

CANADA / JUDGMENT

Tyrell v. Tyrell

2025 BCSC 94

COURT

Supreme Court of British Columbia

DECIDED

22 January 2025

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2025 BCSC 94 Tyrell v. Tyrell IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Tyrell v. Tyrell, 2025 BCSC 94 Date: 20250122 Docket: E58738 Registry: New Westminster Between: Kristine Grace Tyrell aka Kristine Grace Snipstead Claimant And David Mark Tyrell Respondent Before: The Honourable Justice Kirchner Reasons for Judgment The Claimant, appeared in person: K.G. Tyrell (August 25, 2024) Counsel for the Claimant: S. Butler Counsel for the Respondent: C.M. Sheppard Place and Dates of Hearing: New Westminster, B.C. August 25, 2024 and December 3, 2024 Place and Date of Judgment: New Westminster, B.C. January 22, 2025 Table of Contents I. Background.. 3 II. Divorce. 7 III. Division of Family Property and Debt 7 A. Legal Principles. 7 B. Family Property. 8

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- [1] The Respondent in this family law proceeding, David Tyrell, applies for summary trial judgment on all aspects the claim. The principal issues concern property and debt division and retroactive and ongoing spousal support. The parties agree there should be an order for divorce.
- [2] The claimant, Kristine Tyrell, initially opposed the summary trial application, maintaining that a conventional trial was necessary. However, at a continuation of the application after both parties filed additional affidavits, her counsel, who appeared on a limited retainer for the continuation, advised that Ms. Tyrell now wishes to have the matter decided in a summary trial "on the best available evidence" so as to avoid further cost in the litigation.
- [3] Ms. Tyrell is currently 62 and Mr. Tyrell is 69. They were married in 1991 and separated in 2019 after 28 years of marriage. They had two children, one born in 1992 and the other in 1994. Both children are now self-supporting adults and there is no suggestion that either was a child of the marriage when the parties separated in 2019.
- [4] There is very little evidence about the relationship itself. Mr. Tyrell worked as an architect through his company David Tyrell Architect Inc. ("DTA") which he established just before the parties were married. DTA has no employees and serves only as a corporate vehicle through which Mr. Tyrell conducts his business as a sole practising architect. Substantially all of Mr. Tyrell's income is earned through the company and has been throughout the marriage. Until the end of 2017, Mr. Tyrell split his income with Ms. Tyrell through DTA but was not able to do so starting in 2018.
- [5] Ms. Tyrell was a stay-at-home spouse and parent who took care of the household and was primarily responsible for raising the children. Apart from attempting two different businesses, which failed, and a brief attempt in 2015 to do bookkeeping for DTA, Ms. Tyrell did no paid work during the marriage.
- [6] In April 2011, the parties sold their family home in White Rock for \$980,000. Mr. Tyrell deposes that the net proceeds of the sale after paying the mortgage were around \$300,000 and this money was used to pay household expenses. Ms. Tyrell claims she has no knowledge of where this money went. After selling this property the parties rented a family home, also in White Rock.
- [7] In 2016 the parties sold an interest they had in an investment condominium in Sun Peaks. Mr. Tyrell deposes they received \$50,000 from this sale and the money was deposited into their joint account and used to pay household expenses. Ms. Tyrell claims she does not know what happened to this money.

- [8] There is no evidence that causes me to disbelieve Mr. Tyrell's evidence that the proceeds of the sale of the home or the Sun Peaks property were used for anything but family purposes or to pay down family debt. There is certainly no evidence that Mr. Tyrell is hiding that money as Ms. Tyrell seems to imply. Ms. Tyrell acknowledges that she did not pay close attention to the family's finances before separation and I have been given no reason to question Mr. Tyrell's evidence in this respect.
- [9] In January 2017, Ms. Tyrell was diagnosed with breast cancer and underwent chemotherapy and radiation treatment. She also had a double mastectomy. She says this, along with other health conditions, has prevented her from engaging in paid work.
- [10] As stated in Ms. Tyrell's notice of family claim, the parties separated on July 26, 2019 but continued living separate and apart in the rented family home until approximately October 15, 2019 when Mr. Tyrell moved out. Mr. Tyrell admitted this date of separation in his response to civil claim but at the continuation of the summary trial application he sought to resile from that admission. He now claims they did not start truly living separate and apart until October 2019 when he moved out and they began to disentangle their finances. However, an admission made in pleading can only be withdrawn by consent of the other party or with leave of the court: Supreme Court Family Rules, Rule 9-6(5). Mr. Tyrell has not formally sought leave and Ms. Tyrell has not consented. As her counsel points out, spouses frequently live separate and apart within the same family home for a time and that is what the parties did here. Even if Mr. Tyrell had sought leave to withdraw the admission, I am not convinced he has shown the parties did not separate on July 26, 2019. The fact that parties did not start to disentangle their finances until later does not necessarily mean that they had not started living separately: *Yip v. Yip*, 2016 BCSC 1595 at paras. 23-24.
- [11] After separation, DTA continued to provide Ms. Tyrell with medical benefits until January 31, 2020 when Mr. Tyrell evidently removed her from the company's benefits plan. Ms. Tyrell then registered with another medical/dental plan which cost around \$185 per month but she says this plan was inadequate to cover her needs so she cancelled it. She says she has ongoing problems with nerve damage from a car accident dating back to 1981 and needs regular treatment for this but the new plan did not cover those treatments. She also says she has ongoing medical issues, including surgeries, relating to her cancer treatment.
- [12] Starting in November 2019, Mr. Tyrell began making voluntarily payments to Ms. Tyrell for spousal support. He initially paid \$8,000 per month for November and December 2019 and then \$6,000 per month from January 2020 through December 2021, except for March 2020 when he paid \$3,800 and April 2020 when he paid \$5,000. He states the March 2020 reduction was to offset a \$2,200 withdrawal Ms. Tyrell made from a joint line of credit, contrary to an agreement they reached not to accumulate more debt. Mr. Tyrell therefore reduced the spousal support payment for that month and paid off the line of credit. He said he only paid \$5,000 in April 2020 because he could not afford the full \$6,000 that month.

