
CANADA / JUDGMENT

V.R. v. R.Z.

2019 BCSC 658

COURT

Supreme Court of British Columbia

DECIDED

29 April 2019

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2019 BCSC 658 V.R. v. R.Z.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

V.R. v. R.Z.,

2019 BCSC 658

Date: 20190429

Docket: E133295

Registry: Vancouver

Between:

V. R.

Claimant

And

R. Z.

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Claimant:

Appearing in person

Counsel for the Respondent:

Appearing in person

Place and Date of Trial/Hearing:

May 8 - 9 and

August 13 - 14, 2018

Place and Date of Judgment:

Vancouver, B.C.

April 29, 2019

- [1] These reasons for judgment are issued pursuant to two notices of application. An amended notice of application filed by V.R. on April 4, 2018 sought sixteen separate orders dealing with financial disclosure, a fine to be imposed on the respondent under s. 213(2) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], child support including retroactive child support and arrears of child support, that R.Z. repay in excess of \$330,000 into a trust account which had been established for the children of these parties, payment of s. 7 special and extraordinary expenses and many other orders.
- [2] R.Z. filed a notice of application on March 15, 2018 in which he seeks ten orders, all of which deal primarily with parenting issues including parenting time, the appointment of a parenting coordinator, repayment of child support and repayment of s. 7 special and extraordinary expenses allegedly "overpaid" by R.Z. in prior years.
- [3] The hearing lasted over four days and involved thousands of pages of documents in thirteen binders and additional documents, the vast majority of which were of little or no assistance other than to express the ongoing hostility between the parties.

Factual Background

- [4] These parties commenced cohabitation in 1998, married in 2000, separated in June of 2009 and were divorced in 2014.
- [5] There are two children of the marriage, S.R.Z., a daughter now seventeen years of age, and M.R.Z., a son, now thirteen years of age. The claimant, V.R., also has a daughter from a prior relationship, S.R., who is currently twenty-three years of age.
- [6] The separation of these parties in 2009 was the second separation, the first having occurred in 2004. The claimant has alleged that since at least 2004, the respondent inflicted sexual, emotional and physical abuse upon her which resulted in the respondent seeking and obtaining sexual addiction counselling following which the parties reconciled.
- [7] The second separation occurred in 2009 following the claimant finding the respondent in bed with the claimant's older daughter, S.R., who at the time was fourteen years of age.
- [8] In July of 2013 the parties entered into a comprehensive separation agreement ("the Agreement"). The relevant provisions to these applications include:

- Regarding parenting issues, primary residence of S.R.Z. and M.R.Z. were to be with V.R. with generous and detailed parenting time for R.Z. with the two children of the marriage during weekends, weeknight visits, school break, birthdays, summer vacation and other occasions;
 - Spousal support payable by R.Z. payable with lump sum payments totalling \$30,000 followed by monthly spousal support on a reducing scale ending on January 31, 2018 after which spousal support was to terminate;
 - Child support for S.R.Z. and M.R.Z. commencing February 1, 2013 in an amount of \$3,500;
 - Support payments were based upon an income attributed to R.Z. of \$137,500 and \$0 to V.R.;
 - Financial disclosure indicated nominal assets in the name of V.R. other than the family home registered jointly in favour of the parties with corporate investment on the part of R.Z. and significant debt;
 - Certificates of Independent Legal Advice were signed by lawyers representing both parties.
- [9] Following execution of the Agreement, the claimant has alleged failures of the respondent to provide full disclosure, even when he has been ordered by this court to do so, including the failure of the respondent to file an executed and sworn F8 Financial Statement.
- [10] A series of applications were made by the parties commencing in early 2015 relating to support, parenting time and conduct of the parties.
- [11] R.Z. set an application for hearing on April 15, 2015 to reduce his obligation for child support but failed to appear to the application. Intending to respond to the application, V.R. filed an F8 Financial Statement which included her income tax information for the years 2012 to 2014 inclusive. The application was adjourned and R.Z. was ordered to give V.R. seven days notice of a new hearing date with costs of the day of April 15, 2015 payable by R.Z. in an amount of \$500.
- [12] The application by R.Z. was heard by Mr. Justice Butler (as he then was) on June 26, 2015 at which time child support was reduced to \$2,000 per month retroactive to January 1, 2015. The claimant, V.R. has deposed that Butler J. ordered financial disclosure by R.Z., however, the form of order prepared by the parties did not reflect an order in that respect. Applications set for the same date respecting spousal support were adjourned generally.
- [13] A further order was granted by Master Scarth on October 6, 2015 by consent of the parties which, among other orders restraining contact between the parties and their families, included the following:
- a consent order that the respondent, R.Z., pay the claimant "\$43,000 in outstanding arrears with FMEP" which included "all past monies owed to the Claimant to the period ending September 30, 2015";

- the respondent was to pay \$600 per month for each child for special or extraordinary expenses under s. 7 of the Federal Child Support Guidelines [Guidelines] commencing October 1, 2015;
- the respondent pay \$12,195 directly to the private school the children of the marriage were attending for school fees for the year 2015/2016;
- the children will receive counselling with Liz McKenna.

[14] On January 16, 2018, Master Harper was faced with an application by V.R. for disclosure by R.Z. on which R.Z. was represented by experienced counsel and V.R. was again self-represented. R.Z. was ordered to provide the following documents as sought in a notice of application filed by V.R. on December 22, 2017:

- a) A current completed Financial Statement (F8);
- b) A copy of every personal income tax return filed for each of the three most recent taxation years;
- c) A copy of every notice of assessment and re-assessment issued for each of the three most recent taxation years;
- d) A copy of every corporate tax return filed for each of the three most recent taxation years;
- e) The financial statements, including income statement, balance sheet and notes, as prepared by an accounting firm, of each corporation and its subsidiaries for the three most recent taxation years;
- f) The financial statements, including income statement, balance sheet and notes, as prepared by an accounting firm, and the monthly bank statements for 621892 B.C. Limited for 2012, 2013 and 2014.
- g) A statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;
- h) Any share purchase agreement or other documentation, including Management, Executive or Transitions Agreements, concerning the respondent's ongoing involvement in his companies.

[15] The balance of the claims included in the notice of application were adjourned to February 13, 2018.

