

CANADA / JUDGMENT

Y.M.F. v. R.V.F.

2022 BCSC 699

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 699 Y.M.F. v. R.V.F.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Y.M.F. v. R.V.F.,

2022 BCSC 699

Date: 20220503

Docket: E151392

Registry: Vancouver

Between:

Y.M.F.

Claimant

And

R.V.F.

Respondent

Corrected Judgment: The front page of the judgment was corrected on May 31, 2022

Before: The Honourable Madam Justice Tucker

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

June 9-11 and 22, 2021

Place and Date of Judgment:

Vancouver, B.C.

May 3, 2022

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I. INTRODUCTION

[1] The claimant applies for a review of child and spousal support.

[2] The review is pursuant to a consent final order dated August 13, 2018 ("Final Order").

II. BACKGROUND

A. The Parties

[3] The claimant was born in 1968 and is 53 years old.

[4] The respondent was born in 1966 and is 54 years old.

- [5] The parties began a marriage-like relationship in July 1996, married in December 1996, and separated in May 2015.
- [6] The parties share three children, namely:
- A., born 1999;
 - B., born 2002; and
 - C., born 2004.
- [7] The respondent is a portfolio manager with Odlum Brown ("OB"), an investment firm. He has been with OB since 1994 and became a director and shareholder during the marriage.
- [8] When the parties met, the claimant was in the restaurant industry and earned about \$30,000 a year. After the marriage, she continued in the restaurant industry in management and service positions. After A. was born, she stopped working outside the home. In or about 2000, she worked from home as a bookkeeper for a restaurant for a short period of time. The parties then agreed she would stop working altogether. She has been a homemaker since 2001.
- [9] During the marriage, the claimant had primary responsibility for childcare and household matters.
- [10] The parties lived very comfortably during the marriage. They resided in a westside Vancouver home that sold for over \$4,000,000 in 2016.
- [11] A. is presently completing an engineering program at an Ontario university.
- [12] B. is enrolled in an Ontario university. She stayed in Vancouver for her first year and attended online due to the COVID-19 pandemic, but was to be in Toronto beginning August 2021.
- [13] C. attends a private school and is in grade 11.

B. The Family Litigation

- [14] A notice of family claim was filed in May 2015.
- [15] The parties settled at mediation in April 2018. The Final Order reflects the minutes of settlement from that mediation.
- [16] The Final Order divorced the parties and addressed parenting arrangements, child support, spousal support, property division and debt division.

[17] The child support terms of the Final Order expressly refer to the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) [DA]. The spousal support terms refer to the DA or to the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The parties' submissions on spousal support referred to both statutes. When the issue was raised, the parties agreed that the Final Order was silent on the point and that DA should apply by virtue of paramountcy. I agree: *Yu v. Jordan*, 2012 BCCA 367 at para. 51.

C. The Final Order

[18] The Final Order:

- Provides support for A. while he completes his university degree;
- Provides for equal shared parenting time with B. and C.;
- Provides for a 50/50 split with regard to B. and C.'s section 7 costs;
- Sets the respondent's income for support purposes at \$650,000, and the claimant's at \$36,000;
- Provides for a review of spousal support and child support for B. and C. effective July 1, 2020 ("Review Date"); and
- Prohibits any retroactive adjustment of support for the period prior to the Review Date ("Order Period").

[19] A review application was not filed promptly and once brought was adjourned. For purposes of these reasons, I will refer to the period between the Review Date and the hearing before me as the "Added Period".

[20] The respondent paid child support in accordance with the Final Order during the Added Period.

[21] The 50/50 section 7 costs allocation was continued during the Added Period.

[22] On June 22, 2021, an interim consent order was entered to govern child and spousal support and section 7 expenses between June 22, 2021 and issuance of this decision.

[23] The parties were unable to reach an agreement regarding spousal support for the Added Period. Notwithstanding the absence of an agreement, some interim payments were made and accepted. These included a February 2021 payment of \$33,000, made as an after tax lump sum payment, specifically in respect of the July to December 2020 period.

[24] The parties agree that this is a review and there is no need to establish a material change in circumstances. There is, however, an issue as to whether a number of additional orders sought are within the scope of the review. The additional orders deal with security for support payments, the method for making support payments and the section 7 expense reconciliation process.

D. Final Order Provisions

[25] The Final Order includes the following terms:

(g) Regarding child support and review:

UPON the court being advised the names and birth dates of the children of the marriage are:

[C.], born July 18, 2004 ("[C.]")

[B.], born July 13, 2002 ("[B.]") and

(collectively, the "Children")

AND UPON the court being advised the name and birth date of the adult child is:

[A.], born on May 5, 1999 ("[A.]")

Child Support

12. The parenting arrangements of the parties qualify as shared custody pursuant to section 9 of the Federal Child Support Guidelines (the "Guidelines") and pursuant to the Guidelines and based on the parties incomes set out herein.
13. Based on the set-off formula, commencing on May 1, 2018 pursuant to the Divorce Act, the Respondent shall pay to the Claimant \$7,482 per month for child support, continuing on the first of the month until a review takes place. The review will take place on July 1, 2020, (the "Review Date"), when [B.] graduates high school. This review on Review Date will not permit a retroactive adjustment for child support paid in 2018, 2019 and up to June 30, 2020.
14. The parties will share on a 50/50 basis the private school tuition (), cellphone, sports team costs, driving school and licencing fees, medical and dental expenses not covered by insurance, and any other agreed upon extraordinary expenses for the Children until the Review Date. Each party will pay his or her half share of the school tuition and expenses directly to the school.
15. Commencing six months from the making of this Order, and every six months thereafter, the parties will exchange receipts and perform accounting of special expenses each of them incurred for the Children, and should there be any monies owing by either party to the other shall be paid no later than 10 days after completion of the accounting.
16. In the event of a dispute regarding any expense presented for shared payment is disputed or [any] issues in regard to the reconciliation cannot be resolved, the parties will mediate and then arbitrate the disagreement at shared cost with a mutually acceptable mediator/arbitrator whose decision will be binding upon the parties.
17. In the event that the Claimant does not pay to the Respondent her share of such expenses as noted in paragraph 15 above within the time frame noted above or within 10 days following a mediation/arbitration, if required, the Respondent may deduct such unpaid extraordinary expenses from the subsequent child support payments, until paid.

[A.]'s Extraordinary Expenses

18. Commencing forthwith and continuing pending further Court order, the parties shall share the section 7 special and extraordinary expenses of [A.] equally on the terms set out below:
 - (a) Tuition and books;
 - (b) Room and board;
 - (c) Cellular phone costs;
 - (d) Travel for [A.] to and from home/school for the start and end of each semester, and travel for [A.] for holidays agreed upon by the parties in advance in writing;
 - (e) [A.'s] local transportation costs in Ontario; and
 - (f) Monthly incidentals.

Review of Child Support for [B.] and [C.]

