
CANADA / JUDGMENT

S.L.C. v. C.J.R.C.

2016 BCSC 656

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 656 S.L.C. v. C.J.R.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.L.C. v. C.J.R.C.,

2016 BCSC 656

Date: 20160414

Docket: E122487

Registry: Vancouver

Between:

S.L.C.

Claimant

And

C.J.R.C. also known as C.J.C.

Respondent

Before: The Honourable Madam Justice Gray

Reasons for Judgment

Counsel for the Claimant:

H.B. Chiu

The Respondent, C.J.R.C.:

In Person

Counsel for the Director of Maintenance Enforcement for the Benefit of the Claimant S.L.C. as to Enforcement Issues Only:

A.C. McKeown

Place and Date of Hearing:

Vancouver, B.C.

October 29, 2015

Place and Date of Judgment:

Vancouver, B.C.

April 14, 2016

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INTRODUCTION

- [1] The parties to this high conflict matrimonial case brought post-trial cross-applications. The claimant ex-wife ("Ex-Wife") was represented by counsel. The respondent ex-husband ("Ex-Husband") acted in person. His mother sat beside him during the hearing, with the consent of the Ex-Wife's counsel. At a number of points during his submissions, the Ex-Husband was sobbing. He advised that he had sought assistance from family duty counsel, but was only able to get limited assistance.
- [2] While it was clearly difficult and emotional for the Ex-Husband to address the Court regarding the cross-applications, the Ex-Husband made his points clearly.
- [3] Some of the orders the Ex-Husband seeks relate to the conduct of the Director of Maintenance Enforcement ("Director") under the Family Maintenance and Enforcement Act, R.S.B.C. 1996, c. 127 [FME Act]. Counsel appeared on behalf of the Director at the hearing. The Director delegates authority to the Family Maintenance Enforcement Program ("FMEP"), and some of the steps which the Ex-Husband challenges were taken by FMEP.
- [4] In this tragic case, the parties' daughter ("Daughter"), who is now about 16 years old, is estranged from her father, the Ex-Husband. I understand she has not seen him for more than a year. In addition, the parties' son ("Son"), who is 13 years old, is estranged from his mother, the Ex-Wife. I understand that similarly they have not seen each other for over a year.
- [5] The case proceeded to a 28-day trial over the period from October 28, 2013 to February 21, 2014. I gave oral reasons for judgment on the parenting issues on March 20, 2014 and April 4, 2014. On May 20, 2014, I released written reasons for judgment amending the style of cause to use initials for the parties, and providing that in all future reasons for judgment, initials would be used in place of names for the parties, their children and any witnesses.
- [6] The remaining issues, which were primarily financial, were decided by written reasons for judgment released on September 26, 2014 and indexed at 2014 BCSC 1814 ("Trial Financial RFJ").

- [7] A number of significant events have occurred since the trial. The Ex-Husband made an assignment into bankruptcy on February 10, 2015. The Ex-Husband's son with JV ("Baby Son") was born earlier in 2015. The Ex-Husband is now separated from JV, who was his fiancée at the time of trial. The Ex-Husband is no longer living in the Langley house ("Langley House") in which he and JV lived in at the time of trial.
- [8] The Ex-Wife's application is for an extension of the existing protection order restraining the Ex-Husband from contacting her. I refer to it as the "Wife Protection Order" to distinguish it from the protection order concerning the Daughter.
- [9] The Ex-Husband seeks orders cancelling his responsibility for child and spousal support, requiring the Ex-Wife to pay support for the Son, and for related orders regarding security for and enforcement of his obligations to make payments pursuant to the Order resulting from the Trial Financial RFJ ("Trial Order").
- [10] The Ex-Husband's notice of application describes the orders he seeks as follows:
1. An order for child support; retroactive child support; and special and extraordinary expenses for [the Son];
 2. An order to vary the current existing spousal and child support order; to include the ongoing special and extraordinary expenses for the children; to include on a retroactive basis;
 3. An order for the removal of Judgement Reg# CA4038783 in favour of [the Ex-Wife] the registered owner of charge from Title# CA2785172/BA418174;
 4. An order to suspend action on the [Ex-Husband] by the [FMEP]; including to cancel the suspension of the [Ex-Husband's driver's] license; including to cancel the suspension of the [Ex-Husband's] passport; including to cancel all action taken against the [Ex-Husband's] bank account; including to vary the amount owed by the [Ex-Husband] to the [FMEP] on a retroactive basis;
 5. An order to vary the Final financial order; to include the remaining compensation payments owed by the [Ex-Husband and the Ex-Wife];
 6. An order restraining the [Ex-Wife] from providing to any third parties any documents whatsoever pertaining to this Notice of Application, the [Ex-Husband's] and [the Son and Daughter's] private information; and to include any orders at the conclusion of this hearing to any third parties
- [11] The cross-applications proceeded to a one-day hearing on the basis of the Ex-Wife's Affidavits 16 and 17, the Ex-Husband's Affidavits 19-21, the first Affidavits of DH, CC, LC, and the 4th Affidavit of LL.

BACKGROUND

- [12] The Trial Financial RFJ are lengthy and were released on September 26, 2014. They address, among other things, child support, including special and extraordinary expenses; spousal support; the division of property; and the Wife Protection Order.
- [13] The Trial Order resulting from the September 26, 2014 Trial Financial RFJ was settled by Registrar Cameron and entered in the court records on October 16, 2014. It includes the following (with headings added for ease of reference):

THIS COURT FURTHER ORDERS that**i) RRSP**

2. Within 30 days of being advised of the [Ex-Wife's] RRSP account information, the [Ex-Husband] will transfer to the [Ex-Wife] by way of a tax-free spousal rollover pursuant to the Income Tax Act, one-half of the value of his RRSPs as at the date of trial with an approximate total value of \$70,601.60;

ii) Trust Money Payout

3. The [Ex-Wife] shall be entitled to the sum of \$200,000.00 currently held in trust at the law firm of Dhillon & Company for her sole use absolutely, free and clear of any claims by the [Ex-Husband], as a portion of the compensation payment owed to her by the [Ex-Husband] for the [Ex-Wife's] share of family assets;

iii) Compensation Payments and Ring

4. The [Ex-Husband] shall pay the [Ex-Wife] the sum of \$75,000.00 as the remaining portion of the compensation payment owed to her by the [Ex-Husband] for the [Ex-Wife's] share of family assets;
5. Within 60 days, the [Ex-Husband] shall return the [Ex-Wife's] anniversary ring to the [Ex-Wife];
6. In the event that the [Ex-Husband] does not return the [Ex-Wife's] anniversary ring to the [Ex-Wife] within 60 days as set out at paragraph 5 of this Order, the [Ex-Husband] shall pay to the [Ex-Wife] the sum of \$15,000.00 as a compensation payment with respect to that ring;

iv) Retroactive Child Support

10. The [Ex-Husband] shall pay the [Ex-Wife] the sum of \$3,000.00 in respect of retroactive child support for the support of the parties' children [the Daughter] and [the Son] (collectively, the "Children") for the period from the parties' separation until August 31, 2014;

v) Retroactive Spousal Support (Amended Later)

11. The [Ex-Husband] shall pay the [Ex-Wife] the sum of \$8,500.00 in respect of retroactive spousal support;

vi) 2014 Child Support (Amended Later)

12. Commencing September 1, 2014, and continuing on the first day of each and every month thereafter until December 31, 2014, the [Ex-Husband] will pay the [Ex-Wife] the sum of \$734.00 per month in child support for [the Daughter], based on the [Ex-Husband's] imputed 2014 income of \$117,000.00 and the [Ex-Wife's] 2014 income of \$36,000.00, and a set-off each party's child support obligation to the other party based on the current split custody parenting arrangement and s. 8 of the Federal Child Support Guidelines;

vii) 2014 Spousal Support

13. Commencing September 1, 2014, and continuing on the first day of each and every month thereafter until December 31, 2014, the [Ex-Husband] will pay the [Ex-Wife] the sum of \$1,414.00 per month in spousal support, based on the [Ex-Husband's] imputed 2014 income of \$117,000.00 and the [Ex-Wife's] 2014 income of \$36,000.00;

viii) 2015 and Ongoing Child Support (Amended Later)