[16] On February 13, 2018, V.R. and counsel for R.Z. appeared before Mr. Justice Milman to argue the balance of the orders sought in the notice of application filed December 22, 2017. To summarize the order of Milman J., he firstly ordered by consent that the notice of application of December 22, 2017 be heard on March 5, 2018 with regards to Part 1, paragraphs 1 (a) to (n) inclusive. As the disclosure sought in paragraphs 1 (a) to (h) had already been ordered to be produced by Master Harper, the adjournment only applied to

subparagraphs (i) through (n) inclusive. Mr. Justice Milman also adjourned the balance of relief sought by V.R. to be heard in a long chambers application on May 8 and 9, 2018. The relief to be argued on May 8 and 9, 2018 were items 2 through 6 of the notice of application dated December 22, 2017, which were:

2. Pursuant to s. 152 of the Family Law Act and the inherent jurisdiction of the court, an order to terminate paragraph 2 of the order . . . dated June 16, 2015 [the order of Butler J. which reduced child support to \$2,000 per month] thereby reinstating child support to \$3,500 per month retroactive to January 1, 2015.
3. Pursuant to s. 213(2)(e) of the Family Law Act . . . an order to require the respondent to pay \$15,939.51 to the respondent on February 1, 2018 constituting the forgiven amount of arrears for the period July 17, 2014 to September 11, 2015.
4. Pursuant to s. 213(2)(d)(iii) of the Family Law Act . . . an order directing the respondent be fined \$5,000.
5. Pursuant to s. 213(2)(d)(iii) of the Family Law Act . . . an order for the respondent to pay \$24,151.62 to the claimant by February 15, 2018 for legal costs incurred.
6. An order for costs.

[17] Mr. Justice Milman also ordered an application of R.Z. respecting parenting issues be heard on May 8 and 9, 2018 and that the notice of application filed December 22, 2017 scheduled for the same date be peremptory on R.Z.

[18] On March 5, 2018 the parties appeared before Master Vos who ordered:

1. The respondent shall provide to the claimant a list of all real estate purchased or sold by the respondent during the last 3 years or on behalf of the respondent during the last 3 years. This is to be produced by April 5, 2018;
2. The respondent is to produce to the claimant all personal bank account statements including RRSP statements for the last 3 years up to the present. Those personal bank account statements and RRSP statements are to be produced by April 5, 2018.
3. Parts 1(k) and (l) of the Notice of Application dated December 22, 2017 are adjourned generally;
4. The respondent is to produce to the claimant most recent British Columbia assessment authority notices issued for each property owned by the respondent or on behalf of the respondent . . . by April 5, 2018.

Part 1(n) of the Notice of Application of December 22, 2017 is adjourned generally.

[19] On April 4, 2018, V.R. filed a lengthy amended notice of application which came before this Court May 8 and 9, August 13 and 14, 2018 along with the notice of application of the respondent, R.Z., seeking orders regarding parenting issues.

- [20] At the conclusion of the hearing of this application on August 14, 2018, I granted an order that on "an interim basis, any parenting time between R.Z. and M.R.Z. should not be overnight".
- [21] The amended notice of application filed April 4, 2018 included orders sought and adjourned from the notice of application filed December 22, 2017 as amended by V.R. There was one amended application for disclosure and production which relates to R.Z.'s income relating to the Z Family Trust which states as follows:
1. Documents including trust settlement agreements and financial statements including for the [Z] Family Trust as set out in the Separation Agreement dated July 11, 2013, Schedule C in the amount of \$338,406.
- [22] The remainder of many orders sought by V.R. relate to specific amounts for which she is seeking payment which will be dealt with later in these reasons.
- [23] The orders sought between the parties' two applications are properly dealt with under common headings: disclosure; child support; s. 7 expenses; parenting arrangements; and the Z family trust.

Disclosure

- [24] The orders made for disclosure to date are those of Master Harper of January 16, 2018 and Master Vos of March 5, 2018. Although V.R. alleges a lack of compliance by R.Z. with previous orders in 2015, none of those orders involved the production of documents by R.Z. It was submitted by V.R. that, for example, Butler J. had ordered specific disclosure of documents on June 26, 2015, however, no disclosure was included in the formal order for that hearing.
- [25] The order of Master Scarth of October 6, 2015 likewise did not include any orders for disclosure on the part of R.Z.
- [26] Turning to the order of Master Harper made January 16, 2018 which included several orders for disclosure and production, I find as follows:
- a) R.Z. has not filed an executed and sworn F8 Financial Statement and remains in default. He did sign but did not swear to a form of F8 Financial Statement filed February 13, 2018 in which he asserts an employment income of \$140,000 but no income from corporations, several of which he purports to have interests in including 621892 B.C. Ltd., Radiance Energy Corp. and four companies he alleges are no longer in business, i.e., Solmac Consulting Services Inc., Inteluma, Bulls Arena and APARC systems. He lists debts, both personal and corporate totalling \$1,303,600 with no source information or details. R.Z. also lists ownership of a condominium of which he owns 100% on Richards St. in Vancouver, B.C. which he stated was assessed at \$2,380,000 with a mortgage of \$1,348,000 and a unit at Shannon Wall Centre assessed at \$1,200,000 upon which he had placed a deposit of \$240,000 for a sale to complete in 2019. Based upon all of the evidence, it is readily apparent that the

unsworn F8 Financial Statement cannot be relied upon and the Court draws an adverse inference against R.Z. regarding his finances as compared to what he has described in his unsworn F8 Financial Statement.

- b) Attached as part of Exhibit "D" to R.Z.'s affidavit filed February 13, 2018 are unsigned forms of income tax returns. The incomes stated by R.Z. are:

2012: \$20,000 - employment income (no T4s attached);

2013: \$127,911 - employment income (no T4s attached);

2014: \$86,130 - employment income (no T4s attached with attached assessment);

2015: \$120,000 - all income derived from an RRSP;

2016: \$42,008 comprised of \$29,500 business income, \$12,500 from an RRSP and \$8.80 dividends.

