

CANADA / JUDGMENT

C.K.C. v. P.R.C.

2024 BCSC 279

COURT

Supreme Court of British Columbia

DECIDED

20 February 2024

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2024 BCSC 279 C.K.C. v. P.R.C. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: C.K.C. v. P.R.C., 2024 BCSC 279 Date: 20240220 Docket: E64496 Registry: New Westminster Between: C.K.C. Claimant And: P.R.C. Respondent Before: The Honourable Justice G.C. Weatherill Reasons for Judgment Counsel for the Claimant: S. Oberoi S. Plan, Articled Student The Respondent, appearing in person during January 29, 30, 31, and February 1, 2024; No appearance for the remainder of the trial: P.R.C. Place and Dates of Trial: Port Coquitlam, B.C. January 29-31 February 1-2; 5-6, 2024 Place and Date of Judgment: New Westminster, B.C. February 20, 2024 Table of Contents Introduction. 4 Background. 4 Credibility and Reliability. 14 Analysis. 15 Divorce. 15 Parental Responsibilities/Guardianship. 15 The s. 211 Report 15 Family Violence. 18 Parenting Time. 20 Respective Incomes for Support Purposes. 20 The Claimant 20 The Respondent 21 Child Support 23 Section 7 Special or Extraordinary Expenses (the "s. 7 Expenses") 24 Spousal Support 25 Division of Family Property. 25 Excluded Property. 26 Foreign Assets. 26 Gold. 29 The U.K. Property. 30 Bank Accounts (U.K.) 33 Eaglecliff Pension. 34 Shares. 34 Canadian Assets. 34 Richards Street Condo. 34 Family Home. 35 The Parties' Joint Accounts with the Royal Bank of Canada. 36 The Claimant's RRSP. 36 Vehicles. 37 2007 Toyota Camry. 37 2006 Mitsubishi Outlander 37 Conclusion. 37 Divorce. 37 Guardianship/Parental Responsibilities. 37 Conduct Orders. 38 Parenting Time. 39 Child Support 43 Section 7 Expenses. 43 Division of Family Property and Family Debt 44 General Matters. 45

Introduction

- [1] This is a high conflict and acrimonious family law proceeding. Regrettably, the issues in dispute run the spectrum of those this court deals with far too often. Where, as here, a small child is involved, the animosity and concomitant expense is truly unfortunate.
- [2] Since this action was commenced on March 17, 2022, the respondent filed 14 notices of application, some without notice and/or on short leave. Many were found to have been frivolous and vexatious, including those in which he sought to claim against justices who made orders he did not agree with. There have been no less than 14 orders made by this court since the litigation was commenced, including an order on May 4, 2023 pursuant to s. 221 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], prohibiting the respondent from making certain applications in relation to the proceeding without leave of the court. The respondent

filed three notices of appeal, the most recent of which was on the eve of trial.

- [3] During the trial in the afternoon on February 1, 2024, after less than one day of cross-examination of the claimant, the respondent abruptly announced that "I am done" and that "I'm resigning". When questioned as to what he meant by those words, he advised the court that he did not wish to continue his cross-examination and that he was not going to be presenting any evidence on his own behalf or participate any further in the trial. After being apprised of the likely consequences of doing so, the proceedings were adjourned until the following morning in order to give the respondent some time to re-consider his position. He did not appear at trial further. The trial continued in his absence.

Background

- [4] The claimant was born and raised in Langley, British Columbia. She is currently 49 years old.
- [5] The respondent is a citizen of the United Kingdom. He is currently 51 years old. At all material times, the respondent was employed in the field of information technology, generally as a consultant working under contract with various companies. In April 2010, he incorporated "CML" as the entity through which he conducted his business.
- [6] The claimant obtained her Bachelor of Commerce degree from Royal Roads University in Victoria, British Columbia and, began working in the advertising/marketing industry.
- [7] In March 2004, the claimant purchased a condominium unit on Richards Street in Vancouver (the "Richards Street Condo") and lived there until 2005 when she moved to and began working in London, England, initially for various advertising agencies and later in-house for one of her clients.
- [8] The parties met in the United Kingdom in March 2011. In December 2011, they began cohabiting in London, England. They exchanged vows during a Mediterranean cruise in September 2012 and were formally married in the United Kingdom on January 19, 2013.
- [9] The claimant testified that, although the parties had some good times together, their relationship was tumultuous. She testified that the respondent's emotions oscillated from happiness and joy to anger, belligerence, despondency and depression. They argued regularly. They attended counselling in an attempt to work through the challenges in their relationship, but without success. The claimant testified that, during their final counselling session, she was advised by the counsellor to "leave the respondent". She did not heed that advice because she "wanted so badly for [the relationship] to work" and felt that she would be able to help the respondent overcome his emotional difficulties.
- [10] In May 2012, the claimant re-financed the Richards Street Condo and deposited £39,104 into her U.K. bank account.

- [11] In 2014, the parties purchased a "flat", or an apartment, that was in the process of being constructed in London (the "U.K. Property"). The total purchase price was to be £492,000. They were required to provide staggered deposits as construction proceeded.
- [12] In April 2015, they took possession of the U.K. Property. Their total down payment was £271,000 (55% of the purchase price) and they obtained mortgage financing for the balance of £221,000. The respondent contributed 91% of the down payment (approximately £247,000), using proceeds from the sale of another property he had owned prior to the commencement of the parties' relationship. The claimant contributed 9% of the down payment (approximately £24,000).
- [13] On May 13, 2013, the claimant transferred £10,000 to the respondent. He used that money together with £30,000 from his bank account to purchase gold (the "Gold").
- [14] Despite the disparity in the funding of the down payment for the U.K. Property, the parties contributed equally to the mortgage payments and other expenses associated with it.
- [15] The claimant testified that the respondent was anxious to document that he had contributed 91% of the down payment for the purchase of the U.K. Property whereas she had contributed only 9%. On February 8, 2016, the parties executed a document entitled "Declaration of Trust" in respect of the U.K. Property (the "Declaration of Trust").
- [16] The claimant had received a draft of the Declaration of Trust approximately one year before she signed it. She testified that she did not pay much attention to the wording of it. Her understanding was that it simply documented the parties' agreement that 55% of the net proceeds on the ultimate sale of the U.K. Property would be divided in proportion to their respective contributions to the down payment and that the balance would be divided equally.
- [17] The claimant testified that she signed the Declaration of Trust approximately ten months after closing the purchase of the U.K. Property because the parties were struggling in their relationship and she "didn't want to rock the boat". She testified that she did not receive independent legal advice regarding the Declaration of Trust and was never advised to do so.
- [18] The Declaration of Trust provides, in relevant part as follows: THIS DEED IS SUPPLEMENTAL to:- [] (E) WHEREAS
- (1) The purchase price of the Property is £492,000.00.
 - (2) It is agreed between the Trustees that upon sale of the Property after repayment of the mortgage advance and any costs and disbursements attributable to the sale the balance proceeds [sic] shall be paid to the Trustees in the following shares: 91% to [the respondent] 9% to [the claimant] [] NOW THIS DEED WITNESSETH and the Trustees HEREBY DECLARE as follows:- []

