
CANADA / JUDGMENT

Young v. Young

2012 BCSC 1727

COURT

Supreme Court of British Columbia

DECIDED

21 November 2012

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2012 BCSC 1727 Young v. Young

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Young v. Young,

2012 BCSC 1727

Date: 20121121

Docket: ED63699

Registry: Nanaimo

Between:

Brian William Young

Claimant

And

Deborah Lynne Young

Respondent

Before: The Honourable Mr. Justice D. Halfyard

Reasons for Judgment

Counsel for the Claimant:

B.R. Vining

Counsel for the Respondent:

G.B. Kaine

Place and Date of Hearing:

Nanaimo, B.C.

October 31, November 1 & 2, 2012

Place and Date of Judgment:

Nanaimo, B.C.

November 21, 2012

The Application

[1] In this family law case, the respondent Deborah Lynne Young applies under Family Rule 11-3 for summary trial of her counterclaims. If the application for summary trial is granted, the respondent seeks final judgment against the claimant on the counterclaims she advanced on the hearing of this application.

The Relief Sought in the Counterclaim

[2] The respondent sought the following relief in her counterclaim filed on August 15, 2011:

- a) An order for divorce;
- b) An order requiring the claimant to pay child support for Lynsey Brianne Young, born December 7, 1992, "for so long as she remains a child of the marriage," in the amount required by the Child Support Guidelines; and an order requiring the parties to pay special and extraordinary expenses for Lynsey in accordance with s. 7 of the Child Support Guidelines;
- c) An order requiring the claimant to pay the respondent spousal support under both the Divorce Act and the Family Relations Act;
- d) An order for unequal division of the family assets in the respondent's favour;
- e) A declaration that the tools and equipment used by the respondent in the operation of her home-based business "Window Wonders" are not family assets, pursuant to s. 59(1) of the Family Relations Act;
- f) An order granting the respondent exclusive interim use and possession of the former family home and the contents of the family home;
- g) An order requiring the claimant to pay compensation to the respondent for any family assets that have been disposed of by him; and
- h) Costs against the claimant.

Changes in the Relief sought by the Respondent

- [3] In her notice of application dated May 17, 2012, (and filed on May 18, 2012) the respondent added the following claims for relief:
- a) Retroactive child support for Lynsey;
 - b) Retroactive spousal support for the respondent;
 - c) "An order with respect to the income tax liability in the respondent's name for the taxation years 2007 - 2011 inclusive"; and
 - d) "Relief in quantum meruit for reasonable remuneration for work done and services performed by the respondent."
- [4] In her affidavit sworn September 6, 2012 (para 39), the respondent withdrew her claim for special and extraordinary expenses for Lynsey. During the hearing of the present application, the respondent abandoned her claim for reapportionment and her claim that the tools and equipment used in Window Wonders were not family assets. Nor was any claim advanced in quantum meruit.
- [5] Counsel for the claimant informed the court that he had been taken by surprise by the respondent's abandonment of her claim for reapportionment of the family assets, but he did not seek an adjournment of the application. It was implicit in Mr. Vining's position that he agreed that the court should proceed with a summary trial of the issues.

Should the Issues be Tried by Summary Trial Procedure?

- [6] The amounts involved relating to the matters in dispute are not particularly large. The parties are persons of modest means, and are anxious to avoid the additional expense of a conventional trial. Counsel did not allege that there were no conflicts in the evidence, but they seemed to agree that any significant points of conflict could either be resolved by the court or would not prevent the court from finding enough facts to enable it to decide the issues of fact and law.
- [7] After hearing the cases advanced by each party, I accept the submissions of counsel on this point. I conclude that I will be able to find the facts necessary to decide the issues of fact and law relating to the disputed issues in the case, and that it would not be unjust to try the issues summarily.

Preliminary Findings of Fact

- [8] The parties were married on August 16, 1986, in Manitoba. They met each other in Nanaimo in or about 1984. The claimant had graduated from high school in Victoria in 1977. The respondent graduated from high school in Manitoba in 1982, and moved to Nanaimo in 1983. The claimant moved to Nanaimo in 1984.

- [9] The claimant is now 52 and the respondent is 48. They have two children, Sydney Jean Elizabeth Young, born June 18, 1991, and Lynsey Brianne Young, born December 7, 1992. Sydney is now 21 years of age and living independently. Lynsey is 19 (she will be 20 on December 7, 2012). She lives with the respondent in Nanaimo and is presently attending studies at Vancouver Island University in the second year of a Bachelor of Arts program. She had graduated from high school in June 2010.
- [10] At the time of the marriage, the parties were living in Nanaimo and the claimant was working as a licensed practical nurse or long-term care attendant at Arrowsmith Lodge in Parksville. The respondent had been working with her Aunt Marilyn Metruk, who was in the business of sewing drapes, but had taken some time off due to a neck injury sustained in a car accident. She resumed working with her aunt at about the beginning of 1987.
- [11] From September 1988, to May 1989, the claimant attended Malaspina College and became qualified as a Registered Nurse. During the time he attended college he continued to work for Arrowsmith Lodge on a part-time basis. During that time, the respondent worked as a receptionist for B.C. Bearing.
- [12] In the summer of 1989, the claimant obtained employment in Dawson Creek as a registered nurse and the parties moved to Dawson Creek. The respondent was also employed while they lived in Dawson Creek. The parties returned to Nanaimo in late 1989, and the claimant obtained work at the Nanaimo Regional General Hospital. The respondent obtained work at the NHL restaurant in Nanaimo.
- [13] After graduating from high school in 1982, the respondent had taken a course and earned a certificate in architectural drafting. She did not pursue a career in that field. But in September 1990, she began studies in the Applied Science program at Malaspina College. By May 1991, she had completed and passed five courses in this program. She had also worked part time with Canada Post, sorting mail.
- [14] Sydney was born in June 1991. In September 1991, the respondent returned to Malaspina College but was only able to take one course in the Applied Science program. The respondent became pregnant with Lynsey, who was born on December 7, 1992. She did not continue with her studies in the Applied Science program.
- [15] In May 1993, the parties purchased a home at 5214 Kaitlyn's Way in Nanaimo for \$157,000.00. The claimant's father gave \$40,000.00 either to the claimant alone or to the parties jointly (this is in dispute). It is agreed that about \$27,000.00 of that money was used to make the down payment on the property.
- [16] In about 1993, the respondent began working in the family home in the business of sewing children's clothing. It appears that she also continued to work part time for her Aunt in the drapery sewing business. In 1996, the respondent purchased her Aunt's business and equipment for \$10,000.00. She has continued working in the business of sewing drapes in the family home up to the present time. Her business is called "Window Wonders."

