

CANADA / JUDGMENT

W1908 v. H1908

2025 BCSC 1390

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2025 BCSC 1390 W1908 v. H1908

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

W1908 v. H1908,

2025 BCSC 1390

Date: 20250721

Docket: E221908

Registry: Vancouver

Between:

W1908

Claimant

And

H1908

Respondent

Before: The Honourable Mr Justice Crerar

Reasons for Judgment

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Place and Dates of Trial:

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Table of Contents

Table of Contents

Paragraph Range

I. INTRODUCTION

[1] - [6]

II. KEY FACTS

[7] - [15]

III. CREDIBILITY

[16] - [19]

IV. SEPARATION DATE

[20] - [72]

A. Law

[20] - [24]

B. Discussion and decision

[25] - [72]

V. PROPERTY DIVISION

[73] - [81]

VI. INCOME IMPUTED TO THE WIFE

[82] - [95]

VII. SPOUSAL SUPPORT

[96] - [124]

A. Law

[96] - [99]

B. Discussion and decision

[100] - [124]

VIII. REVIEW

[125] - [127]

IX. CHILD SUPPORT

[128] - [130]

X. UNCONTESTED ORDERS

[131] - [132]

XI. CONCLUSION

[133] - [134]

I. Introduction

- [1] The parties met in 1996 when the husband (born 1970) was working abroad in the home country of the wife (born 1972). They married in October 1997. In 1999 they moved to Toronto, and in 2006 they moved to Vancouver. They had two children: born in 1998 (now 27) and 2004 (now 21).
- [2] The issues in this trial:
- what was the separation date: February 1, 2016 (as asserted by the husband), or November 9, 2018 (as asserted by the wife as her alternate position), or January 15, 2019 (as asserted by the wife as her primary position)?;
 - how should the parties' property be divided?;
 - what income should be imputed to the wife?;
 - should the wife's compensatory spousal support be based on the husband's considerable rise in salary and bonuses since his corporate promotion to executive vice-president in October 2016 and president in October 2017?;

- e) should the wife receive indefinite or time-limited spousal support, and could it be subject to review?; and
 - f) how much should the wife pay in child support for the younger child, who has lived predominantly with the husband since separation?
- [3] The husband's promotions, and significant increases in salary and bonuses, drive these issues. His company is a casual restaurant and bar, with hundreds of franchise locations throughout North America, with corporate operations in the Vancouver and Toronto metropolitan areas.
- [4] The parties' separation date is of particular importance. Both of the wife's proposed separation dates would evoke the so-called "Rule of 65", extending the duration of her spousal support to an "indefinite" range. Alternatively, when the Spousal Support Advisory Guidelines [SSAG][1] calculations apply to the husband's earlier asserted separation date of February 1, 2016, the spousal support is limited to half the duration of the relationship (9.25 years) up to the full duration of the relationship (18.5 years): p. 50. A later separation date will also bring the promotions and increased remuneration within the marriage period. The separation date will also influence what assets constitute family assets, earned and acquired during the parties' relationship. Finally, it will factor into the court's final determination of spousal support, and the duration of that support.
- [5] As expanded in these reasons, the Court concludes:
- a) the parties separated in February 2016, after 18.5 years of marriage, when the wife was 43 years old;
 - b) the parties' assets should be divided as at June 2021, when they separated their financial arrangements, and the husband started directly paying the wife spousal support;
 - c) the wife has been deliberately and unnecessarily under-employed before and since separation. Her skills and training, fostered by the husband, indicate that she is capable of making considerably more than minimal wage: \$60,000 is her annual imputed income since the separation date;
 - d) but for the wife serving as the primary caregiver before and after the separation date, the husband would not have been in a position to obtain and maintain his senior executive roles, with their attendant high salary and bonuses: the wife is entitled to spousal support, on both compensatory and non-compensatory grounds, reflecting the husband's increased post-separation base salary and bonuses;
 - e) in the interests of self-sufficiency, and with an eye to the significant amounts the wife will receive in property division and spousal support, spousal support obligations will end in June 2034;

- f) the wife will pay the husband child support from February 2021 until he ceases to be a child of the marriage, based on her imputed income.
- [6] As indicated in the style of cause, in the interests of the privacy of these parties, and predominantly that of their children, these reasons will only provide details necessary for the analysis and context leading towards these conclusions. There are no facts or issues of particular public interest that require publication of particulars of their private lives. There are no material points of testimony that a member of the public might step forward and call out as an untruth.

II. Key facts

- [7] In addition to those canvassed in the introduction, and below under the heading of "Separation date," the following are the key facts, most of which are not disputed.
- [8] In 1996 the couple met in the wife's home country, where he was teaching English and she was the school manager: in effect, one of his bosses. They married the next year, after discovering that she was pregnant: the first child was born in 1998. By that time, the husband was working full time while studying in a remote McGill MBA programme, occasionally flying back to Canada for the requirements of that programme. While the husband contributed, the wife served as the primary caregiver for the child.
- [9] In 1999 the family moved to Montreal to finish the husband's second MBA year at McGill. The wife studied English, but her written and spoken English remained limited. While the husband contributed, the wife remained primarily responsible for the child.
- [10] In 2000 they moved to Toronto, where the husband began work at Manulife Financial on an MBA rotational human resources programme. This led to positions as HR Manager and an investor relations position, in which department he ultimately became a director, in 2004.
- [11] From 2000 to 2004, when the second child arrived, the wife worked at two successive Toronto financial institutions, first as an accounts payable clerk, and then providing focused client service for clients from her home country. While the husband was fully engaged in family life, and dropped the child off at daycare, the wife bore more responsibility in the face of the husband's focus on his professional role and development, and long hours. After the birth of the second child, she generally acted as a stay-at-home mother, attending to the children's appointments and taking primary responsibility for the children and house.
- [12] In 2006 the husband joined the restaurant corporation of which he now serves as president, after being solicited by a recruitment firm. The new job required the family to move again, this time to the Lower Mainland. The husband started work immediately, with the wife staying back to sell the house, and move the family three months later. The husband's first role in his new company was director, investor relations. In 2010 he was promoted to vice-president, investor relations. In this new capacity, his travel duties increased.

- [13] In 2014 he was promoted again: to senior vice president, investor relations/corporate communications. This new role required even more travel, splitting his time between Toronto and Vancouver offices. In 2015, in this capacity, he played a central role in the company's initial public offering, the successful execution of which was integral to his further and ultimate promotions.
- [14] In October 2016 the husband was promoted again: to executive vice-president, marketing. The new post required him to spend 80 percent of his time in the Toronto office. He rented an apartment in Toronto in December 2016, and lived there until July 2020. While he regularly flew back to Vancouver to visit his family, the wife and their then-12-year-old younger child remained in Vancouver, with the wife continuing to serve as the primary caregiver and domestic manager, now almost exclusively, during this critical period in the husband's career.
- [15] In October 2017 the husband was promoted to president. This promotion permitted him to spend more time in British Columbia. He rented an apartment in March 2019, and has predominantly lived in Vancouver since 2020.

III. Credibility

- [16] Each party made submissions on credibility, but ultimately, commendably, did not seek to impugn the general credibility of the other. Each responsibly acknowledged the strengths of the other as a parent and spouse, and avoided all disparagement.
- [17] The wife argued that the husband's professional background in sales and damage control served as both a weakness and strength: she argued that he implausibly recalled details of key events, while forgetting others, and never conceded points adverse to his position. The wife raises as examples his explanations of marital status in Canada Revenue Agency filings, as well as his continued wearing of his wedding ring after his professed separation date. I deal with those alleged discrepancies and others in the analysis below. As set out below, I did not find the husband to be a dishonest or manipulative witness, and generally reject the wife's submissions on credibility.
- [18] The wife also urged the Court to draw an unfavourable inference against the husband for not calling his parents or siblings as witnesses to corroborate aspects of his testimony, such as when he told them of their separation. I decline to draw such an inference. While the husband is close to his family members, it is also clear that he is a very private and protective person. He acknowledged that he was delayed and restrained in telling his family members about his crumbling marriage. It is not unreasonable for him to seek to avoid calling his family members as witnesses, or pitting them against their soon-to-be-former daughter- and sister-in-law, with whom they appear to have had a positive relationship. Had he called them, and had they supported their son's evidence, no doubt the wife would have noted their bias and discounted their evidence.

[19] At the end of the day, as set out below, the Court made key findings based upon contemporaneous and objective documentary evidence rather than credibility. Each party presented as credible, in the sense of striving to provide accurate and honest evidence. The husband, by nature of his professional duties, and the talents and training that provided him with those opportunities, was a careful and precise witness, with a good sense of details. Temperamentally and professionally, the wife was less so. She was considerably more vague on objective details and communications. She was immersed in her own self-perceptions of events, and hesitant to acknowledge other, more objective, interpretations. Her memory was admittedly hazy: "it was a long time ago." Her testimony was permeated with the uncertain and reconstructive phrase "I think that we/I would have I don't know." To be fair, the wife's assertions about the nature of their relationship and separation may have partly flowed from cultural perceptions of what constitutes an ongoing and tenable marital relationship, rather than any attempt to spin her evidence in a manner positive to her case: she comes from a country where arranged marriages are not uncommon, where divorce is frowned upon, and spouses will often live far apart due to work requirements. These points go to reliability, rather than honesty. On the rare material points where the wife's testimony differed from that of the husband, I generally preferred the husband's account.

IV. Separation date

A. Law

[20] Section 8 of the Divorce Act, RSC 1985, c 3 (2nd Supp) ["DA"] sets out the requirements for an order of divorce, based on the breakdown of a marriage and living "separate and apart" for at least one year:

Divorce

8 (1) A court of competent jurisdiction may, on application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been a breakdown of their marriage.

