**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Strait-Hinnerichsen* v. *Strait-Hinnerichsen,* 2023 NSSC 340

**Date:** 20231030
**Docket:**1201-073639
**Registry:** Halifax

**Between:**

Lisa Strait-Hinnerichsen

*Petitioner*

v.

Henrick Strait-Hinnerichsen

*Respondent*

| | |
|---|---|
| **Judge:** | The Honourable Justice Ingersoll |
| **Heard:** | May 11, 2023, in Halifax, Nova Scotia |
| **Written Release:** | October 30, 2023 |
| **Counsel:** | Yvonne M.R. LaHaye, K.C. for Lisa Strait-Hinnerichsen<br>Diana Musgrave for Henrick Strait-Hinnerichsen |

**By the Court:**

## Introduction

[1] Lisa Strait-Hinnerichsen and Henrick Strait-Hinnerichsen separated after almost 20 years of marriage. They have agreed on a shared parenting arrangement for their 2 children.

[2] In this decision I must resolve the following:

1. Should the divorce be granted?
2. What are the matrimonial assets subject to division?
3. Is Ms. Strait-Hinnerichsen entitled to an unequal division of matrimonial assets or to a division of non-matrimonial assets?
4. In the context of shared parenting is Ms. Strait-Hinnerichsen entitled to prospective and historic child support?
5. In the context of shared parenting what is the appropriate proportionate sharing of special and extraordinary expenses?
6. Is Ms. Strait-Hinnerichsen entitled to prospective spousal support and if so in what amount and for what duration?

7. Is Ms. Strait-Hinnerichsen entitled to historic spousal support and if so in what amount?

8. Is Ms. Strait-Hinnerichsen entitled to occupation rent from Mr. Strait-Hinnerichsen as of March 2022?

[3] I will now address each of these issues.

## 1 Should the divorce be granted?

[4] The parties were married in Nova Scotia on July 21, 2001, and separated on January 27, 2021 ("the Separation Date"). The Petition for Divorce was filed on August 27, 2021, and served on September 17, 2021. An Answer was filed on September 20, 2021, and served on September 22, 2021. The Petition, the Answer, the Affidavits of Service, and the long form Marriage Certificate were tendered as exhibits.

[5] The parties have not reconciled, and I am satisfied that there is no possibility of reconciliation. The parties have both lived in Nova Scotia continuously since 2010. I am satisfied that the jurisdictional requirements for the granting of a divorce have been met, and there is proof of permanent marriage breakdown. There is no bar to divorce such as collusion, condonation, or connivance.

[6] I grant the divorce.

## 2 What are the matrimonial assets subject to division?

[7] The parties agreed on the identity, characterization, and value of most of their assets and debts. These agreements, and easily resolved issues, are in Schedule A.

[8] The parties are not in agreement with respect to two assets: an Investment Account and an RRSP Account. Mr. Strait-Hinnerichsen inherited both assets. They are in Mr. Strait-Hinnerichsen's name exclusively. He says that they have not been comingled with matrimonial assets and are, therefore, exempt from inclusion as matrimonial property. Ms. Strait-Hinnerichsen says that the Investment Account was used to fund the family's expenses through their marriage and as a result is a matrimonial property subject to division. Ms. Strait-Hinnerichsen says that the funds within the RRSP Account were intended to fund the parties' retirement and should, therefore, be considered a matrimonial asset.

## 3 Are the Investment Account and the RRSP Account exempt from inclusion as matrimonial property?

[9] I will deal with the Investment Account and the RRSP Account separately after reviewing the law which is applicable to both accounts.

[10] All assets owned by the parties are presumed to be matrimonial assets regardless of ownership and are to be divided in equal shares under Section 12 of the *Matrimonial Property Act* R.S.N.S. 1989, c. 275, s. 1 (hereafter the MPA). Certain assets or classes of assets enumerated in Clause 4 of the MPA are exempted from the classification of matrimonial assets and from equal division. The inheritance exceptions are set out in clause 4(1)(a):

> (a) gifts, inheritances, trusts or settlements received by one spouse from a person other than the other spouse except to the extent to which they are used for the benefit of both spouses or their children.

[11] The inheritance exception in clause 4 (1)(a) applies to assets purchased with exempt inherited funds provided the subsequently purchased assets were not used for family purposes. (See *Tibbetts v. Tibbetts*, 1992 NSCA 17 at paragraph 38 and *Kennedy-Dowell v. Dowell* 2002 NSSF 13 at paragraph 47)

[12] The clause 4(1)(a) inheritance exception applies to earnings (such as accrued interest) generated by inherited assets [see *Tibbetts v. Tibbets* [1992], 119 NSR [2D] 26, *O'Toole v. O'Toole* [1999], 175 NSR [2D] 131, [1999] NSJ No. 111 and *Rafuse v. Rafuse* 2015 NSSC 374].

[13] An inherited asset may lose its exempt status if it is used for the benefit of both spouses or their children. It is the use to which an inherited assets is put, not

the future intended use or the length of cohabitation, which could deprive an inherited asset of its exempt status.

[14] In *MacLean v. MacLean* 2019 NSSC 322, Justice Chiasson considered what utilization of an inherited asset would constitute “use” and thus deprive the inherited asset of its exempt status. Justice Chiasson cited *Fisher v. Fisher* 2001 NSCA 18 in which Justice Cromwell held that the fundamental issue in considering whether an inherited asset has been used for the benefit of the spouses or children is “the extent to which the asset has gone into “the matrimonial pot””. Justice Cromwell held that the determination of whether an asset has gone into the matrimonial pot must be made:

> having regard to the nature of the asset and what use, in the normal course of life, would constitute integration of an asset of that nature into the life of the family. Factors such as the degree to which the asset was kept and treated separately from matrimonial assets, the amount and nature of its use by, or on behalf of, the spouses or the children and the contribution of family resources to maintain or enhance the asset may be factors which will be helpful to consider in making this determination. This, of course, is not an exhaustive list. (paragraph 15)

[15] Justice Chiasson also referred to Justice Campbell’s “use” analysis in *Kennedy-Dowell*, *supra* wherein Justice Campbell stated*:*

> 54 ……. if a preserved asset was merely invested for the purpose of earning investment income spent for family purposes, it has not been "used" at all. Instead, what has been "used" is the proceeds of the inheritance or trust rather than the inheritance or trust itself. The use of an income from a trust or inheritance does not taint the fund itself.

[16] Likewise, Justice MacAdam in *Rafuse v. Rafuse*, 2015 NSSC 374, held that although exempt assets and funds that are withdrawn from exempt assets may lose their exempt character by virtue of being used for family purposes, that use does not affect the exemption accorded to the remainder of the fund (see paragraph 20).

[17] In determining if an inherited asset has gone into the matrimonial pot I may consider:

1. Whether the asset was kept and treated separately from matrimonial assets.
2. The amount and nature of its use by or on behalf of the spouses or the children.
3. The extent to which family resources were contributed to maintain or enhance the asset.
4. The extent to which and the manner in which the asset has been consumed, substituted, or preserved.

[18] The evidence establishes that Mr. Strait-Hinnerichsen inherited assets that became the Investment Account, the RRSP Account and his mother's jewelry collection when she passed away in 1987. The question I need to resolve is whether the accounts were used for the benefit of both spouses or the children.

[19] The evidence establishes that Mr. Strait-Hinnerichsen gained access to the Investment Account and the RRSP Account when he turned 28 in 2001. Until that time his mother's executors together with the investment advisors managed those accounts and approved all expenditures.

### 3.1 The Investment Account

[20] The evidence establishes that on an ongoing basis funds were withdrawn from the Investment Account and deposited in the parties' joint bank account and used to fund family expenses including but not limited to the purchase or contribution to the purchase of the matrimonial home in Toronto and several homes in Nova Scotia.

[21] Between 2005 and the Separation Date, Mr. Strait-Hinnerichsen directed that $4,476,151.97 be withdrawn from that the Investment Account for the benefit of his family (excluding the RRSP funds deposited into the RRSP Account and funds used to pay the tax liabilities triggered by withdrawals from the Investment Account.)

[22] The uncontradicted evidence is that while Mr. Strait-Hinnerichsen attended meetings with the investment advisors before his 28th birthday and thereafter, Ms. Strait-Hinnerichsen never ever attended those meetings. Ms. Strait-Hinnerichsen

did not have the authority to direct a withdrawal from the account and, in fact, never did so.

[23] After Mr. Strait-Hinnerichsen turned 28 his name alone was on the Investment Account. It was never a joint account with Ms. Strait-Hinnerichsen. She never had access to the funds in the Investment Account, rather every transfer of funds from the Investment Account was authorized solely by Mr. Strait-Hinnerichsen.

[24] Except for funds withdrawn from the Investment Account and deposited into the RRSP Account all funds withdrawn from the Investment Account were used for family purposes. Mr. Strait-Hinnerichsen acknowledges that these funds taken from the Investment Account and used for family purposes lost their exempt status.

[25] The Investment Account itself was never mingled with matrimonial assets. It remains a separate account solely in Mr. Strait-Hinnerichsen's name and has never received funds which constituted matrimonial assets.

[26] As of the Separation Date the Investment Account balance was $270,779.36; as of March 29, 2023, there was $123,962.06 in the Investment Account.

[27] Ms. Strait-Hinnerichsen submits that the remaining balance of the Investment Account should be considered a matrimonial asset as it would be unfair

for Mr. Strait-Hinnerichsen to retain the balance when the parties shared the benefits from this account for over twenty years.

[28] Mr. Strait-Hinnerichsen submits that the Investment Account is exempt from inclusion as a matrimonial asset.

[29] Mr. Strait-Hinnerichsen bears the burden of proving that the remaining funds in the Investment Account are not matrimonial assets by reason of an exception (*Cashin v. Cashin*, 2010 NSCA 51).

[30] I find that the funds in the Investment Account were inherited by Mr. Strait-Hinnerichsen from his mother. The funds in the Investment Account, including the growth of the inherited funds over the years, fall with the exception set out in Section 4(1)(a) of the MPA; the funds are therefore not matrimonial assets subject to equal division. I find that the funds withdrawn from the Investment Account (except for funds invested in RRSPs) were used for family purposes and have lost their exempt status and became matrimonial assets.

[31] The Investment Account was at all times maintained as an account in Mr. Strait-Hinnerichsen's name only, and only he could direct that any funds be transferred from the account. At no time were matrimonial funds deposited into

that account. The funds in the Investment Account were not mingled with matrimonial assets; those funds were not “tainted” with matrimonial assets.

[32] The fact that since 2005 approximately $4,476,151.97 was withdrawn from Investment Account for the benefit of the family does not mean that the remaining balance of the funds in the account became matrimonial assets. An inherited and thereby exempt asset may become a matrimonial asset if it is used for the benefit of both spouses and their children. I find that the remaining funds in the Investment Account were never used for the benefit of the spouses and their children. It is the use of an asset, not its intended use, that causes it to lose its inherited (and exempt) status. As noted, the remaining funds in the Investment Account were never used for a family purpose.

[33] For the forgoing reasons the funds in the Investment Account did not become matrimonial assets but rather maintained their exempt status.

### 3.2 The RRSP Account

[34] The evidence indicates that the RRSP Account was created with RRSP funds held by Mr. Strait-Hinnerichsen’s mother.

[35] The RRSPs inherited by Mr. Strait-Hinnerichsen were valued at $454,476 in 1994. By December 31, 2021, this account had grown to $4,494,191.

[36] Mr. Strait-Hinnerichsen assumed control of the RRSP Account when he turned 28 in 2001. Thereafter this account was solely in Mr. Strait-Hinnerichsen's name. Only he could direct withdrawals from the account. Ms. Strait-Hinnerichsen was never named as a beneficiary on the RRSP Account.

[37] Funds were withdrawn from this account only once; $50,000 net was withdrawn from this account in February of 2018. The undisputed evidence establishes that these funds were withdrawn to pay off matrimonial debt and therefore lost their exempt status.

[38] From time to time the RRSP Account received funds directly from the Investment Account which funds were invested as RRSPs in Mr. Strait-Hinnerichsen's name only. The evidence establishes that deposits were made to the RRSP Account (directly from the Investment Account) in 2006, 2008, 2009 and 2010 in the total amount of $53,020.07. There is no evidence of any other deposit made to the RRSP Account.

[39] There were no funds transferred from the parties' joint account to the RRSP Account. There were no funds transferred from the Investment Account to the RRSP Account for investment in an RRSP for Ms. Strait-Hinnerichsen.

[40] Mr. Strait-Hinnerichsen submits that the entire RRSP Account is exempt as a matrimonial asset pursuant to Section 4(1)(a) of the MPA. He bears the burden of proving that the funds in the RRSP Account are not matrimonial assets by reason of an exception: *Cashin v. Cashin*, 2010 NSCA 51.

[41] Ms. Strait-Hinnerichsen submits that only those funds ($553,266) in the RRSP Account on the date the parties began cohabitating (April 1996) should be excluded as a non-matrimonial asset. Ms. Strait-Hinnerichsen submits that the growth in the RRSP Account should be considered matrimonial assets given the length of the marriage and the fact that Mr. Strait-Hinnerichsen assured Ms. Strait-Hinnerichsen that the funds in the RRSP Account would ultimately be used to fund their retirement. Ms. Strait-Hinnerichsen says that the parties did not concern themselves with building separate retirement savings for her because of the availability of the funds in the RRSP Account to fund their retirement. Ms. Strait-Hinnerichsen says that Mr. Strait-Hinnerichsen seeks to take their planned retirement option (utilizing the funds in the RRSP Account) away from Ms. Strait-Hinnerichsen because of their marriage breakdown.

[42] Funds withdrawn from an exempt inherited pool of funds and contributed to an RRSP can retain their exempt status. The interest earned on the inherited funds

contributed to the RRSP also retain their exempt status. (See *O'Toole, supra, Tibbetts, supra and Kennedy-Dowell, supra*)

[43] The funds transferred directly from the Investment Account to the RRSP Account for investment as Mr. Strait-Hinnerichsen's RRSP retained their exempt status as the funds were not used for the benefit of the spouses or their children.