19. In advance of the Review Date, the Claimant and the Respondent shall exchange the following financial information:
 - (a) a copy of his or her income tax return filed for the preceding tax year;
 - (b) any other requested information required to determine the parties' Guideline Income as described in the Child Support Guidelines.
20. In addition to a review on the Review Date, either party may request, at any other time by delivering a written notice to the other, a review of child support if:
 - (a) there is a material change of circumstances;
 - (b) there is a change relating to undue hardship for either party as defined by the Federal Child Support Guidelines;
 - (c) any one of the Children ceases to be eligible for support;
 - (d) the Children's need for support changes by reason of reaching the age of majority or a child enrolling in post-secondary education; and
 - (e) either of the Children ceases to be eligible for support and then becomes dependent again.
21. In the event that the Respondent experiences a significant reduction in his income due to:
 - (a) termination of employment;
 - (b) illness or disability;
 - (c) regulatory discipline;
 - (d) reduction in size of book of business;

- (e) ceasing to be a Director of Odlum Brown; or
 - (f) has a reduction in his Odlum Brown shareholdings the child support shall be immediately reviewed.
22. If on any review of child support herein, the Claimant and the Respondent are unable to reach agreement through negotiation within 30 days after the commencement of such negotiations, then either party is at liberty to apply to court. Neither party is restricted in the arguments available to him or her on such application.

Spousal Support

23. The Respondent shall pay the Claimant as spousal support the sum of \$10,534 per month, based upon a 50/50 Net Disposable Income, commencing the first day of May, 2018 and continuing on the first of each month thereafter until the Review Date. The review of spousal support will take place on July 1, 2020, (the "Review Date"), when [B.] graduates high school. This review on the Review Date will not permit a retroactive adjustment for spousal support paid in 2018, 2019 and up to June 30, 2020.
24. In advance of the Review Date, the parties shall exchange their personal income tax returns for the relevant period, and all financial documents listed in paragraph 19 of this Order.
25. In the event that the Respondent experiences a significant reduction in his income due to:
- (a) termination of employment;
 - (b) illness or disability;
 - (c) regulatory discipline;
 - (d) reduction in size of book of business;
 - (e) ceasing to be a Director of Odlum Brown; or
 - (f) has a reduction in his Odlum Brown shareholdings the spousal support shall be immediately reviewed.
26. If on any review of spousal support herein, the Claimant and the Respondent are unable to reach agreement through negotiation (including e-mail negotiation) within 30 days after the commencement of negotiations, then either party is at liberty to apply to court. Neither party is restricted in the arguments available to him or her on such application.
27. The Respondent shall make the support payments by way of post-dated cheques before September 1, 2018 for September to and including June, 2019, and commencing July 1, 2019, and annually thereafter, cheques for the next 12 months are to be provided. The timing of the provision of post-dated cheques will coincide with the review in 2020 and with subsequent reviews.

III. ISSUES

[26] The following issues are raised for determination:

1. Incomes for support purposes:
 - the respondent's income; and
 - the income amount to be imputed to the claimant;
2. Child support after the Review Period;
3. Spousal support after the Review Period;
4. Whether the additional orders are within the scope of this review and, if so, whether they should be made.

IV. INCOMES FOR SUPPORT PURPOSES

A. Legal Framework

[27] The following provisions from the Federal Child Support Guidelines, SOR/97-175 [Guidelines] pertain to the issues raised by the parties:

Calculation of annual income

16 Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

Pattern of income

17(1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

Imputing income

19(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;

- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

Reasonableness of expenses

- (2) For the purpose of paragraph 1(g), the reasonableness of an expense deduction is not governed by whether the deduction is permitted under the Income Tax Act.

B. The Respondent

1. Additional Facts

- [28] Based on the evidence provided regarding the history and structure of the respondent's income, I find as follows.
- [29] The respondent's employment income has two aspects: commission-related income as an investment advisor and share-based income as a holder of OB shares. (In their submissions, both parties treated both aspects as employment income without drawing any tax distinctions between the two aspects.)
- [30] The commission-related amounts consist of actual commissions as an investment advisor and commission incentive payments based on the respondent's productivity as an investment advisor.
- [31] Commission incentive payments are paid out regularly when targets are hit, and are included on the respondent's T4. As OB's corporate year is April 1 through March 31, commission incentive payments issued at corporate year end show up early in the personal tax year.
- [32] Each year the respondent can receive two different types of bonuses (in addition to commission incentive payments): i.e., an OB share bonus and a commission pool bonus. The commission pool bonus is an investment advisor special bonus pool.

- [33] The commission pool bonus was determined each May (after corporate year-end). It was determined by the Executive Committee and allocated to investment advisors that meet a minimum threshold of productivity. If the respondent is paid a commission pool bonus, it appears on his T4.
- [34] OB eliminated the commission pool bonus in 2020.
- [35] Share bonuses are based on OB's profitability and paid to shareholders based on their shareholdings. These bonuses are determined by the Executive Committee at their discretion. The amount of the bonus per share varies each fiscal year.
- [36] Usually, part of the share bonus is declared in December. Shareholders can elect to include the portion declared in December in income for the current year or defer that part to be included in the following income year.
- [37] There are a fixed number of shares allocated between OB's shareholders. The share allocation is at the discretion of the Executive Committee based on the respondent's personal productivity and value to the firm.
- [38] At the time of the Final Order, the respondent owned 5,000 shares.
- [39] Starting in 2019, the respondent's shares were reduced to reflect his work productivity relative to other investment advisors. In May 2019, OB took back 300 of his 5,000 shares.
- [40] On October 9, 2020, OB took back another 600 shares. As of May 2019, the reduction was due to lowered productivity relative to other investment advisors.
- [41] The respondent was advised that on or before June 20, 2021, OB would take back another 600 shares, again as a reflection on his relative productivity.
- [42] The reduction in OB shareholdings translates into a reduction in the amount paid to the respondent as his share bonus.
- [43] Shareholder bonus distributions on a per-share basis were at their height in 2018 and have steadily dropped in the years since. In 2020, the shareholder bonus was \$24 per share. In 2018, it was \$41.45 per share, apparently the highest per-share bonus in the firm's history.
- [44] In 2017, the respondent received, over and above his regular commissions:
- \$163,750 in share bonuses - which included the December deferral from the 2016 year, but did not include the December 2017 bonus (which the respondent deferred to 2018);
 - \$33,500 in commission incentive payments; and
 - \$12,396 in commission pool bonus.
- [45] In 2018 the respondent received, over and above his regular commissions:

· \$256,750 in share bonuses - as above, the respondent elected to defer his December 2017 share bonus (about \$80,000) payment to January 2018. He then elected to take all of his 2018 share bonus in 2018 (about \$176,000);

· \$58,100 in commission incentive payments; and

· \$15,433 in commission pool bonus.

[46] In 2019, the respondent received, over and above his regular commissions:

· \$173,350 in share bonuses;

· \$45,150 in commission incentive payments; and

· \$17,960 in commission pool bonus.

[47] In 2020, the respondent received, over and above his regular commissions:

· \$71,600 in share bonuses; and

· \$94,643.20 in commission incentive payments.

[48] The respondent deducts expenses from his income. The following table shows the respondent's gross income, expenses, and net income before taxes after deduction for his expenses for the years 2012-2019:

Year

Gross income

Expenses

Net income before tax

2012

\$612,982

\$26,465

\$586,517

2013

\$641,861

\$27,030

\$614,831

2014

\$700,595

\$25,976

\$674,619

2015

\$624,011

\$18,100

\$605,911

2016

\$613,531

\$15,813

\$597,717

2017

\$646,394

\$19,873

\$626,520

2018

\$853,373

\$10,409

\$842,963

2019

\$740,469

\$18,682

\$721,786

2. Parties' Positions

[49] The claimant says the respondent's increase in income post-separation should be included in determining spousal support.

[50] She also says that a three-year average should be employed given the fluctuations in the respondent's income. She points to the respondent's ability to impact any particular year by deciding whether to take or defer bonuses.

