
CANADA / JUDGMENT

W.R.M. v. D.K.M.

2020 BCSC 322

COURT

Supreme Court of British Columbia

DECIDED

9 March 2020

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2020 BCSC 322 W.R.M. v. D.K.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

W.R.M. v. D.K.M.,

2020 BCSC 322

Date: 20200309

Docket: E51938

Registry: Vernon

Between:

W.R.M.

Claimant

And

D.K.M.

Respondent

Before: The Honourable Mr. Justice G.P. Weatherill

Reasons for Judgment

Counsel for the Claimant:

E.J. Woolley

The Respondent on her on behalf:

D.K.M.

Place and Date of Trial/Hearing:

Vernon, B.C.

December 11 - 13, 2019

Place and Date of Judgment:

Vernon, B.C.

March 9, 2020

Introduction

- [1] This family law dispute requires a determination of how the parties' family assets should be divided, as well as child and spousal support, past and prospective, that is payable by the claimant.
- [2] The parties also seek an order of divorce from each other.
- [3] They began cohabiting on December 1, 1998 ("Date of Cohabitation"), were married on March 13, 1999, and separated on August 15, 2013 ("Date of Separation").
- [4] The couple have three children: J., aged 19, S., aged 15, and L., aged 12 (together the "Children").
- [5] The trial took place December 11 - 13, 2019, with written submissions to follow. Attached to the respondent's written submissions received January 23, 24, and 25, 2020, were numerous new documents not previously before the Court, which she noted to be "additional facts". Many of these "additional facts" were unproven at trial, not put to the claimant and were mostly in the form of inadmissible hearsay. To the extent the respondent relies on and makes arguments based on these "additional facts", I have not considered them.

Background

- [6] The claimant is 60 years old and has been employed by BC Hydro as a Power Systems Operator since 1980. He started that occupation in the Lower Mainland area of British Columbia where he was born.
- [7] The respondent is 49 years old and obtained her Bachelor of Education from Simon Fraser University in 1992. She started working as a teacher for the Maple Ridge/Pitt Meadows School District in September of that year and obtained a permanent teaching position in 1994.
- [8] In December 1998, the parties began cohabiting in Coquitlam, BC, in a house on Laurentian Crescent purchased by the claimant from his father six years prior ("Laurentian Home") for \$200,000. The claimant and his father agreed in writing that the claimant's father would live in the basement suite rent free with the claimant paying the existing mortgage, utilities, property taxes and other property-related expenses. They also agreed that the claimant's

father would have the option to re-purchase the Laurentian Home from the claimant for \$200,000 should the claimant wish to sell it during claimant's father's lifetime. The Laurentian Home was registered solely in the claimant's name.

- [9] At the Date of Cohabitation, the claimant also owned ten gold coins that he had purchased as an investment, had approximately \$6,600 in an investment account with Canaccord Capital and had RRSPs in his name of approximately \$36,000. The respondent had a smaller RRSP in her name that she cashed in during the marriage. Before moving into the Laurentian Home, the respondent sold her home in Coquitlam for about what was owing on it.
- [10] In November 2000, approximately two years after the Date of Cohabitation, the parties sold the Laurentian Home and purchased a home on Aspen Place, in Maple Ridge ("Aspen Home") for \$287,500. Pursuant to the agreement the claimant had with his father, the sale price of the Laurentian Home was \$200,000. The amount the claimant received from his father, net of the existing mortgage, was \$128,580.69 ("Laurentian Home Equity") which was used as a down payment on the purchase of the Aspen Home.
- [11] The respondent taught full-time until the end of December 2000, shortly before J. was born. At the time, she was earning \$46,000 per annum plus non-wage benefits and contributed towards a teacher's pension ("Teacher's Pension"). She obtained long service leave and parental leave for J. totalling nearly three and a half years. She took a similar parental leave after the births of each of the other two children. She did not teach again until after the Date of Separation. Instead, she was a stay-at-home mom, and beginning in 2007, home-schooled each of the Children as they reached school age. She continued home-schooling them until the Date of Separation following which the Children were placed in the public school system.
- [12] In 2008, the couple decided to move to the Vernon area in the hopes of retiring on a hobby farm. They sold the Aspen Home in 2009, netting \$686,500, and rented a home in Vernon while they searched for suitable farm property.
- [13] In January 2011, they located and purchased a 43-acre, mostly cleared farm property on Rawlings Road near Lumby, BC, that was to their liking for \$390,000. Within the year, they set about constructing a large home on it. The land purchase and 4,000 square foot, six bedroom, four bath home construction (together, the "Matrimonial Property") was financed by a combination of money from the sale of the Aspen Home and a construction mortgage.
- [14] In September 2012, the claimant's mother gave him an advance on his inheritance of \$70,000, \$49,000 of which was by way of a bank draft and \$21,000 in the form of cash. Coinciding with providing the claimant with those funds, his mother prepared a codicil to her will noting the \$70,000 had been "loaned" to the claimant and she wanted it taken into account in the disposition of her estate ("Early Inheritance"). The claimant's understanding was that the Early Inheritance was an advance from his mother's estate and that when she died, he would receive \$70,000 less than his siblings.

- [15] In early 2013, just months before the Date of Separation, the couple moved into the Matrimonial Property. Some of the interior finishing had still to be completed when the parties separated. For example, the master bathroom, interior doors, baseboards, paint, trim and lighting were unfinished. Landscaping was also required.
- [16] On August 15, 2013, the respondent left the home and moved into rental accommodation in Vernon. The claimant stayed behind, "de-cluttered" the place, and rented a storage container to store chattels belonging to them both. Over time and using his own financial resources, the claimant purchased materials totalling \$13,254.41 and devoted his spare time (he estimates a total of 268 hours) to completing the interior of the Matrimonial Property to ready it for sale. He hired contractors to do the work that he could not. The respondent was aware of and approved of this work to ready the Matrimonial Property for listing. The respondent contributed no time or money to the completion of the home.
- [17] In November 2014, the Matrimonial Property was listed for sale for \$1,100,000. After three years of gradually dropping the listing price and changing realtors, it finally sold in September 2017 for \$779,000. The net sale proceeds of \$386,651.13 were agreed to be held in trust pending the resolution of this matter ("Trust Funds"). In November 2019, each party received \$10,000 from the Trust Funds. The remaining \$366,651.13 plus interest remains to be divided.
- [18] The claimant continues to be employed with BC Hydro, earning in the range of \$119,000 per annum.
- [19] Since the Date of Separation, the respondent has attempted several different career paths including attempting in September 2013 to become a Federal Liberal Party candidate. She began researching politics and attending various Liberal party conventions. Her nomination bid was unsuccessful.
- [20] In August 2016, the respondent obtained employment at the Wholesale Club in Vernon. She also worked at the Interior Provincial Exhibition in August 2016. In September 2016, she worked briefly as an on-call teacher for the St. James Catholic School in Vernon and then as an on-call teacher for the Okanagan Indian Band Reserve School. She resigned from her position at the Wholesale Club and St. James Catholic School in October 2016, after signing a full-time temporary teaching contract with the Okanagan Indian Band Reserve School through June 2017. She continued to work as an on-call teacher at St. James Catholic School after September 2017 to the present, with sporadic hours.
- [21] In 2017, she decided that instead of teaching, she would try her hand at midwifery and enrolled in Thomson Rivers University to study anatomy. In April 2018, she interviewed to be admitted to the UBC School of Midwifery, but was unsuccessful.
- [22] In 2018, she applied for and was offered full-time employment as an English as a second language teacher in Kelowna. She declined to accept that position because she thought it did not pay enough and because she had received a \$300 scholarship for Orff Training in