- c) There is one assessment attached to the above, and all copies are unsigned. Considering R.Z.'s continuing involvement with several companies over these years, the Court finds it unlikely that R.Z. has exhibited true copies of his T1 forms which also do not attach any T4s in the years when he earned employment income. In order to comply with the order of Master Harper, filed copies should be produced from CRA.
- d) In the materials filed by R.Z., he has produced one CRA assessment and remains in default for failing to file assessments for two of the three most recent years as of the date of the hearing.
- e) The fourth item ordered produced by Master Harper was for "a copy of every corporate tax return filed for each of the three most recent taxation years", however, there is no reference in the order to which companies are being referred to in the order. The Court has been unable to locate any corporate tax returns although there is evidence in R.Z.'s affidavits that he has an interest in several companies, some of which have been referred to above. The claimant must apply for an order specifying the companies for which corporate tax returns are to be produced or for financial statements, etc. for any corporation in which R.Z. has an ownership interest, directly or indirectly.
- f) The fifth item, item (e) in Master Harper's order for production, is for financial statements and other documents of "each corporation and its subsidiaries for the three most recent taxation years". Again, the companies have not been identified. Those few corporate documents which have been produced have limited relevance and appear to amount to selective as opposed to comprehensive disclosure.
- g) Item (f) is an order that R.Z. produce financial statements, an income statement, balance sheet and notes as prepared by an accounting firm and the monthly bank statements for 621892 B.C. Ltd. for the years 2012, 2013 and 2014. None of those documents have been disclosed.

- h) Item (g) is for R.Z. to produce a statement of a breakdown of "all salaries, wages, management fees or other payments or benefits paid to, or on behalf of persons or corporations with whom the corporation and every related corporation does not deal at arm's length". Again, no companies are specified and V.R. must specify the companies for which R.Z. must produce the above information. In his affidavit filed May 9, 2018, the second of four days of this hearing, R.Z. attached as Exhibit "J" a "transaction report" for Radiance Energy Corp. which reference in ledger form payments to several employees including R.Z. for 2018, 2017 and 2016 however, the list appears to be incomplete and is of little assistance and could not represent compliance with the order for Radiance Energy Corp., assuming it is one of the companies controlled by R.Z.
- i) Item (h) is an order that R.Z. produce various described documents but again does not specify which companies other than "concerning the respondent's ongoing involvement in his companies" and must be specified.

[27] On March 5, 2018, Master Vos ordered further production by R.Z., specifically:

1. "A list of all real estate purchased or sold by the respondent during the last 3 years or on behalf of the respondent during the last 3 years. This is to be produced by April 5, 2018" - R.Z. has attached to an affidavit reference to his ownership of a condominium at 1280 Richards St. in Vancouver and a strata lot he had agreed to purchase at Shannon Wall Centre and placed a down payment of \$240,000 and has complied with this order. That sale is to complete in 2019.
2. "All personal bank account statements including RRSP statements for the last 3 years up to the present".
3. This item was adjourned.
4. ". . . the most recent assessment authority notices issued for each property owned by the respondent or on behalf of the respondent by April 5, 2018". - An assessment has been produced for the Richards St. condominium, however, no assessments for the Shannon Wall Centre strata lot have been produced.

[28] With respect to Master Vos' order under item 2 that R.Z. disclose all personal bank account statements including RRSP statements for the last three years to present, the affidavits say the following:

- a) In her affidavit filed August 14, 2018, V.R. acknowledges having received statements from R.Z.'s former counsel of the personal RBC Bank account of R.Z. The personal bank statements cover the period between January 29, 2016 to February 28, 2018.
- b) In her affidavit filed April 30, 2018, V.R. attached as Exhibit "U" a copy of an RBC bank statement of R.Z. for the month of January 2015. Deposits to that account during January 2015 amounted to \$70,850. No statements were received for the balance of 2015.

- c) One statement was also received for a company owned by R.Z. and known as Solmac, which was maintained that the Bank of Montreal, had transferred funds to the account of Radiance Energy Corp.
- d) During 2016, deposits and loan credits deposited to the personal account of R.Z. at RBC and Solmac Consulting Services Inc., accounts at the Bank of Montreal totalled \$535,244. During that year, R.Z. declared an income of \$42,000.
- e) During 2017, very large deposits continued to be made to the personal RBC account of R.Z. which, based upon expenditures indicated from that account, would have covered R.Z.'s personal living expenses. In all years, there were multiple transfers into and out of the personal account, although the source and ultimate recipient of those funds could not always be determined from the bank statements. Those deposits were for several hundred thousand dollars and included payroll deposits from Radiance Energy Corp. which R.Z. stated was his principal operating company.
- f) Among the few documents produced by R.Z. from his companies are bank statements for Radiance Energy Corp. at RBC for the period February 2016 through July 2016 which are attached, not to an affidavit sworn by R.Z., but as Exhibit "O" to the affidavit of V.R. filed April 30, 2018. Those documents reveal:
 - i. During the period February 29, 2016 to March 31, 2016, \$163,707.40 was deposited to the Radiance Energy Corp. account. Lesser sums in the range of \$100,000 per month were received in other months.
 - ii. Cheques amounting to \$40,000 were issued by Radiance Energy Corp. to Solmac Consulting Services Inc., another company of which R.Z. was the sole director. No disclosure has been made by Solmac Consulting Services Inc. The cheques were issued between March and July of 2016.
 - iii. Attached to the affidavit of V.R. of April 30, 2018 as Exhibit "S" is an Application for (Voluntary) Dissolution of Solmac Consulting Service Inc. dated March 13, 2018, two months after the order of Master Harper. Solmac was included by R.Z. as a company owned by him in his unsworn F8 Financial Statement of February 13, 2018.
- g) Also attached to the affidavit of V.R. of April 30, 2018 were Visa statements of R.Z. which were attached as Exhibit "V". Those statements reflect purchases of \$26,161 made by R.Z. between March 5 and June 6, 2016 during which time, based upon those purchases, many were made in California and Hawaii.
- h) Mortgage payments were withdrawn consistently from the RBC account in an amount of \$5,676.12 each month in both 2016 and 2017 which would be payments on the mortgage of the Richards St. apartment.
- i) After the November 2017 mortgage payment, no further mortgage payments were made from the personal RBC account of R.Z. R.Z. has not disclosed a bank account from which the mortgage payments were being made after November 2017.

[29] Upon reviewing the notice of application of December 22, 2017 and the amended notice of application of April 4, 2018 at Order Sought #1, the item of disclosure which was adjourned to May 8 and 9, 2018 was item 1(n) being "loan application documents, mortgage applications and the most recent statement for any loans held by the respondent or on behalf of the respondent". I hereby order production of those documents effective the date of these reasons for judgment.

Child Support

R.Z.'s Income for Support Purposes

[30] It is necessary to determine R.Z.'s income for support purposes before determining quantum, duration, and overpayment of child support.