14. Commencing January 1, 2015, and continuing on the first day of each and every month thereafter pending further Court Order or written agreement of the parties, the [Ex-Husband] will pay the [Ex-Wife] the sum of \$865.00 per month in child support for [the Daughter] based on the [Ex-Husband's] imputed 2015 income of \$150,000.00 and the [Ex-Wife's] imputed 2015 income of \$50,000.00, and a set-off of each party's child support obligation to the other party based on the current split custody parenting arrangement and s. 8 of the Federal Child Support Guidelines;

ix) 2015 and Ongoing Spousal Support

15. Commencing January 1, 2015, and continuing on the first day of each and every month thereafter pending further Court Order or written agreement of the parties, the [Ex-Husband] will pay the [Ex-Wife] the sum of \$1,722.00 per month in spousal support, based on the [Ex-Husband's] imputed 2015 income of \$150,000.00 and the [Ex-Wife's] imputed 2015 income of \$50,000.00;

x) Review and Exchange Tax Information

16. The amount of child support and spousal support payable by the [Ex-Husband] to the [Ex-Wife] may be reviewed by the Court on application made by either party on or after January 1, 2016;
17. Each party shall provide to the other party copies of his or her filed income tax returns by June 1 of each year commencing June 1, 2015;
18. Each party shall provide to the other party copies of his or her Notices of Assessment and/or Notices of Reassessment within 30 days of receipt, commencing with Notices of Assessment and/or Notices of Reassessment received in respect of tax year 2014;

xi) Special Expenses (Amended Later)

19. The parties shall share only the cost of those ongoing special and extraordinary expenses for the Children as the parties may agree to in writing or as may be ordered by the Court on the basis that the [Ex-Wife] shall pay 25% and the [Ex-Husband] shall pay 75% of these special and extraordinary expenses;

xii) Family Counselling

20. The parties shall share the ongoing costs of family counselling pursuant to the Order of the Honourable Madam Justice Gray pronounced April 4, 2014 on the basis that the [Ex-Wife] shall pay 25% and the [Ex-Husband] shall pay 75% of this family counselling;

xiii) Wife Protection Order

21. The Protection Order of Master Baker pronounced May 31, 2013 will remain in force for a further period of one year from the date of this Order, unless the Court otherwise Orders;
- [14] The Ex-Husband applied, through legal counsel, to vary the figures in the Trial Order using calculations of the Ex-Husband's income which deducted the amount he was required to pay for spousal support.
- [15] As a result, by order pronounced November 25, 2014 and entered December 23, 2014, the Trial Order was changed and other orders were made as follows (with headings added for ease of reference) ("Amended Trial Order"):

ON THE APPLICATION of the [Ex-Husband] filed on October 28, 2014 and the application of the [Ex-Wife], filed November 7, 2014, coming on for hearing at Vancouver, British Columbia on November 24 and 25, 2014 and on hearing Lisa J. Hamilton and Julie F. Brown, counsel for the [Ex-Husband] and the [Ex-Wife], [Ex-Wife], appearing in person;

1. THIS COURT ORDERS that the Order of Madam Justice Gray made September 26, 2014 and settled October 16, 2014 (the "Financial Order") is hereby changed as follows:

i) Retroactive Spousal Support Amendment

- a. Paragraph 11 of the Financial Order is hereby deleted and replaced with: "The [Ex-Husband] shall pay to the [Ex-Wife] \$1,417 per month in spousal support for March, 2014 through August 2014";

ii) 2014 Child Support Amendment

- b. Paragraph 12 of the Financial Order is hereby deleted and replaced with: "Commencing September 1, 2014, and continuing on the first day of each and every month thereafter until December 31, 2014, the [Ex-Husband] will pay the [Ex-Wife] the sum of \$802 per month in child support for [the Daughter], based on a set-off of each party's child support obligation to the other party based on the current split custody parenting arrangement and s. 8 of the Federal Child Support Guidelines"

iii) 2015 and Ongoing Child Support Amendment

- c. Paragraph 14 of the Financial Order is hereby deleted and replaced with: "Commencing January 1, 2015, and continuing on the first day of each and every month thereafter pending further Court Order or written agreement of the parties, the [Ex-Husband] will pay the Claimant the sum of \$663 per month in child support for [the Daughter], based on a set-off of each party's child support obligation to the other party based on the current split custody parenting arrangement and s. 8 of the Federal Child Support Guidelines";

iv) Special Expenses Amendment

- d. Paragraph 19 of the Financial Order is hereby deleted and replaced with: "The ongoing special and extraordinary expenses of the Children that have been agreed to in writing by both parties or ordered by the Court shall be shared on the basis that the [Ex-Wife] will pay 35% and the [Ex-Husband] will pay 65%. Nothing in this Order will preclude the [Ex-Wife] and the [Ex-Husband] from making alternate mutually agreeable arrangements from time to time without requiring Court.

v) Dr. R Program

- 2. The [Ex-Husband] shall pay the [Ex-Wife] \$3,830.53 to reimburse her for the remainder of his share of Dr. [R's] program.
- 3. If any further monies are reimbursed from Dr. [R] and/or her program from this date forward (i.e. any reimbursement in addition to the \$3,056.34 reimbursement indicated by email from the program dated November 21, 2014), then each of the [Ex-Wife] and the [Ex-Husband] shall share equally any and all such further reimbursed funds.

vi) Trial Costs

- 4. The parties shall each bear their own costs for trial and throughout these proceedings, save and except for costs already awarded for particular applications.

vii) Wife Protection Order Variation

- 5. Paragraph 21 of the Financial Order is hereby varied such that the [Ex-Husband] is permitted to communicate with the [Ex-Wife] in writing using her address for service, in relation to financial and non-financial matters between themselves, BY CONSENT.
- [16] The Ex-Husband's evidence is that he has not worked since October 20, 2014, being about a month after the release of the Trial Financial RFJ. In his affidavit material filed before the hearing of the cross-applications, the Ex-Husband stated as follows:

I have been unable to work since October 2014 approximately, due to significant circumstances that I have been left in, I have been under the care of my doctor since that time. I have been completely unable to pay child or spousal support as I have been unable to work [and] earn income due to my conditions. There are several other significant factors that have played a role in the destruction of my ability to work and to be able to provide for my family.

[17] The Ex-Husband has not paid the amounts to the Ex-Wife which he has been ordered to pay, including:

- a) the \$75,000 compensation payment;
- b) the compensation payment of \$15,000 owed as a result of the his failure to return the Ex-Wife's anniversary ring;
- c) the retroactive child support of \$3,000 for the period from separation to August 31, 2014;
- d) the retroactive spousal support for the period March through April 2014;
- e) child support of \$802 per month for the four-month period September through December 2014;
- f) child support in the revised amount of \$663 per month for the period commencing January 1, 2015;
- g) spousal support of \$1,414 per month for the four-month period September through December 2014;
- h) spousal support of \$1,722 per month for the period commencing January 1, 2015; and
- i) \$3,830.53 for his share of the Dr. R program.

DISCUSSION

- a) Wife Protection Order

[18] During the course of the hearing, the Ex-Wife's position was that the Wife Protection Order should be extended indefinitely, on the basis that the Ex-Husband may apply to set it aside after one year, upon showing that he is undergoing counselling and treatment to address his psychological issues. The Ex-Wife's position is that she is concerned about her health, and particularly concerned about the Ex-Husband's present mental health.

[19] The Ex-Husband opposed the continuation of the Wife Protection Order. He argued that continuing that order will brand him as a wrongdoer. At the time of the hearing of the cross-applications, the Wife Protection Order had been in effect for about two years and four months. The Ex-Husband's position is that he has not breached it during that time, and so it should not be continued.

- i) History of Protection Orders between the Ex-Husband and the Ex-Wife

- [20] I first summarize the history of protection orders relating to the Ex-Husband contacting the Ex-Wife.
- [21] As set out in para. 311 of the Trial Financial RFJ, the Wife Protection Order was initially pronounced by Master Baker on May 31, 2013, as follows:
- [311] On May 31, 2013, Master Baker made a protection order ("Wife Protection Order"). It provides that the Husband is restrained from communicating with or contacting the Wife, except for email communications regarding the children, and is restrained from following her. It provides that the Husband is restrained from attending at, nearing or entering, the Wife's residence, property, business or place of employment, except that he may attend at public places hosting the children's activities on the condition that he stays a minimum of 20 metres away from the Wife while doing so. There is also a police enforcement clause.
- [22] As set out in para. 389 of the Trial Financial RFJ, my order of April 4, 2014 varied the Wife Protection Order to extend it until further order or written agreement between the parties, and to provide that contact between the Ex-Wife and the Ex-Husband shall be permitted to the extent recommended by Dr. LF.
- [23] At paras. 574-75 of the Trial Financial RFJ, I found that the Ex-Wife was a person whose safety and security was likely at risk from family violence carried out by the Ex-Husband, and expressed concern about the possibility that the difficult circumstances arising from the terms of the orders set out in the Trial Financial RFJ had the potential to trigger further violence by the Ex-Husband. As set out in para. 579 of the Trial Financial RFJ, the Wife Protection Order was extended to remain in force for a further year, unless the Court otherwise orders.
- [24] The Ex-Wife deposed as follows in her 16th Affidavit, sworn September 8, 2015:
- a) she remains in fear of the Ex-Husband, and is concerned that if the Wife Protection Order were to expire, that the Ex-Husband would resume the campaign of intimidation, harassment, and abuse that began during the marriage and continued after the separation;
 - b) she is very concerned that the Ex-Husband will begin to contact her inappropriately should the Wife Protection Order expire, and she believes it is only the fear of criminal penalties that has prevented him from breaching the Wife Protection Order to date;
 - c) she is very concerned that the Ex-Husband "continues to avoid any treatment for his psychological issues", and would have less fear of him if his mental health was being monitored and treated;
 - d) she is afraid to reach out to the Son because of the Ex-Husband's conduct; and
 - e) she has spent a significant amount of time in counselling, but any contact with the Ex-Husband causes her a deep sense of fear and anxiety.
- [25] In response to the Ex-Wife's affidavit, the Ex-Husband deposed that:

