

CANADA / JUDGMENT

Y.S. v. K.R.C.

2024 BCSC 1473

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1473 Y.S. v. K.R.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Y.S. v. K.R.C.,

2024 BCSC 1473

Date: 20240814

Docket: E221561

Registry: Vancouver

Between:

Y.S.

Claimant

And

K.R.C.

Respondent

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for the Claimant:

B. Ingram

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Counsel for the Respondent:

I. Phillips

Place and Dates of Trial:

Vancouver, B.C.

October 23-27 and 30, 2023

New Westminster, B.C.

November 6 and 21, 2023

Vancouver, B.C.

April 18-19, 2024

Place and Date of Judgment:

Vancouver, B.C.

August 14, 2024

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Introduction

- [1] These are reasons following the trial of this family law action. The claimant is 51 years old and the respondent is 56. The parties were in a marriage-like relationship from 2010 to 2021. They have two sons, ages 19 and 13. At present, both sons live with the respondent, and have limited contact with the claimant.
- [2] The issues to be determined are: (1) property division; (2) parenting arrangements; (3) Guidelines incomes; (4) child support; and (5) spousal support.

Chronology and Overview

- [3] The claimant grew up in China. She obtained a bachelor's degree in engineering and economics in 1997, when she was 24. While working at a technology company, she met her first husband, Y.O.S., who was from Israel. In 1998, the claimant moved to Israel, and she and Y.O.S. married. While living there, the claimant obtained an MBA, and worked as a business development manager.
- [4] In 2003, the claimant and Y.O.S. provided the claimant's parents with \$20,000 USD toward her parents' purchase of an apartment in Beijing. Although there was initially a dispute as to whether the claimant had a beneficial interest in this apartment, by the end of the trial, the respondent conceded that the evidence does not establish this. I agree. This is not family property, and given the respondent's concession, it does not need to be addressed further.
- [5] In 2005, the claimant's and Y.O.S.'s son, A.S.C, was born. In October 2006, Y.O.S. unfortunately passed away from cancer. He and the claimant had entered into an agreement that addressed property rights (the "Monetary Agreement"). Y.O.S. also had a will (the "Will"). The claimant also receives a monthly Israel survivor's pension (the "Pension"). The claimant makes an excluded property claim with respect to the inheritance, and funds she had accumulated prior to the parties' relationship. There are issues regarding A.S.C.'s interest in the inheritance and a possible claim to the Pension which cannot be determined in this action.
- [6] In December 2007, the claimant came to BC to attend UBC in the Masters of Software Systems program. A.S.C. remained with her parents in Beijing, as she did not know what Canada would be like. On her breaks, she returned to Beijing. In September 2008, her sister came to BC with A.S.C. All three of them lived in family student housing at UBC.
- [7] The respondent grew up in Alberta and after graduating high school in 1986, moved to BC. He attended Kwantlen Polytechnic University for one semester, and then worked for London Drugs for 12 years in various positions in stock, retail, computers, shipping, receiving, and truck driving. He then worked for a brief time at a telecommunications company, and then for about 10 years at a cable provider until September 2009, when he was laid off after that company was bought. The respondent's roles in the cable company centred on repair and installation of telecommunications equipment. Along the way, in 2003, he earned a Bachelor of Commerce degree from UBC. He contributed to three RRSPs. He owned a condo ("Respondent's Condo") subject to a mortgage. He claims an exclusion for these.
- [8] The parties met in late 2008 or early 2009. At the time, the claimant was a student at UBC and the respondent was working at the cable company. In September 2009, the claimant started an accounting program at UBC and was working part-time, and the respondent was laid off from the cable company. Starting in 2010, the respondent was either employed or self-employed as a consultant, doing a variety of IT work for friends' businesses.

- [9] In the summer of 2010, the parties began trying to conceive a child. They travelled to China, and while there, the claimant learned that she was pregnant. When they returned to BC, they began living together at UBC. Initially, the parties disagreed on the date of commencement of their marriage-like relationship, but by the end of the trial, this had coalesced to the summer of 2010, and I find that it was July 1, 2010. The parties separated on April 9, 2021.
- [10] The parties' son, J.C., was born in 2011. Both parties were off work for a time surrounding the birth and on parental leave. The family continued to reside at UBC.
- [11] The claimant continued to study at UBC and took the Certified General Accountant courses. Commencing in 2012 she began working as an accountant. The respondent continued employment or consulting work. The claimant has worked full-time since 2014, and for the last six years as a controller of a business. While the claimant was still a student, the respondent earned more than her. However, that reversed when the claimant began working full-time. The claimant's income has increased steadily. The respondent's income has declined steadily. He has earned little income since 2018. The reasons for that, and any relation to the parties' roles within the family, are relevant to parenting time, Guidelines income, and spousal support. The claimant seeks to impute income to the respondent. He agrees to an imputation, but in a slightly different amount.
- [12] In December 2012, the family moved to the Respondent's Condo. In 2013, the parties purchased and moved to the family home ("Family Home") which they still own. There is a mortgage on the Family Home. The respondent began renting out the Respondent's Condo. The Respondent's Condo was sold in late 2021.
- [13] Starting in 2015, the claimant began the process of sponsoring her parents to immigrate from Beijing to BC. In preparation, her parents transferred funds to her over the next five years so they would have funds on which to live when they came to BC in 2020. Those funds were deposited into an account in the claimant's name at the HSBC ending in 04. Although initially in dispute, by the end of trial, the respondent conceded that these funds are not family property. I agree. The evidence establishes that these are the claimant's parents' funds, and given the respondent's concession, they do not need to be addressed further.
- [14] In January 2021, a few months before separation, the respondent adopted A.S.C.
- [15] Following separation in April 2021, the parties and children continued to reside in the Family Home. The claimant rented a condo in October 2022, but continued to live in the Family Home, occasionally returning to the condo, until August 2023, because the parties could not agree on parenting time, and the claimant wanted to be with the children. For this two-and-a-half-year period, there are disputes as to what took place in the home which are relevant to parenting time, and what should be paid for support as the parties continued their long-term pre-separation arrangement of each equally depositing funds to a joint account for the mortgage and family expenses.

- [16] Since the claimant moved out of the Family Home in August 2023, the children have refused parenting time with her. As A.S.C. has now turned 19, the only parenting orders will be with respect to J.C.
- [17] In addition to the assets already mentioned, the parties have other bank accounts, investment accounts, RESPs for the children, the claimant's RRSPs, and vehicles which were acquired during the relationship and require division.
- [18] With that overview, I turn to the issues to be decided.

Property Division

- [19] Part 5 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], governs the determination, valuation, and division of family property and family debt.
- [20] Section 81 provides the general rule that spouses are both entitled to family property and responsible for family debt regardless of their respective use or contribution. Upon separation, each spouse is presumptively entitled to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt. The parties agree that property found to be family property and family debt should be divided equally.
- [21] Section 84 defines family property. Generally, it includes all property that, on the date of separation, is owned by at least one spouse or in which the spouse has a beneficial interest; and, after the date of separation, is acquired by a spouse or in which the spouse has a beneficial interest, if it is derived from the foregoing family property. It also includes the amount by which the value of excluded property has increased since the later of the date the relationship began, or the property was acquired.
- [22] Sections 1 and 85 define excluded property, which generally is not divided. Excluded property includes property acquired by a spouse before the relationship between the spouses began, an inheritance, and property derived from the foregoing property. A spouse claiming that property is excluded has the onus of proof. In this action, each party claims excluded property.
- [23] In *Pisarski v. Piesik*, 2019 BCCA 129, the Court reviewed the burden for establishing excluded property:
- [24] The onus rested on the appellant to prove her contribution was excluded property pursuant to s. 85. The proper test for establishing a claim to excluded property is proof on a balance of probabilities: *Shih v. Shih*, 2017 BCCA 37 at para. 42. Precision or mathematical certainty is not required, but to discharge the burden, the party seeking to prove property is excluded property must do so with clear and cogent evidence: *Shih* at paras. 40, 43. If documentary evidence is not available, the party seeking to exclude property will need to testify as to their recollection of the disputed transactions and that evidence will be scrutinized for credibility: *Shih* at para. 43. In balancing the evidence as a whole, the judge is permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do

justice between the parties: Shih at para. 44.

- [24] Section 86 defines family debt. It includes all debts incurred by a spouse during the relationship; and, after the date of separation, debt that is incurred for the purpose of maintaining family property.
- [25] Section 87 provides the presumptive rule that unless an agreement or order otherwise provides, the value of family property must be based on its fair market value, and that the value of family property and family debt must be determined as of the date of the trial. This trial did not complete within the time reserved, and there was a six-month hiatus between the start of trial and its conclusion. The evidence of values was current at the start of the trial. The parties did not seek to update those figures, and both sought division based on the values in evidence as of the beginning of trial. In addition, the parties agreed to the date of separation as the valuation date for a few items of property. I agree with those exceptions, which I will identify below. The parties were not seeking to effectively obtain unequal division through a different valuation date without a finding of significant unfairness: *Blair v. Johnson*, 2015 BCSC 761 at para. 69. Instead, they were obtaining an accounting and equal division between them in a practical and efficient way; for example, to avoid having to make an adjustment for double counting of post-separation income or addition to or depletion of property, or where the accounts were subject to daily use post-separation as in *Asselin v. Roy*, 2013 BCSC 1681 at para. 171.
- [26] I turn to the specific items of property and debt. The findings are summarized at the end of this section.

Family Home and Mortgage

- [27] This is family property and family debt. The Family Home was appraised at \$1.15 million as of March 7, 2023. The mortgage was \$332,662 on October 20, 2023, and will likely be about \$325,000 currently. The respondent would like to try to purchase the claimant's equity in the home. He acknowledges that he does not have T4 income, and that obtaining financing will be difficult, but believes his family may be able to assist him. The claimant is agreeable to allowing the respondent a reasonable time to obtain financing. The amount that will be required to purchase the claimant's interest will be approximately \$412,500, calculated as \$1,150,000 less the actual mortgage amount at the time of transfer, divided by two. This assumes the respondent will obtain the claimant's release from the mortgage. If the respondent is unable to purchase the Family Home, it will be listed for sale, and the net sale proceeds based on the actual sale price will be divided equally.

TD Joint Account

- [28] This is the account ending in 23. It is family property. I find that from about the time the Family Home was purchased, the parties had an agreement where each month they each deposited \$2,500 to this account from which they paid the mortgage and all household and

family expenses, but not their own personal expenses. This continued after separation until October 2022. Commencing in November 2022, the claimant stopped depositing \$2,500 per month and instead has deposited varying amounts based on 50% of certain expenses, including the mortgage. I will detail those later under Child Support. The balance in this account as of August 31, 2023 was \$7,836.

