IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hodgins v. Hodgins,*
2025 BCSC 2466

Date: 20251211
Docket: E211013
Registry: Vancouver

Between:

Timothy John Heathcote Hodgins

Claimant

And

Sharon Jayne Hodgins also known as
Sharon Jayne Oxley also known as Sharon Jayne Wood

Respondent

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Claimant:	I. Phillips
Counsel for the Respondent:	C. Lewis
Counsel for the BC Family Maintenance Agency:	P. Hundal
Place and Date of Hearing:	Vancouver, B.C. November 5, 2025
Place and Date of Judgment:	Vancouver, B.C. December 11, 2025

Introduction

[1] This is a high conflict family dispute. The parties are struggling to resolve complex financial issues, including allocating responsibility for a large CRA re-assessment issued against the claimant which appears to exceed the value of the parties' family assets. At one point, the parties were able to reach an agreement at mediation regarding numerous interim matters. Their agreement was made into a consent order which was pronounced on May 5, 2023 (the "Consent Order"). Its terms include orders that the claimant pay the respondent interim without prejudice child and spousal support. By November 5, 2025, the claimant was in arrears of his support obligations under that order by about $710,000, inclusive of interest.

[2] By application filed October 14, 2025, the claimant applies for interim orders that:

a) Support provisions in the Consent Order be vacated, retroactive to January 1, 2023;

b) Arrears of child and spousal support under the Consent Order be cancelled in their entirety, retroactive to January 1, 2023, without prejudice to the ultimate determination of same;

c) A declaration that the parties' children, Darcy (age 24), Clancy (age 23) and Mimi (age 20) are no longer "children of the marriage" for the purposes of the respondent's obligation to pay child support;

d) Alternatively to a), b) and c), suspension of support provisions in the Consent Order until further order or agreement of the parties;

e) Two properties, the Balaclava Property and Whistler Property (defined below) be sold, with the parties having joint conduct of sale;

f) Upon completion of the sale of the Balaclava and Whistler Properties, directions regarding allocation of the sale proceeds; and

g) The respondent be compelled to attend mediation in good faith, and directions regarding appointment of a mediator.

[3] The respondent consents to some of the relief sought, but opposes the majority.

[4] The claimant was also seeking orders (a) suspending enforcement of support provisions in the Consent Order and (b) that the respondent do everything necessary to facilitate return of the claimant's passport, including that she consent to a joint request to the BC Family Maintenance Agency ("BCFMA") and to Immigration, Refugees and Citizenship Canada to return of the claimant's passport to him, and if necessary, that she consent to a petition to be brought in BC Provincial Court for the return of the claimant's passport. The claimant essentially seeks to halt and reverse enforcement measures initiated by BCFMA. At the outset of the hearing, counsel for BCFMA raised jurisdictional objections to these items. The claimant opted to adjourn them generally.

Background

[5] The claimant is 58 years of age. The respondent is 56 years of age. They began cohabiting in October 1997, married on March 16, 2003 and separated on March 13, 2020. They have three children together:

a) Darcy, born December [redacted], 2000 (age 24 years);
b) Clancy, born May [redacted], 2002 (age 23 years); and
c) Mimi, born January [redacted], 2005 (age 20 years).

[6] The respondent stopped working outside the home shortly before Darcy was born, and that continued during the balance of the relationship.

[7] The claimant says for most of his working life, he worked in the specialized area of foreign exchange investment called "straddle trades". This involves a trading strategy which straddles a tax year, with gain legs in one year and loss legs in another. This resulted in a deferral of tax. The claimant and his father indirectly co-owned a company, HFX Markets Ltd. ("HFX"), which in turn owned shares in a UK company, Velocity Trade Holdings Ltd. ("Velocity"). The claimant carried out his foreign exchange trading through Liquidity Trading Partnership ("Liquidity"). The businesses were very successful for a time.

[8] In or about 2018, CRA began challenging the tax treatment of the results of straddle trading. It issued re-assessments against the claimant (for years 2011-2019 and 2023) and HFX (for years 2016-2021). Many of the claimant's clients were also re-assessed. As of September 2, 2025, the claimant owes CRA about $16 million, inclusive of interest and penalties. He has not paid this, so interest continues to accrue. CRA deemed HFX to be a "tax shelter promoter" and assessed a penalty against it of about $8.8 million. In total, it owes about $18 million, including interest and penalties. The claimant says it has no ability to pay, so it had to shut down its operations.

[9] The claimant has appealed the re-assessments. The claimant and HFX have retained the law firm Borden Ladner Gervais LLP to represent them in their dispute with CRA. The claimant believes that the cost of the appeal will be between $600,000 - $1,000,000 in additional legal expenses. Interest continues to accrue on the re-assessed amounts. The only way to stop interest accruing is for the claimant to pay CRA the assessed principal amount, which in the claimant's case is $5,365,770. He says any payment made towards principal would be refunded in the event his appeal of CRA's re-assessments is successful. It is his position that any amount which he owes to CRA, personally and through HFX, up to the date of separation constitutes family debt.

[10] In his most recent financial statement made September 25, 2026, the claimant estimates the value of the parties' joint family assets at about $9.3 million and his personal liabilities are about $19.5 million. It is his position that the parties are in a net negative financial position, which will only worsen the longer the status quo continues.

[11] The parties own three properties:

a) 1747 Balaclava Street, Vancouver, BC (the "Balaclava Property"). This was the family home. It is registered in joint names;

b) #602 – 4910 Spearhead Place, Whistler, BC (the "Whistler Property). It is registered in the respondent's name; and

c) 108 Twiss Road, Galiano Island, BC (the “Galiano Property”). It is registered in the claimant’s name.