Vancouver which she thought might help her obtain employment as a Fine Arts teacher. Using the \$300 scholarship, she attempted to upgrade her musical theory skills to better market herself as a Fine Arts teacher. That idea was also unsuccessful because she did not have the requisite knowledge of music theory.

- [23] Throughout this timeframe, she also took various online and other courses to learn various forms of music and dance. She took guitar lessons, violin lessons, drum lessons, singing lessons and music lessons all, she says, to strengthen her resume in Fine Arts so that she would be more attractive to local school districts. She also took French and Spanish lessons, hired tutors for both, and went on a six-week excursion to Costa Rica to learn Spanish at a Spanish-speaking school.
- [24] In the summer of 2018, she tried working as a "busker" in Vernon, Kelowna and Salmon Arm, through which she earned virtually nothing, indeed less than what she had to pay each City for licencing fees.
- [25] She is currently attempting to launch a new career in "professional advocacy and public speaking".
- [26] To date, save for teaching at the Okanagan Indian Band Reserve School and the St. James Catholic School, all of the respondent's efforts at a new career have failed to provide her a reliable and steady stream of income. Despite her unsuccessful track record, she asserts strongly that within a year or so, she will have success with her new endeavour as a professional advocate. She is confident that she will soon be earning income in the \$60,000 per annum range and will then be self-supporting. She spends her time focussing on researching various global issues in pursuit of this new goal. As part of this career plan, she wants to obtain an online masters degree in communications from Gonzaga University at a cost of \$30,000 USD.
- [27] Since the Date of Separation, there has been very little communication between the parties, but to their credit, they agreed to equal parenting time of the Children and have managed any Children-related issues without much trouble. Neither takes issue with the other as a parent and they agree that they should remain as the Children's guardians and continue shared parenting responsibilities.

Issues

- [28] The issues for determination are:
- a) divorce;
 - b) guardianship and parenting time of the Children;
 - c) division of assets;
 - d) spousal and child support;

Discussion

- [29] Firstly, I will say that the claimant presented his evidence in a clear, forthright, logical and credible manner. His testimony was fair and balanced and I accept his evidence without reservation.
- [30] On the other hand, although the respondent presented as intelligent, she was disorganized and had an unrealistic view of the world and her role in it. Her evidence was rambling, illogical and difficult to follow.
- [31] Where their evidence conflicts, I accept the claimant's evidence over that of the respondent.
- [32] Since the Date of Separation, the respondent has behaved in an unorthodox and irresponsible manner. As earlier mentioned, with no prior political experience of any kind, she attempted to secure the Federal Liberal party nomination for the North Okanagan/Shuswap riding by bizarrely purchasing wigs and costumes (101 of them all told) and wearing them to various Liberal party conventions and events and in the general public. She explained that she thought the wigs and costumes made her stand out among the other candidates. She made other unrealistic attempts at careers including midwifery and busking. She now spends her days researching various world issues, such as climate change, pollution, social credit, and education, and puts her views on social media hoping to get noticed, gain some traction and launch her new career as a professional public speaker and advocate. She believes that once it takes off, she could earn upwards of \$5,000 per engagement or social media posting.
- [33] At trial, she attempted to justify her earlier behaviour on the basis that she was suffering from a self-diagnosed type of post-traumatic stress disorder and some sort of skin condition that affected her ability to obtain employment. There was no medical or other admissible evidence backing up these assertions.
- a. Divorce
- [34] Both parties seek to be divorced from each other. The parties have been separated since August 15, 2013. It is obvious that there is no prospect of them reconciling. I am satisfied, considering s. 8 of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.), that all the requirements for a divorce have been met.
- [35] There will be an order that the parties who were married at Coquitlam, British Columbia, on March 13, 1999, be divorced from each other, such order to take effect 31 days from the date of these reasons.
- b. Guardianship and parenting time of the Children

[36] The parties have shared joint custody and guardianship and equal parenting time of the Children, on roughly a one week on/one week off basis since more or less the Date of Separation. This arrangement was formalized in a consent order made at a Judicial Case Conference on July 10, 2018 ("JCC Order"). The Children are currently aged 19, 15, and 12 respectively. Neither party seeks to vary or change the JCC Order.

[37] Accordingly, until written agreement or further order, the JCC Order respecting custody, guardianship and parenting time of the Children shall continue.

c. Division of assets

[38] The assets that are up for division between the parties are:

- a) the Trust Funds;
- b) the claimant's BC Hydro pension and the respondent's Teacher's Pension; and
- c) the claimant's RRSPs;

[39] Before dealing with the division of the Trust Funds, I will determine the main dispute between the parties, namely the inequality of assets brought into the relationship by the claimant and the Early Inheritance. The claimant seeks to have these assets excluded from family assets.