Y.O.S. Estate Inheritance and the Bank Hapoalim Account

[29] In February 2005, the claimant and Y.O.S. entered into the Monetary Agreement. The preamble states that the parties married in 1998, a male child is about to be born to them, and that they wish to cancel a prenuptial agreement between them and "rearrange their property rights". Thereafter, it states (translated):

1. The preamble to this agreement is an integral part of it and is as binding as the central part.
2. All the property owned by the parties, regardless of whether it was obtained by either of them before they met and were married, or registered in the name of one of them alone, or obtained after the marriage by both together or either of them separately, or that will come to be possessed in the future course of the marriage either as a gift or as a bequest to one of the parties, will be in joint possession in equal parts.
3. In order to remove all doubt, included in the common property is property accumulated by the husband before or after the marriage: [listing of an apartment, an interest in an office, a business, and a business account, all in Israel].

Also, the rights of the wife in an apartment in Beijing that was purchased in 2003.

4. All the property specified in Paragraph 3 above and also any property that will be obtained in the future or obtained as a gift or as a bequest will, as stated, be jointly possessed by the two parties and will be considered an equalizing asset in accordance with Section 5 of the law governing monetary relations between married couples 5733-1973.

[30] The Monetary Agreement was confirmed before a Judge of the Court for Family Matters in Israel, and "given the force of a court decision".

[31] The Will of Y.O.S. is dated August 8, 2005. Relevant portions (translated) are:

1. I bequeath all my property of whatever type, that will belong to me on the day of my death, in equal parts to my three children who are mentioned above [list of names of his three adult children from a previous relationship] and the child who is about to be born to me from my marriage to [the claimant], so that each will receive one quarter of my estate.
2. Among other things, the mentioned property includes: [list of the apartment, office, and business in Israel, as in the Marriage Agreement].

- [32] Following Y.O.S.'s death, an order of the Registrar in Matters of Inheritance in Israel declared that this was the last will of Y.O.S. and valid, and identified the unborn child as A.S.C.
- [33] The claimant testified that at the time Y.O.S. passed away, he owned property in Florida, which was purchased in 2004 or 2005. She does not know why it was not specifically mentioned in the Will, but it may not have yet been purchased. This property was sold as part of the estate. It took time to sell the Florida property and the apartment in Israel, and as A.S.C. was an infant, court approval was required. The claimant was not the executor of the estate. The only documents she has are emails confirming the transfers of funds to her in December 2007 and in 2012 after the sale of those properties, and a draft affidavit forwarded by the executor of the estate which was required for court approval of the sale of the apartment.
- [34] The claimant testified that she received 50% of the estate, and that the other one half was divided 12.5% to each of Y.O.S.'s four children. She does not have a copy of the estate distributions, because there was no dispute about them. She trusted the executor. All of the money from Y.O.S.'s bank account was transferred to her, and she wrote cheques to each of the three adult children for their shares. In total, of the amount the claimant received as inheritance (which includes A.S.C.'s inheritance as he was a child), the claimant states that 80% is hers, and 20% she holds for A.S.C. (i.e. 50/62.5 and 12.5/62.5).
- [35] All of the funds the claimant received from the estate prior to her coming to BC were deposited into the claimant's account at the Bank Hapoalim in Israel. She has twice made transfers of funds from that account to one of her investment accounts in BC, but has otherwise not withdrawn funds from the Hapoalim account. One transfer was in 2015 for \$160,000 CAD which she deposited and invested in BC. She received the estate funds from the sale of the Florida property and Israel apartment after she came to BC, and those funds were deposited and invested in BC. The claimant still receives the Pension, and those funds continue to be deposited into the Hapoalim account. While living in Israel, she earned her own funds which were also deposited into that account.
- [36] The respondent argues that the claimant has not produced sufficient evidence to prove the exclusions or the tracing of funds that she has received while living in BC. In considering the guidance at para. 24 of *Pisarski*, and that these were transactions between 12 and 17 years ago from an estate of which the claimant was not the executor, and based on the evidence of the claimant which I accept and the documentation she has produced, I am satisfied that the claimant has met the burden of proving that the funds in the Hapoalim account at the start of the parties' relationship, and the two further transfers of funds she received in December 2007 and 2012, are either excluded property or A.S.C.'s inheritance, or in part both. I am also satisfied that other than the two transfers from the Hapoalim account, the funds have been invested and remain intact in Israel, and that the funds transferred to BC from the Hapoalim account and the estate funds the claimant received since in BC, have been invested and have increased in value.

- [37] In summary, as of the date of the start of the relationship: (i) to the extent the funds in the Hapoalim account were owned by the claimant, they are excluded property; (ii) to the extent those funds were held for A.S.C. as his inheritance, they are neither family property nor excluded property, and are not subject to division between the claimant and respondent in this action. Further, after the start of the relationship: (i) to the extent the funds received in 2007 and 2012 were owned by the claimant as her inheritance, the funds are excluded property; and (ii) to the extent the claimant holds those inheritance funds for A.S.C., they are neither family property nor excluded property, and are not subject to division between the claimant and respondent in this action.
- [38] I pause here to identify the issues raised by the respondent regarding A.S.C.'s inheritance and the Pension. The respondent argues that there may be an issue regarding the interpretation of the Will and the Monetary Agreement, suggesting that perhaps the claimant was not entitled to any inheritance, and that what the claimant received was actually A.S.C.'s 25% share. Further, the respondent argues that there might be an issue regarding the Pension, suggesting that perhaps part of the Pension should have been received by A.S.C. In 2023, A.S.C. asked the claimant to pay him what he considered to be his money from the Pension. While the claimant gave A.S.C. \$200 per month for five months until the Pension stopped for A.S.C. when he turned 18 (the date of majority in Israel), the claimant views the Pension as money paid to a parent for the support of a child, and not belonging to the child.
- [39] As A.S.C. is now an adult, both the inheritance and the Pension (if he feels part of this is his) are issues for him to pursue with the claimant. The respondent's counsel acknowledges that the way the estate was distributed may be correct according to Israeli law, and the claimant may be correct as to her view that A.S.C. is entitled to 20% of the estate funds she received, but A.S.C. needs independent legal advice. As A.S.C. has now turned 19, I understand from counsel that discussions are underway regarding A.S.C.'s receipt of his inheritance, and respondent's counsel has been in contact with possible counsel for A.S.C.
- [40] The issue is how to divide the family property between the parties with these potential claims outstanding. On either interpretation of the Will and Monetary Agreement, the funds received by the claimant are either excluded property (if owned by the claimant), are neither excluded property nor family property (if owned by A.S.C.), or, as the claimant asserts, are a combination of both (80% hers and 20% held for A.S.C.). In any scenario, the amount received is not subject to division.
- [41] The only possible amount available for division in this action is the increase in value since the commencement of the relationship of any portion found to be excluded property of the claimant, as this is family property. In my view, the claimant has offered a practical answer to enable the division to take place. As between the claimant and the respondent, she is content to assume that the increase on 100% of these funds is family property and will in effect over-pay the respondent from her share. As between her and A.S.C., she alone will account to A.S.C. for any increase found or agreed to be A.S.C.'s. For clarity, nothing in these

reasons decides A.S.C.'s interests in the inheritance.

- [42] Both counsel were content to proceed on this basis, which does not prejudice A.S.C. since he does not have a claim against the respondent. The only risk would be if the claimant did not have funds to satisfy A.S.C.'s claim for any increase in value. The respondent sought a preservation order on A.S.C.'s behalf, to secure funds until the issues between A.S.C. and the claimant are resolved. In my view, this is not an order that should be made in this action and I decline to do so. A.S.C. is now an adult and if he wishes to pursue a preservation order, it is up to him to do so in another proceeding. The claimant has significant assets and income and has held his inheritance for him for the past 18 years.
- [43] The total amount of excluded property and/or property belonging to A.S.C. is \$507,692. Some of the funds were paid in USD, and although there was no evidence of the USD / CAD exchange rate in 2007 and 2012, consistent with their practical approach, both parties were content to proceed on the basis that it was roughly equivalent at those times. The \$507,692 is made up the following:
- a) the balance in the Hapoalim account as of December 31, 2009, in the amount of 1,451,397 ILS, which was equivalent to \$400,150 CAD;
 - b) \$70,355 USD inheritance, received in December 2007; and
 - c) \$37,187 USD inheritance received in May 2012.
- [44] The value of the Hapoalim account as of the date of separation was equivalent to \$127,746 CAD, and as of the date of trial was equivalent to \$152,978 CAD. Since separation, the Pension has continued to be deposited to that account, and has not been removed. As this is post-separation income that cannot be double-counted in property division, it is appropriate to use the separation date. The \$127,746 is family property subject to exclusion amounts. This is less than the amount in the Hapoalim account in 2009 because the claimant made two transfers from that account to investment accounts in BC and those investment accounts, along with the Hapoalim account will be included as family property subject to the \$507,692 exclusion.
- [45] Finally, there is one other issue regarding funds which were in the Hapoalim account. Prior to separation, the claimant purchased a life insurance policy using funds from the Hapoalim account. This is the second of the two transfers she made from the account. The claimant began the process of obtaining the life insurance in 2020, prior to the respondent adopting A.S.C. This was motivated by her understanding of inheritance rules, and that a will could be contested. She wanted to take care of both of her children who are the beneficiaries of the policy.
- [46] As a result, in February 2021, prior to separation, she transferred the equivalent of \$325,000 CAD (846,782 ILS) from the Hapoalim account to one of her HSBC accounts, to be earmarked as premiums for that insurance policy. The respondent raises whether the claimant can use A.S.C.'s funds for this purpose. It is not clear that she has done so, as the funds are currently

in her investment account, but I do not need to make that determination. For the purpose of this action, and as between the claimant and the respondent, those funds are either family property subject to an exclusion which is larger than the \$325,000, or if they are A.S.C. funds, they are not available for division. Again, nothing in these reasons decides any issue between the claimant and A.S.C. with respect to the use of funds for the insurance policy. This is an issue for A.S.C. to address when claiming his inheritance from the claimant.

Claimant's Bank and Non-registered Investment Accounts

[47] These are all family property subject to the exclusion for the funds transferred from the Hapoalim account and the inheritances received after the claimant began living in BC. The total is \$834,353 consisting of:

- a) TD All Inclusive ending in 15: \$33,359 as of separation;
- b) TD Direct Investing ending in 97: \$343,601 as of trial;
- c) TD TFSA ending in 97: \$100,068 as of trial;
- d) HSBC Premier ending in 50: \$292,912 as of separation;
- e) HSBC High Rate Savings ending in 03: \$29 as of separation;
- f) HSBC High Rate Savings ending in 06: \$4 as of trial;
- g) HSBC Advance Savings ending in 33: \$878 as of separation;
- h) HSBC TFSA ending in 88: \$43,898 as of trial; and
- i) EQ bank ending in 98: \$19,604 as of trial.

Claimant's Registered Investment Accounts

[48] These are family property. The total is \$132,529 consisting of:

- a) RBC GRSP ending in 18: \$27,708 as of trial; and
- b) TD SDRSP ending in 97: \$104,821 as of trial.