- [17] In June 2003, the parties purchased a condominium in Nanaimo, for \$85,000.00. They rented the condominium to the respondent's mother.
- [18] In 2007, the parties refinanced the family home property to enable them to make substantial renovations to the home, which included the construction of a shop for the respondent's business. The total cost of the renovations was about \$70,000.00.
- [19] The claimant continued working as a Registered Nurse, on a full-time basis, in the Nanaimo area.
- [20] The parties separated in November 2010, and the claimant moved out of the family home by the end of that month. The respondent has continued to live in the family home, since that time. Lynsey completed the first year of a Bachelor of Arts degree at Vancouver Island University in Nanaimo, in May 2011. She took a year off school, returned to the former family home in late March 2012, and is presently taking the second year of her university program.
- [21] The parties sold their condominium on April 29, 2011 for \$189,900.00. There is a dispute about the amount of the net proceeds that is to be divided between the parties. By agreement, the claimant received all of the sale proceeds that remained after payment of a number of family debts as an advance payment on his share of the family assets. The respondent says that one credit card debt paid by the claimant was not a family debt.
- [22] After separation the claimant continued to pay the mortgage on the family home (approximately \$1,367.00 per month) from December 2010 until May 2011. Since that time, he has not made any direct financial contribution to the support of the respondent or Lynsey.
- [23] The claimant commenced this action on July 25, 2011. The respondent's response and counterclaim were filed August 15, 2011.
- [24] On August 11, 2011, on application of the claimant, the court declared pursuant to s. 57 of the Family Relations Act that there was no reasonable possibility of reconciliation between the parties, and further ordered that the parties be restrained from dealing with the family assets, except by consent of the parties or order of the court. A judicial case conference was held on October 28, 2011.
- [25] On May 18, 2012, the respondent filed this application. On July 5, 2012, on the application of the claimant, the court made the following orders:
- a) The respondent's application for summary trial and final judgment was adjourned generally.
 - b) The claimant was granted leave to present the expert evidence of an actuary, without the joint involvement of the respondent.

- c) The claimant was granted leave to amend his notice of family claim, so as to plead reapportionment of his pension in his favour, in the event that the family home was reapportioned in favour of the respondent.
- [26] Both parties have entered into new relationships. The claimant is living and working in Victoria as a registered nurse, and since January 1, 2012 he has been living with his new partner. The respondent has commenced a relationship with a man who lives and works in Vancouver and whom she had previously known as a friend for a number of years. She continues to live in the family home with Lynsey, and visits with her boyfriend on weekends. She continues to work in her home-based business.

The Claim for Divorce

- [27] Both parties claimed a divorce in their pleadings. The evidence of the respondent (paras. 66 to 71 of her affidavit sworn May 17, 2012), if accepted, establishes entitlement to a divorce on the grounds of the length of their separation. Except for the date of separation (the claimant says that the date of separation was November 20, 2010, not November 7, 2010 as asserted by the respondent), the claimant agrees with the respondent's evidence in support of the divorce. (See para 63 of the claimant's affidavit sworn June 29, 2012). Accordingly, I grant the respondent an order for divorce, which will take effect on the 31st day after the date of this order.

The Issues

- [28] The issues concerning the disputed claims are the following:
- a) Should the claimant be required to pay retroactive child support for Lynsey, further into the past than September 1, 2012, and if so, when should such payments commence?
 - b) Should the claimant be required to pay the Guideline amount of child support for Lynsey, or some lesser amount?
 - c) In order to achieve equal division of the family assets (with the former family home and the respondent's business being distributed to the respondent by agreement), what amount of money must the respondent pay to the claimant?
 - d) Should the claimant be required to pay future spousal support to the respondent, and if so, in what amount and for how long?
 - e) Should the claimant be required to pay retroactive spousal support to the respondent, and if so, when should such payments commence?

Should the Claimant be required to pay Retroactive Child Support for Lynsey?

The Position of the Respondent

- [29] The respondent begins by pointing out that the claimant has not paid child support for Lynsey since the parties separated in November 2010 when Lynsey had not yet turned 18. She alleges that the claimant's income for support purposes is \$75,000.00, and that her income for support purposes is \$36,465.00. The Guidelines require a child support payment of \$701.00 per month for one non-adult child, where the payor parent has an income of \$75,000.00. Lynsey turned 19 on December 7, 2011. Notwithstanding s. 3(2)(b) of the Child Support Guidelines, the respondent submits that the claimant should be required to pay child support for Lynsey in the full amount required by the Guidelines for a non-adult child, commencing in April, 2012. She also claims one month's child support for a period in September and October 2011, when Lynsey returned to live at home.
- [30] The respondent acknowledges that the claimant made the monthly mortgage payments on the family home (about \$1,367.00 per month) for the five months from December 2010 to April 2011. The respondent's half share of those family debt payments was almost \$700.00 per month. She is not claiming retro-active child support for Lynsey for those five months because she is content to accept the claimant's payment of her share of the mortgage payments, in lieu of child support.
- [31] Lynsey graduated in June, 2011. She decided to take a year off from her education, and to go on a youth mission to Indonesia. The respondent does not claim retro-active child support for Lynsey for the four months from May to August 2011. That period included the time when Lynsey was in Vancouver taking a training program with "Youth with a Mission", in preparation for the mission to Indonesia. Lynsey returned to live with her mother in September for about a month until sometime in October 2011, and then left home to join the group which was going on the mission to Indonesia. Lynsey was still 18 when living with her mother for that month, and the respondent claims retro-active child support for that month. There is no claim for child support for the period from October 2011 until late March 2012, because Lynsey was out of the family home and engaged with the mission to Indonesia. Lynsey paid her own expenses relating to the Indonesian mission, which were about \$8,000.00. She had some savings from part-time work, and her parents had given her \$6,600.00 in July 2010 from the RESP they had set up for their children's education. Lynsey resumed living with her mother in late March 2012. It seems implicit in the evidence that the claimant and Lynsey continue to have a normal father-daughter relationship.
- [32] In addition to the one month in the fall of 2011, the respondent is claiming retroactive child support, at the full Guideline amount, for the period from April 2012 up to the time of trial.

The Position of the Claimant

- [33] The claimant accepts that he should pay child support for Lynsey from September 1, 2012 onward, since she is attending a full-time course of studies at Vancouver Island University. But the claimant takes the position that Lynsey was not a "child of the marriage" during the

entire period from May 2011 through August 2012. He says the evidence shows that Lynsey had regular employment at a call centre in Nanaimo from April 2012 (after returning from the Indonesian mission in March 2012) through August 2012. And he notes that Lynsey has been working part-time since starting university, and will continue to work throughout the school year. He submits the amount of child support should be far less than the Guideline amount. As I understand the claimant's position, he also alleges that Lynsey will cease to be a child of the marriage during the four months each spring and summer, when she is not attending university. He accepts that she will be a child of the marriage, during the time that she is attending a full-time course of studies at the university.

- [34] The claimant complains that the respondent has not provided disclosure of Lynsey's income from employment for the past two years and has not disclosed whether she has applied for or expects to receive financial assistance by way of student loans.

