

CANADA / JUDGMENT

C.L.D. v. J.J.P.D.

2024 BCSC 1123

COURT

Supreme Court of British Columbia

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2024 BCSC 1123 C.L.D. v. J.J.P.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.L.D. v. J.J.P.D.,

2024 BCSC 1123

Date: 20240626

Docket: E19082

Registry: Quesnel

Between:

C.L.D.

Claimant

And

J.J.P.D.

Respondent

Before: The Honourable Justice Matthews

Reasons for Judgment

Counsel for Claimant:

K. Thompson

Counsel for Respondent:

G. Whidden

Place and Date of Trial:

Quesnel, B.C.

January 22-25, February 27-29, and March 1, 2024

Place and Date of Judgment:

Quesnel, B.C.

June 26, 2024

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Overview

- [1] The claimant C.L.D. and the respondent J.J.P.D. separated after a relationship of four to five and one-half years and a marriage of over three years to over four years. years. They have a son, H.A.D., who was born in October 2016.
- [2] In the notice of family claim, C.L.D. seeks a divorce, orders pertaining guardianship and parenting of H.A.D., child support and spousal support, division of family property and debt. In his counterclaim, J.J.P.D. seeks the same type of orders expect spousal support. He objects to paying C.L.D. spousal support.
- [3] The parties do not agree when they separated - C.L.D. asserts it was in November 2021 and J.J.P.D. asserts it was in October 2020.
- [4] H.A.D.'s parenting is a contentious issue between the parties. H.A.D. has some health concerns and potential developmental issues such that C.L.D. is of the view that he should not have over night parenting time with J.J.P.D. H.A.D. has not had overnight parenting with J.J.P.D since the parties ceased cohabitating in November 2021. J.J.P.D. seeks overnight parenting to commence immediately and to move to a shared parenting time regime and shared parental responsibilities. C.L.D. seeks an order that they share decision-making but that she has the final authority in the event of a dispute.
- [5] Child support and spousal support are also in issue, including whether C.L.D. is entitled to spousal support, and if so, at what level and for what duration.
- [6] Because of the urgency of the parenting issue from the perspective of J.J.P.D., at a trial management conference, Master Robertson (now Associate Judge Robertson), at the request and with the consent of the parties, ordered that the trial of issues described that certain issues be bifurcated from the issues as to property and debt division and tried first. The issues to be tried first, at this trial, are parenting, child support and spousal support and "all issues ancillary to that".
- [7] J.J.P.D. seeks a divorce at this trial, arguing that it is ancillary to parenting, child support and spousal support. C.L.D. is opposed to the court addressing divorce at this trial, arguing it is not ancillary and so it must be part of the trial of property and debt division.

Applicable Statutory Regime

- [8] Since the parties are married, some of the orders sought can be made under the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) or the Family Law Act, S.B.C. 2011, c.25.
- [9] It is important to specify under which act orders are made: *Yu v. Jordan*, 2012 BCCA 367 at paras. 1, 48; and *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403 at para. 15. Where the parties seek a divorce, orders for child support and spousal support are corollary orders under the Divorce Act. However, even though the Divorce Act is engaged, the doctrine of paramountcy does not preclude consideration of and making orders under the Family Law Act if there are no "operational inconsistencies" between the acts; paramountcy only applies when the two acts are in conflict: *B.D.M. v. A.E.M.*, 2014 BCSC 453 at para 113. Where there is conflict, the Divorce Act governs.
- [10] In *Venables v. Venables*, 2019 BCCA 281, noting the limitations of the Family Rules of Court templates (at paras. 51, 54), the Court of Appeal for British Columbia endorsed an approach to family law claims that focuses on ensuring justice is done between the parties (at paras. 62-63). Provided the parties are aware of the opposing party's position, the formality of the pleadings will not dictate what statutory provisions the court can rely on to resolve the dispute.
- [11] In the event I determine it is appropriate to address divorce at this part of the trial, divorce is governed exclusively by the Divorce Act.
- [12] A contentious issue is the date of separation. The Divorce Act and the Family Law Act provisions pertaining to separation read slightly differently. A leading case on assessing separation under the Divorce Act is *Nearing v. Sauer*, 2015 BCSC 58. In *Gupta v. Kumar*, 2023 BCCA 106, the Court of Appeal for British Columbia summarized the principles referred to in *Nearing* and referred to *Nearing* when describing the test for separation under the Family Law Act.
- [13] Accordingly, I conclude there is no material difference between the provisions of the Divorce Act and the Family Law Act when determining date of separation. The parties primarily referred to caselaw citing the Family Law Act and so I will make my determination pursuant to that statute.
- [14] Parenting, including parental (or decision-making) responsibilities and parenting time is at issue. Pursuant to the 2021 amendments to the Divorce Act, what was previously described as access is now called parenting time. That is the same terminology used in the Family Law Act. Both acts provide that the principle of the best interests of the child govern and both acts set out a list of those principles: Divorce Act, s. 16(1); Family Law Act, s. 37. The factors cover the same basic considerations and although the provisions are worded slightly differently, there is no material difference.

- [15] With regard to parental decision-making/responsibilities, the Divorce Act uses the former phraseology whereas the Family Law Act, in s. 41, uses the latter. I have not been provided with any authorities on whether there is an operational difference between the Divorce Act and the Family Law Act on the issue of whether one party should have final decision-making authority, which is at issue in this case. Given both parties used the term parental responsibilities, I perceive that they agree that the order should be made pursuant to s. 41 of the Family Law Act.
- [16] One clear wording difference in the legislative regimes is around the principle of maximum contact with regard to parenting. Section 16(6) of the Divorce Act provides that in allocating parenting time, the court "shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child." Section 40(4) of the Family Law Act provides there is no presumption that any particular arrangement is in the best interests of the child.
- [17] With regard to the maximum contact principle, J.J.P.D. seeks a transition to equal shared parenting time but he does not do so based on the maximum contact principle. He submits that the best interests of H.A.D. govern, and he made his submissions on parenting time in relation to the factors in s. 37 of the Family Law Act. In my view, the maximum contact principle is not governing in this case and does not create an operational difference including because both statutes make the best interests of the child the overriding factor. See B.D.M. at para. 113.
- [18] Although the parenting provisions of the Divorce Act and the Family Law Act significantly overlap, there is some difference with respect to the circumstances in which orders under each statute may be varied. Under s. 17(5) of the Divorce Act, the court may make an order varying, rescinding, or suspending a child support or parenting order, retroactively or prospectively, only where it is satisfied a change in the condition, means, needs, or other circumstances of either spouse or of any child entitled to support has occurred. Under s. 47 of the Family Law Act the court may change, suspend, or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including a change in the circumstances of another person. Under the Family Law Act a court can vary a child support order in additional circumstances, namely where substantial evidence has become available since the hearing, or evidence of a lack of financial disclosure was discovered after the last order was made: Family Law Act, s. 152(2).
- [19] C.L.D.'s counsel submitted that since there will likely be further proceedings in this matter, the parties may opt to proceed in Provincial Court, and so making the orders under the Family Law Act will facilitate that. Counsel for C.L.D. did not provide any authority for the proposition that orders made by a judge of this court can be varied by a judge of the Provincial Court.