[40] Part 5 of the Family Law Act, S.B.C. 2011, c. 25 ("FLA") governs the division of property after separation, based on an excluded property regime that defines property as family property or excluded property. The relevant principles are:

- a) On separation, spouses each have a presumptive right to an undivided half-interest in all family property as a tenant in common regardless of their respective use or contribution (s. 81(a)).
- b) Subject to s. 85 which lists property excluded from family property (s. 84), any real or personal property owned by at least one spouse at separation is family property.
- c) Family property includes a spouse's entitlement under a pension and the increase in value of excluded property since the relationship began (ss. 84(2)(e) and (g)).
- d) Excluded property includes property acquired by a spouse before the relationship began (s. 85(1)(a)) and property derived from property or the disposition of property referred to in ss. 85(1)(a) to (f) (s. 85(1)(g)).
- e) The spouse claiming that certain property is excluded bears the onus of proof (s. 85(2)).

- f) The court has the discretion to order an unequal division of family property if it would be significantly unfair to divide it equally (s. 95(1)). The court is not permitted to order the division of excluded property unless it would be significantly unfair not to do so (s. 96). Significant unfairness is determined based on prescribed considerations set out in ss. 95(2) and (3) and s. 96(b).
- [41] What is meant by the term "significantly unfair" and the process the court must engage in before making an unequal division are well known: *Remmem v. Remmem*, 2014 BCSC 1552 at paras. 43 and 44. It has been termed a "caution" against a departure from the default of equal division in an attempt to achieve "perfect fairness" such that only when an equal division would bring sufficiently weighty consequences to render an equal division unjust or unreasonable should an equal division be departed from: *L.G. v. R.G.*, 2013 BCSC 983 at para. 71. It requires much more than differing financial contributions in a relationship, recognizing that partners will enter a relationship with differing circumstances and financial means: *Slavenova v. Ranguelov*, 2015 BCSC 79 at para. 60. Section 95(2) does not allow for a wide ranging examination of each spouse's contribution to the accumulation of family assets and their respective capacities: *Nearing v. Sauer*, 2015 BCSC 58 at para. 141.
- [42] The claimant says that he is entitled to have the following declared excluded assets and exempt from division with the respondent:
- a) the Laurentian Home Equity;
 - b) the value of the claimant's RRSP's at the Date of Cohabitation;
 - c) the Early Inheritance;
 - d) the Canaccord Capital Account; and
 - e) the ten gold coins.
- [43] To the extent these assets were sold during the marriage, he argues that they are traceable to the Trust Funds and therefore qualify as excluded property under s. 85(1)(g) of the FLA: *Shih v. Shih*, 2017 BCCA 37; *V.J.F. v. S.K.W.*, 2016 BCCA 186 at para. 68.
- [44] I shall deal with each of these items in turn.
- i. Laurentian Home Equity
- [45] The claimant used the Laurentian Home Equity to purchase the Aspen Home and, in turn, the proceeds of the Aspen Home were used to purchase the Matrimonial Property. The Aspen Home and the Matrimonial Property were both registered in joint tenancy.
- [46] The claimant has the burden to prove that the Laurentian Home Equity is excluded property on a balance of probabilities: see s. 85(2) of the FLA; and *Shih* at paras. 42-44. Where a party contributes to a down payment on the family home purchased during the marriage, he will not be able to establish exclusion of that property from equal division without showing he took steps to keep the funds separate or document an intention to have his contribution

treated separately from the equity in the home: *Wickstrom v. Ng*, 2019 BCSC 1685 at para. 161.

- [47] Here, the claimant did not act to protect the Laurentian Home Equity by requiring the respondent to acknowledge that no gift was intended. Indeed, there is no evidence that the parties discussed the Laurentian Home Equity and what would happen to it if they were to separate. Rather, the evidence suggests that the parties pooled their funds and resources (albeit contributing different amounts) to purchase the Aspen Home and later the Matrimonial Property without an agreement or intention that their respective contributions would not be gifts. There was no agreement or actual confirmation by the respondent that the claimant intended to keep his money separate.
- [48] Citing *McManus v. McManus*, 2019 BCSC 123, and despite the claimant leading no evidence regarding his intentions at the time of the sale of the Laurentian Home and purchase of the Aspen Home in joint tenancy, he asserts that I should conclude that he wanted to take advantage of the laws of joint tenancy and to reflect the fact that the parties were sharing the use of the Aspen Home. In my view, it matters not in this case because I conclude that when the parties married, sold the Laurentian Home and purchased the Aspen Home, the claimant intended 50% of the Laurentian Home Equity to be a gift to the respondent. His actions together with the lack of evidence that he discussed or indicated to the respondent that he did not intend to make a gift to her is, in my view, conclusive of the point: *S.E.V. v. T.M.V.*, 2018 BCSC 30; *Venables v. Venables*, 2018 BCSC 1736.
- [49] I find that the parties' respective contributions were for the purposes of their marriage and that the claimant has not met the burden of proof of establishing he did not intend to make a gift to the respondent: see *Pisarski v. Piesik*, 2019 BCCA 129 at para. 48.
- [50] In the result, the claimant's assertion that the Laurentian Home Equity is an excluded asset fails.

ii. RRSPs

- [51] At the Date of Cohabitation, the claimant had \$36,225.58 in RRSPs. Any RRSPs the respondent had prior to their cohabitation were cashed in and used for family purposes during the marriage.
- [52] In my view, the claimant's RRSPs as at the Date of Cohabitation are clearly excluded property (s. 85(1)(a) of the FLA). They were always kept in his name and therefore no question of presumption of advancement applies to those funds. Indeed, during the trial the respondent conceded this point.
- [53] At the Date of Separation, the claimant's RRSPs totalled \$78,654.58 (\$20,559.77 at the CIBC; \$7,344.92 at the HSBC; and \$50,749.89 at Primerica). He did not invest in RRSPs after the Date of Separation.

