

CANADA / JUDGMENT

A.K. v. N.R.P.

2025 BCSC 1718

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1718 A.K. v. N.R.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.K. v. N.R.P.,

2025 BCSC 1718

Date: 20250904

Docket: E222191

Registry: Vancouver

Between:

A.K.

Claimant

And:

N.R.P.

Respondent

Before: The Honourable Justice Blake

Reasons for Judgment

Counsel for Claimant:

K.D. Craig

Counsel for Respondent:

J.K. Mangat

Place and Date of Trial:

Vancouver, B.C.

May 13-17, 21, 27-31,

June 5-6,

December 9-13,16-19, 2024

April 16, 22, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 4, 2025

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I. INTRODUCTION

- [1] The parties were married on December 12, 2012 and separated in early 2022. They have two sons together: N.J.K., born July 14, 2014; and A.R.K., born October 17, 2016. At the time the trial commenced the boys were 9 years old and 7 years old respectively; they are now 11 and almost 9.
- [2] The parties agree on the reason for the dissolution of their marriage. In December 2021, N.R.P. bought an iPad for A.K., and asked him to give her his old iPad so their children could use it. He did so, and she discovered numerous messages from her husband soliciting the services of sex workers. She was understandably devastated by this discovery. A.K. moved to accommodations near their home, and the parties continued to parent their two young sons together in early 2022 while they worked to see if their marriage was able to be saved. Ultimately, they concluded their marriage was irretrievably broken. The most significant issue in dispute at trial is the appropriate parenting arrangements for their two sons, including the parenting schedule and parental decision-making authority. N.R.P. takes the position that she should have primary parenting time with the children, with A.K. to have only two days of parenting time per week. A.K. seeks equal parenting time with the children. N.R.P. also seeks the final say on parental decision-making for the children, whereas A.K. says they should share that responsibility.
- [3] The other issues in dispute are division of family property and family debt and child and spousal support (prospective and retroactive).

II. BRIEF BACKGROUND

A. The Parties and their Relationship

- [4] A.K. was 51 years old at the time of trial. He attended Concordia University for three years, and then played professional hockey in the United States from 1994 to 1997, until he was injured. After his injury he began working in the mining industry.
- [5] N.R.P. was 43 years old at the time of trial. She obtained her university degree in Mexico.
- [6] The parties met in July 2010, moved in together in November 2010, and married on December 12, 2012.
- [7] Before A.K. met N.R.P. he was employed at Acme Labs, which was an employee-owned company. He began there in 2004, and he started to acquire shares within a year of beginning to work with them. He testified that his current employer, Bureau Veritas, sent a letter of intent in 2010 to acquire Acme Labs, and then audited Acme Labs for approximately one and a half years. Ultimately, the sale went through in 2012.

- [8] At the time of the sale A.K. received a retention bonus to stay for three years with Bureau Veritas, in the amount of \$89,000. He then received another retention bonus to stay at Bureau Veritas for another two years, in the amount of approximately \$92,000. He received approximately \$700,000 from the sale, in addition to the two retention bonuses.
- [9] Before they moved in together each party owned real estate. A.K. owned a condominium on Expo Boulevard in Vancouver which he purchased in early 2010 for \$365,000, and on which he put down \$73,000 (the "Expo Boulevard Condo"). N.R.P. owned a condominium on Horne Street in Burnaby which she had purchased in September 2010 for \$186,000 (the "Horne St. Condo"). She put down approximately \$50,000 to purchase the Horne St. Condo which came from her own funds and funds borrowed from her parents in the approximate amount of \$28,000: \$10,000 from her mother and \$18,000 from her father. The parties paid her mother back for the loan, but not her father. When they began to cohabit N.R.P. moved into the Expo Boulevard Condo, and N.R.P.'s sister lived in the Horne St. Condo.
- [10] After their engagement N.R.P. put the Horne St. Condo into joint names. They rented out the condo starting in January 2011 for \$1,200 a month, and N.R.P. used the rental money for the mortgage and strata fees for the property, and any remainder she used for her day-to-day expenses. She estimates that the remainder she had available each month was between \$200 and \$300.
- [11] The parties lived together in the Expo Boulevard Condo until 2014. In 2014, the parties purchased two units in the Lido Building located in Olympic Village, and combined the two units into one three-bedroom apartment (the "Lido Condo") which they moved into in December 2014. To purchase the Lido Condo the parties used some of the proceeds from the sale of A.K.'s condo and his proceeds from the sale of Acme Labs.
- [12] In 2018, the parties sold the Lido Condo, and bought a property located at 4915 Cedar Crescent, Delta, which they paid \$1,250,000 for. They lived in the home for approximately four months and then tore the existing home down. They built a new house on the property, which was their home at the time of separation (the "Home"). To purchase the Home, they sold the Lido Condo and received equity of approximately \$750,000. The Home was purchased in joint names.
- [13] At the end of 2018, the parties decided that N.P.R. would take the children to Mexico, while A.K. made final arrangements for the permits for the construction of the Home, dealt with the asbestos, and demolished the existing home. N.P.R. did take the children to Mexico for five or six months, and A.R. spent between two to three months in Mexico with them over that period.
- [14] The parties sold the Horne St. Condo in 2019 for \$410,000, and received sale proceeds of approximately \$250,000. After paying back N.R.P.'s mother, the parties used the balance of the funds from the sale to finish construction of the Home, and for deposits for their two investment properties in Kelowna.

- [15] In 2021 N.R.P., with A.K.'s support, enrolled at Vancouver Career College to become a registered acupuncturist.
- [16] While initially N.R.P. did not want to sell the Home, as she wanted to keep it for the children, it was ultimately listed for sale in November 2022 and sold with a completion date of January 5, 2023. The Home sold for \$2,256,460.62. The parties received net sale proceeds, after payment of the mortgage and the line of credit, and after a return of excess funds upon completion and a release of a holdback, in the amount of \$837,391.83.

B. The Separation

- [17] The parties agree their separation occurred because N.R.P. discovered that her husband was soliciting the services of sex workers. A.K. admitted that he had paid for sex with young women, including prostitutes and women who worked at massage parlours. He testified that he did not engage in sexual intercourse with these women, but did engage in "massage and hand release". During these encounters, which occurred every month or two for the year and a half before separation, he did not use condoms. He acknowledged he had sex with an ex-girlfriend while married to N.R.P., in approximately 2015.
- [18] The claimant says they separated on January 1, 2022, as that is the date he moved out of the Home, while the respondent says they separated February 17, 2022, as she says in February 2022 she did not want to be in the relationship any longer. I am satisfied that the appropriate date of separation to use is January 1, 2022, as that is the date A.K. moved out of the Home.
- [19] The parties agree that after the discovery of the messages on the iPad, they considered the possibility of reconciliation. They discussed A.K.'s behaviour and motivations. A.K. testified that N.R.P. insisted he obtain counselling, whereas N.R.P. testified that she needed time to think about what happened and she encouraged him to look for help. She agrees that she gave him a list of different counsellors who may be able to help him, but denies that she told him to go to a counsellor and to say he had uncontrollable sexual behaviours.
- [20] The parties agree that, for at least a few counselling sessions, A.K. would record the session and then give the recording to N.R.P. A.K. says that N.R.P. insisted on this, whereas N.R.P. says A.K. wanted her to hear what he was being told, and wanted her guidance and input. She says he wanted to show her he was doing the work, and that he was committed to change. One of the counsellors A.K. went to see was Dr. Susswein, and he provided N.R.P. with a recording of his session with him. That recording featured prominently at trial and is discussed in further detail below. Ultimately, their efforts to reconcile were unsuccessful,
- [21] On January 1, 2022, A.K. moved into temporary accommodations close to the Home where he remained until April 2022. The cost for this accommodation was \$800 a month, paid for from their joint account. During that time he would come to the Home every day, and the children never realized he had moved out. Throughout 2022 the parties appear to have worked together in the best interests of the children to develop a flexible shared parenting plan. At some point in April 2022 A.K. moved to a fully furnished garage suite a few blocks

away. The cost was \$850 a month, also paid for from the joint account.

- [22] Immediately after the separation A.K. would return to the family home at 6:00 or 6:30 am every morning, wake his sons up, make them breakfast and take them to school. He would then pick them up after school, take them home, take care of them, and put them to bed. This occurred with the agreement of N.R.P. A.K. opined that in the eyes of the children, he never left the Home. From January 1, 2022 to May 2022 he visited the Home daily, and stayed until the children went to bed.
- [23] In 2022, N.R.P. was still at school. Every semester her school schedule would change, and so the parenting schedule also had to change. A.K. says that their parenting schedule would change every four to six weeks. N.R.P. says that they accommodated her school schedule until the summer of 2022, when at some point she asked for a change and A.K. refused. In the summer of 2022, A.K. was taking care of the children four evenings a week, one of which was an overnight on the Friday night.
- [24] In June 2022, the parties agreed to a parenting schedule with the children living at the Home, but A.K. having contact with the boys five days a week. Specifically, he was allowed to be at the Home to care for the children:
- a) Mondays: 3:00 pm to 8:30 pm;
 - b) Wednesdays: 7:00 am to 8:30 pm;
 - c) Thursdays: 7:00 am to 9:00 am;
 - d) Fridays: 3:00 pm to 8:30 pm; and
 - e) Saturdays: 7:00 am to 8:30 pm.
- [25] For the parenting time on Fridays and Saturdays, he would sleep in the Home every Friday night, so when the children woke up Saturday morning he was there. A.K. testified that the children were not aware he had moved out of the Home until the parties told them, sometime in May or June 2022.
- [26] On August 1, 2022, A.K. moved into a three-bedroom townhouse where he still lives. In December 2022, N.R.P. also moved into rental accommodations.

C. Police and MCFD Investigations

- [27] Unfortunately, in July 2022 the relationship between the parties deteriorated, and there were several incidents involving the police and the Ministry of Children and Family Development ("MCFD").
- [28] N.R.P. called the Delta police on July 9, 2022, complaining that A.K. wanted to sleep next to their son A.R.K. and reporting a physical altercation over this issue. I heard considerable evidence from both parties about this event. A.K. testified that he was falling asleep in the room across from the children's room in the Home. A.R.K. came into his room, grabbed his

water bottle, and asked A.K. to put him back to bed. A.K. said he was in bed with A.R.K., trying to put him back to sleep, when N.R.P. came upstairs, told him to get out, and hit him at least twice on the shoulder while he was in bed with A.R.K. He asked her to stop and told her their son was awake, but she then went to the foot of the bed and hit him again on his feet. A.K. was adamant that he did not hit N.R.P. back. Rather, his evidence was that she left the room and went into his bedroom, but he did not want her going through his things, so he got up. After he got up, she went back into the children's room and put her arm up to block his access. His explanation for making it through to the children's room was that he was able to squeeze past her arm. A.K. testified he did not tell the police that N.R.P. had hit him, because he did not want to escalate what he described as an "already heated situation".

[29] N.R.P. testified that she touched A.K.'s feet when he was sleeping on a child's bed and said this is not where you should be sleeping, please move, and he refused, telling her words to the effect of "you are not going to tell me what to do". She went across the hall into his room and he came running in, so she went and stood in front of the kids' bedroom door to block him out. He said he was going to sleep there and when she said no, he pushed past her and she hit her elbow. She then called 911. She said she was very concerned about the incident at the time.

[30] The police notes of that attendance record:

As per this file, [N.P.R.] made a report of [A.K.] pushing her. Upon arrival, members learned that [N.P.R.] was physically blocking the entryway in attempt to prevent [A.K.] from entering their son's bedroom as she believed [A.K.] was a sex and porn addict. [A.K.] pushed past [N.P.R.] to enter the room. Members determined there was no family order in place restricting either parent's access to the home or children. Members believed [A.K.] had no ill intentions. [A.K.] agreed to sleep in his own room to avoid further escalation.

[31] The police concluded that the file did not meet the designation of High Risk Domestic Violence, MCFD were not notified, and the police closed their file.

[32] N.R.P. then attended at the Delta police on August 29, 2022, to complain about a withdrawal made by A.K. of \$50,000 from her bank account. A.K. testified that he noticed that \$110,000 was missing from one of their bank accounts. He contacted the bank, who advised him that the money had been transferred to accounts set up for the boys under N.R.P.'s name, and offered to add his name on the accounts. After this was done, he withdrew \$50,000, in the belief that he was entitled to half of the funds in the separation. The bank later told him they were investigating him for fraud, after which he explained he had been given access and he returned the \$50,000.

[33] N.R.P. testified that she had removed the money because A.K. was spending a significant amount of money, had stopped putting his income into the joint account, and they had payments to make on the Mission Springs and Lake Shore Condos (defined below). No steps were taken by the police as a result of N.R.P.'s complaint.

- [34] The Home was listed for sale in November 2022 and sold with a completion date in early January 2023. N.P.R. moved into rental accommodations in December, in anticipation of the sale closing. At some point after this move, A.K. attended at the rental home, and N.P.R.'s father told him he was not welcome to come into the house. A.K. testified that he had not been informed of any change to their ongoing routine that he would put the children to bed. He testified that the children were crying, he went to his car, got their backpacks for them, and left, without being allowed into the new rental home. He said this unilateral change to his time with his sons justified his decision to keep the children overnight the next time he had his sons, on December 21, 2022 (the night before they were leaving for Mexico with their mother).
- [35] On December 21, 2022, N.R.P. called police to attend at A.K.'s rental home. She was leaving for Mexico the following morning with the children, and A.K. would not return the children to her the night prior to her trip. A.K. testified that one of his sons was asleep and he was putting the other one to sleep, when she arrived at his door with two police officers behind her. His evidence was that she tried to push past him into the house and started screaming for N.J.K. to come down, which he did. The police told her to stop. He testified that he asked the police officers if they had everything, they said yes, and so he closed his door and went to calm down N.J.K. who was scared.
- [36] Although she was confused about the dates in her testimony, N.R.P. testified that at this time A.K. withheld the children from her, and notified her by text that she should pick up the kids before she went to the airport. She advised him that she was expecting them to come home, pack their toys and clothes, and get ready for their trip. A.K. refused, and told her to pick them up at 3:00 am on December 22, 2022. She then called 911, and the police asked to see an order. All she had was the Bilawich Order (defined below), which merely stated the status quo would remain. When she showed it to the police officer he said it was not enforceable, and there was nothing they could do. She knocked on A.K.'s door, and asked for the children, but A.K. refused and told her to leave. She admits she called for N.J.K., and the police grabbed her and kept her back. She denies that N.J.K. witnessed anything.
- [37] As there was no formal custody agreement in place and no safety concerns, the police advised her "to continue talking to her lawyers if seeking formal arrangements for the children" and they concluded their file.
- [38] Upon their return from Mexico on January 2, 2023, A.K. picked the children up in the morning, the first time he had seen them for the Christmas holidays. N.R.P. asked him to return them to her, which he refused to do. His evidence was that he told her that they were spending the night with him, "pursuant to the new schedule which was forced on us when she moved into a new home". At approximately 3:40 pm, N.P.R. attended at Delta Police to report that she had discovered in June or July 2022 naked images of their two sons on A.K.'s iPad, in which they were naked "and appear[ed] to be posing". Later that day, in an interview with police, N.P.R. made a number of allegations against A.K., including:

- a) the discovery of three naked photos of her children;
- b) that A.K. had a "porn and sex addiction";
- c) that N.J.K. had begun ejaculating at night, which the family doctor believed may be related to material his father may have exposed him to;
- d) that A.K. drinks six to ten alcoholic drinks every night;
- e) that in October 2021 A.K. alleged pushed A.R.K.;
- f) that A.K. sleeps with his sons in their bedroom;
- g) that A.R.K.'s school principal reported that in kindergarten, he touched his penis over his clothing and asked a female classmate to look at his penis;
- h) that N.J.K. and A.R.K. had both implied that A.K. touches their genital area; and
- i) an incident after a nightmare where N.J.K. said "I don't want to play like that with Daddy anymore".

[39] N.R.P. testified that her concerns were escalating for the safety of her children, and had been developing since separation in January 2022. She felt that the above list of concerns, coupled with her knowledge that A.K. had cheated and paid prostitutes, was extremely concerning. She had initially called legal aid in July 2023 when she first saw the naked photos of the children, who told her to call MCFD. She said she did but never heard back.

[40] The Delta police attended at A.K.'s residence on January 2, 2023 to remove his sons from his custody. That evening, while the children were in his care, he was visited by six police officers and staff from the MCFD. A.K. testified that he cooperated, and went upstairs with a police officer to wake up the children. He took them downstairs and told them they were "going to Mommy's". The police report is consistent with this:

Police attended at 11 - 5550 Admiral Way with MCFD social workers COOKE and WEBER to retrieve [N.J.K.] and [A.R.K.] from [A.K.'s] custody. [A.K.] was cooperative with police and assisted both [N.J.K.] and [A.R.K.] gather their things to be transported to their mother residence. [N.R.P.] was provided with a safety plan and follow up number by MCFD to follow up. [A.K.] provided with police file number.

[41] A.K. testified that as soon as he put his sons in the MCFD vehicle, he was surrounded by four or five police officers and two MCFD social workers, told about the safety plan, and told if he did not sign it then his sons would go to foster care. He signed it because he felt he was under duress, and he said "no way the kids were going to foster care". The safety plan included that A.K. would have no contact or access to either of his sons, and no access to N.R.P.'s residence.

[42] The next day, both children were interviewed by a Delta police constable, who noted no disclosures were made by either child.

- [43] On January 26, 2023, A.K. and his lawyer provided a voluntary, non-custodial statement regarding the naked photographs of the children. The police also obtained the medical records for the children from their family doctor.
- [44] In his direct evidence, A.K. was taken through the police report recounting the allegations of N.R.P. and provided his detailed response.
- [45] A.K. testified that with specific references to some of the photos of his sons, he did not tell his sons to pose like this, but they were goofing around after a hot tub and a shower and they told him to "take a picture of us chilling", so he grabbed his phone and took a couple of photos.
- [46] With respect to a photo of the child peeing, it was the first time he had peed by himself, the child was proud, and so he marked the memory.
- [47] With respect to the photos of his sons in the tub, he says they were fooling around in the tub. He explains none of the photos were blurred out, but rather, they had a towel.
- [48] A.K. emphatically denied that any of the photographs he took of his sons were for sexual gratification or for any other sexual reason. He testified that he did not distribute the photographs to anyone, and he had forgotten about them until N.R.P. brought them up in the litigation. He stressed that they had only been distributed by N.R.P., in this litigation. He also denies having a porn and sex addiction, and that he drinks to excess.
- [49] With respect to N.J.K. ejaculating at night, he acknowledges that N.J.K. did suffer from nocturnal ejaculation in 2022, but denies that he ever let his sons view pornography. He asked N.J.K. if he had ever been exposed to nudity, violence or gore either at school or by his friends, and his son said he never was.
- [50] A.K. says that in October 2021 he pushed A.R.K. playfully, but not to punish him. He says he does not discipline the children physically, although he admits he used to spank them on the bum.
- [51] He says that he has slept with his sons their entire life, on a random basis, either when they asked him to or he felt like it, and that N.R.P. has been aware of that since the time of their birth.
- [52] With respect to A.R.K.'s incident in kindergarten, he testified it was an earlier incident, and that he spoke to both of his sons about appropriate and inappropriate behaviour.
- [53] With respect to the implication that he touches their genital area, he says he taught both how to properly clean their penises.
- [54] Finally, with respect to the allegation that N.J.K. said "I don't want to play like that with Daddy anymore", he denies his son ever said that, and he is not sure what this is a reference to. He admits that N.J.K. gets scared a bit easier than his brother, so "it could be anything".

