

CANADA / JUDGMENT

A.T.H. v. W.D.G.

2025 BCSC 1302

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2025 BCSC 1302 A.T.H. v. W.D.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.T.H. v. W.D.G.,

2025 BCSC 1302

Date: 20250711

Docket: E230788

Registry: Victoria

A.T.H.

v.

W.D.G.

Before: The Honourable Justice Layton

Reasons for Judgment

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Table of Contents

Introduction.. 4

Assessing Credibility and Reliability. 5

Relationship from Mid-1990s until 2009 Separation.. 9

Start of Second Marriage-Like Relationship. 13

Legal Principles Governing whether Marriage-Like Relationship Exists. 15

Determining when the Parties' Marriage-Like Relationship Resumed. 17

Move from Alberta to the Family Home. 26

Life at the Family Home and Date of Separation.. 31

Legal Principles Governing when Marriage-Like Relationship Ends. 35

Determining when the Parties' Marriage-Like Relationship Ended. 36

Sale of the Family Home. 38

Division of Family Property and Debt. 39

Legal Principles Governing Division of Family Property and Debt 39

Calculating Excluded Property in the Parties' Alberta Houses. 44

Whether Exclusion Lost Regarding the Respondent's Rural House Proceeds. 47

Whether Exclusion Lost Regarding the Claimant's City House Proceeds. 50

Whether Excluded Portion of the Rural House Proceeds Used to Buy the Family Home Should be Divided Under Section 96. 51

Conclusion Regarding Division of Proceeds of Sale of the Family Home. 51

Financial Assets.	52
Chattels.	54
Rental Income.	56
Debts Including Responsibility for Post-Separation Family Home Expenses.	59
Child Support for H.J.G.	64
Legal Principles Governing Application of Section 146 of the FLA.	65
H.J.G. is a "Child" Pursuant to Section 146 FLA.	66
Calculating Guidelines Child Support	72
Section 7 Expenses.	74
Spousal Support.	75
Legal Principles.	75
Determining the Respondent's Income.	77
Entitlement and Duration/Amount	79
Request for Payment and Conduct/Protection Orders.	81
Context in which JCC Order was Made.	82
Respondent's Breaches of JCC Order	85
Jurisdiction to Make Payment Order	90
Appropriateness and Amount of Payment Order	95
Appropriateness of Further Conduct or Protection Order	97
Conclusion..	97

Introduction

- [1] The claimant A.T.H. and respondent W.D.G. were spouses under the Family Law Act, S.B.C. 2011, c. 25 [FLA], but are now separated.
- [2] Arising from that separation, the claimant filed a notice of family claim on February 23, 2023. The respondent filed his response to family claim and his counterclaim on November 2, 2023.
- [3] The claimant is 50 years old, while the respondent is 58 years of age. They have two children: H.G., who was born in the 1990s, and is now an adult; and H.J.G, who was born in 2003. Although H.J.G. is almost 22 years of age, he has been diagnosed with conditions that put into issue whether he remains a "child" under the FLA for the purposes of child support.

- [4] The parties met and became a couple in Victoria in the mid-1990s, but later moved to Alberta. They were still living there when they separated in 2009. At some point at least several years afterwards, the claimant and the respondent began a second marriage-like relationship.
- [5] In August 2019, the parties moved to Vancouver Island with their boys and bought a house in a rural area about 70 kilometres from Victoria, which I will refer to as the Family Home. In July 2020, the respondent left the Family Home to attend a residential treatment centre for alcohol abuse. He never returned, and the parties subsequently separated.
- [6] The pleadings raise issues mostly relating to the parties' second marriage-like relationship. Those issues include when the relationship started and ended, property division, child support regarding H.J.G., spousal support, whether the respondent should be fined for failing to comply with an order made at a judicial case conference, and whether the terms of that order should continue.
- [7] In addition to her own testimony, the claimant called evidence from her mother and her sister. The respondent testified in support of his own case, and also called his father as a witness.
- [8] In the next section of these reasons I will comment on the witnesses' credibility and reliability, mostly focusing on the parties' testimony. I will then review the parties' relationship over the years, in the course of which I will make factual findings and determine the start and end dates for their second marriage-like relationship. Finally, I will address and resolve the other disputed issues.
- [9] To protect the privacy and well-being of H.J.G., whose medical condition and assault by the respondent are discussed in these reasons, I have initialized the names of the parties in the style of cause, and used initials to refer to their children. I have also made efforts to anonymize identifying details where possible, sometimes by using initials to refer to a company.

Assessing Credibility and Reliability

- [10] In assessing the credibility and reliability of the witnesses, I have applied the guidance from *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187.
- [11] Having assessed the parties' testimony in the context of all of the evidence, I have credibility and reliability concerns regarding each of them. For the most part, I attribute these concerns to the passage of time and the conscious or unconscious bias that can arise where a witness testifies about contested matters in which they have a stake. See *L.B. v. D.F.*, 2024 BCSC 2027 at paras. 13-14.
- [12] Without purporting to be comprehensive, I will provide some examples of these concerns from each party's testimony, starting with the claimant.

- [13] In chief, the claimant testified that when the parties separated in 2009, she drafted a separation agreement but had no advice from a lawyer. She further testified that, not only was this draft agreement never signed, but there was no verbal or written agreement regarding child support or spousal support. In essence, the claimant testified that the agreement she had drafted ended up having no bearing on the resolution of the issues that arose following the parties' 2009 separation, which resolution included her receiving \$100,000 from the respondent's mother.
- [14] However, when confronted in cross-examination with inconsistent statements made at her examination for discovery ("EFD"), the claimant admitted that she received legal advice from a lawyer regarding the separation agreement she had drafted. She further conceded that she received the \$100,000 pursuant to that separation agreement, albeit unsigned, in full and final satisfaction of any claims to child support or spousal support.
- [15] A second example of my concerns regarding the claimant's credibility and reliability relates to her testimony in chief that she and the respondent resumed their marriage-like relationship in October 2012. In cross-examination, the claimant admitted that at her EFD she stated that they did so in October 2013, and she adopted the EFD evidence as correct.
- [16] A third example relates to an email the respondent sent to the claimant on October 8, 2019. As I will explain later, this email carries potential significance in distinguishing between excluded and family property. The claimant not only testified that she did not recall this email, but she initially suggested that she may have never received it. She only fully retreated from this position on being reminded that the email was on her list of documents.
- [17] A fourth illustration as to why I have concerns about the claimant's credibility and reliability arises from her testimony in chief that she only began renting out a vacation rental suite at the Family Home in November 2021. On being shown bank statements in cross-examination, she admitted to having started renting it out a full year earlier. The bank statements also establish that she significantly underreported the vacation rental income in the sworn financial statements she filed in this proceeding.
- [18] A final example of why I have some concern about the claimant's credibility and reliability is that she was occasionally rude, flippant or sarcastic in answering questions in cross-examination. For instance, when asked whether she had shared any of the vacation rental income with the respondent--a question to which the answer was indisputably "no"--she responded "I don't know, ask him." Similarly, she adopted an insincere tone in saying "sorry" for not including income from her disability pension on two sworn financial statements.
- [19] As noted, the respondent's testimony also left me with concerns about his credibility and reliability. I will therefore provide a few examples for him as well.
- [20] First, the respondent testified that his desire to start a legal grow op at the Family Home was just one of many things he and the claimant discussed before moving into the Family Home in late 2019, and that he never took this idea seriously because any marihuana grown would

only have been for personal use. However, in an October 8, 2019 email to the claimant, the respondent refers to the goal of starting a grow op, as "my dream", in a context that clearly refers to them being business partners in the endeavour, and expresses real disappointment in her waning enthusiasm for the goal.

- [21] A second example of why I have concerns about the respondent's credibility and reliability arises from his testimony in cross-examination that he is not on the title of the house in which he currently lives in Victoria, and that this property is owned by his parents and sister. Contrary to this evidence, his father testified that the respondent and his sister are the only ones on the title. I accept his father's testimony on this point, not only because his father was directly involved in the purchase and financing of the house, and in his testimony demonstrated financial acumen, but also because the respondent's sworn financial statement confirms that the respondent has a half-interest in this house.
- [22] A third illustration from the respondent's testimony relates to his evidence about having a memory of signing a promissory note for \$401,000 at the kitchen table of his Alberta house, in connection with that property being transferred to him by his mother's holding company. The respondent further testified that, on hearing that he and the claimant had purchased the Family Home, his father mentioned in anger the possibility of requiring him to pay off this promissory note. Finally, the respondent claimed that, after being requested to produce the promissory note at his EFD, his father's attempts to locate it were unsuccessful because the lawyer involved in the transaction had retired.
- [23] The respondent's testimony on these points is belied by his father's evidence that, although the lawyer advised him and his wife to obtain a promissory note, they never did so and he threw the unsigned note away after meeting with the lawyer. Once again, I prefer the testimony of the respondent's father over that of the respondent, including because the respondent's father was directly involved in this transaction and was able to provide more detail about what happened and why.
- [24] A final example of why I have concerns about the respondent's credibility and reliability arises from his responses when cross-examined about his alcohol consumption. The claimant's counsel challenged the respondent's claim to have abstained from alcohol from the time he entered the residential treatment centre in July 2020 until January 2024, after which he began drinking again but only about a six-pack of beer per week. The cross-examination exposed the respondent's testimony as false based on credit card receipts from 2021 and 2022. Those receipts show him making about 150 alcohol purchases totalling more than \$5,000 over a period of about one year. I reject the respondent's claim that almost all of this alcohol was for his girlfriend, who he described as a serious alcoholic. I also note that, in explaining these purchases from 2021 and 2022, the respondent at times appeared to concede that some of the alcohol was for him, undermining his claim to have started drinking alcohol again only in January 2024.

- [25] I recognize that many individuals in treatment or recovery for substance addiction have relapses, and that the road to wellness is frequently not linear. But I am not prepared on this basis to ignore the respondent's untruthful testimony regarding his alcohol consumption, including because the topic is material to some of the issues disputed in this case.
- [26] To sum up, both the claimant and the respondent at times provided evidence that calls into question their credibility and reliability.
- [27] The other witnesses--the claimant's mother and sister, and the respondent's father--all tried their best to provide truthful testimony. I nonetheless have taken into account that, by virtue of their family connections to the parties, each may have had an unconscious bias in giving evidence, and also that the passage of time may have impacted their memories.

Relationship from Mid-1990s until 2009 Separation

- [28] The claimant and the respondent became a couple in Victoria in late 1994, and she moved into the house where he was living sometime in 1995. The claimant worked as an insurance agent, while the respondent did construction work. When H.G. was born, the claimant took a six-month maternity leave.
- [29] The Victoria home in which the parties lived was owned by a holding company, which I will refer to as G.H. Ltd. This company had no employees and was owned by the respondent's mother. She and the respondent's father were G.H. Ltd.'s only board members and ran it together. The respondent's father provided the most detailed and accurate testimony about G.H. Ltd., and unless otherwise stated I accept his evidence regarding its structure, purpose and activities.
- [30] The respondent's parents ran G.H. Ltd. with three purposes in mind: to provide financially for her retirement; to help fund future home ownership for their children, the respondent and his sister; and to provide educational bursaries for their grandchildren.
- [31] Regarding the second objective, the respondent's father testified that the idea was that the respondent and his sister would "earn some equity" on properties prior to those properties becoming theirs, although there was never any hard agreement because the process was also dependant on what was happening with the economy.
- [32] For example, G.H. Ltd. gifted a house to the respondent's sister in 2010 after she had helped "organize" two houses owned by G.H. Ltd., including by providing direction to carpenters and looking after rent. The respondent's father testified that the respondent was somewhat behind in terms of this process, because in 1997 he and the claimant left the G.H. Ltd. home in which they had been living and moved to the Okanagan.
- [33] By 1998, the respondent was working in construction in Alberta. The claimant and H.G. joined him there in 1999, at which point they rented a home.

- [34] In 2000, the respondent and the claimant selected a rural plot of land for purchase by G.H. Ltd., and a house was later built on the property. I will therefore refer to this property as the "Rural House".
- [35] There was a great deal of trial evidence regarding the purchase and financing of this property, the subsequent building of a house on it, and the nature of the payments the parties made to or on behalf of G.H. Ltd. over the ensuing years. However, this evidence included very few contemporaneous documents, and everyone's memory was to at least some extent negatively impacted by the passage of time.
- [36] I accept the evidence of the respondent's father that G.H. Ltd. bought the land, and at the same time obtained an initial mortgage for about \$80,000, which money was spent to fund sewer and water connections and also some construction materials.
- [37] The respondent's father did not recall the purchase price. But the claimant believed it was about \$21,000, and the respondent remembered the price being \$27,000.
- [38] I do not accept the claimant's suggestion that she and the respondent spent tens of thousands of dollars on constructing the house on this property, including because they would have lacked the financial resources to do so and that for a decent chunk of time during construction they had separated and were living apart. I find it more likely that G.H. Ltd. funded a good portion if not most of the cost of materials, and also any work done by trades such as electricians.
- [39] I also do not accept that the claimant was at any point materially involved in the planning or construction processes. Those processes were carried out by the respondent, with a few exceptions such as assistance by a crew in framing the house and some work by an electrician.
- [40] The parties agree that the respondent never completely finished building the house. But they eventually reunited as a couple and moved into the Rural House. While there is apparent disagreement as to when, they were certainly living there in 2002. H.J.G. was born in 2003.
- [41] The respondent and the claimant agree that once living in the Rural House they equally shared responsibility for payments of \$800 or \$1,000 per month to G.H. Ltd. or towards the mortgage. The respondent testified that this money represented rent, but the claimant testified that it constituted payments-to-own, and thus the creation of an equity interest. The respondent's father referred to the payments as rent, but he also said that they covered the mortgage. I question whether, as he stated, they were made by the parties directly to the bank, given that neither the respondent nor the claimant testified to this effect, and both of them would have been directly involved in making such payments.

- [42] The respondent and the claimant agree that, in addition to these monthly payments, they paid for the utilities at the Rural House. The claimant testified that G.H. Ltd. paid for the home insurance.
- [43] I accept the testimony of the respondent's father that G.H. Ltd. later obtained a mortgage for about \$160,000, which may have been used to finance building a suite but in any event was put towards improving the house.
- [44] The ownership of the Rural House was a sore point between the respondent and the claimant when they lived there. But more generally, their relationship while living at the Rural House was often strained and acrimonious.
- [45] During this period, the claimant got a job working for a company I will refer to as A.T. Ltd., rising through the ranks until she was supervising other employees. The respondent continued to work in construction.
- [46] The claimant testified that she eventually had a higher income than the respondent, "at least on paper." However, there is no evidence upon which I am prepared to find that the respondent had any under-the-table income. I find that, by the time of their first separation, the claimant may have earned more than the respondent, and this was certainly the case just prior to her stopping work at A.T. Ltd. for health reasons in late 2015 or 2016.
- [47] The parties' first separation occurred in September 2009.
- [48] The claimant agreed in cross-examination, and I accept, that the respondent's mother paid her \$100,000 under a separation agreement, likely never signed, which was drafted by the claimant and with respect to which she received legal advice. The claimant further agreed that this payment was in full and final satisfaction of any child support or spousal support obligations, and was also intended to enable her to buy a nice home in which the children could live.
- [49] I do not find the respondent's testimony about the \$100,000 payment to be materially inconsistent with the claimant's cross-examination evidence in this regard. Both agreed that the respondent's mother paid this money so the claimant could buy a house, and that whether signed or not there was a separation agreement that referenced child support and spousal support.
- [50] I find that this payment by the respondent's mother was made in full and final settlement of any family law claims arising from the parties' separation.
- [51] I also find that, in making the payment, the respondent's mother was not intending to compensate the claimant for an equity interest in the Rural House. Rather, the payment was made for the purposes I have described above, which included a gift component meant to assist the claimant in buying a house for the couple's children. To the extent the claimant suggested the \$100,000 was paid in whole or part as compensation for her beneficial interest in the Rural House, her testimony does not reflect what actually happened.

- [52] Given these findings, the claimant cannot now seek to look behind the 2009 separation agreement in an effort to claim a beneficial interest in the Rural House. She entered into that agreement after obtaining legal advice. Moreover, neither the claimant's pleadings nor her trial brief claims an interest in the Rural House at the time of the 2009 separation.
- [53] After paying off some debts, the claimant purchased a house in a nearby community, which I will call the "City House". The purchase price was \$257,000, and her initial equity contribution was \$65,000. The respondent remained living at the Rural House. The parties parented H.G. and H.J.G. at their respective houses on a week-on, week-off schedule.

Start of Second Marriage-Like Relationship

- [54] The parties disagree as to when they again became spouses by virtue of resuming a marriage-like relationship. The claimant says this happened in October 2013, while the respondent says the marriage-like relationship did not resume until September 2018.
- [55] This section of my reasons focuses mostly on when the marriage-like relationship recommenced, which is relevant to the issue of property division.
- [56] Before setting out the relevant legal principles and determining when the marriage-like relationship resumed, to provide context I will mention three salient events that occurred between 2013 and 2018.
- [57] First, on June 2, 2015 G.H. Ltd. transferred the Rural House into the respondent's name. The respondent described the transfer as a gift from his mother. The respondent's father described it the same way, adding that he and his wife had long planned to make this transfer, which I take to be an implicit reference to one of the purposes for which G.H. Ltd. was incorporated.
- [58] Contemporaneous documentation for the transfer references a consideration of \$401,000, which the respondent explained was a value put on the transaction for the purposes of determining property transfer tax. The documentation shows, and the respondent's father agreed, that as part of this transaction G.H. Ltd. discharged CIBC's mortgage on the property. However, I was provided with no evidence as to the principal outstanding at that time.
- [59] The respondent's father testified that the \$401,000 amount was calculated by adding the initial purchase price for the vacant lot to the monies advanced on the two mortgages. However, he could not recall the initial purchase price, and the parties' evidence was that it was around \$25,000. Given that the initial mortgage was for \$80,000, I am somewhat sceptical as to whether the purchase price was truly as low as the parties indicated in their testimony. Regardless, and as explained further below, in my view \$401,000 likely represented a reasonable approximation of the fair market value of the Rural House as of June 2015.

- [60] There was evidence from the respondent and his father regarding further documentation, from November 2017, that purports to reflect a transfer of the Rural House at that time, also for a consideration of \$401,000. However, nothing much turns on these 2017 documents, because the respondent's father testified, and the parties agree, that the documents were created solely to resolve a tax issue faced by G.H. Ltd. Neither party suggests that the Rural House was not transferred to the respondent on June 2, 2015, as reflected in a land title registration document entered into evidence at trial.
- [61] The second salient event was a fire at the Rural House, which took place around November 2015. The fire caused extensive damage, after which the house was substantially rebuilt by hired trades people using insurance proceeds. The rebuild took about a year, resulting in a nicer house that likely increased the property's overall value.
- [62] The third salient event occurred in December 2015. The claimant left her position at A.T. Ltd. because of serious illness, and by 2016 was receiving monthly payments from Sun Life through A.T. Ltd.'s long-term disability plan. The claimant continues to receive those payments today.
- [63] I accept the claimant's evidence that Sun Life tops up the CPP disability payments she receives to ensure a total monthly income of \$4,500. The CPP payments are taxed, but the Sun Life top ups are tax free.
- [64] The claimant continues to suffer from several medical conditions that require treatment from specialists, and there is no real prospect she will ever resume working on a regular basis.