[31] When making an order respecting child support, the court must determine the amount in accordance with the Guidelines: Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 15.1(3) [Divorce Act]; FLA, s. 150(1). Under the Guidelines, income for support purposes is determined based on the payor's line 150 income, plus imputed income if applicable, with Schedule III adjustments: Guidelines, ss. 15, 16, and 19. The court may make retroactive orders: *Brown v. Kucher*, 2015 BCSC 1258 at para. 23.

[32] It is patent that the income figures R.Z. listed for the subject years are not accurate. He has failed to comply with his disclosure obligations and this makes it hard for the Court to determine his actual income by imputing income under s. 19 of the Guidelines.

[33] Section 213(1) empowers the Court to grant remedies in the following circumstances:

213 (1) This section applies if a person

(a) fails to comply with

(i) an order for disclosure made under section 212 [orders respecting disclosure], or

(ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules,

within the time or in the manner required by the order or Rules, or

(b) provides information that is incomplete, false or misleading.

[34] For the reasons outlined above, I conclude R.Z. has failed to comply with the court's orders for disclosure and he has provided information that is incomplete, false, and misleading. Section 213 applies. The Court may therefore attribute income to R.Z., and make the necessary support orders on the basis of this inference.

[35] Section 213 includes an order with respect to child support: see *Santelli v. Trinetti*, 2018 BCSC 300 at para. 195.

[36] Section 213(2)(b) assists the Court in setting income for support purposes where a dearth of financial disclosure otherwise inhibits it. The section provides the Court may "draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference". The power to draw an adverse inference was available at common law before s. 213 of the FLA expanded its predecessor s. 92(1) of the FRA: *J.D.G. v. J.J.V.*, 2013 BCSC 1274 at para. 19. The court in *J.D.G. v. J.J.V.* noted *Wu v. Sun*, 2011 BCCA 239 in the s. 213 context, suggesting the related cases and principles apply in this context.

[37] Adverse inferences at common law were recently reviewed by Madam Justice Fitzpatrick in *Natanj v. Nasiri*, 2018 BCSC 1122:

289 Section 213(2)(b) of the FLA, and Rules 21-5(1)(e) and 5-1(28)(f) of the Rules provide that the court may draw an adverse inference against a person who has been found to have not complied with the disclosure obligations under that Act or the Rules.

290 *Cunha* stands for the proposition that if non-disclosure of family assets has been shown, the onus shifts to the non-disclosing party to show that later disclosure was made. If this onus is not met, the Court may draw the inference that the value of undisclosed family assets is at least equal to the value of the disclosed assets: paras. 13-15.

291 However, cases after *Cunha* have introduced some nuances that must necessarily guide the Court in its application. In *Novin v. Novin* (1997), 50 B.C.L.R. (3d) 286 (B.C. S.C.), *Cunha* was applied toward ensuring that the wife received 50% of the value of the family assets: paras. 59 -- 63. See also *Laxton v. Coglon*, 2008 BCSC 42 (B.C. S.C.) at paras. 24 -- 33 and *Wu v. Sun*, 2011 BCCA 239 (B.C. C.A.) at paras. 40 -- 42.

292 Many case authorities, including the above, also discuss the evidentiary burden on the aggrieved spouse before any such presumption can arise, per *Cunha*.

293 In *Laxton* at para. 31, the Court, after referring to *Eng v. Eng* (1998), 83 A.C.W.S. (3d) 653 (B.C. S.C.) [1998 CarswellBC 2354 (B.C. S.C.)], referred to the need to find a "strong evidentiary basis" that there are hidden assets. Many of the above authorities were summarized by Justice Pearlman in *A. (E.D.) v. A. (M.A.)*, 2014 BCSC 1084 (B.C. S.C.), and I would respectfully adopt his summary of the law:

[226] The Court of Appeal also considered the application of the *Cunha* inference in *Wu v. Sun*, 2011 BCCA 239. There, the trial judge held that the husband had made it virtually impossible to evaluate his assets by his consistent refusal to disclose financial information, and found that there were undisclosed assets overseas at least equal in value to the disclosed assets.

- [227] The Court of Appeal affirmed [that] strong measures are justified in discouraging non-disclosure, but emphasized that there must be "some evidence" of the value of the undisclosed assets before the inference may be drawn because "one cannot make something out of nothing". However, as the Court noted in *Wu* at para. 45, the evidence can be "somewhat sparse".
- [228] At paras. 41 and 42, Mr. Justice Donald, for the Court, stated:
- [41] I am not the first to observe that non-disclosure is the Achilles heel of family assets litigation. Strong measures are justified in discouraging it. However, one cannot make something out of nothing. The right note of caution was sounded by Madam Justice Baker in *Palanca v. Palanca*, 2005 BCSC 1014:
- [127] Counsel for Mrs. Palanca submitted that the court could draw an adverse inference against Mr. Palanca's estate in relation to the existence of family assets in the Philippines because Mr. Palanca failed to comply with court orders relating to accounting and disclosure. I accept that Mr. Palanca did not meet his obligations in this regard, but an adverse inference is not an adequate substitute for evidence about specific assets, the ownership of those assets, whether the assets were used for a family purpose, or otherwise met the definition of family assets, or the value of the family assets, sufficient to allow for the making of a compensation order that is more than a guess.
- [42] With respect, I think the judge erred in putting any value on the overseas investments when there was not any evidence about them. In my view, the \$1.6 million ascribed to this item must be taken out of the reckoning of family assets.
- [229] Although the Court found that the trial judge had erred in applying the *Cunha* principle where there was no evidence about the alleged overseas assets, it upheld his imputation of a value of \$2 million to the content of the former matrimonial home. In the absence of an inventory and valuation, an insurance policy listing the value of the contents at \$2 million provided some evidence to support the drawing of the adverse inference.
- [230] To summarize, where one party establishes non-disclosure by the other, the onus shifts to the non-disclosing party to establish that full disclosure has been made. Where the non-disclosing party fails to meet that burden, the court may draw an adverse inference. However, non-disclosure alone is insufficient to warrant an imputation that the respondent has control or possession of undisclosed assets at least equal in value to the assets that have been disclosed. There must be some evidence indicating that the non-disclosing party is hiding valuable assets.
- [231] Where there is evidence showing that the non-disclosing party does own a particular asset, but the value of the asset is unknown, it may be reasonable to infer that the asset is valuable from the fact that its value has not been disclosed: *Yao v. Li*, 2013 BCSC 1314.