[51] The claimant disputes the respondent's expenses. She attests that he did not travel or use a vehicle for work with any frequency during the marriage. She says the evidence does not establish that the expenses were necessary. She seeks to have his gross employment income imputed to him for support purposes.

[52] Thus, she would calculate his three-year average as follows:

- 2020: \$742,237
- 2019: \$740,469
- 2018: \$853,373

Average: \$778,000

[53] The respondent submits that his expenses are reasonable and that the averaging formula should employ his net income. He further contends that 2018 and 2019 are atypical years and should not be used in the averaging.

[54] For 2018, he says:

- he deferred some 2017 share bonus (\$80,000) into 2018 and took his full 2018 share bonus in 2018;
- the last quarter of 2018 had a sharp market drop that led to atypical commissions;
- the fiscal 2018 bonus payout at \$41.35 per share was extraordinary; and
- in 2018, he had still 5,000 OB shares.

[55] As for 2019, he says that year's income is partially due to an unusual corporate portfolio liquidation transaction that triggered \$60,000 in commission.

[56] He contends that in light of his reduced OB shares, the fall-off in bonus distributions per share, and the growing trend of self-service investment, his annual income for support purposes should be estimated at \$600,000 for the near future.

3. Determination

[57] Where a spouse's increased income after separation is linked to expertise and seniority established during the marriage, and no other intervening events have caused the increase, the increase may be taken into account for purposes of determining spousal support: *Helle v. Helle*, 2019 BCCA 97 at paras. 34 - 35.

[58] Here, the respondent's increased post-separation income is attributable to expertise, status and clientele built up during the marriage. I conclude that it is appropriate to calculate spousal support based on the increase. Thus, the respondent's income is the same here for child and spousal support purposes.

- [59] While it is sparse, I find the respondent's evidence on his expenses sufficient given the amount and type of expenses claimed. Although the claimant contends the respondent inflated his expense claims during the marriage, I note that his expenses have been on a general downward trend since 2012.
- [60] I agree that averaging is appropriate here as the respondent's income is structured and has significant variation from year to year. While the respondent's recent loss of shares impacts his share bonus earning potential, should his productivity go up, his shares will increase yet again. The potential for continuing variations in his share allocation is accounted for by using 2018-2020 as the averaging years, as there was significant variation over those three years. Similarly, the evidence demonstrates that OB bonus pools may come and go over time. The commission pool bonus may return or a new and different form of bonus pool may be introduced. Fluctuation in the bonus pool arrangements is also accounted for by averaging these three years, as some, but not all, include commission bonus pool payments.
- [61] I disagree with the respondent's argument that using his 2018 income will inflate the average because he made choices that resulted in his receiving effectively 1.5 years of share bonuses in that particular year (i.e., \$80,000 deferred from 2017 and \$176,000 for 2018). I note that had he deferred again in 2018, the deferred 2018 amount would have been paid in 2019 and thus still been paid within the averaging period. The evidence does not disclose a firm pattern of either deferring or not deferring the second part of the share bonus. Using the years 2018-2020 results in the inclusion of one year where there was deferral and two years where there was not.
- [62] I agree, however, that an adjustment should be made to account for the atypical 2018 per share bonus distribution. Although the respondent's evidence did not explain why the 2018 per share bonus was so high, the 2018 amount is on its face out of step with the adjacent years. As the years used in the averaging already include some with commission pool bonuses and one that captures a deferred bonus payment, I believe the potential for fluctuation has already been adequately addressed. Thus, I find it appropriate to make a discount in light of the 2018 per share bonus.
- [63] The per-share bonus in 2018 was \$41.45. The per-share bonus in 2020 was \$24 (or 58% of \$41.45). Had the 2018 per share bonus been at the 2020 rate, it would have totaled \$101,906 (58% of \$176,000). The atypical 2018 number can be accounted for by discounting the respondent's 2018 income by the difference (\$74,094) ($\$842,963.20 - \$74,094 = \$768,869$).
- [64] In their submissions, the claimant and respondent both used \$742,237 as the respondent's gross employment income for 2020 as per his T4 statement. However, his employment income as set out on the Federal Financial Jacket of his T1 tax return and in his Form 8 Financial Statement filed in May 2021 is \$742,362.34. I will use the latter to determine his income for 2020, along with an expense deduction of \$14,547.08.
- [65] This results in the following calculation:

· 2018 net income: \$768,869

· 2019 net income: \$721,786

· 2020 net income: \$727,815

Average: \$739,490

C. The Claimant

1. Parties' Positions

[66] The claimant seeks a continued imputation of \$36,000 per year, arguing that the amount is already more than full-time earnings at minimum wage. She notes that she had no educational training during the marriage and has been focused on the litigation of this proceeding post-separation. She says she continued as the children's primary caregiver following separation and currently attends to B. and C.'s daily needs by, for example, cooking their meals and driving them to activities.

[67] The claimant contends she is no longer suited to the restaurant industry. She submits that she is too old for service positions, lacks the experience and technological skills for management and that the work requires late night and weekend hours which is time she spends looking after the children. She speculates that it might be difficult to find a restaurant industry position given the pandemic.

[68] The claimant received \$625,000 in cash under the Final Order. She presently has \$489,000 in non-registered investments. She argues that investment income should not be imputed for earnings on that capital because she intends to use it to buy a residence for herself and the children.

[69] The respondent says the claimant is employable in the restaurant industry and could have had a position as of the Review Date. He has put in evidence of advertisements for local full-time junior management positions paying between \$20-30 an hour. He contends she could readily earn \$50,000 - \$60,000 a year, but has made no effort at all to obtain employment.

[70] He also contends that \$500,000 in non-registered investments would, with a conservative rate of return of 5%, earn the claimant approximately \$20,000 a year.

[71] He seeks to have \$70,000 total imputed to the claimant as employment and investment income.

2. Determination

[72] The Court has broad judicial discretion to impute income for child and spousal support purposes. The evidentiary burden is on the party seeking the imputation: *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 36-38.

- [73] I am satisfied there are no barriers to the claimant's ability to obtain employment. Her childcare responsibilities for B. and C. are under a shared parenting arrangement and both are now older teenagers. She is easily capable of finding and holding employment as a junior restaurant manager or server at a position akin to those identified in the respondent's evidence. The advertisements relied on by the respondent demonstrate that jobs are available. At \$20 per hour, she would make about 39,000 a year; at \$25 an hour, she would make about \$49,000. Splitting the difference, I find it reasonable to impute an employment income of \$44,000 a year.
- [74] The claimant says she intends to use the funds in her non-registered investments to purchase a residence for her and the children. She says the funds should not be regarded as income-producing given her intention: *Yemchuk v. Yemchuk*, 2005 BCCA 406 at para. 45, and *Whitfield v. Whitfield*, 2012 BCSC 965.
- [75] In *Yemchuk*, the Court of Appeal observed that although investment income is commonly imputed for spousal support purposes when a lump sum has been paid out under a division of assets, this is not invariably so:
- [45] There are circumstances, however, in which the court will decline to [impute investment income]. One example is where a party (usually the wife) wishes to use the proceeds, or a portion thereof, to purchase a home for herself and a child or children of the marriage, does not have other funds available to do so, and the court is satisfied that it is reasonable to permit her to use her capital for that purpose rather than to produce income.
- [76] In *Whitfield*, Justice Melnick declined to impute investment income on the facts before him:
- [37] I am satisfied that Ms. Whitfield is entitled to spousal support. Although she will have liquid assets of at least \$600,000, she needs to acquire a residence in which to live and in which to operate her dog grooming business. As well, it is important that she invest the money she will be paid by Cpl. Whitfield for her share of his pension to provide for her own retirement.
- [38] Until there is a change in circumstances (such as his retirement or her re-marriage, for example), he should pay her spousal support in the mid-range of the SSAG on the basis of his having an income of \$90,000 a year and her having an income of \$25,000 a year. Although she presently has investment income of close to \$14,000 a year from the Nesbitt Burns account, I would not take that into account as she will need to use her now available liquid assets to purchase a new home and to invest in a retirement plan. I impute an income of \$25,000 a year to her based upon what I accept she is capable of earning as net income from her dog grooming business.
- [77] The question of whether an imputation of investment income is appropriate is fact-dependent. Here, the monies the claimant received under the division of assets under the Final Order exceeded the amount currently held in unregistered investments. The imputation sought is limited to the funds in non-registered investments.