[20] Nevertheless, given H.A.D.'s age, his health issues and his developmental issues, as well as the sparseness of evidence on some of those issues, in my view it is appropriate to make the orders under the Family Law Act which expressly provide for evidence that was not available at the time of trial to be considered on any application to vary.

[21] I will apply the Family Law Act to all matters except divorce.

Credibility

[22] J.J.P.D.'s counsel submitted that C.L.D.'s evidence should not be accepted when it conflicts with that of J.J.P.D. because C.L.D.'s evidence was unreliable in some respects and on other issues, she was untruthful.

[23] When determining whether to accept evidence of any witness, the court often considers two components: credibility, also described as veracity; and reliability, which is sometimes also described as accuracy: *R. v. Morrissey* (1995), 1995 CanLII 3498 (ONCA), 97 C.C.C. (3d) (ON. C.A.), (1995), 22 O.R. (3d) 514 at 526 (C.A.) at para. 33.

[24] Credibility and veracity are about whether the witness is telling the truth in a moral sense. If the witness is shown to be giving evidence inconsistent with what the witness may know or believe to be true, the witness' veracity is called in to question. Reliability and accuracy are about whether a witness's evidence is sound for reasons other than the intention to tell the truth, such as ability to remember or observe events. Credibility and reliability are related, although they are conceptually distinct. Nevertheless, they are often referred to together as credibility.

[25] Generally, the starting point of assessing credibility is to presume truthfulness: *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 10, citing *Halteren v. Wilhelm*, 2000 BCCA 2. However, where evidence conflicts as between witnesses, or where there are issues that give rise to questions about veracity or reliability, further assessment is necessary.

[26] Evaluating credibility and reliability involves examining the witness' evidence for the ability and opportunity to observe events, the firmness of memory, whether the witness appears able to resist the interests at play to modify his or her recollection, a comparison of the evidence against independent evidence, whether the witness changes evidence during direct examination and cross examination, any motive to lie and demeanour. If the trier of fact accepts the witness's evidence as being generally credible, then the trier of fact should compare it with the other evidence to determine whether it fits within the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions"; this is a key consideration: *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296; and *Jin v. Cheng*, 2018 BCSC 763 at para. 19.

- [27] With regard to demeanour, it may be considered but it is not governing and indeed should be used cautiously as it may not be a reliable indicator of veracity or reliability: *R. v. Sue*, 2011 BCCA 91 at paras. 46-47; *R. v. S.H.P.*, 2003 NSCA 53 at paras. 28-30; and *Re: Novac Estate*, 2008 NSSC 283.
- [28] J.J.P.D. points to evidence that C.L.D. gave about H.A.D. returning home from J.J.P.D.'s house with an inflamed eye. At the time, and at trial, she blamed J.J.P.D. for exposing H.A.D. to allergens. When J.J.P.D. responded, at the time, that H.A.D. had red eyes when J.J.P.D. picked him up from school, C.L.D. asked H.A.D.'s teacher about his eyes that day and his teacher said she had not noticed a problem with his eyes but he had a runny nose. On cross examination, C.L.D. was shown doctor's notes made a few days before this incident, showing that she had taken H.A.D. to the doctor right around that time because of concerns about H.A.D.'s eyes, including that for two weeks he had pink eyes and "gluey sticky eyes" for a few days. C.L.D. testified that she did not remember that H.A.D. had problems with his eyes for days prior to the parenting time but she also testified that she had a memory of telling the doctor his eye was swollen at that visit.
- [29] C.L.D.'s evidence was at least unreliable on that occasion and it is also likely that there was an element of selective memory about the state of H.A.D.'s eye health at that time.
- [30] I agree with the submissions of J.J.P.D.'s counsel that C.L.D.'s conduct around a different medical record raises a concern about her motives to seek advantage in this litigation. C.L.D. works at the same medical clinic out of which H.A.D.'s general physician, Dr. Moftah, practices. Dr. Moftah is also the general physician of C.L.D. and J.J.P.D. C.L.D.'s counsel cross examined J.J.P.D. on a document about a visit he had with Dr. Moftah about H.A.D. and allergens. That discussion took place during a visit that J.J.P.D. had with the doctor for his own medical issue, but Dr. Moftah made a separate note about the inquiry pertaining to H.A.D. on H.A.D.'s file. Dr. Moftah testified and was asked about the note. On her own accord she volunteered that she had not given permission for that document to be released from H.A.D.'s file. Since she raised that issue herself, I understood her to be questioning how it was a document that was being used in court.
- [31] C.L.D. then took the stand a second time to address how she came into possession of the record. She explained that while at work, she noted that there was note on H.A.D.'s file for a visit that she was not aware of. She asked the medical assistant who works with Dr. Moftah (C.L.D.'s work is not in Dr. Moftah's practice), to provide her with a copy of the note. She testified that if a parent comes in and asks for their child's file, the medical office assistants give them the file without first checking with the doctor because a parent is entitled to their child's health information. This seemed to be at odds with Dr. Moftah's spontaneous evidence that she had not authorized that document to be released.