Claimant's RESPs for Children

[49] The claimant is the subscriber of two TD RESPs. One is for A.S.C with a value of \$59,082 as of trial. The other is for J.C. with a value of \$35,557 as of trial.

[50] The RESPs are family property, but neither party seeks to divide them, as the parties agree that they are to be used for the children's post-secondary expenses. The accounts are therefore not included in the table below, but I will make orders concerning their division if they are not used. The respondent seeks an order that these be transferred to him as subscriber, or at least put into the parties' joint names, as A.S.C. has limited contact with the claimant. The claimant testified that she speaks to A.S.C. about once per week. The claimant

disagrees the respondent should have these accounts in his name.

- [51] In my view, the accounts should remain in the claimant's name. Putting the accounts in the respondent's name, would only serve to facilitate the lack of contact between the claimant and the children which the respondent states he does not want. It also would not provide any benefit. There has been no dispute regarding the accounts. The accounts have always been in the name of the claimant, and she has managed them all these years. I will make orders that the claimant provide the respondent with statements so that the respondent is apprised of the status of the accounts. The claimant will be entitled to evidence of post-secondary attendance.

Respondent's Condo and Sale Proceeds

- [52] The Respondent's Condo was family property subject to an exclusion, but it was sold subsequent to separation. The portion of funds derived from the sale which represent the increase in value since separation, are family property. The sale proceeds have been deposited into three of the respondent's accounts at the TD Bank, and have either been invested, or spent by the respondent on living expenses. This is the fund from which the respondent is taking the \$2,500 monthly that he deposits into the TD Joint Account for family expenses. The parties agree that there should be no adjustment for the amounts that the respondent has depleted the sale proceeds for living expenses. The respondent has little income and the claimant was not paying full support, requiring him to use capital.
- [53] The respondent purchased this property in June 2003. The value as of August 2010 was \$445,000. The mortgage as of August 2010, was \$125,035. The excluded value is \$319,965. The property was sold in December 2021 for \$695,000, and the net amount received was \$534,005. The respondent paid capital gains taxes of \$23,100, for net proceeds of \$510,905. After deducting the excluded property portion, the family property portion is \$190,940.

Respondent's Bank and Non-registered Investment Accounts

- [54] These are family property. The total is \$17,664 consisting of:
- a) TD Daily ending in 88: \$17,645 as of separation;
 - b) TD Direct Trading CAN ending in 3A: \$19 as of trial; and
 - c) TD Everyday Business ending in 60: \$0 as of separation.
- [55] The net proceeds from the sale of the Respondent's Condo were deposited into the following accounts:
- a) TD Daily ending in 88: \$145,242 as of trial (depleted by living expenses);
 - b) TD Direct Trading US ending in 3B: equivalent to \$106,053 CAN as of trial; and
 - c) TD TFSA ending in 3J: \$75,530 as of trial.

[56] The total of these three accounts is \$326,825. All of these are excluded property subject to the \$190,940 in family property, and the parties simply used the \$190,400 in their calculations rather than include these accounts and make adjustments to arrive at the same family property amount. I note the accounts for two reasons. First, to explain what they are, as they will be referred to in the orders made at the end of these reasons, and so it is clear they have been considered by the parties and the court; and second because the total is relevant to a discussion of lump sum spousal support which the respondent seeks to assist him in purchasing the claimant's equity in the Family Home.

Respondent's Registered Accounts

[57] These are family property subject to exclusions, as they were owned prior to the commencement of the relationship. The total as of the date of trial is \$291,829, and the total exclusion is \$133,297, resulting in family property of \$158,532. They consist of:

- a) two locked in RRSPs ending in 7S and 4S: \$43,085 as of the start of the parties' relationship; and slightly less as of separation. The parties agree these are completely excluded; and
- b) TD SDRSP ending in 3S: The last contribution was \$2,500 in 2011. The respondent could not obtain records going back to the start of the parties' relationship. A June 30, 2017 statement has a historical value chart, which shows the market value on January 1, 2012, to be \$92,712. Subtracting the \$2,500 contribution after the relationship began, I find the excluded amount is \$90,212. The value was \$248,744 as of September 20, 2023. The family portion is \$158,532.

Vehicles

[58] These are family property. The claimant has a Ford Focus valued at \$500, and the respondent has a Mazda truck valued at \$5,000.

Credit Cards

[59] These are family debt. These were used for the parties' daily living expenses post-separation and are valued as at the time of separation. The claimant's credit card balance was \$3,054. The respondent's credit card balance was \$696.

Summary

[60] The compensation payable by the respondent to purchase the claimant's equity in the Family Home will be approximately \$412,500, and assuming the respondent obtains a release of the claimant from the mortgage. If the respondent is not able to purchase the Family Home, it will be sold and the net proceeds divided equally.

[61] The compensation payable by the claimant to the respondent to equalize non-registered bank and investment accounts, vehicles and other debts is \$119,473, calculated as follows, with each party keeping all of the accounts in their own name, and with the Joint TD account being divided and closed:

Claimant	
Respondent	
Joint TD account	
\$3,918	
\$3,918	
Hapoalim account	
\$127,746	
Claimant's bank and non-registered investment accounts in Canada	
\$834,353	
Claimant exclusion plus A.S.C funds, from Hapoalim account and inheritance	
(\$507,692)	
Respondent's Condo (net sale proceeds less respondent's exclusion)	
\$190,940	
Respondent's bank and non-registered investment accounts (not including excluded net sale proceeds from the Respondent's Condo)	
\$17,664	
Vehicles	
\$500	
\$5,000	
Credit cards	
(\$3,054)	
(\$696)	
Total	
\$455,771	
\$216,826	
Equalization payment from claimant to respondent	
(119,473)	
\$119,473	

[62] The spousal rollover required by the respondent to the claimant to equalize registered accounts is \$13,002, calculated as the total of the claimant's accounts (\$132,529) less the total of the respondent's accounts net of exclusions (\$158,532) divided by two.

Parenting Arrangements

[63] The parties agree on a number of orders for joint guardianship and parenting responsibilities. The issues are parenting time and final decision making.

[64] When making orders for parenting arrangements, the court must consider the best interests of the child only: FLA, s. 37(1). All of the child's needs and circumstances must be considered, including the factors set out in s. 37(2). As applicable here, those factors are:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

[65] An order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being: s. 37(3). In making a parenting order, the court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor: s. 37(4).

[66] The circumstances at the centre of the parenting time issue are that since the claimant moved from the Family Home, both children have refused to have any parenting time with her, despite what appears to have previously been a loving relationship. The claimant ultimately seeks equal shared week on/week off parenting of J.C., but acknowledges there will have to be an increase over time to reach this. The claimant argues that she has a lot to offer as a parent, as does the respondent, and it is in J.C.'s best interest to have parenting time with her as well. By specifying a parenting time regime, the court takes the burden off the shoulders of 13-year old J.C. The respondent states that he also wants the claimant to have a relationship with the children, and it would be in J.C.'s best interest to do so, but seeks

an order that J.C. live with him, with J.C. deciding whether to have any parenting time with the claimant.

The Ability of Each Party to Exercise Parental Responsibilities

[67] Both parents are capable of exercising parental responsibilities. To the parties' credit, while they both had some criticism of the other's parenting style, they both recognized that the other loves their children, brings strengths to the relationships, and is a capable parent. The parties have different parenting styles, and express their love for the children in different ways. Neither is better or worse.

The History of the Child's Care

[68] Although the parties interpret events differently and blame each other for the children's rejection of parenting time with the claimant, the arc of events described by both is generally the same.

[69] Prior to separation in April 2021, J.C. had always been in the care of both parents. Because the respondent was not working full-time or at all, and the claimant was working full-time, the respondent was the parent who was home more with the children. The parties each gave evidence of their involvement with the children. In my view, they described a typical level of involvement of loving parents according to their work schedule and availability. Both parties participated in taking children to and from activities, or participating in them with the children. The children were involved in a number of sports, and music and language lessons.

[70] After separating in April 2021 and until July 2023, the parties continued to reside together in the Family Home. Sometime before separation, the respondent had moved out of the master bedroom, and created a sleeping space for himself in the living room. After separation, the respondent put up a tarp in the living room so that there was little space there. The claimant occupied the master bedroom.

[71] From the claimant's perspective, her interaction with the children during the first year after separation was their normal, close relationship. The respondent was friendly with her. A.S.C. knew the parties had separated, but this did not seem to affect him negatively toward her. Her relationship with J.C. was even better for some time, as she worried the separation may negatively impact him more, and she tried to spend more time with him. She denies that she rarely interacted with the children.

[72] However, when she started dating around April or May 2022, her relationship with the children began to deteriorate, and eventually their attitude changed drastically. The claimant denied that she spent a lot of time in her bedroom with the door closed, talking to her new boyfriend. She said that she spent time in her bedroom only after the conflict between the parties escalated, the respondent put the tarp in the living room area, and she had nowhere else to go or to make a call. Once or twice in July 2022, she stayed elsewhere

overnight. She did not tell the respondent or the children when she would be returning home. When she returned, the respondent was upset. She did not think it was upsetting to the children, but said they might be upset because the respondent was upset.

- [73] In October 2022, the claimant rented a condo in the hope that the parties could agree to parenting time, but they could not. The children were involved in her selection of a new place to live, and they indicated they were agreeable to having parenting time with her there. When the parties could not agree to a parenting time schedule, she continued to live in the Family Home so that she could have parenting time with the children, as well as occasionally returning to her condo.
- [74] The claimant testified that she tried not to get into heated discussions with the respondent, but the respondent began accusing her and involving the children in their arguments. For example, the respondent would say to her that they were all hurting and trying to heal, and ask why she was looking happy. When he asked her if she was returning in an evening, she would answer no, without giving a reason, and he would challenge her why she did not admit she was out with her boyfriend. He would involve the children in the conversation. From the claimant's perspective, she was trying to shelter the children from conflict, and the respondent was involving them in his own hurt, and sabotaging her relationship with the children. The parties' relationship continued to deteriorate, as did the claimant's relationship with the children, and there was tension in the home.
- [75] Finally, in about June 2023, the parties reached an understanding to try a parenting time schedule where J.C. would spend weekends with the claimant. The claimant agreed to move out of the Family Home. By all accounts, the attempts at weekend parenting time did not go well. On the first weekend, J.C. did not want to go, was emotional, and only reluctantly went, and then spent half of the weekend in his room, refusing to do activities with the claimant. On the second weekend, J.C. again did not want to go, resulting in a "stand off" for nearly two hours before he finally agreed. That weekend was much the same as the previous one. J.C. told both parents that he had a terrible time, he did not want to be there, and it was like prison. The claimant asked him what she could do to make it better. He said nothing. There was unclear evidence of whether J.C. spent one day on a third weekend in July, but since then J.C. has refused parenting time. The claimant believes the respondent has not encouraged her parenting time. On one occasion when she has come to the Family Home to ask J.C. to come with her, she heard the respondent say to J.C. to do whatever he wanted, and on another occasion the respondent did not call out J.C.'s inappropriate behaviour.
- [76] In August 2023, the claimant began residing in her condo full time. J.C. has blocked her communications. The children did not contact her on her birthday in 2023, or give her a gift at Christmas.
- [77] From the respondent's perspective, the separation was hard on him and the children, and there was a "definite shift" after the separation. The claimant would return home from work, make a meal, and then go directly to her room and not interact with children, or would go

out until about 9:30 pm. He and the children never knew when she would return. The children would ask her to let them know when she was coming home, and she would say she was an adult. The respondent agreed that for the first year after separation, he held out hope that the parties would reconcile.

