of homeschooling the children came up again in approximately 2005. The claimant's evidence is that, against his better judgment, this time he agreed to homeschooling because he did not want to start another argument and he thought it would be good for their marriage. The respondent has been homeschooling the children since.
- [29] Shortly after moving to Armstrong, the parties acquired an acreage from the claimant's father and built a house on the property. The family lived on that property until they sold it and purchased a house in Vernon.
- [30] The parties sold the Vernon property in 2015 and moved into a rental house in Lavington, B.C. where they lived until the date of separation.
- [31] The relationship between the parties continued to deteriorate. In 2017, the claimant took a work assignment in Edmonton, Alberta, for an extended period of time. While in Edmonton, the claimant commenced a relationship with another woman. During the Christmas season of 2017, the claimant returned to Vernon to be with his family. During this time, H.W. discovered text messages between the claimant and the woman in Edmonton. The text messages led to the conclusion that the claimant was having an affair.
- [32] H.W. told the respondent about the text messages that she had discovered. When confronted with the text messages, the claimant revealed that he was involved in an affair. This revelation led to the separation of the parties and a complete estrangement of three children, H.C., M.W. and H.W., from the claimant.
- [33] The parties separated on April 13, 2018.

- [34] Around the time of the separation, the landlord of the rental house in which the family resided, gave the parties notice to end the tenancy. Therefore, in May 2018, the claimant purchased a house in Enderby, British Columbia (the "Enderby House"), to provide a place for the respondent and the children to live. The claimant has never lived in the Enderby House.
- [35] After the separation, the claimant rented a house in Vernon in which he currently resides with his new partner. The claimant rents this residence from his brother at a rate lower than market rent because the claimant provides property management services to his brother.
- [36] After the separation, the respondent and the children, who live with her, lived in the Enderby House. However, the property division trial resulted in the sale of the Enderby House in October 2021. On the sale of the Enderby House, the respondent and the children moved to a rental property in Salmon Arm.
- [37] The respondent currently resides with her fiancé in the rental property in Salmon Arm. However, the respondent must vacate that property shortly. When she vacates that property, the respondent plans to live in a trailer on a property in Tappen, B.C. which is owned by the respondent's fiancé.

Applicable Legislation

- [38] The pleadings in this action seek the relief claimed in this trial pursuant to both the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] and the Family Law Act, S.B.C. 2011, c. 25. However, in their submissions, the parties relied only on provisions of the DA. Therefore, I will decide the issues pursuant to the provisions of the DA.

Parenting Orders

- [39] The parties seek parenting orders for C.W. and L.W.
- [40] Making the appropriate parenting orders in this case is difficult because of the significant animosity and vindictiveness that exists between the parties. There is a great deal of distrust and anger felt by the respondent towards the claimant as a result of the claimant's infidelity.
- [41] There is no question that these feelings of distrust and anger have spilled over to the children. The older children, no doubt through what they have heard from their mother, have taken sides against the claimant. It is not clear what the younger children know about their parents' issues, but I have no doubt that they are aware to some degree. I am also convinced that the information the younger children receive is coloured against their father due to the influences of their mother and their older siblings.
- [42] A letter written by the respondent to the claimant dated February 25, 2018, indicates that the children were aware of the details of the separation. In that letter, the respondent specifically refers to the two youngest children. She writes as follows:

[C.W.] is beginning to put together the pieces. She is asking why you have chosen a new life. She knows you have "kissed a new girl" and doesn't love mommy anymore.

[L.W.] is concerned you will "go to hell because you can't have two wives", and wondering what Daddy's new family looks like.

[43] In addition, in a letter dated May 4, 2018, it is clear that the respondent was speaking to friends, family members, pastors and her own children about the situation. She writes:

After seeking much advice from counsellors, friends, family members, pastors, lawyers, and even our own children; it is with a heavy heart that I make this step forward. My intention is to protect the future of our children, and myself; [their] mother.

[44] In that same letter, she goes on to write as follows:

I personally can no longer remain controlled, manipulated or emotionally abused by you. I have sought much counsel about these very issues and am confident that I need to grant you the separation you are asking for. You are unwilling to receive council or to repent at this point so I have no choice but to move forward and protect my family. You have twisted things and turned the focus onto me, not taking ownership of any of your sins. Have you forgotten the facts about the lying and cheating, drinking in [excess] (have receipts to prove), posting sex ads, subscribing to porn channels, signing up for dating sites, spending in excess, moving money into investments without talking to me, physically assaulting our daughter and refusing to financially support her and now you have turned this all into a "lonely"-unloved self-pity mantra. Take responsibility for YOUR SIN and the pain you have caused everyone who loves you.

[45] The respondent admits to have read the contents of this letter out loud to the claimant in the presence of M.W.

Section 16 of the Divorce Act

[46] When making parenting orders, s. 16(1) of the DA provides that the court must consider only the best interests of the children.

[47] In determining the best interests of the children, s. 16(3) of the DA requires the court to consider all factors related to the children's circumstances, including specific factors enumerated in that section. When considering those factors, s. 16(2) of the DA provides that the court must give primary consideration to the children's physical, emotional and psychological safety, security and well-being.

[48] In that context, I will consider each of the s. 16(3) factors.

Needs of the Children - s. 16(3)(a) of the DA

[49] Section 16(3)(a) of the DA requires the court to consider "the child's needs, given the child's age and stage of development, such as the child's need for stability."

- [50] The respondent was the primary caregiver for C.W. and L.W. during the marriage and continued in that role after separation. The respondent has also been the children's teacher in the homeschool program.
- [51] The claimant supported the family financially during the marriage and continued to do so, to some degree, after the separation. However, after the separation, the claimant wished to become more involved in parenting the children than the respondent would allow.
- [52] With respect to the needs of the children, Dr. England, a psychologist, wrote the following in her s. 211 report at page 38:

The children's history of care therefore is strongly skewed in that they have spent much more time being parented by their mother than their father. With such a history, it is understandable that having their father become more involved in their lives is relatively new for them. Children with such a history may show some difficulties transitioning to a parenting arrangement that becomes more equalized; however, this has been shown to be a relatively short-term issue. Long-term, children are best served by having both parents as fully involved in their lives as possible, regardless of the history of care that precedes such an arrangement.