3. COVENANTS [] 3.4 That as between themselves they will repay the [mortgage] in equal shares
4. NOTICE OF SALE 4.1 If either [the respondent] or [the claimant] (in this Clause referred to as "the Seller") shall desire to enforce the trust for sale of the Property they shall give notice ("the Notice of Sale") to that effect to the other ("the Buyer") BUT first offering to sell the beneficial interest of the Seller in the property to the Buyer at a price to be determined in the manner hereinafter appearing. 4.2 Within four weeks of being given Notice of Sale the buyer shall give a Counter Notice in writing to the Seller that he/she agrees irrevocably to the sale of the Property or indicating a desire to purchase the beneficial interest of the Seller in the Property.
5. VALUATION 5.1 The Parties shall attempt to reach an agreement on the value of the beneficial interest of the Seller in the Property on the open market as though the Property was vacant at the date of the Counter Notice. 5.2 If agreement has not been reached within two months of the date of service of the Counter Notice then the Parties shall jointly instruct an independent Valuer ("the Valuer") to make a valuation binding on the Parties at the joint expense of the Parties. []
6. NOTICE TO PROCEED From the date when such valuation has been communicated to the Parties ("the Valuation Date") the Buyer shall within fourteen days inform the Seller that he/she is prepared to proceed with the purchase of the Property at the price determined by the Valuer ("Notice to Proceed") or shall give his/her irrevocable consent in writing to the sale of the Property.
7. PAYMENT OF AMOUNT OF VALUATION If the Buyer gives Notice to Proceed to the Seller the Buyer shall have two months to pay the amount of the valuation to the Seller upon which the Seller shall execute an assignment of his/her beneficial interest in the Property free from all incumbrances if any created by the Seller. []
9. SALE In the event of a sale of the Property to a third party on the open market the net proceeds of sale (after deducting Estate Agents' Commission legal fees and other costs and expenses of and incidental to the sale) and after redemption of the mortgage as shall be in existence at the time of sale shall be apportioned as follows:
 - (i) 91% share to [the respondent] and 9% share to [the claimant]
- [19] The claimant testified that she did not appreciate that the Declaration of Trust stipulated that 100% of the net proceeds of sale of the U.K. Property would be split between the respondent and her 91%/9%, respectively (rather than only 55%) until recently when she showed the Declaration of Trust to her lawyer.

- [20] In June 2016, the claimant became pregnant. In October 2016, the parties moved to British Columbia where they were determined to start a new life with their yet to-be-born child. Initially, they lived with the claimant's parents in Langley, British Columbia and later moved to the Richards Street Condo. The U.K. Property has been rented to tenants since that time.
- [21] The parties' daughter, J., was born on March 19, 2017.
- [22] The claimant testified that the respondent seemed overwhelmed by child-rearing responsibilities. He struggled at a new project management job he had at Lululemon. He started to regularly indulge in smoking cannabis.
- [23] Shortly thereafter the respondent was diagnosed with depression. He resigned from his position at Lululemon.
- [24] In September 2017, the parties purchased a townhouse located in Langley, British Columbia, which became their family home (the "Family Home"). The down payment of 35% of the purchase price for the Family Home was raised through the sale of CML by the respondent.
- [25] The parties continued to have difficulties in their relationship. The claimant testified that she was desperate for J. to grow up in a two-parent household and did what she could to work with the respondent to resolve their problems. However, the respondent's mood swings worsened. He ranged from being seemingly content to being controlling and aggressive and withdrawing from her and J. altogether. He spent much of his time alone in the garage of the Family Home engaged in heavy consumption of both alcohol and cannabis.
- [26] In October 2018, the respondent started work at a company called "Electronic Arts". The claimant testified that he had trouble coping with the pace of the job demands. The respondent told the claimant that Electronic Arts required him to live within 30 minutes driving time of its office in Burnaby B.C., and openly expressed anger and resentment that the claimant pressed him for details of why that was necessary instead of simply succumbing to his wishes. He accused her of sabotaging his job opportunities at Electronic Arts, including a promotion that he otherwise would have received. Thereafter, he blamed her for his lack of financial success and criticized her for most other matters that he considered was not right in his life.
- [27] The claimant testified that the respondent's anger episodes would carry on for weeks at a time, during which he had little or no interaction with his family.
- [28] In November 2021, during a visit to England, the respondent erupted with rage when the claimant input his vaccination information into a Canadian government on-line site required for entry back into Canada. He suggested that what she had done might result in him going to jail.
- [29] In early February 2022, the respondent presented the claimant and her parents with a spreadsheet which listed the losses he claimed to have suffered at their hands because he had not received a promotion at Electronic Arts. He made it clear to them that his anger had

been simmering since December 2018. He told the claimant that he was not going to allow J. to see her grandparents any longer. The claimant's parents have played a significant and loving role in J.'s life, helping with childcare and otherwise assisting the claimant when needed. To the claimant, this was the last straw.

- [30] The claimant's mother, M.A., testified regarding her interactions with the parties during their relationship. She confirmed the volatile nature of the respondent's personality, his heavy consumption of alcohol and cannabis and his increasing withdrawal from the family after J. was born. She testified that, particularly after he commenced employment with Electronic Arts he frequently erupted in anger, blaming her, her husband, and the claimant for his financial difficulties. She testified that he told her that they made him feel disrespected and that they had put him through "psychological torture" and "betrayal".
- [31] The parties separated on February 12, 2022 and have remained separated since that time. From the date of separation until March 21, 2022 they continued to reside in different areas of the Family Home.
- [32] March 19, 2022 was J.'s sixth birthday. On March 20, 2022, the respondent told J. that:
- a) the claimant had decided that they were not going to be a family any longer;
 - b) the claimant wants to have the Family Home and that he had to leave;
 - c) he is honest and the claimant is not; and
 - d) the claimant did not want him to see J. or for her to have a father in her life.
- [33] J. was understandably inconsolable over what the respondent said to her. The respondent was aware that the exchange was being video recorded by the claimant. The video was played in court over the respondent's objection on the basis that it would embarrass him.
- [34] The respondent flew to England the following day, March 21, 2022, on a one-way ticket. He told the claimant that he was not going to return. Prior to leaving, he told the claimant in J.'s presence that she was a "bad mother".
- [35] The claimant changed the locks on the Family Home and advised the respondent that she had done so. She also arranged for J. to see a counsellor.
- [36] The respondent returned from England unexpectedly on April 4, 2022. He somehow obtained an ex parte Protection Order from the Provincial Court of British Columbia and arrived at the Family Home in the company of the police. The claimant left with J. and stayed with her parents.
- [37] On April 13, 2022, Master Roberson of this court ordered, by consent, that (in part):
- a) J.'s primary residence would be with the claimant;

- b) the respondent's parenting time with J. would be supervised and would take place for four to six hours every week;
 - c) each party was restrained and enjoined from transferring, disposing of, encumbering, assigning, or in any similar manner, dealing with family assets or any assets in which the other party has or may have an interest pending final determination of the action absent the consent in writing of the other party or further court order;
 - d) the respondent would not proceed to enforce the Provincial Court Protection Order and would take the steps necessary to set it aside;
 - e) the respondent would pay child support to the claimant of \$1,309 per month, commencing on April 1, 2022; and
 - f) the claimant would have exclusive occupancy of the Family Home. (the "April 2022 Consent Order")
- [38] The respondent's payment of child support was sporadic. The claimant enrolled in the Family Maintenance Enforcement Program ("FMEP"). At one point during the summer of 2022, the respondent told J. that her mother, the claimant, "sent a man around to take all [the respondent's] money so I can't see you anymore".
- [39] The respondent's supervised parenting time with J. later became unsupervised by consent, for the duration set out in the April 2022 Consent Order. During the period from and after April 13, 2022, the respondent declined to exercise his parenting time on numerous occasions despite repeated attempts on the part of the claimant to not only encourage it, but also to supplement it.
- [40] Throughout, the respondent has blamed the claimant for his parenting-time incapacity, asserting that he could not afford the travel or to feed J. while she was in his care. There are numerous examples in the evidence of rambling and erratic messages sent by the respondent to the claimant criticizing her attempts to facilitate his parenting time and attempting to portray himself as a victim of the claimant's "financial and emotional abuse". Throughout this, the claimant did her best to isolate J. from this behaviour, with only limited success.
- [41] On November 4, 2022, Mr. Justice Schultes ordered, inter alia, that (in part): []
2. Pursuant to section 211 of the [FLA], Mr. Robert Colby shall prepare a full section 211 report ("Section 211 Report[") for parenting with respect to the child of the marriage.
 3. The Claimant shall pay the cost of the Section 211 Report upfront subject to an equal share of the cost being apportioned to the Respondent.
- [42] On June 27, 2023, Mr. Colby released his s. 211 Report.