[78] The claimant has rented a house since the separation. The assertion that she has not bought a home to date because she does not qualify for a mortgage is disputed by the respondent. She has put in no documentary support evidencing an attempt to get a mortgage. The youngest child, C., will be at university very soon. The respondent's evidence that the claimant spends much of her non-parenting time at her new partner's home was not seriously disputed. No evidence was adduced as to where or what kind of property the claimant had or has plans to buy. I am not satisfied on the evidence that she will buy a house any time soon.

[79] I find it appropriate to impute \$20,000 of investment income to the claimant.

D. Conclusion

[80] The respondent's income for support purposes is imputed at \$739,490 from 2021 onward.

[81] The respondent's actual income for 2020 of \$727,815 will be used to determine support for the period of July to December 2020.

[82] The claimant's income for support purposes is imputed at \$64,000 per year from the Review Date onward.

V. CHILD SUPPORT

A. The Final Order

[83] Section 1 of the DA sets out the following definition:

child of the marriage means a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or
- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life; (enfant à charge).

[84] The order describes B. and C. as "children of the marriage" and goes on to define the two of them as "the Children" for purposes of the Final Order. The order describes A. as "the adult child", and then excludes him from the definition of "the Children" (underlining added). The result is awkward to the extent that the Final Order uses descriptions and definitions that do not fully accord with the DA's statutory definition.

[85] However, what the Final Order actually does is clear. Child support is provided for A., B. and C., and all three are treated as "children of the marriage" for purposes of the DA definition. That is, the Final Order treats A. as a dependent "child of the marriage" notwithstanding his age by providing for his support until he finishes university.

[86] The Final Order distinguishes between A and the younger children not with respect to entitlement to child support, but rather by model of child support. Child support for B. and C. is determined by reference to the Guidelines table ("Table Model"). A.'s child support

under the Agreement adopts a model commonly employed for dependent adult children living away from home to attend university ("University Model"): see, for example, *Mohamed v. Martone*, 2019 BCSC 38 at paras. 31-32; and *M.A.T. v K.P.T.*, 2017 BCSC 1603 at paras. 181-183.

[87] The Table Model reflects Guidelines s. 3(1), while the University Model is an alternative model developed under s. 3(2)(b):

Presumptive rule

3 (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

Child the age of majority or over

- (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is
 - (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

Special or extraordinary expenses

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

Sharing of expense

- (2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

[88] Given the respondent's income, s. 4 of the Guidelines is also relevant here:

Incomes over \$150,000

4 Where the income of the spouse against whom a child support order is sought is over \$150,000, the amount of a child support order is

- (a) the amount determined under section 3; or
- (b) if the court considers that amount to be inappropriate,
 - (i) in respect of the first \$150,000 of the spouse's income, the amount set out in the applicable table for the number of children under the age of majority to whom the order relates;
 - (ii) in respect of the balance of the spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children; and
 - (iii) the amount, if any, determined under section 7.

B. Parties' Positions

[89] The claimant initially sought - in her first set of written submissions and her Notice of Application - an order for Table Model support for B. and C. effective the Review Date and on an ongoing basis (with credit for payment of \$7,482 per month from July 1, 2020 onward). In tandem with that, she sought an order requiring the parties to "adjust the quantum of child support and spousal support when there is a change in the status of one of the Children to ensure the Respondent and Claimant maintain the 50/50 Net Disposable Income" ("NDI").

[90] In a draft order submitted with her further written submissions, the claimant set out a somewhat different and more detailed approach. Under the draft order, she seeks Table Model support for B. and C. commencing the Review Date, then Table Model support for only C. from September 2021 until August 2023 (at which time C. will turn 19). Once B. and C. are both over 19 and at university, she seeks only payment of their special expenses, but in conjunction with an increase in her spousal support to maintain a 50/50 split of NDI.

[91] She also seeks an order replacing para. 14 of the Final Order with the following term on a go-forward basis:

Provided that the parties equally share their net disposable incomes, the parties will share on a 50/50 basis the following s. 7 expenses for [B.] and [C.]:

- Private school tuition and fees
- Agreed-upon travel expenses for a school trip for [C.]
- Reasonable University application fees
- Agreed-upon Post-secondary schooling tuition and fees for undergraduate school
- Reasonable travel to and from post-secondary school
- Room and board for post-secondary schooling
- Reasonable extra-curricular sports-team expenses
- Necessary medical or dental expenses not covered by insurance
- Driving school and licencing fees
- Reasonable graduation expenses
- Any other agreed-upon expenses or expenses determined to be s. 7 expenses by a Parenting Coordinator.

[92] The respondent proposes that Table Model support be payable for B. and C. until September 2021, at which point only C. would remain on the Table Model and B. would move to A.'s model (i.e., the University Model). His draft order provides that commencing September 2022 until August 2026 (while C. is an undergraduate at university), Table Model support for C. will continue so long as C. continues to reside with both parties while attending university full-time. In the event C. does not live with parties while attending university, then Table Model support would end and C. would move to the University Model.

[93] The respondent submits that the parties should continue to share B. and C.'s s. 7 expenses equally.

C. Analysis

[94] Both parties acknowledge that the children (to the extent that they are not residing away from home for university) reside with the parties in a shared parenting arrangement and that s. 9 of the Guidelines apply. Both parties seek a straight set-off to determine payable child support. Having considered s. 9 of the Guidelines and the leading case authority, *Contino v. Leonelli-Contino*, 2005 SCC 63, I find that a straight set-off as sought is appropriate.

[95] A helpful discussion of the circumstances that may render a University Model approach suitable is found in *Mohamed*:

[41] In determining the child support payable, I find guidance in the decision of Mr. Justice Weatherill in *Hamilton v. Popp*, 2014 BCSC 506 [Hamilton]. In that case, the payor of child support for a child of the marriage, who lived in B.C. and was attending university in Nova Scotia, was required to continue to pay that support while the child was attending university.

In addition to child support, the payor was paying a proportionate share of the child's university expenses. An RESP was created over a number of years, which in 2014 totalled approximately \$45,000.00.

