

CANADA / JUDGMENT

Rozen v. Rozen

2025 BCSC 1560

COURT

Supreme Court of British Columbia

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2025 BCSC 1560 Rozen v. Rozen IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Rozen v. Rozen, 2025 BCSC 1560 Date: 20250813 Docket: E160816 Registry: Vancouver Between: Drory Rozen also known as Dror Rozen Claimant And Nava Rozen also known as Nava Ben-Nissim Respondent Before: The Honourable Justice Kirchner Reasons for Judgment Counsel for the Claimant: A. Grewal Counsel for the Respondent: J. Gill Place and Dates of Trial: Vancouver, B.C. March 31 and April 1-4 and April 7-11, 2025 Written Submissions: June 30 and July 9, 2025 Place and Date of Judgment: Vancouver, B.C. August 13, 2025 Table of Contents I. Introduction.. 4 II. Background.. 4 III. Property and Debt Division.. 6 A. Legal Principles and Parties' Positions. 6 B. The Family Property. 8

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the Former Family Home. 53 X. Summary and Conclusion.. 54 Appendices. 56 Appendix 1 - Spousal Support Calculation. 56 Appendix 2 - Child Support Calculation. 57 Appendix 3 - Special and Extraordinary Expenses. 58 I. Introduction

- [1] This family law case has come to trial after a lengthy relationship of 24 years and a lengthy separation of over 12 years. Over the past decade, the parties have attempted, without success, to resolve issues through mediation and other procedures. As will be seen, the long time between separation and trial makes the resolution of some issues challenging but, fortunately, the reasonableness of both parties when testifying and the efforts of their counsel to conclude a comprehensive agreed statement of facts and find other trial efficiencies has been of great assistance.
- [2] At issue is division of property and retroactive and ongoing spousal and child support. Within those broad issues are questions of how to value the claimant's business, whether property division should be equal or unequal, whether income should be imputed to either party, what level spousal support should be set at, and whether spousal support should be ordered back to the date of separation or discounted because the respondent did not seek an interim spousal support order in the 12 years since separation. There is no disagreement as to the claimant's obligation to pay child support up to the time of trial, and he has been making payments, albeit without an agreement or interim order as to amount. Due to uncertainties over income, the correct amount of child support is in dispute. Both parties, and especially the claimant, also seek credits for certain expenses they have covered on behalf of both parties since separation. II. Background
- [3] The claimant, Drory Rozen, was born in Israel 1961. He turned 64 during trial. The respondent, Nava Rozen, was born in 1965, also in Israel, and is currently 60. They first met before Mr. Rozen moved to Canada in 1982 where he studied economics at Simon Fraser University. In 1986, he took a semester off and returned to Israel where he re-connected with Ms. Rozen and the two began dating. In 1987, Ms. Rozen came to Canada for a "trial period" to see if the parties' relationship would develop. She briefly returned to Israel but ultimately made the difficult decision to leave her home country to build a life in Canada with Mr. Rozen. She returned to Canada in late 1987 and the parties were married in November 1988.
- [4] There are two children: Noam who is now 28 and living independently, and Maor who is 22 and living with Ms. Rozen at the former family home in Richmond while attending Kwantlen Polytechnic University.
- [5] The parties separated in November 2012 after 24 years of marriage. They both lived in the family home until May 2013 when Mr. Rozen moved out. They did not separate their finances until June 2015.

- [6] During the marriage, Mr. Rozen was the primary income earner and Ms. Rozen the primary caregiver for the children, although Mr. Rozen was clearly an involved parent. After separation, those parenting responsibilities largely remained the same. There was no formal parenting agreement but the children continued living in the family home with Ms. Rozen and Mr. Rozen exercised liberal parenting time. The parties also continued to have dinners together as a family two or three days a week even after separation and into 2015.
- [7] Until they agreed to separate their finances in June 2015, almost three years after separation, both parties continued depositing their respective earnings into their joint bank account and both drew on that account for living expenses, including for the children, just as they had done during the marriage. After June 2015, Ms. Rozen started paying all the household expenses for her and Maaor (Noahm had moved out to attend university by then), other than property taxes which the parties' split equally until 2020. The parties (verbally) agreed that Ms. Rozen would assume responsibility for the mortgage payments on the former family home and that they would share special and extraordinary expenses for the children on a 70%-30% split with Mr. Rozen paying the larger amount. These included summer camp and private school tuition. Mr. Rozen also started paying monthly child support in June 2015, but the amount varied and was not pursuant to a formal agreement or court order. He stopped making payments when Maaor went to the University of Victoria in September 2021 but resumed when he returned home in May 2023. He is currently paying \$500 per month in child support, although he missed one payment in February 2024. He has never paid spousal support and, while Ms. Rozen claimed spousal support in a counterclaim filed in 2016, she did not seek an interim order.
- [8] With that brief background, I turn to the issues in dispute. III. Property and Debt Division
- [9] The parties' family property consists primarily of the former family home, RRSPs, and Mr. Rozen's business. The parties agree on the value of the home and the RRSPs but not the business. Mr. Rozen seeks an equal division of family property and debt, subject to receiving credit for payments he has made towards maintaining the former family home, payments on family debt, and expenditures on special or extraordinary expenses for the children. Ms. Rozen seeks an unequal division of family property. A. Legal Principles and Parties' Positions
- [10] Under s. 81 of the Family Law Act, S.B.C. 2011, c. 25 ["FLA"], spouses are presumptively entitled to equal division of family property and are equally responsible for family debt that exists at the time of separation, regardless of their relative contributions to the acquisition of the property during the relationship: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38. Family property includes all real and personal property owned by at least one spouse on the date of separation and property acquired by a spouse that is derived from family property. Since neither party had any property of note before the relationship, there are no issues of excluded property under s. 85 of the FLA. There is one issue that Ms. Rozen raises respecting a potential inheritance for Mr. Rozen which I will address near the end of these reasons.

- [11] Presumptively, the value of family property and debt is determined as at the date of trial: FLA, s. 87(b)(ii). There must be compelling evidence for the court to depart from that date since doing so amounts to an unequal division: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76. Thus, the court must be satisfied that significant unfairness would arise if property were to be valued as at the date of trial: *Kumagai* at para. 76.
- [12] That said, bank accounts used on a day-to-day basis after separation are typically valued as at the date of separation rather than the date of trial because this best accounts for money routinely moving in and out of those accounts. Long-term investment accounts are typically valued at the date of trial but subject to an accounting of contributions or withdrawals by one or both parties: *Bennett v. Bennett*, 2021 BCSC 1631 at para. 47; *Asselin v. Roy*, 2013 BCSC 1681 at paras. 171-172.
- [13] Section 95 of the FLA permits the court to order an unequal division of family property and debt where an equal division would be significantly unfair. Significant unfairness requires something objectively unjust, unreasonable, or unfair in some important or substantial sense: *Singh v. Singh*, 2020 BCCA 21 at para. 34. The unfairness must be "compelling or meaningful having regard to factors set out in s. 95(2)": *Remmem v. Remmem*, 2015 BCSC 1552 at para. 44.
- [14] Section 95(2) provides a non-exhaustive list of factors the court may consider in assessing whether an equal division would be significantly unfair. Those potentially relevant here are: the duration of the relationship; a spouse's contribution to the career or career potential of the other spouse; and whether one spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends. Section 95(3) also allows the court to consider the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship, but it can only do so if it determines that the objectives of spousal support under s. 81 of the FLA have not been met.
- [15] In considering whether there should be an unequal division of property, the court first applies a notional equal division and then determines if that would be significantly unfair having regard to the factors in s. 95(2) and, if applicable 95(3): *Healey v. Healey*, 2024 BCCA 68 at para. 69. Further, while the practice in this province is to determine property division before making a final spousal support order, when s. 95(3) is invoked it may be necessary to consider spousal support as part of the assessment of whether family property should be divided unequally: *Healey* at para. 65. Since Ms. Rozen relies on s. 95(3), I will do a notional equal division of family property now and return to the question of a potential unequal division near the conclusion of my reasons after I have addressed spousal support.
- B. The Family Property

1. The Family Home

- [16] In 2002 the parties bought the family home in Richmond. As of March 6, 2025, its appraised value was \$1.8 million.
- [17] Mr. Rozen seeks an order for the sale of the family home. Ms. Rozen wishes to keep it and believes she will qualify for a reverse mortgage that will allow her to buy out Mr. Rozen's interest. I propose to return to this question at the end of my reasons when I can assess Ms. Rozen's ability to buy out Mr. Rozen's interest in light of the other orders that I make. For the moment, I find a notional equal division of the home would result in approximately \$900,000 to each party.
2. RRSPs
- [18] The parties agree that the RRSPs they held at the time of separation are family assets. Those in Mr. Rozen's name are currently valued at \$622,414 and those in Ms. Rozen's name at \$7,984. A notionally equal division of these two amounts results in \$315,199 to each party.
- [19] However, since separation, each party has made withdrawals from the RRSPs. Mr. Rozen withdrew a total of \$131,429 while Ms. Rozen withdrew a total of \$128,868 with the net result being that Mr. Rozen has withdrawn \$2,561 more than Ms. Rozen. Thus, Ms. Rozen should receive a credit for half this amount - \$1,281 - to equalize the withdrawals.
- [20] A notionally equal division of the RRSPs is therefore effected by Mr. Rozen making a spousal rollover from his RRSPs to Ms. Rozen in the amount of \$308,496. That is one half of Mr. Rozen's RRSPs (\$311,207) minus one half of Ms. Rozen's RRSP (\$3,992) plus the \$1,281 equalization payment for a total rollover of \$328,496. This is subject to my findings later whether family property should be divided equally or unequally.
3. Reflex Printing and 576500 B.C. Ltd.
- [21] Reflex Printing is printing brokerage firm owned by Mr. Rozen and his partner, Ken Jung through their respective numbered companies. Mr. Rozen and Mr. Jung started Reflex in 1998 after both left another printing brokerage called VCR Printing. Back then, the printing business was strong and the business did very well. Today, things have changed dramatically and I find that neither Reflex nor Mr. Rozen's numbered company that holds the shares in Reflex has any real value to be divided. I treat the proceeds from the sale of Reflex's former strata office space separately as stand-alone family property that does have value.
- [22] Reflex is not itself a print shop. It has no printing equipment or inventory. Mr. Rozen described it as a brokerage in which he and Mr. Jung arrange for print jobs on behalf of their clients. They have suppliers in the printing business from whom they secure favourable prices and their profit is the difference between their cost for a print job and what they charge their own clients. This is the same model on which VCR Printing operated where both Mr. Rozen and Mr. Jung were very successful as sales people. While Mr. Rozen and Mr. Jung are essentially brokers, their knowledge of the printing industry and their skill as sales persons are key to their success.