- [78] Starting in the spring of 2022, the claimant came home later and later, and did not return home three or four nights per week. He was concerned about what was going on. He asked and she told him that she had started to see someone. This was upsetting to him. The claimant had not given any indication of this before. When the claimant talked on the phone she was loud, and he and the children could hear her conversations with her boyfriend. She was giggling and laughing. It was upsetting to him and the children that she was enjoying herself, while they were upset about the situation. The children would ask her why she was there, and A.S.C. asked her for a schedule. From the respondent's perspective, the claimant was giving full attention to her boyfriend and neglecting the children. It was hurtful to him and the children. He gained weight and had difficulty sleeping. The situation in the home continued to deteriorate over time.
- [79] The respondent gave much the same evidence as the claimant as to what took place in July 2023 when the parties tried to implement a weekend parenting schedule. J.C. told the claimant that he had already told her many times that he did not want to go. When J.C. returned from the two weekends he said he had a terrible time, he did not take his shoes off, he wanted to jump off the balcony, he did not eat well or shower, he barricaded himself in the bedroom, and the claimant was on the phone all the time. When he returned home, he immediately went to bed.
- [80] The respondent denied that he has tried to interfere with the claimant's relationship with the children. After the parties' agreement to try weekend parenting time, he convinced J.C. to go. He testified that every Thursday he would tell J.C. his mom was going to pick him up and he packed J.C.'s bag. At some point, he started leaving the Family Home when the claimant arrived, because the claimant accused him of influencing J.C., but J.C. would tell her that was not true. He said he would have intervened, but he thought the claimant did not want him to as she would go into J.C.'s room and close the door. The respondent thought he had to remove himself from the situation. He did not know how to deal with it any other way.
- [81] The respondent states that he has promoted the children's relationship with the claimant. He believes that given time and healing, the children will eventually renew "some type of relationship" with the claimant, but the children remember that he has been the parent who has primarily done things with them. He states that he wishes for the claimant to establish a relationship with the children, but she needs to create an opportunity. He has suggested to her how that can be done. He offered to arrange a go-carting event, and planned to make it a nice, short event to build a bond. It would also show that he supports the relationship. However, the claimant rejected this. He is aware that J.C. has blocked communications from the claimant. He advised J.C. not to, but does not feel that he had the parental sway to

convince then 12-year-old J.C. to unblock the phone.

- [82] The parties' evidence shows that separation has been traumatic and hurtful for all members of this family. For at least a year, the situation in the Family Home was not healthy for the children. Neither party substantively denied the underlying events the other described, just the interpretation of them. I find that both parties' behaviours (regardless of how they may be characterized) contributed to this situation, which both parties recognize is not in J.C.'s best interests. The claimant testified that she sought counselling in how to address parenting time with the children, but no details were provided. There was no evidence that the respondent or children have received counselling. The parties are at an impasse and in my view, counselling would likely be beneficial for both parties (and possibly J.C.) to help them move forward in a positive way to re-establish the formerly good relationship between the claimant and the children. The commitment of both parties to this objective is required. Ideally, A.S.C. would also participate because, as I will discuss below, J.C. looks up to him, but I cannot make any orders with respect to A.S.C.

The Child's Health and Emotional Well-Being

- [83] Both parties testified that the separation was hard for J.C. The respondent states that J.C. did not cope well when the claimant was trying to have parenting time with her. J.C. seems happier lately, which the respondent associates the claimant no longer being in the Family Home. The claimant thinks J.C. is feeling powerless, is hurt and conflicted regarding the separation, and wants to grasp on to something. The respondent's sister testified, and gave similar evidence to the respondent as to the parenting style of each of the parties. From her perspective, J.C. struggled the most of all persons with the separation, and seemed happier once the claimant left the Family Home. This again leads me to conclude that counselling for the parents to help them support J.C., or possibly for J.C., would be in J.C.'s best interests.

The Child's Views, Unless It Would be Inappropriate to Consider Them

- [84] The parties did not obtain a s. 211 report. In my view, such a report would have assisted the court, and I indicated so to the parties. However, the parties did not obtain one in the long adjournment of this trial. Instead, the respondent applied for this court to conduct a judicial interview of J.C. I agreed to this, and interviewed J.C. and reported the results to the parties.
- [85] J.C. told me that he wanted to live with his dad. He said positive things about both parents but said his mom was "annoying" and "randomly said hi to him". He said all his belongings were at the Family Home, and his friends in its vicinity. I often received short answers. It is difficult in that setting and in one short interview to get an accurate sense of matters, but I came away with some impressions. First, the separation has been hard on J.C. Second, the relationship with his mom is not irreparable. Third, he is aware of the parties' specific conflicts, for example on financial matters. Fourth, J.C. is comfortable in his home where he has primarily grown up, he has his own things in his room, and his friends and school are nearby. Fifth, A.S.C.'s views are important to J.C., and if A.S.C. does not see the claimant, J.C.

may follow.

- [86] J.C. is of an age where the court will consider his views. I have considered *K.M.H. v. P.S.W.*, 2018 BCSC 1318 at paras. 39-43; and the review of case authorities in *T.L.M. v. D.J.M.*, 2023 BCSC 2059 at paras. 94-101, where children have clearly expressed a preference for living with one parent and the harm that may result in attempting to force such a relationship, and the difficulty in enforcing it. I do give some weight to J.C.'s views, but they are not determinative.

The Nature and Strength of the Relationships Between the Child and Significant Persons in the Child's Life

- [87] The claimant described the closeness she had with the children, and which continued initially after separation. The respondent states that he has a strong bond with the children because he is the parent who has done 85-90% of activities with them. He acknowledges that the claimant sees things differently, but states that this is what the children remember.
- [88] In my view, up to the time of separation, both parents had a good relationship with the children. I accept that the respondent has a strong bond with the children, but it is not to the exclusion of the claimant's bond with them. While J.C. and A.S.C. may not always have had a close relationship, they now do, and J.C. looks up to him. Since A.S.C. has rejected seeing the claimant, and is now an adult, any parenting time with the claimant will take J.C. away from his brother, and may not be supported by A.S.C. or it may be more successful if A.S.C. attends.
- [89] The respondent's mother and the claimant's parents live in the community where the parties reside. The respondent states that the children have a close relationship with his mother. They also see his sister socially for family events. The claimant's parents came to BC in November 2020. Once here, J.C. saw his maternal grandparents regularly prior to separation. The claimant testified that since separation, she has tried to have the children see her parents. The last time J.C. saw them was in 2022. She took him a few times on birthdays to have pictures and cake, which was a happy time. After that, J.C. did not want to spend time with her so she did not raise it. In my view, shared parenting time will not take away from J.C.'s relationship with any grandparents, and will enhance the opportunities for it.

The Child's Need for Stability, Given the Child's Age and Stage of Development

- [90] J.C. is of an age where shared parenting would be appropriate, but given the turmoil within the family, and the current situation, it would be best for an increase in parenting time to be gradual.

The Ability of the Parents to Cooperate on Issues Affecting the Child

[91] At present, the parties do not communicate well, but they both recognize that something needs to be done to change the current situation, and are capable of moving forward in a cooperative way to do so.

Conclusion on Parenting Time

- [92] It is not a viable option to leave parenting time up to J.C. because it puts a burden on him, and it will essentially mean continuation of the current situation that both parties recognize is not in J.C.'s best interests. The longer the current situation lasts, the more entrenched it will become. Both parents bring strengths to the parenting relationship and it is in J.C.'s best interests that he has both parents who love him, in his life.
- [93] At this point, this issue is not so much about a long-term parenting schedule, but about fixing the relationships within the family, so that a parenting time schedule can be implemented successfully.
- [94] Considering all of the above, I conclude that, at this point, it is in J.C.'s best interests to order some limited parenting time that does not involve overnight time so that J.C. remains living with the respondent, which respects J.C.'s current wishes; and further to order that the parties retain a suitable professional for counselling to help them navigate these issues. It may be that the counsellor will wish to speak to J.C. and A.S.C. to obtain their perspectives for the purpose of helping their parents, and I hope that J.C. and A.S.C. will view this as an opportunity to do so and will participate. I will also delay the start of the parenting time for a period to enable to parties to first consult with a counsellor for guidance on implementing the schedule, but if that cannot be arranged, parenting time will start regardless.
- [95] The ultimate objective of this counselling is to help the parties in encouraging and facilitating a positive relationship between J.C. and the claimant, with a longer-term objective of possibly establishing greater parenting time for the claimant. This may involve counselling for both parents as to the role they played in what must have been a difficult situation for J.C. (and A.S.C.) and how they can support J.C. now. The disputes between the parties, which by both parties' testimony was plainly demonstrated to the children, contributed to that situation. Both need to repair it.
- [96] The respondent also seeks final decision making. He submits that this is J.C.'s best interests because he is more attuned to his needs, and reflects the history of the parenting. He acknowledges that since separation there is no history of a conflict over decisions. He makes decisions and the claimant follows. He suggests final decision making so that, if there is a conflict, the parties do not have to come to court. The claimant opposes this and submits that decision making should be joint.

- [97] In my view, the respondent should not be given final decision making at this time. Despite all that has gone on between the parties, to their credit, there has been no dispute regarding parental decisions. I therefore do not see the benefit of such an order, which would only aid in cementing the respondent's present role as the only parent with significant involvement, something he states he wishes to change. Whether he has final decision making or not, if there were a significant dispute, the parties would likely end up in court.

