

CANADA / JUDGMENT

A.B. v. C.D.

2023 BCSC 1578

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1578 A.B. v. C.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.B. v. C.D.,

2023 BCSC 1578

Date: 20230907

Docket: E200208

Registry: Vancouver

Between:

A.B.

Claimant

And

C.D., HSL Properties Inc. and 1134561 B.C. Ltd.

Respondents

Before: The Honourable Madam Justice Burke

Reasons for Judgment

Counsel for the Claimant:

T.R. Bell

M. Wyant

The Respondent C.D., appearing in person:

C.D.

Place and Date of Trial/Hearing:

Vancouver, B.C.

February 6, 13-17, 23-24, and 27-28;

March 1 and 6; April 24-26;

May 1-5, 15-17, and 19; June 8-9; July 26-28; and August 4, 2023

Place and Date of Judgment:

Vancouver, B.C.

September 7, 2023

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I. Introduction

- [1] This is a difficult, high-conflict family law proceeding where the best interests of three children are the primary issue before the court. The case involves complex issue of alienation and reunification. Ultimately, as in the reasoning in *M.S.R. v. D.M.R.*, 2022 BCSC 1398, the Court is faced with the dilemma created by a favoured parent, the resolution of which requires a choice between two possible harms.
- [2] The claimant A.B., a physician, is 43 years old. The respondent C.D., a high school counsellor and property developer, is 42 years old.
- [3] The parties were married on August 30, 2003, in Surrey, British Columbia. They separated on January 3, 2020, after almost 17 years of marriage.
- [4] As there are children of the marriage who are young, and as per the parties' request, I will anonymize these reasons in order to protect their privacy. I will refer to the claimant mother as A.B. and the respondent father as C.D. I have also eliminated names of certain institutions which may identify the individuals.
- [5] The parties have three children: X, Y, and Z. X was born in May 2008 and is currently 15 years old. Y was born January 2013 and is currently 10 years old. Z was born in November 2013 and is currently nine years old.
- [6] On March 26, 2020, the parties entered into a parenting agreement in which they agreed to share parental responsibility and parenting time of the children pursuant to a 2-2-5-5 schedule, as well as terms related to conduct and communication.
- [7] Shortly after the parenting agreement was entered into in March 26, 2020, problems with X began to emerge. In May 2020, X began to be resistant to having contact with her mother. This resistance became more acute in the fall of 2020, and culminated with an event of December 2020. Until very recently, X had not seen her mother in two and a half years.

- [8] As part of the litigation process, Mr. Robert Finlay prepared a s. 211 report dated October 7, 2021. In that report he made various recommendations, including reunification therapy for X and her mother.
- [9] Despite multiple attempts by the claimant and the involvement of various professionals, including parenting coordinators and counsellors, the claimant has not had parenting time with X since January 2021, other than a brief period very recently in June 2023, in which X was in the care of her maternal aunt and spent time with the claimant prior to returning to the care of the respondent.
- [10] The claimant says each time there is a glimmer of progress in reuniting X and her mother, the respondent has withdrawn from or otherwise frustrated process.
- [11] The claimant identifies a number of issues concerning the children, including what she says is the unjustified rejection of the claimant by X and the manner in which the respondent's direct and indirect actions or inaction have empowered X since shortly after the separation and have allowed her to make decisions that went unchallenged far earlier than she ought to have been permitted to do so.
- [12] In addition, the claimant points to the frailty of the two younger children, who are harbouring their own unresolved trauma related to the breakdown of the marriage and face the real risk that they will follow the same path as X, given what appears to be an ongoing negative portrayal of the claimant in the respondent's home by both him and X, who C.D. permits to disparage A.B. to her sisters.
- [13] A.B. seeks a number of orders aimed at establishing a parenting arrangement that is in the best interests of the children and includes a robust reunification program between X and her mother. In conjunction with this, the claimant seeks conduct and other orders.
- [14] C.D. opposes these orders and maintains that the existing 2-2-5-5 parenting arrangement, entered into by the parties in March 2020, should be maintained and is working well. At the conclusion of the proceedings, however, he sought primary care of X.
- [15] The claimant says however the test for change in circumstances is easily met on the evidence, as the scope of events since March 2020 was neither contemplated nor foreseen by the parties at the time of the agreement.
- [16] While the claimant is not a perfect parent, her capacity to parent and her genuine desire to be a good parent have not been challenged by anyone but the respondent. It is the respondent who points continuously to what he says are the claimant's failings as a parent. Indeed, this is a pattern of his: He points regularly to others as being responsible for any issues, including blaming his counsel when questioned by the court as to why his 15-year-old daughter filed two recent affidavits in these proceedings, despite knowing well that his children should be protected from involvement in court proceedings.

- [17] The claimant argues this case is actually about the capacity of the respondent to parent. While he can provide the necessities of life and attend to the children's physical needs, he does not or cannot objectively put the children's interests first. He cannot act in good faith, as he only seems aware of his own needs, not those of others--including his children.
- [18] Essentially, the claimant argues the respondent has controlled and dominated the claimant prior to separation, both emotionally and physically, and his need to do so after separation is unchanged. He adapted and exercised control by framing the narrative early on to paint the himself as the victim; leveraging the children and the claimant's relationship with them to punish her for speaking honestly about her marriage; and controlling their co-parenting, including manipulating both the children and the s. 211 report process through an ongoing pattern of deceit. Finally, he has consistently tied the ability of the claimant to retrieve the broken relationship with X to having contact with him.
- [19] This issue of communication is a clear example of this controlling behaviour. The claimant has begged him not to communicate with her through counsel, but he simply refuses. He continuously hides behind an agreement made at a different time, when the claimant thought he could change. The respondent believes he alone knows best. He has persistently done whatever he can to ensure his beliefs are followed and is a highly skilled manipulator. He is a self-absorbed person who looks at parenting through what is best for him, including his need for control, and not what is best for the children, even though he is careful to frame it that way.
- [20] A.B. says C.D. has a controlling relationship with the children leading to the alienation of X, which she now says is exhibiting itself in her younger daughters. Accordingly, she seeks various parenting and protection orders to ameliorate this and which she says is in the best interest of the children.
- [21] The claimant says the result is a broken, damaged family and children who have suffered harm the consequences of which will be reflected in the coming years.
- [22] The parties both testified, as did several other witnesses, including professional witnesses and the author of the s. 211 report, Mr. Finlay, who authored a s. 211 report in this matter. There was a voluminous amount of detailed evidence put forward in this matter. I have considered it all, but only include the pertinent details in these reasons for judgment.
- [23] In order to make my findings of fact, I will first make some comments determinations about the credibility and reliability of the witnesses. I will anonymize family and friend witnesses, but will set out the professionals' names.

II. Issues

- [24] The claimant identifies the following issues that must be resolved:
- a) The admissibility of certain voir dire evidence;

- b) The weight to be given to the s. 211 report;
- c) The appropriate parenting arrangements, both as to parenting time and parenting responsibilities, including reunification counselling;
- d) Communication, protection and conduct orders;
- e) Divorce;
- f) Costs.

III. Background

- [25] I will first set out the general background of the parties' relationship and turn to more specifics. I note the evidence was detailed and specific and as noted while I have considered it all, I will only set out an overview of the pertinent parts as necessary.
- [26] In December 1999, the parties met through mutual friends and, in May 2000, they entered into a romantic relationship. There appear to have been early difficulties as reflected by certain events before the marriage.
- [27] The claimant says the respondent sexually assaulted her before marriage and forced her to have an abortion. C.D. made the appointment for the abortion and convinced her she would not get into medical school unless she had an abortion.
- [28] There is no dispute the claimant had an abortion before the parties' marriage, but the respondent says that was the claimant's choice. C.D. said there was no forced abortion. Rather, the couple were in their early 20s and not ready for children at the time, as A.B. wanted to go to med school. C.D. says that A.B. is lying.
- [29] At another point before marriage, C.D. physically assaulted A.B. while she was driving on Granville Street. This assault was witnessed by the claimant's younger sister, who was in the back seat of the car at the time and corroborated this event. While the claimant then ordered the respondent out of the car, she relented when he threatened to not marry her and therefore shame her in front of her family.
- [30] The parties were married August 30, 2003, in Surrey, British Columbia.
- [31] The parties lived in England from January 2004 to August 2005 while the claimant attended medical school. The claimant's parents paid for her education and helped cover her other living expenses, which the claimant says the respondent refused to cover.
- [32] In January 2006, the claimant started her clinical rotations in Chicago, Illinois. The respondent stayed in British Columbia to work as a teacher, but joined the claimant in September 2006 in Chicago.
- [33] On May 7, 2008, the parties' first child, X was born. The claimant suffered post-operative complication's following an emergency c-section, resulting in a five- day hospital stay.

- [34] In June 2008, the claimant began her residency in Atlanta, Georgia. The claimant's mother accompanied the claimant and X to Atlanta and helped her set up her apartment. The respondent joined them a few months later.
- [35] During the second year of the claimant's residency, the respondent returned to BC with X and lived with the claimant's parents while undertaking a Master of Arts in counselling at the University of British Columbia.
- [36] While in Atlanta and Chicago, A.B. worked long hours, and C.D. was responsible for X, but A.B. indicated her parents undertook a significant amount of the care of X while she was in her second year of residency in Atlanta.
- [37] The respondent and X returned to Atlanta for the last year of the claimant's residency. The parties moved back to BC once the claimant's residency was finished in August 2011.
- [38] In October 2011, the claimant says the respondent sexually assaulted her following a family wedding reception at her parents' residence. The claimant reported this incident to her good friend from Atlanta, B.M., who testified in this trial.
- [39] The claimant had signed a contract and was undertaking exams to be licensed as a medical practitioner in British Columbia when she suffered a significant spinal cord compression in December 25, 2011. This event had serious health impacts, causing her a partial paralysis from the waist down and leading to a miscarriage. During this time, the claimant says the respondent took away her pain medication, saying she did not need it and doing without it would make her stronger. The claimant also describes being sexually assaulted by the respondent while she was paralysed on a hospital bed set up in the living room of her parents' residence.
- [40] By March 2012, the claimant resumed her medical practice, performing limited part-time clinical work at a clinic. She also obtained a position as a hospitalist at a hospital.
- [41] The parties second child, Y, was born on January 13, 2013.
- [42] By March 20, 2013, the claimant returned to work at the hospital. She found it difficult to return to clinical work due to the demands of balancing work and family, so she focused on her hospitalist work, working a part-time schedule consisting of four shifts on with ten days off. She also did some administrative work and was teaching at UBC.
- [43] In early 2013, the claimant described another sexual assault by the Respondent.
- [44] The parties third child, Z was born November 15, 2013.

- [45] In December 2013, the parties moved to Ladner, where they lived next-door to the claimant's parents. The two households intermingled. The claimant said the households regularly interacted, with the children spending significant periods of time with her parents. Her father had breakfast with the children and walked them to school. The children had their own rooms and toys at her parents' house. The families regularly had events and playtime with the children in what was essentially a shared backyard.
- [46] While outwardly the marriage appeared intact, it had difficulties for some time.
- [47] The claimant reported more sexual assaults by the respondent to her sister and her friends. The first occurred in March 2015 in Seattle, Washington. The second occurred in July 2015 at a rest area in Portland, Oregon. In March 2017, the claimant said the respondent sexually assaulted the claimant twice while in Hawaii, once in a public restroom and once with the children asleep in bed. These latter incidents the claimant described in cross-examination.
- [48] The parties attended marriage counselling with Carolyn Huffsmith in 2017 or 2018. They also attended couples counseling in 2019 with Darren Wilks.
- [49] In addition, the claimant attended counselling sessions with Ms. Sylvana Yeomans from January 2018 to March 2018. During these sessions, she reported various incidences of family violence. In September 2019, the claimant met with S.D. and disclosed an event of family violence to her.
- [50] From December 2019 to January 3, 2020, the claimant, the claimant's brother, her sister L.M., her sister-in-law, and the children visited Jamaica. The respondent did not go on the trip. Y became very ill and had to go to the hospital, and it was difficult to reach the respondent by phone. The claimant's brother-in-law drove the claimant and the children home from the airport.
- [51] On January 3, 2020, after the claimant and the children returned from Jamaica, the respondent informed the claimant that he wanted to separate and moved into separate bedroom. The respondent advised that he was done with the marriage, never loved her, and had removed or stored many of his articles of clothing. The claimant was in a state of shock, distraught and concerned about her daughters and the family life she had tried to retain and protect. The parties continued to live in separate bedrooms until January 29, 2020.
- [52] The claimant says that, during this time of post-separation cohabitation, the respondent threatened her life in the family home on January 23, 2020. As a result, she brought an application and was granted a financial restraining order and conduct orders against the respondent.
- [53] On January 29, 2020, the respondent moved out of the family house, while the children and the claimant continued to reside in the family house.
- [54] The children began counselling sessions with Ms. Rebecca Farnell.

- [55] On February 1, the respondent had parenting time with the children and exposed them to an affidavit of the claimant, including her allegations of family violence.
- [56] The parties entered into a parenting agreement in March 2020. In this trial, C.D. spent a significant time on the parenting agreement reached in March 2020, which included a number of clauses allowing the parents to jointly attend various extracurricular events and medical appointments. C.D. maintained that these clauses indicated that A.B. was not fearful of him. A.B. however noted that she had agreed to these clauses as she hoped he would change for the sake of the children. That has not proven to be the case, and she has grown even more fearful of him now.
- [57] A.B. noted that, soon after this parenting agreement was reached, she and professionals who were working with family, noticed the rapidly changing behaviour of the children as a result of the respondent's influence.
- [58] There are numerous allegations between the parties with respect to MCFD and arrests that I will not review in detail. Suffice it to say that the transition after separation was very difficult and each party has accused each other of family violence and involved both the police and MCFD. The charge of assault against A.B. was dropped after an investigation as was C.D.'s initial charge of uttering threats in July 2020. C.D., however, is on bail for the incidents of historical sexual assault and uttering threats set out earlier. The reality is however that I have ultimately found sufficient evidence to justify A.B.'s concerns of family violence and have not found any evidence to justify what C.D. says is a conspiracy against him.
- [59] It is evident that the parties' history is complex and fraught with various allegations. The critical issue before me however is the parenting arrangements and the best interest of the children.
- [60] It is not necessary for me to resolve all the of the disputed historical issues between the parties. While a number of the historical events are pertinent, I will only refer to them as they are relevant to the best interests of the children moving forward.

IV. Evidentiary Issues

A. Credibility and Reliability

- [61] In addition to testifying themselves, the parties called several other witnesses. C.D. called his sister, S.G.; his sister-in-law, S.L.; and the claimant's mother. A.B. called two professional witnesses who provided counselling and reunification efforts for the family as well as the previous parenting coordinator, her sister P.D. and her cousin, N.U., her former counsellor, two of her friends, B.M. and S.D., along with Dr. Gamache and Alyson Jones, who each gave evidence about their respective reunification programs.
- [62] The parties challenge one another's credibility and reliability, and C.D. challenges the credibility of the friends and family members of A.B.

- [63] The principles and jurisprudence on credibility and reliability were recently set out in *R.C.T. v. A.K.T.*, 2023 BCSC 654 at paras. 7-12, as follows:
- [7] The court's fact-finding role requires an assessment of the credibility of witnesses and the reliability of their evidence. Credibility refers to truthfulness or honesty, and reliability refers to accuracy. Both credibility and reliability are to be assessed in the context of the evidence as a whole. This requires consideration of many factors.
- [8] Justice Crabtree provided a helpful summary of the principles governing the assessment of reliability and credibility in *Yang v. Duralia*, 2020 BCSC 806:
- [40] Reliability is focused on the accuracy of a witness's evidence, while credibility has to do with whether the witness is telling the truth. Credibility involves the consideration whether the evidence is honestly given. Each involves an assessment of the witness's testimony, in the context of the evidence adduced at trial and in the consideration of various factors.
- [41] The distinction between reliability and credibility was explained in *R. v. H.C.*, 2009 ONCA 56, by Watt J.A. at para. 41:
- [41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately
- i. observe;
 - ii. recall; and
 - iii. recount
- events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514, at 526 (C.A.).
- [9] Justice Crabtree then discussed, at paras. 42-43, the well-known decisions of *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) and *Bradshaw v. Stenner*, 2010 BCSC 1398, *aff'd* 2012 BCCA 296, before providing the following useful summary:
- [45] In summary, the assessment of a witness's credibility and reliability must include a critical assessment of the witness's evidence in the context of the evidence as a whole. This involves an assessment of whether the witness's evidence is at odds with other evidence in the case, and whether the testimony is implausible or improbable, having regard to the surrounding circumstances. The real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions. A trier of fact must also bear in mind that an apparently honest, confident or convincing witness may not necessarily be an accurate witness.

- [10] To this I would add that a court may believe some, all, or none of the evidence and that credibility determinations "may not be purely intellectual and may involve factors that are difficult to verbalize": *R. v. R.E.M.*, 2008 SCC 51 at para. 49.
- [11] It is important not to base determinations on credibility on emotional evaluations, stereotypes, guesswork or other impermissible forms of reasoning. Credibility and reliability determinations have to be grounded in reason and made as objectively as possible.
- [12] I am also mindful to exercise caution in placing too much reliance on demeanour or courtroom presentation of a witness. I have no baseline upon which to assess those things and I know that a courtroom can be an unfamiliar and intimidating place for some people. Everyone reacts to its pressures differently.
- [64] I conclude the non-party witnesses provided valuable evidence, material to the issues I am to decide. They were, by and large, credible witnesses and their evidence was reliable. Each of these witnesses did their best to provide honest and fair evidence. While C.D. argued in essence that A.B.'s family members and friends were advocates for her narrative, I have concluded otherwise as will be reflected in my analysis below. The witnesses testified with appropriate balance and I find their testimony balanced and reliable in the circumstances.
- [65] In reflecting on the claimant and the respondent, I note first that C.D.'s testimony suffered from credibility issues as it did not reflect a balanced perspective. As set out in *R.C.T.* at para. 22:
- [22] Balance exists when a witness avoids minimization or exaggeration, admits memory frailties and personally difficult facts and acknowledges weaknesses in their evidence. A balanced witness does not answer questions strategically, but rather responds to the questions posed. They do not try to unreasonably control the narrative. They do not appear to have an agenda. While Mr. T. admitted many memory frailties and some personally difficult facts, he lacked balance in all of the other ways.
- [23] Mr. T. exaggerated or minimized his evidence when it suited the narrative he was trying to advance. His narrative involved trying to portray Mrs. T. in a negative light. There were several instances in cross-examination when Mr. T. was forced to concede, albeit reluctantly, that he had given incorrect evidence, evidence which was designed to disparage Mrs. T., in his direct examination.
- [66] In this case, C.D.'s narrative relentlessly portrayed the claimant in a negative light and a poor mother, even though the professionals, including those who testified in this court and the author of the s. 211 report completed in October 2021, said otherwise. Any issues C.D. identified were "all the claimant's fault" and he accepted responsibility for none. This was evident both when he testified in chief and in cross. This was a constant throughout his testimony and something he did not deviate from until it was impossible to do so.

- [67] It was particularly striking that during the course of the trial, only when certain events that C.D. claimed did not occur, were established unequivocally on the evidence, and he heard certain professional's testimony about this, did C.D. concede he may "possibly" have been wrong. He then sought to characterize these as things he had "learned from" through this trial. It should not take a lengthy trial in which a number of professionals testify, for C.D. to "learn" from, as indeed some of the professionals who testified were those already assisting him and his family. These he deceived and also was not cooperative with as they sought to assist the family. This comment is indicative of C.D.'s focus on presenting himself as an intelligent compassionate person who has supported the efforts to reunify his eldest daughter with her mother. I will deal with this further as part of the analysis in this matter.
- [68] Furthermore, despite indicating he may have "learned" from this, C.D. continued to dismiss the importance of what he had learned- once again reverting to a narrative that is very C.D. focussed. This reality was further demonstrated in his approach to the information he provided in the s. 211 report. It is clear from the evidence in this trial, that C.D. was not open and truthful as part of that process on an essential topic affecting the mental health of his daughter and which contributed to a fundamental breach in her relationship with her mother. Despite knowing this was the case, C.D. discounted this as not important thereby again reflecting an C.D. focussed approach and an inability to acknowledge and see how matters may be affecting his children's perspective. This is particularly troubling as the s. 211 report was a court-ordered report. While C.D. says any concern about this issue reflects an outdated irrelevant moralistic view of family relations, that is simply not the case when the evidence makes clear the event at issue directly impacted the health of his oldest child.
- [69] As part of this litigation process, C.D. submitted affidavits from the previous family nanny attesting to the family situation, which included disparaging comments concerning A.B., in what can only be described as a conflict of interest, as C.D. was and continues to have an affair with the nanny to date which he has denied. C.D. would not have revealed this detail, which he viewed as irrelevant from his perspective, despite the obvious conflict of interest, when the affiant has in fact been part of the issue that has created fundamental issues of well-being for at least one of the children.
- [70] The fact of this affair was established through a voice recording of C.D. and the evidence of A.H., a medium who was assisting C.D. While initially resistant, C.D. ultimately admitted this fact later in the trial proceedings. The importance of this fact will become evident when I deal with the children's health and well-being.
- [71] I agree therefore that the evidence of the respondent must be approached with caution. He has lied about critical events to a variety of individuals for some time now and has allowed incomplete and incorrect information to be put before the court through the s. 211 report.
- [72] In contrast, A.B. did not minimize her actions and her evidence was measured and consistent with the documentary evidence and oral testimony from third party witnesses. A.B. conceded she was not a perfect parent and had learned through the assistance of

professionals and was still learning. In addition, she admitted a variety of points adverse in interest to her in cross-examination, while C.D. did not. As noted above, he referred to the issue of whether he should have admitted the affair to X when knowing that concealing this fact was part of the basis of her alienation from her mother, as a "learning moment"--not something that he did that was wrong.