[44] I find that the RRSP Account has been kept and treated separately from other matrimonial assets owned by the parties. The RRSP Account was solely in Mr. Strait-Hinnerichsen's name. Only Mr. Strait-Hinnerichsen met with the Investment Advisors and only Mr. Strait-Hinnerichsen could give instruction for funds to be withdrawn or added to the account. With one exception, the funds in the RRSP Account were not used to fund the day to day living expenses of the family and only exempt funds were deposited into the RRSP Account; family resources were not used to maintain or enhance the RRSP Account balance. With that one exception the funds in the RRSP Account were not consumed or substituted but rather were preserved to produce growth within the account. Unlike some inherited property which is preserved and used for the benefit of the family the funds in the RRSP Account were preserved but not used for the benefit of the family.

[45] I find that the funds in the RRSP Account did not go into the matrimonial pot and that they were not used by the spouse or their children.

[46] Ms. Strait-Hinnerichsen submits that the intended use of the RRSP Account (to fund the parties' retirement) is sufficient to deprive those funds of their exempt status. Even if I were to find that there was a mutual intention to use the funds in the RRSP Account to fund the parties' retirement, I find that mutual intention absent actual use is not sufficient to deprive the RRSP Account of its exempt status. I find that the funds in the RRSP Account were not used for the benefit the spouses or their children.

[47] The balance of the RRSP Account are inherited funds which have grown over time through accrued interest and other investment strategies. Both the inherited funds and the growth of those funds are exempt from inclusion as matrimonial assets.

### 3.3 Jewellery

[48] As noted, Mr. Strait-Hinnerichsen inherited his mother's jewelry collection. Ms. Strait-Hinnerichsen accepts that except for three pieces that jewellery collection is an inherited asset and thus exempt from inclusion as a matrimonial

asset. The parties agree that these three items have the following valuations: Trinity Ring $9,750, Aquamarine Pendent $4,350 and the Tennis Bracelet $5,750.

[49] Ms. Strait-Hinnerichsen's position until closing argument was that these three pieces of jewelry were personal items and not shareable matrimonial assets. I accept that these three pieces of jewelry were worn by Ms. Strait-Hinnerichsen (and with respect to the Trinity Ring modified for her use as a wedding ring) and as a result must be considered personal effects and exempt from inclusion as matrimonial assets pursuant to Subsection 4(1)(d) of the MPA.

[50] During closing argument Ms. Strait-Hinnerichsen changed her position regarding the three pieces of jewelry and through counsel returned the tennis bracelet to Mr. Strait-Hinnerichsen. Ms. Strait-Hinnerichsen says that the value of these three pieces of jewelry ($19,850) should be included in the matrimonial asset division and included as being in Mr. Strait-Hinnerichsen's possession. With respect, Ms. Strait-Hinnerichsen cannot unilaterally convert an exempt personal effect into a matrimonial asset and seek to have it included in an equalization calculation. These three pieces of jewelry are Ms. Strait-Hinnerichsen's exempt personal effects and belong to Ms. Strait-Hinnerichsen. They should be returned to her by November 30, 2023.

## 4 Is Ms. Strait-Hinnerichsen entitled to an unequal division of matrimonial assets or to a division of non-matrimonial assets?

[51] Ms. Strait-Hinnerichsen submits that if I find that the entire RRSP Account is exempt, I should order that the (exempt) growth on that account since 2001 be equally divided between the parties pursuant to Section 13 of the MPA or alternatively that I unequally divide the matrimonial assets in Ms. Strait-Hinnerichsen's favour.

[52] Section 13 of the MPA permits me to divide matrimonial assets unequally or make a division of property that is not a matrimonial asset, provided I am satisfied an equal division of matrimonial assets would be unfair or unconscionable considering the factors set out in Section 13. (*Wolfson v Wolfson*, 2023 NSCA 57). Prior to considering whether to grant any relief pursuant to Section 13 of the MPA I must first equally divide the matrimonial assets and then consider if that equal division is unfair or unconscionable.

## 5 The Division of Matrimonial Assets

[53] Prior to determining the required equalization payment, I need to determine two further issues: the valuation date of Ms. Strait-Hinnerichsen's TSFA and her claim for repayment of her ski equipment.

## 5.1 TSFA Valuation date

[54] The parties built a home in Grand Anse for Ms. Strait-Hinnerichsen's parents with funds from the Investment Account. That home was sold in January of 2021 realizing net sale proceeds of $316,215.28 (the Net Sale Proceeds). Ms. Strait-Hinnerichsen invested $97,475 of the Net Sale Proceeds into her Tax-Free Saving Account (the TFSA). The TSFA had a balance of $81,544.58 as of March 31, 2021, which amount Mr. Strait-Hinnerichsen proposes be used as the value of the TSFA for matrimonial asset division purposes. Ms. Strait-Hinnerichsen proposes that the TSFA be valued using the 2022 closing balance (total proposed valuation of $69,698.19.).

[55] In *Simmons v. Simmons*, 2001 CanLII 2617 (NSSF), Justice D. Campbell outlined the general principles for determining the date for valuing assets. The Court of Appeal has endorsed these principles in *Moore v. Moore*, 2003 NSCA 116 at paragraph 24, and in *Morash v. Morash*, 2004 NSCA 20 at paragraph 21. Based on those principles, I find that the TSFA valuation closest to the Separation Date should be used and as a result I value Ms. Strait-Hinnerichsen's TSFA at $81,544.58 for the purposes of matrimonial property division. Ms. Strait-Hinnerichsen's proposed later value would compel Mr. Strait-Hinnerichsen to

share the decrease in the TFSA's value, though he did not benefit from Ms. Strait-Hinnerichsen's withdrawal from the TFSA.

### 5.2 Ski Equipment

[56] Ms. Strait-Hinnerichsen says that Ms. Strait-Hinnerichsen disposed of her ski equipment and seeks $2,000 from him as reimbursement. Ms. Strait-Hinnerichsen did not tender any evidence as to the make or costs of the ski equipment disposed of by Mr. Strait-Hinnerichsen.

[57] Mr. Strait-Hinnerichsen's evidence is that Ms. Strait-Hinnerichsen's skis were purchased in 2002 and were obsolete and non-serviceable. Mr. Strait-Hinnerichsen says that the only new piece of ski equipment was Ms. Strait-Hinnerichsen's helmet. Mr. Strait-Hinnerichsen returned Ms. Strait-Hinnerichsen's helmet and goggles in April of 2023.

[58] Given the lack of evidence regarding the value of the ski equipment (current or replacement value) and in light of Mr. Strait-Hinnerichsen's explanation as to why he disposed of the skis I am not prepared to order Mr. Strait-Hinnerichsen reimburse Ms. Strait-Hinnerichsen for the value of the ski equipment.

### 5.3 Matrimonial Asset Division

[59] The following table sets out my finding regarding matrimonial asset division:

| DIVISION OF ASSETS AND LIABILITIES – Inherited Assets Excluded | | | |
|---|---|---|---|
| | Mr. Strait-Hinnerichsen | Ms. Strait-Hinnerichsen | TOTAL |
| MATRIMONIAL ASSETS | | | |
| 54 Amesbury Gate | $1,117,116.59 | | $1,117,116.59 |
| 6830 Hwy 4, Grande Anse (proceeds) | | $45,009.95 | $45,009.95 |
| 2016 BMW 435i Gran Coupe | $30,000.00 | | $30,000.00 |
| 2021 BMW x3 | | $55,000.00 | $55,000.00 |
| Ms. Strait-Hinnerichsen's TFSA | | $81, 544.58 | $81, 544.58 |
| Ms. Strait-Hinnerichsen's RRSP (net) | | $91, 347.07 | $91, 347.07 |
| Mr. Strait-Hinnerichsen's SunLife Pension (net) | | $35, 714.95 | $35, 714.95 |
| London Life Policy ***571-4 | $43,678.15 | | $43,678.15 |
| London Life Policy ***572-1 | | $24,078.00 | $24,078.00 |
| Mr. Strait-Hinnerichsen Tax Refund | $6, 328.10 | | $6, 328.10 |
| **Subtotal Matrimonial Assets** | **$1,197,122.84** | **$332,694.55** | **$1,529,817.39** |
| MATRIMONIAL DEBTS | | | |
| Ms. Strait-Hinnerichsen Tax Liability | | $2,375.07 | $2,375.07 |
| **Subtotal Matrimonial Debts** | | **$2,375.07** | **$2,375.07** |
| **Net Matrimonial Assets** | **$1,197,122.84** | **$330,319.48** | **$1,527,442.32** |
| **Equalization Payment** | -$433,401.68 | $433,401.68 | |

[60] To achieve an equal division of matrimonial assets Ms. Strait-Hinnerichsen is entitled to an equalization payment from Mr. Strait-Hinnerichsen of $433,401.68.

**6. Is the division of matrimonial assets in equal shares unfair or unconscionable?**

[61] As noted, Ms. Strait-Hinnerichsen submits that an equal division of matrimonial assets would be unfair or unconscionable and seeks an unequal division of matrimonial assets or a division of assets that are not matrimonial assets.

[62] Mr. Strait-Hinnerichsen says that an equal division of matrimonial assets is appropriate. Mr. Strait-Hinnerichsen says that an equal division will create a lump sum benefit to Ms. Strait-Hinnerichsen. He says that he depleted his inheritance having spent the Investment Account funds for the benefit of his family and that Ms. Strait-Hinnerichsen received the full benefit of the withdrawn inherited funds.

[63] Section 13 of the MPA gives me the discretion to divide matrimonial assets unequally or to divide non-matrimonial assets if I am satisfied that an equal division of matrimonial assets would be unfair or unconscionable, having regard to the 13 specific factors set out in Section 13.

[64] In *Wolfson*, *supra*, Justice Van den Eynden held that the purpose of an award pursuant to Section 13 is not to redistribute wealth but rather to arrive at an amount to overcome the unfairness or unconscionability resulting from the property

division or in other words to “bring the division into a range of what would be fair and conscionable and no further” (paragraphs 92 and 112).

[65] At paragraph 93 Justice Van den Eynden stated:

> A s. 13 claim must be grounded in the evidence and relate to one or more of the enumerated grounds. This Court has said that a claim for unequal division must be proven by "strong evidence" that demonstrates, on a broad view of all relevant factors, that equal division would be unfair or unconscionable. (See *Donald v. Donald*, (1991) 103 N.S.R. (2d) 322 (C.A.) at para. 20, 81 D.L.R. (4th) 48 and *Volcko v. Volcko*, 2015 NSCA 11 at para. 49). Only when that determination is made will departure from the norm of equal division be permitted. (See *Young v. Young*, 2003 NSCA 63 at para. 15).

[66] In *Calder v. Calder*, 2022 NSSC 146 Justice MacKeigan considered a claim for relief under Section 13 of the MPA. At paragraph 87 Justice MacKeigan cited, inter alia, the follows legal principles that apply to a claim for unequal division identified by Justice Forgeron at paragraph 27 in *Cunningham v. Cunningham*, 2017 NSSC 244, (affirmed at 2018 NSCA 63):

> […]
>
> * The burden of establishing entitlement rests upon the spouse who seeks an unequal division.
>
> * An unequal division is only permitted where "there is convincing evidence that an equal division would be unfair or unconscionable": Young v. Young, supra, para 15, per Bateman, J.A.; or where there is "strong evidence showing that in all the circumstances an equal division would be unfair or unconscionable on a broad view of all relevant factors:" Harwood v. Thomas (1981), 1981 CanLII 4167 (NS CA), 45 N.S.R. (2d) 414 (A.D.) at para 7, per MacKeigan, C.J.N.S.
>
> * Although the word "unfair" and "unconscionable" do not have "a precise meaning", they nonetheless evoke "ethical considerations and not merely legal ones:" Young v. Young, supra, para 18, per Bateman, J.A.

> * Unconscionable has been held to mean "unreasonable", "unscrupulous", "excessive" and "extortionate" and when "coupled with the requirement that "strong evidence" must be produced to support an unequal division, the burden upon the party requesting an unequal division of matrimonial assets is somewhat onerous:" Jenkins v. Jenkins (1991), 1991 CanLII 4342 (NS SC), 107 N.S.R. (2d) 18 (T.D.), at para 10, per Richard, J.
>
> * The question to be asked is "whether equality would be clearly unfair -- not whether on a precise balancing of credits and debits of factors largely imponderable some unequal division of assets could be justified:" Harwood v. Thomas, supra, para 7, per MacKeigan, C.J.N.S.
>
> * Courts are instructed to examine all the circumstances, and not to simply weigh the respective material contributions of the parties, except in unusual circumstances: Young v. Young, supra, paras 15 and 19, per Bateman, J.A.
>
> […]
>
> * When focusing on claims grounded in s. 13 (d) of the Matrimonial Property Act, the length of cohabitation is a reference to short term, not long term unions: Briggs v. Briggs (1984), 64 N.S.R. (2d) 40 (N.S.T.D.) as affirmed at (1984), 65 N.S.R. (2d) 126 (N.S.C.A.) and Donald v. Donald (1991), 1991 CanLII 2563 (NSCA), 103 N.S.R. (2d) 322 (N.S.C.A.) per Chipman, J.A.
>
> * The determination of whether an equal division will produce an unfair or unconscionable result is a fact-based decision, as shown in the divergent results reported in the various cases relied upon by counsel, which I reviewed.

[67] Ms. Strait-Hinnerichsen bears the burden of establishing that the equal division of matrimonial assets is unfair and unconscionable. If she satisfies that burden, she must then demonstrate what division would bring the division into a range that would be fair and conscionable.

[68] Ms. Strait-Hinnerichsen says that the equal division of matrimonial assets is unfair and unconscionable based on the following Section 13 factors:

- (d) the length of time that the spouses have cohabited with each other during their marriage;

- Ms. Strait-Hinnerichsen says that the parties were in a 25-year relationship which produced two children.

- (h) the needs of a child who has not attained the age of majority;

    - Ms. Strait-Hinnerichsen cites the fact that the parties' younger child is 16 years old and lives with his mother half of the time.

- (i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;

    - Ms. Strait-Hinnerichsen cites the fact that she moved to Toronto where Mr. Strait-Hinnerichsen had a job, that she took two maternity leaves and a four-year hiatus from the work force, was a single parent from 2009 to 2010 when she relocated to Nova Scotia ahead of Mr. Strait-Hinnerichsen, and again when he accepted work in New Waterford, Cape Breton.

- (j) whether the value of the assets substantially appreciated during the marriage;

    - Ms. Strait-Hinnerichsen submits that the RRSP Account grew from $553,266 in 2001 when the parties commenced cohabitation to $4,594,191 in December of 2021.