- [53] In addition, the children are now at an age where they will benefit from a more balanced perspective of the world in which they live rather than a perspective gained through the lens of their mother. The respondent has chosen to live her life heavily involved in and surrounded by her chosen faith and the people who share her perspectives. In order to properly prepare the children to meet the challenges of the world in which they live and to make future informed decisions about how they wish to live their lives, the children ought to be exposed to the alternative perspectives held by their father.
- [54] Of particular concern is the respondent's views about the COVID-19 vaccine and C.W. and L.W.'s apparent reluctance to be vaccinated against the COVID-19 virus. The children's reluctance to be vaccinated is, no doubt, based upon the information that they have received directly from their mother or have gleaned from conversations overheard within her mother's group of friends.
- [55] The respondent's view about the COVID-19 vaccine is set out in an email from the respondent to the claimant dated December 9, 2021. In that email, the respondent describes the COVID-19 vaccine as "an unproven unsafe genetic therapy". The opposing view, held by the federal and provincial health agencies, is that the COVID-19 vaccine is safe and effective. The claimant does not have the same views as the respondent on the COVID-19 vaccine.
- [56] In the long term, the children may benefit from hearing both views on the COVID-19 vaccine. However, at this point in their lives, the children's parents must provide for the children's needs or, if the parents cannot agree, then the court must intervene.

- [57] Depriving the children of the COVID-19 vaccine is not in their best interests based on the directives of the medical authorities. Therefore, the respondent's views on the vaccine is one factor that I have considered in assessing the needs of the children and their best interests.

The Nature and Strength of the Children's Relationships -s. 16(3)(b) of the DA

- [58] Section 16(3)(b) of the DA requires the court to consider the nature and strength of the children's relationships with each spouse, each of the children's siblings and grandparents, and any person who plays an important role in the children's lives.
- [59] The children clearly have a close and strong relationship with their mother. The respondent has been their primary caregiver and their teacher for their entire lives.
- [60] The lesser role that the respondent played in the care and nurturing of the children during the marriage and after separation, has affected the strength of his relationship with the children.
- [61] Dr. England stated in her s. 211 report that the children "are best served by having both parents as fully involved in their lives as possible, regardless of the history of care that precedes such an arrangement", provided that there are no other factors that militate against this result.
- [62] There is also a strong and caring relationship between the children and their siblings. However, the children's siblings have chosen sides in this family law dispute. Two children of the marriage, M.W. and H.W., refuse to have any contact with the claimant.
- [63] The respondent chose to involve the children, H.C. and H.W., directly in the parties' family law issues by tendering them as witnesses.
- [64] H.W.'s open hostility toward the claimant was evident during her testimony at trial. During her testimony, H.W. had nothing positive to say about her father. For reasons that I will outline later in this decision, I find H.W. lacking in credibility. However, H.W. conceded that she told the younger children to be careful around the claimant. I accept that H.W. gave her younger siblings such a warning because doing so is consistent with her feelings of hostility toward the claimant.
- [65] In these circumstances, while an ongoing relationship between the children and their siblings is important to maintain, there is a risk that the older children will continue to transfer their hatred of the claimant to C.W. and L.W. Therefore, I find that fostering an ongoing relationship between the older children and C.W. and L.W. is not a significant factor in determining what is in the best interests of the children. It is more important to foster a positive relationship between the two youngest children and the claimant so that they can have their own experiences with him.

Willingness to Support the Children's Relationship with the Other Spouse -s. 16(3)(c) of the DA

- [66] Section 16(3)(c) of the DA directs the court to consider each spouse's willingness to support the development and maintenance of the children's relationships with the other spouse.
- [67] The respondent is reluctant to support the development of a relationship between the children and the claimant. The reason for her reluctance appears to be her fear that the claimant will cause harm to the children and her general feelings of animosity toward him.
- [68] The fear that the claimant will cause harm to the children is unfounded. I review this issue when I consider the family violence factor later in these reasons. The respondent's animosity toward the claimant has no bearing on whether the claimant should have a relationship with his two youngest children.
- [69] The respondent has severely restricted the claimant's parenting time with the children. In her words, the parenting time she allows to the claimant is "limited and specific".
- [70] There are numerous examples in the evidence where the respondent's lack of communication or unilateral decision-making have deprived the claimant of his agreed-upon and anticipated parenting time with the children. Some examples of those instances are as follows:
- a) On May 28, 2018, the claimant requested parenting time with the children on the weekend of June 2, 2018. The claimant made seven requests for parenting time on the weekend, all of which were unanswered by the respondent. Accordingly, the claimant did not have parenting time with the children that weekend. When the claimant sought an explanation for why the respondent did not respond to him, the respondent also did not respond to those queries;
 - b) On January 15, 2019, the respondent made allegations of inappropriate conduct on the part of the claimant to the Ministry of Children and Family Development ("Ministry"). As a result of these allegations, the Ministry put a safety plan in place under which the claimant was not to have direct access to the children until the Ministry had interviewed the children. After the Ministry completed its investigation, the Ministry concluded that there were no current concerns regarding the claimant's contact with the children. Accordingly, on February 8, 2019, the Ministry left a voicemail message for the respondent stating that the safety plan was no longer in effect. On February 8, 2019, the claimant sought to arrange parenting time with the children for that weekend. The respondent replied to the claimant on February 9, 2019, with "Please leave me alone. I have an appointment with the social workers Tuesday." Notwithstanding that the Ministry had lifted the safety plan, the claimant did not receive parenting time with the children until February 13, 2019;