- [73] Furthermore, while some of the professionals identified issues with C.D.'s cooperation, none did so with A.B. Indeed, all indicated she was cooperative, helpful and willing to do anything requested to assist with family counselling and reunification. In setting out some of the very difficult evidence in this case, it was clear A.B. had great difficulty in doing so--clearly because of grief and the nature of the evidence.
- [74] C.D. appeared to maintain this was all contrived evidence in order to seek retribution against him, something that in my view was extremely unlikely. C.D. maintained in effect the existence of a conspiracy of retribution against him that he attributed to the family and friends of A.B. who testified. There was simply no indication of this whatsoever in the evidence. Indeed, it was striking how A.B.'s mother testified, having been called by C.D., that she had treated and considered C.D. like a son and was clearly devastated by the family situation as it has evolved and been revealed over the last 2-3 years.
- [75] Having made these findings with regards to credibility and reliability, I now turn to my assessment of the parenting arrangements that are in the children's best interests.

B. Admissibility of Voir Dire Evidence

- [76] On April 25, 2023, the parties make submissions as to whether Dr. Ellie Bolgar and Dr. Blancato could testify in this matter.

- [77] In ruling on this matter, I indicated that

After reflecting on the submissions of the parties with respect to whether Dr. Bolgar and Dr. Blancato should be allowed or directed to testify in this matter, I conclude to ensure the efficiency in the trial process and fairness to each of the parties; I will hear the evidence of both Dr. Bolgar and Dr. Blancato within a voir dire process. The parties will then be at liberty to provide more fulsome submissions or add to their present submissions in final argument in this matter as to whether this evidence should be considered in the trial.

In addition I note the question of whether the child X should be interviewed by the court, is a matter of a separate application which I would expect to be made at the appropriate time by the party seeking that process.

The respondent may wish to speak to Dr. Bolgar or Dr. Blancato, as he is known for some significant time that the claimant is seeking to call these counsellors and it is important not to delay the court process in this matter.

The evidence of both Dr. Bolgar and Dr. Blancato will therefore proceed as part of a voir dire process and Dr. Blancato is directed by this court to appear as part of this process.

1. Law

[78] The four-pronged Wigmore test applies when considering whether to exclude otherwise relevant evidence from a medical professional. It requires the Court to consider:

- (a) Did the communication originate in a confidence?
- (b) Was the confidence essential to the relationship in which the communication arose?
- (c) Was the relationship one that must be "sedulously fostered" in the public good? and
- (d) If all the above circumstances are met, do the interests served in protecting the communications from disclosure outweigh the interest in getting at the truth and disposing correctly of the litigation?

(See *Li v. Hung*, 2022 BCSC 1130 at para. 12.)

[79] In *M. (A.) v. Ryan*, [1997] 1 S.C.R. 157 at para. 29, 1997 CanLII 403, the Supreme Court of Canada elaborated on the considerations under part (d) of the Wigmore test:

The fourth requirement is that the interests served by protecting the communications from disclosure outweigh the interest of pursuing the truth and disposing correctly of the litigation. This requires first an assessment of the interests served by protecting the communications from disclosure. These include injury to the appellant's ongoing relationship with Dr. Parfitt and her future treatment. They also include the effect that a finding of no privilege would have on the ability of other persons suffering from similar trauma to obtain needed treatment and of psychiatrists to provide it. The interests served by non-disclosure must extend to any effect on society of the failure of individuals to obtain treatment restoring them to healthy and contributing members of society. Finally, the interests served by protection from disclosure must include the privacy interest of the person claiming privilege and inequalities which may be perpetuated by the absence of protection.

2. Positions of the Parties

[80] The claimant argues that the voir dire evidence should be admissible. In making this argument, the claimant acknowledges Dr. Bolgar's agreement which precludes the discussion of the content in court, but provides a provision in which the parties acknowledge the court to that effect. Counsel also points out this agreement has been breached as the children have been exposed to certain proceedings in contravention of the terms of the agreement.

- [81] More importantly, counsel notes that both these counsellors were involved in team reunification programs that have failed. Furthermore, there is no longer a continuing professional counselling relationship with the children. Most importantly however, counsel points out as the court will be asked to design a program as part of the remedy, it is important to know what created that failure. Accordingly, this is essential evidence important to the case.
- [82] The claimant also points out the s. 211 report which is admissible, also references summaries from each of these doctors who participated in discussions with the children. As a summary provided by Dr. Bolgar is outlined in the s. 211 report, the "horse is out of the barn".
- [83] With respect to the Wigmore factors, however, while the claimant notes these conversations originated in confidence, there is no longer an ongoing relationship. There are competing tensions between protecting the confidence of children in a healthy professional relationship but the importance of the information outweighs the protection of confidential relationship. In this case, the claimant says the evidence is clear that the potential harmful effects on the children has the potential to affect their mental health permanently.
- [84] In response, the respondent pointed to the contractual agreement that precluded the parties from bringing this evidence to court. He also noted the damage that would occur to a confidential counselling relationship going forward with respect to the children participating in a counselling relationship. He also identified a concern that the claimant was in effect essentially seeking to call these doctors as expert witnesses on reunification.

3. Analysis

- [85] Through careful application of the Wigmore test, I conclude the evidence from both voir dires is admissible in these proceedings. The reasons why can be seen through a comparison between the present case and the Court's analysis in *Li*.
- [86] In *Li*, I applied the Wigmore test to exclude the children's counselling records. My reasoning on this point can be summarized as follows:
- The communication originated in confidence (para. 13);
 - The communication was essential to the patient-psychologist relationship (para. 13);
 - It is in the public interest to foster the relationship between counsellor and child (para. 11);
 - In the circumstances, the interest in protecting the communications from disclosure outweighed the interest in getting at the truth, as even without this disclosure, all the information necessary to resolve the litigation was already available (para. 15).

- [87] In my view, the answers to questions (a), (b) and (c) of the Wigmore test from Li are also applicable to the present case: The communications with Dr. Bolgar and Dr. Blancato originated in confidence that was essential to the patient-psychologist relationship, and it is in the public interest to foster the relationship between children and their counsellors through protecting this confidentiality.
- [88] Where Li can be distinguished is in the balancing in part (d) of the test. In particular:
- a) The deficiencies alleged in the s. 211 report increase the importance of the truth-seeking interest relative to the interest in protecting confidentiality, as the information from these counselling sessions is not available elsewhere.
 - b) The potential harm that non-disclosure may cause to the children would heighten the need to get at the truth (so as to avoid this harm) beyond that in Li.
 - c) The expectation of confidence is low as the counselling sessions occurred in an open environment with many professionals sharing information and working towards a common goal- the reunification of X and the claimant
 - d) The information necessary to resolve this case, was not necessarily readily available.
- [89] This was made very clear after hearing the testimony of the two professionals on this point. The evidence of each of the two professionals was more extensive than set out in the notes and is directly tied to the successful parenting arrangements. This includes the reunification efforts between X and the claimant and the mandate of the court to consider the best interests of the children. Further this evidence is crucial to a central issue and not available by other means as it involves the question of a reunification program which failed; the reasons of which are pertinent to the best interests of the children going forward. Accordingly, as I conclude this is probative evidence going directly to the heart of a central consideration of the best interests of the children, the evidence is admissible.
- [90] The evidence that was heard in both voir dire 1 & 2 is therefore admitted into and will be considered as part of these proceedings.

C. Assessing Weight of the s. 211 Report

- [91] A 93-page s. 211 report compiled by Robert Finlay, dated October 7, 2021 was filed in this matter. The parties relied on various parts, with C.D. relying more heavily on this report.
- [92] The claimant points out the court has jurisdiction to decline to follow the recommendation in a s. 211 report, or to decline to attribute significant weight to an author's conclusion: See *N.J. v. S.J.*, 2018 BCSC 2352 at para. 222; *J.S v. S.S.*, 2018 BCSC 355 at para. 93; *Fotsch v. Begin*, 2015 BCSC 227 at para. 216.

- [93] The claimant submits the court should approach the s. 211 Report with caution, for several reasons. While there are some helpful passages, there are several key areas and conclusions where no weight, or limited weight should be given for the following reasons:
- a) The s. 211 report is outdated, as 19 months have passed since it was authored and significant events have occurred of which Mr. Finlay would have no knowledge, including Dr. Bolgar's involvement and subsequent withdrawal.
 - b) The information provided by C.D., on which Mr. Finlay relied, was false, which has an effect on the weight given to other information provided by C.D.
 - c) Key witnesses, including Ms. Beveridge, the parties' first parenting coordinator, were not interviewed. Mr. Finlay agreed in cross-examination that it would have been helpful to interview her. She would have provided critical information about her engagement with the family and the circumstances of her withdrawal, including the lack of cooperation of the Respondent.
 - d) Mr. Finlay failed to adequately consider the role of family violence, despite its central importance in parenting arrangements, as stated by the Supreme Court of Canada in *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 147.
 - e) While he concludes X symptoms fall suggest a case of moderate to severe Child Resisting Contact ("CRC"), his recommendations do not go far enough to address the reunification process.
- [94] I agree with the claimant's points that the court should approach the s. 211 report with care for the reason set out above. I note in particular, as Mr. Finlay agreed, the s. 211 report is a snapshot in time, and many events have occurred since it was prepared. In addition, these proceedings have established that C.D. was not truthful about an important matter in the s. 211 process. I note also Mr. Finlay did not take into account the comments in *Barendregt* with respect to the impact of family violence.

V. What Parenting Arrangements are in the Children's Best Interests?

A. Law

- [95] With respect to guardianship and parenting arrangements, the Family Law Act, S.B.C. 2011, c. 25 [FLA], requires the court and the parties to consider the best interests of the children only.
- [96] Section 37 of the FLA provides parameters as to the best interest of the child:
- (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[97] Section 1 of the FLA defines "family violence":

"family violence" includes, with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including

- (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
- (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
- (iii) stalking or following of the family member, and
- (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

[98] Section 38 of the FLA provides guidance on how family violence must be considered under s. 37(g) and (h):

For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[99] Section 40 of the FLA addresses parenting arrangements, which includes parental responsibilities and parenting time:

- (1) Only a guardian may have parental responsibilities and parenting time with respect to a child.
- (2) Unless an agreement or order allocates parental responsibilities differently, each child's guardian may exercise all parental responsibilities with respect to the child in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances.

- (3) Parental responsibilities may be allocated under an agreement or order such that they may be exercised by
 - (a) one or more guardians only, or
 - (b) each guardian acting separately or all guardians acting together.
 - (4) In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, the following must not be presumed:
 - (a) that parental responsibilities should be allocated equally among guardians;
 - (b) that parenting time should be shared equally among guardians;
 - (c) that decisions among guardians should be made separately or together.
- [100] The Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), contains a similar legal framework with regards to the best interests of the child and family violence: see ss. 2 sub verbo "family violence", 16, 16.1 and 16.3.

B. Position of the Parties

- [101] A.B. argues that C.D. has alienated X from her, such that specific orders including reunification counselling should be ordered. C.D. maintains that the present parenting should be kept in place or, as he said in final argument, that X should live full time with him. C.D. denies any alienation conduct, saying that he wants and encourages his daughters to have a good relationship with their mother.
- [102] C.D. argues that, pursuant to s. 47 of the FLA, a material change in the needs or circumstances of the child is necessary before any change can be made to the parenting agreement, as it was filed as a court order. In response, the claimant points out that an agreement when filed with the court is only an order for enforcement: see Supreme Court Family Rules, R. 2-1(3). For this reason, s. 47 is not applicable in the circumstances.
- [103] To a great extent, this issue is moot in light of the reality of X's refusal to have contact with her mother for the last 2.5 years, instead living full time with her father contrary to the terms of the parenting agreement. As per *Dedes v. Dedes*, 2015 BCCA 194 at para. 25, X's alienation from her mother was certainly not contemplated by the parties. Finally, I note that C.D. seeking to have X live with him full time is an implicit acknowledgement of the occurrence of a material change.
- [104] In this case, the Court is only required to find a change in this instance, and the claimant bears the onus of demonstrating different terms are in the child's best interest: *J.C.L. v. S.J.L.L.*, 2019 BCSC 2052 at para. 48.

C. Evidence of Professionals

[105] A.B. described various events in which counsellors have tried to assist the parties and particularly the reunification of X with her mother. She indicated that every time a counsellor appears effective, the respondent interferes in some way with the children who then resist the latest counselling.

[106] The parties retained two specialists, Dr. Ellie Bolgar and Dr. Blancato, to assist the parties with reunification efforts. I will set out the pertinent evidence on this point.

1. Dr. Ellie Bolgar

a. Clinical Report

[107] A.B. described the intervention of Dr. Bolgar as an example of failed reunification efforts and referred to a letter titled "Summary of therapy sessions" dated November 29, 2022, that was prepared by Dr. Bolgar.

[108] In the letter, Dr. Bolgar notes that Dr. Elterman had referred this case to her for reunification therapy, saying the main issue was that X had not had a relationship with her mother for over a year. She then provided a summary of subsequent events in which she made a number of observations about X. Dr. Bolgar described a September 21, 2022 counselling session with X as follows:

[X] expressed some frustration about her father because "he doesn't listen to what I have to say" when she wanted to spend more time with her friends in Vancouver. She stated that "dad makes rude comments about mom". Talked about resolving issues with her parents, discipline, understanding her parent's concerns and perspectives and communicating her needs.

[109] Dr. Bolgar described a November 23, 2022, counselling session with X as follows:

[X] arrived at my office with a negative attitude and complained about the drive. She asked, "did my mother wr[i]te a letter?" I handed her a handwritten letter with photos [A.B.] wrote and asked if she wanted to read it out loud. She read parts of the letter and started to cry. She dismissed some parts and read the end of the letter and she ripped it up. She took a quick look at the photographs and ripped those up as well. She threw them in the garbage. I told her that her mother wanted to write this letter of apology and I was hoping that at the next meeting they would meet. [X] said that the letter was not what she wanted to hear because her mother didn't say that she hurt her and she didn't want to hear from her anymore "I am sorry that you feel this way" because she never said, "I am sorry I did this to you". I suggested to meet her mother and sort out these thoughts and [X] started to have a panic attack.

[X] was crying and screaming and said, "my mother wants me to forgive her when she is trying to put my dad to prison". As she settled from her panic attack, she explained that she had knowledge of her parents upcoming criminal court case, and she was feeling stressed because she was worried about her father going to prison. She indicated that she can't imagine that her father would do any of the horrible things to her mother that she is saying.

[X] expressed that she was angry towards me for forcing her to be in this "horrible situation" and if her mother would come to my office when she is there she would run away. She stated that she is aware of her rights and counselling should not be forced on a child and she could report me and Dr. Elterman for making her do something she clearly stated that she doesn't want to do. She also stated that being forced is reminding her [of] her mother's abusive behaviour.

Acknowledging that she was so distressed I suggested that she call her father to pick her up and I will think about how to move forward. [X] said that she will not come to my office anymore and her father would have to physically force her to come but she knows that he will never do that.

[Emphasis added.]

[110] Dr. Bolgar's letter states that on November 24, 2022, she "talked with Dr. Elterman and informed him that she was withdrawing from providing therapy for the family."

[111] A.B. points to this as an example of the numerous attempts made by professionals to reunify the family and which has been interfered with by the respondent. She notes X should never have any knowledge of the criminal proceedings and the respondent is clearly talking about these matters with children.

b. Voir Dire Testimony

[112] As noted above, In the course of the trial, certain of Dr. Bolgar's notes were admitted into evidence without objection. The claimant gave evidence with respect to the summary notes of the content of Dr. Bolgar's notes and also that of Dr. Blancato. The Respondent did not object and indeed both a letter from Dr. Blancato to Dr. Elterman and a report of Mr. Finlay's interview with Dr. Blancato was included in the s. 211 report produced in these proceedings.

[113] Dr. Bolgar testified in voir dire number 1 in this matter. Her role was to provide counselling for all three children and help X repair the relationship with her mother. She commenced her work in July 2022 and gathered information from the children as to their life experience; identified areas to work with and in particular to help X with her perception about her mother.

- [114] With respect to the parties and this process, Dr. Bolgar indicated that A.B. would do anything to help with the process. C.D. on the other hand complained about the 45-minute drive to the sessions and had many excuses for not coming to the office. Dr. Bolgar said she did not see engagement or enthusiasm to support X to participate in the process. She said more than once that "he says the words" but he is not compliant. I note this is very similar to Dr. Blancato's views.
- [115] Dr. Bolgar noted C.D. says on one hand that X's reunification with her mother is beneficial but added another context into that when he told X about adult issues between the parties, that Dr. Bolgar was adamant should not be discussed.
- [116] Dr. Bolgar also noted that C.D. complained while X was present and then X would use C.D.'s same words to complain. As an example, Dr. Bolgar noted X would complain about how her dad has to drive to the appointments; he has to leave work early to do so, and said "this is a waste of time". Dr. Bolgar also noted C.D. did not express any concerns or sympathy for A.B. in this process.
- [117] Dr. Bolgar was very clear in her testimony that C.D. did discuss the legal process in the presence of X. This occurred in a joint session with C.D. and X when he discussed how stressed he was about the legal processes; including the criminal process. In this conversation, C.D. referred to correspondence that have been sent to him by A.B. 's counsel. Dr. Bolgar said X was well aware of the legal processes and said how difficult it was for her father. Dr. Bolgar noted X essentially linked the two together.
- [118] In cross-examination when it was put to Dr. Bolgar that it was actually A.B. who was exposing X to the criminal proceedings, Dr. Bolgar said as X had no contact with her mother, information was coming from C.D. and indeed said that he told her about the proceedings. X said words to the effect "my dad is afraid mom will make his life a living hell" and Dr. Bolgar queried how would X know this (other than hearing this from her father).
- [119] Dr. Bolgar said she does not see the required parental leadership in C.D. She noted this is reflected in his verbal and non- verbal cues. C.D. says X has the choice as she is capable. Dr. Bolgar says while X may have choices in many areas; not making this a choice shows parental leadership. Dr. Bolgar said the loss of a parent in a child's life is significant at this time development and it is important to have as many loving adults in their lives as possible. X has also refused to have contact with the rest of her mother's family. She is a critical development point in her life and is missing significant relationships. She is a child who is in the middle of her parents' conflict.

- [120] Dr. Bolgar says she does not see that C.D. has empathy towards understanding the impact of the situation on X. He cannot understand the impact on X and therefore put her needs head of his own needs. If he had empathy, he would put X's needs ahead of his own. When C.D. says that X has experienced trauma, Dr. Bolgar notes that was over three years ago and needs to be resolved.
- [121] Dr. Bolgar said she had been making progress with X, in particular in a Zoom session were C.D. was not present. X opened up and had a very different presentation. As a result, Dr. Bolgar asked the parental coordinator, Dr. Elterman to advise C.D. that he should not bring X to the counselling sessions but rather have third party do so. Despite Dr. Elterman passing on this request to C.D., C.D. continued to bring X, including to her last session dated November 23, 2022.
- [122] After the session of November 23, 2022, Dr. Bolgar withdrew from the file. She said X arrived for counselling session, very different than before. She was hostile and threatened to report Dr. Bolgar to the licensing authority if she was forced to have counselling and would also report Dr. Elterman. These words, Dr. Bolgar said, were not words a child would normally use. Ultimately Dr. Bolgar withdrew as she felt it was not ethical to continue a counselling relationship when the parent does not support the child in reunification, and the child says, "I'm going to report you to the licensing authority".
- [123] C.D. cross-examined Dr. Bolgar on whether it was too soon to have X and her mother meet as X had expressed that she doesn't feel safe with her mother. C.D. said X was upset in the last meeting as she was scared of meeting her mother. Dr. Bolgar noted while X has said this, she does not express the usual emotions one would expect of a child when relating this. In cross, Dr. Bolgar said rather it was her view, that X feared disappointing her father.
- [124] C.D. called Dr. Bolgar the night before she was to testify. Dr Bolgar testified she terminated the call as C.D. was argumentative and she felt intimidated.
- [125] C.D. cross-examined Dr. Bolgar as to why she had not read the s. 211 report before counselling X. Dr. Bolgar said in her therapeutic practise she likes to form her own initial impression of her client. The s. 211 is someone else's impression. I note this is a reasonable explanation that C.D. did not accept. Dr. Bolgar also said in cross that C.D. tried to control the process from the beginning by insisting she see all 3 children at the same time.
- [126] In her final report to Dr. Elterman, Dr. Bolgar said "something needs to change". In explaining that, Dr. Bolgar said that X need to be supported for success. She is of the view that X is significantly impacted by her father's feelings. She is trying to please her father and is basing her decision on how her father feels towards her mother. X is essentially an echo chamber of what her father says.

2. Dr. Marcelle Blancato

a. Clinical Report

[127] Dr. Blancato wrote an update report to Dr. Elterman on December 4, 2021, in which she indicated that C.D. had not followed up with his parenting coach and as a result he had not participated in a feedback session regarding the children. With respect to the two young children, Dr. Blancato's report noted:

[Z] continues to decline with a significant shift in her behaviour towards her mother as observed in my waiting room. She tells her mother she hates her and over the last sessions has resisted entering the playroom. With encouragement and processing her feelings she reluctantly comes into the session. Given the children's session with me is on the transition day from [C.D.]'s home, focus is often on transition stress. However, during the session I observe that she is shut down cognitively and emotionally.

