IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ford v. Ford,*
2016 BCSC 2152

Date: 20161121
Docket: E35582
Registry: New Westminster

Between:

Douglas William Ford

Claimant

And

Courtney Lynn Ford

Respondent

Before: The Honourable Madam Justice MacNaughton

Reasons for Judgment

Counsel for the Claimant:	T. MacDonald
Counsel for the Respondent:	S. Ahuja
Place and Date of Trial/Hearing:	New Westminster, B.C. November 2 and 3, 2016
Place and Date of Judgment:	New Westminster, B.C. November 21, 2016

Table of Contents

The History of the Parties' relationship

[1] These parties commenced cohabitation in 2001. The respondent was then 20 years old and the claimant was 24. They married on August 30, 2003 and separated in June 2009. An order for divorce was granted by Justice Crawford on April 3, 2012, to take effect 31 days thereafter.

[2] The parties have two sons, E.F., born on July 14, 2005 and T.F., born on March 3, 2008 (the "Boys").

[3] The parties' post-separation relationship is highly acrimonious. Twelve judges and masters of this court have made fourteen substantive orders to date. The police, two parenting co-ordinators, and other professionals have all attempted to assist the parties and their Boys.

[4] There is no doubt that the continuing acrimony is affecting the Boys. E.F., who is only 11, recently considered suicide. After being urged to do so by Robert Finlay, their current parenting coordinator ("PC"), the parties have agreed to counselling for the Boys.

The Applications

[5] The parties have brought cross applications. The claimant seeks the following relief and orders:

a. a review of the spousal support payable by him pursuant to Master Keighley's Order of August 19, 2011 and a termination of spousal support effective December 1, 2014;
b. that the respondent be imputed an income of $45,800.00 commencing January 1, 2014 for the purpose of determining spousal support, if any, child support, and the proportionate sharing of s. 7 expenses and including fees owed to the PCs;
c. that the respondent pay the claimant:
    i. $1,890.52 representing one-half of her 2012 income tax refund, as agreed to by the parties in a mediated settlement;
    ii. $618.80 representing 28% of the daycare costs incurred by him; and

iii. $411.08 being the overpayment made by the claimant to the Family Maintenance Enforcement Program.

d. that the respondent pay child support to the claimant in the sum of $695.00 per month for February and March 2015 based on an imputed income of $45,800, or such other income determined by the court;

e. that the respondent pay one-half, or her proportionate share, of the Boys' counselling costs incurred to date totalling $2,488.25 and ongoing.

f. that the respondent pay one-half, or her proportionate share, of the costs already incurred by the Claimant for the Boys' extracurricular activities totalling $1,903.00 and the ongoing costs for the Boys' hockey and football expenses pursuant to section 7 of the *Child Support Guidelines*;

g. that the respondent pay one half of the fees, disbursements and other charges of the PCs, being:

i. $8,000 .00 paid by the claimant to Sandra Jennings;

ii. $873.58 outstanding to Sandra Jennings; and

iii. $10,000.00 paid by the claimant to Robert Finlay.

h. that the respondent pay the PC, Robert Finlay and the child therapist, Susan Stapleton, 50% of the ongoing fees, disbursements and other charges;

i. that the respondent pay the claimant, forthwith, costs as follows:

i. $350 pursuant to the order of the Mr. Justice Butler made November 6, 2014; and

ii. An amount to be determined pursuant to the order of the Mr. Justice Josephson made November 27, 2015,

or that these costs be set off against any monies owed by the claimant to the respondent;

j. that the claimant make his support payments through the Family Maintenance Enforcement Program;

k. that the respondent sign a letter to ICBC, transferring to her insurance the accidents she incurred on the claimant's insurance:

i. Claim N979655 Date of Loss December 17, 2009;

ii. Claim N983144 Date of Loss June 17, 2010; and

iii. Claim N790825 Date of Loss October 15, 2009.

l. that the respondent sign a joint letter to the Canadian Revenue Agency ("CRA") setting out the spousal support she received from the claimant for:

i. 2011 in the amount of $1,440;

ii. 2012 in the amount of $4,320;

iii. 2013 in the amount of $4,320; and

iv. 2014in the amount of $4,320.

[6] In her application, the respondent seeks the following relief and orders:

a. Pursuant to s. 15.2 of the *Divorce Act (Canada)* and Division 4 ss. 160, 161 and 162 of the *Family Law Act,* and the *Spousal Support Advisory Guidelines*, the claimant pay her interim spousal support and maintenance retroactive to January 1, 2014, and continuing on the first day of each month thereafter based on the income determined by this Court to attributable to him;

b. the claimant pay child support and maintenance retroactive to January 1, 2014, and continuing on the first day of each month thereafter based on the income determined by this Court attributable to him;

c. the claimant provide post-dated cheques for his interim child and spousal support and maintenance for each six-months in advance;

d. an order specifying the parties' proportionate share of s. 7 expenses for the Boys, including, but not limited to daycare.

[7] The parties do not seek a change to their joint custody and guardianship of the Boys or a change to the current parenting arrangements. Both seek their costs of this application.

The Procedural History and the Earlier Orders

[8] In their materials, the parties disagree about why the court was required to intervene to make the number of orders which I outline below. The claimant blames the respondent's unreasonableness and says that his efforts to resolve issues without involving the court were not reciprocated by the respondent. The respondent says that the claimant used his greater financial means to bring repeated court applications, which had the effect of running up her legal costs when he knew she was unable to pay them. The overall tone of both parties' affidavits has one party blaming the other for their current crisis and showing little insight as to how their own behaviour, and in the case of the claimant, the behaviour of his new partner, has made cooperative resolution of many of these issues impossible.

[9] After the parties separated in 2009, the respondent remained with the boys in the family home at 6488 184A Street, Surrey. The claimant continued to pay the expenses related to the home. He anticipated doing so only until the home could be sold. On December 8, 2010, 18 months after separation, the claimant obtained an order from Master Keighley that the family home be listed for sale forthwith with a jointly appointed realtor, and the parties having joint conduct of sale. Master Keighley also ordered that the respondent not remove the Boys from the lower mainland without prior written consent or a court order.

[10] The claimant says that the respondent did not want to sell the home and obstructed a sale. The respondent says that, without child or spousal support, she was unable to afford alternate accommodation.

[11] After Master Keighley's order, the house was listed for sale. The claimant blames the respondent for the fact that the house did not sell. He says that she unreasonably refused to accept offers. By March 2011, the claimant says that the he fell behind in the mortgage payments and the bank commenced foreclosure proceedings. He says he discovered that the respondent had not paid the house insurance and he paid it. At this point, the claimant was not paying either child or spousal support.

[12] Things came to a head in the summer of 2011, as the respondent was unable to support herself and the Boys on her income, and the claimant was finding it difficult to maintain the house expenses and to pay rent and living expenses for himself. After the claimant applied for sole conduct of sale of the family home and primary residence of the boys, the parties were able to resolve their issues and spoke to a consent order before Master Keighley on August 19, 2011 (the "August 2011 Order").

[13] In her submissions, counsel for the claimant said that the August 2011 Order was a final order as it dealt with all of the outstanding issues, except the claim for divorce.

[14] The text of the Order does not refer to it being a final order and the clerk's notes refer to some of the orders as being interim. Further, one of the terms of the Order was later revisited by Justice Crawford, and the subsequent order does not indicate that it was varying or implementing the terms of a final order. Because both counsel wished me to consider their applications as variation applications, I agreed to proceed on that basis.