294 Accordingly, there must be "some evidence" of non-disclosure or concealment before any presumption may arise and there must be "some evidence" of those assets, the nature of those assets and the value of those assets. Mere suspicion coupled with non-disclosure will not be sufficient: see also *Kiamanesh v. Kiamanesh*, 2004 BCSC 1052 (B.C. S.C.) at paras. 34 -- 38.

- [38] Throughout a lengthy review of the thousands of pages included in the affidavits before the Court, it is apparent that there is much that has not been produced by the respondent pursuant to the orders of this court. Deliberate non-disclosure is an important element of the test. Indeed it was used as grounds to distinguish the application of *Laxton and Cuhna* in *R.F. v. M.G.B.*, 2014 BCCA 143.
- [39] One can only conclude that the failure of R.Z. to produce a sworn F8 Financial Statement is deliberate as is his failure to produce other documents ordered produced by this court.
- [40] In paragraph 3 of the amended notice of application filed April 4, 2018, V.R. seeks an order imputing income to R.Z. pursuant to the Guidelines for the years 2015, 2016 and 2017 in amounts ranging between \$362,000 and \$926,000. Although it is not clear to the Court how those amounts were calculated, there were substantial payments referred to in the partial disclosure by R.Z. of his involvement in many companies which showed him being paid significant amounts in each of the three years referred to above. Due to the inadequate and partial disclosure, it would not be possible to impute an income for R.Z. for the years in question with any form of precision. However, precision is not necessary and the Court must struggle to find, based upon the evidence before it, a reasonable amount of income to be imputed to R.Z.
- [41] When imputing income, the court can consider payments from business enterprises in which the party has an interest, life style and expenditures made by the person whose income is to be imputed. It is very apparent from a review of all of the evidence before the Court at this time that R.Z.'s income for the years in issue are many times greater than the amounts he has included in the T1 income tax returns included in his affidavit filed in February 2018. During the years 2015 to 2017, R.Z. purchased a condominium for \$2,300,000, paid, albeit reluctantly, some child and spousal support, purchased or leased several luxury vehicles, and other major expenditures including for travel, on a Hawaii timeshare and more.
- [42] Previously in these reasons I have referred to Visa purchases by R.Z., funds deposited into and out of the accounts of Radiance Energy Corp., some to Solmac Consulting Services Inc. which was dissolved voluntarily after the order of Master Harper and other substantial monthly payments which R.Z. was making on his mortgage and other purchases all of which are included in the voluminous materials and clearly do not represent what the total expenditures were during the periods of time in question due to a lack of disclosure. In addition to the expenditures indicated, R.Z. did make some support payments on account of spousal and child support and purports to have debts.

- [43] It would also appear to be the case, based upon all of the affidavit material before me, that payments for personal expenses were being made by his companies as well as personally, although it is not possible to allocate amounts for personal as opposed to business expenditures with any precision.
- [44] Finally, as stated previously in these reasons, R.Z. purports to have unsecured debts of \$1,303,600 in addition to his mortgage. Payments were being made on loans during the periods of time for which disclosure has been made.
- [45] It is apparent from all of the above that R.Z.'s financial disclosure is not only incomplete but inaccurate. It is likely that his personal expenditures amount to at least \$25,000 per month or \$300,000 per annum after income taxes, or approximately \$500,000.
- [46] In connection with Order Sought #3 claimed by V.R., I impute an income of \$500,000 to R.Z. for each of the years 2015 through 2017 and subsequently until varied by agreement or order of this court.
- [47] Based on my finding of R.Z.'s income for the 2015-2017 years, his claim under Order Sought #8 that he overpaid spousal and child support throughout the time since separation is dismissed for those years. The Court does not have enough evidence to conclude if he has overpaid in the 2009-2014 years.
- [48] Section 213 should be robustly applied so that parties appreciate the importance of timely and complete disclosure. The Court may instill such appreciation through the imposition of fines: FLA, s. 213(2)(d). V.R. seeks the Court impose a fine on R.Z. in her Order Sought #5. The fine as "punishment per se is not the end, but rather the means, as the information is required to resolve matters in a just manner": J.D.G. v. J.J.V., 2013 BCSC 1274 at para. 25. R.Z. has failed to provide financial disclosure as ordered by the court. His behaviour demonstrates intentional and inherent disregard for court orders and processes and is deserving of a penalty: see e.g. Krczizanowski v. Fieseler, 2018 BCSC 1545 at paras. 128-133. R.Z. should pay a fine of \$3,500.

Past Child Support

- [49] V.R. seeks past child support in the form of child support arrears and retroactive child support award.
- [50] There are two categorizations of child support in respect of years past: arrears of child support, and retroactive awards of child support. Arrears and retroactive support are different in kind. Arrears are amounts owed by the payor under an agreement or court order. Retroactive awards reflect, in present terms, a parent's obligation to support his or her children even though the relevant time period has passed: D.B.S. v. S.R.G., 2006 SCC 37 at paras. 94-98 [D.B.S.].

Arrears

- [51] V.R. submits in her amended notice of application that R.Z. was in arrears with the FMEP in the amount of \$58,589.88 in August 2015. Her amended notice of application details that a consent order was entered forgiving R.Z. of \$15,939.51 of arrears. V.R. seeks at Order Sought #4 that R.Z. be ordered under s. 213(e) to pay an amount equal to the same, effectively reversing the consent order whereby that sum of arrears was forgiven. She says there was inadequate financial disclosure at the time.
- [52] Regarding V.R.'s claim that the arrears forgiveness be effectively reversed, I am of the view that the current form of the order is not appropriate. If V.R. wants to have the entered consent order forgiving arrears set aside on the grounds of incomplete disclosure and uninformed consent, she is best to challenge the order directly on those grounds, rather than asking the Court to layer orders with the effect of reversal.
- [53] As it stands currently, the balance of arrears owing to August 2015 is \$58,589.88 less the \$15,939.51, i.e., \$42,650.37.

Retroactive Child Support

- [54] The combined effect of Orders Sought #2, #3, and #4 sought by V.R. would be an award of retroactive child support reflecting income imputed to R.Z. for 2015-2017.
- [55] Under Order Sought #2, V.R. asks that Mr. Justice Butler's interim without prejudice order entered December 11, 2015 of retroactive child support be set aside. Having imputed income to R.Z. for the 2015-2017 years, considering the new evidence that came to light about his financial affairs, and his lack of financial disclosure, the Court is satisfied within the meaning of FLA s. 152 as required to set aside the December 11, 2015 order respecting child support.
- [56] Retroactive awards are not exceptional. Child support is the right of the child. The amount of a payor-parent's child support obligations varies as that parent's income fluctuates considering the Guidelines. In determining if a retroactive award is appropriate, the court considers:
- The reasons why the applicant did not seek a change to child support earlier;
 - the conduct of the payor parent, including the presence of "blameworthy conduct";
 - the circumstances of the child, including the child's needs at the time the increased support ought to have been paid; and
 - if the payor would suffer any hardship by a retroactive award.

