SUPREME COURT OF NOVA SCOTIA
(Family Division)
Citation: Fedortchouk v. Boubnov, 2018 NSSC 66 and 2017 NSSC 233

Date: 20180329
Docket: 1201-065948
Registry: Halifax

Between:

Iana Fedortchouk

Applicant

and

Pavel Boubnov

Respondent

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Judge: The Honourable Associate Chief Justice Lawrence I. O'Neil

Hearing: December 7, 8, 9, 2015; January 25, 26, 27, 2016; February 10, 12, 22, 24, 29, 2016; October 17, 18, 19, 21, 24, 2016; November 15, 21, 2016; March 3, 17, 20, 21, 2017; and May 9, 2017, in Halifax, Nova Scotia

Issues: What is the best parenting arrangement for the parties four (4) children? What has been and what is the ongoing obligation of the parties to pay child support and to contribute to the special and extraordinary expenses of the children? Has the equalization payment provided for in the parties' separation agreement been retired by set off ?

Summary: The Court issued two decisions. The first decision dealt with parenting issues. The second decision addressed historical and ongoing financial issues.

The decision on parenting issued August 31, 2017 (2017 NSSC 233). The Court confirmed the parenting status quo of the children. The youngest child's primary care and his sister's primary care remained with the mother. One son remained in the primary care of the father and the oldest was found not to be a child of the marriage.

The decision addressing unresolved financial issues issued in March 2018. The Court ordered that the equalization payment plus interest on it, as provided for in the parties' separation agreement, is to be paid to the father on or before June 30, 2018 (2018 NSSC 66).

The Court found the provisions in the parties' separation agreement dealing with child support and the payment of special expenses to be inapplicable because they were uncertain, contrary to s.13 of the Child Support Guidelines and because the parties themselves sought to abandon these provisions within months of concluding the separation agreement.

The Court applied the economics of scale approach for the period of approximately two (2) years when the parents had a hybrid parenting arrangement. For other periods until August 2017 and ongoing, the Court determined the parties' child support obligations based on traditional conclusions as to the residency of the children; the parties' incomes and the child support tables. The Court also set global amounts as each party's historical and ongoing contribution to the special expenses of the children.

The Court found Mr. Boubnov had met or exceeded his obligation to contribute to meeting the special expenses of the children. The Court found a net financial obligation to Mr. Boubnov in the amount of $16,057.27 in addition to the equalization payment of $47,200 plus interest due him.

Keywords: Best interests; hybrid parenting; setoff; shared parenting;

Legislation:
Divorce Act, RSC 1985, c 3 (2nd Supp)
Maintenance and Custody Act, R.S., c.160, 1989
Parenting and Support Act, R.S., c.160
Child Support Guidelines, SOR/97-175

Cases Considered:
Fedortchouk v. Boubnov, 2017 NSSC 233
Fedortchouk v. Boubnov, 2013 NSSC 277
D.B.S. v. S.R.G., 2006 SCC 37
Kerr v. Baranow, 2011 SCC 10
Mitsui & Co. (Point Aconi) Ltd. V. Jones Power Co., 2000 NSCA 95
Fridman, The Law of Contract in Canada, Carswell, 6th Edition 2011
Day v. Day, 2006 NSSC 111
Child Support Guidelines in Canada, 2015, Irwin Law
Slawter v. Bellefontaine, 2012 NSCA 48
MacDonald v. Pink, 2011 NSSC 421
Harrison v. Falkenham, 2017 NSSC 139
Contino v. Leonelli-Contino, 2005 SCC 63

Authors Cited:
Child Support Guidelines in Canada, 2015, Irwin Law
JP Boyd

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Fedortchouk v. Boubnov, 2018 NSSC 66

Date: 20180329
Docket: 1201-065948
Registry: Halifax

Between:

Iana Fedortchouk

Petitioner

and

Pavel Vladimirovich Boubnov

Respondent

Judge: Associate Chief Justice Lawrence I. O'Neil

Heard: December 7, 8, 9, 2015; January 25, 26, 27, 2016; February 10, 12, 22, 24, 29, 2016; October 17, 18, 19, 21, 24, 2016; November 15, 21, 2016; March 3, 17, 20, 21, 2017; and May 9, 2017, in Halifax, Nova Scotia

Oral Submissions: May 9, 2017
Supplementary Written Material Received to January 29, 2018

Decision on the Parenting Issues: August 31, 2017 (2017 NSSC 233)

Decision on Financial Issues

Counsel: Iana Fedortchouk, Self-Represented
Pavel Boubnov, Self-Represented

By the Court:

I. Introduction

[1] The court issued a decision on parenting on August 31, 2017 following summation in this matter (2017 NSSC 233). This is a decision addressing financial matters.

[2] The parties are the parents of four (4) children. They executed a separation agreement dated December 20, 2010 (tab 1, exhibit 1-A). Both were represented by counsel at the time (exhibit 1-E, paragraph 41). The agreement was registered on May 6, 2011 and became an order of this Court as then provided for by s.52 of the *Maintenance and Custody Act*, R.S., c.160, 1989 , "the MCA". (Note, section 52 of what is now known as the *Parenting and Support Act*, R.S., c. 160 has

different language). Coincidental with the registration of the agreement, an application to vary the agreement/order was filed. In fact, when the application to vary the agreement was first presented to be filed, the Court advised the agreement had to be first registered to become an order which would then be subject to variation. The MCA provided for variation of the terms of an agreement when proposed for registration:

> Registration and effect of agreement
>
> > 52(1) A judge may, with the consent of a party, register in the court an agreement entered into between the parties respecting maintenance or respecting care and custody or access and visiting privileges or any amendment made to that agreement.
> >
> > (2) Before registering an agreement pursuant to subsection (1), a judge may inquire into the merits of the agreement and, after giving the parties an opportunity to be heard, may vary its terms as he deems fit.
> >
> > (3) An agreement, including amendments registered pursuant to this Section, shall for all purposes have the effect of an order for maintenance or respecting care and custody or access and visiting privileges made under this Act.

[3] The agreement purported to 'settle' custody, access, child support, special expenses for the children, property and debt issues as they related to the parties' relationship. However, it did not settle those issues.

[4] For the reasons that follow, I found the essence of the separation agreement as it relates to the support issues to be unenforceable. I therefore looked to the *Child Support Guidelines*, SOR/97-175 to base a rationale for quantifying the parties' child support obligations and to quantify their obligation to contribute to the special expenses of the children. The child support obligations of the parties beginning July 1, 2011 have been reassessed to be made consistent with the principles underlying the *Child Support Guidelines*. This decision is mostly about that calculation. I considered the changes in the primary care of the children over the last seven (7) years. I determined the parties' incomes and what the reasonable and shareable special expenses of the children were over that period.

[5] The child support obligations of the parties and conclusions as to the residency of the children following separation fall within the following defined periods in the life of this family. They are:

(i) separation in October 2010 to order dated June 20, 2012
(ii) pre sabbatical period June 20, 2012 – August 31, 2013
(iii) sabbatical year September1, 2013 – August 31, 2014
(iv) post sabbatical period September 1, 2014 - August 31, 2017

II. Litigation History

[6] Regrettably, much of the Court time devoted to this hearing has been focused on the meaning and effect of the separation agreement, not the *Child Support Guidelines*.

[7] The matter was first before the Courts less than six (6) months after the parties' separation agreement was signed. As stated, in May 2011 Dr. Fedortchouk filed an application pursuant to the provisions of the *Maintenance and Custody Act* to register the parties' separation agreement and to vary its terms. She sought to have the obligations purportedly contained in the parties' separation agreement made consistent with the *Child Support Guidelines* (exhibit 48, tab 1) and (paragraph 33, exhibit 25, tab 1).

[8] Mr. Boubnov confirmed, in other communication with the Court, later than year, that he sought the same (exhibit 1-A, tab 3 at pages 32-33 of the Conference Memorandum).

[9] The parties met with a Court conciliator in September 2011 in an effort to resolve their issues. That was unsuccessful.

[10] The parties were first before a Judge to address their developing conflict over money in late 2011. As explained below, frequent Court interventions have been necessary since then.

[11] I became involved in January 2012 to address a parenting issue (exhibit 1-A, tab 12 at page 112). Later in June 2012, Mr. Boubnov sought the Court's intervention because the Maintenance Enforcement office had 'seized' his law

office accounts or taken some analogous action. A summary of the litigation to this point is at tab 13 of exhibit 1-A.

[12] This is the third written decision flowing from the parties' divorce proceeding. Herein, I will rule on the parties' unresolved financial issues, principally as they relate to child support and the parties' obligations, both past and ongoing, to contribute to the special expenses of the children and as they relate to the equalization payment claimed by Mr. Boubnov.

[13] The Court's January 2013 hearing involving this family was to address the child support and parenting issues on the assumption the family was to continue to live in Halifax. However, the focus of the litigation changed dramatically. Dr. Fedortchouk asked for the Court's permission to relocate to Europe with the children for one year.

[14] This change in position resulted in a lengthy 'mobility' trial followed by a detailed decision in response to Dr. Fedortchouk's application to remove the children from Canada with her for up to one year (*Fedortchouk v. Boubnov*, 2013 NSSC 277). As a result, the scheduled hearing to assess the parties' respective claims for past child support, their past obligation to contribute to the special expenses of the children and ongoing parenting and support issues could not occur in the available time frame. However, in August 2013 the Court did put a support and parenting regime in place for the pending 2013-2014 sabbatical year. The current hearing on the money issues and ongoing parenting issues occurred over the eighteen months after December 2015.

[15] Clearly, this family has had frequent involvement with the Courts since separation. The period since summation in this matter in May 2017 has not been an exception.

[16] On June 9, 2017, Justice Jollimore was called upon to deal with an emergency motion filed by Mr. Boubnov. The motion sought a Court order requiring Dr. Fedortchouk to leave the youngest child, Anton with Mr. Boubnov (and no one else) while she was out of the country. The Court ruled that the child would remain with Mr. Boubnov.

[17] On August 3, 2017, while the parenting decision and this decision was pending, Mr. Boubnov filed a Motion by Correspondence concerning school

registration for one of the children, Galina and concerning a Voices of the Child Report. On October 27, 2017 Mr. Boubnov filed a Motion by Correspondence pertaining to certain special expenses for the children.

[18] In a written decision, released in August 2017 (*Fedortchouk v. Boubnov*, 2017 NSSC 233), the Court issued a ruling addressing the parties' then parenting issues relevant to three (3) of their four (4) children, who remain children of the marriage. As part of that ruling, the Court also issued a child wishes order to determine the views of the parties' third child, Galina. An assessor was asked to report the child's views on the parenting arrangement governing Galina and on what school she wished to attend. This report was received on November 28, 2017.

[19] Also, subsequent to the parties' oral submissions on May 9, 2017, the Court received letters from Dr. Fedortchouk on May 11, 2017; June 7, 2017 and October 30, 2017. Mr. Boubnov responded to Dr. Fedortchouk by letters received by the Court on June 8, 2017 and June 22, 2017. Dr. Fedortchouk's October 30, 2017 letter followed Mr. Boubnov's October 27, 2017 Motion by Correspondence.

[20] Finally, the parties were asked by the Court to file supplementary submissions on the effect that should be given to clause 26 of the parties' separation agreement which relates to the payment of special expenses, given the requirement of s.13(e) of the *Child Support Guidelines* that precise details of the obligation to pay special expenses be in the relevant order. The Court also asked the parties to respond to the Court's concern that clause 26 of the separation agreement may be, as a matter of contract law, be too uncertain to be enforceable. The responses were received on January 26 and 28, 2018.

III. Divorce, Name Change

[21] The Petition for Divorce herein (exhibit 49) was filed February 20, 2012. It was served on Mr. Boubnov on February 24, 2012. The parties confirmed reconciliation is not possible; that they separated October 1, 2010; have not reconciled and they have been residents of Nova Scotia since 2007 and remain so.

[22] A divorce order will issue when presented.

[23] Dr. Fedortchouk requests a name change from Iana Fedortchouk to Yana Fedortchouk (exhibit 49 – Petition for Divorce). This change is ordered.

[24] As stated, following the conclusion of evidence in this matter, a decision on parenting issued in August 2017. Among the remaining marital issues to be addressed, several relate to (a) the past child support obligations of the parties; (b) their past obligation to contribute to the children's special expenses; and (c) the obligation of Dr. Fedortchouk to pay Mr. Boubnov $40,000 as an equalization payment. A resolution of these issues requires a consideration of the meaning and effect of the parties' separation agreement and its interaction with the *Child Support Guidelines*.

IV. Pension(s), Medical Coverage

[25] Division of the parties' pension entitlements has not yet been the subject of a specific order. Mr. Boubnov does not have any pension entitlement governed by the separation agreement.

[26] It was conceded by Dr. Fedortchouk's former counsel in her submission filed April 21, 2017 that pension entitlements to the date of separation are equally divisible. In their separation agreement at clause 43, the parties agreed their pensions were equally divisible. Dr. Fedortchouk earned a pension benefit while the parties were together and while she was employed at Dalhousie University. That benefit earned to October 1, 2010 is equally divisible.

[27] A stand-alone pension order will issue to effect the division.