- a) the Ex-Wife's various and continued outrageous claims and suggestions of his alleged campaign of intimidation, harassment and abuse are not true;
- b) he does not live in a home worth in excess of \$1 million dollars, he has also not taken numerous vacations and holidays as [the Ex-Wife] claims, this is a lie. how or why could [the Ex-Wife] possibly know about his whereabouts is the better question, she claims that she is afraid of him yet she suggests or claims to know exactly where he is. He would like the Ex-Wife to leave him alone and to stay away from him. He does not have any interest whatsoever in the Ex-Wife's life, he feels that she needs help to find a way to carry on with her life and to leave him alone and to stop attacking him and trying to hurt him, his children and his family;
- c) he agrees that he has no reason to contact the Ex-Wife now or in the future, save and except for legal matters that may arise; and
- d) the Wife Protection Order has a large degree of impact on him as first, there has been one in place for more than 2 years and 4 months already, he has never agreed that this was necessary from day one, however, he has always respected it just the same He has not breached the Wife Protection Order nor does he desire to have any contact with the Ex-Wife. He is a law abiding citizen and does not deserve to have a label placed on him to be utilized as part of a platform for a continued campaign of attack against him for no reason, the renewal of the Wife Protection Order will continue to provide the Ex-Wife a tool for her to keep this tragic and horrible ordeal going well into the foreseeable future, wasting everybody's time and resources among other things . He has not lived with, been around, or shared any time with the Ex-Wife save and except for in court proceedings. He has no desire whatsoever to have any contact with the Ex-Wife.

[26] By consent order dated September 15, 2015, the Wife Protection Order was extended such that it would remain in force until the completion of the hearing of the Ex-Wife's notice of application filed September 9, 2015, being her application to extend the Wife Protection Order.

[27] The cross-applications proceeded to hearing on October 29, 2015. My order of that date extended the Wife Protection Order until my further order.

ii) Relevant Provisions in the FLA

[28] Section 1 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides that "family violence" includes the following:

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,

- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
- (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
- (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
- (iii) stalking or following of the family member, and
- (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence

[29] Sections 183 and 184 of the FLA set out the types of protection orders the court may make against a family member, and some of the factors the Court must consider when deciding whether to make such an order. These sections are set out in Appendix 1.

iii) Application of Relevant FLA Provisions

[30] I will first consider the risk factors described in s. 184 of the FLA.

[31] With respect to 184(a), there has been a history of family violence by the Ex-Husband toward the Ex-Wife. As set out in the Trial Financial RFJ at para. 417, subsections a, c, j, and k, and para. 260, the findings after trial include the following:

- a) the Ex-Husband periodically threatened the Ex-Wife, and was periodically physically abusive to her by doing things like holding her down and smashing things in her presence;
- b) the Ex-Husband threw a make-up box and broke the Ex-Wife's toe;
- c) at a party, the Ex-Husband grabbed the Son and lifted him up and pushed him against a fence. After driving the family away from the party in a car, he stopped the car and got out, leaving the Ex-Wife and children in the car. The Ex-Wife's mother picked up the Ex-Wife and the children and took them to the home of the Ex-Wife's parents. The Ex-Husband telephoned the Ex-Wife repeatedly, and went to her parents' home, where he yelled obscenities and demanded that the children go with him;
- d) the Ex-Wife was fearful of the Ex-Husband from time to time, including during the period starting about mid-August 2011;
- e) the Ex-Wife tried to manage the Ex-Husband's anger by agreeing with him;
- f) the Ex-Husband exploited the Ex-Wife's fear of him and insisted that the Ex-Wife enter into an unfair, unconscionable, and wholly unenforceable separation agreement; and

- g) in May, 2012, the Ex-Husband sent the Ex-Wife a series of text messages, including the threats that "The kids will never live with another man Im warning U now", "U want me to hurt u don't u", "U want me to hurt you!????? watch this", and "R ginna get what u want".
- [32] With respect to 184(b) and (c), there has not been family violence by the Ex-Husband towards the Ex-Wife since the events set out in the Trial Financial RFJ. However, the evidence at trial showed a continuing pattern of controlling behaviour by the Ex-Husband against the Ex-Wife in the period prior to separation.
- [33] With respect to s. 184(d), the parties are currently separated. One child lives with each parent, and each child is estranged from the other parent.
- [34] With respect to s. 184(e), there is evidence that the Ex-Husband is suffering mental health problems, although the evidence does not address whether those mental health problems are associated with a risk of violence.
- [35] Dr. LF, who was selected to lead a team of family counsellors to assist the family, write a letter dated November 23, 2014 to the Court. The letter states that on October 16, 2014, Dr. LF met with the Ex-Husband and JV, and the Ex-Husband was "distraught, hyperventilating, sobbing, stressed and overwhelmed". He stated "I have no money" and "I'm a broken man".
- [36] The Ex-Husband produced four documents at the hearing of the cross-applications. Three of them were letters which appeared to be signed by Dr. LP, the Ex-Husband's family physician. Two of those three letters bore the same date, October 21, 2014, and were the same. The other letter was dated September 22, 2015. The fourth document was a July 31, 2015 notice of referral of the Ex-Husband from Dr. LP to a psychiatrist.
- [37] The Ex-Husband only produced these four documents to the Ex-Wife and the Court at the hearing and on the basis of a consent order regarding confidentiality, which is discussed in further detail in the "confidential documents" section of these reasons.
- [38] None of these documents qualify as expert evidence under the court rules. They fail to set out the qualifications of the author or the facts upon which any opinions were based. That is required by Supreme Court Family Rule 13-6(1) for expert evidence, which is as follows:

Requirements for report

- (1) An expert's report that is to be introduced as evidence at the trial must be signed by the expert, must include the certification required under Rule 13-2 (2) and must set out the following:
- (a) the expert's name, address and area of expertise;
 - (b) the expert's qualifications and employment and educational experience in his or her area of expertise;
 - (c) the instructions provided to the expert in relation to the family law case;

- (d) the nature of the opinion being sought and the issues in the family law case to which the opinion relates;
- (e) the expert's opinion respecting those issues;
- (f) the expert's reasons for his or her opinion, including
- (i) a description of the factual assumptions on which the opinion is based,
- (ii) a description of any research conducted by the expert that led him or her to form the opinion, and
- (iii) a list of every document, if any, relied on by the expert in forming the opinion.

[39] However, I note that Dr. LP's referral note dated July 31, 2015 includes the diagnosis that the Ex-Husband is "increasingly depressed, tearful, overwhelmed, agitated and feeling persecuted."

[40] This is a difficult and tragic case. The parties had a difficult relationship which included the Ex-Husband committing family violence against the Ex-Wife.

[41] Since separation, both parents have become estranged from one of their children. The Ex-Husband is not presently working and deposed that he has not worked since October 2014. He has been referred to a psychiatrist, and his family doctor considers that he is increasingly depressed, tearful, overwhelmed, agitated, and feels persecuted.

[42] At the hearing, the Ex-Husband displayed severe emotional turmoil.

[43] As set out in para. 574 of the Trial Financial RFJ, the Ex-Wife was a person whose safety and security was likely at risk from family violence carried out by the Ex-Husband, but my hope was that, particularly with the assistance of the team led by Dr. LF, it would be possible to restore civilized relationships between all the family members.

[44] Unfortunately, that has not occurred. It appears that the Ex-Husband has not attended counselling for almost a year, although he has now been referred to a psychiatrist.

[45] In this case, the important factors are the acts of family violence by the Ex-Husband against the Ex-Wife during the relationship, the Ex-Husband's present difficult personal circumstances, including his separation from JV, his bankruptcy, and his present inability to work, and the fact that the Ex-Husband has not been receiving counselling and is awaiting treatment by a psychiatrist.

[46] The Ex-Wife and two deponents provided evidence that, since the trial, several of the Ex-Wife's friends and associates have had brief negative interactions with the Ex-Husband when they have seen him in public, involving the Ex-Husband staring at them, making faces, making derogatory comments towards them, or some combination of those things. In contrast, the Ex-Husband deposed that he has not seen any of the Ex-Wife's friends or associates since the trial, and has not had any contact with them or the Ex-Wife or her

family. However, it is not necessary for me to resolve this conflict in the evidence in order to decide the question of whether the Wife Protection Order should continue.