- c) In June 2020, when the claimant sought to spend Father's Day with his children, the respondent denied the request with the explanation that she had plans already for the weekend and would be away. When the claimant sought to arrange parenting time for future Father's Days, Mother's Days and birthdays, the response was, "When will you be paying child support?"
 - d) On at least two occasions, the respondent denied parenting time to the claimant on the basis that the children had been exposed to the COVID-19 virus. However, when the claimant asked to speak with the children by telephone, the respondent denied or ignored those requests. When the claimant asked for the phone number for the children's doctor, the respondent ignored those requests;
 - e) On May 17, 2021, the claimant asked the respondent to discuss the summer parenting schedule and the options for a summer camp. The respondent did not respond until June 16, 2021. The response was that the respondent would not consent to the children going to summer camp unless the claimant transported them to and from the respondent's residence in Enderby every day except Monday and Wednesday morning when she would drive the children to the camp; and
 - f) On February 10, 2022, the respondent sought to switch the claimant's parenting weekend from February 18 to February 11, 2022. When the claimant refused to make the change, the respondent unilaterally deprived the claimant of his scheduled time with the explanation that "Well we will be away."
- [71] The numerous emails and text messages presented in the evidence show a pattern on the part of the respondent of limiting the claimant's parenting time or depriving him of his agreed upon, or court ordered, parenting time when it suits her purposes. It also suggests a pattern of conduct that has the result of detracting from the claimant's ability to strengthen his relationship with the children.
- [72] On the other hand, the claimant seems to understand that it is in the children's best interests when the parents meet the children's expectations. For example, the claimant gave up his parenting time in July 2020, so that the respondent could take a trip with the children. The respondent had told the children about attending the wedding of the respondent's sister before speaking to the claimant. Because the trip occurred during the claimant's parenting time, the respondent asked the claimant to give up his time. In order to not disappoint the children, the claimant gave up his time with his children so that they could make the trip to the wedding.
- [73] Based on the historical conduct of the parties, the claimant has not shown any unwillingness to support and maintain the children's relationship with the respondent. However, the respondent has clearly shown an unwillingness to support and maintain the children's relationship with the claimant .

History of the Children's Care -s. 16(3)(d) of the DA

- [74] Section 16(3)(d) of the DA directs that one of the factors to consider in the best interests of the children is the history of the children's care.
- [75] There is no dispute that the respondent was the primary caregiver for the children during the relationship. There is also no dispute that the respondent continues to be the primary caregiver for the children in that the claimant has only had limited and specific parenting time since the separation.
- [76] However, the claimant wishes to increase his involvement in the care and nurturing of the children and, according to Dr. England, in the long-term, it is in the children's best interests to have both parents as fully involved in their lives as possible.

Views of the Children -s. 16(3)(e) of the DA

- [77] Section 16(3)(e) of the DA provides that the court should consider the views and preferences of the children, giving due weight to the children's age and maturity, unless those views cannot be ascertained.
- [78] The children are now nine and ten years old. They were seven and nine years of age when this trial began, and they were seven and eight years of age when the s. 211 report was prepared.
- [79] There is no specific Views of the Child report prepared in this case. However, the children expressed their views as best they could to Dr. England when she prepared the s. 211 report.
- [80] The current views of the children are not before the court. I have heard evidence from the parties about the views of the children on various issues in this litigation. However, I am not satisfied that the views of the children, as expressed through the evidence of the parties, is reliable. The parties' biases and their feelings of animosity toward each other have tainted their perception of the views of the children. Therefore, Dr. England's s. 211 report is the only reliable source for the views of the children.
- [81] Dr. England prepared her s. 211 report following interviews of the children on August 26, 2019. I recognize that due to the passage of time, the views of the children may have changed since the interviews. However, given the limited and specific parenting time that the claimant has with the children, I am concerned that any changes in their views have been influenced by the respondent, M.W. and H.W. Therefore, I have considered the views of the children as expressed to Dr. England in August 2019 because they are the most reliable evidence available.
- [82] Dr. England reports that C.W. expressed love for both of her parents and a desire to spend time with both of them. Dr. England reports that C.W. has heard negative comments made by both parents about the other parent, but appeared to be relatively unaffected by the parental issues.

- [83] L.W. also expressed feelings of love toward both of her parents. L.W. appeared to be excited about spending time with the claimant. The only potentially negative comment made by L.W. to Dr. England is that it was "kind of boring" at the claimant's house. Dr. England also indicates that L.W. has heard negative comments from the parties about each other, but again seemed relatively unaffected by the parental issues.
- [84] There is nothing in the views of the children that would lead me to conclude that spending time with the claimant is contrary to the children's best interests.

Cultural, Linguistic and Spiritual Upbringing -s. 16(3)(f) of the DA

- [85] Section 16(3)(f) of the DA provides that the children's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage, are factors to consider in the children's best interests.
- [86] When the parties first began living together, they were not involved extensively in religious pursuits. However, during the relationship the respondent became heavily involved in a Fundamentalist Christian religion. With the respondent's encouragement, the claimant also became involved in this religious lifestyle. The parties' children grew up in a Fundamentalist Christian household.
- [87] As time went by, the claimant withdrew from their religious lifestyle. The claimant's withdrawal from that way of life created significant differences between the respondent and the claimant.
- [88] Further, the claimant testified that he now feels ostracized and unwelcome by members of the church. He attributes this not only to the separation and acrimony between him and the respondent but also to the disclosure of the details of the separation to the church members.
- [89] Accordingly, while the respondent continues to follow the family's past religious practices, the claimant does not participate.
- [90] The religious and spiritual upbringing of the children is an important factor. However, where there is such a divergent view between the parties on the religious practices historically followed by the family, the need to maintain the children's religious and spiritual upbringing cannot be determinative of what is in the best interests of the children.
- [91] There is a diversity of religious views in this world and, in particular in this family. Regardless of the ultimate decision in this case, the parties should allow the children to maintain their religious and spiritual beliefs, if they so wish. There is no evidence to suggest that if the claimant has more significant parenting time he would deprive the children of their ability to follow their religious and spiritual pursuits.

Plans for the Children's Care -s. 16(3)(g) of the DA

- [92] Section 16(3)(g) of the DA compels the court to consider the parties' plans for the children's care.
- [93] The claimant is working at a job that currently takes him away from home from time-to-time. However, he has a support system in place for the care of the children in his absence. The claimant's mother, who has a close relationship with the children, lives close to the claimant's residence. The evidence is that his mother is available to provide care for the children in his absence.
- [94] The claimant also resides with his new partner. The children have not yet developed a close bond with the claimant's new partner. However, that may partly be due to the relatively minimal amount of time that they have had in the claimant's care.
- [95] The claimant is also pursuing another position which would not require the amount of travel that his current position requires. However, if the claimant is unsuccessful in this pursuit, I find that the support system he currently has in place for the care of the children is appropriate to properly care for the children in the claimant's absence.
- [96] The respondent's plan for the care of the children will continue as it has always been. Her main focus is the care of the children and their schooling. She does not work outside the home.