[28] Dr. Fedortchouk says at paragraph 10 of her affidavit filed on November 24, 2015 (exhibit 1-E) that Mr. Boubnov said at one point he no longer wanted her to continue to have him covered on her medical plan. However, at paragraph 94 of the same document, she said she removed him unilaterally.

[29] I am satisfied Dr. Fedortchouk discontinued the coverage because she felt Mr. Boubnov was not meeting his obligation to assume some of the uninsured medical costs. Having listened to these parties for a number of years over many days, I am satisfied Mr. Boubnov probably did give up his claim for the coverage at some point having concluded the issue could not be resolved.

[30] That is not the same as saying he abandoned the benefit. The same logic would apply to some of the claims now made by Dr. Fedortchouk.

[31] Certainly Mr. Boubnov complained in Court that this important benefit was discontinued and he was forced to incur substantial medical costs as a result. He was very unhappy that this happened and clearly felt he was entitled to compensation as a result. In his written summation, he claims against Dr. Fedortchouk for the loss in the amount of $2,742.00.

[32] The Court ordered that she reinstate the coverage. I am unclear if she did.

V. Equalization Payment

[33] Clause 33 of the separation agreement provides as follows:

> 33. The husband acknowledges that the wife shall have exclusive possession of the matrimonial home and real property associated therewith and located at 857 Bridges Street, Halifax, Nova Scotia and the following arrangements shall apply:
>
> (a) The husband shall forthwith transfer to the wife by way of Quit Claim Deed all of his right, title and interest in the matrimonial home and real property associated therewith and located at 857 Bridges Street, Halifax, Nova Scotia, and hereby releases his interest therein pursuant to the Matrimonial Property Act of Nova Scotia.
>
> (b) The wife assumes sole responsibility for all expenses associated with the matrimonial home, including without limiting the generality of the foregoing, mortgage payments, insurance premiums, taxes, heating, utilities and maintenance costs.
>
> (c) The wife shall assume sole responsibility for the mortgage encumbering the matrimonial home with approximate balance of $358,367.0 and the parties joint Line of Credit with Royal Bank of Canada with the approximate balance of $33,087.00 and the vehicle loan with Toyota with approximate balance of $29,500.00.
>
> (d) The aforesaid Quit Claim Deed will be held in escrow by the wife's lawyer and released to the wife and registered upon the husband's name being removed from liability with respect to the mortgage and line of credit, within forty-five (45) days from the execution of this Agreement.

> (e) The wife shall pay to the husband a property equalization payment of $40,000.00 to compensate the husband for his interest in the matrimonial home payable on or before November 1, 2013, unless the husband die[s] before the payment is due. Interest shall be payable on any outstanding balance at the rate of three percent (3%) simple interest per annum.
>
> (f) The wife agrees she will not re-mortgage or otherwise place or cause to be placed any encumbrance upon the aforesaid matrimonial property without the consent of the husband until such time that the equalization payment to the husband has been completed.

[34] In his affidavits filed in 2015 (exhibits 34 & 35), Mr. Boubnov complained of Dr. Fedortchouk's failure to pay the equalization payment provided for in the separation agreement and he says she further encumbered the property. Dr. Fedortchouk continues to live in the former matrimonial home. She did not compensate Mr. Boubnov for his interest in the matrimonial home as agreed. He has not received any money from her as contemplated by clause 33(e). Dr. Fedortchouk now says she does not currently owe Mr. Boubnov any money because what he owes her as child support or as a contribution to special expenses incurred on behalf of the children is an offset that exceeds her financial obligation to him.

[35] Pursuant to clause 33(e), Mr. Boubnov calculates the present-day value (to May 1, 2017) of her equalization payment as $47,200. In his closing submission, he confirmed he does not claim compound interest. Dr. Fedortchouk does not challenge his calculation. I am satisfied on the evidence and I conclude therefore that as of May 9, 2017 (the day of Mr. Boubnov's oral submission), Dr. Fedortchouk owed Mr. Boubnov $47,200 pursuant to this clause unless that amount can be reduced by an offset(s) as she claims.

VI Retroactive Child Support

[36] Mr. John-Paul Boyd is a lawyer and also the Executive Director of the Canadian Research Institute for Law and the Family, a non-profit organization affiliated with the University of Calgary. In his 2014 presentation at the National Family Law Program, Mr. Boyd presented a helpful commentary on the topic of child support. He summarized several principles governing claims for and the calculation of retroactive child support. They flow from the two leading cases in this area of the law, *D.B.S. v. S.R.G.*, 2006 SCC 37 and *Kerr v. Baranow*, 2011

SCC 10. I am satisfied this Court has jurisdiction to retroactively vary the child support regime outlined in the separation agreement.

[37] Mr. Boyd presents the following key points among others on his blog – JPBoyd on Family Law:

1. An obligation to pay child support exists independent of any order or agreement on child support.

2. The amount of child support is determined by the *Child Support Guidelines*. The *Guidelines* base the amount of support owing on the income of the payor.

3. The payor's child support obligation is the amount payable based on the payor's income and the *Guidelines*, but changes as the payor's income fluctuates.

4. An order or agreement may correctly state the amount of child support payable when the order or agreement is made, but if the payor's income changes, the order or agreement stop being correct.

5. When an order or agreement is no longer correct, a Court can make an order requiring the payor to make up the difference between the amount of child support that was paid and the amount that should have been paid.

[38] Mr. Boyd concludes, "After reviewing how Canada's Courts of Appeal have treated *D.B.S.* and *Kerr*, it seemed to me that orders and agreements for child support no longer offer blanket security against claims made in respect of the period covered by the order or agreement".

[39] I agree with the foregoing conclusions and summary of principles in the area of child support law. I will apply them here.

[40] The start date for retroactive calculations is most often determined by reference to the date of notice that a change is sought (*D.B.S.* at paragraph 118). A retroactive calculation is typically limited to a period of no more than three years prior to the payor receiving notice that a retroactive increase in the amount of monthly child support is sought.

[41] To determine whether either party has underpaid their child support or share of the special and extraordinary expenses of the children, it is necessary to determine the following:

(a) the parties' incomes since separation;
(b) where the children resided since separation;
(c) the effect of any agreement between the parties on their obligations;
(d) the effect of earlier Court orders; and
(e) the general principles governing the payment of child support and the sharing of special expenses of the children as outlined in the *Child Support Guidelines*.

VII. Incomes of the Parties

[42] Dr. Fedortchouk says her income in recent years was as outlined below and she estimates her current income:

2011 - $83,684 (exhibit 1-A at tab 18 at page 173)
2012 - $92,798 (exhibit 1-A at tab 18 at page 172)
2013 - $78,771 (exhibit 1-A at tab 18 at page 164)
(the Court concluded her income would be $100,000 between August 2013 – August 2014, paragraph 183 of the mobility decision – reproduced herein at paragraph 159)
2014 - $98,292 (after July 1, 2014) (exhibit 1-A, tab 18, page 194 at paragraph 8)
2015 - $106,510.32 (exhibit 26)
2016 - $112,162 (submission of Dr. Fedortchouk filed March 29, 2017, exhibit 63)
2017 - $116,000 (the Court's August 2017 decision (at paragraph 61) placed the income at $116,000)

[43] Mr. Boubnov's relevant filings reveal the following line 150 income or purported income:

2011 - $65,000 (exhibit 1-A at tab 8, paragraph 4) ($31,663, exhibit 1-C, tab 5)
(I set it at $35,000 for the reasons given below at paragraph 44)
2012 - $28,486 (exhibit 30 at tab 1)
(the Court concluded his income would be $40,000 between August 2013 – August 2014, paragraph 183 of the mobility decision) – reproduced herein at paragraph 113)
2013 - $38,978 (exhibit 30 at tab 2)
2014 - $24,616.66 (exhibit 30 at tab 3 and exhibit 17)
2015 - $40,000 (exhibit 30 at tab 3 and exhibit 17)
2016 - $35,000 the Court's August 2017 decision (at paragraph 57)
2017 – $35,000 the Court's August 2017 decision (at paragraph 57)(estimated)

[44] Mr. Boubnov must explain his declaration that his income in 2011 was in the range of $65,000 (exhibit 32 at paragraph 13 and exhibit 1-A at tab 8). He

says this number reflected his optimism about his earning capacity. His CRA filings for 2011 show a line 150 income of $31,663 (exhibit 1-C, tab 5). He says his tax returns and the line 150 income shown on each of his returns more accurately reflects his level of earnings (see exhibit 1-C at tabs 6-10 and exhibit 29). I am satisfied on a balance of probabilities that his 2011 income was in fact significantly less than $65,000 and has been since. In the circumstances I fix his 2011 income at $35,000. He did experience an increase in his available cash in recent years because of a settlement he received flowing from an accident and injuries he received. This explains his opportunity to afford certain expenditures that would not be affordable to someone at his level of earned income. He has also received child benefits and child support in varying amounts for periods since 2010, amounts that were significant relative to his earnings.

VIII. Special (Extraordinary) Expenses/*Child Support Guidelines*/The Separation Agreement - para 19

[45] Sections 6 and 7 of the *Child Support Guidelines* provide one spouse may request a contribution from the other spouse to meet the special and extraordinary expenses of a child. A stand-alone provision (s.6) provides for an order requiring medical and dental insurance coverage when either spouse can access it at a reasonable rate. Given the significance of the claims by both parties for a contribution from the other to the children's special or extraordinary expenses, the text of these provisions is reproduced:

> Medical and dental insurance
>
> 6. In making a child support order, where medical or dental insurance coverage for the child is available to either spouse through his or her employer or otherwise at a reasonable rate, the court may order that coverage be acquired or continued.
>
> Special or extraordinary expenses
>
> 7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

(a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;

(b) that portion of the medical and dental insurance premiums attributable to the child;

(c) health-related expenses that exceed insurance reimbursement by at least $100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;

(d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;

(e) expenses for post-secondary education; and

(f) extraordinary expenses for extracurricular activities.

Definition of "extraordinary expenses"

(1.1) For the purposes of paragraphs (1)(d) and (f), the term extraordinary expenses means

(a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

(b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

(i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,

(ii) the nature and number of the educational programs and extracurricular activities,

(iii) any special needs and talents of the child or children,

(iv) the overall cost of the programs and activities, and

(v) any other similar factor that the court considers relevant.

[46] The manner in which each party determines special (extraordinary) expenses and the resulting financial burden on each has been at the centre of the parties' conflict since separation.

[47] The disagreement has been complicated by the link between this determination and Dr. Fedortchouk's ability to pay an equalization payment to Mr. Boubnov because she has retained the former matrimonial home. She claims Mr. Boubnov owes her substantial child support and a substantial contribution to special expenses she incurred for the children. As stated, she says his unfulfilled obligation in this regard offsets her obligation to pay him the $40,000 equalization payment she otherwise owes him under the terms of their separation agreement.

[48] The separation agreement dated December 20, 2010 (tab 1, exhibit 1-A) contains the following support provisions:

> Separation Agreement
>
> 23. The parties have agreed that there shall be no requirement for a formal child support payment at this time.
>
> 24. The parties have shared custody of Arsenij, Galina and Iakov. The parties are aware of the aforesaid *Child Support Guidelines* and, in particular, Section 3 and Section 9 of the *Guidelines*. They enter into the child support arrangement by consent pursuant to Sections 15.1(7) and (8) of the Divorce Act of Canada.
>
> 25. The parties shall exchange no later than July 1st of each year copies of their Income Tax Returns with all supporting schedules and information slips and any Notices of Assessment or Re-Assessment received from Canada Customs and Revenue Agency.
>
> 26. The husband shall be solely responsible for the payment of childcare expenses for Anton required for purposes of the wife's employment. The parties shall be equally responsible for the medical, extra-curricular expenses and other extraordinary expenses relating to the children.
>
> 30. The wife agrees to maintain her existing medical and dental plan through her employment for the benefit of the children of the marriage for so long as she

> is legally able to do so under the terms of the plan for so long as the children remain children of the marriage as defined by the Divorce Act.
>
> 31. The wife agrees to maintain her existing medical and dental plan through employment for the benefit of the husband for so long as she [is] legally able to do so under the terms of the plan.

[49] The requirement to contribute to the cost of the special expenses of the children as expressed in the agreement is imprecise requiring only that the parties be "equally responsible for medical, extra-curricular expenses and other extraordinary expenses related to the children". This general language is often used in agreements as a statement of principle to guide parties. Dr. Fedortchouk asks the Court to interpret the clause strictly once an 'extra' expenditure for the benefit of the children is identified. Mr. Boubnov says he has exceeded both his child support obligation and his obligation to contribute to the special expenses of the children. Dr. Fedortchouk makes the same claim about herself.

[50] Resolving the financial issues in this case has been challenging because of the uncertainty created by the language in the separation agreement; language which did not completely define obligations to pay child support and to contribute to special expenses. There is also no meaningful effort by either party to present evidence to establish the special expenses as necessary; within the means of the parties; to define what share each should pay if any and how the expenses relate to the parties' pre-separation lifestyle. Earlier decisions of this Court were meant to establish predictability by estimating these obligations in response to changing family circumstances since separation.

[51] Notwithstanding the Court having quantified the obligation of Mr. Boubnov to contribute to special expenses beginning in June 2012 and for both parties beginning in August 2013, Dr. Fedortchouk argues Mr. Boubnov's obligation to contribute to the special expenses continued as described in the parties' separation agreement. That is, each is to pay one-half the cost and Mr. Boubnov would pay the entire child care cost for the youngest child.