- [54] At the Date of Separation, the respondent's RRSPs totalled \$37,876.42 (\$20,929.94 at the CIBC; \$16,949.48 at TD Bank). She too did not invest in RRSPs after the Date of Separation.
- [55] Subject to the excluded amount of \$36,225, the parties RRSPs should be equalized as at the Date of Separation.
- [56] The respondent cashed in her RRSPs post-separation stating that the proceeds were used for "general expenses". She led no evidence as to what those expenses were. She must account to the claimant for his one-half share of her RRSPs.
- [57] The total RRSPs held by the claimant (\$78,654.58) net of the excluded portion (\$36,225.85) was \$42,428.73. That amount combined with the respondent's RRSPs as at the Date of Separation is \$80,305.15 (\$42,428.73 + \$37,876.42). The parties are each entitled to one-half of that sum (\$40,152.57) as their respective share of that family asset.
- [58] Therefore, the claimant will keep his entire RRSP free from any claim by the respondent, save for the sum of \$2,276.16 which the claimant must transfer into an RRSP to be established by the respondent.

iii. The Early Inheritance

- [59] The respondent admits that the claimant's mother gave the claimant \$70,000 as an advance on his inheritance and that the \$70,000 went into the construction of the Matrimonial Property. A codicil to the claimant's mother's will dated September 28, 2012, made contemporaneously with the Early Inheritance states:

I Direct my Trustee to collect, or take into account, the SEVENTY THOUSAND (\$70,000) DOLLARS that I loaned or gave to my Son, [W.R.M.], on or about September 13, 2012, before carrying out the distribution in paragraph 4(d) of my LAST WILL AND TESTAMENT

- [60] Section 85(1)(b) of the FLA provides that inheritances to a spouse are excluded from family property. The claimant seeks to exclude \$70,000 he received from his mother as an "advance" on his inheritance. The respondent does not seriously dispute these funds were received but says this money was absorbed in the construction of the Matrimonial Property and, relying on *Tobias v. Tobias*, 2016 BCSC 125, *J.B. v. S.C.*, 2015 BCSC 2136, and *Madruga v. Madruga*, 2015 BCSC 1605, asserts that the Early Inheritance should be presumed to be a gift and not something that can be excluded.
- [61] The issue boils down to whether these funds ought to be considered a "gift" from the claimant's mother. Each case turns on its own unique facts: *Weinhaupl v. Paracy*, 2017 BCSC 1662 at paras. 54-56. In determining the intent of the person who advances money in a family context, the court must weigh all of the evidence to determine the point. Here, there was a clear intention by the claimant's mother that she was "lending" the \$70,000 to the claimant as an advance on his inheritance from her estate, presumably because the claimant needed it to complete the construction of the Matrimonial Property. It is also clear that the Early Inheritance was to be taken into account and deducted from the claimant's

portion of her estate on her passing. The end result is that on the claimant's mother's passing, the claimant will receive \$70,000 less from her estate.

- [62] All things considered, I conclude that the Early Inheritance is an inheritance within the meaning of s. 85(1)(b) and is an excluded asset that must be accounted for in the disposition of the Trust Funds.

iv. Canaccord Capital Account

- [63] As at the Date of Cohabitation, the claimant had \$6,682.03 in a non-registered investment account with Canaccord Capital. This account was closed during cohabitation, the funds placed in a joint account and used to fund the construction of the Matrimonial Property but he seeks to have this amount excluded. For the same reasons as I have determined the Laurentian Home Equity is not excluded property, the claimant's argument fails. I am satisfied that when he cashed in his Canaccord Capital Account and placed the proceeds into the parties' joint account without reserving any interest in them, any characteristic they may have had as "excluded" was lost. The claimant intended these assets to be incorporated into the family and intended them as a gift to the respondent: *Namdarpour v. Vahman*, 2019 BCCA 153, at para. 40.

v. Gold Coins

- [64] There is no debate that the claimant purchased ten gold coins prior to the Date of Cohabitation. Eight of these coins were sold during cohabitation to help fund the construction of the Matrimonial Property. For the same reasons as I have found that the Laurentian Home Equity and the Canaccord Capital Account are not excluded assets, I conclude that when the claimant disposed of the eight gold coins, and placed the proceeds in the parties' joint account without reserving any interest in them, any characteristic they may have had as "excluded" was lost. The eight gold coins that were sold and used to fund the construction of the parties' home were, in effect, gifted to the respondent and are not excluded assets.
- [65] The two remaining gold coins, however, are excluded assets and belong exclusively to the claimant free of any claim by the respondent.

vi. The Respondent's claim for excluded assets

- [66] Throughout the trial the respondent stated that she was not claiming any excluded property. In her written submissions, however, she suggests that at the time of the couple's cohabitation, she had a savings account of some \$4,626, referencing bank documents that do not support such a claim. Even if they did, for the same reasons as I have found the Laurentian Home Equity, the Canaccord Capital Account and the eight gold coins are not excluded assets, any such funds were long since used for family purposes and no longer exist.

[67] Save for her Teacher's Pension that existed prior to the Date of Cohabitation, the respondent has no property that could properly be considered an excluded asset.

vii. Trust Funds

[68] Having disposed of the issue respecting excluded assets, I am left to determine the division of the Trust Funds. The claimant seeks an unequal division in his favor to take into account:

- a) the Early Inheritance;
- b) reimbursement of the time and effort he expended in improving the Matrimonial Home after the respondent left the marriage on the basis that these efforts "significantly increased" its value as a consequence, within the meaning of s. 95 of the FLA; and
- c) the \$11,500 he advanced the respondent in the fall of 2013 shortly after the Date of Separation on the basis that it would be repaid out of her portion of the proceeds of the sale of the Matrimonial Property.

[69] I have already determined that the Early Inheritance is an excluded asset and will need to be accounted for in the division of the Trust Funds.

[70] Additionally, there is no dispute that the claimant spent many hours completing the Matrimonial Property during his spare time (he values it at \$5,357) and that he purchased materials (\$13,254.41) to accomplish the task. He seeks to be reimbursed for his time and expenses by way of an unequal division of the Trust Funds. Here, there is no reliable evidence of any "significant increase" in value of the Matrimonial Property as a consequence of his efforts. Indeed, the evidence is that the Matrimonial Property did not sell for years after it was listed and when it finally sold, it was at a drastically reduced price. In my view, the claimant should be reimbursed 50% of the material expenses he incurred in completing the Matrimonial Property and readying it for sale. The time he incurred is, in my view, offset by the fact that the respondent was not living in the Matrimonial Property and there is an aspect of occupational rent that must be considered. Accordingly, the claimant is entitled to \$6,600 from the Trust Funds.

[71] The claimant also seeks repayment of \$11,500 that he advanced to the respondent in September and November 2013 from his own funds. To help the respondent get re-established after she moved out of the Matrimonial Property, the claimant gave her \$10,000 in September 2013 and a further \$1,500 in November 2013. These funds were from a personal operating line, a personal bank account and a personal visa card. The claimant made it clear to the respondent at the time that the \$11,500 was an "advance" on the respondent's share of the family assets.

[72] The respondent argues that this \$11,500 was paid out of the joint line of credit and was part of her one-half. She says that when the Family Home was sold in 2017, the joint operating loan was paid off and it is a wash.

