

CANADA / JUDGMENT

Swift v. Swift

2021 BCSC 2021

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 2021 Swift v. Swift

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Swift v. Swift,

2021 BCSC 2021

Date: 20211018

Docket: E43515

Registry: Penticton

Between:

Stephanie Irene Swift

Claimant

And

Kevin Bruce Swift

Respondent

Before: The Honourable Mr. Justice Davies

Reasons for Judgment

Counsel for the Claimant:

C.F. King

Counsel for the Respondent:

K.J. Ginther

Place and Date of Trial/Hearing:

Penticton, B.C.

June 10-11, 14-16, and

August 10, 2021

Place and Date of Judgment:

Penticton, B.C.

October 18, 2021

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INTRODUCTION

- [1] The claimant Stephanie Irene Swift and the Respondent, Kevin Bruce Swift met in January 2012 while both were working at a potash facility in Saskatchewan. She was then 24 years old and he was 51. A romantic relationship quickly developed and a marriage-like relationship followed.
- [2] Ms. Swift soon became pregnant with their child, S., who was born on May 1, 2013. The parties were married on April 1, 2017 and separated on July 28, 2018.
- [3] Ms. Swift and S. stayed in the family home after separation until sometime in October 2018. They have resided in rental accommodations since leaving.
- [4] During the trial I pronounced an order for Divorce.
- [5] When this trial commenced Ms. Swift was almost 34, Mr. Swift was almost 60 and S. was 8 years old.
- [6] Ms. Swift and Mr. Swift are both loving, capable and devoted parents who now equally parent S. Both before and during the trial they have consented to most terms of continuing parenting orders.

ISSUES

- [7] The following issues still require determination:
 - 1) The date when the parties marriage-like relationship began;
 - 2) Mr. Swift's excluded property claims under the provisions of s. 85 of the Family Law Act, S.B.C. 2011 c. 25 [FLA];
 - 3) The parties' respective past and prospective incomes for child and spousal support purposes;
 - 4) Ms. Swift's claims for retroactive and continuing spousal and child support;
 - 5) Mr. Swift's claims for reimbursement for family debt and debt servicing paid during separation, debts incurred by Ms. Swift after separation and division of current family debt;
 - 6) The parties' unresolved family asset entitlement issues; and
 - 7) The parties' remaining unresolved parenting issues.
- [8] In order to determine those remaining issues it is necessary to address in some detail some issues of credibility that will inform their resolution.

BACKGROUND

- [9] The parties met in January, 2012 when Ms. Swift came to work as a payroll clerk/administrator at the potash mine operated by Lockerbie and Hole in Rocanville, Saskatchewan. Mr. Swift was employed there in a senior position as a piping supervisor with responsibility for the supervision of general foremen and others.
- [10] The mine facility in Rocanville was in a remote location where most employees stayed in a camp and worked shift work on a rotational schedule of 28 days on and 14 days off. Ms. Swift initially lived in the camp and Mr. Swift lived off-site in a fifth wheel trailer.
- [11] There is some dispute as to how soon the romantic relationship that developed between the couple occurred. Although given the intimate relationships and living arrangements that evolved it is not particularly germane to the issues that now remain to be decided, it is noteworthy that Mr. Swift testified that the parties only saw each other daily and socialized with others in group settings.
- [12] Ms. Swift, however, testified that the relationship "took off" and that they immediately spent all of their spare time together. She testified that she began living with Mr. Swift in his trailer on March 1, 2012. She also testified that by May 2012 the parties had rented and set up a home together in an apartment in Rocanville.
- [13] Mr. Swift testified that Ms. Swift never moved into that trailer with him. He also testified that no apartment had been built by May 2012 that they could have moved into together. He further testified that he never became committed to a relationship with Ms. Swift until after she told him she was pregnant, likely sometime in October 2012. Mr. Swift also testified that prior to learning that Ms. Swift was pregnant he remained in a relationship with another woman with whom he shared a home in Midland, Ontario which he owned and where he resided while not at work in Rocanville.
- [14] Mr. Swift's counsel submitted that the existence of that other relationship is probative of Mr. Swift not having considered himself committed to Ms. Swift as is needed in order to establish a marriage-like relationship.
- [15] Although it is somewhat difficult to reconcile Ms. Swift's evidence about the commencement of a marriage-like relationship in early March 2012 or even May of that year because of her evidence that she lived in camp accommodations for about three months after her arrival; her work schedule; her continued travel to British Columbia while off-shift and his travel to Ontario; and, the lack of any contemporaneous postings on her oft-used Facebook page about her living arrangements with Mr. Swift, I am satisfied that her evidence about the nature of the relationship from its inception, is more credible than that of Mr. Swift.
- [16] As I will later discuss in more detail I am satisfied that much of Mr. Swift's evidence was based upon reconstruction of events or circumstances that are intended to reduce Ms. Swift's claims to entitlement to family assets and spousal support.

- [17] On the issue of the commencement of a marriage-like relationship, I am satisfied that, because the central focus of his claims to property division from the commencement of these proceedings was upon his excluded property claims related to proceeds of the sale of his Midland, Ontario home Mr. Swift tailored his evidence to diminish any claim Ms. Swift had to those proceeds.
- [18] I find that the most compelling and reliable evidence about the beginning of the parties' marriage-like relationship are:
- 1) a Facebook message sent by Mr. Swift to Ms. Swift on August 20, 2012 in which he posted "I am in my room and missing you not the same without you love you lots sleep tight see you tomorrow"; and
 - 2) a Facebook posting by Ms. Swift with a photograph of an apartment stating "Home away from home" dated August 20, 2012 sent from Rocanville.
- [19] That objective evidence together with those aspects of Ms. Swift's evidence upon which I find I can rely convinces me that, notwithstanding Mr. Swift's arguments about his subjective lack of commitment to a committed marriage-like relationship with Ms. Swift, such a relationship began no later than early in August, 2012.
- [20] For pension division and all other purposes for which a commencement date must be established, I find that the parties entered into a marriage-like relationship on August 1, 2012.
- [21] After Ms. Swift became pregnant in October 2012, although the parties continued to maintain separate finances and still travelled to their respective homes out of Saskatchewan in British Columbia and Ontario they eventually determined to live together in Ontario while working in Rocanville. They then began to undertake renovations to the home in Midland which Mr. Swift owned.
- [22] Much of the evidence at trial focussed on the non-financial contributions of Ms. Swift to those renovation efforts that were largely paid for by Mr. Swift but in respect of which Ms. Swift's father, a contractor, was also involved.
- [23] In addition to those issues, a significant amount of time at trial was expended in relation to an unhappy vacation over the 2012 Christmas season taken by the couple in the Bahamas.
- [24] In part, the issues that arose during that vacation had to do with what Ms. Swift said was Mr. Swift's abusive behaviour towards her which caused her to terminate the vacation early and return to Vancouver alone. In part also, the disputes had to do with correspondence dated January 3, 2013 from Ms. Swift to Mr. Swift that stipulated conditions upon which Ms. Swift would return to the relationship, including "putting her name on all his assets and debts". Ms. Swift testified that Mr. Swift accepted those conditions and that she then returned to the relationship.