- [13] Ms. Tyrell stated in a July 15, 2023 affidavit that Mr. Tyrell paid her only \$5,000 per month in spousal support in 2022 but Mr. Tyrell's bank statements indicate he continued paying \$6,000 a month throughout that year.
- [14] I accept that Mr. Tyrell paid \$6,000 per month in 2022. I also accept that the March 2020 reduction was to account for a withdrawal Ms. Tyrell made from the line of credit for her own benefit and I would credit Mr. Tyrell for the \$2,200 deduction from the spousal support payment that month.
- [15] Starting January 1, 2023, Mr. Tyrell unilaterally reduced the spousal support payment to \$1,646.50 per month. Ms. Tyrell brought an application seeking to have the monthly payment restored to \$6,000. On July 28, 2023, Justice Tammen ordered that Mr. Tyrell make interim spousal support payments of \$4,500 starting August 1, 2023. Mr. Tyrell has made each of those payments since the Tammen J. Order.
- [16] As there was no order or signed agreement confirming that Mr. Tyrell's payments to Ms. Tyrell before the Tammen J.'s order were for spousal support, Mr. Tyrell has not been able to claim those payments as deductions on his tax returns. Nor has Ms. Tyrell declared those payments as income except for the 2019 tax year. She has declined to address this issue by way of an agreement with Mr. Tyrell, although she characterized the payments as "spousal support" in a July 13, 2023 Notice of Application and supporting affidavit. Further, Tammen J. declined to make a declaration that the past payments were for spousal support but he did order that future payments under his order would be taxable in the hands of Ms. Tyrell and may be shown as a deduction on Mr. Tyrell's tax return. Mr. Tyrell now asks this court to make the order that Tammen J. declined to make respecting past payments, arguing it is open to me to do so since I am now asked to make a final order. The issue is significant because Mr. Tyrell has paid tax on the support payments up to the time of the Tammen J. order while Ms. Tyrell has received the money tax free (other than the two payments in 2019).
- [17] With that background, I turn to the relief sought in this application. While I have some reservations about deciding some points in a summary trial, I recognize that both parties now view the summary trial procedure as the most cost-efficient way of resolving this matter and both wish to have the matter addressed that way. I agree that the cost to both parties of a five-day trial (as initially planned) are likely disproportionate to the amounts at stake in this dispute. Moreover, my hesitation in deciding some factual matters rests more on the absence of evidence rather than conflicts in the evidence. Thus, having regard to the factors in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 211 (C.A.), I conclude, albeit with some reluctance, that this matter is suitable for summary trial disposition. II. Divorce

- [18] The parties both seek a divorce. They have lived separate and apart for more than a year and neither has colluded in seeking a divorce. There are no longer any children of the marriage. I will make the order in the usual form that the parties be divorced. III. Division of Family Property and Debt
- [19] The parties seek an order dividing family property and debt. They generally agree on what the family property is but disagree on its value. A. Legal Principles
- [20] Family property includes all real and personal property owned by at least one spouse on the date of separation, and property acquired by a spouse that is derived from family property: Family Law Act, S.B.C. 2011, c. 25, s. 84(1) [FLA]. It also includes the increase in value during the marriage of any excluded property but there is no excluded property claimed in this case. Family debt includes all financial obligations incurred by a spouse during the relationship before separation, and debt incurred after separation if it was incurred to maintain family property: FLA, s. 85(2).
- [21] As a starting point, spouses are entitled to equal division of family property and are equally responsible for family debt as at the time of separation, regardless of their relative contributions to the acquisition of the property or the debt: FLA, s. 81; *Zilic v. Zilic*, 2021 BCCA 107 at para. 13; *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38. Where an equal division of family property would be significantly unfair, the court may order an unequal division of family property under s. 95 of the FLA. Significant unfairness requires something objectively unjust, unreasonable, or unfair in some important or substantial sense: *Singh v. Singh*, 2020 BCCA 21 at para. 34.
- [22] Presumptively, the date for determining the value of family property and family debt is the date of the hearing (here the summary trial application) respecting the division: FLA, s. 87(b) (ii). There must be compelling evidence for the court to depart from that date as doing so amounts to an order for unequal division of family property or debt: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76. Thus, to value the property or debt on a date other than the hearing, the court must be satisfied that significant unfairness would arise if the hearing date is used: *Kumagai* at para. 76. Where one spouse has, after separation, caused a significant increase or decrease in the value of family property beyond market trends, that may be a sign of significant unfairness: *Zilic*, para. 13; FLA, s. 95(2)(f).
- [23] Bank accounts that are used on a day-to-day basis after separation are typically valued as at the date of separation rather than the date of trial as this best accounts for money that is routinely moved in and out of such accounts. Long-term investment accounts are typically valued at the date of trial but subject to an accounting of contributions or withdrawals by one or both parties: *Bennett v. Bennett*, 2021 BCSC 1631 at para. 47; *Asselin v. Roy*, 2013 BCSC 1681 at paras. 171-172. B. Family Property

1. DTA

- [24] Despite the presumptive date for valuing property, both parties suggest that DTA should be valued as at the date of separation. Neither party has led expert evidence of DTA's value.
- [25] Mr. Tyrell claims DTA has no value because it is simply the corporate vehicle through which he does business as sole-practising architect. He says it has no book of business and thus it only has value as long as Mr. Tyrell is working. Despite this, he accepts a notional value of \$50,000 based on verbal advice the parties jointly received from an accountant, Ron Tidball, in 2020. Mr. Tidball's advice was summarized in an email from Mr. Tyrell's previous counsel as follows: Ron said your business was purely asset value; the current cash (Ron advised that you said it was \$85,000) and current receivables (\$14,000) amount to \$100,000 minus the approximately \$50,000 owing so he valued the business at \$50,000. He did note that cash was depleting.
- [26] Ms. Tyrell accepts the methodology set out in this email but points out the valuation is based on Mr. Tyrell's advice to Mr. Tidball about its cash as at 2020. There is nothing to suggest that Mr. Tidball verified this advice by looking at DTA's accounts or financial statements. Ms. Tyrell has provided a bank statement for the company dated July 10, 2019 (around the date of separation) which shows a cash balance of \$181,593 and credit card debt of \$9,345. She says she does not know where the \$50,000 debt figure referred to in the email comes from but is willing to accept that figure and deduct it from the July 10, 2019 cash balance to arrive at a value for DTA of \$145,593 as at separation.
- [27] Since neither party seeks or has proposed a valuation as at the date of trial, I conclude that the both consider it would be significantly unfair to value the company as of that date. There is merit in that view given that changes in the company's value after separation are based largely on Mr. Tyrell's efforts rather than market controls. In this respect, the company is more in the nature of a bank account with money flowing in from the work that Mr. Tyrell earns as an architect and money flowing out to pay his work-related expenses (some of which he receives a personal benefit from) and dividends to him as shareholder. Thus, I accept the parties' apparent agreement not to value the company as of the date of trial.
- [28] I am reinforced in this conclusion by my finding later in these reasons that Mr. Tyrell's income for spousal support purposes should be based on the company's pre-tax income rather than his own dividend income. Valuing the company at the date of hearing while also basing spousal support on the pre-tax income of the company would double-count money Mr. Tyrell has left in the company since separation. That would be significantly unfair.
- [29] However, I would not assess the value of the company at the date of separation. The parties did not start to disentangle their finances before Mr. Tyrell moved out of the family home in October 2019 and began paying spousal support the following month. In my view, the date the parties disentangled their finances is the fair date at which to value DTA. I therefore conclude that the approximate date when the parties began to separate their financial affairs is the appropriate date for valuing the company.