Ability and Willingness to Care for and Meet the Needs of the Children -s. 16(3)(h) of the DA

- [97] The ability and willingness of each parent to care for and meet the needs of the children are factors to consider under s. 16(3)(h) of the DA.
- [98] Both parties are able and willing to care for and meet the needs of the children. The difficulty in this case is that the parties have different views about the needs of the children and what is in their best interests.
- [99] From the claimant's perspective, the children need to spend more time with him so that:
- a) The children can develop a closer relationship with their father;
 - b) The children have access to points of view other than those expressed by the children's mother and her circle of friends and family; and
 - c) The children will have access to an education outside of the homeschooling program that will give them the opportunity for extracurricular activities, interactions with other students and qualified teachers.
- [100] From the respondent's perspective, the needs of the children and their best interests are served by her maintaining primary control and care of the children in all aspects of their lives, including education through homeschooling. The respondent also takes the position that the children need protection from, what she perceives to be, the failings of their father.

[101] Dr. England, in her s. 211 report, raises a risk that the respondent's personal needs may not align with the needs of the children. At page 42 of the s. 211 report, Dr. England writes:

Taking all of the above into consideration, in the writer's opinion, [C.D.W.'s] parenting is more likely to be significantly impacted by her personal needs, and therefore more at risk of being discrepant from the needs of the children.

I accept Dr. England's opinion on this point. The risk identified by Dr. England is already apparent in the respondent's insistence that she continue to homeschool the children when she herself has not completed high school.

[102] Based on the foregoing, while both parents are capable and willing to care for and meet the needs of the children, the personal needs of the respondent and her desire to limit the children's contact with their father, may pose a risk that the respondent's personal needs and desires will overshadow the needs of the children.

Ability and Willingness to Communicate - s. 16(3)(i) of the DA

[103] Section 16(3)(i) of the DA requires the court to consider the ability and willingness of each parent to communicate and cooperate with one another on matters affecting the children.

[104] The evidence establishes that the respondent has a pattern of failing to communicate and cooperate with the claimant on matters affecting the children. Since the separation, there are many instances where the respondent:

- a) Does not respond to the claimant's requests for parenting time or for confirmation that the children will be available for parenting time with him;
- b) Does not allow the claimant to freely access the children's schoolwork and have access to the principles of the childrens' homeschool program;
- c) Does not provide the claimant with the identity and contact information of the children's doctors, or details of where the children are receiving treatment; and
- d) Unilaterally denies the claimant parenting time.

[105] On the other hand, the claimant has attempted to communicate with the respondent but, as indicated above, there was often no response from the respondent.

[106] My conclusion on the evidence is that the claimant is more likely and willing to communicate and cooperate with the respondent on matters affecting the children than the respondent.

Family Violence - s. 16(3)(j) of the DA

[107] Section 16(3)(j) of the DA requires the court to consider any family violence and its impact on:

- a) the ability and willingness of the parent to care for and meet the needs of the children; and

- b) the appropriateness of making an order that would require the parents to cooperate on issues affecting the children.

[108] The respondent alleges that she and the older children were victims of family violence perpetrated against them by the claimant.

[109] Family violence is defined generally in s. 2(1) of the DA as:

any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person -- and in the case of a child, the direct or indirect exposure to such conduct

[110] The evidence does not satisfy me that the claimant undertook any conduct or course of conduct that falls within the definition of family violence.

[111] The respondent describes the claimant as controlling and abusive. However, in my view, this description of the claimant is coloured by the respondent's anger and animosity towards him.

[112] Dr. England addressed the respondent's allegations of family violence. At page 37 of her report, Dr. England concludes:

When considering all of the information gathered from the assessment, it is most likely that the nature of conflict has been sporadic, bi-directional, and primarily related to the issues surrounding the separation and the children. It is noted that the parents agreed to adopt a traditional and patriarchal family structure, but beyond this there is insufficient information to suggest that this was coercive or controlling in nature. In conclusion, the opinion is that the nature of the family violence was largely situational and not one which, in and of itself, would be a factor to limit either parents' time with the children.

[113] The evidence in this case supports the conclusion of Dr. England in the passage quoted above. The evidence is not sufficient to establish coercive or controlling behaviour on the part of the claimant that would constitute family violence.

[114] The respondent presented the evidence of H.W., who described the claimant as "abusive, angry and violent". I find that H.W. is not a credible witness and that her evidence is not reliable. The evidence of H.W. is coloured by the views of the respondent and by her own feelings of disappointment and anger towards the claimant. Her evidence was replete with assumptions and conclusions that were based on facts of which she had no direct knowledge.

[115] H.W. testified that the claimant spanked V.A. using his belt with V.A.'s pants fully down. However, on cross-examination, H.W. admitted that she was not in the room when the spanking occurred and she did not see whether V.A. had her pants down or not.

- [116] I am not prepared to accept H.W.'s evidence about the spanking, given the reliability and credibility issues with her testimony. I cannot rely upon her evidence to conclude that the spanking described by H.W. occurred or that if it did, it was as violent as she made it out to be.
- [117] H.W. also accused the claimant of not dealing appropriately with a sexual assault of M.W. The perpetrator of the assault was a friend of the claimant and a fellow member of the family's church. H.W. testified that the claimant did not want to report the assault to the police but wanted to deal with it through the church. H.W. testified that "we" pushed to have the assault reported to the police.
- [118] H.W. also gave evidence about how the assault started by the perpetrator "grooming" M.W. by buying her a camera, hugging her in front of her family and treating her like a daughter.
- [119] The problem with this evidence is that at the time of the sexual assault, H.W. was only nine years of age. I do not accept that at nine years old, H.W. was involved in the discussions about how the family was going to deal with the sexual assault. Further, I do not accept that at nine years of age, H.W. could have understood that the perpetrator was grooming M.W.
- [120] Further, the documents indicate that the police received a complaint about the assault and that the claimant attended at the police station with M.W. to make a statement.
- [121] The perception of the claimant's behaviour held by the respondent and H.W. is in contrast with the views of the Ministry. The Ministry conducted two separate investigations into complaints of inappropriate behaviour on the part of the claimant. In both investigations, the Ministry determined that the children were not in need of protection.
- [122] Further, Dr. England concludes that there are no indicators in the psychological test results that raise any concerns about family violence on the part of the claimant.
- [123] I do not accept the evidence of the respondent or her witnesses with respect to the claims of family violence. I find that the conclusions of the Ministry and the opinion of Dr. England are more reliable and persuasive. Therefore, I find that the family violence factor does not have any bearing on the best interests analysis in this case.