- [23] The shares in Reflex are held equally by two numbered companies, one owned by Mr. Rozen and one by Mr. Jung. While the ownership structure is equal, profits are distributed on an "eat what you kill" basis (as Mr. Rozen put it). Each partner's numbered company earns all the profits from sales to that partner's clients. There is a small handful of "house clients" from which Mr. Rozen and Mr. Jung equally share the profits.
- [24] After some initial start-up challenges, Reflex was very successful in the early years and Mr. Rozen's earnings supported a comfortable lifestyle for the family. Both children attended private school, the family travelled, and they were members of the Richmond Country Club. In 2002, Mr. Rozen and Mr. Jung bought the strata office unit from which Reflex operated. They formed a company called Compound Enterprises whose sole purpose was to hold the strata property. This turned out to be a wise investment that generated a before-tax profit of over \$1 million from its eventual sale in 2018.
- [25] However, starting in the mid 2000s, Mr. Rozen and Mr. Jung began to see a shift in the printing industry and anticipated a potential erosion of their business. They began looking at ways to diversify, including by adding promotional items to their product list. These are things like mugs or USB sticks with a logo printed on them that might be given out at trade shows. They also explored the possibility of acquiring other printing operations but all of these came with printing equipment whereas their primary interest was in client lists.
- [26] As Reflex's revenues declined, Mr. Rozen and Mr. Jung rented out some unused office space through Compound but ultimately sold the strata unit in 2018 and later wound up Compound.
- [27] Reflex's revenues dropped significantly between 2010 and 2024. Mr. Rozen estimates that in early years the company's gross revenues exceeded \$1 million annually whereas in 2024 they were just \$200,000. In 2022, Mr. Rozen lost his largest client which represented some 35% of his own sales. He estimates he presently has around 35 clients whereas he had close to 200 when his business peaked. He stated that an average sale today is in the range of \$150 to \$200 whereas an average sale in earlier times was closer to \$600. As Mr. Jung testified, "everything seems to be moving away from printed material".
- [28] Despite the anticipated decline in the printing industry, Mr. Rozen maintained a good income into the mid-2010s. He earned over \$225,000 in 2011 but that dropped to around \$150,000 in 2012 through 2014 and around \$145,000 in 2015 and 2016. In 2017, his income dropped to \$78,000 and hovered around \$50,000 until it cratered with the COVID pandemic. It recovered somewhat in 2023 but is far below even his mid-2010s income.
- [29] Mr. Rozen's shares in Reflex are held by his numbered company, 576500 B.C. Ltd. ("576"). There is no dispute that 576 is family property. In a 2021 expert report, Rosanne Walters, a Certified Business Valuator, opined the fair market value of 576 was \$292,605 based on an adjusted book value approach. That approach focuses on the individual asset and liability values from the company's most recent balance sheet, adjusted to fair market value. The fact that the report is from 2021 and has not been updated is a product of the bumpy road the

parties have taken to get to trial. Unsurprisingly (and not unreasonably in my view) the parties believed that updating Ms. Walters' report for this trial would not be worth the expense.

- [30] Ms. Rozen argues the 2021 valuation should be accepted since Ms. Walters was jointly retained and not called for cross-examination.[1] However, the report is now more than four years old and its valuation is out of date. It was based on the company's balance sheet as at the end of 2020. At that time, the company's main asset was cash and equivalents of \$392,792 which included money 576 was holding from the strata unit sale (which I will discuss in a moment). Its main liability was a \$79,846 debt owed to Compound, but Compound has since been wound down and that debt retired. This shows how the report is now outdated.
- [31] Today, 576's major asset is \$325,000 that is still being held from the sale of the strata unit and its major liability is a \$112,000 shareholder loan from Mr. Rozen. In view of the sale of the strata unit and the winding down of Compound, I conclude that 576 is best valued independently of Compound and that the proceeds from the sale of the strata unit should be viewed as a stand-alone family asset and not assessed as part of 576's value.
- [32] 576's only other asset is its shares in Reflex. Thus, it is necessary to value Reflex to determine what 576's interest in that company may be worth. Ms. Walters did a valuation of Reflex but that too is now dated, although her report contains helpful insights into Reflex's viability and value as a going concern.
- [33] Ms. Walters began her 2021 valuation of Reflex by using a capitalized cashflow method. That approach assumes that near-term results for the company will approximate its recent historical results. In other words, she tried to value the company by looking to how it performed in the previous four years to project its revenue-generating capacity in the near future. Using that approach, she concluded that Reflex's projected earnings based on the previous four years' performance would be negative.[2] She therefore applied a weighted average to give more weight to the better-performing pre-COVID years but the outcome was still negative. In short, she concluded that that Reflex's near-term outlook was for ongoing losses.
- [34] She therefore switched to an adjusted net book value approach as she had done with 576. She set Reflex's value at \$39,000 and attributed 68.6% of this to 576 based on the fact that Mr. Rozen's higher sales meant that he consistently drew more profit from Reflex than did Mr. Jung. She therefore concluded that 576's interest in Reflex was valued at \$27,000. However, that approach was based on the balance sheet as it stood at the time (2020) when Reflex's major asset was cash (\$29,824), which is very fluid. A year later (2021), the bottom line on the balance sheet was higher at \$60,000 and the major asset was accounts receivable (\$24,000). Cash stood at \$6,500. In 2022 the bottom line of the balance sheet was \$33,000 with cash (\$16,000) and accounts receivable (\$17,000) as the major assets. In all years, liabilities were accounts payable in varying amounts.

- [35] Thus, Ms. Walters' report only provides a snapshot of Reflex's value at the time of her report and says nothing about the value at the time of trial. That (and nothing I have said in these reasons) is a critique of Mr. Walters or her work. She did what was asked of her in 2021 and I find no fault in her work. Her valuation of \$27,000 was current at the time of her report, but is now outdated.
- [36] However, Ms. Walters' assessment of the printing business overall is very informative for understanding why Reflex and 576 have no significant value. She described the decline of the printing industry more broadly and this helps to explain why Reflex has seen such a downturn over the past decade. She wrote: According to the IBIS World Printing Services Report in 2018 (most recent report issued at the Valuation Date), the printing services industry in Canada has struggled over the five years to 2018 as demand from downstream industries in the printing and publishing sectors plummeted. The industry has been one of the economy's worst performing over the past decade due to the shift away from traditional print media channels toward online alternatives. Printing services operators continued to struggle as printed newspaper and magazine circulation declined, physical book sales fell and many forms of printed materials moved online. Over the five years to 2023, industry revenue is expected to decline at an annualized rate of 6.0%. Technological shifts have also negatively affected the industry. Advances in digital printing and desktop publishing have enabled the industry's largest customers to perform many prepress services in-house.
- [37] The year-over-year shifts in Reflex's balance sheet as described earlier reflect the fact that Reflex is simply a corporate vehicle through which Mr. Rozen and Mr. Jung conduct their sales business. Reflex has almost no tangible assets, like equipment or real property. Its only value is in its client lists, the personal relationships that Mr. Rozen and Mr. Jung have cultivated with those clients, and the intimate knowledge of the printing industry they have developed over more than three decades. Twenty years ago, when the printing business was stronger, these might have been worth a great deal if Mr. Jung and Mr. Rozen were prepared to work to transition their clients into a relationship with a new buyer. However, given the current state of the printing industry, it is difficult to see what buyer would invest in Reflex's business model today.
- [38] For these reasons, I find Reflex has no real value to be divided. It continues to have some value uniquely to Mr. Rozen and Mr. Jung in that they can still earn something from their pool of clients and their own experience. This will allow Mr. Rozen to continue earning a very modest income from the company. 576's only significant asset, other than the money it is holding from the strata sale, is its shares in Reflex. Thus, I find it too has no real value as a stand-alone asset.
4. Proceeds from Compound Enterprises/Strata Sale

- [39] The facts relating to the sale of the office strata property are set out in the Agreed Statement of Facts. The strata lot was sold in May 2018 for \$1,460,000 with net proceeds to Compound, after commissions and other sale expenses, of \$1,419,734.40. This amount was split equally into two GICs of \$709,867.20 each. Those GICs were redeemed in July 2018 with \$643,959.92 paid out from each and the balance held by Compound to pay capital gains taxes of \$108,479 for the profit from the sale.
- [40] Of the redeemed funds, \$93,152.50 was paid to Reflex Printing, presumably to cover some business expenses. The rest was evenly split between Mr. Rozen and Mr. Jung personally (\$278,287.50 each) and their respective numbered companies (\$292,751.50 each). Mr. Rozen has had to pay capital gains tax on his share, apparently in the amount of \$73,000 but this is not clear. Another \$26,145 was attributed to each of the numbered companies as a loan repayment which I presume is a loan that the numbered companies made to Compound to buy or maintain the strata property. 576 continues to hold \$325,000 from the sale of the strata property subject to agreement of the parties or a court order. Compound was then wound up in December 2023.
- [41] There remain uncertainties about how the proceeds of the strata sale are to be divided, what amount of taxes had to be paid on the capital gain, and what the tax implications are of paying this money out now. Counsel for Mr. Rozen proposed that the matter be referred to an accountant to recommend how it should be paid out, once the court determines if it should be divided equally or unequally. Ms. Rozen's counsel did not disagree with this proposal. I would add that the evidence does not permit me to assess precisely how much each party should receive from these proceeds, even after deciding on whether property division should be equal or unequal. It seems the net amount paid to Mr. Rozen and 576 was \$571,039, but that was before capital gains and potentially other taxes. Mr. Rozen also used some of it to repay some debt which will need to be reconciled. Ms. Rozen has received an advance of \$15,000 from this fund for the cost of an expert report she wished to have for the litigation so that will also need to be reconciled. There is \$325,000 of this money currently being held in 576 but I am unable to say how that should be paid out to achieve an equal division after a reconciliation of the taxes and other payments from this fund.
- [42] In view of counsel's suggestion and the shortcomings in the evidence, I will order that the division of the proceeds of the sale of the strata unit be referred to the Registrar for final determination and certification. The task is determine what amount was available for distribution to Mr. and Ms. Rozen from the sale of the strata, net of all taxes and expenses. That amount should then be divided between the parties in accordance with the property division I order later in these reasons. There must also be an accounting of money that each party has already received from this fund (Mr. Rozen's debt repayments, Ms. Rozen's expert report, and any other withdrawals from it for personal use). Of course, if the parties can reach an agreement on how this can be divided and paid out, they need not go to a hearing before the Registrar but can be address it by way of a consent order. If it must go to the Registrar, the parties must have a report from an accountant opining on the net amount for

distribution to the parties and how the money can be paid out from the company to the parties in the most tax advantageous way.

5. Other Property

[43] The only other family property is household furnishings and some bank accounts with insignificant amounts in them. The parties made no submissions on these assets and I make no order with respect to them. I trust that the parties can see to a fair division of these items. C. Family Debt

[44] When the parties separated their finances in 2015, there were three lines of credit registered against the family home plus the mortgage. These are the only family debts. The balance of the lines of credit at separation and trial are as follows: Line of Credit Balance Separation Trial 001 \$37,623 \$273,314 002 \$7,000 \$30,000 003 \$0 \$30,146 004 \$56,695 \$16,768

[45] As of January 2016, the parties agreed that Mr. Rozen would pay the interest on Lines of Credit 001 and 002 while Ms. Rozen would pay the interest pay Line of Credit 003 and the mortgage which she converted to Line of Credit 004. Between separation and the date of that agreement, Mr. Rozen paid \$10,885.59 in interest on Line of Credit 001 and \$1,732.09 interest on Line of Credit 002. He seeks a credit for half these amounts, being \$5,442.80 and \$866.05 for a total of \$6,308.65.

[46] Since separation, Ms. Rozen has drawn \$87,000 from Line of Credit 001 for her own use. She acknowledges this should be credited to any spousal support Mr. Rozen is ordered to pay. Mr. Rozen does not specifically treat this as a credit to him but submits that each party should be responsible for the debts they incurred post separation, which, as far as I can tell, amounts to the same thing. Mr. Rozen also argues he should be credited for interest he paid on Ms. Rozen's share of this debt. The total amount Ms. Rozen withdrew is \$87,000, which means Mr. Rozen withdrew about \$148,952.