- [47] The Ex-Husband argued that continuation of the Wife Protection Order will brand him as a wrongdoer. The Trial Financial RFJ have already made the conclusions set out above, including that conclusion that the Ex-Husband was periodically physically abusive to the Ex-Wife by doing things like holding her down and smashing things in her presence. While the findings after trial do not include a finding that the Ex-Husband breached a court order, his abusive conduct before the trial was wrongful.
- [48] The Ex-Wife continues to be fearful of the Ex-Husband. There has been a history of emotional violence by the Ex-Husband to the Ex-Wife.
- [49] It is appropriate to extend the Wife Protection Order. In light of the Ex-Husband's difficult financial and personal circumstances and his need for psychiatric treatment, it is appropriate to extend the Wife Protection Order indefinitely, on the basis that the Ex-Husband may apply to set it aside after one year, if he provides evidence that he is undergoing counselling and treatment to address his psychological issues. It will be up to the Court at that time to assess all the evidence in order to determine whether to set aside the Wife Protection Order.

b) Child and Spousal Support

(i) Background

- [50] As discussed in paras. 533 through 536 of the Trial Financial RFJ, income of \$100,000 per year was imputed to the Ex-Husband for the period commencing September 1, 2013, and \$150,000 per year was imputed to him for the period commencing September 1, 2014. This reflected the Ex-Husband's capacity to earn income, as demonstrated by his earnings history, which was an average of \$247,000 per year for the four years prior to separation.
- [51] From 2015 onwards, the Ex-Wife's income was imputed in the amount of \$50,000 annually.
- [52] The Ex-Wife filed a certificate of judgment against the Ex-Husband's interest in the Langley Property in October 2014. As revised, the certificate of judgment was for \$101,500.
- [53] The Amended Trial Order varied the Trial Order to correct and reduce the child and spousal support payable by the Ex-Husband.
- [54] The Ex-Husband deposed that in January 2015, the General Bank of Canada seized the Ex-Husband's 2012 Toyota Sequoia vehicle. The Ex-Wife questions whether that is true. As set out in para. 353 of the Trial Financial RFJ, the Ex-Husband's October 4, 2013 Financial Statement estimated the value of the Sequoia at about \$49,000, and the loan against it at about \$63,000, with the result that the Ex-Husband did not have any equity in the Sequoia.

- [55] The Ex-Husband made an assignment into bankruptcy on February 10, 2015, appointing TMI as his trustee. The anticipated date of discharge from bankruptcy was November 11, 2015, being nine months following the assignment.
- [56] The Form 79 Statement of Affairs signed by the Ex-Husband ("Bankruptcy SOA") states that his assets have an estimated value of \$1,010,684.30, consisting primarily of \$932,000 for the Langley House, together with about \$81,500 in locked-in RRSPs. It lists the Sequoia as an asset with no value. It states a net realizable value for all his assets of \$3,600, consisting of \$3,100 for an RESP plus \$500 for a utility trailer.
- [57] The Bankruptcy SOA lists the Langley House as "exempt property". Up to \$12,000 of the value of a principal residence in the lower mainland of B.C. is exempt property. The figures in the Bankruptcy SOA suggest that there was equity in the Langley House of \$217,000 (\$932,000 less about \$715,000), half of which would be \$108,500. However, the Ex-Husband's Bankruptcy SOA states that the estimated net realizable dollar value for the Langley House is "nil".
- [58] The Ex-Husband's Bankruptcy SOA lists liabilities of about \$1.38 million, claiming that about \$715,000 represents secured debt and about \$670,000 represents unsecured debt. The secured debts which are listed include a mortgage and property taxes. The list of unsecured debts includes about \$250,000 reported as owing to the Ex-Husband's parents, and about \$242,000 reported as owing to the Ex-Husband's lawyers at trial. The Ex-Husband's Bankruptcy SOA lists an unsecured debt of about \$23,400 to FMEP. It does not list as a liability the certificate of judgment registered against the Langley Property in October 2014 for \$101,500.
- [59] The Ex-Husband's Bankruptcy SOA states that his net self-employment income is \$3,188.94 per month, which is about \$38,000 per year. It does not provide information about gross income earned or expenses deducted.
- [60] The Ex-Husband's Bankruptcy SOA states that the child support payable by the Ex-Husband is \$865 per month, while the Amended Trial Order provided that it was \$663 per month effective January 1, 2015. The Ex-Husband's answer to question 10B is that he did not make any gifts to relatives or others in excess of \$500 in the previous five years, but as set out in para. 472 of the Financial Trial Reasons, the Ex-Husband gave his sister a 2006 Nissan Armada worth about \$14,000 in December 2011. The Ex-Husband's answer to question 13 states that in October 2014, the Ex-Husband transferred a boat, two trailers, and a motorcycle to his father "as per promissory note".
- [61] The Ex-Husband's Bankruptcy SOA describes his family unit as consisting of four people, presumably being the Ex-Husband, JV, the Son, and the Baby Son. It does not show any figure for income earned by JV. The Ex-Husband obtained his mortgage broker's license in mid-2012. An October 27, 2015 print-out from the website of DLS, the Ex-Husband's firm of mortgage brokers, lists the Ex-Husband as a "mortgage expert" and states "expert page coming soon". It has a similar entry for the Ex-Husband's former fiancé, JV. Neither the

reference to the Ex-Husband nor to JV includes a photograph, while there are photographs for most of the other "mortgage experts".

[62] The Bankruptcy SOA uses the value of \$932,000 for the Langley House, which was the property assessment value as at July 1, 2014. As noted in the Trial Financial RFJ, JV contributed to the purchase of the Langley House, and the Ex-Husband and JV have agreed that each of them own half of the Langley House. The Ex-Wife deposed that the Ex-Husband made substantial renovations to the Langley House, including installing a completely new kitchen, renovating the basement, and completing extensive landscaping. However, she does not set out how she could know that, and the Ex-Husband denies it.

[63] The BC Assessment of the Langley House as at July 1, 2015 was \$932,000.

[64] A search on July 7, 2015 of the records of the Personal Property Registry shows that the registration of a security agreement on January 16, 2012 with the base debtor the Ex-Husband, the secured party the General Bank of Canada, and the expiry date January 16, 2019. The Ex-Husband is the base debtor of the Toyota Sequoia.

[65] In his 19th affidavit sworn September 25, 2015, the Ex-Husband deposed that:

- a) he has no money or resources whatsoever because of significant financial circumstances that he is now left in and as such has no choice but to represent himself; and
- b) he has been unable to work since October of 2014 approximately, due to significant circumstances that he has been left in he has been under the care of his doctor since that time. He has been completely unable to pay child or spousal support as he has been unable to work [or] earn income due to his conditions. There are several other significant factors that have played a role in the destruction of his ability to work and to be able to provide for his family.

[66] The Ex-Husband's 20th Affidavit, sworn September 25, 2015, includes the following:

- a) the Ex-Husband attributes his need for medical care to the Ex-Wife's "aggressive legal campaign" against him;
- b) the Baby Son was born earlier in 2015;
- c) the Ex-Husband has moved in with his parents so they can assist him in his daily needs, and he counts on his parents financially for himself, the Son, and his Baby Son; and
- d) the Ex-Husband's parents are retired and on a fixed income.

[67] The Ex-Wife's 17th Affidavit sworn October 8, 2015 includes the following:

- a) her friend RU [presumably told her that he] saw the Ex-Husband on the lake in Osoyoos in the boat with his family over the past Canada long weekend [being July 2015], and also saw the Toyota Sequoia, hooked up to the boat, in front of the Holiday Inn in Osoyoos that same weekend. She attached pictures of the Toyota Sequoia to her affidavit; and

b) the Ex-Husband's parents reside in a beautiful home with a swimming pool.

[68] The Ex-Husband's 21st Affidavit, sworn October 27, 2015, include the following:

- a) he was not asked to produce for the trial the promissory note between himself and his parents regarding his parent's right to seize the boat, trailer, and his motorcycle, if he failed to pay them as required;
- b) he erroneously failed to refer in the Bankruptcy SOA to the certificate of judgment registered against the Langley House, but advised the bankruptcy trustee and the error was corrected;
- c) the pictures of the Sequoia and boat in the Ex-Wife's Affidavit are not of his truck or boat, and he does not own a vehicle;
- d) he refers to seeking an order that Starbucks, TD Bank Canada, and Shape Properties provided videotapes, but he did not include that in a notice of motion and does not appear to have given notice to Starbucks, TD Canada, or Shape Properties about such an application or about the specific dates in question;
- e) he filed an income tax return for 2014 claiming about \$65,000 in gross income and about \$14,600 in net income, after expenses including \$17,000 for "management and administration fees", about \$16,000 for motor vehicle expenses, about \$13,000 for capital cost allowance, and about \$7,000 for home office;
- f) in October 2015, TMI recommended that the Ex-Husband be discharged from bankruptcy, and was satisfied that the security for his father's loan to him was a boat, trailer, and motor vehicle, and TMI did not propose to do anything more regarding the matter. However, the Ex-Husband did not attach the promissory note or other written agreement between him and his parents; and
- g) he provided a copy of a notice from Accurate Effective Bailiffs Ltd. concerning the seizure of the Sequoia.