Civil or Criminal Proceedings - s. 16(3)(k) of the DA

- [124] Section 16(3)(k) of the DA compels the court to review any civil or criminal proceedings that are relevant to the safety, security and well-being of the children. In this case, there are no civil or criminal proceedings related to either party. In addition, there are no other orders, conditions or measures that relate to the well-being of the children.

Conclusion - Best Interests of the Children

[125] Based on the foregoing analysis, I have concluded that it is in the best interests of the children to spend significantly more time with the claimant than the time allowed by previous court orders or the respondent. Therefore, the parenting orders that follow will increase parenting time for the claimant.

[126] In addition, I have concluded that it is in the best interests of the children to have a more balanced and diverse experience than is available to them in their current situation. Accordingly, there will be parenting orders that seek to have the children develop a more balanced experience going forward.

[127] Finally, the parenting orders will allow the claimant more control over decision-making for the children. The claimant has a more reasonable approach to the decision-making process and is more likely to make decisions that are based on the best interests of the children rather than based on personal interests.

Parenting Orders

[128] The following parenting orders are made pursuant to the DA:

- a) The claimant and the respondent will share decision-making responsibilities for the children, C.W. and L.W., as follows:
 - i. In the event of the death of either party, the surviving party will be the only party with decision-making responsibility for the children;
 - ii. Each party will have the obligation to advise the other party of any matters of a significant nature affecting the children;
 - iii. Each party will have the obligation to discuss with the other party any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 - iv. The parties will have the obligation to discuss significant decisions with each other in the obligation to try to reach agreement on those decisions;
 - v. In the event that the parties cannot reach agreement on a significant decision despite their best efforts, the claimant will be entitled to make those decisions and the respondent will have the right to apply for directions on any decision the respondent considers contrary to the best interests of the child; and
 - vi. Each party will have the right to obtain information concerning the children directly from third parties, including but not limited to; teachers, counsellors, medical professionals and third-party caregivers;

- b) If the respondent is prepared to comply with the transportation requirements that follow, the parties will share parenting time with the children, C.W. and L.W., on a 2-2-5-5 repeating schedule where the children reside with one parent for two days, then with the other parent for two days, followed by five days with the first parent and then five days with the other parent. Additional terms for this parenting schedule are as follows:
 - i. The party who has parenting time on Mondays and Tuesdays will have one telephone call with the children on Friday evenings and the party who has parenting time on Wednesdays and Thursdays will have one telephone call with the children on Sunday evenings;
 - ii. The 2-2-5-5 schedule will continue for the summer holidays but each parent may request an extended vacation period of up to two consecutive weeks in the summer;
 - iii. The party exercising parenting time will be responsible for transporting the children to and from school and the transition between the parties' parenting time will occur at the children's school.
- c) If the respondent is not prepared to comply with the transportation requirements above, the children will reside primarily with the claimant. The respondent will have parenting time with the children on a repeating schedule as follows:
 - i. In the first week, from Friday after school until Monday morning;
 - ii. In the following week, from Wednesday after school to Thursday morning; and
 - iii. The parties will exchange the children at a mutually acceptable location in Enderby, B.C.;
- d) Regardless of the parenting schedule the following parenting time will apply:
 - i. The respondent will have parenting time with the children on Mother's Day and her birthday;
 - ii. The claimant will have parenting time with the children on Father's Day and his birthday;
 - iii. The parties will alternate Easter, Thanksgiving and the children's birthdays with the claimant having parenting time with the children for Easter 2022;
 - iv. The parties will each have a full week of parenting time for Christmas and a full week of parenting time for Spring Break;
 - v. The parties will communicate by e-mail with respect to the children's health, schooling and activities but may communicate by text message or telephone for time sensitive or urgent matters regarding the children; and
 - vi. At the suggestion of Dr. England, the parties will retain Donna Soroka as a parenting counsellor to deal with any ongoing parenting issues. The cost of the counselling will be shared equally by the parties.

Guideline Incomes

[129] In order to determine the appropriate support obligations of the parties, I must establish their income for the purposes of the Federal Child Support Guidelines [Guidelines].

Claimant's Guideline Income

[130] Establishing the claimant's Guidelines is relatively straightforward. I have assessed the claimant's Guidelines by reference to his income tax returns. For each relevant year after the parties' separation, I have established the claimant's Guidelines as his reported income for the previous year less deductions such as union dues and employment expenses.

[131] Also, I have not included the Registered Retirement Savings Plan ("RRSP") income based on the submissions of the claimant's counsel that the parties addressed the RRSP division in the property division trial.

[132] Based on this analysis, the claimant's Guidelines for each relevant year is as follows:

2018

\$162,473

2019

\$122,461

2020

\$164,618

2021

\$102,487

2022

\$148,292

Respondent's Guidelines Income

[133] The respondent's main focus is the care and homeschooling of the children. After the birth of the parties' first child, the respondent has not worked outside of the home.

[134] The claimant submits that the respondent had the capacity to generate income for herself after the separation by:

- a) Renting out the basement suite in the Enderby House until it was sold in October 2021; and
- b) Tutoring other children.

Therefore, the claimant seeks an order imputing income to the respondent.