[55] While A.K. does own firearms, at the time he was storing them at a friend's house, as he did not want the firearms to be an issue in the separation. He properly transferred the firearms through the firearms regulators, and brought the long guns back to his house in March or April 2024.

[56] The Delta police concluded their investigation on January 27, 2023 and noted:

After concluding interviews with [A.R.K.], [N.J.K.] and [A.K.], police have not obtained any evidence that indicates that the children's safety or bodily integrity has been compromised. There is no indication that the future safety of the children is at risk. MCFD have been informed of the police investigation and its findings. At this point, there is no sufficient grounds to support a criminal charge. File to be concluded.

[57] A.K. was never charged. MCFD closed their file, and no restrictions were placed on his time with his sons.

[58] N.R.P. confirmed that after the police and MCFD investigation concluded, she never called the police nor MCFD for any further concerns, and since then she has co-operated with A.K. with respect to his parenting time.

D. The Litigation History

[59] In September 2022 both parties filed applications relating to interim parenting time: A.K. sought increased parenting time and N.R.P. filed a cross-application seeking an order that his parenting time be supervised. The applications were set for October 21, 2022, but were not able to finish in the time estimated. As a result, the only orders pronounced at that time were consent orders, recorded in the consent order made before Associate Justice Bilawich on October 21, 2022 (the "Bilawich Order"), in which they recorded an agreement they had reached by way of a four-way meeting with their then counsel.

[60] That order included a without prejudice interim agreement for the payment of child support, commencing October 1, 2022, in the amount of \$2,877 per month. It also included an agreement that s. 7 expenses would be born 80% by A.K. and 20% by N.R.P., and that:

4. BY CONSENT, on an interim and without prejudice basis, the parties agree that the Children shall be enrolled in two extracurricular activities each, the cost of which shall be shared in the proportion of the Claimant paying for 80% and the Respondent paying for 20% of the cost, provided the parties have agreed to the activity in writing. Neither party shall unreasonably withhold consent.

It also provided for interim, without prejudice spousal support in the amount of \$4,146 per month, commencing October 1, 2022, pursuant to the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) [Divorce Act].

- [61] Neither counsel at trial were counsel for the parties at that time; unfortunately, neither counsel were able to advise what incomes were used for the parties to arrive at the amounts of child and spousal support starting October 1, 2022.
- [62] The Bilawich Order also addressed the parties' agreement that Robert Colby was appointed to prepare a s. 211 report with respect to the children, and that A.K. was to be solely responsible for the cost of that report, and "there shall be no contribution from the Respondent and no adjustment in the division of assets with respect to this".
- [63] The parties had also agreed that the Home and two other condominiums be listed for sale. The two presale condominiums were:
- a) Unit #603B 3626 Missions Springs Drive, Kelowna, British Columbia (the "Mission Springs Condo"); and
 - b) Unit #313 3389 Lake Shore Road, Kelowna, British Columbia (the "Lake Shore Condo").
- [64] The Bilawich Order also provided for the distribution of the sales proceeds from the three properties.
- [65] They then appeared before Associate Justice Muir on December 12, 2022, and entered into a consent order which gave N.R.P. the authority to take the children to Mexico to visit her family from December 22, 2022 to January 2, 2023 (the "Muir Order"). The Muir Order expressly provided:
4. BY CONSENT, neither party shall make negative or disparaging comments about the other party or their family to the Children or in the vicinity of the Children. The parties shall remove the Children from the company of anyone making negative or disparaging comments about the other party.
- [66] On the same day they spoke to another consent order which related to their agreement to make an instalment payment on the Lake Shore Condo (the "Second Muir Order"). That Order provided:
- 1 BY CONSENT, on an interim and without prejudice basis, the Claimant will forthwith:
 - i. transfer to the name of the Respondent the sum of \$100,000 from his HSBC RRSP by way of a spousal rollover under s. 146(16)(b) of the Income Tax Act (Canada).
 - ii. provide his consent to the BMO Bank or any other authority, consenting to the Respondent cashing out the Respondent's Primerica Spousal RRSP in the approximate sum of \$59,675.00.
 - 2 BY CONSENT, the Respondent shall cash out Respondent's Primerica Spousal RRSP and use those funds to pay for the instalment on the Lake Shore Condominium.
 - 3 BY CONSENT, both parties shall be equally responsible for the tax payable by the Respondent with respect to the Respondent's Primerica Spousal RRSP cashed out for the payment of the Lake Shore Condominium.

4 BY CONSENT, if the Respondent elects to cash out any further RRSPs in her name or transferred to her by the Claimant, she shall be solely responsible for the tax associated with the same.

- [67] The parties next appeared at a Judicial Case Conference on January 6, 2023, at which time they consented to an interim distribution of \$150,000 to be made to each party from the sale of the Home, and agreed that funds from the sale were to be used to make the payment required for the completion of the purchase of the Mission Springs Condo. They also agreed that the remainder of the funds from the sale of the Home were to be held in trust at the law firm of Chhina Das LLP, until further agreement of the parties or court order.
- [68] The parties were then before Associate Judge Robertson on February 8, 2023, addressing the applications that had previously been set for October 21, 2022. Associate Justice Robertson gave her oral reasons for judgment on February 14, 2023 (the "Robertson Reasons for Judgment"). She was clearly aware of the numerous allegations N.R.P. made against A.K. She reviewed the evidence and arguments and held:
- [52] Notably, in this case, much of the complained-of conduct occurred prior to the parties' separation or, when after, were not raised as an issue in a timely way. The conduct that is alleged to have occurred post-separation did not cause such a concern that it dissuaded the respondent from allowing overnight parenting and notably, when talking with Dr. Bregman, she specifically stated that she had no concerns about the children's safety.
- [53] The claimant has had overnight unsupervised parenting in both February 2022 and recently in December 2022. In April 2022, there were two instances where the respondent asked the claimant to parent late, well into the night, as she was busy, again unsupervised.
- [54] Finally, in May 2022, when they discussed summer parenting, the respondent was agreeable to having the claimant having two weeks of parenting.
- [55] Despite the extensive parenting that has occurred since separation, there is no evidence that any of the alleged conduct of the claimant has presented itself during parenting, other than perhaps the issue with respect to the nighttime issues with the eight-year-old child. I have already addressed those.
- [69] Ultimately, on February 14, 2023, Associate Justice Robertson dismissed N.R.P.'s application for supervised parenting time and ordered:
- a) A.K. was to have parenting time with the children on the following schedule:
 - i. Monday from after school, or 3:00 p.m. if no school is in session, until Wednesday at 8:00 p.m.;
 - ii. Friday after school, 3:00 p.m. if no school is in session, until Saturday at 8:00 p.m.; and
 - iii. such other and further times as the parties may agree to in writing; and

- b) on a without prejudice basis, and without the Court making any findings of inappropriate conduct, A.K.:
 - i. is not to use the internet in front of the Children, other than for work purposes or for accessing content for the Children that is rated for audiences under 14 years of age;
 - ii. is not to take any photographs of the Children while they are in any stage of undress; and
 - iii. is not to consume alcohol while exercising his parenting time
- (the "Robertson Order").

[70] Finally, shortly before the trial commenced, the parties were before Associate Justice Robinson, at which time N.R.P. sought an order that A.K. attend at a continuation of an examination for discovery, and that he answer "all questions asked concerning his addictions, use of sex workers, and pornography during the marriage and after separation". He dismissed the application on May 9, 2022, noting in reasons indexed as 2024 BCSC 939 (unpublished):

[11] Having regard to the history in this proceeding, it is apparent, at least to me, that much effort has been spent to diminish and disparage the claimant and his ability to parent. The information sought will not inform to any significant degree the issues in the proceeding, but it could significantly undermine the reputation and standing of the claimant. This is not to protect him, but at the same time the court should not countenance or encourage questions that have minimal probative value but a very high prejudicial effect.

[71] On May 30, 2024, when it became clear during trial that the initial estimate for trial was woefully inadequate, and there was going to be a lengthy break before the trial resumed, the parties consented to an order dividing the summer parenting time equally, and then returning to the Robertson Order when school resumed.

[72] Then, in December 2024, notwithstanding the efforts made by counsel to complete on time, during what was intended to be the last two days of the trial, it became apparent that A.K. had been dissipating the family property since the commencement of trial. This surprise necessitated several court orders, and a continuation of the trial. On December 18, 2024, I ordered the parties to submit an agreed statement of facts with respect to the anticipated assignment of the contract to purchase the Lake Shore Condo by January 31, 2025. On December 19, 2024, I ordered the parties to provide an agreed upon schedule of the financial assets of A.K., including account numbers and the values of the accounts as at January 1, 2022, October 1, 2022, and May 1, 2024, by January 12, 2025. I also froze A.K.'s four RBC investment accounts and his Canada Life RRSP, and N.R.P.'s BMO RRSP, and ordered the parties to produce specific bank statements that were missing from production. I also ordered a spring break and summer holiday parenting schedule, and that the children were to receive counselling from Jorge Gonzalez at Alyson Jones & Associates at least once every three weeks for the next six months (and more frequently if Mr. Gonzalez advised that in his opinion it was appropriate or necessary for either or both children).

[73] I ordered spousal and child support starting January 1, 2025 as follows:

- a) A.K. was found to have a gross annual line 150 income of \$254,338;
- b) N.R.P., by her agreement, was to have an imputed gross annual income of \$30,000;
- c) A.K. was to pay N.R.P. child support in the amount of \$2,906 starting January 1, 2025;
- d) the parties were to bear their respective proportionate shares for the special and extraordinary expenses for the children in the amounts of A.K. 69% and N.R.P. 31%; and
- e) A.K. was to pay N.R.P. spousal support in the amount of \$4,822 per month starting January 1, 2025.

[74] Finally, I varied the parenting schedule set out in the Robertson Order to the extent that A.K. was to return the children to N.R.P.'s home Wednesday at 6:00 pm, and neither party was to enroll the children in sports activities Wednesdays after school. The balance of the order remained in force.

[75] Unfortunately, the anticipated assignment of the Lake Shore Condo contract of purchase and sale did not complete, nor were the orders for document production fully complied with. Rather, counsel for A.K. filed a notice of withdrawal as counsel, which N.R.P. objected to on January 16, 2025. After the objection was filed, A.K. then filed a notice of intention to act in person on January 27, 2025. On January 28, 2025, I held a judicial management conference and discussed the current situation with counsel and the parties. At my firm urging, counsel for A.K. came back on the record, and a week later I held another judicial management conference on February 5, 2025. At that conference I ordered:

- a) counsel were to provide an agreed upon statement of facts for the purchase of the Lake Shore Condo, including confirmation that the parties had completed the purchase, own the property as joint tenants, and details of the mortgage necessary to complete the purchase and details of the anticipated monthly carrying costs on or before February 28, 2025;
- b) counsel were to provide an agreed upon schedule of the financial assets of A.K., including account numbers and the values of the accounts as at January 1, 2022, October 1, 2022, and May 1, 2024, on or before February 28, 2025; and
- c) after these documents are provided to the court, counsel were then to request to set down the continuation of closing argument for no more than two days.

[76] Counsel did not comply with these orders. Rather, on February 27, 2025, counsel for N.R.P. filed a request to appear for an application, whose nature was indicated to be "change in parenting schedule (interim), fines for breach of court order and interim advance from N.R.P.'s RRSP". I declined to entertain that application at that time.

- [77] On March 4, 2025, N.R.P. filed a notice of intention to act in person, to ensure she was able to act on her own behalf to comply with those orders. Then, for reasons that were never explained, Mr. Craig filed a second notice of withdrawal of lawyer on March 17, 2025, which N.R.P. did not object to.
- [78] At the continuation of closing argument on April 16, 2025, N.R.P. was represented by counsel, and A.K. confirmed he wished to proceed with closing argument, acting on his own behalf.
- [79] Finally, on April 23, 2025, I allowed N.R.P. to bring an application for a change to the interim parenting arrangement because of recent concerns about the well-being of the children, which I address further below.

III. CREDIBILITY AND RELIABILITY

- [80] The determination of the credibility and reliability of a witness requires the trial judge to make an assessment of their evidence. It is not an all or nothing proposition, and I may ultimately decide to accept some, all or none of a witness' evidence. A credibility assessment requires the trial judge to consider the trustworthiness of a witness' testimony, based upon the sincerity of a witness and the accuracy of their evidence.
- [81] Credibility and reliability are separate concepts. Credibility relates to honesty and the willingness to speak truthfully, whereas reliability relates to a party's ability to accurately observe, recall and recount the events in issue.
- [82] The starting point in a credibility assessment is to presume truthfulness. However, when a party's evidence "is demonstrably inaccurate the challenge from an assessment perspective is to identify the likely reason for the inaccuracy in a cautious, balanced and contextually sensitive way": *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 10 [Hardychuk].
- [83] A lack of credibility may be found as a result of a determination that a witness has made a conscious decision not to tell the truth, or that for some other reason they are unable to provide an honest account of historic events. A lack of reliability may be found as a result of the conclusion that their evidence is not accurate.
- [84] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 [Bradshaw BCSC], *aff'd* 2012 BCCA 296. An assessment involves an examination of various factors, such as: the ability and opportunity to observe events; the firmness of the witness' memory; the ability to resist the influence of interest to modify his or her recollection; whether the witness' evidence harmonizes with independent evidence that has been accepted; whether the witness changes his or her testimony during direct and cross-examination; whether the witness' testimony seems unreasonable, impossible, or unlikely; whether a witness has a motive to lie; and the demeanour of the witness generally: *Bradshaw BCSC* at para. 186.

- [85] The trial judge must also reasonably subject the evidence of each witness "to an examination of its consistency with the probabilities that surround the currently existing conditions": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.) [*Faryna*]. It is critical to consider the evidence of a witness and whether it is in "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": *Faryna* at 357.
- [86] A.K. argues that N.R.P.'s testimony "raises considerations of credibility". He argues that she failed to disclose the purchase of the Delta Condo (defined below) in either her financial statement sworn prior to the commencement of trial on April 25, 2024, or during the first portion of the trial. He argues that "[t]his omission is not an oversight but a deliberate act to conceal material facts from this Court". However, N.R.P. testified she was scared that A.K. would not allow her and the children to have a safe place to live, and she did not think she had a legal obligation to advise of the purchase as she had done so after separation.
- [87] He also argues that she failed to produce details she was ordered to produce from her Mexican bank account; however, she explained she was not sure she could obtain them from Canada, and she had made best efforts to do so.
- [88] Further, A.K. complains that on November 8, 2024 N.R.P. breached an order I made on November 1, 2024, by returning the children home 30 minutes after she was ordered to do so. However, N.R.P. testified that she had contacted A.K. about the return, and received his permission to return the children 30 minutes late.
- [89] Finally, he argues that she spent "an inordinate amount of time trying to characterize [himself] as an abusive individual with [addiction] issues", while none of these claims were raised during the marriage, nor immediately after separation when A.K. was exercising significant parenting time at the Home.
- [90] N.R.P. argues that A.K. clearly misappropriated family funds after separation. She also points to the fact that while he says he pushes for the children's involvement in, and is responsible for, their activities, the evidence demonstrates that she was owed \$11,788.86 in s. 7 special and extraordinary expenses, whereas he was only owed \$2,402.63. She relies upon this to challenge his evidence.
- [91] While I do not condone either A.K. or N.R.P.'s behaviour, the reality is that this clearly became highly emotional family litigation for both of them. Both parties entrenched in their positions, and engaged in behaviour designed to cause the other difficulty and place them in an unflattering light. This inevitably affected their ability to testify in an even-handed manner. While I accept both N.R.P. and A.K. as credible and reliable witnesses, I view their testimony--particularly their self-serving testimony--through the lens of high-conflict family litigation, and a clear tendency on both parts to provide self-serving evidence.

IV. THE SURREPTITIOUS RECORDING

- [92] During trial, A.K. applied for an order that a transcript of a session he had with a psychologist, Dr. Susswein, be found to be inadmissible on the basis that it was a surreptitious recording. A voir dire was held, and I dismissed his application on May 17, 2024. By the agreement of the parties, the evidence on the voir dire was admitted into evidence at trial.
- [93] As set out above, the parties agree that when the parties were actively working through their difficulties, N.R.P. asked A.K. to obtain therapy. The parties agree that A.K. did meet with therapists, including Dr. Susswein on February 1, 2022. They agree that A.K. recorded the entire meeting, and that he provided the entire recording to N.R.P. They also agree that N.R.P.'s former counsel prepared a written transcript of A.K.'s session with Dr. Susswein (the "Transcript"). The parties agree that the Transcript, which is 42 pages in length, is an accurate depiction of A.K.'s meeting with Dr. Susswein.
- [94] I note that this Transcript has been attached as an exhibit to a filed affidavit, and was provided to Mr. Colby as part of the documentary record to review for his s. 211 report. Mr. Colby testified at trial that he did not review the Transcript.
- [95] On the Transcript, A.K. admits to "addictions" to alcohol, pornography, and sexual relationships with third parties.
- [96] A.K. testified that he went to see Dr. Susswein at the request of N.R.P., that he recorded the session on her instructions, and that he stated what he did during that session upon her instructions. Specifically, he testified that he told Dr. Susswein he was addicted to alcohol, pornography, and sex on her express instructions. On cross-examination he testified that he did meet with sex workers, but that he did not engage in a sexual intercourse with them, only "massage and hand release". He said at that time he met with Dr. Susswein, N.R.P. was threatening to take their children away from him, and that threat was very real to him. He admits he has used sex workers in the past but maintains he does not use sex workers or abuse pornography now.
- [97] N.R.P. places great weight on the Transcript. Her position was succinctly summarized in her 9th affidavit sworn May 6, 2024, in which she deposed:
9. The transcript of Dr. Susswein is relevant to this family law matter, as the Claimant has stated to Dr. Susswein that he struggles with addictions and propositioning street "hookers." One of the issues the trial judge is going to decide on is whether or not the Claimant and I should have shared parenting. My position is that I should have primary care of the Children given the Claimant's issues with addictions. That transcript goes to the root of my position on parenting. The Claimant, at his Examination for Discovery, took the position that I was the one controlling what he should say to Dr. Susswein, and he, in fact, does not struggle with addictions, he notes. He further accuses me of forcing him into that therapy and then having the sessions recorded

[98] N.R.P. testified that she provided A.K. with a list of potential therapists, and encouraged him to go and get professional help. She denies asking him to record these sessions, and denies requesting the recording of his meeting with Dr. Susswein on February 1, 2022. Rather, she testified that he voluntarily gave it to her. She explained that he had seen another counsellor before and also shared that recording with her, and they would sit down together to listen to the session and the advice he was being given. She testified that he wanted her guidance and input, to reconcile, and to demonstrate to her that he was committed to change. Specifically, she denies telling A.K. to use the word "addictions", which he used at the session in question. N.R.P. testified that before hearing the session with Dr. Susswein, she was not sure that A.K. used the services of street hookers. I note N.R.P. also testified that A.K. told her he was having unprotected sex with sex workers in February or March 2022, which she found to be very concerning.