[52] However, within six (6) months of executing the separation agreement, both Dr. Fedortchouk and Mr. Boubnov sought to vary these terms in favour of a regime that would require each to pay the table amount of child support and to proportionately share special expenses. As early as her filings in May 2011, Dr. Fedortchouk claimed both child support and a contribution to the children's

special expenses (exhibit 48, tab 1) and that they be determined by reference to the *Child Support Guidelines*. She did so again in November 2012 (exhibit 48, tab 5). They each confirmed the same before Justice Legere Sers in the course of a Pre-Trial on December 12, 2011 (exhibit 1-A, tab 3 at page 32).

[53] Dr. Fedortchouk sought *inter alia* retroactive and prospective child support based on their actual incomes retroactive to October 2011; the calculation of the parties' retroactive and prospective contributions to section 7 expenses proportionate to the incomes of the parties back to October 2011. She also sought to impute income to Mr. Boubnov, as income for the purpose of determining his child support obligation. She sought to have income he received as reimbursement of travel expenses including "mileage" included as income for the purpose of determining Mr. Boubnov's child support obligation.

[54] Mr. Boubnov sought child support retroactive to October 1, 2011 and a proportionate sharing of section 7 expenses, such as child care.

[55] Both parties sought the same in the Petition for Divorce filed in February 2012 and Answer respectively (exhibit 49) (see also the September 2011 conciliation record (exhibit 22C)).

[56] The parties' inability to resolve their disagreement about the payment of s.7 expenses resulted in judicial intervention on an emergency basis. In June 2012 when MEP enforcement action threatened Mr. Boubnov's ability to operate his law practice, Mr. Boubnov sought the Court's intervention on an emergency basis, (see exhibit 25, tab 3 at page 57 – letter to the Court).

[57] The enforcement action was based on Dr. Fedorchouk's claim that Mr. Boubnov had not met his obligation to contribute to the child care expense related to Anton, the youngest child (see exhibit 1-A, tab 9 – letters from MEP and affidavit of Dr. Fedortchouk at para 63, exhibit 1-E) and her allegation that he had failed to pay his share of other special expenses for the children. Dr. Fedortchouk does say she provided MEP with two declarations of arrears and receipts for special expenses (exhibit 1-E, paragraphs 63, 77-79 and 87) in support of these claims.

[58] In June 2012, the Court heard from the parties on an emergency basis. A conference call was convened. The Court then ordered Mr. Boubnov to pay $400

per month to meet his ongoing obligation to contribute to the cost of special expenses including daycare and a further $250 to be applied against any "arrears" attributable to child care and special expenses. As provided by s.7 of the *Child Support Guidelines*, the Court made a decision to estimate and to quantify the obligation of Mr. Boubnov given the obvious and predictable problem before it which arose from the uncertain obligations of each party. The June 2012 quantification of the parties ongoing obligations is reflected in the MEP record of payments shown at tab 2 of exhibit 1-A.

[59] In June 2012, the Court issued an order quantifying Mr. Boubnov's obligation to contribute to child care as provided for in the separation agreement. The 2012 order acknowledged Mr. Boubnov's disagreement with the enforcement action that occurred. The Court's decision was on a without prejudice basis in response to the urgent situation before the Court. The objective of the Court was to make an order balancing the language and spirit of the agreement with the principles of s.7 of the *Child Support Guidelines*.

[60] The 2012 order provided:

> **WHEREAS** Pavel Boubnov, the Respondent, has made a Motion by Correspondence seeking relief on a "without prejudice basis" of the arrears which are in dispute and which are being collected by the Maintenance Enforcement Program and which arrears are to be adjudicated on September 5, 2012.
>
> **AND WHEREAS** the parties have four dependent children born of their relationship who are:
>
> | **Name of Child** | **Date of Birth** |
> |---|---|
> | Arsenij Boubnov | September 8, 1995 |
> | Galina Boubnova | May 12, 2002 |
> | Iakov Boubnov | February 25, 2005 |
> | Anton Boubnov | September 15, 2010 |
>
> **AND WHEREAS** on June 20, 2012, the parties, both self-represented, attended this Court by way of a telephone conference.
>
> **NOW UPON MOTION IT IS ORDERED THAT:**
>
> 1. Prospectively, the Respondent, Pavel Boubnov, will pay to the Petitioner, Yana Fedortchouk, the sum of $400.00 per month for the care of the parties'

> four children commencing July 2, 2012 and continuing on the 1st day of each month thereafter until otherwise ordered by this Court.
>
> 2. Pending the hearing scheduled for September 5, 2012 before the Honourable Associate Chief Justice Lawrence O'Neil, the Respondent, Pavel Boubnov, shall also pay the sum of $250.00 per month towards the arrears of child support [child care] owing. Such payment shall also commence on July 1, 2012 and continue on the 1st day of each month thereafter until otherwise ordered by this Court. Provided the Respondent, Pavel Boubnov, pays the prospective child support [child care] as ordered herein and the $250.00 each month toward the arrears up to and including September 5, 2012 no further steps shall be taken by or on behalf of the Petitioner, Yana Fedortchouk, to collect any child support [child care] arrears that may be owing until the matter returns to Court on September 5, 2012.

[61] Some submissions and other documents before the Court do not distinguish between an order to pay child support and an order to pay special expenses, which may be contained in a child support order. For example, exhibit 1-E at paragraph 6, an affidavit filed on behalf of one of the parties, refers to arrears of child support as of June 2012, which arrears flow from obligations in the separation agreement. More precisely, the alleged arrears were for the payment of special or extraordinary expenses which the separation agreement arguably required that Mr. Boubnov pay. The parties' separation agreement did not impose an obligation to pay child support on either party.

[62] The order flowing from the June 2012 appearance also fails to make this distinction. The order speaks of the payment of child support. In fact, the ongoing primary payment was for child care ($400/month) and a second payment ($250/month) ordered was for the assessed arrears related to special expenses to that point in time.

[63] For a variety of reasons, the matter did not return to Court in September 2012.

[64] The Court commenced a hearing in January 2013 with a view to resolving the parties' disagreements as to their respective financial support obligations. However, as noted, that hearing was halted because of a need to deal with Dr. Fedortchouk's plan to relocate the children to Europe for up to one year commencing in August 2013.

[65] As a result, the full effect of Clause 26 of the parties' separation agreement, dealing with special expenses for the children could not be clarified. However, the full effect of Clause 26 had already been varied by the June 2012 order. It would again be effectively changed by the Court's August 2013 'mobility' decision wherein the obligation of each party to pay child support and to contribute to the special expenses of children in the primary care of the other parent was once again estimated and quantified. The August 2013 order was the first quantifying the parties' child support obligations and the first order quantifying both parties' obligations to contribute to the special expenses for the children.

[66] In August 2013, the Court decided to structure the parties' support obligations in a manner consistent with the *Child Support Guidelines*. A ceiling was placed on the special expense obligation of each parent and ongoing child support consistent with the *Child Support Guidelines* was ordered. Again, the emphasis was on achieving financial certainty and predictability of the parties' obligations to pay child support and to contribute to the special expenses of the children. Section 7 of the *Guidelines* provides that expenses may be estimated.

[67] The Court did not re-assess and quantify the past obligations of the parties at that time.

[68] The 2014 order (the decision issued August 2013) required Mr. Boubnov to continue to pay $400 as a contribution to Anton's ongoing child care needs while Anton was out of the country with his mother. This was the only special expense anticipated for him. Dr. Fedortchouk was ordered to pay a global amount of $500 to meet her share of the estimated special expenses for the three children who were to remain behind in Mr. Boubnov's care. Each parent was also required to pay offsetting child support.

[69] The Court opted for an estimated contribution by each party to the special expenses of the children because the parties were unable to agree on what expenses should be shared and the quantum to be budgeted by each parent.

[70] In a further effort to discourage the parties from unilaterally incurring 'special expenses', the order flowing from the 2013 'mobility decision' at paragraph 183(8) cautioned the parties that neither had the freedom to unilaterally

incur special expenses for the children and assume the expense would be shareable or the sole responsibility of the other.

[71] One of the three most recent orders all issued by this Court in August, 2017 defined the obligation of the parties to pay prospective child support and to pay special expenses for the children.

[72] In addition, a stand-alone order issued August 31, 2017. The order suspended pre-existing support obligations, including the payment of special expenses and the order suspended enforcement action pertaining to those obligations. The body of the order provides:

> 1. This order suspends the payment of ongoing special expenses of the children by both parties which obligation may be contained in orders predating September 1st, 2017.
>
> 2. This order suspends any and all ongoing obligation of either party to pay arrears of child support or special expenses until further order of the Court predating September 1st, 2017.
>
> 3. This order suspends any and all enforcement action being taken by the Maintenance Enforcement Program with respect to past arrears of child support or special expenses shown on the records of the Maintenance Enforcement Program office predating September 1st, 2017.

[73] Clause 19 of the parenting order issued August 31, 2017 again cautioned the parties against incurring special expenses and assuming the expenses would be shareable with the other parent:

> 19. The parties are advised that any special expense incurred for the benefit of the children may be found not to be a shareable expense and the parties should endeavor to seek agreement should there be an expectation that the other party should cost share the expense. A separate decision will issue addressing the sharing of past, current and future special expenses.

[74] Parents are always encouraged to reach agreement on their parenting issues, including the sharing of special expenses for their children. It is important that deference be shown to such agreements when possible. However, any agreement must be sufficiently precise to permit the agreement to be interpreted, to be understood, to be enforced and the obligation(s) in the agreement must be affordable. An agreement should not be disregarded simply because it is a ‘bad’

agreement for one side or the other. If an agreement is bad for a child(ren), then it can and should be disregarded.

[75] A significant part of the parties' disagreement and the need to devote Court time to this family is a direct result of the general wording of clause 26. Clause 26 does not limit, in any significant way, the financial or other obligations of the parties nor does it preclude unilateral decision making by either parent when determining what special expenses, including child care, would be shared. In my view, this uncertainty raises the issue of its enforceability.

[76] Clause 26 is a term of a contract between the parties. Well established principles of contract law must be considered when determining whether clause 26 of the parties' separation agreement is enforceable.

[77] Clause 26 is a 'blank cheque' for each parent if interpreted literally.

[78] Cromwell, J. discussed the question of certainty in a contract in *Mitsui & Co. (Point Aconi) Ltd. V. Jones Power Co.*, 2000 NSCA 95 beginning at paragraph 74 (See also Fridman, The Law of Contract in Canada, Carswell, 6th Edition 2011 beginning at page 17). Warner, J. in *Day v. Day*, 2006 NSSC 111 considered the issue in a family law context and reinforced the need for marital contracts to be certain, failing which they can be found to be unenforceable.

[79] In determining whether a term of a contract is so vague or incomplete as to be unenforceable, I am influenced by a number of factors.

[80] It is essential that 'family orders' provide certainty for budgetary reasons. Each parent needs to know what their respective obligations are so they can plan to meet those obligations; seek to change them or to make the case why the obligation should not be imposed at all.

[81] Of significance is the requirement of s.13 of the *Child Support Guidelines*; a provision that requires, in the case of support orders relative to children, that clauses be precise. One of the important objectives of that precision in the area of 'family law' is to lessen conflict over obligations imposed by orders, conflicts attributable to the vagueness of an order.

[82] Section 13(e) of the *Child Support Guidelines* provides:

> 13. A child support order must include the following information:
>
> . . . . .
>
> (e) the particulars of any expense described in subsection 7(1), the child to whom the expense relates, and the amount of the expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense; and
>
> (f) the date on which the lump sum or first payment is payable and the day of the month or other time period on which all subsequent payments are to be made.

[83] It should be noted that the '*Guidelines*' do provide that an expense may be estimated (s.7(1)).

[84] Family Law expert, Julien Payne, describes the obligations in his book, *Child Support Guidelines* in Canada, 2015, Irwin Law at page 437 as follows:

> The inclusion of the above information is mandatory. It is required for the purposes of facilitating both the enforcement and variation of support orders. It is an error in law for the information required under section 13 of the Federal *Child Support Guidelines* not to be provided in a court order. However, an order for child support is not void simply because the form of the order does not comply with section 13 of the *Guidelines*. Where an error or slip is made in drawing up a formal order, the trial Judge retains jurisdiction to rectify the order and this jurisdiction may also be exercised, in appropriate cases, on appeal.

[85] The subject provision, Clause 26, does not conform with s.13(e) of the *Child Support Guidelines*. The separation agreement herein is uncertain; the parties themselves immediately sought the Court's assistance in defining their obligations within months of the 2010 agreement and coincidental with the agreement being registered (see tab 1, exhibit 48 – Statement of Special or Extraordinary Expenses filed by Dr. Fedortchouk on May 19, 2011). The uncertainty of the obligation and the parties' inability to afford the attributed share of the special expenses has made the clause unworkable. I will look to the *Child Support Guidelines* to construct a regime consistent with the spirit of the parties' agreement and the underlying principles of the *Child Support Guidelines*.

[86] In the circumstances before me, I excise clause 26 of the parties' separation agreement which purported to impose an obligation on each party to pay 50% of the cost of the special expenses incurred on behalf of the children.

