
CANADA / JUDGMENT

T.H. v. R.H.

2011 BCSC 1920

COURT

Supreme Court of British Columbia

DECIDED

25 February 2011

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2011 BCSC 1920 T.H. v. R.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.H. v. R.H.,

2011 BCSC 1920

Date: 20110225

Docket: E101885

Registry: Vancouver

Between:

T.H.

Claimant

And

R.H. also known as R.S.

Respondent

Before: The Honourable Mr. Justice Butler

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

T. Bell

Counsel for the Respondent:

T. Yu

Place and Date of Trial/Hearing:

Vancouver, B.C.

February 22, 2011

Place and Date of Judgment:

Vancouver, B.C.

February 25, 2011

- [1] THE COURT: The parties were married for approximately 17 years. They have three children, all of whom reside with R.H. (the "respondent"). They separated in 2004, and were divorced on July 30, 2009. Following lengthy negotiations, they entered into a separation agreement on October 11, 2007 (the "Separation Agreement"), with the assistance of a family law mediator.
- [2] The Separation Agreement resolved property issues, as well as child and spousal support issues. It was agreed that the three children would reside with the respondent, and they have continued to do so. The Separation Agreement provided that child and spousal support could be reviewed after certain dates. Child support has been reviewed on one occasion with the assistance of the mediator. Now, T.H. ("the claimant") applies for a review of both spousal support and child support, and the parties agree that the claimant has the right to apply for a review at this time.

Background

- [3] The claimant is presently 51 years old, while the respondent is 47. They were married in Mexico, but moved to Canada shortly after that. From 1995 until the separation, the parties operated Pinnacle Dental Laboratories Inc., which makes dental crowns and bridges. The claimant was the principal technician, while the respondent provided a variety of services including bookkeeping, administration, deliveries and cleaning. They were equal shareholders and split income from the business equally. The claimant worked long hours to build up the business.
- [4] In addition to her work duties, the respondent was the primary caregiver for their three children, D., E. and A. She fulfilled that role from the birth of D. onwards. In Canada, she has not worked for an employer other than Pinnacle. She had no education or employment training in Canada prior to the separation. At the date of separation, the children were 16, 10 and 6 years old. They are now 22, 16, and 12.

- [5] For approximately three-and-a-quarter years after the separation, the respondent continued to work for Pinnacle in her former capacity. After the Separation Agreement was finalized in October 2007, the parties effected a separation of their financial circumstances, which had remained intertwined. The parties divided the family assets equally, including the matrimonial home and the Pinnacle shares. The respondent agreed to sell her shares to the claimant and to give up her employment with the company.
- [6] The provisions in the Separation Agreement that are relevant to this review include the following:
- Recital D provided: "[R.H.] appreciates the obligation on her to make reasonable efforts to become economically self-sufficient and intends to pursue another business opportunity. [R.H.] has a certified professional accountant diploma from Mexico. After transferring her shares in Pinnacle [she] will not have any employment income."
 - The claimant's income for child support and s. 7 purposes was agreed at \$190,000.
 - The claimant will pay child support of \$3,292 per month. I should note that that is the Federal Child Support Guidelines ("Guidelines") amount based on \$190,000.
 - The claimant will pay spousal support of \$6,000 per month.
 - Section 7 expenses will be split, 62%/38%, based on incomes of \$118,000 for the claimant and \$72,000 for the respondent, where her income represented her spousal support payments.
 - Child support may be reviewed as of May 31, 2008, and on May 31st each year thereafter.
 - Spousal support did not have to be paid until the sale of the matrimonial home. However, the home did not sell promptly, and so the parties agreed that spousal support payments would start on February 1, 2008.
 - Paragraph 16(2) provided: "The parties will review spousal support payable by [T.H.] to [R.H.], both as to quantum and duration, on or before May 1, 2010." I should note that the parties agree the intent of the review provision was to allow for a review after that date and not before it.
 - Finally, the parties acknowledged receiving independent legal advice.
- [7] Since early 2008, the respondent has not worked outside the home. She has made a few applications for employment, taken a career counselling course, and started working towards obtaining a real estate licence.
- [8] The claimant has continued to operate Pinnacle. He says he has worked longer hours because of the respondent's departure: 80 to 100 hours per week in 2008, and 70 to 80 hours per week in 2009 and 2010, compared with approximately 70 hours per week from 1998 to 2005. The business has done well with increased revenues from 2007 to 2009, and then a small decrease in 2010. The company has been able to improve its retained earnings position over the past three years by about \$95,000.