Breakdown of marriage

- (2) Breakdown of a marriage is established only if
- (a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding; []

[21] In *Wang v. Yang*, 2024 BCSC 624, Madam Justice Douglas distils the jurisprudence confirming the requirement of objective evidence of an intention to separate, including communications and actions consistent with that decision:

- [54] It is not enough for one party to form a subjective intention to separate; there must also be objective evidence that the party wishing to separate communicated that intention to the other party and acted in a manner that was consistent with this intention: *Bartch* at para. 92, citing *Nearing v. Sauer*, 2015 BCSC 58 at paras. 54-55, and *J.L.L. v. G.A.L.*, 2010 MBQB 39 at para. 4; *Kaur v. Virk*, 2022 BCSC 173 at para. 61; *McGrail v. McGrail*, 2016 BCSC 104 at paras. 39-40. It is useful to compare the parties' behaviour before and after separation in determining whether they were living separate and apart: *Bartch* at para. 93, citing *Rose v. Guiguet*, 2008 BCSC 1225 at para. 70.
- [22] The intention to separate need not be a mutually shared intention; a unilateral communicated abandonment of the matrimonial relationship is sufficient: *SAH v. IBL*, 2018 BCSC 544 at para 52; *Dhillon v. Dhillon*, [1998] BCJ No 823, 1998 CanLII 4192 (CA).
- [23] In *Nearing v. Sauer*, 2015 BCSC 58, Madam Justice Fleming (then of this Court) confirms that the court's determination is guided by generally accepted characteristics of marriage, as evidencing whether the parties had separated:
- [56] Typically when the parties dispute the date of separation, the court's analysis focuses on the generally accepted characteristics of marriage including the intention to remain married, having sexual involvement, carrying on activities in public, sharing financial resources and sharing significant family events: *Sachdeva* at para. 87. The court will also consider a range of other factors, including a clear statement by one of the parties of his or her desire to terminate the relationship. Sexual involvement, or lack thereof, is not conclusive: *Newth v. Booth*, 2011 BCSC 317 at para. 17.
- [24] In *SAH v. IBL*, Madam Justice Shergill sets out enquiries guiding the court's determination of the separation date:
- [55] As is evident from the case authorities, the determination of the parties' date of separation is a very fact specific exercise. I have found the following questions, framed in the form of a test, useful to determining the date of separation here:
1. Did at least one spouse have the intention to separate?
 2. Was the intention to separate communicated to the other spouse?
 3. Was the intention to separate acted upon? In other words, using generally accepted characteristics of marriage, did one or both spouses take action that is consistent with the separation, such as:
 - a. changing how they behaved with each other in public; and
 - b. changing how they behaved with each other in private.

B. Discussion and decision

- [25] The wife argues for a separation date of January 15, 2019, when the husband physically left the family home for good. Alternatively, she proposes November 9, 2018, where during an amicable dinner at their favourite restaurant, the husband agreed to move out in early 2019: she says that during the conversation, the parties mutually decided to separate, as formalised by that move.
- [26] The husband asserts a date of February 1, 2016, when the parties by email discussed a separation and divorce, after which the husband departed the matrimonial bed and moved to a latched basement suite in the same house.
- [27] I agree with the husband's proposed separation date. On and after that date, both spouses indicated and communicated an intention to separate, that was acted upon in private and, to a lesser extent, public. Objectively and subjectively, the marriage was at an end, and never recovered.
- [28] The husband testified that the relationship had been in a downward trajectory for many years, and that 2015 marked the final year that the parties made concerted and sustained efforts to try to keep their marriage together, through special romantic vacations and otherwise. Over the preceding decade, the couple followed a pattern of fighting and then making up, all the while trying to hide their discord from their children, and in particular their younger child. For her part, the wife argues that 2016 to 2019 simply continued this pattern of discord and reconciliation: an ongoing series of "ups and downs".
- [29] Both parties agree that the marriage had been under considerable strain since January 2015, when their eldest child moved out of the house after an argument with his parents. This event imposed greater stress on the couple, and proved particularly troubling and destabilising for the younger child, who idolised the older sibling.
- [30] On February 1, 2016, they had a particularly animated fight, sparked in part by the wife's stated intention to cease her role as manager of their second property: a West Side Vancouver house that they rented out to international students.
- [31] After the fight, at 10:13pm, the wife sent an email to the husband at his work email address. She expressed her view that the marriage is at an end, and discussed the necessary steps towards a divorce:

It's unfortunate that you lost your temper in front of [child's name] and couldn't stop using F words.

As you said "I can not take it any more", "[Wife] is angry at me all the time", let's move onto the next step. I always mentioned there are 2 different ways of seeing when we have disagreement. However, I reached the point that we are not going to change our views and I am loosing energy to continue relationship with you. You see me as very negative person and my friends laugh at that. They see me as a different person and I think you feel the same way. I don't think we can

make it work at this point. I prefer not to live with someone always blame on others not taking any responsibility of what he does.

I believe in Canada, the next step will be the separation for one year. All we need to do is to live separately. One of us can move out or we can break the house lease and move into somewhere else. I guess time to spend [child] will be half and half! (One week here and there or 3 times here and 4 times there) Let me know if it's better to go through lawyers, let them talk and decide or we will talk. Either way, I prefer to do it ASAP.

You probably feel the same way that I feel that we did our best we could. Sorry for both of us and particularly [child] that it didn't work out.

Thanks so much for 19 years +. I have learned so much being with you.

Let me know what you think by tomorrow on Feb 2 noon. I don't think we need to take time any more for decision. Let's get it done.

[emphasis added. All quotations as in original, unless otherwise noted]

[32] The husband was concerned that the wife had sent this personal message to his corporate email address. He created a new personal email account. At 4:16 AM the next morning, the husband replied:

I understand your note and also want to change our situation going forward. However, there is a lot to consider before we can decide next steps, including separation. I would like time to research the legal process, costs and options before we decide about moving plans etc.

I can stay in [older child]'s room this week and we can meet on the weekend to plan the future.

I'm also very sad that we are in this pattern, especially for [younger child]. I wish it were different.

Please only send info to this email address as my work email is not private.

[33] In her response, the wife questioned the husband's desire to take time to research the legal process, and demanded more immediate action:

Legal process is to be separate for one year then divorce.

We need to make a legal document I believe after we finish living separately or so. Cost of lawyer is depends who to use.

What's more to consider?

It was bad you could not hold your temper in front of [younger child]. I prefer not include him like that at all when we think of [younger child].

Thank you

[emphasis added.]

- [34] The February 2016 email chain marked a significant departure in the relationship. Neither party had ever suggested separation or divorce following any of their many past arguments. As indicated, the wife pushed for divorce (and seems to have done some degree of prior independent research to that end). The husband did not push back on that proposal: only on the timing and logistics.
- [35] At trial, there was no evidence, either documentary or testimonial, that the couple ever walked back from this intention to separate and divorce, or that they ever formally reconciled. They remained commendably cordial and civil, with occasional affectionate references to their past happiness, and spent some family events and meals together in this spirit, but they never took steps to reverse this mutual intention.
- [36] Soon after the February 2016 exchange, the husband moved, first, into the absent child's room, and then, to the basement suite of the house. That suite was separated from the main body of the house by a locked door. He also moved all his possessions downstairs.
- [37] The husband said that they never again shared a bed or had sexual relations after that fight. The wife believes that there was one incident in 2016, but was imprecise and uncertain, and the husband categorically denied further intimacy. In any case, they agree that there was no sustained regular sexual or romantic relationship between the parties after late January 2016.
- [38] The husband began the process of starting new romantic relationships almost immediately. In May 2016 the wife discovered a sex-related item in his briefcase and confronted him. Over the next two years she came across other indications that he was seeing others. The husband claims that in summer 2018 the wife referred to her own new sexual experiences; she denies this conversation.
- [39] While the jurisprudence emphasises that sexual relations should not be the sole metric determining the separation date, it works against the wife's position that for many years their relationship had been a series of ups and downs: fights and then reconciliation. Their cessation of sexual relations with each other, along with other changes in the relationship canvassed below, stand in contrast to the pre-2016 patterns.
- [40] As expanded below, despite the husband's relocation to the basement suite, the wife continued to express frustration with his physical presence in the house. That issue became moot in October 2016, when the husband was offered the position of executive vice-president, marketing. That role required him to move to the Toronto area. He spent most of 2017 through 2019 living in Toronto (roughly 60 percent to 80 percent), although he continued to stay in the latched basement suite of the family house on the occasions he returned to Vancouver to visit his children. Pointedly, the wife herself never visited the husband in Toronto during this period, despite his long absences, and despite the fact that their children did visit their father there.

[41] The circumstances of the promotion in itself reflected that the parties were no longer a couple. The husband pursued and accepted the offer without consulting the wife (although she emailed some unsolicited thoughts). In contrast to past employment opportunities, about which the parties actively discussed pros and cons of the potential new position, the husband told the wife of his promotion only days before it was announced publicly, with no prior discussion; she had to ask him the specific title. He similarly only told the wife of his promotion to president via email, just before its public announcement. She provided a brief reply: "Congratulations on your professional success." They did not celebrate either promotion together, in contrast to their pre-2016 custom.

[42] Although the husband lived in a separate suite, behind a locked door, in the basement, the wife still found the husband's presence in the house on his returns to Vancouver to be stressful, and regularly encouraged him to move out entirely. On August 28, 2017, in an email with the subject line of "Speaking with a Mediator" the wife asked the husband to move out of the basement suite:

I want to also suggest that we start living separately. I feel stress when you come to our house because there's tension between us. I am sure you feel the same way. It's not good for [younger child] too.