[12] The Galiano Property was purchased for $1,000,000, financed by borrowing $800,000 on a line of credit secured against title to the Balaclava Property and $150,000 from an HFX account. The original residence on the Galiano Property was torn down and a new residence constructed. In September 2017, the claimant purchased a 31-foot Boston Whaler boat for about USD $376,000.

[13] The respondent complains she did not agree with the purchase of the Whistler and Galiano Properties, the purchase of the boat and to a new residence being built on the Galiano Property. She was of the view these were unnecessary and beyond the parties’ financial means. By March 2020, the contractor building the new residence had been paid more than $3.1 million, and construction had still not completed. The respondent asked that construction be suspended, but work continued despite her objection. This contributed to the decision to separate, on March 13, 2020. The claimant says he provided funding to complete construction. He estimates the total cost of construction was about $3.9 million.

Procedural History

[14] On March 18, 2021, the parties retained Patti Daum to prepare a valuation of the claimant’s business interests and a *Guideline* Income calculation.

[15] On April 22, 2021, the claimant filed his notice of family claim. Relief sought included orders relating to the children, division of family property and debt, and divorce.

[16] On May 26, 2021, the respondent filed her response to family claim and counterclaim, seeking orders relating to the children, spousal support, division of family property and debt, and divorce.

[17] On August 25, 2021, the parties attended a judicial case conference.

[18] On May 26 and September 20, 2022, the parties attended mediation sessions with Diane Bell, KC. On the latter date, they agreed, on an interim without prejudice basis, that the claimant would pay the respondent specified child support and spousal support, commencing October 1, 2022. An approaching trial date was also adjourned.

[19] The respondent complains that shortly after entering into that agreement, the claimant breached its terms by failing to pay her the agreed amount of support. The terms were later set out in the Consent Order, pronounced May 5, 2023. The terms include, without limitation:

a) The claimant will pay the respondent support, as follows:

   i. Child support of **$7,661** per month for Clancy and Mimi;

   ii. Spousal support of **$16,817** per month;

   iii. Proportionate sharing of Clancy and Mimi's special and extraordinary expenses, at 68% payable by the claimant and 32% payable by the respondent;

   iv. Financial assistance paid directly to Darcy;

b) Child support, spousal support and special and extraordinary expense payments were agreed to be without prejudice and subject to retroactive review;

c) The parties had an equal obligation to pay expenses related to Balaclava and Whistler Properties, including without limitation, the monthly payment on the lines of credit registered against each property, and the claimant had the sole obligation to pay the expenses relating to Galiano Property; and

d) Terms relating to the further efforts to negotiate a settlement after Ms. Daum's final report was received, including exchange of settlement proposals and scheduling a further mediation session.

[20] On June 28, 2024, I presided over the claimant's application to adjourn the new trial date and for sale of Balaclava and Whistler Properties. I issued reasons, indexed as *Hodgins v. Hodgins*, 2024 BCSC 2511. I ordered as follows:

a) Adjournment of the Trial set for August 6, 2024, to be re-scheduled for the earliest mutually convenient date, with the new date being peremptory on the claimant;

b) The application to sell the Balaclava Property and Whistler Property were dismissed;

c) The application to have the parties attend mediation was dismissed; and

d) By consent, the parties agreed to each borrow $6,000 from their Scotiabank line of credit to pay for updated appraisals and preparation of a business valuation and the *Guideline* Income report.

[21] On July 31, 2024, the respondent filed an application seeking an order that the boat and Galiano Property be sold. The application was heard by Justice J. Hughes on October 30, 2024, January 14, 2025 and February 6, 2025. The parties agreed to sell the boat and divide the sale proceeds, 1/3 to the claimant and 2/3 to the respondent. It eventually sold for $375,000. On April 29, 2025, Hughes J. issued reasons, indexed as *Hodgins v. Hodgins*, 2025 BCSC 799. She ordered that the Galiano Property be sold and net sale proceeds be used to pay debt secured against all three properties (including balances owing on the lines of credit registered on the Balaclava and Whistler Properties in respect of the purchase and construction of the Galiano Property), amongst other terms.

[22] On May 30, 2025, the Galiano Property was listed for sale. There has been only one showing of that property since it was listed, and no offers have been received. This suggests the list price may be set too high, however, neither party appears to have pressed for a reduction.

[23] On February 27, 2025, Ms. Daum issued her *Guideline* Income report. The claimant says on April 22, 2025, he sent a settlement proposal to the respondent and requested that the parties proceed to mediation, as contemplated by the terms of the Consent Order. The respondent did not respond to the offer and has not cooperated with arranging mediation.

[24] On October 14, 2025, the claimant filed this application.

[25] Trial is scheduled for February 9, 2026, for 9 days. This is the third scheduled trial date. As noted, this date is peremptory on the claimant.

Child and Spousal Support Issues

[26] The claimant applies for orders that:

a) Support provisions in the Consent Order be vacated, retroactive to January 1, 2023;

b) Arrears of child and spousal support under the Consent Order be cancelled in their entirety retroactive to January 1, 2023, without prejudice to the ultimate determination of same;

c) A declaration that the parties' children, Darcy (age 24), Clancy (age 23) and Mimi (age 20) are no longer "children of the marriage" for the purposes of the respondent's obligation to pay child support;

d) Alternatively to a), b) and c), suspension of support provisions in the Consent Order until further order or agreement of the parties.

Accrued Support Arrears

[27] The Consent Order requires that the claimant pay the respondent interim child support of **$7,661** per month for Clancy and Mimi, that their special and extraordinary expenses be shared by the parties in the proportion 68% to the claimant and 32% to the respondent, and that the claimant pay the respondent interim spousal support of **$16,817** per month.