- [25] Mr. Swift denied not only the circumstances that had led to Ms. Swift leaving the Bahamas but also denied receiving the letter that set forth her conditions for returning to the relationship.
- [26] The denial of receipt of that letter as well as the assertions that Ms. Swift had contributed little or nothing to the improvement of the Midland, Ontario home both raised significant property entitlement issues because, before the evidence at trial concluded, Mr. Swift took the position that the equity in that home was excluded property.
- [27] However, after the evidence at trial was completed on June 16, 2021 and the proceedings were adjourned for later argument, G.P. Wetherill J. delivered reasons in *World v. World*, 2021 BCSC 1177 that were fatal to Mr. Swift's excluded property claims in relation to the equity in the Midland home. That is so because, as I will later discuss, the entire proceeds of that sale had been invested in a farming property in Oliver, British Columbia in June 2014, that was registered in the parties' joint names and became their matrimonial home.
- [28] Accordingly, during final submissions, Mr. Swift abandoned his previous exclusive property claims in respect of the sale proceeds of the Midland, Ontario home.
- [29] Given the abandonment of those claims it is no longer necessary to address the substantive issues and evidence adduced related to them concerning Ms. Swift's contributions to the equity in the Midland home and the effect, if any, of the disputed correspondence and her conditions for returning to the relationship.
- [30] Issues of credibility do, however, remain.
- [31] After having heard the entirety of the evidence at trial and having had the opportunity to consider issues of credibility in the context of the totality of that evidence I have concluded that Ms. Swift's evidence about her involvement in the renovations, what happened in the Bahamas and its aftermath is generally reliable.
- [32] On the other hand, the totality of the evidence concerning the disputed correspondence from Ms. Swift and Mr. Swift's alleged response to it convinces me that Mr. Swift's evidence at trial about the events in the Bahamas and thereafter, including his evidence of his initial reaction to Ms. Swift's pregnancy, was largely based upon self serving reconstruction by which he sought to paint himself in a better light than contemporaneous documentation and his evidence on examination for discovery permit.
- [33] After the tumultuous events of Christmas 2012, the parties settled into a stable relationship in which both worked in Rocanville during Ms. Swift's pregnancy. They resided in the Midland home together when not at work.
- [34] S. was born on May 1, 2013 after which Ms. Swift did not return to work. Mr. Swift continued rotational work at Rocanville where he continued to earn approximately \$200,000 per year.

- [35] Renovations on the Midland home continued while the family resided there and were completed in the spring of 2014 at total cost of approximately \$100,000.
- [36] In late December 2013 the parties made an offer to purchase a farm on River Road in Oliver, British Columbia that would become their family home for \$739,000. The offer contemplated an initial closing date of April 29, 2014. That closing was, however, subsequently extended because the home in Midland had been listed but had not yet sold by April 29, 2014.
- [37] The Midland home was eventually sold for \$523,000. That sale completed on June 26, 2014 and from the net proceeds of its sale, \$147,653 was used to complete the purchase of the Oliver farm. A mortgage in the amount of \$591,200 was also obtained by the parties in order to complete the sale and title was registered in the parties' joint names.
- [38] After the parties moved to Oliver they worked on the family farm with the intention of earning money in addition to employment income.
- [39] Among other farm related endeavors the couple started planting, harvesting, re-seeding garlic in September 2017. Ms. Swift also engaged in a venture in which she purchased peaches in the area and transported them to the lower mainland for re-sale.
- [40] Ms. Swift had difficulty in finding employment outside of the farm until April 2017 because the low wages in available work would not justify daycare costs. In April of that year, however, she secured administration and payroll employment at the newly opened Okanagan Correctional Centre near Oliver.
- [41] After moving to Oliver Mr. Swift continued his employment as a pipeline supervisor in remote camps on a rotational basis until he decided in about November 2017 to start a one-person plumbing business in the local area and retire from camp work.
- [42] Mr. Swift testified that the decision to stop doing the highly remunerative camp work was based on his desire, at 56 years of age, to spend more time at home by stopping the disruptive rotational work that prevented him from enjoying life at home with Ms. Swift and his young daughter.
- [43] To allow the transition to a local plumbing business and to augment the family income, Mr. Swift started to withdraw his pension benefits obtained over his years of his work both as a union and a non-union employee. He then received pension income of approximately \$35,000 per year in addition to money he earned from his sole-proprietor plumbing business that he operated as KS Plumbing.
- [44] The evidence also establishes that after leaving Ontario Ms. and Mr. Swift both obtained funds from wrongful dismissal actions with their former employer, the particulars of which were not addressed with any specificity. That litigation resulted in Ms. Swift receiving \$25,000 and Mr. Swift receiving an undisclosed amount that was, at least in part, paid to him as a retiring allowance into an RRSP.

- [45] Although the parties have agreed that they separated on July 28, 2018 the evidence also establishes that Ms. Swift did not leave the family farm until sometime in October 2018 when she left with S. to live in rental accommodations for which she pays \$1,200 per month. She continued working at the Correctional Centre and started to work as a waitress at a local restaurant and also continued her peach sale business.
- [46] Mr. Swift continued to live on the farm and work doing the garlic crop sales business as well as his plumbing business. He did not pay spousal or child support but continued to service family debts, including, for some time, some credit card debt incurred by Ms. Swift on joint credit cards that she continued to use.
- [47] On November 22, 2018 at a Judicial Case Conference, the parties agreed to into consent orders that were entered on December 17, 2018 concerning their joint custody and guardianship of S. as well as interim access and parenting schedules that provided for equal parenting time and sharing of school holidays.
- [48] That consent order also provided that Mr. Swift would have interim exclusive occupancy of the family farm; the parties would account for the proceeds of any garlic or peaches sold that were not deposited into the farm bank account; and, the family farm would be appraised with the appraisal costs to be equally shared.
- [49] In 2019 Ms. Swift enrolled in on-line courses to advance her training in business and office administration but testified that she did not complete those courses because of child care responsibilities and a lack of financial resources.
- [50] On July 25, 2019 upon application by Ms. Swift, Master Baker ordered that Mr. Swift account for all garlic harvested and sold from the 2019 garlic crop on the farm and that all net sale proceeds from the 2019 garlic crop be held in trust by Mr. Swift's counsel pending agreement or further court order. As a consequence of that order and an earlier order \$4,450.98 is now held in trust.
- [51] On December 19, 2019 Ms. Swift applied for both retroactive and prospective spousal and child support both of which applications were contested by Mr. Swift. As a consequence of those applications, Master Schwartz made the following orders:
1. The respondent's [Mr. Swift's] guideline income is imputed to be \$ 115,517 and the claimant's [Ms. Swift's] guideline income is imputed to be \$65,000.
 2. On the respondent's guideline income of \$ 115,517 and the \$65,000, the respondent will pay to the claimant mid-range spousal support pursuant to the Divorce Act and the Spousal Support Advisory Guidelines in the amount of \$548 per month, on the first day of each and every month, commencing December 1, 2019, until further court order.
 3. On the respondent's guideline income of \$115,517, he will pay to the claimant table child support in the amount of \$1,076 per month. On the claimant's guideline income of \$65,000, she will pay to the respondent table child support in the amount of \$616 per month. Each

party's obligation to pay a table amount of child support in accordance with the Federal Child Support Guidelines and the Divorce Act, will be satisfied by the respondent paying to the claimant the difference between the amounts each is required to pay, which is \$460, on the first day of each and every month, commencing on December 1, 2019, until further court order.

4. On the respondent's guideline income of \$115,517 and the claimant's guideline income of \$65,000, the parties will share the Child's section 7 special and extraordinary expenses pursuant to the Federal Child Support Guidelines proportionate to their guideline incomes. The respondent will be responsible for 60.3% and the claimant will be responsible for 39.7%.
5. Costs of this application are awarded to the claimant in the cause.

[52] Ms. Swift's applications for retroactive spousal and child support were not then dealt with so they must now be determined.

[53] On July 14, 2020 the family farm and some of the farm equipment was sold for \$815,000. The net proceeds from that sale of \$250,752.91 were placed in trust pending agreement or further court order.

[54] Mr. Swift then rented the farm from the purchasers for \$1,600 per month and still resides there.

[55] On February 11, 2021 after a contested application for a pre-trial distribution of assets under s. 89 of the Act, Ms. Swift obtained an order allowing her to receive \$45,000 of the funds held in trust from the sale of the family farm. Those funds must be accounted for by her in the final distribution of the parties' assets.

[56] In March 2021 Ms. Swift commenced employment with British Columbia Housing at its Penticton office in what is presently a work from home position. A letter from her employer states she will earn a salary of \$64,000 per year.

[57] Mr. Swift continues to operate his plumbing business as, for the most part, a single person endeavour.