You can rent an apartment on your own in Vancouver. I can get a roommate at the current house to help with that cost or downsize to a smaller place.

We can figure out the best way to do this.

I think having boundaries like this will help both of us go through the process amicably. I also think this will be good for [younger child] to get used to the idea that we are taking steps for our separation.

[emphasis added]

[43] Earlier in that same email, the wife sets out her ongoing intention to take steps towards a divorce, in a manner sensitive to the feelings of the children:

I look forward to speaking with the mediator about our divorce.

My biggest concern about the divorce is how it will affect [children]. [Children] desperately want us to stay together. They want us to work things out.

We know that it is difficult to work things out at this point, but they do not understand that because they are still young.

This has been particularly hard for [younger child] ..He loves both of us and the thought of us ending our marriage makes him nervous and sad.

Divorce is hard for kids at any age, but harder for young teens like [younger child].

I know our divorce could affect him deeply if we are not careful in how we handle things and want to make that our priority .

One way that could soften it is that we decide the details of the divorce such as splitting our assets with the help of a mediator or lawyer, sign the agreement, but not finalize the divorce for a few years.

While we are separated, the three (or four) of us can do things as family such as gathering with relatives, go to his hockey games, go for dinner, etc. That way, it will feel like we are a family instead of co-parenting.

I want us to stay close and be good friends after we are separated or divorced.

This is been very hard for me emotionally too. We have been together for 21 years raising a family and we had fun together.

[emphasis added.]

[44] This August 2017 email chain continued over four days. The husband responded: "I agree with everything you have said and will book an appointment with a mediator for early September." They are in agreement on moving forward with the formalities of their divorce. He also expressed complete agreement with the wife that they retain an amicable and collaborative relationship for the sake of their children.

[45] Notwithstanding this détente, the tensions in the email chain immediately re-escalated, with the wife pressing her insistence that the husband immediately physically move out of the downstairs suite: "I would like to start living separately as soon as possible"; "unfortunately if you [are] sleeping downstairs, our tension won't go away;" "I need to live separate from you. Please understand that." She urged him to move in with his parents or have his company pay for a hotel, or, if he refused, she herself would move out into an Airbnb: to that end, she now asked for advance notice of his Vancouver visits.

[46] The husband's response to these demands confirms that the couple had been talking about moving forward with the separation since early 2016:

This is very confusing. Yesterday you said you want to work together amicably, using a mediator and focusing on the well being of our children. Today you demand that I move out immediately, that you can't have me in the house and that you will move out with [younger child] if I come there as planned. I understand that this can be an emotional time but we have been talking about moving forward with a separation for 16 months and we have the opportunity to do it the right way--as you described in your e-mail yesterday. Suddenly kicking me out is not the way to begin working together on this process. It is not appropriate or legally advisable for me to move out before we agree on a separation plan

[emphasis added.]

- [47] In her testimony, the wife took the position that these emails discuss the hypothetical: "if we separated". None of her emails are that tentative, and the totality of the communications indicated her (and his) unequivocal and settled intention to separate and divorce. In none of the nine e-mails in the August 2017 e-mail chain does the wife suggest that not separating is an option or that the parties had not yet already separated. As indicated by her adamance that the husband physically depart the basement suite, immediately, the wife, even more so than the husband, was resolute in her desire to formally terminate the marriage. And, again, there is a complete lack of evidence that the parties ever discussed a desire or intention to return to the status of husband and wife, or a desire or intention to reverse from their repeated resolutions to separate and divorce.
- [48] The issue of the husband's tenancy was not immediately resolved. On November 9, 2018, the parties had a dinner at their favourite restaurant. They discussed, with some wistfulness and fondness, the history of their relationship. The husband confirmed that he had been seeing someone else. They agreed that the husband would move out of the family home in early 2019. On January 15, 2019 the husband did so, renting a Vancouver apartment. Again, these two dates represent the dates of separation proposed by the wife.
- [49] Despite the dinner and re-tenancy, the parties continued to delay formalising the terms of their separation and divorce. In November 2019 the wife noted that their separation was coming up on the one-year mark. The husband asserted that they had been separated since February 2016. In August 2020 the parties retained counsel. With the assistance of counsel in July 2021 they financially separated. They stopped maintaining a shared account, and the husband started paying the wife spousal support, on a without prejudice basis, effectively providing half of his base salary (without bonuses) to the wife. An October 2021 mediation was unsuccessful. Eventually, in July 2022, the wife commenced these proceedings.
- [50] I will address some of the evidence put forward by the wife as indications of a continued spousal relationship.
- [51] The wife places great emphasis on the fact that neither party took any particular steps towards divorce immediately after the February 2016 communications, as an indication that reconciliation was still in the air, and that neither party had a settled intention to end the relationship, citing *LTF v. RBF*, 2023 BCSC 834 at paras 81, 83.
- [52] While both the husband and wife are educated, sophisticated people, neither had family members or close friends who had gone through the process of separation and divorce. As set out in their emails, they both understood that the divorce could not be realised any earlier than a year after separation. I accept the husband's evidence that he believed that he could not take steps towards a divorce or separation until after the expiry of this one-year period, and hence the lack of specific progress. Further, their mutual intention to shield their youngest child from outward signs of separation and divorce, as indicated in the email chain above, underlies in part this lack of progress towards termination. Further, this time period provided significant professional challenges and distractions for the husband, with

his two rapid and important promotions, each imposing a steep and urgent learning curve. Finally, the 2016 vice-presidential promotion effectively realised a separation, and delayed the necessity of divorce, with the husband's relocation to Toronto for most of the time.

- [53] Apart from professional focus, the husband also wished to preserve a sense of stability and normalcy in his now highly visible corporate role during this sensitive time. The husband and wife continued to attend some corporate events, including events and get-togethers with the founder of the company and his wife. The modification to their corporate patterns corroborates rather than undermines their separation, however. While they had shared a room at past company conferences, they booked separate rooms for the April 2016 conference. The only reason they travelled together to the conference was that they had earlier set plans to combine it with a cultural trip with their child. The husband did not invite or bring the wife to any of the twice-annual corporate conferences in 2017 or 2018.
- [54] In any case, the parties did take steps towards divorce in a manner consistent with the husband's stated separation date. In March or April 2017--roughly a year after the purported marital breakdown, and the completion of what he believed to be the mandatory separation period--the husband mentioned to a friend who was knowledgeable about family law matters that he was separated, and confused about next legal steps. She emailed him a list of family law resources. Following that email, the husband reached out to a collaborative mediator. He engaged in extensive communications with the mediator about child support, spousal support, child custody, and divorce. In summer 2017, the husband forwarded those communication to the wife. The wife did not express any surprise at the engagement of the mediator, or the discussions of divorce (as opposed to mere temporary separation), as well as child and spousal support. In fact, in September 2017 the wife completed and submitted her own intake forms to the mediator, directly. She wrote that she wished to resolve the issues of child support, spousal support, and parenting matters. While she wrote that they were not separated "yet", this reflects her misunderstanding the legal concept of separation could not be engaged until both of them lived under separate roofs.
- [55] During the 2017 communications about the mediation, the wife issued a curt demand for a wide range of financial documents, with a strict three-day deadline, in a manner more redolent of litigation than mediation aimed at reconciliation.
- [56] The parties scheduled an appointment with the mediator for October 30, 2017. Unfortunately, the husband did not see or respond to the mediator's confirmation communication, sent to his personal email account, in a timely way, and the mediator cancelled the appointment. In a response email, as well as in her testimony, the wife confirmed that she was still interested in proceeding with the mediation at that time.

- [57] After the scheduling snafu, the parties once again returned to a holding pattern. This is understandable as, again, the husband had just taken on the heavy and visible role of president of the company. They were de facto separated, given that he still spent many weeks in Ontario and elsewhere, and lived in the basement when in Vancouver. Importantly, in the following years and months, as in the preceding years and months, at no time did the parties engage a counsellor or therapist with the goal of working on their relationship.
- [58] In the end, the parties made various unsuccessful attempts to formalise their separation between 2018 and July 28, 2022, when the wife filed her notice of family claim.
- [59] The wife's proposed separation date is based on the husband's physical departure from the family home. The fact that the husband nominally maintained a residence under the same roof as the wife, and sometime dined with the family under that roof, is not determinative of separation. In *Azanchi v. Mobrhan-Shafiee*, 2021 BCCA 55 for example, the Court found that the trial judge did not err in concluding that the parties had separated, despite the parties living in the same apartment for 19 months: para 44. There, as here, the husband, was away from that residence for much of that time. The Court of Appeal accepted the trial judge's finding that, despite being occasionally cordial to one another, the fact that they were more often distant and did not display any serious or prolonged attempts at reconciliation supported the conclusion that they were no longer living in a marriage-like relationship: para 45. Similar findings were made in *Rushton v. Rushton*, 2 DLR (3d) 25, 1968 CanLII 606 (BC SC) and *Moulton v. Warren*, 2023 BCSC 335 at paras 136-138.
- [60] In asserting a later separation date, the wife pointed to various activities the family spent together after 2016 as evidence of an ongoing conjugal relationship. She notes that the parties had some meals together, at home and in restaurants. They also had meals with each of their extended family members, and celebrated holidays together, and spent one holiday together at his parents' lake cabin. Apart from that, however, they largely kept to themselves. The parties remained cordial with each other, consistent with their stated desire to maintain, in the wife's phrase, "a non-hurting relationship for the benefit of the children." They put into effect the precise proposal made by the wife in the August 2017 email chain, quoted above: doing things together as a family so that it would "feel like we are a family."
- [61] The wife also points to various communications and activities between February 2016 and November 2018, to support her urged later separation date.
- [62] The wife notes that immediately after the February 2016 email quoted above, he invited her to Valentine's Day dinner: the husband forwarded the golf club's bulk email advertisement for the dinner, writing, "there is still time to reserve " followed by a string of heart emojis.
- [63] I accept the husband's explanation of this email. Given the February 1-2 email exchange, and, in particular, her demand that he move out of the house, it was clear that the parties had much to discuss about their separation. They had a custom of having difficult conversations at restaurants in order to preserve civility, and to insulate their younger child from any acrimony. The couple, and in particular the wife, enjoyed eating in fine and

interesting restaurants. The husband frequently proposed meals at his golf club, the restaurant of which the wife found uninspiring; it was an ongoing marital joke. Hence her reply: "my advice will be make special things SPECIAL." His addition of the hearts, apart from being a doubly ironic reference to discussing divorce on Valentine's Day, at a restaurant she did not love, also served as a form of icebreaker and de-escalation in proposing this serious discussion.