[28] The order expressly provides that the support orders are without prejudice and subject to retroactive review:

a) [Para. 11] – Child and spousal support shall be paid without prejudice to either party's right to retroactively argue that different amount should have been paid in settlement negotiations or when issued between the parties are determined.

b) [Para. 19] –Child and spousal support shall be reviewed by the parties immediately after receipt of Patti Daum's finalized report, with liberty to either party to apply to court or to an arbitrator to determine the issue.

c) [Para. 22] – Within 30 days of receipt of both the final report of Patti Daum and updated property appraisals, the claimant shall provide a counterproposal to the respondent on all issues to be resolved.

d) [Para. 23] – If, within 60 days of receipt of the claimant's counterproposal, the parties fail to reach an agreement, they shall proceed to schedule a mediation with an arbitrator to be jointly selected by the parties. If the parties have not reached a settlement at mediation, which may consist of more than one session with the mediator, the parties will put the issue of whether to proceed to arbitration in the first instance and timing of the arbitration to the mediator and they will agree to be bound by the mediator's recommendation.

[29] The claimant says when he agreed to the above support terms, he was employed as a Trade Desk Administrator with Blackheath Fund Management ("Blackheath") at a salary of $72,000 per year. It is a Canadian-regulated company in Ontario, licensed in Canada to sell managed investments to Canadian customers. He and his father had started the process of purchasing it. He began working for it before the sale completed. He was also receiving large forgivable loans from Blackheath which will eventually become a taxable benefit. Total loans he received were about $700,000.

[30] The claimant says he could not actually afford to pay the respondent spousal support based on the salary he was receiving at the time. He nonetheless agreed to pay the support amounts set out in Consent Order because he was receiving the Blackheath Loans and anticipated that would continue going forward. He also believed the interim support obligation would only last for a short time, until Ms. Daum prepared her report and the parties attended mediation, and possibly arbitration to resolve outstanding issues. He was confident he would be able to make these support payments in the short-term using proceeds of the Blackheath Loans.

[31] As it turned out, the loans ended shortly after the parties entered into the interim agreement. He says he could no longer afford to pay the agreed levels of support. Starting in July 2023, he began unilaterally limiting his total support

payment to just **$1,117** per month. This is the table child support amount for two children, based on him having a *Guideline* income of $72,000. He ceased making any payment towards spousal support.

[32] In June 2023, the respondent enrolled with BCFMA. Counsel for BCFMA provided a statement of account which indicates that as of November 5, 2025, the claimant was in arrears as follows:

Item	Amount
Arrears of support	$653,155.18
Interest on arrears	$56,558.37
Total	**$709,713.55**
Default fees owing	$800.00

[33] It indicates that the total amount of support received and forwarded to the respondent for the period June 16, 2023 to November 5, 2025 was **$43,996.10**. The statement reflects that child support for Clancy stopped accruing as of May 1, 2024, and for Mimi as of February 1, 2025.

[34] The claimant admits he failed to comply with the support terms in the Consent Order, and he did not file an application to vary it until October 14, 2025. He offers the following explanations:

a) There were significant delays in completing Ms. Daum's *Guideline* Income report. In May 2023, the parties agreed to put preparation of the report on hold while seeking certainty regarding certain changes which were being made to tax laws. There were further delays obtaining the respondent's agreement and cooperation in instructing Ms. Daum to proceed with the report. The claimant eventually applied for an order that Ms. Daum's retainer be paid from one of the lines of credit so the report could be completed;

b) Between November 3, 2023 and April 22, 2024, the parties engaged in extensive negotiations;

c) On February 27, 2025, Ms. Daum completed her report;

d) Following receipt of her report, the claimant followed the steps contemplated in the Consent Order. On April 22, 2025, he sent the respondent a without prejudice proposal and requested that the parties proceed to mediation. The respondent failed to respond to the proposal and has refused to cooperate with mediation; and

e) Respondent's counsel insisted that the claimant's application to vary the terms of the Consent Order required a long chambers application. Efforts to secure a long chambers date were only recently successful.

[35] The claimant says that in order to meet his own expenses and other obligations, over the period March 2023 - October 2025 he borrowed about $500,000 from his father.

[36] The claimant says his ability to pay support has been impeded by the fact that he has been paying a disproportionate share of family expenses, including $3,000 per month in insurance premiums and $7,000 per month in line of credit payments. In August 2024, the respondent stopped paying her half of line of credit payments, forcing him to take up the slack. He had to pay about $500,000 to complete construction of the residence on the Galiano Property. He estimates that he has paid about $5,000 per month in legal costs relating to the dispute with CRA.

Claimant's Income

[37] Ms. Daum opines that the claimant's income has been as follows:

Year	Income
2018	$2,339,000
2019	$1,987,000
2020	$147,000
2021	$811,000
2022	$154,000
2023	$5,000

[38] The claimant specialized in foreign exchange investment (i.e. straddle trades) for most of his working life. He left Velocity in the spring of 2022. He and his father began the process of purchasing Blackheath. In 2022, he started working for

Blackheath as a Trade Desk Administrator, for a salary of $72,000 per year. In April 2023, his father completed the purchase of Blackheath. The claimant says its revenues decreased substantially post-purchase, due in part to CRA challenging the straddle trading strategy and re-assessing clients.

[39] The claimant says it will take him a considerable amount of time to find new ways to earn income. His ability to search for new opportunities has been hindered by BCFMA's enforcement measures, including retention of his passport. At present, he is only licensed to trade securities in the UK, so him not being able to travel there impedes his ability to search out new opportunities. He says it would take him several years to get licensed in Canada.

[40] Between 2022 and 2023, the claimant received $700,000 in loans from Blackheath. These will eventually be forgiven and treated as taxable benefits, assuming he remains with the company until 2027. The respondent raises numerous questions regarding where the funds which Blackheath loaned to the claimant originated.