[69] The Ex-Wife did not receive the Ex-Husband's 21st Affidavit until the morning of the hearing of the cross-applications, but did not seek an adjournment to respond to it.

(ii) Arguments of the Parties

[70] The Ex-Husband seeks to vary the orders regarding child and spousal support, and seeks an order requiring the Ex-Wife to pay him retroactive child support and to pay for special and extraordinary expenses for the Son.

[71] As I understand the Ex-Husband's position, it is that he has earned nothing since October of 2014, and the court order should be revised to reflect zero income for him commencing October 1, 2014, and other income for the Ex-Wife.

[72] The Ex-Wife is opposed to any variation. She argued as follows:

- a) the Ex-Husband failed to provide medical evidence that he is unable to work;
- b) if the Ex-Husband was unable to work as of October 1, 2014, that evidence was available to him at the November 25, 2014 hearing leading to the Amended Trial Order, and his failure to provide it at that time means that there has not been a material change of circumstances;
- c) the Ex-Husband has failed to provide full financial disclosure, by failing to provide an updated Form F8 Financial statement, his 2014 income tax return and notice of assessment, bank statements, credit card statements, proof of payment of special and extraordinary expenses for the Son, or other financial documents apart from the bankruptcy documentation which he has provided;
- d) the bankruptcy documentation provided by the Ex-Husband contains errors and is unreliable, because
 - i. it refers to an incorrect amount for the child support payable by the Ex-Husband;
 - ii. it fails to disclose the gift of the 2006 Nissan Armada worth about \$14,000 from the Ex-Husband to his sister in December 2011,
 - iii. it refers to the Ex-Husband transferring a boat, two trailers, and a motorcycle to his father pursuant to a promissory note, when there was no evidence at trial about such a promissory note or such debt being secured;
 - iv. it shows net self-employment income of \$3,188.94 per month for the Ex-Husband (which is about \$38,000 per year) without providing any information about the gross income or the expenses deducted;
 - v. it does not list the certificate of judgment filed in October 2014 and registered against the Langley Home; and
 - vi. the Ex-Wife questions whether the Ex-Husband's Toyota Sequoia was repossessed in January 2015 as the Ex-Husband deposed, because the PPRS search of July 7, 2015 still shows him as base debtor, and because her friend RU reported seeing it in July 2015.

(iii) Analysis

[73] The first question for the Court is whether the Ex-Husband has established that there has been a material change in his circumstances.

[74] That requirement is set out in s. 17 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), which is set out in relevant part in Appendix 2.

[75] As set out in the Continuing Legal Education publication, the Family Law Source Book, at 2.45:

A change in circumstances must represent a clear and distinct departure from what the court knew of the circumstances or could reasonably have anticipated when making the order (*Canning v. Fearn*, 2000 BCSC 362). A change in circumstances will not be material unless it was not foreseen or could not reasonably have been contemplated by the judge in making the original order (*Dietrich v. Kujbida*, 2004 BCSC 455).

- [76] As set out in *Carter v. Carter* (1991), 58 B.C.L.R. (2d) 45 (C.A.), a material change must be "substantial, unforeseen and of a continuing nature".
- [77] The evidence provided by the Ex-Husband on the cross-applications falls short of establishing that he was medically unable to work as early as October of 2014. The letter from Dr. LP of that date says that the Ex-Husband is not medically fit to participate in legal matters or appear in court. It does not comment about his ability to work.
- [78] Dr. LF reported that the Ex-Husband was distraught and overwhelmed when she met with him on October 16, 2014. However, Dr. LF did not comment on his ability to work.
- [79] Dr. LP's July 31, 2015 referral letter to the psychiatrist refers to the Ex-Husband as being "increasingly depressed" and needing an "urgent" appointment. It does not comment about the Ex-Husband's ability to work.
- [80] Dr. LP's letter dated September 22, 2015 states that the Ex-Husband is "unfit for regular or any work at this stage". It does not discuss when the Ex-Husband became unfit to work, or when he is expected to be fit to return to work.
- [81] The Bankruptcy SOA states that the Ex-Husband was earning or was capable of earning about \$38,000 per year. The Ex-Husband stated during the hearing of the cross-applications that the bankruptcy trustee simply looked at his past earnings and divided them by 12 to obtain the monthly figure.
- [82] There are a number of concerns with the Ex-Husband's financial disclosures for this application. First, he did not file a new form F8 financial statement. Second, his evidence falls short of demonstrating that his alleged inability to work is likely to be long-lasting, and for what period of time it applied or will apply. Third, his evidence does not explain what efforts he has made to work. Fourth, his evidence does not explain JV's role with DLS.
- [83] It is also concerning that the evidence in the Bankruptcy SOA is that the Ex-Husband transferred the boat and trailers to his father. The evidence at trial did not set out that the Ex-Husband's father had any interest in the boat. The Ex-Husband stated that the hearing of the cross-applications that he did not understand that it was relevant. The Ex-Husband is a mortgage broker who would be expected to understand the concept of security in an asset. While the bankruptcy trustee has apparently accepted this transfer as legitimate for bankruptcy purposes, it is concerning on this application as between the Ex-Husband and the Ex-Wife.

- [84] It is concerning that the Ex-Husband deposed that the Sequoia was seized in January 2015, when it is listed in the Bankruptcy SOA dated February 10, 2015, and RU reported seeing it in July 2015. However, the evidence at trial was that the loan exceeded the value of the Sequoia. I am not able to come to any conclusion about the Sequoia on the evidence available at this application.
- [85] The fact that the Bankruptcy SOA shows no recoverable value from the Ex-Husband's interest in the Langley House is consistent with the facts presently available. If the property is worth \$932,000, and the mortgage against it is about \$715,000, the net equity would be about \$217,000. If that equity were divided equally between JV and the Ex-Husband, each would have \$108,500. After deducting the amount secured by the registered certificate of judgment of \$101,500, the balance would be \$7,000. That is less than the exempt amount for a principal residence in the lower mainland of B.C. If the property is worth more, any further value may be available to FMEP on the basis of its registration of the maintenance order against the property.
- [86] The Ex-Husband's evidence is that he is separated from JV. However, it is unclear why she is listed on the DLS website as a mortgage expert, when at the time of trial she was a hairdresser. This gives rise to a concern that the Ex-Husband may have enabled JV to earn income arising from placing mortgages, which, for the purposes of the Ex-Husband's application to reduce the amounts he should be paying for support, should be considered part of the Ex-Husband's earnings.
- [87] It is in everyone's interest for the Ex-Husband to recover the ability to work. He will then be in a position to support himself and the Son and the Baby Son, and to contribute to the support of the Ex-Wife and the Daughter through paying spousal and child support.
- [88] The Ex-Husband was in a difficult state emotionally at the time of the court hearing. As stated, at a number of points during his submissions he was sobbing. He advised that he had sought assistance from family duty counsel, but was only able to get limited assistance.
- [89] Ordinarily, the Court would dismiss an application to reduce and cancel support payments if the applicant failed to provide the evidence necessary to establish that there has been a material change in circumstances, and to establish the applicant's actual financial situation. The applicant has the duty to marshal all of the necessary evidence in support of his or her application.
- [90] In this case, it is appropriate to adjourn the Ex-Husband's application rather than to dismiss it. In light of the Ex-Husband's difficult emotional, financial, and medical circumstances and the fact that he is acting in person, it is not appropriate to dismiss his application at this time, even though that may lead to increased expense for the Ex-Wife.