- [32] In any event, C.L.D. did not use the document to acquaint herself with H.A.D.'s health, she used it against J.J.P.D. in these proceedings. Even if the practice at the clinic is as she described it, she did not stay within the spirit of the reason she testified exists for the clinic to give their children's health records. I consider this to be conduct that raises a question about her intentions to be honest and above board regarding matters in this litigation.
- [33] There are also issues with J.J.P.D.'s evidence in some regards. For example, I am cautious about excepting J.J.P.D.'s evidence about dates or years that various things occurred. For example, in direct examination he testified that they moved from their first home together to a home on Hayman Crescent when H.A.D. was three and a half or four years old. That would be in 2020, the year that J.J.P.D. asserts they separated. It is clear from the evidence as a whole that they lived in the Hayman Crescent house for a few years before they separated. This type of unclear or just wrong evidence about dates seemed to affect his evidence about the date of separation, which I will discuss below and which I do not accept.
- [34] On the other hand, when talking about problems with getting H.A.D. to settle down for sleep in the evening, the content of J.J.P.D.'s evidence was consistent with him giving a fair account of that issue and resisting the temptation to present the evidence in the light most favourable to him.
- [35] C.L.D.'s daughter, A.L., testified. On several occasions she parroted exactly or nearly exactly what her mother had said in evidence and her evidence did not fit the preponderance of probabilities. For example, she testified about the fact that H.A.D. needs to have an epi pen nearby at all times because some of his allergies can cause anaphylactic reactions. A.L. testified that she does not know if J.J.P.D. even knows how to administer an epi pen. This seemed to design to dovetail with C.L.D.'s evidence that J.J.P.D. has never administered an epi pen and has refused to learn how to use one.
- [36] For reasons I will detail below, I accept that J.J.P.D. did administer an epi pen to H.A.D. on one occasion, in the presence of C.L.D. I conclude that A.L. gave the evidence she did because of what her mother has told her about J.J.P.D.'s parenting abilities, and not because of things she necessarily knows first hand. She obviously has some personal knowledge of J.J.P.D.'s parenting because she lived in the same house with him where he was in a step parent role with her for about five years. Nevertheless, her evidence about his shortcomings appears to be highly influenced by C.L.D.
- [37] Accordingly, I do not consider the veracity and reliability assessments to be quite as clear cut as J.J.P.D. submits. This is not a case where I can say that generally I prefer the evidence of one party or a witness over the other. It is a matter of identifying what factual matters are in dispute and determining who to believe, guided by corroborating evidence and the preponderance of probabilities.
- [38] Some facts are not in dispute, but some are. When I state facts as facts, they are not in dispute. When the evidence is disputed, I will state the dispute or the competing evidence.

The Parties and the Relationship

- [39] C.L.D. was born in November 1979 and was 44 at the time of the trial. J.J.P.D. was born in 1975 and was 49 at the time of trial.
- [40] Prior to her relationship with J.J.P.D, she had two children, A.L. born in July 2006 and I.L. born in December 2008. J.J.P.D. had a daughter, J.D. from a prior relationship.
- [41] C.L.D. testified that she and J.J.P.D. started living together in June 2016 in a home located on a farm owned by J.J.P.D.' parents, M.F.D. and P.D, to which I will refer to as the "farm". They occupied a separate home from J.J.P.D.'s parents. A.L. and I.L. lived at the farm with C.L.D. and J.J.P.D. J.D. stayed with them when she had parenting time with J.J.P.D. H.A.D. was born in October 20, 2016. C.L.D. and J.J.P.D. were married at the farm in August 2017
- [42] When C.L.D. and J.J.P.D. moved in together, J.J.P.D. worked as a boilermaker. He was dispatched for work around British Columbia and Alberta. This generally meant he would be away from home for weeks at a time, sometimes longer, and then would be at home for long stretches between work.
- [43] In 2018 C.L.D., J.J.P.D., A.L., I.L. and H.A.D. moved to a house closer to Quesnel on Hayman Crescent.

Date of Separation

- [44] C.L.D.'s position is that the parties separated in mid November 2021 at which time she moved out of their home on Hayman Crescent. J.J.P.D.'s position is that they separated in November 2020 when C.L.D. moved out of their shared bedroom and into a bedroom in the basement of the home.

Legal Principles

- [45] In determining when a separation occurred, the focus is on whether one of the parties formed an intention to live separate and apart and then acted on it by taking a step consistent with it: Nearing at para. 54, citing Dhillon v. Dhillon, [1998] B.C.J. No. 823 (C.A.); see also Gupta at para. 13.
- [46] Spouses may be separated while still living under the same roof. If the parties remain under the same roof, the intention to separate need not be mutual but it must be communicated to the other party and acted upon: H.S.S. v. S.H.D., 2016 BCSC 1300 at para. 40, citing Nearing at para. 54, rev'd on other grounds 2018 BCCA 199.
- [47] In assessing whether or when two spouses separated, the court will consider the following factors:
- financial interdependence;
 - living arrangements;

- objective evidence of the parties' lifestyle and interactions such as shared vacations and activities;
- family events and social events attended or shared together, including how the parties present themselves to others;
- whether the parties engaged in sexual relations and other indicia of intimacy including fidelity and sharing personal information; and
- clear statements pertaining to the parties' intention to remain in the marriage or terminate the marriage.

See: H.S.S. at paras. 48-49 citing, among other authorities, Nearing at paras. 56-58; Routley v. Paget, 2006 BCSC 419; and J.J.G v. K.M.A., 2009 BCSC 1056 at paras. 35-39.

[48] Ongoing sexual intimacy and financial interdependence have, in the past, been seen as hallmarks of the presence of a marriage-like relationship or determinative that the parties are not living separate and apart. More recently, the clear authority is that no factor is determinative. The court must take a holistic view of the evidence, taking all relevant matters into account and weighing all the factors, rather than using these factors as a checklist: Weber v. Leclerc, 2015 BCCA 492 at paras. 22-25; and Austin v. Goerz, 2007 BCCA 586 at para. 58.

Evidence

- [49] C.L.D. testified that their relationship had its ups and downs but became very rocky during parts of 2020 and 2021. She testified that from her perspective they kept trying to work on it until they finally decided to separate in the fall of 2021. She testified that at that time, they were living on Hayman Crescent and she was running a daycare out of the basement of the home. She testified that she stopped running her daycare out of the Hayman Crescent home in September 2021.
- [50] C.L.D. testified that after she shut down the daycare, the recreation room of their house was no longer used for that purpose and so she moved her things out of their shared bedroom and down to the rec room. She testified that she slept with H.A.D. in his room. She testified that the family continued to live in the same house and eat meals together until she moved out in November 2021 when she found rental accommodation.
- [51] C.L.D. testified that she entered into a lease for the rental accommodation on November 10, 2021 after approaching the owner of the home in October 2021. She moved into that house with her daughters and with H.A.D.
- [52] J.J.P.D. testified that they determined to separate in November 2020, and around that time C.L.D moved her bedroom contents down to the rec room of the house. On cross examination, J.J.P.D. confirmed that C.L.D.'s move downstairs coincided with her shutting down her daycare which occurred in 2020. Counsel for C.L.D. showed J.J.P.D. C.L.D.'s 2021

tax return which declared income from the daycare business earned in 2021. J.J.P.D. was unable to explain how that could be. He also seemed to become confused about the dates at that point in his evidence but was adamant that C.L.D. moved her bedroom belongings downstairs about a year before she moved out of the house.