- [43] In late August 2023, when the claimant advised the respondent that J. was excited to show him she could ride her bicycle without training wheels, the respondent refused to take J.'s bicycle with him during his parenting time stating: A dad looks forward to that day of teaching their child to ride a bike and the trust it builds. I missed out on that due to your decisions, so it is a sad experience for me to see her doing all these things.
- [44] On Sunday, September 24, 2023, the respondent became enraged that J. was dropped off at his apartment at the beginning of his agreed-upon five hours of parenting time when he claimed he was not ready for J., texting: You have directly involved [J.] in the divorce by bringing her over and that is in direct breach of the consent order, I have not agreed and now she [is] down stairs and that is extremely bad of you to do that. I will see her for 1 hour as you have to take her to gymnastics I am extremely disappointed that you would do this to her and force me into this situation. [] I did not agree and certainly do not accept going downstairs and being met by your brother and sister-in-law. Just so that you can have a party night on a Saturday. It was made clear by your sister-in-law that you will all see each other at your mother's place for dinner. Hence why [you] refused to allow me to see [J.] for 5 hours, so that you could appease your mother's needs rather than [J.'s]. We have had to go on a SkyTrain for our visit as [J.] could not go to the apartment. As I was not expecting her today. We get 45 mins visit as a result of your unilateral decision making to enable you to party rather than look after your daughter. This breach of the consent order requires immediate resolution by the court.
- [45] By order of Mr. Justice Caldwell on October 12, 2023, the respondent's interim child support obligation was reduced from \$1,309 to \$365 effective on November 1, 2023.
- [46] Counsel for the claimant conducted a lengthy examination for discovery of the respondent on November 3, 2023. Numerous requests of him that he produce documents were made. Very few of them were complied with by the respondent.
- [47] On November 21, 2023 the respondent posted the following on his Facebook social media page together with a photograph of J.: Mac and cheese at the community center. Love my bubba but [feel] sad this is how we must see each other due to a narcissistic mother shame, but she is happy seeing me. [] It's nice for my mum to see how well I am doing and for the Facebook stalkers to see what a disaster of a person they dragged into the world win/win.
- [48] On November 23, 2023, Mr. Justice Taylor dismissed an application brought by the respondent and awarded special costs against him. In response, the respondent advised the claimant that he was bankrupt, homeless, eating at the food bank, that she was doing everything in her power to remove J. from his life, that "[he] won't be able to see J. any further" and that she had been removed from [his] life".

- [49] On December 19, 2023, the respondent sent to the claimant a video of J. asking for more time with the respondent during the upcoming Christmas season. It is apparent that, at least for part of the audio, J. was reading from something off camera. At the end of the video, she looked up at the respondent, seemingly seeking his approval. [50] Credibility and Reliability
- [51] The claimant projected as a resourceful, caring and strong woman who testified in a credible fashion. The respondent's attempts during his cross-examination of her to challenge her only enhanced the veracity of her testimony. He focused his questions of her on irrelevant minutia rather than on the material issues in the proceeding. I have no hesitation in accepting the claimant's evidence in its entirety.
- [52] M.A., the claimant's mother, was a delightful witness who gave her evidence in an honest, forthright and credible manner. I accept her evidence in its entirety.
- [53] During his attendance at the trial, the respondent demonstrated a willingness to suppress relevant, material information and displayed a carelessness with the truth. In his Reasons for Judgment dated April 25, 2023, indexed at 2023 BCSC 658, Schultes J. wrote:
- [80] What emerges with great clarity from the evidence is that the respondent has a distorted understanding of the kind of information that is appropriate to share with a young child, and that he is incapable of restraining himself from passing his hostility towards the claimant, as well as his sense of victimhood, on to J., despite his awareness of, or wilful blindness to, the severe emotional consequences of those actions to her. I agree with those observations.

Analysis

Divorce

- [54] The claimant testified that there is no prospect of reconciliation with the respondent and that there has been no collusion in relation to the parties' application for a divorce.
- [55] A divorce order is granted. Parental Responsibilities/Guardianship The s. 211 Report
- [56] As noted, Mr. Colby, a registered psychologist with over fifty years of experience in the field of family and child psychology, prepared a s. 211 Report dated June 27, 2023 (the "s. 211 Report"). His assessment of the parties and of J. was conducted in order to evaluate:
- a) the emotional and psychological status of each of the parties relevant to their parenting abilities and involvement;
 - b) parent-child bonding and parental histories and make recommendations regarding the best interests of J.;
 - c) the emotional, psychological and developmental status of J. and make recommendations regarding parenting responsibilities and parenting time;

- d) matters of family violence;
 - e) views of the child as best as could be discerned; and
 - f) the ability and willingness of the parents to satisfy the needs of the child and make recommendations regarding such needs.
- [57] As part of his assessment, Mr. Colby conducted "collateral interviews" of various people whose names he had been provided by the parties. Those provided by the claimant had all been heavily involved in the parties' lives. Those provided by the respondent were from the United Kingdom and had, at best, a fleeting involvement.
- [58] Mr. Colby charged \$35,000 for the s. 211 Report, which was paid entirely by the claimant. The s. 211 Report was introduced in evidence by consent. Although it is 118 pages in length, a significant portion simply regurgitates the evidence deposed to by the parties in the numerous affidavits they previously filed in this proceeding. To that extent, I do not find the s. 211 Report particularly helpful.
- [59] Mr. Colby assessed the claimant as "an optimistic and positive person" who is "dependable and responsible" and who raised no parenting concerns.
- [60] In preparing the s. 211 Report, Mr. Colby made several assumptions, including that:
- a) both parties show a sincere interest in the emotional, psychological wellbeing of [J.] and seek to be actively engaged in parenting her;
 - b) each party has concerns regarding the other parent's ability to incorporate them within the parenting process and accept them as co-parents;
 - c) the parties are unable to structure joint decision making, cooperation, communication and decision making in a manner for there to be a joint parental engagement in parenting J.;
 - d) the respondent "can be highly reactive to perceptions that others are undermining his concept of his personal rights and wellbeing and will respond in a punitive fashion challenging such individuals' authority and rejecting their input. At points of stress [the respondent] may be overwhelmed and withdraw and disengage";
 - e) "[the claimant] made significant efforts to engage [the respondent] with J., at the same time being concerned about his propensity to be reactive or his tendency to withdraw; and
 - f) both parents have the ability to assume parental responsibility in parenting [J.].
- [61] Based upon the foregoing assumptions, that the claimant "has had ongoing care of [J.] throughout her life and presents positively in terms of meeting [J.'s] emotional, psychological and developmental needs" and that the interactions between the respondent and J. "present as highly positive and without concern", Mr. Colby made several recommendations including that:

- a) the respondent avail himself of alcohol and drug testing in order to confirm that "these are not matters that raise concern";
- b) the parties have joint custody and guardianship of J.;
- c) J. reside primarily with the claimant;
- d) J. remain engaged in receiving therapeutic intervention counselling;
- e) a parenting coordinator be appointed for a two-year term;
- f) every effort be made by the parties to reach mutual decisions regarding J.'s needs;
- g) each of the parties be engaged in J.'s medical appointments and schooling meetings/ activities;
- h) the parties establish a "parallel parenting process" minimizing the direct contact with each other;
- i) the respondent receive counselling from a mental health professional to assist him in dealing with co-parenting;
- j) the parties engage a professional to assist them in enhancing their communication skills regarding co-parenting;
- k) neither party communicates with J. in a manner that is negative or critical of the other party and that "engagement in such activities would indicate a need to reconsider recommendations [] regarding parent/child contact";
- l) that the respondent has unsupervised parenting time for various specified times, holidays and other occasions; and
- m) when J. turns 7 years old, parenting time thereafter be shared equally.