- [30] Mr. Tyrell's move out of the rented family home substantially coincides with DTA's fiscal year end of September 30, 2019. In my view, the financial statements and tax returns for the company's 2018-2019 fiscal year provide the best evidence from which to value the company at or near the time the parties separated their financial affairs. According to those statements, DTA had cash and deposits at that time of \$158,872. Its other assets, apart from a vehicle, are given a value in the financial statements but it is unlikely this represents a realistic liquidation value of those assets so I will not include them in assessing the company's value. I will address the vehicle separately as family property even though it is in the name of the company. No accounts receivable are shown on the balance sheet for the fiscal year ending September 30, 2019. The liabilities total \$54,465, a small amount of which (\$986) is due to the shareholder. On this basis, using Mr. Tidball's methodology for valuing the business based on it cash minus its liabilities, DTA had a value of approximately \$104,000 as of September 30, 2019.
- [31] Another way to consider the value of a non-capital-intensive company is to look at its retained earnings: *Zilic v. Zilic*, 2019 BCSC 1482 at para. 147, aff'd 2021 BCCA 107 at para. 147. As of September 30, 2019 DTA had \$128,501 in retained earnings. However, since neither party proposed or made submissions on this approach and since it does not result in a markedly different valuation, I will not use it other than to satisfy myself that the methodology suggested by the parties and, apparently, by Mr. Tidball does not lead to an unjust result.
- [32] I would therefore value DTA at \$104,000 for the purposes of property division. Ms. Tyrell is entitled to one half that value being \$52,000. There are likely tax implications for this valuation given that the money in the company will be taxed as income to the parties when it is paid out. Thus, it may not equally divide the asset if Mr. Tyrell were to simply pay Ms. Tyrell \$52,000 in an equalization payment because he likely will be taxed on amounts that he draws out of the company to pay this. I received no submissions from the parties on how to address that issue. I will leave it to counsel to address that issue and they may request an opportunity to deal with that point with further submissions if necessary but I strongly urge the parties to find a reasonable resolution.
- [33] I will also order, as requested by Mr. Tyrell, that Ms. Tyrell will forthwith (i.e. without delay) sign all corporate year-end documents for the company from separation to the present and until such time as she relinquishes her shares in the company. I will also order that she relinquish those shares to Mr. Tyrell immediately upon receipt of payment for her one half interest in the company as I have valued it, subject to the taxation question.
2. Volkswagen Tiguan
- [34] As at separation, Mr. Tyrell had a Volkswagen Tiguan that was owned by DTA. It was valued at \$48,533 in DTA's 2019 financial statements. Mr. Tyrell has led evidence from a website called CarEdge that purports to give the depreciated value of cars. According to that website, the depreciated value of the Tiguan as at 2019 was \$41,832 and as of today it would have

depreciated 46.98% since 2016 when it was purchased new. The purchase price was \$47,124.33 before tax. On this basis, the value of the Tiguan at the date of hearing may be estimated at \$22,000.

[35] Ms. Tyrell has led evidence from Autotrader that suggests a current value of a Tiguan is between \$24,990 and \$30,198 depending on the model. Since there is no evidence of what this model is, I can only assume it is the base model and infer from this evidence that the Autotrader assessment would give it a value of just under \$25,000.

[36] I see no reason to depart from the date of trial valuing the Tiguan. Splitting the difference between the two proposed values I set the value as at the date of the hearing at \$23,500 and order that Ms. Tyrell receive a credit for \$11,750 being half the value.

3. Digital Currency

[37] Mr. Tyrell has a digital currency account that he had held since before separation. He says its value as of April 17, 2020 was \$7,996.59. This is based on a screenshot he had of the account as of that date. He has not led evidence of its present value but says one half of a bitcoin was stolen from his digital wallet in 2022.

[38] Ms. Tyrell says the 2020 screenshot suggests that there was one Bitcoin and one Ethereum coin in Mr. Tyrell's digital wallet at that time. She says there are some other digital currencies in the wallet that have insignificant value. She has provided some online information from Yahoo Finance indicating the present value of one Bitcoin is \$131,864 and one Ethereum is now worth \$4,283. She asserts that Mr. Tyrell has failed to disclose financial information respecting the bitcoin account and in the absence of that disclosure I should order that Ms. Tyrell is entitled to a credit of \$68,073 being one half of today's value of one Bitcoin and one Ethereum. She is also suspicious of Mr. Tyrell's claim that half of a Bitcoin was stolen from the digital wallet and alleges that he is hiding it in another digital account.

[39] Apart from the lack of disclosure, I have no other reason to disbelieve Mr. Tyrell that some digital currency was stolen from the wallet. Ms. Tyrell's argument to the contrary is speculation. On the other hand, Mr. Tyrell has offered no explanation for the lack of disclosure of account statements for the digital currencies.

[40] I will order that within 30 days of the date of this judgment, Mr. Tyrell must produce account statements for the digital currencies, including records showing transfers of digital currency out of the account since separation. I will order that Ms. Tyrell is entitled to one half of the value of the digital currency account as of the date of this judgment. This gives Mr. Tyrell the benefit of the doubt with respect to the theft. However, if he fails to produce records that show the transactions for the digital currency since April 17, 2020, Ms. Tyrell will have liberty to apply for a further order with respect to digital currency that is not accounted for.

