SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Hartlen v. McNeil*, 2021 NSSC 223

Date: 20210708
Date Revised: 20210924
Docket: SFHD No. 1201-067278 (087584)
Registry: Halifax

Between:

Dwayne Patrick Hartlen

Petitioner

v.

Lorrie Anne McNeil (previously Hartlen)

Applicant

Judge:	The Honourable Justice Cindy G. Cormier
Heard:	November 21, 22, and 23, 2020 with written submissions filed December 29, 2020 in Halifax, Nova Scotia and additional transcripts and correspondence filed January 8, 2021. Decision released to the parties July 8, 2021.
Counsel:	Robyn L. Elliott, Q.C. for Dwayne Hartlen, Petitioner Lorri Anne McNeil, Respondent, with her representative Ms. Tina Slaunwhite (previously represented by legal counsel: Leigh Davis, Judy Schoen and Lloyd Berliner). Calculations and submissions requested. Mr. Hartlen filed submissions / correspondence related to calculations / costs: July 22, 2021; July 29, 202; and August 9, 2021. Ms. McNeil filed July 23, 2021; and on August 5, 2021.

By the Court:

Introduction

[1] Dwayne Hartlen and Lorrie McNeil are divorced. In October 2017 I rendered a decision regarding corollary relief issues. The form of the Corollary Relief Order was finalized in January 2018. According to the terms of the Order, the parties had the option of returning to Court to resolve certain issues.

[2] Mr. Hartlen, the Petitioner in the parties' divorce, seeks to have the Court finalize all outstanding issues included in any orders arising from my decision in 2017. He also seeks to have the Court dismiss Ms. McNeil's request for forgiveness of arrears of child support.

[3] In her brief Ms. McNeil stated I would:

> be making an independent determination of retroactive child and spousal support owed by the Respondent and an independent determination of future spousal support rate and duration to be paid by the Respondent along with the determination of a varied asset and debt distribution according to new facts disclosed at trial.

[4] Ms. McNeil claimed, among other claims, that she was incapacitated and unable to participate at trial in 2017. She argued that based on certain "new facts" presented in 2020, the court could and should vary, rescind, or suspend final determinations of fact made in 2017.

[5] Ms. McNeil also asked the Court to forgive arrears of child support owed by her.

The Issues

Jurisdiction

1. What jurisdiction do I have to consider each parties' requests?

Capacity

2. Was Ms. McNeil able to participate at trial in 2017?

Child Support calculations

3. After I made final determinations of fact in October 2017, did I approve the final calculation of child support arrears included in the Corollary Relief Order?

Matrimonial Property and debt

4. Are there any issues left to be determined regarding the interpretation, administration, or implementation of the disposition of Mr. Hartlen's pension with the Bricklayers & Trowel Trades International Pension Fund – Canada, being dealt with by separate order?

5. Is the term included in the Corollary Relief Order regarding Mr. Hartlen's claim, through BMO/SunLife creditor disability insurance benefits, for the period of his incapacity between January 2015 and August 2016, sufficient? Should this term be included in the Order regarding the matrimonial home?

6. Do the existing orders address the need for financial adjustments including: provide direction for Ms. McNeil to pay certain specified costs related to the matrimonial home; direct the payout by each party of their share of any matrimonial debt registered against the matrimonial home; and direct the payment of the costs of disposition of the home valued at $380,000? If not, is there a need for further intervention by the Court?

Spousal support

7. What if any entitlement does either party have to retroactive spousal support between December 2012 and October 2017? Can or should I change my findings of fact regarding the parties' incomes for that period? If entitlement is proven, what quantum of retroactive spousal support is payable up to September 2017? Should any retroactive award be paid by Mr. Hartlen? What are the tax implications? Can spousal support owed be set off / satisfy payment of matrimonial debt?

8. What if any entitlement does either party have to spousal support after October 2017? What is the party's incomes October 2017 forward. If entitlement is proven, what quantum of lump sum retroactive support or ongoing periodic spousal support should be paid, for what duration? What are the tax implications?

Change of circumstances

9. Has there been a change of circumstances related to the payment of arrears of child support? Should I vary income I imputed to either party?

Costs

10. Should the Court hear the parties on the issue of costs? Should costs be paid before any spousal support is paid. *Ahmed v. Naseem*, 2016 NSSC 366 (CanLII).

Background

[6] Dwayne Hartlen and Lorrie McNeil began living together in October of 1990, they were married on February 16, 2001, and they separated on November 18, 2012. They were married for twenty-one years. Between 1985 and 1991 Ms. McNeil "worked full-time at the Bank of Montreal". Once the parties' children were born, Jordan in 1991 and Jacob in 1998, Ms. McNeil worked part-time with Estee Lauder Corp. Ms. McNeil also owned an ice cream parlor in or around 2006 or 2007.

[7] Mr. Hartlen worked for his parent's, Dennis Hartlen's and Darlene Hartlen's, company, Central Tile & Terrazzo Company, as a tile setter before, during, and for a period after the parties' marriage. Approximately three years after separation, Mr. Hartlen was incapacitated due to health difficulties. In early 2017 Mr. Hartlen's father, Dennis Hartlen was suffering from symptoms of Parkinson's Disease and dementia and they decided to "wind down" their company.

[8] The parties' acknowledged that in exchange for Ms. McNeil's mother, Faye Courtney, contributing $50,000 for the purchase of the land their matrimonial home was built on, they promised Ms. Courtney she could reside in the home "rent free". Ms. Courtney moved in with the parties in 1993 or 1994, she stated that initially she paid $300 toward expenses. Ms. Courtney then left for a period and she returned with her new husband, Mr. Byron some years later, she and her husband increased

their contribution to household expenses. Upon separation, Ms. McNeil, Ms. Courtney, and Mr. Byron continued to live in the matrimonial home. In September 2017, they all moved into Mr. MacDonald's home.

[9] Mr. Hartlen left the home in November 2012, and he initially lived with a friend. Mr. Hartlen started a relationship with Denise Brophy in 2013 and both he and Jacob Hartlen moved in with Ms. Brophy in November 2014. Jacob remained with them until April 2015. At times Ms. Brophy's sons, Lucas Kenny and / or Jacob Kenny, also lived with them. Ms. Brophy's mother, Marjorie Brophy, lives with Mr. Hartlen and Ms. Brophy.

[10] In April 2013, Lorrie McNeil filed an interim motion pursuant to the *Maintenance and Custody Act*. In July 2013 Ms. McNeil was granted interim primary care of Jacob and Mr. Hartlen was granted reasonable parenting time. Mr. Hartlen was ordered to pay interim child support of $1,072 per month and interim spousal support of $2,461 per month, for a total monthly payment of $3,533, starting July 31, 2013.

[11] On August 26, 2013, Dwayne Hartlen filed a Petition for Divorce. He sought to deal with: custody; access; child support; division of assets, including his pension; and costs. The main areas of disagreement identified included: 1. when Jacob ceased to be a dependent child; 2. the incomes of the parties; 3. the value of the Volkswagen Tiguan car; 4. and how the parties' RRSP's would be treated.

[12] In October 2017 I determined the following: Jacob ceased to be a dependent child at the end of 2015; the incomes of the parties between 2012 and October 2017; arrears of child support; the value of the car; the value of the matrimonial home and disbursements payable; restriction on the division of the pension unless conditions were met; and asset division and the assignment of debts. Those decisions were final. Separate orders were granted. The orders regarding the matrimonial home included direction that Ms. McNeil had to pay expenses related to the matrimonial home while she had exclusive possession of the home.

Jurisdiction

1. What jurisdiction does the Court have to consider the parties' requests?

[13] I retained jurisdiction to deal with the following: spousal support; the division of Mr. Hartlen's pension; any claim Mr. Hartlen may have with BMO/Sunlife; the financial adjustments for any outstanding expenses or liens against the home following the disposition of the matrimonial home; and any costs.

[14] If Ms. McNeil proved a change of circumstances preventing her from paying child support, I could consider forgiveness of arrears of child support accumulated before December 2015.

Analysis: Capacity

2. Was Ms. McNeil able to participate at trial in 2017? In 2020?

[15] Justice Backhouse, in *C.C. v. Children's Aid Society of Toronto*, [2007] O.J. No. 5613, in 2007, stated, "There is a distinction to be drawn between failing to understand and appreciate risks and consequences, and being unable to understand and appreciate risks and consequences. It is only the latter that can lead to a finding of incapacity".

[16] This matter has been ongoing since April 2013. Ms. McNeil did not suggest she was incapacitated at the interim hearing in 2013, or at trial in 2020. Ms. McNeil has suggested she was incapacitated at trial in 2017, for instance: when she failed to attend to be cross-examined and when she failed to make submissions to the Court when she was given an opportunity to do so in September 2017, November 2017 and January 2018.

[17] In advance of trial in 2017 Mr. Hartlen requested Ms. McNeil produce her employment file and information about why she was no longer working. Mr. Hartlen was interested in Ms. McNeil's efforts to find work. He also requested Ms. McNeil provide information regarding any diagnosis she was claiming may impact on her ability to work, such as Post Traumatic Stress Disorder (PTSD). No issue was raised about Ms. McNeil being unable to understand the trial process or the issues to be decided. Ms. McNeil's legal counsel suggested they may call Ms. McNeil's family physician, Dr. Colp, as an expert witness in relation to her ability to work.

[18] In late May 2017, counsel for Ms. McNeil stated they would not be calling Dr. Colp at trial in June 2017. Dr. Colp would not be called to provide evidence regarding any health difficulties Ms. McNeil may be experiencing. By agreement,

all facts contained in Ms. McNeil's affidavit regarding her health were struck. Specifically, counsel for Ms. McNeil confirmed paragraph 40 of Ms. McNeil's affidavit dated October 28, 2016, referencing Dr. Colp, was struck.

[19] However, at trial in November 2020, Ms. McNeil was permitted to call her family physician, Dr. Colp, as an expert witness. By consent of the parties Dr. Colp was qualified as an expert in family medicine. Dr. Colp did not give any evidence suggesting that Ms. McNeil was unable to understand and appreciate the risks and consequences of not attending trial or instructing counsel.

[20] On cross-examination Dr. Colp stated in part: he could not speak specifically about whether Ms. McNeil was in fact suffering from any symptoms of Post-Traumatic-Stress-Disorder at trial in 2017. He stated that his notes indicated Ms. McNeil reported "symptoms include severe anxiety attacks" and the symptoms were based on subjective reports from Ms. McNeil. He offered the opinion that "it could lead" to an "inability to remain in locations." I find that an inability to remain in a location, if Ms. McNeil was in fact unable to remain in court, does not equate to an inability to understand the consequences of failing to participate at trial or to instruct counsel.

[21] When Dr. Colp was asked whether Ms. McNeil was unable to attend Court in September 2017, October 2017 or November 2017, due to a "thyroid problem, extreme anxiety, or panic attacks", he stated: "it was not his place to make that decision" but "it may have been the case". There is no reliable evidence for me to find Ms. McNeil had any diagnosed challenges. Regardless, I find having a physical or emotional challenge which impacts on a person's ability to attend court, does not equate to having an inability to understand the consequences of not participating or instructing counsel.

[22] Dr. Colp confirmed Ms. McNeil attended his office on the following occasions: on February 8, 2017 regarding a skin issue; on March 15, 2017 due to an upper respiratory issue; on July 13, 2017 to address problems with her vision; and that he did not see Ms. McNeil again until January 22, 2018. Dr. Colp acknowledged that Ms. McNeil did not consult with him about any anxiety issues in 2017. Dr. Colp identified that he was not able to comment about Ms. McNeil's circumstances in 2017, and I agree. I find Dr. Colp did not complete an assessment of whether Ms. McNeil was able to understand the consequences of not attending court or whether she was able to instruct counsel.

[23] Dr. Colp confirmed Ms. McNeil attended his office sometime after attending court in January 2018. He indicated in his notes from the visit, that Ms. McNeil: "wants a note saying she missed the trial in September due to anxiety. And she says she did not feel fit to do so. I advised Lorrie that I could not say she was not fit for trial as I did not see her in August and September. I could write a letter for her stating she does have a history of anxiety". I find Ms. McNeil was asking for a letter from Dr. Colp because she appreciated the risks and consequences of her failure to attend court or instruct counsel.

[24] The question is not whether Ms. McNeil was able to attend court, or even whether she failed to understand and appreciate the risks and consequences of not attending court, the question is whether Ms. McNeil was unable, by reason of incapacity, to understand and appreciate the risks and consequences of decisions she made or failed to make in relation to the matter. In other words, could she make legal decisions and/or instruct counsel.

[25] Ms. McNeil's possible failure to understand and appreciate the risks and consequences of not participating fully at trial is different than finding she was unable to understand and appreciate the risk and consequences associated with not participating. I find Ms. McNeil was able to appreciate the reasonable, foreseeable consequences of her decisions or lack thereof. I find Ms. McNeil was not incapacitated. *Evans v. Evans*, 2017 ONSC 4345.

Analysis: Child Support Calculations

3. After the Court made final determinations of fact in October 2017, did the Court approve the final calculation of child support arrears included in the Corollary Relief Order? Can findings of fact be revisited?

[26] Following my decision in October 2017, the final approval of the calculations of arrears of child support were adjourned to a court conference in November 2017, which Ms. McNeil did not attend. Court was adjourned to January 2018 and Ms. McNeil attended. In January 2018 Ms. McNeil was provided with a further copy of the draft calculations and a further copy of the draft Corollary Relief Order. Ms. McNeil refused to review the documents and left the court conference before it was adjourned by me. The Court approved the draft calculations and the draft Corollary

Relief Order. Mr. Hartlen was found to have overpaid child support and Ms. McNeil was ordered to reimburse him.

[27] Mr. Hartlen has argued there is "no basis for Ms. McNeil to bring child support before the Court for re-litigation", and that "she had the option to appeal and did not do so". Mr. Hartlen suggested that if the Court required any additional details with respect to the original calculations, that reference should be made to Mr. Hartlen's June 1, 2017 pre-trial memorandum and November 10, 2017 post-trial submissions. Mr. Hartlen indicated that the above noted documents and the court transcript, "fully explain how the Court arrived at the figures contained in the Corollary Relief Order issued on January 24, 2018."

[28] At a court conference in 2019 Ms. McNeil requested a suspension of the garnishment of her income by the Maintenance Enforcement Program to reimburse the overpayment of child support owed by Ms. McNeil to Mr. Hartlen, a total of approximately $9,652.15. Ms. McNeil advised the Court she was not arguing about the amount, but she was asking the Court to suspend payment until the matter could be resolved. No order was granted. Ms. McNeil's request for forgiveness of arrears is addressed later in my decision.

Pension

4. Are there any issues left to be determined regarding the interpretation, administration, or implementation of the disposition of Mr. Hartlen's pension with the Bricklayers & Trowel Trades International Pension Fund – Canada; being dealt with by separate order?

[29] Prior to trial in 2017 Mr. Hartlen confirmed his position that his pension from the "Bricklayers and Trowel Trades" (he suggested 32.5 years of future service credit) be divided at source. His counsel stated that the specifics were included in Mr. Hartlen's Statement of Property from July 2013.

[30] Ms. McNeil's legal counsel requested "information from the government", "a mock-up" to give Ms. McNeil an estimate of what her entitlement might be. Mr. Hartlen stated that he would be seeking costs in relation to any enquiry regarding his pension as he had agreed to divide the pension at source. Mr. Hartlen provided written consent for Ms. McNeil to make inquiries about his pension with the administrator.

[31] Paragraph 16 of the Corollary Relief Order states:

> Dwayne Patrick Hartlen's pension with Bricklayers & Trowel Trades International Pension Fund – Canada shall be dealt with by separate order(s) and the matter may return to Court should difficulties occur with respect to the interpretation, administration or implementation of this pension disposition.