The Terms of the August 2011 Order

[15] Briefly, the August 2011 Order provided, as it related to the Boys, that:

a) the parties were joint custodians and guardians of the Boys;

b) the Boys' primary residence would be with the respondent;

c) the respondent was obliged to advise the claimant of significant matters affecting the Boys;

d) the respondent was obliged to discuss with the claimant significant decisions with respect to the Boys and the parties were to try and reach agreement failing which the respondent could make the final decision with the claimant having the right to seek a review;

e) both parties were entitled to obtain information about the Boys directly from third parties;

f) the claimant had weekly parenting time from Tuesday at 6:00 p.m. to Friday at 9:00 a.m. The parties were to equally share all holidays, school breaks, and special events. They could agree to any other parenting times;

g) the respondent would not remove the Boys from the lower mainland; and

h) either party was permitted to travel with the Boys within British Columbia without the need for written consent so long as they knew where the Boys were to be and had a contact number at which to reach them.

[16] As it related to child and spousal support and daycare expenses, Master Keighley's order provided that:

> a) based on guideline incomes of $62,200 for the claimant, and $24,400 for the respondent, the claimant was to pay child support of $940 a month in two equal instalments on the 1st and 15th of each month commencing September 1, 2011;
>
> b) the claimant was to pay spousal support of $360 a month in two equal installments on the 1st and the 15th of each month commencing September 1, 2011 and continuing each month thereafter subject to the review provisions of the order;
>
> c) forthwith, the Claimant was to pay a lower amount for child and spousal support for August 2011;
>
> d) the parties acknowledged that each had an obligation to become economically self-sufficient within a reasonable period and that there were no arrears of child or spousal support as of August 18, 2011;
>
> e) the parties were to proportionately share the cost of the Boys' daycare at Jellybean Park in Langley with the claimant's share being 72% and the respondent's 28%;
>
> f) commencing 2012, the parties were to exchange their most recent income tax returns and notices of assessment by May 31 each year; and
>
> g) commencing 2012, the parties were to review spousal and child support with any change to the amount payable, and adjustment to the proportionate share of daycare costs to take effect on July 1. Either party could apply to the court for a review of spousal and/or child support.

[17] As it related to family property and debt, Master Keighley's order provided that:

> a) the following were family assets: the family home estimated to have a current value $440,000; the claimant's pension from Sobey's Inc.; and the respondent's vehicle, with an approximate value of $10,000;
>
> b) the following debts were family debts: the RBC mortgages totaling approximately $310,000; the outstanding property taxes and utilities; the RBC line of credit of approximately $14,600; the Citi Card in the approximate sum of $4,500; and the Home Depot debt of approximately $1,787;
>
> c) the net proceeds of sale of the family home, after payment of the usual deductions, would be divided with the claimant receiving 35% and the respondent 65%;
>
> d) the claimant was to be solely responsible for the Citi Card and the Home Depot debt;
>
> e) the respondent was to have sole possession of her vehicle; and

f) the claimant's pension was to be divided pursuant to the *Family Relations Act*, R.S.B.C. 1996, c. 128, with entitlement between August 30, 2003 and December 8, 2010.

[18] Each party was to bear their own costs.

The Subsequent Orders

[19] In August 2011, the family home was being actively marketed by the parties, but the foreclosure proceedings continued.

[20] Despite the August 2011 Order, in 2012, the relationship between the parties was deteriorating. That deterioration appears to coincide with the claimant beginning to reside with a female roommate. She is now his spouse. Sometime in July 2011, the respondent was charged with uttering threats. Under resulting bail conditions, she was ordered not to have contact with the claimant's spouse and was restricted from being within a certain distance of the residence in which the Claimant resides with his new spouse.

[21] The parties were unable to agree on parenting time for spring break and Easter of 2012, and the claimant applied for an order. On March 15, 2012, Justice Bernard ordered parenting time for the claimant during spring break and Easter.

[22] On April 3, 2013, Justice Crawford granted the parties a divorce and certain other relief (the "Divorce Order"). He made orders with respect to the conduct of sale of the family home, and that the boys would attend Jellybean daycare until September 2012, when the parties were to agree on a child care provider. If they were unable to agree, the parties could apply or jointly retain a PC to make a binding decision on a child care provider, with liberty to either party to apply if they disagreed with the PC's decision.

[23] Justice Crawford also ordered proportionate sharing of the daycare costs in accordance with the August 2011 Order. The claimant was to pay the total daycare costs and to deduct the respondent's proportionate share from the monthly child support. He declared that there were no arrears of child support as of December 31, 2011 after reducing child support for the respondent's share of daycare costs. He

also dealt with setting off the parties' child care provider costs between January and March 2012 and ordered the claimant to pay the resulting child support arrears. The parties were directed to meet within three weeks to make a calendar for sharing the 2012 summer holidays and, in August 2012, to set a holiday calendar for the following year. Finally, Justice Crawford ordered the respondent to pay the claimant's costs, set off against the child support arrears.

[24] The parties were unable to agree on a summer parenting schedule and the claimant applied for an order. On August 10, 2012, Justice Truscott made an order setting out the summer parenting schedule. The Boys were to be picked up in Vernon by the claimant that day, and the respondent was to pick the Boys up in Vancouver on August 24, 2012. The Boys were permitted to communicate by phone with the other parent while in the care of the other parent.

[25] On the first day of school in September 2012, the claimant learned that E.F. had not attended school in Surrey and that neither boy had attended at the daycare.

[26] The claimant applied for a without notice order that the respondent provide him with her address and that he have primary residence of the Boys. On September 4, 2012, Justice Crawford ordered the respondent to provide her residential address, the name and address of the school in which she had enrolled E.F., and of the daycare in which she had enrolled both Boys.

[27] On September 6, 2012, Justice Verhoeven ordered the Boys to be returned to the lower mainland forthwith. The claimant was to pick up the Boys in Vernon from the respondent's parents' home. He also ordered that E.F. was to continue attending Hillcrest Elementary in Surrey, and that both boys were to continue to attend Jellybean daycare. The claimant's application for a police assist clause and that the respondent be found in contempt were adjourned, as was the respondent's application for the Boys to be "de-enrolled" in certain activities. The respondent was ordered to pay $1,000 in costs within six months. As the respondent was not returning to the lower mainland, Justice Verhoeven ordered parenting time for the

respondent in both Vernon and in Vancouver. Finally, Justice Verhoeven terminated the claimant's obligation to pay child support.

[28] The respondent returned to the lower mainland at the end of September 2012 and sought to have the Boys resume their primary residence with her. The claimant sought to negotiate a shared parenting arrangement. Despite her bail restrictions, the respondent rented a home close to the claimant's home. The respondent says that she rented the home from Vernon without knowing of its proximity to the claimant's home. On October 11, 2012, the respondent entered into a one-year peace bond requiring that she have no contact with the claimant's spouse, and that she not attend within a 100-meter radius of the claimant's spouse's residence or workplace. Based on a security camera recording, the claimant reported the respondent's breach of her peace bond to her probation officer, and the respondent was convicted on August 22, 2013 and sentenced to six months probation.

[29] The parties were unable to agree on a parenting schedule and, on November 2, 2012, Justice Ballance dealt with the claimant's application for a shared parenting schedule and the respondent's application to move with the boys to Vernon.

[30] Justice Ballance varied the parenting time in Justice Verhoeven's September 6, 2012 Order such that the parties were to share parenting of the Boys on a 2-2-3 schedule, which had the boys with the claimant from 8:30 a.m. Monday until 8:30 a.m. Wednesday and with the respondent from 8:30 a.m. Wednesday until 8:30 a.m. Friday. The parties alternated weekends with the claimant's first weekend to commence on November 2, 2012. On the one Tuesday evening on which the claimant travelled to Victoria for business, the Boys were to be returned to the respondent at 7:00 p.m. Tuesday evening instead of Wednesday morning. Justice Ballance also ordered that, by November 23, 2012, the parties were to reach an agreement for a new daycare arrangement to commence January 1, 2013 and parenting time for the Christmas school break in 2012, failing which either party could set an application before her. The balance of the relief was adjourned generally.