- [64] The wife points to photographs showing the husband still wearing his wedding ring as late as February 2017: a full year after the alleged separation date. The fact that these photographs exist reflect their context: family events (and in one instance a corporate event), where the husband is trying to preserve the sense of normalcy to his children, to his greater family, and to his work colleagues.
- [65] The same sense of familial normalcy and cordiality explains the various celebration cards the husband sent her from 2016 to 2018. In a May 2016 birthday card, the husband wrote "MTYLT", the acronym written on the inside of their wedding bands, and husband's parents' wedding bands, standing for "more than yesterday, less than tomorrow". That same card was also signed by their two children, as a collective family card to the wife and mother: it would have been odd and troubling for the children if the husband had declined to sign it, or had included a curt greeting or one that differed from the norm.
- [66] The wife also points to the husband's November 2018 anniversary card to her in which he states "congratulations on 21 years! Hard to believe all that we have been through " and encloses a gift certificate from his restaurant chain. Most significant others would not consider such a gift to be generous or romantic, especially knowing that the husband received such cards for free, as promotional gifts for business contacts. This gift stood in marked contrast to the generous gifts the husband had given her pre-separation, such as a \$25,000 diamond ring. I also accept the husband's explanation that he only provided the card and certificate after the wife surprised him with her own gift and card several weeks earlier.
- [67] The wife also cites various post-2016 formal statements by the husband that the parties were married. In July 2017, for example, he signs a travel authorisation letter for his wife to travel with a child, referring to the wife as his "wife." Apart from avoiding unnecessary red flags at the border, it was an accurate statement: they were not yet divorced.
- [68] Similarly, when the husband reported in the 2016 and 2017 tax forms that there was no change to their existing status as "married", it was accurate: they were still married, as they are today. There was insufficient evidence as to whether the software he used provided a default of "married" or whether he was provided or overlooked the option to select "separated." I also accept his explanation of an October 2021 letter to the Canada Revenue Agency that states that they separated in 2018. That letter was drafted by their accountant, whom, he surmised, likely mistakenly took from his 2016 and 2017 filings that the separation occurred in 2018. He admits that he paid insufficient attention to the letter before signing it.

- [69] The wife argues that the intermingling of their finances indicates an ongoing marital relationship: the jurisprudence above notes this can be such an indicator. She notes that after 2016 they maintained a joint account, and consulted about joint financial decisions. To his credit, the husband maintained the joint account for their mutual convenience, and to cover family expenses; his income covered almost all family expenses, including ongoing automobile expenses, and expenses for their primary Vancouver house and Vancouver rental property. The existence of the joint account in the present case thus does not serve as a typical indicator of an ongoing marital relationship, and should not be considered to the prejudice of the husband. Indeed, the joint account continued until June 2021: two years after the wife's own proposed separation date. They both acknowledged that they had hoped that the mediator would assist them in settling and severing their financial arrangements in 2017.
- [70] The wife also points to the husband signing the family home lease for another full year term in August 2018, with no suggestion that the wife take over the lease. The wife also notes that in June 2016, the husband discussed investing some of the funds in the joint account, and that even in January 2017 they were making joint financial decisions. I am satisfied that this does not represent a planned future together, but rather a prudent discussion of wealth maximisation, that underlies in part the husband's historical and continued financial success.
- [71] As with many of the points raised by the wife above, the husband's measured, orderly, and careful approach to separation, eschewing unilateral actions, and acting in the interests of normalcy and stability, should not work to his prejudice, both with respect to this specific case, or as a matter of public policy.
- [72] In conclusion, the present husband and wife are paragons of a divorcing couple. Both parents are calm, measured people, who wished to carry out and discuss the process of separation in a responsible manner that sought to preserve civility between them, and stability for their children. They also sought to preserve stability in their financial arrangements, for the same reason. They were able to project this stability and normalcy to their family, friends, and professional colleagues. Their interpersonal communications were generally civil, and at times, even affectionate and kind. There was civility, but no recovery. Ultimately, none of these communications or events, viewed in isolation or collectively, evidenced any sort of a reconciliation or express or tacit communication that the mutual settled and communicated intentions to separate and divorce exhibited in the February 2016 communications (continuing through 2017 and 2018) no longer applied. Absent significant reconciliation actions, a fly on the crumbling conjugal wall would consider the relationship to be dead as of February 2016.

V. Property division

- [73] The parties are largely in agreement with respect to property division. They agree that there should be equal division of all assets as at the separation date. Neither party is seeking to retain any specific property. They agree that they should retain the vehicles and other items presently registered in their names. They agree that the second Vancouver residential property should be sold. For these reasons, I will not delve into the particulars of the family assets and investments.
- [74] The husband takes the position that the parties' family assets should be divided as at June 2021, when the parties stopped sharing and using the joint account and opened separate bank accounts, with separate financial arrangements. He argues that income earned after June 2021 is not family property because it did not exist at the date of separation; nor is it derived from property that did exist then. The parties should retain the assets they acquired after June 2021. Specifically, the husband seeks to exclude his savings after June 2021.
- [75] The wife takes the position that the property division should include those amounts and assets acquired by husband after June 2021, and that the property or both spouses should be divided as at the trial date. She notes that under the Family Law Act, SBC 2011, c 25 ["FLA"], s 87(b)(ii), the value of family property and family debt must be determined as of the date of the hearing before the Court respecting the division of property and family debt.
- [76] FLA s 84(1) provides that family property includes all property owned by a spouse or in which the spouse has a beneficial interest, as at the separation date. FLA s 81(b) provides that each spouse has a right to an undivided half interest in all family property on separation. Any property acquired after the parties' separation is not considered family property and is not divisible between the parties.
- [77] As stated by Justice Tammen in *PR v. MR*, 2019 BCSC 102 at para 87:
- Section 87(b)(ii) of the FLA states that the value of family property and family debt must be determined as of the date of the hearing. I am also guided by the decision in *Wilson v. Wilson*, (1997), 31 B.C.L.R. (3d) 332 at para. 22 (C.A.) where, Lambert J.A. held that growth attributed to investment or market forces between the date of separation and the date of trial should be shared between the parties, but growth caused by additional contributions should not be shared.
- [78] The husband's post-separation earnings after June 2021, including the special non-Medium-Term Incentive Plan ("MTIP") bonus he received on June 25, 2021, as well as any interest in investment earnings on those amounts, are funds earned after separation and after the start of spousal support payments. This income belongs to the husband, and is not family property.
- [79] *Phillips v. Saunders*, 2018 BCSC 960 (rev'd on other grounds 2020 BCCA 265) made a similar observation, where the high-earning husband's post-separation income, specifically directed into a separate account, was not considered family property:

- [70] Dr. Saunders structured his finances such that his post-separation earnings went into a different account. He wanted a clear separation between his earnings post and pre-separation. Accordingly, any portion of Saunders Inc. that can be traced directly to Dr. Saunders' post-separation professional income is not family property. That includes any profit/loss and any investments Dr. Saunders made with his post-separation earnings.
- [71] In my view, this is consistent with the legislative scheme when one looks to the definition of family property. Section 84(1) (b) of the FLA deems as family property after separation, any property acquired by only one spouse if it is "derived from" family property as defined in s. 84(1)(a). However, the post-separation income injected into Saunders Inc. is not "derived" from family property; it is "derived" from the professional services of Dr. Saunders.
- [80] As set out below, however, I will consider the post-separation bonuses as part of the husband's income for the purpose of spousal support.
- [81] The division of assets has some bearing on the consideration of spousal support: the focus of these reasons. Dividing the financial assets as at June 15, 2021, and 50% of the net equity in the parties' residential property on the west side of Vancouver, each party will receive roughly:
- \$115,839.50 in net liquid cash;
 - \$471,507 in combined gross RRSP, LIRA, and RPP assets; and
 - \$1,269,560, being 50% of the net equity in the residential property, subject to capital gains tax, and subject to any commissions and other conveyancing fees payable if the property must be sold.

VI. Income Imputed to the wife

- [82] The wife acknowledges that although she has not worked for some 19 years, and that she served primarily as a homemaker, raising the children, during the marriage, it is appropriate to impute income to her.
- [83] The wife suggests \$40,000: slightly above minimum wage. The husband suggests an imputed income of \$60,000 per year.
- [84] *Marques v. Zapiola*, 2013 BCCA 433 at paras 36-37 set out the principles governing imputed income:
- [36] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.