[32] At trial in 2017 the Court found Ms. McNeil was entitled to an equal division of twenty-six years of Mr. Hartlen's pension. The Court directed the Pension Order include the entire period of the pension up to separation, including the pre-marital period.

[33] Subsequently, the pension administrators sent a letter to Mr. Hartlen stating they could not divide all pre-marital pension benefits but could divide the pension equally at source as of the date of cohabitation. Ms. McNeil confirmed under oath the parties' date of marriage was February 16, 2001, and that the parties began living together in October of 1990. I directed that the Pension Order be adjusted to include the cohabitation period beginning October 1990.

[34] Mr. Hartlen requested I consider an unequal division of Mr. Hartlen's pension if Ms. McNeil did not meet her obligations pursuant to the orders, including payment of expenses related to the matrimonial home, and any matrimonial debt assigned to her. Paragraph 16 of the Corollary Relief Order states:

> that the pension division will only take place after Ms. McNeil has met her other obligations as set out in the Corollary Relief Order.

[35] I confirm that pension division "will only take place after Ms. McNeil has met her other obligations as set out in the Corollary Relief Order", issued in January 2018. On July 8, 2021 I directed that if there was no agreement between the parties, that the matter would be addressed by me when costs were dealt with.

5. Is the term included in the Corollary Relief Order regarding Mr. Hartlen's claim through BMO/SunLife creditor disability insurance benefits, for the period of his incapacity between January 2015 and August 2016, sufficient? Should there be a separate order?

[36] In 2015 Mr. Hartlen reported that he had been off work since late in 2014 and had no income from employment. He argued that the RRSP's he had cashed in to

"live on" could not be treated as both income and a matrimonial asset upon division. The Court treated Mr. Hartlen's RRSP's as a matrimonial asset. Ms. McNeil argued Mr. Hartlen had a responsibility to apply for mortgage disability insurance.

[37] Ms. McNeil asked Mr. Hartlen to inquire about mortgage insurance for the house for the period when he was incapacitated, between January 2015 and August 2016. Counsel for Ms. McNeil acknowledged that the "mortgage was joint", so either party could access the same information.

[38] The Corollary Relief Order specifies that Mr. Hartlen must share with Ms. McNeil, any mortgage disability benefits he receives for the period between January 2015 and August 2016. Either party is at liberty to provide a copy of the Corollary Relief Order to the disability benefits provider. In addition, I find this term should be added to the order dealing with the matrimonial home.

6. Do the existing orders regarding the matrimonial home address the need for financial adjustments including: provide direction for Ms. McNeil to pay the mortgage, taxes, insurance, and utilities related to the matrimonial home up to the end of September 2017; direct the payout by each party of their share of any matrimonial debt registered against the matrimonial home; and direct the manner of the payment of the costs of disposition of the matrimonial home purchased by Mr. Hartlen for $380,000? If so, is there a need for further intervention by the Court?

[39] Ms. McNeil remained in the home after the parties separated in November 2012. In 2013, when Ms. McNeil was granted interim exclusive possession of the matrimonial home. Ms. McNeil was ordered to be responsible for interim payment of expenses and accounts related to the home including the mortgage, taxes, insurance, and utilities. Ms. McNeil shall be responsible for any outstanding expenses including the mortgage payments (principal and interest), taxes, insurance, and utilities up to September 2017.

[40] Both parties were ordered to pay $175.00 on the 20th day of each month toward the Bank of Montreal account ending 7978, commencing August 20, 2013. If Mr. Hartlen has paid this matrimonial debt, including Ms. McNeil's share, I find Ms. McNeil is responsible to either reimburse Mr. Hartlen / or set off an award against Mr. Hartlen in satisfaction of a portion of the matrimonial debt.

[41] In December 2016 Ms. McNeil's legal counsel approached Mr. Hartlen's legal counsel with a suggestion that the parties should sell the matrimonial home. Three appraisals had been completed: one in November of 2013 attributing a value of $345,000; another in March of 2014 with a value of $345,000; and a further in October of 2016 with a value at $380,000.00.

[42] Mr. Hartlen asked Ms. McNeil to choose the real estate agent and to allow him to walk through the home. Ms. McNeil chose the real estate agent and the listing price of $445,000, and she opposed Mr. Hartlen viewing the home with or without a real estate agent.

[43] Ms. McNeil provided an affidavit confirming she was not disputing that the proceeds of the sale of the home should be divided equally and she would not be asking to be compensated for any improvements she may state she made to the home. She confirmed "whatever the home sells for it would be divided equally". On May 2, 2017, the parties confirmed the matrimonial home had been listed for sale, the listing agreement was signed, and there had been one offer and two "showings".

[44] In June 2017 Ms. McNeil confirmed she would not be seeking reimbursement for the money her mother contributed for the land the matrimonial home was built on through asset and debt assignment. Ms. McNeil indicated she would be asking me to consider the $50,000 contribution when I considered spousal support.

[45] On September 5, 2017, after Ms. McNeil failed to appear in Court to be cross-examined, Mr. Hartlen gave viva voce evidence under oath about circumstances related to the sale of the home. Three Exhibits were filed in relation to the proposed sale of the matrimonial home: Exhibit 8: Agreement of Purchase and Sale – The Brays; Exhibit 9: Agreement of Purchase and Sale – Green; and Exhibit 10: Email from Lorrie McNeil (Hartlen). Mr. Hartlen was permitted to give some viva voce testimony regarding the matrimonial home.

[46] Mr. Hartlen advised that the parties had received an offer on the home, but the real estate agent had taken the house off the market. He explained that on June 28, 2017 buyers had offered to purchase the home for $438,000, and to close the sale on August 31, 2017. The buyers then asked to extend the offer to September 29, 2017, and to change the closing date to October 25, 2017. The new agreement added a clause stipulating that the sale was conditional on the buyers selling their home. Mr. Hartlen claimed that Ms. McNeil would not sign the Amending Agreement.

[47] At trial in 2020 Ms. McNeil claimed she had signed / or initialed the purchase and sale agreement dated June 28, 2017 but she acknowledged she had not filed the initialized copy with the Court. She stated that the real estate agent would not provide her with a copy.

[48] Ms. McNeil acknowledges that her relationship with the real estate agent ended with her calling the police and making a complaint against him. Ms. McNeil confirmed she made a complaint against the parties' real estate agent to the real estate agent's governing body.

[49] Ms. McNeil acknowledged that before leaving the matrimonial home sometime in September 2017, she either sold or took the following fixtures from the matrimonial home: she sold the refrigerator; and she either took or sold the washer and dryer. Upon reviewing the Purchase and Sale Agreement for the sale of the matrimonial home, Ms. McNeil acknowledged the agreement includes a provision specifying that the fridge, stove, washer, dryer, and dishwasher were included under the heading chattels, equipment, and fixtures "owned by the seller and presently located on the property shall remain with the property, be included in the purchase price, and shall be conveyed to the buyer" -- that they were to be included in the sale. Ms. McNeil suggested she had not seen the clause previously. I do not find Ms. McNeil's evidence on this point credible.

[50] Ms. McNeil also claimed she signed an Amending Agreement to extend the period to close on the house for the sale to the Brays, but she could not find the signed copy because her "computer crashed". She acknowledged that when she left the home in September 2017, she did send an email to Mr. Hartlen indicating the home could go to foreclosure and she was not paying anything.

[51] Mr. Hartlen's partner, Ms. Brophy, was cross-examined and she stated she was familiar with the email Mr. Hartlen received from Ms. McNeil on or about October 1, 2017, indicating the home was vacant. Ms. Brophy stated that she first entered the matrimonial home with Mr. Hartlen on October 6, 2017, and they took pictures of the home.

[52] In 2017 Mr. Hartlen stated he understood that Ms. McNeil had refused to sign the Amending Agreement. He claimed Ms. McNeil advised him she needed money for the mortgage payments, and that "the insurance had run out on the house". Mr.

Hartlen explained that he went to the bank and they confirmed the mortgage was behind by three months and the insurance was due. Mr. Hartlen stated that he believed Ms. McNeil had left the property because he had seen Ms. McNeil's "boyfriend's" truck backed up to the house moving her possessions out of the home. On a balance of probabilities I find Ms. McNeil's evidence regarding her acceptance of the offer less credible than Mr. Hartlen's version of events.

[53] Mr. Hartlen explained that there were potential buyers wanting to view the home. He indicated that another offer had been received for $420,000 on August 30, 2017, but Ms. McNeil refused to consider the offer. Mr. Hartlen stated he had received an email from Ms. McNeil indicating her intention was to drop the keys to the matrimonial home at the bank. She stated that because she did not have any money to pay the mortgage or the insurance, the house would be going up for foreclosure. She stated to Mr. Hartlen "Do not contact me anymore".

[54] In September 2017 submissions were made by Mr. Hartlen regarding the need to sell the home which was facing foreclosure. An Order was granted vacating Ms. McNeil's right to exclusive possession of the matrimonial home. Mr. Hartlen was given the authority to sign a Purchase and Sale Agreement and any other documents dealing with the matrimonial home without Ms. McNeil's consent. Mr. Hartlen was free to choose the real estate agent and the list price which would need to be at least $380,000.

[55] Mr. Hartlen argued that when the matrimonial home sold that the proceeds of any sale of the home should be held, but certain creditors paid, and he asked that there be allowable deductions in calculating the net equity of the home, and other deductions would not be allowable in calculating the net equity. Mr. Hartlen suggested that the debts which needed to be paid get paid to "close" on the sale of the home. The Court agreed, and then granted an order.

[56] Allowable deductions recognized by the Court included: the real estate commission, legal fees to close the sale, outstanding balance on the line of credit mortgage ($318,901.56) and any payout penalty. Mr. Hartlen argued that Ms. McNeil should be responsible for her portion of the mortgage she failed to pay which was at $325,000 or $326,000, and that there be an accounting as Ms. McNeil did not pay the principal on the mortgage but made interest only payments for a period while she had exclusive possession of the matrimonial home. Mr. Hartlen's requests were granted. I confirm that the previous orders must be followed.

[57] Mr. Hartlen stated that the second line of credit had a balance of $28,206.56 at separation, and reminded the Court that Ms. McNeil acknowledged she withdrew $31,200 from the parties line of credit several days after separation. Mr. Hartlen stated that as of May 2017 the line of credit was at $64,578. He argued that the money taken by Ms. McNeil was post separation debt she was and is still responsible to pay. The Court agreed. If Mr. Hartlen has already paid Ms. McNeil's share, to allow for the sale of the matrimonial home, the money, $31,200 is owed to him by Ms. McNeil, in addition to her half of the remainder of $60,000 ($28,000 - $33,000 depending on the time frame), therefore each party's share is $14,000 (or $16,500).

[58] The Court specified that if Ms. McNeil, or her mother, or mother's boyfriend were still residing in the matrimonial home, that they were not required to vacate the home, but she would be required to cooperate with the sale. The Court granted an Order giving Mr. Hartlen authority to sell the home, to sign the listing agreement, and to accept a price of either $380,000 or above.

[59] On October 12, 2017, Mr. Hartlen advised the Court that he had moved into the matrimonial home. He explained that he had brought the mortgage up to date, and he had reinsured the home. Mr. Hartlen also stated that he had taken photographs to show the condition of the home as it was left by Ms. McNeil. Mr. Hartlen expressed his wish to reside in the home and advised that he was prepared to purchase the home from Ms. McNeil.

[60] The Court agreed to deal with the matter of the matrimonial home, and the issue of costs, if notice was given to Ms. McNeil. The Court granted an Order for Substituted Method of Providing Notice of a Proceeding by Mr. Hartlen, to provide notice by sending relevant documents to Ms. McNeil's last known email address. The matters involving the matrimonial home and costs were adjourned for two months.

[61] On January 22, 2018, the parties, including Ms. McNeil, appeared before me. She stated she had not opened the correspondence from Mr. Hartlen's lawyer. Court was adjourned to provide Ms. McNeil with another copy of the documents and an opportunity to read the documents intended for her review. Ms. McNeil indicated she preferred not to review the documents.

[62] I asked Ms. McNeil to provide the court with her current address, she declined to do so, citing "safety issues". I advised Ms. McNeil that the court administration could take her address and place it in a sealed envelope, and it would not be released to anyone. Ms. McNeil declined stating "I'm probably moving out west to look for work, so I probably won't even be in the province". I requested Ms. McNeil provide the court with her address if she did move "out west". Ms. McNeil left the court room before the matter was adjourned.

[63] The issue of the matrimonial home was discussed further, including the need to account for the sale proceeds, disposition costs, outstanding expenses, that there was a need to pay out creditors which might include taxes. Mr. Hartlen suggested he may wish to buy the home for less than $380,000. The Court confirmed the home could not be sold or purchased by him for less than $380,000 without a hearing.

[64] The Court indicated that regardless of the condition he claimed the home was in, the appraised value agreed upon was $380,000 and as a result I had directed the home not be sold for less. Mr. Hartlen was given a month to determine if he could arrange to buy the home for $380,000. Mr. Hartlen subsequently purchased the home.

[65] At paragraph 8 of the Corollary Relief Order the Court determined, in part, the following regarding the matrimonial home:

> The disposition of the home shall continue to be dealt with by separate order(s) and the matter may return to Court as needed until such time as the disposition of the matrimonial home has been effected and any necessary financial adjustments between the parties finalized.

[66] When cross-examined in November 2020 Ms. McNeil acknowledged that in 2017 her lawyer had helped her arrange to list the home for sale. Ms. McNeil acknowledged that in 2017 she decided she wanted to list the matrimonial home for sale, she selected the real estate agent, and she had determined the listing price at $445,000.

[67] Ms. McNeil indicated she could not remember Mr. Hartlen wanting to visit the home and she did not recall refusing Mr. Hartlen's request to see the home. Ms. McNeil stated she did remember she did not want him in the home, and that she sought an emergency protection order because she did not feel safe. She stated that if he had asked, she would not have wanted him in the home.

[68] Ms. McNeil agreed that in 2017 she had confirmed in a sworn affidavit that she would not pursue reimbursement for any expenses for repairs or anything she had done to the home up to that point. Mr. Hartlen's counsel suggested that was a concession Ms. McNeil made because she did not want Mr. Hartlen to view the premises. Ms. McNeil stated that although she had filed a document suggesting she had arranged for $3000 worth of work to be done to the home, and she also paid for materials, that she was just trying to establish why the home increased in value between the two appraisals, the first two in 2013 at $345,000, and the appraisal in 2016 at $380,000.

[69] Ms. McNeil explained that she had listed the house at $445,000, higher than the appraised value because of the work she arranged for Mr. MacDonald to complete on the home. She explained that she had painted the bathroom and kitchen cupboards white, she painted the spindles on the home, she had laid new laminate flooring in the bathroom off the main bedroom, and she "believed she had installed a new countertop on the bathroom counters".

[70] Ms. McNeil agreed that in 2017 she had sworn an affidavit stating "I have requested the matrimonial home which I am living in be listed for sale immediately. I agree that upon the sale of the home, any equity will be shared equally between myself and Mr. Hartlen, and I am not looking for any reimbursement of any cost I have incurred in relation to the matrimonial home since separation".

[71] Ms. McNeil pointed out that the passage stating she was not looking for reimbursement for any cost "I" have incurred, suggested she was not asking to be reimbursed the "$3000 worth of work" she incurred, but she was asking for Mr. MacDonald's work to be paid. When asked what Ms. McNeil meant by "any equity will be shared equally" between her and Mr. Hartlen, she acknowledged that it's "usually 50/50" and she had agreed to a 50/50 share.