[62] In contrast to Mr. Colby's assessment, the respondent has continued to make co-parenting extremely challenging. He has engaged J. in the conflict despite Mr. Colby's recommendations that he not do so. A social media post on Facebook the respondent made on November 21, 2023 (well after receipt of the s. 211 Report) is demonstrative of the respondent's ongoing and unabashed determination to disparage and disregard anything that happens regarding the claimant and J. that he views as contrary to his wishes. His conduct in this regard showed a callous disregard for J.'s emotional wellbeing.

[63] The respondent continues to be erratic, impulsive, vindictive, and is prepared to put his own ego and ill-will towards the claimant ahead of empathy for his daughter. It seems that he is either unable or unwilling to refrain from involving J. in the parties' dispute. The ongoing abusive and accusatory communications made by the respondent towards the claimant and her counsel in the months, weeks and days leading up to the trial demonstrate that he continues to harbour deep resentment towards the claimant and anyone who takes her side on virtually any issue. The respondent has given me little confidence that he is emotionally

capable of co-parenting with the claimant. His conduct reveals that the assumptions upon which Mr. Colby based his recommendations are flawed.

- [64] Counsel for the claimant advised the Court that the respondent failed to exercise his established parenting time on Thursday, February 1, 2024, the day he advised the Court that he was withdrawing from the trial, but that he did exercise his parenting time as scheduled on Sunday, February 4, 2024.
- [65] In light of the respondent's conduct after receipt of the s. 211 Report, I have concluded that there is a need to reconsider Mr. Colby's recommendations regarding the respondent's contact with J. and his involvement in her care. Family Violence
- [66] Section 1 of the FLA defines "family violence" to include: "family violence" includes [] []
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, [] []
- [67] The evidence before me is clear that, throughout the parties' relationship, the respondent's conduct towards the claimant met each of those criteria.
- [68] I have no difficulty finding that the respondent has engaged in and continues to engage in family violence as defined by the FLA.
- [69] The claimant has been J.'s primary caregiver, both before and after separation. Before separation, the respondent's participation in J.'s childcare and rearing was nominal. Those responsibilities were performed almost exclusively by the claimant with the assistance of her parents.
- [70] Since the parties separated, J. has lived with the claimant. It was agreed that the respondent would have parenting time as set out in the April 2022 Consent Order. Despite that Consent Order, the respondent has repeatedly failed to exercise his parenting time and has declined the claimant's offers of additional parenting time. There have also been times when the respondent has had no interaction or contact with J. for extended periods. In my view, the respondent's comments to J. on March 20, 2022, in the summer of 2022, and again in December 2023, all involving J. in the parties' issues and disparaging the claimant, are inexcusable. They were not expressions of love. They were spiteful and selfish attempts at possession.
- [71] Nevertheless, there is no question on the evidence that the respondent loves J. and that J., in turn, loves him, wants to spend time with him and is happy when she does.
- [72] In determining J.'s needs and circumstances and what is in her best interests, I have considered the factors set out in s. 37(2) of the FLA. In my view, the respondent's conduct has substantially affected J.'s health and well-being, her need for stability given her age and stage of development, his demonstrated lack of ability to exercise his parental

responsibilities, the impact of family violence that has been directed toward the claimant and the appropriateness of an arrangement that would require J.'s guardians to cooperate on issues affecting her. Parenting Time

- [73] Mr. Colby's recommendation regarding initial parenting time for the respondent was incorporated into a consent order dated July 20, 2023 by Justice Gibb-Carsley (the "July 2023 Consent Order") such that the respondent had parenting time of J. on Tuesdays and Thursdays from 4:30 p.m. to 6:30 p.m. and on Sundays from 10 a.m. to 3 p.m. Later, the Sunday parenting time was amended by agreement to 2 p.m. to 7 p.m. in order to accommodate J.'s gymnastics activity. The gymnastics has now finished and the Sunday parenting time has reverted to 10 a.m. to 3 p.m.
- [74] I do not agree with Mr. Colby's recommendations regarding shared parenting time. The respondent has not yet demonstrated the willingness or ability to consistently adhere to such a regime. Accordingly, I am making the orders in respect of parenting time set out below under the heading "Conclusions". Respective Incomes for Support Purposes The Claimant
- [75] From March 2018 to November 2020, the claimant was employed by Coast Capital Credit Union in its marketing department. Since January 2022, she has been employed by the Pattison Food Group as a Senior Marketing Manager. Her current annual salary is \$115,000 plus discretionary bonuses. She also receives income from the rental of the Richards Street Condo.
- [76] The claimant's Line 15000 income was as follows: 2020 \$150,997 2021 \$25,378 (due to COVID-19 layoff) 2022 \$117,325 2023 \$132,147 (not including Richards Street Condo rental income)
- [77] I find that the claimant's income for the purpose of child support was \$117,325 for 2022 and is \$140,000 for 2023. The Respondent
- [78] The respondent described his formal education as including a "three-way major in physics, chemistry and computer science. He asserted "I have a tested IQ of 142 and I have a tested EQ of 133". He described himself as "an incredibly intelligent specialist" in his field.
- [79] During the time that the parties were living together in London, the respondent worked in the field of intellectual property for various entities such as Lloyd's Bank, British American Tobacco, NetIQ, and Vodafone Telco. His annual income was substantial, in the range of £220,000.
- [80] After moving to Canada in 2016, the respondent was unemployed until January 2017 when he obtained a six-month project management contract at Lululemon, earning an income of \$241,654. However, he quit that contract in May 2017, six weeks before its expiry due to struggles with depression

- [81] From January 2018 to September 2018, the respondent worked under contract with the Provincial Services Health Authority, with earnings that have not been disclosed.
- [82] Commencing in October 2018, he worked at Electronic Arts until May 2020 when he took medical leave, apparently due to his depression and he ultimately quit that employment in January 2021. While there, he earned an income of \$143,044 .
- [83] In January 2021, the respondent commenced employment at an online gambling company called Bally's Interactive. The evidence shows that he earned an income of \$147,555 as a technical program manager and \$135,000 on the "help desk". His employment ended on January 19, 2023 and the respondent has been unemployed since that time, collecting Employment Insurance Benefits.
- [84] The respondent purchased a Rolex watch in 2006. In the context of his purported inability to exercise parenting time and feed J. on the basis that he was without money, he was asked why he did not sell his Rolex watch. He responded: "[i]t's a matter of perspective".
- [85] Section 19(1) of the Federal Child Support Guidelines, SOR/97-175 [Guidelines], gives the court a wide discretion to impute income to a spouse as it considers appropriate in the circumstances, including where s. 19(1)(a) provides, "the spouse is intentionally under-employed or unemployed, other than where [such] is required by the needs of a child [] or by the reasonable educational or health needs of the spouse".
- [86] In *Barker v. Barker*, 2005 BCCA 177, the court noted at para. 18:
- [18] Under s. 19(1)(a) of the Guidelines, the important question is whether the payor spouse has demonstrated an intention to be underemployed, with the consequence that his children do not benefit from his potential earning capacity. This does not mean a parent must work the long hours Ms. Barker puts in to earn her significant income. It does mean that a parent who chooses to work less than a regular work week must justify that choice by the needs of the children or suffer the loss personally. He cannot effectively transfer part of the cost of that choice to his children []
- [87] By the respondent's own admission, he is exceptionally intelligent and a highly trained specialist in the field of information technology. There is no evidence whatsoever to suggest that he is incapable of employment in that field or to justify the respondent's lack of employment. To the extent that the respondent has been and remains unemployed or under-employed, I have no difficulty finding that it is the result of a deliberate plan on his part to spite the claimant.
- [88] I also have no difficulty concluding that, based on his age, skills, qualifications and experience, the respondent could easily have been earning an annual income equal to or exceeding that which he derived prior to the parties' separation. I impute income to the respondent of \$140,000 for the purpose of child support starting from the date of separation.
- Child Support