- (l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;

    - Ms. Strait-Hinnerichsen says that she has lost the benefit of the balance of the Investment Account to alleviate a shortfall in her household budget as the parties did over the last 20 years when there was insufficient employment

> income, and the benefit of the RRSP Account to fund her retirement.

[69] Ms. Strait-Hinnerichsen also supports her position that an equal division of matrimonial assets is unfair or unconscionable by submitting:

1. The parties did not accumulate other substantial saving or assets of a comparable value during their marriage.

2. Mr. Strait-Hinnerichsen says that Ms. Strait-Hinnerichsen should bear sole responsibility for not having built up other savings despite the fact that Ms. Strait-Hinnerichsen's pay was always deposited into the parties' joint bank account and consumed by the family.

3. Ms. Strait-Hinnerichsen understood from her discussions with Mr. Strait-Hinnerichsen that they would both rely on the RRSP Account funds for retirement not just Mr. Strait-Hinnerichsen.

4. The RRSP Account fund is worth more than three time the value of the matrimonial home, which is the parties' most valuable matrimonial asset.

5. At 48, Ms. Strait-Hinnerichsen cannot now save a significant amount of retirement savings.

6. Ms. Strait-Hinnerichsen's net disposable income is $3,992 per month, and Mr. Strait-Hinnerichsen's net disposable income is $11,649.44 per month; and

7. Ms. Strait-Hinnerichsen will be in a "significantly inequitable position to provide for the parties' children and to contribute to their educational and other expenses which she would like to do in some form so as to avoid the appearance to the children that only their father contributes to same".

[70] I note that Ms. Strait-Hinnerichsen has not grouped these points around a factor set out in Section 13. In considering whether the division of matrimonial assets is unfair or unconscionable for the purposes of Section 13 of the MPA I must not consider factors that are not enumerated in Section 13 of the MPA. (*Wolfson, supra*, paragraph 94)

[71] Ms. Strait-Hinnerichsen submits that an equal division of all matrimonial assets and the remaining balance of the Investment Account and all growth (reduced to take 30% taxation into account) in the RRSP Account after the parties commenced cohabitation would address the unfairness and unconscionability of an equal division of matrimonial assets alone. Such a division would require an

equalization payment of $1,951,684.78 from Mr. Strait-Hinnerichsen to Ms. Strait-Hinnerichsen.

[72] I have considered Ms. Strait-Hinnerichsen's position that based upon the factors set out in Section 13(d), (h), (i), (j), and (l) of the MPA that an equal division of matrimonial assets would be unfair or unconscionable.

[73] This is not a case in which one spouse was engaged in business and thereby amassed considerable business assets while the other spouse managed their home and attended to childcare responsibilities. In *Wolfson, supra*, Ms. Wolfson's disproportionate assumption of childcare and other domestic responsibilities enabled Mr. Wolfson to better acquire and develop business interests (engaging Subsections 13(f), (g), and (i)) justified a Section 13 award of $1,500,000 (paragraph 116.)

[74] This case centers around inherited assets which were in part used during the marriage (the Investment Account), and inherited assets (the RRSP Account) which (with one exception) were not used during the marriage and increased considerably in value during the marriage. Unlike the facts in *Wolfson, supra*, the non-matrimonial assets in this case were not acquired or developed through any effort by Mr. Strait-Hinnerichsen during the marriage. Further, Ms. Strait-

Hinnerichsen's contribution to the family's welfare as a homemaker or parent cannot be linked to the acquisition or growth in the inherited (non-matrimonial) assets.

[75] I also find that there were periods in the marriage when Ms. Strait-Hinnerichsen assumed more childcare responsibilities than Mr. Strait-Hinnerichsen (for example when he worked in Toronto or in Cape Breton). However, while there were times when Ms. Strait-Hinnerichsen assumed more childcare responsibilities than Mr. Strait-Hinnerichsen, she did so because of employment decisions the parties made as a family and not because Mr. Strait-Hinnerichsen was absent from the family because he was focused on or developing the inherited assets.

[76] In considering Ms. Strait-Hinnerichsen's claim for relief under Subsection 13 (i) Ms. Strait-Hinnerichsen's contribution to the welfare of the family does not satisfy me that an equal division of matrimonial property in this case is unfair or unconscionable.

[77] With respect to Ms. Strait-Hinnerichsen's claim for relief under Subsection 13 (d) I find that the length of the parties' marriage is not such that it satisfies me that an equal division of matrimonial property in this case is unfair or

unconscionable. This Subsection is typically invoked in circumstances where a marriage is of short duration (*Wolfson, supra*, paragraph 101).

[78] With respect to Ms. Strait-Hinnerichsen's claim for relief under Subsection 13 (h) I do not have evidence that the needs of the parties' son are such that they would cause me to conclude that an equal division of matrimonial property in this case is unfair or unconscionable.

[79] With respect to Ms. Strait-Hinnerichsen's claim for relief under Subsection 13 (j) I find that the inherited funds (and growth associated therewith) in the Investment Account did not substantially appreciate during the marriage but rather were substantially depleted. I find that the inherited funds (and growth associated therewith) in the RRSP Account did substantially appreciate during the marriage. While I find that the balance of the RRSP Account grew substantially during the marriage, I find that the parties benefited greatly from the withdrawals from the other non-matrimonial asset (the Investment Account) and, in any event, the growth in the RRSP Account had nothing to do with any contribution made by either party as homemaker or parent. I am not satisfied that an equal division of matrimonial property in this case is unfair or unconscionable because of the growth in the RRSP Account.

[80] Ms. Strait-Hinnerichsen submits that pursuant to Subsection 13 (l) an equal division of matrimonial assets is unfair or unconscionable in light of the value of the benefit which she will lose the chance of acquiring due to the termination of the marriage. The RRSP Account is solely in Mr. Strait-Hinnerichsen's name; Ms. Strait-Hinnerichsen could not and did not direct or authorize the withdrawal of funds from that account. Had the parties remained married, Mr. Strait-Hinnerichsen could have elected to not draw down the RRSP Account in any given year (until required to do so at age 70) and even if he did draw down some of the RRSP could solely and unilaterally determine how much if any would be drawn down which means that Ms. Strait-Hinnerichsen cannot predict what funds in any given year would have been withdrawn from the RRSP Account. Further, I am not satisfied that a withdrawal by Mr. Strait-Hinnerichsen from the RRSP Account is a benefit as that term is used in Section 13(l) of the MPA. Had the marriage not ended and funds withdrawn from the RRSP Account I am not satisfied that such withdrawals would be a benefit "acquired" by Ms. Strait-Hinnerichsen; such funds might have been deposited into a joint account but that does not equate to the funds being acquired by Ms. Strait-Hinnerichsen.

[81] Ms. Strait-Hinnerichsen submits that she was a beneficiary under Mr. Strait-Hinnerichsen's will and that because of the divorce she lost the opportunity to

inherit the RRSP Account. Mr. Strait-Hinnerichsen's evidence is that Ms. Strait-Hinnerichsen was never the beneficiary of the RRSP Account and that in 2023 (after the breakdown of the marriage) he named his children as beneficiaries. Had the marriage continued these exempt funds could have been designated by Mr. Strait-Hinnerichsen in his sole discretion. I am not satisfied that the funds in the RRSP Account were a benefit which Ms. Strait-Hinnerichsen will lose the benefit of acquiring by reason of the termination of the marriage. I am not satisfied that this is a reason to depart from an equal division of matrimonial assets.

[82] I am not satisfied that an equal division of the parties' matrimonial assets is unfair or unconscionable.

## 7 Child support in the context of shared parenting

[83] The parties have agreed to a shared parenting arrangement in which their younger child, who is now in grade 12, will spend a week with each parent on a rotating basis. The parties' older child does not live with either parent as she is in University out of town; she visits her parents on university breaks but spent the summer of 2023 working in Toronto.

[84] Ms. Strait-Hinnerichsen seeks historic and prospective child support.

[85] Ms. Strait-Hinnerichsen submits that if I permit Mr. Strait-Hinnerichsen to retain the full balance of the RRSP Account, the balance of the Investment Account and if I order an equal division of the matrimonial assets, the means, needs and circumstances of the parties require Mr. Strait-Hinnerichsen to pay child support.

[86] Mr. Strait-Hinnerichsen submits that there is no basis for a retroactive child support owing between either party based on the parties' actual and imputed incomes. Mr. Strait-Hinnerichsen submits that the has provided for the children and met his responsibilities regarding additional expenses. Mr. Strait-Hinnerichsen submits that Ms. Strait-Hinnerichsen has provided no evidence of needs not met by the children since separation.

[87] Child support in shared parenting arrangements is calculated following the three steps mandated by Section 9 of the *Federal Child Support Guidelines*. Justice Jollimore summarised these three steps as follows in *McCrate v McCrate*, 2019 NSSC 167:

> Step one: subsection 9(a)
>
> **34** The first step is to calculate the set-off of the amounts each parent would pay the other under the Table.
>
> ….
>
> Step two: subsection 9(b)

> **38** The second step requires considering the increased costs of the shared parenting arrangements.
>
> ….
>
> Step three: subsection 9(c)
>
> **46** Subsection 9(c) vests me with "a broad discretion for conducting an analysis of the resources and needs of both the parents and the children".

## 8 Child Support for 2021

[88] I will first consider Ms. Strait-Hinnerichsen's claim for prospective child support from the month the Petition was filed (August 2021) until the end of that calendar year.

### 8.1.1 Income determination for 2021

[89] The *Federal Child Support Guidelines* stipulate that the first step in calculating the amount of child support payable in a shared parenting situation is to calculate the amount each parent would pay the other under the table based upon their incomes. (*McCrate, supra* paragraph 34)

#### 8.1.1.1 Ms. Strait-Hinnerichsen's 2021 income

[90] Ms. Strait-Hinnerichsen's income is not in dispute. She worked full time and earned $64,930 in 2021. She paid professional dues of $853, so her 2021 income for child support purposes is $64,077. She would pay Mr. Strait-Hinnerichsen monthly support of $908 for 2 children based on an annual income of $64,077.

### 8.1.1.2 Mr. Strait-Hinnerichsen's 2021 income

[91] The parties do not agree on Mr. Strait-Hinnerichsen's income.

[92] Ms. Strait-Hinnerichsen submits that I should impute as income to Mr. Strait-Hinnerichsen in 2021 the funds he withdrew that year from the Investment Account. Ms. Strait-Hinnerichsen says that Mr. Strait-Hinnerichsen's income for the purposes of calculating his 2021 child support obligations is $247,000.

[93] Mr. Strait-Hinnerichsen submits that in determining his 2021 income, for the purposes of calculating his child support obligations, is $96,417. Mr. Strait-Hinnerichsen submits that there is no basis to impute any income to him in 2021.

[94] To determine Mr. Strait-Hinnerichsen's 2021 income for the purposes of child support I must start with his Line 150 income as determined in his 2021 Income Tax Return. I must then adjust, if appropriate in the circumstances, Mr. Strait-Hinnerichsen's 2021 Line 150 income in accordance with Schedule III of the *Guidelines*. Next, I must consider Sections 17 through 20 of the *Guidelines* and determine, based on the facts of this case, if any adjustments to Mr. Strait-Hinnerichsen's 2021 income are appropriate and if so in what amount. (*Reid v. Faubert*, 2019 NSCA 42 and *Vincent v. Vincent*, 2012 BCCA 186).

### 8.1.1.3 Mr. Strait-Hinnerichsen's 2021 Line 150 Income

[95] Mr. Strait-Hinnerichsen's total income for 2021 at Line 150 of his Income Tax Return is $80,007 ($80,003 in his 2021 Notice of Assessment).

### 8.1.1.4 Application of Schedule III to Line 150 income

[96] In the Nova Scotia Court of Appeal Decision of *Johnson v Barker*, 2017 NSCA 53 Justice Hamilton observed that "Schedule III provides for adjustments, including those to neutralize the favourable tax rates for dividends and capital gains, as compared to other income, and to take into account non-cash expenses such as capital cost allowance" (paragraph 23).

[97] Mr. Strait-Hinnerichsen's 2021 Line 150 income includes capital gains of $19,586.35. The parties agree that pursuant to Schedule III the other half of Mr. Strait-Hinnerichsen's 2021 capital gain must be added to his 2021 income for the purposes of determining his 2021 child support obligations. In her Divorce Mate calculations Ms. Strait-Hinnerichsen adds that amount to Mr. Strait-Hinnerichsen's Line 150 income of $79,737 (as opposed to $80,007) whereas Mr. Strait-Hinnerichsen's Divorce Mate calculation adds that amount to $76,831. As Ms. Strait-Hinnerichsen added the capital gains to an amount which most closely resembles Mr. Strait-Hinnerichsen's actual Line 150 income, I accept her

calculation and find that Mr. Strait-Hinnerichsen's 2021 Line 150 income, together with the other half of his 2021 capital gains, is $99,313.

[98] Ms. Strait-Hinnerichsen submits that Mr. Strait-Hinnerichsen's 2021 Line 150 income should be reduced by $801 to deduct an amount in respect of Dividends from taxable Canadian corporations pursuant to Section 5 of Schedule III. Mr. Strait-Hinnerichsen does not seek to deduct that amount from his Line 150 income. I will deduct this amount based on Ms. Strait-Hinnerichsen's acknowledgement this amount should be deducted from Mr. Strait-Hinnerichsen's 2021 Line 150 income.

[99] Schedule III permits the deduction of carrying charges from Line 150 income. In 2021 Mr. Strait-Hinnerichsen had carrying charges of $55,143.13 comprised of Investment Management fees of $50,832.70, Legal and Accounting fees of $4,296.37 and amounts from T5013 slips of $14.06. These carrying charges were deducted from income on Mr. Strait-Hinnerichsen's 2021 income tax return.

[100] Mr. Strait-Hinnerichsen does not seek to deduct his Investment Management fee from his 2021 Line 150 income for the purposes of determining his child support obligations. Ms. Strait-Hinnerichsen provided calculations in which the investment management fees of $50,832.70 are deducted from Mr. Strait-

Hinnerichsen's 2021 income for the purposes of determining his support obligations.

[101] As Ms. Strait-Hinnerichsen deducted the management fee component of Mr. Strait-Hinnerichsen's 2021 carrying charges from his income for the purposes of calculating his income, I will accept that approach for 2021 and reduce his income by the amount of his 2021 investment management fees.