- [53] J.J.P.D. also testified that H.A.D. slept between them on their bed until they put a mattress on their floor for him. He testified that H.A.D. would still crawl into bed with them until he was five or six years old. His counsel pointed out that at the time that J.J.P.D. was testifying, in February 2024, H.A.D. was seven years old and since the parties had not been together for over a year, H.A.D. could not have been crawling into bed with them when he was six. J.J.P.D. agreed with that and added that they had been separated for two and one half years. That would make the separation in 2021, not 2020.
- [54] There is a volume of text messages between the parties. Both J.J.P.D. and C.L.D. were asked about the texts as a whole and they agreed that they were texts between them on the dates and at the times indicated on the texts. Those in evidence start in November 2020. In that bundle, there are messages indicating significant problems in the relationship. In several of them, one or the other, usually C.L.D., raised or threatened separation. In June 2021, C.L.D. sent a text asserting that she was going to set up a bedroom in the basement. On September 9, 2021, C.L.D. texted J.J.P.D and stated "it's clear now. We will make Separate living arrangements".
- [55] Around and in between these exchanges are texts that are in line with a functioning domestic household. They include topics such as Christmas presents for the children, C.L.D. asking J.J.P.D what he would like for Christmas and telling him what she wants, household supplies, picking up take out meals, caring for the pets, how their respective work is going, errands, household chores, issues the children are having, day to day finances, planning vacations, planning a Valentine's dinner in 2021, discussing potential renovations, talking about "date nights", and intimacy. In some of the texts, J.J.P.D. addressed C.L.D. with endearments such as "hun" and "babe". In March 2021 he texted her and said that she was the best wife ever. They exchanged texts where they expressed support for each other's ups and downs and expressed thanks to each other for various things. There are texts recognizing milestones in their relationship, such as when they started dating and their 4th wedding anniversary.
- [56] The timing of C.L.D. closing down her daycare business and moving her belongings out of the bedroom that she and J.J.P.D. shared and into the rec room are relevant to the date of separation. In addition to C.L.D.'s 2021 income tax return, there are texts referring to the daycare business as an ongoing business up to June 2021. After the last message referring to the daycare, there are texts, starting in June 2021, in which C.L.D. and J.J.P.D. discuss C.L.D.'s decision to set up a bedroom for herself downstairs. There is a text from J.J.P.D. in that exchange questioning whether they are going to "make it".

- [57] After the September 9, 2021 text in which C.L.D. states they will make separate living arrangements, the text messages no longer contain endearments. While it is impossible to discern tone from words in many cases, many texts appear respectful but others appear to be heated and about disputes. There are still some texts about pets, child care, etc., but there are also texts about whether there will be court proceedings pertaining to H.A.D., and grandparent rights in relation to H.A.D. In October 2020 there are texts about seeing lawyers, identifying how they are financially tied together, and how they have changed their living arrangements.

Discussion

- [58] The key question is when one or both of the parties indicated an intention to separate and acted on it in the context of the other indicia of an ongoing relationship.
- [59] Both C.L.D. and J.J.P.D. testified that C.L.D.'s move to sleeping downstairs marked the commencement of the period when they had discussed separating and decided to do so. I conclude it is conduct that amounts to acting on what was by then, a mutual intention to separate.
- [60] With regard to the date that occurred, they both also agreed that it was after C.L.D. shut down her day care. There are texts referring to the daycare up to June 2021. After the last message referring to the daycare, their texts, starting in June 2021, in which C.L.D. and J.J.P.D. discuss that I.L. comes in their room (the room of C.L.D. and J.J.P.D.). There are also texts in which C.L.D. states she is going to move downstairs.
- [61] The text messages are not determinative. They only show communications between the parties over text, and not what they communicated in person or by other means. However, the texts after November 2020 are inconsistent with J.J.P.D.'s evidence that were merely sharing a house, household chores and finances but were no longer sharing a marriage. The text messages are also consistent with C.L.D.'s evidence that she shut down her daycare in the summer or fall of 2021.
- [62] J.J.P.D.'s evidence is internally conflicted on the date when C.L.D. moved downstairs and slept with H.A.D. downstairs which obviously had to be when H.A.D. was no longer sleeping on a mattress in their shared bedroom. J.J.P.D. testified that H.A.D. did that until he was five or six.. H.A.D. turned five in 2021, so J.J.P.D.'s evidence cannot be correct that H.A.D. was getting off his mattress and crawling into bed with J.J.P.D. and C.L.D. when he was five, if H.A.D. and C.L.D. had been sleeping downstairs for almost a year prior to H.A.D.'s fifth birthday. The lack of timeline cohesiveness in J.J.P.D.'s evidence undermines his position.
- [63] The parties agree that until C.L.D. moved out of the house in November 2021, there was no change in the way they managed their finances and that was that J.J.P.D. paid the mortgage and most of the household expenses.

[64] Overall, the evidence supports C.L.D.'s version that although they had discussed ending their marriage, they continued on and no one acted on it until around September 2021 when they stopped talking about whether they could repair and maintain their relationship and started discussing how they were going to carry on as parents who were no longer married.

[65] I conclude the date of separation was September 9, 2021.

Parenting of H.A.D.

[66] Up to the trial, C.L.D. has been making all of the decisions with regard to H.A.D., including about parenting time. C.L.D. considers it an agreement between the parties but I accept that J.J.P.D. has been exercising parenting time that C.L.D. will allow until he could get to trial to obtain what he considers to be an appropriate parenting regime.

[67] Under the current parenting arrangements, J.J.P.D. has day time parenting on Saturdays and Sundays when he is not working and two days after school mid week on weeks he is not on shift. C.L.D. is of the view that J.J.P.D. and H.A.D. should not have overnight parenting time until H.A.D.'s sleeping issues have been resolved.

[68] C.L.D. also seeks an order that the parties share s. 41 Family Law Act parental responsibilities with her having final decision-making in the event of a disagreement. J.J.P.D. agrees to joint parental responsibilities but seeks an order that neither party have final say in the event of a dispute, rather those matters should be referred to the court.

[69] C.L.D.'s positions are based on H.A.D.'s health and shortcomings she perceives pertaining to J.J.P.D.'s parenting.