- [89] On April 13, 2022, the parties consented to the April 2022 Consent Order for the payment by the respondent of child support in the amount of \$1,309 per month, based upon Guideline income of \$144,000. That obligation was reduced to \$365, effective November 1, 2023 by Caldwell J.'s October 12, 2023 Order based on the respondent's purported Guideline income of \$38,400.
- [90] The respondent has not made any child support payments since July 2023, with the exception of a payment of \$292 made through FMEP on January 19, 2024. As of October 27, 2023, he was in arrears in the amount of \$3,898.15. For the period from November 1, 2023 to February 1, 2024, he was in arrears totaling $\$365/\text{month} \times 4 \text{ months} = \$1,460$, less $\$292 = \$1,168$. The total child support arrears are \$5,066.15. There will be an order to that effect.
- [91] Based upon the parties' respective Guideline incomes as set out above, there will be an order that the respondent pay the claimant child support in the amount of \$1,278 per month, commencing March 1, 2024, and payable on the first day of each and every month thereafter while J. remains a child of the marriage.
- [92] The claimant also claims retroactive child support for the four-month period from November 2023 to February 2024 of \$1,278 per month (less the above ordered arrears for that same period), or $\$5,112 \text{ less } \$1,460 = \$3,652$. There will an order accordingly.
- [93] The claimant is entitled to claim all child tax benefits and/or other benefits paid for J. by the Government of Canada or the Province of British Columbia, including the eligible dependant tax credit and Canada Child Benefit. Section 7 Special or Extraordinary Expenses (the "s. 7 Expenses")
- [94] The parties agreed prior to their separation that J. be enrolled in gymnastics and preschool/daycare. J. has been consistently involved in gymnastics for many years. The cost was paid from the parties' joint bank account.
- [95] After separation, J. continued to be enrolled in gymnastics and preschool/daycare. The claimant also enrolled her in swimming, summer day camp and a winter break camp, although she did not obtain the respondent's approval before doing so.
- [96] The s. 7 Expenses after separation were as follows: 2022 Langley Gymnastics Foundation \$436 Swim Fins Swim School Amount unknown Sunflower Montessori Preschool \$3,225 Sportsplex Management Ltd. \$8,650 2023 Township Gymnastics \$106 Sportsplex Management Ltd \$1,323 Langley Gymnastics Foundation \$537 Taylin Child Care Inc. \$197 Sunflower Montessori Preschool \$4,625 2024 Sunflower Montessori Preschool \$455 Total \$19,554
- [97] All of these expenses were borne by the claimant. The respondent has not contributed to any of J.'s s. 7 Expenses since separation.
- [98] In 2022, the claimant received a child care credit from the government in the amount of \$8,650.

- [99] The claimant seeks an order requiring the respondent to pay his retroactive proportionate share of those expenses as well as an order that he pay his proportionate share in the future. By virtue of the respondent's conduct in withdrawing his participation in these proceedings, I infer that he does not take issue with either of those claims.
- [100] The claimant is entitled to an order in her favour in respect of retroactive s. 7 Expenses in the following amounts: 2022 44.7% \$5,503 2023 50% \$3,394 2024 50% \$228 Total: \$9,124 Spousal Support
- [101] The claimant does not seek spousal support.
- [102] The respondent claimed spousal support in his pleadings but, as set out above, made it clear to the Court during the afternoon of the fourth day of trial that he was abandoning all of his claims. Division of Family Property
- [103] Section 95(1) of the FLA provides that the court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to divide it equally. The factors to be considered in determining whether the division should be unequal are set out in s. 95(2) and include: Unequal division by order 95 []
- (2) []
- a) the duration of the relationship between the spouses; and []
- h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or a result of an order; [] [] Excluded Property
- [104] In order to succeed on a claim to excluded property, the party making the claim must provide clear and cogent evidence establishing the claim on a balance of probabilities. If documentary evidence is not available, the party bearing the onus of proof may testify as to their recollection of the transactions in dispute. That evidence will be scrutinized for credibility. The trial judge may draw reasonable inferences from the evidence that is less than certain or precise in order to do justice between the parties: *Brazinski v. Brazinski*, 2023 BCCA 359 at para. 39, quoting from *Shih v. Shih*, 2017 BCCA 37 at paras. 42-44.
- [105] The claimant has provided clear and cogent evidence establishing her claim to excluded property. The evidence supporting any claim by the respondent for excluded property is entirely lacking. There is no evidence that the monies used by the respondent to purchase the Gold (see below) or the deposit monies for the U.K. Property or the Family Home were derived from the respondent's excluded property. Foreign Assets
- [106] Sections 105 to 109 of the FLA stipulates the circumstances where this court has jurisdiction to make orders regarding property located outside of British Columbia: Definitions and interpretation 105(1) In this Division: "extraprovincial property" means property located outside British Columbia; "proper law of the relationship" means the proper law of the relationship as determined under section 107 .

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- (2) For the purposes of this Division, spouses do not have a common habitual residence in a jurisdiction if they live separate and apart in the jurisdiction. Determining whether to act under this Part 106(1) This section applies if an order respecting property division, respecting the same spouses, may be made in more than one jurisdiction.
- (2) Despite any other provision of this Part, the Supreme Court has authority to make an order under this Part only if one of the following conditions is met:
- (a) a spouse has started another proceeding in the Supreme Court, to which a proceeding under this Part is a counterclaim;
 - (b) both spouses submit, either in an agreement or during the proceeding, to the Supreme Court's jurisdiction under this Part;
 - (c) either spouse is habitually resident in British Columbia at the time a proceeding under this Part is started;
 - (d) there is a real and substantial connection between British Columbia and the facts on which the proceeding under this Part is based.
- (3) For the purposes of subsection (2)(d), a real and substantial connection is presumed to exist if one or more of the following apply:
- (a) property that is the subject of the proceeding is located in British Columbia;
 - (b) the most recent common habitual residence of the spouses was in British Columbia;
 - (c) a notice of family claim with respect to the spouses has been issued under the Divorce Act (Canada) in British Columbia.
- (4) Despite subsection (2), a court may decline to make an order under this Part if the court, having regard to the interests of the spouses and the ends of justice, considers that it is more appropriate for jurisdiction to be exercised outside British Columbia.
- (5) In determining whether to decline jurisdiction under subsection (4), the court must consider all of the following: []
- (b) the relative convenience and expense for the spouses and their witnesses;
 - (c) if section 108 applies, the law to be applied to issues in the proceeding;
 - (d) the desirability of avoiding multiple proceedings or conflicting decisions in different courts or tribunals;
 - (e) the extent to which an order respecting property or debt
 - (i) made in another jurisdiction would be enforceable in British Columbia, and (ii) made in British Columbia would be enforceable in another jurisdiction;
 - (f) the fair and efficient working of the Canadian legal system as a whole;
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- (g) any other circumstances the court considers relevant.
- (6) A determination of authority under subsection (2) or of whether to decline jurisdiction under subsection (4) is to be made solely by reference to this section. 107 The proper law of the relationship between the spouses for the purposes of section 108 is
 - (a) the internal law of the jurisdiction in which the spouses had their most recent common habitual residence,
 - (b) if the jurisdiction under paragraph (a) is outside Canada and is not the jurisdiction most closely associated with the relationship between the spouses, the internal law of the jurisdiction that is most closely associated with the relationship between the spouses, or
 - (c) if the spouses did not have a common habitual residence, the internal law of the jurisdiction in which the spouse making an application for an order under this Part was most recently habitually resident. 108(1) In this section, "regime of community of property" means a system of law, including a regime of partnership of acquests, in which property owned or acquired and debt owing or acquired during the relationship between the spouses
 - (a) are deemed to be owned or owing by both spouses, and
 - (b) are divided, on separation of the spouses, as if both spouses equally owned the property or owed the debt, but does not include a regime of separate property or a system of law under which a spouse's interest is deferred until or after the occurrence of an event that signifies the end of the relationship between the spouses.
- (2) If the Supreme Court takes jurisdiction under this Division, the Supreme Court must act in accordance with the rules set out in this section.
- (3) Subject to subsection (4), if spouses make an agreement respecting the division of property or debt, the substantive rights of the spouses in a proceeding under this Part are determined by the agreement.
- (4) The enforcement of an agreement under subsection (3) is subject to any restriction that the proper law of the relationship places on the ability of spouses to determine the division of property or debt by agreement.
- (5) Subject to subsection (3), if the spouses' first common habitual residence during the relationship between the spouses was in a jurisdiction in which a regime of community of property applies, property owned or acquired and debt owing or acquired during the relationship between the spouses that is property or debt to which the regime of community of property applies must be divided at the end of the relationship between the spouses according to that regime of community of property.