ANALYSIS AND DETERMINATION OF ISSUES

[58] Against that background I will next address the issues that require determination.

1) When did the parties' marriage-like relationship begin?

[59] As I have previously noted in many respects this issue was driven by Mr. Swift's excluded property claims with respect to the Midland, Ontario home that he owned prior to the commencement of a marriage-like relationship the sole proceeds of which were subsequently used to purchase the family farm in Oliver.

[60] Since that exclusive property claim has now been abandoned by Mr. Swift the issue is of significantly less significance to the issues to be decided but does continue to impact property division issues at least to the extent that division of the parties pensions must consider their pre-marriage common law relationship and to a very limited extent, the length of time which Ms. Swift may be entitled to spousal support.

[61] For the reasons previously addressed, after considering the totality of the evidence I have found that the parties entered into a marriage-like relationship on August 1, 2012.

2) Mr. Swift's excluded property claims

[62] The primary thrust of Mr. Swift's excluded property claims at trial was his claim that the \$147,653 of the proceeds from the sale of his Midland, Ontario home that was used as part of the June 2014 purchase price for the family farm should be excluded from the distribution of the approximately \$250,000 net sale proceeds obtained in July 2020.

[63] That claim was, however, as I have earlier noted abandoned during final submissions after all of the evidence at trial had been adduced.

[64] In argument, Mr. Swift still however, continued to assert excluded property claims under s. 85 of the Act concerning:

- 1) Plumbing tools acquired by him before his relationship with Ms. Swift began which he claims have a value of \$5,000;
- 2) Equity in a 2016 Chevrolet truck that he says had a negative value of \$11,303.33 at separation in respect of which he claims he reduced the debt owing from his own resources post separation so that it now has a positive value of \$5,171 that he says should be excluded from division as a family asset;
- 3) A tractor that was used on the farm that he says had a net value of \$5,492.50 at separation, the loan against which he says he repaid without contribution from Ms. Swift so that the equity in the tractor has increased by approximately \$10,500 that he claims should be excluded from division as a family asset; and
- 4) An RRSP held at CIBC having a current value of approximately \$8,890.45 that existed when the parties met and to which no contributions were made during any time after the parties' marriage-like relationship began that he claims should be excluded from division as a family asset.

[65] Mr. Swift's excluded property claims engage the following provisions of s. 85 of the Act:

85(1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.
- [66] In order to establish entitlement to property that he claims is properly excluded from distribution as a family asset Mr. Swift must prove that claim on a balance of probabilities with clear and cogent evidence.
- [67] If documentary evidence is not available and is dependent upon testimonial recollection, although that evidence will be scrutinized for credibility, in balancing the evidence as a whole, I am permitted to draw reasonable inferences from such evidence in order to do justice between the parties. See: *Shih v. Shih*, 2017 BCCA 37 at paras. 42 to 44.
- [68] Mr. Swift's claims to his pre-relationship plumbing tools and his RRSP held at CIBC both rest upon the proposition that they were obtained by Mr. Swift without any contribution by Ms. Swift and maintained as such throughout their relationship.
- [69] The evidence in respect of the two claims is not, however, the same.
- [70] Although the plumbing tools were acquired by Mr. Swift before the relationship as part of his work and training he has not proven that they were not used during the relationship in such a way as to cause them to lose their character as excluded property. To the contrary, after he left his salaried employment as a piping superintendent to return to his former trade as a plumber he used those tools in that capacity. I find that such use in the family business resulted in them becoming family assets subject to division as such upon separation. In those circumstances Mr. Swift's excluded property claim to his plumbing tools that he valued at \$5,000 must be dismissed.
- [71] I do not reach the same conclusion with respect to his pre-relationship RRSP held at CIBC to which no contributions were made and from which no withdrawals were taken before or after the parties separated. I find that Mr. Swift has established that his \$8,890.45 RRSP held at CIBC is his exclusive property.
- [72] Mr. Swift's claims to alleged post separation increases in value of the 2016 Chevrolet truck (used in the plumbing business as well as for personal use) as well as the Kubota tractor (used in the family farming business) as excluded property became moot at the end of submissions because the parties agreed that vehicles in their respective names (including the 2016 Chevrolet truck) would become their sole property without claims by the other and also agreed that the Kubota Tractor would be sold with any proceeds of sale to be evenly divided. It is therefore no longer necessary to address those excluded property claims.
- 3) The parties' respective past and prospective incomes for child and spousal support purposes
- [73] Determination of the parties' respective incomes is necessary because of Ms. Swift's claims for both retroactive and future child and spousal support.

- [74] I will first address the parties' respective positions in respect of retroactive support orders followed by my consideration of issues related to Ms. Swift's claims for future spousal and child support.
- a) Retroactive child and spousal support
- [75] As I have noted, after the parties separated on July 28, 2018 and Ms. Swift left the matrimonial home with S. in October 2018 Mr. Swift did not pay either child or spousal support until November 19, 2019.
- [76] After the contested application brought by Ms. Swift on November 19, 2019, Master Schwartz ordered Mr. Swift to pay interim spousal support of \$458 per month and off-set interim child support of \$460 per month commencing on December 1, 2019 but did not address Ms. Swift's claim for retroactive support.
- [77] In determining Mr. Swift's interim support obligations Master Schwartz imputed yearly income of \$115,517 to Mr. Swift and \$65,000 to Ms. Swift. Those imputed incomes also became the basis for the parties' interim respective special and extraordinary s. expenses obligations under s.7 of the Federal Child Support Guidelines, SOR/97 175 (the "Guidelines").
- [78] Ms. Swift submits that Mr. Swift's retroactive child and spousal support obligations for the period from July 28, 2018 to November 30, 2019 should be based upon the same imputations of income used by Master Schwartz in making the interim support order.
- [79] Doing so would require that Mr. Swift pay Ms. Swift retroactive spousal and child support totalling \$16,128. He would also be required to pay Ms. Swift \$1,727.61 as his 60.3% of s. 7 expenses that were paid by her between August 2018 and December 2019 without contribution by Mr. Swift.
- [80] There are two difficulties with that submission.
- [81] First any amount of retroactive support ordered must account for the fact that Ms. Swift and S. continued to reside on the family farm until October 2018 so the period for which any retroactive support should be paid is from the beginning of October 2018 not the beginning of August 2018.
- [82] Second, notwithstanding the simplicity of Ms. Swift's submissions and the fact that they are based upon an order that was not appealed, it is not open to me to simply adopt the conclusions or findings made by Master Schwartz that resulted in that interim order.
- [83] As stated by Prowse J.A. in *Tedham v. Tedham*, 2003 BCCA 600 at para. 59:
- [59] An interim order is just that -- one made pending trial, with the expectation that the full financial circumstances of the parties will be forthcoming and available to the trial judge. In most cases, interim orders are made in circumstances where there has not been full financial disclosure and the parties are well aware that some adjustment may have to be made once all of the relevant financial information is available.

- [84] Mr. Swift's submissions with respect to retroactive support are complex.
- [85] When opposing the making of an interim support order in November 2019 Mr. Swift relied upon his having paid the mortgage on the family farm and some other family debts after separation.
- [86] At trial he did not rely upon his having done so. Rather he claimed reimbursement from Ms. Swift one-half of all his debt servicing that he now seeks to have deducted from her share of family assets.
- [87] In making that submission Mr. Swift also asserted that in paying interim support under the order made by Master Schwartz he paid substantially more in both child and spousal support than he should have been required to pay.
- [88] Those submissions are based upon Mr. Swift's allegations that Ms. Swift's income from the date of separation until the date of trial has been higher than the \$65,000 yearly income imputed to her by Master Schwartz and, more importantly, his submission that his own income has been substantially lower than the \$115,000 imputed to him.
- [89] Mr. Swift claims that if both Ms. Swift's and his own actual yearly incomes as now asserted by him are used rather than those imputed by Master Schwartz, he has overpaid Ms. Swift by \$25,067 comprised of overpayments \$13,011 in offset child support and \$12,057, in spousal support which he says should be repaid to him by deduction of that amount from Ms. Swift's share of family assets.
- [90] In submissions concerning Ms. Swift's income from 2018 to the commencement of trial Mr. Swift's counsel asserted that Ms. Swift's income should be based upon monies received by her from all sources with the exception of spousal support.
- [91] In making those submissions Mr. Swift's counsel included estimates of those amounts derived from what she asserted were available to Ms. Swift from the following sources (both declared and undeclared) for the 2018 to 2020 tax years:
- 1) T4 employment income each year;
 - 2) Estimated tips from her work as a restaurant server each year;
 - 3) Funds received from the rental of a family trailer in 2018; alleged net profits from the sale of peaches, garlic and garlic scape salt in 2018 and 2019;
 - 4) A WCB payment of \$8,816.71 in 2019;
 - 5) Government COVID-19 benefits totalling \$2,862 received in 2020; and
 - 6) Child tax benefits received solely by Ms. Swift from until January, 2021 after which they were shared with Mr. Swift.