[87] Prior to concluding this ruling, the parties' views on the efficacy of Clause 26 of the separation agreement and s.13(3) of the *Child Support Guidelines* were sought and received. This request was consistent with the decision of our Court of Appeal in *Slawter v. Bellefontaine*, 2012 NSCA 48. The responding submissions have been considered. They have been marked as exhibits 64 and 68 (for identification).

[88] The parties have used days of Court time presenting their competing views of what each owes the other as a contribution to the special expenses of the children. As stated, the importance of the issue is elevated by the link of this issue with whether Dr. Fedortchouk must pay Mr. Boubnov as the equalization payment promised by the terms of the parties' separation agreement.

[89] The so called special expenses claimed by both parties reflect a lack of appreciation for the financial limitations this family was required to respect but did not. Section 7 of the *Child Support Guidelines* requires an assessment of the necessity of each expense; requires an assessment of the means of the parties; an assessment of the parties' spending pattern before separation and s.7 provides the Court may order all or any portion of an expense to be paid by each party. As stated neither party in this case conducted a meaningful analysis by reference to these criteria.

[90] Dr. Fedortchouk described herself as facing bankruptcy at the time of separation (exhibit 1-E, paragraph 40). Although she attributes that circumstance to Mr. Boubnov, I am satisfied this family was living beyond its means and she must also bear significant responsibility for that situation developing.

[91] Dr. Fedortchouk accepted financial obligations, under the terms of the separation agreement, which she simply could not meet. As is often the case, a parent's attachment to a 'house' and unwillingness to 'downsize' or modify expectations as to what is financially feasible following a family breakdown, results in unmanageable financial obligations. That has happened here. The obligation to pay Mr. Boubnov his equalization payment, an obligation, in large measure flowing from her desire to 'keep the house' in and of itself, appears to have been an unattainable goal from the beginning for Dr. Fedortchouk.

[92] The financial pressures on Dr. Fedortchouk and Mr. Boubnov have been compounded by the desire to fund special activities for the children, activities this family could not afford.

[93] For the reasons given, I will not be governed solely by clause 23 (payment of child support) and 26 (payment of special expenses) of the separation agreement as I sort out the parties' respective obligations to pay child support and to contribute to the children's special expenses since their separation in 2010.

[94] I will assess the parties' respective obligations to pay child support and to contribute to special and extraordinary expenses for the children based on s.3, s.6, s.7 and s.9 of the *Child Support Guidelines*, SOR/97-175 *supra*.

[95] I will endeavor to apply the relevant provisions of the *Child Support Guidelines* as they relate to special expenses to the facts before me. I will be guided by a number of principles. These were succinctly outlined by Justice Forgeron in *MacDonald v. Pink*, 2011 NSSC 421 beginning at paragraph 55:

> 55. To qualify as a sec.7 expense, Ms. MacDonald must meet the thresholds stated in secs.7(1) and 7(1A) of the *Guidelines.* These provisions have been subject to judicial interpretation. The following principles have emerged from the case law:
>
> a. Section 7 of the *Guidelines* provides the court with the jurisdiction to grant a discretionary award: T.(D.M.C.) v. S.(L.K.) 2008 NSCA 61 (CanLII) at para. 25, per Roscoe J.A.
>
> b. The starting point is the assumption that the table amount will ordinarily be sufficient to provide for the needs of the child: T.(D.M.C.) v. S.(L.K.), supra, at para. 25, per Roscoe J.A. The burden therefore rests on the party asserting the claim. Proof is on a balance of probabilities and based upon clear, cogent, and convincing evidence: C.(R.) v. McDougall, supra.
>
> c. The sec. 7 analysis is fact specific - one that must be determined on a case by case basis taking into consideration the necessity and reasonableness of the expense, and the obligation of the noncustodial parent to contribute to the expense: Staples v. Callender 2010 NSCA 49 (CanLII), at para. 32, per Bateman J.A.
>
> d. Section 7 cases determined prior to the 2006 amendment may not be applicable: T.(D.M.C.) v. S.(L.K.), supra, at para. 21, per Roscoe J.A.

e. It is preferable to first determine whether expenses are necessary in relation to the child's best interests, and reasonable in relation to the means of the parents under sec. 7(1) before determining the applicability of sec. 7(1A) of the *Guidelines*: T.(D.M.C.) v. S.(L.K.), supra, at para. 27, per Roscoe J.A.

f. If the court decides that the expenses meet the requirements of sec. 7(1), then activity expenses must be further scrutinized pursuant to sec. 7(1A): T.(D.M.C.) v. S.(L.K.), supra, at para. 27, per Roscoe J.A.

g. Section 7(1A) calls for a two-part test. First, the court is to determine whether or not the claimed expenses exceed those which the custodial parent could reasonably cover given her total income, and the amount of child support being received.

h. If the first test is not applicable, then the court must have recourse to sec.7(1A)(b). This second test requires the court to review a number of factors, including a proportionality inquiry, and an inquiry into the nature and number of activities, any special needs or talent of the child, the overall cost of the activities, and any other similar and relevant factors: *T.(D.M.C.) v. S.(L.K.)*, supra, at para. 32, per Roscoe, J.A.

i. The custodial parent does not need to prove that a child is at an elite level in order to have an extracurricular activity included as a sec. 7 expense: Staples v. Callender, supra, at para. 32, per Bateman J.A.

IX. Arrears

(a) Arrears Claimed by Dr. Fedortchouk

[96] Dr. Fedortchouk filed two written summaries in anticipation of her oral summation. These are marked as exhibits 62 and 63 for identification purposes only. It should be noted the financial claims in exhibit 63 are different than those in documents filed earlier because exhibit 63 reflects the claims almost two years later. Exhibit 63 cross references exhibits filed earlier.

[97] In addition, Dr. Fedortchouk filed a written response to questions posed by the Court to the parties after summation. This document is marked exhibit 64 for identification purposes

[98] At paragraph 142 of her written case summary (exhibit 62) filed April 21, 2017 (and as detailed earlier detailed in her November 2015 affidavit, exhibit 1-E, paragraph 65) Dr. Fedortchouk says Mr. Boubnov's financial obligation to June 20, 2012 resulted in his being in arrears in the amount of $6,336.73. In his oral summation, Mr. Boubnov also uses this amount as a starting point for his calculation of his obligation, although he also made it clear he views this amount as more than what his assessed obligation should have been. The 'arrears' of $6,336.73 related solely to Dr. Fedortchouk's claim for a contribution from Mr. Boubnov to the special expenses of the children. The description of this expense as child support is legally correct but requires clarification. The separation agreement did not require Mr. Boubnov to pay child support, only that he contribute to the cost of special expenses.

[99] At paragraph 148 of the same case summary, Dr. Fedortchouk confirms her understanding that the $400 monthly payment by Mr. Boubnov (being part of the $650 ordered in June 2012) was for ongoing child care for Anton and $250 was to be applied to the then outstanding arrears of $6,336.73.

[100] The Court is prepared to revisit the parties' obligations to pay child support and to contribute to the children's special expenses after May 2011. This will be the starting point. Dr. Fedortchouk seeks the same (exhibit 1-E, paragraph 71-72).

[101] In her March 29, 2017 case summary (exhibit 63), Dr. Fedortchouk details the basis of her claim that Mr. Boubnov is not owed an equalization payment because of an offset (an earlier summary is contained in exhibit 1-E – her affidavit filed in November 2015):

- She says he owes her $47,855 as his contribution to the children's expenses between July 2012 to March 2017 (exhibit f to exhibit 60 being her affidavit filed November 7, 2016 and as explained in her written submission dated March 2017, being exhibit 63. She classifies those expenses under five headings:

  (a) activity costs $15,063 – July 2012 – March 2017 (calculated at 50%) (exhibit 1-E, paragraph 90);

  (b) after tax daycare costs $28,415 – July 2012 – March 2017 (exhibit 1-E, paragraph 89);

(c) special medical expenses $673;

(d) medical premiums $2,780 – July 2012 – March 2017 (calculated at 50% after insurance reimbursement; and

(e) orthodontist $925 (after insurance reimbursement).

- She says he owes $1,345 as MEP arrears, i.e. for child care to May 20, 2015.

- She says she overpaid child support in the amount of $4,400 being $400 per month for an eleven-month period, August 2014 – June 2015; a period when she says the oldest child was living with her.

- She says she overpaid child support and for special expenses while on sabbatical and wants a credit of $30,418 on the basis that between September 2013 and September 2015 the children spent more time in her care.

- She says Mr. Boubnov received the Canada Child Tax Benefit to which she says she was entitled for Galina and Iakov since September 2013 (exhibit 1-E, paragraph 268)

[102] Dr. Fedortchouk has filed detailed records in support of her claims including spreadsheets detailing the children's activities and her expenditures (exhibits 1-E and 60).

[103] What Dr. Fedortchouk does not calculate is her child support obligation to Mr. Boubnov from June of 2012 to August 2013. This period preceded the Court's having first defined the child support obligation of each party and each party's obligation to contribute to the special expenses of the children; an obligation consistent with the *Child Support Guidelines*.

[104] She also ignores the Court having already quantified Mr. Boubnov's share of the child care obligation as $400 each month effective July 1, 2012.

[105] The June 2012 order was a clear statement that there was a limit to what the Court was prepared to order as Mr. Boubnov's contribution to the child care expense for Anton. The order from August 2013 also explicitly communicated this by quantifying the parties' respective child support obligation and each parties' share of the special expenses of the children.

[106] Dr. Fedortchouk's claims do not acknowledge the Court's cautions.

[107] Mr. Boubnov's child care arrears for the period commencing July 18, 2011 and ending May 20, 2015 were calculated by MEP to be $1,345 (exhibit 1-A at tab 2). This 'MEP' calculation reflects the Court's order of June 2012 and Dr. Fedortchouk's reports to MEP of Mr. Boubnov's obligation prior to that.

(b) Arrears Claimed by Mr. Boubnov

[108] Mr. Boubnov filed three summaries in anticipation of his summation in this matter. These are marked as exhibits for identification purposes only. Exhibit 65 is titled, Brief of Arguments on behalf of Pavel Boubnov on the Issues Highlighted by the Court; exhibit 66 – Brief of Arguments on behalf of Pavel Boubnov and exhibit 67 – an MEP Record for the period August 6, 2014 – April 14, 2017. At the Court's request, he submitted a post-summation response to questions posed to the parties after their summations. This submission is marked exhibit 68 for identification purposes. A copy of the request of the parties is marked exhibit 69 for identification purposes.

[109] Mr. Boubnov says he made numerous direct payments to Dr. Fedortchouk for Anton's daycare in the period January – May 2011. He says they amounted to $2,000. He says he made an additional payment of $1,600 in June of 2011 and hundreds of additional dollars over the summer of 2011. He summarized his evidence on this point in his written submission filed April 5, 2017 (exhibit 65). I accept his evidence in this regard.

[110] He says Dr. Fedortchouk was not enrolled in MEP at this time and he was required to pay her directly.

[111] Mr. Boubnov says he too incurred substantial childcare expenses but Dr. Fedortchouk did not contribute any money to meeting these expenses.

[112] Mr. Boubnov says he did, in fact, contribute 50% of the cost of some special/extracurricular expenses. He did not agree with many of the other costs incurred by Dr. Fedortchouk including membership in the Waegwoltic Recreational Club.

[113] He says he paid for piano lessons for both Galina and Yakov in 2012 and he split the cost of after school care with Dr. Fedortchouk.

[114] Similarly, in 2013 Mr. Boubnov says he paid for dance classes for Galina and 50% of the piano lessons for both children. He says he continued to pay $400/month towards Anton's daycare.

[115] In 2014, he says he paid for drum lessons for Yakov; gymnastics for Yakov; and various activities for Galina. He says Dr. Fedortchouk paid for other camp activities but he was nevertheless required to pay a share of expenses she incurred.

[116] Mr. Boubnov says he has paid for Galina to attend a private Halifax school since September 2015. The cost has been substantial. He paid a deposit of $1,000 and $1,460 per month for the four months over the fall and into 2016. He says the cost to him was $15,000. In addition, he says he paid for other expenses.

[117] Mr. Boubnov explained that the child support he received from Dr. Fedortchouk and other child related government benefits were all directed to activities for the children including to the private school. These funds permitted him to meet these obligations.

[118] In 2017, he says the private school costs were $1,500/month. It appears a bursary may reduce the cost to $7,000 - $9,000 for the period 2017 – 2018.

[119] Mr. Boubnov says he has exceeded his obligation to contribute to the children's special expenses. He says this is particularly true when one considers his income is typically 30-40% of that earned by Dr. Fedortchouk. In 2015 and 2016 he says his earnings were in the range of 25% - 28% of Dr. Fedortchouk's income.