[99] It is important to set out the portion of A.K.'s session with Dr. Susswein that N.R.P. relies upon. The transcript records A.K. as saying:

Yeah, I think, I think there's, there's a few things going on here that I'd like to talk about. I, I'm not sure, um, exactly what I mentioned on the intake, or forms or, or email or whatever it was, um, but it's, uh - I'm thinking addiction, um, but that's up to you to decide, I guess. But, uh, it's pornography, um, as well as alcohol, so I've, um, you know, I've, I've reached out and I've been sexting with partners, as well as looking at, uh, LeoList or Craigslist or whatever it is for, um, um, I guess massages with, with happy endings, um, and, and I am married and I've been doing it for over 10 years and I've been married for about nine years now, and of course, you know, it, it comes to a halt, you know. Um, my wife has found out and I've, have been open with her and we're kind of in that separation mode right now, um, and

[100] After a discussion of A.K.'s activities, Dr. Susswein then is recorded as saying:

But partly it's, it's habit, it's addiction, it's all the memories of those times that it worked out well, uh, or well in terms of thrills, um, and part of counteracting it is actually, um, refocusing your memories to remembering all the times that it worked out badly.

[101] Throughout the rest of the Transcript, both A.K. and Dr. Susswein make a number of references to the "addiction" of A.K. However, A.K. now firmly denies suffering from any addictions, using sex workers or abusing pornography. I give little weight to the Transcript, given the context within which it was recorded, and the almost two and a half years since it was recorded.

V. THE SECTION 211 REPORT

[102] Robert Colby was appointed to prepare a s. 211 report with respect to the children, by the consent of the parties. Mr. Colby is a registered psychologist, and was agreed by the parties to be qualified as an expert in child and family psychology for the purposes of providing an opinion to the Court for the best parenting arrangement for the children. His report is dated March 15, 2023 (the "Colby Report"). Mr. Colby engaged in his assessment of the

parties from November 2022 to early March 2023. He was aware of the events of December 2022 and January 2023, and of the change to parenting time made by Associate Justice Robertson on February 14, 2023.

[103] Although the Colby Report was initially missing a page which addressed his investigations into A.K.'s alleged sexual impropriety, Mr. Colby realized his mistake before trial and sent the missing page to counsel by way of letter dated May 9, 2024.

A. Overview

[104] I have reviewed the Colby Report in its entirety, and will set out the pertinent portions in some detail below.

[105] The Colby Report makes very clear that he was alive to the allegations of sexual impropriety, addiction and alcohol abuse made by N.R.P. He summarizes these concerns:

[N.R.P.] states that [A.K.] has a "porn addiction and sex addiction and was regularly having paid sex with young girls." She states that [A.K.] has admitted to seeking counselling in that regard and has recorded counselling sessions providing her with a copy. She raises concern that the children have been exposed to the content of his phone and iPad. She has consulted the family doctor, Dr. Bregman over concerns that their son [N.J.K.] was experiencing early ejaculation and "wet dreams" with the doctor stating that it was due to exposure to sexuality. [N.J.K.] states his father will touch his genitals. She states he has naked pictures of the children on his iPad. She raises issue that he kisses the children on the mouth. He sleeps in the same bed with the children which she takes issue with. She presents it is not consistent with the family history. Concern has been raised at school regarding [A.R.K.'s] sexualized behaviour. She states she raises concerns about the safety of the children in their father's care. She states she objects to the children having overnight parenting time with their father. [N.R.P.] seeks that [A.K.] have a psychological assessment conducted. She feels that such an assessment was more appropriate than a Sec. 211 FLA Assessment Report.

[N.R.P.] raised concern that the children are not appropriately fed in their father's care, and it has affected their gastrointestinal functioning. She also raised concern that the children are not appropriately attended to in their father's care resulting in [N.J.K.] slipping and having a bruise on his hip and [A.R.K.] being left alone at five years of age in a hot tub. She raises concerns regarding him having firearms. [N.R.P.] seeks to have [A.K.] not have unsupervised parenting time and proposing a schedule where he is supervised by one of her parents.

[106] He expressly addressed these concerns with A.K., specifically his statement in February 2022 that he was addicted to pornography and alcohol. A.K. reported to Mr. Colby that neither was a problem and he made the statement "just to not argue the point with" N.R.P. He noted A.K.'s statements that he is not addicted to alcohol, not involved in sex with young girls, and that the children had no access to pornography on his laptop or watch.

[107] Mr. Colby interviewed both parents and conducted a psychological assessment of each. For both parents he also administered the "Child Abuse Potential Interview". He notes both of their scores were in the normal range, and their responses "are not similar to a large population of individuals who present risk of physical abuse to children". He then conducted home visits of each parent, together with their children.

[108] Mr. Colby also conducted several professional collateral interviews, including with Dr. Bregman (the pediatrician for the children), and with four counsellors/psychologists who had seen the couple. He conducted a few collateral interviews with friends of each party, and conducted a psychological interview of each child.

[109] Mr. Colby requested a hair sample from A.K. to submit for drug testing on February 28, 2023, which produced negative results for the previous ninety days.

B. Mr. Colby's Summary of Psychological Testing

[110] As noted above, Mr. Colby administered several psychological tests to both parents.

[111] With respect to A.K., Mr. Colby noted he presents as highly defensive, and he "presents as similar to individuals who may not acknowledge personal problems and difficulties readily". Further he noted:

Psychological assessment of [A.K.] presents him as a conforming individual who seeks acceptance from others and is a stable individual. However, he also presents as a highly guarded individual who is a highly sensitive individual and can respond with resentment and anger if he feels he is negatively impacted. He can respond in an impulsive manner.

Further personality assessments are invalid as he does not acknowledge or accept problems and difficulties common to most individuals.

Assessment of similarity to individuals who present risk of physical abuse of children indicates his results are not consistent with that population.

[112] With respect to N.R.P., Mr. Colby noted she presents as someone with a high need to be accepted by others, and as someone who can be overly dependent, relying on others to support her. He noted she:

may respond negatively if she feels she is rejected or not appropriately receive[d] by others. She can be hostile and irritable or overly emotional in such situations and it may result in an increased sense of anxiety and discomfort for her. She can be a complaining and irritable individual when she feels rejection.

C. Mr. Colby's Investigation of Family Violence

[113] Mr. Colby also addressed the allegations raised by N.R.P. about domestic violence:

[N.R.P.] raised concern about [A.K.] engaging in domestic violence. She states there was a confrontation when he pushed her, and she hit her shoulder. The police were called on that incident. She states that during the marriage he would be physically and verbally abusive to her and the children. She states he would spank the children. He would pull [A.R.K.] by the ear to the bedroom. She states that [A.K.] pushed [A.R.K.] to the floor on one occasion. In public if he did not like what the children were doing or saying he would pinch them on the shoulder and at one point flicked [A.R.K.] in the face. She raised concerns about the statements [N.J.K.] had made regarding his father being allowed to touch his penis. She described [A.K.] as a "stern and aggressive individual." She raised issues about coercive control stating that he was withholding a vehicle from her that she needed to be able to transport the children. He would limit her spending and she would need approval for some purchases.

[N.R.P.] states at the same time that she was responsible for the family finances. [N.R.P.] states that he would not facilitate schedule changes of his time with the children to accommodate her schooling. She raises concerns about his cooperativeness in regard to co-parenting the children. She states he will not inform her of what he does with the children when he has them in his care. [N.R.P.] states that although the original agreement was that he would be parenting the children at the marital house he would take them out from the house. She said he took the children to a chiropractor without her approval. [N.R.P.] said at the breakdown of the relationship [A.K.] stopped communicating with her. If she was still in the home when he was parenting the children in the morning and preparing breakfast, he would be critical of her presence. The same would be true if he was at the house in the evening, having parenting time, presenting to the children that she should not be there. She states he wanted to be able to have parenting time with the children "any time he chooses" and would not accommodate her schedule.

[114] Mr. Colby noted A.K.'s response to these allegations:

[A.K.] states he never engaged in Family Violence. He states he has never been physical with [N.R.P.] and never pushed her despite her allegation. He said the spanking of the children was when they were diapered. It was a single "swat" and only occurred once. He has not engaged in any physical inappropriateness with the children. He said there were times when he isolated [A.R.K.] in his bedroom, but he would not drag him by his ear. He never pushed [A.R.K.] to the floor, and he did not pinch the children's shoulders as a disciplinary involvement. [A.K.] said he has four photographs of the children naked. One was taken when [N.J.K.] was able to pee standing up for the first time. He said the children were aware of the photographs. He said it is not intrusive kissing the children on the lips. He said it was consistent with his cultural upbringing however he ceased doing so as there were objections to that. He states that he does not engage in sexually touching the children.

[115] Mr. Colby concluded:

A singular post separation in-house altercation presented as a relatively minor and non-continuous incident of a post-separation conflict. Issues of coercive control present generally at a minimal level. The one issue that presents as highly controlling is [A.K.'s] insistence on engaging

with the children post separation. In part that was facilitated by [N.R.P.'s] needs to have him on one hand be engaged to assist her in her schooling and her school schedule but also presents at [A.K.'s] insistence of remaining involved with the children at a post separation level so that the children would not be aware that he was no longer in the marital residence. In the long run it presented also as a major factor in regard to [A.K.'s] needs to identify himself in regard to the parental role he plays with the children and presented with a degree of inflexibility that became problematic when [N.R.P.] no longer required his involvement or found it intrusive. [A.K.'s] resolution of those matters by trying forcibly to enter [N.R.P.'s] home or keeping the children in his care in a manner that was highly inconvenient presents as an intrusiveness on his part that raises concern in regard to his willingness to accept limitations, on one occasion the police having to remove the children from his care.

[116] Specifically, Mr. Colby noted:

- a) the nature and seriousness of the family violence was relatively minor, and was one non-continuous incident that arose as a result of post-separation conflict;
- b) it occurred within the last six months related to the dynamic of the separation;
- c) there were two notable events that both related to the separation dynamic;
- d) [A.K.] presents as attempting to impose his structure on the parental dynamics as [N.R.P.'s] need for his childcare engagement decreased;
- e) [N.R.P.] alleges issues in family violence towards the children, including inappropriate photography, inappropriate discipline and physical contact;
- f) the children unfortunately experienced police interceding on two separate occasions;
- g) the involvement of the children in the conflict dynamic between the parents' risks undermining their security;
- h) MCFD's assessed that the children were not in need of protection; and
- i) with respect to N.R.P.'s allegations of sexual impropriety, "[it] was not felt in this Assessment that [A.K.] engaged in sexually abusive behaviour with the children", and Mr. Colby "cannot find that [A.K.'s] parenting or the children's behaviours are indicators of sexual abuse or limiting [A.K.'s] parenting time allocation".

D. Mr. Colby's Recommendations

[117] Mr. Colby detailed the events post-separation carefully, and set out in detail the confrontations of July 2022, December 2022 and January 2023. He noted the significant difficulties the parties experienced in 2022 and 2023, leading to the disintegration of their ability to communicate and cooperate effectively. He also carefully addressed the issue of the allegations of family violence.

[118] He notes N.R.P.'s concerns about A.K.'s parenting, which he summarized as:

- a) a pornography and alcohol addiction that interfered with his ability to parent;
- b) a failure to feed the children appropriately;
- c) involving them in too many activities;
- d) not being properly attentive to the children;
- e) taking naked pictures of the children, kissing them on the mouth, and touching their genitals; and
- f) engaging in domestic violence and controlling behaviour.

[119] Mr. Colby noted the different arrangement in each parent's household on parenting styles, bathing routines, bedtime arrangements and toileting, and the cultural standards and practices each parent has. He expressly noted that kissing his children on the mouth was a cultural issue for A.K., who chose to abandon that action after realizing it was not reflected in the North American culture.

[120] Mr. Colby specifically noted the allegations of inappropriate touching, and his conclusion on the same:

The children do not raise any issues regarding inappropriate touching. These are matters that have been reviewed extensively by Ministry and police in the past with no concerns being raised and the children being able to have unsupervised parenting time at both parental homes. In the interviews the children acknowledged that the shower at their parents' homes. They shower either individually or together. They said at their father's home their father assist them by putting soap on them with [N.J.K.] saying that his father will wash him specifically saying that his father does not wash his private parts. Both boys said that is not necessary at their mother's house as they provide their own care. The children also state that their father engages in toileting them. They present that as a rare occurrence at their mother's house and they are able to engage in self-toileting.

[N.R.P.] is highly distrustful of [A.K.] presenting risks of sexual intrusion to the boys. The boys have not raised issues of impropriety. Assessment are not found that [A.K.] presents risk to the children. [A.K.'s] actions to remain a significant part of the children's daily functioning and his sense of efforts to exclude him have resulting in [A.K.] being intrusive. It is felt he is over involved in hygienic parenting care.

Based on the information provided, this Assessor is not able to assess whether or not there is a risk presented in terms of [A.K.'s] engagement with the children in terms of bodily care and contact. The behaviours that he engages in with the children in showering is not significantly different from some parents showering and toileting behaviours with children. Children the ages of [N.J.K.] and [A.R.K.] are able to sufficiently develop self-care skills. It appears unnecessary for him to be directly engaged with the children in toileting except if they make such a request to

him in that regard.

[121] Mr. Colby also noted the parties' difficulty with co-operation, noting "each parent sees the other parent as non-cooperative", specifically noting:

Both parents raise [the] issue that the other parent was not cooperative in keeping them informed about interventions with the children saying that they sought out professionals without consultation with them. Both parents raise issue that the other parent was interfering in their relationship with the children and was non-cooperative. Issue has been raised that there was not a sharing of information between the parents regarding their activities with the children. [N.R.P.] further raises issues that there was not a cooperative arrangement between the parents regarding rules for the children to provide consistency between the two households. The dynamic of parental cooperation between these two households is very sparse in terms of the current dynamic.

The issues of cooperation are not separate from the personal dynamics of these individuals. At some level both of these parents present as unwilling to acknowledge difficulties.

However, notwithstanding these difficulties, Mr. Colby recommends joint parenting responsibilities.

[122] In this complex situation, Mr. Colby then analyzed the factors to be considered in determining what is in the best interests of the children:

- a) Views of the children-- "the children are not presenting as rejecting of either parent";
- b) Needs of the children-- "it is important that [the] children not be placed in a situation of conflict between their parents";
- c) Ability and willingness of each parent to satisfy the needs of the children--their "definition of the needs of the children are at odds with the other parents' experienced expectations and concerns and therefore the parental focuses are separate and disconnected";
- d) Parental cooperation--both "sees the other parent as non-cooperative"; and
- e) Family violence--as set out above.

[123] Based upon all the above, Mr. Colby made a number of assumptions, noting they "are the basis for the recommendations presented, and should the Trier-of-Fact negate or reject the assumptions presented, reconsideration would have to be made of the recommendations, as presented". Those assumptions were:

1 Both parents have a sincere interest and love for their children and seek to be actively engaged in the parenting process.

2 Both parents individually have the skills to be able to appropriately parent the children to meet the children's emotional, psychological, and developmental needs and best interests.

3 The communication dynamic between these parents is broken to the point that there is not an active and positive communication dynamic between them that allows them to effectively co-parent.

4 [N.R.P.] has difficulty establishing rules and guidelines in relationship to [A.K.'s] involvement with the children which results in her feeling a sense of helplessness, increases her sense of frustration and further decreases the interparental communication.

5 [A.K.] has a sense of rightful involvement in the children's lives with a level of assertiveness that disregards [N.R.P.]'s engagement.

6 The children [N.J.K.] and [A.R.K.] have a positive, interactive relationship with both parents and seek to be actively engaged with both parents.

7 The differing rules between these parental homes in regard to matters of the children's activities, sports involvement and use of electronic devices within the household heightens the children's differing evaluations of the parental homes and their parental involvement.

8 The children have a positive regard with both parents and seek to be actively engaged with both parents. Both parents have the ability to provide for the children's emotional and psychological needs on an individual basis but are deficit in their ability to do so in a cooperative and consultative manner.

[124] Mr. Colby then recommended that the children would benefit from the parents having joint custody, joint guardianship, joint parental care and a shared parenting regime. While he initially recommended shared parenting with a 2-2-5-5 regime, he testified that by eight years of age children can separate for longer periods of time, up to a week if necessary. He says that the main priority should be consistency for school, particularly for A.R.K. who struggles more with upsets to his routine. He then made an additional 17 recommendations, as follows:

4. It is recommended that A.R.K. be referred for psychoeducation assessment in relationship to concerns over his activity level and difficulties in relationship to attention, focus and activity level.
5. It is recommended that both parents be in agreement that Dr. Bregman will continue providing medical oversight for the child N.J.K. and Dr. Bregman provide pediatric services to A.R.K. as required.
6. It is recommended that parental agreement be obtained for any engagement of the children in any medical consultations or treatment with both parents being fully informed and having access to all medical third-party information.
7. It is recommended that both parents be fully informed and knowledgeable in all matters related to the children's schooling.

8. It is recommended that the children's sports activities be engaged in with agreement between the parents and that no arrangements are reached in regard to a child's extracurricular activities that are scheduled on the other parent's time without agreement of that parent. It is recommended that the children's activities be no more than two sporting or other events per week. Engagement in more activities is overloading the children in events and decreasing their engagement in academic and non-competitive social environments.

It is recommended that these parents seek a Parenting Coordinator to assist them in matters either through joint or separate meetings, either in-person or via electronic media to address areas of disagreement. It is recommended that these parents enter a standard two-year Parenting Coordinator Contract with member of the BC Parenting Coordinator Roster Society. While it is felt these parents do have the ability to act in the children's best interests to reach mutual decisions on many items under Sec. 41 of the Family Law Act, one of the concerns that is raised is the level of distrust [N.R.P.] has of [A.K.] attending to the children's emotional, psychological needs and her firm belief that he presents risk to the children. [A.K.]'s concern that he is being depreciated and undermined in his role with the children, resulting in him taking assertive action which can be counter to the children's best interests and of a cooperative dynamic with [N.R.P.]. These factors together raise issue in regard to either parent having authority under Sec. 41 of the Family Law Act. It is important that parenting scheduling and parenting time be firmly established to assure adherence to each of the parent's involvement with the children.