- [73] I do not accept that argument. The evidence satisfies me that this \$11,500 was indeed an advance from the claimant's personal funds and must be accounted for in the division of assets.
- [74] Therefore, the respondent must repay the claimant \$11,500 from her share of the Trust Funds.
- [75] In sum, I conclude that the Trusts Funds (currently \$366,651.13) are to be divided as follows:
- a) firstly, the claimant is to be paid \$70,000 (representing the Early Inheritance);
 - b) secondly, the balance then remaining (\$296,651.13 plus accrued interest) will be divided in half with each of the claimant and respondent receiving \$148,325.56 plus one-half of the accrued interest;
 - c) thirdly, from the respondent's share, the claimant must be paid \$18,100 representing one-half of the materials purchased by the claimant to complete the Matrimonial Property (\$6,600) plus the \$11,500 advance.
- [76] The net result is that from the Trust Funds, the claimant will receive \$236,425.56 plus one-half of the accrued interest and the respondent will receive \$130,225.56 plus one-half of the accrued interest.

viii. Pensions

- [77] The parties agree that their respective CPP and employment pensions ought to be divided equally for the period of their cohabitation.
- [78] Accordingly, the claimant's BC Hydro pension plan and the respondent's Teacher's Pension plan accrued benefits will be divided pursuant to the provisions of Part 6 of the FLA with the Date of Cohabitation being December 1, 1998, and the Date of Separation being August 15, 2013.
- [79] The parties' respective Canada Pension Plan credits accrued from December 1, 1998 to August 15, 2013, will also be split evenly.
- [80] I will leave it to the parties to make the arrangements with the appropriate pension plan providers. The parties have leave to appear before me if clarifications or further orders are required to effect this division.
- d. Spousal and child support
- [81] There are currently no orders or formal agreements in place respecting spousal or child support. The claimant agrees that the respondent is entitled to spousal support. On September 1, 2013, the claimant started paying the respondent \$2,500 per month for combined spousal and child support. He also paid the respondent's car insurance and life insurance premiums. From February 1, 2017 until November 2017, the claimant reduced the amount to \$1,750 per month because the respondent was working. On November 1, 2017,

the claimant increased the amount to \$2,591 per month and has been paying that sum ever since. Because nothing formal is in place, he has been unable to deduct any portion of that payment for tax purposes and the respondent has not claimed any of it as income.

- [82] The respondent seeks an order for spousal and child support both prospective and retroactive to the Date of Separation. To date, she has been content to rely on the claimant's monthly payments without too much of a fuss, although she says that she kept asking him for more money.
- [83] The respondent's spousal support claim is made on both a compensatory and non-compensatory basis. The respondent says that since the Date of Separation she has been striving to improve and make herself more vocationally attractive and towards becoming self-supporting. To her, self-supporting means earning at least \$60,000 per year. She says that despite her "valiant effort", this goal has not been realized because of various things beyond her control.
- [84] As mentioned, her current plan is to work on her social media profile over the next several months and then take a two-year, 30-credit online master's degree course in communications and leadership through Gonzaga University. The cost of the program is \$28,850 USD. She seeks a lump sum award of \$30,000 from the claimant so that she can take this training. She says there are many opportunities awaiting at organizations, corporations, industry, and in public relations for advocacy and public speaking. She plans to capitalize on those opportunities and is confident she will soon be successful at it.
- [85] While the respondent's stated desire of taking this master's program may have merit, given her track record since the parties separated (summarized below), I am not persuaded it is a realistic objective. Nor am I persuaded that the claimant has an obligation to fund it. Her claim for a lump sum award of \$30,000 is dismissed.
- [86] Despite her testimony, my assessment is that the respondent has been making a half-hearted effort since separation at becoming financially self-sufficient. Her ambitions are lofty, unrealistic and unreasonable. Using the couples' joint line of credit, she effectively went on a spending spree until the credit limits were reached. Thereafter, she relied on money received from the claimant and her spotty employment income to live. She cannot blame the claimant nor her imprudent decisions that have resulted in her current lack of income. I do not accept her explanations that she was simply making an effort to branch out of teaching, enhance her teaching credentials, or find a new career.
- [87] To determine the amount of support payable by the claimant in such a situation, the correct approach is to impute annual income to the respondent in amounts I consider reasonable from the Date of Separation to trial: *McEachern v. McEachern*, 2006 BCCA 508 at paras. 40-41; *Munro v. Munro*, 2006 BCSC 1758 at para. 11. In doing so, I will take into account that the respondent is entitled to a reasonable period of time in order to re-establish herself as a teacher.

i. The Parties' incomes

[88] I will first summarize the claimant's income since the Date of Separation. I will then set out what I consider the respondent's income should reasonably have been for the same time period. I will then determine what spousal and child support ought to have been paid and compare it to what was paid. I will then determine the amount of retroactive support, if any, payable by the claimant.

Claimant's income

[89] The claimant has worked for BC Hydro in the same job capacity all of his working life. Each year since the parties separated in 2013, his line 150 income has been between approximately \$108,000 and \$119,000. He has no other income.

[90] The claimant was eligible to retire at age 58 but, given current circumstances, now plans on retiring at age 65.

[91] For the purposes of calculating spousal and child support, I conclude that his income is as follows:

2013:

\$108,492

2014:

\$107,829

2015:

\$111,996

2016:

\$108,465

2017:

\$119,211

2018:

\$118,586

[92] Going forward, for the purposes of calculating spousal and child support, I find that the claimant's Guideline income is \$119,000.

Respondent's income

[93] The more difficult issue is the amount of income that should be imputed to the respondent since separation. The claimant says that the respondent could have, and should have, obtained employment as a category five, step six teacher earning \$67,000 per year. He seeks to have that amount imputed to her as her income. Alternatively, he argues that income equivalent to what she could be earning as a teacher for the Okanagan Indian Band Reserve School (\$30,000) should be imputed. He points out that even working full-time at minimum wage, she could earn in the range of \$29,000 per year.

[94] I accept that when the respondent taught in the public school system, she reach the level of a category five teacher being paid at step five or six of the Teacher's Salary Grid. I also accept that at the same level, she would currently be earning between \$65,000 and \$68,000 per annum. The respondent argues that her many attempts to return to teaching in the public school system were unsuccessful for a variety of reasons, none of which I am persuaded by. My assessment is that, at best, her efforts to obtain employment as a teacher in the public school system post-separation were half-hearted.