Reply of the Respondent

- [35] In her affidavit sworn September 6, 2012, the respondent deposes that Lynsey only worked for one month at the call centre job, due to the stress of the work (para 34) and that she was off work until August 13, 2012, when she started a part-time job of 20 hours a week at the Source, at a pay rate of \$10.25 per hour (para 35). In her affidavit sworn October 31, 2012, the respondent deposes that on October 26, 2012, Lynsey lost her 20 hour per week position with the Source, and that although she continued to work there, she has no regularly scheduled hours of work. No objection was taken to the admissibility of this evidence. I infer that the claimant accepts that Lynsey has given this information to her mother, and that it is true. But, he argues that Lynsey should be able to work 20 hours per week during the school year.

The Law

- [36] In *Neufeld v. Neufeld* 2005 B.C.C.A. 7 at paras 16 to 20, the Court of Appeal discussed the issue of whether an adult child pursuing post-secondary education remained a "child of the marriage" within the definition in s.2(1) of the Divorce Act. The court stated that an adult child who was under his or her parents' charge and was unable, by reason of the pursuit of post-secondary education leading to a career, to withdraw from that charge, would qualify as a "child of the marriage." At paras 19 and 20, the Court of Appeal adopted the factors first formulated by Master Joyce in *Farden v. Farden*. Those factors are:
- a) Whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
 - b) Whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - c) The career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;

- d) The ability of the child to contribute to his or her own support through part-time employment;
- e) The age of the child;
- f) The child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
- g) What plans the parents made for the education of their children particularly where those plans were made during cohabitation;
- h) At least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

Discussion

- [37] In the present case, the claimant submits that factors (b) and (d) militate against the conclusion that Lynsey was a child of the marriage during the disputed periods in question. He correctly points out that the burden of proof is on the respondent. He refers to and relies on the absence of evidence concerning student loans that might be available to Lynsey and to the absence of evidence of her income and savings. Counsel referred me to a number of cases in which the Farden factors were considered and applied.
- [38] The respondent does not claim child support for Lynsey for the period from May 2011 to March 2012 (except for one month in the fall of 2011). I take this to be a concession that Lynsey ceased to be a "child of the marriage" for the unclaimed months. That does not bar her present claim, because a child's status can change back and forth. For example, see *Pot v. Pot* 2008 BCSC 1619 (H. Holmes J.) at paras 45 and 81.
- [39] The claimant accepts that he should pay child support for Lynsey, but only during the months that she is attending a full-time course of studies at Vancouver Island University. I do not accept this submission. The fact that a student may earn enough in the three or four months summer break to be substantially self-supporting for those months does not, in my view, mean that he or she is able to withdraw from his or her parents' financial charge.
- [40] After returning to her mother's home in March 2012, Lynsey was able to contribute to her own support through employment. But she was not steadily employed up to the time when she returned to university in September 2012. There is merit to the claimant's complaint of non-disclosure of Lynsey's income for the period from April 2012 to date. But I find the inference inescapable that her earnings must have been modest. Also, while Lynsey's savings were not specifically disclosed, I infer that the \$6,600.00 given to her by her parents in July 2010 likely formed the larger part of her savings. I infer that Lynsey can pay the cost of her tuition fees (about \$3,600.00 per year) and books (about \$900.00 per year).

- [41] The evidence does not reveal whether Lynsey ever applied for a student loan or, if she did, whether or not she was eligible for such a loan (and if so, in what amount). That is a deficiency, but in the circumstances of this case, it is my opinion that it goes mainly to the amount of support that should be paid rather than to entitlement to support. The law does not permit a parent to insist that his or her child must finance the bulk of a university education by taking out student loans which will have to be paid off later. This is particularly so, when the complaining parent has the capacity to support the child. See *Neufeld v. Neufeld* at paras 23 - 25.
- [42] On the facts of this case, I find that Lynsey was a child of the marriage during the one-month period in September and October 2011, when she returned to live with her mother, before leaving on the Indonesian mission. She was still 18 years of age, and she was not working at that time.
- [43] I also find that, since April 2012, Lynsey has been unable to withdraw from her parents' charge by reason of her pursuit of a university education, and thus remained (or resumed being) a child of the marriage notwithstanding that she had reached the age of majority. In my view, six of the eight factors reaffirmed in *Neufeld v. Neufeld* weigh in favour of this conclusion, and outweigh the factors relied on by the claimant, by a considerable margin.

When should the payment of retroactive child support begin?

- [44] The respondent did not give notice of a specific intention to seek retroactive child support until she filed her notice of application on May 18, 2012. She did claim child support in her counterclaim, but (understandably) did not make an interim application. It has not been asserted that there has been blameworthy conduct on the part of the claimant. As stated in *DBS v. SRG* [2006] 2 SCR 231 at para. 5:

an award should generally be retroactive to the date when the recipient parent gave the payor parent effective notice of his/her intention to seek an increase in support payments

See also paras 118 and 120 - 121.

- [45] In this case, I find that the date when "effective notice" was given was May 18, 2012, when the present application was filed. The evidence does not reveal that an earlier demand was made by the respondent, or that a period of time was spent on negotiations which failed. I would not award support for the one month claimed in the fall of 2011, or for the period from late March 2012, until the present application was filed. The award will be retroactive to May 18, 2012.

What should be the amount of the retroactive award of child support?

- [46] Having regard to Lynsey's ability to contribute to her own support, through an unknown amount of savings, the RESP balance of \$3,177.00 and part-time employment, I am satisfied that the usual guideline approach is inappropriate. On a consideration of the factors in s. 3(2) (b) of the Guidelines, including the evidence that Lynsey intends to pay the cost of her tuition fees and books, it is my opinion that \$450.00 per month would be a fit amount.
- [47] I order that the claimant shall pay to the respondent child support for Lynsey in the amount of \$450.00 per month. He will be required to pay \$225.00 for May 2012, and from June 1, 2012, onward, he must pay \$450.00 per month up to the date that this order is made. As of the date of trial (in November 2012), the "arrears" of child support would be 6.5 months x \$450.00 = \$2,925.00. That amount will be paid at the rate of \$200.00 per month commencing on December 1, 2012, unless the parties agree on a different method of payment, such as the set-off proposed by the respondent.

What should be the amount of ongoing child support for Lynsey?

- [48] The claimant conceded that Lynsey is a child of the marriage while attending university on a full-time basis, and that she is entitled to an award of child support on an ongoing basis while attending university. The order that I will be making will not be confined to the months when Lynsey is actually attending university. She will be working during the months that she is out of school, and no doubt will be able to contribute more to her own support during those months than while attending university. However, I do not consider this to be a proper basis for concluding that she does not remain a child of the marriage during those months. That will, of course, change when she completes her Bachelor of Arts degree.
- [49] In my opinion, the amount of \$450.00 per month is an appropriate award for future child support for Lynsey. Accordingly, I order that the claimant shall pay the respondent the sum of \$450.00 per month in child support for Lynsey, commencing on December 1, 2012, and continuing on the first day of each month thereafter, for so long as Lynsey remains a child of the marriage.