[72] Upon further questioning Ms. McNeil suggested the $3000 owed to Mr. MacDonald was not her debt although she had contracted him to do the work. Ms. McNeil continued to suggest the appraised value increased from $320,000 to $380,000 because of work done by Mr. MacDonald. Despite her representations in early 2017, that she would divide the equity in the home equally, and she was not seeking reimbursement, Ms. McNeil confirmed she was seeking to have Mr. Hartlen contribute to the cost of the work she had contracted through Mr. MacDonald. My previous decision regarding the proceeds of sale of the matrimonial home are final.

I find Ms. McNeil is responsible to pay for any work she had arranged to be done on the matrimonial home. I am not prepared to order an unequal division.

[73] Ms. McNeil acknowledged that when she left the home in October 2017, the Homeowner ReadiLine secure line of credit account was in arrears by a couple a months. She agreed that the payment was approximately $1,200 per month, but she stated that she did not recall when she stopped paying it. She would not initially acknowledge the secured line of credit account payments were in arrears by approximately $4,500.

[74] Upon review of the documents related to the account Ms. McNeil acknowledged "it doesn't look like" she paid in June, July, August, September, or October 2017. She stated that she left the home in September 2017 and that four months would likely equate to arrears of approximately $4800. She stated: "if he pays me the 'arrears" of the support, which I thought was going to come in, and I would have had it to pay it, yes." As noted earlier in this decision, any arrears on the mortgage up to September 2017 are due and payable by Ms. McNeil.

[75] Ms. McNeil was asked questions about the demand letter from the Bank of Montreal dated September 14, 2017. Ms. McNeil acknowledged there was a $4541 credit on the account on October 16, 2017 and when asked if she paid, she stated: "I don't think so" and then "I don't remember a hundred percent. She acknowledged she had written stating that the "house can go to foreclosure". Credit or debt taken on by Ms. McNeil after separation must be paid by her, if Mr. Hartlen paid matrimonial debt on her behalf, or post matrimonial debt, she must reimburse Mr. Hartlen.

[76] I find Ms. McNeil made it difficult for Mr. Hartlen, and the real estate agent to sell the matrimonial home. I also find that the Agreement of Purchase and Sale for $438,000 was never guaranteed, it was always contingent on the buyer selling their home, presumably at their asking price.

Bankruptcy

[77] Ms. McNeil was asked about certain debts included in her bankruptcy materials including the mortgage at the Bank of Montreal in the amount of $322,427. Ms. McNeil stated she was not certain what debts, if any, she had paid. When asked about reference made in her bankruptcy material to the Bank of Montreal judgment

against spouse, or against property of $72,198, Ms. McNeil indicated she believed that was in relation to the line of credit of $60,000, and she was not certain what the other $12,000 was. She did acknowledge she had declared the debt in her bankruptcy.

[78] She was asked if she understood that the Court had ordered her to pay $31,200 of the approximately $60,000 line of credit personally as it was found to be post separation debt, and half of the $28,000 remaining, which was determined to be a joint matrimonial debt of the parties. If Mr. Hartlen has paid Ms. McNeil's share of any matrimonial debts or post-separation debt previously secured against the matrimonial home, Ms. McNeil must reimburse him.

[79] Ms. McNeil was asked if she understood that there were liens against the matrimonial home, and those would impact on the equity from the house. Ms. McNeil suggested she believed the matrimonial debt was unsecured. When presented with a document indicating an amount was secured against the home, she suggested she did not know. Ms. McNeil stated several times that Mr. Hartlen was the "primary" on both matrimonial debts. If Mr. Hartlen has paid Ms. McNeil's share of any matrimonial debts previously secured against the matrimonial home, Ms. McNeil must reimburse him.

[80] Ms. McNeil indicated she did not understand that the Court had decided Mr. Hartlen could purchase the house for $380,000 and the decision was final. Ms. McNeil also indicated she did not understand that the $320,000 would need to be deducted, as well as the real estate commission fees and legal fees. Again, it is not a question about whether she understood but whether she had the capacity to understand.

[81] Ms. McNeil was asked to review a clause contained in the order granted by the Court on January 24, 2018, included with her materials. Mr. Hartlen's counsel drew Ms. McNeil's attention to the clause wherein the Court found the "house to be valued at $357,000, being the $380,000 appraised value of the home per the 2016 appraisal carried out at the behest of Ms. Hartlen less real estate commissions of $21,850 and legal fees of $11,150."

[82] Using the $357,000 Ms. McNeil was asked to subtract the mortgage of $322,000. Ms. McNeil was reminded there was nothing the Court could do to change the order related to the value of the matrimonial home. Ms. McNeil was then

asked to consider the remainder of $35,000, and to subtract municipal taxes if they needed to be paid $1,719 = $33,281. Mr. Hartlen suggested the judgment of $72,198 would still need to be paid. Ms. McNeil argued it was $60,000. Ms. McNeil confirmed she had not paid her portion of the matrimonial debt.

[83] Mr. Hartlen stated that he and his partner had renovated the home since they started living there in or around October 2017. He suggested the home was not well maintained while he lived in it with Ms. McNeil. He agreed that the 2013 appraisal completed by Mr. Kempton states "over the past 22 years partly due to the way the house has been used or abused, depends on how you would like to describe it. That the attractiveness of the property and the marketplace has significantly declined because of damage and deferred maintenance." Mr. Hartlen agreed he left the home in November 2012.

[84] Mr. Hartlen indicated that the sauna was missing from the home when he moved in. He explained it had been a gift to Ms. McNeil. He advised he purchased a kit, and he built the sauna inside the house. He stated that before Ms. McNeil left the matrimonial home in September 2017, she cut the patio door out downstairs and removed the sauna, sticking the door back but "half assed". He stated the central vacuum canister was removed from the vacuum motor, dumped out, and the can was taken; that the deep well pump was installed improperly; and the tub in the master bathroom was leaking, among other concerns.

[85] Mr. Hartlen acknowledged that the matrimonial home was transferred by quit claim deed from Ms. McNeil and his name, to his name alone, and then transferred by warranty deed from his name alone into his and Ms. Denise Brophy's name. He acknowledged the transfers cost $2,480.59 and Ms. McNeil should not have to contribute to the cost of transferring the title into his and Denise Brophy's name. He agreed Ms. McNeil should only be responsible for one transfer. I find Ms. McNeil should only pay for one transfer.

[86] When reviewing her bankruptcy documents from 2018 Ms. McNeil was asked if her taxes of $1,700, and a debt with CIBC for $29,119.25 were both included and if she paid $4,300 to complete the bankruptcy. Ms. McNeil indicated she was uncertain as she arranged for a trustee to help her with the bankruptcy. In redirect Ms. McNeil stated that she had taken out a line of credit to "try to keep paying the lawyers". Ms. McNeil was also asked if she paid only $9000 of her $60,000 debt to Patterson Law. She responded that she paid a retainer. I do not accept that Ms.

McNeil did not know about the need to pay creditors and disposition costs, I find she attempted to avoid responsibility for those costs by claiming bankruptcy and attempting to assign responsibility for the matrimonial debt to Mr. Hartlen while expecting to receive the equity.

[87] The parties were directed to complete certain undertakings and they must comply with the Corollary Relief Order directing they complete certain tasks if not already completed, including:

> Paragraph 22: Ms. McNeil provide proof she is solely responsible or has paid for "RRSP loan" 706 ($5,546 as of November 2012) and what institution it was held with and if she did not do so and Mr. Hartlen needs to do it then the credit would be given to Mr. Hartlen; Ms. McNeil undertook to send it.
>
> Paragraph 24: Ms. McNeil provide proof she is solely responsible or has paid the Visa debt for card ending 2503 which was $4410.24 in November 2012.
>
> Paragraph 25: Ms. McNeil was ordered to pay $31,200 toward the joint line of credit which was being considered her debt and pay half of the $33,000 ($16,500) that she and Mr. Hartlen were to share. (At various times counsel have suggested the amount is $14,000 and should clarify the amount).

[88] Mr. Hartlen acknowledged the $21,540 debt he owed to Mastercard as his post separation debt. He stated he would pay out the debt if necessary if a judgment is entered before the house is sold and it needs to be paid. Mr. Hartlen remains responsible for his debt.

[89] One of the parties referenced the "Notice of Assessment tax bill for 2014 of $24,059.00 now balance of $33,412.50." If this debt was not dealt with through the Corollary Relief Order previously, it cannot be lumped in with other matrimonial debts after the fact.

Spousal support December 2012 through October 2017

7. What if any entitlement does either party have to spousal support between December 2012 and October 2017? If entitlement is proven, what quantum of spousal support should be paid, from when?

[90] Spousal support is the "equitable sharing" of the "economic consequences of marriage or marriage breakdown". When determining issues related to spousal support I must try to "strike a balance that best achieves justice in each case". Spousal support serves two purpose, to compensate and meet the recipient's need.

[91] When making an original spousal support order I must consider the "condition, means, needs, and other circumstances" of the parties. Other relevant considerations include: the length of time the parties cohabited; the functions performed by each during cohabitation; and any order, agreement or arrangement relating to support of either spouse.

> In applying a means and needs analysis, the court must assess the parties' need due to litigation and other costs in the context of the overall extent of her economic disadvantage… *Leslie v. Leslie*, 2017 MBQB 130.
>
> However, without sufficient evidence, the court will not determine whether legal fees should be included in the means and needs analysis - *Gonsalves v. Scrymgeour*, 2017 ONSC 1034: *Ahmed v. Naseem*, 2016 NSSC 366.

[92] Section 15 of the *Divorce Act* has been found to be broad enough to entitle a judge to award support for a period predating the date of divorce. *Donald v. Donald* 282 A.P.R 322, [1991] N.S.J. No 214 (C.A) *Lidstone v. Lidstone* 335 A.P.R 213, [1993] N.S.J. No 165 (C.A); *Armsworthy v. Boucher*, 2018 NSSC 209. The Court must if possible make an order providing "compensation for marital contributions and sacrifices, allowing for the financial consequences of looking after the children of the marriage, relieving any need induced by the separation and, to the extent it may be practicable, promoting the economic self-sufficiency of each spouse. *Phillippe v. Bertrand*, 2015 ONSC 235.

[93] In *Fisher v. Fisher*, 2008 ONCA 11, the Court found:

> [53] …self-sufficiency is not achieved simply because a former spouse can meet basic expenses on a particular amount of income; rather, self sufficiency relates to the ability to support a reasonable standard of living. It is to be assessed in relation to the economic partnership the parties enjoyed and could sustain during

> cohabitation, and that they can reasonably anticipate after separation…..Thus, a determination of self-sufficiency requires consideration of the parties' present and potential incomes, their standard of living during the marriage, the efficacy of any suggested steps to increase a party's means, the parties' likely post-separation circumstances (including the impact of equalization of their property), the duration of their cohabitation and any other relevant factors.

[94] The parties began residing together in October 1990. Mr. Hartlen was 49 years old and Ms. McNeil was 44 as of their final date of separation in November 2012. Ms. McNeil worked part-time and she was home caring for the children born 1991 and 1998, until after separation.

[95] In July 2013 Ms. McNeil indicated she had started a new job at MD Physician Services as a receptionist for three months, $17 per hour 35 hours per week, until October 18, 2013. In August 2015 she testified she was working for MD Financial Management on a contract ending "December", earning approximately $32,000.00 per year. Mr. Hartlen suggested Ms. McNeil's income was $17.77 an hour plus four percent vacation pay as of December 2015.

[96] In advance of trial in June 2017 the parties acknowledged Ms. McNeil's entitlement to spousal support. At trial in 2017 the parties understood that the Rule of 65 applied, suggesting an indefinite term for spousal support might be a possibility. However, an indefinite term, does not necessarily mean that spousal support is payable forever. As in the case of *MacDonald v. MacDonald*, 2017 NSCA 34, it may be that at trial "a reasonable culmination date for the transition [to self-sufficiency] was not predictable", but if a reasonable "culmination date" is known, spousal support entitlement may end. *Djekic v. Zai*, 2015 ONCA 25; *MacDonald v. MacDonald,* para 41.

[97] I find Ms. McNeil has a compensatory claim which is not dependent on Ms. McNeil being in need or Mr. Hartlen having a surplus. When Mr. Hartlen qualified his position, suggesting he acknowledged entitlement based on need "both ways", he argued that the issue left outstanding was his ability to pay.

[98] Along with his ability to pay, Mr. Hartlen has raised the following concerns: that he has serviced a high level of matrimonial debt post-separation; that any retroactive award of spousal support would have tax implications; and there are many unanswered questions related to Ms. McNeil's RRSPs and her bankruptcy proceedings. *Godin v. Godin*, 2013 NSSC 316, 2013 CarswellNS 1059; *Buchanan*

v. Young, 2013 BCSC 1742. Ms. McNeil has suggested that Mr. Hartlen's income and assets may not accurately reflect his "means". See *Dufour v. Dufour*, 2014 ONSC 166,2014 CarswellOnt 415 (S.C.J).

[99] From her perspective Ms. McNeil has stated in her brief, in part:

> …it was disclosed at trial, for the first time, that Dwayne has received income from sources other than salary since 2015 that were not considered in the determination of imputed salary of $45,000 per year. A fair and reasonable determination of child and spousal support owed by Dwayne to Lorrie, as of 2015, should include consideration of this additional income that was used to maintain Dwayne's lifestyle, buy and renovate the matrimonial home and pay his legal Counsel from 2015 to present, as Dwayne's income during this period was shown at Trial to be much more than from a salary.

[100] To provide context regarding the issues being canvassed and the evidence available to me in 2017, when I was determining the incomes of both parties for the period between 2012 and September 2017, I have summarized testimony given when witnesses were cross-examined by Ms. McNeil's legal counsel, including the following witnesses: Mr. Hartlen's family doctor, Dr. Crooks; Mr. Hartlen's mother Darlene Hartlen; Central Tile and Terrazzo Company bookkeeper, Mr. McDonald; and Mr. Hartlen.

Dr. Harris Crooks – June 6, 2017 Mr. Hartlen's witness

[101] Dr. Crooks was qualified as an expert witness with expertise as a family doctor. Counsel agreed Dr. Crooks had "expertise in the area of family medicine". Dr. Crooks confirmed he had known Dwayne Hartlen for approximately forty years. He agreed with the characterization that he saw Mr. Hartlen "fairly regularly".

[102] He confirmed Dwayne Hartlen was "complaining about back pain in 1988 and that he had referred Mr. Hartlen to a back specialist". He stated that Mr. Hartlen was diagnosed with "mechanical back pain" which Dr. Crooks described as a "catchall diagnosis when there is no other diagnosis".

[103] He noted that the "x-rays at that time showed a small spina bifida occulta, which is a congenital abnormality that's not really of great significance but sometimes is associated with lower back pain. It also showed a mild retrolisthesis, which means that the spine is somewhat unstable…" He stated that the treatment recommendation was that Mr. Hartlen "stay as fit as possible, could use minor pain relievers, ice, heat, physiotherapy, chiropractic treatments, and that sort of thing".

[104] He confirmed Mr. Hartlen was diagnosed with a "compression fracture to his third lumbar vertebrae in an all-terrain vehicle accident in 1991". That he "fractured his L3 and L4 vertebral vertebrae" and Mr. Hartlen was off work for three to four months.

[105] He indicated Mr. Hartlen complained about back pain related to his work which required "a lot of lifting, bending, squatting, kneeling, all activities stressful to the back". Dr. Crook indicated that in June 2013 Mr. Hartlen presented with neck pain, and in 2014 Mr. Hartlen presented with "sciatica, which is leg pain that is caused by the compression of one of the nerve roots exiting the spine".

[106] He advised that Mr. Hartlen was subsequently diagnosed with "premature aging of the spine", including "a reduction of the disk at four levels of his neck, and with his lower spine". Dr. Crooks stated that the "disc issues in his lower neck are substantial, and he also had significant facet joint involvement in the neck as well – which is a companion of the disc disease".