9. It is recommended that all assurances are made that the children are not engaged in any way in viewing or observing sexualized content through any media.
10. It is recommended that in conjunction with the Parenting Coordinator that these parents negotiate an agreement regarding electronic media use by the children. The maximum electronic media use in either home be set by the Parenting Coordinator.
11. It is recommended that these children spend their birthday with the parent whose care they are in on that date and the other parent celebrates at the next available time.
12. It is recommended that [A.K.] should encourage the children's independent attendance to their hygiene and toileting and primarily attend to them when they are in the shower by having oversight to assure that they are not endangered in their independent action by keeping the door open enough that he can be aware that they are sufficiently safe from accidents.

Further it does not appear that it is consistently necessary for him to be involved in the toileting of the children except if they make such a request or if there is an unusual response. If the children need further education of their toileting that he addresses that issue with [N.R.P.] and they access an educational program for the children in self-care as necessary.

13. It is highly recommended that parental assistance in toileting only occur in the most rare situations where such assistance is required due to accidents or medical concerns.

14. It is recommended that the children sleep independently in both parental homes with the support of their parents to be able to transition to that where it does not currently exist.
15. It is recommended that Christmas parenting time be arranged so that there is an equal shared parenting time with one parent having the children on Christmas Eve and the first half of Christmas Day until 1:30 pm with the other parent having the children in their care on Christmas Day from 1:30 pm and Boxing Day with that reversing on an annual basis.
16. It is recommended that the children spend Father's Day with their father and Mother's Day with their mother despite any other parenting arrangements. It is not recommended that there be compensatory time provided to the other parent.
17. It is recommended that school Spring holidays be shared between the parents with one parent having the first half of the holiday and the other parent having the second half and that reversing on an annual basis. It is recommended that the parents have the option, with the approval of the other parent, of extending the holiday with that being accommodated on the next scheduled summer holiday.
18. It is recommended that Hallowe'en and Thanksgiving be alternated on an annual basis with one parent having access on one holiday and the other parent on the other holiday.
19. It is recommended that summer holidays be shared equally between the parents on a two-week rotation unless other arrangements are made between the parents in regard to accommodating the other parent's parenting time in regard to more extensive travel with the other parent having equal access to the same amount of parenting time.
20. It is recommended that each child have a picture of themselves with the absent parent in each of their bedrooms.

("Mr. Colby's Recommendations").

VI. ANALYSIS

[125] The parties were initially somewhat confused as to which legislation they were seeking relief under--the Divorce Act or the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Ultimately in oral closing submissions they confirmed they sought relief under the FLA, except for relief the FLA did not address (the divorce). Accordingly, that is the basis upon which I have analyzed all of their claims.

A. Family Violence

[126] Both A.K. and N.P.R. accuse the other of family violence, which I will analyze pursuant to the FLA. Section 1 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;

[127] 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.

- [128] A.K. asks for a finding of family violence against N.R.P. for "physically abusing [A.K.] and [A.R.K.], and for threatening the Children, both physically and emotionally". N.R.P. asks for a finding of family violence against A.K. for the same event A.K. complains about (the confrontation of July 2022), and for engaging in risky sexual behaviour, thereby putting her in danger.
- [129] The events the parties rely upon for the finding of family violence arise primarily out of the events on July 9, 2022, when the parties had an altercation over A.K. being in bed with A.R.K. I accept that there was an escalation of conflict between the parties, with both acting inappropriately in the heat of the moment. However, I am satisfied this was a result of situational stress, and is not indicative of a pattern of ongoing physical abuse, sexual abuse or coercive control. I see no ongoing concerns that would impact the ability of either party to co-parent effectively, nor any concerns that would impact the best interests of the children. I see no evidence to support A.K.'s argument that N.R.P. has threatened the children either physically or emotionally. Likewise, I do not accept that A.K.'s sexual misbehaviour arose to the level of family violence. In all the circumstances, I decline to make the orders sought by either party.

B. Parenting Issues

1. Applicable Legal Principles

- [130] With respect to guardianship and parenting arrangements, the FLA requires the court and the parties to consider the best interests of the children only.
- [131] 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.

[132] 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.

[133] Section 41 of the FLA provides for parental responsibilities, and s. 42 provides for parenting time.

2. Analysis

[134] The controversial events leading up to the Robertson Order are addressed above. Notwithstanding the difficulties between the parties throughout 2022 and early 2023, since February 2023, A.K. has had unsupervised access to the children and the parties have engaged in a largely shared parenting regime.

[135] In her testimony, N.R.P. characterized A.K.'s statement to Dr. Susswein that he suffered from addictive behaviours as evidence that A.K. had a porn and sex addiction. In her opinion, no professional has addressed A.K.'s "medical state" and addictive behaviours, which is concerning because he has alcohol and firearms at his home and she wants the children to be safe.

[136] I have already addressed at length the events leading to separation and the Transcript. I am satisfied that N.R.P.'s concerns about A.K.'s alleged "porn and sex addiction", and any alleged sexual impropriety with the children, have been fully addressed through the RCMP and MCFD investigation (both of which were resolved and closed), and through Mr. Colby's s. 211 investigation. While I accept that N.R.P. was devastated by her discovery of A.K.'s behaviour during their relationship, and may have been concerned about other aspects of A.K.'s parenting, her concerns have been thoroughly investigated and should have been put to rest.

[137] On cross-examination, N.R.P. was clear she does not accept Mr. Colby's Recommendations because she believes A.K. needs a psychiatric evaluation before she can be satisfied their children are safe in his care, and A.K. refused to have one done. I am satisfied that such an evaluation is neither necessary nor appropriate in the circumstances.

[138] Ultimately, in determining the best parenting arrangement, my concern is not the choices A.K. made previously, but rather his ability to appropriately parent his children at this time.

[139] Notwithstanding the police and MCFD closing their files on their investigations, and Mr. Colby's recommendation for shared parenting, N.R.P. maintains that a shared parenting regime is not in the best interests of the children. Rather, she proposes that the children be with A.K. from Thursday after school to Saturday at 6:30 pm, with equal parenting time during the winter, spring, and summer breaks, although she would prefer to alternate winter holidays to take the children to Mexico. Somewhat surprisingly, she has no difficulty with A.K. having the children for one month in the summer.

- [140] A.K. opposes this suggestion vehemently, saying he has addressed all of N.R.P.'s concerns, and there is no reason the parties cannot share equally in their parenting time. He seeks a week-on, week-off shared parenting regime, which he says would be significantly better for his work commitments, and the implementation of Mr. Colby's Recommendations. He is willing to deviate from Mr. Colby's recommendation for summer parenting time, and to agree to each parent having the children for a longer block of time.
- [141] By the time of closing submissions, the focus of N.R.P.'s argument had shifted. Moving from A.K.'s past behaviour and alleged addictions, the focus of her argument became her belief that the children are suffering under the current schedule. She argues that she was always the primary caregiver, she is better positioned to continue to do so, and she was always the one who made major decisions for the children, and then presented them to A.K. However, I note, she was only a stay-at-home mother during her maternity leaves, and from 2018 to 2021. The goal of the family was always for her to return to work, as is clear from their joint decision for her to enroll in the acupuncture plan.
- [142] As noted above, on April 23, 2025, I allowed N.R.P. to bring an application to change the interim parenting arrangement, as a result of recent concerns about the children, particularly A.R.K. Again, N.R.P. advanced an argument that she has consistently sought counselling for the children, but A.K. has delayed or obstructed it from occurring, including failing to follow through on the court-ordered sessions with Mr. Gonzalez, and refusing to co-operate on medical instructions from doctors. She noted her concern that A.K. took the children to shoot firearms, and exposed them to age-inappropriate video games.
- [143] Ultimately, I allowed the application to proceed because of two events:
- a) N.R.P.'s evidence that in February 2025 A.R.K. had disclosed suicidal thoughts to N.R.P. stating "I don't belong in this world" and "why don't you kill me?"; and
 - b) a page from N.J.K's journal which noted:
I hate [my brother].
I wish he wasn't born.
I absolutely hate him.
F** him.
Sh**t him.
B**ch him.
A** him.
Followed by a picture of him pointing a gun at his brother.

I hate my mom.

I absolutely hate her.

Shes as worse as my brother.

A** her.

B**ch her.

Sh**t her.

F**k her.

Followed by a picture of him pointing a gun at his mother.

[144] A.K. opposed the relief sought, raised his own concerns about events that occurred while the children were in N.R.P.'s care, and criticized N.R.P.'s form of parenting. He also raised concerns about the children's sleeping arrangements when a friend of N.R.P.'s sleeps over.

[145] A.K. addressed N.R.P.'s concerns about firearms, and said he does not insist on taking the children to go shooting, noting that, in any event, hunting season was over by April 2025. With respect to the video games, he says the Minecraft game is rated for ages 8+, and while he acknowledges that Fortnite may not be age appropriate, he says they play only with their friends, and he supervises their play. He says they only have one hour of screentime a night at his house, and he agreed he would not let them play any other video games at his house in the interim.

[146] On the basis of the concerns raised over the boy's mental health, I varied the Robertson Order effective April 28, 2025 on an interim, without prejudice basis, and implemented Mr. Colby's recommended 2-2-5-5 schedule. This was done to minimize the transitions for the children, and to provide them with some greater consistency. I also ordered that the boys were to receive counselling from Mr. Gonzalez every two weeks for the next year, and more frequently if Mr. Gonzalez recommends. I asked N.R.P. to provide Mr. Gonzalez with the page from N.J.K.'s journal as set out above.

[147] I also made several conduct orders pursuant to s. 222 of the FLA:

- a) A.K. will provide N.R.P. with dates he must travel, within 21 days of the anticipated travel, and if he is not able to exercise his parenting time, he will not be entitled to any swapping of parenting time, or any make-up parenting time;
- b) neither party will speak negatively about the other party;
- c) both parties will:
 - i. put the best interests of the children before their own interests;

- ii. encourage the children to have a good relationship with the other parents and speak to the children about the other parent in a positive and respectful manner;
- iii. not discuss with the children any inappropriate adult, court or legal matters; and
- iv. ensure they maintain polite, respectful communications with each other and will refrain from any negative or hostile criticism, communication or argument in front of the children;
- d) A.K. shall ensure all firearms at his residence are securely locked in a proper firearm locker at all times while the children are in his care;
- e) neither party shall allow the children to use or play with any firearms of any sort in any manner, including rifles, pellet guns or air guns, until further order of this court;
- f) neither party shall sign up either child for a youth hunting license until further order of this court;
- g) during their parenting time, neither parent will have the children sleep in a room with anyone other than a family member;
- h) during their parenting time, neither parent will allow the children to have more than one hour of screen time per day, and all screen time shall be finished at least 45 minutes before bedtime, and
- i) during their parenting time, neither parent will allow the children to play a video game that is not rated for their current age, with the exception that the children are permitted to play the current version of Minecraft and Fortnite, with the current restriction in place for their use to remain in force.

[148] N.R.P. maintains that a rotating schedule (such as the 2-2-5-5 recommended by Mr. Colby) will be disruptive for both the children's routine and for A.K.'s travel schedule. She says such a schedule will not allow them to build good habits, nor have clear rules in each household. In her words, she has "trouble understanding how the kids can benefit from a schedule like that".

[149] She is clearly extremely frustrated. She says A.K. is difficult to deal with, and constantly blocks her on parenting decisions. She says she wants the parental responsibilities to be the same as it was during their marriage: she would decide what is best for the children, and would communicate her decisions to A.K. Accordingly, she seeks the Joyce model of parenting responsibilities.

[150] She gave testimony that after separation, A.K. "never" agrees to what she proposes, for example, if she proposes a time for a dentist or doctor on his parenting time he will refuse, and tell her she must take them on her parenting time.

- [151] She testified that A.R.K. has been diagnosed by his pediatrician with attention deficit disorder, but not diagnosed as hyperactive. She confirmed that a psychoeducational assessment for A.R.K., as recommended by Mr. Colby, has not occurred. Neither parent seems to appreciate the purpose of the recommendation that A.R.K. obtain such an assessment, but I agree it is in A.R.K.'s best interests that one be obtained.
- [152] She testified at length to her difficulties in obtaining A.K.'s consent to the children getting counselling, choosing a counsellor and paying for it. While it is clear that A.K. dislikes being told what to do by N.R.P., I cannot conclude he always ignores N.R.P.'s concerns. Rather, I find he does not always blindly accept what N.R.P. tells him should occur. Currently, the children see Jorge Gonzalez at Alyson Jones & Associates, although she says it was extremely difficult to get A.K. to agree to take the children to counselling during his parenting time with them.
- [153] N.R.P. opines that the children are experiencing a lot of confusion, and exhibiting behavioural issues. She argues that the drop-offs at 8:00 pm have disrupted their bedtime routine. She describes them when they are dropped off as over stimulated, angry, fighting with each other, and difficult with her.
- [154] She criticizes A.K.'s feeding of the children over the past two years, and argues that "he does not have the capacity to prepare nurturing meals for the children" so he gets them fast food. She says that, at least once a week, the children are eating either pizza, McDonald's, or Subway. She says N.J.K. suffers from chronic constipation which started in February 2023.
- [155] She is also extremely frustrated with the different rules in the different households. She testified that the counsellors recommended that the parents keep the same rules in both homes to the extent possible, however, A.K. was allowing them to watch television or play video games in the evenings, and bringing them home past their bedtime, without telling her. She was very clear with A.K. that the children should not play video games; however, he bought them a Nintendo switch and purchased both Minecraft and Fortnite, both of which she says are age inappropriate. She says the video games show violence and firearms, and through the online platforms the children have access to other players. They have reported to her they have heard swear words. She characterized her biggest concern at this time as the children becoming violent and aggressive with her and each other, as they attempt to recreate the games. They say to each other and to her words to the effect of "I want to kill you", "I want to shoot you" and "you are dead". She does not let them play video games when they are with her. She also is concerned that while the children are playing video games their father is on his computer, and so A.K. is not parenting them properly.

- [156] Likewise, she complains A.K. has exposed the children to guns, and taken them shooting when they are only 10 and 8 years old respectively. She testified that in her opinion this is highly inappropriate, given her lack of agreement to it, their age, and her belief they are currently acting out in an inappropriate manner. She said the children have told her they were going hunting with real guns, and said to her if they had a gun and pointed it at her then "boom - you are gone".
- [157] N.R.P. also says that A.K. has involved the children in adult conversations which have compromised her relationship with them. She reports the children telling her where A.K. told them they were going to move with him; telling her that it is not fair to expect A.K. to do all the driving; and A.R.K. telling her it was her fault he did not go to hockey. She also says both children have told her it is her fault they do not have a house, because she doesn't have a job.
- [158] Finally, N.R.P. is clearly very concerned that for A.K. to continue to earn the salary he has historically earned, he must continue to travel extensively for work. She testified she has no issue with him travelling for work, and that she will plan her work schedule around the children's schedule. On cross-examination, she alleged that A.K. has only cut back on his travel for the purpose of this trial and once he resumes his normal travel schedule, there "will be a whole host of problems". She complains that since separation, he only gives her one week of notice of his travel plans, which occasionally have been for vacation, and he then requests make-up parenting time. She also criticizes A.K. for volunteering for A.R.K.'s hockey time, as he leaves N.J.K. alone while doing so. Likewise, she criticizes his reliance on childcare and friends to help him during his parenting time.
- [159] She testified that her proposal--where A.K. could pick the children up Thursday after school at 3:00 pm and return them to her Saturday at 6:30 pm--would create consistency and good habits, ensure the children have structured rules at home, and would allow them to ease into starting a school week. She said she can provide home-cooked meals, supervise and help with home work, and drive the children to their after-school activities on a full-time basis. She argued she can create stability and consistency and her proposed parenting time schedule will also benefit A.K., as he will have most of the week to work, and when the children are with him, he can devote himself to parenting them without needing to rely upon television or video games.
- [160] She is very concerned about Mr. Colby's recommendation that a parenting coordinator be appointed. She is concerned it will cost more money, create scheduling difficulties, and will be difficult to schedule.
- [161] A.K. maintains that a comprehensive s. 211 report was completed which supports a shared parenting regime. He argues that since the Robertson Order, shared parenting has been in place, and the children have adapted well to the routine. He argues that the children have thrived apart from struggling with the rules and restrictions in place at N.R.P.'s house.

- [162] I am satisfied that the evidence supports a finding that the boys enjoy participating in sports, and are doing well in school. They clearly have a strong relationship with each of their parents. While they have had some understandable struggles since the separation of their parents, they are now in counselling, and my hope is with the legal issues between their parents resolved, the focus can move to effective co-parenting in the best interests of the children.
- [163] I find N.R.P.'s arguments in support of her proposed parenting regime are based in her desire to maintain her role as mother in the same manner as it was before separation. However, the unavoidable reality is that after separation, parental roles inevitably change. Much of her argument is based on her unwillingness to allow A.K. to be able to parent the children without her direct supervision. While perhaps before separation A.K. deferred to her views, I find he is more than capable of parenting the children during his parenting time. While the parties must cooperate to ensure they are acting in concert in the children's best interests, that does not mean they must do so in an identical manner. Within reason, if they can cooperate on the fundamental rules they agree upon to raise their children to adulthood, they may each be able to have independent lives with their children.
- [164] Inherent in N.R.P.'s position is her desire for A.K. to continue to earn the income he earned before separation, and for her to continue to be the primary caregiver making all significant decisions for the children. The reality of separation is that both parents must work towards being self-sufficient, and work towards co-parenting in a collaborative and effective manner.
- [165] I find that N.R.P.'s arguments in favour of her suggested parenting regime are indicative of her inability to allow A.K. to establish his own parenting arrangements for the children without her control. While she argues that A.K. is controlling, I find she is equally controlling and critical of his decisions. While I acknowledge the ability of the parents to communicate and cooperate is an important factor when considering the best interests of a child, I am not satisfied that N.R.P. has established that it is only A.K. who is failing to cooperate: see *J.E.H. v. P.L.H.*, 2013 BCSC 752. Rather, I find both parents are failing to cooperate with the other.
- [166] While the level of dysfunctional communication that now exists between the parties was perhaps inevitable because of the difficult circumstances in which their marriage broke-down, I put great weight on Mr. Colby's recommendation that the parties share parenting time and parenting responsibilities. He was keenly aware of the breakdown in their ability to communicate, and nonetheless made that recommendation. Implicit in his recommendation was his belief that once the legal issues between the parties are determined, they can both rise to the occasion and quickly learn how to co-parent effectively. In fact, on cross-examination, he expressly noted, "this family can work this out, they can do better, if they get past each of their styles". I would echo this encouragement, and note that it is imperative for the parties to develop an effective manner in which to co-parent for the best interests of the children.