[Z and Y] have reported to me that the "massaging" which now includes "cuddling" as well, continues for at least an hour every night with their father. Although [C.D.] has been advised to stop this behaviour in the past, given he has not participated in a feedback meeting I have not had the opportunity to discuss this behaviour. Additionally, [C.D.] has not followed up with an in office session for his older daughter [X]

[A.B.] had expressed concern on a number of occasions that the deterioration of her relationship with [Z] is similar to what has happened with [X] Her expressed fear is that [C.D.] will not return the girl's for her parenting time over the upcoming holidays, in a pattern similar to what occurred previously with [X]

In light of the deterioration of the observed state of [Z] which, is a drastic emotional and behavioural shift from my previous observations of this child I share [A.B.]'s concerns.

b. Voir Dire Testimony

[128] Dr. Blancato testified in Voir Dire # 2 about her experience with the family. The Respondent also objected to the Dr. Blancato being called as a witness on the same basis as that set out with respect to Dr. Bolgar. While Dr. Blancato's role was to counsel the two younger children, her description of the cooperation of the two parents was similar to that of Dr. Bolgar. She indicated A.B. was compliant with any assistance with respect to the children but it was hard to figure out C.D.". While C.D. seemed compliant, he had a difficult time bringing the children to counselling due to work commitments and did not seem to prioritizing this program. Dr. Blancato was surprised to learn C.D. only worked part time.

[129] Dr. Blancato also noted that in one of her last sessions the youngest child had a complete meltdown noting she hated her mother. This seemed to be associated with soccer and the fact that her father was the coach of the soccer team. There were difficulties for the child to get to practice and the child blamed her mother for this.

- [130] With respect to concerns of massaging the girls at nighttime, Dr. Blancato indicated that physical touch with children does not build resilience as they regress to their younger self. It is not in the best interests of children to use touch to regulate the child as they depend on it. This, in conjunction with allowing them to vent about their mother's house while being massaged, was not a good situation.
- [131] Dr. Blancato said that Y, as the middle child felt she had to be the one to fix the family. Z while younger, seemed a bit more mature but had the meltdown indicating she was tired and it was hard to leave this house. Dr. Blancato indicated it would be helpful if a youth support worker, who is part of her team, would help with the transition by transporting the children to sessions. She also indicated if the preferred parent was not cooperative, she would have the parental coordinator play a larger role. In addition, she indicated X needs her own clinician to work with her.
- [132] In cross-examination C.D. questioned Dr. Blancato repeatedly on safety and whether a child should be forced to attend counselling. Dr. Blancato indicated while there is a cost to reunification, there is also a cost to not re-unifying.
- [133] Finally, with respect to Dr. Blancato's comments, I note there is a dispute between the parties as to whether Z has food allergies. C.D. is very insistent she does not, while A.B. is of the view she does. This however has caused difficulties as reflected by Dr. Blancato's comments. When C.D. questioned Dr. Blancato as to whether Z really has allergies and whether the mother is making this up, Dr. Blancato said "all I see is a child who is doing okay and is now falling apart. She is frightened."
- [134] This once again shows how C.D.'s only sees thing through his perspective, He is convinced Z does not have allergies, and this description shows his inability to appreciate his child's fear in this area, whether she has allergies or not, when he insists she does not.

3. Fiona Beveridge

- [135] A.B. also described the efforts of the first parenting coordinator, Fiona Beveridge, who was appointed pursuant to a parenting agreement date March 26, 2020, for a term of two years. Ms. Beveridge was forced to withdraw and testified in this matter.
- [136] On January 28, 2021, Ms. Beveridge withdrew as the parental coordinator of record in this family law case. She set out her extensive reasons by attaching supplementary pages to the form by which she withdrew her services. Ms. Beveridge's notes indicate she is withdrew for number of reasons, including that the respondent was no longer communicating with her; was refusing to work with her, was refusing to pay her retainer or an outstanding invoice for \$815.20.
- [137] With respect to the lack of communication from the respondent, Mr. Beveridge wrote as follows:

I provided a Determination regarding missed parenting time for the Respondent and missed sleepover time for the Claimant's parents on the afternoon of December 14, 2020. On the morning of December 15, 2020, the Respondent emailed me, advising that he would not pay me for any work going forward and not to email him regarding any matters. I had a joint telephone conversation with counsel for both the Claimant and Respondent on December 15, 2020 and the result of that conversation was my advising counsel that I would not withdraw and that I would continue my work pursuant to the Parenting Coordination Agreement. I sent an email to the Respondent on December 16, 2022 to advise when I would be out of the office over the holidays and the Respondent responded saying "Please stop harassing me", among other things. I received an email from the Respondent's counsel on December 18, 2020 advising that his client would not be replying to me any longer. I made a Determination on January 5, 2021 regarding Parenting Coaching for the parents in Counselling for the Children. I sent emails to the parties in January to deal with an issue from my December 14, 2020 Determination and the Respondent emailed me to say that he had blocked my email address and instructed his counsel not to forward any communication from me to him. Attached are the emails referenced above from the Respondent and his counsel from December 15, 2020, December 16, 2020, December 18, 2020 and January 26, 2021.

[138] With respect to the respondent's refusal to work with Ms. Beveridge, she wrote this began after she made her Determination on December 15, 2020. In particular, C.D. was also refusing to follow the terms of a Determination made on January 5, 2021, relating to parenting coaching and counselling for the children, which set out that the parties would take the children for counselling with Dr. Blancato and they would not communicate with them prior to the counselling starting. The letter details other refusals of this nature by C.D. and ultimately says, "I cannot assist the parents with joint decision making for their children when one party, namely the Respondent, refuses to participate in the process."

[139] Ms. Beveridge also noted that the respondent took the position that it is the claimant who has refused to follow the parenting agreement and take direction from professionals. Dr. Blancato, however, notes that "[t]he Claimant has been cooperative and open to direction during the time I have had conduct of this file. The Respondent has been generally uncooperative and not open to direction from the professionals". She concluded by noting the parties "continue to require intervention to ensure that the Children continue to have a positive relationship with both parents and that the best interests are being met."

[140] C.D. cross-examined Ms. Beveridge on her advice to A.B. to tell X about C.D.'s arrest in July 2020 in the context of X's counselling session with her counsellor at the time, Ms. Farnell. Ms. Beveridge indicated she had been advised the Ministry of Children was interviewing the children, who were not aware of their father's arrest. In view of X's age and in consultation with the professionals, in her view one of the parents should provide this advice. The timing of X's session with her counsellor meant it would be A.B. She agreed however she did not consult C.D. on this.

[141] With respect to the determinations that Ms. Beveridge made, one Included makeup time in May 2020 for the claimant as X had not been returned to her mother after her 12th birthday as per the parenting agreement. In addition, Ms. Beveridge made a number of determinations including that the children have one day a month sleep over at their maternal grandparents because of the deep connection with the grandparents.

[142] Ms. Beveridge testified as to her experience as the parenting coordinator between the parties in this matter. She indicated that A.B. was compliant and responsive throughout the process and accepting of professional advice and recommendations. In contrast, C.D. was uncooperative and determinations which relate to the best interests of the children were largely ignored by him. While one of her concerns was that he refused to pay for any of her work, her main concerns were set out in her letter which concluded in paragraph 8:

While it is not unusual for a parent to disagree with a Determination, the accusations of harassment for simply fulfilling my role under the Parenting Coordination Agreement make it impossible to continue. I cannot assist the parents with joint decision making for their children when one party, namely the Respondent, refuses to participate in the process. I have asked the Respondent's counsel on various occasions to provide legal advice to the Respondent regarding the rights and obligations that come with being a party to the Parenting Coordination Agreement. While I have been reluctant to withdraw from the file where the Respondent is taking steps to thwart the process, this file has reached a point where it is impossible for me to continue to do my work for the benefit of these Children. The Respondent takes the position that it is the Claimant who has refused to follow the Parenting Agreement and take direction from professionals. The Claimant has been cooperative and open to direction during the time I have had conduct of this file. The Respondent has been generally uncooperative and not open to direction from the professionals. I am concerned that Determinations that relate to the best interests of the Children are largely ignored. These parties continue to require intervention to ensure the Children continue to have a positive relationship with both parents and that their best interests are being met.

[143] Ms. Beveridge indicated that while it was not unusual for one of the parties to not be happy with determination, she would be in contact with that party's counsel, who would explain the requirement for compliance with the determination, which would occur, and the parties would continue to process. This was the first time she had encountered a complete refusal to work with her as a parenting coordinator or ultimately to comply with her determinations.

[144] All three professionals who testified indicated a concern about C.D.'s cooperation and dedication to reunification counselling or the cooperation that is required to assist with the best interest of the children. While each had varying degrees of concern, at least two, Dr. Bolgar and Ms. Beveridge, had sufficient concerns that they ultimately left that role. In contrast, all three professionals indicated however that A.B. was very cooperative and dedicated throughout this process.

- [145] C.D. has consistently presented as genuine and dedicated to the reunification process in these proceedings. He tries to present as compassionate, intelligent and consistently professes his love for the children. When one however reviews the evidence and testimony of professionals, it becomes clear as Dr. Bolgar and other have said that "he says the words" but his actions in effect belie those words. They ultimately portray an individual who is reluctant if not deliberately obstructing this process through subtle messaging to his daughter, that she assimilates and acts upon by continuing to refuse to see her mother (at this time) and refusing to be part of a reunification process.
- [146] In addition, it is striking that the two counsellors dealing with the children relate similar experiences. While C.D. says he wants his daughter to reconcile with her mother, his actions include consistent complaints about the travel to and from that process and a clear desire to control the process himself. This has then been absorbed by all the children, but in particular X, the alienated daughter who appears to be parroting the same complaints, as Dr. Bolgar said, in very similar language as her father. This weakens his statement that his is supportive of a reconciliation between mother and daughter and is particularly troubling as he is the favoured parent and his views have strong impact on his daughter.
- [147] Furthermore, it appears C.D. may need to "always be right". He has directly challenged more than one counsellor with respect to X both by his insistence that X be interviewed - whether the counsellor or parent coordinator thinks that is a good idea. This was evident in his dealings with Ms. Beveridge who did not think interviewing X was a good idea as there would be too many adults in X's life. A further example is a reply by C.D. to an email from Ms. Fabbro with respect to the parenting of X in which he, again, says he "wants X's concerns and feelings to be validated", which once again leading to the conclusion he is creating an overly empowered child with the adverse consequences that can arise. As noted by the professionals, this is a sign of a parent overly empowering a child. In addition, it appears C.D. wants to control the situation/dynamics as he continually injects himself into the situation if he does not agree with the direction the professionals are taking-he does not leave it to the professionals. He has yet to leave it to the professionals to do their jobs.
- [148] This of course creates a larger concern as it relates to the continuing impact on the two younger daughters and their relation to their mother.

4. Mr. Finlay's s. 211 Report

- [149] I have reviewed the report in its entirety and will set out certain pertinent portions, indicating the weight I attribute to his conclusions. As I noted earlier, I will be giving less weight to certain aspects of the s. 211 report.
- [150] With respect to undermining behaviours assessed through the use of a co-parenting questionnaire, Mr. Finlay wrote the following:

There was information gathered during the evaluation that [A.B.] was found to disclose to the children, her family and some community members that [C.D.] had abused her, that he had been unfaithful and that she feared for her safety. This has confused the younger girls and in particular [X] who concluded that her mother was lying because she had not ever experienced her father as abusive or a womanizer. These disclosures to the children showed poor judgement and resulted in harm to the children. In my opinion [A.B.] undermined [C.D.]'s relationship with the children early post-separation and the effects are still being felt by [X] Having said that, more current information shows that [A.B.] now gives appropriate responses to the children when they ask about adult issues or when they make comments regarding [C.D.] and their time with him.

[151] In response to this, A.B. admits she made these disclosures but these were in response to the children's reference to the affidavit material in which A.B. had made allegations against C.D., after they returned from the respondent's care. The children used the word rape and she responded to their questions on this as reflected in the video that was played in these proceedings.

[152] C.D. relies upon the following comments made by Mr. Finlay as part of an evaluation instrument he refers to as the "Characteristics of a Competent Parents":

The parent-child observations in the evaluator's office as well as during the home visit showed that all three girls have positive attachments with their father, that they feel safe and secure in his care, that they have appropriate routines and structure, and that [C.D.] has established excellent communication with each child. He demonstrated all of the characteristics of a competent parent. All of the children felt free to talk about their mother in his presence. The younger girls felt free to talk about what they like at their mother's house. [X] was observed to not make any comments about her mother during the observation however [C.D.] reported that he and [X] talk openly about her reuniting with her mother at other times. This suggests that [C.D.] is supporting the younger children in having a good relationship with their mother that that he encourages open conversation with [X] about her mother.

[153] While there were a number of references in the s. 211 report that C.D. did not challenge the children on their negative comments about their mother, and a specific comment about C.D.'s bedtime routine where the father would massage the girls at which time, the younger girls will often say negative things about their mother to their father, these did not seem to really be perceived in a negative light by the evaluator. The s. 211 report notes that Dr. Elterman advised C.D. that this may set up a process of classical conditioning whereby the girls begin to associate having attention and a massage from their father with saying negative things about their mother. He said that C.D. was receptive to the advice and assumed C.D. has made some changes to the bedtime routine.

[154] A.B. said however that is not the case. As recently as December 2022, A.B. noted the children's comments about this particular behaviour. The respondent continues this behaviour but it has now become more troubling as the children try to hide it and it is created a situation where one or the other may get into trouble if they mention it to their

mother. She noted the respondent has been told multiple times by various professionals to stop doing this and referenced a quote of Dr. Blancato's from an interview performed by Mr. Finlay that was included in the s. 211 report:

Dr. Blancato went on to say, "In my orientation with dad, he explained that he massages the girls 25 minutes each and the girls vent about what bothers them at mom's house. One of the girls told me recently that this is still happening and that [X] is also saying negative comments in front of them. I spoke to Dr. Elterman about the venting and I told him that I don't want the girls to vent either parent. I told the coaches that I want them to help the parents to establish the same bedtime routines in each home."

[155] Other professionals in this case who dealt with the children and testified had significantly more concerns about C.D.'s behaviour with respect to negatively impacting on the children's attachment to their mother as set out earlier in this decision.

[156] The s. 211 report sets out a number of conclusions and recommendations. With regards to "[t]he alienating behaviour of the aligned parent", Mr. Finlay wrote:

Given the traumatic events that occurred around the separation, [X] felt confused as to which parent was telling the truth and she eventually decided that her mother was lying. She blamed her mother for the separation and her involving the Court and the Police against her father. She perceived her father to be the victim because he "was kicked out" of the family home. She did not believe her mother's disclosure of abuse because she had never experienced her father to be an abusive person. Given these perceptions and that she felt closer to her father from early childhood because [C.D.] looked after her full time for lengthy periods of time, it is not surprising that she has aligned with her father and his views as well as reaching her own conclusions.

[157] A.B. agrees that the change occurred very quickly and was hard on [X] She indicated however she feared for her life and the children safety and followed the instructions from the police and her counsel with respect to this.

[158] With regards to "[t]he presence of domestic violence and child abuse", Mr. Finlay concluded as follows:

[A.B.] has made a number of allegations against [C.D.] of domestic violence. The most recent allegations are historical and have resulted in criminal charges that are before the Court. Therefore it would not be appropriate for the evaluator to comment on these allegations. [A.B.] reported emotional abuse by [C.D.] alleging that he called her demeaning names in front of the children. This was corroborated by [L.M.] who witnessed [C.D.] calling [A.B.] names.

The conflicting narratives of the parents regarding the above allegations of domestic violence [were] poorly handled by each parent early post-separation, setting in motion high levels of stress for [X] in particular who became the lightning rod for parental conflict. Each parent disclosed inappropriate information about their narratives to [X] and the younger girls. [X] became overwhelmed, developed mental health symptoms and sought refuge with her father. The evaluator recommends that with the assistance of the [Parenting Coordinators] and the Coaches

that the parents agree on how to "park their narratives" and focus on the needs of the children. It is also recommended that with the assistance of the counselling team that eventually the parents develop and deliver a joint apology statement to the children for exposing them to a toxic emotional environment. It would be important for each parent to take responsibility for their part.

[159] A.B. says, however, that in a separate conversation at her house, Mr. Finlay told her he did not believe her allegations of abuse, as she was not credible. He said it would be hard to believe someone like you with these kinds of allegations, could be in A.B.'s particular professional position. A.B. said she had shared the very intimate details of the abuse with Mr. Finlay, some of which she had not disclosed before and now felt really violated. She asked him to leave the house and told him the interview was over.

[160] Mr. Finlay testified in this matter. With respect to the above conversation, Mr. Finlay confirmed C.D. called Mr. Finlay in the course of this trial and in advance of Mr. Finlay's testimony to advise him A.B. had made these allegations in her testimony. While Mr. Finlay indicated he tried to stop C.D. from telling him the details of A.B.'s testimony, he was unsuccessful but noted he could not hear the entire conversation. What he could hear however was that he had said something inappropriate to A.B. as part of the s. 211 inquiry.

[161] While Mr. Finlay initially denied the specifics of the conversation relayed by A.B. or whether such a conversation with A.B. occurred, saying he would not use those words as he is aware individuals are reticent to coming forward due to shame and he is sensitive to how people process sexual abuse, he then said in the context of this conversation he did have questions about the veracity of these allegations. He wanted to understand if her "narrative was completely consistent", and he had some concerns about the details, her proof and why she didn't report it given her responsibilities which included advising others in a similar situation, to report the abuse. When taken to his notes, in cross-examination, Mr. Finlay agreed there was a discussion that someone in her position who has treated patients and told them to report the abuse and get assistance, had not previously reported the abuse. The fact she held off reporting raised a question with him and he said "her response made sense".

[162] Mr. Finlay said he pressed A.B. on the allegations of domestic abuse for the purpose of consistency and to understand more, including understanding the cultural context. He agreed this was not in his notes and should have been.

[163] This admittance by Mr. Finlay, especially after initially denying any such conversation, supports A.B.'s version of the event, now corroborated in part by Mr. Finlay.

[164] When C.D. put specifics of A.B.'s testimony concerning this conversation to Mr. Finlay, the specifics of which Mr. Finlay continued to deny, C.D. asked him if this would cause him concern on A.B.'s truthfulness. Mr. Finlay said no - he had found A.B. to be truthful through the interviews and s.211 process. He added, "we may have a different recollection of what was said. I said I'd like to be direct as I don't want things showing up in the report that she

had not had an opportunity to respond to and we were talking about a very sensitive topic". With respect to whether she asked him to leave, he said, "she may have said if there is nothing more, this interview is over". I note this is more corroborating evidence of A.B.'s testimony.

- [165] Mr. Finlay did note in his report he could not comment on these allegations as a police investigation was underway. He agreed his report was limited by this and he was obliged to note that limitation in his report which he did. This, I conclude, is a significant limitation in this report.
- [166] With respect to Barendregt, which indicates that findings of family violence are a critical consideration in the best interest analysis of the children and courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, Mr. Finlay said he did not make any determinations on the sexual abuse allegations because the matter was before the court. He agreed that family violence is a critical consideration with respect to parenting. He disagreed however that his report didn't consider this.
- [167] When cross-examined extensively on this, he continued to disagree indicating that he did not find incompetent parenting from either of the parties. Both were competent parents. He did, however, concede that if a sexual assault was established, the evaluator in the s. 211 report could do a deeper inquiry into the parents' parenting competence. There is no doubt the lack of real inquiry into family violence, creates a deficiency with respect to parenting arrangements and competence, that impacts the weight of the report.
- [168] As part of his process, Mr. Finlay interviews the parties and asks that they provide individuals he should interview. He indicated that honesty was important and admitting mistakes or matters adverse in interest would give more credibility to the party. He agreed, it was important to get information from all sources before drawing his conclusions.
- [169] On this point, he indicated that he had not interviewed Fiona Beveridge the first parenting coordinator. He was aware that A.B. and her counsel had requested this. He was not aware that C.D. did not agree but was aware that Ms. Beveridge had withdrawn from the file.
- [170] Mr. Finlay had seen Ms. Beveridge's withdrawal form but had not seen the detailed outline of her reasons for withdrawal. When reviewing those and in emails between C.D. and Ms. Beveridge, he indicated while differences between clients and parental coordinator could arise, he would have a concern in this case as it appeared that Ms. Beveridge indicated that C.D. is resistant to the children's counselling, when C.D. was saying counselling with the children was important to Mr. Finlay in conversations. Mr. Finlay noted Ms. Beveridge was an outstanding individual and very ethical.
- [171] Mr. Finlay also agreed that when one child is alienated, other younger children are more at risk of alienation. This is because of the formidable influence of the favoured parent and oldest child impacting on the negative influences of the younger children.

- [172] With respect to the honesty of the two parties, he indicated that both C.D. and A.B. appeared to be truthful, honest and sincere. Mr. Finlay was then taken to the allegations set out in his report that C.D. had had an affair with the nanny that he denied to both Mr. Finlay and as reported by his personal counsellor, he denied to Dr. Murdoch.
- [173] Mr. Finlay then listened to the audiotape in which C.D. admits to having a two- year relationship with his nanny. Mr. Finlay indicated this would impact on C.D.'s credibility but not on the blanket basis. Rather it would cause him to double check a number of things more closely. He agreed that he was denied this opportunity to fully explore this evidence and its impact.
- [174] Mr. Finlay agreed that X is estranged from her mother in part as a result of determining her mother lied about a number of things including C.D.'s affair with the nanny and has chosen to live with her father on this basis. X is angry with her mother about what she thinks her mother is saying that is not true. Mr. Finlay agreed that the person who had the power to correct this misunderstanding was C.D. In the context of his ability under s. 211 to assess a parent, Mr. Finlay indicated that, in those circumstances, his conclusion would be that C.D. is not putting his daughters' interest first.
- [175] Mr. Finlay said when a child threatens to report someone to the licensing authority that is a sign of an overly empowered child. In addition, "echoing" or repeating the words of a parent is a sign of influence by that parent. Mr. Finlay was taken to the actions of a favoured parent that magnify alienation and agreed they include "bad mouthing the other parent and family; withholding or providing additional love or attention in denigrating the other parent; forcing the child to make a decision that is inappropriate for the child and confiding the child about inappropriate matters".
- [176] In addition, Mr. Finlay said X exhibited all the classic signs of "splitting". She believes everything good about her father and everything bad about her mother. The s. 211 report is replete with examples - some extreme of X comments about her mother. These include comments such as "[s]he needs an exorcism". When Mr. Finlay was taken to specific negative examples reported by X about her mother, he noted her complaints would be exaggerated in this context.
- [177] X's reports of conflicts with her mother must be viewed in this context, particularly as noted in Mr. Finlay's report that X said "I felt abused by her after the divorce". Mr. Finlay agreed that the entire time of his interview, X had been in the care of her father and had not seen her mother for some time.