[102] Mr. Strait-Hinnerichsen's Line 150 income, increased to include the other half of his 2021 capital gains and reduced to take into account the above noted dividends and Mr. Strait-Hinnerichsen's 2021 investment management fee, results in an income figure of $47,665.

#### 8.1.1.5 Consideration of Sections 17 – 20 of the *Guidelines*

[103] Ms. Strait-Hinnerichsen says that Mr. Strait-Hinnerichsen's tax-free yearly withdrawals from the Investment Account deposited into the families' joint bank account each month for the past 20 years should be considered in the quantification of Mr. Strait-Hinnerichsen's income for child and spousal support purposes. Ms. Strait-Hinnerichsen submits that Mr. Strait-Hinnerichsen's pattern of reliance on inherited funds has continued post-separation.

[104] Ms. Strait-Hinnerichsen submits that pursuant to Section 19 of the *Guidelines* I should impute as income to Mr. Strait-Hinnerichsen in 2021 the funds he withdrew in 2021 from the Investment Account ($112,212.80) and then gross up those funds as they were received on a tax-free basis.

[105] As noted, Mr. Strait-Hinnerichsen submits that no imputation is appropriate for 2021.

### 8.1.1.6 Should I impute income to Mr. Strait-Hinnerichsen?

[106] The *Federal Child Support Guidelines* permit me to impute income. The *Guidelines* provide a non-exhaustive list of circumstances in which I can impute income including but not limited to under employment, tax exemption and income diversion. Subsection 19(1) of the *Guidelines* stipulates that if I impute income, I am to impute an amount that I consider appropriate in the circumstances.

[107] Justice Forgeron in *Parsons v Parsons*, 2012 NSSC 239 held:

> **32** Section 19 of the *Guidelines* provides the court with the discretion to impute income in specified circumstances. The following principles are distilled from case law:
>
> a. The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reasons and justice, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: **Coadic v. Coadic** 2005 NSSC 291.
> b. The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: **Staples v. Callender**, 2010 NSCA 49.

[108] Ms. Strait-Hinnerichsen bears the onus to establish evidentiary basis for such a finding (*Coadic, supra* at paragraph 12).

[109] If Ms. Strait-Hinnerichsen presents the evidentiary basis suggesting that a prima facie case for imputation of income exists, the onus shifts to Mr. Strait-Hinnerichsen to defend the income position he is taking. (*Horbas v. Horbas*, 2020 MBCA 34)

[110] Ms. Strait-Hinnerichsen submits that I should impute as income to Mr. Strait-Hinnerichsen the amount which he withdraws from his Investment Account grossed up to take into account those funds are withdrawn on a tax-free basis.

[111] In considering Ms. Strait-Hinnerichsen's submission I start by considering the purposes of the *Guidelines* which are:

> 1 The objectives of these *Guidelines* are
>
> (a) to establish a fair standard of support for children that ensures that they benefit from the financial means of both parents;
>
> (b) to reduce conflict and tension between parents by making the calculation of child support orders more objective;
>
> (c) to improve the efficiency of the legal process by giving courts and parents guidance in setting the levels of child support orders and encouraging settlement; and

> (d) to ensure consistent treatment of parents and children who are in similar circumstances.

[112] Of relevance to this case is a consideration of the means of both parents. In *P.W. v. C.M.*, 2021 NSSC 127 Justice MacLeod-Archer considered whether income should be imputed to a parent and observed that in undertaking that analysis:

> 19 According to the Nova Scotia Court of Appeal in *Reid v Faubert*, 2019 NSCA 42, I must first consider whether P.W.'s Line 150 income (as adjusted under Schedule III of the CSG) fairly reflects all the money available to him for the payment of child support.

[113] In considering Ms. Strait-Hinnerichsen's imputation submission analysis I must focus on the child centered principles in child support cases. As held by Justice Jesudason in *Boylan v. MacLean*, 2018 NSSC 15:

> 103 Before delving into an analysis of the Mother's retroactive claim, it is helpful to emphasize the core child-focussed principles in all child support cases. They are:
>
> *child support is the right of children;
> *the children's right to support survives the breakdown of the relationship between the children's parents;
> *child support should, as much as possible, perpetuate the standard of living the children experienced before the parents' relationship broke down; and
> *the amount of child support varies, based upon the parent's income [D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra, 2006 SCC 37, at para. 38].

[114] I have concluded that it is appropriate to impute to Mr. Strait-Hinnerichsen as 2021 income for the purpose of determining his 2021 child support obligation

the $112,213 he withdrew that year from the Investment Account. My reasons for doing so are as follows:

1. The table at Schedule B sets out Mr. Strait-Hinnerichsen's annual Investment Account withdrawals (and other relevant information for both parties) back to 2011 (which was the first full year that both parties lived in Nova Scotia following their move from Ontario).

2. Mr. Strait-Hinnerichsen annually withdrew funds from the Investment Account, which funds were deposited into the parties' joint bank account and thereafter used to fund the family's living expenses.

3. On average, between 2011 and 2020, Mr. Strait-Hinnerichsen withdrew $298,988 each year from his Investment Account (grossed up, the average annual withdrawal is $612,276). The parties built a home in 2012. That year Mr. Strait-Hinnerichsen withdrew $802,179.80 from the Investment Account. If that year is treated as an anomaly and omitted from the analysis of withdrawals from the Investment Account, during the remaining nine years Mr. Strait-Hinnerichsen, on average, annually withdrew $243,078 from the Investment Account each year (grossed up, the average annual withdrawal is $502,033).

4. Each year from 2011 to 2020 (the last full year prior to the parties' separation) the Investment Account withdrawals (Column 5 in Schedule B) exceeded the combined Line 150 incomes of Mr. Strait-Hinnerichsen (Column 3) and Ms. Strait-Hinnerichsen (Column 1).

5. The evidence establishes that the parties maintained a lifestyle beyond that which their earnings alone could finance. Mr. Strait-Hinnerichsen controlled the withdrawals from the Investment Account and consistently directed the ongoing withdrawals from that Account for deposit into the parties' joint account. These withdrawals were an ongoing and consistent resource which the parties relied upon to pay their expenses and fund their lifestyle.

6. In 2021 Mr. Strait-Hinnerichsen withdrew less funds from the Investment Account than he had in any previous year.

7. As of December 31, 2020, Mr. Strait-Hinnerichsen had $277,877 remaining in the Investment Account and $3,847,581.36 in his RRSP Account. In 2021 the Investment Account funds grew by an annual interest rate of 12.15% (resulting in more than $24,000 in growth) for a 2021 closing balance of $189,761.28 (net of deductions) and the RRSP Account funds grew by an annual interest rate of 19.56%

> (resulting in more than $700,000 in growth) for a 2021 closing balance of $4,595,190.78. The balances in the Investment and RRSP Accounts and the 2021 increases in those accounts are relevant circumstances which I can consider in determining Mr. Strait-Hinnerichsen's means and his ability to pay child support in 2021, notwithstanding the fact that neither account is a matrimonial asset.

[115] Given the *Guidelines*' objective that child support be based upon the means of the parents and principle that child support should, as much as possible, perpetuate the standard of living the children experienced before the parents' relationship broke down, it is fair and appropriate to impute to Mr. Strait-Hinnerichsen the amount of $112,212.80 (rounded to $112,213). I am not aware of the extent to which the 2021 Investment Account withdrawal of $112,213 is already included in Mr. Strait-Hinnerichsen's Line 150 income or the Schedule III adjustments to that income. However, given the absence of any submissions regarding a possible double accounting and given Mr. Strait-Hinnerichsen's significant means and the pre-separation lifestyle of the parties I consider it a fair amount to impute to him as income for 2021.

[116] This figure must be grossed up as it was received by Mr. Strait-Hinnerichsen on a tax-free basis. Ms. Strait-Hinnerichsen calculates the gross up on the

Investment Account withdrawal as $87,122. This amount is reasonable and will also be imputed to Mr. Strait-Hinnerichsen's 2021 income.

[117] I find that Mr. Strait-Hinnerichsen's 2021 income for the purposes of determining his 2021 child support obligations is $247,000. His child support obligation in 2021 was $3,152 per month for two children.

[118] Mr. Strait-Hinnerichsen's daughter left home in September of 2021 to attend university out of town. Both parties reduce Mr. Strait-Hinnerichsen's 2021 child support set-off after September 1, 2021, when Alyssa moved away to attend university.

### 8.2 Step One in the Contino Analysis (Section 9(a) - the 2021 Child support set-off)

[119] Mr. Strait-Hinnerichsen's table child support payable between August 1, 2021 (the month in which the petition was filed) and December 31, 2021, was $3,152 per month.

[120] Ms. Strait-Hinnerichsen's Guideline child support contribution for two children between August 1, 2021, and December 31, 2021, was $908 per month.

[121] I find the parties' 2021 set off for two children (between August 1, 2021, and December 31, 2021) was $2,244 for two children.

[122] I have not reduced the amount of child support payable in respect of Alyssa as of September 1, 2021 (when she moved out of town to attend university) because she had not yet reached the age of majority (she did not turn 19 until June of 2022). The *Guidelines* require that the table amount of child support be paid in respect of a child under the age of majority:

> 3(1) Unless otherwise provided under these *Guidelines*, the amount of a child support order for children under the age of majority is
>
> (a)the amount set out in the applicable table, according to the number of children under the age of majority to which the order relates and the income of the spouse against whom the order is sought; and
>
> (b)the amount, if any, determined under Section 7.

## 8.3 Step Two in the Contino Analysis (Section 9(b))

[123] The *Federal Child Support Guidelines* stipulate that the second step in calculating child support in a shared parenting situation involves a consideration of the increased costs of the shared parenting arrangements.

[124] Justice Forgeron in *Wolfson v. Wolfson*, 2021 NSSC 260 noted the following commentary regarding the analysis required by Subsection 9(b) of the *Guidelines*:

> **435** Ms. Wolfson also referenced the article *The TLC of Shared Parenting: Time, Language and Cash*", **xii** wherein Rollie Thompson provided commentary about subsection 9(b) of the *Guidelines*, indicating at page 334 that:
>
> > Under s. 9(b), a court has two concerns: the over-all increased total costs of child-rearing for both parents, especially duplicated costs; and any disproportionate assumption of spending by one parent or the other. The child-related expenses should be apportioned between the parents based

> upon their incomes, to verify the set-off and to determine the need for significant adjustments to the set-off amount.

[125] The jurisprudence establishes the following framework in conducting an analysis pursuant of Subsection 9(b) of the Federal Child Support *Guidelines*:

1. The total child rearing budgets and actual expenditures of both parents must be examined, and a determination made as to the monthly expenditures attributable to the children.

2. The duplication of fixed costs must be considered and if duplication exists the court must consider if the fixed costs of either parent have increased or decreased because of the fact of shared parenting. (*Contino v. Leonelli-Contino,* 2005 SCC 63 *supra*, para 78 and 79)

3. A determination must be made whether shared parenting has resulted in increased child rearing costs of both parents (*Contino, supra* para 52).

4. Consideration must be given as to whether one parent has assumed a disproportionate share of the child's costs (*Contino, supra* para 53); and

5. The child rearing costs identified in the forgoing analysis must be apportioned between the parties in proportion to their incomes. (*Contino*, *supra* para 53)

**8.3.1.1 Total childcare costs and the increase in costs due to shared parenting**

[126] Both parties filed sworn Statements of Expenses in 2021.

[127] Neither party identified costs which were increased due to shared parenting.

[128] Mr. Strait-Hinnerichsen estimated his 2021 monthly expenses at $6,940.94 and with respect to food, clothing, toiletries, hair, and grooming he noted that the budgeted amount included the children's costs as well as his costs (without allocating the costs among them). The only specific cost identified in Mr. Strait-Hinnerichsen's Statement of Expense was Ehtan's private school tuition of $1,250 per month for four months (March to June 2021).

[129] Ms. Strait-Hinnerichsen's 2021 Statement of Expenses estimates her monthly expenses at $7,962.83 and, for the most part, also lumps the children's costs with her own costs. Her Statement identifies annual insurance costs for the children at $360 per year and basketball costs of $201 per month but does not indicate which child incurs that fee.

#### 8.3.1.2 Increased and Duplicated expenses

[130] The parties have many duplicated expenses but as noted have not identified costs which are increased solely because of shared parenting.

#### 8.3.1.3 Does one parent pay a disproportionate share of child related expenses?

[131] Neither party appeared to anticipate spending disproportionately more than the other on the children in 2021.

#### 8.3.1.4 Are expenses apportioned between the parties based on their incomes?

[132] Both parents anticipate incurring food, clothing, toiletry, hair and grooming and other expenses in respect of their children. Given the disparity of the post-separation incomes of the parties, I find that the costs incurred by the parties are not apportioned between the parties based on their incomes. I will return to this observation under the Section 9(c) analysis.

[133] With respect to the Section 9(b) analysis, I find that neither parent bears more child rearing costs than the other. I also find that the fact of shared parenting alone has not increased the parties' child rearing costs. For these reasons I decline to make an adjustment to the set off amount payable by Mr. Strait-Hinnerichsen under Section 9(b) of the *Guidelines*.

### 8.4 Step Three in the Contino Analysis (Section 9(c))

[134] In this stage of the analysis, I must consider the conditions, means, needs and other circumstances of both the parents and the children. I must be especially concerned with the children's standard of living in each household and each parent's ability to manage the costs of maintaining the appropriate standard of living. *Smith v. Smith*, [2011] NSJ No 416 at paragraphs 69 and 70 and *Contino*, *supra* at paragraph 68.

[135] As Justice Jollimore noted in *McCrate*, *supra*:

> **47** "[O]ne of the overall objectives of the *Guidelines* is, to the extent possible, to avoid great disparities between households.": *Contino v. Leonelli-Contino*, 2005 SCC 63 at paragraph 51. This means I retain discretion to modify the set-off amount if, considering the parents' financial realities, the set-off would "lead to a significant variation in the standard of living experienced by the children as they move from one household to another".

[136] The analysis under Subsection 9(c) may lead to the conclusion that Mr. Strait-Hinnerichsen's contribution to child support should be higher than the amount mathematically arrived at pursuant to the Subsection 9(a) and (b) analysis.