- [167] I am satisfied that it is in the best interests of the children for the parties to share parenting time and parenting responsibilities. This means that A.K. will have to adjust his expectations, and realize that during his time with the children he will be required to take them to their routine appointments, whether they be for counselling, medical, or dental appointments, or for any other reason. I am also satisfied that it is not only appropriate, but necessary, for a parenting coordinator to be appointed. N.R.P.'s argument that she would only agree to the appointment of a parenting coordinator if I ordered a Joyce model of parenting responsibilities was not persuasive. N.R.P. initially put forward four potential parenting coordinators: Stephanie Fabbro; Sarah Morse; Michelle Kooy and Julia Hibbard. By October 31, 2025, the parties are to choose one of these, who are available to take on new clients. The parties are to bear the expense equally.
- [168] I order that the parties continue with the 2-2-5-5 regime as ordered on April 23, 2025, until January 2026. When school resumes after the winter break in January 2026, the parties shall commence a week-on, week-off shared parenting regime, with the parent who had the children for the first week of the winter break having the children the first week of school in January 2026. The parties did not address the issue of transitions on such a schedule. Unless the parties otherwise agree in writing, the parent who is exercising parenting time is to deliver the children to the other parent at 6:00 pm on Sunday evenings.
- [169] Further, I agree with #4 through #14 and #20 of Mr. Colby's Recommendations, and I would require the parties to comply with each of them. Recommendations #15 through #19 are addressed specifically below. I have incorporated all the recommendations in an appropriate manner in the attached Schedule A (a draft order including all the orders set out in these reasons for judgment).
- [170] With respect to holiday time, N.R.P. asks that the parties alternate the winter holiday parenting time, so that she may take the boys to visit her family in Mexico every other year. A.K. objects to this, notwithstanding he had accommodated this in some previous years, and rather seeks to have Mr. Colby's recommendation implemented. Both of N.R.P.'s parents testified, and it is clear that she and the children have a close relationship with N.R.P.'s extended family. However, given N.R.P. also seeks that each party has one month in the summer with the children, she will be able to use that month to travel to Mexico with the children to see her family. Accordingly, I am satisfied that is appropriate for the parties to share both the winter and the spring break holiday time equally with the children. Given the priority the parties place on travelling with the children, as opposed to celebrating Christmas Eve and Christmas Day, I am ordering the parties share the winter break equally, alternating weeks, as I have set out in the attached Schedule A.

- [171] Initially, A.K. sought court orders that whenever he was unable to have parenting time, whether for work or any other reasons, he be allowed to claim "make-up parenting time". This belief that such was his right undoubtedly led to much of the conflict between the parties. A.K. was unable to produce any jurisprudence to support this claim, and ultimately withdrew it. For the assistance of the parties, neither party has the right to seek "make-up parenting time" from the other for any reason.
- [172] I am also satisfied that it is appropriate to make an order that neither party will change their residence to a location outside of South Delta without the other party's written consent or court approval.
- [173] A.K. seeks an order that he be at liberty to apply for Greek citizenship for the children, and N.R.P. seeks an order that she be entitled to have their middle names removed and her last name added to the children's last names. She seeks this order to allow her to apply for the children's Mexican citizenship. I decline to make any of these orders, as what is most urgently required at this time is stability for the children.
- [174] Another source of significant friction has been the children's extracurricular activities. The Bilawich Order recorded the parties' consent that the children be enrolled in two extracurricular activities each. I am satisfied that this remains an appropriate order.
- [175] Finally, I am satisfied it is appropriate to incorporate the conduct orders set out above at para. [147] into the final order. At this time, I am retaining the conduct orders with respect to the firearms and video games, to ensure a period of calm and stability for the children as the parties implement these reasons for judgment. The orders with respect to the appropriate rules governing the children's playing of video games and children's hunting can be further addressed with the parenting coordinator, but are not to be changed within a year from the date these reasons for judgment are issued.
- [176] Finally, in his testimony Mr. Colby recommended the parties begin to use Our Family Wizard for their communications, although it was not a recommendation made in his report. I agree this is a wise recommendation, and I order that the parties are, within seven days of these reasons for judgment being issued, to enroll in Our Family Wizard and conduct their routine communications with one another exclusively in writing through that medium, and are to bear the cost equally.

C. Excluded Property

1. Applicable Legal Principles

- [177] The parties agree that it is the previous version of s. 85 of the FLA which applies to this proceeding, not the amended version after Bill 17, the Family Law Amendment Act, S.B.C. 2023, c. 12, received royal assent on May 11, 2023.
- [178] Section 85 of the FLA provides:

Excluded property

85 (1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
 - (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

[179] Accordingly, property acquired by a spouse before the relationship began is excluded from family property. The party seeking an exclusion has the onus of proving an exclusion, on a balance of probabilities, with clear and cogent evidence. The standard of proof for establishing a claim to excluded property is proof on a balance of probabilities: *Shih v. Shih*, 2017 BCCA 37 at paras. 42-43 [*Shih BCCA*].

[180] Section 85(1)(g) of the FLA provides that the Court may "trace" property derived from a spouse's excluded property, such that the property is excluded property. Pursuant to s. 84(2) (g) of the FLA, family property also includes the amount by which the value of excluded property has increased since the later of the date on which the relationship began or the property was acquired.

[181] In *V.J.F. v. S.K.W.*, 2016 BCCA 186 at paras. 74-76, leave to appeal to SCC ref'd, 37091 (13 October 2016) [*V.J.F.*], the Court concluded that excluded property may become family property where one spouse gifts excluded property to the other spouse. The Court held that in determining whether a spouse has made a gift to the other spouse of excluded property, the presumption of advancement applies: at para. 77. However, as with any evidentiary presumption, the presumption of advancement only applies if the evidence is insufficient to establish the transferor's actual intention at the time of the transfer: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 40.

[182] After *V.J.F.* was released, there was initially a state of flux in the correct application of s. 85, which has been recognized by our Court of Appeal: *Pisarski v. Piesik*, 2018 BCCA 326 at para. 26 [*Pisarski*].

[183] *N.R.P.* relies upon the cases in which the Court traced excluded property into joint names: *L.A.F. v. E.H.D.*, 2015 BCSC 1450; *Lahdekorpi v. Lahdekorpi*, 2016 BCSC 2143; *C.L.M. v. M.J.S.*, 2017 BCSC 799; and *Shih BCCA*. She did not address the line of cases that held that the presumption of advancement was applicable, and her counsel noted that she expected counsel for *A.K.* to address those cases. Given the Court of Appeal has clarified the state of flux, she ought to have also addressed the current applicable jurisprudence.

[184] Unfortunately, counsel for *A.K.* provided written submissions on the issue, but did not make oral submissions. Relying upon the written submissions, *A.K.* argues the proper focus is on the intention of the parties at the time they transfer ownership of excluded

property: *Andermatt v. Tahmasebpour*, 2015 BCSC 1743; *Namdarpour v. Vahman*, 2017 BCSC 1189, aff'd on this point in 2019 BCCA 153; and *Venables*. Neither the written submissions nor the tendered case authority make clear whether A.K. refers to *Venables v. Venables*, 2018 BCSC 1736 or 2019 BCCA 281.

[185] However, in the appeal decision, the Court of Appeal made clear that it is the intention of the spouse who transfers ownership of excluded property that is the key consideration. As Justice Griffin noted:

[93] Two questions arise under the FLA when ownership of excluded property is transferred from one spouse's name to the other spouse's name, solely or jointly, and remains in that form of ownership at the time of separation:

- a) first, does the "excluded property" become "family property", or does s. 85(1)(g) apply with the result that it continues to be excluded property; and,
- b) second, if it does become family property, on relationship breakdown, can the origins of the property that previously made it excluded property be considered as a factor that might make it "significantly unfair" to divide the family property equally, justifying judicial reapportionment of the family property under s. 95?

[94] This Court has already spoken on this first question in *V.J.F.*, which was followed in *Pisarski v. Piesik*, 2019 BCCA 129 and *Namdarpour v. Vahman*, 2019 BCCA 153.

[95] What emerges from these authorities, of relevance to the current appeal, is that the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property. If it is found that the spouse who transferred the property intended that the property be a gift to the other spouse, and there is no agreement that it is to remain excluded property, then it will become family property: *V.J.F.* at paras. 74-79; *Namdarpour* at para. 46.

[186] As the Court of Appeal made the applicable law clear in *Venables*, that is the law that I must apply to the issues in this case.

2. Analysis

[187] Both A.K. and N.R.P. make claims for excluded property that I will address in turn.

[188] Before A.K. met N.R.P. he was employed at Acme Labs, which was an employee-owned company. I have addressed his evidence on the sale of Acme Labs at paras. [7]--[8] above.

[189] A.K. claims excluded property in the amount of approximately \$173,000. As his counsel was unable to make oral submissions on this issue, I will repeat the relevant paragraphs from his written submissions:

83. The Claimant's RBC RRSP Mutual Fund, which had a balance of approximately \$221,801.95 as at the date of separation, contains \$172,306 of the Claimant's excluded property which he had prior to the start of the relationship, as the funds were derived from the sale of his company.
84. Additional excluded property funds came from the sale of his condominium located on Expo Blvd. No rent was charged to the Respondent upon her moving into this condo to live with the Claimant as it was kept separate.
- [190] However, this position is not what A.K. testified to at trial. Rather, he explained that just over \$100,000 came from the shares he had in Acme Labs, and the other \$73,000 came from the down payment he made on the Expo Boulevard Condo.
- [191] A.K. did not have any documentary evidence to support his claim that approximately \$100,000 came from the sale of his shares in Acme Labs. He tendered into evidence a "Schedule of Distribution for Canadian Resident Individual" dated February 21, 2012, showing as of that date he held 63,343 Class B Common shares and 130,686 Class C Preferred shares. The statement showed a "Total Payable" of \$161,168 for the Class B common shares and \$130,686 for the Class C Preferred shares. However, that date is after the parties began to cohabitate.
- [192] A.K. also tendered into evidence a lawyer's letter dated May 8, 2024. The letter advised that between December 20 and December 31, 2010, A.K. owned 107,563 Class B Common shares in Acme, and that the law firm did "not appear to have any records of the value or cost of your Shares in 2010". In his written submissions, A.K. argued that the evidence showed an "instruction to transfer Acme shares into [his] RRSP Account" dated February 12, 2010, which at the time showed a share value of \$0.66 per share. However, that is not what the documentary evidence established, and A.K. confirmed that the letter did not refer to a price of \$0.66 per share.
- [193] Unfortunately, the evidence is not sufficiently clear or cogent to establish the value of A.K.'s shares in Acme Labs as at the date the parties began to cohabit. Further, A.K.'s evidence at trial was not that he placed the funds in the amount of \$172,306 into his RBC RRSP Mutual Fund, as set out in his written argument. Rather, he testified that he believes he placed the Expo Boulevard Condo into joint names, and used the proceeds from that sale, as well as funds received from the purchase of Acme Labs, to purchase the Lido Condo.
- [194] I find A.K. failed to establish his claim for excluded property. First, he has failed to prove on a balance of probabilities the assets he owned at the time of cohabitation. Further, and in any event, I find that he failed to provide evidence to establish that, at the time he put any excluded funds into the real estate he held jointly with N.R.P., his intention was to retain his exclusion. In those circumstances, the presumption of advancement would apply, and the funds lost any characterization as excluded and became family property.

- [195] N.R.P. seeks an exclusion of \$42,000, being the \$50,000 she used to purchase her Horne St. Condo in 2010, minus the \$8,000 they paid back to her mother when they sold the property in 2019. While I find that N.R.P. has proven that as of June 1, 2010 she had a balance of \$32,668.81 in her bank account, and she received the amount of \$23,091.25 on July 28, 2010 from her parents, her claim must also fail, for similar reasons to that of A.K.
- [196] The "Order to Pay" for the Horne St. Condo lists the sellers as N.R.P. and A.K. N.R.P. testified that she added A.K. to the title of the Horne St. Condo when they were engaged, and A.K. corroborated this. N.R.P. testified she put the property into joint names as she was "trying to blend everything".
- [197] Further, when the Horne St. Condo was sold in June 2019, the parties used the proceeds toward the renovations of the Home, and towards the purchase of the investment properties.
- [198] In these circumstances, I find that N.R.P. transferred title to the Horne St. Condo into joint names, and the proceeds of sale in June 2019 were used for family purposes, to renovate the Home and to acquire the investment properties. At the time of the transfer of title I find N.R.P.'s intention was not to retain the exclusion over the property, but rather to "blend everything" with A.K. In those circumstances, I find she intended to gift A.K. an interest in her property, and so the funds lost any characterization as excluded and became family property.

D. Division of Family Property and Family Debt

1. Applicable Legal Principles

- [199] Section 87 of the FLA provides that the presumptive date of valuation of family property and family debt is the date of trial. However, this date may be adjusted if valuation at the date of trial would lead to significant unfairness: *Banh v. Chrysler*, 2022 BCCA 74 at paras. 25-28. Specifically, the Court of Appeal noted:
- [26] If an equal division would be significantly unfair, the legislation provides two remedies. The court may vary the date for division of family property under s. 87 or order an unequal division of family property under s. 95; *Blair v. Johnson*, 2015 BCSC 761 at para. 69; *Slavenova v. Ranguelov*, 2015 BCSC 79 at para. 53. A departure from the presumptive date for valuing family property "is effectively a reapportionment of an unequal division of family property": *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 59.
- [27] The term "significant unfairness" creates a "high threshold": *V.J.F. v. S.K.W.*, 2016 BCCA 186 at para. 81, leave to appeal to SCC ref'd, 37091 (13 October 2016). In *Singh*, Garson J.A. provided the following helpful summary of various descriptions of the term:
- [134] In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczewska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in

some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.

[28] When it comes to the court exercising its discretion to depart from valuing family property at the date of trial, this Court has held that it "should only be done where there is compelling evidence" to justify doing so: Rudyak at para. 35.

[200] As noted above at para. [72], on December 18, 2024, counsel for A.K. provided an Addendum to A.K.'s closing submissions which set out the following:

CLAIMANT'S BANK ACCOUNTS

5. As of December 18, 2025, the Claimant has the following remaining in his RBC investment accounts:

- a. \$92,849.84 in his RRSP ending 4793;
- b. \$14,223 in his RBC Directing Investing Account ending 4469;
- c. \$33.00 in his RBC Direct Investing Account ending 7129; and
- d. \$2,348 in his RBC Direct Investing Account ending 8988.

He attached a screenshot to the Addendum of A.K.'s RBC investment account balances as of December 18, 2024. While this Addendum and screenshot did not properly form evidence at trial, the Addendum caused significant consternation for counsel, and resulted in my orders of December 18, 2024, as set out above. Although the parties' Scott Schedules tendered at the start of trial did not accord, a comparison of both with the Addendum made clear A.K. had dissipated significant assets between October 2022 and May 2024, and then again between May and December 2024. A.K. did not argue to the contrary.

[201] Notwithstanding the withdrawal of A.K.'s counsel, A.K. worked together with counsel for N.R.P. to prepare an agreed upon list of assets and their values, which was ultimately entered into evidence on April 16, 2025, at the continuation of closing arguments.

2. Analysis

a) Division of Remaining Family Property and Debt

[202] The parties had entered into a contract for the pre-sale purchase of the Mission Springs Condo in the fall of 2021, and for the Lake Shore Condo a few months later. The Lake Shore Condo is dealt with in greater detail below, as it is the only unsold real estate.

- [203] As already noted, the parties sold the Home and the Mission Springs Condo. Out of the net sales proceeds they each received an interim distribution of \$150,000, and then they used \$423,887.73 for the completion of the Mission Springs Condo. At the time, the amount of \$113,504.10 was held in trust at Chhina Das LLP. When the Mission Springs Condo sold, they used \$42,495.00 towards the Lake Shore Condo, and then each received an equal interim distribution of \$231,464.40 from the remaining sales proceeds.
- [204] There was great difficulty in providing clear evidence as to the value of the family financial investments as at the relevant dates. The difficulties were the result of the sale of HSBC's Canada banking business to RBC (and the resulting change in account numbers), the lack of sufficient document production by both parties, and their lack of compliance with court orders I have made. As a result, the evidence was lacking, and the parties have only themselves to blame if they disagree with my conclusions.
- [205] To their credit, A.K. and N.R.P. did work together with counsel for N.R.P. to develop a colour-coded spreadsheet with the assets, and their respective values as of the specific dates. They also worked together with me, on April 16, 2025, to reach agreement on the accounts in dispute, and the values of those accounts.
- [206] Doing the best I can with the evidence available to me, it appears that the remaining financial assets yet to be divided, as at October 1, 2022 (not the separation date, but the date the parties separated their finances), and as at the commencement of trial are as follows:

Asset

Value as at October 1, 2022

Value as at May 1, 2024

Assets in the name of A.K.

Canada Life

\$4,172.25 (Dec. 31, 2022)

\$11,972.01

HSBC High Rate Savings

(transferred to RBC VIP Banking)

\$9,048.41

\$14,641.31 (RBC)

HSBC RRSP

(transferred to RBC RRSP)

\$220,315.44

\$51,046.99 (RBC)

HSBC TFSA

\$1,202.78

Closed

HSBC Canadian Cash

\$33.33

Closed

HSBC Mutual Funds

(transferred to RBC Mutual Fund)

\$199,813.00

\$224,743.98 (RBC)

Subtotal

\$434,585.21

\$203,404.29

Assets in name of N.R.P.

BMO RRSP

\$35,089.11

\$146,589.49

[207] Even accounting for the \$100,000 spousal rollover pursuant to the Muir Order in December 2022, between October 2022 and May 2024, there is a significant dissipation that A.K. was unable to explain. Further, the family property remaining in A.K.'s name as at May 1, 2022 decreased from \$203,404.29 to \$109,453.84 as at December 2024, as set out above at para. [200].

[208] I must address a few of the listed assets. First, N.R.P. argues that the value of the HSBC RRSP should be not taken as at the date of trial, but rather as at the date the parties separated their finances (October 1, 2022). Notwithstanding \$100,000.00 was rolled over to her from that RRSP pursuant to the Second Muir Order, she argues that A.K. has not accounted for the balance of the funds missing from that account (namely the difference between the \$120,315.44 as of October 2022 and the \$51,046.99 as of May 1, 2022). She likewise argues that the value for the HSBC TFSA should be taken as at October 1, 2022, and the value of the HSBC Canadian Cash Account should be taken as at January 1, 2022. However, she argues the other accounts should be taken as at May 2024.