[47] Since January 2016, Mr. Rozen has paid \$114,152.99 in interest on Lines of Credit 001 and 002 and Ms. Rozen has paid \$25,032 in interest on Lines of Credit 003 and 004.

[48] In my view, these lines of credit are akin to bank accounts since both parties drew money from them to fund their day-to-day living expenses. I find they should fairly be valued as family debt as of separation and equally divided.

[49] I also find that each party should be responsible for the money they withdrew from the lines of credit after separation since these withdrawals were largely to support day-to-day living expenses. Moreover, since Mr. Rozen financed some of his child support payments from Line of Credit 001, he should be solely responsible for that part of the debt.

[50] By the parties' agreement, Mr. Rozen is responsible for paying off Line of Credit 001 but Ms. Rozen is responsible for half the balance as it stood at separation (\$18,811.50) plus the \$87,000 she withdrew after for a total of \$105,811. Mr. Rozen is responsible for half the balance at separation plus the \$148,952 he withdrew for a total of \$167,764.

- [51] For Line of Credit 002, the parties are equally responsible for half the balance as at separation, namely \$3,500 each. Mr. Rozen is responsible for the additional amounts he withdrew after that date, being \$23,000.
- [52] Mr. Rozen has made all the interest payments on Lines of Credit 001 and 002 since January 2016 for a total of \$114,152.99 and seeks a credit for Ms. Rozen's share of this interest. I agree with his proposal to split this interest based on the relative share of the debt each party is responsible for. Ms. Rozen's is responsible for about 29% of the debt on these two lines of credit and that results in a credit to Mr. Rozen of approximately \$33,104. Taking the same approach to Lines of Credit 003 and 004, for which Ms. Rozen has paid \$25,032 in interest, Mr. Rozen is responsible for about 18% of the debt on those lines of credit and therefore about \$4,326 for the interest.
- [53] Finally, Mr. Rozen claims a credit of \$15,418 for half the amount of payments he made on the principal of Line of Credit 001 in 2015-2017. I agree he should receive a credit for this amount.
- [54] Thus:
- a) Mr. Rozen will be responsible for the current balance of LOC 001 and 002 but will receive a credit from Ms. Rozen for \$125,554 for her share of the debt at separation (\$18,811.50), her post-separation withdrawals (\$87,000), her share of the interest paid by Mr. Rozen (\$4,326), and her share of the principal payments Mr. Rozen made in 2015-2017 (\$15,417);
 - b) Ms. Rozen will be responsible for paying LOC 003 and 004 but will receive a credit from Mr. Rozen for \$32,674 which is one half the balance of Line of Credit 004 at separation and Mr. Rozen's share of the interest on that.
 - c) The net credit to Mr. Rozen is \$92,880.
- IV. The Parties' Income
- [55] Before turning to spousal and child support, I will address the parties' respective incomes.
- A. Legal Principles
- [56] Income for the purposes of both child and spousal support is to be determined in accordance with ss. 15-20 of the Federal Child Support Guidelines (the "Guidelines"): Healey at para. 62. The starting point is to look at each spouse's Line 150 income and then make whatever adjustments are warranted under Schedule III of the Guidelines. The court then looks to ss. 17-20 of the Guidelines to determine if any of those provisions apply and, if so, what effect they should be given: *Vincent v. Vincent*, 2012 BCCA 186 at para. 35.
- [57] In this case, each party seeks to impute income to the other under s. 19(1)(a) of the Guidelines which reads: 19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse.

[58] Income may be imputed under this provision where a spouse is unemployed or underemployed and does not seek or intend to seek work commensurate their ability to earn. The onus is on the party seeking to impute income: *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para. 35. The court should consider what is reasonable in the circumstances having regard to the spouse's age, education, experience, skills, and health, as well as the availability to work and freedom to relocate, and other obligations: *Watts v. Willie*, 2004 BCCA 600 at para. 16. Imputing income does not require a finding of bad faith. All that is required is that a person is not earning to capacity: *Yarmie v. Yarmie*, 2024 BCSC 457, para 87. B. Mr. Rozen's Income

1. Assessment of Mr. Rozen's Income

[59] Mr. Rozen's income from 2011 to 2023 as stated in his tax returns and in the Agreed Statement of Facts is summarized in the following table: Year Total Notes 2011 \$225,695 2012 \$155,961 2013 \$148,230 2014 \$149,545 2015 \$143,967 2016 \$144,973 2017 \$78,839 2018 \$323,528 \$40,000 employment; \$282,460 taxable dividends from strata sale \$1,068 interest/investment 2019 \$53,067 \$50,844 employment \$575 taxable dividends \$1,648 interest/investment 2020 \$56,083 \$55,918 employment \$164 taxable dividend 2021 \$73,304 \$3,500 employment \$69,000 taxable dividend 2022 \$94,504 \$3,500 employment \$18,975 taxable dividend \$601 interest/investment \$71,428 RRSP income 2023 \$38,637 \$35,000 employment \$3,637 interest/investment 2024 \$62,239 \$2,239 interest/investment \$60,000 RRSP income

[60] Ms. Walters was instructed by the parties to opine on Mr. Rozen's Guidelines income for 2013 through 2020 and she did so in her 2021 report which I discussed earlier. I agree with counsel for Ms. Rozen that since this report was jointly commissioned and jointly tendered without requiring Ms. Walters' attendance for cross-examination, the court can accept her opinions as to Mr. Rozen's Guidelines income for the years she considered it. The opinion is helpful in that Ms. Walters adjusted grossed-up taxable dividends reported in 2018 and 2019 to the actual cash received, accounted for pre-tax corporate income, and added in a portion of some business expenses, such as meals (50%), cell phone (15%), and auto (62.5%), that have a personal benefit for Mr. Rozen and are properly included in his income under s. 19 of the Guidelines. The following table sets out Ms. Walters' conclusions along with the percentage increase each year from Mr. Rozen's line 150 income (which I will use to assess his income for the years following Ms. Walters' report): Year Adjusted Guideline Income % incr. 2013 \$180,079 17% 2014 \$168,502 12% 2015 \$163,163 12% 2016 \$217,389 34% 2017 \$109,679 27% 2018 \$50,195 20% 2019 \$84,731 36% 2020 \$67,990 16% Average Increase from Line 150 22%

- [61] The average annual adjustment to Mr. Rozen's base income was 22%. I propose to use this figure as a rough guide to adjust his income in later years with the following result: Year Adjusted Guideline Income 2021 \$89,431 2022 \$28,153 2023 \$47,137
- [62] There are two matters which bear mentioning in assessing Mr. Rozen's income. The first is that Ms. Walters has not included in Mr. Rozen's 2018 income a \$282,460 taxable dividend he received in that year. I agree it is appropriate to exclude this because it was a one-time gain from the sale of the strata property which I have already treated as family property to be divided after an accounting. Ms. Rozen's counsel (correctly, in my view) accepts Mr. Rozen's 2018 income as stated by Ms. Walters. Surprisingly, Mr. Rozen proposes his income for that year be based on an average of the previous three years which would result in a 2018 income of \$163,410. In other words, Ms. Rozen accepts a lower number for Mr. Rozen's 2018 income than Mr. Rozen proposes. I confess to not understanding the rationale for using a three-year average for this single year. I have therefore calculated Mr. Rozen's income for 2018 based on Ms. Walters' report which was accepted by Ms. Rozen.
- [63] The second point to note about Mr. Rozen's income is with respect to RRSP withdrawals made by both parties. Mr. Rozen withdrew \$71,428 from his RRSP in 2022 and another \$60,000 in 2024. Ms. Rozen withdrew \$38,868 from an RRSP in 2021, \$88,000 in 2022 and \$2,039 in 2023. There is no clear rule about whether RRSP withdrawals should count as income under the Guidelines; it is presumptively included but it is ultimately in the court's discretion to determine whether a one-time withdrawal should be counted as income: *McKenzie v. Perestrelo*, 2014 BCCA 161 at paras. 82-83. In his DivorceMate calculations, Mr. Rozen's counsel has included the RRSP withdrawals in calculating Mr. Rozen's income for 2022 and 2024 and in Ms. Rozen's income for 2021-2023 whereas counsel for Ms. Rozen's does not include RRSP withdrawals in either party's income. Again, I view the approach of Ms. Rozen's counsel to be the correct one for this case because I have already accounted for and reconciled RRSP withdrawals in property division. They should not be counted again as income.
2. Should Income be Imputed to Mr. Rozen?
- [64] Ms. Rozen argues the court should impute an income of \$90,000 to Mr. Rozen for any year in which his income fell below that threshold. In her valuation of Reflex, Ms. Walters estimated the market value of Mr. Rozen's management contributions to Reflex was \$90,000. Ms. Rozen argues this serves as a good proxy for an imputed income. However, Ms. Walters was not assessing Mr. Rozen's ability to earn an income. She was placing a value of the services he provided to Reflex. That said, the figure was informed by data showing the 2021 salary range for regional sales managers in Vancouver with 25 years experience to be \$58,000 to \$120,000 (median \$87,000) per annum.

- [65] Ms. Rozen argues that Mr. Rozen has known since mid 2000s that the printing industry was showing signs of decline and expected his income would drop. She argues it was incumbent on him at that time to start looking for other opportunities, including potentially leaving printing for a sales job in a more promising industry.
- [66] Ms. Rozen may have a valid point with the benefit of hindsight. However, the evidence does not suggest that Mr. Rozen predicted the especially sharp decline that took hold in the mid 2010s. As the above tables indicate, Mr. Rozen's income was in decline, but it remained above \$150,000 until 2017. By that time, he was 56 years old and it would be difficult to transition into a whole new industry.
- [67] Further, he and Mr. Jung worked to diversify Reflex's business and Mr. Rozen had explored other opportunities to supplement his own earnings by "leveraging the client base into other products". He explored doing local sales for a cybersecurity business based out of Israel, hoping he might be able to make sales to his existing client base but ultimately decided he did not have sufficient understanding of the product to be able to sell it. In 2018 he tried to incorporate a membership-based electronic store called "urStore" into his business but, after a year of effort he barely earned enough money to cover an advance urStore had given him. He also explored other opportunities that, after further examination, did not seem worth the risk of investment. He considered pursuing Google ads as a marketing tool but was told by others in the industry that these were not effective. Ultimately, he decided to stay focussed on the business that he understood which was printing and now promotional products business. He tried to sustain and potentially increase his business through targeted email advertising to the customer base he knows and revamping his website so that clients could place orders online.
- [68] In short, Mr. Rozen did not sit idle and watch his income fall. He was proactive in finding ways to shore up and diversify his business and he tried several ways of doing so with only marginal success.
- [69] It was put to Mr. Rozen in cross-examination that his acknowledged skills as a salesperson are "transferrable to other industries." I agree with his response that this is a "debateable question in today's world." He said when he started at VCR Printing, he was 28 years old, had no kids and lots of energy, and it took him about two-and-a-half or three years to see results. It would be an entirely different matter for Mr. Rozen to start in a new and unfamiliar industry past his mid-fifties. As he wryly (but fairly) suggested in cross-examination, selling electronics at Best Buy is not going to restore his income to the mid 2010s level. He is indisputably a good salesperson but that is in an industry he knows intimately.
- [70] Ms. Rozen called Greg Durst as a witness to explain how he had adjusted to the declining printing business. Mr. Durst owns VCR Printing and was Mr. Rozen and Mr. Jung's boss while both were with that company. Notably, Mr. Durst had done largely the same thing as Mr. Rozen and Mr. Jung to sustain his business as the printing industry declined, namely expand into promotional material. According to Mr. Durst, he was successful at this and it offset

most of the decline in revenues from traditional printing work. However, Mr. Durst's evidence could not be scrutinized since VCR's financial statements were not available. Moreover, Mr. Durst retired in 2014 when printing brokerages, such as Reflex, still had relatively good earnings. It may be that Mr. Durst was more successful than Mr. Rozen and Mr. Jung in developing the promotional material part of the business, at least up to his retirement in 2014, but it is significant that Mr. Durst, like Mr. Rozen and Mr. Jung, stayed with the printing industry rather than try a different type of sales work altogether. That suggests it was not unreasonable for Mr. Rozen to decide at the time to continue on the path that he did, even if hindsight might now suggest better options.