[120] Mr. Boubnov says he is owed a total of $56,686 by Dr. Fedortchouk (exhibit 66). He arrives at this number by listing obligations to him and crediting Dr. Fedortchouk with other amounts he concedes he owes:

> Equalization payment - $47,200 ($40,000 + 3% interest); plus MEP arrears owed by Dr. Fedorchouk - $14,524 = Sub-total $71,210
>
> Less his arrears of $1,400
> Less Dr. Fedortchouk's overpayment when Arsenij was no longer a dependent - $3,280
> Less his contribution for Yasha's attendance at the Russian Math School - $2,000
> Less $500 due from him Galina's orthodontics and $600 due from him for Galina's water polo

Sub-total: $7,780

Total: $56,686

[121] In this written summary, he does not quantify what, if any amount, he is owed by Dr. Fedortchouk as a contribution to the cost of Galina's private school. This obligation, if treated by Mr. Boubnov on the same basis as Dr. Fedorchouk views special expenses incurred by her and for which she claims a contribution from Mr. Boubnov, would be an additional claim by Mr. Boubnov of many additional thousands of dollars. Mr. Boubnov says he used the child support he received to assist in paying Galina's tuition.

[122] He says to May 2017 his MEP arrears payable to Dr. Fedortchouk are reduced from $14,524 to $6,744 as a result. The total arrears therefore are the equalization payment of $47,200 plus $6,744 = $56,686.

[123] The arrears of Dr. Fedortchouk payable to Mr. Boubnov as shown on the records of MEP reached $9,512.18 as of April 23, 2015 (tab 20 of exhibit 1-A). By order made on May 27, 2015, suspension of the collection of arrears she owed was ordered and her ongoing support obligation was reduced to a total of $1,350 from $1,760. The change in amount reflected the fact the oldest child was now independent.

[124] After considering offsets after May 2015, there was an ongoing obligation of Dr. Fedortchouk to pay $864 per month to meet her child support obligation to Mr. Boubnov effective May 2015.

[125] Mr. Boubnov's obligation (outlined in the August 2013 order) to pay $336 per month as ongoing child support for Anton; $400 for ongoing child care and $250 towards any arrears (outlined in the June 2012 order) of child care continued uninterrupted until August 2017.

X. Child Support/Children's Residences

[126] As stated, the child support obligations of the parties and conclusions as to the residency of the children following separation fall within the following defined periods. They are:

(v) separation in October 2010 to order dated June 20, 2012
(vi) pre-sabbatical period June 20, 2012 – August 31, 2013
(vii) sabbatical year September 1, 2013 – August 31, 2014
(viii) post sabbatical period September 1, 2014 - August 31, 2017

[127] As earlier noted at paragraph 51, clauses 23 and 24 of the parties' 2010 separation agreement provided that there was no requirement for a formal child support payment and secondly, the three older children were in a shared parenting arrangement and the youngest child was in the primary care of the mother.

[128] I am satisfied this provision does not bind the Court. It does not provide for reasonable arrangements for the care of the children. The *Divorce Act*, S.C. 1985 c.3 (2nd Supp.) at s.15.1(3) requires the Court to apply the *Child Support Guidelines*. The Court's authority to deviate from the *Guidelines* is contingent on a finding that the children are otherwise provided for adequately, s.15.1(5) and s.15.1(7) and (8).

[129] In addition to providing that no child support would be payable by either party, the December 2010 separation agreement provided that the three older children would be in a shared parenting arrangement; the youngest child would be in the primary care of the mother (clauses 16 and 23 of the separation agreement – exhibit 1-A at tab 1).

[130] As already observed, each party soon sought to have the terms of the agreement varied to require a proportionate sharing of special expenses and each sought child support. I take the May 2011 Court filings as notice to each that the terms of the separation agreement might be altered.

[131] Herein, I am persuaded the *Child Support Guidelines* should have been applied effective July 1, 2011, this being the date shortly after effective notice that a change in the agreement was being sought. As stated, adequate provision was not made for the care of the children under the terms of the agreement given the income disparity between the parties as of May 2011. In addition, when registration of a separation agreement is sought, as in this case, pursuant to s.52 of the *Maintenance and Custody Act*, the Court has a duty to inquire into its efficacy. The application filed by Dr. Fedortchouk to register the agreement thereby making it a Court order and to coincidentally change the order permits this assessment.

(i) Separation: October 1, 2010 – June 30, 2012

[132] I am satisfied the December 2010 parenting arrangement described in the separation agreement more or less continued until the departure of Dr. Fedortchouk on her sabbatical except that Arsenij's primary residence was uncertain during the first year following separation.

[133] Mr. Boubnov says Arsenij was in his care since the fall of 2011 until August 2014 (see affidavit of Mr. Boubnov, exhibit 32 at paragraph 15 and his affidavit sworn December 2011, exhibit 1-A, tab 8 at paragraph 8).

[134] Dr. Fedortchouk described Arsenij as being 'back and forth' between her home and that of Mr. Boubnov to January 12, 2012 (exhibit 25, tab 2, para 17). However at paragraph 43 of exhibit 1-E, being Dr. Fedortchouk's affidavit sworn November 24, 2015, she says Arsenij lived with her until October 2011. At paragraph 30 of the same document (exhibit 25), she says he lives with his father. She says the two middle children have been in a shared parenting arrangement since separation (exhibit 25, tab 2, paragraph 17, the affidavit of Dr. Fedortchouk and exhibit 32 at paragraph 9, the affidavit of Mr. Boubnov).

[135] The parties were involved in litigation within months of concluding the separation agreement; the agreement itself being registered in May of 2011.

[136] Beginning in May 2011, Dr. Fedortchouk provided receipts to MEP for child care expenses and other special expenses incurred for the children. These receipts were the basis for MEP's enforcement action one year later, action which jeopardized Mr. Boubnov's ability to operate his law practice. She did not assert a claim for child support for the period prior to June 2011.

[137] I am not prepared to recalculate the parties' child support obligations for the period before June of 2011. However, I will apply the *Child Support Guidelines* for the subsequent period. The first variation application herein was filed in May of 2011.

[138] For the reason given at paragraphs 42-44 *supra*. I have concluded the parties' child support obligation from June 2011 to June 2012 will reflect an estimated income of $89,000 for Dr. Fedortchouk and $35,000 for Mr. Boubnov. The obligation for Mr. Boubnov will be to pay child support for the youngest child

for the entire period; for the oldest child until October 2011; and child support for the two middle children for the entire period will reflect the shared parenting situation. Similarly, Dr. Fedortchouk shall pay the table amount of support for the oldest child effective November 1, 2011 to June 2012 inclusive and she shall pay child support for the two middle children who were in a shared parenting arrangement for the entire period. This was a period of hybrid parenting and the calculation of child support will reflect that reality. This is expanded upon further at paragraphs 142-155 following.

(ii) Pre-Sabbatical Period: July 1, 2012 – August 31, 2013

[139] Effective July 1, 2012 and by order flowing from a court appearance on June 12, 2012, Mr. Boubnov was required to pay $400 per month as a contribution to the ongoing child care/special expenses for Anton and a further $250 per month on child care arrears shown on the records of the Maintenance Enforcement Program. Neither parent was ordered to pay child support. The order was issued on a without prejudice basis. As stated, Mr. Boubnov asked the Court to intervene when enforcement action by MEP put the continued operation of Mr. Boubnov's law practice at issue. To this point, the parties were following the 2010 separation agreement and the MEP enforcement action was a response to Dr. Fedortchouk's claim that Mr. Boubnov was not paying child care and other special expenses as required by the separation agreement. Although various filings refer to this financial obligation of $650 as child support, it more precisely is for special expenses, $400 as ongoing and $250 on arrears accumulated to June 2012. This is not disputed by Dr. Fedortchouk (see exhibit 25, tab 13, para 11).

[140] When each parent has care of a child for more than 40% of the time, a so called shared parenting situation exists. When a shared parenting situation exists, a Court, when determining the quantum of child support, may deviate from the presumptive table amount of child support mandated by s.3 of the *Child Support Guidelines*.

[141] As stated, for a period following separation and ending in August 2013, the youngest child lived primarily with his mother; the oldest lived primarily with his father and the two middle children were in a shared parenting arrangement on a week about basis (exhibit 25, tab 2, paragraph 17 & 30).

[142] For slightly more than two years after their separation the parties' parenting arrangement was as a hybrid parenting arrangement. That is one or more children was in the primary care of a parent and one or more children were in a shared parenting arrangement. For the two periods July 1, 2011 – June 30, 2012 and July 1, 2012 – August 31, 2013 this was the case.

[143] Because the *Child Support Guidelines* do not give directions on how child support is to be calculated in a hybrid parenting arrangement divergent lines of authority have emerged. One line reflects an economies of scale approach and another line of cases reflect what is described as a two-stage approach.

[144] The two-stage approach would require the addition of the table amount of child support payable for the children in the primary care of the other parent to the net child support payable as a consequence of the child(ren) being in a shared parenting arrangement. Each calculation would be in isolation from the other. I favour the economies of scale approach. To assist the parties in learning the financial difference, for the two periods during which there was a hybrid parenting arrangement, I have provided the child support calculations after applying both the economies of scale approach and the two stage approach (paragraph 187 following).

[145] In her helpful analysis, Justice Jollimore of this court explained why she preferred the economies of scale approach (see *Harrison v Falkenham* 2017 NSSC 139 beginning at paragraph 29). That approach requires that the straight table amount of child support for each parent be determined by treating children in the primary care of the other parent and children in the shared parenting arrangement with the other parent as if they are all in the primary care of that other parent. The other parent will calculate her/his child support obligation on the same basis. The offset is then calculated.

[146] Once the offset is determined the court should apply the factors contained in s. 9(b) and (c) of the *Child Support Guidelines* and exercise discretion in determining the net child support obligation.

[147] Section 9 provides as follows:

> Shared custody
>
> 9. Where a spouse exercises a right of access to, or has physical custody of, a child for

> not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
>
> (a) the amounts set out in the applicable tables for each of the spouses;
>
> (b) the increased costs of shared custody arrangements; and
>
> (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[148] The meaning and effect of this section is explained by the Supreme Court of Canada in *Contino v. Leonelli-Contino*, 2005 SCC 63.

[149] The Contino analysis requires a consideration of the three factors enumerated in s.9. In the words of Payne (at page 321) "While Contino cautions against being formulaic, certainty, predictability and a minimization of opportunities for conflict between the parties may be overriding considerations in considering go-forward calculations". Further at page 323, the authors observe: "Of particular importance under this subsection is the standard of living for the children in each household: to the extent that it is practicable, children should not suffer a noticeable decline in their standard of living" between households.

[150] These comments are relevant to the Court's analysis when the Court is called upon to determine the quantum of child support and sharing of the cost of special expenses. This is discussed in the following.

[151] In many cases, trial Judges when called upon to determine the child support obligations of parties in a shared parenting arrangement will order an offset amount. Given the extensive evidence of the financial and other circumstances of the parties herein which I do have, I am satisfied offsetting child support is the appropriate outcome after applying the factors mandated by s. 9 of the *Child Support Guidelines*. Dr. Fedortchouk's income has been between two (2) and three (3) times the income of Mr. Boubnov since separation.

[152] The result is a significant net child support obligation for Dr. Fedortchouk until August 2013. Thereafter for 2013-2014 the obligation remained significant as was quantified in the decision dated August 2013.

[153] Clearly had the parties applied the principles of the *Child Support Guidelines* when concluding their separation agreement and had they conducted a 'Contino' analysis, Dr. Fedortchouk, as the higher income parent, would have had a significant net financial obligation to Mr. Boubnov for two children in this shared parenting arrangement, plus a support obligation for the oldest child.

[154] Mr. Boubnov would have an obligation to pay support for the youngest child who lived primarily with Dr. Fedortchouk.

[155] I am satisfied the appropriate child support obligations for the period June 2012 – August 31, 2013 should be calculated on the basis of a hybrid parenting arrangement using the economies of scale approach.

[156] The parties' estimated incomes for this period were approximately $85,000 (Dr. Fedortchouk) and $33,000 (Mr. Boubnov).

[157] Their respective child support obligations will reflect these incomes.

(iii) Sabbatical Year: September 1, 2013 – August 31, 2014

[158] As stated, my August 2013 decision addressed Dr. Fedortchouk's application to take the children with her when she was to be on sabbatical for the 2013 – 2014 academic year. She was ultimately permitted to take the youngest child with her but the other children remained in the care of Mr. Boubnov beginning September 1, 2013. The Court defined the parties' child support obligations and their respective obligations to contribute to the special expenses of the children beginning in September 1, 2013.

[159] Sub-paragraphs 183(8), (9) and (10) of the 2013 decision are therefore the starting point when determining the parties' child support obligation since September 1, 2012 [should read 2013]:

> [183] Given the foregoing conclusion, the following is also ordered:
>
> 1. Mr. Boubnov's obligation to pay part of the ongoing child care expense and arrears of the same is continued. This obligation is reflected in an order of this Court dated June 20, 2012.

Any other obligation on Mr. Boubnov to pay Dr. Fedortchouk for past or ongoing child care expenses is suspended.

Mr. Boubnov has been subject to an order to pay $650 per month for child care (ongoing and arrears) since June 2012.

2. Primary care of the parties' children Arsenij, Galina and Iakov is to rest with Mr. Boubnov.

3. Primary care of the child Anton is to rest with Dr. Fedortchouk. She is authorized to travel with and keep him in her custody while she is in Europe on sabbatical between September 1, 2013 and July 1, 2014. For the month of August 2013, Anton shall be cared for by Mr. Boubnov. During the month of August 2013 Galina and Iakov are to be in their mother's care and the Court is told she proposes to travel with them to Europe. She is planning to return to Halifax in early September 2013 at which time she will take custody of Anton.