- [92] In addition to those amounts Ms. Ginther submitted that because of evidence that Ms. Swift had received gross salary of \$8,351.63 in the first six weeks of her new employment with BC Housing her income in 2021 for past and future support purposes should be based upon an income of \$74,842 per year rather than \$64,000 per year as stated in the employment letter from BC Housing.
- [93] Based upon all of those submissions Mr. Swift submits that Ms. Swift's actual income for spousal support as well as for child support in the parties' shared parenting relationship should be assessed as being:
- 1) 2018: \$44,502;
 - 2) 2019: \$62,660 (\$74,027 if the WCB payment is included);
 - 3) 2020: \$62,392 (excluding spousal support); and
 - 4) 2021: \$74,842 (extrapolated as noted above and excluding spousal support),
- [94] After having considered the totality of the evidence and the submissions of counsel, I am satisfied that for the purposes of determining both Ms. Swift's entitlement to retroactive spousal support and her child support obligations in the parties' shared parenting arrangement her yearly income from August 1, 2018 to November 30, 2019 should not be varied from that imputed by Master Schwartz.
- [95] I accordingly find that for the determination of retroactive child and spousal support Ms. Swift's annual income should be imputed to be \$65,000.
- [96] I will later address Ms. Swift's income for future spousal and child support purposes when determining those issues.
- [97] Mr. Swift's assertion that he has substantially overpaid the amount of spousal and child support that he should have been required to pay is primarily based upon his submission that his income from his plumbing business is far less than that which was included by Master Schwartz in imputing a yearly income of approximately \$115,000.
- [98] Mr. Swift submits that his yearly income for child and spousal support purposes should be found to be:
- 1) 2018: \$55,693;
 - 2) 2019: \$51,010; and
 - 3) 2020: 49,398.
- [99] Those submissions acknowledge that Mr. Swift receives \$35,117 per year as pension income as well as some income from his plumbing business. Significantly, however, his attribution of income to his plumbing business ranges from a low of approximately \$14,700 per year to a high of approximately \$20,600 per year.

- [100] In including those latter business amounts as income for child and spousal support purposes Mr. Swift suggests that his net income from the plumbing business should be based upon 20% of the business gross income in each of the three years in issue.
- [101] As to those gross business income assertions Mr. Swift asserts that his business earning in those years was:
- 1) 2018: \$103,124;
 - 2) 2019: \$ 81,862; and
 - 3) 2020: \$ 73,800.
- [102] I do not accept that Mr. Swift's gross income assertions or his net profit assertions based upon 20% of gross income accurately reflect either Mr. Swift's income or his income earning capacity for the purpose of determining his retroactive child or spousal support obligations.
- [103] Ms. Swift adduced the evidence of Trevor Allen, a journeyman plumber who worked with Mr. Swift in 2018 in his plumbing business. Mr. Allen testified that he worked on several plumbing projects and was paid cash "on the side". He also testified that there was an abundance of plumbing work in the local area.
- [104] Ms. Swift also adduced the evidence of Douglas Knight a journeyman plumber who operates a plumbing business in the same trading area as Mr. Swift. Mr. Knight testified that he earns approximately \$200,000 per year after expenses from his plumbing business and that there is "lots of work". Mr. Knight testified that his profit margin is in the range of 20% of his gross billings but also testified about a much larger operation with building, equipment and other business expenses as well as employees on the business payroll.
- [105] I find that Mr. Swift's suggestion that his profit margin in what he operates as a one-man sole proprietorship is like Mr. Knight's, and 20% of his gross sales defies common sense.
- [106] Mr. Swift acknowledged that he has changed the rate for which he works from \$80 to \$85 per hour and that he works at least 35 hours per week. He attributed some of his work week to time expended on unbillable tasks such as preparing quotes. He further testified that his child care obligations impact the amount of work he can do.
- [107] Having considered the totality of the evidence I do not accept that as a highly qualified plumber with the many years of work experience he has and with the amount of work that is available in the local area Mr. Swift would work for what would amount to \$17.00 per hour.

- [108] In addition to that observation, I must note that although Mr. Swift's business accountant testified that he prepares the KS Plumbing financial statements and tax returns and said that it would not be financially advantageous to Mr. Swift to pay an employee off the books or under the table, given Mr. Allen's testimony, I do not accept that Mr. Swift does not do so. He would only do so if it was to his financial advantage which would be the case if he also did not record or report all monies received for plumbing work done.
- [109] All of that leads me to conclude that notwithstanding Mr. Swift's testimony to the contrary he does, in fact do work for undeclared cash. Doing so not only has the effect of minimizing his taxable income and lowering his reported income for child and spousal support purposes, but also casts serious doubt upon the reliability of the financial records maintained by him.
- [110] I am accordingly not satisfied that I can safely rely upon Mr. Swift's financial statements or income tax returns to the extent that they attribute profits and losses to his plumbing business not only because of an unknowable amount of undeclared income, but also because of a mixing of purported farm losses to reduce business income and the inclusion of expenses such as vehicle costs and depreciation allowances that may be deductible for income tax purposes but are not deductible for child support obligations.
- [111] In all of those circumstances, I am satisfied that I must impute income to Mr. Swift from his plumbing business by application of s. 19(1) of the Guidelines. Although counsel for Ms. Swift suggested that imputed income based upon 35 hours per week for 48 weeks each year at \$85 per hour (\$142,800 per year) would be appropriate. I am satisfied that to do so would not address Mr. Swift's evidence that some of his work week is not billable and also would not account for any reasonable business expenses that might fairly reduce his income earning ability. I am satisfied that a reduction of approximately 30% would appropriately adjust for those non-billable hours and legitimate business expenses.
- [112] In result, I find that for retroactive spousal and child support purposes Mr. Swift's past business income should be imputed to be \$100,000 per year. To that yearly amount must be added approximately \$35,000 in pension income.
- [113] Although calculation of Mr. Swift's retroactive child and spousal support obligations could be based upon \$135,000 per year rather than approximately \$115,000 per year as determined by Master Schwartz, I decline to do so.
- [114] Ms. Swift was content to have retroactive support decided based upon the imputed incomes applied by Master Schwartz in making his interim support order. Although she suggested that the period for which retroactive support should be paid is from August 1, 2018 until December 1, 2018 I find that it should start on October 1, 2018 to reflect the date that she left the family farm with S.

[115] I accordingly find that Mr. Swift must pay Ms. Swift retroactive spousal and child support based upon the respective incomes imputed to the parties by Master Schwartz from October 1, 2018 until November 30, 2018.

[116] I also find that Mr. Swift must also pay \$1,727.61 being 60.3% of s. 7 expenses that were paid by Ms. Swift in that period.

b) Future child and support

[117] I am satisfied that based upon the totality of the evidence and the findings I have made with respect to Mr. Swift's imputed income, his ongoing child and spousal support obligations should also be based upon an annual income of \$135,000 comprised of \$100,000 of imputed business income and \$35,000 pension income.