[41] In 2024, the claimant declared total gross employment income of $110,500 consisting of salary, plus a taxable benefit from an early portion of the Blackheath Loans he received in the past. The latter portion is not "new" money.

[42] The claimant argues that for the purpose of retroactively assessing his appropriate support obligations for 2023 and 2024, his salary of $72,000 should be used. At trial, he intends to argue that his income for spousal support purposes should be determined based on the figures in Ms. Daum's report.

[43] The respondent says the claimant has skills which made him highly successful in the past and he should be able to figure out a different approach to making money for wealthy people. She does not believe he is accurately presenting his financial position in this action. She notes he has received a steady flow of "loans" from his father, which have allowed him to maintain a lifestyle which far exceeds what could afford on a $72,000 salary. His and his father's corporate

interests are intertwined. Amongst other issues, she points to him having sold HFX's shares in Velocity in 2024, in two transactions totalling about $1.7 million, and raises questions about what became of the sale proceeds.

[44] She also points to cash flow through the claimant's personal bank account:

Year	Cash Flow	Support Pd
2022	$1,377,954	$226,331
2023	$368,762	$67,045
2024	$598,737	$13,404
2025*	$199,067	$11,170

* To August

Respondent's Income

[45] The respondent has a Bachelor of Applied Science in Chemistry. Prior to meeting the claimant, she worked as an Analytical Chemist and later in various data analysis roles at several financial institutions in the UK.

[46] She did not work outside the home during the marriage. Between October 2021 and April 2022, she started working part-time at a wool shop, earning minimum wage. In December 2021, she began operating the Whistler Property was a short-term rental, from which she has generated net rental income as follows:

Year	Net Rent
2022	$85,000
2023	$70,000
2024	$72,000

[47] In 2024, the respondent started a part-time job as a product sampler for SGS Canada Ltd., earning $20 per hour. Her 2024 income was about $4,000. For 2025, she anticipates she will earn about $12,000. The claimant complains the respondent has offered no explanation for why she is not able to earn more than $12,000 in employment income.

Conclusion – Parties' Incomes

[48] The claimant's financial circumstances are complex. They are intertwined to a significant degree with those of his father (age 85). He argues that his *Guideline* income should be fixed at $72,000, based on the salary he has been receiving from Blackheath since 2022. With respect, I cannot accept that this fairly represents his income or his ability to earn in any of the years relevant to the support-related portions of this application.

[49] In 2022-2023, the claimant received $700,000 in forgivable Blackheath Loans. Even on his own evidence, he considered the loan proceeds to be an appropriate source of payment for his interim support obligations. The loans will eventually be treated as taxable benefits (income). On the evidence before me, it would be appropriate that these loans, or a significant portion of them, be imputed as income in the claimant's hands for the relevant years.

[50] The respondent also has significant experience and professional skills on which to draw when seeking out alternate sources of income. The claimant also raises questions regarding the adequacy of the respondent's efforts to earn employment income. On the evidence and argument before me, imputation of income is a live issue for both parties.

[51] In *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 36-38, the Court of Appeal summarized the principles applicable to imputation of income in cases of intentional under-employment or unemployment:

> **36** For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.
>
> **37** The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. …
>
> **38** Although the legal foundation for awarding spousal support is different from that of child support …, the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of

> reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: … "Means" has been interpreted to include all capital and other sources of income …
> [citations omitted]

[52] Significant disputes regarding imputation of income are often best left to be resolved at trial, where parties can fully canvas their respective earning capacities and contested evidence can better be assessed: see *Kouznetsova v. Kouznetsov*, 2014 BCCA 160 at para. 45.

[53] Neither party offered detailed argument and analysis addressing these issues. I am also concerned that the evidentiary record on this application appears inadequate to carry out an appropriate level of analysis and assessment. This applies both in respect of the application for retroactive variation or cancellation of interim child and spousal support arrears, and in respect of prospective interim spousal support. In my view, it is in the interests of justice that all of these issues be adjourned to be determined at trial. The trial judge will have the benefit of a more fulsome evidentiary record and cross-examination of the parties and other witnesses.

[54] In view of my conclusion that it is not appropriate to attempt to determine the parties' respective *Guideline* incomes for the relevant years on an interim application, it follows that it is also not appropriate to attempt to decide the claimant's applications relating to cancellation of support arrears and variation of ongoing interim spousal support. Those issues are also adjourned to trial.

Children Ceasing to be Children of the Marriage

[55] The claimant seeks an order that all three children are adults and no longer qualify as "children of the marriage", thus ending his obligation to pay child support for them. Their circumstances are as follows:

a) Darcy is 24 years old. She completed a Bachelor of Arts degree at Western University and is now working full time and is self-supporting. She moved into her own apartment on October 1, 2025.

b) Clancy is 23 years old. He has completed a Bachelor of Arts degree at Queens University and is now working. He lives in an apartment owned by the respondent's father. He is otherwise self-supporting.

c) Mimi is 20 years old. She has not continued to pursue post-secondary education. She attended her first year at the University of Creative Arts in Epsom, UK in 2023-2024. The parties were not able to agree regarding how to finance her second year of studies. The claimant insisted that they access the secured line of credit to pay for it. The respondent rejected this approach. Since April 2025, Mimi returned to the UK and has been working full-time.

[56] The respondent consents to an order that the Children ceased to be "children of the marriage" and that any support arrears for them under the terms of the Consent Order be cancelled as of the relevant date. She says the relevant date for each child is as follows:

a) Darcy – April 30, 2022;

b) Clancy – April 30, 2024; and

c) Mimi – January 10, 2025.

[57] The respondent agrees with the proposed end dates for Darcy and Clancy. For Mimi, he argues that her end date should be June 1, 2024, based on her having completed the first year of her post-secondary studies in May 2024. She turned 19 years of age in January 2024. He argues that the respondent has not tendered adequate evidence to support her proposed end date and simply asserts that by January 10, 2025, it was clear Mimi would not be returning to post-secondary education in the immediate future.