- [135] The claimant suggests that the respondent could generate \$500 per month or \$6,000 per year in rent from the basement suite in the Enderby House. The respondent agrees that she in fact rented the basement suite but did not claim the rents received. Therefore, I am prepared to attribute \$6,000 per year in income to the respondent during the time she lived in the Enderby House.
- [136] The claimant also submits that the respondent is capable of earning income by tutoring students. The claimant suggests that the respondent could charge \$25 per hour as a tutor because the respondent pays that rate to the tutors she hires for her children.
- [137] The claimant argues that I should impute an income of \$12,000 per year to the respondent for the years 2018 to 2021 on the basis that the respondent could have tutored 40 hours per month and charged \$25 per hour. For the years after 2021, the claimant submits that I should impute an income of \$24,000 per year to the respondent.
- [138] In order to impute income to a party, there must be some evidence from which I can conclude that the imputed income is reasonable. While there is evidence that a tutor could charge \$25 per hour, there is no evidence about how much work is available for tutors in the Vernon or Salmon Arm areas. Therefore, I cannot accept the claimant's submission on the tutoring income.
- [139] Further, the respondent has been focused on homeschooling the children. I am not prepared to impute income to the respondent while she was undertaking that task. However, that circumstance may change after this decision. Therefore, the claimant has leave to apply for a review of the respondent's income if circumstances change in the future.
- [140] Accordingly, I will impute \$6,000 per year in income to the respondent for the years 2018, 2019, and 2020. Since the Enderby House was sold in October 2021, the respondent's imputed income for 2021 will be \$5,000, since the respondent was unable to rent out the Enderby House for the last two months of 2021.
- [141] I am not prepared to impute income to the respondent after October 2021 at this time.

Child Support

- [142] The respondent seeks child support for H.W., C.W. and L.W.
- [143] The DA requires a parent to pay for the support of a child of the marriage. Section 2 of the DA defines a child of the marriage as a child of two spouses or former spouses who, at the material time:
- Is under the age of majority and who has not withdrawn from their charge, or
 - Is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

- [144] Both C.W. and L.W. are minors and reside with the respondent. It is clear that they continue to be dependent upon the support of their parents and have not withdrawn from their parents' charge. Therefore, C.W. and L.W. are children of the marriage. Accordingly, the claimant is required to pay child support for C.W. and L.W.
- [145] The child support issue is more complicated with respect to H.W. When the parties separated, H.W. was 17 years of age. However, at the time of separation or shortly thereafter, H.W. left the family home to reside with her aunt. H.W. claims that she moved out of the family home after she found out about the claimant's affair and after she and the claimant had an altercation. H.W. did not return to live with the respondent until the summer of 2019.
- [146] By the summer of 2019, H.W. was 19 years old. She had completed high school, was working and attending college. By this time, H.W. had completely shut down any communication with the claimant other than to ask for financial assistance.
- [147] In my view, the claimant is required to pay child support for H.W. until she reached the age of majority regardless of her place of residence or her status as a student. The definition of a "child of the marriage" in the DA requires the payment of child support while the child is a minor unless the child has withdrawn from the parents' charge. The evidence in this case does not satisfy me that H.W. had withdrawn from her parents' charge when she moved to live with her aunt. The evidence is that H.W. continued to rely upon the financial support of the respondent after she moved out of the family home.
- [148] The definition of a "child of the marriage" changes when the child reaches the age of majority. If the child continues to be under a parent's charge at 19 years old, then the child must be unable to withdraw from the parent's charge or be unable to obtain the necessities of life.
- [149] In *Farden v. Farden*, 1993 BCSC 2570, at para. 13, the Master accepted that there was ample authority that the pursuit of education may be sufficient to render a child unable to withdraw from the parent's charge or to obtain the necessities of life. However, at para. 15 the Master qualifies this principle in the following way:
- [15] Whether or not attendance in a post-secondary institution will be sufficient cause for a finding that the child is still a "child of the marriage" requires examination of all of the circumstances. It is not a conclusion which follows automatically from proof of attendance at the institution [*McNulty v. McNulty* (1976), 25 R.F.L. 29 (B.C. S.C.)]. In my view, the relevant circumstances include:
- (1) whether the child is in fact enrolled in a course of studies and whether it is a full time or part time course of studies;
 - (2) whether or not the child has applied for, or is eligible for, student loans or other financial assistance;

- (3) the career plans of the child, i.e., whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
- (4) the ability of the child to contribute to his own support through part-time employment;
- (5) the age of the child;
- (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
- (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
- (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

[150] The Court of Appeal in *Darlington v. Darlington*, [1997] B.C.J. No. 300 (C.A.) endorsed the factors established in *Farden*.

[151] In this case, H.W. has been pursuing post-secondary education since September 2018. She states that she has an interest in the health profession and wishes to enrol in a midwifery program at the University of British Columbia. This is a four-year program for which she has not yet been accepted.

[152] In June 2021, H.W. received a certification as a Nursing Unit Assistant. She completed a practicum and worked for only a matter of weeks as a Nursing Unit Assistant. H.W. was not able to continue working in that position because she has chosen not to receive the COVID-19 vaccination.

[153] H.W. has no certain plans for her future education. She is not attending school at this time and she has not been accepted into any educational program. H.W.'s non-vaccinated status is also likely to be an obstacle to securing a placement in a health-related program.

[154] A further and significant factor in this case is H.W.'s estrangement from the claimant. Since the separation date, H.W. has chosen to terminate any relationship with the claimant. She clearly does not wish to have any contact with him.

[155] In *Farden*, the Master denied a support claim for a mature child pursuing a post-secondary education because the child had terminated any relationship with his father. At para. 19, the Master writes:

[19] The son has refused to consider any sort of relationship with his father. I conclude from the reasons of His Honour Judge Hyde that the father was not guilty of any conduct which disentitled him to access. The trial judge found as a fact that the mother had alienated the son from the affection of his father. As a boy he may have had little control over the situation. However, he is now an adult. He shows a total unwillingness to attempt to reinstate any relationship. He would be content to take money from his father but otherwise

refuses to acknowledge him as a parent. In my view, this is an additional factor which I can take into account in dismissing the application.

[156] Similarly, in *Marsland v. Gibb*, 2000 BCSC 471, the Court held at para. 34:

[34] After reading all of the above cases, I am satisfied that this case could be distinguished from most of the cases that have been drawn to my attention. The case at bar represents a case of complete rejection by Jennifer of her father. Although Mr. Gibb has made numerous attempts to establish a father-daughter relationship with Jennifer she has continuously rejected them in no uncertain terms since she was 11 years old. Jennifer is now an adult and must be aware of the consequences of her actions towards her father. In the unique factors of the case at bar I am not satisfied that Jennifer is any longer a "child of the marriage". The petitioner's application is therefore dismissed.

[157] In my view, H.W.'s circumstances and her total rejection of the claimant notwithstanding his attempts to establish a relationship, persuade me that she was no longer a child of the marriage after she reached the age of majority.