- [209] I cannot agree with this proposition, as N.R.P. is effectively arguing she should be entitled to the highest value of each asset over the period from separation through to trial. I accept that A.K. dissipated the remaining family assets during the period from October 2022 to May 2024, and again from May to December 2024, and I agree it would be significantly unfair to use the value of the financial assets as at the commencement of trial. It is clear that after separation A.K., without N.R.P.'s knowledge or consent, dissipated family assets significantly, including during the length of time it took for the trial to complete. However, it would also be significantly unfair to A.K. to allow N.R.P. to "cherry pick" each asset's highest value. I am satisfied it is appropriate to use the value of family property as at October 1, 2022, the date the parties began to live separate lives, and separate their financial affairs.
- [210] Second, A.K. says that he opened the Canada Life RRSP in September 2022 and argues as it was opened post-separation it is not a family asset. However, his 2022 RRSP statement shows there was a transfer into the plan of \$3,995.12 at some time in 2022, and A.K. was unable to advise where those funds came from. He has failed to prove this plan was not opened with family assets.
- [211] Accordingly, using the value of the investments as of October 1, 2022, I find A.K. held family assets in the amount of \$434,585.21, and N.R.P. held family assets in the amount of \$35,089.11. Pursuant to the Muir Order, A.K. is entitled to an identical spousal rollover of \$100,000, and to 50% of N.R.P.'s BMO RRSP. Notionally awarding him that rollover reduces the assets he held to \$334,585.21. As I find the parties were entitled to an equal division of that remaining family property, N.R.P. is entitled to \$167,292.61. However, as she must pay A.K. for 50% of her BMO RRSP, that amount is reduced accordingly. Accordingly, I find N.R.P. is entitled to an equalization payment for these investments of \$149,748.06.
- [212] As it appears that A.K. no longer holds sufficient assets to make this equalization payment, I find that he is to rollover to N.R.P. all of the RBC assets he currently holds, and any amount he continues to owe her is to be paid out of the sale proceeds from the Lake Shore Condo. I heard no evidence as to any potential tax consequences from such a rollover; if there are any, then the parties are to bear any such consequences equally.
- b) The Line of Credit
- [213] N.R.P. testified that in the summer of 2022 A.K. created a separate account and began to put all of his income into that account. At that time they had also separated their credit cards, and removed each other as authorized card holders.
- [214] N.R.P. testified that from the time the parties moved into the Home until the time it was sold, she did not use the line of credit associated with the property. She said they wanted to have the line of credit available in case of emergency, but they did not use it on a regular basis. She did not use it after separation; however, A.K. did start to use it in August or September of 2022, without her knowledge.

- [215] I accept N.R.P.'s evidence that when she asked A.K. about his use of the line of credit, he testified that he was using it to pay the couple's credit cards. However, at that time he was putting his income, including his bonus, into an account in his own name.
- [216] She acknowledges that from the date of separation until the sale of the Home A.K. was the only income earner, and so he was paying for all of the family expenses, including her credit cards. As of October 2022, when he began to pay support, he contributed half of the mortgage payment and she paid the other half. As there was no more money coming into their joint account, N.R.P. relied upon whatever was left in their joint savings account to make her contributions to the mortgage payment for the Home. In the fall of 2022, up until the spousal support and the child support started, she did not have a bank account in her own name.
- [217] I find that on August 11, 2022, A.K. took a cash advance on the line of credit in the amount of \$27,000, which resulted in the amount of \$27,134.11 due and owing on the line of credit as of October 4, 2022.
- [218] As of July 27, 2022, A.K. had a TD Aeroplan credit card with a balance due and owing. From July 26 to August 29, 2022, new charges of \$15,285.50 were incurred on this account. In the same period, payments, including the \$27,000, in the total amount of \$42,563.32, were made to the credit card. As of December 1, 2022, the amount due and owing on the line of credit was \$28,934.32. When the sale of the Home completed on January 4, 2023, the amount due and owing on the line of credit was \$34,718.16.
- [219] On the same day A.K. took the cash advance on the line of credit (August 11, 2022), he made a payment to his TD Aeroplan Account in the amount of \$27,000. It is reasonable to infer that he used the \$27,000 cash advance on the line of credit to make this payment to his credit card.
- [220] I accept N.R.P.'s evidence that none of the transactions made from July 27 onwards were transactions made by her or for her benefit. I also accept her evidence that none of the \$27,000 cash advance was used to pay down her credit card, nor to provide for her in any way. A.K. testified he was not sure what the line of credit was used for. He testified that around that time he had to buy furniture for his townhouse, and he used his credit card for legal fees, but he could not link specific expenses with the line of credit.
- [221] N.R.P. is therefore entitled to a compensation payment from A.K. in the amount of 50% of \$34,718.16, or \$17,359.08.

c) The Student Loan

- [222] The evidence is that N.R.P. received student loans in 2021 and 2022 for the purpose of attending acupuncture school. N.R.P. testified that the parties agreed they would obtain a student loan to help with the cost of the program.

- [223] The documents show that N.R.P. was found eligible to receive student loans in 2021 in the amount of \$27,950 and for 2022 in the amount of \$35,431, for a total amount of \$63,381.
- [224] N.R.P. testified that starting in July 2024 the student loans due and owing were \$51,490, and she pays approximately \$550 a month on the debt. In closing argument, counsel finally provided a document establishing that as of February 1, 2024, the amount owing on the student loan was \$51,490, and the monthly payments, set to commence on August 31, 2024, were estimated to be \$455.61. This was entered into evidence by agreement.
- [225] I do not accept A.K.'s arguments that the parties discussed investing these funds but N.R.P. failed to do so, and he never realized this. However, I do accept that N.R.P.'s CIBC Account in her sole name shows a student loan deposit on November 16, 2022 in the amount of \$8,606. As she had the sole benefit of these funds, post separation, she should be solely responsible for repaying them.
- [226] I am satisfied that the amount of \$42,884 (\$51,490 minus \$8,606) is family debt, and the amount of \$8,606 is N.R.P.'s sole debt. As these are debts that must be repaid, I do not accept A.K.'s alternative position that these loans should be added to N.R.P.'s income for 2021 and 2022: *Sehra v. Sehra*, 2024 BCSC 1444 at paras. 69-85.
- [227] N.R.P. seeks an order that this debt be paid out of the proceeds of the Lake Shore Condo when it is sold. However, the unfortunate reality is that the parties have very few assets left to divide, and both parties will inevitably be left in difficult financial circumstances. A.K. argues that he has made all monthly support payments for the last two and a half years, and there is no existing threat of non-payment. He argues that to order the student loan be paid out of these sale proceeds would further impact his ability to provide a stable home to his children. In the circumstances I must agree.
- [228] Accordingly, I order that A.K. is to pay to N.R.P. the amount of \$189.73 (being equal to 50% of $(\$42,884/\$51,490) \times \$455.61$) on the 15th of every month, to ensure she can make the student loan payment on the last day of every month. By January 31st of each year, the Respondent is to provide the Claimant with a record showing the last year's payments towards the student loan, and the amount still due and owing on the balance.
- d) The \$110,000
- [229] A major issue between the parties was N.R.P.'s withdrawal of \$110,000 from their joint accounts. She testified that she became concerned after she saw A.K. no longer put his income into their joint account, and saw him begin to use the line of credit. She was concerned they would not be able to make their required commitments for the pre-sale purchase of the Mission Springs Condo and the Lake Shore Condo.

- [230] On May 10, 2022, she made two withdrawals of \$55,000 each from their joint account to two savings accounts at CIBC under her name. She labelled each account in the names of one of her sons. She said she did so to keep the joint account down to a minimum, as she was concerned they were overspending and she did not know where the family money was going.
- [231] This is the transaction that caused a significant amount of conflict between the parties. On August 19, 2022, A.K. caused CIBC to debit one of the accounts in the amount of \$50,000. This is the source of the report N.R.P. made to the police, as discussed above. She testified she felt very threatened when that happened, and was scared A.K. was going to take everything away from her. Ultimately A.K. returned the money.
- [232] She has provided an accounting of the \$110,000 as follows:
- a) June 17, 2022 \$42,495 payment on the Lake Shore Condo;
 - b) August 3, 2022 \$6,473.37 for property taxes for the Home;
 - c) October 1, 2022 \$15,000 payment to A.K. as an interim distribution;
 - d) November 2022 \$15,000 payment to N.R.P.; and
 - e) \$22,845 for the GST for the Mission Springs Condo.
- [233] A.K. argues that \$8,186.63 is unaccounted for. However, I accept that N.R.P. tendered evidence that she made a payment of \$4,323.64 for 2021 income taxes on May 12, 2022. That leaves a balance of \$3,862.99 unaccounted for.
- [234] N.R.P. says she used those funds for own expenses, and for her portion of the family expenses. However, she has provided insufficient evidence to support these allegations, and therefore, I find she owes A.K. an equalization payment in the amount of \$3,862.99.
- e) The Missing \$21,400
- [235] Likewise, there was a deposit into one of the parties' HSBC accounts on August 8, 2022 in the amount of \$21,400 that was then immediately withdrawn. A.K. was not sure where it came from, but he thinks it was a withdrawal from an investment portfolio. A.K. testified he used the funds for several expenses, including to purchase some furnishings for his new townhouse. N.R.P. says these funds are missing from their investment account.
- [236] N.R.P. seeks an equalization payment for 50% of the missing \$21,400. However, as this withdrawal occurred before the parties separated their finances on October 1, 2022, and as A.K. was solely responsible for all of the parties' expenses at that time, I cannot conclude on the evidence tendered that these funds were only used for A.K.'s benefit and I decline to make such an order.
- f) The Vehicles and the Firearms

[237] The only evidence tendered at trial was that A.K. kept the family truck, and N.R.P. kept the BMWx4, both of which were fully paid off. She ultimately sold the BMW as a trade-in for \$19,000.

[238] With respect to the firearms, the only evidence tendered at trial was that A.K. owned several long guns and pistols. In June 2022 he transferred the firearms to a friend who is also a sheriff, concerned there would be an escalation in the separation. Approximately a month before trial he brought the long guns back to his house, but had not yet brought the pistols back.

[239] N.R.P. testified that she knows they had paid a "considerable amount" for the firearms, but does not know what their value is right now. She has not established that they were purchased during the relationship, nor that they have any significant value. She is not entitled to the order she seeks that they be appraised, and their value equalized. Likewise, she has not provided any documentary evidence which would allow the value of the two vehicles owned at separation to be equalized, so she is not entitled to that relief.

g) The Lake Shore Condo

[240] As already noted, the parties purchased two condominiums in Kelowna in the fall of 2021.

[241] The Mission Springs Condo was sold after separation, and the parties used \$42,495 toward a payment due and owing on the Lake Shore Condo, and divided the balance equally. They each received approximately \$231,460 from the sale of the Mission Springs Condo.

[242] However, the parties have been unable to sell the Lake Shore Condo. The property was purchased for \$849,900. At that time it was purchased solely in the name of N.R.P. for tax reasons. As of November 15, 2024, the parties put the Lake Shore Condo into both of their names.

[243] The parties paid a total of \$169,980 in deposits between September 13, 2021 and December 16, 2022.

[244] The purchase completion date was on January 14, 2024, and the parties paid \$133,630.93 to complete the purchase. They used the funds in trust at Chhina Das LLP in the amount of \$113,504.10, and the remainder required to complete, in the amount of \$20,126.83 was paid as follows:

a) A.K. paid \$10,000; and

b) N.R.P. paid \$10,126.83.

[245] The parties were also required to pay an extension fee for the closing date in the amount of \$3,146, and the parties paid that equally. They obtained a one-year mortgage on the property in the amount of \$624,676 from Three Point Capital. As of April 15, 2025, the Lake Shore Condo was listed for sale for \$875,000, with a monthly mortgage payment of \$4,867.27, and a monthly strata fee of \$560.03. The parties paid those equally, and agreed to pay the utilities and monthly insurance costs equally as well.

[246] As there are clearly insufficient liquid assets to divide between the parties at this time, when the Lake Shore Condo is sold, those proceeds are to be held and distributed in accordance with these reasons for judgment. While the net sales proceeds from the Lake Shore Condo are to be divided equally, and any tax consequences arising from the sale are to be borne equally, out of A.K.'s portion N.R.P. must receive any balance outstanding on the equalization payment, and the retroactive child support, before A.K.'s share is distributed to him.

h) N.R.P.'s Condo

[247] In July 2023 N.R.P. purchased a condo located at 1315 - 56 Street, Delta (the "Delta Condo"). It is a two-bedroom, two-bathroom condominium. She used the \$150,000 interim distribution she received from the sale of the Home, and the interim distribution of \$231,460 for the purchase, plus a further \$15,000, to purchase the property. She purchased the Delta Condo for \$610,000, and the property is in her sole name. She obtained a mortgage for the balance. She did not tell A.K. about the purchase, and did not disclose the property on her F8 financial affidavit.

[248] She initially rented the condominium for five months, from August 2023 until December 2023. However, in January 2024, due to poor weather, pipes burst in the building and eight units--including hers--had to be evacuated. From January to September 2024, the unit has had extensive renovations because of the flooding.

[249] She and the children moved into the Delta Condo in late August 2024. During the last week of August 2024, she told A.K. that starting September 2024, the children should be dropped off and picked up at that location.

[250] N.R.P. does not deny that she failed to disclose the purchase of the Delta Condo on her F8 financial affidavit sworn April 19, 2024. She testified she did not think it was an issue in the litigation. She denied trying to hide the purchase, and says that as soon as A.K. asked, she gave him the information he requested. She also stated she was scared he would try to remove her from the Delta Condo due to previous threats he made.

[251] She seeks a declaration that the Delta Condo was purchased post-separation, so it is her property, in which A.K. has no interest. A.K. confirms he does not seek an interest in this property, and I make this declaration.

i) Equalizing Taxes

- [252] As set out above, the Second Muir Order provided N.R.P. would cash out her Primerica Spousal RRSP, use those funds to pay for the instalment on the Lake Share Condo, and that "both parties shall be equally responsible for the tax payable".
- [253] N.R.P. testified that she had to pay \$3,100 for income taxes on that transaction. However, insufficient evidence was tendered to establish what portion of the taxes paid was in respect of the RRSP, and I decline to make an order equalizing the tax paid.
- i) Banque Translanticque
- [254] Through his employment, A.K. has the advantage of a long-term incentive plan (the "Share Plan"). On June 14, 2022, he was granted 675 shares in Bureau Veritas. Those shares will have vested on June 14, 2025. When those shares vest he can either sell them or keep them, but in any event, A.K. testified he must declare them for tax purposes.
- [255] A.K. provided the "Performance Share Plan Rules" for the Share Plan, which clearly articulate that until the shares are vested the employees do not own the shares. The rules also set out that the actual shares that vest are dependent upon the performance of the company. If A.K. lost his job before the vesting date, he would not receive the shares. Further, the value of the shares themselves fluctuates on a daily basis. His entitlement to any future shares through the Share Plan will also depend on his performance and the performance of the company.
- [256] N.R.P. testified that she was aware of the shares A.K. received through the Share Plan, and that he would receive shares every 2 or 3 years, which were reflected as a bonus on his paycheque.
- [257] In *Tomas v. De Batz De Trenquellleon*, 2024 BCSC 180, the Court addressed the issue of stock options, and whether they should be treated as an asset or income: at paras. 51-56. In *Haley v. Haley*, 2022 BCSC 1945, the Court commented:
- [158] It is true that vested stock entitlements existing at the date of separation may be divided as assets. In that event, they may not be treated as income for spousal support purposes to the extent necessary to avoid double dipping. However, the weight of case authority suggests that employment compensation in the form of stock benefits should be treated as income for child support purposes in the year the entitlement to the stocks vest, and also for spousal support purposes if the stocks have not already been divided as family property: *Sarro v. Sarro*, 2011 BCSC 1010 at para. 14; *Crossley v. Vorell*, 2021 BCSC 2484 at paras. 67 - 73 [Crossley]; *A.E. v. A.E.*, 2021 ONSC 8189 at paras. 157 - 158 [A.E.]
- [258] N.R.P. takes the position that these Banque Translanticque shares are joint property, obtained during the relationship, which once vested should be divided equally between the parties. Alternatively, she says they should form part of A.K.'s income for the purposes of child and spousal support. A.K. takes the position that they are neither a family asset nor income.

[259] In the circumstances, I am satisfied that the Banque Transatlantique shares that vested June 1, 2025 should properly be considered in the calculation of his 2025 income, in accordance with the child and spousal support review process. Any future shares issued pursuant to the Share Plan should be treated as income in A.K.'s hands when they vest and he declares them for tax purposes.

k) Future Discoveries

[260] N.R.P. also seeks an order that in the event it is discovered in the future that A.K. invested any of the family funds that she alleges he misappropriated into assets, then she is eligible to reopen this matter and make a claim against any such asset as if it is family property. However, having already considered the dissipation of the family assets by A.K. in making my award for the equalization payment, I decline to make such an order.

l) Conclusion

[261] In conclusion, A.K. is to pay N.R.P. a total equalization payment of \$161,494.15 (being \$149,748.06 + \$17,359.08 - \$3,862.99 - \$1,750 (addressed under spousal support below)), and is to make monthly payments on the student loan as set out above. He is also to reimburse her the amount of \$189.73 for every monthly student loan payment she has made from August 31, 2024 to date, within seven days of receiving a record of all such student loan payments N.R.P. has, in fact, made since payments started to be payable on August 31, 2024.

[262] While A.K. makes a claim for two parking tickets N.R.P. received in 2019, and for Aeroplan miles she used for a flight to Mexico in February 2022, there was no evidence tendered to support a finding either were family debt remaining to be paid at the time of separation, and I decline to make the orders sought.

E. Support Issues

[263] It is clear that both parties are living well beyond their means, at the cost of their savings. Their level of spending is, quite simply, not sustainable. This is demonstrated by the thorough review on cross-examination of their respective credit card statements for the past couple of years. It is also demonstrated by A.K.'s significant dissipation of family assets, and the fact that N.R.P. has been borrowing money from her father and friends (which she failed to declare on her April 2024 F8 financial affidavit). In December 2024, on cross-examination, she testified that to date she had borrowed 2.5 million pesos from her father (approximately \$150,000) and approximately \$80,000 from a friend. The unfortunate reality is both parties have reached their middle age, with almost all of their accumulated family property dissipated. Both of their standards of living are going to have to change. It is unavoidable.

1. Applicable Legal Principles

[264] Notwithstanding the Bilawich Order provided for interim child support and spousal support pursuant to the Divorce Act, I analyze this issue pursuant to the FLA, as agreed to by the parties.

[265] Sections 161 and 162 of the FLA provide:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the parties;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

Determining spousal support

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[266] Entitlement to spousal support is a threshold issue, which must be established before the Court analyzes the appropriate quantum and duration for a spousal support award.

[267] There are three grounds for entitlement to spousal support: compensatory support; non-compensatory support; and contractual support: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420; see also *Jordan v. Jordan*, 2022 BCSC 1564 at paras. 131-133.

[268] Compensatory entitlement is intended to provide redress for an economic disadvantage arising from the marriage or its breakdown. It most often arises where one spouse has sacrificed career opportunities to take on more of the family's household or child-rearing responsibilities. Non-compensatory entitlement arises from the concept that spouses, by virtue of marriage, have some ongoing responsibility to care for one another. Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon the breakdown of a marriage. Finally, contractual entitlement arises out of agreements entered into by the parties: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 45-47,

leave to appeal to SCC ref'd, 33002 (28 May 2009) [Chutter].

[269] Once entitlement has been established, the quantum and duration of spousal support is to be established first by reference to the Spousal Support Advisory Guidelines [SSAG]: *P.M.Z. v. D.J.T.*, 2023 BCSC 1444 at para. 318.

[270] The starting point for determining income under the SSAG is the definition of income under the Federal Child Support Guidelines, SOR/97-175 [FCSG]. Section 16 of the FCSG provides that, subject to ss. 17-20, a spouse's annual income is determined using the sources of income set out under the heading "Total Income" in the T1 General Form issued by the Canada Revenue Agency ("CRA"). Section 19 of the FCSG provides:

19(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

[271] There must be an evidentiary basis upon which to attribute or impute income to a party. The party seeking to impute income to the other spouse bears the burden of proof. The test for imputing income for intentional under-employment is one of reasonableness, "having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability": *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37 [Marquez]; see also *Willms v. Willms*, 2020 BCCA 51 at para. 41.