- [42] At para. 22 of *Hamilton*, the court noted that the main point of contention was child support and the court made a finding that the student in that case continued to be a child of the marriage while attending university. Reference was then made to s. 3(2) of the Guidelines. The court noted at para. 26 that the term "inappropriate" in the context of s. 3(2)(b) means "unsuitable" rather than merely "inadequate": citing *Francis v. Baker*, [1999] 3 S.C.R. 250. As a result, the court may exercise a broad discretion to accept or reject the prescribed amount of child support in each case involving children and age of majority issues.
- [43] At para. 31 of *Hamilton*, after reviewing the relationship between section 3(2)(a) and section 3(2)(b) of the Guidelines, the Court stated:
- [31] In *L.H.M.K. v. Brown J.* accepted the proposition that where s. 3(2)(b) of the Guidelines is applied to an adult child attending post-secondary schooling who is living away from home, courts generally suspend child support for that child when the child is away from home. In turn, courts order each party to pay their proportionate share of the child's education expenses.
- [44] The court also noted that s. 7 of the Guidelines also becomes relevant in determining child support because it provides that a child support order may include a provision for special and extraordinary expenses, including, for example, post-secondary education costs: *Hamilton* at para. 27. In *L.H.M.K. v. B.P.K.*, 2012 BCSC 435 [*L.H.M.K.*], Mr. Justice Brown stated at para. 170:
- [170] There is a certain amount of interplay between s. 3(2) and s. 7(1)(e) of the Guidelines. Attendance at a post-secondary institution may entitle a child of or over the age of majority to child support under s. 3(2), but that same child may not receive an additional award for "expenses for post-secondary education" under s. 7(1)(e) if the means of the spouses and the earnings of the child are of a certain level. In *M.H. v. W.D.H.*, 2003 BCSC 838, *Dorgan J.* explained the relationship between the two provisions as follows:
- [18] With respect to the quantum of support, the court has a flexibility under section 3(2) of the Guidelines that it does not have under section 3(1). Section 3(2)(b) allows the court to award an amount the court considers "appropriate" if the court considers that the application of the Guidelines under section 3(2)(a) would be inappropriate in the circumstances, and to consider the circumstances of the child as well as the circumstances of the parent in making such an award. The onus is on the party seeking to exclude the application of s. 3(2)(a) to establish that the application of this section is inappropriate: *Glen v. Glen*, (1997), 34 R.F.L. (4th) 13 (B.C.S.C.).
- [45] At para. 174 of *L.H.M.K.*, the court recites the submissions of the husband in that case relying on *W.P.N.* and then at para. 176 the following appears:

- [176] In the circumstances, while R. is at university and thus away from home, the husband shall reduce child support payments to the wife from 3 to 2 children to reflect the number of children living at home. Based on R.'s university schedule thus far, it appears that this will have the effect of requiring the husband to pay for two children 8 months of the year and for three children four months of the year.
- [96] Due to the pandemic, B.'s first year of university resembled an additional year of high school rather than the circumstances generally associated with the University Model. However, once B. began residing in Toronto and attending in-person classes in September 2021, the Table Model ceased to be suitable for her circumstances.
- [97] It is appropriate for B.'s support to continue on the Table Model through to the end of August 2021. However, I am satisfied that B. should be moved to the University Model effective September 2021.
- [98] B.'s s. 7 costs under the University Model will be addressed below.
- [99] There is no dispute that the Table Model should continue for C. It is appropriate for that model to continue until he is 19 years old: *P.R.M. v. B.J.M.*, 2012 BCSC 1795.
- [100] Commencing September 2023, if C. continues to reside with the parties while attending university, then the Table Model of support will continue to apply. If C. lives on his own while attending university, the University Model will apply to him as of that date.
- [101] C.'s s. 7 costs are addressed below.

D. Table Model Applied

- [102] For the period of July 1, 2020 to December 31, 2020, using the claimant's imputed Guidelines income of \$64,000, and the respondent's actual Guidelines income of \$727,815, the respondent owed the claimant \$7,984 per month in child support for B. and C.
- [103] Effective January 1, 2021, using the claimant's imputed Guidelines income of \$64,000, and the respondent's imputed Guidelines income of \$739,490, the respondent owed the claimant \$8,122 per month in child support for B. and C.
- [104] Effective September 1, 2021, the respondent will pay the claimant \$5,347 per month in child support for C. This amount will be payable until at least September 2023 or until C. ceases to be a child of the marriage residing with the parties, whichever is later. If after September 2023, C. resides away from his parents while attending university, Table Model support for C. will end.
- [105] The respondent will receive credit for any periodic child support he has paid since the Review Date to the date of these reasons for judgment against the amounts owing under this judgment.

E. Section 7 Expenses

[106] Effective July 1, 2020, the parties will continue to share B. and C.'s s. 7 expenses equally.

[107] B.'s s. 7 expenses will be:

- (a) Tuition and books;
- (b) Room and board;
- (c) Cellular phone costs;
- (d) Travel for [B.] to and from home/school for the start and end of each semester, and travel for [B.] for holidays agreed upon by the parties in advance in writing;
- (e) [B.'s] local transportation costs at university; and
- (f) Monthly incidentals.

[108] C.'s s. 7 expenses are governed by the existing term of the Final Order until he attends university, at which time C.'s s. 7 expenses will be the same as set out above for B.

[109] The terms of the Agreement dealing with A.'s child support are outside the scope of this review. Those terms require the parties to share A.'s listed s. 7 expenses equally through to his graduation (May 2022). Building around that date, the parties will continue to share B. and C.'s s. 7 expenses equally through May 2022.

[110] Effective June 1, 2022, the parties should share B. and C.'s expenses in proportion to their incomes (taking into account the findings regarding spousal support set out below). I find it fair and reasonable, in all the circumstances, for the respondent thereafter to pay 70% of those expenses, and for the claimant to pay 30%.

VI. SPOUSAL SUPPORT

A. Legal Framework

[111] Section 15.2(4) of the DA requires the court to consider "the condition, means, needs and other circumstances of each spouse" in making an order for spousal support. This includes consideration of the length of time the spouses cohabited, the functions performed by each during that time, and any order, agreement or arrangement relating to the support of either spouse.

[112] Section 15.2(6) of the DA lists the objectives of spousal support:

To recognize any advantages or disadvantages to spouse arising from the marriage or its breakdown;

To apportion between the spouses any financial consequences arising from the care of a child;

To relieve any economic hardship of a spouse arising from the marriage breakdown; and

To promote self-sufficiency of each spouse within a reasonable period of time, in so far as practicable.

- [113] In *M.A.T. v. K.P.T.*, 2017 BCSC 1603, Justice Fleming helpfully discussed the Spousal Support Advisory Guidelines [SSAG] and the proper approach to determining the amount of spousal support:
- [215] The SSAG also becomes relevant at this stage. Unlike the Guidelines, the SSAG are not legislated. They are intended to reflect the case law and are therefore considered an important tool for assessing the amount and duration of spousal support. Generally, awards that fall substantially outside the range of support provided by the SSAG should be justified based on exceptional circumstances: *Redpath v. Redpath*, 2006 BCCA 338, at para. 42.
- [216] The SSAG are constructed around two basic formulas: the without child support formula and the with child support formula. Under the with child support formula, the amount of spousal support adjusts for the payor's child support payments. The SSAG also include two hybrid formulas. The first is the custodial payor formula, which applies when the higher income spouse paying spousal support is also the parent with primary care of the children. The formula deducts grossed-up amounts of child support from the income of each spouse and then applies the without child support formula. It produces a lower range of spousal support, recognizing the financial obligations that fall on a custodial parent and the priority given to child support: *Cassidy v. McNeil*, 2010 ONCA 218, at para. 72. The second hybrid formula applies when the children are adults and all of their child support is determined under s. 3(2)(b) of the Guidelines. In other words, it should not be used where there is one adult child away at university and another still living at home. In that circumstance, either the basic with child support formula, or the custodial payor formula will apply, and adjustments can be made to the amounts of child support contributed by each spouse for the child away at school.
- [217] As s. 8.10 of *The Revised User's Guide* (Ottawa: Department of Justice, April 2016), explains, the adult child formula can accommodate a wide range of arrangements to pay for a child's education:

For each parent, deducted from their Guidelines income will be a grossed-up amount for each parent's contribution to child support, after which the formula ranges are calculated using the without child support formula math. If the higher-income spouse pays the full costs of university education, then that amount, grossed up, will be deducted on his or her side, while no amount will be deducted from the Guidelines income of the lower-income spouse. If the spouses decide to share the university costs equally, despite different incomes, the grossed-up deduction of equal child support contributions will adjust for that arrangement.