Legal Principles Governing whether Marriage-Like Relationship Exists

- [65] Section 3 of the FLA defines "spouses" to include unmarried persons living in a continuous marriage-like relationship for at least two years:

3 (1) A person is a spouse for the purposes of this Act if the person

- (a) is married to another person, or
 - (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or
 - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
- (2) A spouse includes a former spouse.
- (3) A relationship between spouses begins on the earlier of the following:
- (a) the date on which they began to live together in a marriage-like relationship;
 - (b) the date of their marriage.

- [66] For unmarried persons, establishing the existence of a marriage-like relationship is thus central to meeting the definition of a spouse in the FLA.
- [67] Spousal relationships are varied, and usually reflect the needs and desires of the couple. Accordingly, whether persons are spouses by virtue of a marriage-like relationship is determined on a holistic view of the relationship, considering and weighing all relevant factors, and not by adopting a checklist approach of factors considered in other cases. No one factor, whether present or absent, will be determinative. See *McDowell v. Andrews*, 2018 BCSC 2216 at para. 22; *Skawski v. Peters*, 2023 BCSC 2244 at para. 43; *Coad v. Lariviere*, 2022 BCCA 222 at para. 127.
- [68] The parties' intentions may be important in determining whether they lived in a marriage-like relationship. A key is whether they intended their relationship to be similar to marriage, particularly in the sense of it being of indeterminate, lengthy duration. But a court must test the parties' professed intentions against objective evidence of lifestyle and interactions, which provides direct guidance as to the circumstances of the relationship and thus may better reflect its true nature. See *Weber v. Leclerc*, 2015 BCCA 492 at paras. 17, 23-24; *Jones v. Davidson*, 2022 BCCA 31 at para. 24; *Dey v. Blackett*, 2018 BCSC 244 at paras. 195, 235.
- [69] While a checklist approach is to be avoided, some of the objective factors that may be relevant in this regard, and thus in determining whether persons are spouses, include whether and how the parties lived together, sexual and personal behaviour, domestic services, social activities, economic support, children, and the societal perception of them as a couple: *Dey* at para. 193; *McDowell* at paras. 23-24; *Bellerose v. Reda*, 2023 BCSC 748 at para. 48.
- [70] The "lived with" requirement in s. 3 of the FLA is approached flexibly and may be satisfied even where the parties did not live under the same roof and maintained separate residences. See *Matossian Estate v. Clark Estate*, 2024 BCSC 2214 at para. 65; *Blake v. Marining*, 2022 BCSC 1529, at para. 64.
- [71] The onus of establishing that parties were spouses within the meaning of s. 3(1) of the FLA rests with the party making that assertion: *Skawski* at para. 25; *Blake* at para. 65.

Determining when the Parties' Marriage-Like Relationship Resumed

- [72] The claimant testified that around Thanksgiving 2013, the respondent said he wanted to get back together as a family. As she wanted this too, they resumed their relationship, albeit maintaining separate residences.
- [73] The claimant explained that they would mostly stay at each other's houses, although the respondent would stay at hers more often, about three or four times per week. He kept clothing and toiletries at her residence, and she would do his laundry. She nonetheless brought clothing and other supplies to his house so she could stay there too. Together with their boys, they celebrated holidays, cooked meals and lived as a family unit. The claimant

also testified that when she became quite ill, the respondent stayed with her a lot, and did the shopping and looked after the kids.

- [74] By contrast, the respondent testified that, although they decided to give their relationship another try in 2013, the relationship soon returned to its previous unhealthy and toxic state.
- [75] The respondent indicated that during this time the relationship could be fantastic, followed by long periods of "not fantastic". There could be three or four months of good, then two weeks of "crap", or vice versa, and in the "not good" periods the communications could be very "spartan". During the bad periods, he might spend little or no time at the claimant's residence, and she rarely stayed at his place at all. The respondent in effect testified that there were not enough good times of sufficient length to justify moving in together and committing to a long-term relationship.
- [76] Each party testified that the relationship as they described it continued for several years, at which point they put into action a plan to move to Vancouver Island and purchase a home together. The claimant started getting the City House ready for sale, and sold it and moved into the Rural House in September 2018. The respondent put the Rural House on the market in early 2019, and sold it in August 2019. The parties and their boys then moved to Victoria, and later that same month signed a contract to buy the Family Home. In late October 2019, the purchase closed and they took possession of the property.
- [77] I prefer the claimant's evidence as to the general contours of the relationship between 2013 and 2018. I have come to this conclusion for several reasons.
- [78] To begin with, in my view the respondent overstated the extent to which the relationship would break down and the parties not see each other between October 2013 and September 2018. Emblematic of this tendency to exaggerate was his testimony in chief about a letter he wrote to the claimant dated December 16, 2013.
- [79] Asked to comment on this letter, the respondent read a brief passage and said it gave insight into the relationship at the time, which was that he was not very happy. In fact, while in the letter the respondent raises a concern with the claimant about her possible past romantic relationship with a third-party, he is also extremely affectionate and expresses a deep commitment to her. He calls the claimant the love of his life, his trusted partner, his lover, and his friend, and states that he wants them to have a future and grow old together. Given its contents, the respondent's description of this letter in chief is unduly one-sided and causes me to question his reliability regarding the nature of the relationship from 2013 to 2018.
- [80] Another reason I prefer the claimant's evidence over that of the respondent is that if, as he claims, they were in a toxic relationship during which they frequently spent long stretches of time barely communicating, it would make no sense for him to decide to move with her to Vancouver Island for the purpose of buying a house.

- [81] In chief, the respondent admitted to discussing this plan with the claimant as early as 2016. In cross-examination, he said they might have discussed the potential move in 2014, albeit as a "dream", but more likely did so in 2015 or 2016, although it took a while for them to get up and moving on this plan.
- [82] In his testimony, the respondent never suggested the move was precipitated by a material improvement in their relationship. Rather, he says they decided to move because their families were in Victoria, the weather was better there, and he wanted to leave construction work for something easier on his body. He also conceded that the claimant's health problems may have been a factor in deciding to move.
- [83] A similar point can be made with respect to the parties getting engaged in November 2018. In his testimony, the respondent provided no explanation as to why he would have gotten engaged had the relationship been so fractured that he was unwilling to commit to it in the long term. For example, he did not suggest that there had been a lengthy stretch of consistently harmonious relations that led him to change his mind and make a long-term commitment. In my view, the November 2018 engagement was a formal recognition of a commitment the parties had made to each other on getting back together in 2013.
- [84] Parenthetically, I do not agree with the respondent's submission that the evidence of the claimant's mother is materially inconsistent regarding when they began discussing a possible move to Vancouver Island or the seriousness with which they viewed this plan. The fact that the claimant's mother first heard about the plan in 2017 does not mean it had not been seriously discussed before.
- [85] Nor do I accept the respondent's argument that the claimant's failure to produce emails she testified she kept in relation to the planned move indicates that her testimony as to when the plan first took shape is fabricated. Her explanation about losing access to this email account because the password was only retrievable via a defunct work email address is plausible. So is her testimony about later destroying hardcopy documents relating to the move, because of the painful memories they engendered, after learning about the respondent's infidelity in July 2020.
- [86] I accept that from October 2013 until September 2018 the parties' relationship was at times tumultuous. But tumult or dysfunction does not mean a relationship cannot be marriage-like: *J.J.G. v. K.M.A.*, 2009 BCSC 1056 at para. 71.
- [87] And maintaining separate residences does not mean the parties could not be living in a marriage-like relationship. Keeping separate residences after having lived together may be consistent with a desire to maintain a long-term, permanent relationship by trying a new mode of living that can accommodate a particular challenge: see, e.g., *Roach v. Dutra*, 2010 BCCA 264 at paras. 14, 17, 20.

- [88] In my view, this is exactly what the parties were doing during this time. It explains why they did not move in together on resuming their relationship, although it appears that the claimant may have preferred living in a populated area whereas the respondent liked living on the outskirts. I therefore reject the respondent's argument that the fact they had two residences and were moving the children back and forth means the parties were not in a marriage-like relationship. But I would add that the children must have stayed fulltime at the claimant's house during the year or so the respondent testified it took to rebuild the Rural House after the fire in late 2015.
- [89] The respondent did not take issue with the claimant's evidence that the resumption of their relationship was sparked in 2013 by his calling her over the Thanksgiving weekend and expressing a desire not to be apart anymore. Indeed, the respondent testified that their decision to get back together in 2013 was made after they both "struck out" over the past few years in terms of relationships with other people. I find that the respondent was genuinely motivated to rekindle and permanently maintain his relationship with the claimant, as also expressed in his December 16, 2013 letter, and that he thereafter acted in accordance with that intention.
- [90] Such documentary evidence as exists also supports my conclusion. The claimant has filed a number of documents suggesting the parties were in a committed relationship during the time in question. They include a photograph of a custom-made Christmas ornament depicting the family together from 2013, the respondent's Facebook post in March 2014 announcing he was in a relationship, a photograph of the respondent holding a large turkey from Christmas 2014, and effusive handwritten declarations of love and commitment from the respondent that I find were written in April 2014 and May 2016.
- [91] In his closing submissions, the respondent submitted that the lack of any other documentation supporting a close and committed relationship during this period militates against finding that such a relationship existed. Viewed in the context of all of the evidence, however, I decline to draw this inference.
- [92] There are other reasons why documentation from this time may not be available (e.g., new phones or phone carriers, misplacing or discarding items during a move). In addition, the respondent has not produced any documents suggesting lengthy ruptures in the relationship between October 2013 and September 2018. I reject the suggestion that such documentation is by its nature unlikely to exist. For example, were the relationship truly as described by the respondent, one might expect there to have existed photographs showing him spending holidays or special occasions with people other than the claimant.
- [93] I have also taken into account that the claimant and the respondent took trips together during the period in question. For example, a Facebook post by the claimant from August 22, 2014 states that she is with the respondent at the Inn at Laurel Point on Vancouver Island. The claimant explained that they would sometimes take trips to Vancouver Island and stay at fancy hotels, and this was one such example. She also testified that she would

sometimes return to Alberta from a business trip, and he would pick her up at the airport and they would stay at a nice hotel for the night.

- [94] Not only did the respondent more or less confirm this evidence in his testimony, adding that they also took trips for the boys' hockey, but he complained that the claimant took vacations with the boys in the summer months, when he was unable to join them because of his work schedule. The respondent did not suggest that the structure of these vacations was the result of a sporadic and fractured relationship. Rather, he expressed regret or bitterness at not being able to accompany the claimant and the boys on more family trips during this period.
- [95] It is true that that the parties and their boys took family vacations to Mexico in 2007 and 2009, paid for by his parents, but never did so between 2013 and 2018. This argument would have more bite if there were evidence showing that the respondent went on vacations with the boys or other family members, but not the claimant, during this period.
- [96] The August 2014 trip to the Inn at Laurel Point carries further relevance because the respondent testified that the boys likely travelled with them to Vancouver Island but stayed with one of their families in Victoria. This testimony helps to undermine his suggestion, in closing submissions, that their families did not know they were in a relationship as late as 2015 or 2016. It also tends to undermine the evidence of the respondent's father that he saw no indication of any relationship between his son and the claimant in 2014 or the several years that followed. To the same effect is the respondent's testimony that during this period he would inform his parents when his relationship with the claimant was "not happening again", which could not have happened if his parents were unaware the relationship had resumed in the first place.
- [97] The respondent's suggestion that they did not present themselves to the outside world as being in relationship is based in part on his contention that the claimant admitted keeping their relationship secret, perhaps even as late as 2016 or 2017. This contention relates to questions asked in cross-examination about a trip to Vancouver. However, the cross-examination did not elicit evidence regarding the timing of this trip, and thus is not inconsistent with the claimant's evidence that they told others about getting back together around March 2014. Furthermore, as already noted the respondent agreed they made their relationship public in March 2014.
- [98] Also relevant to my finding regarding the nature of the relationship after October 2013 is the respondent's agreement in cross-examination that the claimant's mother would visit once or twice each year after 2013 and was truthful when she said she saw them together during these visits. I find it unlikely that the claimant's mother would have seen the parties presenting themselves as together on each visit if the relationship had as many ruptures, including lengthy ones, as the respondent claimed elsewhere in his testimony.
- [99] The respondent's concession regarding the evidence of the claimant's mother also carries weight in undermining the evidence of the respondent's father, which as noted is to the effect that during his occasional visits to Alberta he saw no indication of any domestic

relationship between the parties from the time of their first separation in 2009 until, it appears, 2018 or even later. Plus, the respondent's father testified that during visits to Alberta in September 2018 and 2019 he saw no sign of the claimant living at the Rural House. This evidence is inconsistent with the evidence of both parties that the claimant moved into the Rural House after she sold her house in early September 2018.

- [100] I also note that the respondent's father suggested the parties did not present as a couple when he visited for H.G.'s high school graduation in May 2014, because they were not walking around "holding hands or giggling". It is possible the respondent's father was being facetious in describing this basis for his conclusion. But I nonetheless find his description to be unhelpful in deciding whether the relationship was marriage-like. The evidence of the respondent's father on this point also seems inconsistent with the respondent's March 2014 Facebook announcement that he was in a relationship, and the trip he and the claimant took to the Inn at Laurel Point in August 2014.
- [101] Having concluded that the claimant's evidence is preferable to that of the respondent with respect to the nature of their relationship from 2013 until 2018, in my view for the following reasons that relationship was marriage-like in nature commencing in November 2013.
- [102] Both parties agree the relationship was sexual throughout the period in question. I conclude on the evidence that the claimant was faithful to the respondent, and I reject his bare assertion, unsupported by any detail, that he had relationships with other women during this period. Alternatively, if the respondent had any such relationships, they were surreptitious affairs that he did not reveal to the claimant and did not detract from his intention that the relationship be of indefinite, lengthy duration.
- [103] Although the claimant and the respondent did not spend all their time under the same roof, they did so quite often, in particular at the claimant's house. They often shared meals and cooked together, and kept clothing and other personal items at each other's homes. The claimant did the respondent's laundry.
- [104] The claimant and the respondent were also co-parenting their children at both residences. The claimant testified that she paid most of the children's expenses from 2010 until 2012, but after that paid one half. I accept this evidence, and also the claimant's testimony that, starting in late 2013, they presented themselves to the boys as being in a relationship, and had informed others of this by March 2014. The respondent admitted that at his EFD he stated that he intended that the boys see and feel that he and the claimant were together.
- [105] I further find that the parties spent most major holidays together, as the respondent had wished for in his phone call to the claimant around Thanksgiving 2013.
- [106] The parties also used their two houses as a way to spend time apart from the children, because H.G. was old enough to babysit H.J.G. The claimant testified about them sometimes having "date nights" at one of the houses when the boys were at the other. I prefer her evidence over the respondent's with respect to the frequency of these date nights.

- [107] I do not view the claimant's EFD evidence, put to her in cross-examination, as materially inconsistent with her trial testimony regarding the frequency or nature of the date nights, or for that matter regarding how often the children went back-and-forth.
- [108] Nor do I view the cross-examination of the claimant on her EFD evidence regarding how often they stayed or had meals at each other's houses as demonstrating material inconsistency or a shifting position that undermined her credibility or reliability on the core essentials of the nature of the relationship during this period.
- [109] The respondent provided important emotional support for the claimant during her illness, including by taking her to medical appointments. He also did the grocery shopping for the claimant while she was ill. This is the sort of conduct one would expect from a spouse.
- [110] The respondent's handwritten communications to the claimant further suggest he viewed the relationship as long-term, and was deeply committed to her, despite the relationship being at times volatile. The claimant testified to the same effect, including admitting that they had fights and the relationship could be rocky, and I accept her evidence in this regard. As already noted, the relationship's volatility was a reason, and probably the primary reason, why the parties maintained two residences.
- [111] The claimant's mother visited the couple in Alberta during this time period. Her sister did so too, albeit only in October 2017. I accept their evidence that the parties presented as a domestic couple during these visits. For instance, the claimant's mother says the respondent was staying overnight, doing grocery shopping and cooking on the barbeque. For the reasons already provided, the evidence of the respondent's father to the contrary does not cause me to reject the claimant's evidence regarding the nature of the relationship starting in late 2013.
- [112] During this period the parties had separate bank accounts, did not know much about each other's finances, and were individually responsible for the finances of their own residences. However, their finances were not comingled when they lived together prior to the 2009 separation. Plus, their incomes were not so disparate that the failure of one to assist the other with expenses weighs against finding them to be in a marriage-like relationship. In any event, financial dependence or interdependence is not an essential characteristic of a marriage-like relationship: Weber at para. 12.
- [113] The parties filed their tax returns as "single" during this period, and the claimant stated she was single in a CPP disability benefits application signed February 26, 2018. However, I accept her explanation that she viewed "common law" status as applying when a couple lived together as opposed to having separate residences. Nor do I view as implausible her explanation for not listing the respondent as a beneficiary on her A.T. Ltd. pension during this period, namely, they had agreed the boys would be beneficiaries because the respondent was to receive a significant inheritance from his parents.

[114] In concluding that the parties' marriage-like started in November 2013, I have not overlooked the respondent's October 8, 2019 emails, discussed in more detail below. Those emails show the relationship could be very tumultuous. But I do not accept that expressions of dissatisfaction with the relationship around that time mean it was not marriage-like starting in late 2013. Those expressions simply reflect tensions that began to grow as the reality of financial comingling became more imminent with the sale of their Alberta properties and the approaching purchase of the Family Home.

Move from Alberta to the Family Home

[115] The parties' decision to move to Vancouver Island was put into concrete action in 2017, around the time the claimant's sister and her partner visited the claimant to assist in fixing up the City House to ready it for sale. The respondent also assisted, for example by patching the roof and fixing an electrical problem in the kitchen.

[116] The claimant sold her house on September 3, 2018, then moved into the Rural House with the respondent. After paying off her mortgage and unspecified debts, the claimant was left with about \$100,000, which she intended to contribute towards the purchase of their home on Vancouver Island. The claimant ended up putting only \$60,000 into the Family Home, because at the bank's recommendation she paid off a \$40,000 car loan to increase her monthly income stream and thus obtain a better mortgage rate.

[117] After moving into the Rural House, the claimant helped the respondent prepare the house for sale. As the house had been rebuilt after the fire, I find there was not much to do in this regard and her role primarily involved interior decoration. She spent no more than \$1,000 in the process.

[118] The respondent sold the Rural House for \$515,000 on August 12, 2019. After adjustments, he received \$489,840.61. He paid off some debts, including from credit cards and unpaid taxes, leaving about \$408,000.