- [57] If a retroactive award is appropriate, the obligation will generally run from the date of effective notice to the payor, e.g., when the recipient alerts the payor about a proposed change to child support: D.B.S. at paras. 124-125. It will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice was given to the payor parent. An earlier date of retroactivity may be warranted where there was blameworthy conduct on the part of the payor: D.B.S. at paras. 123-124.
- [58] A retroactive award is appropriate in the circumstances. V.R. was not dilatory in bringing her application. Delay in doing so was likely occasioned by R.Z.'s failures, on a consistent and prolonged basis, to disclose his income. V.R. submits that she struggled financially to cover the needs of the children, particularly the youngest. Having imputed income to R.Z. and looking at the circumstances of his life discussed above, he is highly unlikely to suffer hardship for any reasons contemplated in or analogous to the Guidelines, s. 10(2).
- [59] Regarding the date of the retroactive award, V.R. seeks a retroactive award for 2015, 2016, and 2017. She gave formal notice by way of her original notice of application on December 22, 2017 seeking that Butler J.'s interim without prejudice order be set aside and a higher quantum of support be put in its place. While other items in the December 22, 2017 notice of application were changed or removed in the April 4, 2018 amended version, the orders sought concerning proposed changes to child support remained. Given that formal notice was given in December 2017, a retroactive award beginning in January 2015, as sought by V.R., falls within the appropriate three-year time frame. In any event, R.Z. has demonstrated blameworthy conduct by defying court orders for disclosure in respect of significant income that he could reasonably expect to alter his support obligations and in doing so privileged his own interests over the children's right to support: see D.B.S. at para. 106.

Calculation of Child Support

- [60] Child support for the two children of the marriage for the years of 2015 to 2017 is determined pursuant to the Guidelines based upon an annual income of R.Z. of \$500,000 and the children living full time with the claimant, V.R. The Court's understanding of the table amount of child support payable under the Guidelines on those criteria is \$6,289 per month.
- [61] Given the special Guidelines considerations when a parent earns over \$150,000 per year, a downward adjustment to \$5,000 per month is appropriate.
- [62] The total amount payable for the calendar years 2015 to 2017 equals \$180,000 (36 months x \$5,000 per month). That amount is to be paid in full within sixty days of the date of these reasons for judgment, subject to extensions only upon an agreement in writing between the parties or court order.

- [63] Due to the lack of clarity regarding parts of the affidavits before the Court, I leave it to the parties to agree on the amount of payments received for child support during 2015 to 2017 years and subtract those sums received from those sums owing to determine the outstanding balance owed by R.Z. to V.R.

Section 7 Special and Extraordinary Expenses

- [64] Under s. 7(1), the Court to considers "the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family spending pattern prior to separation". See *Bodine-Shah v. Shah*, 2014 BCCA 191:
- [66] Special expenses listed in ss. 7(1)(a)-(c) and (e) are distinct from extraordinary expenses referred to in ss. 7(1)(d) and (f). Special expenses are defined as relating to child care, medical or dental insurance premiums, health-related costs, and post-secondary education. They must be found to be reasonable and necessary. Extraordinary expenses are not defined. Their extraordinariness is determined in the context of the combined income of the spouses, as well as other considerations, including the nature and amount of the individual expense, the nature and number of the activities, any special needs or talents of the child, and the overall cost of the activities. They also must be found to be reasonable and necessary. Relevant considerations for the tests of necessity and reasonableness include whether the expenses are necessary in relation to the child's best interests, and reasonable having regard to the means of the spouses, the child, and to the family's spending pattern prior to separation. See *McLaughlin v. McLaughlin* (1998), 57 B.C.L.R. (3d) 186 at paras. 81-82 (C.A.). In assessing "means", the court may consider the parties' capital assets, income distribution, debts, third-party resources, access costs, support obligations, receipt of support, and any other relevant factor: *Delichte v. Rogers*, 2013 MBCA 106, 37 R.F.L. (7th) 81 at para. 38. Courts may consider whether the non-custodial parent was consulted regarding the expense, though a lack of consultation does not automatically preclude a finding that the expense is reasonable and necessary: *Delichte* at paras. 39, 44.
- [65] Under the Agreement, s. 7 special and extraordinary expenses are to be apportioned in proportion to the incomes of the parties. As well, clause 3.4 of the Agreement lists five expenses which the parties agreed to be special or extraordinary expenses, i.e.:
- a) Medical and dental insurance and premiums
 - b) Uninsured medical and dental expenses that would qualify as section 7 Extraordinary Expenses
 - c) Subject to clause 2.18 of this Agreement, payments toward tuition and extraordinary education expenses for the children that otherwise qualify in the future as an extraordinary expense pursuant to Section 7(1) of the Federal Child Support Guidelines

- d) Payments toward a Registered Education Savings Funds for the benefit of the children to a maximum of \$4,000 per year, and
 - e) Any other expense for M.R.Z. and S.R.Z. that the parties agree prior to the expense being incurred or a court directs is a special or extraordinary expense within the meaning of section 7 of the Guidelines.
- [66] V.R. seeks, at Order Sought # 11, that R.Z. will pay \$850 per month for section 7 expenses commencing June 1, 2018 so long as the children remain "children of the marriage". V.R. also seeks an order that the respondent "pay \$64,757.47 of section 7 expenses for both children for 2015, 2016 and 2017. V.R. has deposed to having received payments on account of special and extraordinary expenses for those three years of \$3,600 in 2015, \$14,400 in 2016 and \$4,400 in 2017 for a total of \$22,400.
- [67] A list of the amounts claimed by V.R. as special and extraordinary expenses for those years is attached at Exhibit "T" to the affidavit of V.R. filed April 30, 2018. That list totals \$87,157.47 before subtracting the amount V.R. admits to having received on account of s. 7 expenses of \$22,400 leaving a balance of \$64,757, the amount claimed in Order Sought #10 by V.R. for past s. 7 expenses.
- [68] The list of expenses in Exhibit "T" goes far beyond the authorized items listed in the Agreement and include counselling, a tutor, vocal, piano, volleyball, saxophone, mixed martial arts, trumpet, football, cell phones and others and there is little in the affidavits which indicates R.Z. may have consented to the same and whether he was conferred in advance as required by the Agreement.
- [69] The parties have not made submissions, as best as the Court can tell, on whether many of the expenses claimed qualify at law as s. 7 expenses under the Guidelines. Accordingly, the parties will have 30 days to make written submissions regarding the amounts owing for s. 7 special and extraordinary expenses as listed, and whether R.Z. consented.
- [70] Order Sought #8 advanced by V.R. pertains to arrears of what the parties allegedly agree to be s. 7 expenses. The Court does not have sufficient information to determine issues related to s. 7 expenses - ongoing or arrears.