[158] The claimant's obligation to pay child support began on the date of separation in May 2018. Based on the foregoing, the claimant is responsible for the support of three children from the date of separation to and including the month of May 2019 when H.W. turned 19 years of age. Starting in June 2019, the claimant is responsible for the support of two children.

[159] My assessment of the child support payable by the claimant, pursuant to the Guidelines, from the date of separation to the date of this decision is set out in the following table:

Year

Claimant's Income

No. of Children

Table Amount

(per month)

No. of Months

Total

2018

\$162,473

3

\$2,997

8

\$23,976

2019

\$122,461

3

\$2,356

5

\$11,780

2019

\$122,461

2

\$1,813

7

\$12,691

2020

\$164,618

2

\$2,331

12

\$27,972

2021

\$102,487

2

\$1,555

12

\$18,660

2022

\$148,292

2

\$2,139

9

\$19,251

Total

\$114,330

[160] The total child support payable by the claimant from the date of separation to and including September 2022 is \$114,330. I will adjust this amount of child support later in these reasons by offsetting payments made by the claimant.

[161] With respect to prospective child support, if the parties share parenting time as previously ordered, then s. 9 of the Guidelines applies. Section 9 of the Guidelines provides:

9 If each spouse exercises not less than 40% of parenting time with a child over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared parenting time arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[162] The starting point in the application of s. 9 of the Guidelines is to set-off the amounts set out in the tables to the Guidelines for each parent against each other. In this case, since after October 2021, the respondent has no imputed income, her child support amount is zero. Therefore, the claimant's child support obligations remain at \$2,139 per month at this point in the analysis.

[163] However, the proper approach to the application of s. 9 of the Guidelines requires an analysis of the additional factors set out in ss. 9(b) and (c). The Supreme Court of Canada established the proper approach in *Contino v. Leonelli-Contino*, 2005 SCC 63, at para. 49 as follows:

[49] Hence, the simple set-off serves as the starting point, but it cannot be the end of the inquiry. It has no presumptive value. It's true value is in bringing the court to focus first on the fact that both parents must make a contribution and that fixed and variable costs of each of them have to be measured before making adjustments to take into account increased costs attributable to joint custody and further adjustments needed to ensure that the final outcome is fair in light of the conditions, means, needs and other circumstances of each spouse and child for whom support is sought. Full consideration must be given to the last two factors (see *Payne*, at p. 263). The cliff effect is only resolved if the court covers and regards the other criteria set out in paras. (b) and (c) as equally important elements to determine the child support.

- [164] Justice Bowden described the objective of s. 9 of the Guidelines in *Walling v. Holosney*, 2011 BCSC 104 at para. 17 as giving the "court the discretion necessary to adjust child support in situations of shared custody so that the children do not experience significant differences in the standard of living that each parent can offer in their homes."
- [165] In the circumstances of this case, if the parties engage in shared parenting time on the 2-2-5-5 schedule set out previously in these reasons, the respondent will certainly incur additional expenses in transporting the children to and from their school. In addition, since the respondent is not earning income at this time and the claimant has a significant income in comparison, the means, needs and circumstances of the parties and the children require an upward adjustment to the child support amount.
- [166] Therefore, in order to address the objectives of s. 9 of the Guidelines, I find that the child support payable by the claimant should be increased from the table amount to \$2,500 per month. Accordingly, commencing on October 1, 2022, and continuing on the first day of each month thereafter, the claimant will pay child support for two children in the amount of \$2,500 per month until further order of the court or agreement between the parties.
- [167] If the children reside primarily with the claimant, there will be no child support payable by the respondent because she has no income.

Section 7 and Extraordinary Expenses

- [168] The respondent claims s. 7 and extraordinary expenses incurred for H.W., C.W. and L.W. However, the respondent's claims in this regard are not particularized in any significant detail and the evidence with respect to those expenses is unclear. The respondent presented a large volume of documents which may contain information about these expenses, but the respondent did not specifically identify which documents she relies upon to establish this claim.
- [169] Further, the evidence is that the children's homeschool program, which is run by an external organization, paid for some of the children's expenses for extracurricular activities such as skiing, bible camp and gymnastics.
- [170] With the exception of some educational expenses incurred by H.W. before she turned 19 years of age, the evidence falls short of establishing s. 7 and extraordinary expenses as defined by the Guidelines.
- [171] The Guidelines provide that child care expenses must be incurred "as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time". The respondent has not established that the child care expenses were incurred as a result of employment, illness, disability or education.

[172] Traditional Chinese Medicine treatments do not fall within those health-related expenses expressly included in s. 7 of the Guidelines and the respondent has not led evidence or provided any authorities to establish that the Traditional Chinese Medicine treatments claimed are health-related expenses under the Guidelines.

[173] However, the evidence does establish that H.W. incurred some educational expenses before she turned 19 years of age. She had expenses related to her education at Okanagan College in 2018. Those expenses were \$3,371.42 from May 2018 to December 2018. The parties will share those expenses pro-rata based on the parties' income in 2018 and after adjusting for the after-tax cost/benefit of spousal support. The claimant's pro-rata share is 82% or \$2,764.56. The respondent's share is 18% or \$606.86.

Spousal Support

[174] Section 15.2(1) of the DA provides that a court may make an order requiring one spouse to pay a reasonable amount to the other for support. Per s. 15.2(4), in making an order for spousal support, the court must take into consideration the condition, means, needs and other circumstances of each spouse including:

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

[175] Section 15.2(6) of the DA directs that in ordering spousal support the court should:

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

[176] The Court of Appeal in *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 32-35, explained the statutory factors and objectives set out in the DA. The broad principles established by *Marquez* are as follows:

- a) marriage is an economic partnership built upon a premise (albeit rebuttable) of mutual support;