[95] The respondent's hand-written tax returns are difficult to follow but as best as I can determine, she reported the following line 150 income for tax purposes from 2013 through 2015 as follows:

2013:

\$800

2014:

\$2,223

2015:

\$8,280

2016:

\$23,830

2017:

\$42,116

2018:

\$16,368

[96] In 2017, she made T-4 earnings from the Okanagan Indian Band Reserve School of \$30,114.98 and from the St. James Catholic School of \$208. Her 2017 EI benefits were \$10,217. In 2016, she earned \$13,810.30 teaching for the Okanagan Indian Band Reserve School and \$624 teaching for St. James Catholic School, \$298 from the Interior Provincial Exhibition and

\$858.68 working for Westfair Foods Ltd. She also received \$540 EI benefits that year. She also reported some spousal support for those years. She admits that she has taken no steps to apply for jobs since September 2018.

- [97] The test for imputing income for unemployment or intentional under-employment is one of reasonableness having regard to that spouse's income earning capacity in light of his or her age, education, health, work history and work ability: *Marquez v. Zapiola*, 2013 BCCA 433 paras. 36-37.
- [98] The picture that emerges is that the respondent is capable of earning far more than she has since the parties separated. She has simply chosen fanciful and unrealistic alternatives. While I acknowledge she needed a period of perhaps two years to establish herself, I conclude that by September 2015 she would have been able to earn at least \$30,000 per year had she focussed her attention on supporting herself.
- [99] The claimant says that the respondent should be economically self-sufficient by now. She currently earns an income of about \$3,000 per month comprised of \$2,591 support, \$466 child tax benefits and about \$200 per month from part-time teaching at the St. James Catholic School. Meanwhile, in the last year or so, her time has been spent reading books, on twitter expressing opinions and making videos that she believes will become popular. She says that even the Prime Minister of Canada follows her on social media.
- [100] In my view, had the respondent acted reasonably, she would have settled into a career earning a respectable income. She is outgoing and has obvious talent. If she were to focus her talents she would probably be employed. Nevertheless, the respondent strongly maintains that within a year or two, she will be earning \$60,000 per year in her new chosen field as a professional advocate.
- [101] I accept that the respondent needed a period of time to re-establish herself in the work force after separation. I accept that some degree of re-training or upgrading would have been reasonable to allow her to return to teaching. However, I am not persuaded that the respondent took reasonable steps following separation to become self-supporting. I find the opposite to have occurred. She chased unrealistic dreams of being a politician, midwife, musician, and singer. She has now settled on being a public advocate.
- [102] In the circumstances, I conclude that the respondent should, and would, within two years of separation, have been able to earn at least \$30,000 per year as either an on-call teacher or in some other capacity had she not been obsessed with wigs, costumes, volunteering and other non-remunerative pursuits. I also conclude that by now, she would have been earning in the range of \$50,000 and going forward, I impute that amount of income to her.

ii. Spousal support

- [103] In ordering spousal support, both the Divorce Act and the Family Law Act provide that the order should recognize any economic disadvantages to the respondent arising out of the marriage and its breakdown, relieve her of economic hardship arising from the breakdown

of the marriage and, in so far as practicable, promote the respondent's economic self-sufficiency within a reasonable period of time: Divorce Act, s. 15.2(6); Family Law Act, s. 161. This relationship lasted almost 14.5 years. The respondent gave up her teaching career to be a stay-at-home mom and home-schooled the Children. She has been disadvantaged economically as a result.

[104] For the purposes of calculating support payable to the respondent going forward, the claimant's income shall be \$119,000. I have already imputed the respondent's income at \$50,000 annually.

[105] Accordingly, commencing January 1, 2020, and on the first day of each month thereafter until the claimant's spousal support obligations cease (as determined below), I order that the claimant pay spousal support to the respondent in the amount of \$1,000 per month, an amount slightly higher than the mid-range of the Spousal Support Advisory Guidelines. The claimant will be permitted to deduct and the respondent must include spousal support in preparing their respective future income tax returns.

iii. Duration of spousal support

[106] I note that as a result of the orders I have made respecting the claimant's pension, the respondent will be receiving almost one-half of the claimant's BC Hydro pension when he retires, at which point, their respective incomes will essentially be equal.

[107] Respecting duration of spousal support, the claimant was eligible to retire when he was 58 but because of the separation, he now expects to retire at age 65, some four and a half years hence. The respondent speculates in argument that he will retire closer to age 70 but she did not put that proposition to the claimant on cross-examination.

[108] I conclude that it is probable the claimant will retire at age 65. Given the respondent's behaviour since the Date of Separation, her self-induced sporadic work record and her strong suggestion that she will be earning sufficient income from her current endeavor to be self-supporting within a year, and allowing for a contingency that she may continue to struggle, I conclude that the claimant's obligation to pay spousal support will continue until he reaches the age of 65 on June 11, 2024. Thereafter, his obligation to pay, and the respondent's entitlement to receive, spousal support shall cease: *Powell v. Levesque*, 2014 BCCA 33.

[109] To be clear, the claimant's final spousal support payment to the respondent will be on June 1, 2024.

iv. Child support

[110] There is no dispute that each party has an obligation to support the Children so long as they remain children of the marriage. Child support is payable in accordance with the Federal Child Support Guidelines.

- [111] I have already determined the parties' incomes for the purposes of calculating support. The calculation of child support is straightforward. It is a shared parenting arrangement.
- [112] The claimant must pay ongoing child support on a set-off basis pursuant to s. 9 of the Federal Child Support Guidelines based upon the parties' incomes that I have determined. For the purposes of this calculation, I have imputed the respondent's income at \$50,000. For 2020, the claimant's income will be \$119,000.
- [113] Therefore, commencing January 1, 2020, and on the first day of each month thereafter until varied in accordance with these reasons or further court order, the claimant will pay the respondent child support in the amount of \$1,270 (the net set-off amount). The parties will share ongoing s. 7 special and extraordinary expenses in proportion to their respective incomes as I have determined. For 2020, and until June 1, 2021, the claimant shall pay 70% of proper extraordinary expenses and the respondent shall pay 30%.
- [114] Commencing June 1, 2021, the claimant's child support obligations will be adjusted on June 1 of each year, based upon their respective taxable incomes in the preceding year. This is with the exception that the respondent's income for child support purposes will be imputed at a minimum of \$50,000 until her income surpasses that amount, at which point her actual income will be used. The parties are required to exchange their respective income tax returns and notices of assessment by June 1 of each year for so long as any of the Children remains a child of the marriage as defined by the Divorce Act.

v. Section 7 special and extraordinary expenses

- [115] The relevant portions of ss. 7(1) and 7(1.1) of the Guidelines state as follows:

7(1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account 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's spending pattern prior to the separation:

- (f) extraordinary expenses for extracurricular activities.