- [91] The Ex-Husband's applications to vary the Amended Trial Order in respect of child support and spousal support are adjourned, with liberty to the Ex-Husband to reset the application upon providing further evidence, including his up-to-date Form F8 Financial Statement with all attachments, and any further evidence he wishes to rely on. It would be expected that the Ex-Husband would provide evidence to address the concerns about his financial situation discussed above.
- c) FMEP Conduct
- [92] As discussed above, the Ex-Husband has failed to pay to the Ex-Wife the amounts that he has been ordered to pay.
- [93] The Ex-Wife enrolled with the Director on or about December 30, 2014. The Ex-Husband was in arrears of about \$23,400 at the time of enrolment. As of October 1, 2015, the Ex-Husband was in arrears of child and spousal support of over \$46,000, inclusive of statutory interest and fees.
- [94] FMEP has taken the following actions:
- a) registered the maintenance agreement against the Ex-Husband's interest in the Langley House;
 - b) sent a garnishee summons to the Department of Justice Canada for arrears of \$30,695.26 as at March 5, 2015, and monthly periodic payments of \$2,385;
 - c) advised the Ex-Husband that it would be filing a credit report;
 - d) advised the Ex-Husband that it intended to instruct the Insurance Corporation of British Columbia ("ICBC") to refuse to issue a new driver's license to the Ex-Husband, or to refuse to renew his current driver's license; and
 - e) issued notices of attachment against two banks for arrears of about \$41,000 as of July 7, 2015 and ongoing monthly payments of \$2,500.
- [95] FMEP has not taken steps which would have the effect of denying the Ex-Husband a passport.
- [96] The Ex-Husband wishes to suspend FMEP's actions, including cancelling the suspension of his driver's license, cancelling all actions against his bank account, and varying the amount owed by him to FMEP on a retroactive basis.
- [97] The position of FMEP is that this application should be dismissed. The position of FMEP is that it has a statutory mandate to enforce the payment of support orders and will do so, so long as there are arrears in support or an ongoing support application. However, FMEP would close its file and withdraw any enforcement if the Court cancelled the support order and all support arrears including statutory interest and fees.
- [98] Appendix 3 contains ss. 15, 16, 26, 29.1, and 29.2 of the FME Act.

i) Registration Against Title to the Langley House

[99] Section 26 of the FME Act relates to registration of a maintenance order against land.

[100] In *Harvey v. Gould* (1959), 18 D.L.R. (2d) 590 (B.C.S.C.), Justice Wilson stated that a maintenance order registered against property acts as security not just for arrears, but also for future payments. The order is a charge on the lands until all provisions of the judgment have been fully satisfied.

[101] At this point, the Ex-Husband remains in arrears of support, and he has ongoing support obligations. The registration of the order against his interest in the Langley House is appropriate, and his application to cancel it is dismissed.

ii) Driver's License and Vehicle License and Plates

[102] Section 29.1 of the FME Act relates to the Director advising ICBC to take action about the debtor's driver's license and corresponding vehicle license plates. As set out in s. 29.1(1), the Director is permitted to take those steps if the debtor is in default and the arrears total \$3,000 or more.

[103] The Ex-Husband continues to be in default of his support obligations, and the arrears total well in excess of \$3,000. As a result, FMEP is entitled to take steps to affect the Ex-Husband's driver's license and vehicle license.

[104] In addition, the Ex-Husband has not followed the procedure required by the FME Act. That requires an applicant to apply to the Director to review the issuance of the hold on the driver's license. It is only after the Director has considered the matter that the court has jurisdiction to consider making an order concerning the removal of the driver's license. See *Hamilton v. Hamilton*, 2006 BCSC 1074, at paras. 43 and 46 as follows:

[43] With respect to the driver's licence, section 29.1 of the Family Maintenance Enforcement Act provides that the Director may send a notice of default to the Insurance Corporation of British Columbia ("ICBC") where the debtor is in default and the arrears total \$3000 or more. Upon receipt of that notice, ICBC must not issue or renew the debtor's driver's licence. Section 29.2(1) provides that the Director must direct ICBC to disregard a default notice if the debtor satisfies the Director that the notice is based on a material error, or that the lack of a driver's licence will significantly reduce the debtor's ability to pay the support ordered, or that the debtor has entered in to a payment arrangement that is satisfactory to the Director. If the Director refuses to act, s. 29.2(2) provides that the debtor may apply to court to determine whether the refusal is unreasonable and, if the court finds the Director's refusal is unreasonable, it may order the Director to act.

[46] In my opinion, Mr. Hamilton must first apply for a review by the Director of the federal licence denial and the driver's licence withholding before he can seek a remedy on judicial review. Until he has taken the steps for review provided for in the enactments, it would be inappropriate for the court to review the Director's decisions with respect to these

enforcement mechanisms. However, even if it were appropriate for me to review those decisions at this point, there is no evidence before me that establishes that the Director's decisions to issue a default notice to ICBC or to apply for a federal licence denial were in any way unreasonable. The decisions were made in accordance with the respective statutes.

[Underlining added.]

- [105] The Ex-Husband alleges that he cannot work at present. The evidence at trial was that he had worked from home as a mortgage broker. He has failed to provide evidence that the lack of a driver's license will significantly affect his ability to pay under the maintenance order. While the evidence suggests that the absence of a driver's license impairs the Ex-Husband's personal activities, such as driving the Son to his activities, that is not a basis for setting aside the hold on the driver's license pursuant to section 29.2 of the FME Act.
- [106] Further, the evidence of the FMEP enforcement officer is that the Director understands that the Ex-Husband's driver's license does not expire until September 12, 2018, and so the Ex-Husband should still have the use of his driver's license at this time.
- [107] The Ex-Husband suggested that he received different advice in a telephone call from someone at the office of the Director. It is not clear whether the Ex-Husband misunderstood the Director's representative, or the Director's representative was mistaken under the applicable legislation.
- [108] In any event, the Court does not have jurisdiction to consider whether to direct FMEP's activities concerning the Ex-Husband's driver's license and vehicle license and plates until after the Ex-Husband makes an appropriate application to the Director and provides the evidence required under the legislation.

iii) Attachment of Bank Accounts

- [109] Section 16(2) of the FME Act governs withdrawal of notices of attachment sent to a person who is indebted to the maintenance debtor. For example, a bank which owes money to a maintenance debtor like the Ex-Husband can be subject to a notice of attachment.
- [110] Section 16(2) sets out the procedure for seeking a withdrawal of a notice of attachment. A debtor like the Ex-Husband can apply to the Director, and seek to satisfy the Director that the notice contains or is based on a material error.
- [111] As with respect to the Ex-Husband's application regarding his driver's license, this Court does not have jurisdiction to consider the matter until the debtor has first applied to the Director. If the Ex-Husband applies to the Director for the withdrawal of a notice of attachment and the Director dismisses his application, at that time the Court can consider whether to set aside the Director's decision that the notice does not contain or is not based on a material error.

iv) Summary

[112] As a result, the Ex-Husband's applications for orders suspending FMEP's actions must be dismissed.

d) Removal of Registered Judgment

[113] After the release of the Trial Financial RFJ, a certificate of judgment for \$101,500 was registered against the Ex-Husband's interest in the Langley House. At trial, that property was occupied by the Ex-Husband, JV and the Son. According to the Ex-Husband, it is now occupied by JV and the Baby Son.

[114] The certificate of judgment reflected the amounts the Ex-Husband was ordered to pay after trial for the division of family assets.

[115] As I understand it, the Ex-Husband's position is that the certificate of judgment should be removed because of his present inability to work and difficult financial circumstances.

[116] In contrast to an ongoing order for the payment of spousal or child support, this Court does not have jurisdiction to vary an order regarding the division of family assets. The decision about how to divide the parties' assets was based on the evidence at trial of the parties' actual assets, and the relevant history regarding those assets.

[117] Any financial difficulties the Ex-Husband has suffered since the trial do not change the facts which led to the registered judgment. This Court does not have the jurisdiction on a post-trial application such as this one to change the terms of the judgment following trial.

[118] As a result, the Ex-Husband's application to remove the registered judgment against title to his interest in the Langley House is dismissed.

e) Compensation Payments

[119] The Ex-Husband seeks an order to vary the Amended Trial Order. As I understand it, he seeks an order cancelling the remaining compensation payments owed by the Ex-Husband to the Ex-Wife. The Ex-Wife is opposed to such an order.

[120] As with the registration of the certificate of judgment registered against the Langley House, this Court does not have jurisdiction to vary an order regarding the compensation payments. The compensation payments arose from the Court's decision about how to divide the parties' assets, which was based on the evidence at trial of the parties' actual assets, and the relevant history regarding those assets.

[121] Any financial difficulties the Ex-Husband has suffered since the trial do not change the facts which led to the compensation payments. This Court does not have the jurisdiction on a post-trial application such as this one to change the terms of the judgment following trial.

[122] As a result, the Ex-Husband's application to vary the Final Order with respect to the remaining compensation payments owed by the Ex-Husband to the Ex-Wife is dismissed.

f) Confidential Documents

[123] The Ex-Husband seeks an order restraining the Ex-Wife "from providing to any third parties any documents whatsoever pertaining to this Notice of Application, the [Ex-Husband's] and [the Son and Daughter's] private information; and to include any orders at the conclusion of this hearing to any third parties."

[124] It is not entirely clear what documents the Ex-Husband has in mind.

[125] The Ex-Wife deposed that she has never shown the Ex-Husband's personal documents to third parties in a "deliberate manner" and does not intend to do so, and the only occasion when she did so is when she provided the ADHD clinic with the court papers that they requested.