[119] Around this time, the parties moved to Victoria with their boys and began looking for a property to buy. They kept the proceeds they intended to contribute towards buying a new home in their respective bank accounts.

[120] The respondent testified that the plan was to buy a property in which the family could live but that could also potentially provide him with revenue to retire. As noted, he was keen to stop construction work. He believed that buying property in the area where the Family Home was located might allow him to start a business conducting ATV or surfing tours, or make money as a handyman, or perhaps start a legal grow op. He and the claimant could also run an Air B & B. In her testimony, the claimant more or less agreed.

[121] Both parties liked the Family Home, and in August 2019 entered into a contract for its purchase for \$880,000. The respondent paid the \$25,000 down payment from the Rural House proceeds.

- [122] The respondent testified that, because he had no pension, little in his RRSP, and did not want to work as hard as he had been working in construction, he never intended to give his proceeds from the Rural House to the claimant. She had her own income in the form of her disability pension, a financial cushion that he lacked.
- [123] On being shown a legal document relating to the Family Home indicating that he and the claimant were mortgagors "as joint tenants", the respondent testified that at the time he thought this meant they would both be living there. He recounted attending with the claimant to meet their real estate lawyer regarding the purchase of the Family Home. He said the meeting lasted five or ten minutes, and there was no discussion about how he and the claimant would be buying the property.
- [124] In cross-examination, the respondent agreed that they only discussed buying the property as joint owners and there was no prenuptial agreement, although he testified that he wrote a letter to the claimant and there were heated arguments. The respondent also said that he had spoken to some people and the general consensus was that both his and the claimant's investments in the Family Home would be protected.
- [125] The "letter" referenced by the respondent is an October 8, 2019 email to the claimant. The relevant parts are worth quoting in full because both parties rely on the email in their submissions regarding the respondent's intention in contributing the Rural House sale proceeds to the purchase of the Family Home:

Since our sacred engagement back in November you have wanted to [go] our own ways 3 times. That's not including 2 times previous the engagement. I feel that all of those incidents weren't worthy of being disrespected in that manner. The other day in an argument about the gp house [i.e. the Rural House] you said you should've got half and that's the law. You said your cheques [were] your money and i was trying to be controlling. i don't want my money [controlled] either.

You never liked that over your head and I understand but on the other hand I'm not going to live my happy years worrying when you want to separate and take half by law. i cant live my life always worrying about that. how can i be a good husband father humane-being. i believe that with couples therapy we can do anything.

I want a contract stating \$ invested just between you I and a lawyer and we will proceed as a work in progress and try to live a happy life out there. AFTER 5 years [of] a good marriage we could get all that changed. Everything made on the house equity would be 50/50.

I give you my word I will never say judge or in any way harm you with this. I truly love you and want us out there get married have kids.

And if you do agree we move on with no past resentment no shit history just a clean start and a new life sorry if this upsets you I just can't spend my life walking on thin ice all the time. Amy i love you we just have some issues to get past then enjoy the life we need and dream.

LOVE YOU

- [126] The respondent testified that this email expressed his desire to be able to retire without everything being taken away from him. He explained that, after entering into the contract of purchase and sale for the Family Home, the claimant had refused to put her disability money into their joint account, which had resulted in arguments. The \$408,000 he had committed to the Family Home was his nest egg, and the "contract" proposed in his email was to ensure it was safe.
- [127] The respondent agreed that the claimant did not accede to his proposal for a contract, and he never obtained advice from a lawyer.
- [128] On October 8, 2019, the respondent also sent a second email to the claimant, in which he expressed similar worry about their relationship and her refusal to be his business partner in a proposed grow-op.
- [129] In her testimony, the claimant agreed that the respondent wanted her to put her disability pension into a joint account. While she was prepared to do so eventually, she had concerns about him accessing her money because he was consuming a lot of alcohol. The claimant testified that for this reason, and also because COVID-19 and other events intervened, she never acceded to his request.
- [130] I do not accept the claimant's suggestion that discussions about her sharing access to her disability pension arose only after they moved into the Family Home. Rather, these discussions preceded the respondent sending his email on October 8, 2019. I come to this conclusion for four reasons.
- [131] First, the respondent testified that prior to the closing he and the claimant argued about money, with the claimant taking the position that her disability pension was her money, not his. Concern that the respondent might be fabricating this testimony after-the-fact is rebutted by his October 8, 2019 email to the claimant, which is consistent with them having argued over whether he would have access to her income stream after they moved into the Family Home.
- [132] Second, the claimant initially testified that they had no discussions about their ability to control each other's money in relation to the purchase of the Family Home or otherwise, apart from one occasion where she wanted to spend \$700 on a rug. She also said they had no written communications about the financing for the Family Home. These claims are undercut by the respondent's October 8, 2019 email. The claimant's credibility in this respect is also negatively impacted by her initial refusal to admit to having received the email, which she only retracted on being reminded that it was on her list of documents.
- [133] Third, the respondent's testimony regarding when these discussions occurred makes sense. The parties had entered into a contract of purchase and sale for the Family Home in August 2019. By October 8, they were only a few days away from getting mortgage approval and opening a joint bank account. The closing was to take place at the end of the month. In

cross-examination, the claimant did not dispute that, as the respondent said in his email, after their November 2018 engagement she had more than once raised the prospect of them going their own ways, although she basically suggested such statements were not serious. Based on these factors, the time was particularly ripe for pointed discussions about sharing her disability income.

- [134] Fourth, I find unconvincing the claimant's suggestion that the respondent only mentioned pooling all their money in the joint account in February 2020, and that while she initially agreed various things happened to delay this happening, such as COVID-19, and that she later changed her mind because the respondent was drinking heavily and she was unsure where his money was going.
- [135] I find it more likely that the claimant refused to comingle their incomes before they moved into the Family Home, for the reasons previously stated, and perhaps also because by that point concerns about the respondent's excessive alcohol consumption had already manifested. In this latter regard, I accept the evidence of the respondent's father that, while staying with him and his wife on arriving in Victoria from Alberta, the respondent started each day by drinking coffee, Baileys and whiskey.
- [136] On October 15, 2019, RBC approved the parties for a \$420,000 mortgage on the Family Home.
- [137] On October 17, 2019, they opened a joint account at RBC. Neither the respondent nor the claimant ever transferred the proceeds from the sale of their Alberta properties into this joint account.
- [138] The parties closed their purchase of the Family Home as joint tenants on October 30, 2019. The respondent contributed \$383,564.82 by way of a bank draft he had purchased using funds from his personal bank account. The claimant contributed \$60,000 from her bank account.

Life at the Family Home and Date of Separation

- [139] The parties and their boys moved into the Family Home at or shortly after the date of closing.
- [140] They each deposited \$1,000 monthly into the joint account, which was used to pay expenses related to maintaining the Family Home.
- [141] The monthly mortgage payment was \$1,921 until refinancing in October 2024, at which point it became about \$2,900.
- [142] The parties had a line of credit secured by the mortgage, which the respondent testified he never used. The claimant did not contend otherwise in her evidence.
- [143] When the parties took possession of the Family Home, there was already a tenant in a suite in an outbuilding. That tenant remained in place for the time being.

- [144] The parties took steps to establish a second rental unit. The respondent converted a workshop into a large suite for this purpose, which included making a bedroom and putting in new lighting, countertops, and cabinets. Had he worked on this project full-time, it would have taken about two or three weeks.
- [145] The respondent took no steps towards starting his own business. He explained that this was partly because the Family Home was in a beautiful area and he enjoyed going to the beach. But it was also because he had no income and the claimant did not share her disability pension with him, rather keeping it in her personal bank account. He therefore had to pay his own half of the rent, bills and incidentals for the Family Home. There was little work in the area, so he worked for his sister as a handyman at her hobby farm about 70 km away, near Victoria, and typically slept over at that farm on Sunday to Thursday nights.
- [146] The respondent was drinking heavily when they were living at the Family Home. The claimant testified to this effect, and the respondent agreed. The respondent's father was sufficiently concerned that, whether before or after the parties moved into the Family Home, he put the respondent in touch with a psychiatrist connected to a residential detoxification and recovery home called Cedars. But the respondent's father indicated that his son was not yet ready to address his drinking problem.
- [147] The claimant testified about two especially concerning incidents that involved excessive alcohol consumption by the respondent. The respondent accepts that the facts she recounted were accurate.
- [148] I will review the incidents later in these reasons. At this point, it is enough to say that the second incident occurred in late June 2020, and ended with the respondent physically assaulting the claimant and H.J.G. This event was the catalyst for the respondent to enter a residential program at Cedars in early July, paid for by his father.
- [149] The Cedars program ran for about 60 days. While there, the respondent had limited contact with the outside world. He was permitted only phone calls in the first week, but sent letters to the claimant and the boys then and in the weeks following. In these letters, the respondent expressed great love and gratitude to all three of them and remorse for his actions during the incident in late June.
- [150] After the respondent's first week at Cedars, the claimant was allowed to visit, but testified that she only did so a few times because of COVID-19, so they mostly used FaceTime.
- [151] The claimant testified that on August 19, 2020, the respondent told her that instead of living at the Family Home after finishing his stay at Cedars, he was going to a "halfway" house in Victoria. He also said that she had triggered and was responsible for his addictions.

- [152] The claimant testified that the respondent did not say he wanted to separate, but she was extremely upset and after finishing the phone call overdosed on pain medication. At the hospital, she falsely denied having tried to commit suicide, but a few days later was still having suicidal thoughts, and checked herself into the hospital, where she stayed for 10 days.
- [153] The claimant recounted that she was still in the hospital when the respondent left Cedars, which would have been late August or early September 2020. She said he had no visitors at the halfway house because of Covid 19, but the halfway house was near the hospital and he would drive over in his car and wave as they spoke on the phone.
- [154] The claimant testified that the respondent was at the halfway house for about a year, until August or September 2021. She says they did not get together often during this time, but spoke by phone once or twice every day, updating each other about what was going on.
- [155] The claimant testified that it was only upon receiving a letter from the respondent's lawyer dated September 20, 2021 that she learned that he wished to separate.
- [156] For his part, the respondent testified that after about 30 days in Cedars his counselling led him to conclude that he had been in a mentally abusive relationship with the claimant, who made him feel inadequate, and that the relationship was bad for his mental and physical health. He said that his communications with the claimant became less frequent, and his letters to her petered out.
- [157] The respondent testified that by the end of his time at Cedars he had decided not to go back to the relationship with the claimant, and so his father paid for him to live at the halfway or "sober" house in Victoria. He said it was around this time that he told the claimant that their relationship had contributed to his alcoholism, and that he was ending it and was not coming home. In cross-examination, the respondent stated that this conversation took place perhaps a couple of months after he arrived at the halfway house, and so could have happened in October or November 2020.
- [158] The respondent entered into evidence an email to him from his lawyer, dated December 18, 2020, asking for the claimant's email address for the purpose of sending her a letter, a draft of which the lawyer would first provide to the respondent for approval. The respondent testified that he had visited the lawyer at the start of December, although he had decided his relationship with the claimant was over once he left Cedars.
- [159] The respondent also described a meeting with the claimant a month or two after entering the halfway house, at which they had a screaming match. The respondent said the claimant asked him to come back to the Family Home in 2020, but he had no communications with her about their relationship in 2021, although they did discuss him trying to re-establish a relationship with H.J.G.

- [160] The respondent further testified that he left the halfway house in March 2021, and moved into a recreational vehicle on his sister's property, where he lived for over two years, until sometime in 2023.
- [161] In her closing written submissions, the claimant's position was that after the respondent moved into the halfway house they went back and forth on the topic of him returning to the Family Home, but "at least from her point of view the first clear indication to her that [he] was truly separating" was the letter she received from his lawyer in September 2021 (original emphasis).
- [162] By contrast, the respondent says the marriage-like relationship ended when he told the claimant over the phone that he would not be coming back to the Family Home, which he estimated happened in October or November 2020.

Legal Principles Governing when Marriage-Like Relationship Ends

- [163] Determining whether a separation has occurred involves considering a range of factors, including whether the characteristics of marriage continued following a physical separation: *Gupta v. Kumar*, 2023 BCCA 106 at para. 13; *O.M. v. V.G.*, 2025 BCSC 209 at para. 250; *C.L.D. v. J.J.P.D.*, 2024 BCSC 1123 at para. 47.
- [164] Section 3(4) of the FLA provides that, as evidence of separation, the court may consider a communication by one spouse to the other spouse of an intention to separate permanently, and action by a spouse that demonstrates the spouse's intention to separate permanently.
- [165] The wording in s. 3(4) reflects that it only takes one spouse to end a marriage-like relationship by declaration or conduct. Mutuality of intention is not necessary, nor is an unequivocal communication to the other spouse of an intention to separate. Generally, if the parties have physically separated and at least one of them has evinced a settled intention of living separate and apart, and taken steps consistent with that intention, separation under the FLA will have occurred. See *Gupta* at para. 13; *Nearing v. Sauer*, 2015 BCSC 58 at paras. 54-56; *H.S.S. v. S.H.D.*, 2016 BCSC 1300 at paras. 40-44, rev'd on other grounds, 2018 BCCA 199, leave ref'd 2019 CanLII 7962 (SCC); *O.M.* at paras. 245-248; *C.L.D.* at para. 45.
- [166] Some degree of physical separation after an argument does not, without more, automatically bring a relationship to an end. A break of this sort may constitute a mere "cooling off" period falling short of demonstrating a settled intention to terminate the relationship. In such cases, the marriage-like relationship will have continued despite the physical separation. A marriage-like relationship may also continue where one party has moved out of a shared home for health reasons. Determining whether the separation is only physical in nature, as opposed to being a separation at law, involves viewing the evidence holistically in light of the particular relationship in issue. See *L.T.F. v. R.B.F.*, 2023 BCSC 834 at paras. 82-88; *M.P. v. P.P.*, 2024 BCSC 2138 at para. 54; *Roach* at para. 17.

Determining when the Parties' Marriage-Like Relationship Ended

- [167] Applying these legal principles to the evidence before me, I find that the parties had separated by the beginning of November 2020.
- [168] Despite his testimony to the contrary, it is possible that in the phone call that precipitated the claimant's overdose and ensuing stay in the hospital the respondent stopped short of expressly stating he was ending the relationship. But based on her reaction to the information conveyed by the respondent, I find that his expression of dissatisfaction fundamentally destabilized if not shattered the relationship's foundations. If the respondent stopped short of expressing an unequivocal intention to permanently separate, it was only just.
- [169] This phone call must also be viewed in the context of what was happening, and about to happen, in the relationship. The respondent never returned to live at the Family Home after leaving Cedars. In fact, he appears to have spent no time there until 2024, when he attended to assist in readying the property for sale. Nor is there any indication the respondent did anything to help manage the Family Home while living offsite.
- [170] And even on the claimant's testimony, in the year that passed between his leaving Cedars and the claimant receiving the lawyer's letter, the respondent spent almost no time in her company.
- [171] Not surprisingly in light of these indisputable facts, there is no evidence that during this period the claimant and the respondent presented themselves as a couple to the world, including to their children.
- [172] I do not accept the claimant's testimony about the frequency of their communications in the year after the respondent left Cedars. Daily communications about quotidian matters, as she claims, are profoundly inconsistent with the respondent staying away from the Family Home and her, at least absent some viable explanation, and the claimant has provided none. Such communications are also inconsistent with the claimant's apparent ignorance of the respondent moving from the halfway house to his sister's property in March 2021, a point on which he was not challenged in cross-examination.
- [173] Although not necessary to the conclusion I have reached regarding the separation date, it is supported by two other factors.
- [174] First, bank statements from the parties' joint account indicate that after October 2020 there were no longer monthly deposits of \$1,000, which was the amount the respondent had contributed for his share of expenses since they took possession of the Family Home. In January 2021, a pattern of \$600 monthly deposits commenced. This evidence is consistent with both parties' testimony that at some point after leaving the Family Home the respondent reduced his monthly contribution to household expenses to \$600.

- [175] There is no suggestion that the respondent changed his monthly deposits in these ways because of financial hardship or some other reason, while remaining committed to or even equivocal about his relationship with the claimant. I view the changes in his contribution pattern as more consistent with his having made a firm and final decision to end the relationship and live elsewhere permanently.
- [176] My view in this respect is somewhat reflected in the claimant's closing written submissions, where she describes the respondent's \$600 per month contribution as having been made "in the years since separation, representing undefined without prejudice to support/or mortgage assistance" (emphasis added).
- [177] Second, the respondent's father testified, and I accept, that after leaving Cedars the respondent stated that he did not want to have anything to do with the claimant. I have concluded that this statement of future intention by the respondent to his father was made in a natural way and not in circumstances raising a suspicion as to its reliability. It is therefore admissible as an exception to the hearsay rule: *R. v. Bottomley*, 2023 BCSC 267 at para. 71; Paciocco, Paciocco & Stuesser, *The Law of Evidence*, 8th ed., 2020, at p. 225-227.
- [178] In sum, I conclude that by November 1, 2020 at the latest the respondent had formed a settled intention to permanently end his relationship with the claimant and had followed through on this intention with his actions. The marriage-like relationship therefore ended as at this date.

Sale of the Family Home

- [179] Shortly before closing submissions at trial, the parties entered a contract to sell the Family Home for \$1.35 million not long afterwards. The respondent's revised Scott schedule, filed in May 2025, indicates that the sale was completed, and lists a few of the associated expenses paid out of the proceeds, such as realtor commissions, discharging the mortgage and outstanding property taxes.
- [180] There were likely some other expenses associated with the sale, but based on the information before the court the net proceeds were in the vicinity of \$933,000. Pursuant to a consent order made May 7, 2024, each party has probably already received an interim distribution of \$100,000 from these proceeds.

Division of Family Property and Debt

- [181] A main dispute between the parties concerns the division of the remaining proceeds from the sale of the Family Home.

- [182] Issues on which they disagree include whether the respondent had a beneficial interest in the Rural House when the marriage-like relationship started on November 1, 2013, and whether the portions of the proceeds of the sales of the Rural House and the City House that constituted excluded property became family property when the parties subsequently purchased the Family Home as joint tenants.
- [183] The division of the parties' other assets and their debts is mostly uncontentious. But there are disputes regarding whether and to what extent the claimant must share post-separation rental income from the Family Home with the respondent, and whether the respondent is obligated to cover one half of certain post-separation costs of maintaining the property.
- [184] Before addressing these issues, I will review some of legal principles bearing on the division of family property and debt.