- [71] Ultimately, I cannot find that Mr. Rozen has acted unreasonably or that he is deliberately underemployed. I decline to impute income to him, other than making adjustments consistent with Ms. Walters' report. C. Ms. Rozen's Income
- [72] Ms. Rozen is a psychologist who has focused on counselling children and families. She earned a bachelor's degree in psychology from UBC in 1997 and intended to pursue a master's degree thereafter, but family obligations got in the way. She eventually was able to return to studies and finish her master's in psychology in 2011. She immediately started work as a counsellor for Jewish Family Services and spent one or two days a week building a private practice. She was let go from Jewish Family Services in 2022 due to a vaccination requirement (she did not get the COVID 19 vaccine because of concerns with how it might interact with another health condition). She then focussed exclusively on a private practice out of the family home.
- [73] Ms. Rozen's income since 2012 is a combination of employment income from Jewish Family Services and self-employment income from her own practice: Year Total Notes 2012 \$49,635 \$59,235 employment \$9,600 self employment 2013 \$24,351 \$30,808 employment \$6,457 self employment 2014 \$38,115 \$36,155 employment \$1,960 self employment 2015 \$37,746 \$36,247 employment \$57.59 interest/investment \$1,441 self employment 2016 \$37,337 \$37,894 employment \$557 self employment 2017 \$40,028 \$37,244 employment \$237 interest/investment \$2,550 self employment 2018 \$37,885 \$37,312 employment \$490 interest/investment \$82 self employment 2019 \$42,425 \$37,312 employment \$651 interest/investment \$3,919 self employment 2020 \$47,966 \$39,883 employment \$8,083 self employment 2021 \$95,320 \$40,045 employment \$38,868 RRSP \$16,406 self employment 2022 \$162,752 \$20,115 employment (including retirement allowance and vacation payout) \$54,636 self employment \$88,000 RRSP 2023 \$31,400 \$29,361 self employment \$2,039 RRSP 2024 \$23,969 \$23,969 self employment
- [74] Mr. Rozen argues the Court should impute income to Ms. Rozen starting in 2013 with \$50,000 and increased by \$5,000 each year until it reaches \$75,000 in 2018. He submits a \$75,000 income should be imputed each year thereafter. He points to Government of Canada labour market data which indicates the median wage for family counsellors in the Lower Mainland is just over \$32/hour and job postings for child and clinical counsellors offering wages in the range of \$80 to \$100 per hour or \$100,000 annually. Ms. Rozen currently charges \$180 per

hour in her private practice, although that does not include preparation time or follow-up work before and after a session. She agreed in cross-examination that in 2024 she was doing about five sessions a week, which is only one client a day on average. The sessions are around an hour, plus preparation and follow-up time. Since being let go from Jewish Family Services, Ms. Rozen has not explored employment opportunities at other clinics. She believes her vaccination status is an impediment but has not looked for opportunities since vaccination requirements have been relaxed.

- [75] Ms. Rozen argues that no income should be imputed to her, particularly before her employment at Jewish Family Services was terminated.
- [76] I agree with the latter point. Ms. Rozen worked hard to complete her education while balancing her parenting and household responsibilities. She had some help from a housekeeper or nanny, and the children attended daycare before starting elementary school. This gave her some amount time to work and keep her foot in the door with counselling while she completed her master's degree. When she did finish her master's, she moved directly into near-full-time work between three days a week at Jewish Family Services and one or two days building her private practice. I do not think it can reasonably be suggested that she should have pursued more lucrative work in those years. It must be remembered that she was a new counsellor with only limited, supervised, experience when she started at Jewish Family Services in 2011. That job gave her the opportunity to learn and develop her skills with the benefit of stable employment and some retirement benefits. In my view, it was reasonable for her to maintain that opportunity so early in her career. I would not impute income to Ms. Rozen before 2022.
- [77] After being let go from Jewish Family Services in 2022, Ms. Rozen had a successful year in private practice, earning almost \$55,000 in self-employment income that year. However, in 2023 this dropped to just under \$30,000, which she attributes to her pre-occupation with family matters, including a deterioration in her mother's health, Maaor returning home from UVic to live with her, and responding to an application that Mr. Rozen brought to sell the family home.
- [78] I tend to agree with Mr. Rozen that Ms. Rozen has not focused on maintaining and building on the level of success she achieved in 2022. Nor has she tried to find employment outside of her private practice. I appreciate she is squeezed to some extent with care for aging parents but I am not persuaded that Maaor's return home in 2023 nor the need to respond to Mr. Rozen's application to sell the home reasonably explains the drop in her income. I accept that, like Mr. Rozen, her age might be something of an impediment to securing new work, although her experience is undoubtedly an asset.
- [79] Having regard to the evidence of job postings and salaries for family counsellors in the Lower Mainland and the fact that Ms. Rozen's own hourly rate is \$180, I find she is capable of earning more than her most recent annual income. I would be inclined to impute an annual income to her of at least \$65,000 and probably more starting in 2023, but since a higher

number makes no difference for support calculations I need not settle on a specific amount. Before 2023, I would base support calculations on her actual income. D. Summary of Incomes

[80] Based on the foregoing, I find the parties' annual incomes should be set as follows at for the purposes of calculating support: Year Drory Nava 2013 \$180,079 \$24,351 2014 \$168,502 \$38,115 2015 \$163,163 \$37,746 2016 \$217,389 \$37,337 2017 \$109,679 \$40,028 2018 \$50,195 \$37,885 2019 \$84,731 \$42,425 2020 \$67,990 \$47,966 2021 \$89,431 \$56,451 2022 \$28,153 \$74,751 2023 \$47,137 \$65,000 V. Spousal Support A. Parties' Positions

[81] Ms. Rozen claims she is entitled to compensatory and non-compensatory spousal support, both retroactive and ongoing. Mr. Rozen concedes it is "more likely than not" that Ms. Rozen is entitled to some retroactive spousal support but argues it should not be ongoing. He argues spousal support from the date of separation to the date of trial is "more than sufficient to meet the objectives of spousal support." He submits that any order for retroactive spousal support should be reduced to account for the fact that Ms. Rozen did not seek any interim spousal support in the nine or so years since this proceeding was commenced. If the court orders ongoing spousal support, Mr. Rozen seeks it as a lump sum to be taken from his share of the former family home. B. Legal Principles

[82] Entitlement to spousal support is determined in accordance with the objectives set out in s. 15.2(6) of the Divorce Act which reads: 15.2 (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

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

[83] There are three bases for entitlement to spousal support: contractual, compensatory, and non-compensatory: Bracklow v. Bracklow, [1999] 1 S.C.R. 420 at para. 37. The latter two are in issue here.

[84] Determining the amount and duration of spousal support is informed by the factors in s. 15.2(4) of the Divorce Act which reads: 15.2 (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall 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.

[85] Courts must take guidance from the Spousal Support Advisory Guidelines ("SSAG"). In *Sebok v. Babits*, 2022 BCCA 2 at para. 24, the Court of Appeal confirmed that while courts are not necessarily bound by the SSAG, reference to them is "required as part of the process for quantifying support", exceptional circumstances are required to justify a substantial departure from them, and reasons should be given when doing so: *Sebok* at paras. 25-26.

[86] The SSAG provide ranges - low, mid, and high - for spousal support. These are designed to allow for adjustments to the amount and duration of support to accommodate the specific circumstances of each case in light of the factors and objectives set out in the Divorce Act, ss. 15.2(4) and (6): SSAG, Chapter 9, p. 98. Factors such as a strong or weak compensatory claim, greater or lesser need, stronger or weaker ability to pay by the payor, and the presence or absence of family property are among the factors that might guide a decision of where to place support within the range and what adjustments to amount or duration might be appropriate: SSAG, Chapter 9 pp. 98-101; Spousal Support Advisory Guidelines: The Revised User's Guide, 2016 pp. 45-48. C. Entitlement

1. Compensatory

[87] Entitlement to compensatory support is grounded in sacrifices made by one spouse during the relationship, usually to the benefit of the other spouse, that has impaired the sacrificing spouse's economic prospects. Justice Rowles explained the purpose of compensatory support as follows in *Chutter v. Chutter*, 2008 BCCA 507:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise. The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success. In *Moge v. Moge* [1992] 3 S.C.R. 813, the Supreme Court of Canada observed, at 867-868: The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

- [51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse". [Underlining is Rowles J.A.'s. Citations omitted.]
- [88] I find Ms. Rozen is entitled to a measure of compensatory support. She was the primary caregiver for the two children while Mr. Rozen was the primary income earner. Mr. Rozen worked long hours to build and maintain his business and was freed up to do so by Ms. Rozen taking primary responsibility for the children and the household. Mr. Rozen was clearly an involved and active parent who helped around the house and spent much time with the children, but the primary childcare and household duties undoubtedly fell to Ms. Rozen, albeit with some assistance from a housekeeper and her parents.
- [89] Ms. Rozen's career got off to a late start largely because of the responsibilities she undertook in the home and to care for the children. When she arrived in Canada in 1988, she started working full time at the Royal Bank and took ESL courses to improve her English. In 1990 she enrolled in a university transfer program at Langara College and continued to work part time at the bank. In 1992 she transferred to UBC where she did undergraduate studies in psychology with the hopes of becoming a counsellor. She also taught Hebrew School two days a week and worked part time at London Drugs. She and Mr. Rozen both knew that a bachelor's degree would not be sufficient to launch her career as a counselling psychologist and she would need at least a master's degree to pursue that. They expected she would continue with her education after finishing her bachelor's degree.
- [90] Noahm was born in May 1997, just when Ms. Rozen graduated with her undergraduate degree. She initially expected to be off work for six months (which was then the limit for maternity leave benefits) but Noahm had health issues that required her to take more time and she eventually had to give up her position at London Drugs. For the first 18 months of Noahm's life, his needs were intense and Ms. Rozen was fully occupied with his care.
- [91] During this time, Mr. Rozen had left VCR Printing with Mr. Jung to start Reflex and he was working long hours to build the new business. Ms. Rozen's assumption of primary parenting responsibilities freed Mr. Rozen up to pursue this new business.
- [92] Eventually, Noahm's needs began to subside and the parties hired a nanny to care for him part time. This allowed Ms. Rozen to work two or three days a week at a counselling agency, although not as a fully-qualified psychologist. After two years in that job, Ms. Rozen left and began a private practice within a different agency where she rented a room one day a week. However, because she did not have a master's degree, her practice had to be supervised by a more qualified psychologist.