- (6) If neither subsection (3) nor (5) applies, the substantive rights of spouses in a proceeding under this Part must be determined according to the proper law of the relationship. 109(1) If the Supreme Court has authority under this Division to make an order respecting extraprovincial property, the Supreme Court may make an order respecting the ownership and division of the extraprovincial property.
- (2) For the purposes of dividing extraprovincial property, the Supreme Court, on application by a spouse, may make an order to do one or more of the following:
- (a) instead of dividing the extraprovincial property,
 - (i) require property or family debt within British Columbia to be substituted for rights in the extraprovincial property, or (ii) require a spouse who has legal title to the extraprovincial property to pay compensation to the other spouse;
 - (b) if the court is satisfied that it would be enforceable against a spouse in the jurisdiction in which the extraprovincial property is located,
 - (i) preserve the extraprovincial property, (ii) provide for the possession of the extraprovincial property, (iii) require a spouse who has legal title to the extraprovincial property to transfer all or part of the spouse's interest in the extraprovincial property to the other spouse, or (iv) provide for any other matter in connection with the extraprovincial property;
 - (c) if the court is satisfied that it would be enforceable in the jurisdiction in which the extraprovincial property is located, provide for non-monetary relief.
- [107] The respondent commenced a counterclaim in this proceeding and has submitted to the jurisdiction of this court. Both of the parties were habitually residing in British Columbia at the time this proceeding was started. There is a real and substantial connection between British Columbia and the facts on which the division of property under this proceeding is based. There is no question that this court has authority to make orders related to the parties' property located outside of British Columbia. Gold
- [108] As best as I have been able to decipher from the evidence, on February 14, 2013 the respondent transferred £20,000 into a gold bullion account. On May 16, 2013, the claimant transferred £10,000 to the respondent and he, in turn, deposited those funds into the same gold bullion account. The respondent later transferred an additional £20,000 into the account. The respondent used these monies to purchase gold bullion ("the Gold").
- [109] In January 2024, the respondent sold at least some of the Gold and used £35,675 of the proceeds to pay and discharge the mortgage on the U.K. Property. At the time he disposed of the Gold, there was a court order in place in this proceeding that prohibited either of the parties from disposing of family property. He did so without notice to the claimant and in breach of that court order.

- [110] The balance remaining in the gold bullion account, as disclosed by the respondent, is £5,223.
- [111] Reliable evidence of currency exchange rates is readily available from several open sources on the internet. Such sources have been used in family law proceedings to convert foreign currencies to Canadian dollars. One such source which has been used to convert English Pound Sterling to Canadian dollars is "poundsterlinglive.com": Johnson v. Korol, 2019 BCSC 111 at paras. 17 and 21. The current exchange rate according to that site is 1.7. Accordingly, the Canadian dollar equivalent of the amount remaining in the respondent's gold bullion account is \$8,879. The U.K. Property
- [112] On August 9, 2023, the respondent purported to exercise the provisions of the Notice of Sale clause pursuant to s. 4.1 of the Declaration of Trust. He did so by sending to the claimant a document titled "Notice of Intension [sic] for Sale", which provided, in relevant part:
NOTICE OF INTENSION [sic] FOR SALE Property: [U.K. Property] Date: 9th Aug 2023 To: [Claimant] Re: Sale of Property Under Deed of Trust Dear [Claimant] [] Terms of Sale: The majority shareholder, [the respondent], who hold a 91% share in the property, reserves the right to offer you, the minority shareholder holding a 9% share, the opportunity to purchase your 9% share. This offer is made with the intention of allowing the property to be sold with a single person on the title. [] You have a period of four weeks from the date of this notice to agree to the sale of your 9% share in the property. If you agree within this timeframe, the sale will be concluded based on the open market valuation of £540,000 GBP [Section 4.2]. [] If you do not agree to the sale of your 9% share within the stipulated four-week timeframe, the sale of the property will proceed as follows: · A 91% share will be allocated to [the respondent] · A 9% share will be allocated to you, [the claimant] These proportions reflect the distribution as specified in the Deed of Trust signed on the 8th of February 2015 [sic]. []
- [113] The claimant did not respond to the "Notice of Intension for Sale".
- [114] On December 31, 2023, three weeks before the commencement of this trial, the respondent served the claimant with proceedings he filed in the courts of the United Kingdom seeking to enforce the terms of the Declaration of Trust.
- [115] The claimant submits that the Declaration of Trust cannot be relied upon by the respondent for various reasons including that it is unenforceable on the basis of significant unfairness and unconscionability.
- [116] The applicable provisions of the FLA are as follows: Setting aside agreements respecting property division 93(1) This section applies if spouses have a written agreement respecting division of property and debt, with the signature of each spouse witnessed by at least one other person. []

- (3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:
- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
 - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable. []
- (5) Despite subsection (3), the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
- (a) the length of time that has passed since the agreement was made;
 - (b) the intention of the spouses, in making the agreement, to achieve certainty;
 - (c) the degree to which the spouses relied on the terms of the agreement. [] Order respecting property division 94 []
- (2) The Supreme Court may not make an order respecting the division of property and family debt that is the subject of an agreement described in section 93(1), unless all or part of the agreement is set aside under that section.
- [117] It is noteworthy that the Declaration of Trust does not contain a choice of law provision.
- [118] The parties clearly contemplated at the time they signed the Declaration of Trust that, in the event of a sale of the U.K. Property, the net profit (or loss) would be divided in a manner that took into consideration their respective contributions towards the down payment at the time of purchase. Their actions thereafter in sharing equally the mortgage, management fees, taxes and other expenses associated with the U.K. Property are demonstrative of such a contemplation and are entirely inconsistent with an understanding that the entirety of the net profit (or loss) would be divided 91%/9 % in favour of the respondent.
- [119] Regardless, the Declaration of Trust does not contemplate a division of property upon a breakdown of the parties' relationship. It merely contemplates how the net proceeds will be divided on a sale of the U.K. Property. That precipitating event has not occurred. The U.K. Property has not been sold. In my view, an interpretation of the terms of the Declaration of Trust and a consideration of its validity at law is not required in this proceeding.