Legal Principles Governing Division of Family Property and Debt

- [185] The division of family property and debt is governed by Part 5 of the FLA, which consists of ss. 81 to 109.
- [186] Under s. 81, on separation each spouse is presumptively entitled to an undivided half interest in all family property and is equally responsible for family debt, regardless of their respective use or contribution. The right to family property and the responsibility for family debt thus crystallize on separation: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38; *Weaver Estate v. Weaver*, 2022 BCCA 79 at paras. 36, 41, 57.
- [187] Section 84(1)(a) defines family property as all real and personal property, legally or beneficially owned by at least one spouse at separation, as well as property acquired after separation if derived from family property. *Dignard v. Dignard*, 2025 BCCA 43 at para. 29 [*Dignard (BCCA)*].
- [188] However, s. 85 excludes certain categories of property from family property, including property acquired by a spouse before the relationship began, inheritances and gifts from a third party.
- [189] A party seeking to rely on s. 85 must establish the exclusion and its value on a balance of probabilities. If documentary evidence is unavailable, the party will need to testify as to their recollection. The trial judge is nonetheless permitted to draw reasonable inferences from evidence that is less than certain or precise to do justice between the parties. See s. 85(2); *Shih v. Shih*, 2017 BCCA 37 at paras. 42-45; *Brazinski v. Brazinski*, 2023 BCCA 359 at para. 81.

- [190] Property derived from excluded property or its disposition is also excluded property (s. 85(1)(g)). But the increase in value of excluded property, after the later of the date when the relationship began or the property was acquired, is family property and thus presumptively shared equally (s. 84(2)(g)). The increase in value must be proven by the spouse making the claim. See *Mills v. O'Connor*, 2025 BCCA 34 at para. 51; *Loberg v. Loberg*, 2023 BCSC 2283 at para. 15.
- [191] Where excluded property increases in value during a spousal relationship so as to become family property, that increased value can be viewed as analogous to a contribution to a mixed fund. As a general proposition, the exercise of tracing excluded property through a co-mingling of excluded and family property is performed on a pro rata ex post facto basis. See *Mills* at paras. 99-102.
- [192] Where one spouse transfers excluded property to the other spouse, the question arises as to whether it remains excluded or instead becomes family property. The intention of the transferring spouse is the key to answering this question. If that spouse intended the property as a gift, and there is no agreement otherwise, it will become family property. See *Venables v. Venables*, 2019 BCCA 281 at para. 95; *Namdarpour v. Vahman*, 2019 BCCA 153 at paras. 25-40; *Brazinski* at paras. 40, 72-73; *Cohoon v. Stobo*, 2023 BCCA 479 at paras. 15-18, leave ref'd 2024 CanLII 76324 (SCC).
- [193] The broad factual circumstances of the transaction may inform the assessment of the transferring spouse's intentions, but will generally not, without more, determine whether a gift or inheritance remains excluded property or alternatively loses that character. In each case, the judge must consider all the circumstances, including both direct and indirect evidence, to determine the transferor's intentions. Evidence arising after the transfer may be considered if relevant to the transferor's intent at the time of the transfer, but must be reviewed critically. See *Namdarpour* at para. 40; *Cohoon* at paras. 20-22.
- [194] There appears to be some debate as to whether the presumption of advancement continues to play any role in determining the transferring spouse's intention. Compare, for example, *Andersen v. Andersen*, 2021 BCSC 2598 at paras. 38-47, with *Dignard v. Dignard*, 2024 BCSC 104 at paras. 44-48, aff'd without reference to this issue, *Dignard* (BCCA). That said, the presumption has been abolished for proceedings, unlike this one, commenced after May 11, 2023: Family Law Amendment Act, S.B.C. 2023, c. 12; *Dignard* (BCCA) at para. 30.
- [195] In any event, as will become evident below I need not engage with this debate to resolve the issues arising in the case at bar.
- [196] Pursuant to s. 86, family debt includes all financial obligations incurred by a spouse from the beginning of the relationship until separation, but also after separation where incurred to maintain family property. The party alleging the existence of the debt has the onus of establishing it, and if arising after separation of proving it was incurred to maintain family property. See *Chatha v. Uppal*, 2018 BCSC 6 at para. 309.

- [197] Section 87 provides that the presumptive date for valuing family property or debt is the date of the trial, and that the value of family property must be based on its fair market value.
- [198] Section 97(1)(b) permits a court to make any order that is necessary, reasonable or ancillary to give effect to a division of property or family debt under Parts 5 and 6 of the FLA.
- [199] Under s. 95(1), the court may order an unequal division of family property or debt on the basis of significant unfairness. The relevant factors the court may consider in deciding whether to order an unequal division are set out in s. 95(2) and (3):
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
 - (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

- [200] Section 95 seeks to increase certainty, predictability and fairness in property division by reducing, but not eliminating, the discretion of the courts to depart from equal division. This purpose is accomplished in two ways. First, by requiring significant unfairness, not just unfairness, as a threshold for departing from equal division. Second, by more precisely identifying the factors to be considered in applying this threshold. See Jaszczewska at paras. 36-37, 41.
- [201] To meet the high threshold in s. 95(1), the party seeking unequal division must show unfairness that is "significant", which connotes something compelling or meaningful having regard to the factors set out in s. 95(2). The general rule of equal division thus prevails unless persuasive reasons can be shown for a different result. Ultimately, a different result requires, "something objectively unjust, unreasonable or unfair in some important or substantial sense". See Jaszczewska at paras. 41-42; Dignard at para. 33; Mills at para. 54.
- [202] Under s. 96 as it stood prior to the Family Law Amendment Act coming into force on May 11, 2023, and thus as it applies in the case at bar, a court must not order the division of excluded property unless it would be significantly unfair not to do so on consideration of the following factors: (i) the duration of the relationship between spouses; and (ii) a spouse's direct contribution to the preservation, maintenance, improvement, operation or management of excluded property.
- [203] The phrase "significantly unfair" as used in s. 96 requires the party seeking a division of excluded property to show an unfairness that is compelling or meaningful on a consideration of the just-mentioned factors. Division will be justified where the consequences of not dividing the property would be so weighty as to produce an unjust or inequitable result: Venables at para. 90-91; Small v. Small, 2020 BCSC 707 at para. 113-114.

Calculating Excluded Property in the Parties' Alberta Houses

- [204] When the parties' marriage-like relationship commenced in November 2013, the claimant's interest in the City House was excluded property. Any appreciation in the value of the City House from that point until its sale in 2018 is family property.
- [205] The claimant paid \$65,000 towards the purchase price of the City House when she bought it for \$257,000 in 2010. She testified that she sold the property for \$325,000 in 2018, which indicates an increase in fair market value of \$68,000, or about 26.4% over the purchase price.

- [206] There is no evidence directly bearing on the fair market value of the City House on November 1, 2013. However, pro rating the \$68,000 increase in equity over the roughly eight years she owned the property, its increase in fair market value in the three years from its purchase until the start of the marriage-like relationship would have been about \$25,500. This increased value is excluded property. The remainder of the increase in fair market value as at the date of sale in 2018 is family property, namely, \$42,500.
- [207] I have no evidence whatsoever as to the extent to which the claimant may have increased her equity in the City House prior to the start of the marriage-like relationship by making mortgage payments. Despite bearing the onus of proving the value of excluded property, in written submissions submitted at my request following the trial the claimant did not suggest any particular amount in this regard. Accordingly, I have calculated the ratio of excluded to family property for the City House without taking into account any increase in equity attributable to mortgage payments.
- [208] Based on the above analysis, I find that the equity in the City House when sold in 2018 was about \$133,000, comprising the claimant's payment on purchasing the property (\$65,000) plus its increase in market value during the period in which she held it (\$68,000).
- [209] The part of the equity constituting the claimant's excluded property is \$90,500, comprising her payment on purchase (\$65,000) plus the increase in value between 2010 and 2013 (\$25,500). Her excluded property thus constitutes 68% of the total equity, while the family property component amounts to 32%.
- [210] As for the Rural House, this property was not legally owned by the respondent when the marriage-like relationship started in November 2013. The legal owner was G.H. Ltd., which transferred it to the respondent about 19 months later, on June 2, 2015.
- [211] However, the issue arises as to whether the respondent had a beneficial interest in the Rural House prior to the date legal title was transferred to him by G.H. Ltd., and in particular whether he held such an interest when the marriage-like relationship started.
- [212] The claimant made this assertion in passing in closing submissions, but neither party addressed the issue in a focussed way. I therefore asked for additional written submissions. In those submissions, the claimant urged me to determine the issue through application of the principles of unjust enrichment, which are set out in cases such as *Kerr v. Baranow*, 2011 SCC 10. The respondent thus focussed on those principles in his responding submissions, and I have likewise conducted my analysis based only on the concept of unjust enrichment.
- [213] In my view, unjust enrichment has not been made out because, at the very least, there was a juristic reason for any enrichment and corresponding deprivation flowing from the respondent's work in building the residential structure at the Rural House and covering the mortgage payments while he lived there.

- [214] Specifically, based on the evidence before me I find that the respondent and his parents, through G.H. Ltd., had an agreement whereby G.H. Ltd. would buy the land and obtain mortgages to pay for improvements to the property, and provided that the respondent built a house and covered the mortgage payments his parents would transfer him the property at a time of their choosing. Their decision to do so when they did, and not earlier, was entirely consistent with this agreement.
- [215] This agreement is fundamentally inconsistent with any expectation on the respondent's part that he would incrementally acquire a beneficial interest in the property prior to transfer of legal title. I accept the respondent's evidence to the effect that he trusted his parents to determine in their sole discretion when the transfer would occur, and that in the meantime he was getting a good deal living on the property in return for modest monthly payments and his sweat equity in building the house.
- [216] To the extent that, in his evidence, the respondent's father referred to his children "earning equity" in properties prior to the properties being transferred to them by G.H. Ltd., I find that he was using a turn of phrase that was not intended to, and did not, reflect the legal reality of the agreement he and his wife had with their children.
- [217] I thus reject the claimant's evidence that the agreement between the respondent and his parents was "pay-to-own", and that the parties' monthly payments were in essence repayment of a loan from G.H. Ltd. that enabled the purchase of the Rural House. As explained earlier, I also reject that the \$100,000 payout to the claimant and the related settlement in 2010 in any way reflected or recognized that she and/or the respondent held a beneficial interest in the Rural House.
- [218] For these reasons, I do not accept the claimant's submission that, based on the principles of unjust enrichment, when the parties resumed their marriage-like relationship in November 2013, the respondent already held a beneficial interest in the Rural House, and that any subsequent appreciation of that interest due to market forces is therefore family property.
- [219] Rather, I conclude that the respondent did not obtain a beneficial interest in the Rural House until legal title was transferred to him by G.H. Ltd. on June 2, 2015.
- [220] I accept that the property's fair market value at that time is reflected in the \$401,000 valuation used in the associated legal documents. This valuation makes sense given the sale of the property for \$515,000 in mid-August 2019. The increase in value of \$114,000 reasonably reflects the improved rebuild after the fire plus the same sort of increase in property value seen with respect to the claimant's City House; i.e. 26.4% over the eight years to early September 2018.
- [221] The increase in the fair market value of the Rural House between June 2, 2015 and its sale in 2019 for \$515,000 was therefore \$114,000. This increase is family property, while the remaining \$401,000 is excluded property. The portion of the equity constituting excluded property comprises 78%, while the family property component amounts to 22%.

- [222] Following the sale of the City House and the Rural House, there were adjustments to pay. Also, the claimant and the respondent each used part of the proceeds received to pay off debt.
- [223] The claimant was left with \$60,000 to pay towards the purchase of the Family Home, 68% or \$40,800 of which represented excluded property, and 32% or \$19,200 of which represented family property.
- [224] The respondent was left with \$408,000 to pay towards the purchase of the Family Home, 78% or \$318,240 of which represented excluded property, and 22% or \$89,760 of which represented family property.

Whether Exclusion Lost Regarding the Respondent's Rural House Proceeds

- [225] The claimant argues that the respondent's excluded portion of the Rural House proceeds lost that status when used to help purchase the Family Home because in contributing those proceeds towards a property held with her in joint tenancy he intended to transform the excluded portion into family property. On this view, the respondent gifted the excluded portion of the proceeds to the family by using them in purchasing the Family Home.
- [226] The respondent argues that he never intended to gift his excluded property in this way when using the Rural House proceeds to help buy the Family Home, and that the excluded part of the proceeds from the sale of the Rural House therefore survives the joint tenancy and should not be taken into account when dividing family property.
- [227] In my view, the respondent did not intend to gift the excluded portion of the proceeds from the sale of the Rural House to the claimant so as to transform it into family property. Rather, he intended to keep his excluded property separate and distinct from family property, and to maintain its excluded status.
- [228] I am not suggesting that the respondent was thinking in these exact legal terms at the time. But his intention as expressed in the October 8, 2019 email amounts to the same thing. A number of factors are important in bringing me to this conclusion.
- [229] To begin with, the parties had maintained separate finances since starting the marriage-like relationship in 2013, and had lived in separate residences in part because doing so reduced conflict in the relationship. Buying a house together was a significant change in this respect. Transforming all of the Rural House proceeds into family property created a real risk to the respondent if the relationship floundered, because he had limited assets apart from those proceeds. This risk was more than speculative, as demonstrated by the claimant recently expressing potentially existential dissatisfaction with the relationship.

- [230] Moreover, in the respondent's mind a true pooling of all assets as family property would involve him paying a significantly larger portion of the purchase price for the Family Home in exchange for the claimant sharing her more stable income stream with him. Yet sometime prior to the October 8, 2019 email, the claimant informed the respondent that she would not share her disability income with the respondent by depositing it into the soon-to-be opened joint bank account.
- [231] I find that the respondent was not willing to treat the excluded portion of the Rural House proceeds as part of the pool of family assets on purchase of the Family Home if the claimant was unwilling to pool her disability income in an analogous way. The October 8, 2019 email constituted a step taken by the respondent to keep his excluded funds separate, and more importantly documented his intention not to relinquish their excluded status.
- [232] While the claimant refused to accede to the respondent's request for a contract to protect the excluded parts of their respective contributions to the purchase of the Family Home, a meeting of the minds is not required to establish that the spouse transferring excluded property does not intend it to be a gift. Rather, it is the intention of the transferor spouse that counts. I reject that the claimant's argument that her refusal resulted in the respondent abandoning his intention to keep his property separate.
- [233] Another relevant factor is that the respondent kept the Rural House proceeds in his personal bank account until the purchase was made, which weighs somewhat in favour of concluding that he did not intend to gift one half of the excluded portion of those funds to the claimant. For example, the respondent did not deposit the Rural House proceeds into the joint bank account prior to the purchase of the Family Home.
- [234] I recognize that, after the parties purchased and took possession of the Family Home, the expenses associated with maintaining the property were paid out of the joint account. But the parties do not appear to have co-mingled their finances in any other way. Use of a joint account to pay the Family Home expenses is therefore not determinative.
- [235] Nor is this a case where an intention to gift excluded property can be inferred because the transferring spouse is deriving a benefit such as creditor protection, income splitting or the simplification of estate administration.
- [236] To conclude, the respondent's excluded portion of the \$408,000 he paid towards the purchase of the Family Home, 78% or \$318,240, did not thereby lose that status and become family property, because in buying the Family Home as a joint tenant with the claimant he never intended to gift any part of that excluded portion to her.

Whether Exclusion Lost Regarding the Claimant's City House Proceeds

[237] The claimant argues that, if I conclude the respondent did not intend to transform the excluded portion of the Rural House proceeds into family property, then the excluded portion of the City House proceeds should be treated the same way, whether because: (a) she did not intend to relinquish the excluded status of that portion of the proceeds unless the respondent intended to do the same with his excluded proceeds; or (b) it would be significantly unfair to conclude otherwise.

[238] The respondent points out that in her testimony the claimant insisted that the parties both intended to comingle as family property all the proceeds from the sale of their Alberta properties when purchasing the Family Home. But he also submits that her testimony about the parties having this common intention was either not credible or not reliable and should be given little weight, and that her actual intention was more likely to keep her excluded funds separate, in which case those funds did not lose their excluded character when the Family Home was purchased.

[239] In my view, to the extent the claimant intended to contribute her excluded proceeds from the City House to the pool of family property, her intention was contingent on the respondent intending to do the same. Given the friction developing around this issue at the time, I find it inconceivable that she would have intended otherwise.

[240] I thus conclude that the claimant's excluded portion of the \$60,000 she paid towards the purchase of the Family Home, 68% or \$40,800, did not by virtue of that purchase lose its status as excluded property.

Whether Excluded Portion of the Rural House Proceeds Used to Buy the Family Home Should be Divided Under Section 96

[241] The claimant argues that if I find that the excluded portion of the Rural House proceeds retained that character after being used to buy the Family Home, and thus did not become family property, that portion of the proceeds should nonetheless be divided equally, or to some lesser extent, under s. 96 of the FLA.

[242] In my view, the claimant has not met the high threshold for establishing significant unfairness within the meaning of s. 96 so as to justify an equal or any lesser division of this excluded property.

[243] To the extent that the claimant made direct contributions to the preservation, maintenance, improvement, operation or management of the Rural House between 2013 and 2019, they were decidedly modest, confined to getting the property ready for sale prior to the parties' move to Vancouver Island. There is no reason to believe these efforts increased the sale price for the Rural House beyond any increase in the sale price for the City House arising from the respondent's improvements to that property prior to its sale in 2018. Regardless, any increase in the sale value of the Rural House arising from the claimant's efforts would presumably be reflected in her equal share of the property's

increase in value between 2015 and 2019.

- [244] I have taken the duration of the parties' relationship into account in conducting the above analysis. Nothing else about its duration inclines me to the view that not dividing the respondent's excluded portion of the Rural House proceeds equally or to some lesser extent would cause significant unfairness to the claimant.

Conclusion Regarding Division of Proceeds of Sale of the Family Home

- [245] As explained above, of the \$408,000 the respondent paid towards the purchase of the Family Home, \$318,240 represents excluded property, and of the \$60,000 the claimant paid towards the purchase, \$40,800 is excluded property.
- [246] The parties agree that from the Family Home sale proceeds, net of amounts used to retire the mortgage and pay real estate commissions, property taxes and any other expenses, each should receive an amount equal to their excluded property. After those excluded amounts have been distributed, the remaining proceeds are family property and should be divided equally, subject to further adjustments required to take into account amounts owed by one party to the other as described in the remainder of these reasons.
- [247] The parties also agree that they will share equally any costs incurred in repairing the Family Home's septic tank or system undertaken to remove conditions of sale of the property.

Financial Assets

- [248] Bank accounts used on a day-to-day basis are generally valued as at the date of separation, whereas long-term investments such as RRSPs are valued as at the date of trial unless it can be shown that post-separation contributions or withdrawals were made. See *Asselin v. Roy*, 2013 BCSC 1681 at paras. 171-172; *Tyrell v. Tyrell*, 2025 BCSC 94 at para. 23.
- [249] The closest date to trial for which evaluation is available for the claimant's RRSP is December 31, 2021, when it was worth \$27,819.48. She subsequently withdrew most of these funds, and proposes that the value of this family property be grossed down to \$19,473.30 to account for the taxes she paid. The respondent did not object to this approach. I therefore find that the amount of \$19,473 constitutes family property and should be divided equally between the parties. The claimant will retain this RRSP undivided, and the respondent's one-half share of the \$19,473 will be paid out of the claimant's share of the net proceeds of the sale of the Family Home.
- [250] The parties agree to value the claimant's A.T. Ltd. pension at \$67,123.24, which is the value of the respondent's non-registered investment account at the date of trial. Both parties will therefore retain these assets undivided, with no equalization payment required.