Guidelines Income

- [98] The Federal Child Support Guidelines, SOR/97-175 [Guidelines], provide the framework for determining income for the purpose of child support. The relevant provisions are set out in ss. 16 to 20. Pursuant to s. 16, the calculation commences with total income from line 15000 of a spouse's personal tax return and is adjusted in accordance with Schedule III: *Brown v. Brown*, 2014 BCCA 152 at para. 16; *Vincent v. Vincent*, 2012 BCCA 186 at para. 35. The court must then consider if the circumstances in ss. 17 to 20 are present, and whether there should be an adjustment to arrive at the fairest determination of income available for support, keeping in mind the objectives in s. 1 of the Guidelines: *Brown* at paras. 23, 29.
- [99] Pursuant to s. 17(1) of the Guidelines, 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, or receipt of a non-recurring amount during those years.
- [100] Pursuant to s. 19(1)(a) of the Guidelines, the court may impute income if a spouse is "intentionally under-employed or unemployed" other than where this is "required by the needs of a child" or the reasonable educational or health needs of the spouse. It is not necessary to show that there was an intent to evade or minimize child support; what matters is whether the parent is earning what the parent is capable of earning: *Barker v. Barker*, 2005 BCCA 177 at paras. 18-19.
- [101] In determining whether a spouse is intentionally under-employed or unemployed, the Court must consider whether the spouse has taken reasonable steps to obtain employment commensurate with their age, health, education, skills and work history: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37. Parents who are healthy and can work have a duty to seek employment, and persistence in un-remunerative employment will not be an excuse: *Fong v. Fong*, 2011 BCSC 42 at para. 82, citing *Hanson v. Hanson*, 1999 CanLII 6307 at para. 14, [1999] B.C.J. No. 2532 (B.C.S.C.). The onus is on the person seeking to impute income to show an evidentiary basis on a balance of probabilities: *Marquez* at para. 36.

Claimant's Guidelines Income

[102] The claimant is a T4 employee and works full-time. The only dispute regarding her income is whether capital gains should be included for 2021. The claimant argues that if she is responsible for one-half of the capital gains paid by the respondent on the sale of the Respondent's Condo, then she should not have to include capital gains for 2021 in her income, as it this was an exceptional event.

[103] I do not accede to the claimant's argument. The capital gains from the sale of the Respondent's Condo were not included in the respondent's income because this was not a recurring event, and has largely been reinvested. It was an exchange of one form of capital for another. The only depletion has been because full support has not been paid by the claimant. In contrast, from a review of the claimant's tax returns, although the amount of capital gains in past years has been smaller, it is recurring income. The claimant did not give any evidence of how the capital gain in 2021 arose, and why it was non-recurring or different than prior years other than as to amount, or whether it has been reinvested. I reviewed the claimant's full tax return for 2021 to try to determine where the gain took place and whether it had been reinvested. It appears the gain was primarily in the Hapoalim account. I conclude that the gain may have been in connection with claimant's decision to transfer \$325,000 to BC to earmark for the insurance policy premiums because the claimant testified that she liquidated stocks in that account. She subsequently spent some of that \$325,000 on premiums prior to separation. In my view, the gain is available for support and should be included in income.

[104] Based on the claimant's tax returns, I find that the claimant's Guidelines income since separation to be:

- a) 2021: \$141,876. This is line 15000 income of \$129,672 adjusted for actual capital gains (add \$13,697) and taxable dividends (subtract \$1,493); and
- b) 2022: \$132,387. This is line 15000 income of \$132,582 adjusted for actual capital gains (add \$1,036) and taxable dividends (subtract \$1,231).

[105] As the 2023 income information was not complete at the time of trial, the parties suggested using the claimant's 2022 income for 2023. I agree. The evidence indicated that her income will likely not be much different.

Respondent's Guidelines Income

[106] The claimant seeks to impute income to the respondent. The respondent concedes an imputation, but at a slightly different amount. Despite this small difference, it is necessary to describe the respondent's history of employment in more detail than would otherwise be required, because this evidence is also relevant to entitlement to spousal support, discussed later in these reasons.

- [107] In the years leading up to the start of the parties' relationship, and while working at the cable company, the respondent had employment and self-employment income that increased from \$63,021 in 2005, to \$104,522 in 2008. In 2009, his earnings up to September when he was laid off, were \$70,657 plus a \$55,722 severance package. His employment income in 2010 was \$17,617.
- [108] From 2011 to 2014, the respondent was employed at two telecommunications companies connected to friends. His roles were IT-related. Some work was project-based. He was laid off a few times, but then re-hired. His annual income was in the \$35,000 to \$50,000 range, including EI which he collected each year.
- [109] From 2014 onwards, he was self-employed only. His employment income has since steadily declined, and was minimal in the few years prior to separation. He had a few clients, mostly obtained through friends or acquaintances, for whom he primarily did IT contract work. The respondent's tax returns from 2014 show the following employment income, not including rental income he received from the Respondent's Condo or a split amount from the Pension:
- a) 2014: \$10,008 employment; \$2,056 EI; \$12,440 self-employed income;
 - b) 2015: \$43,553 self-employed income;
 - c) 2016: \$23,272 self-employed income;
 - d) 2017: \$19,345 self-employed income;
 - e) 2018: \$1,941 self-employed income;
 - f) 2019: (\$1,172) self-employed loss on revenue of \$2,250; and
 - g) 2020: \$14,000 "other income". It is not clear what this is, possibly CERB, plus business income of \$443 on revenue of \$6,000.
- [110] The claimant alleges that for a number of years prior to the separation and continuing afterwards, the respondent was intentionally under-employed. From her perspective, the respondent was not seriously attempting to find work, which was a significant dispute during their relationship. The respondent told her variably that he was making efforts, or that it was too stressful to work full-time and have a boss, or he was working and receiving cash. She gave an example of following up with him several times about applying for a job where the respondent had not done so.
- [111] The respondent denies that he was under-employed, and states that he could not work full-time because he was and is the parent primarily caring for the children. From his perspective, he was an excellent and involved father, and was busy and worked every day, albeit not always paid employment. The claimant was busy with study and then work and she was not a "hands on" parent.

- [112] The respondent testified that A.S.C. was diagnosed with ADHD when he was six or seven years old, and had a possible further diagnosis in Grade 5. The respondent testified about significant incidents when A.S.C. was in elementary school, but gave little evidence of any specific challenges in high school. The claimant resisted having A.S.C. tested or giving him prescribed medication. The claimant's evidence confirmed this. The respondent felt that he did not have parental rights, but he was the person dealing with this. Once A.S.C. was on medication, some issues persisted, but they were much reduced. The respondent testified that because he was the parent who primarily cared for the children, he needed flexibility and was not able to work more. In his work for friends, he could make his own schedule. He acknowledges that the claimant was also involved, and she would attend more important events, but he was responsible day-to-day.
- [113] The respondent also acknowledged that some of the decline in his work and income was the ending of contracts he had. He is concerned now about the currency of his IT skills and how his age will affect obtaining employment. He said his income decreased in 2016 for two reasons. First, he was the parent primarily caring for the home and children, and second, there was some variation between jobs and clients, and there was a reduction in work. By 2018, he no longer had the contract with his main client. By 2019, the respondent was out of contracts. When asked if there was anything from 2019 onward that required his attention at home, and that would have impacted his income, he said it was a difficult question to answer. He said there were many ongoing requirements with the children, but he could not identify anything out of the ordinary. A.S.C. was 14 and J.C. was 8 years old at the time. When asked what work he did in 2020, the respondent said it was difficult to pin down because there were "small random jobs I could fit into my schedule". A friend owned a golf ball recycling company where the respondent worked in the warehouse, and helped with IT "as time would allow" and when work was available. Another friend had a metal recycling business, and he did some work there to process and store metal. When asked what hours he worked, the respondent said these were "completely flexible" because of his "commitments with everything else".
- [114] This reasoning has continued post-separation. When questioned as to what he has done to find work since separation, the respondent stated that his parental responsibilities have not changed much. He testified that A.S.C. still needs support. He looks after the household and takes J.C. to tutoring twice a week and to cadets once a week. He looks for jobs when he has time. He keeps in touch with people and friends, but many are retired. He gets alerts on his phone from the Indeed website and, if he sees any appropriate postings, he responds. He believes it will be "extremely difficult" for him to find a job based on his conversations with friends.
- [115] In 2023, he started a new business with A.S.C. to clear out homes and remove people's things with his truck. He has posted this venture on Facebook. In two months, he had four jobs, and he gave A.S.C. the revenue of between \$200 and \$500 per job. He states that he intends to continue, and that "at this point, money is not of consequence" to him, as the

priority is to support A.S.C. When asked why he has not sought work at London Drugs, Save on Foods, or Starbucks, he did not answer directly but said that he has worked at his friend's metal recycling plant and other jobs. He received cash, and estimates that his income in 2023 was \$9,800. The respondent also testified that he has been stressed since the separation. He has not been prescribed medication.

[116] I turn to a determination of the Guidelines income since separation. The respondent's tax returns and his testimony show the following income:

- a) 2021: \$0 employment income; \$15,015 net rental income. The respondent also had actual capital gains of \$173,836 from the sale of the Respondent's Condo, but this has not been included in income. It was addressed in property division; and
- b) 2022: \$8,500 other employment income.

[117] As noted earlier, the respondent estimated his 2023 income was \$9,800. The claimant accepts the \$15,015 net rental income as the respondent's Guidelines income for 2021, but submits that a modest income at the provincial legislated minimum wage, full-time, should be imputed to the respondent. The respondent submits that an income of \$30,000 (less than full-time minimum wage) from 2021 to 2024, should be imputed to him.

[118] I find that the respondent has been intentionally under-employed since 2022, and that this under-employment was not required by the needs of a child. I accept that when A.S.C. was young, there were some challenging times, and that because the claimant was working full-time, the respondent took on the greater share of parenting. However, those factors have not prevented the respondent from working since separation. When the parties separated, A.S.C. was almost 17 years old and J.C. was 10. Both parties resided in the Family Home for nearly two and a half years after separation. A.S.C. has since graduated high school, is now an adult attending college, and the respondent described him as very responsible. The respondent drives J.C. to school in the morning, but J.C. makes his own way home, does things with his friends after school or goes to tutoring. J.C. gets along well with others. He is about to enter high school.

[119] I find that the respondent has not made reasonable efforts to find work since 2022. When the respondent was cross-examined on what exactly he had been doing to find work, he was vague and repeated that he was busy with the children and required flexibility, without specifying what exactly in that schedule prevented him from working. He expressed concern that his technology credentials were not up to date, but he has taken upgrading, as recently as December 2022. His answers at his examination for discovery regarding his attempts to find work were also vague. He subsequently produced an excerpt from the Indeed website, which shows that he applied for eight jobs in the five weeks prior to the examination for discovery. As for the new venture with A.S.C., while I accept the respondent is trying to assist A.S.C., it does not satisfy his obligation to make reasonable efforts to work to his capacity.

- [120] The respondent also suggested that his health has declined since separation. I accept that the separation has been a difficult time for the respondent, and it is why I am not imputing income for 2021, as this may have required a period of adjustment. However, he has otherwise not established by expert evidence, any health condition that would prevent him from working.
- [121] I find that the amount imputed should be that suggested by the claimant. This is a conservative amount considering the respondent's skills, experience, and previous earnings, but also considers his age and that he has been largely out of the workforce for six years. He testified that entry-level jobs with his current qualifications range from minimum wage to \$22 or \$23 per hour.
- [122] I therefore find for 2021, and impute for 2022 to 2024, the following Guidelines income to the respondent:
- a) 2021: \$15,515;
 - b) 2022: \$30,850;
 - c) 2023: \$32,400; and
 - d) 2024: \$34,150.