4. Coin Collection and Art

[41] Mr. Tyrell is in possession of a coin collection that is family property. He claims it has no real value. Ms. Tyrell says she has "no information" about its value but estimates it to be worth \$2,000. She does not explain the basis for this estimate or how she arrived at it when she has "no information" about its value.

[42] I am not able to find on this evidence that the coin collection has any value. I conclude that it should be treated as a household effect and Mr. Tyrell may keep it to offset the value of the household furnishings that Ms. Tyrell kept after separation.

[43] I make the same finding with respect to the parties' art.

5. Bank Accounts

[44] Ms. Tyrell seeks half the value of the balance in a TD Bank tax free savings account as of the date of separation. She has produced a bank statement showing the balance at July 31, 2019 as \$61,566.

[45] Mr. Tyrell concedes this is family property but argues it should be valued as at October 31, 2019 when he now says the parties separated. The value on that date was \$33,386. Mr. Tyrell says money was taken out of the account between July 31 and October 31 to pay down family debt.

[46] I find the October 31, 2019 date is the fair one for valuation as that is when the parties separated their finances. Ms. Tyrell is entitled to a credit of \$16,693 plus accrued interest on that amount to the date of trial at the rates applicable to that account.

[47] Mr. Tyrell says he is entitled to half the value as at October 31, 2019 of a TFSA in Ms. Tyrell's name. That value was \$2,345. I find Mr. Tyrel is entitled to a credit for half that amount.

[48] The parties agree that the amounts in their other bank accounts were negligible at separation and neither pursues claims to those amounts. C. Family Debt

1. TD Line of Credit

[49] The parties agree that a TD line of credit in the amount of \$25,269 at separation is a family debt to be equally divided and I will make that order. Mr. Tyrel has since paid that debt off and he will be credited for half that amount.

2. DTA Ltd. Visa Card

[50] Mr. Tyrell claims that a \$10,092 balance on a DTA Visa card is a family debt but this was a debt of the company that I infer was included in the debt shown on DTA's balance sheet for the fiscal year ending September 30, 2019. I have therefore already accounted for it in valuing DTA as family property. I make no further order respecting this debt.

3. RBC Visa

[51] Mr. Tyrell claims that a \$5,030 balance on a joint RBC Visa is family debt. Ms. Tyrell argues this debt was originally double that amount and she addressed her half of it through a consumer proposal she entered into in 2023. Mr. Tyrell disputes that any part of the debt was forgiven and the consumer proposal only had the effect of shifting the full amount of the debt to him. He says the balance was accumulated entirely by Ms. Tyrell after separation, including \$5,000 for legal fees presumably for this litigation charged to the account on January 15, 2021.

[52] The consumer proposal is dated June 23, 2023. There is no evidence indicating that the RBC Visa was reduced as a result. Nor is there evidence explaining why this joint Visa card was not cancelled as of separation. I find the full \$5,030 balance on this credit card is a family debt to be equally divided between the parties. Since Mr. Tyrell has paid this off, he is to receive a credit for half the amount as a credit.

4. CIBC Visa

[53] Mr. Tyrell claims a \$13,000 balance on a CIBC Visa card in his name is a family debt but he has not produced evidence of this debt. He claims it is referenced with an approximate value in a 2019 F8 Financial Statement but that statement is not in the application record. He has not proven this debt and I make no order in respect of it.

5. Tiguan Car Loan

[54] Mr. Tyrell claims \$26,000 as a family debt for the Tiguan car loan. As with the CIBC Visa, he has produced no documents to support that claim. Regardless, the car is in his company's name and I infer that the loan is part of the company's \$54,465 liability as at September 30, 2019 and thus has already been accounted for in valuing the company. I find the car loan is not a family debt.

6. Canada Revenue Agency

[55] Mr. Tyrell claims personal income tax debts of \$22,815 for 2018 and \$38,862 for 2019. Both are shown on his Notice of Assessment dated November 19, 2020. I accept the 2018 debt and most of the 2019 debt are family debts but I would prorate the 2019 debt to the first 10 months of 2019 to credit Ms. Tyrell for tax debt that accumulated after the parties had begun separating their finances. I therefore find that \$55,000 of the CRA debt is family debt to be divided equally. D. Summary of Family Property and Debt

[56] Subject to assessing the present value of the digital currency account and reconciling tax implications for valuing DTA, the following table summarizes my findings on family property and debt:

Item	Value	Equalization Credit	Claimant	Respondent	Family Property
DTA Ltd	\$104,000	\$52,000*	Tiguan	\$23,500	\$11,750
Digital Currency	TBD	TBD	Coins/Art	\$0	\$0
TD TFSA	\$33,386	\$16,693	Claimant TFSA	\$2,345	\$1,172
Family Debt	TD Line of Credit	\$25,269	\$12,635	RBC Visa	\$5,030
CRA Debt	\$55,000	\$27,500	Net	\$80,443**	\$43,822**
Total Equalization Payment	\$36,621**	(\$36,621)**	*subject to addressing tax issues **subject to adjustments for tax on DTA value and valuing of digital currency account.		

IV. Spousal

Support A. Legal Principles

- [57] Entitlement to spousal support is to be determined in accordance with the objectives set out in s. 15.2(6) of the Divorce Act or s. 161 of the FLA. Here, the parties propose support be addressed under the Divorce Act. Section 15.2(6) reads: 15.2 (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time. These provisions are largely mirrored in the FLA.
- [58] There are three bases for entitlement to spousal support: contractual, compensatory, and non-compensatory: *Bracklow v. Bracklow* [1999] 1 S.C.R. 420 at para. 37. The latter two are in issue here.
- [59] Entitlement to compensatory support is grounded in sacrifices made by one spouse during the relationship, usually to the benefit of the other spouse, that have impaired the sacrificing spouse's economic prospects. Justice Rowles explained the purpose of compensatory support as follows in *Chutter v. Chutter*, 2008 BCCA 507:
- [50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise. The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success. In *Moge v. Moge* [1992] 3 S.C.R. 813, the Supreme Court of Canada observed, at 867-868: The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