- [251] Neither party submitted or adduced any evidence to suggest that their bank accounts contained excluded property.
- [252] For some of those bank accounts, no evidence was adduced as to the value at the time of separation on November 1, 2020. In determining the family property in each account, I have therefore relied on evidence indicating the post-separation valuation closest to that date.
- [253] The parties' RBC joint bank account, from which they paid the Family Home expenses, contained \$1,063.88 on November 1, 2020. The respondent did not use this account at all following separation, apart from depositing \$600 each month as a without prejudice contribution to house expenses. I therefore find that this amount is family property, one half of which is to be paid to the respondent from the claimant's share of the net proceeds of the sale of the Family Home.
- [254] The joint account should be closed within 60 days, unless the parties by agreement extend the time for doing so. Any funds in it at that time belong to the claimant and are not family property, and will be paid out to her. Conversely, if when closed the joint account has a negative balance the claimant will be responsible for paying off that entire debt.
- [255] The claimant's financial statement from 2022 shows a balance of \$2,280 for her CIBC chequing account. This amount is family property, one half or \$1,140 of which belongs to the respondent and will be paid to him out of the claimant's share of the net proceeds of sale of the Family Home.
- [256] An April 2024 snapshot printout from the claimant's CIBC savings account shows it overdrawn by \$0.63. As there is no evidence suggesting this amount was owed at the time of separation, or was incurred to maintain family property, I decline to treat it as family debt.
- [257] The respondent's TD chequing account had an overdraft of \$562.64 on January 4, 2022, and his TD business account had an overdraft of \$9,194.97.64 on January 7, 2022. For the reasons set out in the previous paragraph, I am not prepared to treat these amounts as family debt.

Chattels

- [258] The parties mostly agree on the value attributable to the chattels in their possession.
- [259] Given my findings that the marriage-like relationship started on November 1, 2013 and ended on November 1, 2020, the following chattels constitute family property, either because the evidence indicates they were purchased during the marriage-like relationship or because the party having possession has not proven otherwise so as to justify my treating them as excluded property.
- [260] The Nissan Maxima was traded in by the claimant at a value of \$17,000, which amount is family property.

- [261] The jewellery in the claimant's possession is family property valued at \$4,200, as indicated in her financial statement.
- [262] The 2016 Commander ATV in the respondent's possession is family property and the parties agree that its value is \$10,000.
- [263] The 2006 Honda ATV in the respondent's possession is family property valued at \$4,000.
- [264] The respondent's financial statement indicates that he purchased \$25,000 worth of furniture in 2016. Most of this furniture was still at the Family Home when the trial concluded. The claimant proposed that this and any other furniture be physically divided after the sale of the Family Home on a "you pick, I pick" basis, without any dollar equalization. I am adopting the claimant's suggestion, first pick to be determined by a coin flip. The parties may by agreement divide the furniture by a different method if they wish.
- [265] The tools and building materials in the respondent's possession are valued at \$2,500, as indicated in his financial statement. His financial statement and written closing submissions suggest these items are excluded property, but in those documents he asserts a relationship start date of September 2018, which I have rejected, and he has provided no evidence as to when the items were acquired. I therefore find that these tools and building materials are family property.
- [266] The firearms in the respondent's possession are valued at \$5,000, as indicated in his financial statement. For reasons analogous to those provided in the preceding paragraph, the respondent has failed to establish that the firearms are excluded property. I thus find that they are family property.
- [267] The respondent's financial statement asserts that a 2006 Chevrolet truck in his possession at separation is excluded property. However, based on reasoning analogous to that set out in the previous two paragraphs, the respondent has not established that this truck is excluded property.
- [268] The respondent nonetheless asserts that the 2006 Chevrolet truck should be attributed no value because, as explained in his testimony, it was rendered worthless in an accident in 2022 or 2023, at which time he had no insurance.
- [269] In the circumstances as the respondent described them, I find that his driving this vehicle without insurance was negligent. Pursuant to ss. 95(2)(f) and/or 95(g)(i) of the FLA, I am therefore ascribing to the 2006 Chevrolet truck the value it would have had but for the respondent's negligence, which the claimant's financial statement estimates as \$10,000. The respondent did not take issue with the claimant's estimate or suggest a different value. Accordingly, for the purposes of property division that entire amount is to be treated as family property in the respondent's possession.

- [270] Apart from the furniture, each party will keep the family property chattels currently in their possession, with one-half of the indicated value to be paid to the other party from the possessing party's share of the net proceeds of the sale of the Family Home.

Rental Income

- [271] Pursuant to s. 84(1)(b)(i) of the FLA, rental income derived from family property, including income from vacation rentals, is itself family property. See *C.K.M. v. H.R.M.*, 2021 BCSC 1297 at paras. 82-85; *Yousefian v. Jafarmadar*, 2018 BCSC 855 at para. 45; *Judge v. Judge*, 2015 BCSC 1764 at paras. 393-399.
- [272] Since separation, the claimant has received rental income from the Family Home, and thus from family property, from two sources: a tenant; and vacation rentals through Airbnb and VRBO. Only the vacation rental payments were deposited directly into the joint bank account.
- [273] In chief, the claimant testified that the vacation rentals started in November 2021. But in cross-examination she was shown statements from the joint account indicating that money from vacation rental companies started to be deposited in November 2020. She then conceded that her testimony in chief was incorrect and that the vacation rental business started in that month.
- [274] In her financial statement sworn July 18, 2024, the claimant reports a gross annual vacation rental income of \$24,919. However, in his closing submissions the respondent's counsel indicated that adding up all vacation rental deposits made to the joint bank account in the months for which records are available shows that the claimant received \$141,187 in vacation rental income from November 2020 to November 2024.
- [275] The claimant did not dispute this number in her reply submissions at the end of the trial, nor did she contest the number when it was referenced again in the respondent's additional written submissions.
- [276] I therefore reject the claimant's assertion that the post-separation gross vacation rental income amounted to only \$24,919 per year. Rather, this gross income totalled \$141,187 over a period of about four years, or slightly over \$35,000 per year. As an aside, I note that the claimant did not declare any rental income on her tax returns, and testified that she is being audited as a result.
- [277] Post-separation, a second suite at the Family Home was rented out starting in November 2022. The claimant testified that the rent was sometimes reduced to compensate the tenant for cleaning the vacation rental suite. The claimant further testified that she deposited the rent into her personal account, not the joint bank account. The claimant has not complied with a request from the respondent to provide statements from this account so that the rent received can be accurately determined.

- [278] The claimant's 2023 tax return does not appear to include any rental income from the tenanted suite. However, her financial statement sworn July 18, 2024 indicates a rental income of \$12,000 per year, or about \$1,000 per month, which I am prepared to accept as accurate. Her rental income from this suite for the 27 months from November 2022 until the end of the trial in late January 2025 thus amounts to \$27,000.
- [279] Based on the above information, I find that from the date of separation until the end of trial the claimant received \$168,187 from vacation rentals and the Family Home tenant. None of this income was shared with the respondent.
- [280] The claimant says that from the respondent's half-share of this income must be deducted his share of the expenses she incurred to generate the income. She gave evidence about buying items for the vacation rental suit such as beds, a table and chairs, a television and sound system, dishes, cookware and utensils, towels and bedding, a washer and dryer, and stocking the suite on an ongoing basis with things like toilet paper and a complimentary bottle of wine for guests. She or her mother cleaned the suite for the first year or so, after which she engaged a cleaning company until November 2022, when her tenant took over that job in exchange for reduced rent.
- [281] Despite testifying about having a "tub of receipts" regarding the expenses incurred, the claimant has produced no documentary evidence to support her claim to have spent money in furnishing and renting out the vacation rental suite. In her trial evidence, she provided no estimate of the expenses incurred. The only indication of the proportion of expenses to gross income is in her sworn financial statement, where she indicates that 20% of the gross income was spent on "gift baskets".
- [282] In her additional written submissions, the claimant asserted that certain documents from the joint account provide evidence regarding the vacation rental expenses. But she did not specify any entries as examples of such expenses, other than utility payments for the Family Home. The most I can infer from the joint account documents is that the claimant was paying the utilities for the Family Home, and that a portion of these payments would have covered use by occupants of the vacation rental suite, as well as the tenant.
- [283] Absent further documentary evidence, I have concerns about the claimant's credibility and reliability regarding the amount of expenses incurred.
- [284] For one thing, and as already noted, in chief she testified that the vacation rentals started in November 2021, but in cross-examination was forced to concede they started a year earlier. In addition, she materially underreported the gross vacation rental income on her sworn financial statement.
- [285] I also find it unlikely that the claimant would have spent 20% of the gross vacation rental income, or \$28,237.55 over a four-year period, on gift baskets, as claimed in her financial statement. While asserting that the gift baskets were paid for using her personal accounts, she has provided no account statements supporting this claim.

- [286] That said, I accept that the claimant spent money on furnishing the vacation rental suite and keeping it running on a day-to-day basis. I am prepared to credit her \$20,000 over the entire four-year rental period for amortized expenditures to furnish the vacation rental suite and all day-to-day expenses for that suite and the tenanted unit.
- [287] I am also prepared to credit the claimant another \$15,000 over the same period to compensate her for time spent managing the vacation rental business, including cleaning the unit for some of the period in question. In arriving at this figure, I have taken into account the health challenges that make manual labour more taxing for her.
- [288] I do not accept the respondent's argument that the claimant spent negligible time managing the vacation rental business, amounting to little more than pressing a key on her computer to accept rental requests. But I also reject the claimant's claim for management fees totalling almost 70% of the gross revenue.
- [289] From the claimant's \$168,187 income received from vacation rentals and the Family Home tenant must therefore be deducted \$35,000 for expenses and management work incurred in earning it. The net income of \$133,187 is family property. The respondent is therefore entitled to half this net amount, or \$66,593, to be paid out of the claimant's share of the net proceeds of sale of the Family Home.

Debts Including Responsibility for Post-Separation Family Home Expenses

- [290] The parties agree that, with the exception of the Family Home mortgage, most of their debts were incurred post-separation for purposes other than maintaining family property, and are thus excluded from consideration in the division of family debt.
- [291] There are nonetheless a few areas of dispute or potential uncertainty, which I will address below.
- [292] First, the claimant argues that her CIBC line of credit is family debt, relying on an April 21, 2021 statement indicating a balance owed of \$6,506.63. However, I have determined the date of separation to be November 1, 2020, and the claimant has provided no evidence to suggest that this line of credit existed at that time or was incurred to help maintain family property. Accordingly, I am unable to conclude that the respondent has any responsibility for this debt under s. 81 of the FLA.
- [293] Second, in her Scott schedule the claimant includes the respondent's CIBC Visa balance as family debt, but once again her position is based on a later separation date. The respondent has provided no evidence suggesting that this debt existed at the time of separation or was incurred to maintain family property. The respondent's debt for this credit card is therefore not family debt, and he does not suggest otherwise in his Scott schedule.

- [294] Third, the respondent agrees that he is responsible for one half of the post-separation mortgage payments the claimant made for the Family Home, after receiving credit for the \$600 per month he deposited into the joint bank account for most of this period.
- [295] The mortgage payment for each of the 47 months from the November 1, 2020 separation to September 2024 was \$1,921, totalling \$90,287. Refinancing led to a higher payment of \$2,900 per month up to the conclusion of the trial in January 2025, which amounts to another \$11,600. The mortgage payments made by the claimant from November 2020 to January 2025 are thus \$101,887.
- [296] In his Scott Schedule and his closing written submissions, the respondent says he paid the claimant \$600 per month starting in September 2020. But his trial testimony was not so definitive regarding the start date for these payments. In both chief and cross-examination, the respondent testified that it was hard to nail down when the payments began. Based on the records for the joint bank account, into which he made these payments, I find that they started in January 2021. The total payments made from that point until the end of the trial 49 months later is thus \$29,400.
- [297] Crediting the respondent for these monthly payments, he owes the claimant one half of the remaining \$72,487, or \$36,243, for his share of the post-separation mortgage expenses, to be deducted from his share of the proceeds of sale for the Family Home.
- [298] Fourth, the claimant asks that the respondent be responsible for one half of the amounts she paid in respect of post-separation property taxes and necessary repairs and maintenance for the Family Home.
- [299] The claimant relies on *Oleksiewicz v. Oleksiewicz*, 2017 BCSC 228 at paras. 180-183 for the proposition that post-separation property taxes and residential repairs constitute family debts and are thus reimbursable.
- [300] As the respondent points out, *Oleksiewicz* at paras. 179-181 appears to tilt more in the opposite direction, stating that the costs of operating a home including property taxes, but not mortgage costs, should be paid by the spouse who lives there post-separation and should not be shared by the other spouse as those costs represent a set-off akin to occupation rent.
- [301] However, *Ostere v. Harding*, 2017 BCCA 157 at paras. 19, 22 and 26 holds that expenditures made by one party necessary to preserve the equity in family property should be shared by the other spouse, including property taxes, home insurance and other expenditures to maintain the property. See also the following decisions subsequently decided under the FLA: *Arcand v. Arcand*, 2023 BCSC 747 at paras. 120, 131-133; *N.J.B. v. S.R.B.*, 2020 BCSC 400 at para. 45-46 and 53; *Schneider v. Owers*, 2019 BCSC 528 at paras. 266-268 and 272(o); *Zellweger v. Zellweger*, 2018 BCSC 1227 at paras. 89-92.

- [302] I therefore do not agree with the respondent that Oleksiewicz prohibits an occupying spouse from ever recovering post-separation expenses incurred to maintain family property. Rather, determining whether such expenses should be shared depends on the circumstances, the focus being on achieving justice between the parties, as is the case with the somewhat related or overlapping concept of occupation rent: *McFarlen v. McFarlen*, 2017 BCSC 1737 at paras. 12-22.
- [303] In determining whether the payor spouse should be compensated, the court should thus consider a range of factors, including but by no means limited to whether that spouse was in sole possession of the property, and also whether the non-occupying spouse incurred expenses to live elsewhere. See *Storey v. Terry*, 2020 BCCA 30 at paras. 8, 14, 21-28; *Schneider* at para. 282; *N.D.S. v. J.A.S.*, 2020 BCSC 1034 at para. 65; *K.A.V. v. J.A.V.*, 2023 BCSC 1474 at para. 30; *Bilawchuk v. Bilawchuk*, 2014 BCSC 2067 at paras. 35-37.
- [304] Having discussed some of the case law, I will turn now to consider the claimant's submission that the respondent should pay one half of the property taxes and home maintenance costs following separation.
- [305] With respect to property taxes, the claimant has provided no receipts or invoices, but in her 2022 Financial Statement she indicated that these taxes for the 2020-2021 annual cycle were \$5,459.03. From this figure, she extrapolates the total amount paid post-separation.
- [306] The respondent argues that the claimant's figure of \$5,459.03 is derived from a Notice of Forfeiture, dated October 4, 2021, which was filed in evidence. He says this document shows that the \$5,459.03 comprises two years of property taxes, not one, because the amount owed is broken down into \$1,973.29 for 2020 and \$3,485.74 for 2021.
- [307] If true, this would mean that the property taxes for the Family Home in 2021 increased by 76% over 2020, which seems unlikely. Given the October 4, 2021 date on the Notice of Forfeiture, a much more probable explanation is that the \$5,459.03 owed comprises the second property tax instalment for 2020 and both instalments for 2021. This latter explanation finds support in the claimant's 2024 Financial Statement, which provides a monthly expense for property taxes that adds up to \$3,485.04, which is basically the same as the amount owing for 2021 in the Notice of Forfeiture.
- [308] I therefore accept that the claimant paid around \$3,485 annually in property taxes for the Family Home from the time of separation onwards, with no contribution from the respondent. Calculating to the end of the trial in late January 2025, the total amount of payments is \$14,811. The respondent should pay one half of this expense, or \$7,405, to be taken from his share of the net proceeds of sale for the Family Home.

- [309] I appreciate that the claimant had the benefit of living at the Family Home after separation, while the respondent lived elsewhere. But the evidence suggests that the respondent had few or no accommodation expenses during most of this period. His father paid for his stay at the sober house, after which he lived for a couple of years in a camper on his sister's property. While the respondent mentioned working for his sister "for a little bit" for "cash and rent", absent more detail I find that any offset for rent would be minimal.
- [310] The respondent now lives in a home owned by him and his sister, which he testified was purchased by his parents in late 2023. The respondent's father testified that he and his wife pay the mortgage. The respondent's financial statement indicates that he pays the property taxes. However, I accept the claimant's evidence that in the early summer of 2023 she tried without success to obtain the respondent's cooperation in selling the Family Home, because its upkeep was challenging given her health issues and she wanted to move to Victoria with H.J.G. Her evidence finds support in the respondent's father testimony that the claimant must be frustrated with the respondent because "to this day" the respondent avoids her.
- [311] In other words, but for the respondent's dilatoriness in cooperating with putting the Family Home up for sale, it would likely have been sold much earlier, with the result that property taxes would have been incurred for a substantially shorter period of time.
- [312] The claimant also asks that the respondent be required to pay one half of the \$200 per month she purports to have spent on home repairs and maintenance after separation, based on the number contained in her 2024 Financial Statement.
- [313] However, the claimant has provided no receipts to back up this number. Moreover, she has not indicated whether portions of any such expenses are attributable to the vacation rental and tenanted suites, for which I have already permitted her to deduct some expenses against the rental income. In any event, requiring the claimant to pay the entirety of this relatively modest amount is not unreasonable given that she enjoyed sole occupancy of the home, with the respondent paying one half of the mortgage and property tax expenses.
- [314] I am therefore not prepared to accede to the claimant's request that the respondent pay one half of the amount she claims to have spent for post-separation home repairs and maintenance.

Child Support for H.J.G.

- [315] H.J.G. was born in 2003, and is almost 22 years of age.
- [316] The claimant argues that H.J.G. is a "child" within the meaning of s. 146 of the FLA, so as to justify an order for child support. She seeks retroactive child support for all of 2022 and from January until September 2023, after which H.J.G. ceased to primarily reside with her.
- [317] The respondent argues that H.J.G. is not a child within the meaning of s. 146, but in the alternative argues that the claimant should pay him child support starting from when H.J.G. began to reside with him in September 2024.

[318] I will begin this section of my reasons by outlining the legal principles bearing on when a person who is 19 years or older can be a child under s. 146 for the purposes of child support. I will next explain why, applying those principles, I have concluded that H.J.G. remains a child in this limited sense. I will then apply the Federal Child Support Guidelines, SOR/97-115 ("Guidelines") to determine each party's child support obligations.