- [37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work...
- [85] Schmidt v. Sucke, 2013 BCSC 1489 summarised at para 45 the principles informing the analysis of the imputation of income for child support purposes in cases of underemployment:
- (a) Parties liable to pay child support cannot avoid their responsibilities simply by virtue of being under-employed (Van Gool v. Van Gool 1998 CanLII 5650 (BC CA) at para. 31).
 - (b) Parents have a joint and ongoing legal obligation to support their children and must earn what they are capable of earning. The court gives effect to this obligation by imputing income (Hanson v. Hanson, [1999] B.C.J. No. 2532 at paras. 8-9).
 - (c) Bad faith is not required. A parent is intentionally under-employed if he chooses to earn less than he is capable of earning (Hanson at para. 13).
 - (d) When imputing income due to intentional under-employment, the court must consider what is reasonable in the circumstances, including the age, education, experience, skills and health of the parent, and other matters such as the availability of work (Hanson at paras. 14 and 20).
 - (e) A parent who chooses to work less than full time must justify that choice by the needs of the children. (Mahannah v. Mahannah, 2012 BCSC 403 at paras. 122-123; McCaffrey v. Paleolog, 2011 BCCA 378 at para. 49).
- [86] The wife argues that she has no marketable skills. English is her second language: she left her home country in part to further her husband's studies and career. She is unfamiliar with MS Word, has never used MS Excel, MS PowerPoint, and even point-of-sale systems in a retail setting. She also argues that she has faced health challenges, the future prognosis of which are not clear on the evidence.
- [87] I agree that it is appropriate to impute \$60,000 income to the wife.
- [88] The wife has lived in Canada for over half of her life. Notwithstanding her protestations to the contrary, her testimony indicated that she possesses decent and idiomatic written and spoken English. She is personable, creative, and intelligent. She holds a post-secondary degree in teaching music. She worked in white collar positions in her home country, and worked in clerical positions at investment firms on Bay Street for their first years in Canada.
- [89] While the wife served as the predominant caregiver for the children, their marriage, at all stages, was not purely a traditional one. The husband contributed significantly to family and household management, both directly, as well as in supportive projects such as renting out their second residence. Nor was the wife occupied full-time with the children or domestic matters. The family engaged nannies and cleaners. Even in the earliest years, they had

before- and after- school care. For much of their childhood, the children spent Saturdays at a school that taught their mother's native language and culture, providing further time for the wife to engage in her own vocational activities or training. Further, rather than stifling her career for the sake of the family, the husband actively encouraged her to develop her marketable skills during the marriage: considerable family finances were directed towards her training and education in a variety of areas each of which she ultimately chose not to pursue. These potential vocations, supported financially and otherwise by the husband included colour therapy, design, yoga instruction, a possible import-export business, and management of their West Side Vancouver rental property.

- [90] The wife's under-employment is emphasised by her lack of efforts to obtain employment or improve her education or training in the near-decade since their separation. I agree that the wife has the skills, abilities, training, education, and experience to obtain higher than minimum wage in the workforce.
- [91] In reaching this conclusion, I join the observations of three Court of Appeal justices, whilst on this Court, in rejecting proposed imputed incomes close to minimum wage, notwithstanding those wives' absences from the workforce.
- [92] In *HCF v. DTF*, 2017 BCSC 1226, Mr Justice Voith noted that, as here, while the wife served as the primary homemaker, it was not a case where the parties agreed to suppress the wife's career in order to advance the husband's career, at least in its later stages. Voith J imputed an income of \$60,000 to the wife, rejecting her proposed minimum wage imputation:
- [196] Counsel for Mrs. F. suggested that I impute income of \$20,000 (minimum wage) to Mrs. F. for the next three to five years. There is no principled basis for this. It was apparent during Mrs. F.'s evidence and, for example, from some of the documents she generated for the trial, that Mrs. F. is a highly intelligent, articulate, mathematically competent and organized individual. There is no reason that an individual of Mrs. F.'s age, with Mrs. F.'s attributes and education, would or should be holding a minimum wage job almost eight years post-separation. That suggestion and that career path would be far more likely to ensure that Mrs. F. never re-enters the workforce in a meaningful way.
- .
- [209] These factors, and in particular Mr. F.'s express wish that Mrs. F. return to work, are relevant to Mrs. F.'s compensatory claim. This is not, at least for the last number of years of the parties' marriage, a case where two parties have agreed that one of them should stay at home and that this would advance their interests as a family unit. Nor was this, again in the last number of years, a measured decision made by the parties to help advance Mr. F. in his career. Instead this is a case where Mrs. F., after a point in time, made the personal decision or choice over the expressed wishes of her spouse, to stay at home rather than to return to work.

- [210] Mrs. F. was entitled to do as she wished. There is, however, a significant difference between an experienced, well-educated and intelligent person being out of the workforce for perhaps six years (when K. would have started school) or ten years (when the parties separated) or nearly 13 years (which is where the parties are now).
- [211] I consider that Mrs. F.'s personal decision to stay out of the workforce informs the nature and content of her compensatory claim. It would be curious if Mrs. F. could make a personal decision to stay out of the workforce and concurrently assert that that decision strengthened her compensatory claim for spousal support.
- [93] Similarly, in *PG v. DG*, 2015 BCSC 1454 at paras 115-117, Madam Justice Fenlon found the wife to be a healthy, capable woman, with no barriers to employment other than a long absence from the workforce. While it was not unreasonable for her to seek retraining before returning to the workforce, she should have been able to complete such retraining within two years of the parties' separation and should be imputed an income as a result.
- [94] Similarly, in *Haley v. Haley*, 2022 BCSC 1945 at para 154, Madam Justice Horsman imputed an income \$28,000 above that earned by the claimant, on facts similar to the present. The wife, 47 years old at the time of separation, and 51 at trial, had a reasonable time to take at least initial steps towards self-sufficiency in the years since separation. She had a number of years remaining in her working life. She was an intelligent and capable individual, with working experience. There was no evidence that the claimant has undertaken any type of job search.
- [95] In this, I also agree that the wife has elected not to work, not only from the February 2016 separation date, but even since the 2018 and 2019 dates of separation she herself asserts. During this period, the youngest child was a teenager, requiring less active care. He has since left the home. The wife was 43 years old and healthy at the separation date, and is presently 52 years old. Had she maintained a part-time job, or sought training or employment at the time of separation, she would be well placed to earn considerably more than the \$60,000 now proposed. The consequences of her decision to delay any retraining or job-hunting for almost a decade fall on her, rather than the husband: *Jendruck v. Jendruck*, 2014 BCCA 320 at para 16.

VII. Spousal support

A. Law

- [96] The parties are in general agreement on the principles guiding spousal support. FLA, ss. 161-162, in language close to that in the DA, s. 15.2(4) and (6), sets out the objectives and determinations of spousal support:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

Determining spousal support

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[97] In *Haley*, Horsman J (then of this Court) provides a useful summary of the governing principles:

[189] Pursuant to s. 15.2(4) of the Divorce Act, in making a spousal support award the court must consider "the condition, means, needs and other circumstances of each spouse", including "the length of time the spouses cohabited", "the functions performed by each spouse during cohabitation", and "any order, agreement or arrangement relating to support of either spouse".

[190] There are two grounds for entitlement to spousal support that apply in this case-- compensatory support, which primarily relates to the first two objectives listed in s. 15.2(6) of the Divorce Act, and non-compensatory support, which primarily relates to the last two objectives: *Chutter v. Chutter*, 2008 BCCA 507 at para. 47 [Chutter], citing *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paras. 15, 41-42, 44 [Bracklow]. The court is called upon to apply the relevant factors and strike the balance between the various grounds for entitlement in a way that best achieves justice in the circumstances of a case. The doctrine of equitable sharing is the overarching principle that must guide the process: *Chutter* at para. 49.

[191] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of economic advantage on the other spouse: *Chutter* at para. 50. The compensatory basis for relief recognizes that

sacrifices made by a recipient spouse in assuming childcare and household responsibilities may impact their future financial prospects: Chutter at para. 50. There may be a corresponding advantage to the payor spouse in the ability to pursue career opportunities free of such responsibilities.

- [192] Non-compensatory support is "grounded in the 'social obligation model' of marriage in which marriage is seen as an inter-dependent union". Upon marriage dissolution, it falls on the former partner, and not the state, to meet the needs of a disadvantaged spouse: Chutter at para. 54. In Bracklow, the Supreme Court of Canada held that need alone may be sufficient to ground a claim for spousal support: at para. 43.
- [193] "Need" in this context refers to something more than the basic necessities of life. The concept of need may vary depending on the circumstances of the parties. In longer marriages, courts may measure need against the marital standard of living: Chutter at para. 90. The flip side to this justification for needs-based support is that the payor spouse must have the financial means to provide such assistance.
- [194] Once entitlement to support is established, the issue becomes the appropriate amount and duration of support. The SSAG has been endorsed in British Columbia as a useful tool in determining the quantum of support: Chutter at para. 100. Quantum refers to both the amount and the duration of spousal support.
- [98] In the present case, the husband's income significantly exceeds the \$350,000 contemplated in SSAG, p. 111. Haley sets out the principles governing such a situation:
- [204] In *M.A.T v. K.P.T.*, 2017 BCSC 1603 [M.A.T.], Justice Fleming summarized the methods available to determine spousal support in such circumstances:
- [222] Sections 11 and 11.1 of the SSAG identify a gross annual income of \$350,000 as the ceiling or the upper limit for generating "acceptable results" using the formulas in a typical case. The upper limit is, however, not an absolute cap or ceiling: *Smith v. Smith*, 2008 BCCA 245, at para. 31. In *The Spousal Support Advisory Guidelines: A New and Improved User's Guide to the Final Version*, (Ottawa: Department of Justice, March 2010), the authors comment that "[t]he formulas are not to be applied automatically above the ceiling, although the formulas may provide an appropriate method of determining spousal support in an individual case, depending on the facts" (emphasis in original). They also state that "[a]bove the ceiling, spousal support cases require an individualized, fact-specific analysis" (emphasis in original). Section 11.3 of the SSAG suggests two approaches where the payor earns more than the ceiling and is also paying child support (which is not the case here). The first is the "minimum plus" approach, which calculates the amount of spousal support owed at \$350,000 and then adjusts or adds a further amount after taking into account the actual amount of child support paid. The second approach identified as more important if the payor's income is well above the ceiling, is one of pure discretion.

