

CANADA / JUDGMENT

S.K.W. v. C.M.W.

2024 BCSC 1183

COURT

Supreme Court of British Columbia

DECIDED

5 July 2024

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2024 BCSC 1183 S.K.W. v. C.M.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.K.W. v. C.M.W.,

2024 BCSC 1183

Date: 20240705

Docket: E211835

Registry: Vancouver

Between:

S.K.W.

Claimant

And

C.M.W.

Respondent

Corrected Judgment: The test of the judgement was corrected at paragraphs [145], [189] and [194] on July 23, 2025.

Before: The Honourable Justice E. McDonald

Reasons for Judgment

The Claimant, appearing in person:

S.K.W.

The Respondent, appearing in person:

C.M.W.

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 20-24, 27-29,

December 4-8 and 11-14, 2023

Place and Date of Judgment:

Vancouver, B.C.

July 5, 2024

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Introduction

- [1] Following a 15-year marriage, the parties separated in May 2021. At the time of separation, the claimant was 56 and the respondent was 48 years old and their two children were nine and 12 years old. I will refer to the parties' eldest child as "C1" and the youngest child as "C2" (collectively the "Children").
- [2] The main issues relate to parenting issues and division of family assets and debts. The parties are experiencing significant challenges co-parenting after separation and their relationship is high-conflict.
- [3] The parties were self-represented at the trial.

Preliminary Issues

Application to Reopen the Trial

- [4] Following the completion of the trial and while the matter was under reserve, the respondent sought to reopen the trial. The respondent also requested interim orders, many of which are the same as the orders sought at trial. The claimant opposed this request.
- [5] The respondent submits that the trial should be reopened to allow her to submit additional evidence to contradict the claimant's submission at trial that he would continue to adequately care for the Children, pay child support and contribute to s. 7 expenses. She also seeks to provide additional evidence to support the orders she seeks at trial and to update the court on ongoing issues.
- [6] During the trial, I heard evidence concerning these issues and the parties provided their submissions on a great number of issues, including their positions about child support, s. 7 expenses, extra-curricular activities, counselling for the Children and parenting time.
- [7] Many of the incidents the respondent refers to relate to her ongoing concerns about the claimant not facilitating, or even refusing to allow the Children to attend extra-curricular activities during his parenting time. For example, she cites a situation where the claimant was 30 minutes late picking up C2, which made him late for an extracurricular activity.
- [8] While the court has wide discretion to reopen the trial before judgment, it must be exercised cautiously to prevent an abuse of process and the court must consider the relevance of the proposed evidence, the effect of reopening on the orderly conduct of the trial and the potential for prejudice to the other party: *Vander Ende v. Vander Ende*, 2010 BCSC 597 at para. 84 citing *R. v. Hayward* (1993), 86 C.C.C. (3d) 193, 1993 CanLII 14679 (Ont. C.A.).
- [9] I do not find that it is appropriate to exercise discretion to reopen the trial. The evidence proposed to be submitted by the respondent is not qualitatively different from the extensive evidence provided at the trial. It tends to show that the concerns she raised during the trial have continued post-trial.

- [10] In my view, it is not uncommon for the parties to continue their conflict after trial and before it is resolved by judgment. In my view, if the trial were reopened due to a party wishing to update the court about the conflicts that were the subject of the trial, the orderly and expeditious conduct of the trial would be jeopardized.
- [11] When I consider the proposed additional evidence, the submissions of the parties and the legal principles, I conclude that it would be inappropriate to reopen the trial in the present circumstances. Therefore, the respondent's request to reopen is denied.

No Response to Counterclaim

- [12] On October 18, 2023, the respondent filed a counterclaim. However, the claimant never filed a response to the counterclaim. On that basis, the respondent requests that the counterclaim be granted as if it was an undefended claim. For the reasons that follow, I decline to do so.
- [13] One reason I decline to allow the counterclaim on the basis that is undefended is that is unclear the counterclaim was brought in timely way. A party may file a counterclaim within 30 days of being served with a notice of family claim: Rule 4-4(4)(a) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR].
- [14] On July 24, 2023, the parties consented to an order authorising the claimant to file a second amended notice of family claim to correct certain pleaded facts, such as their date of marriage. They also consented to waive the requirement to personally serve "the filed copy" of the second amended claim in favour of ordinary service by email. The second amended claim was filed on November 9, 2023.
- [15] As the second amended claim was not filed until November 9th, it is difficult to see how the counterclaim filed on October 18th complied with SCFR 4-4(4)(a).
- [16] However, even if I assume that the counterclaim was properly commenced on October 18th and served on the claimant the same day, the time for the claimant to respond would not have expired until after the then trial date of November 14, 2023. It was only because no trial judge was available on the original trial date of November 14th that the trial was then reset to begin on November 20, 2023.
- [17] Therefore, while it is correct that no response to counterclaim was ever filed, the date and circumstances of the commencement of the counterclaim and the time available to respond must also be considered.
- [18] Regarding the request to grant the counterclaim, SCFR 4-4(5) provides that a party against whom relief is sought must respond within 30 days of being served with the counterclaim. The consequence of failing to do so is that the defaulting party will not be entitled to notice of trial: SCFR 4-4(6).

- [19] It should be noted that an "undefended family law case" is defined in SCFR 1-1 to mean, a family law case where it is true, among a number of possible scenarios, that "(d) a response to family claim and counterclaim have been filed but the notice of family claim and any response to the counterclaim have been (i) withdrawn, or (ii) struck out, discontinued or dismissed". In my view, the present circumstances do not fit within the definition of an "undefended family law case".
- [20] I do not find that the claimant's failure to file a response to counterclaim leaves the respondent unable to know the claimant's position on parenting issues. Each parties' pleadings clear state their positions on key issues.
- [21] Therefore, for the reasons explained above, I decline the respondent's request to grant the counterclaim on the basis that the claimant failed to respond.

Credibility

- [22] Assessing the credibility and reliability of witnesses is always a difficult task, especially in cases such as this where the evidence of key witnesses directly conflicts.
- [23] In the often-cited case of *Faryna v. Chorny*, (1951), [1952] 2 D.L.R. 354 1951 CanLII 252 (B.C.C.A.) at paras. 9-10, our Court of Appeal warns against basing credibility findings on superficial and often arbitrary impressions of whether a witness appears to be telling the truth. The court directs trial judges that all elements must be considered and, at para. 10, that, " the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."
- [24] Assessing credibility is described as an "art" that involves examining various factors. Such factors may include: the ability and opportunity to observe events; firmness of memory; the ability to resist the influence of interest; whether the testimony harmonizes with independent evidence that is accepted; whether the testimony changes during direct and cross-examination; whether the testimony seems unreasonable, impossible or unlikely; whether there is motive to lie; and, the demeanour generally: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186 [Bradshaw]. The testimony of non-party, disinterested, witness may provide a useful yardstick for comparison: *Bradshaw*, at para. 187.
- [25] During the respondent's testimony, she was highly articulate and she had lots to say about all of the matters in issue. I observed the respondent to expend high levels of attention and effort throughout her testimony and submissions at trial. Many secondary sources referenced in the s. 211 report describe the respondent as highly-detailed and interested in providing extensive information, especially on matters involving the Children. That accords with my observations of the respondent during the trial.

- [26] During the claimant's testimony, he testified less articulately and his answers tended to be less detailed than the respondent's. However, I conclude that the claimant answered honestly and he did not avoid the questions asked. The claimant also appeared willing to provide evidence that was potentially unhelpful to his position at trial. For example, the claimant agreed with the respondent that when C2 was injured at the park during his parenting time, he did not immediately inform her about the injury. The claimant gave an explanation for what he did and he agreed that his only effort to seek medical attention was to discuss C2's injury over the telephone with someone who was a nurse.
- [27] I find that the respondent, unlike the claimant, had difficulty resisting the influence of her desire to secure a favourable outcome during her testimony. I also find that the respondent's testimony, unlike the claimant's testimony, often seemed unreasonable, impossible or unlikely. For example, when the respondent testified about the claimant's time as a stay-at-home parent, she was very reluctant to give evidence that might give credit to the claimant for that period.
- [28] The respondent frequently engaged in lengthy, argumentative counter-narratives during her testimony, especially in cross-examination. She portrayed the claimant as both controlling and ineffectual, as well as unconcerned about the Children's well-being.
- [29] Obviously, both of the parties are interested witnesses and perhaps not surprisingly, their evidence often conflicted. When I consider all of the elements relevant to assessing credibility, I have no difficulty finding that the respondent is overall, a less credible witness than the claimant.
- [30] I find the respondent to be a less credible witness than the claimant because her testimony often lacked objectivity and harmony with the preponderance of the probabilities which a practical and informed person would readily recognize. Therefore, where the evidence of the claimant and respondent conflict on material points, which I will discuss in more detail later, I have usually preferred the evidence of the claimant.

Background Facts

- [31] The claimant is presently 56 years old and he is well-educated. The claimant has previously worked as a pastor at a church but currently, he is employed by a charitable organization.
- [32] The respondent is presently 48 years old and she is well-educated. The respondent has and continues to work in the areas of business consulting focussed on the real estate industry.
- [33] The parties were married on April 8, 2006. They separated on May 27, 2021.
- [34] The parties' Children are presently 15 and 12 years old. They were born on the following dates:
- a) C1, was born on December X, 2008; and

b) C2, was born on January X, 2012.

- [35] During the relationship, both the claimant and respondent continued their post-secondary educations. From 2007 to 2008, the respondent completed a Masters of Science in Real Estate Degree (MSRE) in the United States. Prior to the relationship, the respondent had also completed an MBA degree.
- [36] From 2006 to 2010, the claimant completed a Masters of Divinity Degree in Ontario. From 2015 to 2020, the claimant pursued a doctoral degree in religion, receiving his Ph.D. in the United States by May 2020.
- [37] In 2012, the parties and the Children relocated from Eastern Canada to the lower mainland of British Columbia. The purpose of the move was so that the claimant could pursue his career goal of obtaining a pastoral position at a church in the lower mainland. However, when the parties moved, the claimant had not yet secured such a position.
- [38] Both parties testified that their relationship was somewhat out of the ordinary within their faith community. Both parties described the respondent's busy and lucrative full-time career in business as uncommon for the wife of a pastor. However, the parties had discussions about this and they agreed their relationship aligned with their goals.
- [39] The parties separated in May 2021. The claimant stayed in the parties' former family home until July 2021, when he moved into a nearby one-bedroom apartment.

How Should Family Property and Debt be Divided?

Applicable Legal Principles

- [40] Part 5 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] governs the division of family property and debt. Section 81 of the FLA provides that spouses generally share family property and they are equally responsible for family debt. In the present case, there are few assets and a significant amount of debt to divide.

Family Property

- [41] The family property potentially subject to division consists of ownership of a company, a vacation timeshare property in the United States, RRSPs and RESPs. When the parties separated, they closed their joint bank accounts.

Timeshare

- [42] In 2011, the claimant and respondent acquired a Hilton Grand Vacations timeshare during the relationship. The parties submit that the timeshare is a family asset.

- [43] The claimant admits, due to his non-response to the respondent's notice to admit, that the parties purchased the timeshare by paying an initial contribution of \$2,149 (USD), plus a \$314.77 (USD) monthly for ten years. This totals \$39,921 (USD). The final payment was made on June 15, 2021.
- [44] There were also annual maintenance fees payable for the timeshare. The claimant paid the fees for 2022, but for 2023, the fees are unpaid. In August 2023, Hilton Grand Vacations placed a "privilege block" on the parties' timeshare points due to the overdue maintenance fees.
- [45] The respondent submits that since she has paid general expenses since separation and borrowed funds to do so, the claimant should be required to pay the outstanding fees of \$1,765.70 owing for 2023. The claimant submits that he cannot afford to pay the maintenance fees.
- [46] There was no formal valuation of the timeshare obtained by the parties. However, as already mentioned, the total cost of the timeshare was \$39,921 (USD).
- [47] To address the division of the timeshare, I find it appropriate to value it at its purchase price of \$39,921 (USD). That purchase price converts to \$53,881 (CDN), applying the Bank of Canada's average annual exchange rate of 1.3497 for 2023. One-half of that amount is \$26,941 (CDN).
- [48] The claimant's evidence is that he is unable to afford to pay the maintenance fee or to travel to the timeshare property post-separation. In light of the overall division of family assets and debt, I find it appropriate to order the timeshare, along with all accumulated points, transferred to the respondent for the sum of \$26,941 (CDN). The claimant shall promptly provide the documents necessary to transfer his interest in the timeshare to the respondent.
- [49] As will be detailed later in these reasons, the \$26,941 payable for the timeshare, shall be accounted for by setting that amount off against the claimant's share of family debt. Since the respondent shall receive all accumulated points in the timeshare and she is the only party who has used points since separation, the respondent shall be solely responsible for paying any current or future amounts owing for the timeshare, including all maintenance fees.