[137] In considering the conditions, means, needs and other circumstances of the parties and the children to determine if the set off amount should be applied or varied, and if so to what extent, I will assess the evidence to determine the following:

1. The parties' gross incomes and their disposable incomes,

2. The parties' assets and liabilities,
3. The parties' spending patterns and their capacity to meet their routine expenses, and
4. The childrens' standard of living in each home.

### 8.4.1 The parties' gross incomes and their disposable incomes

[138] Mr. Strait-Hinnerichsen's gross 2021 income for the purpose of calculating child support is $247,000 compared to Ms. Strait-Hinnerichsen's gross 2021 income of $64,077. Absent any consideration of spousal support Mr. Strait-Hinnerichsen's share of the parties' net disposable income is in the range of 75% with Ms. Strait-Hinnerichsen's share of the parties' net disposable income in the range of 25%. With the payment of the child support set off and spousal support, these net disposable incomes are much more closely aligned.

### 8.4.2 The parties' assets and liabilities

[139] As of their separation date, the parties had considerable assets and few liabilities (a mortgage and a Joint RBC Visa balance). A few months later Ms. Strait-Hinnerichsen was assessed an income tax debt. Following separation Mr. Strait-Hinnerichsen paid the mortgage and related home expenses, and the Visa balance. Ms. Strait-Hinnerichsen secured an apartment. Neither party disclosed any monthly debt payments in their 2021 Statement of Expenses.

### 8.4.3 Each party's spending pattern and capacity to meet their routine expenses

[140] Ms. Strait-Hinnerichsen submits, and I accept, that her monthly ongoing expenses exceed her income. I accept that Ms. Strait-Hinnerichsen must use savings to meet her ongoing monthly expenses. Mr. Strait-Hinnerichsen can meet his ongoing monthly expenses.

[141] Neither party has adopted a lavish spending pattern post-separation.

### 8.4.4 The children's standard of living in each home

[142] Mr. Strait-Hinnerichsen remained in the family's large 4-bedroom home. Ms. Strait-Hinnerichsen rents an apartment with 2 bedrooms and a den. She sleeps in the den to provide bedrooms for her children. I find that the circumstances of the children in each home are not the same; their living circumstances at their father's home is much more in keeping with their former lifestyle.

### 8.4.5 Conclusion with respect to Section 9(c) analysis

[143] In considering the means and circumstances of the parties upon the payment of child support and spousal support I find that the set off amount is acceptable. Ms. Strait-Hinnerichsen has not requested an amount of child support greater than the set off amount. Mr. Strait-Hinnerichsen submitted that no child support is payable by him in 2021 but did submit calculations which indicated that if child

support was calculated for 2021, the set off amount (based on Mr. Strait-Hinnerichsen's income of $96,417) was the appropriate approach to calculating child support.

### 8.5 Conclusion regarding 2021 Child Support

[144] I find the 2021 set off for two children (between August 1, 2021, and December 31, 2021) of $2,244 for two children is the appropriate child support for this period.

[145] As Mr. Strait-Hinnerichsen did not pay any child support to Ms. Strait-Hinnerichsen in 2021, he is ordered to pay Ms. Strait-Hinnerichsen the sum of $11,220 in respect of child support he should have paid between August 1, 2021, and December 31, 2021.

## 9 Child Support for 2022

### 9.1.1 Income determination for 2022

#### 9.1.1.1 Ms. Strait-Hinnerichsen's 2022 income

[146] Ms. Strait-Hinnerichsen's 2022 income is not in dispute. She worked full time and earned $74,163 in 2022, less professional dues of $870. Ms. Strait-

Hinnerichsen's 2022 income for the purposes of calculating her child support obligations is $73,293.

#### 9.1.1.2 Mr. Strait-Hinnerichsen's 2022 income

[147] The parties do not agree on Mr. Strait-Hinnerichsen's 2022 income.

[148] Mr. Strait-Hinnerichsen submits that in determining his income for the purposes of calculating his child support obligations his 2022 income was $97,984. Ms. Strait-Hinnerichsen says that his 2022 income for the purposes of determining child support was $182,558.

[149] I will determine Mr. Strait-Hinnerichsen's 2022 income by first determining his Line 150 income, then considering if that income must be adjusted in accordance with Schedule III of the *Guidelines* and then assess whether further adjustments should be made to his income pursuant to Sections 17 – 20 of the *Guidelines*.

#### 9.1.1.3 Mr. Strait-Hinnerichsen's 2022 Line 150 income

[150] Mr. Strait-Hinnerichsen's line 2022 150 income was $92,657.87; he did not have any employment income in 2022 but received employment insurance benefits which benefits ended in 2022.

[151] Mr. Strait-Hinnerichsen collapsed RRSPs from his RRSP Account in 2022. He declared $74,163 as income from this RRSP. Ms. Strait-Hinnerichsen says that this amount is $71,428.57. I find that the evidence establishes that in 2022, Mr. Strait-Hinnerichsen declared as income from his RRSP $71,428.57 from which $21,428.57 was withheld at source for a cash receipt by him of $50,000.

[152] Both parties agree that I should include the RRSP income in Mr. Strait-Hinnerichsen's income for the purposes of determining his child support obligations. I agree that Mr. Strait-Hinnerichsen's 2022 RRSP withdrawals, which are included in his Line 150 income, should be included in his income for the purposes of determining his child support obligations.

#### 9.1.1.4 Schedule III adjustments to Line 150 income

[153] The parties agree that Mr. Strait-Hinnerichsen's Line 150 income should be adjusted pursuant to Schedule III of the *Guidelines* by the addition of Capital Gains of $3,404 and the deduction of $812 representing dividends from taxable Canadian corporations. With these adjustments Mr. Strait-Hinnerichsen's 2022 income is $96,061.95.

[154] Mr. Strait-Hinnerichsen does not seek to deduct his investment management fee from his 2022 Line 150 income.

[155] Ms. Strait-Hinnerichsen acknowledged that the 2021 carrying charges comprising management fees incurred by Mr. Strait-Hinnerichsen ought to be deducted from his 2021 income when determining his income for child support and spousal support purposes. Ms. Strait-Hinnerichsen has not reduced Mr. Strait-Hinnerichsen's income to take his 2022 carrying charges into account. Ms. Strait-Hinnerichsen left the question of whether investment management fees should be deducted from Mr. Strait-Hinnerichsen's 2022 income with me to resolve.

[156] In *M.K.P v. F.R* 2022 BCSC 2361 Justice Wilson refused to deduct carrying charges from the Respondent's income because the management fees which comprised the carrying charges had been deducted from the accounts and not paid out of the Respondent's annual income. Justice Wilson held that the expense (the management fee) did not match to income because the income earned in the portfolio is realized at some future date on disposition whereas the expense is incurred regardless of whether the income is realized. Justice Wilson concluded that the management fee should not be deducted from income as the fee was paid out of capital, not income leaving the Respondent's entire income available for support purposes without regard to the carrying charges.

[157] In *McBennett v. Davis* 2021 ONSC 3610, Justice Chappel also considered whether a Schedule III carrying charge (this time in respect of legal fees paid to

pursue support) should be deducted from income for the purposes of calculating support. Justice Chappel noted that carrying charge are deductible costs because they constitute amounts laid out to earn income from property. Justice Chappel determined that it was appropriate to treat the legal fees as falling within Section 8 of Schedule III but to then determine whether all or some of the fees should be imputed back to the party's *Guidelines* income pursuant to Section 19(1) of the *Guidelines* based on the circumstances of the case. She held that the imputation would not be pursuant to 19 (1)(g) but rather on the basis that the deduction from *Guidelines* income permitted by Section 8 of Schedule III results in injustice on the particular facts of the case.

[158] I prefer Justice Chappel's approach as it is consistent with Section 8 of Schedule III of the Guidelines which permits deductions of carrying costs which would be deductible under the *Income Tax Act*. I find that Mr. Strait-Hinnerichsen deducted $60, 480.36 (investment management fees of $55, 904.16 and legal and accounting fees incurred regarding support payments of $4,576.20) from his income in 2022. These deductions were accepted by CRA. I find that it is appropriate to deduct these costs from his Line 150 income. I will now consider whether based on the facts before me I should impute any of these funds back to Mr. Strait-Hinnerichsen as income in 2022.

[159] In 2021 Mr. Strait-Hinnerichsen had combined employment and employment insurance income of $53,662.97 and in addition to that income withdrew $112, 212.80 (grossed up to $219,938.80) from his Investment Account. That was the smallest withdrawal from the Investment Account since 2011. Mr. Strait-Hinnerichsen's income for the purposes of calculating child support prior to deduction of carrying costs was approximately $302,143.13. By contrast in 2022, Mr. Strait-Hinnerichsen had employment insurance income of $14,875 and in addition to that income withdrew $47,886.36 from his Investment Account (grossed up to $87,308.36) and $71,428.57 from his RRSP Account. He clearly had much less income and withdrawals in 2022 than in 2021 and thus less funds available to support his children.

[160] Mr. Strait-Hinnerichsen controls the withdrawals from both the Investment Account and the RRSP Account and in 2022 elected to withdraw less from both accounts than he had since 2011, notwithstanding his much-reduced employment income. Mr. Strait-Hinnerichsen had the means available to him to not reduce his 2022 withdrawals and in fact could have increased his withdrawals to account for his reduced employment income and to ensure that he his children benefitted from his means.

[161] I find that Mr. Strait-Hinnerichsen intentionally reduced the funds available to himself in 2022, in a year in which he had no employment income and limited employment insurance income.

[162] The carrying charges deducted by Mr. Strait-Hinnerichsen over time did not decrease as the balance of his Investment Account decreased. The Investment Account had a balance of $2,015,692.24 on December 31, 2008, and that year Mr. Strait-Hinnerichsen deducted carrying charges of $46,665. By contrast the Investment Account had an opening balance of $189,761.28 on January 1, 2022, and a closing balance of $123,962.06 on December 31, 2022, and in that year Mr. Strait-Hinnerichsen deducted carrying charges of $60,480.36, of which $55,904.16 were comprised of Management Fees. Mr. Strait-Hinnerichsen's income tax return notes that the deducted management fees are in respect of investments other than RRSPs.

[163] In *M.K.R v. F.R supra*, Justice Wilson observed that the Respondent's carrying charges of $102,000 were reasonable given the fact that the funds being managed totaled approximately $17 million. In 2022, Mr. Strait-Hinnerichsen claimed management fees of $55,904.16 on funds of $123,692.06. Mr. Strait-Hinnerichsen's income tax return notes that management fees cannot be deducted in respect of RRSPs, which means that the 2022 management fees of $55,904.16

were in respect of the $123,692.06 in his Investment Account. Mr. Strait-Hinnerichsen did not offer any evidence to explain management fees which approximately 45% of the funds being managed.

[164] To reduce Mr. Strait-Hinnerichsen's 2022 *Guidelines* income by $60,480.38 would yield an unjust and distorted result given Mr. Strait-Hinnerichsen's reduced Line 150 income, his means, his control of those means, the unexplained high management fee given the small amount of funds remaining in the Investment Account and the reduced funds withdrawn from the Investment Account in 2022.

[165] I find that it is appropriate exercise my discretion and impute as income to Mr. Strait-Hinnerichsen an amount which would in effect reduce his 2022 carrying costs deduction to $10,000.

[166] As a result, I adjust Mr. Strait-Hinnerichsen's 2022 income by deducting from his Line 150 income his 2022 carrying costs and imputing back to him all but $10,000 of that amount. As a result, his 2022 Line 150 income is reduced by carrying costs of $10,000 for a net 2022 income of $86,061.95 ($96,061.95 less $10,000).

#### 9.1.1.5 Adjustment to 2022 income pursuant to Guidelines Sections 17 to 20

[167] Mr. Strait-Hinnerichsen submits that he did not withdraw any money from the Investment Account in 2022.

[168] Ms. Strait-Hinnerichsen submits that Mr. Strait-Hinnerichsen in fact withdrew $47,886.36 from the Investment Account in 2022 which amount should be considered as income and used in the calculation of Mr. Strait-Hinnerichsen's child support obligations. Mr. Strait-Hinnerichsen acknowledges that these funds were withdrawn from the account but says that the funds were not paid to him. Mr. Strait-Hinnerichsen did offer an explanation as to where the funds withdrawn from the Investment Account were directed.

#### 9.1.1.6 Historic pattern of Investment Account withdrawals to supplement family income

[169] In the second year after the parties separated, Mr. Strait-Hinnerichsen withdrew the smallest amount since 2011 from the Investment Account. I have ruled that his 2021 withdrawal from the Investment Account should be considered income for the purposes of determining his child support obligations. Ms. Strait-Hinnerichsen says that I should include the 2022 Investment Account withdrawal in Mr. Strait-Hinnerichsen's 2022 income. I agree the 2022 Investment Account withdrawal should be included in Mr. Strait-Hinnerichsen's income.

[170] The 2022 Investment Account withdrawal of $47,886.36 must be grossed up as it was paid on a tax-free basis. The grossed-up amount to be added to the Investment Account withdrawal is $36,758 for a total 2022 income of $169,894.

## 9.2 Step One in the Contino Analysis (9 (a))

[171] As noted, the first step in calculating the amount of child support payable in a shared parenting situation is to calculate the set-off of the amounts each parent would pay under the table based upon their incomes. (*McCrate, supra* paragraph 34)

[172] Alyssa turned 19 in June of 2022 and in September returned to university out of town. Mr. Strait-Hinnerichsen is required to pay the full amount of child support set off for two children until June of 2022. I will adjust the amount of child support payable in respect of Alyssa as of September 2022.

[173] Section 3(2) of the *Guidelines* addresses the issue of child support payable in respect of a children who is over the age of majority. This section states:

> (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support is
>
> (a)the amount determined by applying these Guidelines as if the child were under the age of majority; or

> (b)if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[174] Justice Oland on behalf of the Nova Scotia Court of Appeal in *Lu v. Sun*, 2005 NSCA 112 confirmed that the trial judge had not erred in ordering child support in an amount equal to one half of the table amount for a child who was attending university and living away from home (paragraph 28).