[31] The claimant says that the commencement date of the alternating weekend parenting schedule was set to coincide with the weekends during which the claimant's new spouse had parenting time with her son.

[32] The parties were unable to agree on a parenting schedule for the 2012 Christmas break and appeared before Justice Ballance on November 2, 2012. She set the parenting schedule, allowed for telephone communication with the Boys while in the other parent's care, ordered text communication about where the Boys were to be, and ordered the parties to attend a further judicial case conference ("JCC") in an attempt to have the parties resolve their continuing issues.

[33] No resolution was reached at the JCC on January 23, 2013.

[34] On an unspecified date in 2013, the parties agreed to retain Robert Finlay, as a mediator, to try and resolve some of their issues. On what appears to be August 30, 2013, the parties entered into a number of verbal agreements. They signed an appendix setting out the agreed-upon terms but agreed that it was not binding until incorporated into a consent order. Although a consent order was never entered, during submissions, both counsel agreed that the verbal agreement reached in August 2013 was binding on their clients. I will refer to this as the August 2013 Agreement.

The August 2013 Agreement

[35] Pursuant to the August 2013 Agreement, the parties incorporated and varied some of the terms of both the August 2011 Order and the Divorce Order which they agreed set out their existing parenting plan. In summary, the parties agreed:

a) to vary the term of the August 2011 Order which gave the respondent final decision-making authority if the parties were unable to agree on major decisions. They agreed to make all reasonable efforts to resolve such decisions and to attend mediation prior to filing any court applications;

b) that the August 2011 Order had been varied as of September 1, 2012 such that the parties shared equal parenting time based on a 2-2-3

schedule and that that schedule would remain in place unless otherwise agreed to by the parties;

c) that, pursuant to the Divorce Order, they had settled the summer parenting schedule with equal parenting time for July and August 2013 and with the regular 2-2-3 schedule to resume when the boys were back in school;

d) that they had reviewed child and spousal support pursuant to the terms of the August 2011 Order by exchanging their 2012 tax returns. They agreed on their respective incomes for the calculation of child support in 2012 at $74,441 for the respondent and $28,841 for the claimant. A set off child support calculation resulted in the claimant being required to pay the respondent $667 a month, by way of direct deposit, beginning on June 1, 2013, and on the first of each moth thereafter. The proportionate sharing of s. 7 expenses was 72% by the claimant and 28% by the respondent unless otherwise agreed;

e) that the respondent would continue to pay spousal support of $360 a month in two equal installments in accordance with the August 2011 Order but that it would be reviewed on or before July 2014;

f) to resolve the past and current childcare costs for the Boys, a s. 7 special expense. After calculation of the various adjustments, the net amount owing by the claimant was $2,794;

g) the claimant owed $1750 in court costs which were to be set off against the s. 7 expense amount reducing the claimant's liability to $1,044. Thereafter, neither party would make any future claim for past care costs or Court costs;

h) they would share the same before and after school care provider and proportionally share in the cost based on the proportions set out in term d above unless otherwise agreed to by the parties; and

i) that, prior to filing their income tax returns, they would consult each other with respect to claiming the boys as dependents for tax purposes in 2012 and subsequent years and to share equally any tax refund resulting from claiming the Boys as dependents in 2012.

[36] After Mr. Finlay's involvement, there was a relative period of calm as it related to court orders. The parties returned to Mr. Finlay on May 23, 2014 and were able to agree to a process for exchanging the Boys' equipment and clothing by leaving them by the garage door of their respective homes. They also agreed that the respondent would take the lead with school projects until the end of that school year and that in the fall, the parties would alternate managing school projects. Finally, the parties agreed to a summer holiday schedule and an exchange of itineraries for out of town travel. The parties would return to the regular schedule in September with the claimant purchasing school supplies and taking the Boys to school on the first day. Thereafter they would annually alternate buying supplies and taking the Boys to school.

[37] In October 2014, the claimant says the respondent refused to return to their earlier parenting schedule which had the Boys with the claimant on the same weekends as when his spouse's son was with them. At about the same time, the respondent advised that she was no longer willing to continue mediating with Mr. Finlay.

[38] The claimant applied for a court order enforcing the alternating weekend schedule which had been implemented after Justice Ballance's November 2, 2012 order.

[39] On November 6, 2014, Justice Butler ordered that Justice Ballance's alternating weekend schedule was to continue such that the boys would be with the claimant for the weekend commencing November 14, 2014, and every second weekend thereafter, and that the alternating weekends were not to be varied without written consent. He also ordered that the Boys would be with the claimant for the additional weekend of November 7, 2014. He directed that the parties attend

mediation with Mr. Finlay, or another agreed upon mediator, to address the outstanding issues between them and that the respondent was to pay fixed costs in the sum of $350.

[40] The parties could not agree to return to mediation with Mr. Finlay but met with a Family Justice Counsellor. The mediation was unsuccessful, and each party blames the other for the lack of success.

The Appointment of the First PC

[41] At some point, the respondent applied to have a PC appointed and, on February 26, 2015, Justice Arnold-Bailey made an order appointing Sandra Jennings as the PC for a minimum of a year. She also decided parenting time for spring break in 2015 and gave the claimant parenting time from February 27 to March 1, 2015 to allow for E.F's hockey playoff schedule with the respondent to have makeup time on dates to be agreed.

[42] Justice Arnold-Bailey's order included all of the usual terms for the appointment of a PC and provided that the fees, disbursements and other charges were to be shared equally subject to the PC's authority to reapportion the costs between the parties. Both parties were to provide the PC with any information she requested and to sign authorizations to permit the PC to receive information from third parties.

[43] A further application was necessary to ensure that the respondent comply with the terms of Justice Arnold-Bailey's order. The respondent says that she was unable to afford the shared costs of the PC and that the respondent misled Justice Arnold-Bailey by indicating that he was not in arrears of support at the time he sought the order. The respondent says that the claimant had, by this time, ceased paying her spousal support despite there being no variation of the August 11 Order or the August 2013 Agreement.

[44] On April 17, 2015, Justice Ball ordered the respondent to sign the PC agreement appointing Sandra Jennings and to make an appointment that day to

meet with Ms. Jennings within the following 7 days, subject only to Ms. Jennings' unavailability. On consent, Justice Ball ordered the claimant to pay Ms. Jennings' initial $4,000 retainer with the final apportionment of the costs to be determined by her. The balance of the relief sought by the claimant was deferred to be addressed by the PC.

[45] The claimant says that the respondent resisted Ms. Jennings' involvement. The parties signed a Parenting Coordination Agreement on May 12, 2015. On May 15, Ms. Jennings summarized the agreements the parties had reached on May 12 including:

a) the parties were to communicate with each other by email regarding issues concerning the boys and Ms. Jennings was to receive a copy;

b) the Boys were free to phone either parent when in the other parent's care and the Boys were permitted to communicate with the respondent by BBM messenger prior to their 8:30 p.m. bedtime;

c) the claimant was to take T.F. to doctor to rule out whether he was lactose intolerant and to report the doctor's diagnosis and recommendations to the respondent. The claimant was to consult with the respondent before taking any further steps;

d) future medical concerns regarding the Boys were to communicated by email to the other party as they arose and, with the exception of emergencies, in a timely way;

e) neither party was permitted to remove the Boys from school without providing the other with 48 hours' notice, and the other party's consent was not to be unreasonably withheld;

f) by May 29, 2015, the parties were to exchange sworn F8 financial statements, complete with attachments, including tax returns, notices of assessment for 2012-1014, and their three most recent pay stubs; and

g) the parties were to exchange summer holiday parenting time proposals and to respond to the other's proposal.