- [51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse". [Underlining is Rowles J.A.'s. Citations omitted.]
- [60] Non-compensatory support is aimed at narrowing the gap between the means and needs of the spouses on marital breakdown. It is grounded in a "social obligation model" in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the government: *Chutter* at para. 54, *Bracklow* at para. 23. In a long relationship, such as this one, the parties' standard of living during the relationship helps inform a spouse's "needs" for support: *Chutter*, paras. 57-59. The objectives of relieving economic hardship from the breakdown of the marriage and promoting economic self-sufficiency should bear some relationship to this factor: *Hodgkinson v. Hodgkinson*, 2006 BCCA 158 at para. 69.
- [61] Determining the amount and duration of spousal support is informed by the factors in s. 15.2(4) of the Divorce Act (largely mirrored in s. 162 of the FLA): 15.2(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.
- [62] Courts must take guidance from the Spousal Support Advisory Guidelines ("SSAG") in assessing spousal support. In *Sebok v. Babits*, 2022 BCCA 2 at para. 24 the Court of Appeal confirmed that while courts are not necessarily bound by the SSAG, reference to them is "required as part of the process for quantifying support" and exceptional circumstance are required to justify a substantial departure from them. Reasons should be given for departing from the SSAG: *Sebok* paras. 25-26.
- [63] The SSAG provide ranges - low, mid, and high - for spousal support. These are designed to allow for adjustments to the amount and duration of support to accommodate the specific circumstances of each case in light of the factors and objectives set out in the Divorce Act, ss. 15.2(4) and (6) and the FLA, ss. 161 and 162: SSAG, Chapter 9, p. 98. Factors such as a strong or weak compensatory claim, greater or lesser need, stronger or weaker ability to pay by the payor, and the presence or absence of family property to provide support are among

the factors that might guide a decision of where to place support within the range and what adjustments to amount or duration might be appropriate: SSAG, Chapter 9 pp. 98-101; Spousal Support Advisory Guidelines: The Revised User's Guide, 2016 pp. 45-48. B. Entitlement to Spousal Support

- [64] I find that Ms. Tyrell is entitled to spousal support on both a compensatory and non-compensatory basis. This was a long (28-year) marriage during which Ms. Tyrell was largely a stay-at-home spouse and parent who was the primary caregiver for the parties' two children. There is no evidence of career paths or opportunities that she sacrificed to take on this role and in fact there is evidence of several unsuccessful attempts by Ms. Tyrell to move into the paid workforce, including two failed businesses and an unsuccessful attempt to work as a bookkeeper at DTA. Nevertheless, with Ms. Tyrell taking on primary responsibility for raising the two children, Mr. Tyrell was freed up to pursue his career as an architect and that provides a basis for compensatory support: Chutter, para. 51.
- [65] With respect to non-compensatory support, this long marriage ended when Ms. Tyrell was 57 years-old. That is a difficult age to re-enter the paid workforce after more than two decades of being a stay-at-home spouse and parent. There is no evidence that Ms. Tyrell has a particular skill that positions her to find work. In fact, the evidence indicates that she has not been able to establish herself in the paid workforce in the past, including the failed attempt to work for Mr. Tyrell through DTA which, at the time, was probably a more sympathetic and accommodating employer than might be expected outside of the family.
- [66] Ms. Tyrell says she has been unable to work since at least 2017 due to ongoing treatments relating to her breast cancer and the continuing chronic effects from her 1981 car accident. In a July 2023 affidavit she provided letters from three doctors addressing her ability to work. Ms. Tyrell's family physician, Dr. Shiva Tayebi, states in a November 15, 2022 letter that Ms. Tyrell is not able to work due to "extensive mental and physical symptoms". Dr. Tayebi refers to paresthesia to the extremities, neck and lower back pain, muscle weakness, balance issues, memory fog, and anxiety and depressive symptoms that arose following her 2017 cancer treatment. Dr. Tayebi provides more detail in an April 17, 2023 letter that sets out Ms. Tyrell's symptoms in some detail and summarizes her medical history and her course of treatment. With respect to Ms. Tyrell's ability to work, Dr. Tayebi writes: Ms. Tyrell has been suffering from several chronic conditions over the last 40 years. She has been dealing with a significant amount of mental and physical trauma. Throughout these years she has been compliant with the prescribed medications and procedures and followed by several specialists including neurologists, pain specialists and physical rehabilitation specialist until present. Unfortunately, despite extensive therapy, Ms. Tyrell physical and mental conditions have not improved. She has been dealing with pain on a daily basis which has also affected her activity of daily living. It is to my understanding that her pain is permanent and it is unlikely that Ms. Tyrell would be able to return to any type of work in the near future.

- [67] In a June 5, 2023 letter, Deirdre Goudriaan, a trauma counsellor states that Ms. Tyrell has attended some 43 counselling sessions since March 12, 2018.
- [68] Mr. Tyrell is skeptical about the ongoing effects of Ms. Tyrell's breast cancer. He says it was treated in 2017 with a double mastectomy and he believes any ongoing medical procedures are unrelated cosmetic surgeries. He points out that she has not led any medical evidence explaining these ongoing treatments and has not disclosed medical records when asked to do so. He argues the court should draw an adverse interest from her failure to do so, particularly because the lack of medical disclosure has prevented him from exploring the veracity of her claims as to the nature of her ongoing medical treatments and to question the opinions of the doctors as set out in the letters. He also points out that the letters are hearsay opinion evidence that are inadmissible as they are not in the form of a sworn statement.
- [69] At the continuation of the summary trial Ms. Tyrell attempted to put into evidence a flash drive that I was told contains some 1,000 pages of medical records. I declined to receive that evidence given its late disclosure and the lack of accompanying medical evidence to allow the court to make sense of this large volume of material.
- [70] Ultimately, I find the dispute over Ms. Tyrell's ongoing medical challenges does not have significant bearing on the question of spousal support. To the extent that it might elevate Ms. Tyrell's need and potentially suggest spousal support at the higher end of the SSAG scale, I agree with Mr. Tyrell that disclosure of Ms. Tyrell's medical records ought to have happened at a much earlier stage and the medical evidence should have been in the proper form with a more detailed explanation of Ms. Tyrell's condition and prospects for recovery. However, I accept that Ms. Tyrell own evidence that she has had medical challenges that impact her ability to work. and I am satisfied that Ms. Tyrell's age, her long absence from the paid workforce, and her several unsuccessful attempts to engage in paid work establish a needs-based entitlement to spousal support.
- [71] Moreover, this was a 28-year marriage during which Mr. Tyrell was the sole income earner while Ms. Tyrell worked in the home. The parties' standard of living during the relationship helps to inform Ms. Tyrell's need for support: Chutter, paras. 57-59. Mr. Tyrell has considerable advantage over Ms. Tyrell to sustain a standard of living through the architecture practice he built during the marriage and the principles of non-compensatory support place a burden on him to meet Ms. Tyrell's needs through spousal support: Chutter at para. 54, Bracklow at para. 23. To achieve some measure of equity in trying to maintain the standard of living these parties had during the relationship and having regard to all the circumstances of this case, I find non-compensatory support is required. C. Assessment of Income