[175] The determination of the amount of child support that should be paid in respect of the parties' adult child who attends university is within my discretion and is dependent on the facts of this case. I am satisfied that requiring Mr. Strait-Hinnerichsen to pay the full amount of table child support for two children when one child resides in neither home is not appropriate. Alyssa worked during the summer of 2022, had a scholarship in 2022/2023 academic year and had a RESP to draw on but was far from self sufficient financially. I find that while Alyssa lived away from home for four months in 2022, many of the mother's fixed costs did not decrease and the mother continued to purchase Alyssa's clothing as required, so some amount of child support is appropriate. Ms. Strait-Hinnerichsen says that I should award her half of the child support that would otherwise have been attributable to Alyssa while she was in Ms. Strait-Hinnerichsen's care and not attending university. I accept that submission as reasonable and find that Mr.

Strait-Hinnerichsen should have paid set off child support in respect of Allyssa in the last four months of 2021 in the amount of $582 per month. This amount is to be added to the single child table amount payable in respect of Ethan.

[176] Mr. Strait-Hinnerichsen's 2022 monthly child support payment for 2 children was $2,227 per month, and $1,388 for 1 child. Ms. Strait-Hinnerichsen's 2022 child support obligation for 2 children was $1,033 per month and $628 per month for 1 child. I find the parties' 2021 set off for 2 children was $1,194 and $760 for 1 child.

[177] I find that Mr. Strait-Hinnerichsen's set off obligation from January 1 to August 31, 2022, is $1,194 per month. I find that the set off between September 1, 2022, and December 31, 2022, should be set at the halfway point between the one child and two child rates, which equates to $977 per month.

### 9.3 Step Two in the Contino Analysis (9 (b))

[178] The evidence does not offer any insight as to whether the parties experience increased costs because of shared parenting in 2022. Neither party suggested that such increased costs exists and that I should increase or maintain the Subsection 9(a) set off due to a Subsection 9(b) analysis. I will therefore not make any adjustment pursuant to this Subsection.

### 9.4 Step Three in the Contino Analysis (Section 9(c))

[179] Neither party addressed whether Subsection 9(c) should lead me to increase or maintain the Subsection 9(a) set off.

[180] Ms. Strait-Hinnerichsen's proposed set off for 2022 was much higher than my findings because she calculated Mr. Strait-Hinnerichsen's 2022 income at $183,370.31. Even with a much-proposed higher income for Mr. Strait-Hinnerichsen, Ms. Strait-Hinnerichsen did not request that I exercise my discretion under Subsection 9(c) and increase the Subsection 9(a) set off due to the difference between the parties' incomes and their disposable income. I will not make an adjustment under Subsection 9(c).

### 9.5 Conclusion regarding 2022 child support

[181] I find the parties' 2022 set off for two children (between January 1, 2022, and August 31, 2022) was $9,552 and was $3,908 (between September 1, 2022, and December 31, 2022). As Mr. Strait-Hinnerichsen did not pay any child support to Ms. Strait-Hinnerichsen in 2022, he is ordered to pay Ms. Strait-Hinnerichsen the sum of $13,460 in respect of child support he should have paid in 2022.

## 10 Prospective child support as of January 1, 2023

### 10.1 Income determination for 2023

[182] The evidence establishes that Mr. Strait-Hinnerichsen has been unemployed since November of 2021 and that his Employment Insurance benefits ended in 2022.

[183] To the date of the trial in 2023, Mr. Strait-Hinnerichsen had withdrawn RRSP income of $114,285.71 ($80,000 net) from his RRSP Account.

[184] Mr. Strait-Hinnerichsen submits that he will withdraw approximately $60,000 from his RRSP (an amount roughly equal to Ms. Strait-Hinnerichsen's income) if he is unable to receive at least that much money from an employment source. Mr. Strait-Hinnerichsen acknowledges that the income drawn from his RRSP and the small amount of interest generated from the limited investments outside of the RRSP can be imputed to him as income pursuant to Section 19(a) and (e) of the *Guidelines*.

#### 10.1.1 Should income based on a three-year average be imputed to Mr. Strait Hinnerichsen?

[185] Ms. Strait-Hinnerichsen submits that in calculating child support on a go forward basis, I should have regard to Mr. Strait-Hinnerichsen's three-year average income, which she calculates at $335,126 (employment income of $107,548, other non-taxable income of $112,877 and non-taxable income gross up of $114,701).

Ms. Strait-Hinnerichsen's three-year average does not factor in any carrying charge deduction as permitted by Schedule III of the *Guidelines*.

[186] I decline to calculate Mr. Strait-Hinnerichsen's 2023 income based on a three-year average for the following reasons:

1. An averaging includes employment income for Mr. Strait-Hinnerichsen and as noted, I am not prepared to impute income to Mr. Strait-Hinnerichsen in the range proposed.
2. The funds have been withdrawn on a tax-free basis from the Investment Account which account has been greatly depleted. The current balance of that account does not permit historic withdrawals to continue for even one more year.
3. Withdrawals from the RRSP Account are subject to tax withholding and are included in income for income tax purposes. Further withdrawals from the RRSP Account in amounts equivalent to historic withdrawals from the Investment Account would encroach on the RRSP Account's capital significantly depleting the RRSP Account.

### 10.1.2 Should employment income be imputed to Mr. Strait-Hinnerichsen?

[187] Ms. Strait-Hinnerichsen submits that I should impute employment income to Mr. Strait-Hinnerichsen in 2023. Ms. Strait-Hinnerichsen submits that Mr. Strait-Hinnerichsen has time to attend races, to attend obstacle courses, to go to the gym and train, to fly to conventions, to attend meetings with progress clubs, to fly to Montreal and drive to Vermont to participate in a race but will not take a part time job in Elmsdale. Ms. Strait-Hinnerichsen says that Mr. Strait-Hinnerichsen is underemployed.

[188] Ms. Strait-Hinnerichsen also submits that Mr. Strait-Hinnerichsen is prepared to work for $20 per hour at his gym but will not work at Sportchek or Cleves.

[189] Mr. Strait-Hinnerichsen says that there should be no employment income imputed to him as he has looked for work and has been unable to locate work.

[190] The *Guidelines* permit me to impute to Mr. Strait-Hinnerichsen an amount of income appropriate in the circumstances if I am satisfied, among other things, that he is intentionally underemployed or unemployed where the underemployment or unemployment are not required by the needs of the children or the Mr. Strait-Hinnerichsen' reasonable educational or health needs (Section 19(1) of the

*Guidelines*). If income is imputed it must be done so judicially with a solid evidentiary foundation and not arbitrarily (*Parsons v Parsons, supra*). The test to be applied in considering whether a person is intentionally underemployed or unemployed is reasonableness, meaning that I may impute income to Mr. Strait-Hinnerichsen without proof of an intent to undermine or avoid child support (*Smith v. Helppi* 2011 NSCA 65). Ms. Strait-Hinnerichsen bears the burden of establishing the evidentiary burden that income should be imputed (*Coadic, supra).*

[191] In *Smith v. Helppi, supra*, Justice Oland endorsed Justice Darryl Willson's summary of what a judge should consider when asked to impute income (paragraph 27). The following considerations are relevant to this case:

1. There is a duty to seek employment where the parent is healthy and there is no reason the parent cannot work.
2. The age, education, experience, skills, and health of the parent must be considered as well as the availability of work, freedom to work and other obligations.
3. The courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.

[192] Since relocating to Nova Scotia (from Ontario) in 2010 Mr. Strait-Hinnerichsen has had seven different jobs and six periods of unemployment (the most recent of which commenced in November of 2021). Prior to the parties' separation Mr. Strait-Hinnerichsen had experienced five periods of unemployment but always located work. None of Mr. Strait-Hinnerichsen's prior periods of unemployment were as long as his current period of unemployment, which at the time of trial was approximately 18 months.

[193] Mr. Strait-Hinnerichsen's evidence establishes that his positions held in Nova Scotia have not been entry level positions. For example, his position titles have included: Account Manager, Marketing & Sales Executive, General Manger and Interim Chief Operating Officer, General Manager, and Director, Policy, and Workforce Development. While Mr. Strait-Hinnerichsen's job titles have been impressive, his average annual income between 2011 and 2020 was only $39,041.42, indicating that his past employment opportunities have not been high paying positions.

[194] The evidence establishes that Mr. Strait-Hinnerichsen's most recent employment position ended because he was let go; he did not quit his job. The evidence also establishes that since losing that position Mr. Strait-Hinnerichsen has applied for many jobs (16 in 2021, 30 in 2022 and 21 as of March 25, 2023). Mr.

Strait-Hinnerichsen has had at least six interviews since January of 2022, none of which resulted in a job offer.

[195] I have considered the titles of the positions for which Mr. Strait-Hinnerichsen has applied. They are, for the most part, all Manager or Director level positions. Based on the limited evidence before me regarding the positions for which Mr. Strait-Hinnerichsen has applied I am not satisfied that Mr. Strait-Hinnerichsen is necessarily qualified for the positions he is seeking. The fact that between January 1, 2022, and March 2023 Mr. Strait-Hinnerichsen applied for 51 positions, was only interviewed for six of those positions and received no job offers indicates that his job search and expectations are not reasonably aligned with his skill set or market opportunities.

[196] Mr. Strait-Hinnerichsen teaches fitness classes at Evolve Fitness on an ad hoc basis in exchange for his membership. Evolve Fitness offered Mr. Strait-Hinnerichsen a part-time position in Elmsdale which he declined to accept. There is no evidence as to how much the Evolve position would have paid or its duration. Mr. Strait-Hinnerichsen says that he has not applied for retail jobs at Cleves or SportChek as fitness is a passion but not a career goal. That may be the case but when faced with the prospect of having no employment income and no employment insurance benefits in a context when Mr. Strait-Hinnerichsen is

obliged to maximize his income earning potential for the benefit of his children I am not satisfied that it was reasonable in the circumstances for Mr. Strait-Hinnerichsen to not accept a part-time position at Evolve in Elmsdale or otherwise broaden his job search to seek positions lower than Management or Director level positions.

[197] Mr. Strait-Hinnerichsen is healthy, articulate, well-educated and has work experience. There is no reason that he cannot work. I find that work is available to Mr. Strait-Hinnerichsen. I find that he should and could have found work by January of 2023, which is approximately 13 months after he lost his last position. He can choose not to accept such work and to not refocus his employment search, but he cannot avoid his child support obligations for that reason.

[198] I therefor impute employment income to Mr. Strait-Hinnerichsen for 2023.

[199] I must now determine what amount of income I will impute to Mr. Strait-Hinnerichsen. His average annual income between 2011 and 2020 was $39,041.42. Mr. Strait-Hinnerichsen's average income is not much higher that than the annual current minimum wage income for Nova Scotia. The minimum wage rate in Nova Scotia has increased throughout 2023. Using the minimum wage rates in Nova Scotia in 2023 as a guide I impute income of $29,952 to Mr. Strait-Hinnerichsen.

### 10.1.3 Should additional income be imputed to Mr. Strait-Hinnerichsen in 2023?

[200] As of March 29, 2023, there was $123,962.06 in Mr. Strait-Hinnerichsen's Investment Account and $4,262,191.97 in his RRSP Account (net of the $114,285.71 withdrawn in January of 2023).

[201] I find that although the RRSP Account is not a matrimonial asset, the balance in the account can and should be considered in determining Mr. Strait-Hinnerichsen's prospective child support obligations. Section 1(a) of the *Guidelines* direct me to ensure that the children "continue to benefit from the financial means of both spouses after separation." Mr. Strait-Hinnerichsen's investments are means from which his children should benefit post separation. Caselaw supports the finding that funds held by a parent can be considered and used as a basis for imputing income for the purposes of calculating child support. (See *Ellis v. Carpenter*, [1999] OJ No 934, *Bak v. Dobell*, 2007 ONCA 304, *RJN v. PMF*, [2018] OJ No 827 and *St. Amand v. St. Amand*, [2006] NBJ 261)

[202] In considering Mr. Strait-Hinnerichsen's means it is obvious that his Investment Account has been drawn down significantly and will be completely depleted within one year if historic draws continue. On the other hand, Mr. Strait-Hinnerichsen's RRSP Account has grown considerably over time. For example,

the account grew by 19.56% ($746,609.42) in 2021. The RRSP Account lost ground in 2022 but rebounded in 2023. As of March 31, 2023, the annualized rate of return on the RRSP Account since January 31, 1996, has been 8.07%. Prospectively, that rate applied to the March 31, 2023, RRSP Account balance of $4,262,191.97 would equate to annual growth of $343,958.89. A more conservative annual growth of 5% would equate to annual growth of $213,109.60.

[203] I find that it is appropriate to impute as income to Mr. Strait-Hinnerichsen an amount equal to an annual conservative projection of growth in the RRSP Account of 5%. This conservative projection is reasonable as it is less than the actual annualized growth in the account and satisfying his child support obligations should not encroach on the principle of the RRSP balance. This amount will be subject to tax upon withdrawal.

[204] Mr. Strait-Hinnerichsen's Investment Account ($115,155.48 as of March 31, 2023) earned 2.96% growth in 2022 but had an annualized rate of return since April 30, 2001, of 7.19%. A 5% growth in the Investment Account would result in annual growth of $5,757.77. I find that imputing income to Mr. Strait-Hinnerichsen of $5,757.77 per year from the Investment Account is reasonable and appropriate given Mr. Strait-Hinnerichsen's means in this account, his historic reliance on this account, and the average annualized return in this account, for the purpose of

calculating his child support obligations. This amount must be grossed up to consider the fact that the imputed income is not subject to tax.

[205] Going forward, I find that annually imputing employment income of $29,952, RRSP income of $213,109.60 and Investment Account withdrawal of $5,757.77 (plus gross up of $6,757) to Mr. Strait-Hinnerichsen's income for the purpose of calculating his child support obligations is reasonable. Any RRSP withdrawals that exceed the RRSP imputed amount and any employment income earned by Mr. Strait-Hinnerichsen that exceeds the imputed employment income in any year would be added to this amount.

### 10.1.4 Deduction of carrying charges going forward

[206] Mr. Strait-Hinnerichsen has deducted carrying charges from his income annually. The table at Schedule B sets out the annual carrying charges incurred. Tax deductible carrying charges can be deducted from Guideline income if they relate to investment other than RRSPs. There is no evidence regarding future anticipated carrying charges in respect of the Investment Account. Management fees in respect of RRSPs cannot be deducted from income and thus cannot be deducted pursuant to Schedule III of the *Guidelines*. I find that it would be improper to assume that the carrying charges will be in the historic range of carrying charges as those annual amounts are nearly one-third of the total current

value of the Investment Account. I find that assuming annual carrying charges of $5,000 is appropriate, particularly given the greatly diminished amount of the Investment Account.