- [178] With respect to the nanny and allegations of C.D. cheating being a key factor in X's alienation, Mr. Finlay said when crossed by C.D., X has a certain view of her father and she doesn't want to believe the affair as this is too much for her to come to terms with. When pressed on this by C.D. and referenced to reported comments by X that she doesn't care about that, Mr. Finlay was firm and said "don't believe for a moment that children don't care about how one parent treats another- they care a great deal".
- [179] Mr. Finlay said A.B. did not use the word dangerous to describe C.D. Rather that was a word Mr. Finlay said he came up with.
- [180] While Mr. Finlay says he recognized that there were cultural influences in this family matter, he did not reference those in the report and perhaps should have said more. When C.D. cross-examined him and put to him he did not observe any traditional cultural examples in the family such as an arranged marriage, and given A.B. education, this family was not subjected to cultural influences, Mr. Finlay indicated A.B. had reported to him that cultural influences had prevented her from reporting the family violence and abuse allegations earlier.
- [181] On the question of C.D.'s lack of honesty and the s. 211 report, in chief, C.D. admitted to having an affair for two to three years with the nanny prior to the separation. He said when the children asked him if he had an affair and whether he was abusive to A.B., he was afraid if he admitted it, this information would be used against him to keep the children away from him. He also said he had never sworn in an affidavit that he had not had an affair and did not directly answer the children on this point. Rather, he would say these things sometimes happen.
- [182] C.D. also said that while X's refusal to see her mother is because she perceives her mother as lying, there are several reasons including what X says is abusive behaviour of her mother. While C.D. admits the question of his affair with nanny is one of the factors, he does not think it is a major factor. He also says in view of what he had heard in this trial, he is open to guidance from the team as to whether to reveal this to X and how that should be done.
- [183] C.D. was cross-examined on the fact he lied to Mr. Finlay about the affair in the s. 211 report, but throughout sought to deflect the questions and repeatedly said this was not an important factor. While he knew that this factor was connected to X's estrangement from her mother as set out in the S. 211 report completed in October 2021, C.D. continued to say it was not important, repeatedly set out what he characterized as the many other reasons, including alleged abusive behavior by her mother and her mother lying about this, and refused to take any responsibility for this. He repeatedly pointed out this was A.B.'s mess that he had to clean up as she should never have told X about the affair - being an adult matter. In response to many questions, he returned to his narrative: did not answer yes or no--just repeated his narrative.

- [184] Ultimately, as put to C.D. in cross, it is his view that it is always someone else's fault.
- [185] C.D. said however he would tell X if the team recommended it. When it was put to him if there was no recording in which he admits to the affair, he would never have admitted it, he repeated his narrative that this was not a major factor; there were many reasons for X not wanting to see her mother and they were all A.B.'s fault. He is clearly messaging this to X--whether conscious or unconscious.
- [186] It was not clear how much of this Mr. Finlay knew during his s. 211 report. He certainly censured A.B. with her admittance of disclosure--any censure of C.D. is not evident, which would further detract from the reliability of the report.
- [187] With respect to the December 2020 phone incident, and how a child can move forward from this, Mr. Finlay says it may not be possible to resolve or untangle all the threads at this point. Rather, there should be a recognition that this incident is about the relationship and there is a need to talk about and understand the needs of each party. If the parties are stuck on the specifics of this incident, they cannot get to the underlying issues and will not be able to resolve their differences. Mr. Finlay said as part of moving forward, the parties will need professional assistance to facilitate that conversation. They will need rules for that conversation; need to prepare for that conversation and need to hear what the other person experiences. This groundwork will need to be undertaken before that conversation.
- [188] C.D. read various parts of the s. 211 report to Mr. Finlay, including the complementary remarks of Dr. Murdoch, C.D.'s psychiatrist who indicated C.D. was not a violent person. Mr. Finlay said, however, Dr. Murdoch would be reporting what C.D. told her and did not access source information or collaterals. This would be taken into account when assessing weight. I note in this context, C.D. was not truthful with Dr Murdoch with respect to the affair and this impacts on that assessment.
- [189] C.D. read through many of the s. 211 reports of information by and about X, including referencing her anxiety attack and Ms. Carey's recommendation (X's present counsellor) of the need to move gradually in any reunification efforts with her mother When C.D. referenced X's last comments to Dr. Bolgar that "you can't make me go to counselling", Mr. Finlay noted "this is a sign of an overly empowered child who thinks she is going to chose a counsellor and doesn't need to give her reasons as to why she won't see a particular counsellor".
- [190] Mr. Finlay said the purpose of his recommendation in the s. 211 report that it would be helpful for the court to interview X, was because X was "splitting", i.e., showing a lack of empathy for her mother and was an overly empowered child. She needed to hear from authority that it was not her decision to not see her mother. While she had options as to how and when to work towards that goal, it was not a choice. In his view, the judge would be taking the position of parental authority and order her to do so.

[191] Mr. Finlay noted at page 53 that X displays Child Resistant Contact (CRC) symptoms of Justified and Non-Justified Rejection (Alienation) with respect to her mother, however her symptoms of unjustified Rejection are more predominant. As noted by Mr. Finlay while X reported incidents when she felt shamed, judged and/or treated harshly by her mother, what Mr. Finlay said was Justified Rejection symptoms, she said she felt safe and not judged by her father at all times.

[192] He also noted however:

This is typically not the case with Unjustified Rejection. In this situation, the child's complaints and reactions are out of proportion to the behavior of the Rejected Parent. [X] displayed symptoms of Unjustified Rejection such as splitting, a lack of empathy for her mother, hostility shown as disrespect ("She needs an exorcism."), minimizing and discounting any positive memories with her mother, saying her mother will never change, not taking responsibility for her part in the relationship, exaggeration of complaints ("She is a -18 on a scale of 1-10[.]"), presenting as overly empowered such as a Court cannot tell her what to do, that she will not go with the Police (Police enforcement clause), that she doesn't ever have to see her mother again and cutting off contact with maternal relatives with whom she was previously close. She said that she wants a No Contact Order against her mother and for her father to have full custody.

Children with symptoms of Unjustified Rejection can develop severe anxiety to the level of a phobic response. [X] reported nightmares suggesting her anxiety level is not only high but she copes with it through avoidance such as running away. She perceives that her only safe place is with her father. The mental health screening with [X] showed that she is currently emotionally stable however her nightmares suggest emotional fragility which will need to be carefully monitored as part of any reunification efforts. There will need to be special attention given to help her reduce her anxiety.

[193] Mr. Finlay set out his recommendations at the conclusion of his report. Overall, he finds both parents to be competent and loving parents with each having room to improve. While he agrees co-parenting is key, he noted that could take the form of parallel parenting to reduce conflict and until communication and conflict improve, where they could move to a more flexible arrangement. He said X was found to display symptoms that are indicative of a Moderate to Severe Case of CRC caused by a combination of factors that could be considered both Justified and Unjustified categories. This will require a comprehensive plan of intervention plan implemented over time in gradual steps to reunite X with her mother.

[194] In his cross-examination of Mr. Finlay's recommendation, C.D. was particularly focussed and insistent on having Mr. Finlay reaffirm his recommendation with respect to co-parent communication and insist on his position that each parent communicate directly or via Family Wizard. On this point, however, Mr. Finlay said if one parent was triggered or traumatized by contact with the other parent, such communication should start gradually and it was not necessary to have direct contact. Mr. Finlay said if one parent was

traumatized by contact, that should be respected and taken into account. A clinical professional would be needed to support the person and the exchange of information. In his view however, this would not excuse the parent from being required to exercise joint guardianship.

- [195] Once again, it is striking that C.D. continued to insist on direct communication with the claimant despite requests from her and her counsel-even during adjournments and as pointed out by counsel after observing her distraught during trial. C.D. said he does so because he received legal advice to follow the parenting agreement and a previous judgement had said this. He continues to rely on is a very literal translation of all this, which appears a convenient way to continue a pattern of conduct of control and abuse of the claimant--this is very concerning despite the fact that C.D. more recently offered to communicate through Dr. Elterman if the claimant pays for this.
- [196] With respect to a parent that is not putting the best interests of the children first and is found to have actively frustrated the process, Mr. Finlay said a treatment plan should be clearly outlined and expectations set out. It would be important to have access to a parenting coordinator or the court to ensure compliance. If despite this the process is still not working, the court may need to order a residential treatment. Mr. Finlay also noted, if there was evidence to this effect, the child may have to be removed from the non-compliant parent's care.

D. Analysis

1. Best Interests of the Children

- [197] The legal principles governing the best interests of the children and parenting arrangements have been set out above. Those factors include the child's health and emotional well-being; the nature and strength of the relationships between the child and significant persons; the history of the child's care and stability, the ability of the responsible person to exercise his or her responsibility; the impact of family violence and the views of the child.
- [198] For the purpose of s. 37(2), and the best interests of the child, a court must consider a number of factors including in brief, the nature, seriousness and frequency of the family violence; whether any psychological or emotional abuse constitutes a pattern of coercive and controlling behaviour directed at a family member; whether the child was exposed to family violence and whether there is any harm to the child's physical, psychological and emotional well-being as a result of the family violence.
- [199] To a great extent I find much of the evidence in this case impacts on and overlaps with many of the factors. Accordingly, while my comments on some factors may be brief, I have considered each factor as mandated by the FLA.

- [200] While overall, it is fair to say the two younger children, while no doubt suffering some adverse effects from the separation, have generally adjusted to the separation, this Court has a concern about the future well-being of the children as a result of the alienation of X from her mother. As noted by Mr. Finlay, and set out earlier, there is a stronger possibility of adverse impacts on the younger children if the alienation of X continues.
- [201] The s. 211 report has outlined the difficulties faced by X, who is alienated from her mother and has suffered mental health consequences from being in the middle of the conflict between her parents.
- [202] I now set out further details of the events and the consequent impact on the children's health and emotional well-being as follows.
- [203] I turn to my consideration of those factors now.
- a. The Children's Health and Emotional Well-Being
- [204] Difficulties arose almost immediately between the parties at separation which have impacted upon the children.
- [205] A.B. admits that she made a mistake and advised the children that C.D. had left and had been unfaithful. She has since avoided discussing the case and when in court simply says she is going to meetings. During the trial, she noted the children had noticed and said lately that she was "in a lot of meetings".
- [206] On this point, which is noted by Mr. Finlay in his s. 211 report, as A.B. disclosing adult issues to the children immediately after separation, Mr. Finlay indicated this was a stressful situation that if A.B. had access to advice she would likely have done differently.
- [207] When questioned as to whether A.B. discussed court matters with the children, she indicated when asked by the children, she told them the information in the affidavit that the children had seen while in C.D.'s care on February 1, 2020, was true. In addition, A.B. advised the children of C.D.'s arrest in July 2020, on the advice of professionals--being Ms. Beveridge and Ms. Farnell, who were counselling the children. She briefly advised the children of the situation based on this advice. In addition, when X in particular called her a liar and asked if she was telling the truth, A.B. did say she was telling the truth.
- [208] A.B. denied, however, telling the children about the criminal proceedings against C.D. As noted in Dr. Ellie Bolgar's notes of X's distress about these proceedings articulated most recently in November 2022, A.B. has not seen; nor had contact with X in over two years at the time of this testimony.
- [209] As part of C.D.'s allegations that A.B. was attempting to alienate the children from him, he put to her that she directly told the children about the sexual assaults, about his affairs, that he was dangerous, and he was a drug dealer.

- [210] C.D. testified that in May 2020, X reported to him that A.B. had told her that C.D. was a drug dealer and had been to jail. She also told her not to marry a brown man. (which latter point was not put to A.B.).
- [211] A.B. denied this indicating she did not share any information unless prompted with the children especially with respect to the court process. She did not say he was a drug dealer. With respect to his affairs, she indicated the children may have overheard family members on this account.
- [212] I conclude other than that the initial disclosures, A.B. has not been involving the children in this litigation process. Some of C.D.'s allegations above were not put to A.B. in cross, but more importantly there is no evidence to support C.D.'s allegations in this respect.
- [213] In contrast, C.D. has directly involved the children in this litigation, thereby adversely affecting their health and emotional well-beings, and continues to do so despite numerous professionals providing advice not to do so and conduct orders to that effect. The evidence establishes C.D. has been involving and advising the children; particularly X, of this litigation, despite his initial protestations otherwise.
- [214] At the outset, C.D. allowed the children, in particular his eldest daughter X, to read an affidavit of A.B. which outlines the particulars of the claimant's family claim, including allegations of family violence and sexual assault.
- [215] On February 1, 2020, the children returned from parenting time with C.D. The claimant maintains the children were exposed to her affidavit as they referenced the sexual assault claims, which she had not indicated to the children.
- [216] This incident was outlined in detail by A.B., corroborated by a video of the children's response and corroborated by another witness, N.I., a friend of the claimant, who testified and was present at the time.
- [217] Due to earlier police involvement A.B.; her family and N.I. were trying to settle the children back into the home and create a family environment. Very shortly after her return, X, who was 11 at the time, asked "what is rape" and if her mother "had lost a child". The adults were shocked and X said she had read this in an affidavit of her mothers, given to her by her father. The adults tried to change the subject and set up a more child friendly environment by putting on a children's film.
- [218] N.I. also said, the younger two children mentioned they had seen the nanny at their father's residence and he had said they would live there like brother and sister and they could all live together. C.D. continued to deny this latter comment but later, after many denials, admitted in these proceedings, he had given the affidavit to X to read.

- [219] This was the beginning of what I conclude has been regular involvement by C.D., of X in particular, in these legal proceedings. Not only is this based on what the children have told A.B. but is established by evidence of the professionals retained to assist this family. In addition, C.D. finally admitted at trial that he has exposed the children to these proceedings.
- [220] In chief, C.D. admitted to disclosing the affidavit to the children, which details the abuse allegations. He said this was a poor decision, along with that of A.B.'s disclosing information to the children at the outset. He also said, however, he did not agree with X being told about his July 2020 arrest and he was put into a difficult position.
- [221] C.D. conceded he has told X about the court proceedings including the criminal court proceedings, and may have done so since she was 12. He said as she now is 15 (which I note occurred one week ago before this testimony), he has told her he is in court both at the times of his civil and his criminal proceedings.
- [222] C.D. said that X knows about the legal proceedings, including the criminal proceedings. She asked him if his arrest was related to the abuse allegations and he told her yes. He says, "she is 15; she lives with me; she goes to the high school that I work at; she knows when I absent. She is aware to the trials; including the criminal trial" and can tell from his appearance that he is tired. He said that "[s]he needs to know that much" and is "mature enough to be aware of these proceedings".
- [223] All of this reflects adversely on C.D. It is evident C.D. has involved the children despite conduct orders to not do so; despite professional advice to not do so; and in the midst of a very high conflict family case with difficult allegations of family violence, including sexual assault, and the reality of his eldest daughter being alienated from her mother in significant part due to her belief or not as to the veracity of these allegations.
- [224] I conclude the children's health and emotional well-being has been adversely affected by the parties' separation and in particular the actions of C.D. by involving the children, in particular X, in these legal proceedings.

b. The Children's Views

i. Summary of X's Interview by the Court

- [225] After interviewing X, the court provided the parties a brief summary to the effect that X's comments were consistent with the s. 211 and what her father said she has said to him. X says her mother overshadows her problems, particularly at the time of separation. While she is hardworking, and before the separation, they get along well, her mother while trying, has a temper. X says her father treats them well but is stressed and tired.

- [226] X presents very much as an overly empowered child as from her perspective she can chose where she lives because as she said "the parenting agreement" says 50/50 but she lives full time at her fathers". In addition, X indicated she could not be forced to take reunification counselling and would not do so even if ordered by the court.
- [227] X loves his sisters and wants live with them. The one bright spot is that X said she was open to improving her relationship with her mother but wanted to do this with her own counsellor and in her own time. Counsel for the mother says while this may be a break through-it has happened once before but X quickly reverted back to the father-which she has now done again.
- [228] It may again be said that in the interview with respect to her mother- her words echo her father's perspective and indeed echo some of her father's testimony.

ii. Views-of-the-Child Report

- [229] Dr. Elterman provided a views-of-the-child report, dated September 12, 2022. The children were interviewed in June and July 2022, and the report largely confirms the views of the children set out in the s. 211 report. Essentially, the younger children are comfortable in both parent's houses and the current parenting arrangement. X's preference is also the current arrangement in which she lives with her father.
- [230] I am aware of and consider these views in the context of the evidence as a whole. In particular, as noted earlier, X displays CRC symptoms of Justified and Non-Justified (Alienation), the latter being more predominate with respect to her mother, so her views must be viewed in that context. While there have been issues that have arisen between A.B. and X because of A.B.'s parenting style, the evidence is overwhelming that X exhibits significant symptoms of Non-Justified Alienation with respect to her mother.

c. Nature and Strength of Relationships between the Children and Significant Persons in Their Lives

- [231] A.B. described a close relationship with her children including her eldest daughter, X, prior to the separation. This was corroborated by her sister who indicated they had an amazing mother-daughter relationship and did everything together. Cooking was their passion; A.B. took the children to their activities and took X to Paris as this was a shared dream of theirs.
- [232] P.D. also outlined her very close relationship with X. As A.B.'s younger sister, she lived in the same house as X when she was a baby, helping to take care of her from the time X was six months old. P.D. said X would confide in her. In cross-examination, P.D. denied that X said her mother abused her. Rather, X would say only that her "mother was so annoying" and was struggling after the divorce but she did not say her mother abused her. P.D. also outlined X's very close relationship with her grandfather and the difficulties after the divorce when X did not see her grandfather including at the time of his untimely death due to cancer.

- [233] C.D. also has a close relationship with the children as reflected by his testimony and the s. 211 report. While he maintains he was the primary caregiver as he worked part time, this was in the context of A.B.'s family providing very significant family support and care for the children.
- i. The December 2020 Incident
- [234] A significant amount of evidence related to the event in December 2020, which is said to have ruptured the relationship between X and her mother.
- [235] A.B. testified about the December 28, 2020 events. She indicated that X was in her care along with the younger girls and they had had a good Christmas. They were in good spirits even though her father had received his serious diagnosis of pancreatic cancer. The family had spent time at her parents' place beside her own house and returned to their house for bedtime. It was late and A.B. indicated she does not allow the children to have electronics in their room or use after 8 PM. Although it was 10 PM, X indicated that she wanted to face time her father. As it was the holidays A.B. indicated this was fine but only for 5 minutes.
- [236] A.B. then knocked on the door and overheard X on the phone and the respondent saying "do you want me to call the police; are you okay". She said she then called her mother and brother to indicate she needed help as she felt she was being set up. The police had been called before by the respondent and the Ministry of Children and Family Development ("MCFD") had been in their house a couple of times. She felt this was another such occurrence.
- [237] A.B. went into the room and tried to take the phone from X. The other two girls were with her. X kicked her in the left front side, and A.B. fell back on the bed. She said, "what are you doing" and X escalated. A.B. grabbed the phone and they had a struggle over the phone. X started screaming "my mother bit me". A.B.'s mother came in and said "no she did not bite you". While she pulled the phone, A.B. said she did not bite her finger. A.B. took the phone and the two youngest and asked her mother to stay with X to calm her down. X had suggested she was going to escape and had brought an electric scooter with her. A.B. decided to call the police for help. The police indicated they did not have a concern about X's safety, but suggested she lock the scooter in the garage.
- [238] A.B.'s mother spent the night with X in her room and A.B. kept the girls. The next morning X appeared settled. The family had a Zoom cousin Christmas exchange which X participated in and appeared to enjoy.
- [239] X however indicated to her grandfather and A.B. that she had feelings that were of concern to her mother, so A.B. called an officer. The officer said she would take X to the hospital and A.B. should follow her. A.B. testified she arrived at the hospital and was interviewed by a social worker and the MCFD. They indicated they had no concerns in releasing X to her care.

- [240] A.B. said however she was told that the respondent had arrived in escalated demeanour at the hospital. A.B. had a conversation with X who told her it would be easier if she went home with her father. They shared tears and a hug. While A.B. told the hospital X could be returned to her father's care, A.B. had a huge sense of fear as she felt C.D. was doing what he had always threatened he would do "take X from her". That was the last time she saw X until extremely recent events, in June 2023, which shall be described later.
- [241] While C.D. says MCFD put X in his care in December 2020, this is not accurate. A.B. agreed to relinquish X to his care at the hospital when told X would prefer that. MCFD closed the file shortly after this.
- [242] Shortly after this incident, A.B. received a phone call from the police who told her to come in to the police station. A.B. was charged with assault of a minor. A.B. said this was a very difficult process and she felt very sad for her child as what her child was going through was overwhelming and unfair. She said she realized she was "going to lose this girl" and the threats that the respondent had been making for years, that he would "take X away when she was 12", were coming true.
- [243] A.B. was released with conditions that included not seeing her child. This affected multiple relationships in a very tightknit family that had been an integral part of X's upbringing.
- [244] X had been particularly close to her grandfather. He was dying and X did not see him. His birthday was on April 5, 2021, and he wanted to talk to his granddaughter. While A.B. was concerned as the respondent had not been helpful, her father did call X and when she picked up she said "Domino's Pizza how can I help you". X quickly hung up the phone. A.B. thought that X was scared or was not able to talk to her father.
- [245] A.B.'s father died April 18, 2021. While the two younger girls were able to say their final good byes in person, X was not. On April 17, P.D. corroborated A.B.'s testimony that a cousin who still had contact with C.D. begged him to send X to say goodbye to her grandfather as he was dying. C.D. said no. Steve then begged for a phone call. C.D. allegedly said "I'll give you the phone call if you do me a favour". While X did have a final phone call with her grandfather, by then he was not able to respond to his granddaughter.
- [246] X has had a number of her own counsellors which has been arranged by the respondents. Other than their names, the claimant however has had no access or information to these individuals.
- [247] I do not need to resolve the specifics of the December 2020 event. Suffice it to say, regardless of the participants' perspective, it led to the ultimate breakdown in the relationship. As noted, by Mr. Finlay, the resolution of the ruptured relationship, will require an acknowledgment of the underlying issues and guidance by professionals.