[272] The FLA requires that a spouse work towards economic self-sufficiency within a reasonable time period, or at least make reasonable efforts to contribute to their own support. Where a spouse fails to do so, a court may impute a reasonable amount of income. There is a broad judicial discretion to impute income for both child and spousal support purposes: *Marquez* at paras. 36-38; *Hathaway v. Hathaway*, 2015 BCSC 1485 at para. 59.

[273] Further, while the receipt of gifts in the normal course is not included in imputed income, in circumstances where a particular gift is sufficiently unusual, it may constitute appropriate circumstances in which to impute income: *Shih v. Shih*, 2015 BCSC 2108 at para. 175, appeal allowed in part on other grounds 2017 BCCA 37; see also *Bak v. Dobell*, 2007 ONCA 304 [Bak]. There are a number of relevant considerations for when it would be appropriate to consider gifts in determining a proper imputation of income, including: duration of their receipt; whether the gifts were likely to continue; and the true purpose and nature of the gifts: *Bak* at para. 75; see also *K.A.L. v. K.J.L.*, 2017 BCSC 651 at paras.130-139.

[274] An award of lump sum spousal support may be preferable to an order for periodic payments in some cases. The purpose of such an award must be distinguished from its effect. The advantages of making such an award will be case-specific, and may include

terminating ongoing ties between the spouses, and ensuring payment of adequate support when there is a risk of non-payment of periodic support. The disadvantages of such an award may include the real possibility that the means and needs of the parties will change over time, leading to the need for a variation, and the difficulties inherent in calculating an appropriate award in place of ongoing, indefinite periodic support. One important consideration in determining whether to make a lump sum spousal support award is whether the payor has the ability to make such a payment without undermining the payor's future self-sufficiency: see *Parton v. Parton*, 2018 BCCA 273 at para. 47, citing from *Davis v. Crawford*, 2011 ONCA 294 at paras. 60-69.

2. The Parties' Income

[275] A.K. is employed by a large international company, Bureau Veritas, as the VP Business Development for North America. His reported line 150 income since 2021 is as follows:

Year

Line 150 income

2021

\$210,880.00

2022

\$296,482.77

2023

\$254,338.00

[276] His 2024 annual base salary is \$217,350, and he is also eligible for an annual performance bonus of up to 30% of his base salary, and an annual salary increase. His bonus fluctuates year by year and is dependent upon the performance of the company. By the time closing submissions completed in April 2025, A.K.'s line 150 income for his 2024 income was unknown.

[277] In addition to his income, A.K. is allocated shares of Bureau Veritas under their Share Plan. These shares are held in an account at Banque Transatlantique, and vest three years after they are allocated, at which time A.K. must declare them for tax purposes.

[278] N.R.P. has a bachelor's degree from a university in Mexico City. She is also qualified as a registered massage therapist in Mexico, but not British Columbia.

- [279] When N.R.P. moved to Vancouver in February 2010 she initially found work for the 2010 Olympics. Shortly after that she found work as a travel agent, which was her occupation when the parties met. When she met A.K. she was earning approximately \$27,000, and her 2010 income was approximately \$35,000. After that she testified that her salary fluctuated from \$35,000 to \$45,000, depending upon her commissions.
- [280] After the birth of each child she took a full year maternity leave, and then returned to work full-time as a travel agent. When the parties moved to the Home in July 2018 she worked as a travel agent remotely, which affected her income significantly. After the parties realized her paycheque was not enough to cover the cost of daycare, they made the joint decision in the summer of 2018 that she should be the children's full-time caregiver. She stopped working and kept her credentials as a travel agent active.
- [281] She has received reiki training, aromatherapy training, and craniosacral training. She began to work officially as a craniosacral therapist in 2022.
- [282] Most recently she became an acupuncturist. She registered in the Traditional Chinese Medicine Program--Acupuncture at Vancouver Career College in Burnaby. She testified that she chose the acupuncture program given her background in massage, and knowing that she could arrange her own schedule. In June 2021, she enrolled in the traditional Chinese medicine program for acupuncture at the Vancouver Career College in Burnaby. At that time, she testified that the family plan was after she graduated she would work during school hours to provide a supplementary income.
- [283] Her program was initially scheduled to take two years and three months; however, because of a failure in a course in early 2023, she did not complete the program until January 2024. N.R.P. attributes her failure of this course to her struggles as a result of the separation.
- [284] After separation, towards the end of 2022, N.R.P. began to obtain some hours to perform craniosacral therapy. She began to rent a room at VIP Therapy in Delta. She works through a sole proprietorship called Evolve Integrative Healing.
- [285] She testified that from January to November 2024 she worked an average of, at most, four hours a week. She was focused on writing her qualifying acupuncturist exam, preparing for trial, and dealing with the renovations on the Delta Condo. Her 2024 earnings as a craniosacral therapist were approximately \$11,300.
- [286] N.R.P. testified that her understanding of the appropriate salary expectation for an acupuncturist is charging up to \$110 a session, depending on the location. Her recently-graduated colleagues tell her it is "on and off" at the beginning and that she will need another part-time job to supplement her income for the first three years. Her professors told students it could take three to five years to be able to make a full-time income.
- [287] While she intended to speak with three acupuncture clinics, in December 2024 she did not have a contract with any of them, nor any guaranteed clientele. She testified that the clinics were concerned that a rotating parenting schedule wouldn't give the patients the

appropriate access to treatment. She said she is working towards economic self-sufficiency and agreed it would require some adjustments to her lifestyle. However, she maintains the children are her priority, and made clear that she expects A.K. to help her develop her career.

[288] In 2021, N.R.P. had self-employment income of \$1,345.06. In 2022, she reported self-employment income of \$2,593.10. Finally, in 2023, she reported self-employment income of \$11,299.

[289] N.R.P. argues that the proper amount for her 2023 income would be \$8,252, as she seeks to claim a loss from renting the Delta Condo. However, as she failed to report the purchase or the rental of the Delta Condo to A.K., I decline to attribute this loss. Accordingly, I find N.R.P. to have the following self-employment income:

Year

Self-Employment

2021

\$1,345.00

2022

\$2,593.00

2023

\$11,299.00

By the time closing submissions completed in April 2025, N.R.P.'s line 150 income for her 2024 income was also unknown.

[290] A.K. argues that, commencing January 1, 2025, N.R.P. should be imputed income of \$80,000. He argues that "she is intentionally underemployed and is capable of earning a greater income". A.K.'s position is that N.R.P. should be working full-time as either an acupuncturist or as a craniosacral therapist, and she is capable of earning more than \$50,000 a year. He argues that both children are in school full-time, and that the parenting responsibilities are shared equally between the parties. Notwithstanding she is willing to be imputed income of \$30,000 a year starting January 1, 2025, A.K. argues that that is lower than a full-time worker would earn at the current BC minimum wage of \$17.40/hour, and is also lower than the wage she was earning as a travel agent when the parties first met.

[291] A.K. also stresses that N.R.P. has had access to significant funds from her father and a friend in Australia. A.K. argues these funds must be gifts, while N.R.P. testified that they are loans. Notwithstanding this testimony, she did not provide any documentary loan evidence setting out the terms of repayment.

- [292] Finally, in April 2025, counsel for N.R.P. provided a print-out of the Government of Canada Job Bank, showing an acupuncturist in the lower mainland would earn between \$36,973 to \$78,000 per year. This was the only evidence tendered at trial as to potential income of an acupuncturist. A.K. did not object to this evidence.
- [293] When I made the child and spousal support order effective January 1, 2025, I imputed income of \$30,000 per annum to N.R.P. She has graduated from her acupuncture program, and it is appropriate that full-time income be attributed to her. Notwithstanding the prior agreement of the parties that she would stay home and look after the boys full-time, that agreement ended when they agreed before separation that she would retrain as an acupuncturist to contribute to the family finances again.
- [294] Further, N.R.P. has an obligation to become self-sufficient. Her argument that she should continue to be able to fit her work around the children's schedule shows a lack of appreciation for that obligation. Likewise, her argument that she should be the primary parent for the children so that A.K. can devote himself to his career, and continue to earn the amount he was earning before separation, ignores the reality of the consequences of separation.
- [295] Finally, N.R.P. clearly has access to significant funds that have assisted her throughout this turbulent time. Since separation, she has received approximately \$230,000 from her father and a friend, which are enabling her to live well beyond her financial means. While I cannot determine if these were gifts, based upon the evidence before me, N.R.P. clearly has access to funds.
- [296] In all the circumstances, I am satisfied that it was appropriate to impute income of \$30,000 to N.R.P. as of January 1, 2025. Further, as N.R.P. graduated a year and a half ago, and should be working full-time, and growing her business, I find it is appropriate to impute income of \$40,000 to her as of July 1, 2025.
- [297] Further, for the same reasons, I find it appropriate to impute income to her as of July 1, 2026 as the greater of an imputed income of \$50,000, or her actual income.

3. Child Support

- [298] Pursuant to the Bilawich Order, A.K. paid N.R.P. child support of \$2,877 per month commencing October 1, 2022, pursuant to the Divorce Act and the FCSG, on an interim and without prejudice basis. The consent order also ordered that the children be enrolled in only two extracurricular activities and s. 7 expenses would be born by A.K. as to 80%, and N.R.P. as to 20%, also on an interim and without prejudice basis.

- [299] N.R.P. seeks both retroactive and prospective child support. She seeks retroactive child support payable from February 2022 until October 2022. However, I find such an award is not appropriate, as the children remained in the Home, and A.K. paid for all of the families' expenses. N.R.P. has produced no jurisprudence in support of her argument that such an award would be appropriate.
- [300] N.R.P. also seeks retroactive child support payable from October 1, 2022 until December 31, 2024. However, her retroactive calculations are based upon actual line 150 incomes being used effective as of January 1st, before tax forms were issued by employers and before tax returns were filed. This is not appropriate. Rather, I find it would be appropriate to look at July 1st as the appropriate date for reviews to have occurred, based upon the line 150 income from the previous years' tax return.
- [301] From October 1, 2022 to June 30, 2023, based upon an income of \$210,880 for A.K. and \$1,345 for N.R.P., there is no retroactive child support payable. From July 1, 2023 to June 30, 2025 the retroactive child support due and owing pursuant to the FCSG is:

Period of Time

A.K. Income

N.R.P. Income

Monthly Child Support Paid

Monthly Child Support Owing

Retroactive Amount Owing

July 1, 2023 to July 1, 2024

\$296,483

\$2,593

\$2,877

\$3,887

\$12,120

July 1, 2024 to December 31, 2024

\$254,338

\$11,299

\$2,877

\$3,390

\$3,078

Total Retroactive Child Support

\$15,198

- [302] As of January 1, 2025, A.K. has been paying child support based upon his line 150 income for 2023, in the amount of \$254,388, and an imputed income for N.R.P. of \$30,000. That child support has been in the amount of \$2,906 per month. Pursuant to that calculation, A.K. is to bear 69% of the children's special and extraordinary expenses and N.R.P. is to bear 31%.
- [303] As of July 1, 2025, I find A.K. is to have paid child support to N.R.P. based upon his line 150 2024 income, and her imputed income of \$40,000. The parties are to calculate that amount, and to make any retroactive adjustments necessary to both child support and their proportionate sharing of the children's special and extraordinary expenses.
- [304] The parties are to exchange their 2024 tax returns immediately if they have not already done so, and are to calculate the appropriate child support that should have been payable as of July 1, 2025, and are to immediately determine the retroactive child support payable from July 1, 2025, or any overpayment. A.K. is to begin paying the appropriate amount as of October 1, 2025, and the parties are to begin making the appropriate contributions toward special and extraordinary expenses as of October 1, 2025.
- [305] Every July 1st hereafter, the parties are to exchange the documentation necessary for an annual review of child support, in accordance with the terms of the draft order attached.
- [306] At the commencement of trial there was an issue between the parties with respect to retrospective special and extraordinary expenses for the purposes of s. 7 of the FCSG, but the parties resolved that issue. However, the evidence established that the parties had significant conflict over the proper activities the children should be enrolled in. I am satisfied it is appropriate to order that N.J.K. be enrolled in soccer, and A.R.K. be enrolled in hockey, and both be enrolled in swimming. They may be enrolled in any other activities that the parties agree to in writing for the children. Further, special or extraordinary expenses incurred appropriately for the purposes of s. 7 are to be found to be a special or extraordinary expense, as provided for in the order attached as Schedule A.
- [307] Finally, both parties seek orders governing contributions to the children's Industrial Alliance RESP account. N.R.P. seeks an order that each party contribute 50% of the maximum contribution amount. A.K. seeks an order that each party make a minimum contribution of \$1,000 per year. As it is clear that both parties have been living well beyond their means, I decline to make such an order, as neither is affordable. Rather, I make the following orders:
- a) the parties will continue to maintain the RESP account for the benefit of the children;
 - b) neither party will withdraw any funds from the RESP without the other party's written consent; and

- c) if there is any remaining balance in the RESP when the youngest child reaches 25 years, then the RESP is to be divided equally, and the remaining balance after all taxes due and owing are paid shall be distributed to the children equally.

[308] The child tax benefit will be allocated between the parties pursuant to the order attached as Schedule A.

4. Spousal Support

[309] The Bilawich Order also provided for interim, without prejudice spousal support.

[310] Beginning with the threshold issue, I am satisfied, and A.K. admits, that N.R.P. is entitled to spousal support on a compensatory and non-compensatory basis. N.R.P. has been economically disadvantaged by the caregiver role she took on during the marriage, and by the parties' separation.

[311] N.R.P. seeks retroactive spousal support going back to February 1, 2022. With respect to the period of time from February 1, 2022 until September 30, 2022, she says she is willing to forego retroactive spousal support for that period if I find A.K. is to reimburse her for 50% of the line of credit he incurred (in the amount of \$17,359.08), which I have ordered above. However, I must note that, for this period of time, N.R.P. continued to reside in the Home with the two children and A.K. paid all of the expenses for the family. In those circumstances, it would not have been appropriate to order retroactive spousal support due and owing in any event.

[312] For the period from October 1, 2022 to December 31, 2024, N.R.P. seeks retroactive spousal support based upon the mid-level of support, in the amount of \$34,182. However, I find that mid-level support is not appropriate in these circumstances, as the parties have effectively shared parenting time, and have extremely limited financial means available. Rather, I find it appropriate that spousal support be payable with the effect that each household have 50% of the net disposable income, to ensure the lifestyles of the two households are similar. Based upon that assumption I find that retroactive spousal support in the total amount of \$4,884 is payable by A.K. to N.R.P. Attached as Schedule B are the divorce mate calculations for the following table.

Period of Time

A.K. Income

N.R.P. Income

Monthly Spousal Support Paid

Monthly Spousal Support Owing

Retroactive Annual Amount Owing

October 1, 2022 to June 30, 2023

\$210,880

\$1,345

\$4,146

\$3,472

(\$6,066)

July 1, 2023 to June 30, 2024

\$296,483

\$2,593

\$4,146

\$4,966

\$9,840

July 1, 2024 to December 31, 2024

\$254,338

\$11,299

\$4,146

\$3,808

(\$2,028)

January 1, 2025 to June 30, 2025

\$254,338

\$30,000

\$4,822

\$3,947

(\$5,250)

Total Retroactive Spousal Support

(\$3,504)

[313] As N.R.P. owes A.K. retroactive spousal support of \$3,504, that amount is to be deducted from the equalization payment he owes her. Neither party made any argument about the appropriate tax treatment of any retroactive spousal support award. However, as A.K. has already received the benefit of the tax deduction for the payment of the spousal support for the years set out above, and N.R.P. has declared the spousal support and paid the tax, and

given the low value of the retroactive amount due and owing, I find it appropriate that N.R.P. reimburse A.K. the amount of \$1,750 (to roughly reflect the after-cost consequences of this overpayment). That amount has been deducted from the equalization payment A.K. owes to N.R.P. as set out at para. [261].

- [314] The relationship had a duration of 11 years and two months. The DivorceMate calculations indicate a potential duration for spousal support ranging from five and a half years to 13 years from separation.
- [315] A.K. argues the appropriate duration for spousal support is six years. He says that he supported N.R.P. for most of 2022, he amassed a significant real estate portfolio during the relationship which has had to be sold as a result of its dissolution, and that N.R.P. has benefitted from the sale of the real estate. He argues that N.R.P. has been intentionally underemployed and took longer to complete her acupuncture degree than was necessary. He criticizes her excessive spending, and argues that she has managed to establish herself in a far better financial position than A.K. throughout the separation, which she chose to conceal. He stresses his own dire financial circumstances.
- [316] N.R.P. argues she should receive lump sum spousal support based upon a duration of ten years, and incomes of \$254,338 and \$30,000 for her and A.K., respectively. She seeks a lump sum support payment of \$312,863 to "ensure she will be paid".
- [317] However, I am not persuaded that a lump sum award is appropriate in these circumstances. A.K. has faithfully made all child and spousal support payments ordered by this Court since October 1, 2022. Further, the family does not possess assets out of which such a lump sum award may be paid. Rather, making such an order would force A.K. into further debt, which would inevitably prejudice his financial circumstances. Finally, as already discussed, N.R.P. is being attributed an income greater than \$30,000, and has an obligation to become self-sufficient.
- [318] I am satisfied that N.R.P. has established her entitlement to spousal support. In my opinion, her compensatory claim is not a significant one, as she only ceased working in 2018, and began her retraining in 2021. I also put little weight on her argument that she stayed at home to allow A.K.'s career to flourish. While her non-compensatory claim is stronger, I am satisfied that an appropriate duration for support is nine years, to commence on October 1, 2022. The quantum of support is to be based upon a 50/50 of the net disposable income of the parties, for the reasons set out above.
- [319] Both parties request annual reviews of both child and spousal support, and I find that is appropriate in these circumstances. Accordingly, for so long as child or spousal support remain payable by a party, then by May 31st of each year, the parties are to exchange the documentation set out in the attached draft order, and will review child support, spousal support, and special expense proportions effective July 1st of each year.

[320] As with child support, as of July 1, 2025, A.K. is to have paid spousal support to N.R.P. based upon his line 150 2024 income, and her imputed income of \$40,000.00, based upon a net 50/50 of the net disposable income. The parties are to calculate that amount, and to make any retroactive adjustments necessary.

F. Divorce

[321] I am satisfied that the parties have provided the evidence necessary to establish they are entitled to obtain a divorce under the Divorce Act, and that there are no bars to such an order. I order that the parties are divorced, which divorce is to take effect on the 31st day after the date these reasons for judgment are issued.