Identification, Division and Valuation of the Family Assets

- [50] It is now agreed that the family assets should be divided equally between the parties. But each party claims that certain adjustments must be made in his or her favour, to ensure that the division is in fact equal. The parties have also agreed that the respondent will have the right to purchase the claimant's interest in the former family home, by paying him one-half of the value equity they now have in the property (less any deductions in her favour). By agreement, the respondent will retain her business, but an adjustment for one-half of its value must be made in the claimant's favour.
- [51] There is no dispute between the parties as to what the assets consist of. It is also agreed that the valuation date for all assets should be the date of trial.

- [52] The parties informed the court that they had agreed as to how the contents of the former family home would be distributed between them. It is therefore unnecessary for the court to identify or put a value on the house contents. Counsel will draft the order to reflect the agreement.
- [53] The parties were in agreement that the claimant's CPP credits and the respondent's CPP credits would be divided between them in accordance with the rules set out in the Canada Pension Plan Act. I was told there was no need for a court order to be made in this respect.
- [54] The parties have also agreed that neither of them have any equity in the motor vehicles which each of them owned at the time of the triggering event on August 11, 2011. As a consequence, their vehicles need not be included in the list of family assets.
- [55] The net proceeds from the sale of the condominium on April 29, 2011, were of course a family asset. The condominium was sold on April 29, 2011, for \$189,900.00. After payment of real estate commission, property taxes and strata corporation costs adjustments, the sum of \$178,001.07 remained. From that amount, the mortgage debt of \$83,576.65 and the account of \$595.00 for the cost of conveyancing were paid, leaving a balance of \$93,829.42. That was the amount payable to the parties as the net sale proceeds.
- [56] The parties agreed that the claimant would receive all of the net sale proceeds on condition that he would pay a number of family debts. From the \$93,829.42, the claimant made 11 payments which totaled \$49,111.50. When that amount is deducted from \$93,829.42, the remainder is \$44,717.92.
- [57] The respondent agrees that all of the debts paid by the claimant were family debts, and should be shared equally between the parties, except for the MBNA MasterCard debt of \$3,427.03. She disputes that this was a family debt. The claimant deposes that this was the balance of that credit card debt at the time the parties separated and that the debt is a family debt. His evidence is contained in para. 68 of his affidavit sworn June 29, 2012, (and Exhibit I of that affidavit), and para. 18 of his affidavit sworn October 23, 2012. The respondent's affidavit evidence on this issue is contained in para. 19 of her affidavit sworn September 6, 2012, where she seems to acknowledge the validity of about \$1,600.00 of the payments made on the \$3,427.03 credit card debt, and then deposes that she does not know what the balance of the charges were for. In further support of her case on this issue, the respondent has filed the affidavit of Violet White sworn October 25, 2012 which states (at para. 12) that \$808.00 of that credit card debt was incurred on November 30, 2010 (which was after the date of separation claimed by the claimant himself).
- [58] On the evidence presented, I find that the sum of $\$3,427.03 - \$808.00 = \$2,619.03$, was a family debt for which the parties are equally liable. That means that \$808.00 should be added to the \$44,717.92 that the claimant ended up with, which makes \$45,525.92. As a consequence, the claimant owes the respondent 50% of that amount, which is \$22,762.96, as her equal share of the net sale proceeds.

The Equity in the Former Family Home

- [59] There is a dispute about the value of the equity in the family home that should be used as the value of that family asset. It is undisputed that the present value of the family home is \$330,000.00. It is also agreed that the present mortgage debt is \$183,877.00. When that amount is deducted from \$330,000.00, the balance is \$146,123.00. An equal division would mean that the claimant would receive \$73,061.50 for his interest.
- [60] However, the respondent alleges that she paid down the mortgage by \$8,122.00, by making all of the mortgage payments from mid-May 2011, up to the present time. She says that the mortgage debt should be assessed at \$192,000.00 instead of the present actual value of the debt (\$183,877.00). If the respondent's case is accepted, the value of the equity in the family home would be only \$138,000.00, and she would only have to pay the claimant \$69,000.00 for his interest.
- [61] In further support of her position, the respondent points to the evidence which shows that she may incur capital gains tax of up to \$4,100.00, if she sells the property in the future. That potential tax liability stems from the improper claim that the house renovation in 2007 was a capital expenditure for the respondent's business.
- [62] The claimant does not dispute that the respondent reduced the mortgage debt by \$8,122.00. But he points out that he paid the full monthly mortgage payments (of about \$1,367.00 per month) for the five months from December 2010, through April 2011, and that the respondent has had the exclusive use and occupation of the family home for two years since November 2010. On the other hand, the claimant has had to pay rent for other accommodation for two years. He further argues that the monthly mortgage payments are roughly equivalent to the rent that would have to be paid for a house comparable to the former family home.
- [63] Finally, the claimant points out that his father put up the \$27,000.00 required for the down payment on the property, and that without that money, they could not have bought the house in the first place. There is a dispute as to whether the claimant's father gave a gift of \$40,000.00 (the source of the down payment) to the claimant alone, or to the parties jointly. I cannot resolve this conflict, but I do not consider the answer to be significant, since the house was purchased in 1993.
- [64] The claimant also deposed that during the five months that he made the monthly mortgage payments after separation, he also paid certain utilities expenses for the home. The respondent denies this. In view of that direct conflict, I do not find that the claimant paid any of the utilities bills for the house, after separation.
- [65] The claimant submits that, in these circumstances, any claim that he might have for notional "occupation rent," and any credit the respondent might seek for reducing the mortgage debt since he stopped making those payments, should simply cancel each other out.

- [66] I place no weight on the potential income tax liability for the respondent. I find that the potential tax liability is only a remote possibility. The claimant deposed (by inadmissible hearsay) that the respondent and her boyfriend were looking for a house to buy. The respondent denied this directly, but also replied to the claimant's evidence by equally inadmissible hearsay. I disregard the hearsay evidence. I find that the respondent does not intend to sell.
- [67] In all of the circumstances, particularly the fact that the respondent has had the exclusive use and occupation of the family home for two years while the claimant has had to pay rent for other accommodation, I agree with the claimant's position. The mortgage debt of \$183,877.00 should be deducted from the appraised value of \$330,000.00, which makes the net equity in the former family home \$146,123.00.