[118] While I found that Ms. Swift's income from October 1, 2018 to December 1, 2018 should be imputed to be \$65,000 as imputed by Master Schwartz for the purposes of her claims for retroactive child and spousal support I am not satisfied that her future entitlement to spousal support or the determination of her obligations for child support in the parties' shared parenting arrangement should also be imputed in that amount.

[119] As I have previously noted there is somewhat conflicting evidence as to Ms. Swift's income in 2021 upon which her future entitlement and obligations should be assessed.

[120] That conflict arises because in the letter dated February 12, 2021 from BC Housing with whom Ms. Swift commenced employment on March 1, 2021 the employer stated that her income would be \$64,000 per year. However, counsel for Mr. Swift submitted that extrapolation of gross salary received by Ms. Swift in the first six weeks of her new employment indicates that she could receive employment income of \$74,842 per year.

[121] The BC Housing Statement of Earnings for the pay period April 4, 2021 to April 17, 2021 upon which Mr. Swift's extrapolation submissions are based indicates that by April 17, 2021 Ms. Swift had earned \$8,351.63 inclusive of Regular Pay, Statutory Holiday Pay and 1.5 hours of "Medical Pay" less a "MMW adjustment" of one-half an hour.

[122] Given the contradictory statement from BC Housing that she will earn \$64,000 I am unable to agree that Mr. Swift's postulated extrapolation will accurately reflect Ms. Swift's actual employment income in 2021.

[123] I am, however, prepared to accept that in addition to \$64,000 in employment income Ms. Swift will likely earn some income as a server in the future if she continues to engage in that occupation on a part time basis and if COVID-19 restrictions do not preclude or inhibit her doing so. I assess that amount to be \$3,000 per year. I will also include \$1,000 as a yearly amount for the sale of peaches that she pursued as a business venture in the past and which I expect she will continue.

- [124] In total, therefore, I find that for the purposes of determining her entitlement to spousal support as well as her obligations for child support based upon the parties' shared parenting arrangements, Ms. Swift's income should be imputed to be \$68,000 per year.
- [125] Based upon those respective imputations of income, pursuant to the Guidelines Mr. Swift's child support obligations are \$1,237 per month and Ms. Swift's are \$646 per month.
- [126] Each party's obligation to pay that their respective amounts will be satisfied by Mr. Swift paying Ms. Swift \$591 per month for the support of S.
- [127] The parties will share S.'s s. 7 special and extraordinary expenses under the Guidelines proportionate to their respective imputed incomes other than daycare costs for which each will be separately responsible while S. is in their care.
- [128] For all other s. 7 expenses Mr. Swift will be responsible for 66.5% and Ms. Swift will be responsible for 33.5% of those special and extraordinary expenses upon which they agree in writing and which, on the evidence will, at minimum, include participation in dance, skating lessons, swimming lessons and horseback riding.
- [129] In the event that the parties disagree with the continuation of any of those specific activities they are at liberty to apply.

c) Future spousal support

- [130] Mr. Swift submitted that Ms. Swift is not entitled to future spousal support. Alternatively, he submitted that any spousal support to which she is entitled should be either offset by reducing some of her "financial obligations" to Mr. Swift or found to be satisfied by the payment of \$6,576 that he has paid as interim support pursuant to the order of Master Schwartz.
- [131] Ms. Swift submitted that Mr. Swift should be ordered to pay ongoing spousal support on both a compensatory and non-compensatory basis reflecting their respective incomes to be reviewed in about five years when Mr. Swift reaches age 65.
- [132] In submitting that Ms. Swift is entitled to, at most, minimal spousal support Mr. Swift relied upon the relatively short (approximately six years) duration of their relationship, and the fact that Ms. Swift was only out of the work force for approximately four years before separation during one of which years she was on maternity leave. He also submitted that Ms. Swift's long term employment circumstances are significantly better than this own with her having the potential to earn future pension accrual benefits as opposed to the fact that he is drawing on his pension, his age and his desire to retire from his plumbing business.
- [133] Mr. Swift also submitted that Ms. Swift will share in significant family assets the acquisition of which was funded almost entirely by him.
- [134] He further submitted that Ms. Swift's post separation lifestyle including travel and vehicle acquisition suggest that her income may be higher than her financial statements disclose.

[135] In *Chutter v. Chutter*, 2008 BCCA 507 at para. 50 our court of Appeal explained the basis for compensatory support stating:

[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 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.

[136] Concerning non-compensatory support the Court said at para. 54:

[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), 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.

- [137] In submitting that she is entitled to substantial continuing spousal support Ms. Swift relied upon the facts that she left a well-paying job to give birth to S. and undertook primary childcare responsibilities while Mr. Swift was able to continue his career earning approximately \$200,000 per year working rotationally as a piping supervisor.
- [138] Ms. Swift also relied upon the fact that from the time the parties left Ontario in mid-2014, until April 2017 when she obtained employment at the Okanagan Correctional Centre, she had difficulty finding work in Oliver that would pay more than the cost of daycare
- [139] Ms. Swift further relied upon the fact that in November 2017 she supported Mr. Swift's decision to leave his lucrative employment as a piping supervisor by helping to start his local plumbing business and also worked with Mr. Swift in attempting to supplement their income by farming and produce sales. Also, after separation she moved into rental accommodations two months later without support from Mr. Swift while he remained on the farm with the ability to earn money from farming endeavours as well as the family plumbing business.
- [140] In addition, Ms. Swift testified that since separation she has received significant financial assistance from her father amounting to \$47,500 to assist with expenses including a down payment on a vehicle, child care expenses, legal fees and furnishings for her rental accommodations.
- [141] Also, as previously noted, in February 2021 Ms. Swift applied for and, over the opposition of Mr. Swift, received an advance of \$45,000 from funds in trust from the sale of the family farm that will have to be accounted for in the distribution of family assets.
- [142] Although Mr. Swift sought to minimize Ms. Swift's efforts during the marriage and suggested that she has not been economically disadvantaged when property division is considered, I am satisfied that those submissions fail to recognize that child-bearing and the rearing of children, especially young children that requires a spouse to leave the workforce and delays re-entry will in most circumstances cause that spouse to suffer economic disadvantage.
- [143] Similarly, when one spouse undertakes child-related endeavours and doing so allows the other to continue on a chosen career path, that other spouse will in most cases enjoy an economic advantage.
- [144] Those are the circumstances that exist in this case.
- [145] I find that the totality of the evidence establishes that Ms. Swift is entitled to compensatory support. I also find that, although to a lesser extent given her relatively successful new career opportunities as well as the short length of the parties' relationship, she is entitled to non-compensatory support.
- [146] That leaves for determination issues of the quantum and length of spousal support to which Ms. Swift is entitled.

- [147] Under the Federal Spousal Support Advisory Guidelines (SSAG) with the parties' respective imputed incomes of \$135,000 and \$68,000 per year and their shared parenting arrangements, the range of monthly support to which Ms. Swift is entitled is \$541 at the low end, \$1,058 at the mid-point and \$1,838 at the high end.
- [148] I am satisfied that spousal support of \$1,000 per month being near the mid-point of the SSAG range is appropriate in this case.
- [149] The SSAG formula suggests that the duration for which Ms. Swift's support should be payable should be for an unspecified (indefinite) period subject to variation (and possible review) within a minimum of 3 years and a maximum of 10 years from the date of separation.
- [150] In the totality of the circumstances of this case, with Ms. Swift's improving economic situation and prospects, the child care arrangements that are in place as well as Mr. Swift's age and eventual retirement, I find that Mr. Swift is obligated to pay spousal support (including retroactive support and interim support paid to date) for seven years from the date of separation.
- [151] The first payment of continuing spousal support in the amount of \$1,000 per month will commence on the first day of November, 2021 with the last payment being due on July 1, 2025.
- 4) Mr. Swift's claims for reimbursement for family debt and debt servicing paid during separation, debts incurred by Ms. Swift after separation and division of current family debt
- [152] Mr. Swift claims reimbursement for family debts that he says he paid after the parties separated as well as reimbursement for debts that he says were incurred by Ms. Swift on credit facilities that the parties had obtained during their marriage.
- [153] In addition to those claims it is necessary to address unresolved issues concerning the responsibility of each of the parties for their current family debts.
- [154] Those issues are all complicated.
- [155] Mr. Swift asserts that after separation he paid and/or serviced all outstanding family debts, including credit card and line of credit debts (most, if not all of which were in his sole name); mortgage debts with respect to the family farm; and, insurance payments on the family farm between the date of separation and its sale on July 14, 2020.
- [156] Issues are further complicated by a lack of clarity of financial information provided by the parties as well as by the facts that Mr. Swift: had by far the greater income after separation; continued to use assets which had been acquired through the use of the credit facilities; continued to reside on the family farm and use it and all of the equipment on it for his purposes, including family business ventures; had authority over most if not all of the family credit facilities; and, refused to pay child and spousal support after Ms. Swift and S. left the family farm after separation until ordered to do so on November 9, 2019.