1. Legal Principles

- [72] Income for the purposes of SSAG is determined using the Federal Child Support Guidelines, ss. 15-20 (the "Guidelines"): SSAG, s. 6.1; Chutter at para. 111. The steps for determining the parties' respective incomes was summarized in *Vincent v. Vincent*, 2012 BCCA 186 as follows:
- [35] All determinations of child support begin with finding the spouse's Line 150 income, a relatively straight-forward step one. The second step is to make whatever adjustments to that amount are required by Schedule III [to the Federal Child Support Guidelines]. Once these two steps are completed, the court must look to section 17 to 20, to determine whether any of the exceptions set down in those provisions applies, and, if so, what effect they should be given on the facts of the case.
- [73] The parties have not directed me to anything in Schedule III of the Guidelines that may apply in this case but s. 18 is relevant. Section 18 provides that where a spouse is a shareholder of a privately held corporation and the court determines the spouse's income as reflected in the spouse's tax return does not fairly reflect all the money available for support, the court may calculate the spouse's income with consideration of some or all of the income of the corporation. In *Namdarpour v. Vahman*, 2019 BCCA 153 Justice Savage explained the "simple" rationale for s. 18 as follows:
- [121] The reason for considering the income of a corporation is straightforward. Where a person owns or controls a corporation, the income actually paid by the corporation may not represent the total income available to be paid. By underpaying him or herself, an owner could artificially reduce the income available to pay support unnecessarily or arbitrarily-- i.e., reduce income by choice. A corporation could be used as a vehicle to accumulate savings, which would depress support payments. Section 18 allows the court to "lift the corporate veil" to ensure that money received as income by the payor spouse fairly reflects all the money available for payment of support [citations omitted]
- [74] Section 18 does not require the court to assess income based on pre-tax earnings of the corporation but there is a presumption that the company's pre-tax earnings are available unless there is clear evidence that the corporate income is needed to sustain the company as a viable enterprise: *Hausmann v. Klukas*, 2009 BCCA 32 at paras. 51-52. The court must consider the nature of the company's business and any evidence of legitimate calls on the corporate income for business purposes: *Kowalewicz v. Kowalevich*, 2001 BCCA 450 at para. 58. The onus is on the payor (here Mr. Tyrell) to establish that the corporation's pre-tax income is not available for distribution because of legitimate calls on that income for company purposes: *Namdarpour*, para. 124.
- [75] A corporation may also be a vehicle through which a spouse expenses items such as phones or vehicles that have some personal benefit to the spouse and would ordinarily be paid for out of the spouse's income. Thus, in addition to using some or all of the corporation's net pre-tax income to calculate a spouse's income, the court may also add back into that income items that show as expenses of the company that have a personal benefit to the spouse or

that are unusual such as home office expenses and unreported cash: *M.A.M. v. D.L.L.*, 2018 BCSC 2114 at para. 104.

- [76] As with a corporation's pre-tax earnings, the onus is on the payor (Mr. Tyrell) to prove the reasonableness of business expenses when those are put in issue: *M.T. v. J.S.* 2023 BCCA 64 at paras. 8-10; *C.M. v. V.M.*, 2016 BCSC 2144 at paras. 39-40. It is not for the court to second-guess business decisions (*Kowalewich* at para. 44) but it is for the court, when asked to do so, to scrutinize whether a particular expense has a personal benefit for the payor.

2. Mr. Tyrell's Income

- [77] Mr. Tyrell's Line 150 income on his tax returns is based primarily on dividends he has drawn from DTA. It also includes a nominal amount of employment income for 2018 and 2019 which I infer has to do with an accounting practice. Starting in 2019, his income includes Canada Pension Plan retirement benefits and, starting in 2020, Old Age Security (OAS) which is subject to a clawback.

- [78] The following table summarizes Mr. Tyrell's personal income as shown in his tax returns. Note that the OAS amount is net of any clawback shown on the tax return or the Notice of Assessment: David Tyrell 2023 2022 2021 2020 2019 2018 Employment - - - \$3,500 \$3,500 Dividends \$117,300 \$78,775 \$54,390 \$103,500 \$195,500 \$238,960 CPP \$10,066 \$9,451 \$9,203 \$9,112 \$8,942 \$8,741 Net OAS \$4,183 \$5,771 \$7,487 \$0 - - Total Income \$131,549 \$93,997 \$71,080 \$112,612 \$207,942 \$251,201

- [79] By comparison, the following table summarizes DTA's net (after expenses) pre-tax income. This is not a year-for-year comparison since DTA's fiscal year ends on September 30 but it provides a reasonable indication of the differences between Mr. Tyrell's personal income and his company's pre-tax net income: DTA Income 2022-23 2021-22 2020-21 2019-20 2018-19 2017-18 Gross Revenues \$204,847 \$322,736 \$194,297 \$190,388 \$274,199 \$406,379 Net pre-tax income \$92,297 \$236,617 \$127,762 \$83,566 \$180,724 \$319,987

- [80] In comparing Mr. Tyrell's personal income with the company's net pre-tax income, some years stand out as anomalous. In 2018, the year before separation, the company's net income before taxes was more than \$70,000 higher than Mr. Tyrell's personal income. Since there is no evidence of DTA's financial statements before 2018, there is no clear picture of what happened with that \$70,000 but I note the company had \$160,044 in retained earnings at the end of its 2017-18 fiscal year which suggests that at least a portion of the \$70,000 was left in the company for the time being.

- [81] In 2019 Mr. Tyrell's income was approximately \$27,000 higher than DTA's pre-tax income for its fiscal year ending September 30, 2019. His 2020 income was around \$30,000 more than DTA's pre-tax income for its 2019-2020 fiscal year. These two years largely cancel out the \$70,000 difference from 2018.