- [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.

- [223] *Hathaway v. Hathaway*, 2014 BCCA 310, leave to appeal ref'd [2014] S.C.C.A. No. 412, considered these very comments and affirmed that spousal support cases involving incomes above the ceiling require an individual fact-specific analysis. The Court of Appeal recognized that determining an appropriate amount of spousal support may be a matter of pure discretion, but at the same time, it is not an error to fix an amount within the SSAG range.
- [224] Referring to *Hathaway* and other decisions, Justice Dardi concluded in *T.N. v. J.C.N.*, 2015 BCSC 439, what is ultimately required is the principled exercise of discretion:
- [68] In the final analysis, the SSAG are advisory and the ultimate determination of the appropriate amount of spousal support in high income cases is a matter of judicial discretion that is governed by the factors and objectives set out in s. 15.2(4) and (6) of the Divorce Act.
- [225] In *Rogerson and Thompson*, *Spousal Support Advisory Guidelines: The Revised User's Guide*, the authors observed that, for incomes not too far above \$350,000, the courts frequently, but not always, order an amount of spousal support at the low end of the SSAG range. For incomes well beyond the ceiling, most often, the amount ordered was below the SSAG range and in relation to the highest incomes, sometimes well below (pp. 57-58).
- [226] The decision in *S.G. v. K.G.*, 2012 BCSC 1937, is consistent with these observations. There, the payor's income was \$1,256,000 and the recipient was imputed income of \$75,000. Each received approximately \$2.3 million in assets. The court applied the pure discretion approach. Based on a number of considerations, including the parties' standard of living during the relationship, their ages, their incomes, and the financial assets available to both, the recipient was awarded spousal support of \$15,000, below the low end of the range.
- [227] I note that in *Hathaway*, however, the Court of Appeal upheld the order of the trial judge, which required the husband to pay monthly spousal support of \$24,124 - the mid-point of the range under the SSAG, based on his income of \$1 million, applying the with child formula.

- [228] Similarly in T.N., the amount of spousal support awarded, \$24,000 per month initially and then \$23,500, was above the mid-point for the SSAG for an income of \$982,626, applying the custodial payor formula.
- [229] The respondent relies upon a number of factors to argue that spousal support should be below the range, including the claimant's absence of need, the needs of the children, work incentives for him, and the high property division. Section 9 of the SSAG explains that the ranges for the amount and duration of support generated by the formulas allow for adjustment to accommodate the specifics of the case, in light of the "support factors" and the statutory objectives of spousal support. The strength of any compensatory claim is a factor that will favour an award at the higher end of the range. The absence of compelling need, on the other hand, may push an award to the lower end.
- [230] Section 9.3 specifies the age, number and needs of children will shift the range under the with child support formula. While s. 9.3 does not apply here, L. and A.'s needs are considered by including their post-secondary education expenses. I agree with the respondent, however, that work incentives identified in s. 9 have been applied by the courts to lower the quantum of support. In T.N. for example, where the husband's income was exceptionally high and the wife was not employed, Justice Dardi wrote , " it is important for all parties that the payor spouse is given some incentive to continue to work at his very demanding occupation" (see also: S.G. at paras. 151, 160 and 161).

B. Parties' Positions

- [114] The claimant says her household role enabled the respondent to focus on and advance his career and increase his earning potential. She says her needs should be measured against the marital standing of living.
- [115] She acknowledges having been in a relationship with Mr. S. for seven years but contends that she should not be considered re-partnered for purposes of spousal support. She further submits that, as her entitlement to spousal support is primarily compensatory, her relationship with Mr. S. is irrelevant.
- [116] She seeks spousal support resulting in a 50/50 NDI split. She says this is appropriate given the length of the marriage and the shared parenting arrangement: M.F.R. v. B.P.R.. 2010 BCSC 1063 at paras. 89 - 90. She seeks ongoing adjustments to spousal support to maintain a 50/50 NDI when and as B. and C.'s entitlement to child support changes. Her argument for 50/50 NDI is partially tied to the fact that she pays 50% of the children's s. 7 expenses.

- [117] As for the term, the claimant contends indefinite spousal support is appropriate here in light of the following: the marriage was 19 years in length: *Bockhold v. Bockhold*, 2010 BCSC 214 at para. 56; *Tedham v. Tedham*, 2005 BCCA 502 at paras. 78 and 88; the challenge of re-entering the workforce given her age and skills: *Fleming v. Fleming*, 2016 BCSC 2408 at paras. 38, 40, 60; and the application of the "rule of 65" under SSAG 7.5.3 (age at separation (47) + length of the marriage (19) = 66).
- [118] The respondent does not dispute the claimant's entitlement to spousal support but disputes the amount and term sought.
- [119] With respect to amount, he contends that the claimant and Mr. S. have significantly intertwined their financial lives and that Mr. S. underwrites a luxurious lifestyle for the claimant. The respondent submits that his post-separation lifestyle is the lesser one. He submits that a 50/50 NDI formula is inappropriate, pointing to the marital standard of living (which he asserts was less luxurious than the claimant contends) and comparing it to the parties' respective current lifestyles.
- [120] As for the term, the respondent submits that spousal support should be time-limited and cease the year he turns 65 (2031), subject to review on a material change in circumstances.
- [121] The parties also disagree with respect to the payment of spousal support for the period of July 1 to December 31, 2020. In February 2021, the respondent made a lump sum payment to the claimant of \$33,000 for that period based on his counsel's view of the after-tax cost and benefit.
- [122] The respondent submits that the \$33,000 paid is sufficient to cover his spousal support obligation for the period. The claimant seeks the full amount of periodic support that she calculates as having been payable during this period, with that amount to be paid now, but with a credit for the \$33,000 already received.

C. Analysis

- [123] The claimant correctly notes that her entitlement to spousal support is primarily compensatory. At 19 years, the marriage was a lengthy one. Not long into the marriage, the claimant left the workforce to be a mother and homemaker, and in that capacity supported and enabled the respondent to build a successful business career. The impact of her role in the family will have lasting negative effects on her earning capacity.
- [124] Where spousal support is primarily compensatory, re-partnering does not impact entitlement: *Rozen v. Rozen*, 2014 BCSC 2426 at para. 29. It may, however, impact the amount payable to the extent it impacts on the standard of living. Standard of living post-separation in comparison to the marital standard is a factor for consideration in determining placement on the range. It is possible for re-partnering to be relevant in that respect.