[70] Section 37(2) of the Family Law Act provides that the following factors should be considered when determining the best interests of a child in relation to a parenting order:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

Parenting Time

- [71] J.J.P.D. seeks to increase his parenting time over a period of three months after which they will have roughly equal parenting time. He seeks overnight parenting time one day per week starting immediately. Eventually, he seeks parenting time with H.A.D. when he is not on shift, which would result in roughly equally shared parenting time since he has equal days off shift with on shift.
- [72] C.L.D. seeks to maintain the status quo until there is more medical clarity with regard to H.A.D. and until he is able to settle to sleep without her being present.
- [73] J.J.P.D. does not dispute that C.L.D. is an appropriate parent to have significant parenting time. He seeks to increase his parenting time so that he can be involved in H.A.D.'s day to day activities, routines and education. C.L.D. objects to that in part because of her view that J.J.P.D. was an uninvolved and neglectful parent who smokes marijuana and drinks beer to excess, does not appropriately address H.A.D.'s health vulnerabilities, allows H.A.D. to play inappropriate video games, uses inappropriate discipline tactics, and allows other people to look after him when he has parenting time.
- [74] I will address each of these issues as part of the consideration of the s. 37(2) factors that are relevant to this assessment, s. 37(2)(a-g).

H.A.D.'s Health and Emotional Well-Being

- [75] H.A.D. has diagnosed health issues and some developmental issues that have not been diagnosed but are of concern.
- [76] The medical records disclose the following diagnoses:
 - a) anaphylactic peanut allergy;
 - b) allergy to eggs;
 - c) the possibility that he is allergic to beef;
 - d) asthma triggered by smoke; and
 - e) atopic dermatitis (eczema).

- [77] C.L.D. has provided H.A.D. with a gluten free diet for most of his life. H.A.D. does not have a diagnosis of gluten intolerance or of celiac. C.L.D. and her daughters are celiac. The family disposition seems to be the basis for the gluten free diet for H.A.D.
- [78] C.L.D. testified that from an early age, H.A.D. has had eczema. In June 2017, when he was less than a year old, he was referred to BC Children's Hospital about the eczema. The family, C.L.D., J.J.P.D, A.L., I.L. and H.A.D. travelled to Vancouver together for this appointment. At that time, the anaphylactic peanut allergy and the egg allergies were identified.
- [79] Over the next year, the medical records demonstrate that H.A.D. had frequent nasal congestion and cough. He was diagnosed with asthma and prescribed two inhalers, one to use daily and one to use when his asthma flares up.
- [80] In 2019, he had hives. The medical records indicate the cause was not known.
- [81] C.L.D. has had H.A.D. seen on many occasions for abdominal pain and constipation, but no diagnosis has been made. In 2021, C.L.D. asked for a "full work up" on the issue including an abdominal ultrasound. That was done and nothing abnormal was detected. He was also referred to a surgeon for assessment of appendicitis, but that was ruled out.
- [82] C.L.D. testified that H.A.D. sometimes has problems with incontinence and wears pull ups at night. In 2020 she asked a doctor about it but was reassured that children develop at different paces. However, the incontinence issues persist.
- [83] H.A.D. was first enrolled in kindergarten in 2021 but that was not successful. He attended kindergarten in 2022 with more success. H.A.D. is now in grade one. His report card shows that he is struggling with reading and with trying new things. C.L.D. agreed that H.A.D. does not like to try new things because he is afraid he will fail and sometimes does not like playing games for fear that he will lose.
- [84] In April 2022, H.A.D.'s general physician, Dr. Moftah, recommended that H.A.D. be referred for a formal autism assessment. The medical records indicate that his referral would be reviewed, and if he was considered eligible for assessment, he would be put on the waitlist.
- [85] In August 2022, Dr. Moftah noted that C.L.D. had concerns about H.A.D. not sleeping well, especially if C.L.D. is not beside him. In September 2022, H.A.D. saw Dr. Elmradi for assessment of possible obstructive sleep apnea. Dr. Elmradi concluded the problems were his allergies and possible enlarged adenoids. He had an x-ray of his adenoids that was normal.
- [86] In November 2022, H.A.D. saw a pediatrician in Prince George, Dr. Chaudry. Developmentally, Dr. Chaudry described H.A.D. as having good speech and eye to eye contact. She reported that he can get upset with the change of routines and becomes fixated on ideas. I assume this was the referral for the autism assessment, and that Dr. Chaudry did not pursue a formal assessment, but this is not clear to me.

- [87] In June 2023, Dr. Moftah referred H.A.D. for an assessment with Child and Youth Mental Health. According to the documents, C.L.D. indicated concerns with behaviour, anxiety, sleeping and school-occupational function challenges. The behavioural concerns include daily meltdowns, not wanting to leave C.L.D., hitting when he has meltdowns, a long time adjusting to a new situation, needing timers set for all transitions, and having difficulty staying asleep. The assessment indicated that H.A.D. completed an anxiety screen tool, the results of which endorsed generalized anxiety disorder.
- [88] After the assessment, C.L.D. was provided a set of recommendations, including pursuing education on ADHD and neurodiversity, a program for children who have "witnessed challenging domestic situations"; an anxiety program; and family unit programs. The assessment stated that it is important that all persons be aware of "this plan" for H.A.D. C.L.D. did not advise J.J.P.D. that this assessment was taking place and did not provide him with the results, the recommendations or the plan, except through this litigation.
- [89] In addition, the support worker who undertook the assessment stated that she "wondered about the possibility of Autism Spectrum Disorder" due to H.A.D.'s anxiety, gastrointestinal issues, sleep challenges, feeding challenges and social relationship challenges.
- [90] H.A.D. is on the waitlist to see the Child and Youth Mental Health Outreach Child and Youth Psychiatrist. At the time of the Child Youth and Mental Health assessment in June 2023, there was a waiting list of 6-8 months. C.L.D. did not advise J.J.P.D. of this. At the time of the trial, there was an indication that this appointment was in the process of being arranged, but J.J.P.D. was not consulted about that. During closing submissions I ordered that C.L.D. immediately provide any information about referrals or health care assessments or issues to J.J.P.D., and that such appointments be scheduled in consultation with him.
- [91] In August 2023, Dr. Moftah referred H.A.D. for updated allergy testing, asthma and constipation with a pediatrician in Prince George.
- [92] C.L.D. is concerned that J.J.P.D. does not take these issues seriously and is uninformed about them by his own choice. C.L.D. testified that J.J.P.D. rarely went to H.A.D.'s medical appointments. A.L. echoed this evidence but it is not clear how she would know this except second hand from her mother.
- [93] J.J.P.D. testified that prior to their separation, he did not attend all of H.A.D.'s medical appointments, but he did attend major ones when he was informed of them and could attend. The evidence and medical records shows that J.J.P.D. attended the appointment at B.C. Children's Hospital as well as an appointment with a surgeon who ruled out appendicitis.