Legal Principles Governing Application of Section 146 of the FLA

[319] Section 147 of the FLA imposes a duty on each parent and guardian of a child to provide support for that child, subject to exceptions that do not apply here.

[320] Section 146 defines a "child" for the purposes of child and spousal support to include, "a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of the person's parents or guardians".

[321] A number of cases address the application of s. 146, but I have in particular been assisted by the discussions of Justice Matthews in *J.C.W. v. J.K.R.W.*, 2024 BCSC 139, and Judge Marchand, as he then was, in *M.J.L. v. G.H.*, 2015 BCPC 208.

[322] Cases that consider the definition of "child of the marriage" in s. 2(1) of the Divorce Act, R.S.C. 1985, c. 3, can also provide guidance, because that definition is in essence the same as the definition in s. 146 of the FLA: *Hutchinson v. Taraviras*, 2022 BCSC 1982 at para. 58.

[323] Once a person reaches the age of majority, the party applying for child support bears the onus of proving that person is still a "child" within the meaning of s. 146: *Dring v. Gheyle*, 2018 BCCA 435 at para. 49.

[324] If a person over the age of majority is determined to fall within the scope of s. 146, the quantum of child support is determined according to the Guidelines. Where that child lives at home and a disability renders negligible their ability to generate income, the appropriate measure to consider need is s. 3(2)(a) of the Guidelines, which states that the amount should be determined as if the child were under the age of majority. See *J.C.W.* at para. 40.

[325] The wording in s. 146 is disjunctive, and therefore captures adult children who, "because of illness, disability or another reason", are either unable to withdraw from their parents' charge or to obtain the necessities of life: *L.L.M. v. D.R.M.*, 2022 BCSC 143 at para. 34, quoting from *M.J.L.* at para. 29(2).

[326] Two important factors bearing on whether an adult child with disabilities is unable to obtain the necessities of life are the child's employability and the extent of their disability: *L.L.M.* at para. 34, quoting from *M.J.L.* at para. 29(4).

[327] The concept of being within a parent's "charge" means being in the "care", "custody" or "responsible possession" of that parent, which may include being in the financial care of that parent: *L.L.M.* at para. 34, quoting from *M.J.L.* at para. 29(5).

[328] A court may accept evidence of the child's disability without expert confirmation: H.M.R. v. D.G.R., 2010 BCSC 647 at para. 33.

H.J.G. is a "Child" Pursuant to Section 146 FLA

[329] H.J.G. has been diagnosed with autism, ADHD and Tourette's Syndrome. None of the witnesses suggested that these diagnoses have only a minimal impact on H.J.G.'s ability to navigate his way in the world. All in essence agreed that he had learning disabilities that presented at least some challenges in this regard.

[330] The respondent nonetheless contends that H.J.G. does not meet the definition of a "child" in s. 146 of the FLA because he is able to both withdraw from his parents' charge and obtain the necessities of life.

[331] I disagree with the respondent's contention. In explaining why, I will address each of the points that, in closing submissions, he asserted taken together demonstrate that the FLA definition is not met.

[332] First, in closing submissions the respondent argued that, although H.J.G. was held back for a year, he graduated from high school with a Dogwood Diploma, the same as any other graduating student in British Columbia.

[333] However, in his own testimony the respondent readily conceded that H.J.G. has learning disabilities, and stated that while H.J.G. did well in high school in British Columbia his schooling was modified. The respondent also recounted at length the significant efforts he made in Alberta to place H.J.G. in a school system that could accommodate his needs. He said that H.J.G. struggled in school, but had great teaching assistants until high school, at which point schooling was more of a "babysitting service" for H.J.G. The clear implication is that accommodation and teaching assistants were essential to H.J.G.'s progress through the school system.

[334] The respondent's evidence in this regard is consistent with the testimony of the claimant, who stated that although H.J.G. graduated from high school he needed assistance to do so.

[335] Second, in closing submissions the respondent relied on the fact that H.J.G. is currently attending community college.

[336] However, the respondent testified that H.J.G.'s community college program or course is for students with developmental disabilities. Indeed, it is because of these developmental disabilities that H.J.G.'s postsecondary education is completely subsidized by the government. The respondent also testified that H.J.G.'s community college programming included a course on life skills.

- [337] To similar effect, the claimant described H.J.G.'s community college program as a life skills course that assists him in things such as how to conduct a job interview, what to wear at an interview, and so on. She also testified that as part of the community college program H.J.G. was doing gardening or landscaping, as did the respondent.
- [338] The respondent's father, who was responsible for locating the community college program in which H.J.G. is enrolled, described its focus as being mostly on building confidence and social skills.
- [339] Third, the respondent's closing submissions asserted that H.J.G. can make himself simple meals and do his own laundry.
- [340] Yet in his testimony the respondent indicated that, while H.J.G. can make a sandwich or microwave something, he would not be comfortable with H.J.G. cooking on his own without supervision. He gave the example of not being comfortable were H.J.G. to attempt make Kraft dinner without supervision. The respondent's concern seemed to be that H.J.G. is often too focused on his phone and ignores what is happening around him.
- [341] While the claimant testified that H.J.G. wants to be autonomous and move into a group home at some point, neither she nor any of the other witnesses suggested he is currently able to live on his own without the assistance of a parent or equivalent supervision.
- [342] Although a minor point, the evidence about H.J.G. and laundry came from the claimant. She did not state that H.J.G. does his own laundry, but rather that he could do his own laundry if shown how and that he had helped her do laundry in the past.
- [343] Fourth, in closing submissions the respondent submitted that H.J.G. worked during the summer in between school semesters and received pay cheques.
- [344] Once again, the respondent's own testimony adds important nuance to this submission. H.J.G. did some work for the respondent's neighbour, who runs a garden service, but only if the business was very busy. There is no indication that H.J.G. has ever had steady employment. Moreover, the respondent expressed the view that H.J.G. will face challenges in keeping employment because he is so focused on his phone. Indeed, the respondent denigrated the claimant for giving H.J.G. the idea that he has "virtues that are hireable", stating that H.J.G. needs to be taught how to chase jobs.
- [345] In his testimony, the respondent also ascribed attributes to H.J.G. that, although not mentioned in the context of employability, will arguably make it more difficult for him to obtain or keep a full-time job. For example, the respondent indicated that H.J.G. is sometimes quick to anger and does not take well to firm direction.

- [346] This testimony is somewhat similar to that of the claimant's sister, with whom H.J.G. is close and lived during his first year at community college. The claimant's sister testified that H.J.G. is super sensitive to sound, introspective, and does best if provided with patterns or routines. She said that if someone becomes elevated with H.J.G. and raises their voice, he panics, becomes scared and frustrated, and wants to flee.
- [347] Along the same lines, the respondent's father testified that the community college program, while focused on building confidence and social skills, was not as much about teaching students how to work eight hours a day. He offered the opinion that this was something that H.J.G. would need to learn to do. The respondent's father noted that H.J.G. was about to start a volunteer position at a plant nursey, which could potentially develop into a permanent paying position.
- [348] None of the witnesses suggested there was an imminent prospect of H.J.G. obtaining full-time employment sufficient to permit him to support himself. To the contrary, the claimant noted that, although H.J.G. does not currently receive disability payments, she was looking into obtaining a "person with disability" benefit for him from the government, which would require an application process.
- [349] Fifth, in closing submissions the respondent relied on the fact that H.J.G. has his own bank account and a credit card.
- [350] Yet the respondent testified that H.J.G.'s phone was recently cut off, and he was unable to get into his bank account, because he had not paid his phone bill or kept his credit card payments up-to-date. The respondent noted that H.J.G. has had help with banking in the past and needs to be reminded.
- [351] To similar effect, the claimant's sister described how her partner had helped H.J.G. when they lived together in terms of making sure that credit card bills were paid. The claimant's sister said that H.J.G. sometimes forgot to do so and her partner would need to send reminders.
- [352] The claimant's sister also expressed concern about H.J.G. having a credit card because he had been taken advantage of in the past. In this regard, she and the respondent both described an incident involving a slightly younger boy who lived in a suite in the house owned by H.J.G.'s maternal grandfather. The respondent, who described H.J.G. as being very trusting, recounted how this boy bilked H.J.G. out of over \$2,000 by accessing H.J.G.'s banking or credit card information to purchase alcohol and/or cannabis. The respondent also indicated that this boy used H.J.G. to purchase such items because, unlike H.J.G., he was too young to do so legally.
- [353] Notably, the respondent testified that he believed there was no risk of H.J.G. being taken advantage of in this way in the future, not because H.J.G. had learned from the experience and was no longer vulnerable, but rather because H.J.G. no longer had any money in his bank account.

- [354] Sixth, the respondent's closing submissions pointed out that, although H.J.G. was diagnosed as having autism by Dr. Kelly Price for the Ministry of Children and Family Development in January 2020, Dr. Price did not check off "Life Skills" as an "Area of Greatest Concern."
- [355] Leaving aside the hearsay concerns arising from Dr. Price's report, the respondent's submission once again leaves out significant context.
- [356] For one thing, while Dr. Price may not have viewed "life skills" as an "area of greatest concern" for H.J.G., the claimant testified that Dr. Price never met H.J.G., but rather merely looked at some documents provided by the claimant. The claimant was not challenged on this testimony in cross-examination.
- [357] Furthermore, and importantly, as already noted H.J.G.'s programming at community college is for individuals with learning disabilities, and includes if not focuses primarily on life skills preparation.
- [358] I also note that Dr. Price's report sets out numerous "areas of greatest concern" with respect to which she states that H.J.G. may benefit from intervention, including social adjustments, problem behaviours, emotional functioning, communication, academic problems and motor/sensory functioning. In other words, the report on its face suggests that H.J.G. faces challenges of a nature that might impact his ability to provide for himself the necessities of life.
- [359] Seventh, in closing submissions the respondent submitted that H.J.G. has friends and a social circle, and can travel around independently by bus or walking. The respondent also submitted that H.J.G. is able to brush his teeth, dress himself and take a shower every day.
- [360] However, the only one of H.J.G.'s friends specifically identified by any witness was the boy, mentioned above, who defrauded him of over \$2,000. Notably, in cross-examination the respondent conceded that this boy was not the best person for H.J.G. to be associating with as a friend, but said that H.J.G. would be unlikely to follow direction to cut off contact because H.J.G. has only a few school friends and can get lonely.
- [361] As for H.J.G.'s ability to use public transit by himself, I accept the evidence of the claimant's sister, based on direct experience, that although H.J.G. is able to take a bus on his own, he needs to be accompanied the first few times on a route, so as to establish a pattern. The claimant testified to the same effect, and I also accept her evidence on this point.
- [362] Finally, in his closing submissions the respondent argued that H.J.G. has similar abilities to the person found not to be a child of the marriage within the meaning of s. 2(1) of the Divorce Act in *M.J.M. v. S.J.M.*, 2010 BCSC 1782.

- [363] In M.J.M., however, the person in question appears to have had no form of medical or psychiatric disability. Neither party takes that position here. H.J.G.'s circumstances appear to be distinguishable from those of the person in M.J.M. in other ways as well. For example, she graduated from high school without failing any grades. And there is no indication she needed assistance or accommodation to do so. Nor is there any suggestion that she had difficulty managing her finances.
- [364] Having considered all of the circumstances, I therefore reject the respondent's assertion that H.J.G. is not a child within the meaning of s. 146 of the FLA.
- [365] Rather, I find that the claimant has established that the nature and extent of H.J.G.'s diagnosed conditions, including autism, ADHD and Tourette's syndrome, make it unlikely that he will be able to obtain employment, at least in the near-to-medium term, so as to permit financial self-sufficiency. These conditions also render H.J.G. unable to live on his own without at least some assistance or supervision. I therefore conclude that H.J.G. is a child within the meaning of s. 146 because his diagnosed conditions render him unable both to withdraw from his parents' charge and to obtain the necessities of life.

Calculating Guidelines Child Support

- [366] Given his status as a child within the meaning of s. 146, the claimant seeks child support from the respondent from January 2022 until September 2023, after which H.J.G. moved to Victoria to live primarily with the claimant's sister.
- [367] The parties agree that the respondent's annual Guidelines income for 2022 and 2023, respectively, was \$121,495 and \$44,274, as set out in his tax documents. Based on these numbers, the respondent's monthly child support payment in 2022 is \$1,125, and his monthly payment in 2023 is \$416.
- [368] Since H.J.G. lived with the claimant for all of 2022, the respondent owes her a total of \$13,500 for that year. H.J.G. only lived with the claimant for nine months in 2023, so for that period of time the respondent owes her a total of \$3,744. These amounts, totalling \$17,244, will be paid to the claimant by the respondent from his share of the net proceeds of the sale of the Family Home.
- [369] Because H.J.G. has lived with the respondent since September 2024, the claimant is obligated to pay child support to the respondent from that point forward.
- [370] The parties agree that the claimant's income for 2024 should comprise her CPP disability pension and her Sun Life long-term disability insurance payments, which total \$54,000, but that the Sun Life payments must be grossed up because they are non-taxable.
- [371] At the time of trial, the claimant's most recent tax filing was for 2023. Her tax documents do not report any of the money received from Sun Life, but show CPP benefits of \$18,184. She must therefore have received non-taxable benefits of \$35,816 from Sun Life.

- [372] Based on this information, and grossing up her Sun Life income, the claimant's annual Guidelines income for 2023 was \$64,496. Given the nature of this income, I will assume that it has remained steady in 2024.
- [373] Based on this number, the claimant's monthly child support payment to the respondent starting in September 2024 is \$612. She owes the respondent for any arrears in these payments from that month up to the date of these reasons, to be paid to him from her share of the net proceeds of the sale of the Family Home. Starting the month after these reasons are released, the claimant shall pay the respondent \$612 per month for the support of H.J.G. on the 15th of each month for as long as H.J.G. remains a child within the meaning of s. 146 of the FLA or until further agreement of the parties or court order.
- [374] Furthermore, for as long as H.J.G. is eligible to receive child support:
- (a) the parties will exchange copies of their respective income tax returns for the previous year, including all attachments, not later than May 30 each year, as well as copies of any notice of assessment or reassessment provided to them by Canada Revenue Agency, immediately upon receipt; and
 - (b) the parties shall conduct a review of child support on an annual basis and payments shall be adjusted as necessary by July 1 of every year.

Section 7 Expenses

- [375] The claimant asks that the respondent compensate her for half of the \$5,220 that in her 2024 financial statement she states she paid for H.J.G.'s medical/dental premiums (\$720), unspecified extraordinary expenses "to prepare [H.J.G.] for [his community college] program" (\$2,000), and unspecified "post-secondary education expenses" (\$2,500).
- [376] The claimant provided no receipts for any of these particular expenses, whether at trial or to the respondent.
- [377] The claimant did file in evidence two receipts totalling \$2,972 for dental expenses, and testified that she paid them. But as confirmed in the Scott schedule filed as part of her closing submissions, and her subsequently filed revised Scott schedule, the claimant is not claiming for dental expenses, but rather for the cost of "medical/dental premiums". She did not testify about or provide any receipts associated with such premiums.
- [378] The claimant also filed in evidence a receipt for a laptop purchased in November 26, 2020, at which point H.J.G. appears to have been in high school. But she gave no evidence to suggest the laptop constituted an extraordinary expense for educational programs that meet H.J.G.'s needs.

[379] Moreover, the claimant testified that H.J.G.'s tuition at community college is completely subsidized. She gave evidence that the materials he needs for community college are not subsidized, but the only items she mentioned buying for him were: business attire, on which she "spent a lot of money"; and a tool holder and gloves for his landscaping course. She provided no receipts for these purchases.

[380] As already mentioned, I am generally sceptical of the accuracy of the claimant's expense estimates in her 2024 Financial Statement absent supporting documentation.

[381] For these reasons, I am not prepared to order that the respondent compensate the claimant for any portion of the s. 7 expenses claimed in her financial statement.

Spousal Support

[382] The claimant seeks spousal support for a four-year period moving forward, preferably by lump sum payment.

[383] The claimant's claim is not compensatory in nature. Rather, she seeks spousal support only on a non-compensatory or needs basis. She argues that, on moving out of the Family Home her standard of living will be lower, requiring time to adjust, and that the respondent has the ability to help ease this burden because his current income is significantly higher.

[384] The respondent opposes spousal support for two main reasons. First, he says the claimant has failed to establish an entitlement to spousal support because she was living well beyond her means while at the Family Home, the result of excessive spending. Second, the respondent argues that his post-separation income is essentially the same as hers.

[385] I will begin my discussion by reviewing the relevant legal principles, after which I will determine the respondent's current income. I will then address whether the claimant has established an entitlement to spousal support, and if so for what duration and amount.

Legal Principles

[386] Under s. 160 of the FLA, one spouse has the duty to provide support for the other spouse where entitlement is established based on the objectives in s. 161. Those objectives are:

- (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 spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

- [387] The objectives in s. 161 encompass three conceptual bases for spousal support: compensatory, non-compensatory or needs based, and contractual. See *Parton v. Parton*, 2018 BCCA 273 at para. 43.
- [388] As noted, the claimant advances only a non-compensatory claim for spousal support.
- [389] The purpose of non-compensatory spousal is described in *Chutter v. Chutter*, 2008 BCCA 507, leave ref'd 2009 CanLII 27232 (SCC):
- [54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (*Bracklow*, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (*Bracklow*, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.
- [390] In this context, "need" is a flexible and relative concept, which covers more than the basic necessities of life and varies with the parties' circumstances. Those circumstances include the length of the relationship and the marital standard of living. See *Chutter* at paras. 54-61; *Parton* at paras. 39-40; *Healey v. Healey*, 2024 BCCA 68 at para. 61.
- [391] Non-compensatory support can thus account for the interdependence that may arise in a spousal relationship where there is a significant income disparity between the spouses, allowing for transitional assistance to the lower-income spouse from the shared financial resources of the relationship to the financial realities of a single income: *Kirton v. Mattie*, 2014 BCCA 513 at para. 49.
- [392] But a difference between the parties' post-separation incomes without more does not entitle the lower-income earner to non-compensatory support. There must be evidence of a diminution in the standard of living and a significant difference between the parties with respect to their current lifestyles. See *Lux v. Lux*, 2023 BCSC 1435 at para. 338.
- [393] Section 162 of the FLA provides that 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 length of time they lived together, the functions performed by each spouse during that time, and any agreement between them relating to support.

- [394] A spouse's means includes their capital base, employment income or earning capacity and any other available sources of benefits or gains: Parton at para. 43. But if the spouse seeking support must encroach on their capital to maintain a standard of living comparable to that enjoyed during the marriage, they are suffering hardship, since the capital will deplete over time and eventually leave them in a worse position than had the marriage continued: Chutter at para. 90.