RRSPs

- [50] The parties agree that as of the date of separation, each party is entitled to a one-half interest in the claimant's pre-separation pension savings.

- [51] There were few documents entered concerning the amounts in the claimant's pension or RRSP investments. However, the respondent provided evidence about her calculation of the respondent's pension savings as of the date of separation based on the information he disclosed to her. The respondent calculates that the total value of the claimant's RRSP investments as of the date of the date of separation is \$94,780. He has withdrawn \$24,917 of funds from his RRSP since separation.
- [52] According to the claimant's F8 financial statement made November 2, 2023, as of that date, he held two RBC RRSP accounts. One RRSP account ending in *149 has a balance of \$22,882.90 and the other RRSP accounting ending in *726 has a balance of \$59,130.50. The claimant did not enter any of his RRSP account statements into evidence at the trial.
- [53] I conclude that the respondent's evidence about the balance of the claimant's retirement savings at the date of separation is accurate and I accept her calculation. The claimant had retirement savings of \$94,780 as of the date of separation. Therefore, the respondent is entitled to one-half, namely, \$47,390.
- [54] The claimant shall transfer \$47,390 to the respondent by a spousal rollover from his RRSP investment accounts.
- [55] The respondent also seeks a one-half share of pension contributions made by the claimant after the parties separated. In my view, there is no basis for dividing the pension contributions the claimant made after the parties' separation. It was not established that RRSP contributions were made using family property. I decline to divide any of the claimant's post-separation pension contributions as family property.
- [56] The respondent also has an RRSP investment worth of approximately \$10,000. She claims this is excluded property and I agree. The respondent acquired this RRSP prior to the relationship and since the relationship began, she made no further contributions and there was no significant growth during the relationship. As an item of excluded property, the respondent shall retain the entirety of her RRSP.

RESPs

- [57] The parties have RESP investment accounts for the Children. Since RESPs are held in trust for the child, they are not divisible as a family asset under s. 84 of the FLA and the party who is the trustee, remains the trustee: *R.(K.) v. D.(J.)*, 2017 BCSC 182.
- [58] The respondent seeks an order that the claimant remove his name from RESP accounts so that she alone is the trustee and in control of the accounts. In my view, such an order is not necessary given that the funds are held in trust for the Children. While the respondent is concerned the claimant is not continuing to make contributions, there is no suggestion or evidence that the funds are at risk because the claimant's name is the account(s).

- [59] The respondent is also concerned that the claimant has failed to make RESP contributions since separation. The respondent seeks an order requiring the claimant to make contributions to the RESP accounts to make up for contributions that she says he failed to make. The claimant's evidence is that he could not afford to make the contributions.
- [60] I find that in the circumstances of this case, it is inappropriate to order either party to make additional contributions for the Children. To the extent that a party has made, or failed to make, contributions to the RESP account(s) after separation, that may be relevant to a future determination of the parties' respective obligation to contribute to the Children's post-secondary education costs.

The Corporation

- [61] After the parties moved to British Columbia, the respondent incorporated a corporation (the "Corporation") in early 2013. The Corporation is the vehicle through which the respondent provides business consulting services and it is her employer.
- [62] The respondent testified that she could not find suitable employment in BC that paid her anything close to her business consulting work. The claimant expected to lead a comfortable lifestyle and the respondent believed it was her role to earn as much money as possible. For that reason, the respondent said she and the claimant agreed that she would provide her consulting services through the Corporation.
- [63] The respondent testified that she incorporated the Corporation online and in the presence of the claimant. The claimant testified that he was unaware of the incorporation and he did not know that he was a shareholder. He opposed the respondent's incorporating because this had caused the parties financial difficulties in the past.
- [64] In 2013, the parties opened a corporate bank account and a few years later, they obtained a corporate credit card. Each party signed the banking documents for these accounts. I find that both parties knew about the incorporation and the banking arrangements.
- [65] The respondent testified that the parties agreed she would control the Corporation. She was the controlling shareholder. Her role included managing the Corporation's finances and providing her personal services to clients through the Corporation. The parties agree that the claimant had no role in the operation of the Corporation.
- [66] The Corporation's T2 returns were not filed in a timely fashion. The respondent used software to track the Corporation's expenses and earnings although she admits she was not diligent about record keeping. The respondent said one reason the returns were not filed was that the claimant would not give her credit card statements. She needed those statements to check for business expenses.

- [67] I find the respondent delayed filing the Corporation's tax returns until after separation because she believed the Corporation was very likely indebted for tax. The respondent knew that filing returns would mean the tax would have to be paid and the respondent knew that would cause financial problems due to lack of funds.
- [68] In fact, this was not the first time significant tax debts had arisen during the parties' relationship. The respondent testified about having to use the sale proceeds from the home they owned in Eastern Canada to repay tax debts.
- [69] The respondent acknowledges that the Corporation is family property and that both parties own shares. However, the respondent seeks sole ownership of the Corporation going forward.
- [70] The parties provided no formal valuation of the Corporation. As I mentioned, its business consists almost exclusively of providing the respondent's business consulting services to clients. According to Exhibit 24, which is the Corporation's Statement of Profit and Loss and Retained Earnings and Balance Sheet, its revenue for years 2017 to 2023, were as follows:

Year

Revenue

2017

\$285,271

2018

\$277,097

2019

\$190,752

2020

\$141,553

2021

\$153,262

2022

\$152,460

2023

\$88,488

- [71] The tangible assets of the Corporation are not significant, consisting mainly of low-value bank accounts and office-type equipment. According to the balance sheet, the Corporation's total assets for the last seven years only ever exceeded \$5,000 in 2018 and 2019, when the total assets were \$13,917 and \$7,965, respectively.
- [72] I infer that the clients are the most valuable asset of the Corporation. However, I find that the majority of the value of that client list is attributable to the respondent's personal services. In other words, the value of the client list is closely linked to the respondent's personal services.
- [73] The respondent testified that since separation, she has decreased her work hours to devote more time to the Children. The respondent testified that she usually kept her annual salary at less than \$118,000 to remain in a lower tax bracket.
- [74] The respondent testified that the Corporation has lost clients. Indeed, the Corporation's revenue has been declining. As mentioned, the respondent wishes to continue her business consulting work through the Corporation and to try to retain the remaining clients.
- [75] Both parties described having difficulty during the relationship with managing their finances. Each blames the other party for overspending. The respondent testified that she regularly removed money from the Corporation to cover the parties' personal expenses. At the same time as money was being removed from the Corporation, the Corporation was not regularly remitting tax and the tax returns were not being filed on a timely basis.
- [76] However, after separation, the respondent arranged to file returns for herself and the Corporation. The claimant also filed his own returns.
- [77] The respondent testified about how dividends were accounted for when the returns were prepared. According to the respondent, any amount in excess of the T4 issued to her and the expenses reimbursed, was divided between her and the claimant and recorded as a dividend. Out of the total dividends reported, they were allocated 75% to the respondent and 25% to the claimant in accordance with their proportionate shareholdings.
- [78] As a result of the returns being filed, the Corporation reported paying dividends to both parties over numerous taxation years prior to separation. In August of 2022, the claimant received T5 slips (Statement of Investment Income) issued to him for dividends allegedly paid to him by the Corporation for eight taxation years from 2014 to 2021.
- [79] Given the evidence regarding total assets, and the nature of the Corporation as a way for the respondent to provide her personal business consulting services, I find that the Corporation has nominal value for purposes of dividing it as an item of family property.
- [80] As the respondent intends to continue to provide her services through the Corporation, the claimant shall sign any documents necessary to remove his name as an officer, director or shareholder of the Corporation. The respondent is responsible for preparing the documents to remove the claimant from the Corporation and to pay all costs to remove him.

- [81] While I have determined there is no value in the Corporation for purposes of property division, I am of the view that the parties' history of using corporate income and receiving dividends, is a factor to take into when determining Federal Child Support Guidelines, SOR/97-175 [Guidelines] income and for the purpose of analysing the spousal support claim.

Conclusion and Orders Made on Division of Family Assets

- [82] For reasons that I have explained, the respondent's RRSP is excluded property that is not subject to division. I also find that the Corporation has no value available for division.
- [83] For division of family assets, and for the reasons explained above, I order as follows:
- a) the claimant shall transfer the timeshare to the respondent in exchange for a credit of \$26,941 against the claimant's share of family debt; and
 - b) the claimant shall transfer \$47,390, by way of spousal roll-over to the respondent from his RRSPs.

Family Debt

- [84] There is a significant amount of debt associated with personal and corporate income tax.
- [85] The respondent testified that the Corporation was profitable and the parties used corporate funds to finance their lifestyle during the relationship. The respondent had responsibility to pay bills and manage the finances and she testified that the claimant only increased their debt load.
- [86] As I already mentioned, the respondent did not file returns for tax years 2014 to 2021 for herself or the Corporation until after the parties had separated in 2021. These returns were not assessed until 2022. The claimant also failed to file his individual tax returns in a timely fashion but since his tax was remitted at source, there were no significant tax debts when he filed.
- [87] In dividing the family debt, including the Corporation's tax debt, I have concluded that due to the respondent's actions in not filing many years of tax returns until after separation, the claimant faces significant unfairness. In my view, it would be significantly unfair to require the claimant to take equal responsibility for the penalties and interest owed by the respondent and the Corporation for 2014 to 2021. I so conclude because the penalty and interest is mainly the result of the respondent's failure to file the returns until after separation: *Hofmann v. Miller*, 2022 BCSC 678 at para. 187; *Chang v. Chang*, 2020 BCSC 1783 at para. 89.

[88] Again, both parties agree that the respondent managed the family and Corporation finances. The respondent is highly educated and experienced as a business consultant and she understands the consequences of using corporate funds and not filing tax returns. For those reasons, I conclude it would be significantly unfair to require the claimant to equally share the pre-separation tax penalties and interest owing by the respondent and the Corporation.

Respondent's Tax Debt

[89] For taxation years 2014 to 2021, according to the most recent notices of assessment, the balance owing by the respondent on her individual tax returns for each tax year, exclusive of penalty and interest, is as follows:

Year

Respondent's Balance owing before penalty/interest

2014

\$14,853

2015

\$55,952

2016

\$20,262

2017

\$24,023

2018

\$(3,550)

2019

\$(2,798)

2020

\$4,592

2021

\$804

Total:

\$114,138

[90] As these are tax debts accrued during the relationship, I find that the parties are equally responsible for the respondent's principal tax debts for the 2014 to 2021 taxation years totalling \$114,138. Again, the respondent is wholly liable for penalties and interest for the reasons explained.

[91] I note that after separation, the respondent paid off her tax debt using funds she borrowed from her mother. The November 23, 2023 statement of account from Canada Revenue Agency ("CRA"), shows no balance owing by the respondent as of the end of 2022. The respondent also used the borrowed funds to loan the Corporation money to pay off its tax debt.

Claimant's Tax Debt

[92] According to the most recent notices of assessment, the claimant owed \$2,647 for the 2021 taxation year. The parties are equally responsible for the \$2,647 owing by the claimant for the 2021 taxation year which includes principal tax, penalty and interest.

[93] According to the claimant's evidence, which I accept, the CRA has not yet processed all of the T5s issued to him by the Corporation. Those T5s for 2014 to 2020, respectively, state the claimant received a total amount of taxable dividends totalling nearly \$174,792.

[94] I find that the claimant and respondent are equally responsible for any tax, penalties and interest that may arise upon the reassessment of the claimant's taxes for 2014 to 2020 for the dividend income.