- [94] There is evidence about an occasion when C.L.D. rushed H.A.D. to the hospital near Christmas, after they had separated, J.J.P.D. left work and drove more than an hour to get to the hospital, but by the time he arrived, C.L.D. had left the hospital with H.A.D. and would not allow J.J.P.D. to visit with him. C.L.D. testified that they had been up in the wee hours with the medical emergency and when they left the hospital, she and C.L.D. were exhausted and needed to sleep.
- [95] I conclude that the conflict between C.L.D. and J.J.P.D. and the problems that they have communicating generally have influenced how they communicate about H.A.D. including about his health issues. Since separation, C.L.D. has not shared medical information about H.A.D. with J.J.P.D. and does not include him in medical appointments she has made for H.A.D.
- [96] C.L.D. testified that she has had to administer an epi pen to H.A.D. on three occasions. She testified that the first time he became anaphylactic, he was 8 months old, and he was vomiting and had hives. She testified that they rushed him to the hospital and since then he has an epi pen with him at all times. She testified that a few months later, he had a reaction when he ate spaghetti, and could not breathe. She testified that she gave him the epi pen and took him to the hospital. She testified that the last time was 2 years ago, so January 2022.
- [97] I pause to note that while C.L.D. described three potentially anaphylactic reactions, and said that she administered the epi pen three times, she either did not describe one anaphylactic episode or the epi pen has only been administered two times. That is because at the time of the first episode, they did not have an epi pen.
- [98] C.L.D. testified that J.J.P.D. has never used the epi pen with H.A.D. She testified that she asked him to take first aid in order to learn how to use it, but he replied that was not required. J.J.P.D. testified that he does know how to use the epi pen, and has administered it. He testified that when they were still living at the farm, they became concerned about H.A.D.'s wellness and he administered the epi pen while C.L.D. held him. He described in detail how he administered the pen, he described how he felt looking at his son in distress. His evidence about administering the epi pen was far more detailed than the evidence that C.L.D. described were three times she gave the epi pen, which could be at most two.
- [99] I conclude that J.J.P.D. administered the epi pen on what C.L.D. described was the second anaphylactic episode.
- [100] I note C.L.D.'s evidence was the third anaphylactic episode, in January 2022, was when she and J.J.P.D. were no longer residing together and she administered the epi pen. Accordingly, all of the anaphylactic episodes have occurred when H.A.D. was with C.L.D. and J.J.P.D. or with C.L.D. without J.J.P.D. The evidence is that H.A.D. has never had an anaphylactic episode when in the care of J.J.P.D. apart from C.L.D. This is not to say that any conduct of C.L.D. is responsible for the anaphylactic episodes. It is to observe that when children have sensitive allergies, they can have untoward events even when they have careful and vigilant parental supervision. There is no basis for concern about J.J.P.D.'s parenting in this regard.

- [101] With regard to H.A.D.'s environmental allergies, C.L.D. testified about an occasion when H.A.D. had swollen and red eyes after parenting time with J.J.P.D. at the farm. She testified that J.J.P.D. had not noticed that H.A.D. had started a medical reaction, despite, as I have described above, that the medical records demonstrated H.A.D. had red eyes and discharge from his eyes for over a week before that incident. I conclude that C.L.D. took this opportunity to blame J.J.P.D. for H.A.D.'s discomfort because she was angry with J.J.P.D. about losing track of time when he was supposed to return J.J.P.D. after parenting. She did not permit H.A.D. to have his next scheduled parenting time with J.J.P.D.
- [102] C.L.D. testified that H.D. was in swim club, which he really enjoys, but he has reactions to the chemicals used in the pool which aggravate his allergies. She testified that as a result, she was holding him back from swim club but J.J.P.D. took him swimming anyway.
- [103] The medical records indicate that H.A.D. is allergic to cats. J.J.P.D. testified and C.L.D. agreed that when they lived at Hayman Crescent, they had a cat, notwithstanding that they knew that H.A.D. was allergic to cats. C.L.D. testified that the cat was an outdoor cat. J.J.P.D. testified that the cat was in the house sometimes. I consider the cat issue to be an example of C.L.D. allowing herself some flexibility with H.A.D.'s health issues, but demanding strict adherence by J.J.P.D.
- [104] C.L.D. is of the view that J.J.P.D.'s wood burning stove causes flare ups of H.A.D.'s allergies. She insists that he not use it and that he provide certification that it is not blowing smoke. In his evidence, J.J.P.D. describe the ventilation system he has in his house at the farm. There was no evidence to contradict this, except evidence from A.L. and C.L.D. about an occasion when H.A.D. came home smelling of "wood heat" and had red eyes, congestion and coughing. J.J.P.D. testified that on this occasion, they were outside around a firepit and an ember landed on H.A.D. causing the smell to permeate his clothes.
- [105] On one occasion, H.A.D. had a cold. He was to have parenting with J.J.P.D. C.L.D., in advance of the parenting, texted J.J.P.D. and told him that H.A.D. had a cold, had taken cold medicine, and if H.A.D. was unwell, J.J.P.D. was to bring him home for more medicine. J.J.P.D. responded that he had cold medicine and could give H.A.D. some if needed, and asked C.L.D. what she had given him. She refused to tell him. When confronted with this text at trial, C.L.D. said she was not comfortable with what medicine J.J.P.D. might have. She eventually agreed that she should have just told J.J.P.D. that she had given H.A.D. Tylenol.
- [106] I find that J.J.P.D. is aware of H.A.D.'s allergies and takes appropriate steps to not trigger or aggravate them while also trying to not let them get in the way of H.A.D. having all of the experiences a young boy can have. The evidence does not support that being with J.J.P.D. endangers him or that J.J.P.D. is indifferent. The people around him when he is with J.J.P.D. including his grandmother and J.J.P.D.'s friends, know that he has more than one food allergy and are careful about that.