[107] Dr. Crooks stated "Mr. Hartlen has a very nasty spine…and the possibility for compression of nerve roots that he has, I think it is particularly amazing that he could do that particular job for as long as he did,…". He stated that Mr. Hartlen was not "capable of doing a job that required frequent bending, lifting, squatting or kneeling eight hours a day, five days a week". Dr. Crooks stated: "I have no doubt that he will not be able to return to any type of heavy work on a sustained basis."
[108] He also offered the opinion that Mr. Hartlen struggled for many years with alcohol use disorder which impacted his life and his work. And that in July 2016 Mr. Hartlen was "diagnosed with chronic obstructive pulmonary disease (COPD)".

[109] Dr. Crooks confirmed he had not put Mr. Hartlen off work in January 2015. He acknowledged he had reviewed the list of medical conditions that Mr. Hartlen wished to have included in his report, before he, Dr. Crooks, prepared his own list. He agreed he did not know if Mr. Hartlen had attended physiotherapy or had quit smoking. Dr. Crooks acknowledged that Mr. Hartlen would be able to act in a supervisory role to organize and to manage employees at a work site. I accepted Dr. Crooks's opinion that Mr. Hartlen would not be able to return to any type of "heavy work on a sustained basis", but could do some work.

John McDonald, bookkeeper, subpoenaed by Ms. McNeil

[110] John McDonald, bookkeeper for Central Tile & Terrazzo Company, was subpoenaed to testify. He provided the parties with Mr. Hartlen's employment information produced pursuant to his subpoena. Copies were provided to the parties and entered as an exhibit.

[111] Mr. McDonald confirmed he was employed by "Central Tile" as a bookkeeper and he began his employment at Central Tile in or around January 2000. He stated that after the company hired him, he started using a program known as Simply Accounting, and he maintained records for the company. That the records before that time "don't exist" as the company was only required to keep records for seven years and a decision was made to dispose of any records over ten years old. Mr. McDonald stated that the information he had provided to the Court was his best effort to comply with the subpoena issued by the Court.

[112] He stated he worked approximately twenty-four hours per week at Central Tile & Terrazzo Company until 2016, and that more recently he was working as office/project manager. He indicated his employment responsibilities included but were not limited to being responsible for accounts payable, accounts receivable, invoicing of jobs, progress billings, follow up with change orders, recording everything that needed to be paid, pursuing payments, paying suppliers, and weekly payroll.

[113] Mr. McDonald confirmed Mr. Hartlen had been employed with Central Tile & Terrazzo Company before he began keeping records for the company in or around January 2000. He confirmed Central Tile & Terrazzo Company continued to employ approximately six people while the company was in the process of "winding down".

[114] He stated that when the company was doing well financially there were usually eleven or twelve employees at Central Tile & Terrazzo. He confirmed the company had one tile setter still in its employ and Central Tile & Terrazzo would sometimes contract out for an additional tile setter if the job required it. He stated that even when the company was not in the process of winding down, Central Tile & Terrazzo would lay off employees if there was a shortage of work.

[115] Mr. McDonald confirmed some employees at Central Tile & Terrazzo were retained on salary including the estimator or project manager. He stated that the employees were paid an hourly rate, often minimum wage plus one dollar, usually

between $14 and $29.95 per hour. That employees who were members of the union, would receive eight or nine percent vacation pay and holiday pay and a contribution to RRSP's.

[116] Mr. McDonald confirmed Mr. Hartlen was off work for a period and returned to work in August 2016. He stated that upon Mr. Hartlen's return to Central Tile & Terrazzo he worked as a "facilitator" leaving with the men from the shop and going with the men to their job sites and he might get materials if required for the job. Mr. McDonald believed Mr. Hartlen was paid $15 per hour upon his return to work ($14.42 + vacation pay of 4%).

[117] Mr. McDonald confirmed that in 2013 Mr. Hartlen was earning $1,900 per week + union percentage and in addition, that both Dwayne Hartlen and his brother Darren Hartlen, who was an engineer with another company and did not receive a salary from Central Tile & Terrazzo, would receive yearly bonuses from Central Tile & Terrazzo, mostly at Christmas and in February based on the "financial health of the company". Mr. McDonald indicated that not everyone received a bonus, that perhaps the estimator and a director might receive a bonus. Mr. McDonald indicated that Mr. Hartlen was not a director. Mr. McDonald confirmed that the parties' older son, Jordan Hartlen, worked for the company and was being paid approximately $25 or $26 per hour plus union benefits.

[118] He stated that if Mr. Hartlen was not working then he would not receive "any hours that were being put towards jobs", as normally "his pay cheque would be attributed to jobs that he was working on". Mr. Hartlen was paid a salary but because he was part of a union "it had to be set out as an hourly wage". Mr. McDonald confirmed that previously, when the company was doing well financially Mr. Hartlen earned over $100,000 per year and that he was paid "a little more than the union rate" when working as a tile setter.

[119] Mr. McDonald stated he understood the business was "winding down" due to the health difficulties of Dennis Hartlen which he believed resulted in company losses in recent years. Mr. McDonald observed that Dennis Hartlen's health issues had negatively impacted on production at the company. Mr. McDonald indicated that Dennis Hartlen could not contribute in the same manner as Mr. McDonald had seen him contribute to the company prior to his illness. Mr. McDonald understood that, as a result Dennis Hartlen and Darlene Hartlen had decided not to bid on any new jobs and to terminate the job of estimator.

[120] Mr. McDonald confirmed that the company had two outstanding jobs to complete: one estimated at $196,000 and the other estimated at $300,000, and two others estimated at $100,000 and $4000, with the company year-end being October 31, 2017. He explained that salaried persons who were left working for another year or so were: himself, Dwayne Hartlen, Jordan Hartlen and a cleaner. He agreed that previously the journeyman tile setter was paid approximately $68,000 + bonuses and therefore approximately $70,000 to $75,000.00 per year.

[121] Mr. McDonald acknowledged he dealt with garnishments of Dwayne Hartlen's pay by the Maintenance Enforcement Program and Revenue Canada. He confirmed he received a Notice the garnishment was suspended in April 2017. Mr. McDonald confirmed the last payments made to the Maintenance Enforcement Program were payments of $262 every month which was garnished from Mr. Hartlen in November and December 2016; and January 26, 2017 and February 28, 2017.

[122] Mr. McDonald confirmed Mr. Hartlen was earning a gross pay of $600 per week after he returned to work in August 2016 and that Canada Revenue was not garnishing his pay because the Maintenance Enforcement Program was garnishing the maximum allowed. He confirmed Mr. Hartlen received no pay September 15, 22 and 29, 2016. Mr. McDonald agreed that there was a period of a few months where Mr. Hartlen was earning $600 per week in gross pay but receiving no money as his pay was being garnished. That on May 18 and on May 25, 2017 Mr. Hartlen received $335.37 (net) of his $600 (gross) but Canada Revenue Agency garnished $143.73 because the Maintenance Enforcement Program was no longer collecting.

[123] Mr. McDonald confirmed that Mr. Hartlen was previously a member of the tile setter union and he did pay union dues for tile setting jobs he did of approximately $420 in 2015. He testified that when Mr. Hartlen did work as a tile setter, the company contributed to RRSP's on his behalf through Primerica. He indicated that when there were no "checks" for RRSP's it could mean Mr. Hartlen was working with soft flooring or that there was no work. When Mr. Hartlen was not working, he would be paid a "flat salary" so Mr. McDonald could not determine when Mr. Hartlen was or was not working.

[124] Mr. McDonald confirmed Mr. Hartlen received the following bonuses: February 2008 $10,000; December 2008 $3,500; February 2009 $12,000; December 2009 $3,500; February 2010 $12,000; December 2010 $4000; February 2011

$15,000; December 2011 $4000; February 2012 $15,000; December 2012 $4000; June 21, 2013 $8,100; December 2013 $4000; and December 2014 $2000. Mr. McDonald confirmed that all bonuses were taxable income. Mr. McDonald stated that Jordan would also get a "large bonus" in the $1000 range. He indicated that he believed the company had suffered losses over six previous years. I accepted Mr. McDonald's testimony about the losses the Central Tile & Terrazzo Company had suffered and about Mr. Hartlen's employment history, and the employment income and benefits he received.

Darlene Hartlen testified June 5, 2017 subpoenaed by Ms. McNeil

[125] Mr. Hartlen's mother, Darlene Hartlen, stated she was seventy-three years old. Ms. Hartlen confirmed that the Central Tile & Terrazzo Company was in the business of "supplying and installing flooring and tile and material", that the business had been in operation for thirty-seven years and that she and her husband Dennis Hartlen who was seventy-four years old, were both officers and directors of the company.

[126] Ms. Hartlen confirmed that the company was "winding down", that half the employees were "gone", and they were no longer "bidding on work". Ms. Hartlen confirmed her husband, Dennis Hartlen, had been diagnosed with Parkinson's Disease five years previously and more recently he was suffering from symptoms of dementia. She stated that the decision to wind down the company was made due to Dennis Hartlen's poor health and resulting company losses over five or six years. Ms. Hartlen confirmed that the company was being sued for three million dollars. She stated that the lawsuit had nothing to do with their decision to wind up the company.

[127] Ms. Hartlen confirmed she and Dennis Hartlen had no plans to start another business or to sell the business and they had reached their decision in February or March of 2017. She stated that she and Dennis Hartlen had to put a couple hundred thousand dollars of their retirement money into the business over the last two or three years and this contributed to their decision to retire, that they had not made any provision for continuing to pay any employees' salaries and they would be paying for hours worked during the "winding down" of the company.

[128] She suggested she had forty-nine shares and her husband fifty-one, with him being the controlling shareholder, but she was not certain. Ms. Hartlen confirmed

that her son Darren Hartlen had signing authority and he would receive a bonus each year depending on profits. Ms. Hartlen confirmed Dwayne Hartlen did not have any shares in the company and that nobody held shares in trust on his behalf. Ms. Hartlen stated that her regular involvement in the company started to "phase out" when John McDonald was hired as a bookkeeper, seventeen years previously.

[129] Ms. Hartlen was asked about Dwayne Hartlen's illnesses since 1990. Ms. Hartlen confirmed that Dwayne Hartlen suffered from back problems. She stated she could not recall when the problems started. She suggested that tile setting was hard on the back and that Dwayne Hartlen also had a "bike accident".

[130] Darlene Hartlen confirmed that Dwayne Hartlen struggled with alcoholism. That she believed he had been in a rehabilitation program at least two or three times, and she believed the last time had been approximately two years previously. Ms. Hartlen believed Dwayne Hartlen was in "rehab" once and in the hospital for two weeks another time. Ms. Hartlen was asked about Mr. Hartlen's motor vehicle accident in 1999 and the letter from Worker's Compensation in October of 1999. Ms. Hartlen stated that she did not have any memory of the accident.

[131] Ms. Hartlen indicated that it was her husband who would decide about bonuses for employees, and for Dwayne Hartlen's brother, Darren Hartlen. Ms. Hartlen confirmed Dwayne Hartlen was paid his weekly salary whether he worked or not. Ms. Hartlen confirmed Dwayne Hartlen was not available for work when he was in a rehabilitation program and 30hat she and Dennis Hartlen paid personally for his rehabilitation and their company paid his salary "except the last time when he was off work."

[132] Ms. Hartlen confirmed Mr. Hartlen was "laid off" in January 2015 and he was then offered employment other than tile setting in August 2016. Ms. Hartlen stated that after Dwayne Hartlen stopped work, that she and her husband helped Mr. Hartlen from time to time by buying groceries, contributing possibly $4000 or $5000 in groceries. Ms. Hartlen confirmed that the company had loaned Dwayne Hartlen money previously.

[133] Ms. Hartlen stated she believed her grandson took her iPad from her home and that Ms. McNeil gained access to it, including all her private information. Ms. Hartlen explained she believed Ms. McNeil gained access to her iPad because other people told her that Ms. McNeil had told them about it. I accept Ms. Hartlen's

testimony about Dennis Hartlen's health struggles and about their decision to stop bidding on new jobs. I accept Ms. Hartlen's testimony about the financial assistance and the support she and her husband provided to both their sons, and by extension, their son's families over the years.

Dwayne Hartlen testified June 6, 2017

[134] Mr. Hartlen stated that his parents helped the parties' family, and the plan was to have Ms. McNeil at home with their kids, that his salary was over twice as much as other employees doing the same work and this was the case "to keep my wife home with my kids, that was supposed to have been the arrangement". He acknowledged struggling with alcoholism. He confirmed he had a grade nine or ten education and two years "vocational school" for pipefitting and one-year for welding.

[135] He stated that he had an ATV accident in 1991, he was required to rest for three to four months, but he did renovations to a basement during that period. He indicated that he has received massages to address back pain. He acknowledged being in a motor vehicle accident in 1999. He indicated that he drives the company truck and has access to a gas card. He stated that he could not use the truck when he was off work, that it was parked, and nobody else used it.

[136] Mr. Hartlen described himself as a functional alcoholic. He stated that he has attended Detox in Middleton for several weeks; Crosbie House in 2006; Detox in Dartmouth; the Dartmouth Core program; Seabridge in March of 2016 for about a month; and then again in the Fall of 2016. He suggested he had also attended AA throughout the parties' marriage and after, he acknowledged "serious bouts of drinking during his marriage".

[137] Mr. Hartlen advised that he was paid by Central Tile & Terrazzo until December 23, 2014. He suggested he was overpaid, and he did not do what he should be doing. He acknowledged that his Record of Employment indicates his final pay period was January 7, 2015, but he went off work December 14, 2014 for "health reasons", and he checked into a rehabilitation center.

[138] He explained that he did not apply for disability benefits and he did not apply for Worker's Compensation. He acknowledged he knew he had insurance on his mortgage and line of credit for disability coverage and he did not apply until July

2016. He stated he had trouble obtaining all the necessary information to make the application.

[139] Mr. Hartlen acknowledged that his tax returns confirm he cashed in RRSP's in 2014 and the rest in 2015 (RRSP of $112,787). He stated he required support for himself and for Jacob who was living with him while he was still paying child support to Ms. McNeil, May 2014 through April 2015.

[140] Mr. Hartlen acknowledged the parties' joint Bank of Montreal line of credit was in default and that as of March 2015 he did not make the $175 per month payments as required by the Interim Order. He acknowledged an action was started against he and Ms. McNeil in relation to the line of credit of $64,500, and against him in relation to his Mastercard of $21,540.79.

[141] Although Mr. Hartlen stated there was no such thing as a supervisory position in his business, he later acknowledged he had previously referred to himself as a "tile foreman." In 2017 Mr. Hartlen was suggesting he could earn $35,000. As noted, in October 2017 I found Mr. Hartlen to have an annual income for determining child support and spousal support of $130,175 in 2012; $128,004 in 2013; $115,849 in 2014; $0 in 2015; $0 January 2016 to July 2016; and $45,000 from August 2016 onward. Although at times Mr. Hartlen did not appear to have an in depth understanding of his financial affairs, I found him a credible witness generally. I would note that Ms. McNeil acknowledged she handled their financial affairs.

[142] When granting the Corollary Relief Order in 2017 I made the following findings of fact among others:

- that Mr. Hartlen was laid off work in response to his health difficulties in late 2014 and that his parents did not expect him to return to work. That when he did return to work, they created a position for him. I accepted the evidence that Mr. Hartlen was off work for medical reasons although Dr. Crooks did not "put him off work".

- that Mr. Hartlen had cashed in his RRSP's and was using them to live off of in 2014 and 2015 when Jacob was living with him and Mr. Hartlen was still ordered to pay child support for Jacob to Ms. McNeil.

- that Mr. Hartlen's mother and father had helped him with groceries when he was off work, and that he started living with Denise Brophy in November 2014 and Ms. Brophy was "supporting him".