The Value of the Respondent's Business, Window Wonders

- [68] The claimant alleges that the value of the respondent's business should be set at \$15,000.00. The respondent alleges in her final submissions, that her business has a value of only \$3,330.00. The respondent relies on the evidence relating to the value of her business which is contained in para. 52 of her affidavit sworn May 17, 2012, and paras 21 to 24 of her affidavit sworn September 6, 2012.
- [69] Counsel for the claimant has identified fatal weaknesses in the letter from Bill Murray, which is relied on by the respondent to support the valuation of \$3,300.00. That letter is Exhibit B to the respondent's affidavit sworn September 6, 2012. In my opinion, this evidence is inadmissible.
- [70] The claimant further points out that the respondent has given contradictory evidence as to the value of her business. There is merit to this argument.
- [71] The claimant relies on the respondent's sworn evidence to the effect that the value of the business was \$15,000.00. In her financial statement sworn July 26, 2011, (at page 9) the respondent deposed that the "approximate value of equipment, fixtures and supplies" of Window Wonders was \$15,000.00. On her examination for discovery on December 13, 2011, the respondent testified that the value of her business was "about \$15,000.00 . . . based on the equipment and supplies that I own." (See Exhibit M of the claimant's affidavit sworn June 29, 2012). Then, in her financial statement sworn May 17, 2012, (at page 8) the respondent deposed that the "approximate value of equipment, fixtures and supplies" of Window Wonders was \$5,000.00. Then, as mentioned, in her affidavit sworn September 6, 2012, (at paras 21 - 24) the respondent gives evidence to the effect that her business equipment may only have a value of about \$3,300.00.

- [72] The respondent does not give any explanation for the inconsistent statements that she has made under oath about the value of her business. On the whole of the evidence relating to this issue, I reject the respondent's evidence to the effect that the value of the business is about \$5,000.00. Although the respondent now claims, by necessary implication, that her two earlier sworn statements valuing her business at \$15,000.00 were false, I accept that evidence and I find that the value of the respondent's business is \$15,000.00.
- [73] The claimant's pension through his employment is a family asset. The claimant began making contributions to this pension plan on December 1, 1989. The parties have agreed that the respondent's interest in the pension will be based on the period of time from the date of the marriage until the date of the s. 57 declaration on August 11, 2011. They have agreed that the pension will be divided pursuant to the provisions of Part 6 of the Family Relations Act. There will be an order to that effect, to be drafted by counsel.
- [74] The Canada Pension Plan credits accumulated by each of the parties are family assets. Each party claims an interest in the CPP credits of the other, based on the provisions of the Canada Pension Plan Act. They say that no order of the court is required for the division of their respective CPP credits.
- [75] Each of the parties owned a motor vehicle at the time of the triggering event. However, they agree that neither of them has any equity in the vehicles they presently own (or lease), so that there are no values to be divided. There is one exception. In or about the spring of 2011 (before the triggering event), the claimant sold a 2004 Chevrolet Optra to Lynsey for \$2,750.00. The claimant has given somewhat unsatisfactory evidence about having had to pay off a debt of \$500.00 to \$600.00 on the Optra, after selling it to Lynsey. Based on that evidence he submits that the car should be valued at \$2,200.00 and that the amount he owes to the respondent as an adjustment should be set at \$1,100.00. I find the value of the vehicle to have been \$2,750.00, and that an adjustment must be made in the respondent's favour in the amount of \$1,375.00.
- [76] The husband agrees that the income tax refund he received for 2010 (which he received in 2011) in the amount of \$3,720.00 was a family asset. He agrees that an adjustment of one-half this amount, \$1,860.00, should be made in favour of the respondent.
- [77] Neither party alleges that there is any bank account or RRSP to be divided between them as a family asset.
- [78] I find that the family assets (both those which were previously disposed of and those which remained in existence at the time of the trial) and their values (where known) at the time of the trial are the following:

Family Asset

Value at Date of Trial

Family home (equity)

\$146,123.00

Contents of family home

Unknown, but the contents are to be divided between the parties in accordance with their agreement

Window Wonders

\$15,000.00

Respondent's pension through employment

To be divided in accordance with Part 6 of the Family Relations Act, by agreement

Claimant's CPP Benefits

To be divided in accordance with the Canada Pension Plan Act by agreement

Respondent's CPP Benefits

To be divided in accordance with the Canada Pension Plan Act by agreement

Net proceeds from sale of condominium

\$45,525.92

Proceeds from claimant's sale of Chevrolet Optra in 2011

\$2,750.00

Income Tax refund to claimant for 2010

\$3,720.00

Total Value

\$213,118.92

[79] Subject to any adjustments that need to be made in respect of family debts, an equal division of the family assets would result in a share of \$106,559.46 to each party.

Adjustments for Family Debts

[80] The respondent will be solely responsible for the \$6,250.00 debt she incurred by withdrawing that amount from the Line of Credit on November 14, 2011. The present balance of that debt is now approximately \$5,920.00. But the requirement that she must pay this debt does not enter into the adjustments that I will be making for family debts that have already been paid. Counsel said that they had agreed as to how this non-family debt would be adjusted between them, but they did not elaborate further.

- [81] The respondent incurred a debt for income tax for the year 2010, in the amount of \$6,150.00. The claimant agreed that this was a family debt and that he should be responsible for half of it. Accordingly, there will be an adjustment in favour of the respondent in the amount of \$3,075.00.
- [82] The claimant submits that there should be an adjustment in his favour of \$886.00, on the ground that he paid more than his fair share of the capital gains tax that was payable on the sale of the condominium. The respondent disputes that any adjustment should be made. The claimant's evidence on this issue is contained in paras 21 to 24 of his affidavit sworn October 23, 2012, and in Exhibits C and D to that affidavit.
- [83] I accept the opinion expressed in the letter of Michael Hughes, Chartered Accountant, dated October 17, 2012, (Exhibit D). There will be an adjustment of \$886.00 in favour of the claimant.
- [84] The net adjustment in favour of the respondent in respect of the payment of family debts is $\$3,075.00 - \$886.00 = \$2,189.00$. Her share of the family assets will be increased by that amount, and the claimant's share will be reduced by the same amount. That means that she is entitled to receive \$108,748.46 in value, and the claimant will receive \$104,370.46 of these family assets.

Distribution of the Family Assets

- [85] The family assets with known values will be (or already have been) distributed as follows:

Family Asset

Value at Date of trial

To Claimant

To Respondent

Former family home

\$146,123.00

0

\$146,123.00

Window Wonders

15,000.00

0

15,000.00

Proceeds from sale of Condominium

45,525.92

\$45,525.92

0

Income tax refund to claimant 2010

3,720.00

3,720.00

0

Proceeds from claimant's sale of 2004 Optra

2,750.00

2,750.00

0

TOTALS

\$213,118.92

\$51,995.92

\$161,123.00

Equalization payment

[86] There will be \$161,123.00 worth of family assets distributed to the respondent. But, as calculated above, she is only entitled to receive \$108,748.46. That means that she will have to make an equalization payment to the claimant in the amount of $\$161,123.00 - \$108,748.46 = \$52,374.54$.