[205] As noted by Justice Fleming at para. 225 of M.A.T., the authors of the SSAG User's Guide observe (at pp. 57-58) that where the income of the payor spouse is not too far above \$350,000, spousal support will frequently be ordered at the low end of the SSAG range. If the income of the payor spouse is well above \$350,000, the amount ordered is often below the low end of the SSAG range. However, each case requires the "individualized, fact-specific analysis" described in the SSAG User's Guide. Depending on the facts, a spousal support award within the range fixed by the SSAG formulas may be justified even where the income of the payor spouse significantly exceeds the ceiling: *Hathaway v. Hathaway*, 2014 BCCA 310, leave to appeal ref'd [2014] S.C.C.A. No. 412.

[emphasis added.]

[99] The Spousal Support Advisory Guidelines: the Revised User's Guide ["SSAG RUG"] [2] reviews the applicability of the \$350,000 ceiling built into the SSAG (at p. 56):

- The formulas for amount are no longer presumptive once the payor's income exceeds the "ceiling";
- The ceiling is not an absolute or hard "cap", as spousal support can and usually does increase for payor incomes above \$350,000;
- The formulas are not to be applied automatically above the ceiling, although the formulas may provide an appropriate method of determining spousal support in an individual case, depending on the facts;
- Above the ceiling, spousal support cases require an individualized, fact specific analysis
- Where the payor's income is not too far above the ceiling, the formula ranges will often be used to determine the amount of spousal support, with outcomes falling in the low-to -mid range for amount. How far is "not too far above" is still not clear. Somewhere between \$500,000 and \$700,000, it seems;
- Once the payor's income is "far" above the ceiling, then the amount of support ordered will usually be below the low end of the SSAG range, but SSAG ranges are still calculated and sometimes the outcome will fall within the SSAG range.

[emphasis removed.]

B. Discussion and decision

[100] Both parties acknowledge that the wife is entitled to spousal support. The husband has already put that position into practice. As set out above, the husband responsibly deposited half of his income (including bonuses) into the parties' joint account, from the separation date in February 2016 to their financial separation in June 2021. The wife had free access to their joint bank accounts, which she used for all personal and family expenses; she also unilaterally transferred some funds to her own accounts for her own personal savings. The husband then, from June 2021 to October 2024, remitted half of his base post-tax salary

(without bonuses) to the wife (at between \$5,677 and \$12,864 per month, totalling roughly \$400,000): all as uncharacterised without-prejudice support payments. Throughout, the husband also paid for all house expenses, including maintenance, tax, and insurance.

- [101] While the husband acknowledges a compensatory basis for support, he questions a non-compensatory basis. He notes that the wife is coy about her post-trial income plans, or whether she will even remain in Canada. He reiterates the wife's failures to develop or pursue an independent career with his support and encouragement during the marriage. He cites Haley, where the claimant wife, with a prima facie compensatory claim, took no steps to move towards self-sufficiency, even where, as here, she was relieved of her role as primary caregiver:
- [207] There is no doubt that, for the reasons I have stated, the claimant has a strong claim to compensatory support. I accept that this is one factor that might support an award of spousal support within the range fixed by the SSAGs. However, there are other factors that point away from an award of support within the fixed range. As of 2021, none of the children remained living at home. I have found that the claimant was, as of 2021, capable of working at a full-time job, and also of taking steps to enhance her own income-earning capacity. Among the objectives of spousal support is to encourage self-sufficiency on the part of the recipient spouse.
- [102] While I agree that the wife has failed to make meaningful efforts to obtain work or improve her skills since the separation date, I ultimately agree with the wife's argument that she will never achieve self-sufficiency in a manner that will permit her to fund a standard of living anything close to that she experienced during the marriage or presently. Even had she pursued the various training and vocations canvassed in the evidence, before the separation date, she would fall far short of her standard of living at the time of separation. Apart from the prejudice inflicted by her change of country and maternal language, and focus on the family, she had a 12-year hole in her résumé at the separation date.
- [103] Given the parties' unity on a compensation-based support, the main issue in this case is the extent, if any, that the husband's significant post-separation income rise should affect the quantum and duration of spousal support. At the February 2016 separation date, the husband earned \$562,509 annually. After his post-separation promotion to executive vice-president (2016) and president (since 2017), his earnings (base salary and bonuses) have been: 2017 (\$528,353); 2018 (\$707,610); 2019 (\$995,519); 2020 (\$845,047); 2021 (\$809,360); 2022 (\$958,087); 2023 (\$1,574,748); and 2024 (\$1,880,035).
- [104] A significant portion of that remuneration is represented by bonuses. His base salary as president was \$500,000, which was later increased to \$575,000, effective January 1, 2023. On top of his base salary, the husband is eligible to receive a MTIP bonus, as well as other bonuses.

[105] In *Helle v. Helle*, 2019 BCCA 97, Justice Willcock summarised the law on the effect of post-separation income rises on spousal support. At para 35, for the Court, he endorsed the following passage from *Judd v. Judd*, 2010 BCSC 153:

[23] The resolution of the issue of post-separation wage increases is clearly fact based. The principle that appears to emerge from current case authority is that the connection the increase in salary has to the recipient's contribution during the marriage is determinative. If the increase in salary is founded in expertise and seniority established during the marriage and no intervening event or events are the cause of the increase, then the increase is to be included unless the recipient's role during marriage necessitates a different determination. If an event after separation is the reason for the increase, in whole or in part, then the increase may be excluded from consideration, also in whole or in part.

[106] At para 39, he noted that:

. Two of the most important considerations from the jurisprudence are: the expertise the respondent acquired during the parties' relationship and the extent to which the respondent found himself in favourable circumstances as a result of the joint enterprise of the marriage.

[107] The *Helle* Court found a strong connection between the wife's contributions during the 17-year marriage and the husband's increased income through his post-separation promotion. At para 40, the Court noted that the couple had made "a joint investment in one career" by having the wife take on the bulk of the childcare responsibilities while the husband pursued his career outside the home.

[108] *Kinsella v. Mills*, 2020 ONSC 4785 at para 431 helpfully distils the jurisprudential principles governing post-separation increases in income:

1. A recipient spouse is not automatically entitled to increased spousal support based on a payor spouse's post-separation increase in income.
2. The question of whether there should be a sharing of post-separation income increases is not an "all or nothing" matter. Partial sharing of such increases, and/ or sharing for a specified period of time, are issues that the court should also consider when the issue arises.
3. The determination of whether there should be any sharing of income increases, and if so the extent of any such sharing, must take place within the framework of the general spousal support objectives and factors set out in the relevant legislation. Accordingly, in a proceeding governed by the Divorce Act, the factors and objectives outlined in section 15.2(4) and (6) must inform the overall analysis.
4. The basis of a spouse's entitlement to spousal support is an important consideration. In both compensatory and non-compensatory cases, the court's assessment of the needs of the recipient and ability of the payor spouse to pay are significant factors that should inform the court's analysis regarding sharing of post-separation income increases. However, in cases involving non-compensatory claims, the focus tends to be on maintaining a reasonable

standard of living as measured by the standard enjoyed during the relationship, and this is a factor which may impact the decision as to whether a recipient should benefit from the payor's post-separation income increases. Nonetheless, the circumstances of each case must be carefully considered to ensure a just outcome, having regard for all of the objectives and factors outlined in the relevant legislation. The needs of the recipient spouse are always a very important part of the spousal support analysis and may support a sharing of post-separate income increases in purely needs-based claims in appropriate circumstances. For instance, a long-term relationship involving financial dependence by the recipient spouse coupled with evidence of significant ongoing need may support sharing of post-separation income increases. Even in shorter or mid-length relationships, a strong non-compensatory claim based on factors such as illness, disability or other considerations may support some sharing of income increases to ease the transition to a new post-separation reality.

5. The existence of a compensatory element to a support claim is an important factor in determining entitlement to share in post-separation increases in income. In addressing this factor, the court must keep in mind the various different indicia of compensatory entitlement and not simply the assumption of child care and home management responsibilities. In these cases, the general strength of the compensatory claim is an important factor. The analysis should therefore include consideration of the length of the relationship, the extent of the recipient's contributions and sacrifices both during the relationship and post-separation and the duration of time during which those efforts and sacrifices were made.
6. Another important consideration in compensatory situations is whether the recipient's efforts and contributions during and after the relationship contributed to the payor's financial advancement during the relationship and post-separation. the court should consider the extent to which the payor ended up in favourable circumstances as a result of the joint enterprise of the relationship. Evidence that the recipient's sacrifices and contributions during the relationship supported the payor's financial progression post-separation will typically support a sharing of post- separation income and a higher amount of such sharing. In assessing whether and to what extent the recipient's efforts contributed to the payor's ability to advance financially, the court must maintain a broad perspective of the various means by which a spouse's contributions and sacrifices can support the other spouse's success both in the short and long-term, including for example assuming primary responsibility for home- management matters, taking on primary child care responsibilities during and/or after the relationship ended, assisting in the establishment and operation of the payor's business or subordinating their career to that of the payor so that the payor could focus on the development of their skills and career.