4. While each parent has primary care of a child or children until July 1, 2014, that parent will make decisions as to the care and activities of the children. Any changes in the current education plan for Galina and Iakov must be communicated to Dr. Fedortchouk by Mr. Boubnov. Any health or other significant issues pertaining to any of the children shall be communicated to the other parent in a timely way.

5. In the event that Dr. Fedortchouk returns to Halifax after December 2013 with a view to remaining, the shared parenting arrangement for Galina and Iakov shall not be reinstated.

   The parties are directed, however to cooperate to ensure the middle children will maximize their time with Dr. Fedortchouk over the winter of 2014. The Court is concerned that a requirement that shared parenting be reinstated will result in more disruption for the children and more conflict. A final divorce hearing in June or July 2014 will resolve the issue of the children's parenting into the future.

   The Court is concerned that financial considerations are a significant factor influencing the position of each parent and the plan put forward for the children. More specifically, the child support implications and the potential requirement to contribute to the special expenses for the children are burdens each parent wishes to avoid.

6. The parties are directed to not discuss this litigation or any of the evidence offered or arguments made by either party with the children.

They are directed to actively protect the children from being exposed directly or indirectly to their conflict.

7. If either parent has the opportunity to spend time with a child in the other parent's care because of a short visit to Europe or Nova Scotia as the case may be, the parties shall cooperate to ensure access occurs.

8. The Court is aware of the provision of the separation agreement pertaining to the payment of the child care expense for Anton. Dr. Fedortchouk is reminded that any child care arrangement she makes for Anton must be reasonable and economical. She is advised that her decisions in this respect may come under Court scrutiny.

9. Effective September 1, 2012 [2013], the parties will be under an obligation to pay ongoing child support to the other. Dr. Fedortchouk will earn approximately $80,000 as salary during her sabbatical and $4,200 per month for the seven months she will be in Zurich. She will also have free accommodation in Zurich. In addition, she will earn approximately $27,000 over the year in rental income (before deductions).

   For the purpose of determining her child support obligation I am determining her annual salary to be $100,000. I fix Mr. Boubnov's salary at $40,000. This I do on a without prejudice basis given that the parties' financial history needs to be more fully explored and adjustments can be made at that time.

   This will be a split custody situation. On this basis, the offsetting child support obligation payable by Dr. Fedortchouk is $1,434. This reflects Mr. Boubnov's obligation to pay $336 for one child in Dr. Fedortchouk's care and Dr. Fedortchouk's obligation to pay $1,760 for three children in Mr. Boubnov's care.

   Dr. Fedortchouk is also ordered to contribute $500 per month as a contribution to the special expenses of the children, including child care commencing September 1, 2013.

   Both parties are directed to maintain complete records of their expenditures on the children. Neither has blanket authority to incur expenses without consulting the other. Each should be aware that, at a later date, an expense may be ruled as excessive and not shareable as an obligation of the other parent. (emphasis added)

10. The total calculation is therefore as follows:

> $650 payable by Mr. Boubnov for [child] care of Anton as per June 2012 order ($400 ongoing and $250 on arrears)
>
> $336 child support for Anton
>
> $986 payable by Mr. Boubnov
>
> $1,760 child support payable by Dr. Fedortchouk
>
> $500 for special expenses for the children
>
> $2,260
>
> The net amount payable by Dr. Fedortchouk is therefore $2,260 - $986 = $1,274. This shall be paid to Mr. Boubnov commencing September 15, 2013
>
> The Court has estimated special expenses in an effort to avoid further litigation and to provide certainty for this family until the final hearing in June/July 2014.

[160] I am not prepared to now redefine the parties' child support obligation for the period September 1, 2013 to August 31, 2014. I am satisfied the foregoing order dated August 2013 correctly and fairly reflected an appropriate outcome given the 2013-2014 circumstances of the parties, including the incomes of the parties.

[161] Dr. Fedortchouk asks the Court to accept that her income while in Europe and on sabbatical was in fact less than the $100,000 in Canadian funds attributed to her in August 2013 when the Court was determining her child support obligation while away (exhibit 1-E, paragraph 257). The Court's conclusion at the time reflected its belief that $100,000 was on the low range of what her income would be. That conclusion remains unaltered.

[162] Dr. Fedortchouk says she did receive compensation in a European currency. She complained that the cost of living in Europe was higher than Halifax and this mitigated in favour of this Court concluding her income was effectively in a lower range than determined by the Court in August of 2013.

[163] I am not satisfied with her candor about the benefits she was receiving while in Europe. In addition throughout the trial, Dr. Fedortchouk showed a lack of insight into her behaviour and offered lengthy rationalizations of her choices, many of which, in my view, were not consistent with the evidence. For example, as already noted, she offered conflicting accounts of the circumstances surrounding the termination of the medical coverage for Mr. Boubnov. She was not forthright about her income while overseas. She refused to contribute to Galina's private school costs and continues to do so. She says she cannot afford the cost yet rejects that justification when offered by Mr. Boubnov as a basis for his unwillingness to contribute to the cost of the Waegwoltic Club membership or some of the other costs for which she claims a contribution from Mr. Boubnov. Her evidence was clearly coloured by her contempt for Mr. Boubnov. Her evidence clearly had, as an objective, recouping 50% of the cost of all activities the children were involved in, regardless of the Court's orders of August 2013 and June 2012 and her request of the court in 2011 that court order that the sharing of these expenses be proportionate to the parties' incomes.

[164] In addition, she did not account for the fact of her receiving rental income while away. Although she declares the rental activity as if it is a net loss, clearly there is a benefit to her for pursuing this activity. It is a business pursuit that yields a financial benefit to her.

[165] The evidence of the parties is contradictory and it is impossible to determine what the parenting reality was during each month of this period. Regardless, the Court is not prepared to engage in a month by month recalculation of the parties' obligations to reflect the amount of time each child spent with each parent in a given month over this period. Such an approach would open the flood gates and invite frequent court intervention in families when short term or temporary changes in the allocation of parenting time occurs. Such an approach removes certainty and predictability in parents' affairs, results in endless litigation and denies access to the courts for many other families with pressing needs. Frequent and multiple applications to vary one's financial obligations, as a parent, is inconsistent with the philosophy of the child support recalculation program. Although the parties' child support order is not enrolled in the program, I take some guidance from the philosophy of that program. That program provides for annual recalculations of support obligations by administrative personnel.

[166] The order dated September 2013 contemplated a final divorce hearing over the summer of 2014. That did not occur. I therefore find the fairest approach is to calculate the parties' respective support obligations over twelve (12) months, September 1, 2013 – August 31, 2014. Given Dr. Fedortchouk's summary filed April 21, 2017 at paragraph 95 provides a parenting schedule that shows three of the children in the primary care of Mr. Boubnov from September 1, 2013 – August 31, 2014. This then appears to be conceded. Regardless the evidence establishes on a balance of probabilities the three oldest children were in Mr. Boubnov's primary care and the youngest was in Dr. Fedortchouk's primary care over the period, September 1, 2013 – August 31, 2014.

[167] I am also satisfied the level of annual income for each party over this period was as determined in August 2013 and outlined at paragraph 84 *supra*.

[168] With respect to the amount of money each party should have contributed to the other as a share of the child care expense and other special expenses for the children over the period September 1, 2013 – August 31, 2014. I am satisfied the contributions ordered in August 2013 are a fair and reasonable contribution given the factors I must consider as mandated by s.7 of the *Child Support Guidelines*. The assessed 2013, s.7 obligation of these parties to the other is confirmed.

[169] In conclusion, the parties' respective support obligations for the sabbatical year remain as defined in the order issued in August 2013 (paragraph 159 *supra*).

(iv) Post Sabbatical Years – September 1, 2014 – August 31, 2017

[170] The following conclusions pertain to the three-year period following Dr. Fedortchouk's completion of her sabbatical year of study, September 1, 2014 – August 31, 2017.

[171] I find the primary care of the children for the period following August 31, 2014 and the consequential child support obligations and obligation to contribute to special expenses to be as outlined in the following.

- **Anton**

[172] Anton has been primarily resident with his mother throughout and continues to be. Mr. Boubnov's child support obligation to Dr. Fedortchouk for Anton for each year of this period will reflect his line 150 income for that year.

- **Galina and Yakov (also referred to as Yasha)**

[173] Galina was primarily resident with Mr. Boubnov from August 31, 2014 to October 2016. I find that there were weeks over this period when Galina lived with Dr. Fedortchouk but her time with her mother, as measured on an annualized basis (September – August) did not approach 40%. Galina's primary care has been with her father at least since August 2013 until October 2016. For this period, child support was payable by Dr. Fedortchouk to Mr. Boubnov for the care of Galina. Thereafter, Mr. Boubnov has been obliged to pay child support to Dr. Fedortchouk for Galina.

[174] Galina's primary care shifted to Dr. Fedortchouk in October 2016 as claimed by both parties.

[175] Yakov has been primarily resident with his father for the entire period after August 31, 2014 and continues to be primarily resident with his father.

- **Arsenij**

[176] Arsenij was in the primary care of Mr. Boubnov from at least October 2011 until August 31, 2014 when he moved to his mother's home (see paragraph 24, summary of Dr. Fedortchouk filed April 21, 2017). He reached nineteen (19) years of age on September 8, 2014. No child support obligation exists for the period following his nineteenth (19^{th}) birthday given he ceased being a child of the marriage as defined by the *Divorce Act* upon reaching nineteen years of age. At paragraph 190 of her submission filed April 21, 2017 (exhibit 62), Dr. Fedortchouk confirms he was not in school. Although she describes him as remaining dependent on her, I am satisfied he was not in fact a child of the marriage as defined by the *Divorce Act* after becoming nineteen years of age.

[177] At paragraph 7 of the same summary, she says Arsenij took two high school exams in 2016. At paragraph 126(3) she says he regained dependency in January 2017.

[178] However, the evidentiary basis to support his having regained his status as a child of the marriage, has not been presented to the Court. For this reason, the conclusions herein reflect his no longer being a child of the marriage after he reached nineteen (19) years of age.

XI. Child Support Summary – July 1, 2011 – August 31, 2017

[179] The separation agreement provisions respecting child support are inconsistent with the *Divorce Act* and the *Child Support Guidelines* and uncertain as discussed earlier. Both parties sought to replace the relevant clauses in the separation agreement by the regime contained in the *Child Support Guidelines*. They sought this change within months of signing the agreement. In early 2011, each had notice that change was desired. In their respective summations, they also make claims for child support on the basis of the *Child Support Guidelines*.

[180] I agree that the *Child Support Guidelines* should govern my determination of the parties' child support obligations since June 30, 2011.

[181] The following calculations reflect the foregoing conclusions.

[182] I have considered Dr. Fedortchouk's argument that income should be imputed to Mr. Boubnov as permitted by s.19 of the *Child Support Guidelines*. The basis of her claim is an allegation that Mr. Boubnov unreasonably deducts expenses from income and secondly, that he works for undeclared income.

[183] Dr. Fedortchouk does not have persuasive evidence in support of either allegation or any other basis for the Court to be satisfied income should be imputed to Mr. Boubnov.

[184] As Mr. Boubnov explained, he was required to travel to rural parts of Nova Scotia to represent clients and he was often paid legal aid certificate rates and he was subject to the fee ceilings.

[185] Dr. Fedortchouk has trouble believing lawyers in private practice often struggle to earn an income to support a law practice and a family.

[186] The following child support calculations reflect the obligations during six (6) periods. The first period is July 1, 2011 to June 30, 2012 , a period during which a court order did not require either party to pay child support or special expenses (disregarding for the purpose of this conclusion whether the registration of the separation agreement gave the agreement the effect of an order); the second period is July 1, 2012 to August 31, 2013, a 14-month period during which a Court order was in place quantifying only the financial obligation of Mr. Boubnov, but not Dr. Fedortchouk, to pay special expenses. The order did not make child support payable by either party. The third period is from September 1, 2013 to August 31, 2014, the sabbatical year, when an order quantifying the obligation of both parties to pay both child support and special expenses was in place. The fourth-sixth periods were one year in duration each beginning September 1, 2014 to August 31, 2017, a three-year period following completion of the sabbatical by Dr. Fedortchouk.

[187] The incomes of the parties as set out at paragraphs 42-44 *supra* were used to determine the table amount of child support*;* the calculations reflect the primary residences of the children as explained above.

> **Three Periods: separation to the end of the sabbatical year, August 31, 2014**
>
> A. July 1, 2011-June 30, 2012;
> B. July 1, 2012-August 31, 2013;
> C. September 1, 2013-August 31, 2014;
>
> . . . . .
>
> **A. Child Support Obligation: July 1, 2011 – June 30, 2012 (see income determination paragraph 42-44 *supra*) (12 months). A hybrid parenting arrangement existed for 12 months but the configuration differed over this period. The outcomes for both the economies of scale and the two stage approach are calculated.**
>
> July 1, 2011 - June 30, 2012
>
> Mother's Income - $89,000 (midway point between 2011 and 2012 line 150 income)
> Father's Income - $35,000 (midway point between 2011 and 2012 line 150 income)

Hybrid Parenting Arrangement

Outcome if the Economies of scale approach is followed:.