[87] Upon receiving payment of \$52,374.54 from the respondent, the claimant must transfer his interest in the former family home to the respondent. The respondent will have 60 days from this date, to make this payment. The usual rules of conveyancing will apply. The respondent will have leave to apply for a 30-day extension, in the event she encounters difficulties in re-financing the property.

[88] The respondent will have sole ownership of her proprietorship and exclusive ownership and possession of all assets of that business.

Spousal Support

The Positions of the Parties

- [89] The respondent claims entitlement to spousal support, both past and prospective. She seeks a retroactive award from May 2011 to the time of trial and future spousal support for an indefinite period thereafter. She says the monthly amount of the award should be \$687.00, based on the application of the Spousal Support Advisory Guidelines to an income of \$75,000.00 for the claimant and an income of \$36,465.00 for the respondent. The respondent claims entitlement on both the compensatory ground and the ground of need. She implies that she gave up the pursuit of a career in engineering, as a result of her role in the marriage.
- [90] The claimant denies that the respondent is entitled to spousal support. He admits that his income for support purposes is about \$75,000.00 per year. But he alleges that the respondent's income is far greater than the \$36,465.00 she claims. In effect, he claims the respondent earns or should be imputed to earn, almost the same amount of money that he earns. In addition to asserting that the respondent cannot show entitlement on the basis of need, the claimant alleges that the respondent has failed to establish entitlement on compensatory grounds. He denies that the respondent sacrificed any career opportunity for his benefit, as a consequence of her child-rearing responsibilities. The claimant says that she chose the career she wanted. He further denies that the respondent has suffered greater economic disadvantage than he has, as a result of the marriage or the breakdown of the marriage.

The Issue of Entitlement

- [91] The respondent did not press the claim based on the compensatory ground with much force. I am not persuaded that the evidence presented proves that the respondent is entitled to spousal support on the compensatory ground. She has not shown that she sacrificed any serious career plans, to her detriment and for the benefit of the claimant. I infer from the evidence that she could have resumed her engineering studies (with her husband's approval and support) when Lynsey reached school age (or even sooner), if she still wanted to pursue such a career. It might be a reasonable inference that the respondent did more child-raising and housekeeping work than did the claimant. But the respondent did not attempt to advance this as a reason to support her claim on the compensatory ground.
- [92] The respondent has developed significant skills as a seamstress and has operated her own business with considerable success for at least 16 years. In my opinion, if the respondent is to be entitled to spousal support, it must be on the ground of need. Her case is that she earns only a modest income and that the claimant earns twice as much money as she does. If that fact is established, then entitlement will be made out. Consequently, the first and main issue is the determination of the respondent's income.

At what amount should the Respondent's Income be set?

- [93] Both parties agree that their line 150 incomes reported in their 2011 tax returns should be reduced by \$22,702.05, being the amount of taxable capital gains that each party had to report as a result of the sale of the condominium. That was a one-time event.
- [94] The respondent relies on the general rule in s. 16 of the Federal Child Support Guidelines that a spouse's annual income should be determined by accepting the income reported in her most recent tax return at line 150. She has established that her true line 150 income for 2011 (\$36,465.00) was accepted by Canada Revenue Agency as being her taxable income (after deducting the capital gains tax payable). She acknowledges that she receives some personal benefit from some of the expenses that she is allowed to deduct from the gross profits from her business for income tax purposes. But she submits (and this is not disputed) that all of the expenses deducted are lawful under the income tax rules. The respondent seemed to advance the position that any savings that she may make by paying a reduced amount of income tax either was not a significant amount, or if significant, should nevertheless not be added to her income for spousal support purposes.
- [95] On her 2011 income tax return, the respondent reported gross business income of \$67,764.64 and net business income of \$36,465.41. In the statement of business activities (contained in the respondent's financial statement sworn May 17, 2012, at pages 20 to 23 of the exhibits), the respondent reported the cost to purchase materials as being \$11,047.88. That reduced her gross business income to the "gross profit" of \$56,716.76. The claimant takes no issue with that deduction.
- [96] In her 2011 statement of business activities, the respondent also deducted \$13,382.38 in business expenses, which reduced her gross profits to a net income of \$43,334.38. The claimant challenges \$9,496.43 of the business expenses deducted, as follows:

House insurance

\$327.00

Mortgage interest

660.00

Telephone and utilities

1,067.01

Motor vehicle expenses

Fuel

1,503.60

Repairs and maintenance

581.82

Insurance

1,358.48

Lease payments

3,998.52

Total Motor Vehicle Expenses

7,442.42

Total of challenged deductions:

\$9,496.43

[97] The claimant submits that those four expenses totaling \$9,496.43 were incurred entirely for the personal benefit of the respondent. He says that she would have had to incur and pay those expenses as part of her ongoing daily living expenses, regardless of whether or not she conducted her business out of her home. It is argued that notwithstanding that the Canada Revenue Agency permits these expenses to be lawfully deducted from gross profits for income tax purposes; the money spent to cover these expenses is money that is available for the respondent's own support. He relies on s.19 (1) (g) and s.19 (2) of the Guidelines.

[98] The respondent did not present any evidence to describe the extent to which she uses her motor vehicle for business purposes. I find that \$5,000.00 of the motor vehicle expenses should be attributed to the respondent's individual use.

[99] It seems to me that the expenses for house insurance and mortgage interest would be payable by the respondent in any event. I would attribute these expenses, which total \$987.00, to personal expenses of the respondent.

[100] The expense item of \$1,067.01 for "telephone and utilities" seems modest to me. Without much to go on, other than common sense, I find that \$300.00 of that expense goes to individual use.

[101] In the result, I find that the following amounts should be added to the respondent's income for spousal support purposes:

House insurance

\$327.00

Mortgage interest

\$660.00

Telephone and utilities

\$300.00

Motor vehicle expenses

\$5,000.00

Total

\$6,287.00

[102] When the amount of \$6,287.00 is added to the line 150 income of the respondent (\$36,465.00), her income is increased to \$42,752.00.

[103] On her 2011 income tax return, the respondent was also allowed to deduct the sum of \$6,869.11 as a "business-use-of-home" expense, which reduced her taxable income by that further amount. The statement of business activities shows that the respondent incurred expenses of \$19,626.04 for the following items:

- a) Heat and electricity
- b) Insurance
- c) Maintenance
- d) Mortgage interest
- e) Property taxes
- f) User rates
- g) Internet

Total

\$2,144.65

\$1,566.00

\$824.09

\$9,951.76

\$2,621.37

\$672.12

\$1,846.05

\$19,626.04

[104] The respondent was allowed to write off 35% of these expenses, which amounted to \$6,869.00, as a further reduction of her taxable income. The claimant submits that the whole of this amount should also be imputed as income to the respondent, for support purposes. I do not accept this submission. To my mind, it seems reasonable to attribute 35% of the described expenses to the respondent's business. Obviously, if the respondent

had to rent other premises to operate her business, the amounts of several of the expenses would be considerably higher than the amounts allowed as deductions. I would not allocate any of these expenses as being for the personal benefit of the respondent.