[46] On June 30, 2015, Ms. Jennings issued a determination with respect to the delivery of financial statements. She determined that both parties had substantially complied with their agreement, but that there had been confusion about the mechanism for the exchange. She was critical of both parties for not providing all of the required attachments but focused most of her criticism on the respondent. Ms. Jennings ordered that, by June 16, 2015, all of the missing financial information would be delivered to her office and that each party could pick it up after 4:00 p.m. on that day.

[47] The claimant sent the respondent a settlement proposal on June 22, 2015 which proposed that the respondent be imputed an income of $44,470 based on grossing up her part-time wages to the equivalent of full-time. Despite there being no agreement, on June 1, 2015, the claimant unilaterally began paying set-off monthly child support of $646.43 based on his 2014 income and the grossed up income he had calculated for the respondent.

[48] In December 2015, the claimant sent another proposal to settle all outstanding issues and offered to pay child support based on his 2014 income and the respondent's actual 2014 income. That set off calculation required him to pay monthly child support of $913. His counsel followed up in April 2016 and, even though he had had no response from the respondent, the claimant began paying child support at $913 a month.

[49] In January 2016, the parties had a disagreement with respect to the Boys' school backpacks. The parties have had earlier disputes about the exchange of hockey equipment for the Boys. Ms. Jennings assisted them in arranging for the exchange of hockey equipment using the garages at each home. Despite the arrangement, the claimant accused the respondent of returning the equipment bag without hockey gloves and with a hockey mask which was missing screws. The

claimant says that the respondent's garage was locked on one occasion, preventing the exchange of the equipment.

[50] Ms. Jennings was also required to deal with having the respondent sign passport applications and travel authorizations for the Boys so that the claimant and his spouse could travel with them to Disneyland in August 2015. There was also difficulty in obtaining financial disclosure from the respondent which resulted in a determination by the PC requiring disclosure. The respondent did not provide either her 2013 tax return or her T4 for 2014.

[51] The claimant says that he spent $8,000 for Ms. Jennings' services without contribution from the respondent. The parties filed cross applications. The claimant sought an order requiring the respondent to cooperate with the PC, and the respondent sought an order removing Sandra Jennings as their PC.

[52] The parties appeared before Justice Josephson on November 27, 2015 and, with the intent of getting the PC process back on track, and on consent, he appointed Mr. Finlay as the PC and directed Mr. Finlay to interview the Boys and make recommendations for treatment or counselling. Justice Josephson ordered the parties to contact Mr. Finlay that day, and all consents and the PC agreement were to be signed by December 2. Also on consent, the claimant was ordered to pay Mr. Finlay's initial retainer. The parties were to proportionally share the cost of Mr. Finlay's interviewing the Boys with the claimant to pay 70% and the respondent to pay 30%. The final allocation of the PC's expense was to be determined after determination of the parties' outstanding support issues.

[53] Justice Josephson also dealt with parenting time over the Christmas school break and ordered that, because the respondent had unilaterally made plans for the Boys over the Christmas break, the claimant was entitled to make up time at a time to be determined by the PC.

[54] The parties met with Mr. Finlay on January 14, 2016, and he determined two issues. The first dealt with ongoing conflict with respect to the exchange of hockey

equipment and with E.F's use of his iPod while in the claimant's care. On March 28, 2016, Mr. Finlay recommended that the boys see a child therapist to address their issues arising from their parent's conflict. The boys were referred to Susan Stapleton for that purpose. The claimant and the respondent were advised of their obligation to cooperate with the therapy. The claimant was to arrange for payment.

[55] Also on March 28, 2016, Mr. Finlay implemented guidelines for email communication between the parties. The guidelines limited the length and number of emails to be exchanged before a matter was referred to him.

[56] On May 4, 2016, Mr. Finlay issued a determination regarding summer parenting time between July 29 and August 12, 2016. He referred to the parties' previous inability to reach agreement and the parents' conflicting plans for the summer of 2016 which each had arranged without consultation with the other. Mr. Finlay determined that for 2016, and future summer holidays, the regular parenting schedule would be replaced by a week on/week off schedule unless the parties agreed to a different schedule by no later than February 1 of each year. Summer parenting would commence on the first Friday after the last day of school and would continue to the Friday before the Labour Day weekend with exchanges to occur at noon unless otherwise agreed.

[57] Since then, this year, Mr. Finlay has made the following determinations:

a) May 20 - regarding parenting time over the May long weekend;

b) June 15 - regarding parenting time on Mother's and Father's Day in 2016 and in the future;

c) June 30 - regarding pick-up and drop-off of the Boys on July 1;

d) July 4 - regarding a communication protocol between the parents requiring all communication to go through him first;

e) July 8 - regarding a process for summer exchanges;

f) July 21 - regarding medications, use of iPods and haircuts;

g) August 21 - regarding exchange of hockey equipment; and

h) September 6 – regarding hockey equipment, passports, and co-parent counselling. Each party was assigned a coach and required to pay the resulting fees.

[58] On September 6, 2016, the claimant found a note E.F. had written in which he expressed suicidal thoughts. On September 9, Ms. Stapleton requested that E.F. attend at a Children and Youth Mental Health Clinic to be assessed by a psychiatrist. Mr. Finlay suggested that the parents both accompany E.F. to the appointment which was scheduled for September 14 but, by agreement, the respondent was to take E.F. Although the respondent attended at the clinic, E.F. did not see the psychiatrist as she left after concluding that the wait times were too long.

[59] On September 14, 2016, Mr. Finlay wrote to counsel expressing his concern that the respondent was not acting in good faith in the PC process. Mr. Finlay indicated that unless by Friday of that week, the respondent agreed to engage her co-parenting coach, meet with her coach regularly, and paid their fees, he would withdraw as the PC, and he expected that Ms. Stapleton would also withdraw as E.F's counsellor.

[60] On September 17, 2016, Mr. Finlay wrote to the parties indicating that he had not received confirmation of the respondent's agreement to the co-parenting coaching. He gave the 30-day notice required under the PC agreement for termination of his services.

[61] On October 14, 2016, a consent order was made to enforce the PC determinations including that the parties attend co-parent counselling and pay for their own counsellor. I am advised that this matter has now been resolved and that Mr. Finlay will be continuing as the parties' PC.

[62] There were various attempts to agree to a date for their applications to be heard. This is the first time the parties have appeared in court since Justice Josephson's order.

The Issues

Should the claimant's spousal support obligation terminate as of December 1, 2014?

[63] When the parties consented to the August 2011 Order, they estimated their 2011 incomes. The claimant's income was estimated at $62,200 and the respondents at $24,400. Based on the *Spousal Support Advisory Guidelines* (the "*SSAG*") calculations at the time, the spousal support was ranged from $0 at the low and mid-range to a high of $95.

[64] The claimant says that he accepted that the respondent, who was the primary care parent for the Boys, had a need for spousal support, he agreed to pay her $360 a month in two installments. However, as he expected that the respondent would be able to increase her hours to full-time, reducing her need for spousal support, the parties agreed on an annual spousal support review commencing in July 2012.

[65] The parties did not review spousal support in 2012, and the claimant continued to pay in accordance with the August 2011 Order.

[66] When the parties negotiated the August 2013 Agreement, the claimant agreed to pay spousal support for another year and review it in on July 1, 2014. The claimant says that he made it clear that he expected spousal support to end in 2014. He did not however request a review, as the issue of spousal support was less important than some of the other parenting issues the parties were dealing with in 2014.