- [93] In September 2000, Ms. Rozen enrolled in a two-year master's program at Norwich University in the United States. This was a distance learning program and she could do most of the work from home with some requirements for personal attendances for a week or so two or three times a year. While studying for her master's, she continued working one day a week in her private practice plus some additional hours in a lunchtime school program run by Family Services of Greater Vancouver. She was still the primary caregiver for Noahm but had help from her parents and Noahm attended daycare.
- [94] In 2002, Ms. Rozen became pregnant with Maaor. As this was a higher-risk pregnancy, she suspended her studies at Norwich with only one semester left. Maaor was born in December 2002 and had some significant health problems that kept Ms. Rozen occupied with him for the next five years. By the time she was ready to resume her studies, Norwich had closed the program and the credits she had earned were not transferable to another institution. She was compelled to start her master's degree all over again, which she did through another distance-learning program at the Leadership Institute of Seattle (LIOS). This program was similar to Norwich although it required personal attendances in Seattle once a month over extended weekends.
- [95] As part of the LIOS program Ms. Rozen was required to do two internships. She did one at New Westminster Family Services and another at Jewish Family Services Association. Both places offered her positions after she completed her master's in 2011. She worked at New Westminster Family Services one day a week and Jewish Family Services two days a week. She spent a fourth day building a private practice. Thus, by 2011 she was finally able to launch a career in earnest, some 22 years after Mr. Rozen did.
- [96] In 2012 Ms. Rozen left New Westminster Family Services at Mr. Rozen's urging due to some late-night work that took her away from the family and gave Mr. Rozen some safety concerns. However, this change did not affect her career trajectory since she immediately made up the time by working an additional day at Jewish Family Services.
- [97] I find that Ms. Rozen had an entitlement to compensatory support upon the breakdown of the marriage because her assumption of family responsibilities delayed the start of her own career and gave Mr. Rozen freedom to build his. However, Ms. Rozen was not completely shut down from building her qualifications. Even before completing her master's degree, she worked part time as a counsellor in a supervised practice which she was able to do because the parties hired nannies and housekeepers to assist with childcare and domestic duties. Mr. Rozen was also supportive of Ms. Rozen completing her master's degree and she was able to do that with financial and personal support from Mr. Rozen. In this respect, her career path was delayed but not foreclosed.

- [98] Further, by the time of trial, Ms. Rozen had the capacity to maintain a counselling practice with a significant hourly rate of \$180. Thus, while her career got off to a late start, I find the circumstances of the marriage and its breakdown is no longer inhibiting her career potential, although as with Mr. Rozen, it is reasonable to think that her age might be a limiting factor.
- [99] I also note that while Ms. Rozen's assumption of family and household responsibilities freed up Mr. Rozen to build his business, the benefits of this were mostly enjoyed by both parties during the relationship. Due to the decline in the printing industry, Mr. Rozen has not been able to benefit from this opportunity much beyond the three or four years post-separation. By contrast, Ms. Rozen is now in a better position to earn an income with her education and experience in field where her skills are in higher demand than are Mr. Rozen's in his field.
- [100] I will take all these factors into account in setting the quantum and duration of spousal support.

2. Non-Compensatory

- [101] Non-compensatory support is aimed at narrowing the gap between the means and needs of the spouses on marital breakdown. It is grounded in a "social obligation model" in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on the former partner, rather than the state: Chutter para. 54, Bracklow at para. 23. In a longer relationship, such as this one, the parties' standard of living during the relationship helps inform a spouse's "need" for support: Chutter, paras. 57-59. The objectives of relieving economic hardship from the breakdown of the marriage and promoting economic self-sufficiency should bear some relationship to this factor: Hodgkinson v. Hodgkinson, 2006 BCCA 158 at para. 69.
- [102] I accept that Ms. Rozen has an entitlement to non-compensatory support at least for the years following separation. That need is reflected in the fact that her income was much smaller than Mr. Rozen's and she had to borrow some \$150,000 from family members to cover her expenses. She has also drawn from the parties' lines of credit to meet her living expenses.
- [103] There is no doubt that Ms. Rozen has endured a lower standard of living than what the parties' enjoyed during the marriage, but so too has Mr. Rozen. He has also had to borrow some considerable amounts from his family members, particularly since his income began to decline more significantly around 2017.
- [104] It does not strike me that either party now has a particularly extravagant lifestyle. A large part of the debt that they have each accumulated seems to relate to the ongoing cost of living on a substantially reduced income from Reflex, the cost of the children's education (both private school and now university), and, unfortunately, the cost of this litigation. I note that Ms. Rozen's financial disclosure statement does not provide an accurate account

of her actual living expenses. The statement was sworn before she retained her present counsel (who only came on the record very shortly before the start of trial) and she believed that she should list expenses that were commensurate with the lifestyle she enjoyed during the marriage, not what her actual expenses are now. Regardless, on the totality of the evidence, it is clear that neither party is living the way they did when Reflex Printing had its heyday.

- [105] With the decline of Mr. Rozen's business and considering his age and the admirable but largely unsuccessful efforts he has made to diversify his business, Ms. Rozen now appears better equipped to earn an income than is Mr. Rozen. D. Amount and Duration
- [106] I will begin my consideration of amount and duration of spousal support by assessing what I would consider to be an appropriate order going back to the date of separation. I will then consider Mr. Rozen's argument that any retroactive award should be reduced to account for Ms. Rozen's delay in seeking spousal support.
- [107] Both parties submit that spousal support should be calculated from the date of separation in November 2012. I had some question as to why that was the case since the parties did not separate their finances until June 2015. As I said earlier, up to that point they shared a joint bank account into which both of their incomes were deposited and from which each withdrew money for their own living expenses and to support the children as they had done during the marriage. The vast majority of that money came from Mr. Rozen's income but Ms. Rozen contributed \$2,000 a month to the joint account from her income until June 2015. Thus, Ms. Rozen's and the children's needs were met prior to June 2015 in the same way they were prior to separation and there was no need for spousal or child support before the agreement to separate finances, except perhaps to address a compensatory element of spousal support.
- [108] I asked counsel for further submissions on this point and both reiterated their positions that entitlement to spousal and child support should be assessed from the date of separation with credits and debits to each party to account for things such as Ms. Rozen's contribution to the parties' joint account from her income and her charging some of her family and living expenses to the parties' joint Visa account which Mr. Rozen paid for.
- [109] I propose to follow the parties' submissions since they agree on this point. That approach may also be necessary to capture compensatory support since Mr. Rozen's income dropped fairly significantly after 2017. However, I will use 2013 as a starting point (rather than November 2012), in part for ease of calculation, but also because Mr. Rozen did not move out of the family home until May 2013 and he benefited from the household expenditures while still living there and, to some degree, after.

- [110] An order for retroactive spousal support must also consider the tax implications. If the payments had been made on an ongoing basis, they would have been taxed in Ms. Rozen's hands and Mr. Rozen would have received a tax credit. To account for this, the parties have agreed to a 25% deduction in any retroactive spousal support payment. This does not account for the tax consequences with precision, but the parties agree it is a reasonably addresses this consideration.
- [111] With respect to amount, I consider spousal support at the high end of the range of the SAAG is appropriate in this case due to Ms. Rozen's entitlement to compensatory support and the short duration that support is ultimately payable for. Ms. Rozen has experienced some financial and career disadvantage from the marriage but this was tempered by the fact she was able to complete her education and keep her foot in the counselling workforce throughout the marriage. She is now in at least an equal and probably better position than Mr. Rozen to earn an income. These points, on their own, would have led me to order spousal support in the mid range if support was going to be indefinite or at least a longer period than what I would order. However, because of the post-separation decline in Mr. Rozen's income, retroactive spousal support is only payable for a relatively short duration after separation for a marriage of this length. In order to achieve the compensatory objectives of spousal support within that limited time frame, I find it is necessary to calculate it based on the higher end of the range.
- [112] I have set out a detailed calculation of retroactive spousal support in Appendix 1 to these reasons. It is based on the DivorceMate calculations provided by the parties. It includes mid and high range for comparison, but I order retroactive support in the high end for the period it would have been payable. The total after deducting the agreed 25% but before considering other credits and a potential reduction for delay is \$155,301. E. Delay in Seeking Spousal Support
- [113] Mr. Rozen argues that any spousal support order should be reduced to account for Ms. Rozen's delay in seeking such an order. He points out that this claim was filed in 2016 and at no time in the nine years since did Ms. Rozen seek an order for interim spousal support. He submits it would be unfair to him to now go back some 12 years to the date of separation to order retroactive spousal support.
- [114] Ms. Rozen argues a claim for spousal support was included in the notice of family claim filed in 2016 and has never been taken off the table. She argues Mr. Rozen has known all along she is claiming spousal support and had time to plan for it. She also says she has provided a reasonable explanation for not seeking an interim order.
- [115] Both parties cite *Legge v. Legge*, 2021 BCCA 365 where there was a delay of almost 10 years from the date of separation to the adjudication of spousal support. In that case, Ms. Legge started proceedings in Provincial Court within a month of separation and there were several appearances there dealing with parenting and child support. Those issues were eventually resolved. Although spousal support was claimed, no interim application for it

was brought and the matter was never addressed in the Provincial Court. In 2014, Mr. Legge brought an action in Supreme Court seeking a divorce and orders respecting children and property division. Ms. Legge filed a counterclaim seeking spousal support retroactively to the date of separation but again did not bring an interim application. After trial, the judge found Ms. Legge had established an entitlement to support on both compensatory and non-compensatory grounds but declined to make an order because of the delay.

- [116] The Court of Appeal allowed Ms. Legge's appeal. Speaking for the court, Justice Butler noted that in *Kerr v. Baranow*, 2011 SCC 10, the Supreme Court of Canada identified two underlying interests that are at stake in delayed claims for retroactive spousal support: certainty for the payor in planning their financial affairs and encouraging parties to bring their claims promptly. However, those interests were ultimately of little significance because the spousal support claim was made early even if not pursued on an interim basis. Justice Cromwell stated in *Kerr* at para. 210: "Commencement of the proceedings provided clear notice to the payor that support was being claimed and permitted some planning for the eventuality that it was ordered." Similarly, Butler J.A. found Ms. Legge's Provincial Court pleading and her prompt counterclaim in the Supreme Court "gave clear notice" of her claim to spousal support.
- [117] Justice Butler held at para. 40 that when a court is considering a delayed claim for spousal support, it must consider both the payor's circumstances and give effect to the statutory objectives of spousal support. In doing so, trial judges must consider the needs of the recipient spouse at the time support should have been paid and at the time of trial. He said:
- [40] 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.
- [118] He went on to say that a trial judge has multiple options to achieve this balance including with lump sum awards, reapportioning property, or prospective awards rather than a retroactive amount. He also referred to *Segura v. Segura*, 2020 BCSC 650 where Schultes J. reduced a retroactive award by 50%, which he assessed was commensurate with the spouse's delay in seeking support. Justice Butler said the important thing is for judges to 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."
- [119] Justice Butler ordered a lump sum of retroactive spousal support, taking into account the delay itself, the hardship the husband would face with a substantial retroactive award given that his financial resources were "somewhat limited", the economic disadvantages the wife suffered and continued to suffer from the marriage breakdown, and the limited amount of family property available for division.