- [82] For 2021, Mr. Tyrell's personal income was around \$55,000 less than DTA's pre-tax net income for 2020-21, suggesting that amount was left in the company that year. Indeed, DTA's retained earnings at the end of the 2020-21 fiscal year stood at \$179,817 which is approximately \$66,000 higher than the previous year. In 2022 Mr. Tyrell's personal income was approximately \$140,000 less than DTA's pre-tax income for 2021-22 and the company's retained earnings rose by \$154,042 to \$333,859, suggesting Mr. Tyrell left a substantial amount of money in the company that year. In 2023 Mr. Tyrell's personal income was \$47,594 higher than DTA's pre-tax income for 2022-23 and retained earnings dropped by around \$23,000 to \$310,654.
- [83] Given the sometimes-significant differences between Mr. Tyrell's personal income and DTA's pre-tax income, I agree with Ms. Tyrell that this is an appropriate case in which to apply s. 18 of the Guidelines and assess Mr. Tyrell's income for spousal support purposes using DTA's earnings. DTA is a privately-held corporate vehicle through which Mr. Tyrell operates as a sole-practising architect. It is not a company that requires significant capital investment and its expenses are likely paid through its ordinary revenue stream. It has little in the way of overhead given that Mr. Tyrell operates out of a home office and has done so since before separation. Mr. Tyrell has the onus of showing that the company's pre-tax earnings are not available for spousal support and he has not led evidence to meet this onus. I will therefore assess his income using DTA's pre-tax income.
- [84] I also agree with Ms. Tyrell that some of DTA's expenses should be added back into Mr. Tyrell's income as many provide a personal benefit to him. However, despite Mr. Tyrell's lack of evidence explaining these expenses, I would not add back the full amount that Ms. Tyrell suggests. I address each category of expense as follows:
- a) Meals: There is no evidence from Mr. Tyrell explaining meals and how they relate to his business. In the absence of an explanation, I would add the full amount of meals back into his income.
 - b) Employee Benefits: The cost to the company for employee benefits is relatively high in 2018-2020 which are years when Ms. Tyrell was still on DTA's benefits plan. Since DTA has no employees, these benefits could only have been for the personal benefit of Mr. and Ms. Tyrell. I would therefore add one half of the pre-2021 amounts to Mr. Tyrell's income on the assumption (in the absence of other evidence) that he and Ms. Tyrell shared equally in those benefits. I would also add one half to Ms. Tyrell's income for those years to account for the benefit to her. Starting in 2021, I would attribute the full amount of the benefits to Mr. Tyrell as he was the only one receiving them, although by then the cost was significantly less.

- c) **Amortization:** I would add the full amount of the amortization cost back to the DTA's pre-tax income. The amortization costs relate to the company's equipment which show as assets with a book value on DTA's balance sheet. I have not included this equipment in valuing DTA itself since it likely has no significant liquidation value. Thus, the amortization costs for that equipment should not be deducted from the company's pre-tax income for the purposes of calculating income available to Mr. Tyrell for support purposes.
 - d) **Office Expenses:** Ms. Tyrell argues the full amount of office expenses as shown on the DTA financial statements should be added back to Mr. Tyrell's income, presumably because he works out of a home office. However, the home office costs are shown in the financial statements under "occupancy costs" and, while Mr. Tyrell has led no evidence to explain the office costs, I accept some cost is to be expected for maintaining the office and the business, and the amounts shown on the financial statements do not appear excessive. I would therefore not add an amount for office expenses back to Mr. Tyrell's available income.
 - e) **Occupancy Costs:** Mr. Tyrell has worked out of his home since before separation and continues to do so now in a live/work space in a condominium tower in Vancouver. He therefore claims at least a portion of this space as a business expense. Ms. Tyrell argues the full amount should be added back in to Mr. Tyrell's income because it constitutes a substantial contribution to his personal housing expense. Mr. Tyrell argues it should not be added back because if it were not for his home office space, he would have to lease another commercial space which would bring down his income and consequently the spousal support that Ms. Tyrell receives. I accept Mr. Tyrell's position to a point but observe that he still receives a significant personal benefit by working out of his home and expensing some of his home costs to the company. There is no evidence that he would be living in a less expensive home if he did not need to use it as a home office. I would add back in one half of the occupancy costs to Mr. Tyrell's income.
 - f) **Utilities, Telephone, and Vehicle:** Ms. Tyrell argues one half of each of these items should be added back into Mr. Tyrell's income. I agree with respect to the phone and the vehicle, particularly given the absence of evidence about how and to what extent the car is used for work. However, the utilities are minor (in the range of \$500 to \$700 per year) which is likely a small fraction of Mr. Tyrell's home utility cost and does not seem out of line for the type of business.
- [85] Based on the above, I have calculated Mr. Tyrell's income for spousal support purposes by doing the following:
- a) I start with the pre-tax net income of DTA for each of its fiscal years.
 - b) I add back into DTA's net income the amounts for each of the above categories of expenses for the applicable fiscal year. I have used the DivorceMate program which grosses those expenses up to account for tax that would be applicable to those items.

- c) I have then adjusted the amounts from DTA's fiscal year (October 1 to September 30) to make them applicable to the calendar year using the same approach outlined in the table at para. 8 of Ms. Tyrell's affidavit #8.
- d) I have then added in Mr. Tyrell's CPP and OAS incomes for each calendar year, adjusting the OAS to account for the clawbacks reflected in Mr. Tyrell's tax returns and notices of assessment.
- e) Since DTA's 2023-24 financial statements are not in evidence, I have used the adjusted income for the 2023 calendar year to assess the income for 2024. I prefer this approach over using an average of three years because Mr. Tyrell indicates that his business is winding down as he nears retirement.

[86] The results of this analysis are shown in the table at para. 94 below.

3. Ms. Tyrell's Income

[87] Ms. Tyrell's income is very small and consists mostly of Canada Pension Plan disability benefits. Mr. Tyrell argues the Court should impute income to Ms. Tyrell under s. 19 of the Guidelines on the basis that she is intentionally underemployed. He argues that she is capable of working at least a minimum wage job but chooses not to.

[88] I am not persuaded that I should impute income to Ms. Tyrell under s. 19 of the Guidelines. Imputation of income for intentional underemployment requires a consideration of what is reasonable in the circumstances having regard to the spouse's age, education, experience, skills, and health: *Watts v. Willie*, 2004 BCCA 600 at para. 16. As I have discussed earlier, while Ms. Tyrell's evidence and disclosure of her medical circumstances is lacking, I am not persuaded she is capable of moving into full-time employment. I have discussed some problems with the medical evidence she has led but I consider the fact that she has been receiving CPP disability payments for several years now provides some support for her claim to be unable to work, as does her history of failed attempts at working.