- [248] While clearly both parties had strong positive relationships with the children, that significantly changed to the point X is alienated from her mother and mother's family. I have set out much of that evidence and have accepted certain findings in the s.211 report with respect to this. I have also considered the evidence the professionals set out earlier, who have identified both this reality and the need to address it for the sake of the children's well-being, in particular X.
- d. The History of the Children's Care
- [249] Prior to separation, I conclude both parents were regularly involved in their children's care. While C.D. seeks to portray himself as primary parent, I disagree. Both parents worked. While A.B. worked longer hours, I accept that A.B.'s parenting, along with a nanny, would have taken care of the children's needs as well. While C.D. may have only worked part time, he did not indicate he was otherwise a "stay-at-home dad" and indeed his participation level is very much contested.
- [250] Post-separation, the children's care and parenting arrangements were set out in the March 2020 parenting agreement.
- [251] Dr. Elterman is the present parenting coordinator and has been working with and making many determinations for these parties' post-separation concerning the children's care.
- [252] There were many questions in cross-examination as to whether the parenting agreement was being followed and changes that A.B. would like. This included a comparison between the 2/2/5/5 approach vs the week on week off approach. A.B. testimony was consistent that she preferred the week on week off approach to limit transitions which were creating difficulties for the children. A.B. indicated Dr. Elterman's expressed concerns with respect to the current arrangement along with other professionals including Dr. Bolgar.
- [253] A.B. said she would prefer the children have primary residency with her due to her concerns about the well-being of the children and the respondent's impact on that.
- [254] There is much disagreement between the parties as to who the medical professionals should be. Those originally named in the parenting agreement are no longer medical professionals in this matter. There is a significant dispute whether Z has allergies and who the doctor should be. This is concerning and I will address this later in my reasons.
- [255] A.B. in cross-examination indicated she was not comfortable using family Wizard to communicate with respect to the children. as her parenting coach advised that this online tool only worked well with parents that were cooperating in co-parenting. A.B. does not wish to have any contact in any form with the respondent due to her concerns of safety and wishes all communication to go through a parenting coordinator.
- [256] A.B. has said numerous times, she does not feel comfortable co-parenting for her safety and does not want direct communication or contact with C.D. I accept this.

- [257] A.B. said she would take measures to engage in a robust reunification program as developed and advised by the professionals testified to this court case. With respect to the comments that she has an authoritarian or insensitive parenting style, she said while sometimes her tone of voice is perceived this way by the children, she would take advice from her parenting coach and the professionals.
- [258] With respect to the care of the children, C.D. consistently alleged breaches of the parental agreement including A.B. not taking the girls to soccer on her parenting time as; not allowing another family to drive the girls to soccer; and outlining difficulties associated with finding a new family doctor as the children's family doctor had just retired.
- [259] A.B. indicated that the family doctor had a replacement doctor for the practice which she has faith in and who was suitable for the children. C.D. disagreed indicating difficulties getting information from that doctor. In addition, he referenced disputes about whether Z should have a new allergist as C.D. was of the view Z did not have any allergies. A.B. however consistently said that C.D. was pushing Z to eat some of these products, which made Z afraid and uncomfortable.
- [260] There was a dispute as to whether A.B. did not allow C.D. at the ER on two occasions with Z. On the first occasion, November 2021, the hospital advised only one parent could attend. C.D. called the police about this alleged interference with his ability. A.B. had attended with Z on the stretcher in an ambulance due to the seriousness of the occasion, and while she offered to leave to allow C.D., both the police and the hospital advised that was not necessary.
- [261] On the second occasion, January 2023, Z was brought to the hospital where A.B. was working and the emergency physician provided C.D. with all the information.
- [262] C.D. also said A.B. breached the parenting agreement with respect to Z's birthday party in October 2021. A.B. admitted this mistake and said she corrected it.
- [263] A.B. agreed that she did not enrol the children in extra curricular activities until July 2022 but said this was because of her concerns about Covid and her own safety during this time. The children are now in dance, gymnastics and take violin lessons.
- [264] While the respondent in final argument focusses on the claimant breaching the parenting agreement, he does so when it is clear he is fundamentally breaching the parenting agreement with respect to the claimant's parenting time with X.
- [265] Ultimately, these are by and large issues that have been dealt with by Dr. Elterman, the parenting coordinator. While some of this evidence is pertinent to a final remedy I do not find it necessary to resolve or deal with these matters which the parenting coordinator appears to have well in hand.

[266] I do conclude, however, that this history of difficulties and differences between parties and A.B.'s expressed safety concerns lead me to conclude a parallel parenting regime is required in this instance. This will become evident later in the analysis.

e. The Children's Need for Stability, Given Their Age and Stage of Development

[267] Given the children's young ages and the amount of conflict, the children have an important need for stability. I find this particularly so with respect to health and medical matters, which appear to have turned into another battleground between the parties. At this point, it appears the parties are on a path to have two medical professionals per child, duplicated services which is not tenable and adverse to the children's welfare. To promote stability, I conclude that A.B. should have decision making with respect to medical matters and the choice of a family doctor. C.D. may have that same authority with respect to dental matters.

[268] The current parenting time schedule has provided stability, in particular for the younger children, but has led to difficulties with transitioning from one household to another. This is reflected in the testimony of the professionals, in particular Dr. Blancato who referenced that difficulty when the younger girls came to her for counselling. In addition, A.B. has clearly set that out in her testimony.

[269] There is also the aggravating factor evident most recently of the younger girls being influenced by the negative comments of X and C.D. towards A.B. This was referenced by the professionals and recognized by Dr. Finlay's characterization of the formidable force of the favoured parent and alienated child and their impact on the younger children.

[270] This leads me to conclude at a minimum, the parenting schedule must be changed to one week off and one week on to offset this influence and to facilitate transitions, while maintaining stability for the children.

f. The Ability of A.B. and C.D. to Exercise Their Responsibilities

[271] I have set out A.B.'s abilities, responsiveness and willingness to exercise her responsibilities earlier these reasons. They are simply not in question, and A.B. demonstrates both love and a deep willingness to work with X, her oldest daughter to repair that relationship. While she has a demanding career, she has stepped back in the past to redress that balance when required and her family has been a significant support to her. The children have been heavily integrated to that extended family life which adds to that support. A.B. has been utilizing a parenting coach to address any issues with parenting style and has shown that she is willing to do so. I do not doubt AB's ability to exercise her parenting responsibilities.

[272] I do however have some doubts with respect to C.D.'s ability and willingness to exercise his parenting responsibilities in a way that ultimately keeps the best interests of the children as his primary concern. While C.D. has cared for the children, he has not followed the suggestions and requests of professionals who are trying to assist the family, in particular with the reunification of X and her mother.

[273] I note C.D.'s need for control or to control the situation is evident and commented upon throughout his interactions with these professionals and further reinforced by what can only be described as his self-focussed view of the world. He has trouble, as identified by the professionals, in seeing things from another's perspective--a form of empathy--including what may be impacting on his children--which he appears to lack according to Dr. Bolgar. As has been noted, this is reflected in his continued insistence that his deceit with respect to the nanny, was irrelevant to his eldest daughter's alienation from her mother, which was based in part on her belief that her mother was lying about this particular fact.

[274] This inability to see the damage he is inflicting on his daughter is troubling and leads me to have some doubt as to whether he is able to meeting his parenting responsibilities consistently going forward. He has not expressed the requisite knowledge; nor desire to do so, in these proceedings. The one "learning moment" he experienced, he quickly downgraded as not really being important, and in which he was proved wrong by very unusual events in this case.

[275] There is no question that X is a child alienated from her mother and despite recent events likely remain so. A significant question or issue in this case has been whether and to what extent C.D. as the favoured parent contributed to this alienation as this directly impacts on the remedy.

i. Recent Events

[276] I will at this point set out a summary of recent events that took place during a final adjournment between June 9, 2023 and July 26, 2023, in this lengthy trial, at which time the matter was to recommence with the court's scheduled interview with X and final submissions in this matter.

[277] In order to consider these events, I have acceded to the claimant's request to adopt the evidence filed with respect to parenting time by both parties and filed on June 20 and 21, 2023, respectively. As the claimant says due to a series of highly unusual unexpected events, the grounds of this case have shifted very late in the day. This case has therefore become even more complicated.

[278] On the morning of June 14, 2023, P.D. received a phone call from her niece, X, while at her home in Vancouver. This was the first time she had spoken to X in two and a half years. X asked if P.D. could pick her up from school because she was having a bad day and needed to talk to her. Shortly afterwards, X called back and asked her to pick her up from the library, down the street from the school and she had checked out of school for the day. P.D. did so; hugged X when she arrived and as X said she wanted to leave Ladner, drove back to Vancouver.

[279] In that 45-minute drive, P.D. indicated that X told her many things including that on June 10, 2023, C.D.'s girlfriend told her about C.D.'s affair with the nanny during his marriage to the Claimant. X said this upset her because he had lied to her for so long about the affair.

P.D. then said X relayed a number of other things including she was responsible for everything at C.D.'s house, she can hear the C.D.'s pornography from the other rooms in the house, and he provides her with only \$40.00 a month as spending money. X also indicated that C.D.'s girlfriend had shared many things with her including that C.D. was very rough with her while they were engaging in sexual activity; the claimant had probably been sexually assaulted by C.D.; she could not leave C.D. as he had video of them engaging in sexual activity which he threatened to release to her work and ruin her career; and a number of other things including that C.D. told her that he was aroused by the nanny's 12-year-old daughter, planned to massage her and eventually wanted a threesome with the nanny and her daughter.

- [280] P.D. said that X wanted to speak to police and that her father needed to face consequences for his behavior. P.D. told her this was too much for her and her teenage years should not be filled with these issues. When they arrived, X repeated these disclosures to P.D.'s husband and told her to call the claimant and put her on speaker. X said the claimant could come and see her at P.D.'s apartment, which she did. While X and the claimant did not hug when they reunited, P.D. said X appeared content to be with her mother, and told them that she now understood the claimant's side. X repeated what she had told P.D. to the claimant.
- [281] S.D., X's grandmother arrived with Y and Z and hugged for two minutes while both cried. X apologized to S.D. for not seeing her grandfather before his death. S.D. said she did not need to apologize.
- [282] I will not go into details much further other than to indicate that both the Delta and Vancouver police became involved and spoke to X about her concerns. In the meantime, X had a lengthy conversation with C.D.'s girlfriend, and ultimately the respondent who was on the phone and he denied the allegations concerning the 12-year-old. This conversation was recorded and the transcript of that recording is disturbing once again illustrating that X, a child, continues to be involved in adult matters by C.D., which has created real anguish for that child.
- [283] As might be expected this was an intense time for everyone involved, including X. The respondent came to see X to talk on Thursday, June 15. X and her father had dinner, and they returned home. X had asked P.D.'s husband to go with her. P.D. said X indicated she wanted some back up and to stay at P.D.'s apartment and had left her backpack and belongings at the apartment. P.D. said while her husband was talking to X, C.D. was pacing behind him and said "stop brainwashing my kid" or words to that effect.
- [284] In view of these events, the claimant decided to not to return the younger children to C.D.'s care. This resulted in C.D.'s application of June 20 to have the claimant's withholding of the children found to be wrongful with make up time.

- [285] That application was ultimately deferred to this court with an interim order allowing C.D. supervised access during the day to his children. That did occur with supervised reports, which C.D. asked to be put before this court as part of his application.
- [286] I heard that application as part of final argument and concluded pursuant to s. 62(1)(a) and (e), of the Family Law Act, the claimant's withholding of the children between June 14, 2023, to the date of this order was not wrongful. The withholding arose as a result of an incident of concern that had implications for the children and arose completely independent of the claimant and was worthy of investigation.
- [287] I concluded however with respect to the interim order at that time, as the police are not further investigating this matter and on an interim basis - I allowed C.D.'s summer parenting for a week until this matter was dealt with further on the following Friday, August 4, 2023 - at which time the parties could address this further. I had reviewed the supervised parenting reports and other material and noted there was no real reference to any further MCFD involvement in this matter and I was concerned with disruption to the children and their best interest.
- [288] I also ordered that the parties shall not directly communicate with each other, in person or through any written means. All communication must be through the parenting coordinator for parenting issues and counsel for legal issues, who alone will receive the originating communication without one parent copying the other. This is particularly relevant to C.D.
- [289] After other specific conduct orders, I ordered that there be absolutely no involvement of the children in these proceedings and that included X. It is critical that not be done and if any child asked any questions about this--and that may be X--she could be advised that the court has specifically noted that the children should not be involved in these legal matters.
- [290] As a result of these events, two things stand out. One is that C.D. continues to involve X in the legal proceedings to the point of having his 15-year-old file two affidavits, contradicting some of what P.D. had said, and directly involving her in recounting her version of these difficult events. He appeared to have no compunction in doing so, though he blamed it on his counsel.
- [291] Furthermore, a review of X's affidavit shows the use of the same phrases as her father in his filed affidavit; further supporting the concerns expressed by the professionals that she is effect echoing her father's views.
- [292] Indeed, a close look at her affidavits illustrate that she is using the very same words that C.D. is using in court--some of the exact same words--in describing things. As an example--throughout, C.D. says that A.B. is just out to punish him. In X's recent affidavits, at para. 3 of her second affidavit, she says "my mom wants to punish my dad and my sisters". This is very concerning.

- [293] In conjunction with this is her comment that she had no plans to leave C.D.'s home because of the affair. There is some question as to why X would say this in her affidavit, unless C.D. had told her this was a significant point in the trial. I conclude C.D. has since referenced this in the preparations for this affidavit. He has clearly been talking to X about the proceedings and/or had her put this in to counter the argument that the claimant had made on this point.
- [294] While C.D. says he just asked X to answer her mother's points in the affidavit and no more, that is a disingenuous as her mother has set out some of the evidence in the trial and he thereby exposes X to more of the trial details.
- [295] More importantly however, it appears that these events have resulted in what can possibly and hopefully be considered a bit of a break through in the possible reunification of X. This is particularly important as I set out the remedy which I will do shortly.
- [296] While C.D. said he was in a difficult situation and could tell his children the truth as he was afraid this fact would impact on his access to the children, there has been ample time to rectify this significant oversight, with the help of various counsellors who have been trying to assist this family over the years. While normally it could be argued this is not relevant to the issues in a FLA proceeding, in this case, as it directly impacts on the factors underpinning X's alienation, it is very much relevant in this case. As Mr. Finlay says, these actions reflect an individual who is not putting his daughter's best interest first.
- [297] In addition, C.D. consistently has said this is not an important or even relevant factor to reunification and provided none of the professionals this information so they can assess its relevance. Recent events have dramatically proved C.D. wrong, but he seeks to change that narrative by filing his daughter's affidavits in these proceedings, after persuading her to return home in very difficult circumstances. Throughout, C.D. appears again to want to be in control and be in effect the arbiter of the relationship between X and her mother, despite his denials. In his testimony, he insisted it was important he communicate with A.B. so he can provide A.B. advice on reunification with X as X lives with him. Again, a rather revealing position.
- [298] As indicated by Mr. Finlay in his s. 211 report, C.D. presents as "friendly, articulate and intelligent". He had a calm demeanor at all times"(at page 33). Indeed, he largely presented in the same way in court. I cannot however ignore the evidence of at least 3 professionals who expressed concerns with respect to what C.D. says vs what C.D. does. In addition, the evidence established C.D. did not present this way to the professionals who were trying to assist the family in a process he could not control. Finally, having his daughter file affidavits and address a significant point in trial, is very troubling.
- [299] One concern identified from the very recent supervised visit reports is that the two younger children are very much influenced by their older sister, who does blame her mother for things, i.e., the fact that supervised access occurred, and the younger girls pick that up and imitate it. That is troubling, and lends further support to the need for reunification therapy

for X and her mother as being of prime importance. The claimant has identified these concerns and this most recent evidence, along with what has been set out earlier, provides support for the validity of those concerns going forward.

g. The Impact of Any Family Violence on the Children's Safety, Security or Well-Being, Whether the Family Violence is Directed toward the Children or Another Family Member

[300] I now turn to the issue of family violence which I am required to consider, and make findings on, as part of these proceedings.

[301] A.B. said that, while the first year of the relationship was good, it significantly deteriorated after that time. A.B. testified as to particulars of family violence, including sexual violence. C.D. strongly denied the particulars articulated by A.B. I will deal with these as set out below.

[302] The claimant maintains there is a long history of corroborated family violence, which includes sexual violence; emotional and verbal abuse; one incident of physical abuse; the withholding of medication following the claimant's surgery and withdrawing financial support during medical school. In addition, the Respondent has made a number of threats and continued to refuse or respect the claimants repeated requests for no direct communication due to her fear of the claimant.

[303] The respondent maintains all allegations of family violence are fabricated by the claimant and she is seeking to create a narrative by which she can describe him as a dangerous person and alienate him from his daughters and the community. In addition, he says, rather than himself being controlling, it was the claimant who is a sophisticated, educated woman who has indicated she is out to destroy him and "has an army" to do so.

[304] C.D. says these allegations are all invented to obtain the upper hand in the court proceedings. He says all the claimant's witnesses are lying and points to texts or emails from A.B. that support this proposition.

[305] As a preliminary point, I note the standard of proof when considering family violence and/or an allegation of sexual assault in the civil context is proof on a balance of probabilities taking into account the seriousness of the allegations: *British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd.*, 2023 BCCA 70 at para. 163 [Angel Acres]. The Court of Appeal has most recently commented on this, making clear the civil standard of proof applies in such instances. Accordingly, it is important to recognize that this case does not deal with the criminal standard of proof.

[306] C.D. has been charged criminally with respect to a number of the same instances set out in this case and I will not be applying the criminal standard of proof to the matters before me.

[307] I turn to the evidence of abuse now.

i. Physical Violence

- [308] A.B. outlined an incident of physical violence prior to the marriage, where she was driving down Granville Street with C.D., with her sister and cousin in the backseat of the car. The couple had argued and C.D. struck her. A.B. was shocked and told C.D. to get out of the vehicle. In response, C.D. said "if I get out I will not marry you and your family will be shamed". As a result, she ultimately let him back in.
- [309] A.B.'s sister testified about this event, providing details corroborating the incident. L.M. said she was in the backseat of the car and observed C.D. hit her sister on the side of the head, as she said, hard enough that her sister's head hit the window. As a result, A.B. ordered C.D. out of the car. In response, C.D. said if he left he would never come back. He did depart the vehicle and A.B. then asked her 16-year-old cousin who was in the back seat of the car at the time to "go get him". A.B.'s sister testified her cousin was reluctant initially saying "why would you go get him" but ultimately was persuaded to do so.
- [310] I conclude this instance of physical abuse occurred.
- [311] This corroborative testimony, in conjunction with its particular details, supports the reality of this incident, which would have been shocking for teenagers to observe. While L.M. noted A.B. was shocked and angry at the time of the incident, A.B. did not leave C.D. as she did not want the relationship to end and was concerned about shame to her family.

ii. Financial Abuse

- [312] While at medical school in England, A.B. said she requested funds from her mother because C.D. would not provide basic living expenses for her, despite the fact he was working and she was not. C.D. financially cut her off and she asked her mother to send her money so she could buy lunch, and other necessary items.
- [313] C.D. cross-examined A.B. and put to her that her allegations of his financial abuse and that he was not supportive of medical school was fabricated. She disagreed. He pointed out in particular, while they were in England, her parents paid her schoolbooks and tuition and had paid or loaned her \$300,000. In view of this her testimony with respect to requesting funds from her mother was fabricated. A.B. indicated however this amount was a loan and paid for tuition and books over the course of her medical education which took a number of years to complete.
- [314] A.B. said while she was at medical school she was not allowed to study as C.D. wanted all her attention. She was as a result, forced to study at night.
- [315] In addition, with respect to financial control, A.B. indicated while she had her own corporate account, C.D. would tell her how much to transfer from that account into their joint account. In contrast however, C.D. however brought up expensive vacations A.B. had taken over the years and that A.B. purchased of range rover in January 2020 for \$450,000. A.B. indicated this was necessary because C.D. had traded in the Range Rover she was driving, and told her she was on her own for transportation.