- [120] Before June 2015, the parties carried on with their financial affairs as though there had been no separation and so there was no reason for Ms. Rozen to seek spousal support before then. Once Mr. Rozen filed his notice of family claim in May 2016, Ms. Rozen responded with a counterclaim that included spousal support. This put Mr. Rozen on notice at an early stage of the proceedings that he should plan for a potential spousal support order. There were then unsuccessful efforts to resolve the case through mediation. This provides some explanation for a delay.
- [121] Ms. Rozen also says she did not want to seek interim spousal support because she was concerned it might disrupt the voluntary child support Mr. Rozen was paying. However, since Ms. Rozen had counsel at the time (though not her trial counsel), I find this explanation unpersuasive.
- [122] Nevertheless, there is no evidence to suggest Mr. Rozen was taken by surprise that retroactive spousal support to the date of separation was advanced at trial and there are family assets that make a retroactive payment viable. Further, as I discuss below, Mr. Rozen is entitled to substantial credits from Ms. Rozen for items he paid for going back to the date of separation that more than offset a retroactive spousal support order.
- [123] Moreover, I have found that Ms. Rozen is entitled to compensatory support and, given the decline in Mr. Rozen's income in the past 10 years, that compensatory element can only be addressed through a retroactive order for spousal support or through an unequal division of the family property in lieu under s. 95(2)(c).
- [124] Finally, the fact that Mr. Rozen's declining income results in an effective termination of spousal support after 2017 significantly reduces the hardship of a retroactive order.
- [125] I therefore find that a retroactive spousal support order is necessary to address the objectives of spousal support and is not prejudicial to Mr. Rozen. I would not discount the spousal support order. F. Ongoing Spousal Support
- [126] Ms. Rozen seeks an order for ongoing spousal support. She cites the fact that this was a 24-year marriage after which spousal support would ordinarily be indefinite. However, Mr. Rozen is now 64 and the chances of his business rebounding are improbable, whereas Mr. Rozen's prospects of earning an income are good. Thus, absent some unexpected jump in Mr. Rozen's income, I would not make an order for ongoing spousal support. VI. Child Support A. Parties' Positions
- [127] Mr. Rozen concedes an obligation to pay retroactive child support, subject to a credit for what he has already paid and for certain special and extraordinary expenses he has covered. He argues there should be no ongoing child support after trial.

- [128] Ms. Rozen submits that Mr. Rozen has paid insufficient, inconsistent, and irregular child support since the date of separation, resulting in retroactive child support payments owing to her. She argues Mr. Rozen should not be given credit for all that he claims since some of these expenses were incurred on his own volition without consulting Ms. Rozen. B. Support Calculations
- [129] Following the parties' proposals, I would calculate child support starting in 2013. My calculations, again based on the incomes I have found and the DivorceMate calculations submitted by the parties, are set out in Appendix 2. The amount of retroactive child support I assess is \$158,492, less \$113,359 Mr. Rozen has paid for a net retroactive amount of \$45,043, again subject to the credits Mr. Rozen claims. In arriving at the amounts in Appendix 2, I applied the following considerations:
- a) From 2013 to the end of June 2015, both children were living with Ms. Rozen.
 - b) Noahm finished high school in June 2015 and worked the summer at Camp Hatikvah until September when he started at UBC. When not at the camp he split his time roughly equally between the parties' homes. I assume most of his summer living expenses were covered by the camp and it could only have been a matter of a couple of weeks that he was living with the parties. I therefore would not order support for Noahm during these months.
 - c) From September 2015 to April 2016, Noahm lived in residence at UBC with that expense largely covered by an RESP. Mr. Rozen supplemented that cost but the evidence does not specify how much. Ms. Rozen also gave Noahm \$200 each week or so to assist with his expenses. However, since Noahm's living expenses were substantially covered through living in residence, and since both parents were independently giving him some additional money, I would make no order for child support for Noahm while attending UBC. I would set support for Maaor in the Guideline table amount of \$1,459 per month.
 - d) From May 2016 through August 2016, Noahm worked at Camp Hatikvah and otherwise split his time equally between the parties' homes. I assume his living expenses were covered while at the camp but the evidence does not indicate how long he was there and how much time he spent with his parents. For this period, I order the Guideline amount for two children for two months with a modest discount to account for an offset for Noahm only since he was splitting his time between the parties.
 - e) Starting in September 2016, Noahm lived in an apartment with friends while attending UBC. This was covered by his RESP plus additional support from both parties in amounts they chose. I would therefore set child support for this period at the one-child amount for Maaor only from September 2016 through 2020.
 - f) In 2021, Maaor graduated high school and in September he started at the University of Victoria where he lived at Hillel House which Mr. Rozen paid for. I therefore set child support for 2021 for Maaor only and for 8 months (January to August). I would not order child support for the balance of the year.

- g) In 2022, Maaor lived at Hillel House while at UVic but returned home for the summer where he lived with Ms. Rozen. He returned to Victoria in September where he lived in an apartment. I would order child support for the four months that he was living at home with Ms. Rozen.
- h) In 2023, Maaor was at UVic until the end of the school year in April. He returned home for the summer and enrolled in a digital marketing program at Kwantlen University starting in September 2023. He is still working at that program while living with Ms. Rozen. He is taking a three-course load which Kwantlen considers full time, although it is not the more conventional five-course load. For that reason, I consider that Maaor is capable of at least some part-time work to assist with his expenses: *Farden v. Farden*, 1993 CanLII 2570, 48 R.F.L. (3d) 60 (B.C.S.C.). He is also able to work over the summer months. Thus, for 2023 I would not order child support while Maaor was at UVic and I would order the Guideline amount, discounted to \$350/month account for Maaor's ability to contribute some amount to his expenses, for the balance of the year.
- i) From 2024 to the present, Maaor continues to attend Kwantlen with a three-course load. I would order the \$350 per month which is a discounted Guideline amount. The Agreed Statement of Facts indicate that Mr. Rozen's income for 2024 is \$60,000, mostly made up of an RRSP withdrawal which I have not counted as income. The evidence does not indicate any employment or business income for 2024 which has not been explained. I will therefore impute \$50,000 to Mr. Rozen for 2024 and 2025 for the purposes of child support as that amount is close to his 2023 income.
- [130] As for ongoing child support, I would order that Mr. Rozen continue paying \$350 per month for Maaor as long as he is enrolled in the digital marketing program at Kwantlen with at least a three-course load. When Maaor completes or leaves that program, support may terminate. VII. Credits
- [131] Both parties, but primarily Mr. Rozen, seek credits for some expenses each covered since separation. In most cases, these credits would offset some of the amounts due for retroactive spousal or child support but in some cases a credit would be more in the nature of an unequal division of family property. A. Mortgage Payments and Property Taxes
- [132] Mr. Rozen seeks a credit of \$19,142 for one half of the mortgage payments he made on the former family home between separation and June 2015. He also seeks a credit of \$5,558 for half the property taxes he paid for the family home in 2013-2015 and full reimbursement of \$4,307 for property tax arrears he paid in 2024.
- [133] I agree with Ms. Rozen that mortgage payments and property taxes contribute to the overall value of the home and Mr. Rozen benefits from this through property division. The parties made no agreement on mortgage payments before they divided their finances in June 2015. I am not aware that Mr. Rozen sought to be reimbursed for past mortgage or property tax payments before that point.

- [134] After June 2015, Ms. Rozen agreed to take over the mortgage, presumably because she had the benefit of living in the former family home. There was no agreement on property taxes but Mr. Rozen paid half of the property taxes until 2020 when he said he could no longer afford it.
- [135] Making an order to give Mr. Rozen credit for the pre-June 2015 payments is akin to a reapportionment of the value of the property to which those payments contributed. In *Jean Louie v. Jean Louie*, 2020 BCCA 220 at para. 34 the Court of Appeal held that there is no established principle that unequal post-separation contributions to family property should result in an unequal division of that property and it is "misguided" to suggest otherwise.
- [136] Mr. Rozen did not move out of the home until May 2013 and did not start paying rent on a new place until September 2013. He also continued to have meals at the family home two or three times a week into 2015. Most of these were prepared by Ms. Rozen who presumably had bought the groceries.
- [137] Considering all these factors, I find it would be significantly unfair not to credit Mr. Rozen for some portion of the mortgage and property tax payments he made while Ms. Rozen had exclusive possession of the family home, but not for the full amount he claims. I would credit him for \$2,154, being one half of the property tax payments he has made after the June 2015 agreement and credit him for another \$15,000 for pre-2015 property taxes and mortgage payments. B. Utilities - Pre-2015
- [138] Mr. Rozen paid a total of \$3,122 in utilities for the home before June 2015 but since he was still living in the home for part of that time, I would credit him for \$2,500 for this amount. C. Occupation Rent
- [139] Starting September 1, 2013 Mr. Rozen began paying rent for his own apartment at \$1,200 per month. It increased to \$1,225 on May 1, 2016 and increased again at some point. He stated that he was paying around \$1,330 when he moved out of that place in June 2023. On July 1, 2023, Mr. Rozen moved in with his new partner with whom he splits the rent equally. His share is \$2,575 per month plus half the utilities.
- [140] Mr. Rozen did not include a claim for occupation rent until he amended his notice of family claim just over a month before the start of trial. He purports not to seek a stand-alone order to this effect at trial but argues that "any retroactive child and spousal support due and owing to the respondent be reduced to account for the fact he had to pay rent while Ms. Rozen had the former family home. He does not suggest an amount that retroactive support should be reduced by.
- [141] Occupation rent is not to be considered as a stand-alone claim but may be a factor to consider in a reapportionment of family assets: *Shen v. Tong*, 2013 BCCA 519 at para. 49; *McManus v. McManus*, 2019 BCSC 123 at para. 75. It requires a "holistic consideration of all the circumstances": *Holland v. Holland*, 2017 BCCA 75 at para. 22-24. Relevant factors include the circumstances in which the non-occupying spouse left the home, whether the

children are living with the occupying spouse, claims made by the occupying spouse against the other spouse for expenses related to the premises, whether support is being paid, whether the occupying spouse has increased or decreased the value of the property, the duration of the occupancy, and other competing claims in the litigation: McManus para. 76.