Child Support

- [123] The Guidelines provide the framework for determining the amount of child support payable. Pursuant to s. 3, if there is not shared parenting (where each spouse has at least 40% of parenting time), the general rule is that the amount payable is the applicable table amount in the Guidelines. Pursuant to s. 9, if there is shared parenting, the amount of the child support order must be determined by taking into account:
- (a) the amounts set out in the applicable tables for each of the spouses;
 - (b) the increased costs of shared parenting time arrangements; and
 - (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.
- [124] The leading case on s. 9 of the Guidelines is *Contino v. Leonelli-Contino*, 2005 SCC 63, which discusses the contextual approach to the analysis. Under s. 9(b), the "total cost of raising children", and "consequently, all of the payor parent's costs should be considered": at para. 52 (emphasis in original). Under, s. 9(c), the Court is vested with a "broad discretion for conducting an analysis of the resources and needs of both the parents and the children": at para. 68. The Court must keep in mind the objectives of the Guidelines of a fair standard of support for the children and fair contributions from each parent, based on evidence, and the "standard of living of the child in each household and the ability of each parent to absorb the costs required to maintain the appropriate standard of living in the

circumstances": at para. 68.

[125] The parties disagree whether there was shared parenting up until the claimant moved to her condo in August 2023, and what if anything should be deducted for the amount that the claimant contributed to the TD Joint Account after separation. The respondent argues that, as he was the parent primarily providing care to the children after separation, and paying most of their expenses, he should be awarded the table amount without set off, and without any deduction for amounts paid by the claimant to the TD Joint Account. The claimant argues that there should be set off of the table amount, and further that she should be able to fully deduct the amount that she deposited to the TD Joint Account as that account was used solely for family living expenses and is a form of support.

[126] I find that there was shared parenting from separation to July 2023. All four family members lived in the same home. While I accept that the respondent was doing more (but not all) parenting, this was because he was generally not employed, and the claimant was working full-time. For example, the parties agree that when the claimant came home from work, she was the parent who prepared the evening meal. Further, child support is concerned with a fair level of support. The family lived in the same home, and under the exact same financial arrangements as were in place prior to the separation, where the parties each contributed equally to the TD Joint Account from which they paid the mortgage and all family expenses. I accept it was likely the respondent who shopped for groceries and bought clothing for the children during this time, but there was no specific corroborated evidence that up to November 2022 (when there was a change in what was being deposited by the claimant) that the respondent was paying for expenses that were not eventually paid from the TD Joint Account during this time period. The respondent testified that he paid for a used car for A.S.C. but that does not come within monthly child support. That is potentially a s. 7 expense.

[127] Turning to s. 9(a), the monthly table amounts from 2021 to August 2023 payable by the claimant, based on their Guidelines incomes are below. For convenience, I have also included the monthly table amounts for the period after there was no longer shared parenting:

Claimant

Respondent

Set-off amount

2021 (April to Dec.)

\$2,061

\$184

\$1,877

2022

\$1,940

\$497

\$1,443

2023

\$1,940

\$521 (to July). No set off Aug. to Dec.

\$1,419 (to July) \$1,940 (Aug. to Dec.)

2024

\$1,940

No set off

\$1,940

[128] Turning to s. 9(b), there is no increased costs of shared parenting because the parties were living in the same home with the same expenses, and sharing the same meals, all of which (at least up to November 2022) were paid from the TD Joint Account. If anything, there were less costs, but in my view that will be subsumed within the issue of any deduction for amounts deposited to the TD Joint Account.

[129] As for s. 9(c), even with imputation of income, the claimant had greater resources, but the needs of the family and the standard of living of the family remained the same. The parties' financial statements do not show unusual living expenses or needs.

[130] Considering all of the above, I conclude that a straight set-off is appropriate for the period of shared parenting, subject to any deduction that should be made for the deposits to the TD Joint Account.

[131] Turning to the period since August 2023, there has been no shared parenting, and s. 3(1) of the Guidelines applies, which is payment of the table amount for any children under the age of 19, again subject to any deduction that should be made for the deposits to the TD Joint Account.

[132] Finally, after a child turns 19, child support is governed by s. 3(2) of the Guidelines, which provides that the amount of child support 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.

[133] In this case, as A.S.C. has recently turned 19 and is attending college and living with the respondent, in my view, it is appropriate to require the claimant to continue to pay the table amounts, pending either the agreement of the parties or an application to address any child support owing for the support of A.S.C. after the age of 19. Because of the long adjournment of this trial, there was no evidence of what if anything, A.S.C. may be required to contribute to his support after the age of 19 either from part-time work, or any inheritance he receives, so the determination cannot be made. The parties will have to review support for A.S.C. once they have further information, and considering the case authorities, for example *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, 1993 CanLII 2570 (B.C.S.C.); *Nordeen v. Nordeen*, 2013 BCCA 178 at paras. 16-17. I expect the parties should be able to agree on this, and if not, an application can be made.

[134] I turn now to address what if any deduction should be made for the deposits the claimant made to the TD Joint Account since separation. This could have been addressed, in part, through division of property, but the parties agreed to equal division and addressed it as a contested form of support: *Kirton v. Matte*, 2014 BCCA 513 at para. 46. This makes sense as the amounts deposited were not limited to the mortgage and other Family Home maintenance expenses, but also included other living expenses.

[135] In my view, there are three distinct periods of deposits and living situations that require different results for each. As discussed previously, after separation the parties continued with exactly the same financial arrangement as they had since about 2013 - each contributed equally to family expenses through equal monthly deposits to the TD Joint Account. This continued until October 2022 when the claimant rented her condo. Thereafter, the claimant deposited money each month to pay half of the mortgage payments, electricity and gas bills, costs of extracurricular activities for the children (e.g. volleyball, tutoring), home internet, property insurance, cell phone, safety deposit box, municipal utility bills, and property taxes. This has continued to date, although because of the adjournment of the trial, the evidence is only current to July 2023. From August 2023 on, there was no shared parenting.

[136] I have determined that: (i) for the period up to October 2022, there should be no deduction against child (or spousal) support for the amounts the claimant deposited to the TD Joint Account; (ii) for the period from November 2022 to July 2023, there should be a deduction for half of the amounts the claimant deposited; and (iii) from August 2023 to date, there should be a deduction for the full amounts that the claimant has deposited. In summary, I am ordering child support in accordance with the Guidelines, but consider the amounts deposited by the claimant to the TD Joint Account to be a form of support that directly and indirectly benefits the children (and the respondent), and a special provision, and find that it would be inequitable to not deduct the amounts indicated below: s. 150(4) of the FLA.

[137] My reasoning is as follows. Up until October 2022, if the claimant pays set-off child and spousal support to the respondent, their net disposable income (NDI) according to DivorceMate calculations, is nearly equal, slightly favouring the respondent by about \$650 per month. The expenses paid from the TD Joint Account represent their combined living expenses. They were equally living in the Family Home and there was shared parenting, so they should equally pay that cost. If support were not paid, the respondent would be required (as he was) to pay his share of those expenses from his capital. From November 2022 to July 2023, after which the claimant moved from the Family Home, there was shared parenting and the parties were both living in the Family Home, but the situation was deteriorating, and the claimant was partially living in her condo. Someone had to move out of the Family Home, and bear the cost of the extra rent which was \$3,000 per month. The claimant testified that she felt like she was pushed out of the Family Home. She had suggested a nesting arrangement, but the respondent rejected it. In my view, a deduction of half the deposits, fairly apportions between the parties the extra costs of this difficult situation, and recognizes that the claimant was mostly, but not completely living in the Family Home and having part of her living costs addressed there. From August 2023, when the claimant moved to her condo, the full amount she has deposited to the Joint Account must be deducted against child (or spousal) support. To do otherwise would unfairly overcompensate the respondent who, in effect, would get half of his and the children's housing and other children's costs from the claimant in addition to her paying full support which is intended to cover those. The monthly mortgage amount is a little over \$2,000 and is likely a good approximation of the rent that the respondent would have to pay if the Family Home had been sold already.

[138] Due to the trial's adjournment, the evidence of the amounts deposited beyond July 2023 was not in evidence, so the parties will have to make the adjustment. It should be easily calculable, but if they cannot agree, they may make arrangements to attend before me to speak the matter before entry of the final order.

[139] The above determinations lead to the following payments and credits. I have used the summary of deposits in the respondent's closing submissions which is taken from the bank statements in evidence to determine the deduction if any:

Claimant

Child support payable

Deduction or not

Payable

April - Dec. 2021

$\$1,877 \times 9 = \$16,893$

No deduction

\$16,893

Jan. - Sept. 2022

$\$1,443 \times 9 = \$12,987$

No deduction

\$12,987

Oct. 2022 - July 2023

$\$1,443 \times 3 = \$4,329$ plus $\$1,419 \times 7 = \$9,933$

Deduction of half of deposits of \$17,293 = \$8,647

\$5,615

Total

\$35,495

[140] For the period from August 2023 to the end of July 2024, the amount payable by the claimant is $\$1,940 \times 12 = \$23,280$, less a deduction for the amount she has deposited to the TD Joint Account in that time period, but not including any amounts that are s. 7 expenses.

[141] I have not deducted the \$200 per month that the claimant paid to A.S.C. for the few months prior to him turning 18. In my view, this cannot be deducted as child support which is paid to the parent of a child. It may be something that is addressed in another forum if A.S.C. believes he is entitled to a portion of the Pension.

[142] Finally, I have made the deduction from child support, although it could have been made from spousal support instead or split between the two. The end financial result is the same. I have simply applied it first against child support because this is addressed first.

[143] Neither party seeks a retroactive accounting of the children's special expenses. All future special expenses will be paid in proportion to their relative Guidelines income. The current proportion without shared parenting, is 69/31.

Spousal Support

[144] In determining whether there is entitlement to support, the Court must consider the objectives of spousal support in s. 161 of the FLA. Those are:

- (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.

[145] If entitlement is established, in determining the amount and duration of support, the Court must consider the "the conditions, means, needs and other circumstances of each spouse, including the following" factors in s. 162:

- (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.

[146] There are three bases upon which a spousal support award may be made: compensatory (economic advantage and/or disadvantage); non-compensatory (needs-based); and contractual: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paras. 15, 49, 1999 CanLII 715. There is no contractual basis alleged here. In determining if there is entitlement to support, the court begins with the objectives of spousal support. No objective is paramount and all must be considered: *Bracklow* at paras. 35-37; *Moge v. Moge*, [1992] 3 S.C.R. 813 at 850-852, 1992 CanLII 25.