- [316] C.D. cross-examined A.B. on child support, maintaining that she did not pay child support for a significant time, maintaining this was a form of family violence. A.B. that this was a misunderstanding and also referred to significant personal issues during this time, including the death of her father, her own major surgery and cardiac event. Ultimately, however, the parties reached a consent order with respect to child support which included a fine of \$5000, if she did not pay on time.
- [317] I accept this latter explanation as to why those delays occurred and the resolution which is evidenced by the consent order to that effect. I do not accept that family violence has been established by C.D. on this point.
- [318] With respect to other financial allegations of abuse, due to the directly contradictory testimony on these points, the question of financial abuse is difficult to ascertain. In view of other pertinent determinations, I conclude however a determination on this point is not necessary to my ultimate conclusion as to whether family violence occurred and its impact on the children. I will deal with below.

iii. Emotional Abuse

- [319] A.B. also particularized emotional abuse during the marriage including constant belittling behaviour on a daily basis in which C.D. would call A.B. "useless", "an unfit mother", "what kind of mother are you, you can't produce breastmilk", "you are so ugly how can I even look at you", "you think you're fucking cool as you are a doctor now" and comments along that nature. Once the children were born C.D. would constantly say to A.B. "what kind of mother chooses a career over her kids"; and remarks of that nature.
- [320] These actions and these kinds of comments were corroborated by P.D., A.B.'s sister, who said A.B. told her of these comments and she directly observed them in the house. She observed C.D. telling A.B. that "she was a terrible mother"; she "was useless"; and "no one would want to date her". He also said to her "Doctors aren't very smart"; she was "good for nothing" and he called her "lazy". She noted C.D. called A.B. "useless" almost daily and it was normal to hear him say that. She was young at the time and can now see how such comments were not normal.
- [321] P.D. was not shaken from this testimony in cross-examination. When it was put to her that she was making this up along with A.B., she consistently maintained she absolutely disagreed. P.D. also noted the couple did not have a loving relationship and she never saw any expressions of affection between the two.
- [322] P.D. also relayed a phone call from her sister in which A.B. told her C.D. had said he would "take [X] away from [A.B.] on her 12th birthday" and "take all the kids". P.D. noted this was something C.D. had said a number of times to A.B. who relayed these instances to her sister.

- [323] This is a particular concerning matter as it was corroborated by a number of unrelated witness. Not only did P.D. relay this but so did S.D., a friend and colleague from her workplace. This is something that A.B. says has now taken place as evident by the alienation of X from her mother shortly after she turned 12.
- [324] NU, A.B.'s cousin testified, and noting a number of incidents and observations over the years of the marriage, where A.B. appeared to be anxious, and walking on eggshells around C.D. A.B. would constantly be worried that she not do anything to upset him. A.B. confided to NU, that he regularly gave her the "silent treatment"; there was no intimacy and she was responsible for everything even though C.D. worked part time.
- [325] A friend of A.B., N.I. also testified that in the presence of C.D., A.B. appeared to be walking on eggshells, lost her self confidence and generally appeared less sure of herself. She also observed an incident in the home in November 2019, when A.B. asked C.D. to pay more attention to the youngest child who was seeking his attention She observed C.D. suddenly charge at A.B. and say "don't fucking talk to me like that". In cross-examination, C.D. put to X that she had made similar accusations in her own divorce in 2018/2019 and she had provided the "playbook" to A.B. to undertake a similar approach, which she denied. C.D. provided no other evidence on this point beyond this bare assertion.
- [326] A.B. also recounted an instance in December 2011 when she had surgery due to serious health concerns, and was in a lot of pain. C.D. took away her pain medication saying this was a weakness and she would become addicted. At the time she could not walk and C.D. just smiled and said "crawl". A.B. said C.D. got joy out of seeing her in pain. Nothing she did was right. While this event was denied by C.D., it was corroborated by A.B.'s friend, B.M. who testified in this matter. She is a physician and a good friend of A.B. dating from the time the couple lived in Atlanta. She said C.D. did not visit his wife in the hospital after her surgery and A.B. told her at the time that C.D. took away her pain medication. B.M. said, as a medical professional, she was of the view this was an inappropriate action.
- [327] I conclude this did occur. While C.D. denies this, the corroborating testimony of B.M. was not shaken in cross-examination. Whether C.D. took away the pain medication to "make A.B. stronger" or not, this is clearly a form of emotional abuse and control, particularly where as A.B. testified she was in a lot of pain and partially paralyzed from the waist down so could not walk.
- [328] A.B. sent email messages to C.D. in 2017 which indicated she was accepting blame for certain behaviour, and indicating her love for C.D. C.D. put those emails to her to show her allegations of abuse are not true. In response, A.B. indicated this was during a time of discord in the marriage where C.D. had threatened to leave and she was "groveling" trying to say what was needed to keep him from abandoning her, taking the children and publicly ruining her as he had threatened to do.

- [329] A.B. also said she tried to fix the marriage when she experienced this domestic violence by writing love letters to C.D., giving him gifts, cards and trying to "fix herself" as he regularly told her to. Things did not change however. Even her parents, who lived next door, did not know.
- [330] A.B. attended counselling in January 2018. Her counsellor's notes include references to her husband on January 18, 2018 as experiencing "her husband forcing himself onto her to have sex; January 24, 2018 as being "emotionally and sexually abusive"; March 1, 2018 that "she knew she had experienced emotional verbal, psychological and sexual abuse and was not sure if he could actually change his behaviours. However, she wanted to believe that they may have a chance for the sake of her kids".
- [331] A.B.'s counsellor testified and indicated commencing January 2018, A.B. disclosed allegations of sexual and emotional abuse as referenced above. She also confirmed A.B. related threats by C.D. to take the children, the money and the property in January 2020 upon the parties' separation.
- [332] The couple attended marriage counselling. In cross-examination C.D. put to A.B. that every time he threatened to leave, she would go to a marriage counsellor and "told them lies" for strategic purposes in order to get ahead of the game in a litigation. A.B. denied this.
- [333] C.D. also put to A.B. in cross-examination that she belittled him and physically and verbally abused him, which she denied. C.D. also indicated she yelled at the children. A.B. replied that she does not yell at the children but her voice is at a different pitch than C.D. who is soft-spoken so this may be perceived as such by the children.
- [334] In cross-examination C.D. also put to A.B. that she would do anything to get X back into her life, and that included lying and making false allegations against C.D. A.B. denied this and reiterated her allegations of family violence including sexual violence by C.D. While she agreed C.D. had moved with her to England for medical school, and joined her in Chicago and Atlanta, she indicated he was financially coercive as while he was working, he would not provide her funds for basic living expenses.
- [335] C.D. cross-examined A.B. on an email called "gratitude for my guy" which listed 130 things about C.D. for which she was grateful. While the date of the email was April 2019, A.B. said she could not confirm that date. While she agreed she made the list and sent the email, she said, "this was a task that the respondent asked me to do - to list a minimum of 100 things to provide to him before he would further engage in the relationship or conversation. He asked me if I was trying to speak with him or engage with him, he needed a list of at least 100 reasons she was grateful for him". A.B. thought this arose when she was having issues accessing financial funds, and she wrote this "in order to do what needed to be a done" "to allow the respondent to have what he needed to hear" which was" in direct contradiction to what she was living".

- [336] A.B. said she was in survival mode. As A.B. said, the respondent needed constant affirmation and she wrote this despite the constant levels of abuse she suffered. Things in this list which included # 28 "Doesn't control me" she said were false. In cross, A.B. said after reviewing this email, she has learned from her therapy that these were cries for help.
- [337] I conclude these events, which can be characterized as emotional abuse did occur. Specifics of the name calling were corroborated by P.D. A.B.'s demeanour around C.D. which appeared to be somewhat submissive and described as "walking on eggshells" has been outlined by at least two other witnesses, N.I. and N.U. Furthermore, N.I. testified to observing the sudden change in C.D.'s demeanour to what could be characterized as threatening when he told her to "don't fucking talk to me like that".
- [338] In addition, and importantly, A.B.'s counsellor's testimony corroborated this along with her counselling notes taken some time ago. It is noteworthy that C.D. attacks the veracity of these notes by suggesting to A.B. that she deliberately created this record by going to a counsellor when he previously threatened to leave, in order to use these notes at some point in the future to disparage him.
- [339] As is evident throughout these proceedings, C.D.'s response to A.B.'s evidence and description of abuse is that it is fabricated, along with the testimony of A.B.'s friends and relatives. He is unable to sustain this submission with anything more than this bare assertion and I cannot ignore the consistency of the descriptions of certain events by witnesses who have no direct connection. Other than alleging a broad based conspiracy, C.D. has no real answer to these allegations.
- [340] The email which C.D. relies upon in which A.B. lists 130 of C.D.'s good qualities is concerning and in fact supports A.B.'s consistent testimony that she was continuously trying to appease C.D. He could not be pleased and she continued to make constant efforts to do so.
- [341] When asked why she did not leave this marriage, A.B. said shame kept her in the marriage. She was the first of her family to go to school; the first to become a doctor; she was considered a role model in the community and took all her roles seriously. She said "deep shame" kept her in the marriage. A.B. also did not want her family to know about the abuse and was afraid as since her youngest child was five years old, A.B. said C.D. had told her he would take the kids. It was only a matter of time. She said "he did all the things he said he would do, so I couldn't leave till I had no choice".
- [342] This latter point and A.B.'s indication that shame kept her in the marriage was strongly contested by C.D. He described A.B. as a strong independent woman who was non-traditional, a feminist and someone who would not be afraid or concerned about shame for the family. He cross-examined A.B. extensively on this and pointed out the non-traditional activities and education she had engaged in over the years which demonstrated that she was bound by the strictures of family expectations and shame if these were not met. These included sports throughout her early schooling and her education, where ultimately, she

became a medical doctor.

- [343] C.D. was adamant no cultural influences impacted on this family. To conclude so, C.D. said would be to engage in stereotypical thinking - especially with respect to a south Asian man. He was born and raised in Canada and his mother moved to Canada at 13.
- [344] A.B. was as a result, extensively cross-examined on whether her family was traditional. C.D. sought to establish that it was not, so her comments of shame and traditional expectations were fabricated. A.B. indicated however while her parents are open, they were still a traditional family and as the oldest daughter there were certain expectations of her that were different. She was the first girl to go to higher education. Her parents supported her educational endeavours and she had responsibilities as a result.
- [345] I accept this testimony. There is no doubt that A.B. may have accomplished much and her accomplishments may be characterized as non-traditional in the context of her family. Her testimony, that of her sister P.D., and her mother, however, makes clear A.B. as the oldest daughter, was treated more traditionally than her younger siblings and absorbed much of the traditional expectations of the family. These expectations included being superior in accomplishments, which accomplishments added to and were shared as part of the family's accomplishments in the community. Indeed, the family provided significant financial support which would have added to A.B.'s feeling of responsibility to the family - even in a non-traditional context. I note this is not stereo-typical thinking. The evidence established this was the case.
- [346] Family shame in this context, including failure of a marriage and allegations of abuse, from A.B.'s perspective would tarnish her image as a role model and the family image as a result. This no doubt contributed to her decisions and in particular her desire to save the marriage and avoid what her parents may have perceived as shameful for the family. I conclude this was a significant factor in keeping A.B. in what appeared to have been a difficult, unhappy marriage in which C.D. subjected her to emotional and physical abuse.

iv. Sexual Violence

- [347] A.B. also testified as to sexual violence in the marriage. There are criminal proceedings against C.D. identifying alleged sexual assaults of A.B. on October 1, 2011; December 1, 2011; and February 1, 2012. C.D. is also charged with two charges of threatening to cause bodily harm on January 3, 2020, and January 23, 2020.
- [348] A.B. described an incident of sexual violence that occurred in October 2011 in which she told the respondent to stop. A.B. testified after a family wedding C.D. assaulted her in a degrading and humiliating situation. She was preparing for bed and to have a shower, when C.D. pushed her face down on the bed, held her hands down so that she could not move. A.B. said she kept saying stop "don't", but C.D. ignored this and shoved his penis into her anus without her consent. A.B. could not move, and as her father was in the next room, she could not shout or cry out.

- [349] C.D. continued by then forcing his penis into her mouth. After he finished, A.B. went to the bathroom and threw up for the rest of the night. In the morning when her family noticed she was ill, C.D. taunted her by saying "it must've been the lamb at the wedding."
- [350] A.B. confided in her good friend, B.M. from Atlanta, concerning the October , 2011, assault. A.B. told her friend she did not know" you could be raped in the marriage." She said she did not know C.D. could be so cruel. He is soft-spoken, charismatic and in public presents in a certain way for face in the community.
- [351] B.M. testified and corroborated A.B.'s description of this incident. She indicated A.B. called her in October 2011 and relayed to her a sexual abuse event with C.D. She recounted how C.D. initiated a sexual encounter in which he performed the sex acts on her as A.B. described above, while restraining her. She could not cry out as her parents where in one room beside her and her baby in the other room beside her. B.M. said A.B. told her she was violently ill after the episode and through the next day, while C.D. taunted her that "it must have been the lamb".
- [352] As B.M. was of the view this was an extremely disturbing incident, she asked A.B. if she was safe and did she need to leave this relationship, A.B. told her she felt she couldn't leave because of her faith, her belief in marriage and her family. As A.B., C.D., and X lived in the same household as her family, she was concerned about what her father and brother would do to protect her. She also told BM that she was afraid as C.D. told her he had friends in the police.
- [353] A.B. said she has done extensive therapy to get to this place and describe these events, and as her father is no longer here he does not know, as he would feel shame and suffer beyond description.
- [354] A.B. described another incident occurred in December 2011. A.B. said she was bedridden after surgery following a serious medical event and pregnancy which had caused the death of her unborn child, C.D. again forced himself on her, while she was in her mother's house, immobile in a hospital bed in the living room. She could not get up nor cry out because she was in her parents' house.
- [355] A.B. said there were many other incidents of sexual violence which she has blocked out because of her children. In January 2013 he again forced himself on her without her consent.
- [356] A.B. detailed historical further sexual assaults in her marriage including one which occurred in Seattle in March 2015 which required her to seek medical attention for excessive rectal bleeding; and one which occurred in Portland in July 2015. In the former, C.D. again restrained her against her will and performed sexual acts on her with enough force that it caused A.B. physical harm.

- [357] The latter incident which occurred in Portland was corroborated by A.B.'s sister who related a phone call in which A.B. detailed the specifics of this assault, consistent with A.B.'s testimony at trial. In July 2015, while the couple were on their way to Portland, Oregon, C.D. stopped in a roadside parking lot which had a trail and forested area and forced A.B. to take off all her clothes and perform oral sex, while threatening to leave her there in the US in that state without her clothes or her purse.
- [358] While I have not set out the detailed specifics of all these incidents, suffice it to say that if established they would meet the definition of family violence.
- [359] C.D. adamantly denies these allegations of sexual abuse. He says he never sexually or physically abused A.B. He is not that interested in sex. He never pressured A.B. and rather it was the opposite. A.B. would want to have sex. C.D. also says the acts performed during the sexual assault were A.B.'s idea and it was largely unsuccessful. He says A.B. is lying and this is a form of vengeance.
- [360] With respect to the witnesses who testified as to A.B.'s reports of these sexual assaults over the years to them, he maintains he initially had a close relationship with A.B.'s sister, P.D. but when she found out that he had an affair with the nanny, she was upset and no longer wished to talk to him.
- [361] With respect to her A.B.'s physician friends who testified, C.D. says while A.B. may have reported events to them, it doesn't mean they happened. He also points out that at least one of them SD who is a doctor has an obligation to report child abuse and given that she reported that A.B. described at least one incident of child abuse to her and SD did not report it, shows it is not true.
- [362] C.D. cross-examined A.B., maintaining the sexual assaults were fabricated- which she denied. He also pointed out A.B. initiated sex in January after the separation. While A.B. agreed in January 2020 she initiated sex with C.D. after the separation, she said she did this as once again she was overwhelmed with the fact he was leaving and threatening to take her children from her.
- [363] C.D. referred to and cross-examined A.B. extensively on numerous emails between 2004 and 2019 in which she expressed her love and appreciation for him. While by and large A.B. admitted she made these comments, she repeatedly noted that she continually told the respondent what he needed to hear in order to survive, as she was afraid.
- [364] With respect to emails where she indicated she would try to improve her "bitchiness" and tone, she indicated this reflected the fact that the respondent was hypercritical, constantly criticizing her, calling her a bitch and blaming her for every failure within the relationship.

- [365] A.B. indicated she was committed to the sanctity of marriage and hopeful but was saying things she thought C.D. wanted to hear to ensure she was not cut off financially and to reduce the harm to herself. Overall, she said she has come to understand the complexity of abuse in which she was committed to sorting out her troubles and hoping that things would get better.
- [366] To establish A.B. was fabricating these allegations, C.D. also put to A.B. that there were no written texts between them identifying abuse. A.B. replied there were some sexually explicit texts sent by him to her but she does not recall texts setting out the abuse. C.D. therefore put to her again that her allegations of abuse were fabricated, which she disagreed with.
- [367] A.B. was also cross-examined on texts she sent in January 2020 seeking reconciliation between the parties. When cross-examined as to why this would be the case if she was mistreated, once again she noted she had learned through therapy a cycle of abuse and she was trying really hard to love someone who was controlling and took advantage of her. She maintained she was scared of him despite the exchange of texts between themselves on January 24 after she testified he had threatened her life on January 23. A.B. said however, she was in the process of putting together material for an ex-parte order to remove C.D. from the house, which application was filed on January 29, 2020.
- [368] Overall, C.D. put to A.B. that she was fabricating all the abuse allegations, and had persuaded her family and friends to support her in this endeavour which she denied. He also put this to the corroborating witnesses who all denied this accusation.
- [369] C.D. also called family witnesses to establish there were no allegations of abuse. C.D. called his sister S.G. and his sister-in-law, S.L. as witnesses. S.G. said the couple appeared happy although A.B. complained that C.D. was lazy. She also noted A.B. did not express any concern about abuse nor did she witness any. She was shocked when she heard about the separation and when she called A.B. on February 2, 2020, she said A.B. was angry at the separation.
- [370] S.L. also said the A.B. complained C.D. was lazy and there was no physical connection between them. S.L. had coffee with A.B. on January 11, 2020, and A.B. indicated she was upset about C.D. moving into his own bedroom, said "I don't know who he thinks he is", and that she wanted to make the marriage work for the sake of the children. In cross-examination, S.L. agreed A.B. also said she was afraid C.D. would take the children and agreed she had not included that in her affidavit filed as part of the court proceedings between the parties.
- [371] S.L. said C.D. was in shock and confused when he was removed from the home on January 29, 2020 and "he wanted to make things work. On January 30, 2020, SL and C.D.'s mother went to A.B.'s mother's house to try and talk to A.B. S.L. said A.B.'s mother was confused by the situation but did mention that A.B. was now afraid of C.D. When S.L. called A.B. on February 2, 2020, S.L. said A.B. kept mentioning the nanny and also said she "had an army

of a family to support her." She did however agree that A.B. was distraught and emotional in this phone call. She also said she was not aware of the allegations concerning C.D. and the January 23, 2020 incident. S.L. also said since X's alienation from her mother, she and C.D.'s mother have tried to help rekindle X's relationship with her mother.

- [372] C.D. argues this testimony supports his position that A.B. was vindictive and angry after the separation. While I agree it supports the view that A.B. was angry, it also shows she was distraught and indeed identified her fear that C.D. would take the children. It does not however support C.D.'s position that AB was vindictive such that she has engaged in a conspiracy, along with her family and friends as part of these proceedings. It also puts into context the phrase that C.D. has riled upon, i.e., that A.B. "has an army "which is referenced to support her rather than to denigrate or discredit C.D.
- [373] One of the fundamental difficulties for C.D., is that despite his denials, there is corroborating evidence of a number of these sexual assaults over the years. While C.D. dismisses all this evidence as fabricated and part of A.B.'s. campaign against him in which she had enlisted her friends, this simply cannot apply to the number and diversity of the corroborating witnesses who testified before this court.
- [374] With respect to the first incident of October 2011, B.M. testified clearly as to her recollection of the assault which took place many years ago. She was firm in her recollection and did not waver from this during cross-examination. I conclude C.D. assaulted A.B. on this occasion. B.D.'s detailed evidence corroborates that of A.B. There is no indication B.D. is connected to any of the other witnesses, or that she was part of a conspiracy to denigrate the Respondent.
- [375] With respect to the second assault of September 2015, A.B.'s mother testified to being aware at the time that her daughter had a rectal bleeding issue while her daughter was in Seattle, which also corroborates the testimony of A.B. A.B. was required to seek medical treatment for this injury, and returned to Canada to do so. While A.B.'s mother was not made aware of the circumstances from her daughter, she was clear that her daughter experience rectal bleeding during this trip to Seattle and sought medical treatment. I therefore conclude C.D. assaulted A.B. again in Seattle in March 2015.
- [376] With respect to the third assault on the way to Portland, Oregon, P.D. testified as to her conversations with A.B. and the reported details of those assaults. These reflect and corroborate the details A.B. provided to this Court. I conclude C.D. again sexually assaulted A.B. in this incident in July 2015.

- [377] It is unnecessary for me to detail or resolve the other sexual assaults relayed by A.B., as suffice it to say that at least three sexual assaults over the years in this marriage, is enough to add to and establish a disturbing pattern of family violence by C.D. against A.B. The nature of this violence is fundamental to the parties' relationship and clearly adversely affected A.B. over the years. A.B. sobbed through much of her testimony which C.D. attributed to being part of the conspiracy.
- [378] Suffice to say while demeanour is certainly not determinative, there was no doubt A.B.'s anguish in relating these and other events was genuine. C.D.'s lack of empathy of any sort was again striking.
- [379] While C.D. has made much of 20 years of loving emails and texts and no report to police until after the marriage break up, C.D. misunderstands the modern view of abuse in which it is recognized the abused may say things to placate their abuser and be confused. Indeed, the depth of his misunderstanding is reflected in his use of the phrase in final argument that "hell had no fury like a woman scorned" to argue this evidence is part of a campaign of vengeance against him. There is simply nothing to establish this proposition and C.D. has failed to do so.
- v. January 23, 2020 Incident
- [380] A.B. described another threatening incident of January 23, 2020. A.B. was distraught after the separation and the respondent came home while she was on the staircase. The two youngest children were in the play room and X was upstairs along with the housekeeper. A.B. said the respondent came up to her directly in a way that presented very differently and said "who do you think you are? I'm going to get rid of you; I'm going to take the kids, of money, the house and your parents and no one will know anything. I'll take you for spousal alimony and your pension."
- [381] A.B. backed up on the stairs as he postured towards her, saying she had never felt this level of rage from him. She asked "what with the children do without their mother". He said "they will cry a lot but there will get over it because I'm a counsellor." At that point she said she felt she needed to get away and she ran up the stairs. C.D. chased her up the stairs. A.B. shut the bedroom door, on which he banged loudly. A.B. then ran into the bathroom, locked the door and called her sister. Her sister told her she needed to get out and come to her in Vancouver. She quickly exited the other door and the respondent was there with X behind him. She couldn't get to X because she was scared. X looked confused as she did not know what was going on. A.B. grabbed the two younger ones; said we are going out and would be back.