- [142] The issue was obviously not pressed forcefully and I am not persuaded any adjustment should be made. Ms. Rozen assumed responsibility for the mortgage on the former family home under the parties' agreement and I have credited Mr. Rozen for much of the mortgage payments he made prior to that agreement. I am therefore not persuaded that any significant unfairness arises without an order for occupation rent and Mr. Rozen cited no authority for the proposition that it can offset retroactive spousal support. Moreover, it was not pleaded until weeks before the trial started. I make no order for or in respect of occupation rent. D. Section 7 Expenses
- [143] Both parties seek credit for certain special and extraordinary expenses under s. 7 of the Guidelines that each has paid for the children. As part of their agreement to separate finances in June 2015, the parties agreed that Mr. Rozen would pay 70% of these expenses and Ms. Rozen would pay 30%. That is the split that Mr. Rozen still claims, even though his income has declined to an amount that would suggest a narrower division.
- [144] Mr. Rozen seeks a credit for 30% of the expenses listed in paragraphs 31(a) and 46 of the Agreed Statement of Facts. These are mostly expenses for private school tuition, summer camp fees and some university-related expenses. Ms. Rozen does not take issue with most of these. Two that she objects to are \$15,000 for costs to move Noahm to Toronto and the cost of Maaor's tuition at King David Secondary after 2017.
- [145] I agree that Ms. Rozen should not share in the cost of moving Noahm to Toronto. He moved there briefly after graduating from UBC to take a job but did not stay long and soon returned to Vancouver. Mr. Rozen did not discuss this expense with Ms. Rozen before incurring it and there is no evidence of why Mr. Rozen decided to pay it. I decline to include it as an extraordinary expense.
- [146] With respect to Maaor's private school tuition, both parents wanted Maaor to continue at King David through graduation. It was only because Ms. Rozen felt she could not afford her 30% that she resisted paying and, through her counsel at the time, suggested withdrawing Maaor from private school. Mr. Rozen did not want that so he paid the full tuition.
- [147] At trial, Ms. Rozen agreed she would not have gone so far as to pull Maaor out of King David but said the parties could have asked the school's administrators a reduction in tuition based on hardship. I accept Ms. Rozen was genuinely concerned about her ability to pay her share of the tuition at the time but I am now making a retroactive spousal support order and some additional retroactive child support. Had Ms. Rozen been receiving those at the time, she would have been in a better position to pay her share of the tuition under the parties' agreement. I therefore find that Mr. Rozen should now be credited with Ms. Rozen's 30% share of this expense.

- [148] Ms. Rozen also objects to paying a share of Maaor's miscellaneous expense while attending Kwantlen University. She says Mr. Rozen made some unilateral arrangement to give Maaor some money while he is in the program but she was not consulted about it. She has her own expenses for this since Maaor is living with her. I agree and would not include this item in the s. 7 expenses.
- [149] I find Mr. Rozen should be assessed with 70% of the items claimed by Ms. Rozen claims as s. 7 expenses she paid for (Agreed Statement of Facts, para. 34) except for the \$195 cost for school uniforms. I consider those to be clothing for the children that is an ordinary expense contemplated by the table amount of child support.
- [150] The calculation of special and extraordinary expenses is set out in Appendix 3. It results in a net credit to Mr. Rozen of \$44,961. E. Joint Visa Account
- [151] Mr. Rozen claims a credit of \$109,559 for the amounts that Ms. Rozen charged to the parties' joint Visa account after separation but before June 2015. According to the Agreed Statement of Facts, para. 31(d), Ms. Rozen used this Visa card to pay family related expenses, personal expenses, and her legal fees after separation. Mr. Rozen paid for this Visa until June 1, 2015.
- [152] Ms. Rozen concedes her responsibility to pay the legal fees. However, she argues this Visa account was used to pay family and s. 7 expenses. She argues the s. 7 expenses on the Visa should be split proportionally and the other expenses should be set-off by her contribution to the joint account plus any amounts that she actually paid on the Visa statement. However, Ms. Rozen has not pointed to any entries in the Visa statement that are evidently s. 7 expenses beyond those I have already accounted for in Appendix 3. Nor has she shown that she made any payments on the Visa during that period beyond what was paid from the joint account.
- [153] The Agreed Statement of Facts state that Ms. Rozen incurred \$109,559 in expenses on the joint Visa card between separation and June 2015. It also states that Mr. Rozen paid this Visa bill up to June 2015 but it is my understanding that it was paid from the joint account into which Ms. Rozen contributed \$2,000 a month from her earnings. (To my mind, this is another reason why it makes most sense to start support and related credits as of June 2015 but, as mentioned, neither party wants that.) Thus, Ms. Rozen is to receive a credit for the \$62,000 she contributed to the joint account between separation and June 2015. I would therefore give Mr. Rozen a net credit for the Visa expense in the amount of \$47,559. F. Litigation Expenses
- [154] Mr. Rozen seeks a credit of \$21,552 being one half the cost of joint expert and mediation fees he paid for in this litigation. I would give him this credit, but that is without prejudice to a position either party might take in assessing costs for this litigation. G. Summary of Credits

- [155] The following table summarizes the credits I have just found and the credits for payments on the lines of credit. It also includes amounts I find are owed to Ms. Rozen for retroactive spousal and child support. It does not include the equalization payment I found is necessary to effect on equal division of the RRSPs nor a payment to equalize the proceeds from the sale of the strata office unit. Credits Drory Nava Lines of Credit #1 and 2 \$125,554 Lines of Credit #3 and 4 \$32,674 Retroactive Spousal Support \$155,301 Retroactive Child Support (net of interim payments) \$45,133 Property Taxes and Mortgage \$17,154 Utilities \$2,500 Section 7 Expenses \$42,711 Joint Visa \$109,559 Nava Salary deposited to joint account \$62,000 Litigation Expenses \$21,552 Totals \$321,280 \$295,108 Net Credit (Debit) \$23,922 (\$23,922)
- [156] Thus, I conclude that Ms. Rozen must pay Mr. Rozen a total of \$23,922 after all the credits are accounted for. VIII. Equal or Unequal Division of Property
- [157] I now return to whether property division should be equal or unequal. Ms. Rozen argues an equal division would be significantly unfair having regard to: the duration of the relationship; Ms. Rozen's contribution to Mr. Rozen's career; the extent to which Ms. Rozen's financial means and earning capacity have been affected by her responsibilities and other circumstances of the relationship; and the inequity created by the parties' ultimate/future financial position. A. The Section 95 Factors
- [158] To my mind, the question of equal or unequal property division in this case turns largely on whether the parties fair roughly equally in terms of the assets each holds coming out of the marriage, the earning opportunities both now have, and whether Ms. Rozen's entitlement to compensatory support has been addressed.
- [159] By my assessment, the parties are in a roughly equal position as it relates to assets from the relationship. Each will receive approximately \$1.5 million in family property, although Ms. Rozen must pay Mr. Rozen \$23,922 for the credits he is to receive (including for her post-separation debt on Line of Credit 001).
- [160] The overall amount of retroactive spousal support I have ordered is limited by the decline in Mr. Rozen's income and the rise in Ms. Rozen's ability to earn. Thus, it does not extend past 2017 in any significant amount. Despite that, I am satisfied the objectives of both compensatory and non-compensatory support are met by that order and the equal division of property for the following reasons.
- [161] First, although Ms. Rozen's career path was stalled by her family obligations, she was supported throughout the marriage in completing her education such that she is now a well-qualified and experienced psychologist and counsellor. In fact, I find she is now better positioned to earn an income than is Mr. Rozen.
- [162] Second, before separation, the parties discussed the potential for Mr. Rozen's income to decline and a corresponding need for Ms. Rozen to earn more to help sustain the family's standard of living. They agreed it would be necessary for Ms. Rozen to complete her

master's degree so she could enhance her earning potential. This is precisely what happened and, while Ms. Rozen was delayed in finishing her master's, she did ultimately finish it with Mr. Rozen's support. This has placed her in a good position to earn an income post-separation.

- [163] Third, as I have discussed earlier, the economic benefit to Mr. Rozen of being freed up to build his business by Ms. Rozen taking on childcare and household responsibilities is now largely spent with the decline of Reflex's business. Those benefits were largely realized and enjoyed by both parties during the relationship. In the few years after separation while business was still good, I have ordered retroactive spousal support at the high end of the SAAG range.
- [164] Finally, neither party is presently enjoying or able to enjoy the standard of living they had during the marriage. Mr. Rozen no longer has the income to support that lifestyle but Ms. Rozen has the qualifications and experience to be self-sufficient, albeit in a more modest lifestyle. B. Mr. Rozen's Expected Inheritance
- [165] Ms. Rozen also argues there should be an unequal division of family property because Mr. Rozen stands to receive a significant inheritance from his father. In 2018, Mr. Rozen's father and stepmother placed their wealth in a family trust which currently has assets of some \$10 million. The trustees are Ron Rozen and Phil Winkler, who are Mr. Rozen's brother and stepbrother. The beneficiaries are Mr. Rozen, Ron Rozen, and their three stepsiblings. However, Mr. Rozen's father is entitled to draw on the capital and income of the trust during his lifetime and the beneficiaries have no entitlement to the trust until after he passes away. (His stepmother passed away sometime after the trust was settled.) Mr. Rozen's father is 95 and, understandably, neither Mr. Rozen nor his brother would speculate in cross-examination about how long he may live. According to Mr. Rozen, his father is doing "extremely well".
- [166] Since Mr. Rozen is a beneficiary of an established trust, it is virtually certain he will receive an inheritance through it at some point. It appears his father is drawing on the capital for his own living expenses and care but not at a rate that will substantially deplete the trust, even if he lives an extraordinarily long life. The trust capital is also prone to market fluctuations (as Ron Rozen observed in cross-examination, the market crashed on the very day he testified), and there will also be tax to pay on the trust before any of the beneficiaries receive any benefits, but it is indisputable that Mr. Rozen presently stands to receive a generous inheritance.
- [167] Ms. Rozen argues this fact should be considered in dividing family property. She argues the trust gives Mr. Rozen an element of financial security for his future that she does not enjoy, and that should be considered in property division. Her counsel concedes this is a "challenging argument to succeed on" but submits that when this likely inheritance is factored into the parties' financial circumstances Mr. Rozen could have assets in the range of \$4 million or more while Ms. Rozen would have approximately \$1.5 million (excluding

each party's personal, post-separation debt).

- [168] The FLA, ss. 84 and 85(1)(b) provides that inheritances of a spouse are "excluded property" which is not subject to division under s. 81 unless one of the circumstances described in s. 96 exist. In *Venables v. Venables*, 2019 BCCA 281, Justice Griffin explained the rationale for the excluded property regime as follows:
- [87] The excluded property regime reflects the reality that many modern relationships do not last a lifetime and the perspective that, since the other, non-acquiring spouse had nothing to do with the acquisition of the excluded property, it is presumptively fair that the non-acquiring spouse should not share in the other's excluded property upon the relationship ending.
- [169] However, Justice Griffin went on to observe at para. 90 that the FLA does not remove all flexibility and the court retains a discretion to reapportion either family property or excluded property if it would be significantly unfair not to do so. In fact, s. 96 of the FLA provides for just that. Section 96(b)(iii), for example, permits a court to order a division of excluded property if it would be significantly unfair not to do so "on consideration of the duration of the relationship between the spouses" and if significant unfairness already found under s. 95(1) cannot be addressed through an unequal division of the family property or debt.
- [170] However, a prospective inheritance is not real or personal property owned by a spouse and, even when the inheritance is a "relative certainty", it is not family property: *Sidhu v. Sidhu*, 2025 BCCA 263 at para. 60. In *Sidhu*, which was released after submissions concluded in this case, the court said at para. 62 that "it is settled law that a prospective inheritance, one that may come to a spouse from a person still living, should not be considered when determining whether the equal division of family property would be significantly unfair."
- [171] In this case, the inheritance is more certain than it was in *Sidhu* given that it is in the form of an established family trust in which Mr. Rozen is already named as a beneficiary. However, Mr. Rozen has no right to access the trust property until after his father passes and thus it is in the nature of a contingent trust that does not constitute family property: *H.S.S. v. S.H.D.*, 2018 BCCA 199 at para. 80.
- [172] Ms. Rozen relies on *Healey* in arguing the anticipated inheritance should be factored into family property division. There the husband was the beneficiary of trusts settled by his father and stepfather before the start of the parties' 21-year relationship. The value of the trust property, not counting the increase in value during the relationship, far exceeded the value of the family property at trial. Thus, with the trust being treated as excluded property, the husband stood to hold assets valued at over \$16 million after trial while the wife's half interest in the family property was \$2.2 million. At issue was whether this disparity made an equal division of the family property significantly unfair to the wife.