Corporation's Debts

[95] Regarding the tax debt of the Corporation, its tax year end is October 31st. For the taxation years prior to separation, the Corporation's income tax expenses are set out in Exhibit 24 as follows:

Year

Expenses

2015

\$71,492

2016

\$6,463

2017

\$14,068

2018

\$14,585

2019

\$1,168

2020

\$34,766

2021

\$756

[96] The respondent testified that she borrowed from family and friends to cover the tax liabilities of the Corporation to avoid CRA collection action. For example, in 2019, the respondent borrowed from family and friends to pay the Corporation's tax debts and some of those loans remain unpaid.

[97] As set out in Exhibit 24, the Corporation's total liabilities in 2021 were recorded as \$200,319. The liabilities consisted of current liabilities such as income taxes as well as long-term liabilities such as the repayment of private loans from the respondent's friend and brother, as well as the Canada Emergency Business Account ("CEBA") loan.

[98] During the COVID-19 pandemic, the Corporation obtained a CEBA loan for \$60,000. The respondent testified that if the Corporation repaid the loan by December 31, 2023, then \$20,000 would be forgiven, but if that did not happen, the entire \$60,000 would be owing.

[99] In 2022, the respondent borrowed \$398,385 from her mother to pay the respondent's personal tax debt for 2014 to 2021 and the Corporation's income tax debt for 2017 to 2021. The terms of this loan are set out in the agreement signed by the respondent. A portion of this loan was used to pay the Corporation's tax liability, which is represented on its balance sheet as the \$186,158 "private loan 4" from the respondent to the Corporation.

[100] In 2023, the Corporation's liabilities total \$240,987. By 2023, the Corporation's current liabilities had been largely paid down, in fact, there is a credit of just over \$5,000 related to income taxes. The Corporation's long-term liabilities in 2023 still include the private loan from the respondent's brother and the CEBA loan, however, the loan from the respondent's friend had been paid off and there was, as mentioned above, the new "private loan 4" from the respondent to the Corporation.

[101] I find that the parties are equally responsible for the Corporation's liabilities of \$200,319, being the total liabilities for the 2021 year-end. The Corporation's liabilities incurred after 2021, are not to be equally shared because the only additional liability is "private loan 4" from the respondent, which was used to pay down the Corporation's liabilities for which she will be reimbursed by the claimant as described in these reasons.

[102] If any further corporate liabilities have occurred since 2021, the respondent will be fully responsible on the basis that the claimant had no role in managing the Corporation, he received no post-separation dividends, and there is no evidence that any of the Corporation's additional debts were to maintain family property.

Conclusion on Family Debt and Orders Made:

[103] The outcome of the division of family debt set out above is that the parties are equally responsible, subject to the adjustments explained below, for the total family debt amount of \$257,104.

[104] The above total family debt number does not include an amount for the claimant's unknown tax liability for the T5 reassessments. It also does not include \$60,000 for the CEBA loan, because if it was paid by Dec 31st, then that amount would be \$40,000.

[105] The following table sets out the equalization payment that is owed from the claimant to the respondent to reimburse her for the Corporation's liabilities as of 2021, minus the CEBA loan, and her CRA debt, both of which have largely been paid down by the respondent to date. This equalization payment sets off the amount of the claimant's tax debt for 2021:

Respondent

Claimant

Tax debt \$114,138 (paid by Respondent)

Tax debt for 2021 \$2,647

Corp liabilities as of 2021 \$140,319 (largely paid by Respondent)

Subtotal = \$254,457

Subtotal = \$2,647

Equalization payment \$125,905

Equalization payment to Respondent \$125,905

Total: \$128,552

Total: \$128,552

[106] The claimant's equalization payment will also be set off by the amount the respondent owes the claimant for the timeshare, \$26,941, which makes the equalization payment \$98,964 (the "General Debt Equalization Payment").

- [107] With respect to the CEBA loan, if the loan has been paid by the respondent, then the claimant will reimburse the respondent for half the loan repayment upon receiving proof of payment. If the loan has not yet been paid then the claimant will pay the respondent \$30,000 for his share of the CEBA loan and the respondent will be responsible for any arrears which may have accrued (the "CEBA Debt Equalization Payment").
- [108] To clarify, the respondent will be solely responsible for paying all debts of the Corporation owing after separation on May 21, 2021 and the respondent is to indemnify and hold harmless the claimant for all debts associated with the Corporation arising post-separation.
- [109] With respect to the claimant's tax debt that remains to be determined for years 2014 to 2020, both parties are equally responsible for all taxes, interest and penalties arising from the reassessment of the claimant related to the T5 statements.
- [110] I order that the claimant's General Debt Equalization Payment to the respondent of \$98,964 is not payable until the T5 statements for the 2014 to 2020 taxation years have been processed and the reassessments issued. At that time, the General Debt Equalization Payment may be reduced by half of the amount of taxes, including penalties and interest, owing by the claimant.
- [111] If the T5 statements for the 2014 to 2020 taxation years issued to the claimant have not been processed and the claimant's taxes have not been reassessed within two years from the date of this judgment, then the General Debt Equalization Payment is to be made in full, and the respondent will reimburse the claimant for her half of the taxes arising from the reassessment of the claimant at the time it is completed.
- [112] Should a dispute arise between the parties regarding the specific sums of money owed for the CEBA loan, or the final General Debt Equalization Payment upon the claimant's tax reassessment being finalized, such disputes may be referred to the Registrar who will quantify the specific amounts owing on the basis that any such debts will be apportioned equally between the parties.
- [113] I urge the parties to settle such issues without the necessity of further litigation.

What Parenting Time and Decision-Making Arrangements are in the Children's Best Interests?

Legal Principles

- [114] The sole consideration in respect of parenting arrangements is the best interests of the Children: s. 37, FLA. The Children's best interests must take into account their needs and circumstances, including the factors prescribed by the FLA: s. 37(2), FLA.
- [115] Sections 40 and 41 of the FLA govern parenting arrangements and parenting responsibilities.

- [116] In appropriate circumstances, the court may order that one parent exercise parental responsibilities under s. 41: C.W.C. v. L.A.W., 2021 BCSC 1774 at para. 69 [C.W.C.], rev'd on other grounds 2022 BCCA 400. Such circumstances have included where the conduct of one parent demonstrates that they are far less capable of co-parenting in a way that would make shared parenting or shared parental responsibilities a viable option, or where the toxic nature of the relationship meant that civil discussion or consultation between the parents was very unlikely: C.W.C., at paras. 57 and 68.

Position of the Parties

- [117] The parties do not agree on parenting arrangements, guardianship or exercise of parental responsibilities.
- [118] As mentioned, the claimant seeks to share parenting with the respondent and for parenting time, he proposes a "one week on/one week off schedule". On the other hand, the respondent seeks to have all parental responsibilities and for the Children to reside primarily with her.
- [119] The respondent also seeks the majority of the parenting time and she proposed a very detailed order in respect of parenting matters.
- [120] The respondent submits that her proposed parenting time schedule is in the best interests of the Children because she provides excellent structure for the Children. The respondent submits that the claimant is much less adept at structuring the Children's daily lives and supporting their emotional needs.
- [121] Although the respondent concedes the Children love the claimant and they want to have time with him, she alleges the claimant is damaging the Children with his distracted demeanour and absent parenting style. The respondent says the Children feel "unheard" and "disrespected" by the claimant, when, for example, he does not let them see their friends.
- [122] The respondent provides many examples of her concerns about the claimant's substandard care of the Children, including: being late to pick up the Children; inferior packed lunches and at-home meals; allowing excessive screen-time during his parenting time; leaving the Children unsupervised, either at home or in public locations; denying her telephone contact with the Children by declaring "technology-free" days; allowing the Children's cell phone batteries to run out; failing to adequately supervise or seek medical treatment for the Children; and, having inadequate living space for the Children.
- [123] The respondent submits that as the claimant's parenting time was increased, the Children were detrimentally affected. For example, the respondent submits that increased problems associated with the claimant's parenting time has resulted in the Children receiving specific learning supports at school.

- [124] Based on my observation of the parties during the trial and my review of the documents tendered, including copies of the parties' email correspondence, I have concerns about the respondent's perception of what is in the Children's best interests.
- [125] I also have concerns about the respondent's role in seemingly intractable conflicts over what would otherwise be minor parenting issues, such as the time of day to exchange the Children. The respondent appears to frequently amplify objectively minor matters into major conflicts. For example, if the claimant asks to adjust the pick-up time of the Children, the respondent regards this as reducing her autonomy. She testified that the respondent is constantly "changing the goal posts" and "her boys were living that". The respondent insists that equal parenting time is not in the Children's best interests because she is "on the side of right".
- [126] The respondent testified about carefully avoiding involving the Children in the parental conflict. However, she describes incidents that do not accord with shielding the Children from their conflict. For example, she testified about C1 coming home from school after separation and informing her how he learned that the claimant is an aggressive communicator and emotionally abusive. The respondent was clearly impressed with C1's assessment of his father. In my view, this demonstrates a troubling example of C1's being drawn into his parent's conflicts and it demonstrates the respondent's difficulty in seeing her own role in this troubling dynamic.

Section 211 Report

- [127] In the present case, there is a recent s. 211 report to assist the court.
- [128] In *A.P. v. J.C.*, 2018 BCSC 1381, Justice Verhoeven discussed the background to s. 211 reports generally:
- [46] The facts set out in the s. 211 report are prima facie evidence of the truth of those facts:
- [116] The context under s. 211 is not comparable to that of an expert retained by a party in a non-family case. As observed by Parrett J. in *Goudie v. Goudie*, [1993] B.C.J. No. 1049 (S.C.), at para. 33:
- [33] The procedure anticipated by s. 15 is one in which the investigator interviews the people involved, observes the relationship and interaction between the spouses and the children and reports those observations, facts and impressions to the court. In the truest sense these individuals act as the courts eyes and ears in what are all too frequently highly emotional areas of conflict. The safeguards built into the process include the early delivery of the investigation reports, the opportunity to call the investigator to the witness stand and the opportunity to respond to the report generally by other evidence.

- [117] FRA s. 15 reports were not governed completely by the evidentiary rules which would be in effect when dealing with reports requisitioned by one of the parties from an expert: *Wu v. Sun et al*, 2006 BCSC 1891, at para. 3. Similar legal principles can be applied to both s. 15 FRA and s. 211 FLA assessments or reports: *K.B. v. J.B.*, 2015 BCSC 704, at para. 6.
- [118] The s. 211 author may provide an opinion, but it is for the court to decide the matters at issue: *Johnson v. Skillen*, 2009 BCSC 209, at para. 8; *I.J.G.P.G. v. K.M.*, 2016 BCSC 1072, at para. 100; *A.L. v. L.W.*, 2017 BCSC 964, at para. 8.
- [129] On February 8, 2023, the court appointed Dr. Peggy Koopman, a registered psychologist, to assess the parties' parenting abilities and make recommendations for the Children, including parenting time, holidays, communication between the parties, transitions, any supports that are required, decision making responsibility and a comment on the long-term relationship and health of all involved (the "Report").
- [130] Dr. Peggy Koopman was to conduct interviews of the parties and the Children as she deems appropriate and assess the parties' parenting abilities, make recommendations about parenting arrangements, identify any supports required and comment on the long-term relationship and health of all involved. The claimant paid the full costs of the Report on a without prejudice basis.
- [131] The claimant accepts the conclusions of the Report, but the respondent does not. The respondent required Dr. Koopman to attend the trial for cross-examination.
- [132] In cross-examination, Dr. Koopman confirmed that despite the large volume of material served right up to the last day, she managed to review and consider it all. Dr. Koopman testified that she is confident about the issues identified and reasoning leading to her opinions and recommendations.
- [133] Dr. Koopman's report dated November 10, 2023 is detailed and comprehensive. I will not attempt to summarize the Report. Instead, I will refer to some of the relevant findings, recommendations and observations. Regarding her interviews with the Children, Dr. Koopman reports that they both said the respondent assisted them with managing their school work and extracurricular activities. For clarity, C1 was 14 years old and in grade nine and C2 was 11 years old and in grade five when they were interviewed by Dr. Koopman.
- [134] For example, C1 reported that the respondent sets goals for them to follow after school. The respondent has created a schedule for the Children that includes homework, chores and free time. In contrast, C1 said the claimant wants to be a "fun" dad and he is not as good at keeping them "on track", such as reminding the Children to do their homework. C1 reports finding it easier to procrastinate while he is at the claimant's house.