[157] Against that background I will address each of Mr. Swift's claims and resolve those that the evidence permits of resolution.

[158] Unfortunately, I am unable to address with finality some of the issues raised because the totality of the evidence adduced, both documentary and testimonial, of the inter-relationship of various credit facilities and Mr. Swift's use of them will not permit me to do so.

[159] After reviewing the evidence adduced and the submissions of counsel in respect of these debt issues both as addressed in final argument and after a further hearing in which I sought clarification of the parties' positions I have, with reluctance, concluded that in order to resolve some of the specific matters in issue in accordance with provisions of the Act it will be necessary to refer those matters to a Registrar of the Court for final determination and certification.

[160] My conclusions and reasons for those conclusions that I am able to resolve follow.

[161] I will then address those issues that will have to be referred to a Registrar with the necessary directions to allow those issues to be resolved by the Court if the parties are unable to reach agreement on those issues without the need of those further hearings.

a) Family debt servicing and reduction

[162] Section 81 of the Act provides:

81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],

- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
- (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.

[163] The presumption of equal entitlement to family property and responsibility for family debt is the starting point for property division under the Act. See: *Remmem v. Remmem*, 2014 BCSC 1552.

[164] More specifically, with respect to the division of family debt, ss. 86 and 87 of the Act provide:

86 Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property.

Valuing family property and family debt

87 Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,

- (a) the value of family property must be based on its fair market value, and
- (b) the value of family property and family debt must be determined as of the date
- (i) an agreement dividing the family property and family debt is made, or
- (ii) of the hearing before the court respecting the division of property and family debt.

[165] Also relevant is s. 95 of the Act that provides:

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[166] In *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272, (S.L.M.W.) Steeves J. considered the earlier decision of Betton J. in *K.M.J. v. J.D.H.N.*, 2014 BCSC 1895 which addressed the family debt provisions of the Act that are engaged in this case.

[167] In doing so at paras.55 to 57 Steeves J. wrote:

[55] In a previous decision, Mr. Justice Betton usefully discussed how the FLA applies to debt (*K.M.J. v. J.H.D.N.*, 2014 BCSC 1895): "[t]he legislation sets the separation date as the date when property and debts are to be identified [s. 86] and, in the absence of an agreement, the date of hearing for valuation [s. 87]" (para. 140). Further, the definition of debt is simply stated in s. 86: "all financial obligations incurred by a spouse" (para. 142).

[56] The same judgment (para. 152) cited the Explanatory Notes to the FLA from the Ministry of Justice for British Columbia, which point out that, while the starting point for family debt is that all debts incurred during the relationship are to be equally divided, there is an exception for debt incurred after separation where it is incurred to maintain family property:

Since both spouses generally continue to benefit from the family property until it is divided, both are presumed to be responsible for the cost of maintaining that property until that time.

[57] However, the application of these provisions can be problematic because a party may increase family debt or pay it down after separation. If equal division of post-separation family debts leads to significant unfairness, the debt can be unequally divided under s. 95.

[168] After setting forth those provisions, Steeves J. stated at para. 58:

[58] Section 87 can also be used to remedy unfairness by valuing family property and debt as of a date other than the date of hearing or date of agreement (*Slavenova v. Ranguelov*, 2015 BCSC 79, at para. 53; also *K.M.J.*, at para. 155).

[169] Of particular concern in this case are, Steeves J.'s observations at para. 57 in *S.L.M.W.* related to the problematic application of equal division when an increase or pay down of family debt can lead to significant unfairness that may require the consideration, as well as the application, of the unequal division provisions of s. 95 of the Act.

[170] Mr. Swift seeks reimbursement for one-half of what he claims was his servicing and reduction of family debts totaling \$95,715.28 during separation. The amounts for which he claims reimbursement include:

- 1) Various Visa and Line of Credit payments totalling \$31,080.34;

2) Mortgage payments made on the family farm from the date of separation until its sale on July 16, 2020 in the amount of \$60,885.12; and

3) Property insurance for the farm for the same time period in the amount of \$3,749.62.

[171] Mr. Swift thus submits that Ms. Swift is obligated to reimburse him for one-half of those payments in the total amount of \$47,857.64.

[172] Mr. Swift testified that he paid those debts from his pension and business earnings as well as from a \$100,000 inheritance he says that he received from his father in 2019. He did not, however, provide any documentary evidence related to that alleged inheritance, including any evidence tracing the use of such funds for the specific debt servicing or repayment for which he alleges that Ms. Swift must compensate him.

[173] Ms. Swift did not contest that some of what she acknowledges was family debt was reduced by Mr. Swift after separation but disputes that she should be required to pay one-half of the amounts claimed.

[174] Although I agree that a proven reduction of family debt by one spouse to the benefit of the other should be subject to reimbursement, I am also satisfied that the evidence adduced at trial must be capable of supporting both that there was a reduction and that in the circumstances that reduction should be equally apportioned.

[175] In order to address the specific amounts for which Mr. Swift claims reimbursement it is necessary to consider the extent to which the evidence adduced at trial proves that he is entitled to reimbursement of one-half of those amounts under the Act and also that reimbursement in that amount would not be lead to significant unfairness.

[176] In addressing those issues I will first address Mr. Swift's claims with respect to the servicing and reduction of the various credit card and line of credit debts for which he seeks reimbursement followed by consideration of his claims in respect of mortgage and property insurance payments.

[177] The amount of credit card debt and line of credit debt totalling \$31,080.34 that Mr. Swift says he maintained and/or reduced during separation is comprised of:

Bank of Nova Scotia Visa ending in #013:

\$6,533.12

Bank of Nova Scotia Visa ending in # 017:

\$684.96

Scotiabank Line of Credit ending in # 012:

\$2,125.73

Bank of Nova Scotia Visa ending in # 015:

\$7,876.36

CIBC Visa ending in #380:

\$11,473.12

CIBC Line of Credit ending in 630:

\$2,875.05

[178] He also claimed reimbursement for an American Express Credit card (\$2,174) and a Hudson's Bay Credit card (\$146.74) that he discharged after separation.

[179] In her final Form F8 financial statement filed in this proceeding and in final submissions Ms. Swift recognized the Bank of Nova Scotia accounts ending in 013; 015; and 017 as family debts and also agreed that they were to be paid forthwith from the funds held in trust from the sale of the family farm.

[180] She, however, did not acknowledge the other debt instruments for which reimbursement was sought (which are all held in Mr. Swift's name) as family debts because of her lack of detailed knowledge about their use and repayment.

[181] Ms. Swift also stated that the CIBC line of credit ending in 630 included debt related to a fifth wheel trailer, a Sea Ray Boat and trailer, a golf cart, and tractor attachments all of which Mr. Swift kept and used after separation and that, later in these reasons will be the subject of property division.

[182] I have reviewed the debts that Mr. Swift claimed as family debts and the amounts owing on each. I have also reviewed the accounts for which he now seeks reimbursement for debt reduction as detailed above and have attempted to reconcile the balances outstanding on their accounts for which he claims reimbursement both at the time of separation and as of May 13, 2021 before trial.