[58] For the purposes of this interim determination of the reasonable date on which Mimi ceased to be a child of the marriage (at least until she sources funds necessary to return to her post-secondary education), it appears there was a period of uncertainty regarding whether she would be able to return for her second year of studies. She also does not appear to have immediately become financially independent upon completion of her first year. I agree the appropriate end date for

the claimant's obligation to pay the respondent interim child support for Mimi is January 10, 2025.

[59] If the parties cannot agree on what (if any) reductions in the arrears of child support flow from the foregoing end dates, this can be addressed at trial, or if trial does not proceed on the date currently scheduled, they have liberty to apply.

Sale of Balaclava Property and Whistler Property

[60] The claimant seeks orders as follows:

a) For sale of the Balaclava Property and the Whistler Property, with the parties having joint conduct of sale;

b) Upon completion of sale of the Balaclava Property and Whistler Property, the parties instruct their conveyancing lawyer to pay various financial encumbrances, if not already discharged from the sale of the Galiano Property:

i. To pay normal sale and conveyance costs;

ii. From the sale proceeds of the Balaclava Property, to pay two Scotiabank Lines of Credit;

iii. From the sale proceeds of the Whistler Property, to pay a Scotiabank Mortgage and Scotiabank Line of Credit;

iv. To pay CRA the principal amount owing ($5,363,770) on account of taxes owing by the claimant for the years 2016 - 2019, exclusive of interest and penalties, without prejudice to the ultimate determination of each party's responsibility for the CRA debt; and

v. Any remaining balance be paid to Hamilton Fabbro Lawyers in trust pending written agreement of the parties or court order.

[61] The respondent consents to the Balaclava Property being sold, but asks that listing of the property for sale be delayed until the February 9, 2026. This is the first day of the scheduled trial. The asks that the following terms be included:

a) The parties may each retain a realtor;

b) It will be listed for sale on a date to be agreed by the parties, but in any event no earlier than February 9, 2026;

c) Expenses needed to prepare the property for sale, if recommended by the parties' realtors, will be paid in the first instance by the claimant with liberty to seek a different allocation of such expenses at trial;

d) After payment of the lines of credit secured against the Balaclava Property and the Whistler Property, and other necessary costs of sale, the respondent will receive the sum of $1,800,000 to enable her to secure accommodations; and

e) The remaining net sale proceeds be held in an interest-bearing trust account by Hamilton Fabbro Lawyers, not to be disbursed without written agreement between the parties or order of the court.

[62] The respondent says if the Court orders that the Balaclava Property be sold on terms other than those set out above, or if it orders that the Whistler Property be sold, she consents to payments of the amounts set out in paras. 60 a) and 60 b) i) & ii) above and asks that the remaining net sale proceeds be held in an interest-bearing trust account by Hamilton Fabbro Lawyers, not to be disbursed without written agreement between the parties or order of the court.

Background – Sale of Properties

[63] On June 28, 2024, I presided over the claimant's application for, amongst other things, an order that the Balaclava and Whistler Properties be sold. I dismissed those items, at paras. 30-34 of my earlier reasons:

> [30] On the application for a sale of property, the key considerations are whether the sale is either necessary or advantageous to both parties. In this case, it appears in the broader sense that it is very likely that at least one of the properties are going to have to be liquidated. It is not clear to me at this point which one. There is a really complicated factual and financial background to how the debt got in place, but basically the lines of credit appear to have been used, at least in part, to fund the construction of the house on the Galiano Property. The Galiano Property estimated valuation I have been given is about $3.557 million, and it appears to have no debt registered against it. The Whistler Property estimated valuation is $2.875 million. It has a mortgage of $74,000 and the third line of credit, which has a balance of about $303,000 and change. The Balaclava Property estimated valuation is $3,502,000, and it has two lines of credit on title, the first for $1.1 million and change, and the second for $228,000.

> [31] Some of the line of credit debt, as I say, is attributable to the construction of the house on the Galiano Property. The Whistler Property is currently a major source of income for the respondent, in circumstances where the claimant is not currently living up to the terms of the consent order which provides for interim child and spousal support. It would not be equitable to cut off her source of support, at least on an interim basis. I think that is something that ought to remain available to her until the parties are able to settle or proceed to trial and let the trial judge sort out what the equities are.
>
> [32] The Balaclava Property is currently the home for the respondent and the three children, or I should say the third child when she is not in the UK at university. I am not persuaded that it is inevitable that it is going to have to be sold. Yes, it does have a substantial amount of debt. The parties put in place temporary arrangements in the consent order of May 5, 2023, that each was responsible for paying half of the servicing costs. I appreciate that may have become a financial burden to the parties if their incomes are reduced since the consent order was pronounced. However, there is a marked lack of clarity, on the material before me, as to abilities for various parties to pay. We have the respondent, who it appears is currently treading water, in terms of being able to use the Whistler Property revenue to help keep things going, with the Balaclava and the Whistler Properties, at least temporarily.
>
> [33] The claimant has received loans from his father, the interest-free loan from Blackheath, which appears will be forgiven eventually. He has not had to reduce his lifestyle. He could have been taking steps to do things like selling the boat to come up with funds and get rid of some of the other luxury items on the parties' roster to reduce debt, and he has not been doing so. In the circumstances, I do not think it would be equitable to allow him to basically push all of that onto the respondent's shoulders by forcing an interim sale of one of the properties that she is relying on either for her home or for her income.
>
> [34] I am not persuaded that this is an appropriate case in which to force a sale. It is not necessary at present. It is also not something that would be beneficial to the respondent. In the circumstances, I am going to dismiss the application for sale of either the Balaclava Property or the Whistler Property.