[67] Attempts to mediate in 2014 were unsuccessful, and the claimant unilaterally stopped paying spousal support in July 2014. He says in his affidavit that he hoped that this would cause the respondent to provide financial disclosure and enter meaningful discussions about support. The claimant was cross-examined on this

issue and acknowledged that the August 2013 Agreement did not say that spousal support stopped in July 2014 (Q. 157-158). He agreed that he stopped paying spousal support to cause the respondent to have a conversation about ongoing spousal support (Q. 152-156, 162-165). He has not paid spousal support since but, until May 2016 in this application, never applied for a review of the quantum of spousal support or a termination of his obligation.

[68] There is little dispute that an application for review of an earlier spousal support order does not require the applicant to establish a material change in circumstances. This was explained by the Court of Appeal in *Morck v. Morck,* 2013 BCCA 186, at para. 17. The review is a hearing *de novo* and treated as an initial support application under s. 15.2 of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) (the "*DA*") and the *SSAG* may be used for guidance. As Justice Neilson said:

> [17] …This permits the court to adjust support in a manner that takes into account changes that may have been contemplated by the parties at the time the order was made, but were nevertheless uncertain.

[69] Because a review is treated as if it were an initial support application, entitlement, quantum and duration are considered: *Domirti v. Domirti*, 2010 BCCA 472, at paras 39 and 41.

[70] In this case, the initial review was expected to occur a year after the August 2011 Order, and was, as reflected in the terms of the Order, to allow the respondent to increase her work to full-time hours. The parties anticipated that the respondent would have the ability to increase her income. The claimant did not request a review in 2012 and, in the August 2013 Agreement, he agreed to continue spousal support for another year. At that time, the claimant's income was $74,441, and the respondent's was $28,841. A spousal support review was contemplated in July 2014.

[71] I am satisfied, on all of the evidence that the respondent continues to be entitled to compensatory spousal support.

[72] In *Chutter v. Chutter*, 2008 BCCA 507, at paras. 50-53, the Court of Appeal reviewed the purposes of compensatory support orders. In summary:

> a) Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage on the other spouse.
>
> b) The recipient is entitled to compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise.
>
> c) Compensatory support recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in lower earning potential and fewer future prospects of financial success.
>
> d) Compensatory support addresses the economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts.
>
> e) Throughout a marriage, each spouse makes decisions that accommodate the economic and non-economic needs of the other. The decisions include the way in which child care and other family responsibilities will be handled and the way careers will develop. These decisions can have a significant impact upon the income earning ability of each at the time of separation. Yet it is not easy to determine exactly the relationship between these decisions and the consequent benefits and detriments to each spouse. The rough equivalency of standard of living approach has operated as a workable substitute to assess compensatory claims.

[73] In this case, the respondent suffered an economic disadvantage arising from the decisions these parties made with respect to the responsibility for parenting of the Boys and their respective careers. The claimant has worked for Overwaitea for the past fifteen years and now manages one of its Save-on Foods stores. The respondent has always worked in the payroll field and, for the last ten years has worked for Payworks which provides payroll and human resources support to clients.

[74] The parties first began cohabiting in 2001. When they married in 2003, the respondent's income was higher than the claimant's. After their eldest son was born, and a six-month maternity leave, the respondent attempted to return to her previous employment, which then paid her about $45,000, but the parties decided that she should work part-time to accommodate child care and the claimant's career aspirations. The respondent began part-time work with her current employer. After

the birth of T.F., she took another maternity leave and then returned to work part-time. That situation continued until separation.

[75] After separation, and until November 2012, the respondent continued to be the primary care parent as the claimant only had the Boys from Tuesday at 6:00 p.m. until Friday at 9:00 a.m. She initially worked part-time hours but gradually increased them.

[76] The claimant's evidence is that she is currently working full-time hours for her employer. Full-time is between 32-40 hours a week depending on demand in her industry. The respondent also says that she enjoys her work and her current employer permits her a great deal of flexibility as she is able to work from home and to work unconventional hours, so long as she meets all of the job demands.

[77] There is no evidence that the respondent is declining available hours from her current employer. Although the claimant attached a job advertisement which was posted by the respondent's employer in October 2012, referring to full-time work, the respondent says that the job is, in fact, her current job.

[78] The respondent has always worked in the payroll field and, for the last ten years, has worked for her current employer.

[79] The claimant is critical of the respondent for not seeking continuing education opportunities to increase her skills and knowledge in the payroll field or another. This however ignores the fact that the respondent is a single mother in a shared parenting regime and requires flexibility. It also ignores the fact that the claimant has a new partner who is a registered nurse and who is casually employed about two days a week. When he was examined for discoveries on October 25, 2016, on his affidavit, the claimant said that his partner was "on casual because of course we have the children to raise" (Q. 313-317) While it is true that his partner also has a shared-parenting arrangement with her child from a previous relationship, his statement acknowledges the additional responsibility and demands of raising young

children while working. He relies on his current spouse to support him in the parenting and career.

[80] The *SSAG* suggests that the duration of spousal support for a nine-year relationship, involving two children of the Boys' ages, ranged between 4.5 and 16 years. By my calculation, the mid-point is 10 years 3 months.

[81] The claimant suggests that he has paid living expenses and spousal support for a period of 5 years (from 2009-2014). He is wrong in his calculation. He did not begin paying spousal support until the August 2011 Order and, although he paid some living expenses between the date of separation and April 2010, he stopped paying the mortgage and began paying child support to the respondent. He was not then paying spousal support. In his affidavit sworn November 8, 2010, he says he stopped paying living expense in an effort to get the family home listed for sale. The child support was less than the mortgage payments had been.

[82] The claimant has, on at least three other occasions, unilaterally stopped, or reduced his support payments as leverage to obtain the respondent's agreement to his proposals. He did not pay child support in January 2014 as his payment was returned by the Family Maintenance Enforcement Program ("FMEP"). He reduced child support payments in February and March 2014 because he believed the respondent was stealing hockey equipment. He stopped paying child support for the months of April and May 2015 because, as he indicates in Ex. K to his May 19, 2016 affidavit, he was "trying to obtain financial disclosure". He stopped paying spousal support on July 1, 2014 because he wanted the respondent to enter into discussions with him about his ongoing obligations.

[83] These unilateral actions by the claimant have increased the financial pressure on the respondent and have meant that she is unable to rely on a certainty of income. In addition, although the August 2011 Order contemplated that the claimant would make his child and spousal support payments on the 1st and 15th of each month, he acknowledges that his payments are not always made on those dates.

This too means ongoing financial uncertainty for the respondent and the Boys while in her care. When he was asked about this in cross-examination, the claimant said:

> There's no FMEP rules around it. Your client had FMEP cancelled, so there are no rules around it. We pay the month of, …we do struggle to pay on the 1st, but we get it in that month. (Q. 122-123)

[84] Although the parties had agreed that the respondent was to receive 65% of the net proceeds of sale of the family home, because of the foreclosure proceedings, the parties received nothing from the sale of their home. When the August 2011 Order was entered into, the anticipated net proceeds were expected to be about $100,000. The claimant blames the respondent for the fact that the home did not sell earlier but, when the home was inspected by a prospective purchaser, significant mould was discovered and repairs had to be effected before any sale could close. The anticipated proceeds would have assisted the respondent in becoming economically self-efficient.

[85] For all these reasons, I am satisfied that the respondent has not yet had an opportunity to become economically self-sufficient, that she is still entitled to compensatory spousal support, and that the claimant is required to continue to pay spousal support.

[86] I have also concluded that the claimant's spousal support obligation should not be reviewed annually, but that the next review should occur two years from the date of this order. In advance of the review in November 2018, the parties are to exchange updated financial statements including their three most recent tax returns and notice of assessment and their three most recent pay stubs.