[183] I say "attempted to reconcile" because Mr. Swift did not identify or address with specificity or consistency those debts that he said existed at the time of separation; the amounts he claimed he repaid in respect of each such account; whether an account was used by him after separation and if so for what purpose; and, the amounts claimed as being due and owing at the beginning of trial on each account.

[184] He also did not provide evidence that would allow a tracing of payments by him from a particular source including whether payments were made from the plumbing business which was, until the end of this trial, an undivided family asset.

[185] Doing the best I can with the evidence adduced by Mr. Swift and the schedules he incorporated into his final argument and, to the extent possible, correlating the limited source evidence provided while bearing in mind the burden upon Mr. Swift to prove his claims on a balance of probabilities, I find that Mr. Swift has proven the following reductions of debt instruments in which Ms. Swift must share:

Scotiabank Visa ending in #017:

\$ 409.04

Scotiabank Visa ending in #013:

\$ 527.17

Scotiabank Visa ending in #015:

\$5,679.34

American Express Credit Card:

\$2,174.00

HBC Credit Card:

\$ 146.74

Total:

\$8,936.29

[186] Those reductions comprise at least a part of the \$31,080.34 in credit card and line of credit facilities for which Mr. Swift seeks reimbursement.

[187] The difficulty with the balance of that claim is that I am unable to ascertain with any confidence from the evidence adduced whether Mr. Swift has included in those amounts any monies paid in relation to the use of any of those credit facilities for his personal purposes.

[188] Ms. Swift would, of course, not be obligated to reimburse him for any such amounts.

[189] It will thus, unfortunately, be necessary to refer Mr. Swift's claims for reimbursement of the balance of the amount claimed (\$22,144.05) for alleged debt maintenance to the Registrar for determination and certification if the parties cannot reach agreement on the issue without further litigation.

[190] As to Ms. Swift's obligation to reimburse Mr. Swift for total claimed debt now proven to be reduced or to be proven in future for debt maintenance after deduction of any amounts attributable to his personal use amounts, I find that it would be significantly unfair to require Ms. Swift to reimburse one-half of those amounts.

[191] I reach that conclusion because:

- 1) The amounts allegedly expended by Mr. Swift for debt reduction and maintenance were wholly within Mr. Swift's control without input from Ms. Swift as to the amount of interest he decided to pay to maintain high interest credit facilities rather than seek to reduce that interest.
- 2) To the extent Mr. Swift chose to make those payments while not paying spousal or child support to Ms. Swift he chose to favor his creditors over his responsibility to support both his spouse and child and did so at least in part from the family business Ms. Swift had helped to start up.
- 3) Mr. Swift has had the sole use of some family assets acquired through the use of those credit facilities since separation.
- 4) Ms. Swift has borrowed in excess of \$47,000 from her father to meet her ongoing needs and expenses and those of S.

[192] I am satisfied that in those circumstances as well as the disparity in the income available to the parties prior to trial and their respective needs and to avoid significant unfairness, Ms. Swift is obligated to reimburse Mr. Swift in respect of the proven debt reduction and any debt maintenance proven in future in an amount that is proportionate to the parties' respective ability to bear the burden of the maintenance of family debt.

[193] I find that proportionate amount to be one-third of any proven maintenance of family debt claimed in the amount of \$22,144.05 that remains to be determined by the Registrar (or by agreement) to be a maximum of \$7,381.35 which will be in addition to Ms. Swift's obligation to reimburse Mr. Swift \$2,979 for one-third of his now proven \$8,936.29 post separation reduction of acknowledged family debt.

[194] Mr. Swift has also sought reimbursement from Ms. Swift for his payment of the mortgage on the family farm as well as for his payment of property insurance from the date of separation until the family farm was sold.

[195] No evidence was adduced by Mr. Swift as to how much he paid toward the principal owing on the mortgage after separation. Also, Mr. Swift continued to reside on the farm after separation and availed himself of its equipment and the use of the farm property as a base for his business. At the same time, after October 2018 Ms. Swift was required to pay market rent for an apartment and set up a new home from the parties' daughter without payment of any spousal or child support by Mr. Swift.

[196] I find that by paying the mortgage and the insurance on the farm Mr. Swift was not only not required to pay for his accommodations and a place from which to operate his business, but was also preserving and utilizing property for his own benefit. I say that because prior to abandoning his excluded property claim at the conclusion of trial with respect to the proceeds from the sale of the Ontario home, he was seeking to preserve what he hoped to keep for himself.

[197] In all of those circumstances I find that Mr. Swift has not proven entitlement to any reimbursement from Ms. Swift with respect to the mortgage payments made by Mr. Swift or property insurance paid by him. I am also satisfied that in the totality of those circumstances it would be significantly unfair to require Ms. Swift to contribute to those payments.

b) Ms. Swift's post-separation debt

[198] After separation until December 31, 2018, Ms. Swift had in her possession some family credit cards and had access to at least one family line of credit that was used by her.

[199] During that period she made some payment on the debts she incurred on those credit facilities that Mr. Swift asserted came from family assets. I am not satisfied that Mr. Swift has proven that assertion.

[200] Mr. Swift further asserted that he eventually repaid all of the debts which he characterized as being for Ms. Swift's personal use that were incurred on those debt instruments while she had access to them.

[201] In total Mr. Swift has claimed reimbursement for payments in the amount of \$12,500 he says he made to service or retire those debts.

[202] I am unable to reconcile the claims made by Mr. Swift against the banking records in evidence with the exception of payments by Ms. Swift to her lawyers in the amount of \$4,500 and charges on a HSBC Visa in the amount of \$942.89.

[203] Given the irreconcilable banking records, lack of any verifiable tracing of alleged payments and the parties' conflicting evidence as to the payments made by Ms. Swift herself rather than by Mr. Swift on her post separation expenditures, I find that Mr. Swift has proven only that he is entitled to repayment of \$5,443 paid by him in respect of Ms. Swift's post separation expenditures.

c) Family debts subject to division

[204] At the conclusion of argument counsel for the parties agreed that the three Scotiabank accounts totalling \$20,861.71 to which I earlier referred would be immediately repaid from the net sale proceeds in trust from the sale of the family farm.

[205] The parties have not agreed upon the division of other family debt.

[206] Comparison of the parties' last Form F8 financial statements filed in these proceedings evidences agreement that in addition to the three Scotiabank facilities upon which agreement for equal division has been reached the parties have accepted that the following credit facilities were used by the family during cohabitation:

1) Scotiabank Line of Credit ending in # 012

2) CIBC Visa ending in 380

3) CIBC Line of Credit ending in 630

[207] I am advised that the Scotiabank Line of Credit ending in #012 was secured by a mortgage on the family farm that was discharged when it was sold.

[208] During final submissions Mr. Swift alleged that after payment of the three Scotiabank accounts as agreed, the two CIBC Visa accounts (with outstanding balances totalling in excess of \$21,000) remain outstanding. He asserts that those debts are family debts and subject to equal division as such.

[209] Given the lack of agreement by the parties as to whether the two CIBC Visa accounts should be divided as family debts in the amounts claimed by Mr. Swift and the lack of evidence available to determine whether, and if so how, they were used by Mr. Swift during separation I am unable to determine what amount, if any, of those two debts should now be divided.

[210] Unless the parties are able to agree upon responsibility for those two accounts I am satisfied that I must also refer that issue to the Registrar for determination and certification together with the other outstanding debt maintenance issues I have referred for determination.

[211] For the reasons I have addressed in respect of an unequal division of responsibility for debt reduction and maintenance I find that if any of the remaining amounts of the balances on the two CIBC Visa accounts are family debts (in that they were incurred or added to prior to separation rather than by Mr. Swift post-separation for his personal use) Ms. Swift will be obligated to pay one- third of those family debts to prevent the significant unfairness that would arise from a requirement to pay one-half of those debts.