[64] The respondent subsequently applied for order that the Galiano Property be sold. The claimant opposed her application, arguing that a sale was neither necessary, nor was it expedient. In *Hodgins v. Hodgins*, 2025 BCSC 799 at paras. 39 and 62, Hughes J. concluded that the sale of the Galiano Property was necessary and inevitable. She went on to conclude, at paras. 51 and 62, that in the event she was incorrect in concluding that sale was necessary, she also found that a sale was expedient.

[65] I pause to note that in the course of opposing that application, the claimant took the position that he wished to retain the Galiano Property. Hughes J. found his position was unrealistic and improbable: see her reasons, para. 60:

> [60] Finally, while I accept that Mr. Hodgins wishes to retain the Galiano Property "as his desired property in final settlement or judgment", this seems improbable given the parties' financial circumstances, but regardless, it does not negate the advantages to the parties of a sale as outlined above. The suggestion that Mr. Hodgins may be in a position to buy out Ms. Hodgins' interest in the Galiano Property appears unrealistic given his present financial circumstances and notably, Mr. Hodgins did not seek any term or condition be included in an order for sale that would afford him the opportunity to do so.

[66] Since separation, the respondent has resided in the Balaclava Property. On June 27, 2024, it was appraised at $3,365,000. There are two lines of credit registered on title, with a total balance owing of about $1,426,000.

[67] On July 8, 2024, the Whistler Property was appraised for $2,850,000. The 2025 BC Assessment valuation is $2,655,000. It has a mortgage on title which has a balance owing of $65,000 and a line of credit with a balance owing of $228,000. It has never been the parties' principal residence, so capital gains tax will have to be paid on any increase in its value once it sells. The respondent has using the property for short terms rentals, generating about $72,453 net per year ($146,736 gross) and she has relied on the proceeds to help meet her living expenses.

Applicable Law – Sale of Properties

[68] Rule 15-8 of the *Supreme Court Family Rules*, B.C. Reg. 169/2009 ("*SCFR*") deals with sales by the court. Sub-section (1) – (3) are as follows:

> **Court may order sale**
>
> (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.
>
> **Conduct of sale**
>
> (2) If an order is made directing property to be sold, the court may permit any person having the conduct of the sale to sell the property in the manner the person considers appropriate or as the court directs.

> **Directions for sale**
>
> (3) The court may give directions for the purpose of effecting a sale, including directions
>
> (a) appointing the person who is to have conduct of the sale,
>
> …

[69] The principles applicable to an application for sale are summarized in *Halan-Harris v. Blain,* 2023 BCSC 681 at para. 13:

> [13] The principles to be applied upon an application for a sale of family property are set out by Master MacNaughton, as she then was, in *K.J.M. v. P.D.A.*, 2011 BCSC 1729 at paras 13-14:
>
> > [13] Rule 15-8 permits the Court to order that matrimonial property be sold where it appears that it is necessary or expedient to do so. As the Court of Appeal said in *Reilly v. Reilly*, [1992] B.C.J. No. 2561, an order for sale can be made on an interim basis.
> >
> > [14] The parties agreed about the principles to be considered and applied by the court when dealing with such an application. They have been set out in a number of cases and include, in summary:
> >
> > > a) If a sale is not necessary then, viewed objectively, it should be advantageous to both parties: Reilly at para. 35;
> > >
> > > b) Any doubt about the justice of an order for sale should be resolved in favour of the status quo recognizing that the status quo for one spouse may perpetuate an injustice for the other*: Bodo v. Bodo*, [1990] B.C.J. No. 346 (S.C.) and *Reilly* at para. 35;
> > >
> > > c) Where children are involved, the court should consider their need for stability and easy access to their school and friends, especially in the period immediately following separation. However, stability for the children may be balanced by other factors which affect their best interests including maintaining a relationship with an access parent: *Bodo*, at p. 12, *Dean v. Dean*, 2008 BCSC 1176 at para. 14, and *L. v. L*., 2002 BCSC 871 at para. 33;
> > >
> > > d) The availability and affordability of alternative accommodation for each party and their dependents: *Bodo* at p. 12;
> > >
> > > e) The emotional condition of each party especially the party who has primary parenting responsibility: *Bodo* at p. 12;
> > >
> > > f) External economic factors such as a declining market or the wasting of the asset: *Bodo* at p. 12;
> > >
> > > g) The capacity of the parties to maintain the asset: *Bodo* at p. 12; and

> h) The inability of one party to buy out the others interest and the inevitability of the ultimate sale of the property: *Lede v. Lede*, [1994] B.C.J. No. 1655 (S.C.) at paras. 15-16, *Dean v. Dean*, 2008 BCSC 1176 at para. 12.

Position of the Parties – Sale of Properties

Claimant

[70] The claimant argues that sale of both properties is necessary and inevitable:

a) The parties' finances are dire. Neither party will be able to retain either property given the amount of CRA debt;

b) Both parties have had to liquidate assets to meet their expenses;

c) The claimant's personal indebtedness has increased post-separation due to the dramatic reduction in his income and his inability to access family property and lines of credit to finance completion of construction of the residence on the Galiano Property, to pay legal expenses to deal with CRA issues and to pay his share of joint family expenses;

d) The total cost to service lines of credit is $7,000 per month ($84,000 per year) which is greater than his gross salary;

e) Total family debt exceeds the value of family property, and there are no other sources from which to pay it;

f) The children no longer reside at the Balaclava Property and no members of the family use the Whistler Property;

g) The properties must be sold to pay the principal owing to CRA. The respondent has not presented a plan for payment of the CRA debt.

h) The claimant says he does not have the funds necessary to pay for the upcoming 9-day trial and needs to access equity in the properties to pay his legal fees;

i) The claimant has no funds with which to pay counsel for his appeal of the CRA re-assessments;

j) The claimant was recently named as a defendant in an Ontario action started by one of his former clients in relation to his role as a foreign exchange broker while he was employed at Velocity. The plaintiff in that

case is seeking damages of $500,000 against him. He says the action has significant implications in terms of his ability earn income and his professional reputation. He requires access to funds from family property to defend the lawsuit;

k) The claimant was recently assessed an Alternative Minimum Tax upon filing his 2024 tax return. He has no ability to pay this; and

l) The Galiano Property was listed for sale on May 30, 2025. There has been only one showing and no offers received. There is no expectation this property will sell anytime soon, so it is necessary to sell the other two properties so as to ease the parties' financial burdens.