[87] The claimant relies on the fact that a PC has been in place for a period of 21 months and the claimant has paid for all of the costs. He submits that the respondent has been uncooperative and resistant to the involvement of a PC and has not followed their determinations. This has driven up the cost of the PC and should be considered as a factor in the claimant's request to cancel spousal support.

I have concluded that it is more appropriate to consider this issue when dealing with the parties' obligation to pay for the PC fees to date and going forward.

Should income be imputed to the respondent?

[88] Section 19 of the *Federal Child Support Guidelines* permits a court to impute the income it considers appropriate in the circumstances, including where a spouse is intentionally under-employed.

[89] The claimant seeks an order imputing income to the respondent for both child and spousal support purposes. He submits that, based on 40 hours a week at her current rate of pay, she should be earning $45,800.

[90] In *Watts v. Willie*, 2004 BCCA 600, at para. 16, the Court of Appeal adopted guidelines set out by Justice Steel in the Manitoba Court of Appeal in *Donovan v. Donovan*, 2000 MBCA 80, at para. 21. Although in the context of child support, they provide a helpful analytical framework for the purposes of spousal support as well. As they relate to this case, the guidelines provide:

> a) When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.
>
> b) A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at the lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
>
> c) Persistence in unremunerative employment may entitle the court to impute income.
>
> d) A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
>
> e) As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

[91] In this case, taking into account what is reasonable in the circumstances, I am satisfied that the respondent is working the full-time hours that are available to her

from her employer. Her single-parenting responsibilities make it important that she work with a flexible employer. The nature of her employment and her seniority with Paymaster provides her with that flexibility. The flexibility is one of the reasons which allows the parties to have no or minimal day care costs.

[92] This is not a case where the respondent is unemployed and does not intend to seek work. In fact, the respondent has increased her hours from the part-time work she was doing when the parties first separated to full-time hours.

[93] The respondent filed a financial statement on October 28, 2016. The respondent's line 150 income from her attached 2015 income tax return was $36,660.76 of which $35,940.76 was employment income. That income is up from her 2012 income of $29,841 as reflected in the August 2013 Agreement which in turn was up from her income of $24,400 as reflected in the August 2011 Order.

[94] This pattern of increasing income does not suggest that the respondent is failing to take seriously her obligation to become economically self-sufficient and to support her children.

[95] For these reasons, I decline to impute an income to the respondent for either child or spousal support purposes.

Would it be unfair for the respondent to share in the claimant's post-separation income?

[96] The claimant is a store manager with Save-on Foods; he has been employed by them for 15 years. During the marriage, he worked as a produce manager with them.

[97] According to his affidavit, he has invested substantial time and effort in the past seven years to working hard and doing a good job and that, without his current spouse's support, he could not have achieved his current level of income.

[98] In *Judd v. Judd*, 2010 BCSC 153, at paras. 21 and 22, Justice Punnett cited a number of cases which have dealt with the issue of whether post-separation

increases in a payor's income should be included for the purpose of *SSAG* calculations. Describing it as a fact-based inquiry, Justice Punnett said:

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

[99] While I accept that the claimant has continued to work hard for his employer, the foundation for his current success was laid during the parties' marriage and their decision that the respondent would give up her more lucrative employment to provide primary care to the boys. When the respondent did return to work, she did so in a part-time capacity thereby freeing up the claimant to pursue his career aspirations. The parties were together for nine years, and the claimant has always been employed by the same employer. His current success is, in my view, a promotion in a career the respondent supported while the parties were together.

[100] Even after separation, and until November 2012, the respondent was still the primary care parent despite the claimant having a new partner who was not working full-time. In that respect, the respondent continued to free the claimant up to pursue his career aspirations.

[101] I have concluded that it would not, in all of these circumstances, be unfair for the respondent to share in the claimant's increased income which was, in part, achieved as a result of the respondent's contribution to his career.

[102] I have also taken into account that, for the purposes of spousal and child support, the claimant's household income is higher because his current spouse earned and continues to earn a part-time income and is contributing to household expenses. Apparently, she is also in receipt of child support from her former spouse to contribute to some of the expenses of the third child who resides with them on a

half-time basis. The respondent is not seeking to have that income included for support purposes.

[103] I conclude that spousal support is owing from the claimant to the respondent from July 1, 2014 to June 30, 2015 based on the claimant's 2013 income. From July 1, 2015 to June 30, 2016, spousal support is owing based on the claimant's 2014 income. From July 1, 2016 and until the review I have ordered to occur two years from the date of this order, spousal support is owing based on the claimant's 2016 income.

[104] In accordance with the August 2011 Order, the claimant may split his spousal support in two equal installments payable on the 1st and 15th of each month.

Child Support

[105] The last time the parties reviewed child support was in the August 2013 Agreement. At that time, the parties agreed that, based on their 2012 incomes, commencing June 1, 2013, set-off child support was $667 a month commencing June 1, 2013 and that the claimant was to pay 72% and the respondent 28% of the cost of the after school provider they were both using.

[106] Child support was not reviewed in June 2014 or 2015 as the parties did not exchange income information.

[107] The respondent is seeking a review of child support commencing on January 1, 2014.

[108] Pursuant to the terms of the August 2011 Order, from January to June 2014, child support would be based on the parties' 2012 incomes. From July 2014 to June 2015, child support would be based on the parties' 2013 incomes. From July 2015 to June 2016, child support would be based on the parties' 2014 incomes. Commencing July 2016 and until June 2017, child support would be based on the parties' 2015 incomes.

[109] The parties' respective incomes for the calculation of child and spousal support are, based on the materials before me:

Year	Claimant's Income	Respondent's income
2012	$70,256	$29,395
2013	$79,460	$30,600
2014	$106,735	$32,537
2015 (the last year for which income tax information is available)	$104,153	$35,940
2016 – the parties agree that they expect to make similar incomes in 2016	$104,153	$35,940

[110] It is impossible for me to calculate the set off child support which may be owing from the claimant to the respondent as there is disagreement about what child support has been paid and the parties have given inconsistent evidence in that regard.

[111] The claimant says in his May 19, 2015 affidavit that because the respondent was upset about the PC being appointed, she did not see the Boys for almost two months and that they resided with him on a full-time basis. As a result, he unilaterally decided not to pay child support for February, March or April. In his view, the respondent owed him child support for at least some of those months. Because she did not pay him for those months, he unilaterally decided not to pay child support for May 2015: see para. 57. Exhibit K, which is attached to the same affidavit, provides a different explanation for the non-payment of child support between February and May 2015.

[112] Accepting that an adjustment of child support might be required when the boys are with one parent exclusively, it was not up to the claimant to unilaterally decide the amount of that adjustment particularly in light of the court's orders.

[113] Some costs associated with children are fixed regardless of where children reside. For example, the fixed cost of housing associated with a family which includes two children is higher than the cost of housing for a single adult. The respondent could not decrease her fixed costs although her variable costs may have been reduced. At the same time, the claimant's fixed costs did not increase because he had the Boys full time but his variable cost may have been.

[114] Further, the respondent disputes that she did not see the Boys for two months and says that they were not with the claimant full time. In para. 125 of her June 28, 2016 affidavit, she says that the claimant did not pay any child support from January to April, 2015. At paragraph 132, she says that he did not pay from January to June, 2015 yet at para. 133 indicates that the first deposit of $913 from the claimant was on May 13, 2016. At her October 26, 2015 examination for discovery, the respondent said that the claimant did not pay support from January to June 2015.

[115] In submissions, counsel for the claimant argued that the respondent should be precluded from obtaining retroactive child support as a result of her "bad behaviour" and failure to provide financial disclosure so that the proper amount of child support could be determined. Counsel could point to no principled reason or case authority for her submission.