- [105] The claimant submitted that a further \$6,000.00 income should be imputed to the respondent, on the ground that she could easily rent a room out to a university student for \$500.00 per month. He points out that there is plenty of room in the house to accommodate a boarder and that the respondent's failure to do so indicates that she is not reasonably utilizing her property to generate income. Counsel relied on s. 19(1)(e) of the Federal Child Support Guidelines in making this argument. Counsel for the respondent argued that the respondent had not failed to reasonably utilize the former family home to generate income. But the applicability of this statutory principle was not challenged.
- [106] I agree with the claimant's submission on this point. It is of course the respondent's choice as to whether or not she wants to rent out a room of her house to a stranger. But when her claim for spousal support depends on establishing need for support, I think her capacity to earn additional income in this way should be taken into account. I conclude that a further \$6,000.00 should be added to the respondent's income, which means that her income for spousal support purposes should be set at \$48,752.00.
- [107] The claimant made a submission to the effect that the respondent was intentionally under-employed. I reject that submission, and I find it unnecessary to review the evidence given by the parties relating to this issue.
- [108] Nor do I accept the somewhat confusing submission made by the claimant to the effect that additional income should be imputed to the respondent because she pays income tax at a lower rate than he does. That is inevitably the case when one party earns a higher income than the other. Unless one party was exempted by law from the payment of income tax where it would otherwise be payable on the amount of income earned, I do not see how the two different rates of income tax payable by the parties could have much significance.
- [109] In this case, the claimant argues that the respondent is not required to pay income tax on a portion of the money that will now be considered part of her income. He contends that the difference between the income tax payable on her line 150 income and the amount of income tax that would be payable on her income as imputed by the court for spousal support purposes, should be added to further increase her imputed income. I do not agree. This submission might have more persuasive effect if the income in question had not been reported to the tax authorities.
- [110] The claimant suggested in his evidence and in final argument that the respondent could be receiving some cash payments which she did not report as income, relying on his assertion that she had done this on several occasions before the separation. The respondent denies this allegation. It is not clear whether she is denying ever having failed to report any cash payment as income, or whether she is only denying that she has never done so since the separation. Regardless of which is the case, the claimant has not presented any evidence

which could support his allegation and I reject it.

Is the Respondent entitled to Spousal Support?

[111] In *Yemchuk v. Yemchuk* 2005 BCCA 406, the Court of Appeal (through Prowse J.A.) stated at para. 20 as follows:

[20] . . . Clearly both s. 15.2(4) and (6) [of the Divorce Act] have to be considered in determining whether an order of [spousal] support should be made, and if so, the quantum and duration of that support.

[112] Those subsections of s. 15.2 of the Divorce Act state the following:

(4) Factors - In making an order under subsection (1) . . . the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- a) The length of time the spouses cohabited;
- b) The functions performed by each spouse during cohabitation; and
- c) Any order, agreement or arrangement relating to support of either spouse.

. . .

(6) Objectives of spousal support order - An order made under subsection (1) . . . that provides for the support of a spouse should

- a) recognize any economic advantages to the spouses arising from the marriage or its breakdown;
- b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[113] In this case, the parties cohabited for more than 24 years before separating. The claimant was employed on a full-time basis throughout the marriage. The respondent was employed either full time or part time up until she commenced a university program in September 1990. After completing the first year of that program, the parties' first daughter was born in June 1991. The respondent started the second year of her university program (taking only one course) in September 1991, but was unable to continue. Lynsey was born on December 7, 1992. I infer that the respondent was mainly occupied with child raising and household management from June 1991, until 1993, when she began working part-time at home, in the business of making children's clothing. She did not earn much from that endeavour. She

had also been working part-time with her aunt in her aunt's drape-making business. In 1996, the respondent purchased her aunt's business. Since that time, she has been self-employed on a regular basis in the family home, operating her own business. The evidence does not clearly support the inference that the respondent's work in child-raising and housekeeping was substantially greater than the claimant's share in that work.

- [114] It appears that the parties used their respective incomes, to support the family. They also invested in the purchase of a rental property in June 2003.
- [115] There has not been any order, agreement or arrangement relating to the support of the respondent.
- [116] The objectives set out in s. 15.2(6)(b) and (c) have no application in this case.
- [117] In her financial statement sworn May 17, 2012, the respondent claims annual expenses of \$56,800.00. Almost all of these expenses are fairly modest, but I find the monthly expense of \$250.00 for house repairs and maintenance and the \$125.00 per month for household furnishings and equipment to be excessive. The expense claim for \$120.00 per month for gifts would be excessive in my view, were it not for the fact that the respondent does not claim any amount for entertainment/recreation. Her reasonable expenses would appear to be about \$52,000.00 per year. She seems to be living slightly beyond her means. I infer that, as a result of the breakdown of the marriage, the respondent has suffered some economic disadvantage from the loss of her husband's contributions to the support of the family.
- [118] In his financial statement sworn June 29, 2012, the claimant reports his annual expenses to be \$70,848.00. I consider the expense of \$150.00 per month for household supplies and \$100.00 per month for household furnishings and equipment to be excessive. His claim for \$200.00 per month as a vacation expense is unnecessary in the present context. The expense of \$200.00 per month for gifts is excessive, in my view, considering that he has also claimed \$200.00 per month for entertainment/recreation. In my opinion, his reasonable annual expenses should not exceed \$65,000.00. They should probably not exceed \$60,000.00, having regard to the monthly debt payments totalling \$641.00. That seems excessive to me, considering that he received all of the net proceeds from the sale of the condominium.
- [119] In my opinion, each of the parties has demonstrated that they are substantially self sufficient, the claimant much more so than the respondent. The evidence does not show that the respondent has suffered a significant reduction in her standard of living (or that the claimant has maintained or increased his former standard of living) as a result of the marriage breakdown. But I have found that there is a significant disparity in the incomes of the parties, in that the claimant's income is more than \$26,000.00 a year higher than the respondent's income. While the respondent may be economically self sufficient to a substantial extent, that does not necessarily negative her claim for spousal support on the basis of need. I infer from the disparity of incomes that the respondent's standard of living has diminished to some extent, although not drastically, as a result of the breakdown of the

marriage. Simply because the respondent should be able to meet her monthly living expenses with the income available to her does not mean that she has failed to establish need for spousal support. See paras 48-50 of *Yemchuk v. Yemchuk*.

[120] I conclude that, although both parties may have suffered some economic disadvantage arising from the marriage breakdown, the economic disadvantage to the respondent has been the greater. In my opinion, on consideration of all of the relevant factors, the respondent has proved entitlement to spousal support.

Should there be a Retroactive Award of Spousal Support?