- [125] Assessing the marital standard of living is challenging here. All that is before me is a review on support. I do not have the benefit of having conducted a trial regarding the division of assets. The parties settled their property issues in mediation and the terms of the Final Order do not inventory nor even provide much sense of those assets. As such, I have only the Final Order itself and such evidence about the pre-separation state of affairs as the parties have chosen to include in their affidavits.
- [126] That said, the evidence before me suggests that the marital standard of living was less than a first impression glance might suggest. While the parties had a large house on Vancouver's westside, the proceeds available for division under the Final Order suggest the equity was limited by mortgages or loans of considerable size. The house appears to have been in want of interior renovation almost the entire time they resided in it as a family, and the parties hosted foreign students and generally rented out the basement suite. While all three children attended private school, the cost of that appears to have been a significant family expense. The family does not appear to have travelled much or luxuriously.
- [127] The claimant currently rents a house that is, like the former family residence, on the westside of Vancouver. The respondent currently lives in a three-bedroom apartment. The parties' present personal residences appear comparable.
- [128] I find that the claimant's standard of living is impacted by her relationship with Mr. S. While Mr. S.'s finances are unknown to me, his personal lifestyle has hallmarks of luxury. He lives in a South Surrey mansion and has a number of personal vehicles, including luxury vehicles.
- [129] The claimant and Mr. S. have been in a close relationship for seven years. The claimant says she and Mr. S. do not reside together but did not dispute the respondent's evidence that she frequently stays at his South Surrey residence. She concedes that they travel internationally together on a near monthly basis. The claimant acknowledges that Mr. S. funds these travels, but says they are generally grafted onto business trips Mr. S. would have to make in any event and that the increased cost of her coming along is relatively modest. She acknowledges that Mr. S. has given her a ring, but denies that they are engaged.
- [130] In terms of direct financial support, she says Mr. S. loaned her some money after the separation, but that she repaid the loan. Mr. S. is a co-signer on the lease for the claimant's rental home in Vancouver. The claimant says this was done for security because she needed to rent but had no employment, and that she pays the rent.
- [131] The evidence does not establish an engagement, nor that the claimant and Mr. S. cohabitate. It also does not establish that Mr. S. provides direct financial support to the claimant. Further, I agree with the claimant that the relationship does not impact her entitlement to compensatory spousal support.

- [132] However, the relationship need not fit into any particular box or model to be relevant to the claimant's standard of living. The remaining question is how, if at all, the claimant's relationship with Mr. S. impacts her standard of living at present and is likely to in the future.
- [133] A seven-year relationship suggests durability and stability. While the claimant and Mr. S. do not have a single shared household, she often stays at his residence during her non-parenting time. He absorbs the expense of regularly taking her on international travels. There is evidence that he is generous about the loan of his vehicles. I am satisfied that Mr. S. significantly impacts the claimant's post-separation standard of living by including her in his own lifestyle at his own cost for much of the time. This not only impacts her standard of living but indirectly reduces the amount the claimant needs to spend maintaining her own household or social or recreational activities.
- [134] Mr. S. is not obliged to provide this benefit to the claimant, but he does and I am satisfied that he will likely continue to do so. I am also satisfied that it has a tangible impact on the claimant's overall standard of living. I am satisfied it is an appropriate factor for consideration in determining the location on the range for spousal support, albeit only one of many and only in relation to her post-separation standard of living.
- [135] Both parties' submissions acknowledge the interrelationship between child support and spousal support and the particular significance of that interrelationship on the facts of this case. Given that C. attends a private school with a tuition akin to university tuition and my conclusions above regarding the University Model, s. 7 expenses are a dominant component of child support. A further complication arises from the fact that A.'s University Model s. 7 expenses are fixed at a 50/50 allocation and those expenses are outside the scope of this review.
- [136] Given the considerable s. 7 expenses here, it is necessary to include the expenses in the calculation (including A.'s expenses so long as they are payable) in determining the appropriate amount of spousal support. Further, the Agreement provides for A.'s s. 7 expenses to be shared 50/50 until his graduation in May 2022. Given this latter fact, I have calculated spousal support in two phases. From the Review Date through May 2022, I have calculated spousal support with s. 7 expenses for all three children shared 50/50. After A.'s graduation, s. 7 expenses will be allocated in proportion to income.
- [137] Attached as Appendix A are a set of DivorceMate calculations addressing the relevant support periods. Through to May 2022, an override has been applied to impose a 50/50 allocation of s. 7 expenses, an adjustment that alters the range of spousal support to account for the fact that the claimant is contributing a greater proportion to s. 7 expenses than she would if it were proportionate to income (even after taking into consideration a 50/50 NDI).

[138] The parties have the liberty to apply to correct the calculations found in Appendix A for mathematical and typographical errors. Unless a party applies within 30 days of the release of the reasons for judgment, the figures set out below govern.

1. 2020

[139] For 2020, the claimant's imputed Guidelines income is \$64,000 and the respondent's Guidelines income for 2020 is \$727,815. I have estimated the children's expenses, to be shared equally, as \$30,000 for A., \$8,050 for B. while residing in Vancouver and attending online courses, and \$30,000 for C. in private school expenses.

[140] The range of spousal support is \$10,462 - \$15,565 - \$16,980, with the low end of the range providing for a 50/50 split of NDI.

[141] For the six-month period July-December 2020, the lump sum amount of spousal support payable at the low end of the range (50/50 NDI), after considering the after-tax cost and benefit, results in a midpoint lump sum amount of \$33,753.

2. 2021

[142] From January 2021 onwards, the claimant's imputed Guidelines income is \$64,000 and the respondent's imputed Guidelines income is \$739,490. For 2021, I have estimated the children's expenses, to be shared equally, as \$30,000 for A., \$19,025 for B. (to recognize that in 2021 she will spend one semester in Vancouver and one semester in Toronto), and \$30,000 for C. From January to September, the table amount of child support is still payable for both B. and C. The range of spousal support payable is \$10,647 - \$15,985 - \$17,364, with the low end of the range resulting in a 50/50 split of NDI.

[143] From September 1, 2021, once B. is over the age of majority and living in Toronto, the amount of s. 7 expenses does not change but the table amount of child support is only payable for C. The range of spousal support payable is \$16,436 - \$18,435 - \$20,042, with the low end of the range resulting in a 50/50 split of NDI.

3. 2022

[144] From January 1, 2022, I have estimated the children's expenses as \$15,000 for A. because this will be his final semester at university (May 2022 graduation), and \$30,000 each for B. and C. These expenses will be shared equally until May 2022, and then the parties will begin to share B. and C.'s expenses proportionate to their incomes. This is also the year that C. will transition from high school to university. The table amount of child support will continue to be payable for C. because he is under the age of majority. For January to May, the range of spousal support payable is \$16,428 - \$18,357 - \$19,994, with the low end of the range resulting in a 50/50 split of NDI.

[145] For June to December, the parties will share B. and C.'s expenses proportionate to their incomes. The range of spousal support payable is \$14,439 - \$16,553 - \$18,581, with the low end of the range resulting in a 50/50 split of NDI.

[146] I note that I have considered that C. may continue to live with the parties while attending university which may result in lower expenses for this year. I find the difference in the range of spousal support is insignificant.

4. 2023

[147] From January 2023, the children's expenses will continue to be shared proportionate to the parties' incomes. I have considered two different scenarios for January to September during which time the table amount of child support will still be payable for C.

- In scenario one, B. and C.'s expenses are both \$30,000. The range of spousal support payable is \$14,439 - \$16,553 - \$18,581, with the low end of the range resulting in a 50/50 split of NDI.