### 10.2 Step One in the Contino Analysis (9(a))

[207] I find that Mr. Strait-Hinnerichsen's monthly child support for Ethan for 2023 is $1,985. Ms. Strait-Hinnerichsen's 2023 child support for Ehtan is $628. Applying Section 9(a) of the *Guidelines,* I find that the set off payable by Mr. Strait-Hinnerichsen is $1,357 per month.

[208] Although still a child of the marriage, Alyssa was away from both parents' home for most of 2023 (University from January to April and then working in Toronto in the summer). Because she was away from both parents for the bulk of the year, I will reduce child support payable in respect of her to approximately one half of what would have been payable had she lived with both parents, which would increase Mr. Strait-Hinnerichsen's set off payment to Ms. Strait-Hinnerichsen by $402.50.

[209] I find that the 2023 set off, subject to completing the balance of the Contino analysis, is $1,759.50 per month.

### 10.3 Step Two in the Contino Analysis (9(b))

[210] In his 2023 Statement of Expenses Mr. Strait-Hinnerichsen estimated his expenses at $6719.61, and with respect to food, clothing, toiletries, hair, and grooming, aggregates the children's costs in with his costs, He identified the following specific costs for the children: Ethan's rock climbing ($62.50 per month), school supplies for Alyssa ($222.34 per month), spending money ($200 per month for Alyssa and $100 for Ethan), and life insurance premiums for the children ($720 per month).

[211] Ms. Strait-Hinnerichsen's 2023 Statement of Expenses also aggregates the childrens' costs with her own costs except that she identifies clothing costs of $1,000 per year for each child and the costs of Ethan's wisdom tooth extraction of $1,830.

[212] I find that neither party argues that there are significant shared expenses due to shared parenting. I will not make any adjustment pursuant to Subsection 9(b).

### 10.4 Step three Subsection 9(c)

[213] I find that there have been no material changes to the parties' assets, liabilities, spending patterns or the children's standard of living since 2021.

[214] The parties' gross incomes and their disposable incomes are less differentiated in 2023 (because of the income I have imputed to Mr. Strait-Hinnerichsen) than they were in 2021.

[215] Ms. Strait-Hinnerichsen does not seek a change to the Subsection 9(a) set off (although her proposed set off was higher than what I have ordered based on her proposed imputed or average income for Mr. Strait-Hinnerichsen. I am not satisfied that I should adjust the Subsection 9(a) set off.

### 10.5 Conclusion regarding 2023 and future child support

[216] I find that Mr. Strait-Hinnerichsen shall pay monthly child support of $1,759.50 to Ms. Strait-Hinnerichsen as of November 2023. For the period January 1, 2023, to October 31, 2023, Mr. Strait-Hinnerichsen shall pay Ms. Strait-Hinnerichsen the lump sum of $17,595.

### 10.6 Is Ms. Strait-Hinnerichsen entitled to child support from the date of separation to the commencement of this proceeding?

[217] I find that Ms. Strait-Hinnerichsen commenced this proceeding promptly (August of 2021) following the parties' separation in January of 2021 (the parties remained in the matrimonial home until March of 2021). Ms. Strait-Hinnerichsen seeks child support from the date she moved out of the matrimonial home.

[218] I have considered the jurisprudence regarding historic claims for child support including *DBS v. SRG*, 2006 SCC 37 and *Colucci v. Colucci*, 2021 SCC 24 and find that Mr. Strait-Hinnerichsen should pay the set off amount of child support, based on his 2021 income for the period of April 1, 2021, to August 1, 2021, in the amount of $2,244 per month for a total historic payment of $8,976. I order child support for this period because I find that Ms. Strait-Hinnerichsen was prompt in commencing this proceeding following separation; no hardship would result to Mr. Strait-Hinnerichsen because of this order and the circumstances of the children at the time justify such an order.

### 10.7 Annual production of Income tax returns and Notices of Assessment

[219] The parties are ordered to exchange full copies of their Income Tax Returns and Notices of Assessment on or before May 15th each year. Mr. Strait-Hinnerichsen shall annually produce confirmation of withdrawals from the Investment Account and the RRSP Account.

## 11 In a context of shared parenting, how should I address special and extraordinary expenses?

[220] The evidence establishes that the parties have created RESPs for the children. The RESP funded Alyssa's first full year of university expenses except

that her mother bought her books and the parties paid to set up her room at university.

[221] I find that Alyssa works, is contributing to her own entertainment expenses and purchases some of her own clothes.

[222] Mr. Strait-Hinnerichsen says that the parties should equally share in any of Alyssa's university expenses not funded out of the RESP. Ms. Strait-Hinnerichsen says that the children's university expenses should first be paid (to the extent that funds are available) out of the available RESP and any scholarship funding. She says that the children should purchase their own books and pay their own entertainment expenses. Ms. Strait-Hinnerichsen says that any non-RESP/scholarship funded expenses other than books or entertainment should be born by the parties in proportion to their incomes. I agree.

[223] I order that effective September 1, 2021, for each child in an undergraduate degree within five years of the child's high school graduation, the parties shall fund any university related expenses not funded by the RESP or scholarships in proportion to their incomes (actual for Mr. Strait-Hinnerichsen and imputed and actual for Mr. Strait-Hinnerichsen). I include in the category of university related expenses reasonable entertainment expenses for the children. I note that Ms. Strait-

Hinnerichsen paid for Alyssa's books in the fall of 2021. I order Mr. Strait-Hinnerichsen to reimburse Ms. Strait-Hinnerichsen for his proportionate share of that expense. Going forward the children will be expected to purchase their own books.

[224] Ms. Strait-Hinnerichsen says that effective September 1, 2022, all non-university related Section 7 expenses should be shared in proportion to the parties' incomes. I agree. As of September 1, 2022, for so long as there remains a child of the marriage or a child in an undergraduate degree within five years of the child's high school graduation, the parties shall fund non-university related Section 7 expenses in proportion to their incomes. I direct that the parties discuss and agree before incurring any Section 7 cost more than $100 for either child if one party seeks to have the other party contribute to the cost. If the parties agree to share an expense the party who did not pay for the costs shall indemnify the party who paid for the expense within two weeks of receiving the invoice or receipt for the expense. Any expense incurred without consultation with the other party will be borne solely by the party who incurred the cost.

## 12 Is Ms. Strait-Hinnerichsen entitled to spousal support and if so in what amount and for what duration?

[225] Ms. Strait-Hinnerichsen submits she is entitled to non-compensatory spousal support. She submits that she has suffered an economic disadvantage and economic hardship because of the parties' marriage and its breakdown.

[226] Mr. Strait-Hinnerichsen submits that Ms. Strait-Hinnerichsen is not entitled to spousal support. He says that his economic position has worsened through their marriage and that Ms. Strait-Hinnerichsen seeks to justify ongoing spousal support on his past willingness to deplete inherited assets for his family's benefit. Mr. Strait-Hinnerichsen submits that Ms. Strait-Hinnerichsen's entitlement to spousal support cannot be based on her desire to deplete non-matrimonial assets but rather must be based on income and that he is without income to provide spousal support. Mr. Strait-Hinnerichsen says that given his lack of independent employment income, the entitlement to non-compensatory support does not exist.

[227] I may order spousal support pursuant to Section 15.2 (1) of the *Divorce Act* bearing in mind the factors and objectives set out in Sections 15.2 (4) and (6) which state:

**Spousal support order**

> **Factors**
>
> **(4)** In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

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

**Objectives of spousal support order**

**(6)** An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

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

[228] In *Moge v. Moge*, [1992] 3 SCR 813, Justice L'Heureux-Dube stated:

> **84** Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement. Furthermore, great disparities in the standard of living that would be experienced by spouses in the absence of support are often a revealing indication of the economic disadvantages inherent in the role assumed by one party. As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution. (citations omitted)

[229] I reject Mr. Strait-Hinnerichsen's contention that his lack of employment income precludes a finding that Ms. Strait-Hinnerichsen is entitled to support on a compensatory basis. The *Divorce Act* mandates that I must consider the means, needs and circumstances of the parties in considering whether to order support and if so in what amount and what duration.

[230] In *Leskun v. Leskun*, [2006] 1 SCR 920, the Supreme Court of Canada held the word “means” must be broadly defined:

> There is no support in the case law or in logic for the proposition that the chambers judge was wrong [page934] to take into account the appellant's capital assets acquired after the marital break-up. In *Strang v. Strang*, [1992] 2 S.C.R. 112, the Court stated that the traditional understanding of the word "means" includes, "all pecuniary resources, capital assets, income from employment or earning capacity, and other sources from which the person receives gains or benefits" (p. 119). J. D. Payne and M. A. Payne elaborate as follows:
>
> - The word *means* includes all pecuniary resources, capital assets, income from employment or earning capacity, and any other source from which gains or benefits are received, together with, in certain circumstances, money that a person does not have in possession but that is available to such person. [Emphasis in original.]
>
> - (*Canadian Family Law* (2001), at p. 195)

[231] Mr. Strait-Hinnerichsen’s inherited non-matrimonial assets are pecuniary resources which constitutes means and must, in this case, be considered as part of the means analysis.

[232] Between 2011 and 2020 Ms. Strait-Hinnerichsen’s salary never accounted for more than 10% of the funds annually available to the family (using grossed up figures) (see the table at Schedule B) and in some years her contribution was much less than 10% of the overall pool of available funds. The funds annually available to the family enabled the parties to purchase and furnish large expensive homes, to wear designer clothes, to purchase high end vehicles, to travel to high end resorts in the Caribbean, to travel to Europe, to rely on weekly housecleaning services and

property maintenance services, and to build and enjoy a vacation property in Cape Breton. In addition to enjoying a lifestyle which she did not fund, Ms. Strait-Hinnerichsen was gifted new and inherited expensive jewelry from Mr. Strait-Hinnerichsen and permitted to wear jewelry that belonged to him. Ms. Strait-Hinnerichsen also enjoyed frequent and regular family holidays to locations such as Germany, Toronto, and Italy funded by Mr. Strait-Hinnerichsen's godmother.

[233] Ms. Strait-Hinnerichsen enjoyed and benefited from a life style that she alone could not afford.

[234] When the parties separated, they lived in a four-bedroom, 4,246 square foot home (basement area included) which they agree has a current market value of $1,366,000. Ms. Strait-Hinnerichsen now lives in a two bedroom and den apartment and sleeps in the den to provide a bedroom for each of the children. Ms. Strait-Hinnerichsen submits that she wants to own a home in the area where her son attends school but has been unable to finance such a purchase as she remains on the matrimonial home's mortgage.

[235] Ms. Strait-Hinnerichsen's March 24, 2023, Statement of Expenses discloses that her monthly expenses total $8,674.62 and that her monthly deficit is $3,579.12. Ms. Strait-Hinnerichsen says that she is relying on savings to fund this

monthly deficit. Not only is Ms. Strait-Hinnerichsen unable to afford the lifestyle to which both parties were accustomed she is unable to finance her current reduced standard of living.

[236] Mr. Strait-Hinnerichsen's March 30, 2023, Statement of Expenses discloses that he has monthly expense of $6,719.61 with a monthly deficit of $258.61. Mr. Strait-Hinnerichsen's March 29, 2023, Statement of Income discloses income of $6,536 per month, the bulk of which is comprised of RRSP income (RRSP income of $5,952.33 monthly or $71,427.96 annually). The RRSP withdrawals reflected in Mr. Strait-Hinnerichsen's Statement of Income are amounts determined solely by him and are represent less than 1.8% of the RRSP total and are less than the annual growth in that account.

[237] The parties were in a relationship for almost 25 years. This is a long relationship in which the parties enjoyed an affluent lifestyle and gives rise to a legitimate expectation that both Ms. Strait-Hinnerichsen and Mr. Strait-Hinnerichsen should benefit from equal standards of living upon its dissolution. I find that Ms. Strait-Hinnerichsen has established that she is entitled to non-compensatory spousal support on an indefinite basis.

### 12.1 What amount of Spousal Support is appropriate?

[238] I will determine the amount of spousal support to which Ms. Strait-Hinnerichsen is entitled by focusing on the factors and objectives set out in the *Divorce Act* using the *Spousal Support Advisory Guidelines* as a comparative tool (*Strecko v. Strecko*, 2014 NSCA 66, paragraph 49 and *MacDonald v. MacDonald*, 2017 NSCA 34, paragraph 31 and *Sampson .v Sampson*, 2023 NSSC 107, paragraph 111) In setting the appropriate quantum of support I have given considerable weight to the following facts:

1. The parties had a lengthy marriage.
2. The parties enjoyed an affluent lifestyle during their lengthy marriage.
3. Although Ms. Strait-Hinnerichsen worked outside the home her contribution to the family's overall income (from all sources) was very small.
4. Ms. Strait-Hinnerichsen was not expected to contribute more to the family budget than she did.
5. Ms. Strait-Hinnerichsen's post separation life style is significantly diminished when compared to the family's lifestyle before separation.
6. Ms. Strait-Hinnerichsen's post separation budget is reasonable.

7. Ms. Strait-Hinnerichsen cannot approximate the lifestyle her family enjoyed during the marriage.
8. Ms. Strait-Hinnerichsen cannot fund her current greatly diminished lifestyle without support from Mr. Strait-Hinnerichsen.
9. Mr. Strait-Hinnerichsen has considerable means.

[239] The *Spousal Support Advisory Guidelines* indicate that based on the income I have imputed to Mr. Strait-Hinnerichsen and Ms. Strait-Hinnerichsen's actual income that the "with child support" range for one child is $2,981 (Low), $3,809 (Mid) and $4,642 (High). I have chosen the one child option for calculating spousal support as the child support I have ordered is less than the Guideline amount for two children.