7. The fact that the recipient spouse has continued to be a primary caregiver for the children post-separation is a factor that supports a sharing of post-separation income increases, since this often allows the payor to continue to focus on their career advancement. On the other hand, the fact that the payor has primary care or shared care of children post-separation may also be relevant to whether sharing of such increases is appropriate, and the amount of any such sharing.
8. The sharing of post-separation income increases is not necessarily dependent on the recipient spouse having sacrificed their own career advancement during the relationship for the benefit of the payor spouse's progression in their career. However, evidence that they did so is a further factor that may support a sharing of the increases.
9. In compensatory cases, evidence that the knowledge, skills, expertise, credentials and/or connections that enabled the payor to increase their income following the separation were acquired and developed during the relationship is a factor that will favour sharing of post-separation income increases.
10. The courts often consider the length of time that has passed from the separation until the increase in income occurred. The closer the temporal link, the more likely it is that the court will find that the recipient's efforts supported the other party's post-separation financial success.
11. Another important consideration is whether there were any changes in the payor's career post-separation that explain the increase in income, such as a new job, position or business reorganization. However, in these circumstances, the court must still consider whether the change in position was attributable to the knowledge, skills and experience that the payor had acquired during the relationship with the support of the recipient's efforts.
12. The courts also consider whether the increase in income is primarily attributable to the payor's decision following the separation to increase their work effort through means such as working more overtime, accepting work that is more lucrative but involves significant personal sacrifices or taking on extra jobs. These types of circumstances may support no sharing, or only partial sharing, of income increases following the termination of the relationship.
13. Evidence that the increased income was attributable to specific, unusual events following the separation, such as unexpected changes in market conditions, is a factor that may weaken a claim to share in the increase.
14. Evidence that the recipient spouse has not taken reasonable steps towards achieving self-sufficiency is another factor that courts have considered in determining whether there should be a sharing of post-separation income increases, and if so, the extent of any such sharing. In such situations, the shortcomings in the recipient's self-sufficiency efforts will also be relevant to determining whether income should be imputed to them, but it is not inappropriate to consider the issue from both lines of analysis.

15. Evidence that the payor has also made contributions to the recipient's career advancement post-separation will also be relevant.

[emphasis added; citations omitted.]

- [109] The wife describes her position as a "classic compensatory claim for spousal support," citing *Bracklow v. Bracklow*, [1999] 1 SCR 420, 1999 CanLII 715; *Moge v. Moge*, [1992] 3 SCR 813, 1992 CanLII 25; *W v. W*, 2005 BCSC 1010, and *Chutter v. Chutter*, 2008 BCCA 507, reconsideration denied 2009 BCCA 177, leave to appeal ref'd 2009 CanLII 27232, and that she should share in her husband's post-separation pay rises enabled through her pre-separation contributions. She argues that she sacrificed her career and her plans. The parties moved long distances three times in furtherance of his education and career. Her service as the primary caregiver and homemaker freed the husband to focus on his career without restriction, leading to his present considerable success. That career required long hours and frequent travel, both of which would be impossible without her serving as an anchor on the home front. She took also took primary responsibility over their children's immersion in their maternal heritage, culture, and language, consistent with the values both parties held. She also directly assisted his corporate rise: she dutifully attended corporate events, as well as social functions with her husband, as well as the wives of other executives, including that of the owner. In short, the wife formed a partnership with the husband in all regards.
- [110] She also notes that she sacrificed the security of her home country and primary language, in moving to Canada. In cases such as *Kim v. Sharp*, 2021 BCSC 1428 at para 106 and *Yang v. Zhang*, 2017 BCSC 524 at para 178, courts recognise the particular disadvantage and impediment to self-sufficiency suffered by a spouse who leaves her home country for the sake of the family, particularly when combined with the role of primary caregiver.
- [111] The wife accordingly seeks spousal support of \$77,367 per month, starting November 1, 2024, based on the husband's actual increased post-separation base salary and bonuses, as anticipated to continue: that spousal support payments would continue indefinitely. She also seeks adjustment and augmentation of retroactive spousal support beyond that previously paid. In the alternative of indefinite spousal support, she seeks a review based on certain triggers: this proposal will be discussed and dismissed in the next section.
- [112] The husband responsibly acknowledges that the wife's contributions during the parties' relationship were linked to some extent to his later corporate successes. He argues, however, that there is insufficient connection between her contributions during the marriage and the efforts, skills, experience, knowledge that the husband gained and exercised post-separation to justify her sharing in his post-separation increases in income. He specifically argues that the roles of executive vice-president, marketing (2016) and president (since 2017), attained after separation, were substantially different in content, stature, and responsibility from his pre-separation roles. His previous 16 years, representing his entire time at the company, and his career before the company, focussed

on investor relations. He had virtually no experience in marketing before applying for the executive vice-president role, which also imposed upon him significant budgeting duties, as well as a staff of 30, in contrast to the previous one direct reporting employee. The role of president even more profoundly introduced new challenges and new skills. The husband notes that he had to take considerable risks and expend considerable efforts to vie for those two senior roles: the existing senior vice-president of marketing had been the obvious candidate for the executive position. After he obtained those roles, he had to expend considerable energy learning and developing his new skills: the 2016-2017 learning curve was described by the husband as "drinking from the fire hose". He argues that in light of those factors, and the passage of time since the parties' separation, the connection between his current position and the parties' relationship is no longer substantial.

- [113] The husband accordingly proposes \$12,646 per month spousal support to the wife, based solely on his base non-bonus income of \$575,000, and the wife's imputed income of \$60,000, and reflecting the parties' pre-separation standard of living. Those payments would continue to June 2030, when spousal support would end.
- [114] The husband argues that spousal support should reflect the wife's failure to take any steps toward self-sufficiency since the start of both children in full-time schooling (from 2010), and since the separation date, or even since her own proposed separation dates (2018 or 2019). He also emphasises the amount of support the wife has already received, and the funds she will receive after trial in the property division.
- [115] With an eye to the Kinsella factors, I generally agree with the wife's position that the husband's significant post-separation compensation increases should result in a higher level of spousal support, for a significant period. The wife has a strong case for compensatory spousal support, including, specifically, a claim for compensatory spousal support reflecting his increased base salary and attendant significant executive bonuses. Her domestic and corporate support, both before and after separation, was critical to his advancement and salary increases. While his executive vice-president role in marketing marked a departure from his previous roles, he only attained a position to plausibly apply for that role, in his opportunities to display his talents to the owner and other executives, thanks to his spousal partnership of support. Further, he could not have received or maintained the vice-president or executive vice-president roles, with their considerable travel obligations, and significant learning curve, without the wife anchoring the home life and caring for the younger child. In particular, he could not have moved to the Toronto area for the executive vice president role, as a year-long precursor to the resident role, without her service as the primary caregiver for the younger child. There is a strong causal relationship between the parties' marital partnership and support, and his lofty corporate positions and salaries. As the husband wrote to the wife, after receiving her congratulations for his executive vice-president promotion, "Thanks for your note of congratulations last night. It means a lot to me to have your support and you have mine also."

- [116] There is also a strong temporal connection between her contributions and the promotions: the executive vice-president promotion occurred just months after the separation date, and the president promotion occurred the next year. Post-separation, she cared for the younger child while he relocated to Toronto for his vice-president role: but for that care, he could not have accepted that promotion and excelled in that role; but for the vice-president role, it is unlikely that he could have successfully applied for and attained the presidency. I agree with the wife's characterisation of his rise as a logical climb up the corporate ladder, in the same organisation: the post-separation positions were only attained due to the pre-separation support.
- [117] In this, the husband's continued corporate rise did not represent an unexpected intervening change of circumstances but rather a foreseeable event as a direct progression from his professional activities and promotions historically enabled through his marital partnership. In *BSW v. WFW*, 2023 BCSC 1925, after a 17-year marriage, with three children, the wife argued that her post-separation income should not have been considered because the increase was attributable to an assumed temporary senior role and a bonus payment based on her employer's earnings in the previous fiscal year. Applying the Judd principles, the Court rejected the argument:
- [223] In this case, the claimant's increase in salary is founded on expertise and seniority established during the marriage, and there are no intervening events causing the increase, therefore the increase should be included in the claimant's salary for spousal support purposes. The dismissal of the previous General Counsel is not in my view an intervening event within this context. The departure of senior executives, for whatever reason, is an ordinary, regular occurrence in most organizations. Given the claimant's regular position as Deputy General Counsel, her temporary promotion to co-acting General Counsel is not surprising.
- [emphasis added.]
- [118] *REL v. KJBA*, 2023 BCSC 602 rejected a similar argument advanced by the husband who was similarly promoted post-separation. As in *Helle* and *BSW* (and close to the present), it was a 17-year marriage, with multiple children. As in the present case, the couple moved several times for the husband's work. The wife worked on and off part-time, but it was decided that she would remain at home to look after the children, with the husband as the sole breadwinner. During the marriage, the husband was able to advance into more senior roles, eventually taking on a role as vice-president of operations for a pulp mill. The Court, citing Judd and *Helle*, determined that the spousal support calculation should include a \$250,000 bonus paid two years after separation by the same employer the husband worked for when the parties relocated: para 88. The bonus was paid to the husband for achieving efficiencies at the pulp mill, which Madam Justice Duncan concluded were not different from the husband's regular duties or hours of work. The husband was in a favourable position as a result of the wife's sacrifices.