Determining the Respondent's Income

- [395] The respondent testified that he started working at his current job with a company I will call W.C. Limited in around mid-2023. He stayed with W.C. Limited for all of 2024 and was still working there when he finished his trial testimony in late January 2025.
- [396] The claimant argues that the respondent's annual income from W.C. Limited since the start of 2024 is about \$90,000 per year. She bases this figure on two direct deposit documents attached to the respondent's financial statement, reporting receipts of \$4,368.00 and \$4,113.60 from W.C. Limited on February 2 and 16, 2024.
- [397] I accept the respondent's testimony that these direct deposit documents from February 2024 reflect full-time work for W.C. Limited. I further accept the respondent's evidence that he does not necessarily work full-time, but rather his hours depend on the amount of work available, which in turn depends on W.C. Limited's ongoing projects.
- [398] The respondent testified that the work with W.C. Limited in 2024 was consistent other than in November and December, which were slower months. The claimant did not challenge this testimony, and her proposed income figure of \$90,000 builds in a discount of about 10% to account for those slower months.
- [399] However, the respondent takes issue with the \$90,000 figure because he testified that W.C. Limited pays him an hourly wage as a subcontractor, not as an employee, and he deducts expenses such as his truck, gasoline, purchased tools, office space in his home, scaffolding and some materials purchases such as drywall and mud.
- [400] In this respect, the respondent relies on his 2023 income tax documents, which show net self-employment income of \$36,051 after deducting business expenses from gross income of \$58,249. As noted, he testified that this self-employment income was the result of about six months of work at W.C. Limited. The respondent argues that his income for 2024 should be based on extrapolating this net self-employment income from 2023, which would result in a net income of \$72,102.
- [401] I am not prepared to accept the claimant's submission that the respondent's annual income is \$90,000 for two main reasons.

- [402] First, while the claimant asks me to award spousal support based on a finding that the respondent's 2024 income from W.C. Limited was \$90,000, for the purposes of calculating child support she accepts that his income in 2023 is as stated in that year's 2023 tax return. In other words, for child support purposes the claimant accepts the respondent's evidence that in 2023 he had a net self-employment income of about \$36,000 for a half year's work at W.C. Limited.
- [403] Second, while in cross-examination the respondent was asked about his expenses while working at W.C. Limited, including in reference to his 2023 tax return, the claimant's counsel did not suggest to the respondent that these expenses were unreasonably deducted within the meaning of s. 19(1)(g) of the Guidelines. Nor did her counsel make this suggestion to me in closing submissions.
- [404] In these circumstances, it would be unfair to put the onus on the respondent to justify that his expenses are reasonable under s. 19(1)(g): *M.T. v. J.S.*, 2023 BCCA 64 at para. 8; *Tyrell* at para. 76. It would also put the court in the difficult position of having to assess the reasonableness of the expenses without any idea as to which ones are being challenged or on what grounds.
- [405] For these reasons, on the evidence before me I find that the respondent's income for 2024 is \$72,012, or double what he made during the six months or so that he worked for W.C. Limited in 2023.

Entitlement and Duration/Amount

- [406] During their time as spouses in Alberta, from November 2013 to August 2019, the respondent does not appear to have been earning more than the claimant with the result that her standard of living was elevated beyond what it might otherwise have been.
- [407] The claimant likely earned more than the respondent from 2013 until she went on long-term disability in 2016. From that point, or soon after, she appears to have earned about \$54,000 per year, before gross up to \$64,496 to account for the non-taxable nature of her Sun Life benefits.
- [408] I have limited evidence as to the respondent's income during this period in Alberta, and I have not been referred to any reliable evidence suggesting it significantly exceeded the claimant's after she went on long-term disability. Regardless, there is no suggestion that while in Alberta the respondent helped maintain the claimant's standard of living by reason of her health-induced income drop. Instead, the evidence indicates that they continued to maintain their own residences and meet their own expenses.

- [409] On moving to Vancouver Island, the parties began sharing expenses for the Family Home, each contributing to the joint bank account from which those expenses were paid. However, the claimant testified that she paid more of the expenses than did the respondent, and I accept her evidence in this regard. I do not find that, whether by reason of a higher income or otherwise, the respondent paid or was able to pay half or more of the expenses, nor do I understand the claimant to argue otherwise.
- [410] Rather, from her brief opening and closing submissions on the point, it appears that the claimant grounds her claim for spousal support, not on any suggestion that the respondent earned more than she did during the spousal relationship so as to permit a higher standard of living for the family, but on the notion that sharing expenses as spouses at the Family Home permitted economies of scale that will not apply on transitioning to a single-income household with no associated rental income.
- [411] I accept this general proposition, which means that the claimant will likely experience a reduced standard of living on moving away from the Family Home. And because her income is fixed, she cannot increase it to ease the transition.
- [412] By contrast, the respondent earned less than the claimant while they lived together at the Family Home, but after separation was eventually able to increase his income by returning to the type of employment he had in Alberta.
- [413] Granted, the respondent's income is now only about \$7,500 higher than that of the claimant, but in my view the difference is just significant enough to put him in a materially better position in terms of the post-the Family Home transition.
- [414] Based on the 2024 incomes of \$64,496 for the claimant, and \$72,102 for the respondent, and taking into account that H.J.G. is living with the respondent, the Spousal Support Advisory Guidelines [SSAG] recommend "custodial payor" spousal support in the amount of \$45, \$52, or \$60 in the low, mid or upper range, for a duration of three-and-a-half to seven years from separation.
- [415] The SSAGs are a useful tool in determining the amount and duration of spousal support: Chutter at para. 100. A substantial departure from the SSAG amounts requires exceptional circumstances, and should be accompanied by an explanation: *Sebok v. Babits*, 2022 BCCA 2 at paras. 24-26. Neither party has asked me to depart from the SSAGs in this case.
- [416] In the circumstances, I have concluded that a lump sum spousal support payment is appropriate, as sought by the claimant. The respondent does not object to the payment being made in this fashion. Moreover, a lump sum is likely of greater use to the claimant because it permits her to defray higher transitional costs of living up front. Periodic payments in the modest amounts set out in the SSAG will probably be less useful to her in this regard.

- [417] The SSAGs indicate net present value lump sum amounts of \$2,088, \$2,481, and \$2,814 at the low, mid or high points.
- [418] I have concluded that a lump sum payment at the high point is appropriate: \$2,814. For one thing, there is no real possibility that the claimant will be able to increase her income in the future. And while her claim for needs-based spousal support is not strong, all three SSAG amounts are modest, and so is the difference between them.
- [419] In sum, the claimant is entitled to spousal support, which the respondent will provide to her as a lump-sum payment of \$2,814, by way of a deduction in this amount from his share of the net sale proceeds for the Family Home.

Request for Payment and Conduct/Protection Orders

- [420] The claimant seeks an order, under s. 228(1)(c)(ii) of the FLA, requiring that the respondent pay her \$20,000 for repeatedly breaching a consent order made at a judicial case conference on February 20, 2024 ("JCC Order").
- [421] The relevant terms of the JCC Order state:
- (a) By consent, neither party shall consume alcohol or illicit substances in the presence of [H.J.G.], born [in] 2023 ("[H.J.G.]").
 - (b) By consent, the parties will make best efforts to discourage [H.J.G.] from consuming alcohol and illicit substances.
- [422] The claimant says the respondent breached these terms by, among other things, drinking alcohol and smoking marijuana in H.J.G.'s presence.
- [423] The claimant also seeks a three-year protection order or conduct order, under s. 183 or 222 of the FLA, as the case may be, with terms mirroring those in the JCC Order, for the purpose of safeguarding H.J.G.'s mental and physical well-being, in particular by preventing the respondent from drinking alcohol in H.J.G.'s presence.
- [424] In opposing both remedies, the respondent argues that he did not breach the JCC Order. But he also submits that, regardless, I have no jurisdiction to make a payment order under s. 228(1)(c)(ii) of the FLA.
- [425] I will start my discussion by examining the context in which the JCC Order was made. Next, I will set out why I have found that the respondent breached it. I will then explain why the respondent's jurisdictional objection to a payment order is not persuasive. After that, I will determine whether a payment order should be made, and if so in what amount. Finally, I will explain why making a conduct order with terms similar to the JCC Order is justified under s. 222 of the FLA.

Context in which JCC Order was Made

- [426] The respondent was abusing alcohol by the time the parties and their boys moved to Vancouver Island. Two alcohol-related incidents stand out as having harmed or created a real risk of harm to his boys, although in the discussion below I will focus solely on H.J.G.
- [427] The first incident took place in March 2020. The respondent was impaired by alcohol while driving a vehicle in which H.G. and H.J.G. were passengers. The vehicle flipped or rolled off the road. No one was injured, but the respondent's conduct put H.J.G. at serious risk of significant injury or death.
- [428] The second incident occurred on June 29, 2020. The respondent was inebriated during a family picnic in a remote area where people sometimes shoot off guns. He had been shooting a rifle, and at one point accidentally fired it near H.G.'s head.
- [429] H.G. then tried to convince the respondent not to drive home while drunk, but the respondent insisted on driving everyone back to the Family Home. He did so in an erratic manner, yelling at H.G. on the way.
- [430] On arriving home, the respondent got into a physical altercation with H.G. Once inside the house, the respondent punched doors, and knocked over a table and chairs. He picked the claimant up by the neck and threw her down. H.J.G. saw this happen and became upset at the respondent. The respondent reacted by throwing H.J.G. to the ground and threatening him.
- [431] This incident left H.J.G. with bruises to his back. H.J.G. spoke to a crisis counsellor about the incident. The counsellor alerted police. H.J.G. then gave a police statement.
- [432] The police told the claimant that, while the decision whether to charge the respondent was not hers, they would consider her wishes. She advised the police that she did not want the respondent charged because by that time he was at Cedars and working hard on his recovery. No charges were laid.
- [433] In admitting these two incidents at trial, the respondent was genuinely emotional and remorseful. He did not try to downplay his level of culpability or the harm or risk of harm flowing from his actions.
- [434] The respondent testified that, after the June 2020 incident, H.J.G. was wary and distrustful of him, and it took him a long time to regain H.J.G.'s trust. Based on this testimony, and also the testimony of the claimant, I conclude that the respondent's conduct during this incident caused H.J.G. not only physical but also substantial psychological harm.

- [435] The respondent testified that the firearm he used during the June 2020 incident was later taken by his father, but he has since gotten it back. He now keeps six firearms in his house, and has the requisite permits to do so. The respondent described keeping the firearms in a gun safe with trigger guards. Although the respondent's father had a different recollection as to when he took possession of his son's firearms, nothing turns on the discrepancy, and there is no dispute that the respondent currently possesses all of them.
- [436] In September 2023, H.J.G. started his program at community college. Because the community college is in Victoria, H.J.G. lived from Monday to Thursday with the claimant's sister and her partner. When in Victoria during this period, H.J.G. usually attended the respondent's house for dinner. H.J.G. went back to the Family Home most weekends, getting drives from the claimant or occasionally from her mother.
- [437] The claimant's sister testified that on a couple of occasions H.J.G. stayed overnight at the respondent's house, instead of coming back to her place after dinner with his father. The next day, he told the claimant's sister he had not come home because there had been drinking and it was not feasible to drive him home. There were also a number of times when H.J.G. came home from the respondent's house, and she could tell he had been drinking alcohol and he confirmed this to her verbally.
- [438] On none of these occasions did H.J.G. specify who had been drinking alcohol at the respondent's house. At the time, the claimant's sister believed the respondent was not among those who had been drinking because he had completed the Cedars program, and she understood that he was attending Alcoholics Anonymous.
- [439] However, the claimant's sister testified that in the last week of January 2024, she was working from home and heard H.J.G. come back from school. H.J.G. usually used the speakerphone when talking on his phone, and she heard the respondent call and ask where he was. H.J.G. said he was at her house. The respondent told H.J.G., "remember to pick up a case of beer on the way home". H.J.G. said "okay daddy-o bye," and ended the call.
- [440] After the call ended, the claimant's sister asked H.J.G. why the respondent would be asking him to bring beer given that the respondent did not drink. H.J.G. averted eye contact and said he did not know but he guessed it was in case he (H.J.G.) got thirsty. H.G. was also present, and told the claimant's sister that the respondent was drinking alcohol again, but only a glass or two of beer and not whiskey. The boys then left for the respondent's house.
- [441] In her testimony, the claimant recounted how, based on the above information, and also on information obtained by her directly from H.J.G. and H.G., she believed that the respondent was drinking alcohol again and also smoking marihuana, which led her to request the JCC Order.
- [442] As noted, the JCC Order was made on February 20, 2024, and provides that neither party shall consume alcohol or illicit substances in H.J.G.'s presence, and also that both parties will make best efforts to discourage H.J.G. from consuming alcohol and illicit substances.

Respondent's Breaches of JCC Order

- [443] A substantial amount of evidence was led at trial regarding whether the respondent had complied with the JCC Order.
- [444] The claimant testified that, subsequent to the JCC Order, both H.J.G. and H.G. told her that the respondent continued to consume alcohol and marihuana in H.J.G.'s presence. However, she was initially unsure as to whether these conversations happened before or after the JCC Order. I therefore prefer not to rely on her evidence as to when she received this information from the boys. Also, the information is hearsay, and neither H.G. nor H.J.G. is a child within the meaning of s. 202 of the FLA so as to engage the statutory relaxation of the hearsay rule.
- [445] The claimant in addition testified that, when speaking to the respondent on the phone about drinking alcohol in front of H.J.G., he said he was a nice drunk and no one could tell him what to do in his house. This conversation may have occurred after the JCC Order was made. However, absent greater specificity regarding its timing, I will proceed on the basis that the conversation preceded the JCC Order.
- [446] The claimant further recounted that H.J.G. told her that his spring 2024 birthday celebration with the respondent and the respondent's girlfriend was not very special, because they had given him a case of beer and a squished store-bought cheesecake. This statement is also hearsay, but as explained below I will rely on part of the respondent's evidence to make factual findings regarding this "birthday" beer.
- [447] The claimant's sister also provided testimony potentially bearing on whether the respondent had complied with the JCC Order. She testified that on St. Patrick's Day in March 2024, H.J.G. returned home and reported that "everyone" had been drinking alcohol at his paternal grandparent's Sunday family dinner, and that the attendees had included the respondent, his parents and H.G. Once again, however, this evidence is hearsay.
- [448] The claimant's sister further recounted an incident on October 21, 2024. H.J.G. was then in his second year at community college. He had been living at the respondent's house since September because it was within walking distance of the institution. The claimant's sister learned that H.J.G. had cut his hand, and she went to the hospital, where she met H.J.G. and the respondent. She described a verbal confrontation between the respondent and H.J.G. At one point, the respondent walked away to cool down, and on returning H.J.G. angrily lunged at him. The claimant's sister got between them, and she smelled beer on the respondent's breath, although she did not perceive him to be inebriated.
- [449] The respondent also testified about whether he had complied with the JCC Order. I will focus mostly on his evidence regarding whether he drank alcohol in H.J.G.'s presence, although the respondent testified as well about whether: (a) he consumed marihuana in front of H.J.G.; and (b) used best efforts to discourage H.J.G. from consuming alcohol and illicit substances.

- [450] In chief, the respondent stated that he likes a couple of beers now and then, and drinks perhaps a six-pack per week. The respondent testified that, while he does not drink in front of H.J.G., H.J.G. is not very observant anyway. He said that H.J.G. was not a beer drinker at all, and that he and H.J.G. would never sit around and drink, because H.J.G.'s "joy" is his phone. The respondent admitted that his girlfriend had given H.J.G. a case of beer on H.J.G.'s birthday in 2024, but denied encouraging her to do so, and said that she had apologized.
- [451] In cross-examination, the respondent repeatedly denied drinking in H.J.G.'s presence, but usually added comments to the effect that, if H.J.G. came home and the respondent had a beer, the respondent would put it down by the microwave or somewhere like that. Or that H.J.G. never saw him drink because H.J.G. is not observant. Or that H.J.G. was usually in his bedroom or outside walking and was thus never around to see the one or two beers that the respondent drinks.
- [452] During this cross-examination, the respondent initially said there was no alcohol abuse at all in his house. But later in cross-examination he conceded that his girlfriend was a serious alcoholic who lived with him and H.J.G. half the time. He also agreed that beer was kept in the fridge, and that his girlfriend and H.G. drank alcohol freely in the house.
- [453] Near the end of this cross-examination, when it was put to the respondent that he was unable to exercise parental authority over H.J.G. with respect to alcohol use because he was himself drinking alcohol in front of H.J.G., the respondent responded by agreeing that he had "hamstrung" himself, although he then added that he had followed the JCC Order to the very best of his ability.
- [454] When asked about this response in re-examination, the respondent stated that he did not drink alcohol in front of H.J.G., but once again added that H.J.G. is not observant, and that if H.J.G. comes home and the respondent is drinking beer the respondent does his best to put the beer down and stop.
- [455] Regarding the incident in October 2024, where H.J.G. cut his hand on a knife and attended the hospital, the respondent testified that he was advising H.J.G. about restricting his phone use, when H.J.G. became upset and "body-checked" the respondent. The respondent then lost his temper with H.J.G. H.J.G. grabbed a knife and stabbed it into the counter, causing his hand to slide down the blade, hence the slicing injury. The respondent took H.J.G. to the hospital. The claimant's sister arrived, and at the respondent's request took H.J.G. back to her place for the night.
- [456] In cross-examination, the respondent agreed that he had consumed "a beer or two" prior to H.J.G. cutting his hand, but insisted that he was not impaired. He nonetheless admitted being under the influence of THC at the time.

- [457] Having considered the respondent's evidence, I find his claims not to have consumed alcohol in H.J.G.'s presence after the JCC Order was in place unconvincing because they usually included lengthy and self-serving explanations about how H.J.G. was never home, or would not notice if the respondent was holding a beer, or about how the respondent would in any event put the beer down.
- [458] Plus, as noted, near the end of his cross-examination on this topic, the respondent essentially conceded to drinking alcohol in front of H.J.G. I do not accept as true his caveat that he had used his very best efforts not to do so, or his retraction of this concession in re-examination.
- [459] The respondent's credibility and reliability in this area is further undermined by his false testimony regarding when he resumed drinking alcohol after completing the program at Cedars, a topic discussed in the section of these reasons dealing with credibility and reliability.
- [460] In sum, I accept the respondent's evidence that he continued to drink beer at home after the JCC Order was in place, but I reject his evidence that he never did so in H.J.G.'s presence.
- [461] I cannot determine precisely how often the respondent drank alcohol in H.J.G.'s presence in breach of the JCC Order. But I am satisfied that the respondent usually drank at least one beer on most days. And I find that, as a resident of the household between September 2024 and late January 2025, H.J.G. would have been present on many occasions when the respondent was drinking beer. I further find that H.J.G. was present on many occasions when the respondent was drinking beer following the making of the JCC Order on February 20, 2024, but before H.J.G. moved in with the respondent in September of that year, because during this period H.J.G. frequently attended the respondent's house for dinner on weeknights.
- [462] I do not accept that the respondent made best efforts to discourage H.J.G. from drinking alcohol, including because the respondent often drank beer in front of H.J.G. In this respect, I reject the respondent's apparent claim to have known nothing in advance about the case of beer that was given to H.J.G. on his birthday in 2024. I find it most likely that he actively participated in giving H.J.G. the beer, but at the very least he knowingly condoned his girlfriend making the gift.
- [463] I have devoted much less space in these reasons to the issue of whether the respondent smoked marihuana in front of H.J.G., because in my view marihuana is not an "illicit substance" within the meaning of the JCC Order. The respondent's evidence regarding whether he smoked marihuana in H.J.G.'s presence was nonetheless similar to his evidence about consuming alcohol. For the same reasons given with respect to the respondent's alcohol consumption, I thus find that he knowingly smoked marihuana in front of H.J.G. on multiple occasions.