- [135] C1 described how he told the claimant that he and C2 wanted to spend two weekends with mom (i.e. the respondent) and one weekend with dad (i.e. the claimant). C1 told Dr. Koopman that the claimant told him that he did not mean it, but C1 said he started to cry and he told the claimant that they only do screens at his house and he doesn't do his homework because the claimant does not remind him enough.
- [136] C1 recounted an incident where the claimant told them he had to be away for a day due to a work commitment. The claimant told C1 he had arranged for a female who was friends with their cousin to look after them including for an overnight. C1 said he agreed to this, but later he and C2 changed their minds about it. They didn't feel comfortable about it. C1 told the respondent about it and the Children decided to stay with the respondent. When the claimant returned, C1 said he was upset that they suddenly decided to stay with the respondent. C1 said he resented his father not including the Children in the decision about their care when he had to be away for work.
- [137] C1 said he talked with the respondent about that incident. He explained that after that incident, the claimant brought his paternal grandmother from Ontario to care for them when the claimant had to go on a work trip. He provided an account of what his parents had apparently said to each other about pick-up times being either 12 p.m. or 2 p.m. and it appears that those details came from things the respondent told C1.
- [138] C1 is a good student with interests and aptitude in music and acting. In 2021, C1 became represented by a talent agent. C1 enjoys preparing for and attending auditions and the talent agent is optimistic about C1's acting potential. C1 appears to have a well-adjusted and positive attitude towards participating in auditions. The respondent says that the claimant is not supportive of C1 having a talent agent or auditioning for parts.
- [139] C1's school experiences are positive. C1 has been admitted into an arts program that aligns with his creative interests and he is doing well.
- [140] C1 told Dr. Koopman that after school, he delays leaving his extra-curricular activities as long as possible to minimize his time at the claimant's house. However, in a later interview with Dr. Koopman following observations with the Children at the claimant's house, C1 seemed to change his view, telling Dr. Koopman that he spent more time doing homework at the claimant's house due to fewer distractions there.
- [141] C1 reported to Dr. Koopman that he found it bothersome how both of his parents tried to act overly happy and pretend that each of them is doing better than the other party. He described this as the parties "pretending". C1 shared that he knew his parents exchanged many texts and emails. He understood that his parents were both trying to be the only parent who knew about things. C1 described the claimant as "controlling".

- [142] C2 reported that there is a little more to do at the respondent's house because it is bigger. C2 also said that he liked the previous parenting schedule because now he is spending a little too much time at the claimant's. He complained that time at the claimant's house is not as enjoyable and he is bored there.
- [143] C2 said that it was good to see his paternal grandmother but he didn't want her to take care of him and his brother for the weekend because he would like the respondent to be responsible for their care. Dr. Koopman observed that C2 appeared sad when telling her that there was not much to do at the respondent's house. He said he does not do his homework and instead, he watches screens when he is there.
- [144] C2 enjoys school and he has a positive school environment. C2 enjoys sports but had to stop playing sports while recovering from an ankle injury during the claimant's parenting time. C2 reported having good friends and enjoying time with his friends. C2 was excited to have been selected for a program bringing students together from international locations that was to include an international trip. C2 is also interested in acting but he does not have an agent and he does not attend auditions.
- [145] C2 said in both his interviews that he wanted less time with the claimant. However, Dr. Koopman states that her clinical impression is that C2 was reluctant to speak negatively but he felt pressed to do so. Dr. Koopman's opinion based on a psychotherapeutic question to C2, is that he is feeling constrained and he wishes for more freedom in his life.
- [146] During home observation, the Children showed Dr. Koopman their home with each parent. The home observations were made within a couple of days of each other. Both homes were neat and well-organized and each party provided healthy foods for the Children during the home observations.
- [147] In the respondent's home, C1 and C2 have their own bedrooms. Dr. Koopman observed the atmosphere at the respondent's home is relaxed and the Children interact positively with the respondent. The respondent and the Children engaged in conversation that was more akin to conversation between friends and equals, rather than mother and child. Dr. Koopman observed an equality of opinion and lack of dominance or ordering in the discussion. Overall, Dr. Koopman observed that at the respondent's home, there were signs the lifestyle was active and the atmosphere was loving.
- [148] In the claimant's home, which is a one-bedroom apartment, C1 and C2 share a bedroom and a desk. When the Children are there, the claimant sleeps in the living room. The claimant and the Children conversed and the atmosphere was relaxed and happy. They ate an after-school snack and then played a card game. Dr. Koopman observed laughter and banter during the play. C2 independently decided to prepare another snack for himself and C1. The conversation was continuous and the claimant asked the Children about their day. The claimant listened and did not interrupt while the Children were speaking.

- [149] Dr. Koopman administered psychological testing of both parties. In her report, she notes that the test results are hypotheses that should not be considered in isolation from other assessment results.
- [150] Dr. Koopman expressed some cautionary validity concerns that the claimant was under-reporting and presenting himself as very well-adjusted, which is in fact "relatively rare" amongst the general population. The claimant is possibly overly trusting but there were no indications of "somatic, cognitive, emotional, thought or behavioural dysfunction". The claimant's test did not yield any specific treatment recommendations and no specific psycho-diagnostic recommendations were made.
- [151] There were no validity concerns about the respondent's test results. Due to the respondent's vague neurological complaints and physical symptoms in response to stress, somatic and cognitive dysfunction, was indicated. Due to her reports of significant persecutory ideation, thought dysfunction was indicated meaning the respondent is likely to be suspicious of and alienated from others.
- [152] Dr. Koopman also interviewed numerous collateral sources, including, among others, the Children's registered clinical counsellor, the Children's family doctor and physiotherapist, a school counsellor and the claimant's former treating registered psychologist.
- [153] The Children's registered clinical counsellor reports the Children have told her they wish to spend weekdays with their mother because she keeps them on track, organizes activities and reminds them about their homework. The counsellor also reports that the Children are experiencing anxiety and distress as they try to adjust to life after separation.
- [154] The family doctor, who has known the Children for many years, reports that she usually sees the Children with the respondent. She reports the Children seem to be well-loved and she has a good relationship with both parents. She describes the respondent as "more forthcoming" and the claimant as "calm and collected".
- [155] The school counsellor to both of the Children provided Dr. Koopman with her observations of the Children. The school counsellor noticed that the Children express their Attention-Deficit Hyper-Activity Disorder ("ADHD") differently, but no teachers were raising ADHD as a concern. The school counsellor said the Children need help to focus and a plan and schedule that assists with that. C2 has complained about a lack of structure and boredom at the claimant's house. The school counsellor described C2 as being very attached to the respondent.
- [156] The respondent told the school counsellor about the things she is concerned with at the claimant's house. The school counsellor told Dr. Koopman that the things C2 reported about the claimant were similar to the things the respondent reported to her. The school counsellor reports that the respondent goes into great detail about things and she advocates for the Children based on what they say. The school counsellor offered to Dr. Koopman that in her view, more time at the respondent's house would provide greater structure and

activity levels for the Children.

- [157] The claimant's former treating psychologist spoke to Dr. Koopman about his role in providing psychological counselling to the claimant around the time when the parties were separating. The therapy he provided was focussed on marital issues that the claimant raised with him.
- [158] The former treating psychologist told Dr. Koopman that he had no concern about the claimant being a risk to the Children and that the claimant did not appear to be a neglectful person. He said the claimant was a loving and fit parent.
- [159] Some of the personal references that Dr. Koopman spoke to included friends and relatives of the parties. In particular, Dr. Koopman spoke with friends who described the claimant as caring and highly engaged with the Children but not controlling. These sources were highly complimentary of the respondent's parenting abilities and they had nothing negative to say about the claimant, although they spent less time with him.
- [160] Dr. Koopman also spoke to a friend of the claimant's. That friend described the parties had different personalities in that the claimant had a strong nurturing side but he was less able to work out logistics or define goals in life. That friend described the respondent as having a strong personality, with a tendency to be controlling, and the claimant being more deferential.
- [161] Dr. Koopman also spoke to the claimant's mother and sister who provided a positive picture of the claimant's parenting skills.
- [162] The observations in Dr. Koopman's report include that:
- a) Both parents are capable of meeting the needs of the Children.
 - b) The parties' relationship involves a long pattern of the claimant turning over decision-making responsibility to the respondent linked to the claimant's avoidant personality traits and lack of assertiveness.
 - c) Dr. Koopman's clinical impression of the respondent is that she demonstrates traits of borderline personality disorder including acting out of perceived abandonment, experiencing intense episodic dysphoria, having a history of estrangement from family; impulsivity in extreme overreactions to perceived criticism; and, periods of intense, all-consuming anger.
 - d) Collateral sources tended to mirror the parties' respective claims about each other's parenting abilities (i.e. that the claimant was uninvolved and ineffectual, while the respondent was controlling and over-programming the Children); professional opinions appeared to be influenced by the party with which the professional had the most contact.

- [163] Importantly, Dr. Koopman noted that her clinical impression was that sources who had contact with the Children made statements in nearly identical words as the Children had used in their interviews. Dr. Koopman concluded that this is due to a well-rehearsed, but not necessarily deliberate, "set program of grievances and recalled experiences". Dr. Koopman opines that is unlikely so many people would hear "identical statements from two children" and this presentation creates doubts. Ultimately, Dr. Koopman concludes that the Children live in an atmosphere saturated with the Children's opinions which has led them to adopt these statements as true representations of their needs.
- [164] Regarding the parties' relationship, Dr. Koopman opines that their personal histories and personality traits could have predicted the kind of conflict that showed no signs of abating during the s. 211 assessment. Dr. Koopman described the parties as operating from heavily fortified positions going far deeper than in most custody disputes.
- [165] The identified issues associated with the learning and emotional needs of the Children include: for C1, his ADHD diagnosis, along with a recommendation for further, first-hand, examination of his psychiatric, cognitive and educational needs; and, for C2, his ADHD diagnosis, along with unspecified anxiety disorder.
- [166] Dr. Koopman notes that both Children state that they want less time at the claimant's house. This is not because they don't want to see him and not because of ill-treatment, but it is because of extreme differences in his parenting style as compared to the respondent. Dr. Koopman observes that the respondent provides a management style that leaves the Children feeling at a loss and confused when the structure is not there. Some of the collateral sources also confirmed this observation.
- [167] Dr. Koopman opines that the Children experience the emphasis on self-motivation at the claimant's house as if nothing happening. The Children admit to requiring not only reminders but also hands-on surveillance at the respondent's house.
- [168] Regarding the emotional and educational needs of the Children, Dr. Koopman states as follows:

In the clinical opinion of the writer the boys are not capable, given their current parental experiences of making informed decisions about access to either parent. Neither parent provides the atmosphere that will meet all of their needs when they have custody of them. What almost worked when they were together, does not work now. The balance is lost when each parent has sole responsibility. This needs to change in the parenting behaviors of both parents.

The custody and access issue most needing to be address[ed] for this family involves what happens in each home during access that enhances the boys' lives and supports the other parent's style rather than how much time the boys should be in one home to mitigate the negative aspects of the other home. Addressing the s. 211 from a limiting time to one parent perspective, would, in the opinion of the writer exacerbate the already problematic divisions from which the boys are suffering.

- [169] Dr. Koopman concludes that the goal for access and parenting should be 50-50 with each parent. Dr. Koopman recommends beginning with a one-week on, one-week off schedule and gradually transitioning to a two-week on, two-week off schedule over the course of a year. This schedule will avoid multiple transitions and it will honour the strong current views and felt needs of the Children. Dr. Koopman points out that the Children's current views and felt needs will only change and become more receptive to time with the claimant when the actions and attitudes of the parents modify.
- [170] Dr. Koopman acknowledges that her recommendation for a shared parenting time schedule is not consistent with the stated wish of the Children to spend more time with the respondent. Dr. Koopman explains that her recommendation is the result of her clinical opinion that the Children have adopted this stance and found evidence to support their stance to satisfy others and this is due to "pervasive indoctrination". Dr. Koopman also notes that if parenting time for the claimant is reduced, it will not be regained without enormous further strife.
- [171] Dr. Koopman recommends that the claimant take concrete action to become more proactive about enforcing homework time and increasing activity, including by taking the Children to committed activities. Dr. Koopman recommends that each parent have the authority to put away the Children's electronic devices, including cell phones, at times during that party's parenting time. Dr. Koopman disagrees that the parties need to know exactly where the Children are and what they are doing during the other's parenting time because both are competent parents.
- [172] Based on her assessment, including reviewing hundreds of pages of text messages and emails between the parties and herself, Dr. Koopman also strongly recommends the appointment of a fully empowered parenting coordinator. Dr. Koopman is aware the parties will have difficulty paying the cost of a parenting coordinator. However, Dr. Koopman regards the parties are unable to solve even the most insignificant problems together.
- [173] According to Dr. Koopman, a parenting coordinator is the only possibility for positive change in the parties' deeply conflicted and extreme situation. She notes the Children report deep distress over the atmosphere during any face-to-face interactions between the parties.
- [174] For this reason, parental interactions must be reduced to the greatest extent possible. The parenting coordinator should have the power to create and enforce parenting times; and, select and schedule school and extracurricular activities after consultation with the parties.