7(1.1) For the purposes of paragraphs (1)(d) and (f), the term extraordinary expenses means

- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
- (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

- (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
- (ii) the nature and number of the educational programs and extracurricular activities,
- (iii) any special needs and talents of the child or children,
- (iv) the overall cost of the programs and activities, and
- (v) any other similar factor that the court considers relevant.

[116] The respondent claims reimbursement for the claimant's proportionate share of approximately \$21,000 for what she calls extraordinary expenses for activities that she enrolled the Children in from the Date of Separation through June 2019. These activities were for what the respondent refers to as "a variety of skills to help them become accomplished people" and includes such things as swimming lessons, lifeguard training, archery, basketball, soccer, clogging (a form of tap dancing), tap dancing, break dancing, hip hop dancing, gymnastics, nature study, boxing, martial arts, and music lessons including guitar, piano, drums, banjo, clarinet and school band ("Extra-Curricular Activities"). Additionally, the respondent claims to have taught the Children numerous other skills and languages including preserving food, gardening, cross-country skiing, roller-blading, handwriting, aerial acrobatics, horse riding, weight training, sewing, flatfoot dancing, reading, writing, math, French and Spanish. She also incurred travel expenses to send the Children on school trips to Quebec.

[117] The claimant testified that he had very little involvement or say in these Extra-Curricular Activities and that the respondent simply registered or enrolled them without discussion or agreement despite knowing that finances were tight. To the extent there were discussions between the parties, it is apparent that regardless of the claimant's objections, the respondent simply enrolled the Children in any activity she pleased. The claimant concedes that he too registered the Children in and paid for some activities.

[118] The respondent supported some of these claimed expenses in the form of receipts and notes. Others were unsupported. She seeks 70% of these expenses which she calculates to be \$14,798.

[119] For the respondent to succeed, she must first prove that expenses related to the Extra-Curricular Activities qualify as special or extraordinary expenses within the meaning of s. 7 of the Federal Child Support Guidelines.

[120] Before a recreational or extracurricular expense will be considered a s. 7 expense, it must meet the threshold of being necessary, reasonable and affordable. It must be "extraordinary" in the sense that it is over and above what should be considered "ordinary". The court must consider if the recipient of child support can reasonably cover the expense

out of income, including table child support. If "yes", it will usually not be considered an extraordinary expense. Nevertheless, it may still be considered an extraordinary expense depending on the amount of the expense in relation to the claimant's income, the kind and number of programs/activities that the children are enrolled in, any special needs or special talents the children have, the overall costs of the programs/activities and other relevant/similar factors: *L.A.M. v. S.C.M.*, 2020 BCSC 67.

[121] The respondent has the onus of proving both the extraordinary nature of the expense and that it is reasonable and necessary and in the children's best interests: *McLaughlin v. McLaughlin* (1998), 57 BCLR (3d) 186 (C.A.) at paras. 81-82; *Bodine-Shah v. Shah*, 2014 BCCA 191 at para. 66; *MacInnis v. MacInnis*, 2018 BCSC 1507 at para. 106. Here, the respondent has not shown that these expenses are anything more than ordinary expenses related to regular extracurricular activities. She has not shown that the children are at an exceedingly talented level that turns them from ordinary expenses into extraordinary expenses. On the admissible evidence before me, I find that the expenses related to Extra-Curricular Activities are no more than ordinary expenses that ought to be paid from child support. They do not meet the threshold of qualifying as extraordinary expenses: *Clarke v. Clarke*, 2014 BCSC 824 at paras. 50-54.

[122] Accordingly, the claimant has no obligation to pay the respondent for any of these expenses. Her application for arrears of s 7 extraordinary expenses fails.

vi. Retroactive/arrears of spousal and child support

[123] The first issue is whether the respondent is entitled to retroactive child support. As I see it, this issue can be decided by applying the test for retroactive child support set out in *D.B.S. v. S.R.G.*, 2006 SCC 37. *D.B.S.* provided four factors that must be considered when deciding whether to award retroactive child support at paras. 100-116:

- a) whether there exists a reasonable explanation for why retroactive support was not sought earlier;
- b) the conduct of the payor spouse;
- c) the circumstances of the Children; and
- d) any hardship that would be occasioned by a retroactive award.

[124] Fairness to the parties is another consideration. As Justice Bastarache stated in *D.B.S.*:

[96] . . . As situations evolve, fairness demands that obligations change to meet them. Yet, when obligations appear to be settled, fairness also demands that they not be gratuitously disrupted. . . .

[125] Here, the respondent has advanced no reason why she did not apply for an order for child and spousal support since the Date of Separation nearly six and one-half years ago. She was apparently content to rely on the tax-free approximately \$2,500 per month she was

receiving from the claimant. There is no evidence or indeed any suggestion that the claimant misconducted himself or was guilty of blameworthy conduct during this time. Likewise there is no evidence that either the Children or the respondent suffered any hardship, were wanting, or had to sacrifice anything as a result of lack of support from the claimant. Indeed, the nature and quantity of the Extra-Curricular Activities speak volumes.

[126] The first indication that the respondent would seek to claim arrears of spousal and child support was when she filed her counterclaim on June 15, 2018. She took no steps thereafter to pursue support until trial. Given my conclusions regarding the D.B.S. factors, I find that the respondent's claim for retroactive support, to the extent she may have one, must be limited to the period from July 1, 2018 to December 31, 2019. She is entitled to an award of retroactive spousal and child support based upon the difference between what the claimant paid during that time frame, and what he ought to have paid according to the Federal Child Support Guidelines and the mid-range of the Spousal Support Advisory Guidelines.