Application of R.Z. Parenting Issues

- [71] R.Z. seeks ten orders relating to parenting and in particular parenting time with the two children, S.R.Z. and M.R.Z. The Agreement of July 2013 provided for joint custody and guardianship of the children with the residence of the children to be primarily with their mother, V.R. Residency has continued to be with V.R. to the dates of this hearing.

Law

- [72] If there is an agreement in place with respect to parenting, the party seeking to change the agreement need not show a material change in the circumstances. The Court is empowered to set aside an order with respect to parenting if it concludes that the arrangement is not in the best interests of the children: FLA, s. 44(4); *Nijjar v. Gill*, 2017 BCSC 1362.
- [73] In making orders with respect to parenting, the Court may only consider the best interests of the children: FLA, s. 37(2); Divorce Act, s. 16(8). In considering the best interests of children, the court considers the parent's conduct only if it substantially affects a factor under s. 37(2) and only to the extent that it affects that factor: FLA, s. 37(4); Divorce Act, s. 16(9). No parenting arrangement is presumed to be in the children's best interest, including an arrangement providing for equal parenting time among guardians: FLA, s. 40(4); *Henderson v. Bal*, 2014 BCSC 1347 at para. 46.

Discussion

- [74] This discussion pertains to the parenting issues raised in Orders Sought #1 through #10 in R.Z.'s notice of application.
- [75] Section 2 of the Agreement provided considerable detail regarding parenting time, parenting responsibilities, travel with the children and several other considerations. At the time of the Agreement, their daughter, S.R.Z. was twelve years old and M.R.Z. was eight years old.
- [76] Clauses 2.2(b) and (c) are clauses which R.Z. seeks to enforce with his notice of application and provide for the children to be with V.R. each Sunday at 5:00 p.m. through the school week until Friday at 5:00 p.m. and for R.Z. to have parenting time one weeknight each week on a date to be agreed considering school schedules and extracurricular activities. R.Z. has deposed that his parenting time with M.R.Z. in particular has been minimal, especially more recently.
- [77] Other orders sought include days of parenting to be granted retroactively for time previously denied to R.Z., that V.R. drive the children to visits with their father, that the parents enter into a "parent child contact treatment program agreement", to deny telephone access to V.R. when the children are with R.Z., reimbursement of overpayment of child and spousal support and the appointment of a parenting coordinator.
- [78] After careful consideration of all of the extensive information described in the affidavits of the parties regarding the conduct of each other and the children, it will not be necessary to review and grant orders in connection with all of those orders sought.

[79] In making an order regarding parenting, the only issue for consideration is for the court to determine what may be in the best interests of the children, nothing else. Although the Agreement speaks of the importance of the children developing and maintaining good relationships with each parent as does the law, there are cases in which increased time for the children with one parent is not in their interest. The case before me is one of those.

[80] To determine what parenting arrangement is in the best interests of the children, the Court considers the following factors:

- a) the child's health and emotional well-being;
- b) the child's views, unless it would be inappropriate to consider them;
- c) the nature and strength of the relationships between the child and significant persons in the child's life;
- d) the history of the child's care;
- e) the child's need for stability, given the child's age and stage of development;
- f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members; and
- j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[81] The Court has reviewed the undated report of Liz McKenna, a psychologist, titled a "Social Emotional Report" which has largely been relied upon by R.Z. in his quest for more parenting time. Ms. McKenna was originally retained as a counsellor for the family.

[82] Under the heading "Reason for Report" at p. 8, Ms. McKenna states:

28th march 2017 - R.Z. requested a meeting to discuss having more access to his children. He requested that V.R. be at the meeting, and offered her several dates and times that were convenient for her. V.R. did not respond to those requests.

R.Z. has asked me to write asking that the court enforce the legal agreement for joint custody citing little support working towards joint custody over the last eighteen months.

R.Z. cites ongoing active alienation by V.R.

At. p. 10, Ms. McKenna stated:

- a) M.R.Z. has an insecure attachment to his father that would be greatly improved if the parents could agree on respecting the joint custody court appointed agreement.
- b) The situation between the parents is not healthy and is getting worse;
- c) I do not believe that V.R. is deliberately alienating her children against their father, however, alienation is happening nevertheless;
- d) . . .
- e) M.R.Z. is being allowed to triangulate between the parents in a very unhealthy way;
- f) Alienation of the father/son healthy attachment will continue to occur unless there are more prolonged bonding opportunities.

[83] The report does not reach conclusions nor does it provide specific recommendations.

[84] Expert evidence, properly admissible, is necessary to support a finding of alienation: *Williamson v. Williamson*, 2016 BCCA 87 at paras. 47-48. The Court is aware that the report has been investigated by the Canadian Mental Health Association, determined to have been written under false pretenses, and Ms. McKenna has been instructed to withdraw the report. The report did not appear to be properly proffered as expert evidence. It is therefore of little to no assistance to the Court.

[85] The Court agrees that there is extreme anxiety on the part of M.R.Z. and his father and that the child is distant from his father. As well, the statement by Ms. McKenna that M.R.Z. is being allowed to "triangulate between the parents in a very unhealthy way", assuming "triangulate" means, for lack of a better term, playing one parent off as against the other, i.e., manipulating his parents.

[86] The most significant evidence regarding the conduct of M.R.Z. was a recording of a recent telephone conversation between M.R.Z. and his father, which, with the consent of the parties, was played in court. In that conversation, M.R.Z. was hostile towards his father, challenging his father that "You make plans without consulting me?", "Do you ever ask what I want to do?", that he did not want to stay over at his father's home, "you're so unreliable" and other statements which could only be labelled as hurtful. The conversation was being controlled by M.R.Z. who was repeatedly berating his father.