- [382] A.B. said while she was driving she was shaking so hard she could not make it through the tunnel to get to Vancouver, so called one of her cousins for assistance. She testified she was scared to call the police because C.D. has said he "has people" and if she fled they would find me. A.B. still believes that is the case. A.B. went to her cousin's house for assistance. Her cousin welcomed her and had the children play with her cousin's daughter.
- [383] Later that evening, A.B. ultimately went home with the children. A.B. said she returned home as X had remained in the house with C.D. and a friend was coming over for a sleepover. In view of that, she did not think C.D. would do anything with someone else in the house.
- [384] While A.B. went to work the next day, A.B. told her parents that they needed to keep the girls close and contacted a lawyer to start the court process to remove C.D. from the house and restrain him from contacting them.
- [385] A.B.'s description of this event was corroborated by her cousin, N.U. N.U. testified that she received a phone call from P.D., A.B.'s sister telling her that A.B. was on her way with the children, and to make sure she was ok. When A.B. arrived, N.U. said A.B. was visibly upset, shaking with tears and apologized for the inconvenience. She told N.U. that "C.D. was leaving and wanted a divorce". Once the children were settled in N.U.'s daughter's bedroom, the two discussed what had happened. N.U. said A.B. told her C.D. said he would take the kids and the money and "once you are gone, I'll have nothing to worry about". N.U. said A.B. told her C.D. chased A.B. up the stairs into the bedroom and she locked the door and called her sister. A.B. was terrified, upset and knew this was the end of the marriage.
- [386] This description of events was also corroborated by P.D. who testified she received a call for A.B. that day, who was crying; told her she was scared and hiding in the closet in her room. She told P.D., C.D. had told her he was going to take the kids and "end her"; "finish her". P.D. told A.B. to get the girls and come to her house. Some time later, A.B. called to say it was too far to drive and she was going to her cousin's house, P.D. called N.U. to let her know A.B. was coming and to call her when she arrives. N.U. did so and told P.D. she had never seen A.B. like this.
- [387] A.B.'s counsellor's notes of January 31, 2020 indicate that A.B. "reported that her husband left and threatened to get her, the money, the property and the kids "; "the emotional abuse and sexual abuse has continued".
- [388] Shortly after his forced departure from the house at the end of January 2022, C.D. obtained a court order with respect to the sale of the house and sought to sell the house to his parents. While these processes were underway, A.B. indicated that the girls told her that their dad said she had "kicked him out; he would be back; he was going to live next door to Munge and Nana (the maternal grandparents] and he was going to fix this". He also said he was going to come back and live with the claimant. A.B. said she felt threatened by these comments.

- [389] While it has been three years, A.B. says she still feels fearful of C.D. despite having sought and experienced extensive counselling for some time. She says it has been hard "because not everyone can see it or get it - how a soft-spoken, charismatic, polite, empathetic and emotionally centred person can do the things he has done to me and figure out what is going on."
- [390] In response on this point however, C.D. pointed out however that A.B. has yet to be able to obtain a protection order against him in various court proceedings and referenced a previous court decision which indicated that sufficient protection was provided in the parties parenting agreement which accomplished this objective.
- [391] In addition, C.D. also referenced alleged threats by A.B. in previous court proceedings. C.D. testified A.B. mouthed the words "liar" to him twice in court proceedings and outside the court reference she had "an army behind her" and said "I'm going to get you". A.B. said she did call him a liar at one point, did not recall comments about affairs and her reference to an army of people was to an army of supporters being her family and friends and colleagues in this process.
- [392] With respect to C.D. being dangerous, C.D. maintained that A.B. fabricated the need to hire security in order to alienate the children. A.B. said however she consulted law enforcement, and the Lower Mainland victim services who advised her to hire security because of fear of retaliation and escalation and to develop a safety plan.
- [393] In the course of these proceedings, C.D. also relied upon an affidavit from the nanny/housekeeper that said the events of January 23, in which A.B. indicated she was threatened, did not occur. This document however is yet another that detracts from C.D.'s credibility. C.D. relied upon this affidavit without providing the court with accurate information as to whom the deponent really was i.e. not only the nanny but the individual with whom he was having an affair and has done continuously throughout various court proceedings. That person in effect has an interest in these proceedings that has not been disclosed. This lack of information, no doubt, has prevented the court from accurately assessing the veracity of the material set out in that affidavit.
- [394] C.D. cross-examined A.B. alleging that she was attempting to alienate the children by her allegations of concern for her safety and advising the school charges against him. A.B. indicated victim services had advised her to ensure that relevant institutions were advised of those charges.
- [395] C.D. pointed out numerous times that A.B. had yet been able to obtain a protection order in the litigation proceedings as an answer to RD's allegations and alleged fear. The short answer is that is, in a trial, far more extensive evidence which can be tested is presented. The court is therefore in much better position to evaluate the credibility of both parties and the evidence.

- [396] I conclude that the events of January 23, 2023 occurred as described by A.B. and C.D. threatened A.B. as part of the separation process. A.B.'s description of the events has been corroborated by two witnesses; one of whom who reported a call from A.B. while it was underway at the time and one of whom directly observed A.B. shaking and in tears with her two younger children, after the event, once A.B. had arrived at her doorstep.
- [397] Overall, I conclude C.D. has engaged in acts of family violence that includes physical, emotional and sexual abuse of the claimant. I conclude this has adversely affected the claimant. While the violence is not directed at the children, it impacts on the children as it reflects an overall pattern of coercive and controlling behaviour to the claimant and has ultimately impacted the children's sense of safety, security, and well-being.
- h. Whether the Actions of a Person Responsible for Family Violence Indicate that the Person May Be Impaired in His or Her Ability to Care for the Children and Meet the Children's Needs
- [398] For the reasons set out above, I conclude that C.D.'s actions indicate his ability to care for the children is compromised. I note in particular the comments I have made when dealing with C.D.'s ability to exercise his parental responsibilities, in conjunction with C.D.'s lack of empathy.
- i. The Appropriateness of An Arrangement That Would Require A.B. and C.D. to Cooperate on Issues Affecting the Children, Including Whether Requiring Cooperation Would Increase Any Risks to the Safety, Security or Well-Being of the Children or Other Family Members
- [399] I will deal with this in the section on Remedy. As noted earlier, I accept the claimant's fear and concern for her safety.
- j. Any Civil or criminal Proceedings relevant to the Children's Safety, Security or Well-Being
- [400] I will only note that C.D.'s criminal proceedings with respect to allegations of sexual assault are set for trial in September 2023.
2. Other Considerations
- [401] The factors identified in s. 37(2) of the FLA are not exhaustive. I must consider all of the children's needs and circumstances.
- a. Specialized Reunification Programs
- [402] Two professionals testified as to the nature of their specialized reunification programs. Both had helpful testimony in this regard.
- [403] Alyson Jones described the Family Forward program which is a team-based approach which she directs. She assigns a parent therapist, a child therapist, and she is part of the team which includes a court reporting specialist.

- [404] Dr. Gamache, described the Reach team treatment program which as noted in the material integrates therapeutic evaluation and in-depth therapeutic treatment services together with various court services to support children and families and create pathways out of the court process to resolution that may include ongoing support. This team is an affiliation of independent therapists who work together to maintain a family systems perspective and provides in-depth therapeutic intervention for families in which parent-child relationships have been disrupted and or there is high conflict or high complexity.
- [405] Both programs involved intensive therapy over the course of some time and which try to keep the momentum going to allow healing of the ruptured relationships which each characterized as a wound that the child carries and needs to be healed.
- [406] In my view while both programs provide very useful tools, the Reach team treatment program is one that may best suit the needs of this family at this time. Of note is the affiliation of independent therapists who work together to provide in-depth therapeutic intervention for families in which parent-child relationships have been disrupted and or there is high conflict or high complexity. This case has both and a number of tools will no doubt be needed to assist with reunification.

VI. Conclusion on Parenting Arrangements and Remedy

- [407] In considering the remedial request of the Claimant and in particular the question of reunification I note first, the X is considered an alienated child, with predominantly non-justified rejection.
- [408] The claimant has argued that C.D. had repeatedly engaged in intentional misrepresentation to professionals and attempt to manipulate the s. 211 report by lying to Mr. Finlay and his own psychologist about his affair. He has also engaged in behaviours consistent with alienation including badmouthing the Claimant and allowing the children to do so; creating a bed time routine in which he massages the children while they vent about the claimant and showing court documents and discussing the legal proceedings with X, in particular.
- [409] In addition, he has overly empowered X such that she believes she is in control of the parenting arrangements and he has impeded previous reunification efforts. In addition, he has most recently allowed X to swear two affidavits in June 2023, and clearly provided X with the affidavit of P.D. sworn on June 26 and the affidavit of the Claimant swore on June 26, 2023.
- [410] I agree with this summary and view of events as reflected in my analysis above.
- [411] In considering the best of interests of the children and the change in the circumstances, I have reviewed the parties' evidence, their respective witnesses, the evidence of the professionals and the s. 211 Report.

- [412] I have set out my conclusions with respect to family violence and the parties' evidence which is directed towards each other. I have concluded C.D. subjected A.B. to family violence which is clearly still affecting A.B.
- [413] With respect to the children, I rely on the evidence of the professionals and find the s. 211 Report to be somewhat helpful but limited for the reasons set out earlier. As a result, I place greater weight on the evidence of the other professionals who testified in this matter.
- [414] I conclude, however, as Mr. Finlay has indicated, that X displays a Moderate to Severe Case of CRC caused by a combination of factors that could be considered both Justified and Unjustified categories, however her symptoms of Unjustified Rejection are more predominant. It is more than evident, as set out by Mr. Finlay and others, that "[X] is safe with her mother and that reunification therapy could proceed when it is appropriate and recommended by the [Parenting Coordinators] and the Counselling team. It is important however that [X]'s mental health continue to be monitored".
- [415] There is no question that X was a child alienated from her mother and despite recent events likely remains so. A significant question or issue in this case was whether and to what extent, C.D. as the favoured parent contributed to this alienation as this directly impacts on the remedy. As noted earlier, a favored parent may magnify alienation by "bad mouthing the other parent and family; withholding or providing additional love or attention in denigrating the other parent; forcing the child to make a decision that is inappropriate for the child and confiding the child about inappropriate matters".
- [416] I have considered the factors outlined earlier by Mr. Finlay in the s. 211 report to assess whether the favoured parent has contributed to the alienation of the child. As the evidence demonstrated the respondent, despite his denials, has denigrated A.B. and allowed the children to "bad mouth" their mother, while massaging them before bedtime. By doing so, he is "providing additional love and attention when the children denigrate the other parent". He has empowered X, the child alienated from her mother; since she was 12 to decide whether to see her mother, in effect forcing her to make the decision as to whether to see her mother--which is inappropriate in the circumstances. C.D. has also exposed the children, in particular X, to inappropriate matters--being both the civil and criminal matters between the parties. These in addition, to other activities set out earlier in the evidence, have all contributed to and magnified the alienation of X and is now impacting on the two younger children.
- [417] C.D. significantly contributed to the alienation and has been interfering in subtle and not so subtle ways in the reunification efforts. Accordingly, my remedy must address this but also be sensitive to most recent highly unusual events.
- [418] I have concluded that C.D. is a non- cooperative but influential parent. As a result there will be a need more involvement of the parenting coordinator as suggested by Dr. Blancato and a transition plan with respect to transport to counselling to offset these behaviours.

- [419] With respect to C.D.'s role and the alienation of X from her mother, as I have indicated, C.D. is an intelligent articulate person who "says all the right things". It is however his actions that must be examined, in particular the fact he never told his oldest daughter the truth. X is alienated from her mother in part because she believes her mother is lying about her father, including that her father had an affair with the nanny. C.D. discounted this factor. It is clear from his testimony that he would not have admitted to this deception which directly impacted his daughter and was contributing to the alienation, if not for these legal proceedings where clear evidence of this deception was presented.
- [420] C.D. continues to blame everyone else - in the latest - he blames his girlfriend for telling X and takes no responsibility for his conduct - again using the same words he has before, i.e., I have learned from this. At this stage, this statement sounds contrived and has been repeated a bit too often.
- [421] This case is very unusual as there has been a dramatic event mid-trial that has affected the foundation of the matter. There are now a number of unknowns, so some adjustments will be needed. While C.D. says the changes A.B. seeks are because she wants to exert control, that is not the case. I agree it is necessary that X have someone with specific skills to help give her some space from this conflict. X is continually trying to manage the complexities of pleasing her father and dealing with her mother. X has been in a loyalty bind for years. I agree this is not a light switch that can be turned off. While there may have been a fundamental shift as X absorbs and experiences the new reality that has been revealed to her recently, X needs to be provided with an environment in which she has some space and that may well include some time away from her father.
- [422] While the claimant has proposed Dr. Bolger for reunification therapy, she has also proposed Dr. Blancato in addition to the specialized reunification process described by Ms. Jones or Dr. Gamache. I have concluded that the REACH reunification program offered by Dr. Gamache, in conjunction with other professionals, is the appropriate program for this family. I agree relying on X's counsellor alone to move this process along is problematic as it is unclear what her relationship is with C.D. and how he has influenced the narrative. If the REACH program is not available, Dr. Elterman may identify an appropriate program or counsellor for these efforts, as he has in the past.
- [423] The claimant also says with respect to her request to requiring C.D. to have no contact with X for 90 days as part of this process--given the recent change in circumstances, another option would be to provide the reunification experts the ability to impose that 90-day window if he/she determines it was necessary. Rather than ordering it right away, the experts could assess the need in conjunction with Dr. Elterman and if they conclude it necessary--that tool would be provided to them as noted in this decision and in the accompanying orders. Circumstances have changed and they may well have changed again by the time the decision is released. I agree with this approach.

- [424] I also have concluded the parenting arrangements should include parallel parenting with no direct communication between the parties. All communications with respect to parenting should go through Dr. Elterman. All communications with respect to legal issues should go through or counsel. The parties should not be copies on these communications. C.D. has refused to accept this without court order (reflecting his desire to control the claimant) and that court order has been made. As noted, C.D.'s unwillingness to recognize this, causes harm to the claimant, and thereby the children is concerning.
- [425] As noted, I have also concluded the Reach reunification program should be ordered for the family and C.D. is responsible for 80 percent of that cost. While there is no doubt C.D.'s actions have contributed to this situation, I conclude that apportionment is sufficient to reflect that reality. A.B. will fund 20 percent of the cost.
- [426] I am providing by virtue of the order attached as Schedule A, a revised parenting agreement that replaces the March 2020 agreement. It is most unfortunate that C.D. has to a certain extent weaponized this agreement when dealing with disputed issues (such as insisting on direct communication and indicating he is only following the agreement) with the claimant, and I conclude it no longer is suitable in the circumstances. The revised parenting agreement largely follows the agreement as requested by the claimant in final submissions.
- [427] I am also providing by virtue of that the Schedule A to this judgement, a provision that allows the parenting coordinator, Dr. Elterman, significant ability to manage the reunification process in conjunction with the other professionals involved. In particular, if it becomes apparent to Dr. Elterman that C.D. is interfering in the reunification process in any way, subtle or otherwise, Dr. Elterman can decide that C.D. should have no contact with X for 90 days, as initially requested by the claimant as part of the reunification process. The professionals have indicated this is a real issue and therefore it should be closely monitored. I am not inclined to order this as part of this decision due to the particular sensitivities that have arisen as a result of the recent events which have seen X finally see her mother for the first time in two and a half years. Rather, I leave that ability to Dr. Elterman to exercise if a need arises in this reunification process.
- [428] I have accepted the alternative position of the claimant on the parenting schedule i.e. one week on and one week off. While I am concerned about C.D.'s messaging whether subtle or otherwise, I conclude this change, which will create less transitions and offset C.D.'s behaviour is sufficient along with the reunification program, the revised parenting agreement and the expanded role of Dr. Elterman. The children do have a real affection and connection with their father as evidenced in the s. 211: The Views of the Child Report and the most recent supervised visit reports and a dramatic change may well adversely affect their wellbeing.

[429] The details of the new arrangement are reflected in Schedule A with attached a detailed order in this matter. The new parenting schedule shall take place on the Tuesday following the release of this judgement.

VII. Divorce

[430] The parties seek an order for divorce. Sections 8 to 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA], set out the requirements that must be satisfied in order for me to grant the divorce. I conclude that those requirements are satisfied, based on the following evidence presented at trial:

- a. The parties married on August 30, 2003;
- b. The parties have been living separate and apart since January 3, 2020;
- c. There is no collusion in respect of this application for divorce and the parties are not seeking this divorce for any improper purpose or upon false evidence;
- d. There is no chance that the parties will reconcile; and
- e. I am satisfied that child support is in place and reasonable arrangements have been made for the support of the children having regard to the applicable Guidelines.

[431] Based on the foregoing, I am satisfied that the requirements of the DA have been met. I grant the parties an order for divorce which will take effect on the 31st day after the issuance of this order.

VIII. Publication Ban

[432] The respondent has asked for a publication ban, in addition to the anonymization of this judgment

[433] The analytical framework for determining whether the court should order a publication ban founded on the court's inherent jurisdiction at common law has recently been commented upon in *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38. This provides the current test for making an inherent jurisdiction publication ban.

[434] In order to succeed, the person asking the court to exercise discretion in a way that limits the open court principle must establish all three of the following prerequisites:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[435] Two elements are subsumed under the first branch of the test:

- a) the risk must be real and substantial, well grounded in evidence, posing a serious threat to the interest in question; and
- b) the interest in question cannot merely be specific to the party requesting the order, but must be one which can be expressed in terms of an important public interest in confidentiality (for example, in a commercial context the general interest of preserving confidential information would qualify as an important commercial interest but the risk of commercial harm specific to a party would not).

[436] Under the second branch of the test, the judge is required to consider not only whether reasonable alternatives are available to such an order but also to restrict the limitation on court openness and freedom of expression as much as is reasonably possible while preserving the important public interest in question.

[437] Finally, under the third branch of the test, the court must be satisfied that the beneficial effect of the confidentiality order would outweigh deleterious effects including the adverse impact on the open court principle, thus balancing the protection of the particular public interest at stake against the principle of open and accessible court proceedings.

[438] I was unable to find any cases that have applied a publication ban in the circumstances before me and decline to do so. I conclude the privacy interest in this case, lacks the public interest quality mandated by the Supreme Court of Canada in *Sherman Estate*. I note the claimant does not seek a publication ban. In my view, the anonymization of this decision accomplishes the desired objective of protecting the young children in this matter.

IX. Conclusion

[439] I have been tasked with the parenting issues in this difficult high conflict family case. The financial issues have been dealt with elsewhere. The court has made its decision on the parenting issues and issued its judgement which includes Dr. Elterman being given the details through this judgement, and the capacity to deal with daily parenting issues within this context. That is simply beyond the capacity of the court; nor is it an appropriate role. This judgment also provides an expanded rule and tools for Dr. Elterman to use as part of the reunification process that is ordered, with respect to X and family members affected.

[440] I am attaching an order as Schedule A that replaces the parenting agreement dated March 20, 2020. I have adopted the claimant's position on this in large part because the evidence has demonstrated C.D.'s need to control the parenting relationship; his need to directly communicate with A.B. as a large part of that control and what I have concluded is his subtle alienating behaviour, which has impacted on X and show signs of possibly impacting the younger children. The children however are attached to their father and it would no doubt adversely impact them if they cannot see C.D. for long periods of time i.e. the schedule proposed by the claimant wherein the children live mainly with A.B. and periodically visit their father on specified days and alternate weekends. This has truly been a very difficult decision to make.

- [441] In view of this however, I have acceded to A.B.'s requests with respect to parental decision making which I conclude will assist with providing a buffer to C.D.'s insidious control methods.
- [442] I have also provided a provision for the reunification team, along with Dr. Elterman, to have the ability to suspend C.D.'s contact with the children for 90 days, if it becomes apparent that C.D. is not complying with the requests and directions of the reunification counsellors and is continuing this behavior. This can be decided by Dr. Elterman in conjunction with the reunification counsellors. If the reunification counsellors have withdrawn, Dr. Elterman can make that decision alone. I do this largely because of the highly unusual events of June 2023, where it can be said some progress on renunciation may have been made. I say may however because as the claimant pointed out, a very brief reunification took place once before the final rift, but did not last. This has occurred once before and did not sustain itself. Accordingly, it is important that the professionals are able to do their job without interference during this very sensitive time.
- [443] The court has issued a remedy which should be allowed to progress as its effects may take some time. I am no longer seized of this matter.
- [444] Costs normally go the successful party who I conclude is A.B. in this matter. If there is something else the court needs to be aware of regarding costs, the parties are at liberty to resolve that issue or bring an application if filed within 90 days of this judgement.

"Burke J."

Schedule A

Court File No.: E200208

Court Registry: Vancouver

In the Supreme Court of British Columbia

Claimant: A.B.