[126] At the hearing of the cross-applications on October 29, 2015, the Ex-Husband provided four documents to the court, on the basis of my order, by consent, as follows:

Without making any finding as to whether or not the Ex-Wife has provided any confidential documents to anyone else, the court orders that the documents will be provided to the Ex-Wife's counsel and the Ex-Wife on the basis that they will keep them confidential and use them only for the purposes of litigation and neither of them shall show the documents to anyone else without further order of the court, and on the basis that the documents will be sealed in the court file.

[127] This order was made to enable the application to proceed smoothly. Therefore, the four documents which the Ex-Husband produced at the hearing of the cross-application are subject to the consent order of October 29, 2015 regarding confidentiality. Those four documents were all from the records of Dr. LP.

[128] Supreme Court Family Rule 5-1(29) provides that financial documents produced in the lawsuit, including Form F8 financial statements, must be kept confidential and used only for the purposes set out in that sub-rule. That sub-rule is as follows:

Confidentiality

(29) Any person who has access to documents obtained under this rule must keep the documents and any information contained in them in confidence and must not disclose the documents or information to anyone other than

- (a) for the purposes of a valuation of an asset,
- (b) for a determination of the disclosing party's income, or
- (c) in the course of permitting the documents to be introduced into evidence during the family law case.

[129] In my view, Family Rule 5-1(29) does not cover the four pages that the Ex-Husband produced during the hearing because they are not financial documents produced under the applicable rule.

- [130] Ordinarily, documents which a party to a family proceeding produces under the compulsion of the Court's discovery procedures are subject to an implied undertaking of confidentiality. This was discussed by the Supreme Court of Canada in *Juman v. Ducette*, 2008 SCC 8 at para. 4. The implied undertaking applies to documents and oral evidence produced on discovery by the opposite party. The party who receives such information is precluded from using the information except for the purposes of the litigation in which it was obtained, without leave of the Court. There is an exception in a situation of immediate and serious danger.
- [131] Once evidence has been introduced in court, the documents usually cease to be subject to the undertaking, although the Court may make a specific order regarding confidentiality of evidence introduced in court.
- [132] In this case, the May 20, 2014 order amended the style of cause to use initials for the parties, and provided that in all future reasons for judgment, initials would be used in place of names for the parties, their children, and any witnesses. That was intended to provide some protection for the privacy of the children.
- [133] Ordinarily, a party is legally free to show others a copy of the Court's reasons for judgment and its orders. Ordinarily, counsel provide copies of orders to anyone who would be concerned by the outcome.
- [134] It is often the course of wisdom to limit the distribution of orders and reasons for judgment, particularly if they may have an effect on the privacy of a child. A parent is expected to act in the best interest of the children, and so may be criticized for distributing the Court's reasons for judgment inappropriately, such as to children and neighbours.
- [135] If the Ex-Husband's concern related to the four documents from the files of Dr. LP which he produced at the hearing of the cross-applications, those concerns have been addressed by the consent order of October 29, 2015.
- [136] If the Ex-Husband has concerns about other documents, he will need to make an application which specifies the documents of concern. As a result, I will adjourn this application, but the Ex-Husband has liberty to renew it upon specifying the particular documents of concern.

SUMMARY

[137] In summary:

- a) The Wife Protection Order is extended indefinitely, but the Ex-Husband has liberty to apply to set it aside after one year, if he provides evidence that he is undergoing counselling and treatment to address his psychological issues. It will be up to the Court at that time to assess all the evidence in order to determine whether to set aside the Wife Protection Order;

- b) The Ex-Husband's applications to vary the Amended Trial Order in respect of child support and spousal support are adjourned, with liberty to the Ex-Husband to reset the application upon providing evidence including the Ex-Husband's up-to-date Form F8 Financial Statement with all attachments, and any further evidence he wishes to rely on;
- c) The Ex-Husband's applications for orders suspending FMEP's actions are dismissed;
- d) The Ex-Husband's application to remove the registered judgment against title to his interest in the Langley House is dismissed;
- e) The Ex-Husband's application to vary the Final Order with respect to the compensation payments owed by the Ex-Husband to the Ex-Wife is dismissed; and
- f) The Ex-Husband's application for an order restraining the Ex-Wife from providing documents to any third parties is adjourned, but the Ex-Husband has liberty to renew it upon specifying the particular documents of concern.

[138] The Ex-Wife was successful on her application, and all of the Ex-Husband's applications were either adjourned or dismissed. As a result, the Ex-Wife is entitled to her costs of the cross-applications.

"Gray J."

Appendix 1: Excerpts from FLA

Orders respecting protection

183 (1) An order under this section

- (a) may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and
 - (b) need not be made in conjunction with any other proceeding or claim for relief under this Act.
- (2) A court may make an order against a family member for the protection of another family member if the court determines that
- (a) family violence is likely to occur, and
 - (b) the other family member is an at-risk family member.
- (3) An order under subsection (2) may include one or more of the following:
- (a) a provision restraining the family member from
 - (i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,

- (ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
- (iii) following the at-risk family member,
- (iv) possessing a weapon, a firearm or a specified object, or
- (v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;
- (b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;
- (c) directions to a police officer to
 - (i) remove the family member from the residence immediately or within a specified period of time,
 - (ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or
 - (iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);
- (d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- (e) any terms or conditions the court considers necessary to
 - (i) protect the safety and security of the at-risk family member, or
 - (ii) implement the order.
- (4) Unless the court provides otherwise, an order under this section expires one year after the date it is made.
- (5) If an order is made under this section at the same time as another order is made under this Act, including an order made under Division 5 [Orders Respecting Conduct] of Part 10, the orders must not be recorded in the same document.

Whether to make protection order

184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:

- (a) any history of family violence by the family member against whom the order is to be made;
- (b) whether any family violence is repetitive or escalating;

- (c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;
 - (d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;
 - (e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;
 - (f) the at-risk family member's perception of risks to his or her own safety and security;
 - (g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.
- (2) If family members are seeking orders under this Part against each other, the court must consider whether the order should be made against one person only, taking into account
- (a) the history of, and potential for, family violence,
 - (b) the extent of any injuries or harm suffered, and
 - (c) the respective vulnerability of the applicants.
- (3) For the purposes of subsection (2), the person who initiates a particular incident of family violence is not necessarily the person against whom an order should be made.
- (4) The court may make an order under this Part regardless of whether any of the following circumstances exist:
- (a) an order for the protection of the at-risk family member has been made previously against the family member against whom an order is to be made, whether or not the family member complied with the order;
 - (b) the family member against whom the order is to be made is temporarily absent from the residence;
 - (c) the at-risk family member is temporarily residing in an emergency shelter or other safe place;
 - (d) criminal charges have been or may be laid against the family member against whom the order is to be made;
 - (e) the at-risk family member has a history of returning to the residence and of living with the family member against whom the order is to be made after family violence has occurred;

- (f) an order under section 225 [orders restricting communications] has been made, respecting the at-risk family member, against the family member against whom the order is to be made.

Appendix 2: Excerpts from s. 17 of Divorce Act

Order for variation, rescission or suspension

- 17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,
 - (a) a support order or any provision thereof on application by either or both former spouses;

Factors for child support order

- (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

Factors for spousal support order

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

Conduct

- (6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

Guidelines apply

(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

Objectives of variation order varying spousal support order

- (7) A variation order varying a spousal support order should
 - (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;

- (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.
- (8) [Repealed, 1997, c. 1, s. 5]

Limitation

- (10) Notwithstanding subsection (1), where a spousal support order provides for support for a definite period or until a specified event occurs, a court may not, on an application instituted after the expiration of that period or the occurrence of the event, make a variation order for the purpose of resuming that support unless the court is satisfied that
- (a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (4.1) that is related to the marriage; and
 - (b) the changed circumstances, had they existed at the time of the making of the spousal support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

Appendix 3: Excerpts from FME Act

Notice of attachment

15 (1) If the debtor has at any time defaulted in a payment required under a maintenance order, the director may serve a notice of attachment in the prescribed form on a person who is indebted or likely to become indebted to the debtor.

- (2) [Repealed 2011-5-18.]
- (3) Service in accordance with the regulations of a notice of attachment on the attachee binds the attachee, without further service and to the extent limited by the regulations, in respect of
- (a) any money or benefit that is due and owing on the date of service to the debtor by the attachee, and
 - (b) any money or benefit that becomes due and owing from time to time after the date of service to the debtor by the attachee.

(3.1) Subject to subsection (3.2), subsection (3) applies in respect of a notice of attachment served on a person that maintains a deposit account in the name of the debtor and one or more other persons as joint, or joint and several, account holders.

(3.2) For the purpose of subsection (3), if a notice of attachment is served in respect of a deposit account, each joint, or joint and several, account holder is presumed to own an equal share of the money credited to the deposit account and the attachee must, in the prescribed manner and within the prescribed time, provide the director and the joint, or joint and several, account holder with a notice that contains the prescribed information.