[240] Given the circumstances of this family and taking Ms. Strait-Hinnerichsen's request for mid range support in account I find that prospective mid-range spousal support is appropriate. Spousal support at the mid-range is also required because Ms. Strait-Hinnerichsen's March 2023 Statement of Expenses establishes that her monthly deficit is $3,579.12. Net spousal support at the mid-range when combined with the child support set off will just eliminate this deficit. Accordingly, I set Ms. Strait-Hinnerichsen's spousal support entitlement at $3,809 per month as of

January 1, 2023. Mr. Strait-Hinnerichsen is ordered to pay this amount each month as of November 1, 2023. He ought to have paid Ms. Strait-Hinnerichsen spousal support of $38,090 between January 1, 2023, and October 31, 2023. Ms. Strait-Hinnerichsen submits that the lump sum spousal support ordered against Mr. Strait-Hinnerichsen should be discounted because the payment will not be subject to income deduction by Mr. Strait-Hinnerichsen or taxation in the hands of Ms. Strait-Hinnerichsen. Mr. Strait-Hinnerichsen's net cost of the gross amount of $38,090 is $18,420; Ms. Strait-Hinnerichsen's net benefit is $22,900. I will exercise my discretion and fix the net 2023 lump sum child support amount at $20,660 which is the average of Mr. Strait-Hinnerichsen's net cost and Ms. Strait-Hinnerichsen's net benefit.

### 12.2 Is Ms. Strait-Hinnerichsen entitled to historic spousal support and if so in what amount?

[241] Ms. Strait-Hinnerichsen seeks spousal support from the date of separation.

[242] With respect to claims for retroactive spousal support, Justice MacKeigan noted in *Calder v Calder*, 2022 NSSC 146 that:

> **185** A retroactive award of spousal support is discretionary. The Court should "strive for a holistic view of the matter and decide each case on the basis of its particular factual matrix" (*S (D.B) v. G (S.R*), 2006 SCC 37).

[243] In *Calder*, *supra*, Justice MacKeigan declined to award retroactive child support to Ms. Calder because "The evidence does not support Debra Calder, or the children, were disadvantaged or deprived during the retroactive period."

[244] Unlike the situation in which Ms. Calder found herself, I find that Ms. Strait-Hinnerichsen was deprived during the retroactive (historic) period. Mr. Strait-Hinnerichsen did not pay any support to Ms. Strait-Hinnerichsen at any time. Mr. Strait-Hinnerichsen remained in the family home while Ms. Strait-Hinnerichsen rented an apartment which did not provide a bedroom for each of her children and herself. The rental costs of this apartment plus her other expenses exceeded her income (again unlike the circumstances experienced by Ms. Calder in *Calder, supra*,) forcing her to draw down savings. She has been unable to finance the purchase of a home.

[245] I find that Ms. Strait-Hinnerichsen commenced this proceeding promptly (August of 2021) and experienced a reduction in her lifestyle immediately upon separation and had to spend her savings in addition to her income to fund her lifestyle since separation. As a result, it is appropriate for me, in this proceeding, to consider her claim for spousal support from the date of separation adjusted to the date that Ms. Strait-Hinnerichsen left the matrimonial home (April 1, 2021).

[246] Ms. Strait-Hinnerichsen seeks spousal support in respect of 2021 at the low to mid range in the amount of $30,655 from March 1, 2021, to December 31, 2021 (based on the one and the two child amounts). As I have found that the 2021 child support is payable based on the two child table, I will use the two child amount to calculate 2021 child support. I find that Ms. Strait-Hinnerichsen was entitled to spousal support in 2021 at the mid range of the "with child" formula for two children calculated pursuant to the *Spousal Support Advisory Guidelines* of $3,445 per month from April 1, 2021, to December 31, 2021, for a total of $31,005. As noted, Ms. Strait-Hinnerichsen submits that the lump sum spousal support ordered against Mr. Strait-Hinnerichsen should be discounted because the payment will not be subject to income deduction by Mr. Strait-Hinnerichsen or taxation in the hands of Ms. Strait-Hinnerichsen. Mr. Strait-Hinnerichsen's net cost of the gross amount of $31,005 is $28,422; Ms. Strait-Hinnerichsen's net benefit is $19,026. I will exercise my discretion and fix the net 2021 lump sum child support amount at $23,724 which is the average of Mr. Strait-Hinnerichsen's net cost and Ms. Strait-Hinnerichsen's net benefit.

[247] With respect to 2022, Ms. Strait-Hinnerichsen seeks mid-range spousal support of $23,208 gross ($14,532 net). I find that in 2022 Mr. Strait-Hinnerichsen ought to have paid Ms. Strait-Hinnerichsen mid range spousal support of $1,690

per month between January 1, 2022, and August 31, 2022 (using the two-child calculation), and spousal support in the amount of $1.908 per month (using the one child calculation) from September 1, 2022, to December 31, 2022, for a total of $21.152. Mr. Strait-Hinnerichsen's net cost of the gross amount of $21.152 is $13,216; Ms. Strait-Hinnerichsen's net benefit is $13,260. I will exercise my discretion and fix the net 2022 lump sum spousal support amount at $13,238 which is the average of Mr. Strait-Hinnerichsen's net cost and Ms. Strait-Hinnerichsen's net benefit.

[248] The spousal support I have ordered is less than I would have ordered had Ms. Strait-Hinnerichsen not also received an award of child support. I find that the combination of the after-tax spousal support and the child support that Ms. Strait-Hinnerichsen will receive going forward will nearly eliminate her monthly deficit as set out in her March 2023 Statement of Expenses. For this reason, Section 15.3(3) of the *Divorce Act* applies to any future reduction or termination of child support.

## 13 Is Ms. Strait-Hinnerichsen entitled to occupation rent from Mr. Strait-Hinnerichsen as of March 2022?

[249] Ms. Strait-Hinnerichsen seeks occupation rent from Mr. Strait-Hinnerichsen from March 1, 2022, by which time she says the matrimonial home should have

been sold. She submits that Mr. Strait-Hinnerichsen's refusal to sell the house resulted in an unequal division of property in his favour while she struggled financially and was unable to purchase a home for, she and her children. Ms. Strait-Hinnerichsen says that Mr. Strait-Hinnerichsen took an inappropriate negotiating position and failed to pay either child support or spousal support.

[250] Mr. Strait-Hinnerichsen resided in and paid the mortgage, property tax and all other expenses associated with the matrimonial home since separation which expenses totalled $2,072.84 per month (Mr. Strait-Hinnerichsen's March 29, 2023, Statement of Expenses). The children divided their time evenly between the parties.

[251] Ms. Strait-Hinnerichsen's March 24, 2023, Statement of Expenses indicates her living expenses (apartment, heat, and insurance) were $1,960 per month.

[252] I have considered the applicable jurisprudence including, *Andrews v. Andrews*, 2006 NSSC 120, *Carmichael v. Carmichael*, 2005 NSSC 318, *Cameron v. Cameron*, 2014 NSSC 224, and *LeBlanc v. LeBlanc*, 2019 NSSC 254. I note that Justice Dellapina in *Andrews, supra* endorsed Justice Slatter's statement in *Kazmierczak v. Kazmierczak*, [2001] A.J. No. 955 that "[o]ccupation rent should only be awarded in the family law context with great caution."

[253] A claim for occupation rent was not advanced in the Petition for Divorce. I find that the housing costs of both parties have been roughly similar. Mr. Strait-Hinnerichsen has paid the mortgage on the matrimonial home which has reduced the mortgage and thus increased the net residual value of the home. The children have resided equally with both parents, and, except for Ehtan's private school tuition, no parent assumed more child related costs than the other.

[254] Having considered the facts of this case and the applicable jurisprudence I elect not to award occupational rent to Ms. Strait-Hinnerichsen.

## 14 Conclusion

[255] I order:

1. The divorce is granted.
2. Mr. Strait-Hinnerichsen must pay Ms. Strait-Hinnerichsen $433,401.68 forthwith.
3. Mr. Strait-Hinnerichsen must pay Ms. Strait-Hinnerichsen prospective child support of $1,759.50 per month commencing on November 1, 2023, and continuing thereafter on the first day of each month.

4. Mr. Strait-Hinnerichsen must pay Ms. Strait-Hinnerichsen $17,595 child support of in respect of 2023 (to October 31, 2023).

5. Mr. Strait-Hinnerichsen must pay Ms. Strait-Hinnerichsen child support of $20,196 in respect of 2021 and $13,460 in respect of 2022.

6. The parties must fund university expenses that are not covered by RESPs or scholarships in proportion to their incomes (imputed income of $250,577 for Mr. Strait-Hinnerichsen and $73,293 for Ms. Strait-Hinnerichsen), Mr. Strait-Hinnerichsen must reimburse Ms. Strait-Hinnerichsen for his proportionate share of Alyssa's 2021 university books, which based on their 2021 incomes results in a payment of $371.

7. The partis shall fund non-university related expenses in proportion to their incomes.

8. Mr. Strait-Hinnerichsen must pay Ms. Strait-Hinnerichsen historic spousal support of $23,724 (net) for 2021 and $13,238 (net) for 2022.

9. Mr. Strait-Hinnerichsen must pay Ms. Strait-Hinnerichsen spousal support of $20,660 (net) for 2023 up to and including October 31.

10. Mr. Strait-Hinnerichsen must pay Ms. Strait-Hinnerichsen spousal support of $3,809 per month commencing of November 1, 2023, and continuing thereafter on the first day of each month.

11. Mr. Strait-Hinnerichsen must pay the amounts set out in paragraphs 4, 5, 6, 8 and 9 on or before December 15, 2023.

[256] If either party seeks costs and the parties cannot agree, the parties shall file their cost submissions within 45 days of this decision.

Daniel W. Ingersoll, J

**Schedule A**

Matrimonial Assets

Mr. Strait-Hinnerichsen will retain the matrimonial home at 54 Amesbury Gate, Bedford. The parties agree its fair market value is $1,366,000. After deducting the outstanding mortgage and notional disposition costs (real estate commission of 4% ($54,640), HST on the commission at $8,196, legal fees and HST on them of $1,500, and the balance of the outstanding mortgage ($184,547.41), the home's value is $1,117,116.59.

Ms. Strait-Hinnerichsen retained the net proceeds of $44,155.28 from the sale of a home in Grand Anse. The home was built for Ms. Strait-Hinnerichsen's parents using money from the Investment Account. The parties agree the net proceeds of $44,155.28 are a matrimonial asset.

Mr. Strait-Hinnerichsen has transferred the entirety of his CTV/Bell Media Pension to Ms. Strait-Hinnerichsen. The parties agree this is a matrimonial asset. I have discounted the pension of $51,291.79 by 30% to recognize its inevitable taxation. I assign a value of $35,904.25 to the benefit Ms. Strait-Hinnerichsen received.

Ms. Strait-Hinnerichsen has an RRSP with a balance of $130,495.82. I have discounted this by 30% to recognize its inevitable taxation. I assign a value of $91,347.07 to the benefit Ms. Strait-Hinnerichsen received.

The parties agree Mr. Strait-Hinnerichsen will retain life insurance policy 5572-4 at London Life. The parties disagree about its value: I use Ms. Strait-Hinnerichsen's value of $43,678.58, which is 15 cents higher than the value ascribed to it by Mr. Strait-Hinnerichsen.

The parties agree Ms. Strait-Hinnerichsen will retain life insurance policy 5572-1 at London Life. The parties disagree about its value: I will use Ms. Strait-Hinnerichsen's value of $24,078, which is $266 more than Mr. Strait-Hinnerichsen's value.

The parties agree Mr. Strait-Hinnerichsen's 2016 BMW is worth $30,000 and Ms. Strait-Hinnerichsen's 2021 BMW is worth $55,000.

The parties agree that Mr. Strait-Hinnerichsen's 2020 income tax refund of $6,328.10 is a matrimonial asset.

Family Debts

When Ms. Strait-Hinnerichsen filed her 2020 taxes in the spring of 2021, she was assessed outstanding taxes of $2,375.07. Based on *Webb v. Webb*, 1994 CanLII 4248 (NSSC), I accept that this debt is a matrimonial debt and should be addressed in the property division.

The parties have resolved all issues related to the RBC Visa and no additional accounting needs to be made for it.

Excluded Assets

Ms. Strait-Hinnerichsen will retain the 3 parcels of undeveloped land in Cape Breton that her father gave her. The family never used this land, and the parties agree the land is not a matrimonial asset because of clause 4(1)(a) of the MPA.

All jewellery except the trinity ring, aquamarine pendant and tennis bracelet is agreed to belong to Mr. Strait-Hinnerichsen and no additional accounting needs to be made for it.

The parties agree the children's RESPs are not matrimonial assets: *Lockerby v. Lockerby*, 2010 NSSC 282 at paragraph 95.

The parties agree they've divided all their household contents, and no additional accounting needs to be made for them.

## Schedule B

| | Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6* | Column 7 | Column 8 |
|---|---|---|---|---|---|---|---|---|
| Year | Ms. Strait-Hinnerichsen Line 150 income less Union dues (as of 2014) | Mr. Strait-Hinnerichsen Employment income | Mr. Strait-Hinnerichsen Line 150 Income | Mr. Strait-Hinnerichsen Capital Gains Add Back | Funds withdrawn from the Investment Account | Gross up Investment Account withdrawal | Combined Columns 3,4,5,6, and 7 | Carrying Charges (deductible expense) |
| 2011 | $14,327 | $23,151 | $137,900 | $33,602 | $149,499.03 | $148,696 | $469,697.03 | $52,510 |
| 2012 | $16,629 | $15,999 | $187,356 | $106,396 | $802,179.80 | $802,281 | $1,898,212.00 | $43,486 |
| 2013 | $17,762 | $38,383 | $137,055 | $43,129 | $275,141.75 | $274,236 | $729,561.75 | Not provided |
| 2014 | $41,873 | $2,764 | $153,281 | $110,230 | $320,201.34 | $320,202 | $640,403.34 | $49,290 |
| 2015 | $41,310 | $42,115 | $178,222 | $94,762 | $320,253.82 | $320,255 | $913,492.82 | $47,112 |
| 2016 | $31,423 | $81,788.48 | $152,850.74 | $32,853 | $268,911.45 | $311,579 | $766,194.19 | $44,833.22 |
| 2017 | $35,178 | $30,832.78 | $136,140.54 | $49,175.13 | $252,734.29 | $289,431 | $727,480.96 | $45,481.68 |
| 2018 | $37,748 | $42,310.55 | $132,828 (includes RRSP income) | $12,095 | $209,687.56 | $237,741 | $592,351.56 | $44,024.60 |
| 2019 | $39,763 | $49,109.43 | $106,317 | $40,029 | $212,740.81 | $234,653 | $593,739.81 | $44,957.07 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 2020 | $46,235 | $63,961 | $104,378 | $22,610 | $178,532.07 | $193,804 | $449,324.07 | $45,592.79 |

*Column 6 gross up as calculated by Ms. Strait-Hinnerichsen