- [120] In any event, even if I am wrong, I am satisfied that the claimant did not understand the nature or consequences of the Declaration of Trust when she signed it. I conclude that it should be set aside pursuant to the provisions of s. 93(3)(c) of the FLA. Alternatively, having considered the length of time (six-and-a-half years) that has passed since the Declaration of Trust was made and the lack of any evidence regarding the parties' intention to achieve certainty by the Declaration of Trust or the degree to which they relied upon its terms, I conclude that the Declaration of Trust should be set aside pursuant to the provisions of s. 93(5) of the FLA.
- [121] The U.K. Property was purchased by the parties in March 2015 for a price of £492,000 using a total down payment of £271,005 and mortgage financing of £220,995. In January 2024, the respondent used the proceeds from the sale of the parties' gold bullion to pay off the remaining principal owing under the mortgage of £35,675. The current appraised value of the U.K. Property is £560,000, converted to Canadian dollars @ 1.7 = Cdn \$952,000. Bank Accounts (U.K.)
- [122] As best as I have been able to decipher from the evidence, the following amounts in the following bank accounts are family property to be divided equally: Account Name Account No. Amount Halifax Joint Bill 9366 £950.40 @ 1.7 = Cdn \$1,616 Halifax Current 0238 £72.92 @ 1.7 = Cdn \$124 Halifax Gold 4428 £7.08 @ 1.7 = Cdn \$12 Halifax Websaver 0855 £27.48 @ 1.7 = Cdn \$47 Halifax House Money 7112 £30.24 @ 1.7 = Cdn \$51 Halifax Online Saver 0267 £5.94 @ 1.7 = Cdn \$10 Halifax 8740 £4,027 @ 1.7 = Cdn \$6,846 Total Cdn \$8,706 Eaglecliff Pension
- [123] There was some evidence that, in 2016, the claimant was enrolled in a pension plan with her then employer in the U.K. However, the extent, if any, of that enrollment was short. Neither party was able to provide any evidence of the value of the pension, if it indeed exists. Shares
- [124] The respondent disclosed that he owns shares in Lloyds and Vodaphone but that their value (as disclosed in his Form F8 Financial Statement) is nominal. Canadian Assets Richards Street Condo
- [125] The claimant purchased the Richards Street Condo on March 29, 2004. Its appraised value as at the date of cohabitation was \$360,000. The principal owing under a mortgage against the property at that time was approximately \$40,000.
- [126] In May 2012, the claimant refinanced the Richards Street Condo by increasing the mortgage owing on it from \$35,587 to \$100,000. The net proceeds of the refinancing of \$64,413 (£39,104) were transferred to her U.K. bank account. Some of that money was transferred to the respondent for the purchase of the Gold and some was used as her portion of the down payment on the U.K. Property.
- [127] As a result of the claimant losing her employment during the COVID-19 crisis, on February 21, 2021, the parties further refinanced the Richards Street Condo for \$170,000.

- [128] The monthly expenses associated with the Richards Street Condo are: Mortgage \$1,548 Strata fees \$360 Management fees \$94 Repairs and maintenance \$50 Insurance \$88 Taxes \$146 Total \$2,286 The Richards Street Condo is currently rented for \$2,240 per month.
- [129] At the outset of the trial, the parties consented to an order that the Richards Street Condo be sold with the net proceeds of sale to be held in an interest-bearing trust account at the claimant's counsel's firm pending further order of this Court.
- [130] The current appraised value of the Richards Street Condo is \$630,000. Family Home
- [131] The Family Home was purchased by the parties on September 18, 2017 for the sum of \$689,000. Although there is a distinct lack of evidence regarding the genesis of the funds used for the down payment of 35% (approximately \$241,000), the claimant apparently concedes that it was funded by way of the sale by the respondent of CML, which he incorporated in April 2010 and used as the vehicle through which he earned his income. There is no evidence as to the value of CML as at the date of cohabitation or that any of the sale proceeds are excluded property.
- [132] The current appraised value of the Family Home is \$1,050,000. In February 2021, the mortgage registered against it was increased to \$230,000 (as part of the refinancing of the Richards Street Condo). The current mortgage debt against the Family Home is \$162,507, resulting in equity of \$887,493.
- [133] The claimant has been residing with J. in the Family Home since the April 13, 2022 Consent Order was made. With the exception of one by-weekly mortgage payment for the month of April 2022 paid by the respondent (\$1,036), she has been solely responsible for the payment of all expenses associated with the Family Home since separation, including the mortgage and taxes.
- [134] The claimant wishes to purchase the respondent's interest in the Family Home. The respondent does not oppose her doing so. The Parties' Joint Accounts with the Royal Bank of Canada
- [135] At the time of separation, the parties' RBC joint account No. 1 had a balance of \$42,914. On March 24, 2022, the claimant transferred \$18,000 from this account to her own personal account. She used those funds to pay the ongoing mortgage, strata fees and other expenses associated with the Richards Street Condo and the Family Home. The respondent withdrew \$7,000 from this account for his own living expenses.
- [136] The parties also maintained a RBC joint account No. 2 which was used for banking related to the Richards Street Condo. The claimant withdrew \$3,000 from this account for payment of expenses associated with the Richards Street Condo.
- [137] These accounts have since been closed. The Claimant's RRSP

- [138] At the time of cohabitation, the claimant had an RRSP valued at approximately \$15,000. Its value at the date of separation was \$24,626. Its current value is \$26,507. Vehicles 2007 Toyota Camry
- [139] This vehicle was purchased by the claimant after the parties separated with a \$9,000 loan from her parents. Its current value is approximately \$6,000. It is not family property. 2006 Mitsubishi Outlander
- [140] This vehicle was the parties' sole family vehicle and purchased by them in 2017 for \$8,233. Its current value is approximately \$5,000. The respondent has had sole possession of this vehicle since the date of separation.

Conclusion

- [141] I am making the following Orders: Divorce
- a) the parties are divorced, the order to take effect 31 days after the date of these Reasons for Judgment; Guardianship/Parental Responsibilities
 - a) pursuant to s. 39(1) of the FLA, the parties are joint guardians of J.;
 - b) pursuant to s. 41 of the FLA, the claimant has sole decision-making authority with respect to:
 - i. where J. will reside; ii. J.'s education and participation in extracurricular activities; iii. subject to section 17 of the Infants Act, R.S.B.C. 1996 c. 223, giving, arranging for, refusing or withdrawing consent to medical, dental and other health-related treatments for J.; iv. applying for or renewing a passport, licence, permit, benefit, privilege or other thing for J.
 - c) the claimant will advise the respondent prior to making any of the decisions set out in the paragraph immediately above, except in the case of an emergency;
 - d) pursuant to s. 40(2) of the FLA, the parties will make their respective reasonable best efforts to reach an agreement regarding significant decisions respecting J. In the event they are unable to agree, and subject to a court order to the contrary, the claimant will have final decision-making authority;
 - e) each of the parties may obtain information concerning J. directly from her school, counsellor, medical professionals and third-party caregiver;
 - f) the claimant will retain possession of J.'s passport, care card and birth certificate and will provide such credentials to the respondent as necessary to facilitate his travel or other activities with J. as agreed by the parties. The respondent will return such credentials to the claimant upon the completion of the travel or activity. The respondent may apply to the appropriate authorities to obtain a copy of J.'s care card and/or birth certificate at his own cost; and

- g) the respondent will not remove J. from the Lower Mainland of British Columbia without the prior written consent of the claimant or a court order. Conduct Orders

[142] Each of the parties:

- a) will put the best interests of J. ahead of her/his own interests;
- b) will foster a positive relationship with the other parent;
- c) will maintain polite, respectful communications with the other parent;
- d) will refrain from negative, derogatory, disparaging or critical comments about the other parent, or discuss these or any related court proceedings in the presence of J.;
- e) pursuant to ss. 222 and 227 of the FLA, will not post or make negative comments, either explicitly or implicitly, about the other parent, or his/her counsel or family members on any website or social media platform; and
- f) will communicate with each other only as is reasonably necessary to facilitate their respective parenting of J. and only by way of email or WhatsApp, except in the case of emergency. Parenting Time

[143] the respondent's parenting time with J. is subject to the following conditions (the "Parenting Time Conditions"):

- a) he will not have consumed alcohol, cannabis, non-prescription medication or any other illicit substance during or within seven hours of the commencement of the parenting time;
- b) he provides appropriate care and accommodation to J. during his parenting time, including by providing her with healthy meals;
- c) he exercises his parenting time on a consistent basis;
- d) he engages in counselling provided by a licenced mental health professional (the "Respondent's Counsellor") aimed at addressing and improving his parenting skills, at times and for a duration to be determined by the Respondent's Counsellor;
- e) he provides a copy of this order and the s. 211 Report to the Respondent's Counsellor at the commencement of the counselling; and
- f) the respondent complies with the conduct orders set out herein.