[147] Compensatory support is intended to provide for an equitable sharing of the economic consequences of the relationship or its breakdown. Both economic advantage and disadvantage are considered. The longer the relationship, the greater the presumptive claim to an equal standard of living upon its breakdown: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-52, leave to appeal to SCC ref'd, 33002 (28 May 2009); *Bracklow* at paras. 34, 39; *Moge* at 861-863, 870.

[148] Non-compensatory support is intended to provide needs-based support where compensatory principles do not apply. Its goal is to narrow the gap between the needs and means of spouses upon marital breakdown. Need is a relative concept, and goes beyond the basic necessities of life. It is informed by the circumstances of the parties, including the length of the relationship and the standards of living enjoyed during and after the relationship: *Chutter* at paras. 54-59; *Bracklow* at paras. 36, 41.

[149] In this case, the respondent seeks lump sum future spousal support to assist him in purchasing the claimant's equity in the Family Home. While spousal support is usually paid monthly, the Court may award lump sum spousal support. In *Parton v. Parton*, 2018 BCCA 273 at para. 47, the Court quoted passages from *Davis v. Crawford*, 2011 ONCA 294, outlining some of the advantages and disadvantages that must be considered in determining whether such an award should be made:

- [67] The advantages of making such an award will be highly variable and case-specific. They can include but are not limited to: terminating ongoing contact or ties between the spouses for any number of reasons (for example, short-term marriage; domestic violence; second marriage with no children, etc.); providing capital to meet an immediate need on the part of a dependant spouse; ensuring adequate support will be paid in circumstances where there is a real risk of non-payment of periodic support, a lack of proper financial disclosure or where the payor has the ability to pay lump sum but not periodic support; and satisfying immediately an award of retroactive spousal support.
- [68] Similarly, the disadvantages of such an award can include the real possibility that the means and needs of the parties will change over time, leading to the need for a variation; the fact that the parties will be effectively deprived of the right to apply for a variation of the lump sum award; and the difficulties inherent in calculating an appropriate award of lump sum spousal support where lump sum support is awarded in place of ongoing indefinite periodic support.
- [150] The claimant acknowledges that the court will likely find that the respondent has established entitlement to support, but submits that it should be on the basis of need only and not compensatory, and that the duration should be fixed at seven years but acknowledges that it may be eight until J.C. graduates high school. The claimant submits that there was no particular division of labour where the respondent gave up opportunities in the work place in connection with the children or family that entitles him to spousal support on a compensatory basis. However, there is a difference in income that grounds entitlement, and is needs focused. The claimant submits that spousal support should find a balance between too little and too much support, and should not remove the incentive for the respondent to work. He is 56 years old with no identifiable health issues. The claimant submits that any payment of spousal support should be periodic, and not a lump sum as this allows her to preserve capital. She was renting as of the trial.
- [151] The respondent submits that he is entitled to spousal support on a primarily compensatory basis, based on his role in the relationship. He seeks lump spousal support based on a duration until J.C. graduates from high school, and with two dependent children (assuming A.S.C. remains in post-secondary school for another five years). Alternatively, if the court awards periodic support, he submits that it should be indefinite subject to variation for a material change in circumstances, and terminate no earlier than when J.C. graduates from high school. As for the lump sum, in addition to assisting him to purchase the Family Home, he argues that a lump sum would reduce contact between the parties, is appropriate because it does not appear that the claimant's income will change, and he submits that he will not be able to earn more in the future than what is imputed to him. Further, it would not be a significant amount for the claimant and would not negatively affect her.
- [152] In my view, the respondent has established both a needs-based and a compensatory-based entitlement to spousal support. There is a significant difference in the parties' incomes and he has need. This was not a particularly long relationship, but the respondent is entitled to

transitional support to enable him time to bridge the difference in income and standard of living, through reasonable efforts to become self-sufficient. I find that the respondent has suffered some economic disadvantage because of the roles the parties assumed, with a corresponding advantage conferred on the claimant. Although a spousal support award is indivisible (*Zacharias v. Zacharias*, 2015 BCCA 376 at para. 39), I find the need basis is stronger than the compensatory basis.

- [153] While I accept some flexibility may have been required when the children were young, I find it did not impact the respondent's work to the extent he claims. Prior to the parties' relationship, the respondent already had an established career, had worked full-time for over 20 years, and had a business degree. He then was laid off from the cable company, a long-term employer. Before the parties' marriage-like relationship began, the respondent's income had already significantly declined after he was laid-off; he earned less than \$18,000 in 2010. Thereafter, there was no evidence that he was offered or sacrificed other specific full-time work because of the roles the parties assumed, or that there was a decision by the parties that he not work full time to instead parent and look after the home. In fact, from 2011 to 2014 he was employed until he was laid off.
- [154] The respondent attributed his lack of work mainly to being the primary caregiver, and less to the availability of work in the career path he chose after he was laid off. I find that it was the other way around, and that he was the primary caregiver mainly because he chose to be a consultant mostly through friend contacts, rather than pursue full-time work for an employer. The further decline in his employment income in the last few years of the relationship was primarily because his contracts ended and he did not find alternative work or employment, and not because of the roles the parties assumed in the relationship. By 2018, A.S.C. was in high-school and J.C. was in elementary school. The children attended an after-school program and were picked up by the claimant at the end of her work day.
- [155] However, that is not to say that there was not an economic disadvantage to the respondent or benefit to the claimant. I accept that when A.S.C and J.C. were young, the respondent was the primary caregiver, which affected his career to some extent. More significantly, the respondent's work at home conferred an economic advantage on the claimant and her career. She had the flexibility to work as needed, or not to have to attend events or incidents with the children if the respondent was available. I find that facilitated the claimant's ability to study and obtain an accounting degree, and to work full-time, thereby benefitting her career and earning capacity.
- [156] As for duration, the relationship was 11 years. The Spousal Support Advisory Guidelines [SSAG] provide two duration tests for with-child support formulas. These are the length-of-marriage test and the age-of-children test. The former is one-half to one year of support, per year of co-habitation. The latter ends when the youngest child finishes high school. J.C. will be 18 when he graduates high school. That would be just over eight years of support which is in the top half of the range, and would satisfy both duration tests. Considering all the findings above, I find that is the appropriate duration.

[157] As for quantum, I have considered the factors discussed in chapter 9 of the Spousal Support Advisory Guidelines: The Revised User's Guide (Ottawa: Department of Justice, 2016). The respondent has a compensatory claim, but it is not particularly strong. The respondent does not have unusual needs. For the shared parenting time, as discussed previously the mid-range produces close to equal net disposable income, slightly favouring the respondent. In the current situation with no shared parenting, but one dependent child and one adult child who is about to receive a sizeable inheritance, the mid-range produces about a 45/55 split of net disposable income in favour of the respondent, and about a \$1,200 monthly difference. The claimant did not testify as to any unusual expenses. She has the ability to pay. Property division is equal. In my view, the mid-range is appropriate for quantum.

[158] As for retroactive support, both parties have submitted the mid-point after-tax figures from DivorceMate calculations. I agree with accounting for the favourable tax deduction that the claimant otherwise would have had with a periodic order, and the taxes the respondent would otherwise have had to pay with a periodic order. This also avoids the parties having to amend their past tax returns.

[159] The above findings produce the following amounts payable to the end of July 2024:

April - Dec. 2021

$\$1,754 \times 9 = \$15,786$

2022

$\$1,194 \times 12 = \$14,328$

Jan. - July 2023

$\$1,147 \times 7 = \$8,029$

Aug. 2023 - Dec. 2023

$\$629 \times 5 = \$3,145$

Jan. to July 2024

$\$944 \times 7 = \$6,608$

Total

$\$47,896$

[160] As for future support, the periodic amount is \$1,466 per month. The respondent seeks lump sum future spousal support. In my view, the assumptions suggested by the respondent are reasonable. On those assumptions, the present value mid-point after-tax lump sum amount until J.C. graduates high school is \$53,334.

- [161] The primary benefit to the respondent would be to assist him in purchasing the Family Home, where the children have lived most of their lives. The primary disadvantage to the claimant would be taking funds from capital that she may otherwise wish to spend on her own home or save.
- [162] I have considered whether it would be feasible for the respondent to purchase the claimant's equity in the Family Home with or without lump sum future spousal support. I have totalled the approximate amount he would be required to pay, as well as his resources. I conclude that it may be possible for him to purchase the Family Home, but it would come at the cost of likely using most of his savings, or would require assistance from elsewhere. A lump sum future spousal support sum would assist, and would indirectly benefit the children if he is able to purchase the Family Home. As for the claimant's interests, the lump sum spousal support amount is not large. Whether or not she is required to pay a lump sum, she will have a sizeable down payment should she wish to purchase a home, plus she has a good income. If she does not pay a lump sum, she will have a monthly support obligation that takes away funds that would be required to pay a mortgage. However, I recognize that such an award would reduce her savings.
- [163] Recognizing both parties' interests, and knowing that the respondent being able to purchase the Family Home would indirectly benefit J.C., I will order that spousal support will be paid as a lump sum, in the amount of \$53,334, but only if the respondent is able to purchase the Family Home within 90 days. This amount will be deducted from the compensation payment owing by the respondent to the claimant for purchase of the Family Home. However, if he is not able to do so, the order for lump sum spousal support is cancelled, and the claimant shall pay monthly periodic spousal support to the respondent in the amount of \$1,466, which will terminate on June 30, 2029.

Orders

Dates of Marriage-Like Relationship

- [164] The commencement of the parties' marriage-like relationship was July 1, 2010, and the termination was April 9, 2021.

Property and Debt Division

- [165] The Family Home is family property, and the mortgage is family debt. The respondent shall have 90 days from the date of this order to purchase the claimant's interest in the equity in the Family Home, being half of \$1.15 million less the mortgage as of the date of transfer, and subject to the release of the claimant from the existing mortgage.