5) The parties' unresolved family asset entitlement issues

[212] As I have earlier noted, during submissions at the end of the trial the parties reached some agreements with respect to the division of family assets.

[213] Those agreements are that:

- 1) Ms. Swift will retain her 2019 Ford F-150 vehicle and the debt associated with the vehicle without further adjustment;
- 2) Mr. Swift will retain his 2016 Chevy 3500 vehicle and the debt associated with the vehicle without further adjustment;
- 3) Mr. Swift will retain the Kubota tractor and purchase the respondent's half interest at fair market value to be valued by Gerard's Equipment Ltd. in Oliver, BC.
- 4) Mr. Swift will retain the Fifth wheel travel trailer (agreed value: \$3,000) and will purchase Ms. Swift's interest for \$1,500;

- 5) Mr. Swift will retain the golf cart (agreed fair market value: \$2,000 and will purchase the Ms. Swift's interest for \$ 1,000; and
- 6) The boat, trailer and accessories will be jointly listed for sale and the parties will share the sale proceeds equally.

[214] Other than the financial assets that I will next discuss those agreements leave for determination the division of the following assets under s. 84 of the Act:

- 1) Proceeds of the sale of the family farm and equipment in the amount of \$250,752.91 held in trust of which \$45,000 was advanced to Ms. Swift on February 11, 2021 by order of the Court under s. 89 of the Act.
- 2) Proceeds of sale of the 2019 garlic crop in the amount of \$4,405.98 held in trust.
- 3) Tools held by KS Plumbing comprised of those valued at \$5,000 held by Mr. Swift that he has failed to prove are his exclusive property and others valued at \$2,500 acquired during the relationship.

[215] I have concluded that all of those assets are subject to equal division and distribution for the following reasons:

- 1) The proceeds of the sale of the family farm remaining in trust (after deduction of the amount paid to repay the three Scotia Bank Visa accounts and accounting for the \$45,000 previously paid to Ms. Swift) will be divided so that Mr. Swift receives \$114,945.60 and Ms. Swift receives \$69,945.16. The parties must make all payments found to be due from one to the other for retroactive child and spousal support, debt reduction and debt reimbursement as well as Mr. Swift's property division agreements from their respective shares of the funds held in trust.
- 2) The proceeds of the sale of the 2019 garlic crop held in trust will be divided equally. The lack of clarity of the accounting provided by Mr. Swift with respect to the 2019 garlic crop as well as the lack of clarity provided by Ms. Swift with respect to her sale of peaches (an issue I addressed in considering her income for support purposes) satisfies me that no evidence adduced by either party favors division of the funds held in trust from the 2019 garlic crop other than an equal division.
- 3) The tools were used in the family business and will be kept and used by Mr. Swift as such. He will be required to pay Ms. Swift \$3,750 for her interest in those tools.

[216] In addition to the parties non-financial family assets they also hold Pensions and RRSP's (not including the \$ \$8,890.45 RRSP held at CIBC that I have determined to be Mr. Swift's exclusive property) that must be divided.

- [217] The RRSP's that are subject to division are all held in Mr. Swift's name. They consist of three Scotiabank RRSP's having a total value of \$105,364.18 as of the date of trial. The parties have agreed that the three RRSP's will be equalized by way of a tax free rollover pursuant to s. 146 (16) (b) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.).
- [218] The parties' pensions that are subject to division include entitlements under their respective Canada Pension Plans; Ms. Swift's Public Service Pension Plan for her work at the Okanagan Correctional Centre; and, Mr. Swift's Plumbing and Pipefittings Workers Local 46 Pension, a small portion of which was earned during the parties' relationship.
- [219] The parties have agreed that their interests in those pensions earned between August 1, 2012 and July 28, 2018 will be divided at source pursuant to the provisions of Part 6 of the Act. I am satisfied that in the circumstances any costs of those divisions should be shared equally by the parties.
- 7) The parties' remaining unresolved parenting issues
- [220] As I earlier indicated the parties have resolved most of their parenting and guardianship issues by way of a comprehensive shared parenting regime that has been in place pursuant to consent orders made at a Judicial Case Conference.
- [221] In summary, the parties have agreed that they shall share equal parenting time consisting of weekly alternating blocks with the exchange occurring at 2:30 pm on Friday and that they will be S.'s joint guardians.
- [222] Also, at the conclusion of trial the parties agreed to the following holiday schedule for the years going forward:
1. The Child's [S.'s] winter holiday will be alternated between the parties. Ms. Swift will have the Child for the entire holiday on even years and the respondent Mr. Swift will have the Child for the entire holiday on odd years.
 2. The Child will spend Mother's Day with the claimant, and Father's day with the respondent.
 3. The parties may have a two week uninterrupted block of parenting time during the Child's summer holiday, and such other times as the parties may agree to in writing.
- [223] Notwithstanding those broad agreements and the parties' cooperation in resolving what can often be acrimonious and detrimental to a child's well being when parties separate Mr. and Ms. Swift each raised some issues that now require judicial intervention.
- [224] The most significant of those issues is Ms. Swift's position that notwithstanding her agreement that the parties are S.'s joint guardians with all of the parental responsibilities attaching thereto under s. 41 of the Act she also sought orders that:

1) In the event of disagreements that the parties cannot resolve she would have the final say with respect to any such dispute with Mr. Swift having the right to apply under s. 49 of the Act for directions concerning the disputed issue; and

2) She will retain S.'s passport and other important documents.

[225] Mr. Swift opposed the making of those orders. He himself seeks orders that:

1) The parties will alternate holding S.'s passport with the exchange of the original document occurring no less than one week before she is scheduled to travel with the other party;

2) As ordered by the consent order entered on December 17, 2018, in the event that either party is unable to care for S. for more than three hours during their parenting time the other party will be given the opportunity to care for her before third party childcare arrangements are made; and

3) Communication between the parties be limited to the use of an application known as "Our Family Wizard".

[226] I am satisfied that Ms. Swift's application to have final say over disputed parenting issues must be dismissed. Although I understand that the intent of such an order would be to avoid further court applications with respect to parenting, I am not satisfied that the evidence of the parties' conduct to date justifies such an important and potentially disruptive departure from the present shared parenting regime.

[227] It is important that each of these parents have the right to exercise their full parental responsibilities without interference by the other while S. is in their care.

[228] It is also important that each parent co-operate with the other in matters of importance that will effect their respective rights and responsibilities concerning their parenting of S. That will be better achieved if neither party has the ability to require the other to apply to address an issue upon which they cannot agree.

[229] I do, however, agree that Ms. Swift should retain possession of S.'s passport because the evidence establishes that it is more likely that she will travel out of Canada with S. than will Mr. Swift. She will of course be obligated to provide the passport and any other necessary travel documents to Mr. Swift at least one week in advance of any travel by him with S. that requires that documentation.

[230] Item 5 of the consent order entered on December 17, 2018 with respect to travel to the United States with S. will also continue.

[231] As to other important documents effecting S.'s care (such as Health Care Cards, extended health documents and immunization records) the parties are each entitled to obtain such documents as they may require and will each be obligated to share copies of such documentation as necessary.

- [232] I am not prepared to continue Item 6 of the consent order entered on December 17, 2018 concerning the right of first refusal in respect of the care of S. as sought by Mr. Swift. As I have said, it is important that each party have full parental responsibility while S. is in their care. That includes the right to make decisions in respect of daycare or other care since each will be solely responsible for any costs he or she may make that are associated with those decisions.
- [233] I also decline to order that communications between the parties be limited to a particular method. This is not a high conflict relationship that requires such an order.
- [234] It is important that each party communicate with the other as needed to exercise their parental responsibilities and ensure that the other is informed of matters affecting S.'s well being. If any method of communication is abused by either party that can, if necessary, be resolved by further application. The evidence before the court at this time does not require the making of such an order.

COSTS

- [235] If the parties are unable to resolve issues of costs with respect to this proceeding they are at liberty to make arrangements through Supreme Court Scheduling to address such issues within 30 days of the date of this judgment.

"Davies J."

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