- [175] Dr. Koopman recommends against either party having sole decision-making authority. Because the parties' relationship involves such pervasive power struggles, Dr. Koopman recommends that the parenting coordinator be granted decision-making authority, to be undertaken in consultation with the parties. After a period of relative stability, Dr. Koopman recommends that such decision-making power by the parenting coordinator could be revisited by the court.
- [176] Dr. Koopman recommends psychological treatment for the Children to be coordinated by the parenting coordinator. The parenting coordinator will provide status reports to the parties and receive the opinions and recommendations for the Children made by the treating psychologist.
- [177] Dr. Koopman also recommends efforts towards maintaining connections, or establishing connections, with extended family on both sides. The Children have a relationship with extended family on the claimant's side.
- [178] Dr. Koopman had no information about the willingness of the respondent's parents to reconnect with her or the Children. The respondent testified about her reasons for deciding to eliminate her parents, especially her mother, from her life and the claimant was initially supportive of this. Dr. Koopman recommends creating a bridge of civility for the Children to connect to their maternal grandparents, rather than having the Children believe that somehow, their maternal grandparents are people that they will not know.
- [179] As I already mentioned, the respondent disputes the findings in Dr. Koopman's report and her recommendations. The respondent is concerned that Dr. Koopman minimizes the statements by the Children about their preference to spend the majority of their time with the respondent.
- [180] The respondent is also concerned that Dr. Koopman misunderstood medical information concerning the Children and information provided by collateral sources. I find that Dr. Koopman considered all of the material provided to her as well as the views of the persons she interviewed. I accept Dr. Koopman's evidence about the information she considered in reaching her opinion and recommendations. I am not convinced that Dr. Koopman misunderstood or ignored the information she obtained or was given.
- [181] I reject the respondent's submissions that Dr. Koopman is biased against her, or that Dr. Koopman has been unfair and unprofessional in respect of preparing the report or testifying at trial. I accept the validity of Dr. Koopman's concerns regarding the best interests of the Children and I share the concerns she identified.
- [182] Both of the parties are capable and loving parents to the Children. While the respondent may regard her skills and parenting style as superior to the claimant's, Dr. Koopman emphasizes that the Children need their parents to bring their conflict to an end. The Children have expressed to Dr. Koopman and many collateral sources, their deep need for less conflict and tension emanating from their parents.

[183] I agree that the parties must set aside their own views about the other. Each party exhibits different personality traits and different parenting styles. I agree with Dr. Koopman that each parent loves and cares for the Children. I find that each parent is capable of meeting the best interests of the Children.

Section 37(2) Factors

The Children's Health and Emotional Well-Being

[184] Dr. Koopman, the family doctor, the school counsellor and the Children's counsellor all described the Children as well-loved and cared for by the parties. No professional described having concerns that the health and emotional needs were not being met by the parents. However, the Children described experiencing some stress and anxiety about their parents' relationship and adjusting to life post-separation. I do not find it unusual that the Children report feeling unhappy about their parents' inability to cooperatively undertake even simple tasks, such as exchanging their backpacks.

[185] The respondent testified about injuries C2 sustained while in the claimant's care in approximately 2021 or 2022. In the few incidents at issue, C2 fell or jumped out of trees, injuring his face, wrist and ankle. The respondent testified the injuries were very serious and they resulted from the claimant failing to adequately supervise the Children at the park and allowing them to climb and jump from heights.

[186] The respondent testified that the claimant would not tell her promptly, or at all, about the injuries. She would eventually notice C2 limping or see bruising and then she would immediately take him for medical attention, including to the hospital. The claimant insisted that he adequately supervises the Children and he states that none of the injuries were serious.

[187] The respondent also recounted incidents where she alleged the claimant abandoned one or both of the Children in public places. For example, at a school cross-country track meet, she testified that the claimant left C2, who was nine years old, and went to pick up C1 from her house. Fortunately, she was at the track, so she supervised C2 once the other children and coaches left. The claimant testified that he had asked a coach when the meet would conclude and he believed he had sufficient time to pick up C1 and get back before the meet finished.

[188] Overall, I find that both parents are successfully meeting the needs of their Children. There is no suggestion by any person involved with the parties or the Children that the Children are being neglected or put at risk by the claimant.

The Children's Views

- [189] The Children have expressed to Dr. Koopman, the respondent and professional and non-professional collateral sources, that they wish for less time with the claimant. The Children appear to believe that less time with the claimant means their day-to-day lives will be better managed by the respondent. The Children report that the respondent is more adept at setting schedules, reminding and motivating them about their homework, and she is more engaged in their activities.
- [190] As mentioned, the Children describe feeling anxious about the prospect of having to self-motivate and self-entertain while at the claimant's house. They describe feeling bored at the claimant's house because they have less to do there. They describe wishing for structured activities or time with their friends during the claimant's parenting time.
- [191] This is consistent with the evidence that the respondent is devoted to arranging, supervising and supporting all details of the Children's lives. On the other hand, the claimant values providing a relaxed and more unstructured environment for the Children during his parenting time. While the claimant does not ignore homework, school or extracurricular activities, his expectations are different from the respondent's. Apparently, the Children find the different parenting styles confusing and they gravitate towards the respondent.
- [192] In one very telling incident, the parties described C1 deciding to participate in an important religious rite. C1 apparently decided to participate in the rite at a time and place when he believed only the respondent would be in attendance. As a faith leader, the event at issue also held significance for the claimant and so the claimant began planning to attend the event, which caused conflict with C1. Ultimately, the claimant did not attend as C1 requested. The parties' evidence about this event, indicate that C1 wanted to avoid both parties being present, so to minimize conflict, C1 chose to have the respondent attend. For reasons that include their need to reduce conflict and stress, the Children do seem to chose the respondent as the preferred parent.
- [193] Dr. Koopman expresses concern that if the claimant's parenting time is reduced, it will not increase without significant further stress and conflict and I agree with that assessment. Dr. Koopman also concludes that developmentally, C2 is feeling constrained and seeking more freedom. In my view, the claimant's parenting style is just as capable of supporting the emotional, developmental and physical needs of the Children as the respondent's parenting style.
- [194] Dr. Koopman concludes that the Children's statements about wanting less time with the claimant are likely due to well rehearsed, and not necessarily deliberate, "set program of grievances and recalled experiences" which have been adopted as true representations of their needs. In other words, while the Children express views about wanting less time with dad for specified reasons, their views should be considered cautiously in light of the overall context and circumstances, including Dr. Koopman's clinical opinion on the issue. I agree

that the views of the Children should be taken into account but assessed with caution in light of the issues identified.

History of Care & Nature and Strength of Relationships

- [195] Regarding the history of care for the Children, the parties agree that when the Children were very young, the claimant was a stay-at-home parent. For example, the claimant was a stay-at-home for three years after C1 was born.
- [196] During this time, the respondent was working in real estate with her mother, who was a very successful realtor. However, the respondent testified that the stay-at-home dad arrangement was the result of the claimant being unemployed after receiving a severance package from his employer.
- [197] The respondent's evidence was that while she worked long hours and sometimes travelled for her work, she provided the majority of the primary caregiving for the Children. The respondent testified that she always arranged, organized and managed every aspect of the Children's lives. I have no doubt that the respondent was highly involved in the daily care of the Children despite working while the respondent was the stay-at-home parent.
- [198] When the Children were older and both parties were working, the respondent testified that she did most of the day-to-day care of the Children. This was because the claimant's pastor's duties required him to attend evening and weekend events. By contrast, the claimant said his work schedule was flexible and he was free during most day-time hours to look after the Children.
- [199] I find that both parents provided regular care for the Children. Over the years, the parties' work schedules allowed flexibility to assist with family responsibilities and when the respondent was working, the claimant would provide care.
- [200] Regarding the nature and strength of the relationships between the Children and significant persons in their lives, each party testified that they have close and loving relationships with the Children. Dr. Koopman's opinion is that the Children are well-cared for by each parent and this is supported by many of the collateral sources. Dr. Koopman observed the Children interacting positively at each party's home and with each parent.
- [201] Regarding extended family, both parties' relatives live in another province, so in-person contact with extended family and the Children is limited and video calls are the most common mode of contact. The Children have a good relationship with their paternal grandmother and extended family on the claimant's side.
- [202] The Children have no relationship with their maternal grandparents. The respondent remains in contact with her brother and the Children have a relationship with him and his family. The respondent states that she has stopped facilitating the Children interacting with extended family on the claimant's side and instead, she leaves it up to the Children.

[203] I find the Children are involved in strong and loving relationships with each of their parents and they have a well-developed circle of extended family and friends.

Need for Stability Given Age and Stage of Development

[204] The parties testified at length about the details of the Children's emotional, educational and physical needs. As mentioned, both Children have been diagnosed with ADHD and C2 also has a diagnosis of anxiety.

[205] Following separation, the claimant obtained housing close to the former family home. The Children have maintained their school and social routines.

[206] C1 is now a teenager who is flourishing at school including by pursuing his interest in singing and acting. C1 and C2 have a close relationship. C2 is doing well at school and he is a social child who enjoys sports and friendships with his peers.

[207] The Children also benefit from a close connection to their faith community. However, there is now a conflict regarding which church the Children should attend with each parent.

[208] The parties testified about the impact of their separation on the claimant's role as a pastor at a church. It was apparent that each party blamed the other for the impact of the separation on the claimant's loss of employment. The claimant's work as a pastor was negatively impacted by the separation and eventually, he was terminated without cause. Overall, I find the relevant point is that each party is actively striving to maintain the Children's involvement in their religion and faith community.

[209] I find that each parent is capable of meeting the needs of the Children for stability given their ages and stages of development.

Ability to Exercise Parenting Responsibilities

[210] As I have already discussed, each party is a responsible and loving parent to the Children. I am aware that the respondent questions the claimant's judgment, for example, by failing to immediately take C2 to the doctor after an injury at the park or leaving C2 alone at the playing field after an event.

[211] In the claimant's testimony, he provided explanations for the many events cited by the claimant as examples of his inattentive parenting. While I have no doubt that the respondent would handle these situations differently, I accept the claimant's explanations about his actions. I have no difficulty finding that each parent is able to exercise parenting responsibilities safely and in the best interests of the Children.

Impact of Family Violence

- [212] Both parties allege that the other party has perpetrated family violence. I note that the incidents of alleged family violence occurred mainly around the time when the parties were separating.
- [213] The court is required to consider the impact of family violence in analysing the best interests of the Children. Section 38 of the FLA also requires the court to consider specific factors. Before I consider these factors, I will summarize the evidence concerning the alleged family violence and set out my findings.
- [214] The claimant alleges the respondent started having out-of-control anger episodes in public or in the presence of the Children. The claimant also said that the respondent began trying to provoke physical confrontations where she would block the entrance or exit to a room and refuse to move to allow him to pass by. The claimant said he became so concerned he started having to exit their bedroom through the ground-floor window. He also started to record his interactions with the respondent and hold his hands up in the air to ensure no physical contact with her.
- [215] For example, the claimant audio-recorded an incident during which the respondent was locked inside a child's bedroom with both Children and he wanted to enter. The claimant had concerns the respondent was in the bedroom discussing the details of the marital conflict with the Children.
- [216] The respondent's testimony about the audio-recorded incident was that the claimant was at fault for trying to enter the locked bedroom. The respondent admitted that during the incident she lost her temper and she can be heard yelling about the claimant being on a dating website. The Children can be heard sobbing and asking their parents to stop. The respondent testified that her conduct was an anomaly and she denies ever engaging in family violence.
- [217] The respondent alleges that the claimant committed family violence against her. To support this allegation, she tendered a video that was taken by the parties' upstairs neighbour depicting the parties arguing on the front lawn.
- [218] The claimant testified that the incident began when the respondent snatched his cell phone and refused to return it. The respondent admitted that she took the claimant's cell phone and would not return it. The respondent testified that the claimant frightened her during the incident.
- [219] In the video, the claimant can be seen moving back and forth with his arms outstretched in front of the respondent. Neighbours can be seen approaching the parties, telling the claimant to stop. The claimant can be heard to say that he just wants his cell phone back and he ceases to block the respondent. The parties then walk off the front lawn towards the house together.