- I accepted Dr. Crook's evidence that Mr. Hartlen could not return to the same work, I accepted the evidence of both Mr. McDonald and Darlene Hartlen about the nature of Mr. Hartlen's salaries and bonuses, his challenges generally, and the evidence regarding Mr. Hartlen's parents', Dennis' and Darlene's, decision to retire.

[143] Despite the evidence that Mr. Hartlen was earning a gross pay of $600 per week after he returned to work in August 2016 ($31,200), I considered what other people installing flooring and tiles could make with Mr. Hartlen's experience in the field, despite his challenges and I imputed a reduced income of $45,000 to Mr. Hartlen as of August 2016. A consideration when imputing income to Mr. Hartlen was that there was no evidence Mr. Hartlen had sought work elsewhere and he had been unable to secure employment with another company.

[144] In 2017 Mr. Hartlen objected to Ms. McNeil's affidavits being considered by the Court without cross-examination, but he did not object to her financial information being considered. Ms. McNeil disclosed her annual income for support as follows: $15,046 in 2013; $33,265 in 2014; and $33,733 in 2015. Because Ms. McNeil did not disclose her income in 2016, I imputed an income of "at least $25,000, commencing in 2016 up to trial in October 2017.

[145] At trial in 2020 Mr. Hartlen has suggested Ms. McNeil's position seemed to be that "Central Tile & Terrazzo should continue to pay Mr. Hartlen more than market salary indefinitely in order to support her." "That Central Tile & Terrazzo should basically keep on trucking it seems in order to keep Mr. Hartlen in money".

[146] Mr. Hartlen has argued that his parents, Dennis Hartlen, and Darlene Hartlen, did not have a legal obligation to support Ms. McNeil and that if there was an obligation for spousal support it was Dwayne Hartlen's and "not one that falls to these other folks."

[147] In 2017 Mr. Hartlen stated that he was being paid a "small wage right now to be largely a go-fer". He stated that he was being paid minimum wage and that he

had minimal education. He did not argue he could not earn anything but stated that he could not earn "anything near what he earned before". As noted, he suggested imputing $35,000 to him would be a fair assessment. In 2017 I imputed an income of $45,000 to Mr. Hartlen.

[148] In her testimony Ms. McNeil swears that Central Tile & Terrazzo is still an active company. Ms. McNeil was asked about the document she had included from the Registry of Joint Stocks Companies and indicated she had included it as it suggests the company status was active as of February 2019.

[149] She stated she thought they were waiting for a "large draw" from the Scotia Square job and suggested the company could still pay income to Mr. Hartlen. Ms. McNeil acknowledged that the document indicated the last time they had filed anything was in March 2018 and that their registration was revoked for non-payment in August 2020. Ms. McNeil suggested that in his previous testimony Mr. Hartlen indicated the company would close in 2017 and it did not.

[150] In re-direct Ms. McNeil stated that she believed the company would be restarted, when asked why she believed that she stated: "because Dwayne worked for that business for 30 some years and he was the foreman and Jordan was a trained tile setter so I thought they would continue on with the family business". There is no reliable evidence to suggest Mr. Hartlen has any control over the Central Tile & Terrazzo Company.

[151] In 2017 I made findings of fact regarding Mr. Hartlen's, and Ms. McNeil's income when determining child support. The determination of employment income for child support is guided by the *Child Support Guidelines*, similarly those same *Guidelines* are relied upon to determine employment income for spousal support.

[152] Ms. McNeil has argued that, in addition, when determining spousal support, I must carefully consider the "condition, means, needs, and other circumstances" of the parties. And as mentioned above, the length of time the parties cohabited, the functions performed by each during cohabitation, and any order, agreement or arrangement relating to support of either spouse.

[153] In 2017, Ms. McNeil's circumstances were not properly before me when I determined the parties' income for support generally, and when I applied that income to child support determinations while I suspended my final conclusions on spousal

support. If I am able to consider Ms. McNeil's arguments about Mr. Hartlen's income between 2015 and September 2017, and if she is arguing that: his income was not fully disclosed; he was "working under the table"; his parents were paying him an income; his parent's company was paying him an income; he was receiving income from a trust; or he was receiving income from investments or property, I find that there is, and there was, no reliable evidence to reach any of the above noted conclusions.

[154] If I am able to consider Ms. McNeil's claims about Mr. Hartlen's means for the period between 2015 and September 2017: that his father is paying his legal bills and that his wife is supporting him, I would have found he was receiving financial support from others. I also had to consider his challenges. Yes, he needed support, and no he did not ask Ms. McNeil for support. He did rely on others, but they did not have an obligation to provide support to him or to Ms. McNeil. The obligation to compensate Ms. McNeil is Mr. Hartlen's obligation, and I found that at that time he was not able to do so, and I find he is not able to do so going forward. The means highlighted by Ms. McNeil are not Mr. Hartlen's means and were not / are not controlled by him.

[155] When determining spousal support payable for the period between December 2012 and October 2017, I did consider their marriage was a "joint endeavour", and marriages are generally premised on "obligations and expectations of mutual and co-equal support". However, I also considered that when their marriage ended the presumption of mutual support which existed during the marriage no longer applied.

[156] I find that between November 2012 and November 2020 Ms. McNeil had entitlement to spousal support on a compensatory basis given her reduced participation in the workforce to care for the parties' children and that this may have "jeopardized her ability to ensure her own income security and independent economic wellbeing". I have determined an amount of spousal support which would be reasonable, by "comparing and contrasting both parties' economic circumstances" at the relevant periods, one at a time.

[157] I have considered the condition of each party for the various periods depending on previous findings of fact if made and based on what evidence is properly before me, old or new, regarding: ages, health, employability, obligations, dependents, and overall situation in life. I have also considered their means: all financial resources, capital, and income, as well as earning capacity. I have

considered that Ms. McNeil's need: "does not [necessarily] end when a spouse seeking support achieves a subsistence level of income or any level of income above subsistence". *Yemchuk v. Yemchuk*, 2005 BCCA 406. The outstanding issue, since 2015, has been Mr. Hartlen's ability to pay based on any reliable evidence of any additional "means". I find those "means" would need to be under Mr. Hartlen's control to be considered.

[158] In coming to my decision about spousal support I did turn my mind to the conclusions I had reached when finalizing asset and debt division in 2017. For instance, I had decided the parties would keep their own RRSP's and they would be treated as an asset. I also decided that the money Ms. McNeil took from the parties' joint line of credit post separation would be considered in the asset and debt division. I decided both would be treated as assets and they were considered in the final calculation of asset/debt division. They cannot be reconsidered now.

[159] I would note that in 2017 I drew an adverse inference regarding Ms. McNeil's disclosure in relation to her RRSP's. I continue to have an incomplete understanding of the number and value of RRSP accounts owned by Ms. McNeil. Given that I previously accepted the evidence from both parties that Ms. McNeil managed the household finances, and I understood that Ms. McNeil has worked in banking at times over her lifetime, I continue to have concerns about the disclosure provided by Ms. McNeil. In 2017 I resolved the issue by deciding both parties would keep their respective RRSP accounts. I considered it even. That decision cannot be revisited.

[160] Ms. McNeil has argued that the $50,000 her mother contributed should be considered when I determine any award of spousal support. I will deal with the $50,000 later in my decision on ongoing spousal support.

Retroactive Spousal Support – tax implications

[161] Mr. Hartlen asked the Court to consider that any lump sum retroactive spousal support ordered back to 2012 – 2013 would not be tax deductible. I find that consideration will need to be given to the tax implications of any lump sum spousal support award. If the parties cannot agree on the tax implications of my decision on spousal support, within two weeks of my decision on spousal support, both parties may submit one page of calculations only. I will make a final determination of the tax implications of my decision on spousal support.

Spousal Support December 31, 2012 and January 31, 2013 through June 31, 2013

[162] Mr. Hartlen's income in 2012 was $130,175 and Ms. McNeil's income was $8,700. In 2013 Mr. Hartlen had an income of $128,004 and Ms. McNeil's income was $15,046. I rely on the high range of the Spousal Support Guidelines to determine spousal support owed on December 31, 2012, and between January 31, 2013 and June 31, 2013.

[163] I find the high range of the Spousal Support Guidelines is reasonable for that period only because: of the disparity in the parties' incomes; although Ms. McNeil had fixed costs, and was earning very little income from employment, the parties' child, Ms. McNeil's mother, and Ms. McNeil's mother's husband remained living with her; Ms. McNeil and those living with her had not yet had an opportunity to re-order their affairs to adapt to Ms. McNeil's new reality.

[164] I find Mr. Hartlen notionally owes spousal support in the amount of $3,277 December 31, 2012, and spousal support of $2,854 x 6 = $17,124 from January 31, 2013 to June 31, 2013. For a total spousal support payment owed by Mr. Hartlen to Ms. McNeil of $20,401 between December 2012 and June 2013.

Spousal Support July 31, 2013 through December 31, 2013

[165] On July 24, 2013 Mr. Hartlen was ordered to pay interim spousal support of $2,461 beginning July 31, 2013. The amount ordered by the Court was in the low range of the Spousal Support Guidelines. I find that amount is appropriate given that Ms. McNeil had had seven months to start planning her financial future, to adjust her responsibilities, to make a motion to sell the home, and she had just secured a contract position.

[166] I recognize there was still a big discrepancy in income between the parties but I find that the combined spousal and child support was reasonable in the circumstances. Mr. Hartlen must pay spousal support in the amount of $2,461 between July and December 2013,for a total spousal support payment owed by Mr. Hartlen to Ms. McNeil of $14,766 between July 31, 2013 and December 31, 2013.

Spousal Support in 2014

[167] The disparity between the parties' incomes was reduced somewhat between January 2014 and December 2014. Again, given the parties' respective situations, with Ms. McNeil now working, and continuing to receive child support despite Jacob being with his father April 2014 through April 2015, I feel the low range is a reasonable support amount. Mr. Hartlen's 2014 income was $115,849 and Ms. McNeil's income $33,265. For part of 2014: January 31, February 31, March 31, and April 31, 2014, Mr. Hartlen is obligated to pay spousal support of $1,050 x 4 = $4,200.

[168] Between May 31, 2014 and December 31 of 2014 Mr. Hartlen is required to pay spousal support based on the custodial payor formula at $1,757 x 8 = $14,056. (calculated in error to be $14,065 in the initial decision released July 8, 2021) for a total of $18,256 in 2014. The "custodial payor" amount is appropriate because child support has been accounted for and Mr. Hartlen has been credited back that money. Although Ms. McNeil was earning approximately $33,000 that year, the additional spousal support of $18,256 for a total of $51,256 compared to Mr. Hartlen's take home $115,849 – 18,256 = $97,593, not accounting for child support he owed up to April 2014, is a reasonable amount of support for Mr. Hartlen to pay.

Spousal Support in 2015, and January 31, 2016 through July 31, 2016

[169] I found Ms. McNeil's income to be $33,733 in 2015. The parties' living situations were relatively similar, Ms. McNeil's mother and her mother's husband were living with Ms. McNeil, and the parties' son returned to live with Ms. McNeil in April 2015. As of November 2014, Mr. Hartlen had re-partnered and was living with Ms. Brophy, Ms. Brophy's mother, and at times one or both of Ms. Brophy's children lived with them. Jacob Hartlen also moved in with his dad in November 2014 and resided with them until April 2015.

[170] Between January 2015 and December 2015, I found that due to either his alcohol use disorder or his back problems, or a combination thereof, Mr. Hartlen was incapacitated. Obviously a very difficult situation for both Mr. Hartlen and Ms. McNeil to be in. Mr. Hartlen was not earning an income from Central Tile & Terrazzo, but "living off" his RRSP's. As noted above, I found his RRSP's were his asset to which Ms. McNeil had no claim.

[171] I decided that as of the end of 2015, no further child support was payable by either party. I made the decision despite Ms. McNeil's argument, made in advance of trial in 2017, that Jacob may have earned approximately $24,000 in 2016, but he lived with her, and he did not contribute financially to the home. Ms. McNeil's evidence was not properly before the Court.

[172] When considering spousal support now, I recognize that as of January 31, 2016 child support was no longer payable to Ms. McNeil, and that was a change for her. However, Mr. Hartlen's circumstances had also changed significantly.

[173] I found Mr. Hartlen's income from employment to be $0 between January 31, 2016 and July 31, 2016. Ms. McNeil's income was imputed to at least $25,000. I find that in the circumstances, there is no spousal support payable by either party to the other in 2015 or between January 2016 and July 2016.

[174] If I consider Dr. Colp's testimony regarding Ms. McNeil's time off in 2017 up to September 2017, including the times when Ms. McNeil's doctor agreed, or more likely acquiesced, when Ms. McNeil asked to be off work, I find she still could have earned at least $25,000. I do not accept, and Dr. Colp did not state or at least he did not conclude, that Ms. McNeil's various ailments required her to continue with reduced work hours. I do not find Ms. McNeil's representations to her doctor to be credible. Given the conclusions I have come to, I have chosen the low end of the spousal support scale from 2016 onward.

[175] If I could consider the evidence, Ms. McNeil's evidence, and the parties' arguments about who was living with whom between 2015 and September 2017, there would still be no way around the tremendous change in Mr. Hartlen's circumstances. The issue is that Mr. Hartlen did not have any income for spousal support. Despite the various representations Mr. Hartlen made about his lack of ability to earn an income and pay spousal support, Ms. McNeil chose to remain in the matrimonial home. I heard arguments about Ms. McNeil's means suggesting Ms. McNeil's mother, her mother's husband, and Jacob should have contributed to her expenses. Her claim is compensatory. It is not about basic subsistence, if not for Mr. Hartlen's change of circumstances after 2014, he would be paying spousal support to Ms. McNeil in 2015 and in 2016.

[176] I have considered Mr. Hartlen's choice to reside with Ms. Brophy, Ms. Brophy's mother, and at times Ms. Brophy's two sons, and how those decisions may

have impacted on his expenses and ability to pay compensatory spousal support. Mr. Hartlen's mother indicated they did not continue to pay Mr. Hartlen an income after the last cheque he received in early January 2015. They did not think he was coming back to work at Central Tile & Terrazzo.

[177] Both parties made choices about where and with whom they would reside. The two household total incomes were significantly different given Ms. Brophy's income and Mr. Hartlen cashing in RRSP's, but Ms. McNeil had her RRSP's, and due to incomplete disclosure, or at times confusing or inconsistent disclosure, I made a decision that the parties would keep their own RRSP's. He chose to use them in 2014 / 2015. I am not prepared to find she had any claim to his asset given my previous decision.

[178] I find that Ms. McNeil's and Mr. Hartlen's ages are similar. I find Mr. Hartlen has health difficulties he has proven impact on his ability to earn an income from employment. I find that both parties' employability prospects are somewhat limited by their circumstances: Ms. McNeil's because of time out of the workforce; and Mr. Hartlen's because of his health, his limited education, limited training, and his over-reliance on his family to provide him with employment despite his challenges. I find their obligations are similar.

[179] Ms. McNeil has stated "he's a millionaire", referencing Mr. Hartlen. I take it that Ms. McNeil is suggesting Mr. Hartlen may inherit money from his mother someday, or from his father who is deceased. There is no reliable evidence before me of any income earning property or other resources under Mr. Hartlen's control.

Spousal Support August 31, 2016 – December 31, 2016

[180] Mr. Hartlen returned to work at Central Tile in August 2016. Between August 2016 and December 2016, I find he was assigned modified duties. I understood he was earning approximately $31,000 but in 2017, after considering his age, health, employability, training, and experience in the field, I imputed an income of $45,000 to Mr. Hartlen. Once again, Ms. McNeil's income continued to be imputed to at least $25,000. I find Mr. Hartlen should have paid $525 x 5 = $2,625 per month in spousal support to Ms. McNeil between August 31, 2016 and December 31, 2016.