- [9] The respondent says she has not been able to look for work or do more retraining for a number of reasons. First, she was responsible for the sale of the matrimonial home, which took nine months. She bought another house for herself and the children, but felt she had to sell it when the claimant advised her that he was in the process of selling the business to move to Japan. She was actively involved for some time with the arrangements for the purchase and sale of that house, and for two moves for herself and the children. In addition, her mother died last year in Mexico and she had to deal with the estate.
- [10] Most significantly, she says she has been the one responsible for dealing with the difficult issues caused by the behaviour of their son E. He had to leave two schools and has faced potential criminal charges for five or six incidents. Most recently, he was arrested for passing counterfeit currency and was charged with credit card fraud. She says that the claimant has not participated actively in assisting with the problems with E., or indeed the care and upbringing of their other sons.
- [11] Two other background matters are of some significance to this application. First, the respondent has inherited her mother's house in Mexico. She is the sole beneficiary and intends to sell the house. It has an assessed value of approximately \$220,000 (Can.), but there is no evidence as to how much of that she will be able to receive in Canada, net of expenses and taxes. Second, D. will graduate from engineering at UBC in June of this year and will likely cease to be a child of the marriage at that time or very shortly thereafter.

Position of the Claimant

- [12] The claimant says that the amount he has had to pay for spousal support is much too high. He says he did not understand when the Separation Agreement was signed that his support obligation was far above the Spousal Support Advisory Guidelines (SSAG) range, for someone with his income. As a result of the contractual obligation, he has worked far harder than he did in previous years, and harder than he feels he should have to work. He did so in order to make the support payments. He has not missed or been late with a single payment. He says his income for spousal support purposes should be less than his actual current income, which is at an elevated level as a result of what he says, in essence, was an improvident agreement. For spousal support purposes, he argues that an income of \$150,000 to \$165,000 is appropriate and reasonable.
- [13] The claimant acknowledges that his child support income should be based on his actual levels of income, according to the Guidelines. He suggests that should be in the range of \$175,000 to \$200,000.
- [14] The claimant argues that income should be imputed to the respondent in the amount of \$30,000. He is critical of her failure to take any real steps to attempt to move towards self-sufficiency. She has had three years since leaving Pinnacle and has nothing concrete to show for it, either in job experience or further training or education. In addition, he says that her alleged need for support is driven in part by a gambling addiction. He points to multiple

cash withdrawals from her bank account and from her credit card accounts for amounts totalling as much as \$1,000 per day. In some months her cash withdrawals total \$15,000. Sometimes the dates when she made those multiple withdrawals coincide with credit card charges at a local casino. On discovery, she could not say what the multiple cash withdrawals were for, but ultimately admitted to attending the casino as many as three times per week. The claimant argues that I should infer she is spending her time gambling, which is impacting on her attempts to retrain or find work.

- [15] The claimant also argues that the recent inheritance is a factor that I can take into account when fixing the amount of spousal support. He says the amount of support should be reduced because of her access to this capital sum.
- [16] Finally, he argues that I should fix a time limit for the duration of spousal support, and suggests that it should end in approximately two years' time.

Position of the Respondent

- [17] The respondent argues that spousal support should remain at the level that was established in the Separation Agreement. She says the parties engaged in lengthy negotiations with the benefit of legal advice. Pinnacle's revenues and the claimant's income have actually increased since the Separation Agreement was signed, so there is no reason to decrease spousal support. Further, the spousal support amount was set at \$6,000 per month because it was intended to cover the expenses that both parties knew she would have on an ongoing basis.
- [18] Alternatively, the respondent argues that if spousal support is to be reduced, then income must be imputed to the claimant at a level of at least \$200,000. This is because he receives money from the company as dividends, has personal expenses paid for by the company, and receives cash for recycled metal that should be company income. He failed to disclose these metal funds until shortly before this application. In addition, some of the retained earnings should be treated as income.
- [19] The respondent says there is no doubt that she has an entitlement to spousal support on a compensatory basis. Accordingly, she says that the claimant should continue to pay the support indefinitely or at least for a lengthy time before another review. This is because the compensatory support obligation will not be satisfied for a long time. She says the SSAG duration guideline is relevant here. The minimum duration, based on the length of the relationship, is for 8 1/2 years, and the outside range is 17 years. Thus far, the claimant has paid spousal support for only three years.
- [20] In addition, the fact that she has received an inheritance is irrelevant, given that the basis for the support is compensatory. The law is clear, she says, that a windfall received by a spousal support payee is not a factor when considering either entitlement or amount of support.