- [220] Both parties testified that once inside the apartment, they entered their master bedroom. The respondent testified that the cell phone was her property because it was owned by the Corporation and she was paying for the cell phone bill. She objected to the claimant taking the phone without paying for it because it was another example of the claimant stealing from her and the Corporation.
- [221] Once inside the master bedroom with the respondent, the claimant asked a family friend to come over. That friend arrived and stayed with the parties inside the master bedroom until the claimant e-transferred a sum of money demanded by the respondent. Once the respondent received the money, she returned the cell phone and the claimant left.
- [222] In my view, these incidents should be considered in the context of the evidence as a whole. The evidence about the alleged incidents of family violence demonstrate both parties have sometimes used poor judgment in certain situations.
- [223] Regarding the cell phone incident, I find it began when the respondent wrongly took the claimant's cell phone. While the respondent alleges the claimant was "stealing" the cell phone, there is ample evidence that during the relationship, the parties treated corporate property as a family asset. Indeed, in this proceeding, respondent submits that the claimant is a part-owner who is liable for one-half of the Corporation's significant liabilities.
- [224] I find that both parties are to blame for the cell phone incident. I disagree that the respondent was the only party being intimidated and harassed during the incident. If the claimant were perpetuating family violence, it would make no sense for him to call a friend over to witness part of the incident. The respondent initiated the cell phone incident to obtain payment from the claimant and once she achieved that objective, the claimant left.
- [225] I find that none of the incidents described were directed at the Children. I do not find that the incidents described significantly impacted the safety, security or well-being of the Children.
- [226] During the locked bedroom incident, the Children were present and obviously distressed by their parents' conduct. However, I find that this was an isolated incident. I accept the respondent's evidence that her conduct in telling the Children about details of the marital conflict was unusual.
- [227] When I consider the evidence regarding family violence as a whole, I do not accept that family violence has occurred. Even if I concluded the incidents amounted to family violence, I find the nature and seriousness of the incidents are at the low-end. As well, the alleged incidents occurred long ago and close to the time when the parties were separating.

- [228] Further, I do not find the incidents were frequent events or that they constitute a pattern of coercive or controlling behaviour directed at a particular party or the Children. The Children did not report concerns about family violence to Dr. Koopman and neither did any collateral source.
- [229] In summary, I do not find there is a significant impact of family violence as it relates to the best interests of the Children.

Appropriateness of an Arrangement Requiring Cooperation

- [230] The court must also consider the appropriateness of any arrangement that would require cooperation by the parties and whether such requirement would increase risks to the Children's safety, security or well-being.
- [231] I note that while the respondent seeks the majority of the parenting time and all parenting responsibilities, she does not argue that the claimant should have no parenting time. The respondent's position is that a detailed order regarding parenting matters would minimize conflict and the need for cooperation.
- [232] Dr. Koopman strongly recommends a parenting coordinator to assist with the parenting issues for the reasons she explained. I am mindful that the Children report deep distress about face-to-face interactions between the parties and Dr. Koopman recommends reducing parental interactions.
- [233] I am also mindful that the parties have limited financial means and the respondent submits that they are unable to afford a parenting coordinator. However, if the court is satisfied that a parenting coordinator would assist the parties, financial concerns may be an insufficient reason to deny a request for the appointment of a parenting coordinator: *Koka v. Koka*, 2021 BCSC 2023 at para. 101 citing *Silverman v. Silverman*, 2013 BCSC 601.
- [234] In light of the evidence, including the recommendations of Dr. Koopman, I am satisfied that the level of conflict between the parties is correctly characterized as high conflict. Both parties described the other party as unreasonable and uncooperative and that is confirmed by Dr. Koopman's conclusions regarding the parties' inability to cooperate even on the simplest of matters.
- [235] I am also satisfied that a parenting coordinator will significantly support an arrangement requiring cooperation. I conclude that appointing a parenting coordinator will assist the parties and serve the best interests of the Children, including, by minimizing the need for direct contact between the parties and reducing parental conflict.

Conclusions on Parenting Time and Decision-Making

- [236] As mentioned, the parties' views on the appropriate parenting time and parenting decision-making arrangements for their Children are far apart.

- [237] In *K.D.P. v. A.R.K.*, 2011 BCSC 1085, Justice Goepel provides the following aptly-worded summary of the considerations before the court where a parent essentially submits that they are better at parenting than the other parent:
- [1] No parents are perfect. All have flaws of one kind or another. If families stay together, except in those rare circumstances in which a child is found to be in need of protection, the state and the courts allow imperfect parents to raise their children as best they can. The children, in most cases, are no worse for wear for the experience.
- [2] If families separate, however, and issues of custody and access arise, in the guise of determining the best interests of the child, a parent's flaws of character and conduct are put under a microscope. In such circumstances, care must be taken not to lose sight of the strengths that a party brings to the challenge of raising a child.
- [238] After considering the best interest of the children pursuant to ss. 37 and 38 of the FLA, and in light of all of the evidence, I find that a regular parenting time schedule that minimizes transitions, and which promotes certainty and predictability is in the best interests of the children.
- [239] In my view, the schedule for regular parenting time that is in the Children's best interests is a shared parenting schedule with alternating weeks described in the orders below. I urge the parties to model maturity and commitment to prioritize the Children's best interests as they undertake a new parenting time schedule.
- [240] I am aware that the Children have expressed a desire for less parenting time with the claimant. However, I agree with Dr. Koopman that their views need to be considered in the overall context. I accept Dr. Koopman's clinical observations including, that any reduction to the claimant's parenting time will not be regained without additional harmful strife and conflict.
- [241] In short, I am largely in agreement with Dr. Koopman's parenting time recommendation and I find that a shared parenting time regime is in the Children's best interests including by assisting them as they develop greater independence, self-motivation and self-management skills as they grow and mature.
- [242] While Dr. Koopman recommends a gradual transition to a two-week on, two-week off, regular parenting regime, I do not find that to be in the Children's best interests. As mentioned, at present, the Children express a preference for less time with the claimant and in light of their current circumstances and needs, I do not find it is in their best interest to gradually transition to a two-week alternating regular parenting time schedule.

- [243] I do not find it appropriate to grant the respondent final decision-making in respect of all parenting responsibilities. The parties will have joint decision-making authority in respect of the Children. If they cannot agree on a decision, the parenting coordinator will, after consultation with the parties, make a determination. I expect that with the assistance of a parenting coordinator, the parties will be encouraged to cooperate and compromise on issues regarding parenting and the stress on the Children will be reduced.
- [244] The parties will employ Our Family Wizard for their primary communication method, in accordance with the recommendation of Dr. Koopman, unless the parenting coordinator decides that the parties shall use another method of communication.
- [245] I agree with Dr. Koopman's recommendation that the Children should receive therapy from either a psychiatrist, psychologist or registered counsellor. The parties shall exchange a list of their suggested therapists and use their best efforts to agree on a therapist who will treat the Children. If the parties are unable to agree, the parenting coordinator shall be responsible for making the selection of the Children's therapist after reasonable consultation with the parties.
- [246] All therapists, parenting coordinators, and parent coaches involved in this matter should receive a copy of Dr. Koopman's report.

Parenting Orders Made

- [247] I confirm that both parties are guardians of C1 and C2 pursuant to s. 39(1) of the FLA and I make the following parenting orders pursuant to s. 45 of the FLA:
- a) The claimant and respondent shall share all of the parental responsibilities as defined by s. 41 of the FLA, when C1 and C2 are in the parties' respective care. The parental responsibilities are to be exercised as required by ss. 42 and 43 of the FLA, as follows:
 - i. each parent shall make day-to-day decisions affecting the Children during the time in which they are exercising their parenting time;
 - ii. each parent has the obligation to advise the other party of any matters of a significant nature affecting the Children, including:
 - 1. any medical or dental appointments that are made for the Children;
 - 2. any illnesses or injuries the Children are experiencing;
 - 3. any medication that has been prescribed to the Children, including the manner and times it is to be administered;
 - 4. any significant school-related problems the Children experience (academic or behavioral); and

5. all school announcements, permission slips, notices, and reports that are provided directly to the Children.
- b) each parent has the obligation to discuss with the other parent any significant decisions which have to be made concerning the Children, including significant decisions concerning the health (except emergency decisions), education, religious instruction and general welfare of the Children;
- c) both parents have the obligation to try to reach agreement on these major decisions, and to elicit the assistance of the parenting coordinator as needed;
- d) in the event that, despite their best efforts, the parties cannot reach agreement with respect to a major decision related to the Children's health and education, the appointed parenting coordinator shall make a determination; if there is no parenting coordinator in place, then either party has the right to apply to court to seek direction;
- e) each parent has the right to obtain information concerning the Children directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party caregivers; and
- f) each parent is to provide any consent necessary for the other parent to receive any information about the Children from third parties.

[248] The parent who is exercising parenting time shall take the Children to any extracurricular activity that falls during their parenting time. However, no parent shall enrol a child in an extracurricular activity that falls during the other parent's parenting time, without that other parent's consent.

[249] A parent who fills a prescription for medication for the Children and receives medication directly from the pharmacy or a physician, shall provide the other parent with a sufficient supply of the prescribed medication for the Children's parenting time with the other parent.

[250] The parent who is exercising parenting time shall supervise the Children's electronic devices, including cell phones, and the parent may set reasonable limits on the Children's use of electronic devices, including cell phones, during their parenting time.

[251] The parents shall facilitate reasonable telephone contact between the Children and the other parent during their parenting time.

[252] Pursuant to s. 15 of the FLA, a parenting coordinator shall be appointed for a period of 18-months from the date when the parties have signed the retainer documents. The parenting coordinator may assist the parties in accordance with the provision of the FLA and the Family Law Act Regulation, B.C. Reg. 347/2012, s. 6.

[253] The parties shall retain an agreed upon parenting coordinator by no later than 45 days from the date of these reasons for judgment.

[254] The fees, disbursements and other charges of the parenting coordinator shall be paid equally by the parties, subject to the parenting coordinator's authority to reapportion the total costs for an issue, or issues, after taking into account the parties' respective incomes, the source, nature, and frequency of issues that the parenting coordinator is asked to determine, and the parenting coordinator's assessment of the reasonableness of the positions taken by each party.

[255] Pursuant to s. 42 of the FLA, the parenting time with the Children is allocated as follows:

Regular Parenting Time Schedule

- a) The parties shall equally share regular parenting time with the Children on an alternating weekly schedule with an exchange time at 10:00 a.m. on Saturdays, unless the parties otherwise consent to a different exchange day of the week or time.
- b) The first week of regular parenting time shall commence with the respondent's parenting time on Saturday, August 31, 2024, unless the parties otherwise consent to a different commencement time.
- c) The party completing their parenting time shall be responsible for dropping the Children off at the home of the party scheduled to begin their parenting time.
- d) During the exchange of the Children, the parties shall deliver the Children's backpacks, including prescribed medications.

School Holiday Parenting Schedule

- a) The parties shall equally share summer holiday parenting time. For clarity, for the summer of 2024, the parties shall equally share parenting time for an eight-week summer holiday period from Saturday, July 6 to Saturday, August 31, as follows:
 - i. commencing on Saturday, July 6, 2024, the respondent shall have four weeks of summer holiday parenting time with the Children until August 3, 2024;
 - ii. commencing on Saturday, August 3, 2024, the claimant shall have four weeks of summer holiday parenting time with the Children until August 31, 2024; and
 - iii. the parties may consent to a different 2024 summer holiday parenting time schedule and they are encouraged to agree to any adjustment that is consistent with the best interests of the Children.

Special Events Parenting Time

- a) The party who has parenting time with a child on the child's birthday, shall facilitate at minimum, a reasonable telephone or video call between the other parent and child at a reasonable time and for a reasonable duration. The parties may agree to other parenting time arrangements for a child's birthday in the child's best interests.