- [166] If the respondent is unable to purchase the claimant's interest in the Family Home within the 90 days, the parties shall forthwith jointly list the Family Home for sale. Upon its sale, the net sale proceeds (sale price, less all other reasonable or necessary selling costs and adjustments, less the mortgage), shall be divided equally between the parties.
- [167] The Beijing Apartment is not family property, and the respondent has no claim to an interest in that property.
- [168] The funds received by the claimant from her parents between 2015 and 2020 and currently deposited primarily in the HSBC account ending in 04, are not family property, and the respondent has no claim to an interest in those funds.
- [169] All of the parties' remaining bank and non-registered investment accounts, vehicles, and credit card debts are family property and family debt, which are subject to excluded amounts. The net family property amount for these items shall be equally divided by the claimant paying to the respondent the sum of \$119,473. This shall be paid within 90 days of this order. For greater clarity these accounts and other items of property and debt, and how they should be divided are:
- a) The claimant shall retain the Hapoalim Bank account. This order does not determine any interest of A.S.C. in those funds;
 - b) The respondent shall retain the TD Joint Account and shall remove the claimant's name from the account within 90 days;
 - c) The claimant shall retain the bank accounts and investment accounts in her name, being
 - i. TD All Inclusive ending in 15;
 - ii. TD Direct investing ending in 97;
 - iii. TD TFSA ending in 97;
 - iv. HSBC Premier ending in 50;
 - v. HSBC High Rate Savings ending in 03;
 - vi. HSBC High Rate Savings ending in 06;
 - vii. HSBC Advance Savings ending in 33;
 - viii. HSBC TFSA ending in 88; and
 - ix. EQ bank ending in 98.
 - d) The respondent shall retain the bank and investment accounts in his name being:
 - i. TD Chequing ending in 88;
 - ii. TD Direct Trading CAN ending in 3A;

- iii. TD Everyday Business ending in 60;
 - iv. TD Direct Trading US ending in 3B; and
 - v. TD TFSA ending in 3J.
 - e) Each party shall retain the vehicles they currently own; and
 - f) As between the parties, each is responsible for the debt on the credit cards in their own name. If either party is a secondary card holder on the credit card of the other, within 90 days of this order, the parties shall remove the secondary card holder from that account.
- [170] The parties' RRSP accounts are family property. Within 90 days of this order, the respondent shall equalize the parties registered accounts by way of a rollover of \$13,002 pursuant to s. 146(16)(b) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp). Thereafter, each party shall retain the accounts in their name. For greater clarity these accounts are:
- a) claimant's RBC GRSP ending in 18;
 - b) claimant's TD SDRSP ending in 97;
 - c) respondent's two locked-in SDRSPs ending in 7S and 4S; and
 - d) respondent's TD SDRSP ending in 3S.
- [171] The claimant shall continue to manage and hold the two TD RESPs in her name, to be used for the post-secondary education expenses of A.S.C. and J.C. Upon each child completing his post-secondary education or by his 25th birthday, whichever is earlier, any remaining funds within the RESP for that child will be divided equally between the parties. If either party makes further contributions to these accounts after the date of these reasons, and they are not used for post-secondary expenses, those funds shall not be divided, but returned to the party who made the contribution.
- [172] The respondent shall provide the claimant with proof of enrollment for any upcoming post-secondary education for which a child is seeking RESP funds; and following each post-secondary term shall forthwith provide the claimant with that child's transcripts of marks.
- [173] On February 1 and August 1 of each year the RESPs are in existence, the claimant shall provide to the respondent a statement of the RESP accounts which includes any deposits or transfers from the accounts in the preceding six months.
- [174] The parties unadjusted pensionable earnings under the Canada Pension Plan shall be equalized under s. 55.1 of the Canada Pension Plan, R.S.C. 1985, c. C-8 and either party may apply for equalization of the other's unadjusted pensionable earnings, with entitlement from July 1, 2010 to April 9, 2021.

Guidelines Income

- [175] The claimant's Guidelines incomes from 2021 to 2023 are:

- a) 2021: \$141,876;
- b) 2022: \$132,387; and
- c) 2023: \$132,387.

[176] The respondent's Guidelines incomes from 2021 to 2023 are:

- a) 2021: \$15,515;
- b) 2022: \$30,850 (imputed); and
- c) 2023: \$32,400 (imputed).

[177] Subject to the respondent having greater actual Guidelines income, the respondent shall have an imputed 2024 Guidelines income of \$34,150.

Guardianship and Parenting Arrangements

[178] Pursuant to s. 39 of the FLA, the claimant and the respondent are the joint guardians of J.C.

[179] If either guardian dies prior to J.C. obtaining the age of majority, the remaining guardian shall be the sole guardian of J.C. with all of the associated parental responsibilities.

[180] Pursuant to s. 41 of the FLA, the guardians shall share all of the parental responsibilities in that section for J.C. (The parties may list these in the formal order.)

[181] During a guardian's parenting time, the guardian may exercise the parental responsibility of making day-to-day decisions affecting J.C. provided that the guardian must forthwith advise the other parent of any matters of a significant nature affecting J.C.

[182] The parties shall have the obligation to discuss significant decisions other than day-to-day decisions about J.C. with each other, and shall make reasonable efforts to reach agreement concerning these significant decisions, subject to the right of either party to seek directions pursuant to s. 49 of the FLA.

[183] Should an emergency health decision need to be made for J.C. by a party, that party shall immediately advise the other.

[184] Pursuant to s. 45 of the FLA, J.C. shall reside primarily with the respondent, and the claimant shall have parenting time as follows:

- a) commencing the week of September 23, 2024 one evening every second week between Monday and Friday from 5:00 p.m. to 8:00 p.m.; or alternatively, one weekend day every second week from 10:00 a.m. to 1:00 p.m. The day to be decided by the parties. If an agreement cannot be reached, it will be Wednesdays;
- b) commencing the week of November 11, 2024, the same schedule as above, except every week; and
- c) such other times as agreed to between the parties.

- [185] The respondent shall encourage, support, and facilitate the claimant's parenting time with J.C., and shall take steps to prevent any family member from discouraging J.C. from having parenting time with the claimant.
- [186] Pursuant to s. 224 of the FLA, within 10 days of these reasons, the parties shall jointly retain a psychologist or registered clinical counsellor (the "Counsellor") and undertake parental counselling (which can be joint or individual as the Counsellor directs) with the objects of repairing J.C.'s relationship with the claimant, and encouraging and facilitating parenting time between J.C. and the claimant, on the following terms, which I have adapted from Justice Saunders decision in *Cosper v. Bauer*, 2021 BCSC 985 at para. 27:
- a) If the parties are unable to agree on who is to be retained, the claimant will provide a list of three psychologists or registered clinical counsellors who are willing, and available prior to the week of September 23, 2024 or within a reasonable time, to work with the parties, and the respondent will promptly choose one name from that list. The person chosen must not have had any prior relationship with the parties or J.C. The intention is that prompt attention to this order will ideally permit the parties to obtain some assistance from the Counsellor prior to the week of September 23, 2024, however if that is not possible, parenting time will commence that week regardless;
 - b) The cost of the counselling is to be borne by the parties 69% by the claimant, and 31% by the respondent, and each will directly pay their share of any retainer and of any invoices, forthwith;
 - c) The parties will attend at least six and, subject to the direction of the Counsellor, up to twelve sessions of counselling;
 - d) All communications with the Counsellor, other than routine communications as to the retainer and scheduling of appointments, will remain confidential, with the exception that each party may waive the confidentiality of communications with the Counsellor as to only their own treatment, including but not limited to their completion of any therapy, exercises, or treatment prescribed, recommended, or administered by the Counsellor; and, in the event that one party chooses to waive such confidentiality, no inference will be drawn should the other party maintain their own right of confidentiality;
 - e) The Counsellor shall be provided with a copy of these Reasons;
 - f) If the Counsellor wishes to speak with J.C., or recommends counselling for J.C. by that Counsellor or another suitably qualified professional, the parties will promptly arrange that meeting or counselling, and use their best efforts to encourage and facilitate that meeting or counselling and will pay the cost of that meeting or counselling in the same proportion and on the same terms as above; and
 - g) Neither parent party shall have any communication with J.C. or A.S.C. about the contents of any counselling session.

- [187] The parties shall not refuse reasonable requests for travel with J.C. by the other party, including international trips outside of Canada.
- [188] The parent who travels with J.C. shall provide the other parent with the itinerary, including the flight schedule if traveling by air, telephone contact information outside of Canada, details with respect to the accommodations, and the time of departure and return.
- [189] For reasonable travel requests, the parties shall provide the traveling party with written travel authorization within a reasonable time of the request being made.

Child Support

- [190] The retroactive child support payable by the claimant to the respondent from the date of separation until the end of July 2023 is \$35,495. The claimant shall pay this within 90 days of this order.
- [191] The retroactive child support payable by the claimant to the respondent from August 2023 to the end of July 2024 is \$23,280, less a deduction for the amount the claimant has deposited to the TD Joint Account in that time period, but not including any amounts that are s. 7 expenses. The parties to make the calculation, with the net amount owing to be determined and paid within 90 days of this order.
- [192] Commencing August 1, 2024, the claimant shall pay to the respondent on the first of each month, child support of \$1,940 until further order of the court or agreement of the parties. If the claimant continues to make deposits to the TD Joint Account to pay half the mortgage amount and other family expenses From August 1, 2024 to the time of transfer or sale of the Family Home, those deposits, but not including any amounts that are s. 7 expenses, will continue to be deducted from child support payable until the Family Home is transferred or sold.
- [193] Within 90 days of this order the parties will attempt to agree to any adjustment to the current child support payable for the support of A.S.C. from age 19. If the parties cannot agree, the current order for child support will remain, and I am seized of this issue for the next six months.
- [194] Commencing August 1, 2024, the parties shall share the cost of s. 7 child support expenses, in proportion to their Guidelines incomes. Currently, that proportion is 69% paid by the claimant, and 31% paid by the respondent. The parties shall pay their respective proportionate shares of the s. 7 expenses to the other party within seven days of being provided with a receipt or invoice for payment.
- [195] If the parties have not already done so, by August 31, 2024, they shall each provide to the other a copy of their own 2023 income tax return and notice of assessment. Thereafter, by May 31 each year, for as long as there is a child of the relationship as defined in the FLA, the parties shall provide to the other party, a copy of their own previous year's tax return and notice of assessment, or if it is not yet available, provide it upon receipt, and the parties

shall make any adjustment required to child support in accordance with the Guidelines, commencing July 1 each year.

Spousal Support

- [196] The retroactive spousal support payable by the claimant to the respondent from the date of separation to the end of July 2024, is \$47,896. The claimant shall pay this within 90 days of this order.
- [197] If the respondent is able to purchase the claimant's equity in the Family Home within 90 days of this order, the claimant will pay future lump sum spousal support to the respondent in the amount of \$53,334, and thereafter the claimant's obligation to pay spousal support is terminated. If the respondent is not able to purchase the claimant's equity in the Family Home within 90 days of this order, the lump sum future support order is cancelled, and the claimant shall pay monthly periodic spousal support to the respondent in the amount of \$1,466, on the first of each month from August 1, 2024 to June 30, 2029, at which point spousal support will terminate.

Other Orders

- [198] I have indicated a few areas where I expect the parties to be able to agree to adjustments to be made for unknown financial information and events which will take place in the near future. I will remain seized of this matter for those accounting issues only, for the next six months. If the parties cannot agree, or there are other issues that arise as a result of these reasons, the parties may make arrangements through Supreme Court Scheduling to attend before me at 9:00 a.m. if there is a short matter, or during regular court hours if longer.
- [199] My initial impression, without argument, is that there has been divided success such that each party should bear their own costs, but I do not know what settlement offers, if any, were made between the parties. If the parties cannot agree, they may make arrangements through Supreme Court Scheduling to speak to the matter.

"Norell J."

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Prepared on 29 October 2026 · Esheria