- [119] I also agree that, as in REL and BSW the calculation of the husband's income on which the spousal support shall be based shall not be limited to his increased base salary, but shall include his lucrative bonuses. While those bonuses are discretionary and based upon performance, the evidence available at trial indicates that such bonuses have been and will usually be paid, and have and will significantly augment the base salary. The only years when the husband did not receive those bonuses were 2020 and 2021, in part due to the anomaly of the COVID pandemic; even then, he received a one-off retention bonus for his leadership during the pandemic. Such bonuses flow fully from the corporate ascension that the husband was only able to attain with his wife's domestic support. Whether viewed in the immediate aftermath of the separation, or almost a decade later, the husband is only eligible for and likely to obtain those bonuses thanks to his promotions, thanks in turn to the wife's historical domestic support both pre- and post-separation.
- [120] I order that the husband's full actual remuneration, base and salary, be used in calculations of spousal support, both retroactively and going forward. In the interests of certainty, for future payments, this will be based on the annual average of his total earnings for the past five years: \$1,215,055. Using the five-year average will also address in part the contingency that the husband may not receive the full bonus, or any bonus, in any given year in the future until the end of the spousal support period. This approach accords with the guidance of the Court of Appeal and the common practice of this court: *Jakob v. Jakob*, 2010 BCCA 136 at para 46; *OC v. KC*, 2016 BCSC 72 at para 46; *YMF v. RVF*, 2022 BCSC 699 at para 60. Again, the wife's income will be based on the imputed income of \$60,000 for each year, for past and future.
- [121] With respect to the location within the SSAG range, a low-range calculation is appropriate, retroactively and going forward. As per the SSAG RUG and *Haley*, above, the husband's income is significantly above the \$350,000 SSAG ceiling, which generally results in a low-end (or even lower) location on the range. Turning to the specific facts of this case, the relatively long marriage and contribution of the wife to the husband's corporate successes must be offset partly by, again, the husband's valid argument that he did not request or demand that the wife serve primarily a domestic role, or eschew work for the sake of his career. On the contrary, he supported, in finances and encouragement, her training in and exploration of potential career paths that she could pursue both during and after the children's childhood, as set out above.
- [122] With respect to duration, I agree with the husband that spousal support should not be indefinite, as sought by the wife, for several reasons already mentioned. The husband's increased salary and eligibility for generous bonuses, reflect not only his wife's historical support, but also his own separate considerable pre- and post-separation efforts, skills, and accomplishments: the causal and temporal connection between those emoluments and the marriage will further dilute over time. Turning the focus back on the wife, the parties separated after 18.5 years of marriage; the wife was 43 years old. As one consideration for entitlement under the SSAG RUG, she falls short of the so-called rule of 65. In contrast to

some cases, she did not sacrifice an actual or potential lucrative career to care for the children. At no time did the husband request or pressure the wife into a housewife role: on the contrary, he actively encouraged and supported means for her to pursue her own career, which opportunities she largely failed to pursue. The wife's dilatory efforts towards a career both before and after the separation have stymied the fourth statutory objective of spousal support: promoting economic self-sufficiency within a reasonable period. Indefinite support would further stymie that objective. The wife possesses the skills and training to pursue a vocation, and should do so whilst she is still relatively young. The Court orders spousal support on the above terms until June 1, 2034, at which point it will presumptively end.

[123] In summary, the husband shall pay the wife the following, at the low range, based not upon his base salary, but upon his actual employment receipts, including bonuses:

- a) retroactive spousal support, from the February 2016 separation date to June 2021, when they ceased using the joint account, less the amounts the wife withdrew from the joint account and otherwise received from the husband during the period;
- b) retroactive spousal support, from June 2021 to the present, less the support amounts the husband has already paid the wife in uncharacterised without prejudice spousal support during that period;
- c) future spousal support until June 1, 2034. The husband shall make the support payments to the wife on the first day of each month, unless otherwise agreed to by the parties.

[124] Counsel have reassured the Court that based on their historically cooperative dealings, they are confident that they can calculate these amounts based the Court's directions, as well as calculate the past support already provided by the husband to the wife. The Court shares this confidence. With respect to (a) and (b), in the interests of finality, simplicity, and economy, the Court encourages approximations rather than penny counting. If counsel cannot determine those amounts (or any other amounts flowing from these reasons that required quantification or calculation rather than further judicial adjudication), I refer the matter to the Registrar for calculation and confirmation.

VIII. Review

[125] The wife suggests that the Court consider an order that the wife share in the husband's increased income post-separation income (both retroactively and prospectively) for a defined period, at which point there will be a review. The wife notes the future uncertainties with respect to her success in the job market, coupled with uncertainties about the amount of the husband's executive bonuses.

[126] *Roeske v. Roeske* 2023 BCCA 358 summarises the law on reviews:

- [88] There is a clear overlap between the issue of indefinite spousal support and the order for a review in 2025. The legal framework which applies was recently summarized in *M.T. v. J.S.*, 2023 BCCA 64:
- [39] Under s. 15.2(3) of the Divorce Act, the court may include review provisions in support orders to permit the parties and the court to reconsider the support award where there is "genuine and material uncertainty at the time of the original trial" on a factual issue that is the basis for a support award. In such cases, once the uncertainty has been resolved, a party should not have to meet the strict threshold of establishing a material change in circumstances to have the support award reconsidered: *Leskun v. Leskun*, 2006 SCC 25 at paras. 36-37 and 39. Unless the order providing for a review sets out limitations on the scope of the review, a review is a hearing de novo and encompasses determination of each of the issues of entitlement, quantum and duration: *Domitri v. Domitri*, 2010 BCCA 472 at paras. 38-39; *Morck v. Morck*, 2013 BCCA 186 at para. 17.
- [42] As the Supreme Court observed in *Leskun* at para. 37:
- [37] Review orders, where justified by genuine and material uncertainty at the time of the original trial, permit parties to bring a motion to alter support awards without having to demonstrate a material change in circumstances: *Choquette v. Choquette* (1998), 39 R.F.L. (4th) 384 (Ont. C.A.). Otherwise, as the amicus curiae fairly points out, the applicant may have his or her application dismissed on the basis that the circumstances at the time of the variation application were contemplated at the time of the original order and, therefore, that there had been no change in circumstances. The test for variation is a strict one: *Willick v. Willick*, [1994] 3 S.C.R. 670, at pp. 688-90.
- [90] It is also evident from the passages of the RUG to which the judge referred that while post-*Leskun* reviews were generally considered to be the exception rather than the rule, that landscape has changed in the fifteen years that have elapsed post-*Leskun*. This is seen, for example, in the RUG commentary at chapter 8(n): "often a review will be required in these indefinite orders".
- [91] Reviews, therefore, allow a court to reconsider the financial circumstances of the payor and payee, and to assess the payee's path to self-sufficiency at a given period following the trial.
- [127] The orders made above with respect to spousal support already account for the uncertainty identified. They will balance the interests of self-sufficiency and finality with those of compensation. The past and prospective spousal support, coupled with the division of the party's assets (each party will receive roughly \$1.86 million), will place the wife in a strong and flexible financial position going forward, whether she elects to work full-time, or in a reduced capacity, or, as at present, not at all.

IX. Child support

- [128] The parties provided sparse submissions on retroactive child support, which was not a major issue at trial. Again, the husband has provided funds for all family expenses, including all expenses for the younger child, to the present.
- [129] The parties acknowledge that the younger child, now aged 20, remains a child of the marriage entitled to support, as a student enrolled in full-time post-secondary education. Since September 2023, he has lived and studied at a university outside of Vancouver. During the remaining months of the year, the child lives with the husband in Vancouver, and has primarily done so since February 2021.
- [130] The wife shall pay child support based on their respective incomes set out above, for the five months per year (summer and holidays) the child resides with the husband, starting on June 1, 2024, and continuing at least so long as the child remains a child of the marriage, which, for the purposes of certainty, shall presumptively continue so long as the child remains enrolled in full-time undergraduate studies. The wife will also pay retroactive child support (including section 7 expenses) to the husband, for the time the child predominantly resided with the husband, from February 1, 2021 to August 31, 2023 (full time), and September 1, 2023 to June 1, 2024 (five months a year). The parties will pay the child's post-secondary expenses not covered by their RESP funds and other section 7 expenses in proportion to their respective incomes.

X. Uncontested orders

- [131] Being satisfied that the statutory DA requirements are met, the Court grants the divorce order, in the usual form, to take effect 31 days after these reasons.
- [132] The Court grants the wife's application to change her legal name back to her maiden name, pursuant to the Name Act, RSBC 1996, c.328, s.5.

XI. Conclusion

- [133] Success has been mixed. Presumptively, each party will bear their own costs. If either party wishes to dislodge this presumption, that party will advise the other within 15 days of these reasons, and schedule with the Registry a date as soon as reasonably practicable to argue the matter. Each party will provide a written argument to the other party and to the Court at least seven days before the hearing date. Each side is encouraged to strive for a negotiated settlement to the costs issue prior to the costs hearing, and issue formal offers to settle costs.
- [134] The Court expresses its gratitude to counsel for their excellent advocacy, organisation, and cooperation. The Court also commends the parties for the relative civility of their separation and this dispute, in the best interests of their children.

"Crerar J"

[1] Professors Carol Rogerson and Rollie Thompson, Ottawa: Department of Justice, 2008.

[2] Professors Carol Rogerson and Rollie Thompson, Ottawa: Department of Justice, 2016.

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