- [21] Finally, she argues that there is insufficient evidence for me to draw an inference that she has a gambling addiction or problem as suggested by the claimant. Further, the use that she makes of her discretionary funds is not relevant to any issue raised on this application.
- [22] With that background and the parties' positions, the issues on this application are as follows:
1. What is the basis for the respondent's entitlement for spousal support?
 2. What is the claimant's income for Guidelines purposes for child support?
 3. Should the claimant's income be different for spousal support purposes and, if so, what should it be?
 4. What amounts should the claimant pay for child support?
 5. What amount should the claimant pay for spousal support and for how long?
- [23] Before turning to these issues, I will set out the basic principles relevant to the spousal support aspects of the application. These are not controversial.
- [24] A review application is usually a hearing *de novo*, where the court must consider and apply the factors and objectives set out in s. 15.2 of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.). I refer to *McEachern v. McEachern*, 2006 BCCA 508. On occasion, a review will be limited by the terms of a prior order or by agreement. Here, the parties agreed that the spousal support review could consider both quantum and duration. As I have noted, the parties also agree that the intent of the Separation Agreement was that a review of spousal support would be available after May 1, 2010. In addition, the Separation Agreement contained no limitation as to the issues to be considered on a review. Accordingly, the Separation Agreement does not limit the scope of this review.
- [25] The relevant factors to be considered in making a spousal support order are set out in s. 15.2(4) of the Divorce Act, and the objectives of such an order are set out in s. 15.2(6):
- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
 - (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.
 - (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

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

[26] As noted in *Moge v. Moge*, [1992] 3 S.C.R. 813 and in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, the leading cases in this area, the court must consider all of the objectives, none of which are paramount. The court must look at the factors enumerated and consider the conditions, means, needs, and other circumstances of each spouse. The conditions of the spouses include their age, health, needs, obligations, and dependants. The needs of a spouse must be assessed relative to the parties' circumstances and in light of the standard of living enjoyed during the marriage.

Issue 1: What is the basis for the respondent's entitlement for spousal support?

- [27] The claimant concedes that the respondent is entitled to spousal support. However, in order to determine both the quantum and duration of support, it is important to identify the basis for her entitlement. This is particularly so where there is no prior decision or agreement establishing or acknowledging the basis for entitlement.
- [28] The respondent argues, and I agree, that the primary basis for a spousal support order here is compensatory. It is clear that the claimant received the economic advantages of the marriage, while the respondent bore the economic disadvantages of the marriage and breakdown. This occurred for a number of reasons.
- [29] When the parties left Mexico, the respondent had marketable employment qualifications. She had an accounting designation that is described in the materials as having some similarity to a CGA. She also had work experience with one of the multi-national accountancy firms. No evidence was presented to explain if her qualifications would be valid in Canada, but undoubtedly her training and experience assisted her in the position with Pinnacle.
- [30] However, when the parties' first child was born, the respondent took on the task of being the primary caregiver for the children. As a result of the twin roles she undertook, working for Pinnacle and looking after the children, she lost the opportunity to get relevant Canadian job experience in her field and to acquire Canadian qualifications. By contrast, the claimant built a successful business as he developed and improved his skill and reputation in the manufacture of dental appliances.

- [31] As a result of the separation and the terms of the Separation Agreement, the respondent received her share of the value of the Pinnacle shares. However, she also left her employment with Pinnacle and lost the only job she had in Canada. She came away with no job, no qualifications, and no marketable employment experience. Other than the family business, she had been out of the job market for years. She was significantly disadvantaged economically. She suffered, in essence, a triple whammy as a result of the years she spent caring for the children, the loss of opportunity to obtain professional experience, and the loss of her job.
- [32] In these circumstances, after 17 years of marriage, the respondent has a strong compensatory claim for spousal support.