Spousal Support January 31, 2017 to September 31, 2017

[181] In 2017 I found Ms. McNeil was capable of earning, "at least $25,000". In 2017 Ms. McNeil did not make herself available to answer questions on cross-examination and she did not call her family doctor to speak about any past health difficulties. However, I was aware of what she had earned while on contract and that she had been out of the full-time work force for a significant period. I imputed what I considered was a modest income she was able to earn.

[182] Although Ms. McNeil's family doctor, Dr. Colp did not testify in 2017, he did testify in 2020. If I could consider his evidence for the period before 2017, I would note that he spoke about Ms. McNeil's health and he commented about the time she had asked to take off work and the time he agreed she should take off from work. He testified about various challenges she had experienced. He also testified about the improvements he had noted by September 2019.

[183] Even if I were able to consider the evidence Dr. Colp provided in November 2020, for the period before September 2017, I find there is insufficient evidence to prove Ms. McNeil could not earn at least $25,000 in 2016, and 2017, as noted she in fact earned more in 2016 according to her financial documents. I find there is no reliable evidence properly before the Court to support a finding that Ms. McNeil is suffering from a medical condition requiring her to take extensive time off work, or suggesting she could not earn at least $25,000 per year.

[184] Between January 2017 and September 2017, Mr. Hartlen's income was imputed at $45,000 and Ms. McNeil's income was imputed at $25,000. Mr. Hartlen should have paid $525 x 9 months in spousal support to Ms. McNeil = $4,725. (the sum of $5250 included in the decision circulated July 8, 2021, was indeed a clerical error.)

Total amount of spousal support owing before accounting for tax implications

[185] The total amount of spousal support owed by Mr. Hartlen to Ms. McNeil up to October 2017 is $61,298. Periodic spousal support payments are taxable in the hands of the payee and deductible in the hands of the payor. Lump sum payments, in contrast, are tax neutral.

8. What if any entitlement does either party have to spousal support as of October 2017? If entitlement is proven, what quantum of spousal support should be paid, until when?

[186] The issue of spousal support was left open after the original trial in 2017 as I believed there was a "genuine and material uncertainty". My decision allowed either party to bring spousal support back by way of a motion without having to demonstrate a "material change of circumstances".

[187] In 2017 there was significant uncertainty about Mr. Hartlen's financial situation and some uncertainty about the parties' employment prospects. I did not feel I had sufficient information to determine what level of support would be needed or could be provided. The "dust appears to have settled" since then. By that point Ms. McNeil had some experience in the workforce, although it was unclear whether Ms. McNeil had found permanent employment.

[188] As of November 2020, the parties had been separated for eight years. Earlier in my decision I concluded that between November 2012 and October 2017, Ms. McNeil had a strong compensatory (clean break) claim. I also recognized that an indefinite term for spousal support was not out of the question and my answer should turn on the facts;that I would need to determine whether "a reasonable culmination date to transition to self-sufficiency" was predictable or not.

[189] In this case, I also have to consider that the issue of "any presumptive claim to a standard of living which existed before the dissolution of the marriage", was turned on its head in 2015 due to significant changes to Mr. Hartlen's earning capacity, and the impact on his standard of living and his ability to pay. And of course, the impact on Ms. McNeil.

[190] Mr. Hartlen confirmed that his 2017 income was $31,824, and he had just started receiving income from the Canada Pension Plan. He believed it had taken possibly "100 days before his application was approved for CPP benefits approximately four months earlier". He explained he was found to be disabled approximately one year earlier. He stated he has essentially been unable to work since he was about 30 years old and he cannot go back to work. Mr. Hartlen's updated Statement of Income indicates he will be receiving $14,365.08 in benefits per year.

[191] Mr. Hartlen acknowledged he had gone out with his son on jobsites when his son was installing fencing. He explained he was "just trying to get the kid off the ground". He acknowledged he and Ms. Brophy were not getting any rent for the

"in-law-suite" in their home as Jacob Brophy is living in it. He acknowledged that his father Dennis Hartlen had passed, and he stated he had not received any money. He confirmed that his father had been paying his legal bills when he was living. He stated that in 2015 "things changed" and he could not pay Ms. McNeil spousal support. He acknowledged that in the past he has taken trips with Ms. Brophy to San Diego through her work, and to Costa Rica for a wedding.

[192] As noted, Ms. McNeil filed a Statement of Income dated October 5, 2018 indicating she expected to earn $14,232 working for Scotiabank in 2018. Ms. McNeil filed Tax Assessments indicating she had earned a total income of $45,783 in 2017 (including but not limited to total earnings $6,243, EI $10,833, other income $3,865, RRSP income $24,577); $36,048 in 2016 (total earnings $33,383, UCB $300, EI $2,365); $36,992 and reassessed at $36,653 in 2015 (including but not limited to total earnings $33,733, UCB $420, taxable dividends $87, interest and investment income $139, taxable capital gains $48, RRSP income $2,500, other income $65).

Change of circumstances related to income imputed for support award in 2017

[193] Ms. McNeil has asked me to change the income imputed to her as of January 1, 2018, she suggests:

> Page 2 of the Corollary Relief Order, dated 24 January 2018, should be varied as follows: "(a) to have an imputed annual income of at least $25,000, commencing with her leaving her employment in 2016 and $20,000 as of 1 January 2018".

[194] I cannot set aside the imputation of either party's income based only on that party's suggestion they do not earn the imputed income amount. Each party asking for a change must establish that some important facts or circumstances have changed since the Corollary Relief Order was granted in October 2017.

[195] For instance, neither party can bring in their tax returns and say, look I earned less, or I worked less. They must do more than say this is my income "on paper". If either party thought I made a mistake when I imputed income to them in October 2017, they could have taken steps to change my decision, they could have appealed.

[196] If either party wants to convince me to vary my decision on imputation of income, then they must accept my decision was correct at that time, in 2017 – that the original imputation of income was correct. If they want to rely on their declared income in their financial information to convince me to change the amount their

income is imputed at from October 2017 onward, they must prove why I should accept their arguments.

[197] As Pazaratz J. put it:

> 53. If "declared income' automatically prevailed on a motion to change support, it would defeat the purpose of imputing income in the first place. It might even be a disincentive for payors to participate in the initial court process. They could simply ignore support Applications – as they often do. They could wait to see if the court imputes income, and how much. If dissatisfied with the amount, the payor could later return to court waving their tax returns, to suggest that the original judge got it wrong. *Trang v. Trang*, 2013 ONSC 1980.

[198] In advance of trial in November 2020, I directed Ms. McNeil to file an affidavit addressing what she had done to work toward self-sufficiency since the Corollary Relief Order was granted. What work, what job searches, and/or to provide medical evidence about her current circumstances if she was claiming she was not able to work.

[199] Counsel for Mr. Hartlen argued that the issues left to be resolved included quantum of spousal support, if any, based on the means and needs of the parties, including consideration of any contributions from other persons residing in the parties' homes.

Dr. Colp's testimony regarding Ms. McNeil's ability to work full-time

[200] Ms. McNeil called her family physician to provide evidence in support of the conclusion she was unable to work full-time. Dr. Colp was qualified as an expert witness with area of expertise being family medicine. Ms. McNeil filed an affidavit on Dr. Colp's behalf. Dr. Colp acknowledged Ms. McNeil presented him with an affidavit for his signature and he did request changes to the initial draft prepared by Ms. McNeil.

[201] Dr. Colp acknowledged he had not diagnosed Ms. McNeil with Post Traumatic Stress Disorder. He further acknowledged that his reference in his notes that Ms. McNeil's circumstances, including "symptoms include severe anxiety attacks" were based on subjective reports from Ms. McNeil. Dr. Colp agreed that if Ms. McNeil suffered from the symptoms reported that "it could lead" to an "inability to remain in locations." Dr. Colp confirmed he had put Ms. McNeil off work

between October 2018 and February 2019 due to her subjective reports she was suffering from severe anxiety and thyroid problems.

[202] He stated "we may have many people who may have an anxiety issue that we may not actually physically see them in that state, but we do have to take our patients at their word". Dr. Colp indicated that with respect to Ms. McNeil's reports of an abusive homelife that in his position he accepts "the patient's information at face value, but it is based on their reporting".

[203] He acknowledged he did not make any specific diagnosis of Ms. McNeil after her reported car accident because she did not become his patient until fifteen months after the accident. Dr. Colp acknowledged that the notes taken by another doctor, Dr. Coles, shortly after Ms. McNeil was involved in the car accident, did not suggest Mr. Hartlen was responsible for the accident or that Mr. Hartlen had tried to kill her.

[204] Dr. Colp acknowledged that the one note entered about the car accident, was entered by another doctor, Dr. Coles, and it read: "there was a two-vehicle accident at a three-way stop, and a young person with a suspended license, no insurance or registration struck the vehicle in which Ms. McNeil and her husband were occupants at high speed".

[205] He acknowledged that in the Spring of 2011 Ms. McNeil reported she was attending physiotherapy regularly. He agreed there was a Discharge Report on Ms. McNeil's file from physiotherapy dated October 26, 2010 which indicated: "returned to physiotherapy October 18, 2009? and her last visit was July 2010.

[206] Dr. Colp agreed the Discharge Report from physiotherapy was not consistent with Ms. McNeil's report that she started attending physiotherapy immediately after the accident and she was still attending "once a week or every two weeks". Dr. Colp agreed that his letter dated April 30, 2012 was not consistent with the reports either. He agreed that Ms. McNeil's reports about her home life and anxiety were also self reports.

[207] Dr. Colp acknowledged that on October 18, 2011 he met with Ms. McNeil, and she reported "she was terrified to drive a car, feels she has Post Traumatic Stress Disorder (PTSD), has issues with spelling, concentration when pressured, suffers from panic attacks and anxiety, and cannot work for more than four to five hours". Dr. Colp indicated those were Ms. McNeil's complaints but not his conclusions. Dr.

Colp offered the opinion that PTSD can cause cognitive and memory issues, but he stated that he did not diagnose Ms. McNeil with PTSD.

[208] Earlier in this decision, when considering the issue of whether Ms. McNeil was competent to make legal decisions I reviewed the evidence Dr. Colp gave on that issue, including his review of what health issues Ms. McNeil had discussed with him in 2017 and Ms. McNeil's request on January 22, 2018 for Dr. Colp to find she was unable to work. Dr. Colp agreed he did give Ms. McNeil a note to be off work for three weeks.

[209] Dr. Colp confirmed that in February 2018 Ms. McNeil attended his office and he wrote a note indicating Ms. McNeil: "wants a note saying she missed the trial in September due to anxiety. And she says she did not feel fit to do so. I advised Lorrie that I could not say she was not fit for trial as I did not see her in August and September. I could write a letter for her stating she does have a history of anxiety". Dr. Colp confirmed Ms. McNeil indicated she wanted to return to work and she indicated how many hours she was prepared to work. Dr. Colp agreed to write a note for Ms. McNeil with the proviso he would see her in four days.

[210] He confirmed that the next recorded appointment in Ms. McNeil's chart was May 7, 2018 when Ms. McNeil requested Dr. Colp give her a note so she could be put off work, due to problems with her eye. Dr. Colp also stated that Ms. McNeil reported that her employer would not give her the work hours she wanted, and she would have to look for another job. Dr. Colp acknowledged he provided Ms. McNeil with a note indicating she could only work four days per week for six hours due to an ongoing eye issue. Dr. Colp agreed he provided a further note on May 15, 2018 giving her another week off work and that there appeared to have been a further visit on June 12, 2018 but there was no note regarding the nature of the visit.

[211] Dr. Colp acknowledged that in November 2018 Ms. McNeil reported pain at her temples and "not feeling right" and Dr. Colp gave her a note to be off until January 18, 2019. He acknowledged that it appeared further appointments took place on July 18, 2019 and on December 4, 2019 but he was unclear about the nature of the visits.

[212] He confirmed that in September 2019 he met with Ms. McNeil and he found Ms. McNeil's "present physical state is stable. She's shown improvements in her mental condition having progressed to the point where she related improved

cognitive function and the ability to attend court with a possible return to work in the offing". Dr. Colp indicated that he understood she was not at work at that time.

[213] Dr. Colp offered the opinion that stress and anxiety can be related to hypo or hyperthyroidism. He referenced a study, not filed with the Court, related to increased anxiety in women who are on thyroid medication whose thyroid values "actually" fall in the normal range. Dr. Colp indicated that Ms. McNeil was on thyroid medication. He stated there were three periods of time since September 2015 when Ms. McNeil's thyroid results from the TSH (thyroid-stimulating hormone) "fell outside the normal range".

[214] He confirmed he had prescribed Ms. McNeil medication for anxiety. Dr. Colp offered the opinion that Ms. McNeil was trying to continue to work in some fashion, whether it be reduced hours. However, that during the times when she felt she was unable to work, after a discussion he did agree to put her off work for periods of time. Dr. Colp suggested there was a report on his medical file from Ms. Goderich referencing a letter from Dr. Leckie (neurologist) having diagnosed Ms. McNeil with a concussion, anxiety, and PTSD. He stated he did not have Dr. Leckie's letter. Neither Dr. Leckie nor Ms. Goderich testified.

[215] Dr. Colp offered the opinion that "PTSD and anxiety combination, are something that could be long-term for different patients". He agreed that although he did not see Ms. McNeil in 2017, it was possible she was suffering from anxiety and stress during that time. Dr. Colp confirmed he had seen Ms. McNeil in "states of anxiety", and those states could be consistent with Post Traumatic Stress Disorder or an anxiety disorder. Dr. Colp confirmed Ms. McNeil might have attended a walk-in clinic elsewhere in 2017 or at any other time and he may have or may not have received a report from that clinic.

[216] Ms. McNeil acknowledged that she did post her resume on LinkedIn and that her resume accurately outlines her education and work history. Ms. McNeil did qualify that she had never worked for MD Physicians' Services but had worked for MD Management. Ms. McNeil indicated she was working as a teller for the Bank of Nova Scotia and she believed she started in that position in November 2017 and she had continued in that position although she had been off on sick leave several times. Ms. McNeil stated she was off for various periods of time including three months, two months, a month, and a week.

[217] Mr. Hartlen noted that out of approximately thirty-six months, between November 2017 and November 2020, it appeared Ms. McNeil had been off for six months "and a bit". Ms. McNeil stated that while off work she was paid at times and at other times she was not. She explained that initially she did not quality for disability until, she believed, she had been employed for a year.

[218] She explained that after she qualified for disability, she received short term disability of 60% of her salary through her employer. Ms. Hartlen indicated she was off in March and April 2020 and she had been off since the middle of October 2020. She stated she may have received more than sixty percent of her income when she was off in 2020 "due to COVID". In redirect Ms. McNeil indicated she had a thyroid problem and that at times she can become very confused. She stated she had trouble regulating her thyroid for the previous three years and she offered the opinion that it was not likely to go away.

[219] Ms. McNeil was asked questions about her updated Statement of Income. Ms. McNeil acknowledged that as of October 25, 2020 she had earned $19,224 working at Scotiabank despite her work absences but that she did so with COVID-19 support. Ms. McNeil confirmed she works 22.5 hours per week at $15.90 and her gross earnings would be $715. She stated that they no longer had full-time positions available at the branch she works at. Ms. McNeil acknowledged taking out RRSP's in 2017 when she was no longer working at MD Management. Although I do accept Ms. McNeil's testimony about what she was earning and even how frequently she was working, I do not accept she has a valid reason not to work full-time.