Respondent

[71] The respondent agrees it is inevitable that the Balaclava Property will have to be sold, but asks that listing the property be delayed until February 2026. The property is about 3,000 square feet. It is filled with the family's possessions, which need to be sorted, distributed, stored or disposed of. She says the residence needs repairs, cleaning and staging before it is listed. The majority of that work will inevitably fall to her. She has competing responsibilities, including her job, managing the Whistler Property and managing the demands of this litigation.

[72] The respondent expresses concern about where she will live next, after the Balaclava Property sells. She estimates it would cost about $4,000 per month to rent a two-bedroom apartment in the West Side area. Her gross monthly income is about $7,000 (including Whistler Property rent). She does not have sufficient income to pay rent. She estimates it would cost about $1.8 million to buy a two-bedroom condominium or townhouse in the West Side. Her banker informs her she cannot include Whistler rental income as part of her income for purposes of a mortgage application.

[73] The respondent opposes sale of the Whistler Property. The parties have kept payments up to date. It is well maintained. She says sale is not immediately necessary. She also says selling the property would not be advantageous to her, because it is her most significant source of income. Without it, her income will drop

to about $12,000 per year, plus whatever support she receives from the claimant. Most recently, this has been $13,404 per year for child support. It is an open question whether the respondent will continue to make any voluntarily support payments now there are orders that his obligation to pay ongoing support for all three children has ended. Even with the Whistler rental income, she has struggled to keep up with her expenses, including having to borrow from the children. She cannot afford to purchase alternative accommodation, even while receiving rental income from the Whistler Property. The respondent says her emotional condition has been profoundly affected by the financial instability caused by the claimant's decisions. The prospect of such a drastic reduction in her income is stressful.

[74] The respondent says at trial, she intends to ask the Court to impute income to the claimant and order him to pay her lump sum spousal support from his share of equity in the parties' real estate. She will also ask for an unequal division of family property in her favour. She suggests it may be possible for her to retain the Whistler Property a part of her share of family property. It is a key component to her future financial security. An interim sale of the property would foreclose her from being able to argue that she ought to be allowed to retain it. Trial is only a matter of months away.

Analysis and Decision – Sale of Properties

[75] The parties agree that sale of the Balaclava Property is necessary. At issue is when the listing should start. I am not persuaded that it is appropriate to delay the listing as long as the respondent suggests. To the extent that any significant repairs may be outstanding, it is not at all clear what that might involve, what it would cost, how long it would take and who would pay for it. The respondent simply proposes that the claimant pay for repairs in the first instance. It is not clear where he would find the funds to do that, on top of what he is already paying each month. It is also not clear that any specific repairs would materially improve the value or marketability of the property. De-cluttering would undoubtedly be beneficial, but that can be accomplished by removing excess items into short term storage. They can be sorted

and distributed later. I do accept that some modest delay is appropriate given the looming holiday season.

[76] With respect to the Balaclava Property, I order:

a) That it be listed for sale by no later than January 5, 2026, with the parties having joint conduct of sale;

b) The parties are to jointly retain a single realtor. If the parties cannot agree on a specific realtor, the respondent will put forward three names of qualified realtors and the claimant will select one of them.

c) Upon completion of sale of the Balaclava Property, the parties will instruct their conveyancing lawyer to pay various financial encumbrances, if not already discharged from the sale of the Galiano Property:

i. To pay realtor commission and applicable tax;

ii. To pay any property taxes and water and sewer rates owing;

iii. To pay normal sale and conveyance costs;

iv. To pay two Scotiabank Lines of Credit registered on title to the Balaclava Property; and

v. The remaining net sale proceeds will be held by Hamilton Fabbro Lawyers in an interest-bearing trust account, and will not be disbursed except in accordance with a further order of the court or written agreement of the parties.

[77] With respect to the Whistler Property, while it may seem unlikely, I cannot say with certainty that there is no possibility that the respondent might be able to persuade the trial judge that she ought to be allowed to retain that property as part of her share of family property. For example, if the respondent is successful in resisting the claimant's efforts to cancel the accrued support arrears, plus argue for lump sum spousal support, this could provide her a substantial "credit" which could theoretically assist in advancing such an argument. Any doubt regarding the justice of an order for sale should be resolved in favour of the status quo.

[78] I am also not persuaded that the sale of the Whistler Property would be expedient or advantageous for the respondent. It has been her primary source of income for the extended period during which the claimant has been in constant breach of the support provisions he agreed to in the Consent Order. Once this stream of rental income ends, she will be living on about $12,000 per year in employment income. Prospective child support payments have ended. It seems unlikely, given the claimant's approach to support over the past 2-1/2 years, that he will suddenly start voluntarily paying her an amount towards interim spousal support.

[79] In my reasons of June 28, 2024, I noted at para. 31:

> [31] … The Whistler Property is currently a major source of income for the respondent, in circumstances where the claimant is not currently living up to the terms of the consent order which provides for interim child and spousal support. It would not be equitable to cut off her source of support, at least on an interim basis. I think that is something that ought to remain available to her until the parties are able to settle or proceed to trial and let the trial judge sort out what the equities are.