Issue 2: What is the claimant's income for Guidelines purposes for child support?

- [33] The positions of the parties are not significantly different on this issue. I accept the claimant's revised calculation of his income for child support purposes as a starting point. He has taken his line 150 income for 2009 and deposits to his account for 2010, and added to those figures amounts to represent personal expenses paid by the company and the metal funds that he received personally. While I agree this is a proper approach, the amounts added back to his income are, in my view, understated. This is because he received the metal funds tax free. That amount needs to be grossed up. When this is done, his income for 2009 approaches approximately \$180,000 and for 2010, \$220,000. I should note, however, that the 2010 figure is not based on figures for the full year and may be imprecise.
- [34] In addition, the respondent says that some amount of the retained earnings at Pinnacle should be considered income. The claimant has given no explanation as to why this should not be done. I agree that in the absence of such an explanation, it is appropriate to include at least some portion of retained earnings as income for child support purposes. However, this cannot be done with any precision. I think the appropriate approach here is to look at the last three years of income, rather than focus on the partial year figures for 2010. When I do that, and take into account all of the factors, as well as the income of \$190,000 that the parties agreed to in the Separation Agreement, I conclude here that a fair Guidelines income for child support purposes is \$200,000.

Issue 3: Should the claimant's income be different for spousal support purposes and, if so, what should it be?

- [35] I do not accept the claimant's primary argument on this issue. He says that he has worked more than he would have done, but for the improvident spousal support agreement. I cannot accept that and I cannot conclude that he has worked more on the basis of the material before me. The respondent said that he always worked long hours and spent little time with the children. Indeed, on the basis of his own evidence, the difference in his hours of work in the two years since the respondent left Pinnacle, compared to prior to the separation, is not significant: 70 to 90 hours per week now versus 70 hours before. On that evidence, it is impossible for me to know how often he works closer to 90 hours or to his

former work week of 70 hours. I find his evidence unconvincing. Further, as the owner of the company, he gets to make significant decisions which impact on how much he works. These include decisions regarding hiring employees or releasing them, expanding the business or keeping it at its present level. I am not satisfied that it would be fair to discount his income on the basis that he says he has worked too much and wants to work less.

- [36] While there is no requirement to assess income for spousal support purposes using the provisions of the SSAG and the circumstances of this case, I do not see any reason to use a figure that is different.

Issue 4: What amounts should the claimant pay for child support?

- [37] For an income of \$200,000, the amount payable for child support based on three children is \$3,448 a month.
- [38] The claimant has also asked that I make an order to reflect the likelihood that D. will no longer be a child of the marriage as of July 1, 2011. I agree that it is very likely he will no longer be a child of the marriage, either on July 1, 2011 or within a very short period of time thereafter. However, I do not think it is appropriate for me to make an order at this time. I will, however, say that I expect that child support for D. will no longer be payable as of July 1st, as he will be fully capable of supporting himself and will withdraw from the care of his parents. I assume the parties can agree as to the precise date when that occurs. If they cannot, I will remain seized of any further application to consider variations to child support. Any such application can be set outside of normal court hours.

Issue 5: What amount should the claimant pay for spousal support and for how long?

- [39] Of course, this is the central issue on this review. With the benefit of legal advice, the parties agreed to a figure for spousal support that is far above the range in the SSAG. Both parties offered reasons for this. The claimant says that it was done as an incentive for the respondent to get started on working towards self-sufficiency. The respondent says it was to cover her known expenses. There may be some truth to both of these explanations. However, they do not help with the assessment of a proper figure for support on this review.
- [40] As the parties have agreed, the Separation Agreement contemplated a full review at this time. While I can take the provisions of the Separation Agreement into account, there is nothing in the agreement that suggests to me that the parties intended the spousal support figure to continue at that level, just as there is nothing that suggests the parties intended spousal support to end or be reduced below the SSAG range.
- [41] Both parties made reference to the SSAG when making submissions. Both took the view that those Guidelines have some relevance on this review. In *Bockhold v. Bockhold*, 2010 BCSC 214, Groves J. surveyed the cases that have considered the proper approach to use of the SSAG on a review. He concluded that a safe course to follow was that explained by Metzger J. in *Kerman v. Kerman*, 2008 BCSC 500, at para. 76:

I bear in mind the principle from Bryant that the Guidelines may be less applicable on a review. I bear in mind also the principle from Redpath v. Redpath, 2006 BCCA 338, at para. 42, that it may be an error of law to "substantially" depart from the Guidelines in the absence of "exceptional circumstances" or, as subsequent cases have stated, at least a "reasonable explanation" (for example, McEachern at para. 64). In my view, the synthesis of these decisions is that the principle in Redpath continues to apply on a review, but the exceptional circumstance or reasonable explanation inquiry for departing from the Guidelines will usually be broader on a review, as per Bryant, than it might be on an initial determination.