- In scenario two, B.'s expenses are \$30,000 and C.'s expenses are \$8,050 because he is living at home while attending university and the range of spousal support is \$14,972 - \$17,006 - \$19,034.

[148] From September 2023, once C. has turned 19 and is attending university, I have also considered two different scenarios:

- In scenario one, B. and C.'s expenses are both \$30,000. No table amount of child support is payable if C. is living away from home. The range of spousal support payable under the "Adult Children" formula is \$13,382 - \$15,613 - \$17,843 and the range does not include 50/50 NDI. The low range of spousal support provides the respondent with 67.5% of the NDI and the high range of spousal support provides the respondent with 62.2% of the NDI.

- In scenario two, C.'s expenses are \$8,050 while he attends university living at home with his parents and the table amount of child support is payable while C. resides with the parties. The range of spousal support payable under the "With Child Support" formula is \$14,972 - \$17,006 - \$19,034 and the range does not include 50/50 NDI although the low range provides the respondent with an NDI of 50.4% as he will also be paying the table amount of child support.

5. When C. becomes the only child of the marriage

[149] When B. ceases to be a child of the marriage, there are also two possible scenarios:

- In scenario one, C.'s expenses are \$30,000 while he lives away from home and attends university. In this case, no table amount of child support is payable. The range of spousal support payable under the "Adult Children" formula is \$14,713 - \$17,165 - \$19,617 and the range does not include 50/50 NDI. The low end of the range provides the respondent with 66.2% of the NDI and the high end of the range provides the respondent with 60.3% of the NDI.

· In scenario two, C.'s expenses are \$8,050 and the table amount of child support is payable while C. resides with the parties. The range of spousal support payable under the "With Child Support" formula is \$15,505 - \$17,534 - \$19,562 and the range does not include 50/50 NDI although the low range provides the respondent with an NDI of 51.1%.

6. When there are no children of the marriage

[150] Once there are no children of the marriage, the range of spousal support payable under the "Without Child Support" Formula is \$16,043 - \$18,717 - \$21,391. The low end of the range provides the respondent with 64.8% of the NDI.

D. Conclusion

[151] An individualized fact-specific analysis is necessary to determine the amount of spousal support, including the degree to which the respondent's income exceeds the SSAG ceiling. I have considered the parties' marital and post-separation standards of living, the parties' respective expenses, the strength and nature of the claimant's entitlement, and the children's s. 7 expenses (including those under the Agreement for A.).

[152] As noted by Justice Fleming in M.A.T., the specific facts must then be assessed and considered in the context of s. 15.2(4) and (6) of the DA. After considering the statutory objectives of spousal support, the factors set out in s. 15.2(4), and all of the circumstances of this case I find the following awards of monthly spousal support to be fair and reasonable (some numbers involve the averaging of alternatives set out above):

- Effective January 1, 2021 - \$10,647;
- Effective September 1, 2021 - \$16,432;
- Effective June 1, 2022 - \$14,439;
- Effective January 1, 2023 - \$14,705;
- Effective September 1, 2023 - \$14,177;
- When C. becomes the only child of the marriage - \$15,109; and
- When there are no longer children of the marriage - \$16,043.

[153] For the period July 1 to December 31, 2020, the respondent has already paid \$33,000 to the claimant. As set out above, the lump sum amount of spousal support payable at the low end of the range (50/50 NDI) results in a midpoint lump sum after-tax amount of \$33,753. The respondent has already paid the \$33,000 in after-tax money to the claimant with respect to that period. On the basis that the low end of the range is appropriate, I hold that the \$33,000 already paid by the respondent satisfactorily covers the period.

[154] The respondent is to be credited for all periodic spousal support he has paid since January 2021 to the date of these reasons for judgment against the amounts owing under these reasons.

[155] Finally, I agree with the claimant that indefinite spousal support is appropriate here. I note, however, that indefinite, under the Guidelines and current case law, does not mean "permanent" or "infinite", but only that no duration has been specified.

VII. MISCELLANEOUS ISSUES

[156] The parties raised some additional issues.

A. Expense Reconciliation

[157] The Final Order provides as follows:

15. Commencing six months from the making of this Order, and every six months thereafter, the parties will exchange receipts and perform accounting of special expenses each of them incurred for the Children, and should there be any monies owing by either party to the other shall be paid no later than 10 days after completion of the accounting.
16. In the event of a dispute regarding any expense presented for shared payment is disputed or an issue in regard to the reconciliation cannot be resolved, the parties will mediate and then arbitrate the disagreement at shared cost with a mutually acceptable mediator/ arbitrator whose decision will be binding upon the parties.
17. In the event that the Claimant does not pay to the Respondent her share of such expenses as noted in paragraph 15 above within the time frame noted above or within 10 days following a mediation/arbitration, if required, the Respondent may deduct such unpaid extraordinary expenses from the subsequent child support payments, until paid.

[158] The respondent asks the Court to substitute terms setting up a different reconciliation process.

[159] Assuming, without deciding, that I have the jurisdiction under this review to make the requested change, I decline to do so in any event. The parties have never invoked the process in the Final Order and there is no evidence the existing process is deficient.

B. Support Payment Method

[160] Again, the Final Order includes the following term:

27. The Respondent shall make the support payments by way of post-dated cheques before September 1, 2018 for September to and including June 2019, and commencing July 1, 2019, and annually thereafter, cheques for the next 12 months are to be provided. The timing of the provision of post-dated cheques will coincide with the review in 2020 and with subsequent reviews.

[161] The claimant asserts that the respondent does not always make support payments in a timely and efficient manner and seeks an order directing support payments to be made by direct deposit. The respondent says he prefers to pay by cheque for tax and record-keeping purposes.

[162] In terms of organization, para. 27 is the final paragraph under the sub-heading "Spousal Support". There is no comparable paragraph under the sub-heading "Child Support". However, the Final Order terms generally use the specific terms "child support" and "spousal support", and the use of the generic term "support payments" in para. 27 indicates that it applies to both child and spousal support payments. Thus, the Final Order expressly stipulates the method of support payments for both types of support.

[163] Nothing in the review provisions suggests the payment method is within the scope of review. Given the existence of para. 27, the jurisdiction to address payment method as part of the review cannot be inferred. I conclude that the changes sought are outside the scope of this review.

C. Security for Support Payments

[164] The Final Order also provides:

Life Insurance

28. The Respondent shall:

- (a) Permit the Claimant to obtain a life insurance policy on his life in such amount as the Claimant decides;
- (b) Allow the Claimant to be the owner of said policy provided she is responsible for the payment of all the premiums;
- (c) Do all things reasonably necessary to facilitate the policy being issued.

[165] The Final Order obliges the respondent to facilitate the claimant to obtain an insurance policy on his life at her own cost. She attests that she has looked into getting such a policy, but found it can only be done at great cost. She seeks further and different security orders obliging the respondent to carry life insurance and binding his estate to his support obligations.

[166] The issue of security for support is expressly addressed under the Final Order and by terms outside the scope of this review. I conclude that no orders can be made changing the security for support terms in the Final Order.

VIII. DISPOSITION

[167] The orders are made with regard to income for support purposes, child support and spousal support are as set out above at paras. 81-83 and 154-157. All are made as orders under the DA.

[168] The applications for orders dealing with the s. 7 expense reconciliation process, the support payment method and security for support are all dismissed.

[169] The parties will each bear their own costs.

"Tucker J."

Appendix A

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