[220] Ms. McNeil has asked me to adjust her imputed income as of January 1, 2018. It appears from Dr. Colp's testimony that she was off work as of January 22, 2018 for three weeks; in February 2018 for four days; that in early May 2018 Dr. Colp provided a note indicating Ms. McNeil could only work four days per week for six hours due to an ongoing eye issue; in mid May 2018 he wrote a note giving her another week off work; and in November 2018 Ms. McNeil reported pain at her temples and "not feeling right" and Dr. Colp gave her a note to be off until January 18, 2019.

[221] In September 2019 Dr. Colp acknowledged that he found Ms. McNeil's "present physical state is stable; improvements in her mental condition having progressed to the point where she related improved cognitive function, and the ability to attend court with a possible return to work in the offing. However, at trial

in November 2020 Dr. Colp suggested Ms. McNeil may be experiencing problems with her thyroid; with anxiety medication she is taking; and that he may not have the entire picture as she may be meeting with other physicians and he may not be receiving their reports.

[222] For ease of reference I will reproduce Ms. McNeil's stated income as reflected in the tax information she filed in October 2018: total income of $45,783 in 2017 (including but not limited to total earnings $6,243, EI $10,833, other income $3,865, RRSP income $24,577); $36,048 in 2016 (including but not limited to total earnings $33,383, UCB $300, EI $2,365); $36,992 and reassessed at $36,653 in 2015 (including but not limited to total earnings $33,733, UCB $420, taxable dividends $87, interest and investment income $139, taxable capital gains $48, RRSP income $2,500, other income $65). Ms. McNeil had earned between $30,000 and $33,000 in 2014 and 2015.

[223] Based on Dr. Colp's assessments, which I find to be inconclusive and not extremely reliable, which is not necessarily a reflection on Dr. Colp, I have considered Ms. McNeil's imputed income of "at least $25,000". I find Ms. McNeil has failed to establish that some important facts or circumstances have changed for the worse since the Corollary Relief Order was granted in October 2017, requiring me to reduce her imputed income to $20,000. Ms. McNeil earned more than was imputed to her in 2015 and 2016. There is no reliable medical evidence to explain why Ms. McNeil did not earn more income from employment in 2017.

[224] There is no change. In October 2017 I knew Ms. McNeil was off work in 2016 and in 2017, that was part of the reason I adjourned the issue of spousal support. I knew Ms. McNeil had earned over $30,000 two years in a row, and I knew there was a question about whether she was working full time. Based on those facts, I came to certain conclusions to make a final determination regarding support. One of the conclusions was imputing an income of at least $25,000 to Ms. McNeil. In retrospect, I find I underestimated, not overestimated, Ms. McNeil's income.

[225] Given Dr. Colp's suggestion that Ms. McNeil is in a better position as of September 2019 and the inconclusive nature of Dr. Colp's concerns expressed about Ms. McNeil's thyroid symptoms and possible interaction with her anxiety medication, I am imputing an income of at least $30,000 to Ms. McNeil from October 31, 2017 onward. Based on Mr. Hartlen's evidence, including the finding

he is disabled and eligible for disability benefits, I accept that Mr. Hartlen's total annual income is $14,365.08 from January 2020 onward.

The parties' respective circumstances between October 2017 and November 2020

[226] For the purposes of determining entitlement to compensatory support I have to determine if there are "great disparities in the standard of living" that would be experienced by either party in the absence of spousal support, as the "great disparities in the standard of living" may reveal an "indication of the economic disadvantages inherent in the role Ms. McNeil assumed" by staying home with the parties' children.

[227] When comparing the circumstances of the parties between December 2012 and August 2017, I noted that many of their circumstances were similar, but I did acknowledge that after December 2014 Mr. Hartlen was living with an intimate partner, Ms. Brophy, and her mother, and at various times Ms. Brophy's two children may have resided with Mr. Hartlen and Ms. Brophy or relied on their mother for financial support of some sort.

[228] Mr. Hartlen expressed concern about the last section of Ms. McNeil's tax information which was not completed regarding who the adults were in the household. Mr. Hartlen objected to the Court accepting, without cross-examination, that the other adults in the household did not contribute to her expenses: Byron, Faye, Jordan, Jordan's girlfriend, and Jacob. Mr. Hartlen argued that Ms. McNeil must show what her income is and what her needs are. He argued that one fifth of her household expenses were reasonably attributable to her in terms of the overall household expenses. I have touched on this, and I am not prepared to do an accounting of contributions in each household. There is no need, there is no longer a vast difference in the parties' incomes, there is not enough income to pay spousal support, and I do not see a real difference in their lifestyles. Again, the issue is Mr. Hartlen's ability to pay.

[229] In 2017 I imputed an income to him $15,000 higher than what his tax returns suggested, while I underestimated Ms. McNeil's earning capacity. I find that Mr. Hartlen has struggled with alcohol use disorder, and, at times, he has worked at physically demanding jobs despite his physical challenges including his problems with his back. I accept that Mr. Hartlen has been diagnosed with COPD.

[230] I find that during their marriage, when Mr. Hartlen sought help for his alcohol use disorder, Ms. McNeil told him to get back to work or she would leave. I have found that Mr. Hartlen no longer has access to the same inflated income, the same bonuses, or the preferential treatment through his employment at his parents' company: Dennis and Darlene Hartlen have retired. I have considered that his parents have helped Mr. Hartlen with his legal fees and with groceries, and perhaps with other bills, but they are entitled to do so. I have no evidence before me to suggest Mr. Hartlen's mother has passed on, or that Mr. Hartlen is currently receiving any income from any trust.

Denise Brophy's testimony

[231] Mr. Hartlen's partner, Ms. Brophy, acknowledged her income in 2019 was $72,197. She explained that she earned more in 2018 because she received her service award at her twenty five-year mark and she also received a significant raise to approximately $42 per hour. She explained she is part of a union and may receive pay increases.

[232] Ms. Brophy explained that one of her sons started university in 2013; and he was in high school when she and Mr. Hartlen started dating in 2013. She indicated that Mr. Hartlen and Jacob started living with them in November of 2014 when her son Lucas was in University. She indicated that Lucas only lived with her one semester in 2018 and he went to Acadia University, then Dalhousie University. Ms. Brophy confirmed Jacob was still residing with her and stays in the basement. Suggesting "as long as he doesn't cost her money" she's fine with him living with them.

[233] Ms. Brophy explained that Lucas had graduated in May 2019 as an avionics engineer tech from NSCC, got a job with Jazz immediately after finishing school, worked until "COVID-19 came along" and that he was laid off but he continues to be "subsidized" through Jazz. Ms. Brophy confirmed that her mother was still residing with her and pays $800 per month to live with them. She confirmed that Jacob lives with them and stays in the basement. I accepted her evidence.

[234] To compare the parties' circumstances as of September 2017, Ms. McNeil, her mother, and her mother's boyfriend began residing at Ms. McNeil's friend's home, Mr. MacDonald's, home. Mr. MacDonald confirmed he had lived in his home

for thirty years, that he earns $56,000 per year working as a carpenter at St. Mary's University, and he has worked in that capacity since 2012. He acknowledged he did some work "on the side", earning no more than approximately $1000 per year for his extra work.

[235] Mr. MacDonald explained that there were two units in his home and the units shared heat, oil, electricity, and water. He confirmed that the basement unit had its own kitchen, living area, dining room, bathroom, and one bedroom. He indicated he had rented out the other unit for approximately eight years to a single person for $575.00. He acknowledged he asked the person renting his basement unit to leave in 2017 so that Ms. McNeil, Ms. McNeil's mother, and Ms. McNeil's mother's husband could move in, but he suggested the individual was planning to leave in any event. He confirmed that Ms. McNeil's mother, Faye Courtney and Faye Courtney's husband, Byron Courtney were residing in the basement unit, or the "in-law suite". He stated that they initially paid him $600 toward expenses but he increased it to $650.00 in the last couple of months.

[236] Mr. MacDonald testified that he had known Ms. McNeil for five years. He acknowledged he did some work for Ms. McNeil, on and off for a couple of years;that he worked on the matrimonial home where Ms. McNeil resided. He stated he did the work and agreed not to be paid until the house sold as Ms. McNeil indicated there would be equity in the home. He explained that he did not invoice Ms. McNeil. He confirmed Ms. McNeil had never told him Mr. Hartlen was paying her $3,500 per month in support at any time, and she did not disclose to him that she borrowed approximately $30,000 from their joint line of credit.

[237] He stated that they did not have a contract for any work done on the matrimonial home and he did not provide Ms. McNeil with regular invoices. He agreed he did not get Mr. Hartlen's permission to do the work. He offered the opinion that much of the work completed by him was routine repair and maintenance. He agreed "a chunk of what you would have been doing would have been wear-and-tear that would be reasonable for someone to have incurred while occupying a home over a period of time". Mr. MacDonald then stated: "some" of his work was basic wear and tear but that the work was necessary after "many years of neglect".

[238] Mr. MacDonald described Ms. McNeil as his friend and indicated that he rents her a room in his house at $600 per month. He acknowledged he spent the night at

the Terence Bay Road home approximately eight or ten times. He denied having an intimate relationship with Ms. McNeil, but he agreed she has lived in his home continuously since she moved from the Terence Bay home.

[239] Mr. MacDonald indicated he did not have a "girlfriend" and he had not had a "girlfriend" over the four to five years Ms. McNeil has lived with him. He stated that to his knowledge Ms. McNeil does not have a boyfriend. He acknowledged he has attended court with Ms. McNeil twice or maybe three times and he was present when some of the evidence was given in 2017. He acknowledged the photos presented to him of he and Ms. McNeil out at dinner, with her grandchild, and together at Christmas. Mr. MacDonald's evidence regarding what amount he charges the Courtneys to live in his home differed from Ms. Courtney's evidence, however, I found Mr. MacDonald's testimony to be credible.

[240] Ms. McNeil was asked about the photographs of her and Mr. MacDonald. Ms. McNeil stated that she rents a room in Mr. MacDonald's house and shares kitchen, living room and other facilities with him and that the arrangement had been in place for over three years.

[241] Ms. McNeil's choice, to live with a friend or roommate, is perhaps not the same as Mr. Hartlen's choice to re-partner, but people manage their finances differently in different relationships. I find that both Ms. McNeil and Mr. Hartlen receive support given their choice to share their lives, and their space with others. It is more expensive to live on one's own. I find that neither Mr. Hartlen, nor Ms. McNeil, would be able to maintain the same lifestyle they had during their marriage without the financial support that comes with sharing expenses with others.

Ms. McNeil's mother, Faye Courtney

[242] Faye Courtney confirmed she has lived in the basement of Mr. MacDonald's home in a separate apartment since the Fall of 2017. She indicated she had known Mr. MacDonald for seven or eight years, before Ms. McNeil met him. She stated that she has paid him $550 cash toward "oil and lights" for as long as she has lived in the apartment. Ms. Courtney indicated there was no signed lease and she does not ask for a receipt.

[243] Ms. Courtney stated that when she initially moved into the Terence Bay home, where she stayed for approximately three years, she paid $300 for expenses. She

indicated she moved into an apartment in Timberlea for about a year and a half, then purchased a mini-home in Lakeside, and she lived there for five years before she went back to live at Terence Bay. She indicated that between 2007 and 2017 she paid $500 per month for the apartment at Terence Bay road. She stated she did not have a lease, she paid cash, and she shared power, heat, and water with the upstairs unit.

[244] Ms. Courtney stated that she was not aware Ms. McNeil took $31,200 from the parties' joint line of credit after the parties separated but she had heard of some support being paid to Ms. McNeil. Ms. Courtney confirmed that her income in 2017 was $18,997; 2016, $19,702; 2015, $14,087; 2014, $19,375; 2013 $29,881 ($12,000 in Worker's Compensation); and in 2012 $26,118. Ms. Courtney indicated that she was not aware of what her husband, Mr. Courtney earns per year, but she stated that they "pay their rent together".

[245] Ms. Courtney indicated it was never her intent to live at Terence Bay long term, that they always intended to find another house or some other accommodation after the court case was over. Aside from my slight concern about what appeared to be slightly different figures regarding what Ms. Courtney pays to live at Mr. MacDonald's home, I found Ms. Courtney's testimony to be credible.

Cross-examination of Ms. McNeil

[246] Ms. McNeil was asked to review a letter she had filed with her Notice of Variation Application. Specifically, the letter she had received from Allan Marshall dated September 20, 2018. Ms. McNeil was asked if she approached the bankruptcy trustees on January 22, 2018, the same day she had appeared in court and she had been provided copies of the Corollary Relief Order and final calculations. Ms. McNeil indicated she did not remember but she acknowledged that if the court transcript indicated she appeared on that date, then she would not question it.

[247] The issue of the $50,000 contribution Ms. McNeil's mother made toward the land the matrimonial home was built on was raised. Ms. McNeil stated that she felt Faye Courtney's, and Byron Courtney's financial information was not relevant to the issue of spousal support which was to be determined. When Ms. McNeil was asked for clarification regarding why she was asking Mr. Hartlen to provide financial information related to his spouse, his spouse's mother, and his spouse's children. Ms. McNeil stated: "only because you asked for theirs". She then stated that their

incomes are relevant because they did not provide $50,000 for the land-- stating "so they're living, basically, in my house."

[248] When considering the contribution made to Mr. Hartlen and Ms. McNeil's family by Ms. Courtney, I am reminded of the support Mr. Hartlen has received from his family. To be fair, as noted earlier, Mr. Hartlen's father approved bonuses to Mr. Hartlen which would have benefited Ms. McNeil's family including bonuses: February 2008 $10,000; December 2008 $3,500; February 2009 $12,000; December 2009 $3,500; February 2010 $12,000; December 2010 $4000; February 2011 $15,000; December 2011 $4000; February 2012 $15,000; December 2012 $4000; June 21, 2013 $8,100; December 2013 $4000; and December 2014 $2000--over $85,000.

[249] In addition to Mr. Hartlen and his brother, Darren Hartlen, being paid bonuses by his parent's company, Dennis Hartlen chose to pay Dwayne Hartlen more than other tile setters for the same work or arguably lesser work. Dennis Hartlen also employed the parties' eldest child, Jordan. Ms. McNeil had the benefit of all the extras flowing from Mr. Hartlen's parents. I accept that Mr. Hartlen would bring his paycheck home and give it to Ms. McNeil. I accept it was Ms. McNeil who managed the finances in the home. I find Ms. McNeil's request for an accounting of the $50,000 from her mother is offset by the contributions Mr. Hartlen's family also made to the family.

[250] I am imputing an income of $30,000 to Ms. McNeil from October 2017 onward. I have no reliable evidence to suggest Ms. McNeil cannot earn $30,000 annually in the foreseeable future. I do not accept Ms. McNeil's evidence about her health difficulties or any inability to work full-time. I have concerns about Ms. McNeil's credibility when she is giving evidence in relation to the parties' assets and debts, including her evidence regarding her RRSP's and the circumstances surrounding the sale of the home.

[251] I am imputing an income $30,000 to Mr. Hartlen from October 2017 to the end of 2019. I accept his income information suggesting an income of $14,365.08 from January 1, 2020 onward.

[252] I find Mr. Hartlen is disabled and he is unable to earn employment income. I accept his condition will not change. Given Mr. Hartlen's inability to pay spousal support, the parties' respective circumstances, and considering that the parties have

now been separated for nine years, I find both parties' entitlement to spousal support should terminate as of November 2020.

Change of circumstances in relation to payment of child support

Forgiveness of arrears of child support

9. Has there been a change of circumstances related to the payment of arrears of child support?

[253] Ms. McNeil has asked for relief from the payment of child support arrears based on her representations that she is unable to pay. Based on the above noted findings I have imputed an annual income of $30,000 to Ms. McNeil and I find she is able to pay arrears of child support.

[254] Given my findings regarding Ms. McNeil's ability to earn an income, I am not able to find she has a current or a future inability to pay arrears in child support. She must pay outstanding child support arrears until they are paid in full.