- b) The parties shall alternate parenting time with the Children on Christmas Eve and Christmas Day regardless of which parent has regular parenting time with the Children on those days. For clarity, commencing on December 24, 2024, the party who has regular parenting time with the Children on Christmas Eve shall provide parenting time with the Children to the other party starting at 10:00 a.m. to 7:00 p.m. on December 25, 2024 and the parties will then alternate Christmas Eve and Christmas Day parenting time each year thereafter. There shall be no make-up for parenting time due to the parties sharing alternating parenting time with the Children on Christmas Eve and Christmas Day.
- c) The respondent shall have parenting time with the Children from 10:00 a.m. to 7:00 p.m. on Mother's Day each year and the claimant shall have parenting time with the Children from 10:00 a.m. to 7:00 p.m. on Father's Day each year, regardless of which parent has regular parenting time on those days. There shall be no make-up parenting time due to the parties having parenting time with the Children on Mother's and Father's Day.

Child Support

Legal Principles

- [256] I adopt the following summary of the legal principles that apply to determining the amount of child support from *J.M. v. S.T.*, 2022 BCSC 1210 at paras. 71-75:
- 71. Pursuant to s. 150(1) of the FLA, child support orders must be determined in accordance with the Federal Child Support Guidelines, SOR/97-175 [Guidelines].
 - 72. A three-step process is used to determine a party's Guidelines income. First, the court must find the party's Line 150 or Line 15000 income. Second, the court must make any required adjustments to that amount, as prescribed by Schedule III of the Guidelines. Third, the court must examine ss. 17-20 of the Guidelines to determine whether any of the exceptions apply and, if so, what effect they should be given: *Vincent v. Vincent*, 2012 BCCA 186 at paras. 35-38.
 - 73. Pursuant to s. 17(1) of the Guidelines, the court may have regard to a party's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, or fluctuation in income, if the court is of the opinion that the determination of the party's annual income under s. 16 of the Guidelines would not be the fairest determination of that income.
 - 74. Where a party owns or controls a corporation, the party has the ability to artificially reduce their income and, if they do so, their income should be adjusted: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 121. Pursuant to s. 18 of the Guidelines, where a party is a shareholder, director, or officer of a corporation, and the court is of the view that the determination of the party's income under s. 16 of the Guidelines does not fairly reflect all of the money available to the party for the payment of child support, the court may determine the party's income to include all or part of the corporation's pre-tax income.

75. Child support obligations are not offset if one of the parties exercises less than 40 percent parenting time with the child: s. 9 of the Guidelines.

Claimant's Guidelines Income

[257] During the parties' relationship, the claimant earned income almost exclusively from employment with arm's length employers.

[258] From 2017 to 2022, the claimant reported the following total income:

Year

Total Income Reported (claimant)

2022

\$80,827

2021

\$88,222**

2020

\$70,806

2019

\$71,357

2018

\$71,323

2017

\$69,933

**On December 15, 2022, the claimant's 2021 taxation year was reassessed from \$80,244 to \$88,222 to account for a dividend reported paid to him by the Corporation.

[259] Following separation, the claimant was terminated without cause from his previous employment as a pastor. He eventually received a severance package from his former employer that included salary continuance from December 17, 2021 to October 4, 2022. He now earns \$70,000 a year from his current full-time employment as confirmed in the offer letter received in November 2022.

[260] The claimant testified that following separation, he began to cash his RRSPs to pay for legal representation, day-to-day costs and child support. Those RRSP withdrawals are reflected in his total income on his returns.

[261] The respondent requests that amounts be added to the claimant's income for certain benefits paid to him under the severance package from his prior employer, for example, the sum he was reimbursed for legal services. However, in my view, none of those amounts are properly treated as adjustments to income for purposes of Schedule III of the Guidelines.

Respondent's Guidelines Income

[262] The respondent has a history of success in business and self-employment as a business consultant. She has considerable experience as a business consultant.

[263] The respondent testified that in their relationship, she supported the claimant's religious work by earning the majority of the family income. According to the respondent, this allowed the claimant to focus on carrying out his duties as a faith leader at a much lower salary than her own.

[264] From 2017 to 2022, the respondent reported the following total income:

Year

Total Income Reported (Respondent)

2022

\$98,958 (employment)

2021

\$100,000 (employment)

\$23,934 (dividends)

\$123,934

2020

\$105,833 (employment)

\$20,427 (dividends)

\$126,095

2019

\$180,264 [\$142,083 employment;

\$13,757 dividends; \$24,428 RRSP income]

2018

\$161,514 [\$125,208 employment;

\$35,473 dividends; \$833 RRSP income]

2017

\$209,136 [\$105,416 employment; \$102,887; \$833 RRSP income]

[265] The respondent's average employment income from 2017 to 2022 is in excess of \$175,000.

[266] The respondent testified that she has tried to keep her salary below \$118,000 to remain in a lower tax bracket. She also testified that since separation, her income has been reduced because the Corporation lost clients and she cannot afford to pay herself a high salary while also keeping tax remittances current. The respondent testified that she has cut back on work to focus on the Children.

[267] After considering the evidence at trial, I find that since separation, the respondent has not been working to her full and usual earning capacity because she decided to decrease her work hours. In my view, this deliberate reduction in income is demonstrated not only by her evidence, but also by considering the respondent's earnings history during the relationship.

[268] I also find that there is an additional basis to impute income to the respondent under s. 19(1) of the Guidelines due to her receiving significant income from dividends. The respondent's evidence was that she caused the Corporation to report dividends paid to her and the claimant based on money taken out of the Corporation during the relationship. The respondent testified that she intends to continue operating the Corporation and providing her professional services through it. I therefore find that the respondent will more than likely continue to receive a significant portion of her income from dividends in the future.

[269] I find the respondent's annual Guidelines income as of January 1, 2022 is \$130,985. In determining that amount, I have imputed \$32,000 of additional income to the respondent, in addition to the \$98,958 of employment income that she reported earning in the 2022 taxation year. I have imputed additional income to the respondent because I find that she has discretion to set her annual income, and she could increase her work hours, but she has decided to cut back.

[270] I reject the respondent's submission that I ought to determine her Guideline income for 2023 to be \$75,000. Instead, as I have already explained, I find the respondent's total income for support purposes from 2022 onwards is \$130,985.

Past Child Support Claim

[271] The respondent seeks arrears of child support. The evidence is that the claimant has been paying the respondent \$1,086 per month of child support up to the time when the trial completed.

- [272] Until September 9, 2022, I find the respondent had the majority of the parenting time with the Children and the claimant had an obligation to pay child support to the respondent. However, after September 9, 2022, I find the parties had shared parenting time within the meaning of s. 9 of the Guidelines.
- [273] For the period June 1 to December 1, 2021, the monthly child support payable by the claimant based on his total 2021 income of \$88,222, is \$1,362 for a total owing of \$9,534. Assuming that the claimant paid the respondent child support of \$1,086 for each of June 1 to December 1, 2021, for a total of \$7,602 paid, the respondent is entitled to retroactive child support owing for 2021 of \$1,932.
- [274] For the period January 1, 2022 to August 1, 2022, the monthly child support payable by the claimant based on his 2022 total income of \$80,827, is \$1,251 for a total owing of \$10,008. Assuming that the claimant paid the respondent child support of \$1,086 for each of January 1 to August 1, 2022, for a total of \$8,688 paid, the respondent is entitled to retroactive child support owing for eight months of 2022 of \$1,320.
- [275] As of September 1, 2022, I find that the child support payable by the claimant is subject to set-off by the child support payable by the respondent. The child support payable by the respondent based on her Guideline income of \$130,985 is \$1,921 per month. The retroactive child support due to the claimant as a result of the set-off for September 1 to December 1, 2022 is \$601 per month, for a total of \$2,404.

Current Child Support

- [276] Based on the Guidelines income of \$70,000 for the claimant and \$130,985 for the respondent, the current table child support payable by the respondent to the claimant is \$835 on the first day of each month for so long as C1 and C2 continue to be children of the marriage within the meaning of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA]. The order for payment of child support is subject to variation, rescission or suspension pursuant to s. 17 of the DA.
- [277] The parties shall exchange their financial information, including copies of individual and corporate tax returns, notices of assessment and corporate financial statements as soon as available but no later than November 30 of each year (commencing with November 30, 2024).

Section 7 Expenses

- [278] Section 7(1) of the Guidelines provides that the court may provide an amount to cover all or a portion of certain expenses after taking into account the necessity of the expense in relation to the Children's best interests and the reasonableness of the expense in relation to the spouse's means and the pre-separation spending pattern of the spouses.

- [279] In *Bodine-Shah v. Shah*, 2014 BCCA 191, the court explains that special expenses and extraordinary expenses are not the same thing:
- [66] Special expenses listed in ss. 7(1)(a)-(c) and (e) are distinct from extraordinary expenses referred to in ss. 7(1)(d) and (f). Special expenses are defined as relating to child care, medical or dental insurance premiums, health-related costs, and post-secondary education. They must be found to be reasonable and necessary. Extraordinary expenses are not defined. Their extraordinariness is determined in the context of the combined income of the spouses, as well as other considerations, including the nature and amount of the individual expense, the nature and number of the activities, any special needs or talents of the child, and the overall cost of the activities. They also must be found to be reasonable and necessary. Relevant considerations for the tests of necessity and reasonableness include whether the expenses are necessary in relation to the child's best interests, and reasonable having regard to the means of the spouses, the child, and to the family's spending pattern prior to separation. See *McLaughlin v. McLaughlin* (1998), 57 B.C.L.R. (3d) 186 at paras. 81-82 (C.A.). In assessing "means", the court may consider the parties' capital assets, income distribution, debts, third-party resources, access costs, support obligations, receipt of support, and any other relevant factor: *Delichte v. Rogers*, 2013 MBCA 106, 37 R.F.L. (7th) 81 at para. 38. Courts may consider whether the non-custodial parent was consulted regarding the expense, though a lack of consultation does not automatically preclude a finding that the expense is reasonable and necessary: *Delichte* at paras. 39, 44.
- [280] Expenses for items such as school supplies, cell phones and grooming are generally not s. 7(1) expenses: *Clarke v. Clarke*, 2014 BCSC 824 at paras. 47-58. The court may deny or cap the amount of s. 7 expenses where the expense is too high, beyond the means of the parents, or where it is not shown that the child has a special talent: *M.K. v. J.K.*, 2016 BCSC 311 at para. 91
- [281] In *L.A.M. v. S.C.M.*, 2020 BCSC 67 at para. 29, Justice G.P. Weatherill set out a two-step approach for determining whether an expense qualifies as an extraordinary expense:
- a) First, the court should determine whether the expense claimed under section 7(1)(f) of the Guidelines is an extraordinary expense or extracurricular activity by considering the following factors:
 - i. the combined income of the parties;
 - ii. the nature and amount of the individual expense;
 - iii. the nature and number of the activities;
 - iv. any special needs or talents of the children;
 - v. the overall cost of the activities; and
 - vi. any other similar factor that the court considers relevant.

b) Once the court determines that an expense falls within section 7(1)(f) of the Guidelines, a court must then determine whether the expenses are necessary in relation to the child's best interests and reasonable in the circumstances having regard to the following factors:

- i. the means of the spouses and those of the child; and
- ii. the family spending pattern prior to separation.

[282] The respondent seeks reimbursement from the claimant for various child-related expenses from 2021 onwards. For 2021 to 2023, the respondent seeks the claimant's reimbursement for part of the \$60,923.40 of s. 7 expenses that she paid.

[283] The claimant is concerned that the respondent is incurring expenses and effectively bypassing his extended health benefits plan. The claimant also submits that the respondent is claiming for items that are not special or extraordinary expenses or the items are unreasonable and beyond the parties' means.

[284] The expenses paid by the respondent for which she seeks the claimant's reimbursement consist of items such as "acting-related expenses" for C1, allowance money, lunch money, transportation, lost items, counselling costs for the Children, extra-curricular activities, medical equipment, prescriptions, clothing, school fees, and supplementary educational or training supports. The single-largest category of items claimed by the respondent is for extra-curricular activities and camps where the respondent seeks contribution towards the \$16,998.03 expended from 2021 to 2023. There are also significant amounts sought for medical appointments (\$13,5210.23), prescriptions (\$3,431.40) and acting-related expenses for C1 (\$7,313.30).