[89] Promoting the economic self-sufficiency of each spouse within a reasonable time is one objective of spousal support, but the Supreme Court of Canada has rejected characterizing it as a "duty": *Leskun v. Leskun*, 2006 SCC 25 at para. 26. It is a factor to be considered along with other objectives and is qualified by the words "in so far as practicable". Imputation of income must be evidence-based and I have not been provided with evidence that minimum wage job awaits every 57-year-old woman following the breakdown of a 28-year marriage during which she was out of the paid workforce.

- [90] I will impute one half of DTA's employee benefits costs for 2019 and 2020 to Ms. Tyrell's income for those years since I have added the same back to Mr. Tyrell's (or DTA's income). Beyond that, I would not impute any further income to Ms. Tyrell as the evidence does not support a conclusion that she is reasonably capable of re-entering the full-time workforce at this stage of her life. My conclusions on her income are set out in the table at para. 94. D. Level and Duration of Support
- [91] Mr. Tyrell argues that any spousal support should be at the low end of the range under the SSAG because Ms. Tyrell has not sacrificed career opportunities to work in the home or raise the family. Ms. Tyrell argues support should be at the high end given her need and entitlement to compensatory support.
- [92] I reject Mr. Tyrell's position. As I have said earlier, sacrificing career opportunities is not the only basis for compensatory support. Ms. Tyrell's work in the home as the primary caregiver of the (now grown) children freed up Mr. Tyrell to pursue his career and build his architectural practice. That is a basis for compensatory support: Chutter para. 51. The fact that Ms. Tyrell may not have sacrificed her own career opportunities is a factor to consider in the level of support but it does not negate entitlement to compensatory support.
- [93] I find there is potential foundation for Ms. Tyrell's position that spousal support at the high end of the scale is appropriate given the length of the marriage, her age, lack of skills, education, and her health. Had the evidence of her medical condition been stronger and had she disclosed her medical records in a timelier way, the court might have been in a position to better understand the health issues and that might have indicated spousal support at the higher end of the range. However, in the absence of that evidence and the late disclosure of the large volume of medical records, I am not able reach that conclusion.
- [94] I find that support at the mid range of the SSAG is appropriate on the evidence of this case. Mr. Tyrell has been paying spousal support at varying amounts since November 2019 and since August 2023 in the amount ordered on an interim and without prejudice basis by Tammen J. Using the methodologies for calculating income I have discussed earlier, I would order retroactive spousal support and adjustments based on support paid in the past as follows:
- | Year | David's Income | Kristine's Income | SSAG (mid-range) | Support Paid | Balance Due |
|--------|----------------|-------------------|------------------|--------------|-------------|
| 2019 | \$211,114 | \$7,100 | \$14,876* | \$16,000 | (\$1,124) |
| 2020 | \$149,344 | \$40,839 | \$47,471 | \$71,000 | (\$23,529) |
| 2021 | \$200,110 | \$11,944 | \$82,323 | \$72,000 | \$10,323 |
| 2022 | \$224,814 | \$12,266 | \$92,990 | \$72,000 | \$20,990 |
| 2023 | \$141,761 | \$17,869 | \$56,305 | \$34,024 | \$22,281 |
| 2024** | \$141,761 | \$17,869 | \$56,305 | \$54,000 | \$2,305 |
| Totals | \$350,270 | \$319,024 | \$31,246 | | |
- *November and December only **Based on 2023 incomes
- [95] Mr. Tyrell seeks detailed declarations that the payments he made to the date of the Tammen J. order are to be included in his tax returns for the applicable years and deductible from Ms. Tyrell's income for the applicable years. Essentially, he seeks an order shifting the tax burden for those past payments from him to Ms. Tyrell.

- [96] I am not aware of my authority to make such an order and I decline to do so. I will make a declaration that the specific payments outlined in the above table have been made as spousal support by Mr. Tyrell for Ms. Tyrell's benefit. If that declaration is insufficient to allow Mr. Tyrell to seek retroactive adjustments to his tax returns, I would invite the parties to work out a suitable adjustment to the equalization payment that will flow from this judgment to address that issue. If they cannot work the issue out between them they may seek to address the issue before me. To be clear, if the parties cannot reach agreement, I will make an order to fairly adjust the equalization payment. The resolution should credit Mr. Tyrell for the tax he unnecessarily paid because he was not able to deduct the support payments from his taxable income but it should not burden Ms. Tyrell with an unduly larger payment than she would have made if she had been called upon to pay taxes on those payments. Some compromise on the part of both parties might be necessary to achieve equilibrium, although Ms. Tyrell's past refusal to acknowledge those payments as spousal support for tax purposes would be a relevant consideration.
- [97] With respect to prospective spousal support, the parties' 2023 income provides the best available information at this point and I will order that Mr. Tyrell pay spousal support in the amount of \$4,692 on the first day of each month effective January 1, 2025. That is the mid-range of the SSAG. Mr. Tyrell's submission that his support obligations should now come to an end - just five years after the breakdown of a 28-year marriage in which Ms. Tyrell was not in the paid workforce - has no support in law or fact. Given the length of the marriage and the age of the parties, the term of support is indefinite.
- [98] Mr. Tyrell seeks a review of support at age 70 which is less than a year from now. He suggests such a short period because he expects to retire at age 70. I will not order a review at that date as it is only speculative that he will retire at age 70. Once Mr. Tyrell decides to retire, that will be a material change in circumstances in which case he may then seek a review. V.
- Conclusion

[99] I would therefore make the following orders:

- a) the parties be divorced in the usual terms;
- b) there will be a division of property and debt as set out in the table at para. 56 of these reasons;
- c) Mr. Tyrell is assessed with retroactive spousal support in the amounts set out in the table at para. 94 of these reasons and given credit for the payments set out in that table;
- d) Ongoing spousal support in the amount of \$4,692 per month payable by Mr. Tyrell on the first day of each month starting January 1, 2025 and subject to review upon Mr. Tyrell's retirement.

[100] I would also make a declaration that the payments made by Mr. Tyrell as outlined in the table in para. 94 of these reasons were for spousal support for Ms. Tyrell's benefit. If further steps are necessary to rectify additional tax Mr. Tyrell has had to pay by not being able to deduct these payments from his income, the parties should follow the procedure I have outlined in para. 96 of these reasons.

[101] I order that the parties bear their own costs of this proceeding. "Kirchner J."

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