[121] The respondent seeks spousal support retroactive to May 2011. Generally speaking, the rules governing the issue of whether a retroactive award of spousal support should be ordered, are the same as the rules for determining when an order for retroactive child support should be made. There are of course some differences. See *Kerr v. Baranow* [2011] 1 S.C.R. 269 at para. 207.

[122] The factors to be considered in deciding whether a retroactive award of spousal support should be made, are:

- a) the needs of the recipient;
- b) the conduct of the payor;
- c) the reason for the delay in seeking support; and
- d) any hardship the retroactive award may cause to the payor.

[123] Where a spouse claims retroactive spousal support, the failure to give timely notice and the failure to give a reasonable explanation for not making an interim application will carry more weight than they would have where the application is for retroactive child support. See *Kerr v. Baranow* at para. 208.

[124] The parties separated in November 2010. After the claimant filed his notice of family claim on July 25, 2011, the respondent counterclaimed for spousal support (on August 15, 2011), but did not plead that support should be retroactive to May 2011. I find that the date when she gave effective notice that she would claim support for a period of time before the date of her counterclaim was when she filed her notice of application on May 18, 2012. The respondent did not make any application for interim spousal support, after filing her counterclaim. Even before the claimant commenced his action on July 25, 2011, the respondent agreed that he could keep all of the net proceeds from the sale of their condominium property. This conduct invites the inference that the respondent was not in need as of May 2011. I am unable to discern the respondent's explanation for not making an interim application, after filing her counterclaim, other than an implicit hope that the parties would negotiate a settlement of all claims. In my opinion, she has not given a reasonable explanation for the delay. Finally, there has been no blameworthy conduct shown on the part of the claimant.

[125] On application of the relevant legal principles to the facts of this case, I find that the respondent has established her claim for a retroactive award. But it is my opinion that the claimant should not be required to pay spousal support for any period of time before June 1, 2012.

What Monthly Amounts for Past and Future Spousal Support should be Ordered?

[126] On my reading of the Spousal Support Advisory Guidelines, they indicate that the monthly amount of spousal support payable by a spouse with an income of \$75,000.00 to a spouse with an income of \$48,752.00 (using the "with child support" formula), should fall within the following ranges:

Low: \$ 0

Mid: \$238.00

High: \$526.00

[127] The respondent submits that the mid-range suggested by the Guidelines should be applied. The claimant says that, if spousal support is to be paid, it should be an amount in the low range. Neither counsel articulated any specific reasons for their suggested placement of the award within the SSAG ranges. It is not suggested that the duration of the future award should be other than for an indefinite period. In final argument, the respondent conceded that a lump sum payment of spousal support would not be appropriate.

[128] The respondent has a history of earning a higher net income than the net income that she presently claims. The respondent has given evidence to the effect that the number of her clients has increased but that the amount of work requested by her clients has decreased. Even if that is so, there is no evidence which suggests that this situation will continue for the foreseeable future. There could just as easily be improvement in the future. Adding that circumstance to the other circumstances existing here, I consider that spousal support should be set in an amount that is at or near the middle of the range.

[129] I order that the claimant shall pay the respondent spousal support in the amount of \$240.00 per month commencing on June 1, 2012, and continuing on the first day of each month thereafter. The duration of the support payments will be indefinite.

[130] The amount of spousal support payable for the six-month period from June through November 2012, is $6 \times \$240.00 = \$1,440.00$. If the parties so agree, this part of the award may be paid in full by setting that amount off against the amount that the respondent will have to pay the claimant to purchase his interest in the former family home. If they do not agree to that method of payment, then the claimant will be required to pay the "arrears" at the rate of \$200.00 per month, commencing on December 1, 2012.

Summary of Orders Made

- [131] The parties shall be divorced from each other, effective 31 days from this date.
- [132] It is declared that Lynsey Brianne Young has been a "child of the marriage" since April 1, 2012. (She will continue to be a child of the marriage until she obtains her Bachelor of Arts degree from Vancouver Island University, provided that she attends a full program of courses at the university in successive years, until April or May 2015.)
- [133] The claimant shall pay to the respondent child support for Lynsey in the amount of \$450.00 per month commencing on May 18, 2012, and continuing on the first day of each month thereafter, for so long as Lynsey remains a child of the marriage. The retroactive amount owing at the time of trial is \$2,925. The claimant will pay that amount at the rate of \$200 per month commencing on December 1, 2012, unless the parties agree to payment by way of set-off.
- [134] The family assets shall be divided equally between the parties.
- [135] The family assets and their values (where known) at the time of trial are as set out in paragraph 78 herein.
- [136] The family assets with known values will be distributed to the parties in accordance with paragraph 85.
- [137] In order to equalize the distribution of the family assets being made in paragraph 85, and to account for the adjustments made in paragraphs 81 to 84, the respondent shall pay the sum of \$52,374.54 to the claimant.
- [138] The respondent shall have exclusive ownership and possession of the proprietorship "Window Wonders" and all of the assets of the proprietorship.
- [139] The respondent shall have the right to purchase the claimant's interest in the equity of the former matrimonial home by payment to him of the sum of \$52,374.54.
- [140] The respondent shall have 60 days within which to make the said payment to the claimant, with liberty to apply for an extension of time of up to 30 days in the event of difficulties in refinancing the property. Upon the respondent properly tendering payment of the said amount, the claimant shall execute and deliver all documents necessary to effect the transfer his interest in the property to the respondent.
- [141] The employment pension of the claimant shall be divided between the parties in accordance with the applicable provisions of Part 6 of the Family Relations Act. The relevant time period for valuation of the respondent's interest shall be the time from the date of the marriage (August 16, 1986) to the date of the triggering event (August 11, 2011).

- [142] The family assets consisting of the contents of the former matrimonial home shall be divided between the parties in accordance with the agreement that they have reached on this issue, and the essential terms of this agreement will be incorporated in this order. When the agreed division and distribution of these items has been completed, each party shall have exclusive ownership of the items in their respective possessions.
- [143] The claimant shall pay to the respondent spousal support in the amount of \$240.00 per month commencing on June 1, 2012, and continuing on the first day of each month thereafter.
- [144] The amount of retroactive spousal support owing for the six-month period from June 1, 2012, to November 1, 2012, (\$1,440.00) shall be paid by the claimant making additional payments to the respondent of \$200.00 per month commencing on December 1, 2012, unless the parties agree on a different method of payment of the said amount.
- [145] If the parties are unable to agree as to how any term of the final order should be worded or implemented, there will be liberty to apply for directions.

Costs

- [146] Costs have not been spoken to. If the parties cannot settle this issue, a date may be arranged to argue the matter by contacting the trial scheduling manager's office.

"Mr. Justice D.A. Halfyard"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/12/17/2012BCSC1727.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/young-v-young-2012>

Prepared on 26 October 2026 · Esheria