[116] As I indicated at the time, the claimant's obligation to provide child support is an obligation to his Boys regardless of the respondent's conduct. Even in cases involving children who have been alienated from a parent, the court is reluctant to terminate a parent's child support obligation: see, for example, *Athwal v. Athwal*, 2007 BCSC 221, paras. 51-53. The claimant could have applied for an order compelling disclosure if he was concerned. I conclude that the claimant is to pay retroactive child support, based on the incomes I set out above, from January 1, 2014 forward.

[117] In accordance with the August 2011 Order, the claimant may split his child support in two equal installments payable on the 1st and 15th of each month.

[118] With the assistance of counsel, I am hopeful that the parties will be able to calculate or agree to any child support which may be owing from the claimant to the respondent from January 1, 2014. If they are unable to agree, they may contact Supreme Court scheduling to arrange for a convenient date to appear before me to finally determine this issue. Before appearing, counsel must jointly outline, in writing, the issues on which they have reached an impasse and provide it to me for my review in advance.

Section 7 Expenses

[119] Section 7 expenses, which the parties agree include the cost of hockey and football (including registration and equipment costs) for both Boys, and any required daycare costs that either parent incurs are to be divided proportionately. The parties are to discuss any proposed additional s. 7 expenses with the PC.

[120] Rather than adjusting the proportion annually, I am setting it at 70% to the claimant and 30% to the respondent. The claimant is not to deduct s. 7 expenses from ongoing child and spousal support payments. The parties are to keep all receipts and provide copies to each other on July 1 each year at which time there will be an annual reconciliation of amounts owing one to the other. If the parties are unable to agree on the reconciliation, they are to refer the matter to their PC for a determination.

[121] I have considered the claimant's request that all support payments be made through FMEP but decline to make that order. There is a delay in the respondent receiving support payments when they are processed through FMEP, and delay and uncertainty of payment date has been an ongoing issue. Between these parties, certainty of payment date is required. I have also considered the respondent's request that the claimant provide post-dated cheques covering interim child, spousal support and maintenance for each six-month period in advance. I also decline to

make that order. The parties have been operating with a direct deposit arrangement which appears to be working for the most part, and it should continue.

Other Financial Issues

Respondent's 2012 Income Tax Refund

[122] As a term of the August 2013 Agreement, the respondent agreed to pay the claimant one-half of her 2012 income tax refund. She must do so, and the amount of $1,890.52 will be deducted from any amounts owing from the claimant to the respondent for spousal support under this order.

Claimant's Overpayment to FMEP

[123] Reconciling the claimant's child and spousal support payments with FMEP's records was historically problematic. Both parties accuse the other of misrepresenting the amounts owing from one to the other. Some payments were made to FMEP and others to the respondent directly. As a part of the August 2013 Agreement, the parties resolved the outstanding issues with respect to arrears of child and spousal support. Following the August 2013 Agreement, FMEP advised the claimant that he was again in arrears and issued him a default notice.

[124] In response, the claimant provided proof of all his payments from 2012 – 2014, copies of all the court orders, and the August 2013 Agreement. FMEP advised him on January 29, 2014 that they had withdrawn the default notice. On April 24, 2014, FMEP advised the claimant that he had a credit balance of $411.08.

[125] This matter remains unresolved. I am satisfied, based on my review of the FMEP's correspondence, that the claimant has a credit balance with them which should be refunded to him. It does not appear that the credit balance has been paid to the respondent. If a credit balance remains, it should be paid out to the respondent and credited against any outstanding arrears as a result of this order. The parties are to sign any documents necessary to have FMEP pay out the credit balance. If the credit balance has already been paid out, it will be deducted from any

arrears of child or spousal support the claimant owes to the respondent as a result of this order.

Child Support for February and March 2015

[126] As set out above, the parties do not agree about whether the Boys were in the claimant's full-time care in February and March of this year. I have also said that even if that were the case, the appropriate adjustment for child support was not for the claimant to stop paying child support to the respondent. Nor would it be appropriate for the claimant to have to pay full child support to the respondent for those two months. The parties disagree about what happened in those two months. I have urged the parties to try and work this out through their counsel as, on the record before me, it was not capable of resolution. As set out above, if this issue is one on which the parties reach an impasse, I will finally determine it at a future appearance.

Daycare Costs

[127] It was a term of the August 2011 Order that the claimant and the respondent proportionately share the cost of the Boy's daycare. The proportionate share at that time was 72% payable by the claimant and 28% by the respondent.

[128] The Divorce Order provided that the parties continue to share daycare costs in the same percentage. The claimant was to pay the total cost to the Jellybean daycare each month and to deduct the respondent's proportionate share from child support.

[129] In the August 2013 Agreement, the parties agreed that they would continue to pay the same proportionate share of daycare costs and they reconciled the outstanding amounts as of August 2013.

[130] The claimant says that since then, he paid $400 in daycare costs from September to December 2013, $1,280 in 2014 and $700 in 2015. He attaches invoices and receipts to his May 19, 2016 affidavit as Exhibit L.

[131] In her June 28, 2016 affidavit, the respondent does not dispute the claimant's daycare costs. Rather, she complains that the claimant does not contribute to her costs and that she has adjusted her work hours to keep those costs to a minimum.

[132] I order that the respondent is to pay to the claimant $618.80, representing her 28% of the daycare costs incurred by him. I also order that, upon provisions of receipts representing proof of payment, the claimant is to contribute 72% of those costs up to the date of this order. Going forward, I have set the parties respective proportionate share of s. 7 expenses at 70% and 30% and ordered that there be a once-annual reconciliation of s. 7 expenses including daycare costs.

Extracurricular Costs

[133] In his May 19, 2016 affidavit, the claimant says that he had incurred a total of $1903 for the Boys' sports and activities between 2013 and 2016. Receipts for all but $200 are attached.

[134] The respondent agrees that she is willing to contribute to these costs as she supports the Boys' involvement in sports.

[135] The costs previously incurred should be proportionately shared based the claimant paying 72% and the respondent paying 28%. Henceforth, the proportional sharing is to be based on a 70-30 aspect.

[136] Neither counsel made submissions on the effect, if any, of the fitness tax credit and how it should treated. I leave counsel to work this out as part of their negotiations regarding arrears of child and spousal support and the other expense-sharing orders I have made.

Counselling Costs for the Boys

[137] As set out above, Mr. Finlay recommended that the Boys attend counselling with Ms. Stapleton. The claimant has paid all of those costs to date. It is not clear to me whether there is extended benefit coverage which might be available from either parties' employer which might cover part of those costs.

[138] I have read all of the affidavits which have been filed on this matter including all of the attachments and have concluded that these parties share some responsibility for the stress they have put their Boys under. Both parties are quick to blame the other for the difficulties they have experienced in co-parenting the Boys, and neither has considered how their own behaviour has impacted the other or the Boys.

[139] However, the focus of the counselling is on the Boys' needs and not on the parents' conduct and as a result, I am satisfied that the expense of counselling for the Boys, net of any reimbursement from either parties' employer, should be proportionately shared as a s. 7 expense. I order that the claimant shall pay 72% and the respondent 28% of the cost of Ms. Stapleton to date. Going forward the proportional sharing is to be based on 70-30 split and is to apply to Ms. Stapleton, or such other counsellors as may be recommended for the Boys. The respondent's share is to be set off against arrears of child and spousal support owing hereunder.

Parenting Coordinators Fees

[140] As I have set out in some detail in this decision, the parties have required the assistance of two different PCs to deal with issues which should be routine seven years after the parties separated. These include parenting time on Mother's and Father's Day, passports, allocation of parenting time over school breaks and summer holidays, and exchanges of hockey equipment.