- [173] The Court of Appeal held that it did, and that the trial judge erred by not considering this disparity in assessing the wife's claim to an unequal division of family property. Writing for the court, Justice Horsman observed at para. 71 that the husband "retains sole ownership of almost \$12 million in excluded assets, a portion of which had, during the marriage, been used to cover family expenses and maintain the marital standard of living". Key to her decision was that the inheritance had been used for family expenses and to maintain the parties' lifestyle, such that the excluded property was "not unrelated to the economic circumstances of the spousal relationship": Healey, para. 79. On this basis Horsman J.A. distinguished *Cook v. Cook*, 2021 BCCA 194 where one spouse received an inheritance shortly before separation. In that case the court held that while this inheritance resulted in an economic disparity between the parties at separation, that did not justify an unequal division of family property because the inheritance was unrelated to the economic characteristics of the spousal relationship and reapportionment was not necessary to achieve the objectives of spousal support. Justice Horsman found that was not the case in Healey.
- [174] In this case, unlike Healey and Cook, Mr. Rozen's interest in the trust cannot be either family or excluded property because it is still a contingent interest that Mr. Rozen has no right to access. Further, he did not acquire that contingent interest until the trust was settled in 2018, some six years after separation.
- [175] Nor is Mr. Rozen's interest in the trust related to the economic circumstances of the spousal relationship. Obviously, the inheritance was not used for a family purpose during the relationship as it was in Healey, but nor is there evidence that the parties planned their financial future together in reliance on an expected inheritance.
- [176] Further, even if one could go down the path of considering likely inheritances in deciding property division, fairness would dictate that evidence of what both parties might expect to receive through inheritances would have to be considered. Ms. Rozen has offered no evidence of what, if any, inheritance she might expect to receive from her parents.
- [177] For these reasons, I find it is not open to me to consider Mr. Rozen's interest in the trust and I otherwise find it would not be significantly unfair to divide the family property equally. I would therefore order an equal division of family property in the manner I have set out earlier. IX. Sale of the Former Family Home
- [178] The last issue is whether I should order that the former family home be sold or whether Ms. Rozen should be given an opportunity to buy out Mr. Rozen's interest. Ms. Rozen feels a very strong attachment to the home and wishes to try to keep it. She said it "represents everything" for her and the children, "tradition, history, safety, love, and acceptance." She has spoken with a mortgage broker and believes she can buy out Mr. Rozen's interest by obtaining a reverse mortgage. She said she and the broker discussed a potential \$500,000 mortgage.

- [179] Mr. Rozen argues the house must be sold because neither party can afford it. He points out that the property taxes have not been paid for several years and the City of Richmond has indicated it may foreclose on the property in the fall. There are also two judgments registered against the house, one by Ms. Rozen's former lawyer for \$80,000 and another for which there is no evidence of amount but is also Ms. Rozen's debt.
- [180] While I can appreciate Ms. Rozen's attachment to the home, I am skeptical of her ability to buy out Mr. Rozen. She will need at least \$950,000 to buy out Mr. Rozen and pay the credits to which he is entitled. She will need to discharge the judgments on the property. She will at some point receive some amount for her share of proceeds from the sale of the strata property but that amount is yet to be determined. She will have some \$300,000 in RRSPs but that is not available to her at once without a tax penalty. She also has other debts to pay.
- [181] To my mind, it is unrealistic for Ms. Rozen to buy out Mr. Rozen's interest. I am therefore inclined to agree with Mr. Rozen that the property should be listed for sale but his submission that it should be listed within 21 days of this judgment seems harsh considering that it has been Ms. Rozen's home for over 20 years. I would be inclined to order that it be listed within 45 days of this judgment as that will give Ms. Rozen time to digest these reasons for judgment and prepare herself for the sale of the house.
- [182] Since I am ordering a 45-day period for listing of the house for sale, I will give Ms. Rozen a brief opportunity to buy out Mr. Rozen's interest in the home within that time frame. She will have 30 days from the date of this judgment to do so. If she is unable to buy out Mr. Rozen's interest in that time, the property must be listed for sale within 45 days of this judgment with the parties having joint conduct of sale. The listing and sale will otherwise be on the terms proposed by Mr. Rozen. I would not dictate the listing price in an order, even if it is the value in the joint appraisal that was jointly put into evidence, unless the parties cannot otherwise agree on a listing price. X. Summary and Conclusion
- [183] In summary, I would order an equal division of family property and debt and would make no adjustment for Mr. Rozen's anticipated inheritance. The family property includes the family home valued at \$1.9 million, RRSPs currently valued at \$622,414, and the proceeds from the sale of the strata office property whose after-tax value must be assessed but is approximately \$571,039, potentially with some further taxes to be paid on it. I find Mr. Rozen's business otherwise has no value.
- [184] The family home is to be listed for sale within 45 days of the date of this judgment unless Ms. Rozen is able to buy out Mr. Rozen's interest within 30 days of this judgment. Mr. Rozen is to effect an equalization of the RRSPs by way of a spousal rollover in the amount of \$308,496 (which equalizes the parties' post-separation withdrawals). The after-tax value of the strata property is referred to the Registrar, if necessary, for determination and certification after the parties have obtained necessary advice from an accountant. Family debt is also to be equally divided as it stood as of the date of separation. To account for post-separation withdrawals and payments on the lines of credit, Mr. Rozen is to receive a net

credit of \$122,660.

- [185] I assess retroactive spousal support at \$155,301 (after the agreed 25% deduction) and retroactive child support at \$158,492. This is offset by the \$113,359 Mr. Rozen has paid in child support plus the other credits I have identified, including the \$122,660 net credit for the lines of credit. The total net credit payable to Mr. Rozen is \$23,922. That is to be paid to Mr. Rozen from the proceeds of the sale of the home.
- [186] The parties wish to address costs after judgment. They may do so by making written submissions not exceeding 5 pages within 60 days of this judgment. If they require an opportunity to make oral submissions, they may submit a request to appear before me after they have filed their written submissions. "Kirchner J." Appendices Appendix 1 - Spousal Support Calculation Year Income Spousal - Mid Spousal - High Drory Nava per mo per yr per mo per yr 2013 \$180,079 \$24,351 \$3,378 \$40,536 \$3,847 \$46,164 2014 \$168,502 \$38,115 \$2,554 \$30,648 \$3,026 \$36,312 2015 \$163,163 \$37,746 \$2,413 \$28,956 \$2,871 \$38,452 2016 \$217,389 \$37,337 \$4,314 \$51,768 \$4,994 \$59,928 2017 \$109,679 \$40,028 \$1,178 \$14,136 \$1,582 \$18,984 2018 \$50,195 \$37,885 \$0 \$0 \$0 \$0 2019 \$84,731 \$42,425 \$265 \$3,180 \$614 \$7,368 2020 \$67,990 \$47,966 \$0 \$0 \$0 \$0 2021 \$89,431 \$56,451 \$0 \$0 \$0 \$0 2022 \$28,153 \$74,751 \$0 \$0 \$0 \$0 2023 \$47,137 \$65,000 \$0 \$0 \$0 \$0 2024 \$60,000 \$65,000 \$0 \$0 \$0 \$0 Subtotal \$169,224 \$207,068 Less 25% to account for tax (\$42,306) (\$51,767) Total \$126,918 \$155,301 Appendix 2 - Child Support Calculation Year Income Guideline per month Explanation for Assessment Result (year) Drory Nava 2013 \$180,079 \$24,351 \$2,482 · Two children full year \$29,784 2014 \$168,502 \$38,115 \$2,337 · Two children full year \$28,044 2015 \$163,163 \$37,746 \$2,270 (2 children) \$1,459 (1 child) · Jan-June: 2 children · July-Aug: Maaor only · Sep-Dec: \$1,859/mo (Guideline for Maaor plus \$400/mo for Noahm) \$22,374 2016 \$217,389 \$37,337 \$1,882 (2 children) \$2,954 · Jan-Apr and Sep-Dec: \$2,282/mo (Guideline for Maaor plus \$400 for Noahm) · May-Sep: 2 months at the two-child amount with a \$350/mo setoff and 2 months at one child amount for Maaor \$24,028 2017 \$109,679 \$40,028 \$1,028 Maaor only \$12,336 2018 \$50,195 \$37,885 \$472 Maaor only \$5,664 2019 \$84,731 \$42,425 \$810 Maaor only \$9,720 2020 \$67,990 \$47,966 \$646 Maaor only \$7,752 2021 \$89,431 \$56,451 \$855 · Jan-Aug: Maaor only · Sep-Dec: no support (Maaor living at Hillel House) \$6,840 2022 \$28,153 \$74,751 \$255 · May-Aug only (Maaor at home for summer) \$1,020 2023 \$47,137 \$65,000 \$443 · May-Dec at a reduced rate of \$350/month \$2,800 2024 \$50,000 \$65,000 470 · Full year at reduced rate of \$350/month \$4,200 2025 \$50,000 \$65,000 470 · Full year at reduced monthly rate of \$350/month \$4,200 Total \$158,492 Total Paid by Mr. Rozen \$113,359 Net owing \$45,133 Appendix 3 - Special and Extraordinary Expenses Year Item Amount Paid by Mr. Rozen 2013 Camp Hatikvah - Noahm \$5,000 2013 King David - Noahm \$14,950 2013 Talmud Torah - Maaor \$9,530 2014 Camp Hatikvah - Noahm \$6,000 2014 King David - Noahm \$15,690 2014 Talmud Torah - Maaor \$9,530 2015 Camp Hatikvah - Noahm \$1,104 2015 King David - Noahm \$8,034 2015 Talmud Torah - Maaor \$15,619 2020 King David - Maaor \$20,850 2021 UVic Tuition - Maaor \$3,699 2021 Hillel House - Maaor \$2,360 2022 UVic Tuition - Maaor \$4,338 2022 Hillel House - Maaor \$2,360 2022 Maaor Rent (Victoria) \$4,000 2023 Maaor Rent (Victoria) \$8,000 2023 Maaor Dental Surgery \$4,000 2023 Kwantlen Tuition - Maaor \$1,998 2024 Kwantlen Tuition -

Maaor \$4,447 2025 Kwantlen Tuition \$2,437 Subtotal \$147,359 Allocation 70-30 Drory Nava \$103,151 \$44,208 Paid by Ms. Rozen 2015 Dr. Karasz (Podiatrist for Maaor) \$415 2016 JCC After school care \$788 2017 JCC After school care \$231 2017 Clearview Orthodontics \$630 2018 Clearview Orthodontics \$74 Subtotal \$2,138 Allocation 70-30 Drory Nava \$1,497 \$641 Net Credit to Mr. Rozen \$42,711

- [1] Ms. Rozen's acceptance of Ms. Walters' report is qualified by her counsel's suggestion that Ms. Walters omitted her assessed value of 576's shares in Reflex in the valuation but counsel is not correct about this. She explained how she factored these shares into her valuation at para. 29 of her report.
- [2] Reflex did not actually lose money in those four years, but Ms. Walters applied certain assumptions that a potential buyer of the company would consider. These assumptions include the market value of the managerial time put in by Mr. Rozen (which she valued at \$90,000) as opposed to the actual amount that Mr. Rozen drew from the partnership in those years.

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