- b) the statutory factors and objectives considered in awarding spousal support include both compensatory and non-compensatory principles;
 - c) the DA and the Family Law Act acknowledge both principles of compensation for spousal support because neither principle alone is sufficient to achieve a just legal framework for spousal support;
 - d) it is not a question of applying one principle or the other but, rather, a matter of applying the relevant factors and striking a balance that best achieves justice in the particular case before the court;
 - e) compensatory support recognizes the need to compensate a spouse for the economic disadvantages arising from the marriage and to account for economic advantages conferred on a spouse as a result of the marriage; and
 - f) non-compensatory support recognizes the need to compensate a spouse for the loss of the economic partnership and the mutual support that both parties enjoyed during the marriage.
- [177] The economic disadvantages typically considered in the compensatory support principle include the withdrawal of one spouse from the workforce to assume primary responsibilities for childcare and household management. Withdrawing from the workforce to assume those functions often results in an impairment of that spouse's future economic opportunities: *Marquez* at para. 33.
- [178] In this case, the respondent's work history is sparse and sporadic. She worked outside the home off and on in the early years of the parties' relationship. However, for the most part, the respondent stayed at home caring for and homeschooling the children during the marriage. I am satisfied that the respondent's non-involvement in the work force in order to care for the children is an impairment of her future economic opportunities. Therefore, the respondent is entitled to compensatory spousal support.
- [179] The non-compensatory support principle allows the court to assess the level of entitlement to meet the spouse's needs after the separation. Non-compensatory support is not limited to a level of support that meets the basic necessities but includes a consideration of the standard of living enjoyed by the parties during their marriage: *Marquez* at para. 34.
- [180] The parties in this case had a "traditional" family. The claimant worked and provided for the family financially while the respondent stayed at home and nurtured the children. Therefore, the respondent relied upon the claimant to maintain her standard of living. After the separation, the respondent did not have the background to financially maintain that same standard. In this circumstance, I find that the respondent is also entitled to spousal support on the non-compensatory principle.

[181] Based on my previous findings with respect to the parties' Guidelines Income, I assess the spousal support payable by the claimant using the midpoint of the range established by the Spousal Support Advisory Guidelines [SSAG] as follows:

Year

Claimant's Income (yearly)

Resp. Income (yearly)

No. of Children

SSAG Midpoint (monthly)

Months

Total

2018

\$162,473

\$6,000

3

\$2,011

8

\$16,088

2019

\$122,461

\$6,000

3

\$1,246

5

\$6,230

2019

\$122,461

\$6,000

2

\$1,535

7

\$10,745

2020

\$164,618

\$6,000

2

\$2,576

12

\$30,912

2021

\$102,487

\$5,000

2

\$1,169

12

\$14,028

2022

\$148,292

\$0

2

\$2,452

9

\$22,068

Total

\$100,071

[182] The total spousal support payable by the claimant from the date of separation to and including September 2022 is \$100,071. I will adjust this amount of spousal support later in these reasons by offsetting the spousal support payments made by the claimant and the credits to which he is entitled.

- [183] With respect to prospective spousal support, if the parties share parenting time on an equal basis, the range of spousal support established by the SSAG is between \$1,954 and \$3,301 per month. The mid-point of the range is \$2,922 per month. This range is based upon the claimant's annual income of \$148,292, no income for the respondent and child support of \$2,500 payable by the claimant.
- [184] Therefore, if the parties share parenting time, the claimant will pay prospective spousal support in the amount of \$2,922 per month commencing on October 1, 2022, and continuing on the first day of each month thereafter until further order of the court or agreement between the parties.
- [185] If the parties cannot share parenting time on an equal basis and the children reside primarily with the claimant, then the spousal support range pursuant to the SSAG is between \$2,107 and \$2,860 per month with a mid-point of \$2,452 per month. Therefore, if the parties cannot make a shared parenting time arrangement work, then the claimant will pay spousal support to the respondent in the amount of \$2,452 per month commencing on October 1, 2022, and continuing on the first day of each month thereafter until further order of the court or agreement between the parties.
- [186] The prospective spousal support is for an unspecified duration. However, it will be subject to review after 12 months. A review in 12 months will include a re-assessment of whether income ought to be imputed to the respondent.

Adjustments to Support Obligations

- [187] The claimant has paid child support and spousal support to the respondent off and on and in varying amounts since the date of separation. In addition, on February 19, 2021, the respondent obtained an order of the court that included the following terms:
- a) The claimant to pay interim, without prejudice, child support in the amount of \$1,412 per month commencing on March 1, 2021;
 - b) The claimant to pay interim, without prejudice, spousal support in the amount of \$1,568 per month commencing on March 1, 2021; and
 - c) The claimant to receive credit for \$1,000 per month towards his contributions to the parties' mortgage, property taxes, property insurance, city utilities and line of credit payments;
- [188] The claimant presented a summary of all payments he has made toward child support and spousal support as well as a summary of the payments he has made to the agreed upon shared expenses of the parties. The respondent does not dispute the figures presented in those summaries.
- [189] With respect to child support, the claimant has paid the following amounts:

Child support paid directly to the respondent or to the Family Maintenance Enforcement Program from the separation date to and including October 2021

\$49,537.00

Undesignated support payments made to the FMEP from November 2021 to and including March 2022

\$22,994.37

Total

\$72,531.37

[190] The claimant will receive a credit of \$72,531.37 against the \$114,330 in the child support payable from the date of separation. Therefore, the net amount of child support outstanding is \$41,798.63.

[191] With respect to spousal support, the claimant will receive credit for the following amounts:

Spousal support paid directly to the respondent or to the Family Maintenance Enforcement Program from the separation date to and including October 2021

\$20,124.00

Payment of the respondent's unpaid share of the agreed upon expenses paid by the claimant

\$19,490.03

Total

\$39,614.03

[192] The claimant will receive credit for \$39,614.03 against the \$100,071 in spousal support payable from the separation date. Therefore, the net amount outstanding for spousal support is \$60,456.97.

Future Financial Disclosure

[193] As long as there is a child who meets the definition of a "child of the marriage", the parties will exchange their income tax returns with supporting documents and their notices of assessment by June 1 of each year.

Costs

[194] The claimant has been substantially successful with respect to the issues in this trial. Therefore, unless either of the parties wish to make contrary submissions to this costs order, the claimant will have his costs of the action. However, those costs will be limited to costs related to the issues of parenting, child support and spousal support.

[195] If either party wishes to make submissions on costs, then they have leave to do so within 60 days of this decision.

'D.K. Hori J."

HORI J.

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/17/2022BCSC1757.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-b-w-v-c-d-w-2022>

Prepared on 28 October 2026 · Esheria