(A) For 5 months 2 children were in the primary care of Dr. Fedortchouk and 2 were in the shared parenting with Mr. Boubnov. Dr. Fedorchouk's obligation is to pay the table amount of child support for two children. Dr. Fedorchouk's income was $89,000 and the table amount is $1215 per month for 5 months.

Mr. Boubnov's obligation is to pay the table amount of child support for 4 children. Mr. Boubnov's income was $35,000 and the table amount of child support for 4 children is $810 per month for 5 months.

Setoff over the 5 months is $405 per month.

(B) Hybrid parenting arrangement existed for another 7 months but had a different configuration than the earlier five (5) months. Yasha and Galina continued in shared parenting and Arsenij was primarily with his father. Anton continued to live primarily with his mother.

Dr. Fedorchouk's child support obligation for these 7 months is for 3 children; 2 in shared and the 1 in the primary care of Mr. Boubnov. This is a table amount of $1586 per month for 7 months.

Mr. Boubnov's child support obligation for these 7 months is for 3 children; 2 in shared and the 1 child in the primary care of Dr. Fedortchouk. The table amount of $674 per month for 7 months is payable by him.

Setoff over these 7 months is $912 per month.

The total setoff over these 12 months payable by Dr. Fedortchouk was (5 x $405) + (7 x $912) = $2,025 + $6,384 = $8,409.

Having calculated the net child support obligation, I must now consider s. 9 (b) and (c) of the *Child Support Guidelines* to determine the appropriate level of child support payable:

(b) the increased costs of shared custody arrangements; and

(c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

Having considered s. 9(b) & s.9(c) I am satisfied the setoff amount was the appropriate amount payable by Dr. Fedorchouk.

Outcome if the two-stage analysis is followed:

Mother's child support obligation for two children (Yasha and Galina) in shared parenting arrangement, assuming setoff ($1,215 – $505 = $710) for 12 months = $8,520

Mother's child support obligation for one child in the father's care, October 2011 – June 2012 (Arsenij) (7 months x $750) = $5,250

Father's child support obligation for two children (Arsenij and Anton) in the mother's care until October 2011 and thereafter for one (Anton) ($505 x 5 months, then $294 x 7 months) = $2,525 + $2,058 = $4,583

Net obligation payable to Mr. Boubnov ($8,520 + $5,250) = $13,770 less $4,583 = $9,187

. . . . .

B. Child Support Obligation: July 1, 2012 – August 31, 2013 (see income determination – paragraphs 42-44 *supra*) (14 months). A hybrid parenting arrangement existed.

July 1, 2012 - August 31, 2013

Mother's Income - $85,000 (midway point between 2012 and 2013 line 150 income)
Father's Income - $33,000 (midway point between 2012 and 2013 line 150 income)

Hybrid Parenting Arrangement

Outcome if the Economies of scale approach is followed:

For 14 months 1 child was in the primary care of Dr. Fedortchouk and 1 was in the primary care of Mr. Boubnov and 2 were in a shared parenting arrangement. Dr. Fedorchouk's obligation was to pay the table amount of child support for three children. The table amount was $1,523 per month for 14 months.

Mr. Boubnov's obligation was to pay the table amount of child support for 3 children; 2 in a shared parenting arrangement and 1 in the primary care of Dr. Fedortchouk. The table amount of child support for 3 children was $641 per month for 14 months.

Setoff over the 14 months is $882 per month for a total of $12,348 over 14 months.

Having calculated the net child support obligation, I must now consider s. 9 (b) and (c) of the *Child Support Guidelines* to determine the appropriate level of child support payable:

(b) the increased costs of shared custody arrangements; and

(c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

Having considered s. 9(b) & s.9(c) I am satisfied the setoff amount was the appropriate amount payable by Dr. Fedorchouk.

Outcome if the two-stage analysis is followed:

Mother's child support obligation for two children (Yasha and Galina) in shared parenting arrangement, assuming setoff ($1,165 - $480 = $685)

Mother's child support obligation for one child in the Father's primary care (Arsenij) ($718 x 14 months)

Father's child support obligation for one child in the Mother's primary care (Anton) ($278 x 14 months)

Net obligation payable to Mr. Boubnov ($685/month + $718/month) less $278/month = $1,125/month x 14 months = $15,750

[188] During the period, September 1, 2013 – August 31, 2014 Dr. Fedortchouk was on sabbatical. Three children were in Mr. Boubnov's primary care and one in Dr. Fedortchouk's care. The parties' respective obligations each month were as follows:

C. Child Support Obligation (including special expenses) – September 1, 2013 – August 31, 2014 (see order flowing from August 2013 decision, paragraphs 158-160 *supra.*)

Mr. Boubnov	Dr. Fedortchouk
$250 on child care arrears	$500 for special expenses
$400 for ongoing child care	$1,760 as ongoing child support for three
$336 as ongoing child support	(3) children

$986 $2,260

Net obligation for both child support and s. 7 expenses and payable to Mr. Boubnov $1,274/month x 12 = $15,288.

Net obligation for child support alone and payable to Mr. Boubnov $1,760/month less $336 set = x 12 = $17,088.

Three Periods: (post sabbatical to August 31, 2017)

D. September 1, 2014 – August 31, 2015;
E. September 1, 2015 - August 31, 2016;
F. September 1, 2016 - August 31,2017;

. . . . .

[189] For the three years following the sabattical, September 1, 2014 – August 31, 2017 the s. 7 obligation was not redefined. The child support obligation based on the *Child Support Guidelines* is as detailed in the following:

D. Child Support Obligation – September 1, 2014 – August 31, 2015 (see income determination – paragraph 42-44 and exhibit 63) (12 months)

Mother's Income - $109,201* Father's Income - $40,000
*taken from her April 21, 2017 submission, exhibit 63
Mother's Child Support Obligation for two (2) children (Galina and Yakov) - $1,462 Father's Child Support Obligation for (1) child (Anton) - $336

(the oldest child was no longer a child of the marriage after his 19th Birthday on September 8, 2014)

Net Child Support Obligation payable to Mr. Boubnov $1,126/month x 12 = $13,512

E. Child Support Obligation – September 1, 2015 – August 31, 2016 (see income determination – paragraph 42-44 *supra.*) (12 months)

Mother's Income - $112,162 Father's Income - $35,000

Mother's Child Support Obligation for two (2) children Father's Child Support Obligation for one (1) child (Anton)-$294 each

(Galina and Yakov)- $1,498 each month month

Net Child Support Obligation payable to Mr. Boubnov $1,204/month x 12 = $14,448

F. Child Support Obligation – September 1, 2016 – August 31, 2017 (see income determination – paragraph 42-44 *supra.*) (12 months)

Mother's Income - $112,162	Father's Income - $35,000
Mother's Child Support Obligation for one (1) child (Yakov) – (after October Galina joined Anton and lived with their mother) ($933 x 11 months = $10,263) + ($1,498 x 1 month)	Father's Child Support Obligation for two (2) children (after October 1, 2016 Galina and Anton lived with their mother) ($505 x 11 months = $5,555) + ($294 x 1 month)

Net Child Support Obligation payable to Mr. Boubnov $1,204/month ($1,498 - $294) payable to Mr. Boubnov for one month and $428/month ($933 - $505) for eleven months = $1,204 + $4,708 = $5,912

[190] The net child support obligation of Dr. Fedortchouk and Mr. Boubnov for the six periods July 1, 2011 to August 31, 2017, not inclusive of any contribution to s. 7 expenses is as follows (paragraph 187 *infra*.):

2011 – 2012	$ 8,409 payable by Dr. Fedortchouk
2012 – 2013 (14 months)	$12,348 payable by Dr. Fedortchouk
2013 – 2014	$17,088 payable by Dr. Fedortchouk
2014 – 2015	$13,512 payable by Dr. Fedortchouk
2015 – 2016	$14,448 payable by Dr. Fedortchouk
2016 – 2017	$ 5,912 payable by Dr. Fedortchouk
	$71,717.00 Total

[191] For the current year, 2017-2018, the child support obligation is as outlined in the decision of this Court dated August 30, 2017 and is confirmed as a net obligation of $483/month payable by Dr. Fedortchouk.

XII. Special and Extraordinary Expenses Summary

[192] It is worth repeating that section 7 of the *Child Support Guidelines* limits the Court ordered obligation on a parent to contribute to the cost of special expenses to *inter alia* all or any portion of an expense after considering how

necessary the expense is having regard to a child's best interest and how reasonable the expense is in relation to the means of the spouses.

[193] The Court has considerable discretion when evaluating retroactive claims for special expenses. The following comments of Justice Jesudason in *Boylan v. MacLean*, 2018 NSSC 15 are relevant:

> 169. Retroactive claims for s.7 expenses are different from retroactive claims for basic child support. Unlike basic child support, there is no inherent obligation on a parent to pay for same. Julien D. Payne and Marilyn A. Payne, in *Child Support Guidelines in Canada,* 2015 (Toronto: Irwin Law Inc., 2015), make this point as follows:
>
> Many of the policy issues and factors that are addressed in relation to retroactive basic child support are also applicable to claims for a contribution to section 7 expenses […] However, there is one fundamental difference. Basic child support reflects the right of the child to have his essential needs met. Extraordinary expenses […] are not a basic right of the child and there is no inherent obligation in the parents to pay for such activities. An order for a retroactive contribution to such expenses may be deemed unfair where the [payor] had no knowledge of these expenses and had no idea that he might ultimately be called to contribute towards them […] Limits may be judicially imposed on the retroactivity of an order for a contribution to section 7 expenses so as to promote fairness in light of the attendant circumstances…(p. 462) [Emphasis added].

[194] The positions of the parties does not reasonably reflect their financial means. To illustrate, I draw attention to the ongoing private school expense for Galina. This is unaffordable for this family, notwithstanding it is in Galina's best interests to attend this school. The tuition expense (absent bursaries) amounts to $15,000 each year. Similarly, the cumulative effect of the expenses incurred on behalf of the children by Dr. Fedortchouk over the years reflect activities that benefit the children but are not affordable. The claim by Dr. Fedortchouk that Mr. Boubnov reimburse her for 50% of the cost of these expenses is unreasonable.

[195] To further illustrate the point, I draw attention to schedule 'A' to Dr. Fedortchouk's March and April 2017 submissions (exhibits 62 & 63) which detail her claim that for the period January 2016 – March 2017 Mr. Boubnov owes her $8,045.56 as his share of the children's special expenses. In 2016 Mr. Boubnov's 150 income was $35,000 and he was subject to a child support obligation to Dr. Fedortchouk in the amount of $505 for eleven (11) months and $294 for one (1) month. Mr. Boubnov was also incurring substantial special expenses for the benefit of one or more of the children through this period.

[196] Mr. Boubnov did not and does not currently have the means to fund these activities to a level of 50%, which is the level she claims. In fact, neither party can afford all of these expenses.

[197] In response to this obvious reality, the Court cautioned the parties in 2013 and in 2017 that unilateral decisions to incur expenses for the benefit of the children would not necessarily bind the other party to contribute.

[198] As noted in several places in this decision, in 2011 the parties sought a change in the separation agreement formula for sharing special expenses. Each sought a proportionate sharing of those expenses. For the reasons already given, I will be guided by s.7 of the *Child Support Guidelines* when determining the parties' obligations in this regard. I agree the sharing should be proportionate if the obligation is deemed by the Court to meet the pre-conditions of s.7 of the *Child Support Guidelines*. However, for the reasons given, I have assessed "estimated" global amounts to be paid by each party for special expenses with the principle of proportionate sharing in mind.

[199] This is the third written decision flowing from the parties' divorce proceeding. Herein, I will rule on the parties' unresolved financial issues, principally as they relate to child support and the parties' obligations, both past and ongoing, to contribute to the special expenses of the children and as they relate to the equalization payment claimed by Mr. Boubnov. Notwithstanding Dr. Fedorchouk's having sought a proportionate sharing of special expenses in 2011 the financial conclusions she provided the Court in 2017 as to what proportion of those expenses each is responsible for is based on a 50:50 sharing.

[200] The following special expense overview reflects the court ordered obligations of the parties during three periods. The first period (a) October 2011 to June 30, 2012 inclusive; (b) July 1, 2012 to August 30, 2014 when orders were in place quantifying the s.7 obligation of one or both parties. The (c) third period being 3 years in duration, from September 1, 2014 to August 31, 2017 is when, arguably, no order quantifying the obligation of either party to pay both child support and special expenses was in place. However, the order that governed while Dr. Fedortchouk was on sabbatical was enforced by the Maintenance Enforcement office for this period.

[201] The parties' obligation to contribute to the special and extraordinary expenses of the children must be determined for the periods since separation:

(a) October 2010 – June 30, 2012 inclusive
(b) July 1, 2012 to August 31, 2014
(c) September 1, 2014 to August 31, 2017:

(a) The periods October 2010 to June 30,2012; and
(b) July 1, 2012 to August 31, 2014 will be addressed together:

To June 2012 Dr. Fedortchouk placed Mr. Boubnov's special expense obligation at $6,336.73. This amount is accepted as his arrears and the Court set his ongoing obligation as $400 per month and he was required to pay $250 per month on the said arrears until the arrears were paid in full. That has occurred. Thereafter, in August 2013, when the sabbatical began, his obligation was continued as $400 per month, principally as childcare for the youngest child Anton. The Court's objective was to quantify Mr. Boubnov's obligation. The June 2012 order was granted on a 'without prejudice' basis. Given what I now know of the parties' circumstances at that time, I am persuaded that the obligation of the parties to pay special expenses should be as ordered in June 2012.