[144] Paragraphs 1 to 5 of the July 2023 Consent Order of Mr. Justice Gibb-Carsley are vacated and replaced with the following terms:

- a) J. will reside primarily with the claimant;

- b) provided, and for so long as, the respondent is in compliance with the Parenting Time Conditions, he will have the following parenting time with J. Unless otherwise specified, the respondent will be responsible for the pick-up and drop-off of J. (with the claimant, her parents or other adult whose name has been provided in advance to the respondent) at the claimant's residence or at such other location as may have been previously agreed by the parties in writing: Phase I, commencing March 8, 2024
- (1) every other Saturday and Sunday from 9 a.m. to 7 p.m.;
 - (2) if he has given the claimant at least 24 hour's notice and provided the time does not conflict with J.'s previously scheduled activities or events, one weekday from after school (or after school care pickup as the case may be) to 6:30 p.m.; and
 - (3) as has been agreed with the claimant in writing from time to time. Phase II, commencing June 1, 2024
 - (4) every other weekend from 9 a.m. on Saturday to 7 p.m. on Sunday,
 - (5) if he has given the claimant at least 24 hour's notice and provided the time does not conflict with J.'s previously scheduled activities or events, one weekday from after school (or after school care pickup as the case may be) to 6:30 p.m.; and
 - (6) as has been agreed with the claimant in writing from time to time. Phase III, commencing September 1, 2024
 - (7) every other weekend, from Friday pick-up after school (or after school care as the case may be) to 7 p.m. on Sunday. If the applicable Friday or Monday is a statutory holiday or a professional development day for J.'s school, the parenting time will be from Thursday and/or Monday, as the case may be;
 - (8) if he has given the claimant at least 24 hour's notice and provided the time does not conflict with J.'s previously scheduled activities or events, one weekday from after school (or after school care pickup as the case may be) to 6:30 p.m.; and
 - (9) as has been agreed with the claimant in writing from time to time. Holidays and Special Occasions
 - (10) on odd-numbered years, the claimant will have parenting time with J. from noon on Christmas Eve to noon on Christmas Day. The respondent will have parenting time with J. from noon on Christmas Day to noon on Boxing Day. On even-numbered years, those parenting times will be reversed;
 - (11) notwithstanding the scheduled parenting time set out above, the respondent will have parenting time each year on Father's Day from 5 pm on the previous day (Saturday) until 7 p.m. on Father's Day; the claimant will have parenting time each year on Mother's Day from 5 p.m. on the previous day (Saturday) until 7 p.m. on Mother's Day.

- c) the respondent will ensure that J. has phone or electronic communication access to the claimant during his overnight parenting time;
 - d) during each party's parenting time, J. will be provided with ability to initiate electronic communication with the other party no later than one-half hour before J.'s bedtime for no longer than ten minutes;
 - e) except in the case of an emergency or matters arising that are beyond his reasonable control, the respondent will provide the claimant with at least 48 hours' written notice of his being unable to exercise his scheduled parenting time, in which event the claimant will have the right to exercise parenting time if she elects in writing to do so;
 - f) during their respective parenting time, each party will have day-to-day parenting responsibility, will facilitate J.'s attendance at scheduled medical and dental appointments, extracurricular activities and events, and will advise the other in a timely manner of any significant issue affecting J. that arises during such parenting time;
 - g) neither party will schedule appointments, events or activities for J. during the other's parenting time, absent the written consent of the other party;
 - h) all parenting times set out above may be varied at any time with the prior written agreement of the parties; and
 - i) notwithstanding the foregoing, the claimant will be at liberty to travel with J. outside of British Columbia without the consent of the respondent, written or otherwise. Unless otherwise agreed to in writing by the respondent, if such travel affects the respondent's parenting time with J., the claimant will provide him with at least one-week's advance written notice thereof. In the case of travel outside of Canada, the claimant will provide the respondent with at least one-month's advance written notice of thereof. In either case, the claimant will provide the respondent the travel itinerary and contact information at the destination. In the event that the claimant travels with J. outside of British Columbia for a period exceeding 14 consecutive days, the respondent will be entitled to additional parenting time to make up for any parenting time he misses as a consequence. Child Support
 - a) The respondent will pay child support to the claimant in the amount of \$1,278 per month commencing March 1, 2024 and payable on the first day of each and every month thereafter while J. remains a child of the marriage.
 - b) The claimant is entitled to claim all child tax and/or other benefits paid for J. by the Government of Canada or the Province of British Columbia, including the eligible dependant tax credit and Canada Child Benefit.
 - c) The arrears of and retroactive child support payable by the respondent to the claimant in the amount of \$8,718.15 will be set off against the Equalization Payment referenced below.
- Section 7 Expenses

- a) The parties will share J.'s special and extraordinary expenses in proportion to their respective Guideline incomes, pursuant to s. 7 of the Guidelines, such expenses to include:
 - i. Childcare expenses incurred as a result of the employment, illness, disability or education or training for employment of the party who has the majority of parenting time, including childcare and summer day camps during J.'s spring, winter and summer school breaks; ii. That portion of the medical and dental insurance premiums attributable to J.; iii. Health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or related professional, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses; iv. Extraordinary expenses for primary or secondary school education and/or other educational programs reasonably required to meet J.'s needs;
 - v. Post-secondary education expenses; and vi. Extracurricular activities, including gymnastics and swimming.
- b) For the purpose of determining the parties' share of s. 7 Expenses, any associated tax benefit or subsidy will be taken into account.
- c) Each party will pay the other party his/her portion of the s. 7 Expenses within 15 days of receipt from the other party of an accounting (with supporting receipts or other documentation) of the expense incurred by that other party.
- d) The respondent will pay the claimant the sum of \$9,124 in satisfaction of retroactive s. 7 Expenses, which amount will be set off against the Equalization Payment referenced below.

Division of Family Property and Family Debt

 - a) The respondent will forthwith execute the documents necessary to transfer his interest in the Family Home to the claimant. The claimant will in conjunction with such transfer of the Family Home forthwith execute the documents necessary to transfer her interest in the U.K. Property to the respondent and to remove the respondent as guarantor in respect of the mortgage registered against the Richards Street Condo. Upon completion of the foregoing transfers, the respondent will have no further claim against the Family Home, the Richards Street Condo or the claimant's RRSP, and the claimant will have no further claim against the U.K. Property, the Gold or the Mitsubishi Outlander.
 - b) Upon completion of the foregoing transfers, the claimant will pay to the respondent the sum of \$43,937 (the "Equalization Payment"), less the set offs referred to below, as an equalization payment in respect of the parties' family property and family debt.
 - c) All other family property and family debt as determined in these Reasons for Judgment will be owned by or the responsibility of the party in whose name or possession the property/debt it is currently in.

- a) The respondent will pay the claimant 50% of the cost of the s. 211 Report, being \$17,500, which amount will be set off from the Equalization Payment.
- b) The respondent will pay the claimant 50% of the cost of the joint appraisals of the Richards Street Condo and the Family Home. There was no cost incurred in respect of the appraisal of the U.K. Property.
- c) Commencing 2025 and for so long as J. remains a child of the marriage, the parties will exchange copies of their respective income tax returns and notices of assessments by no later than the first day of August of each year. The parties' respective child support and s. 7 Expenses payment obligation will be adjusted each year accordingly.
- d) Paragraph 4 a. of the order of Mr. Justice Tammen made May 4, 2023 that:
 - a. Pursuant to section 221 of the Family Law Act, the Respondent is prohibited from making any application in relation to this proceeding unless he has received leave from a judge of this court to bring an application. This order applies from May 4, 2023 until the commencement of the Trial and [] is extended until February 28, 2025 or until further order of this court.

[145] The respondent's counterclaim filed August 22, 2022 is dismissed in its entirety.

[146] The claimant is entitled to her costs of this action, at Scale B.

[147] The respondent's signature on the Order flowing from these Reasons for Judgment is dispensed with. "G.C. Weatherill J."

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