[464] As a final point, in closing submissions the claimant's counsel applied to admit H.J.G.'s hearsay statements about the respondent's alcohol consumption for their truth under the principled exception to the hearsay rule. However, I have made my factual findings without relying on out-of-court declarations made by H.J.G., H.G. or anyone else.

Jurisdiction to Make Payment Order

[465] The respondent argues that, even if I find that he breached the JCC Order, I have no jurisdiction to make a payment order or impose any other remedy under s. 228 of the FLA.

[466] This jurisdictional objection centres on the fact s. 228 only permits a remedy for failure to comply with "an order made under this Division", meaning Part 10, Division 5 of the FLA [Orders Respecting Conduct]. The respondent says the JCC Order cannot have been made under Part 10, Division 5 because there was no jurisdiction to make a conduct order regarding H.J.G.

[467] More specifically, the respondent argues that, under s. 146 of the FLA, H.J.G. can be a child only for the purposes of Part 7 of the FLA, which deals with child and spousal support. H.J.G. is therefore not a child for the purposes of making a conduct order under Part 10, Division 5. It follows, says the respondent, that breaching the JCC Order cannot engage the remedial powers in s. 228.

[468] I disagree. In my view, s. 228 is engaged because the JCC Order is a conduct order that was properly made under ss. 222 and 227(c) of the FLA to mitigate the risk of the respondent perpetrating alcohol-fueled violence on H.J.G. In explaining why this is so, I will begin by reviewing the relevant provisions of the FLA and some associated case law.

[469] Sections 222 and 227(c) state:

222. At any time during a proceeding or on the making of an order under this Act, the court may make an order under this Division for one or more of the following purposes:

- (a) to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;
- (b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;
- (c) to prevent misuse of the court process;
- (d) to facilitate arrangements pending final determination of a family law dispute.

227. A court may make an order requiring a party to do one or more of the following:

- (c) do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222 [purposes for which orders respecting conduct may be made].

[470] A.B. v. C.D., 2020 BCCA 11 at para. 182 holds that ss. 222 and 227(c) give the court a broad power to regulate the conduct of a party to a family law proceeding. A.B. further holds that:

[186] Sections 222 and 227 do not limit the court's authority to the scope of current proceedings. Section 222(a) allows orders regarding "an issue that may become the subject of a family law dispute" (emphasis added). The power to "manage behaviours that might frustrate resolution" or "facilitate arrangements" similarly suggest court power to reach into issues incidental to the litigation. The breadth of authority is underlined by s. 227(c), which permits the court to require a party to "do or not do anything" in relation to the purposes referred to in s. 222.

[original emphasis]

[471] Furthermore, nothing in the wording in ss. 222 or 227(c) confines their use to the purpose of ensuring the best interests of a "child", as that term is defined in s. 1 of the FLA.

[472] In my view, the JCC Order at the very least fell within the ambit of the power to make an order under ss. 222(a) and 227(c) because it was incidental to an issue that might become the subject of a family law dispute, namely, the need to protect H.J.G. from family violence at the hands of an intoxicated respondent pursuant to s. 183 of the FLA.

[473] I come to this conclusion based on the following chain of reasoning.

[474] The JCC order was made February 20, 2024. At that time, H.J.G. was spending Mondays to Thursdays with his maternal aunt and her partner, and many or most weekends with the claimant at the Family Home. He was therefore living with both the claimant's sister and the claimant.

[475] Given these living arrangements, H.J.G. was a "family member" with respect to the respondent within the meaning of s. 1 of the FLA, which states:

"family member", with respect to a person, means

- (a) the person's spouse or former spouse,
- (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
- (c) a parent or guardian of the person's child,
- (d) a person who lives with, and is related to,
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or
- (e) the person's child,

and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

[emphasis added]

- [476] In particular, at the time in question H.J.G. was a "family member" with respect to the respondent under subparagraph (d)(ii), because H.J.G. was living with and related to the claimant, who was the former spouse of the respondent.
- [477] Because the respondent and H.J.G. were "family members", s. 183(1) permitted the claimant to seek an order on behalf of H.J.G. against the respondent for the protection of H.J.G. as an "at-risk family member". Section 182 defines "at-risk family member" to mean "a person whose safety and security is or is likely at risk from family violence carried out by a family member."
- [478] Under s. 183(2), the order would be made against the respondent for H.J.G.'s protection if the court determined that family violence was likely to occur and H.J.G. was an "at-risk family member".
- [479] Section 184 sets out risk factors a court must consider in determining whether to make a protection order. The factors include any history of family violence by the family member against whom the order is sought, whether the family violence is repetitive, any circumstance of the family member against whom the order is sought that might increase the risk of family violence such as substance abuse, access to weapons or a history of violence, and any circumstances that may increase the at-risk family member's vulnerability, including health or economic dependence.
- [480] The inclusive definition of "family violence" in s. 1 of the FLA does not require an intention to cause harm by the family member against whom the order is sought, and is easily broad enough to encompass physical and psychological harm caused to H.J.G. by his family member, the respondent, while under the influence of alcohol.
- [481] Even a single earlier act of physical family violence may be sufficient to conclude that family violence is likely to occur in the future, within the meaning of s. 183. While the passage of time may reduce the probative force of such evidence, if the circumstances giving rise to the earlier act of violence still exist, its predictive quality may persist. See *Dawson v. Dawson*, 2014 BCSC 44 at para. 44.
- [482] When assessing the "likely" threshold in s. 183, a court should consider the gravity of the harm that might flow from an act of physical family violence. There is thus a sliding scale to the threshold, under which the potential for very serious acts of violence is sufficient to engage s. 183, even if those acts of violence are, in absolute terms, not particularly likely. See *Dawson* at paras. 44-45.
- [483] Given the language in ss. 183 and 184, and the relevant case law, I find that at the time the JCC Order was made there was a real prospect that in the future the issue might arise as to whether a protection order was needed to protect H.J.G. from family violence at the hands of the respondent. I say this because:

- a) The respondent had a history of serious alcohol abuse;
- b) The respondent also had a history of committing violent or dangerous acts while intoxicated that either harmed or created a real risk of serious harm to H.J.G.;
- c) H.J.G. was at that time having dinner at the respondent's residence on most of the nights he was in Victoria;
- d) there was a legitimate concern that, despite having attended Cedars, the respondent was again drinking alcohol in H.J.G.'s presence;
- e) H.J.G. was vulnerable by reason of his cognitive challenges.

[484] This group of factors either: (a) constituted an arguable case for concluding that the respondent was likely to commit family violence against H.J.G. as an at-risk-family member, so as to justify a protection order under s. 183; or alternatively (b) raised a real prospect that, if prophylactic steps were not taken, the "likely" threshold for a protection order would be met in the future.

[485] The broad power set out in ss. 222(a) and 227(c) of the FLA was thus engaged, because a conduct order restricting the respondent's ability to, among other things, drink alcohol in H.J.G.'s presence, would help to facilitate the settlement of an issue that might arise in the future, that issue being the need to protect H.J.G. from family violence arising out of the respondent's alcohol consumption. Such an order might also help to manage behaviours that could otherwise frustrate the resolution of this issue (s. 222(b)), and facilitate arrangements pending final determination of the family law dispute (s. 222(d)).

[486] I come to the same conclusion regarding the term in the JCC order that required the respondent to make best efforts to discourage H.J.G. from drinking alcohol or illicit substances. I say this because H.J.G.'s vulnerability to family violence by an inebriated respondent would be exacerbated were H.J.G. also intoxicated. In this respect, I should add that the evidence at trial established that H.J.G. sometimes uses marihuana to the point of more than moderate intoxication.

[487] I therefore reject the respondent's argument that, because H.J.G. was a child under the FLA only for the purposes of Part 7, which deals with child and spousal support, there was no jurisdiction to make the JCC Order under ss. 222 or 227(c) in Part 10.

[488] Despite being an adult for the purposes of this latter part of the FLA, H.J.G. was an at-risk family member with respect to the respondent within the meaning of ss. 182 and 183. The legitimate concerns about possible future family violence committed by an intoxicated respondent against H.J.G. thus engaged ss. 222 or 227(c) to permit an order restricting the respondent's ability to consume alcohol or illicit substances in H.J.G.'s presence and requiring the respondent to use best efforts to discourage H.J.G. from consuming alcohol or illicit substances.

- [489] Having come to this conclusion, it is unnecessary to consider the claimant's alternative submission that, even if a payment order could not be made under s. 228 of the FLA because the JCC Order was not issued pursuant to s. 222 or 227(c), it could nonetheless be made under s. 230 of the FLA, which permits similar remedies if no other provision of the FLA applies for the purposes of enforcing an order made under the statute.

Appropriateness and Amount of Payment Order

- [490] Having found that the respondent breached the JCC Order, and that the court's remedial power in s. 228 is engaged, the question becomes whether a payment order is warranted, and if so in what amount.
- [491] Section 228 of the FLA provides that if a party fails to comply with a conduct order the court may, among other things, make an order requiring that party to pay an amount not exceeding \$5,000 to or for the benefit of the other party, or a spouse or child whose interests were affected by non-compliance.
- [492] The aim of s. 228 is not to punish but to seek compliance with court orders, which is central to the proper administration of justice and the rule of law. The measures available under s. 228 should be employed to the extent necessary and appropriate to secure such compliance, while also addressing the specific situation before the court. See *A.J.F. v. N.L.S.*, 2020 BCSC 26 at paras. 75, 83-86.
- [493] In keeping with this approach, a breach of a conduct order, on its own, is not determinative of whether a payment order should be made. All of the circumstances must be considered before imposing this remedy, including the number of breaches, their duration, the contravening party's state of mind, the need to deter further breaches, the impact of a payment order in resolving matters as opposed to escalating conflict, and other available options such as a reprimand or a costs order. See *M.S.H. v. B.J.H.*, 2024 BCSC 2147 at paras. 22-32.
- [494] While s. 228 permits a payment order "in an amount not exceeding \$5,000" where a party fails to comply with a conduct order, the total payment imposed can exceed \$5,000 on a "per breach" basis, if the court is satisfied there are multiple discrete breaches of an order: *B.F.W. v. F.P.*, 2025 BCSC 589 at para. 31.
- [495] Here, the respondent knowingly breached the JCC order by consuming alcohol in H.J.G.'s presence, and also by not using best efforts to discourage H.J.G. from consuming alcohol.
- [496] These breaches undermined the JCC order's animating purpose, which was to reduce the risk to H.J.G. of family violence perpetrated by an intoxicated respondent.
- [497] The breaches were frequent, in my view likely occurring up to several dozen times. I also find that they persisted over a long period, probably from around the spring of 2024 until the conclusion of the trial in January 2025.

- [498] I further find that the breaches continued despite the respondent being given notice, at or shortly before the start of trial in December 2024, that the claimant would be seeking a payment order under s. 228.
- [499] Making a payment order will not have an adverse effect on the resolution of other issues in this matter. To the contrary, it will have a useful deterrent effect on the respondent given my decision, explained below, to impose a conduct order moving forward.
- [500] I cannot, however, accept the claimant's submission that the respondent breached the JCC order on the day H.J.G. cut his hand, and that this breach directly caused the injury and is thus a particularly aggravating factor. While the evidence raises reasonable suspicions in this regard, it does not allow me to make these findings on a balance of probabilities.
- [501] Given these circumstances, I conclude that a payment order in more than a nominal amount is justified. I therefore order that the respondent pay \$7,500 to the claimant under s. 228(1)(c)(ii) of the FLA for his breaches of the JCC Order, to be paid from his share of the net proceeds of the Family Home.

Appropriateness of Further Conduct or Protection Order

- [502] I have determined that a conduct order is required to reduce the risk of H.J.G. being subjected to family violence by the respondent in the future, for the same reasons that justified making the JCC Order in February 2024. I have outlined those reasons above, and will not repeat them again.
- [503] While the concern regarding family violence appears mostly related to the respondent's abuse of alcohol, the evidence indicates that he has abused illegal drugs in the past, in particular cocaine, and that he frequently uses marihuana. The conduct order will therefore extend beyond alcohol to any other intoxicating substance, including THC products, except when taken in accordance with a medical prescription.
- [504] The conduct order will also require the respondent to exercise best efforts to discourage H.J.G. from consuming alcohol, THC products and any other intoxicating substances, except when taken in accordance with a medical prescription.
- [505] I have decided against making a protection order, among other reasons because the payment order imposed on the respondent will constitute significant specific deterrence against him breaching the conduct order I am imposing.

Conclusion

- [506] The parties' marriage-like relationship began on November 1, 2013 and ended on November 1, 2020.

- [507] From the net proceeds of the 2025 sale of the Family Home, \$318,240 is the respondent's excluded property and \$40,800 is the claimant's excluded property. The remainder of the net proceeds is family property and will be divided equally between the parties, subject to the adjustments outlined in some of the paragraphs below.
- [508] The parties will share equally any costs that were incurred in repairing the Family Home's septic tank or system for the purpose of removing conditions on the sale of the property.
- [509] The claimant's pension and the respondent's non-registered investment account are both valued at \$67,123.24. They will each retain these respective assets as their sole property, undivided.
- [510] The value of the claimant's RRSP, grossed down to \$19,473 to reflect that she withdrew most or all of the funds post-separation, is family property. The respondent's one-half interest in this amount will be paid out of the claimant's share of the net proceeds of the sale of the Family Home. Any remaining funds in that RRSP belong to the claimant, undivided.
- [511] The parties' RBC joint bank account is valued at \$1,063.88 as at the date of separation, which constitutes family property. The respondent's one-half interest in this amount will be paid out of the claimant's share of the net proceeds of the sale of the Family Home.
- [512] That same RBC joint bank account should be closed within 60 days, unless the parties by agreement extend the time for doing so. Any funds it at that time belong to the claimant and are not family property, and will be paid out to her. But if the joint account is overdrawn at that time, the claimant is solely responsible for that debt.
- [513] An amount of \$2,280 referable to the claimant's CIBC chequing account is family property, one-half or \$1,140 of which belongs to the respondent and will be paid to him out of the claimant's share of the net proceeds of sale of the Family Home.
- [514] The following chattels are family property in the values indicated, and will remain in or be treated as remaining in the possession of the party who had them at separation, with one-half of the indicated value to be paid to the other party from the possessing party's share of the net proceeds of the sale of the Family Home:
- a) Nissan Maxima in the claimant's possession, valued at \$17,000;
 - b) jewellery in the claimant's possession, valued at \$4,200;
 - c) tools and building materials in the respondent's possession, valued at \$2,500;
 - d) firearms in the respondent's possession, valued at \$5,000;
 - e) 2016 Commander ATV in the respondent's possession, valued at \$10,000;
 - f) 2006 Honda ATV in the respondent's possession, valued at \$4,000; and
 - g) 2006 Chevrolet truck in the respondent's possession, valued at \$10,000.

- [515] The parties' furniture will be physically divided on a "you pick, I pick basis", without any dollar equalization, first pick to be determined by a coin flip. The parties may by agreement divide this furniture by a different method if they wish.
- [516] Post-separation, the claimant received a net income of \$133,187 from vacation rentals and the Family Home tenant, which is family property and none of which was shared with the respondent. The respondent is entitled to one-half of this amount, or \$66,593, to be paid out of the claimant's share of the net proceeds of sale of the Family Home.
- [517] After crediting the respondent for the \$600 payments he made into the parties' joint bank account in most of the months since separation, he owes the claimant one-half of the remaining \$72,487 she paid on the Family Home's mortgage post-separation, or \$36,243. The claimant will receive this amount from the respondent's share of the net proceeds of sale of the Family Home.
- [518] The respondent owes the claimant one-half of the \$14,811 she paid towards the Family Home's property taxes post-separation, or \$7,405. She will receive this amount from the respondent's share of the net proceeds of sale of the Family Home.
- [519] H.J.G. remains a "child" within the meaning of s. 146 of the FLA.
- [520] The respondent will pay the claimant \$13,500 for H.J.G.'s child support for 2022, and will in addition pay her \$3,744 for H.J.G.'s child support for the nine months during which H.J.G. lived with her in 2023. He therefore owes her \$17,244 for H.J.G.'s child support in 2022 and 2023, which will be paid to her from his share of the net proceeds of sale of the Family Home.
- [521] The claimant's monthly child support payment to the respondent in respect of H.J.G. is \$612 starting in September 2024. She owes the respondent for any arrears in these payments from that month up to the month in which these reasons are released, to be paid to him from her share of the net proceeds of the sale of the Family Home. Starting the month after these reasons are released, the claimant shall pay the respondent \$612 for the support of H.J.G. on the 15th of each month for as long as H.J.G. remains a child within the meaning of s. 146 of the FLA or until further agreement of the parties or court order.
- [522] For as long as H.J.G. is eligible to receive child support:
- a) the parties will exchange copies of their respective income tax returns for the previous year, including all attachments, not later than May 1 each year, as well as copies of any notice of assessment or reassessment provided to them by Canada Revenue Agency, immediately upon receipt; and
 - b) the parties shall conduct a review of child support on an annual basis and payments shall be adjusted as necessary by July 1 of every year.

- [523] The claimant's claim for the s. 7 expenses listed in her 2024 financial statement and also in her initial and revised Scott schedules is dismissed.
- [524] The respondent will pay the claimant lump sum spousal support in the amount of \$2,814, to be deducted from his share of the net sale proceeds for the Family Home.
- [525] Pursuant to s. 228(1)(c)(ii) of the FLA, the respondent will pay the claimant \$7,500 for breaching the JCC Order, to be paid out of his share of the net sale proceeds for the Family Home.
- [526] The JCC Order is vacated, and in its place I am ordering that for three years following the date of this judgment:
- a) while in H.J.G.'s presence the respondent is not to consume alcohol, nor is he to consume THC products or any other intoxicating substance except when taken in accordance with a medical prescription; and
 - b) the respondent will make best efforts to discourage H.J.G. from consuming alcohol, THC products or any other intoxicating substance except when taken in accordance with a medical prescription.
- [527] The parties are encouraged to agree on costs. If unable to do so, within 30 days of these reasons either party, or both parties, may contact Supreme Court Scheduling with a request to make submissions on that issue. It may be that the court will direct the parties to exchange and file written submissions, and after reviewing those written submissions will further determine whether oral submissions are also necessary.

"D. Layton J."

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