[141] A review of the PCs' communications and determinations leaves the overall impression that, although the claimant is not blameless, the primary focus has been on the respondent's conduct. Ms. Jennings' frustration with the respondent is apparent in her June 10, 2015 determination regarding financial disclosure.

[142] Mr. Finlay's frustration with the respondent is apparent in his September 14, 2016 email to counsel for both parties in which he threatened to withdraw as the parties' PC. He says:

> There is evidence accumulating the Courtney is not acting in good faith in the PC process. Despite numerous times where both Susan [the boys' counsellor] and I have told her not to draw [E.F.] into parental conflicts, she continues to do so. Despite her complaint that Doug took them to the Doctor she didn't follow the Doctors recommendations and then when she agreed to take [E.F.] to a mental health assessment for suicidal ideation she did not follow Susans directions citing it was too busy at the clinic when Doug said he could take him. Despite a determination pertaining to the exchange of equipment on transition days at 9 am, she did not follow it and I had to ask her to return the equipment that evening. Despite her requesting help to communicate with Doug and an agreement on coaches she is yet to follow my determination. Despite her allegation that [E.F.] is suffering anxiety because of Doug she has yet to acknowledge any responsibility for her contribution. Although Doug is not blameless here, he has participated in good faith and has followed all of my determinations even when he was not in agreement.
>
> [As written with the exception of anonymization of the child's name]

[143] The PC's focus is on the parents and addressing their co-parenting difficulties. Both parents will benefit from their involvement, and I have concluded that it is appropriate that the costs be shared equally. The claimant has advised that he has paid to Ms. Jennings a total of $8,000 and there is $873.58 outstanding. He has also paid $10,000 to Mr. Finlay. The respondent is responsible for half of those amounts and her share is to be deducted from any arrears of spousal support which she is owed pursuant to this order. If the arrears are insufficient to satisfy the respondent's obligation under this term of the order, the claimant may reduce his spousal support payment by $250 a month until the respondent's share is paid in full.

[144] The proportional sharing of any further fees, disbursements or other charges associated with Mr. Finlay, or any other PC, is to be determined by the PC.

Insurance Claims

[145] As set out in the notice of application, the claimant seeks an order that the respondent sign a joint letter to the Insurance Corporation of British Columbia transferring to her personal insurance three accidents she was involved in while driving on the claimant's insurance post-separation. The accidents occurred in

October, December 2009 and June 2010. The claimant says that when the August 2011 Order was negotiated, he was not aware of these accidents.

[146] I decline to make this order. The claimant took the risk of possible claims when he permitted the respondent to drive under his insurance post-separation. In light of the August 2011 Order and the August 2013 Agreement, it would not, in my view, be helpful to revisit what appears to be a grievance dating back to 2009 and 2010.

Joint Letter to CRA

[147] The claimant seeks an order that the parties write a joint letter to CRA specifying the amounts of spousal support he paid to the respondent between 2011 and 2014.

[148] Apparently, the respondent has not been declaring the spousal support payments she has received for income tax purposes which has meant that the claimant has not had the benefit of the deduction.

[149] Rather than make the order the claimant seeks at this time, I will permit the parties the opportunity to seek some accounting advice about how this might be resolved without the necessity of both parties refiling income tax returns going back to 2011. There will also be a revised retroactive amount for 2014 and 2015 about which the parties' may require advice. I expect that their counsel may be able to assist them in this regard.

[150] If the parties are unable to resolve this issue, it may be the subject of submissions in accordance with the procedure I outline above.

Earlier Costs Orders and the Costs of This Proceeding

[151] On November 6, 2014, Justice Butler ordered the respondent to pay fixed costs of $350, and on November 27, 2015, Justice Josephson ordered her to pay costs pursuant to his order. Neither order was for costs payable forthwith and, in the normal course, those cost orders would be dealt with at trial. It may well be that this

matter never goes to trial as between the August 2011 Order, the August 2013 Agreement and these reasons, there is little else to be determined.

[152] In the result, and in the interests of efficiency and costs, I fix the costs of the appearance before Justice Josephson at $500 and order that both sets of costs are to be set off against any spousal support owed by the claimant to the respondent.

[153] At the close of the submissions before me, the parties requested the opportunity to make written submissions on the claimant's evidence about payments made by him. I set a schedule for the exchange of submissions by November 14, 2016. Having received none, I have issued these reasons.

Costs

[154] As can be seen from a review of these reasons, the parties have had mixed success on their cross applications. In the usual course, that would suggest that each party bear their own costs. If the parties wish to make submissions on a different cost order, they may inform Supreme Court scheduling, no later than 30 days from the date of this judgment, that they wish to either schedule a brief hearing before me or provide an agreed schedule for the exchange of written costs submissions.

Summary of Orders Made

[155] I have made the following orders:

a) the claimant is to continue paying spousal support to the respondent, based on the income schedule I have set out. Spousal support is to be reviewed in two years from the date of this Order. In advance of the review, the parties are to exchange updated Financial Statements including required attachments;

b) income is not to be imputed to the respondent for either child or spousal support purposes;

c) the respondent is entitled to share in the claimant's post-separation pay increase;

d) spousal support arears are owing to the respondent from January 1, 2014 onwards, calculated based on the actual annual income and based on the terms of the August 2011 Order as to variation date and the applicable income year for calculation purposes;

e) child support arears are owing to the respondent from January 1, 2014, based on the parties actual incomes and the terms of the August 2011 Order as to variation date and the applicable income year for calculation purposes;

f) if the parties are not able to agree on the calculation of child support arears, they may contact Supreme Court scheduling to arrange to appear before me to finally determine the issue. Before appearing, they must jointly outline in writing that they have reached an impasse;

g) those s. 7 expenses which have already been paid by the claimant, are to be contributed to by the respondent at 28% of the cost;

h) ongoing s. 7 expenses are to be included hockey and football costs and daycare expenses and are to be shared with the claimant to pay 70% and the respondent 30%;

i) s. 7 expenses, based on receipts, are to be reconciled annually on July 1. If the parties are unable to agree, the reconciliation will be determined by the PC;

j) the claimant's support payments are to be made by direct deposit to the respondent's account on the 1st and 15th of each month;

k) the respondent is to pay the claimant $1890.52 for her 2012 tax refund to be adjusted as a set off against the arrears of spousal support owing under this Order;

l) the claimant is to receive credit for his $411.08 overpayment to FMEP either by way of a return from FMEP or adjusted as a set off against the arrears of the child and spousal support owing under this Order;

m) the respondent is to pay to the claimant $618.80, her share of the claimant's daycare costs, to be adjusted as a set off as against the arrears of child and spousal support owing under this Order;

n) the respondent is to pay her 28% proportional share of $1,903, the cost incurred by the claimant for extracurricular activities for the Boys. The actual cost is to be determined taking into account the impact, if any, of the Fitness Tax Credit;

o) the respondent is to pay her 28% proportional share of the Boys' counselling fees incurred to date, net of any insurance recovering. Henceforth, she is to pay a 30% share;

p) the respondent is to pay to the claimant one half of the costs he has paid, or owes to date. Her share is to be deducted from any arrears of spousal support she is owed pursuant to this Order. If the arrears are insufficient to satisfy the respondent's obligation, the claimant may reduce his spousal support payment by $250 a month until the respondent's contribution is paid in full. The proportional sharing of any further PC charges is to be at the discretion of the PC;

q) the parties may seek advice and are to attempt to resolve the CRA issue regarding the respondent's failure to declare spousal support paid by the claimant as income and any income tax re-fillings that many be required; and

r) the respondent is to pay the claimant $850 in costs arising from earlier applications. The costs are to be set off as against spousal support arrears owing hereunder.

"MacNaughton J."