VII. FINES AND SPECIAL COSTS

[322] In closing submissions, N.R.P. sought a fine in the amount of \$15,000 from A.K., pursuant to s. 213 of the FLA. She argues that he failed to produce documents in accordance with the timelines of my document production orders made in December 2024. She also argues that he, on occasion, drank, in contravention of the Robertson Order. I decline to exercise my discretion to order a fine, as A.K.'s ability to comply with that order was inevitably compromised by his difficulties in retaining counsel in early 2025. Further, both parties complain of breaches of court orders by the other. I find it would be unfair and inappropriate to order such a fine in these circumstances.

[323] Further, in a "Second Addendum to Claimant's Closing Submissions" dated December 19, 2024, while represented by counsel, A.K. sought an order for special costs payable by N.R.P. The Court has the discretion to order that costs of a family law proceeding be assessed as special costs: Rule 16-1(1)(b)(i) of the Supreme Court Family Rules. Awards of special costs in family and civil proceedings are governed by the same principles: *T.A.O. v. D.J.M.*, 2022 BCSC 636 at paras. 6-7. An award of special costs is intended to chastise a party for reprehensible conduct in the course of the litigation itself: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 [Smithies] at paras. 133-134. "Reprehensible" conduct has a wide meaning, and "encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke": *Garcia v. Crestbrook Forest Industries Ltd.*, 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (B.C.C.A.) at para. 17.

[324] A.K. argues that N.R.P. made unfounded allegations of sexual abuse, intentionally did not provide a balance for her BMO RRSP on her September 23, 2024 financial affidavit, and failed to provide all the documentation she was asked or ordered to produce. He also argues she failed to disclose the purchase of the Delta Condo during the first portion of the trial, and failed to initially properly report the rental income from that property on her 2021 tax return.

- [325] I am not persuaded an order for special costs is appropriate in these circumstances. Notwithstanding I do not find N.R.P.'s concerns about A.K.'s behaviour to be substantiated by the evidence, I do not find her behaviour during this litigation to merit an award of special costs. Further, while she was deleterious in her document disclosure, so was A.K. Both were focussed on blaming the other party for actual and perceived slights and irregularities and not focussed on proceeding with an efficient and proportionate resolution of the matters in dispute.
- [326] In all of the circumstances, I am satisfied that there has been divided success at trial, and the appropriate award is that each party bear their own costs.

VIII. SUMMARY AND CONCLUSION

- [327] I make the above orders, and for the sake of facilitating cooperation between the parties, have attached, as Schedule A, a draft order that includes all of the above, and the ancillary orders I find to be appropriate in these circumstances.
- [328] I note that I have built into the order an ability for A.K. to make all payments due and owing pursuant to these reasons for judgment out of the financial assets in his name, and the eventual sales proceeds of the Lake Shore Condo.
- [329] As a final matter, I have determined that it is prudent to seize myself of all matters arising from the implementation of these reasons for judgment, and all parenting matters between the parties that may arise between now and 12 months from the date of these reasons for judgment. At that time, I will no longer be seized.

"Blake J."

SCHEDULE "A"

Divorce

Subject to s. 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), the Claimant, A.K., and the Respondent, N.R.P., who were married at Vancouver, British Columbia on December 12, 2012, are divorced from each other. The divorce is to take effect on the 31st day after the date of this order.

Parenting

The following orders for parenting are made under the Family Law Act, S.B.C. 2011, c. 25 [Family Law Act]. Upon the Court being made aware that there are two children of the marriage:

N.J.K., born July 14, 2014, who is 11 years of age; and A.R.K. born October 17, 2016, who is 8 years of age
(the "Children").

Pursuant to the order of Associate Justice Robertson made February 14, 2023, the parties remain joint guardians of the Children under s. 39 of the Family Law Act. Paragraph 4 of the order of Associate Justice Robertson made February 14, 2023 is varied, and the Claimant:

is not to take any photographs of the Children while they are in any stage of undress.

Both parties will share s. 41 parental responsibilities (as defined in the Family Law Act) in consultation with one another as follows:

- 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 live and 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 s. 17 of the Infants Act, R.S.B.C. 1996, c. 223, giving, refusing, or withdrawing consent to medical, dental, and other health-related treatments for the Children;
- g) applying for a passport, licence, permit, benefit, privilege, or other thing for the Children;
- h) giving, refusing or withdrawing consent for the Children, if consent is required;
- i) receiving and 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;
 - iii. exercising any other responsibilities reasonably necessary to nurture the Children's development.

Both parties will discuss with the other any major decisions which have to be made with respect to the Children, including significant decisions concerning the health (except emergency decisions), education, religious instruction, and general welfare of the Children, and each party will be obligated to try to reach agreement with respect to those major decisions.

Parenting Coordinator

Pursuant to s. 15 of the Family Law Act, the parties will forthwith retain a member in good standing of the Roster of the British Columbia Parenting Coordinators Roster Society (the "Society") as parenting coordinator (the "Parenting Coordinator"), for a period of 24 months, on the terms provided in this Order and in the most current form of generally accepted precedent for a parenting coordination agreement endorsed by the Society (the "Standard PC Agreement"); provided that where terms of this Order conflict with the Standard PC Agreement, this order will prevail. The Parenting Coordinator shall be agreed upon by the parties no later than October 31, 2025, with liberty to apply to this Honourable Court failing agreement. In the event the parties cannot reach agreement with respect to any major decision despite best efforts, they will use the Parenting Coordinator to resolve the dispute. The Parenting Coordinator may assist the parties in the following manner:

by building consensus between the parties, including, but not limited to, by:

- i. developing and instituting guidelines for the implementation of the parenting terms of this Order;
- ii. developing and instituting guidelines for communications between the parties;
- iii. identifying, creating and implementing strategies for resolving conflicts between the parties; and
- iv. providing information respecting resources available to the parties for the improvement of their communication or parenting skills, and

subject to the specific provisions of this Order, pursuant to s. 18 of the Family Law Act, and in the event the parties cannot agree on any matter respecting their parenting responsibilities as defined in s. 41 of the Family Law Act, by making a determination on such matters subject to s. 19 of the Family Law Act.

The fees, disbursements and other charges of the Parenting Coordinator will be shared equally, subject to the Parenting Coordinator's authority to reapportion the total parenting coordination costs between the parties as provided in the Standard PC Agreement.

Regular Parenting Time

During parenting time, each party may exercise the parental responsibility of making day-to-day decisions affecting the Children, provided that the party must advise the other of any matters of a significant nature affecting the Children. The parties shall continue with the current 2-2-5-5 regime until after the 2025-2026 winter holidays, at which time the parties shall commence a week-on - week-off shared parenting regime, with the party who did not have the Children at the end of the winter holiday commencing their parenting time on the Sunday before school at 6:00 p.m. ("Regular Parenting Time"). The party whose Regular Parenting Time is ending will deliver the Children to the other parent on Sundays at 6:00 p.m. The party whose Holiday Parenting Time

(defined below) is ending will deliver the Children to the other parent. In the event one party dies before the Children become independent, the surviving party will be the Children's sole guardian. The surviving party will maintain a relationship between the deceased party's extended family and the Children. If either party is unable to take the Children to their scheduled extra-curricular activities, he or she will offer the off-duty parent the opportunity to take the Child or Children to that activity. There will be no make-up parenting time for any parenting time missed by the on-duty parent, while the off-duty parent takes the Child or Children to their activities. Neither party will schedule medical appointments without first consulting the other party as to his or her availability. Any required medical appointments will be scheduled when both parties are available to attend unless it is an emergency. Both parties will implement any and all recommendations made during medical appointments. If one parent is unable to attend, the attending parent will call the other parent and include them in the appointment. During parenting time, either party may schedule and attend any health-related treatments covered by the parties' extended benefits policies, including chiropractic treatments, registered massage therapy treatments, craniosacral therapy and the like, without consulting the other party. Both parties will keep the other informed of any health-related treatments received. In the event one parent is not able to exercise overnight parenting time for any reason, they will advise the other parent seven days in advance, and will provide the other parent with the first right of refusal. There shall be no swapping, or making up, of missed parenting time. The Claimant will provide all known dates for his work-related travel to the Respondent at the beginning of each year, and the Respondent will make arrangements to have the Children in her care during his work-related travel. Again, there shall be no swapping, or making up, of missed parenting time. In the event the Claimant needs to travel for work or any other reason on an urgent basis, he is to provide the Respondent with as much notice as possible. The Respondent will have the Children in her care, but in the event she needs childcare to cover the Claimant's travel, he shall be solely responsible for that cost. Again, there shall be no swapping, or making up, of missed parenting time.

Holiday Parenting Schedule

Holiday parenting time will supersede Regular Parenting Time and will be as follows:

- a) The Children's winter break holidays will be divided equally between the parties with the Claimant having the first week in even numbered years and the Respondent having the first week in odd numbered years;
- b) The Children's spring break holidays will be divided equally between the parties with the Respondent having the first week in even numbered years and the Claimant having the first week in odd numbered years;
- c) The parties will alternate having parenting time with the Children on Easter long weekend with the Claimant having the Easter long weekend in odd numbered years and the Respondent having the Easter long weekend in even numbered years.

- d) During the Children's summer holidays, specifically, the months of July and August, the parties will equally share parenting time with the Claimant having the month of July in even numbered years and the Respondent having the month of July in odd numbered years;
 - e) The parties will alternate having parenting time with the Children on the Thanksgiving long weekend with the Claimant having the Thanksgiving long weekend in even numbered years and the Respondent having the Thanksgiving long weekend in odd numbered years;
 - f) The Respondent shall have parenting time on Mother's Day if the Children are not in her care pursuant to Regular Parenting Time, from 9:00 a.m. to drop off at school the following day;
 - g) The Claimant shall have parenting time on Father's Day if the Children are not in his care pursuant to Regular Parenting Time, from 9:00 a.m. to drop off at school the following day;
 - h) The parties shall alternate taking the Children trick or treating on Hallowe'en, with the Respondent taking the Children in odd numbered years and the Claimant taking the Children in even numbered years;
 - i) The Claimant will have parenting time with the Children on his birthday from 9:00 a.m. until 8:00 p.m.;
 - k) The Respondent will have parenting time with the Children on her birthday from 9:00 a.m. to 8:00 p.m.; and
 - m) As recommended by Mr. Colby, the Children will spend their birthdays with whichever party they are residing with according to Regular Parenting Time,
- ("Holiday Parenting Time").

Other Parenting Arrangements

The parties are at liberty to attend the Children's events and activities regardless of whose parenting time it is during those events and activities. Neither parent will change residence to a location outside South Delta without the other party's written consent or court approval. Neither party will travel with the Children outside of Canada without the other parent's written consent, and the travelling parent will provide the other with an itinerary and contact information at least 28 days in advance of said travel. If a travel authorization letter is required, the travelling parent will prepare the letter and the non-travelling parent will not unreasonably withhold consent to sign said letter. If notarization is required, the travelling parent will bear the expense. Each party has the right of first refusal of the other parent cannot be present for a period of more than four hours during his or her parenting time.

Parties' Incomes

The Claimant's guideline income for child and spousal support purposes is:

Year

Line 150 income

2021

\$210,880

2022

\$296,483

2023

\$254,338

The Respondent's guideline income for child and spousal support purposes is:

Year

Self-Employment

2021

\$1,345

2022

\$2,593

2023

\$11,299

The Respondent is imputed income of \$30,000 as of January 1, 2025 and \$40,000 as of July 1, 2025. Her income as of July 1, 2025 shall be the greater of her actual line 150 income for 2024, or an imputed income of \$50,000.00.

Child Support and Special Expenses

As of July 1, 2025, the Claimant owes the Respondent total retroactive child support, pursuant to the Family Law Act, of \$15,198.00. The parties will immediately exchange their 2024 tax returns, and will calculate the new child support amount payable, commencing July 1, 2025, based upon the Claimant's line 150 income, and the Respondent's imputed income of \$40,000. The parties shall calculate any retroactive child support either due, or to be repaid, immediately. The parties will share special and extraordinary expenses in proportion to their respective incomes, in accordance with the updated child support calculation. Special and extraordinary expenses include:

- a) childcare expenses;

- b) any uninsured portion of the medical and dental insurance premiums attributable to the Children;
- c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aid, glasses and contact lenses, and cranial sacral therapy; and
- d) extraordinary expenses for extracurricular activities, including but not limited to:
 - i. Hockey for A.R.K.;
 - ii. Soccer for N.J.K.; and
 - iii. Swimming for the Children.

The parties will each provide each other with copies of any and all receipts relating to special and extraordinary expenses and reimburse the other party within 30 days of receipts being provided. Neither party will incur any expenses for which reimbursement is sought without the prior written agreement of the other parent except as provided above. The parties will review child support and special expenses by July 1st each year, for so long as the Children qualify as a child of the marriage, commencing July 1st, 2025. For the purpose of the review of child support and spousal support, the parties will each provide the other with the following documents by May 31st, commencing in 2026:

- i. a photocopy of the most recent tax return,
- ii. the most recent notice of assessment, if received,
- iii. details of child tax benefits or other similar benefits received in the previous year and anticipated in the coming year, if known,
- iv. the most recent annual statement of earning including overtime,
- v. corporate financial statements and T2 corporate tax returns for any corporation in which either party has a majority interest; and
- vi. any other information required by the Child Support Guidelines or any other relevant information, to facilitate determination of the adjustment, if any, to the Child Support.

The Respondent will claim the child tax benefit and any eligible dependant deduction for N.J.K. The Claimant will claim the child tax benefit and any eligible dependant deduction for A.R.K. When N.J.K. is no longer considered a dependant with the CRA, the parties will alternate claiming the eligible dependant tax credit for A.R.K. with the Claimant having the first year. For so long as they qualify, the parties will each name the Children under any medical, extended medical or dental schemes as are available to them through his or her employment and will maintain such medical and dental coverage in good standing for the benefit of the Children.

Spousal Support

As of July 1, 2025, the Respondent owes the Claimant total net retroactive spousal support, pursuant to the Family Law Act, of \$1,750, which has been deducted from the equalization payment the Claimant owes the Respondent. The parties are to calculate the new spousal support amount payable, commencing July 1, 2025, based upon the Claimant's line 150 income, and the Respondent's imputed income of \$40,000, based upon 50% of the net disposable income. The parties shall calculate any retroactive spousal support either due, or to be repaid, immediately. Pursuant to the Family Law Act, the Claimant will pay to the Respondent spousal support, until October 31, 2031, at which time spousal support will be terminated. Until that time, the quantum of spousal support will be reviewed every year, on July 1st.

Property and Debt Division

The Claimant owes the Respondent an equalization payment in the amount of \$161,494.15. The assets previously frozen by order of this court are unfrozen, to allow for the following transaction to occur. The amounts the Claimant owes to the Respondent are to be paid in the following manner:

The Respondent is to keep the entirety of her BMO RRSP; The Claimant is to roll over the balance in his Canada Life RRSP to the Respondent within 30 days; and The Claimant is to rollover the balance in the following accounts within 30 days:

- i. The Claimant's RBC RRSP;
- ii. The Claimant's RBC Direct Investing Account ending in 4469;
- iii. The Claimant's RBC Direct Investing Account ending in 7129; and
- iv. The Claimant's RBC Direct Investing Account ending in 8988.

The Claimant, at the same time, is to produce to the Respondent a reconciliation showing the balances transferred to the Respondent pursuant to the order above (the "Reconciliation"). If the Reconciliation shows that there are funds still to be paid by the Claimant to the Respondent, then the balance due and owing by the Claimant shall be paid out of the sale proceeds of the Lake Shore Condo (the "Balance Due"). If there are any tax consequences arising out of the transfer above, the parties shall bear such tax consequences equally.

RESP

The parties will continue to maintain the Children's RESP for the benefit of the Children. Neither party will withdraw any funds from the Children's RESP without the other party's written consent. If there is any remaining balance in the Children's RESP by the time they reach 25 years old, the RESP is to be divided equally, and the remaining balance after all taxes due and owing are paid shall be distributed to the Children equally.

Lake Shore Condo

When the Lake Shore Condo is sold, the net proceeds of sale of the Lake Shore Condo will be divided equally between the parties, except out of the Claimant's share he shall first pay to the Respondent:

The Balance Due (as defined above); and The \$15,198 in retroactive child support, as modified by the calculation of any retroactive child support due and owing after the July 1, 2025 review; and any retroactive spousal support due and owing after the July 1, 2025 review.

Bank Accounts

The parties will then retain their bank accounts as their separate property free from any claim by the other party. Except as otherwise set out, each party will retain his and her respective assets and chattels for his and her respective sole use, free and clear from any claim by the other, and bear sole responsibility for the debts and liabilities in his and her respective name.

Other

The parties' Canada Pension Plan credits will be divided pursuant to the Canada Pension Plan, R.S.C., 1985, c. C-8 with the date of cohabitation being November 1, 2010, and the date of separation being January 1, 2022. The Respondent's Delta Condo purchased post-separation is her sole property, and the Claimant has no interest in the same.

Student Loans and Grants

The Respondent is to provide the Claimant with a record of all student loan payments she has made since the payments started to be payable on August 31, 2024. The Claimant is to reimburse the Respondent \$189.73 for every monthly payment she has made from August 31, 2024, to the date these reasons for judgment are issued, within seven days of receiving the record.

Commencing on September 15, 2025, the Claimant is to pay the Respondent the amount of \$189.73 on account of his share of the student loan. This obligation shall continue until the student loan is repaid in its entirety. By January 31st of every year, the Respondent is to provide the Claimant with a record showing the last year's payments toward the student loan, and the amount still due and owing on the balance.

Conduct Orders

Neither party will speak negatively about the other party, member of the other party's family or member of the other party's household. The parties will not make any derogatory or otherwise negative remarks regarding each other, their family or their conduct in relation to the parties' separation or matrimonial issues to third parties. The parties will:

- a) put the best interests of the Children before their own interests;

- b) encourage the Children to have a good relationship with the other parent and speak to the Children about the other parents and that parent's family in a positive and respectful manner; and
- c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication, or argument in front of the Children.

The parties will not:

- a) question the Children about the other parents or time spent with the other parents 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.

The Claimant shall ensure all firearms at his residence are securely locked in a proper firearm locker at all times while the Children are in his care. Neither party shall allow the Children to use or play with any firearms of any sort in any manner, including rifles, pellet guns or air guns, until written agreement or further order of this court. Neither party shall sign up either child for a youth hunting license until written agreement or further order of this court. During their parenting time, neither parent will have the Children sleep in a room with anyone other than a family member. During their parenting time, neither parent will allow the Children to have more than 1 hour of screen time per day, and all screen time shall be finished at least 45 minutes before bedtime, until written agreement or further order of this court. During their parenting time, neither parent will allow the Children to play a video game that is not rated for their current age, with the exception that the Children are permitted to play the current version of Minecraft and Fortnite, with the current restrictions in place for their use to remain in force, until written agreement or further order of this court. Within seven days of these reasons for judgment being issued, the parties will enroll in Our Family Wizard and conduct all routine communication with one another exclusive in writing through that medium. They are to bear the cost equally. The parties shall adhere to and implement Recommendations #4 through #14, and #20, from Mr. Colby's Section 211 Report dated March 15, 2023.

SCHEDULE "B"

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