- [107] C.L.D. is more cautious than J.J.P.D. It is not surprising that two different human beings will have different perspectives on how to parent a child with several health issues. C.L.D. sees herself as appropriately protective considering the risks involved. J.J.P.D. sees the risk as managed and thinks that cocooning H.A.D. makes the problem worse. In the absence of any demonstrated problem, C.L.D. cannot dictate what approach J.J.P.D. will take no more than he can dictate what approach she takes. Different approaches do not, in this case, support restricted parenting for either parent.
- [108] An issue that is unresolved is H.A.D.'s issues with getting to sleep and staying asleep. C.L.D. testified that H.A.D. was a colicky child who only slept an hour at a time. She testified that she nursed H.A.D. until about age four, before bed and when he woke up in the night. She testified that in order to get some sleep herself, she slept with him. That occurred until very recently. She testified that at present, he will not fall asleep unless she is with him in the room and if he wakes after falling asleep, comes and finds her.
- [109] J.J.P.D. testified it was difficult to get H.A.D. to settle down for to sleep. He agreed that he was not often successful. He testified that he thought they should let him settle on his own, but C.L.D. disagreed and adopted the approach of nursing him if he could not settle or woke up and could not re-settle.
- [110] C.L.D. testified that when she went back to work when H.A.D. was young, J.J.P.D. would put him down, and if he did not go to sleep, he would go in the room, snap his fingers, and tell H.A.D. to lay the [f] down. C.L.D. said after that, she was not comfortable leaving H.A.D. It is not apparent how C.L.D. had this information, given that she was at work. It was not put to J.J.P.D. in cross examination that he ever used foul language with H.A.D. in that regard or used that approach to putting J.J.P.D. down for a nap. I do not accept this evidence.
- [111] C.L.D., J.J.P.D. and A.L. testified about an occasion when C.L.D. was out at a friend's house in the evening. J.J.P.D. could not get H.A.D. to get to sleep. Eventually, he went to bed with ear plugs on. A.L. was at home and called C.L.D., who came home to calm H.A.D.
- [112] Post-separation, C.L.D., H.A.D., A.L. and I.L. stayed with a neighbour after a house fell on the rental house in which they were living. The neighbour testified that H.A.D. would act out around bed time and if H.A.D. awoke after C.L.D. had left him, would cry and scream and ask her why she had left him. The neighbour testified that he had never seen anything like it.
- [113] At the time of trial, H.A.D. was seven years old. Despite his age, C.L.D. and A.L. testified that he remains unable to get to sleep without his mother present in the room and cannot get back to sleep if he wakes up and she is not there. Previously he would not sleep unless she slept in the same bed. At present, he will sleep in his own bed but shares a room with C.L.D.

- [114] There is some suggestion that the length of time that H.A.D. was nursed in the evening may have contributed to the problem. J.J.P.D. testified that C.L.D. was still nursing H.A.D. until she moved out of the house in November 2021, at which time H.A.D. was five years old. C.L.D. testified that she nursed him until he was about four. J.J.P.D. also testified that during their relationship, he felt that C.L.D. knew best about how long to nurse a child and did not weigh in on that decision. I cannot conclude that nursing was a factor in this ongoing problem.
- [115] The evidence does not assist with understanding why H.A.D. is unable to go to sleep and stay asleep without C.L.D. present. Obviously, children vary immensely on this front, but inability to go to sleep and stay asleep independently at age 7 is problematic. For the purposes of this case, it is a factor in determining how to arrange parenting that is in the best interests of H.A.D.
- [116] C.L.D.'s position is that until this problem has been addressed, H.A.D. cannot have overnight parenting time with J.J.P.D. She does not propose a timeline for addressing this problem nor a plan, except for the outstanding referrals to a pediatrician and a psychiatrist. She asserts that since those referrals are imminent, the court should not make any order without knowing the outcome.
- [117] Those referrals are not specific to this issue. This issue has It has also been part of the reasons for referrals in the past but no specific plan has been developed to address it.
- [118] When it was clear that the trial could not conclude in the time scheduled and there would be a break before it could resume, I advised counsel that the Court would appreciate some guidance on this issue from medical or other experienced quarters. When the trial resumed, neither party tendered any evidence that met the Court's request.
- [119] C.L.D. tendered a report from Dr. Moftah with regard to H.A.D.'s medical issues and specifically about how those medical issues impact the best interests of H.A.D. with respect to the time spent with his father. C.L.D. tendered the report knowing that J.J.P.D. seeks over night parenting with H.A.D. and that she would be resisting it based at least in part on H.A.D.'s sleeping issues. Dr. Moftah referred to H.A.D.'s separation anxiety issues, and stated that she did not have the knowledge or experience to advise whether H.A.D. should spend more or less time with his father to avoid heightened anxiety levels. She was of the view that the issue should be addressed through the pending referrals. Dr. Moftah did not, in this part of her opinion or anywhere else refer to any problems with sleeping or offer any opinion that it is not in H.A.D.'s best interests to have overnight parenting time with J.J.P.D. because of his problems getting to sleep and staying asleep.
- [120] J.J.P.D. has not tendered any evidence of a medical or other expert specific to how this issue can be addressed. He points to the AFCC-BC Parenting Plan Guide prepared by a task force appointed by the British Columbia Chapter of the Association of Family and Conciliation Courts ("AFCC-BC") for guidance. He asserts that the Ontario version is relied on by the Ontario courts, and that the newly released BC Guide was relied on by Justice Verhoeven in

E.M.L. v. C.L., 2024 BCSC 73. That is correct, but Justice Verhoeven did so only for the proposition that generally speaking, children do better when parenting of all siblings follows the same structure and schedule.

- [121] The AFCC-BC Parenting Plan Guide, of necessity, provides general guidance. For a child of this age, where one parent has had less involvement than the other, it suggests a gradual move to more time with the less involved parent including an overnight on the weekend and a few hours mid week. It does not provide any guidance on what to do about a seven-year old who has problems getting to sleep and staying asleep.
- [122] Since C.L.D.'s counsel advised that the appointments would be occurring in very short order and since knew I would have the matter under reserve and would benefit from any recommendations that the medical personnel have about how to manage the sleeping issue with regard to parenting time, I asked that counsel advise me if the referrals took place and arrange to appear before me if there was any evidence that bears on the issues while I have the matter under reserve. I have not been advised that the referrals took place and that they generated evidence that I ought to consider.
- [123] Accordingly, the Court must proceed with the evidence it has.
- [124] The evidence that H.A.D. cannot get to sleep and maintain sleep while with J.J.P.D. is dated. The parties separated over two years before the trial began and J.J.P.D. has not had an opportunity to try. J.J.P.D. testified, and I believe him, that if he perceives that the sleeping situation is causing harmful distress to H.A.D. he would take H.A.D. home to C.L.D.
- [125] I acknowledge that referrals to a psychiatrist and pediatrician are pending, but this issue has been outstanding for years and neither H.A.D.'s parents, including C.L.D., have pressed for a solution. It is not sufficient reason for C.L.D. to point to it as a reason for H.A.D. to not have overnight parenting time with J.J.P.D. indefinitely.