[87] After hearing the comments of M.R.Z., it would not be in his best interests to force his mother to send him for overnight visits with his father which M.R.Z. would most definitely refuse at this time.

- [88] It is submitted by R.Z. that V.R. has been attempting, with some success, to alienate the children, especially M.R.Z., from their father. V.R. vigorously disputes any attempt to alienate the children. Without more, particularly in light of the deficiencies in Ms. McKenna's report, I am not prepared to make a finding of alienation.
- [89] It may very well be correct that V.R. has been involved in the children growing distant from R.Z. She has expressed serious concern over R.Z.'s conduct with the children which is reflected in the words of M.R.Z. in the recorded telephone call and in the affidavits referred to above. There appears to be reason for concern as to R.Z.'s parenting.
- [90] The Court has reviewed extensive text messages between the parties, the many affidavits of both and other correspondence between the parties. Based upon that review, it is firstly apparent that R.Z. has been delinquent in the payment of support, both child and spousal and has avoided disclosure as required by the Rules.
- [91] As well, there are many allegations which have been made by V.R. to the effect of R.Z. being obsessed with sex, which my review indicates is a justified opinion on the part of V.R.
- [92] Those allegations include incidents of a sexual nature involving R.Z. and V.R.'s daughter as described by V.R.'s daughter included in her affidavit attached as Exhibit "Q" to the affidavit of V.R. filed April 30, 2018 which includes the following statements which are among the milder comments and statements of V.R.'s daughter contained in her affidavit:
- 4) R.Z. is an abuser who has sexually, physically and emotionally abused me. I have also witnessed him abuse my mom, my sister [S.R.Z.] and my brother [M.R.Z.].
- ...
- 7) R.Z. has always had a bad temper. I was scared of him as a kid because he would get extremely angry over small things and would get physical with my mom or me.
- [93] In a similar vein are affidavits of Andrew McLaren, a former neighbour from 2004 and the former nanny retained by the family which are attached as Exhibits "B" and "C" to the affidavit of V.R. filed April 30, 2018.
- [94] The Court's consideration of a guardian's conduct is limited to looking at conduct that substantially affects one of the s. 37(2) factors: N.R.G. v. G.R.G., 2017 BCCA 407; s. 37(4) at para. 43. Incidents of a sexual nature involving R.Z. are relevant to the children's health and emotional wellbeing. R.Z. was found engaging in explicit activity with a minor person, S.R. S.R. was a child, and R.Z. occupied the role of her step-father.
- [95] I conclude that it would not be in the interests of the children to order that V.R. cooperate in having the children with R.Z. for the times described in the Agreement until R.Z. completes a comprehensive round of counselling along with V.R. and the children. The counselling should examine the hostility of both parties towards the other and the attitudes of the children, for until the cause of the strained relationship between the children from R.Z. is understood, little can be done to improve it. The parents of these children need to

appreciate that both have contributed to the concerns of their children and that unless the hostility resolves, the relationships are unlikely to improve.

- [96] In these circumstances, I am unwilling to make any orders which could compel one parent or the other to take the children to spend time with the other parent and therefore adjourn, until adequate and comprehensive counselling can be concluded. The counselling should be with a counsellor other than Ms. McKenna.
- [97] V.R. seeks, at Order Sought #14, to have sole guardianship of M.R.Z. The court in *M.A.G. v. P.L.M.*, 2014 BCSC 126 at paras. 43-46 held that guardianship should only be terminated in extreme situations, and the court first decides if parenting responsibilities can be allocated to one parent to remove risk to the child's best interests arising from the other parent's continued guardianship. In light of the foregoing, all parenting responsibilities concerning M.R.Z. are allocated to V.R and R.Z. remains a guardian.
- [98] In light of the parenting arrangement and the best interests of the children, the Court declines to appoint a parenting coordinator and R.Z.'s Order Sought at #9 claiming the same is not granted.

Z Family Children's Trust

- [99] V.R. seeks an order that R.Z. repay \$338,406 into a trust account which had been set up for the children of the marriage. The Family Trust was referenced in the Agreement of July 11, 2013. In a letter of February 22, 2018, R.Z. stated to V.R. in response to a quaere on the Trust:

Q - Status of Family Trust

A - The Family Trust has zero monies in it and there has been no annual filings completed in the last 10 years. I was the sole director of this trust and elected at the time to close the trust and remove all beneficiaries.

- [100] R.Z. has deposed, in his affidavit filed August 9, 2018 as follows:

- [24] Attached hereto and marked as Exhibit "O" is a true copy of a Family Trust Statements dated September 2012. \$329,258.88. The Respondent's family trust account, of which he was the sole trustee of, was used by the Respondent to fund a number of financial transactions, including the investment into Solmac Consulting Inc., Radiance Energy Corp. deposit monies on his Grace residence, monthly support payments to the Claimant during the years when he had little or no income. The Claimant was well aware that the Respondent was the sole trustee of his [Z] Family Trust.
- [101] Exhibit "O" referred to above is a statement of the Z Family Trust No. 1 indicating a balance of funds as of September 30, 2012 of \$329,258.88 after a current withdrawal of \$10,000.

- [102] The Court understands R.Z.'s statement in para. 24 of his affidavit above to be an admission of having withdrawn the funds from the Family Trust for the purpose of business transactions and to pay for his monthly support obligations and that he did so as he deemed that as sole trustee he had authority to withdraw funds for his own use and purposes.
- [103] R.Z. also stated in his submissions at the hearing that he no longer has a copy of the trust agreement under which the trust was established for his children. He added that he "appointed himself as beneficiary as he was the sole trustee" and he was allowed to appoint beneficiaries.
- [104] The trust was for the benefit of the children. During the hearing, R.Z. admitted to having closed the trust and removing the funds. It is not known when the funds were withdrawn other than in the statement referred to above.
- [105] R.Z., as trustee of these funds for his children, was legally obligated to maintain and invest the same for his children and is responsible, not only for the principal amount he withdrew from the trust for his own purposes but also for interest which could have been earned on those amounts at the prime rate of the Bank of Canada from time to time. The Court so orders payment into a trust account for the children \$329,258.88 plus interest at the prime rate of the Bank of Canada since January 1, 2013. If a new trust is to be established, V.R., as opposed to R.Z., is to be the sole trustee of those funds.

Costs

- [106] V.R. has been substantially successful in the application. The parties may make submissions on costs up to 30 days after the issuance of these reasons as to the appropriate type of costs.

"Jenkins J."

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