[127] The \$2,591 per month the claimant has been paying the respondent since November 1, 2017, was not broken down between spousal and child support. Accordingly, I will treat them together for the purposes of calculating retroactive support. The following table sets out an accounting of both the claimant's spousal support and child support obligations versus the amount paid, based upon what I have earlier determined to be the parties' respective Guideline incomes and based on the mid-range spousal support. For ease of calculation, I have assumed the claimant paid the respondent \$2,500 per month throughout. I have also imputed income to the respondent in an amount I conclude she could and would have earned had she acted reasonably since the Date of Separation:

Year

Income

Claimant (Husband)

Imputed Income

Respondent (Wife)

Spousal support owing

Child support

owing

Amount

Paid

Difference

2013

\$108,492

\$ 800

$\$1,936 \times 12 = \$23,232$

$\$2,063 \times 12 = \$24,756$

$\$2,500 \times 12 = \$30,000$

-\$17,988

2014

107,829

2,223

$\$1,846 \times 12 = \$22,152$

$\$2,053 \times 12 = \$24,636$

$\$2,500 \times 12 = \$30,000$

-\$16,788

2015

111,996

30,000

$\$1,322 \times 12 = \$15,864$

$\$1,502 \times 12 = \$18,024$

$\$2,500 \times 12 = \$30,000$

-3,888

2016

115,000

35,000

$1,116 \times 12 = \$13,392$

$\$1,453 \times 12 = \$17,436$

$\$2,500 \times 12 = \$30,000$

-\$828

2017

116,000

40,000

$\$1,001 \times 12 = \$12,012$

$\$1,407 \times 12 = \$16,884$

$\$2,500 \times 12 = \$30,000$

\$1,104

2018

118,586

45,000

$\$928 \times$

$12 = \$11,136$

$\$1,355 \times 12 = \$16,260$

$\$2,500 \times 12 = \$30,000$

\$2,604

2019

119,000

50,000

$\$874 \times$

$12 = \$10,488$

$\$1,270 \times 12 = \$15,240$

$\$2,500 \times 12 = \$30,000$

\$4,272

[128] By these calculations, assuming the respondent's income was imputed as I have done and assuming the mid-range of the Guidelines, had the respondent applied for spousal and child support in a timely manner, excluding the income tax ramifications to the parties, the claimant would owe the respondent \$31,512 in retroactive support. Remembering that the claimant was not able to deduct any portion of the \$2,500 monthly support payments, the net effect is much less.

[129] Given my ruling that because of the respondent's tardiness in claiming retroactive support she is limited to the years 2018 and 2019 only, and given that by these calculations the claimant has been overpaying support since 2017, I decline to make any order respecting retroactive support payable by the claimant. The claimant did not seek and I make no order respecting his "overpayment" based on these calculations.

Other matters

[130] The respondent seeks an order that the claimant maintain a life insurance policy "of no less than \$200,000" with the respondent as the named beneficiary.

[131] Section 170(e) of the Family Law Act authorizes the court to order a person who has an existing life insurance policy to designate his or her spouse as a beneficiary to secure spousal and child support. There is no evidence before me that the claimant has an existing life insurance policy within the meaning of s. 170.

[132] This issue was recently canvassed by Justice Kelleher in *R.E.Q. v. G.J.K.*, 2019 BCSC 1116. Similar to the situation in this case, there was no existing life insurance policy in place. Ultimately, Justice Kelleher dismissed the payee spouse's application that the payor spouse be required take out a new life insurance policy. His reasons are set out at paras. 137-150 of that judgment.

[133] For similar reasons, I decline to make the order sought. There is no evidence that the claimant is in poor health. The Children are aged 19, 15 and 12. If something were to happen to the claimant, the respondent will be able to support herself. There is no suggestion that the claimant will not comply with any orders that are made respecting child or spousal support such that there will be any arrears should the unforeseen happen.

Summary

[134] To conclude, I make the following orders:

- a) The parties, who were married at Coquitlam, British Columbia, on March 13, 1999, shall be divorced from each other, such divorce to take effect 31 days from the date of these reasons;
- b) The parties shall continue to have joint guardianship and shared parenting of the Children as was formalized in the JCC Order dated July 10, 2018;
- c) Each party is entitled to all personal property, vehicles, bank accounts and other assets in their respective current possession, free from any claim by the other;
- d) From the Trust Funds, the claimant shall be paid \$236,425.56 plus one-half of the accrued interest and the respondent shall be paid \$130,225.56 plus one-half of the accrued interest;

- e) The claimant's BC Hydro pension plan and the respondent's Teacher's Pension plan and their respective accrued benefits will be divided pursuant to the provisions of Part 6 of the FLA with the Date of Cohabitation being December 1, 1998 and the Date of Separation being August 15, 2013;
- f) The parties' respective Canada Pension Plan credits accrued between December 1, 1998 and August 15, 2013, will also be divided equally;
- g) The claimant will keep the RRSP currently in his name free from any claim by the respondent, save for the sum of \$2,276.16, which he is to transfer into a RRSP to be established by the respondent;
- h) Commencing January 1, 2020, and on the first day of each month thereafter to and including June 1, 2024, the claimant shall pay spousal support to the respondent in the sum of \$1,000 per month. The claimant may deduct and the respondent must include this sum pursuant to the appropriate provisions of the Income Tax Act;
- i) The claimant will pay ongoing child support on a set-off basis pursuant to s. 9 of the Federal Child Support Guidelines based upon the parties' respective line 150 income Federal Child Support Guidelines. For the 2020 year, the claimant's income shall be \$119,000 per annum and the respondent's income is imputed at \$50,000 per annum. The claimant shall pay 70 percent of s. 7 special and extraordinary expenses and the respondent will pay 30 percent;
- j) Commencing January 1, 2020, and on the first day of each month thereafter until varied in accordance with these reasons or further order, the claimant will pay the respondent child support in the amount of \$1,270 (the net set off amount). The parties will share ongoing s. 7 special and extraordinary expenses in proportion to their respective incomes as determined immediately above;
- k) Commencing June 1, 2021, and on June 1 of each year thereafter for so long as there are children of the marriage as defined by the Divorce Act, the claimant's child support obligations will be adjusted based upon the parties' respective taxable incomes in the preceding year, with the exception that the respondent's income for child support purposes will be imputed at a minimum of \$50,000. In order to accomplish this adjustment, the parties shall exchange their respective income tax returns and notices of assessment by June 1 of each year;
- l) The respondent's claim for retroactive spousal and child support is dismissed;
- m) The respondent's claim for reimbursement of s. 7 expenses related to the Extra-Curricular Activities is dismissed; and
- n) The respondent's application for an order that the claimant take out an insurance policy for a minimum amount of \$200,000 with the respondent as a beneficiary, is dismissed.

Costs

[135] Given their relative successes, the claimant is entitled to his costs at Scale B.

"G.P. Weatherill J."

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