10. Costs

[255] I have summarized some, but not all, of the relevant evidence relating to the question of costs. Based on my conclusions it appears Mr. Hartlen was the more successful litigant and I expect costs will be awarded against Ms. McNeil. Both have acknowledged there has been a prolonged legal court procedure from August 2013 to date. Both parties have claimed the other has needlessly prolonged litigation. Ms. McNeil has suggested the proceedings led to her bankruptcy, financial decline, and loss of marital lifestyle. The evidence before me suggests otherwise.

[256] In reviewing this file I have noted that at various times counsel for the parties believed they had reached a final agreement pending a request for some additional disclosure. In May 2014, the Court granted the parties a divorce and trial dates were scheduled June 2 and 3, 2014 but adjourned when an agreement was read into the record. The matter was then adjourned to September 2014 and then to December 2014.

[257] In January 2016 Ms. McNeil's counsel filed a formal motion to be removed as solicitor of record which was granted on January 22, 2016. Trial dates scheduled in January 2016 were adjourned. Ms. McNeil failed to appear in Court on January 22, 2016 and on March 22, 2016. New court dates were scheduled June 11 and 12, 2016. The Court attempted a "focused hearing". The parties requested additional information and the matter was adjourned to October 2016.

[258] In September 2016 Ms. McNeil sought an adjournment of the trial dates scheduled October 24 and 25, 2016 indicating her new legal counsel was not available on those dates. The trial dates were adjourned to January 11 and 12, 2017.

[259] On May 2, 2017 Mr. Hartlen asked counsel for Ms. McNeil to clearly indicate where any conflict existed with respect to the asset and debt division. Mr. Hartlen believed the outstanding issues included the value of the boat or the car, the loan on the car, and he suggested these may have been outstanding in the summer of 2016 when an asset/debt chart was created.

[260] Counsel for Mr. Hartlen referred to asset/debt charts filed on May 29, 2016, June 1, 2016, July 25, 2016, the memorandum of settlement dated May 30, 2014 (1st version), and a final version December 10, 2014. Counsel were directed to use former Justice Douglas Campbell's chart format for their asset and debt division chart and to refer to the case of *Simmons v. Simmons*, 2001 CanLII 4617 (NS SF).

[261] In late May 2017 counsel for Mr. Hartlen suggested there remained three outstanding issues regarding property division: the home, the value of Ms. McNeil's vehicle, and an RRSP investment valued at $10,000.00. Mr. Hartlen's counsel indicated they had conceded on the contents of the home in Ms. McNeil's possession and agreed to a value of $5,000.00.

[262] Counsel for Ms. McNeil indicated the issue of how they would "treat the RRSP's" was still an outstanding issue. The issue of Ms. McNeil's car which was jointly owned with Mr. Hartlen had been dealt with in or around August 2015, with ownership being transferred to Ms. McNeil by way of an Order issued October 7, 2015.

[263] Numerous conferences were held before the trial dates set in June 2017 and adjourned to September 2017 with a decision rendered in October 2017.

[264] After I rendered a decision on October 2017, I agreed to deal with the matter of the matrimonial home and costs if notice was given to Ms. McNeil. The Court directed Mr. Hartlen to file his submissions on costs within one month and that Ms. McNeil would then have an opportunity to respond. Mr. Hartlen expressed concern about Ms. McNeil's failure to provide a forwarding email or address. The Court granted an Order for substituted method of providing notice of a proceeding by notice to Ms. McNeil's last known email address. The matter was adjourned for two months. The issue of costs was deferred as noted in the Corollary Relief Order, and I find I do have jurisdiction to address the issue of costs.

[265] Mr. Hartlen has noted that Ms. Hartlen had "been through a number of lawyers", that at times she has failed to appear in Court, and in one instance she hung up on the Court in the middle of a conference. Mr. Hartlen reminded the Court that the process had not been easy for him. He reminded the Court he had had his licence suspended, passport suspended, both after Ms. McNeil failed to adjust child support when Jacob chose to live with him. She came to trial, had her counsel cross-examine witnesses and then failed to attend for cross-examination. Mr. Hartlen argued that he had been through a lot.

[266] Ms. McNeil was asked questions about her bankruptcy. Ms. McNeil did not immediately acknowledge that she went to see the bankruptcy trustee the day she had appeared in court on January 22, 2018-- the date when I was explaining the Corollary Relief Order and giving both sides an opportunity to review the values the Court had decided to use to finalize child support and in relation to certain property.

[267] When reviewing her bankruptcy documents from 2018 Ms. McNeil was asked if her taxes of $1,700, and a debt with CIBC for $29,119.25 were both included and if she paid $4,300 to complete the bankruptcy. Ms. McNeil indicated she was uncertain as she arranged for a trustee to help her with the bankruptcy. In redirect Ms. McNeil stated that she had taken out a line of credit to "try to keep paying the lawyers". Ms. McNeil was also asked if she paid only $9000 of her debt to Patterson Law of $61,000. She responded that she paid a retainer.

[268] At trial in 2020, Ms. McNeil was asked to explain the $97,000 she has suggested throughout her material had been "billed" to her. Ms. McNeil acknowledged she did not pay $97,000 although Ms. McNeil had asked the Court to order Ms. Hartlen to pay $97,000. Ms. Elliott queried whether Ms. McNeil asked for the relief prior to filing bankruptcy. Ms. McNeil had to repeatedly be told to

answer the questions being asked and to not continually suggest Mr. Hartlen's legal counsel had bankrupted her.

[269] Ms. McNeil was asked questions about her brief. Mr. Hartlen noted that she was claiming that after bankruptcy she had to pay $35,000 in legal fees. Ms. McNeil stated that she paid $35,000 in legal fees before the bankruptcy. Ms. McNeil was then directed to her affidavit sworn March 2, 2019 (revised February 26, 2020) wherein she stated "I did not petition for divorce and did not try to delay these proceedings. I sought through documented settlement proposals to resolve the matter."

[270] Ms. McNeil then claimed: "the petitioner should therefore reimburse me for my legal fees which amount to $97,000, the invoices for which are found at exhibit eight". Ms. McNeil confirmed she was asking for the $97,000 because the lawyers should be paid. Ms. McNeil confirmed she had declared bankruptcy and the lawyers would not be getting paid but stated "he should be paid though". Later Ms. McNeil confirmed she had stated "I" should be reimbursed by the petitioner for "my" legal fees and she should not be required to pay his legal fees.

Final calculations

[271] If the parties cannot come to an agreement, the parties are invited to file submissions on costs, and final calculations using values gleaned from this decision including: the payment of any matrimonial debts or post-separation debt secured against the home; payment of any outstanding expenses related to the home up to September 2017; tax implications of the lump spousal support award; and to make any final suggestion with regard to how to apply the notional amount of spousal support to either matrimonial debt (and if so determine if the conditions precedent to issue the revised Pension Division Order have been met), or costs. The calculations should be no more than two pages and filed within one month.

Conclusion

Jurisdiction

[272] I have jurisdiction to deal with specific issues left to be determined in relation to the division of Mr. Hartlen's pension, Mr. Hartlen's claim with BMO/Sunlife, the

financial adjustments following the disposition of the matrimonial home, and any costs to be determined.

[273] I have jurisdiction to deal with the issue of entitlement, quantum, and duration of spousal support between November 18, 2012 and October 2017, and after October 2017.

[274] I have jurisdiction to determine if there was a change of circumstance allowing me to forgive arrears of child support owed by Ms. McNeil before December 2015.

Capacity

[275] I found Ms. McNeil had the capacity to participate in the proceeding.

Child Support calculations

[276] The Court approved the draft calculations and the draft Corollary Relief Order. Mr. Hartlen was found to have overpaid child support and Ms. McNeil was ordered to reimburse him. The decision was final.

Matrimonial Property and debt

[277] Determinations of value of assets and determinations of debt owed were final.

[278] The Pension Order shall be adjusted to include the cohabitation period. The pension division will only take place after Ms. McNeil has met her other obligations as set out in the Corollary Relief Order. If there is a dispute regarding whether she has met her obligations, both parties can include those calculations with their submissions on costs. These calculations were in addition to the calculations for spousal support.

[279] The term directing the BMO/SunLife creditor disability insurance benefits for the period of Mr. Hartlen's incapacity, between January 2015 and August 2016, be shared, should be added to the order dealing with the matrimonial home.

[280] The adjustments for the disposition costs in relation to the matrimonial home, previously approved by the Court apply with the necessary adjustments for any specified expenses owed by Ms. McNeil up to the end of September 2017, and

disposition costs shall be finalized. The outstanding expenses must be paid by Ms. McNeil. If the parties can not agree they should file their final calculations with their submissions on costs. Once again, these calculations were in addition to the calculations for spousal support.

Retroactive Spousal support

[281] Ms. McNeil has entitlement to spousal support on a compensatory basis. The notional quantum is set out below. Mr. Hartlen is not required to pay the award at this time. The notional quantum of spousal support was limited by Mr. Hartlen's change in circumstances, and his inability or reduced ability to pay spousal support. The notional amount of retroactive spousal support must be adjusted for taxes, and can be set off against the matrimonial debt and / or a part of the post separation debt Mr. Hartlen paid out on behalf of Ms. McNeil or set off against a future costs award.

[282] Notional amount of retroactive spousal support owing:

- $3,277 per month December 31, 2012; and
- $2,854 per month x 6 = $17,124 January 31, 2013 to June 31, 2013.
- $2,461 per month x 6 = $14,766. July and December 2013.
- $1,050 per month x 4 = $4,200 January 31, February 31, March 31, and April 31, 2014;
- $1,757 per month x 8 = $14,056 (from $14,065), May 31, 2014 and December 31 of 2014.
- no spousal support payable in 2015.
- no spousal support payable between January 31, 2016 and July 31, 2016.
- $525 per month x 5 = $2,625 between August 31, 2016 and December 31, 2016.
- $525 per month x 9 = $4,725 (from $5,250), between January 2017 and September 2017.

The total notional amount of spousal support owed by Mr. Hartlen to Ms. McNeil for the entire period is $60,773. (Consult MEP Record if child support payments did not account for Mr. Hartlen's full payment.)

[283] I have imputed an income of $30,000 to Ms. McNeil from October 2017. I find that due to Ms. McNeil filing for bankruptcy she may have reduced some of the matrimonial debt she owed but it is unclear exactly what was affected by the

bankruptcy. What is clear is that Mr. Hartlen has paid out a significant amount of Ms. McNeil's post separation debt, debt Ms. McNeil has stated she would have paid if she received the spousal support owed to her.

[284] I imputed an income of $30,000 to Mr. Hartlen from October 2017 to the end of 2019. I have accepted Mr. Hartlen's income information, finding his income to be $14,365.08 from January 1, 2020 onward. I find Mr. Hartlen is disabled and he is unable to earn employment income and that his condition is unlikely to change in the future.

[285] Given the significant amount of matrimonial debt Mr. Hartlen has serviced on behalf of both parties, I find he has a present inability to pay any award of retroactive spousal support and that there is no prospect he will be able to pay toward a retroactive award of spousal support in the future.

[286] In *Godin v. Godin*, 2013 NSSC 316, 2013 CarswellNS 1059, the Associate Chief Justice Lawrence O'Neil found:

> [89] I am satisfied that this is not an appropriate case to order retroactive spousal support. Given the high level of family indebtedness Mr. Godin has been forced to service and the enormous costs that he has been forced to bear as a result of the ongoing misconduct of Ms. Godin, it would, in my view, be unconscionable to order him to pay retroactive spousal support. He does not have the means to pay retroactive spousal support and Ms. Godin has not fully disclosed her current or past circumstances. Any award of spousal support will therefore take effect on a date following release of this decision.
>
> [90] To be clear, my decision to not order retroactive spousal support is not based on Ms. Godin's misconduct. It is based in part on the enormous financial consequences for Mr. Godin as a result of that conduct; the additional fact that he alone has been forced to service the parties' debts since separation and Ms. Godin's failure to disclose evidence of her financial circumstances.

[287] I have calculated the notional amount of spousal support owing (without adjustment for taxes): if Mr. Hartlen was able to pay, if Mr. Hartlen had not serviced the majority of the matrimonial debt, and if I did not find, which I do, that Ms. McNeil has been responsible for the majority of the ongoing litigation costs between the parties. As in *Godin, supra*: I find there has been misconduct on the part of Ms. McNeil throughout this litigation. However, my decision that Mr. Hartlen not pay retroactive spousal support is not based on Ms. McNeil's misconduct during this litigation. Among other things, my decision also takes into account the financial consequences for Mr. Hartlen as a result of Ms. McNeil's conduct throughout the

litigation process. He cannot afford to pay. Ms. McNeil does however have the option of using the notional lump sum award after taxes to set off against her share of matrimonial debt or costs, her choice.

[288] I find Ms. McNeil is entitled to rely on the notional amount of spousal support owed to her, after accounting for taxes, to set off against certain matrimonial debts she was ordered to pay pursuant to the terms of the Corollary Relief Order, and have subsequently been paid by Mr. Hartlen on her behalf.

[289] What if any entitlement does either party have to spousal support after October 2017? Final determinations.

- There is entitlement to spousal support up to November 2020.
- Ms. McNeil's income is imputed to $30,000 from October 2017 onward.
- Mr. Hartlen's income is imputed to $30,000 between October 2017 to the end of 2019.
- I accept Mr. Hartlen's income information, and I find his income to be $14,365.08 from January 1, 2020 onward.
- I find Mr. Hartlen to be disabled as of January 1, 2020.
- I find Mr. Hartlen is unable to earn employment income after January 1, 2020, and that his condition is unlikely to change in the future.
- Entitlement to spousal support is terminated for both parties as of December 1, 2020.

[290] Given Mr. Hartlen's inability to pay spousal support, the parties' respective means, and circumstances, and considering that the parties have now been separated for nine years, I find both parties' entitlement to spousal support should terminate as of December 1, 2020.

Change of circumstances – request to forgive retroactive child support amount

[291] Has there been a change of circumstances in relation to payment of child support.

- I have imputed an income of $30,000 to Ms. McNeil as of October 2017,
- I am not persuaded Ms. McNeil is unable to earn at least $25,000 after October 2017.

- I find there have been changes of circumstances. I find that the changes have resulted in Ms. McNeil being in a better position to earn an income and pay arrears of child support. Ms. McNeil has been employed in the same field for an extended period and can rely on her recent experience to find full-time work in her field. Ms. McNeil should have more disposable income following bankruptcy.

Costs

[292] If the Petitioner, Mr. Hartlen, wishes to be heard on costs he must file his submissions within three weeks. Ms. McNeil is authorized to file her submissions no later than one week after Mr. Hartlen's submissions are filed.

[293] As noted above, I am relying on the case of *Ahmed v. Naseem*, 2016 NSSC 366 (CanLII), where Jollimore J., found Mr. Ahmed owed costs of $70,000 to Dr. Naseem, and that those costs could be set off against the lump sum spousal maintenance award of $152,366 owed by Dr. Naseem to Mr. Ahmed.

[294] I reserved the right to further edit my decision for readability and grammar.

NOTES:

[295] On July 8, 2021 I provided the parties with a written decision and therein I directed the parties to file their calculations and costs submissions. Unfortunately I provided conflicting instructions at paragraphs 162, 272 and 293.

[296] On July 29, 2021 Mr. Hartlen sent correspondence confirming his intention to file all his calculations and submissions by August 9, 2021, and he did so. All correspondence from the parties was received by August 9, 2021. Both parties have had ample opportunity to make submissions regarding any final calculations and regarding costs. The timing of the parties' submissions did not result in prejudice to either party.

[297] Confirmation of calculations and my decision on costs is to follow.

Cindy G. Cormier, J.S.C. (F.D.)