[42] I accept this as an accurate statement of the law in B.C. On a review such as the one in question, the proper approach is to use the SSAG to establish a range to consider for spousal support in all of the circumstances. I further agree that I should not depart from the Guidelines without a reasonable basis for doing so, although I can take a broader view as to what might amount to a reasonable basis, given that this is a review. While these principles apply generally, in the circumstances of this case, there is a further reason to start the analysis with the Guidelines range. The \$6,000 spousal support payment was set by agreement for a limited period of time, following which the parties agreed to a full review. No benchmark or guideline as to quantum is provided in the Separation Agreement. Further, there is no existing court order or judicial assessment as to quantum and duration of spousal support.

[43] In the absence of such a framework, it can be assumed that the parties would look to the SSAG to determine the range for support and it is appropriate for the court to do so.

[44] In this case, the circumstances or factors that have been suggested by the claimant as reasons to establish support in an amount outside of the range or towards the bottom of the range are:

- the respondent's failure to take reasonable steps towards self-sufficiency;
- the respondent's gaming expenditures; and
- the respondent's inheritance.

I will deal with each of those.

Self-sufficiency

[45] I agree that the respondent has not moved towards self-sufficiency as quickly as the claimant probably anticipated at the time of the separation. However, her explanation for the lack of progress has some merit. She has had to deal with significant family issues, two moves, the death of her mother, and acting as the primary parent for the children. This latter task has been onerous, given the difficulties experienced with E. Nevertheless, I think it is fair to say that she has not pursued employment or additional training as expeditiously as she could have.

- [46] I infer from her work with Pinnacle and her previous employment in Mexico that she has marketable skills and an ability to become fully employed. Having said that, I also accept that it is unlikely that she will ever be truly self-sufficient in the sense of attaining, through her employment, a standard of living similar to what the parties enjoyed before the separation. I am also of the view that it is not surprising that she has not progressed very far along that path, given the position she was put in at the time of the separation.
- [47] When considering the concept of self-sufficiency in the circumstances of this case, the comments at para. 33 in *Tedham v. Tedham*, 2005 BCCA 502 are apposite:

As already stated, however, s. 15.2(6)(d) of the Act does not require self-sufficiency, but simply seeks to promote self-sufficiency "in so far as practicable". In determining what is practicable, regard must be had to all of the circumstances, including the age and gender of the spouse, her/his skills and education, or lack thereof, the opportunities for retraining, and the realistic prospect of the spouse being able to find not just a job, but one which enables her/him to become self-sufficient, which may be quite a different matter.

- [48] When I look at the respondent's age, experience, education, and all of the other circumstances with which she is faced, I conclude that she should now be at a point where she is about to enter the job market. Had she pursued her plan to obtain a real estate licence, she could have finished her qualifications by this time. Alternatively, she could have obtained some form of employment in bookkeeping or accounting. As noted in McEachern, the remedy when a recipient spouse has failed to use adequate efforts to attain self-sufficiency is to impute income. In my view, in light of all of the circumstances, it is appropriate to impute a modest amount of income to the respondent at this time.

Gaming expenditures

- [49] The claimant argues that the excessive spending on gambling shows that the respondent does not have as high a level of need as she argues. He further says that I can infer that it is preventing her from becoming self-sufficient. In other words, she is spending too much time at the casino. Given the denials of the respondent to these allegations, it is difficult to make particular findings about her gambling habits. Fortunately, I do not think it is necessary for me to do so to dispose of this argument. The main reason for this conclusion is that the respondent is entitled to receive support for compensatory reasons. Thus, the level of support she receives is not dependent to a large extent on her need at this point in time. The question is whether a sufficient amount of support has been paid for long enough to satisfy the compensatory obligation. As I do not need to analyze her need to arrive at the level of support on this application, I do not need to assess whether she really has a gambling problem that is affecting her needs and circumstances. As I have indicated above, it is appropriate to impute a modest income to her at this time, but to do that I do not need to come to any conclusions about her gambling habits. I certainly hope that she does not have a gambling problem and find some comfort in her denials. At the same time, the cash withdrawals do paint a picture of a situation that may be close to getting out of the

respondent's control.