[80] The circumstances remain essentially the same today. If anything, the situation has worsened as support arrears have continued to accumulate. The claimant has not been abiding by his support obligations under the Consent Order. The respondent has been relying primarily on net rent generated from the Whistler Property to cover her living expenses. I remain of the view that it would not be equitable to cut off this source of support for her prior to trial. The claimant's application to sell the Whistler Property is dismissed. This will have to be addressed at trial.

Mediation

[81] The claimant seeks an order compelling the respondent to attend mediation in good faith with respect to resolution of child support, spousal support and division of family property and debt. He also seeks directions regarding appointment of a mediator.

[82] The claimant argues that the terms of the Consent Order require the parties to attend mediation to attempt to resolve all outstanding issues. On January 14,

2025, he served a notice to mediate on the respondent, pursuant to the *Notice to Mediate (Family) Regulation*, B.C. Reg. 296/2007.

[83] Sections 222, 223 and 224 of the *Family Law Act*, S.B.C. 2011, c. 25 allow the Court to make an order that the parties attend mediation.

[84] The respondent offers the following reasons for not wanting to attend mediation:

a) She distrusts the claimant's portrayal of his financial position;

b) She argues the claimant lacks good faith. Examples provided include, in 2021, him attempting to prevent her from renting the Whistler Property, in 2022, him freezing the line of credit without notice to her, him unilaterally reducing support payments three times, him listing the boat for sale without notice in August 2023, in 2024, him causing HFX to dispose of Velocity shares without notice, in 2024, him disposing of his UK pension for $67,000 without notice, him insisting the parties had to borrow $45,000 to pay for Mimi's university despite him having access to funds from his disposal of family property, and him encumbering the boat and the Galiano Property with debt he incurred without notice;

c) She doubts mediation can produce a fair result for her;

d) The claimant has a record of failing to comply with informal agreements regarding support, the mediated agreement regarding interim support and the Consent Order terms relating to interim support;

e) She cannot afford both mediation and trial;

f) She is concerned that the claimant will use mediation as a pretext for yet again applying to adjourn the currently scheduled trial date;

g) Her agreement to take part in further mediation and sharing its costs was based upon the claimant's agreement to pay her interim support of about $24,000 per month. He has failed to do that. Had she known he would reneg, she would not have agreed to further mediation;

h) I previously dismissed the claimant's application to compel the parties to attend mediation.

[85] The respondent says her lack of trust in the claimant is justified. Forcing the parties to spend time and use scarce financial resources for mediation at this point would have no utility. The claimant's position is that the respondent must pay 50% of the CRA re-assessment, interest and penalties. That would extinguish her interest in family property. His position that he is only able to earn $72,000 per year would effectively eliminate any prospect of her receiving a meaningful level of spousal support. The parties have already engaged in exhaustive efforts to negotiate a settlement, including the two previous mediation sessions. If there was any prospect of reaching an agreement, they would have done so.

[86] The claimant's previous application to compel the parties to attend mediation was made on June 28, 2024. My reasons for dismissing that were as follows:

> [35] On the issue of forcing a mediation, I am not inclined to make a further order on that. The parties have the existing term re mediation in their consent order. I do not think it is necessary for me to expand on that. The parties have very clearly put a considerable amount of time and effort into negotiation, and I am not sure that forcing a mediation, absent additional information from the expert reports that are pending, is likely to be fruitful at this juncture in any event. I am going to dismiss the applications relating to mediation.

[87] Ms. Daum's report is now available. The claimant says thereafter he followed the steps contemplated in the Consent Order, including sending the respondent a settlement offer and has requested that the parties attend further mediation.

[88] The prospect of potentially settling all or some of the outstanding issues in a day or so of mediation would obviously be preferable and more cost-effective than the parties running a 9-day trial. The practical problem is that the mediation was supposed to proceed after Ms. Daum's report became available. Completion of her report was significantly delayed, until February 27, 2025. Thereafter, rather than focusing on pressing for an early mediation, the claimant chose to put forward an omnibus application which added an interim application for a retroactive review of support, cancellation of arrears, suspension of enforcement, etc. This added significant complexity to the issues raised in his application, making a long chambers unavoidable. Securing timely long chambers dates can be challenging. He did not actually file his application until October 14, 2025.

[89] If mediation was the claimant's primary goal, he could and should have made a separate, narrower application to enforce the mediation provisions in the Consent Order. That is a relatively straightforward issue which could have raised in regular chambers and decided much earlier than occurred in this case. That would have left time prior to the scheduled trial to comfortably schedule continuation of the mediation. As things now stand, if mediation were to be ordered, it would realistically have to occur sometime in January 2026. There appears to be inadequate time to locate and retain a mediator, address pre-mediation issues such as exchanges of mediation briefs, and hold the actual mediation.

[90] Both parties acknowledge that there have already been extensive and exhaustive efforts to negotiate a settlement of the issues in dispute. Those efforts have not been successful. The distance between the financial positions which each of the parties set out in their submissions before me is frankly stark.

[91] The claimant initiated the adjournment of the two earlier scheduled trial dates in this matter. If mediation were to be ordered at this point, it appears likely this could trigger another application to adjourn the February 9, 2026 trial, a date which is peremptory on the claimant. In my view, it is in the interests of justice that the trial proceeds as scheduled so that the parties' dispute can be resolved. Given the financial pressures on both parties, neither can afford further significant delay. I exercise my discretion to dismiss the claimant's application to compel the parties to attend further mediation.

Costs

[92] The respondent has had the larger measure of success in opposing the claimant's application. She is entitled to costs of this application, in the cause.

"Associate Judge Bilawich"