[285] When I consider the factors contributing to whether an expense is extraordinary, except for health-related and particular extracurricular or educational expenses that I will address, I am not convinced that the amounts sought by the respondent are special or extraordinary expenses.

[286] I am aware that the parties' pre-separation spending pattern was to expend considerable resources on extracurricular activities for the Children. However, I do not find the parties' pre-separation spending pattern particularly useful for considering the reasonableness of post-separation s. 7 expenses.

[287] In my view, except for the particular expenses discussed below, most of the items claimed by the respondent are either not special or extraordinary expenses, or they are unreasonable including because of the parties' incomes, the nature and number of extracurricular activities, the special needs and talents of the Children and the overall circumstances.

Extra-Curricular Expenses

- [288] The Guidelines provide that extraordinary expenses for extracurricular activities are permissible s. 7(1) expenses.
- [289] The Children participate in many extra-curricular activities. Many of these are for sports and after-school activities.
- [290] I find that, except for C1's acting-related expenses, none of the extra-curricular expenses claimed are special or extraordinary expenses and in fact, they are ordinary costs already factored into the child support paid for the Children. I also agree with the claimant that given the financial circumstances of the parties, including the significant family debt, the extra-curricular activity costs of the extent claimed by the respondent are unreasonable and likely unsustainable.
- [291] As mentioned above, the only extra-curricular activity that I find is an extraordinary expense is C1's acting-related costs which includes acting lessons, agent's fees and reasonable audition expenses. Given that C1 has secured an agent who advises that C1 is well placed to secure professional acting jobs, and given that C1 has already attended many professional auditions, I am of the view that these are s. 7 expenses. The parties must share these expenses on a 30/70 basis with the claimant responsible for 30% and the respondent responsible for 70%.
- [292] For 2021 to 2023, the respondent's evidence is that she paid \$7,313 for C1's acting-related expenses. For these retroactive expenses, the parties shall share these expenses with the claimant covering 30% of the expenses and the respondent covering 70% of the expenses. To be clear, the claimant shall pay to the respondent \$2,194 as reimbursement for s. 7 expenses for the s. 7 extra-curricular activities for the period from separation to November 30, 2023.

Health-Related Expenses

- [293] The Guidelines provide that health-related expenses, in excess of insurance reimbursement, are permissible s. 7(1) expenses.
- [294] The claimant always had extended health coverage for himself and the Children through his employment. The respondent testified she has had trouble submitting the Children's medical-type expenses for processing through the claimant's extended health coverage.
- [295] Sometime in 2023, the respondent decided to obtain her own extended health coverage for herself and the Children. The respondent pays for this coverage personally.
- [296] Among other things, the respondent seeks reimbursement from the claimant for the benefits fee of approximately \$310 per month she incurs for this extended health coverage. In my view, the monthly insurance fees incurred by the respondent is not a special expense within the meaning of s. 7, especially when the claimant already has extended health benefits available for the Children.

- [297] As mentioned, for 2021 to 2023, the respondent's evidence is that, inclusive of the insurance fee, she paid a total of \$13,521 for medical appointments, \$277 for medical equipment, \$3,431 for prescriptions, and \$3,237 for counselling expenses for the Children. The total cost is \$20,466, which shall be reduced by \$3,410 (11 months x \$310 as monthly benefit fees) to arrive at \$17,056 as the s. 7 expense for medical-type expenses for the Children from the date of separation to November 30, 2023. The claimant is responsible for 30% and the respondent is responsible for 70% percentage of \$17,056 as retroactive payment of these s. 7 expenses.
- [298] In the future, the s. 7 expenses for medical expenses of the Children shall be only those amounts remaining after each party's extended health benefit coverage has been applied. Each party is entitled to rely on whatever benefits they may have to help them cover the cost of the Children's s. 7 medical-type expenses. It is only the amount that is not covered by the parties' extended health coverage that is an expense under s. 7.
- [299] The parties are directed to forthwith contact their extended health benefit providers to obtain information about how to coordinate their benefits for the Children. The parties must exchange that information as soon as it is available.
- [300] The parties shall promptly submit all medical, optical, dental, counselling, or other medical-type expense to their respective benefit providers as directed by their providers. The parties shall track all medical-type expenses paid, submitted, and reimbursed by their respective benefit provider. Any balance unpaid shall be shared as a s. 7 medical-type expense for the Children on a 30/70 basis as set out above.
- [301] Going forward, in light of the parties' Guidelines income, the parties shall share s. 7 expenses on a 30/70 basis, with the claimant responsible for 30% and the respondent responsible for 70%. However, the party wishing to claim the expense must notify the other party of their intention to incur the expense, prior to incurring it, and seek their consent with the parenting coordinator having the authority to make a determination where the parties cannot agree.

Spousal Support

- [302] During the trial, the claimant successfully applied to amend his family law claim to seek spousal support. The claimant seeks spousal support on compensatory and non-compensatory grounds. The claimant does not seek retroactive spousal support.

Entitlement to Spousal Support

Relevant statutory provisions and case authorities

- [303] Section 15.2 of the DA provides that spousal support should meet the objectives of recognizing any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown, apportioning between the spouses any financial consequences

arising from the care of any child of the marriage over and above child support obligation, to relieve economic hardship of the spouses arising from the marriage breakdown and as far as practicable and promoting economic self-sufficiency of each spouse within a reasonable period of time. All four of these objectives should be considered to achieve a fair and equitable distribution of resources: *Moge v. Moge*, [1992] 3 S.C.R. 813, 1992 CanLII 25 at 850-853.

- [304] The court must also consider the condition, means, needs and other circumstances of each spouse including the length of the relationship, the functions performed by each spouse during cohabitation and order or agreement related to spousal support: s. 15.2(4), DA.
- [305] In *Chutter v. Chutter*, 2008 BCCA 507 at paras. 49-51, 54-55, the court discusses the principles and objectives of the various grounds for spousal support:
- [49] Although the compensatory and non-compensatory grounds for spousal support are animated by different models of marriage, the case authorities hold that there is no single basis of support or objective under the Divorce Act that supersedes the other, and that many claims involve aspects of both compensatory and non-compensatory principles (Bracklow, at para. 27; *Moge*, at 852). A court is not called upon to decide on one basis for support to the exclusion of the other but rather to "[apply] the relevant factors and strik[e] the balance that best achieves justice in the particular case" (Bracklow, at para. 32). Moreover, the doctrine of equitable sharing is the overarching principle that must be borne in mind (*Moge*, at 864).

(ii) Compensatory support

- [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 (Bracklow, at paras. 24, 41). 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 2008 BCCA 507 (CanLII) *Chutter v. Chutter* Page 17 future prospects of financial success (*Moge*, at 861-863; Bracklow, at para. 39). In *Moge*, 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 in original).

(iii) Non-compensatory support

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, 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 his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 1995 CanLII 2274 (BC CA), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[306] Prior to making a spousal support award, the court must, "at a minimum determine the incomes of the parties and in some fashion consider their means and needs": *He v. Guo*, 2022 BCCA 355 at para. 42.

Analysis - Spousal Support

[307] The claimant submits that during the entirety of their 15-year relationship, he earned significantly less than the respondent did. In her testimony, the respondent confirmed that the parties agreed she would earn as much income as possible to allow the claimant to pursue a leadership career in their religious faith. The parties understood that the claimant's employment would not be highly paid, but they viewed their respective roles as aligned with their deeply held religious beliefs.

- [308] The claimant's evidence was that he took time away from his faith leadership career to care for the Children, especially when they were very young. The claimant also testified that his work as a pastor provided a flexible schedule that enabled him to be the parent with the capacity to look after the Children. For example, he would be available to the Children in the mornings because he was home in the mornings and his work usually involved evening meetings or church events.
- [309] The respondent denies that there is any basis for the claimant's entitlement to spousal support. She submits that the claimant's career opportunities were unaffected, or even enhanced, by the relationship. The respondent also submits that the claimant did not sacrifice career or educational opportunities for the benefit of her career. She denies the respondent supported her career in any way. For example, she points out the claimant was able to complete his doctoral degree during the relationship.
- [310] The claimant's evidence is that he took time off from his career to stay home with the Children when they were very young so that the respondent could return to work. I find the evidence shows that during the relationship, the respondent was able to work hard, focus on her career and travel for work and the claimant's role assisted her career.
- [311] I find that the claimant now faces important economic disadvantages as a result of the marriage breakdown. These economic disadvantages include that he took time from his career to act as the stay-at-home parent while the Children were very young. As well, the parties agree to arrange things so as to ensure the respondent could earn a high income and develop her business to provide sufficient income to the family, while at the same time, agreeing the claimant should devote himself to work in a religious field that was not highly paid. After many years of this arrangement and, following the breakdown of the relationship, the claimant is left with a long history of modestly paid faith-based work, but without the respondent's considerable economic support.
- [312] A further economic disadvantage faced by the claimant arises from his responsibility for significant family debt, coupled with there being no value in the Corporation for division. In my view, the claimant's loss of access to corporate profits, together with receiving no value from the division of the Corporation, is an obvious and significant economic disadvantage flowing from the breakdown of the marriage. Meanwhile, the respondent is well-positioned to resume her successful career providing business consulting services through the Corporation.
- [313] I find that the claimant's employment experience and nature of his education affords him far fewer opportunities than the respondent to maximize or increase his earnings. I find that the claimant's means, especially related to earning capacity, is considerably less than the respondent's.

- [314] Regarding the parties' needs, I note that since separation, the claimant has lived modestly. For example, he rents a one-bedroom apartment close to where the Children and the respondent reside. He testified to being unable to afford an apartment with more than one bedroom. I note that the respondent cited the lack of bedrooms at the claimant's house as a reason not to increase his parenting time.
- [315] When I consider all of the circumstances, the statutory provisions and objectives and the guidance in the case authorities, I find that the claimant has established a strong compensatory grounds for entitlement to spousal support. Given the claimant was 54 at the time of separation and given the length of the relationship, I find that his entitlement to spousal support is indefinite.
- [316] However, I do not find that the claimant has established non-compensatory grounds for entitlement to spousal support on the evidence presented at trial. That is because, in my view, when I consider the evidence as a whole, there is not a significant gap to be narrowed between the needs and means of the spouses upon marital breakdown.
- [317] The "with child support" formula of the Spousal Support Advisory Guidelines (SSAG) is largely compensatory and intended to respond to the economic consequences of both past and ongoing child-rearing responsibility, plus there is an element of non-compensatory support.
- [318] Using inputs of an annual Guidelines income of \$130,958 for the respondent and \$70,000 for the claimant, based on relationship length of 15 years, and factoring in the present age of the Children, the claimant's age at separation being 54, the amount and duration generated by the SSAG with child support formula is \$56 at the low-end of the range, \$558 at the middle of the range, and \$1,056 at the high-end of the range for an indefinite duration.
- [319] In deciding the quantum of spousal support in light of the range, Professor R. Thompson states that in a shared custody case without new partners and additional children, the outcome should be the spousal support which generates an equal split of non-disposable income: Thompson, R., "The TLC of Shared Custody: Time, Language and Cash" (2013), 32 Can.Fam.L.Q. 315 at 341-4. I agree with that view and in the present case, the SSAG calculation at the high-end of the range provides each party with 50% of the net disposable income.
- [320] I therefore, conclude that \$1,056 per month is the appropriate amount of spousal support payable by the respondent to the claimant. The spousal support shall commence on December 1, 2023 and continue on the first day of each month thereafter for an indefinite period.
- [321] The spousal support commences on December 1, 2023, because the date of initiation of the proceeding for spousal support is the usual commencement date, absent a reason not to make the order effective on that date: *Kerr v. Baranow*, 2011 SCC 10 at para. 211. In this case, the issue of spousal support arose during the trial and on November 28, 2023, the

claimant filed a further amended notice of civil claim seeking spousal support making December 1, 2023, the usual commencement date. I see no reason to not make the order effective on that date.

Costs

[322] Unless there are issues related to costs that I am unaware of, the claimant as the successful party to this family law litigation is entitled to his costs.

[323] The claimant is also entitled to reimbursement from the respondent for one-half of the amount he paid Dr. Koopman for the preparation of the s. 211 Report. The respondent shall reimburse the claimant for one-half of the amount upon the claimant providing proof of payment.

"E. McDonald J."

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