(3.3) Within 14 days of receiving the notice under subsection (3.2), a joint, or joint and several, account holder may apply to the court for an order that all or part of the money paid to the director by the attachee must be returned to the joint, or joint and several, account holder, and the court may make the order if satisfied that the joint, or joint and several, account holder owns all or part of the money paid to the director by the attachee.

(3.4) If the director receives a notice from an attachee under section (3.2), the director may release the money received with the notice, unless

- (a) the director is served with notice of an application to the court under subsection (3.3), and
 - (b) the director receives an order under subsection (3.3) within 60 days of receiving the money attached under the notice of attachment.
- (4) The director must deliver a copy of the notice of attachment to the debtor, but the inability of the director, after reasonable effort, to deliver the copy of the notice does not render the notice of attachment ineffective.
- (5) Subject to subsection (7), a notice of attachment remains in effect without further service until whichever of the following occurs first:
- (a) the date specified on the notice of attachment;
 - (b) a notice of withdrawal is served on the attachee under section 16 (1) (a);
 - (c) the court, on application by the director under section 16 (3) or by the attachee or the debtor under section 16 (4), orders otherwise;
 - (d) a notice of withdrawal is served on the attachee under section 16 (8).
- (6) On receiving a notice of attachment, the attachee must
- (a) deduct from the money or benefit then due and owing and from time to time becoming due and owing by the attachee to the debtor the amount required by the notice, and
 - (b) within 5 days after each amount is deducted in accordance with the notice of attachment, remit the amount deducted to the director in the manner specified in the notice of attachment.

(7) By serving an attachee with a notice of suspension, the director may suspend the attachee's duty to comply with subsection (6), either for a specified period or until further notified by the director.

(8) Payment by an attachee in accordance with the notice of attachment discharges the attachee's obligation to the debtor to the extent of the payment.

(8.1) In the case of a deposit account in the name of the debtor and one or more other persons as joint, or joint and several, account holders, payment by an attachee to the director discharges the attachee's obligation to the debtor and to the joint, or joint and several, account holder to the extent of the payment.

(9) In this section:

"benefit" means a benefit as defined in the Pension Benefits Standards Act;

"deposit account" includes a demand account, a time account, a savings account, a passbook account, a chequing account, a current account, an account for prepaid debit or credit card payments or another similar account at any one of the following:

- (a) a bank that is set out in Schedule I or Schedule II of the Bank Act (Canada);
- (b) a financial institution as defined in the Financial Institutions Act;
- (c) an extraprovincial corporation as defined in the Financial Institutions Act;
- (d) a financial institution similar to one mentioned in paragraphs (a) to (c);
- (e) a deposit business as defined in the Financial Institutions Act.

Withdrawal of notice of attachment

16 (1) If the attachee responds in accordance with the regulations to a notice of attachment, the director must,

- (a) by serving a notice of withdrawal on the attachee, withdraw the notice if the attachee satisfies the director that
 - (i) no money or benefit is due and owing or is likely to become, during the term of the notice of attachment, due and owing by the attachee to the debtor,
 - (ii) the director has not supplied the attachee with sufficient information with respect to the debtor to enable the attachee to make any deductions, or
 - (b) refuse to withdraw the notice if the director is not satisfied as to any matter referred to in paragraph (a).
- (2) On application by the debtor, the director may withdraw a notice of attachment if the debtor satisfies the director that the notice contains or is based on a material error.

- (3) If an attachee fails to pay in accordance with a notice of attachment served on the attachee or fails to respond in accordance with the regulations to the notice, on application by the director, the court may order payment by the attachee of the amount unpaid.
- (4) If the director refuses to withdraw a notice of attachment, on application by the attachee or the debtor in accordance with the regulations, the court may
 - (a) summarily determine whether or not
 - (i) the attachee is liable under the notice, or
 - (ii) the notice contains or is based on a material error, or
 - (b) determine that an issue or question necessary for the determination of the liability of the attachee be tried.
- (5) If the court determines that the attachee is no longer liable or determines that the notice contains or is based on a material error, the notice of attachment no longer has any effect and must be withdrawn.
- (6) If the court determines that the attachee is liable, it must order payment by the attachee of the amount unpaid.
- (7) An order under subsection (3) or (6) may be enforced by the director in any manner that a maintenance order may be enforced.
- (8) The director must withdraw a notice of attachment by serving a notice of withdrawal of attachment on the attachee if
 - (a) the debtor enters into a voluntary payment arrangement that is satisfactory to the director,
 - (b) the debtor has fully satisfied his or her obligations under the maintenance order and no further payments will be due from the debtor to the creditor, or
 - (c) any other prescribed circumstances apply.
- (9) The withdrawal of a notice of attachment by the director does not prevent the issue of another notice of attachment in respect of the same debtor and the same attachee.
- (10) In this section, "benefit" means a benefit as defined in the Pension Benefits Standards Act.

Registration in land title office

26 (1) A maintenance order may be registered in a land title office in the same manner as a charge is registered and is deemed for the purposes of Part 5 of the Court Order Enforcement Act to be a judgment as defined in section 81 of that Act if an application is made under this section for the registration and the application is accompanied by,

- (a) if registration is by the director, a copy of the maintenance order, or

- (b) in any other case, a copy of the maintenance order certified by a proper officer of the court.

Debtor's licences and number plates

29.1 (1) If a maintenance order is filed with the director and the debtor is in default and the arrears under the maintenance order total \$3 000 or more, the director may do either or both of the following:

- (a) forward to the Insurance Corporation of British Columbia a notice stating that the debtor is in default and that action under this section is to be taken in relation to the debtor's driver's licence;
 - (b) forward to the Insurance Corporation of British Columbia a notice stating that the debtor is in default and that action under this section is to be taken in relation to a licence and corresponding number plates for any motor vehicle or trailer owned by the debtor.
- (2) At least 30 days before forwarding a notice to the Insurance Corporation of British Columbia under subsection (1) (a), the director must give the debtor notice that action under this section will be taken in relation to the debtor's driver's licence.

(2.1) At least 60 days before forwarding a notice to the Insurance Corporation of British Columbia under subsection (1) (b), and again at least 30 days before forwarding the notice under subsection (1) (b), the director must give the debtor notice, which must be in the manner prescribed by the regulations, that action under this section will be taken in relation to a licence and corresponding number plates for any motor vehicle or trailer owned by the debtor.

- (3) On receipt of a notice under subsection (1) (a), the Insurance Corporation of British Columbia, for the applicable period under subsection (3.2), must not issue or renew a driver's licence of the debtor.

(3.1) On receipt of a notice under subsection (1) (b), the Insurance Corporation of British Columbia, for the applicable period under subsection (3.2), must not issue or renew a licence and corresponding number plates for a motor vehicle or trailer owned by the debtor.

(3.2) Subsections (3) and (3.1) apply in relation to a debtor from the date the Insurance Corporation of British Columbia receives the applicable notice under subsection (1) until the earliest of the following:

- (a) the date the Insurance Corporation of British Columbia is advised by the director that the maintenance order
 - (i) has been withdrawn under section 6, or
 - (ii) is no longer in arrears;
- (b) the date the director directs the Insurance Corporation of British Columbia under section 29.2 to disregard that notice.

- (4) The director may, as a condition for acting under subsection (3.2) (a) (ii), require the debtor to give the director a deposit in a prescribed amount as security for future payments under the maintenance order in addition to paying the arrears.
- (5) The director may hold a deposit received under subsection (4) until the debtor has not been in arrears under the maintenance order for at least 9 consecutive months since the deposit was given, in which case the deposit may be applied to future maintenance payments, or returned to the debtor, as the director considers appropriate.
- (6) If the debtor gives a deposit under subsection (4) and subsequently falls into arrears for more than 10 consecutive days under the maintenance order filed with the director, the director may
 - (a) prepare and forward to the Insurance Corporation of British Columbia a further notice under subsection (1) without further notice to the debtor under subsection (2) or (2.1), as applicable, and
 - (b) apply the deposit to the payment of arrears under the maintenance order.
- (7) Action by the Insurance Corporation of British Columbia under subsection (3) or the giving of a deposit under subsection (4) is not a bar to the bringing of other proceedings under this Part to enforce payment under the maintenance order.

Withdrawing the director's notice

29.2 (1) The director must direct the Insurance Corporation of British Columbia to disregard a notice given under section 29.1 if the debtor satisfies the director that

- (a) the notice is based on a material error,
 - (b) the lack of anything referred to in section 29.1 (3) or (3.1) will significantly reduce the debtor's ability to pay under the maintenance order and the debtor has entered into an arrangement that is satisfactory to the director to report the debtor's financial circumstances from time to time, or
 - (c) the debtor has entered into a payment arrangement that is satisfactory to the director.
- (2) If the director refuses to act under subsection (1), the court, on application by the debtor, may summarily determine whether the refusal was unreasonable and, if the refusal is found to be unreasonable, may order the director to act under subsection (1).

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