Respondents: C.D., HSL PROPERTIES INC. AND 1134561 BC LTD.

FINAL ORDER

BEFORE THE HONOURABLE MADAM JUSTICE BURKE 09I07/2023

AT THE TRIAL of this family law case coming on for hearing at 800 Smithe Street, Vancouver, British Columbia, on February 6, 13-17, 23-24, and 27-28; March 1 and 6; April 24-26; May 1-5, 15-17, and 19; June 8-9; July 26-28; and August 4, 2023, and on hearing Todd R. Bell and Mallory Wyant for the claimant, A.B., and C.D., appearing on his own behalf; and on considering the evidence put forward.

AND ON BEING ADVISED that there are three children of the marriage, namely;

- a. X, born May 2008
- b. Y, born January 2013; and
- c. Z, born November 2013.

(collectively, the "Children")

THIS COURT ORDERS THAT:

The Divorce

1. Counsel will submit the divorce order as a freestanding order to be entered contemporaneous with the order flowing from the reasons for judgment.

Guardianship

2. Pursuant to s. 39(2) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the parties shall remain joint guardians of the Children.

General

3. Pursuant to s. 44(1)(4) of the FLA, this order sets aside and replaces the parenting agreement of the parties entered into March 26, 2020 in its entirety.
4. Except where there is reference to specific ss. other than Section 45, the balance of the terms of this order are made pursuant to s. 45 of the FLA.

Wrongful Denial / Make-Up Time

5. Pursuant to s.62(1)(a) and (f) of the FLA, the Claimant's withholding of the Children between June 14, 2023, and the date of this order is found to be not wrongful.

Further Appointment of Parenting Coordinator

6. Pursuant to section 15 of the FLA, the parties shall further retain Dr. Elterman to act as the parenting coordinator until at least December 2025, and shall thereafter retain Dr. Elterman or another member in good standing of the Roster of the British Columbia Parenting Coordinators Roster Society (the "Society") to act as the parenting coordinator (the "Parenting Coordinator"), for a minimum term of 24 months, on the terms provided in this Order and in the most current form of the parenting coordination agreement endorsed by the Society (the "Standard PC Agreement"); provided that where the terms of this Order conflict with the Standard PC Agreement, the terms of this Order shall prevail.
7. The fees, disbursements, and other charges of the Parenting Coordinator shall be shared equally by the parties, subject to the Parenting Coordinator's ability to reapportion the costs between the parties, as provided in the Standard PC Agreement,

8. The professionals assisting the family, including the Parenting Coordinator, the Children's counsellor, the Reunification Program team, and the parties' parenting coaches, are permitted to freely communicate with one another regarding the family.

Parental Responsibilities

9. The parties shall share parenting responsibilities and decision-making of the Children, to be exercised in the best interests of the Children, pursuant to s. 41 of FLA, which include:
- (a) making day-to-day decisions affecting the Children and having day-to-day care, control and supervision of the Children,
 - (b) making decisions respecting where the Children will reside;
 - (c) making decisions respecting with whom the Children will associate;
 - (d) making decisions respecting the Children's education and participation in extracurricular activities, including the nature, extent and location;
 - (e) making decisions respecting the Children's cultural, linguistic, religious, and spiritual upbringing and heritage;
 - (f) subject to section 17 of the Infants Act, giving, refusing, or withdrawing consent to medical, dental, and other health-related treatments for the Children;
 - (g) applying for a passport, license, permit, benefit, privilege, or other thing for the Children;
 - (h) giving, refusing or withdrawing consent for the Children, if consent is required;
 - (i) receiving or responding to any notice that a parent or guardian is entitled or required by law to receive;
 - (j) requesting and receiving from third parties' health, education, or other information respecting the Children;
 - (k) subject to any applicable provincial legislation,
 - (i). starting, defending, compromising, or settling any proceeding relating to the Children, and
 - (ii). identifying, advancing, and protecting the Children's legal and financial interests, and
 - (l) exercising any other responsibilities reasonably necessary.
- (collectively, the "Parenting Responsibilities")
10. All communication regarding Parenting Responsibilities shall be made through the Parenting Coordinator.

11. For the exercise of any Parenting Responsibilities, both parties must consult the other about any important decisions that must be made and try to reach agreement concerning the important decisions. If they cannot agree, the parties shall refer to the issue to their Parenting Coordinator, if the issue is within his or her jurisdiction to resolve. In the event of a dispute that is not within the parenting coordinator's jurisdiction, the Claimant shall ' have final decision-making authority.
12. In the event of a parenting responsibility decision made by the Claimant at a time when no parenting coordinator is engaged is opposed, the Respondent may challenge that decision under s. 49 of the FLA.
13. During parenting time, a guardian may exercise the parental responsibility of making day--to-day decisions affecting the Children, provided that the guardian must advise the other parent of any matters of a significant nature affecting the Children through the parenting coordinator.
14. If either guardian dies, the remaining guardian shall be the guardian of the Children with all of the Parental Responsibilities. The remaining guardian shall ensure that the Children have reasonable contact with the deceased parent's extended family.
15. Each guardian shall be at liberty to appoint a guardian under section 53 of the FLA, to take effect only on the death of both of the parties.
16. Neither guardian shall appoint a standby guardian under section 55 of the FLA unless agreed upon by both of the parties.

Regular Parenting Schedule

17. Effective the first Tuesday following the release of the reasons for judgment, the parenting schedule will be, subject to any suspension periods determined by the parenting coordinator, Dr. Elterman, parenting time shall be on the following schedule:
 - (a) The parties shall parent the Children on a week on, week off, basis; and
 - (b) The transition of the children will be done with one parent dropping the children off at school on Tuesday and the other picking up.
 - (c) The schedule shall be parallel parenting, such that:
 - (i). The parties will not interact with the other;
 - (ii). The parents wilt not attend meetings or appointments together;
 - (iii). The parents will do or not do whatever necessary to minimize their engagement, which is in any event never to be in person and in respect of communication must always be through the parenting coordinator; and

(iv). In the event of needed assistance in implementing a parallel parenting arrangement, or enforcing it, the parenting coordinator may assist.

Reunification

18. The parties:

- (a) Shall commit and participate in the REACH reunification program (the "Reunification Program") offered by Dr. Susan Gamache for the purpose of reunification between the Claimant and X. Pursuant to ss. 225 and 227 of the FLA, the parties shall implement and follow the recommendations of the Reunification Program team regarding parenting arrangements, which may include, but is not limited to, suspension of the Respondent's parenting time with the Children, changes to the parenting schedule and counselling.
- (b) The Respondent shall be responsible for 80 percent of the cost of the Reunification Program. The Claimant shall be responsible for 20 percent of the cost.
- (c) As part of the Reunification Program, if the parenting coordinator, Dr. Elterman, in conjunction with the reunification counselling team, or alone, if the counselling team has withdrawn, conclude that C.D. is interfering with this process by refusing to follow directions, or other ways, Dr. Elterman can make a determination, in full or in part, as follows:
 - (i) Pursuant to ss. 225 and 227 of the FLA, the respondent is prohibited from:
 - (A) Having any direct or indirect contact with X, including but not limited to phone contact, text messages, letters, contact via computer. Snap-chat, Face-time, Skype, Instagram, video game or other forms of electronic communication, in-person contact, and/or communication via third parties;
 - (B) Being within 100 meters of the Claimant's home or any other place she might reasonably be expected to be, including her place(s) of employment save and except for justified need for access to emergency services;
 - (C) Making and direct or indirect contact with X at her school, and shall take all steps necessary to avoid any contact with her, including but not limited to:
 - (1) Making a formal request through his union for permission to work from home for a defined period of time;
 - (2) Providing a copy of this order to school administrators and seeking a physical placement within the school which will prevent, to the greatest extent possible, any direct or indirect contact with X and which may include working and providing counseling services in a location within the school to which the general student population does not have access.

(D) In the event X tries to directly or indirectly contact the Respondent at the school, the Respondent shall immediately remove himself from the situation and seek further directions from Dr. Elterman and Dr. Gamache, as the case may be, and who in turn shall be at liberty to:

- (1) Make adjustments to the terms and conditions herein; and/or
- (2) Report to the Court; and/or
- (3) Seek the further assistance of the Court.

From the time the order is pronounced for a period of a minimum of 90 days, or until further order of the court.

(ii) If the respondent has direct or indirect contact with X during the 90-day period, then the 90-day period on no contact will restart.

(iii) If any third-party contacts X where the court determines such contact has frustrated the aims of the reunification process the 90-day period of no contact will restart, subject to the discretion of the court.

19. Following the completion of the 90-day period, the Respondent shall not attend at any appointments X has with the Reunification Program team, nor transport her to same, unless specifically allowed in writing by Dr. Elterman, Dr. Gamache, or other member of the reunification program designated by Dr. Elterman.
20. Pursuant to ss. 225 and 227 of the FLA both parties will outwardly and expressly support X's participation in the Reunification program and the program itself, and neither shall directly or indirectly message to X any lack of enthusiasm, investment or commitment to the program.

Transitions (pick-ups and drop-offs)

21. X's dog shall go back and forth with the Children during the parties respective parenting time.
22. On school day transition days, the parent who has the Children in his or her care the night before the transition (the "On-Duty Parent") shall be responsible for dropping off the Children at school and the other parent (the "Off-Duty Parent") will be responsible for picking up the Children from school.
23. If there is no school on a transition day, the transition shall take place at Ladner Leisure Centre and in the event of the first proposed schedule above;
 - (a) if there is no school on the Friday going into the Respondent's weekend, the transition will be at 10:00 a.m.; and
 - (b) If there is no school on the Monday, the transition will be 6:00 p.m,
 - (c) Tuesday morning at drop off at school.

Changes to the regular Parenting Schedule

24. The parties may modify the Regular Parenting Schedule on occasion to accommodate special circumstances and requests. Any such variations shall be by written agreement of both parties. The parties shall make all requests to change the Regular Parenting Schedule through the Parenting Coordinator. The parties shall not make requests to change the Regular Parenting Schedule through the Children and shall make best efforts to advise the other parent prior to discussing it with Children.
25. There shall be no make-up time for any changes to the Regular Parenting Schedule, unless both parents agree.
26. If the parties intend to make a long-term change to the Regular Parenting Schedule, they shall do so by entering into a consent variation order with the assistance of the Parenting Coordinator or counsel, which must be signed by each parent and witnessed.

Holiday and Special Occasions

27. The Regular Parenting Schedule shall be temporarily suspended during the following times, to recommence as soon as possible following the particular time (the "Holiday Schedule"):
 - (a) Statutory Holidays and Professional Days;
 - (i) Except as provided for herein, the Children shall spend Statutory Holidays or Professional Days with the On-Duty Parent.
 - (b) Spring Break;
 - (i) Spring Break commences when school finishes on Friday and ends when school resumes on the Monday morning following the break (the "Spring Break Period").
 - (ii) The parties shall divide the Spring Break Period equally.
 - (iii) In odd years, the Claimant shall have the first part and the Respondent shall have the second part. In even years, the Respondent shall have the first part and the Claimant shall have the second part.
 - (iv) Unless otherwise agreed, the exchange time during Spring Break shall be at 10:00 am on the Saturday between the two weeks.
 - (c) Summer Holiday Period:
 - (i) The summer holiday period commences after school on the last day of school in June, and ends on the morning when school resumes in September (the "Summer Holiday Period").

(ii) The Regular Parenting Schedule shall continue to apply during the summer, except that each parent will be entitled to take the Children for 10 days of vacation during the Summer Holiday Period. In even years, the Claimant shall have the first pick of her vacation period and in odd years, the Respondent shall have the first pick of his vacation periods.

(iii) The parties shall finalize the summer schedule by January 15th of each year.

(d) Halloween: The parents shall alternate having the Children on Halloween, and Halloween starts on October 31st at 3:00pm and ends on November 1st at 10:00am. The Claimant shall have the Children in even years and the Respondent will have the Children in odd years.

(e) Christmas Holiday Period: The parties shall divide the Christmas Holiday Period equally, subject to the following:

(i) The Respondent and the Claimant shall finalize the schedule for the Christmas Holiday Period by September 1st of each year;

(ii) In even years, the Children shall be with the Claimant from 3:00 pm on December 24th until 3:00pm on December 25th, and with the Respondent from 3:00pm on December 25th to 3:00pm on December 26th;

(iii) In odd years, the Children shall be with the Respondent from 3:00 pm on December 24th until 3:00pm on December 25th, and with the Claimant from 3:00pm on December 25th to 3:00pm on December 26th.

(f) Mother's Day and Father's Day:

(i) Each year on Mother's Day, the Claimant shall have the Children from Saturday at 6:00 pm until drop off at school the following morning.

(g) Each year on Father's Day, the Respondent shall have the Children from Saturday at 6:00 pm until drop off at school the following morning. Children's Birthdays: Each parent shall have the option of spending 2.5 hours with the Children on each of their birthdays, regardless of whose scheduled time it is. The On-Duty parent shall have the dinner meal with the Children unless otherwise agreed.

(i) Unless otherwise agreed, in odd years, The Respondent shall organize and be responsible for the cost of the Children's birthday parties for their school friends.

(ii) Unless otherwise agreed, in even years, The Claimant shall organize and be responsible for the cost of the Children's birthday parties for their school friends.

(iii) The parties shall not attend the birthday parties organized by the other.

(h) Parents' Birthdays

(i) If the Respondent does not have the Children on his birthday, he shall have the option of having dinner with the Children between 10:00 am to 7:00 pm on his birthday,

- (ii) If the Claimant does not have the Children on her birthday, she shall have the option of having dinner with the Children between 10:00 to 7:00 pm on her birthday.
 - (i) Other Holidays: If the On-Duty Parent is not traveling with the Children over Easter Weekend or Thanksgiving Weekend, the Off-Duty Parent shall be given the option of having the Children for a five-hour period to have a Thanksgiving Dinner or Easter Dinner with the Children with the times to be mutually agreed or set by the Parenting Coordinator if the parents cannot agree,
28. All communication regarding the Holiday Schedule shall be done through the parenting coordinator.

Medical and Dental Issues

29. The Children shall have one family physician and one dentist. If the parties are unable to agree on the Children's medical professionals, or the medical professionals are unable to continue to care for the Children, the parties shall refer the issue to the Parenting Coordinator for determination.
30. Save and except in emergencies where a child's physical safety is in imminent risk:
- (a) The Claimant will schedule all doctor's appointments and specialist appointments which fall within the medical sphere;
 - (b) The Claimant shall be responsible for keeping track and making routine eye examinations and immunizations;
 - (c) The Respondent will schedule all dentist's appointments and specialist appointments which fall within the dental sphere.
31. The parties shall not attend any appointments on the other parent's time.
32. The parent who attends a medical or dental appointment with the Children shall provide the Parenting Coordinator with an email summary of what occurred at the appointment, which the Parenting Coordinator will forward to the other parent.
33. Through the Parenting Coordinator, both parties shall:
- (a) keep the other informed of any illness or injuries that relate to the Children; and
 - (b) share all medical information related to the Children.
34. If an emergency arises, the On-Duty Parent will notify the Parenting Coordinator as soon as possible. The parenting coordinator shall notify the Off-Duty Parent. The On-Duty Parent may make immediate emergency decisions. The parties shall follow the reasonable recommendations of the Children's medical professionals.

35. A party shall only attend the hospital where the other parent is with a child if a health practitioner has advised in writing that the attendance is for a crisis which presents an imminent threat to life.

Travel and Passports

36. The parties may travel with the Children within Canada and the United States during his or her parenting time. The travelling parent shall provide the Parenting Coordinator with the following information, which will only be released to the non-travelling parenting in the event of an emergency:
- (a) the location, including address of any accommodations and contact telephone number, of the travel;
 - (b) the duration of the travel;
 - (c) flight numbers and airline itinerary, if applicable; and
 - (d) a phone number of a contact person in the event of an emergency.
37. The parties may travel with the Children outside of Canada and the United States only if:
- (a) they first obtain the other parent's written consent, to be communicated through the Parenting Coordinator, which will not be unreasonable withheld; and
 - (b) the travelling parenting provides the Parenting Coordinator with the information as set out in paragraph 41 of this Order, which shall only be released to the other parent in the event of an emergency,
38. If the parties travel with the Children outside of the Lower Mainland, but within British Columbia, for a period of time that extends overnight, the travelling parent shall notice the Parenting Coordinator in advance of the travel, and shall provide the parenting coordinator with the information set out paragraph 41 of this Order, which shall only be released to the other parenting in the event of an emergency.
39. The parties shall provide the other parent with a notarized letter consenting to the Children traveling within Canada and the United States with the other parent during that parent's regular parenting time or holidays with the Children each year provided that the COVID- 19 restrictions are no longer in force and effect during that particular year.
40. A parent who travels with the Children shall ensure that he or she has adequate travel medical insurance to cover the cost of any medical care the Children may require outside of Canada.

41. If the travelling parent fails to obtain adequate travel medical insurance for the benefit of the Children while travelling outside of Canada, that parent shall be solely responsible, and shall indemnify and save harmless the other parent in respect of, any and all medical costs incurred for the benefit of the Children if any of the Children become sick and injured while travelling outside of Canada with the travelling parent and require medical care.
42. The Claimant shall hold the Children's passports in even years, and the Respondent shall hold the Children's passports in odd years. The parties shall exchange the Children's passports by January 15th of each year through the Parenting Coordinator. The parent responsible for holding the passports in any given year shall be responsible for:
 - (a) ensuring the passports are up-to-date; and
 - (b) making the passport cards available to the other parent for travel during their parenting time.

Documents

43. Either party may request through the Parenting Coordinator that the other party cooperate to obtain duplicate birth certificates, social insurance cards, and medical cards for the Children to ensure that each party has an original. The other party shall cooperate with all such requests.

The Children's Belongings

44. The parties shall allow the Children to take personal items, including, but not limited to, clothing, toys, sports, equipment, electronic devices and gifts from the other parent and third parties (collectively, the "Personal Items") between the parties' residences. Neither parent shall restrict the Children's ability to take personal items between the parties' residences.
45. Each party shall ensure that they each have half of the Children's clothing at their own residence respectively to ensure that the Children are not required to transport a suitcase of clothing between the parties' residence.

Telephone Access and Technology

46. For a period of not less than one year, there shall be no communication between the off-duty parent and the children during the on-duty parent's time save and except as determined in writing by Dr. Elterman and Dr. Bolgar/Dr. Gamache as part of the reunification process.
47. Either party may, not earlier than one year from the date of this order, ask Dr. Elterman to make a determination about what, if any, non-reunification communication will be permitted on terms and conditions they determine to be appropriate.

Discipline

48. Neither party shall use physical discipline with the Children or use extreme consequences for mis-behaviour.
49. The parties shall discuss issues related to the Children's behaviour and discipline through the Parenting Coordinator on a regular basis so that they can strive for mutually agreeable^ and consistent approaches.

Communication

50. For greater clarity, the parties shall not directly communicate with the other, in person or through any written means. No aspect of the parties' rights and obligations under this order shall operate as an exception. All communication will be through the Parenting Coordinator, who alone will receive the originating communication, without one parent copying the other parent.
51. Pursuant to ss. 222 and 227 of the FLA, the parties shall:
 - (a) put the best interests of the Children before their own interests;
 - (b) encourage the Children to have a good relationship with the other party and speak to the Children in a positive and respectful manner; and
 - (c) make reasonable efforts to maintain polite, respectful communications with each other through the Parenting Coordinator; and
 - (d) refrain from any negative or hostile criticism, communication or argument regarding the other party in the front of the Children or within earshot of the Children.
52. Pursuant to ss. 222 and 227 of the FLA, the parties shall not:
 - (a) question the Children about the other parent or time spent with the other parent beyond simple conversational questions;
 - (b) discuss with the Children any inappropriate adult, court or legal matters; or
 - (c) blame, criticize or disparage the other parent to the Children.
53. Pursuant to ss. 222 and 227 of the FLA, the Respondent shall not, at any time:
 - (a) directly or indirectly communicate with the Claimant except through the Parenting Coordinator; attend at, near or enter the Claimant's residence, the Claimant's place of business except in the event of an emergency, or any place where the Claimant may reasonably be expected to be;
 - (b) follow or otherwise harass the Claimant, and
 - (c) possess a weapon or firearm.

School

54. The Children shall attend Hotly Elementary School in Ladner, B.C. unless otherwise agreed.
55. The parties shall not jointly attend any school events or activities. Unless otherwise agreed, the On-Duty Parent shall attend any school events or activities that occur during their parenting time.
56. The parties shall try to each receive all information from the school individually, and in the event any information cannot be received individually but only by one parent, that parent shall share the school related information with the other parent through the Parenting Coordinator.

Extracurricular Activities

57. The parties shall arrange whatever extracurricular activities they wish but which will occur only on their parenting time.
58. Neither party shall schedule extracurricular activities for the Children during the other parent's time.
59. Neither party shall promise an extracurricular activity to the Children knowing that it will conflict with the other parent's time.
60. The parties shall not attend the Children's extracurricular activities which do not occur on their time.

Conflict Resolution

61. If the parties are unable to resolve any issue in dispute after making their best efforts, the parties shall engage the following processes, prior to taking any further legal steps:
 - (a) if the issue is within the jurisdiction of the Parenting Coordinator, the parties shall refer the issue to the Parenting Coordinator for a determination.
 - (b) if the issue is not within the Parenting Coordinator's jurisdiction, the Claimant shall have final decision-making authority, subject to paragraphs 8, 9 and 10 of this Order.
62. The Parenting Coordinator has jurisdiction to modify the parenting arrangements, including but not limited to the Regular Parenting Schedule and the Holiday Parenting Schedule, as set out in this Order from time to time, if it is in the best interests of the Children or recommended by the Reunification Program team.

By the Court

"Burke J."

Registrar

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