The respondent's inheritance

- [50] As found by Martinson J. in *Murphy v. Murphy*, 2000 BCSC 974, where there is a compensatory basis for the spousal support award, any windfall to the payee will not affect the award: see *Gosling v. Gosling*, 2008 BCSC 1323.
- [51] The claimant relies on *Lochhead v. Lochhead*, 2010 BCSC 1048, for the proposition that while an inheritance does not defeat entitlement, where that entitlement has a compensatory basis, an inheritance is one of the circumstances to consider when fixing the amount of the support.
- [52] While I agree that an inheritance may be taken into account where it is appropriate to do so, in the circumstances here it is a minor factor. The amount of the respondent's inheritance is uncertain at this time, but it will not be substantial. The circumstances here are very different from those in *Lochhead*. In that case, the payee had substantial assets when compared to the payor. Brown J. considered the inheritance as one part of the circumstances that informed the parties' needs and means. Here, the inheritance has much less significance. The parties' assets have similar value and the claimant has retained the business, a capital asset which allows him to earn a comfortable income. While the respondent does have a claim for support based on need, the inheritance will not reduce her need in a significant way. Further, the spousal support is primarily compensatory. Accordingly, the claimant cannot rely on it to offset his obligation to provide compensatory support.

Conclusion

- [53] When I examine all the factors in this case, I am of the view that an amount of support within the SSAG range is fair to both parties. The claimant will have to pay much less on a monthly basis than he has paid for the last three years. He will have to continue payment of support at the SSAG levels in order to meet the obligation to provide compensatory support. As I have indicated, I am not persuaded that I should award an amount at the highest end of the range solely because of the fact that the parties agreed to a higher amount of spousal support for the initial period following the separation. I have chosen an amount closer to the middle range.
- [54] I will impute income to the respondent in the amount of \$15,000. This imputation covers the first two years following this order. Either party is at liberty to review this order solely on the basis of the respondent's income after two years. In other words, the amount of support may be varied depending on her income level.

- [55] The range of spousal support, given these findings, and with child support payable for three children is: the low end of the range is approximately \$3,220 a month, the high end \$4,132, and the mid-range \$3,679. These figures are approximate, based on Mr. Yu's submission as to how to arrive at the range for imputed income of \$15,000.
- [56] I order that the claimant pay spousal support in the amount of \$3,852 per month. This is somewhere between the middle range and the high end of the range. With the child support payment of \$3,448, that totals \$7,300 per month.
- [57] When D. is no longer a child of the marriage, the child support will fall down to \$2,671, and the spousal support at that point I will order to be \$4,279 a month, so the total will be \$6,950 a month.
- [58] I note, finally, that the Separation Agreement is silent on duration. The parties did not agree to limit the duration, simply to review it. For the reasons that I have noted above, I am of the view that the respondent's claim for support is largely compensatory. I have also noted that it is unlikely she will achieve the pre-separation standard of living through her own employment. I also note that in lengthy marriages where there is entitlement, the authorities generally favour an indefinite order.
- [59] Accordingly, the award of spousal support to the respondent must be made on an indefinite basis. The quantum of support will, however, be open to future changes in circumstances, and in particular to the income levels of both parties. I have already indicated that there may be a review after two years, but solely to deal with changes to the respondent's income. However, the situation is still in flux, and so either party may apply to review spousal support four years after the date of this order.

[SUBMISSIONS ON COSTS]

- [60] THE COURT: Well, I am of the view that success was divided. The claimant also sought to limit the duration significantly and, in my view, that was something that the respondent was entirely successful on. Given the decision I have arrived at, I will order that the parties bear their own costs.
- [61] MR. BELL: I'm sorry, just one clarification, My Lord. I just want to be totally clear. The four-year review is a full de novo one more time, is that correct?
- [62] THE COURT: It is a full de novo review at that time.

"Butler J."

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