Mr. Boubnov fulfilled his obligation to June 2012 and his obligation until August 2013 was as ordered, i.e. $400 per month. Thereafter, from September 1, 2013 to August 31, 2014 his obligation is deemed satisfied on the basis of a payment of $400 each month. Dr. Fedortchouk's obligation to contribute to special expenses to September 1, 2014 was found to be $500 per month as ordered in August 2013. Certainty was also important for Dr. Fedorchouk. The amount payable by Dr. Fedortchouk was well below what a proportionate sharing of the total of the children's special expenses would be.

I am persuaded that Mr. Boubnov and Dr. Fedortchouk expended significant other sums directly on special expenses for the children.

(c) September 1, 2014 to August 31, 2017

Following the return of Dr. Fedortchouk from her sabbatical and for the period beginning September 1, 2014, substantial special expenses were incurred on behalf of the children by both parents. I am satisfied that each parent has met or exceeded any obligation the Court would impose after considering the necessity of the expense and the means of the parties. This has already been commented upon.

Dr. Fedortchouk has detailed her expenditures in painstaking detail. Mr. Boubnov has not maintained the same level of bookkeeping. However, I am satisfied he has also exceeded the obligation the Court would impose as a contribution to meeting the

> special expenses of the children since separation to August 31, 2017. His contribution to Galina's private school education itself is significant.

[202] Given the inability of the parties to agree upon future special expenses and to afford what was proposed by the other, the Court fixed an amount for special expenses in the 2012 order and again in the order flowing from the August 2013 mobility hearing. These parents nevertheless incurred expenses in excess of the budgeted amount and each now seeks reimbursement from the other parent.

[203] As stated, since July of 2012 Mr. Boubnov has been subject to an order to pay $400 per month for the child care of Anton who has been in the primary care of his mother throughout. This is a contribution to the special expenses of the children as provided by the *Child Support Guidelines*. The 2012 order quantified an obligation to pay child care, contained in their separation agreement.

[204] Mr. Boubnov has contributed to the orthodontic expense for one of the children. Mr. Boubnov has also incurred other expenses related to the children that would fall within the description of special or extraordinary. He detailed some of these in his filings (exhibits 29 & 30).

[205] In recent years, expenses paid by Mr. Boubnov have included many thousands of dollars in tuition costs he has covered to ensure Galina could attend a private school. In his oral summation, he estimated this amount as $30-$35,000 after the cost of uniforms and school trips for the child are added. I am satisfied Galina has benefited from her attendance at this school. The expenditure has been in her best interests.

[206] In her submission filed January 26, 2018 Dr. Fedortchouk, at paragraph 17, acknowledges the cost of the private school to be in the range of $15,000 each year. This is an example of a special expense incurred by Mr. Boubnov on behalf of the children without Dr. Fedortchouk's consent and she has not contributed to meeting this cost. In balancing the equities between the parties, it is relevant that each incurred significant expenses on behalf of the children without the agreement of the other. This observation seems to be lost to both parties.

[207] Similarly, many of the expenses claimed by Dr. Fedortchouk are outside what I would order to be shared. Like Mr. Boubnov's expenditure for private schooling, Dr. Fedortchouk has chosen to incur many thousands of dollars of

expenses that have permitted the children to participate in special or extraordinary activities. Many of these expenses are unaffordable.

[208] Clearly, the parties took the view that each had full discretion to decide upon activities for the children and was entitled to a 50% contribution to the cost, as of right, from the other. They were mistaken in this respect and despite cautions from the Court, disregarded this constraint.

[209] I have already observed that clause 26 of the separation agreement is unenforceable; that shortly after signing the separation agreement, the parties both sought to abandon this clause in favour of a proportionate sharing of special expenses. They both sought an application of the *Child Support Guidelines* dealing with both child support and special expenses. I have done that.

[210] In her 2011 application, Dr. Fedortchouk sought a proportionate sharing of these expenses.

[211] As detailed at paragraph 101 *infra* Dr. Fedorchouk says for special expenses alone Mr. Boubnov owes her $47,855 to March 2017; that she is owed an additional $35-$40,000 as a payment or a credit because she claims she overpaid child support in the range of $30,000. In addition to this $30,000 she says she over paid child support of $4,400 for Arsenij because he was in her care for a period for which she was assessed a child support obligation for him and finally she says Mr. Boubnov claimed the child tax credit for periods when she should have been receiving it. Additional background to the claim is contained in Dr. Fedorchouk's submissions marked as exhibit 63.

[212] In contrast, the court calculated Dr. Fedorchouk's net child support obligation from July 1, 2012 to August 31, 2017 to Mr. Boubnov to be $71,717 (paragraph 190 *infra*.). She paid significantly less than this.

[213] The MEP records reflecting the obligations of the parties for the period July 18, 2011 to September 10, 2013, as far as the obligations of the parties were known by the MEP office. The records show a balance owing by Mr. Boubnov in the amount of $1,345 on September 13, 2013 (see MEP record of payments shown at tab 2 of exhibit 1-A). This calculation reflected the court order from June 2012 which required Mr. Boubnov to pay $250 on the arrears due for special expenses and an obligation to contribute $400 on an ongoing basis for special expenses to

the end of August 2013. That order did not address the obligation of the parties to pay ongoing child support nor did it quantify Dr. Fedorchouk's obligation to pay special expenses.

[214] The MEP record to the end of the sabbatical year in early August 2014 shows the opening MEP balance of $14,014 owed by Dr. Fedorchouk (exhibit 67). By April 1, 2017 the balance was $5,012. (A partial record for the period, August 2014-April 2015 appears at tab 12 of exhibit 23.)

[215] The MEP records can confirm what amount has been paid following the end of the sabbatical. Those records (exhibit 1-A and exhibit 67) show that Dr. Fedorchouk paid $21,415.82 as net "child" support from August 31, 2014 to April 1, 2017 as per the order dated August 31, 2013. Note the amount of $21,415.82 reflects setoff and has a component attributable to her obligation to pay a share of special expenses and also reflects a setoff of child support. As a result, the actual child support paid by her is increased by the amount of the setoff attributable to child support payable to her. Similarly, it is reduced after the component of the money received by MEP from her to reflect a component which is her obligation to pay Mr. Boubnov a share of special expenses. The August 2013 order specified child support and special expenses to be paid by both parties and it ordered setoff.

[216] Given all of the foregoing Mr. Boubnov was never under a net obligation to pay child support to Dr. Fedorchouk. For all years since separation Mr. Boubnov's child support obligation when offset against the child support obligation of Dr. Fedorchouk results in a net child support payment to him from Dr. Fedorchouk.

[217] I find that to August 31, 2017 the parties have satisfied their obligations to contribute to the special expenses of the children.

[218] Mr. Boubnov claimed $56,686 as the amount owed to him by Dr. Fedortchouk (paragraph120 *infra.* and exhibit 66). Of this amount, $47,200 is the equalization payment of $40,000 plus interest on it. In his oral submission on May 9, 2017, Mr. Boubnov corrected his written submission. His new claimed amount owed is $16,057.27 in addition to the $47,200 equalization payment. This is considerably less than what Mr. Boubnov would *prima facie* be entitled to after applying the *Child Support Guidelines* to determine the parties' child support

obligations, including the sharing of special expenses for the period since separation.

[219] However, prior to determining whether Dr. Fedortchouk should pay the full amount the court has determined she owes I will embark upon an analysis of the hardship any award would cause to her and its impact on the children. Such an assessment is consistent with the Supreme Court's direction in *D.B.S. v. S.R.G.*, 2006 SCC 37. In particular, attention is drawn to paragraphs 95 and 114-116:

> 95. It will not always be appropriate for a retroactive award to be ordered. Retroactive awards will not always resonate with the purposes behind the child support regime; this will be so where the child would get no discernible benefit from the award. Retroactive awards may also cause hardship to a payor parent in ways that a prospective award would not. In short, while a free-standing obligation to support one's children must be recognized, it will not always be appropriate for a court to enforce this obligation once the relevant time period has passed.
>
> 114. While the Guidelines already detail the role of undue hardship in determining the quantum of a child support award, a broad consideration of hardship is also appropriate in determining whether a retroactive award is justified.
>
> 115. There are various reasons why retroactive awards could lead to hardship in circumstances where a prospective award would not. For instance, the quantum of retroactive awards is usually based on past income rather than present income; in other words, unlike prospective awards, the calculation of retroactive awards is not intrinsically linked to what the payor parent can currently afford. As well, payor parents may have new families, along with new family obligations to meet. On this point, courts should recognize that hardship considerations in this context are not limited to the payor parent: it is difficult to justify a retroactive award on the basis of a "children first" policy where it would cause hardship for the payor parent's other children. In short, retroactive awards disrupt payor parents' management of their financial affairs in ways that prospective awards do not. Courts should be attentive to this fact.
>
> 116. I agree with Paperny J.A., who stated in *D.B.S.* that courts should attempt to craft the retroactive award in a way that minimizes hardship (paras. 104 and 106). Statutory regimes may provide judges with the option of ordering the retroactive award as a lump sum, a series of periodic payments, or a combination of the two: see, e.g., s. 11 of the *Guidelines*. But I also recognize that it will not always be possible to avoid hardship. While hardship for the payor parent is much less of a concern where it is the product of his/her own blameworthy conduct, it remains a strong one where this is not the case.

[220] After consideration of all of the factors identified by the Supreme Court, the continuing financial stress under which the parties live, the children's

circumstances, and the respective equities I will reduce my assessment of Dr. Fedortchouk's liability to the level sought by Mr. Boubnov. In my view this is a substantial benefit to Dr. Fedortchouk and the children.

[221] The *Child Support Guidelines* (s.11) provide for a lump sum payment of support. On a go forward basis commencing September 1, 2017 each party is directed to identify special expenses for the children each prefers and they are to spend a budgeted amount. In the case of Mr. Boubnov that amount is $300 per month and in the case of Dr. Fedortchouk $500 per month on the special expenses of the children. The expenses need not be apportioned among the children. For example, Mr. Boubnov's expenditure for private school for Galina exceeds his current obligation under this regime. No other s. 7 expense contribution is ordered for either party.

[222] The parties are required to account to each other for these expenditures and to provide an itemized list that confirms the expenditures. This shall be exchanged on or before August 31 each year.

[223] It is acknowledged that this direction for a global amount expended solely at the discretion of each party is unusual. However, given the history of these parties all opportunities for conflict must be removed or minimized if possible.

XIII. Costs

[224] Each party seeks costs.

[225] Dr. Fedortchouk seeks costs because Mr. Boubnov served notice of his intention to set aside the parties' separation agreement. Time reserved for that matter in June 2013 was lost because Mr. Boubnov did not finalize his application. He later abandoned that application (exhibit 1-A, tab 13).

[226] Mr. Boubnov says Dr. Fedortchouk's conduct of this litigation caused it to last many days more than was necessary and costs should be awarded against her because of that.

[227] Of course, each assumes they will be the more successful party and each presumably seeks costs on that basis as well.

[228] The parties are directed to file any additional submissions on costs on or before April 20, 2018. Submissions must be provided to the other side on or before they are filed with the Court.

XIV. Conclusion

[229] The ongoing child support calculations in the decision dated August 31, 2017 reflect Mr. Boubnov having an income of $33,000, not $35,000. Herein at paragraph 42, I set Mr. Boubnov's income at $35,000. The child support obligation of Mr. Bobnov is recalculated effective August 31, 2017 as $505/month reflecting his now determined income of $35,000. This results in a revised offset of $458 ($963 - $505) payable to Mr. Boubnov by Dr. Fedortchouk. Dr Fedortchouk will receive a credit of $25 for each month since August 31, 2017 when she paid the higher offset amount which was $483 per month.

[230] The ongoing obligation of the parties to contribute to the special expenses is set at a global amount as explained *infra* at paragraph 221: $300 for Mr. Boubnov and $500 for Dr. Fedorchouk. Each will select the expenses to which this is applied and account to the other on or before August 31 of each year and provide copies of receipts to the other confirming evidence that they have made the expenditures.

[231] A pension division order will issue providing Mr. Boubnov with a 50% interest in the Dalhousie University pension entitlement of Dr. Fedorchouk earned to October 1, 2010 the date of the parties' separation.

[232] Dr. Fedorchouk is directed to pay Mr. Boubnov an equalization payment reflecting the parties' separation agreement. This shall be paid on or before June 30, 2018. The equalization payment which amounted to $47,200 as of summation in this matter (paragraph 35) shall be adjusted to reflect the increase in this obligation since then to the date the equalization payment is made.

[233] Dr. Fedorchouk's other financial obligation to Mr. Boubnov is $16,057.27. It is recognized as arrears of child support owed by her and it shall be paid by Dr. Fedorchouk at a rate of $200 each month commencing May 1, 2018 until paid in full.

[234] Finally, Dr. Fedortchouk is directed to reinstate Mr. Boubnov on her medical plan as soon as possible and to apply to do so within two (2) weeks of this decision.

ACJ