H.A.D.'s Views

- [126] There is no formal evidence about H.A.D.'s views such as a s. 211 report taking that into account or a views of the child report.
- [127] C.L.D. testified that sometimes H.A.D. voices that he wants to stay home when he is supposed to have parenting time. C.L.D. testifies that sometimes H.A.D. tells her he did not spend time with J.J.P.D. during his parenting time.
- [128] J.J.P.D. testified that the only difficulty he perceives with H.A.D. during their parenting time is that H.A.D. does not want the time to end, and becomes anxious about timing when the time to go home to C.L.D. is approaching. Jacqueline Van Pulver, a person whom J.J.P.D. dated for about a year, testified that she observed H.A.D. resist going home and having meltdowns about it.

- [129] J.J.P.D. testified that H.A.D. is happy spending time at the farm, going on the outings he arranges and wants more time with him. I accept that this, but it is problematic to use a seven-year old's reaction to fun parenting time as an indicator of how he will do when the parenting time includes meal time, bedtime, homework, and chores. I acknowledge that J.J.P.D. seeks to assume a parenting role that is not limited to fun parenting time.
- [130] I do not consider the evidence to support the proposition that H.A.D. does not want, enjoy or benefit from parenting time with J.J.P.D. I also do not accept that he does not want to go back to C.L.D.'s home. It may be that H.A.D. is saying what he thinks C.L.D. and/or J.J.P.D. want to hear and/or is exhibiting behaviour in anticipation of conflict during exchanges. That sort of behaviour is not uncommon among children whose separated parents are in conflict over parenting time.

History of H.A.D.'s Care

- [131] C.L.D. testified that after she moved into the house on the farm, J.J.P.D. was working on call and was out of town for weeks or months at a time. She testified that when he was in town, he did not help out with the kids, but rather spent his free time in his shop on the farm where he drank and smoked marijuana with his father. She testified that he was not involved with H.A.D.'s daily care including meal times
- [132] J.J.P.D. testified that he was involved in meal times, including preparation of some meals. He testified that he was also involved in bath time. He testified that after bath time, C.L.D. took over the bed time routine because she was breast feeding H.A.D.
- [133] While the text messages do not tell the whole story, they demonstrate that J.J.P.D. was engaged on matters such as meals, spending time with H.A.D. and family matters. They do not include communications to the opposite. They are also consistent with the evidence that C.L.D. did more meal planning and preparation, and more bed time routines, than J.J.P.D.
- [134] I conclude that C.L.D. was more frequently and regularly undertaking H.A.D.'s daily routines than was J.J.P.D., in large part because of his shift work and because C.L.D. was not working outside the home for most of H.A.D.'s young life prior to the separation.
- [135] C.L.D. also asserts that J.J.P.D.'s use of marijuana and alcohol make him ill suited to have more parenting time. J.J.P.D. does not dispute that he smokes marijuana in his shop. He testified that he does not do so all the time and smokes it outside so that it is away from the children.
- [136] A.L. testified that on one occasion, when they were still living at the farm, she was outside with J.J.P.D. at night sitting around a fire. J.J.P.D. was smoking marijuana and offered her some. She was about 12 or 13 years old at the time. J.J.P.D. denied this happened or that he would offer marijuana to a child.

- [137] A.L.'s evidence about this was awkward. As she was giving it, she made a sort of laughing sound, and prefaced the evidence by the statement that she did not think J.J.P.D. would remember the episode. She repeated that again and added that she did not think he would remember it because he was high. A.L.'s uncomfortable appearance on the stand, particularly notable during this part of her evidence, could be due to her unfamiliarity with court proceedings and her age when she testified, which was 17. However, the content of her evidence, especially that she prefaced it with the statement that she did not think J.J.P.D. would remember, causes me to approach this evidence sceptically.
- [138] There is no other evidence about J.J.P.D.'s use of marijuana around the children that causes any concern.
- [139] C.L.D. is also concerned that when in J.J.P.D.'s care at the farm, H.A.D. is around his paternal grandparents, who smoke marijuana. In fact, C.L.D. asserted that they illegally grow marijuana, an assertion that M.F.D. denied.
- [140] C.L.D. called the Ministry and Children and Family Development ("MCFD") about other matters but also reported her allegations about J.J.P.D.'s parents growing marijuana. At first, C.L.D. denied that she had called MCFD about M.F.D. and P.D. She testified that she had called MCFD about J.J.P.D. and the living arrangements that J.J.P.D. had shortly after he moved out the Hayman Crescent house and into a trailer on the farm. As her evidence on the topic evolved, she said that when she contacted MCFD about J.J.P.D. she probably did mention M.F.D. and P.D. She asked MCFD to also inspect their house as well as the trailer in which J.J.P.D. was living. There is no evidence that that this issue resulted in any investigation of illegal marijuana growing on the farm.
- [141] M.F.D. testified that she uses CBD for aches and pains and smokes marijuana, usually in the evenings. In the summer, she and P.D. smoke marijuana outside in the evening and in the winters, they smoke inside. She testified that she has never smoked around H.A.D. or any of the children. There is no evidence contradicting this and I accept it.
- [142] C.L.D. led evidence of a beer tasting party that J.J.P.D.'s brother hosted after they separated. Based on pictures she saw on Facebook, she testified shows J.J.P.D. intoxicated. C.L.D. did not have direct evidence about that since she was not there. In any event, H.A.D. was not there either and having too much to drink at a beer tasting party is not per se bad parenting.
- [143] There is evidence that C.L.D. also uses marijuana and consumes alcohol. The text messages refer to J.J.P.D. picking up supplies from the cannabis store for her, including use of a pen. There is also evidence that C.L.D. and J.J.P.D. consume alcohol regularly.

- [144] A.L. testified that during the last couple of years of their relationship, C.L.D. and J.J.P.D. fought constantly and their house was not a good place to be. She testified that after the fights, J.J.P.D. would go out to the shop and drink and smoke marijuana. She testified that he did so to calm down. She did not testify that he did so in front of the children, or that there was untoward behaviour on this part due to this consumption.
- [145] I conclude that the evidence does not support that concerns about consumption of alcohol or marijuana should dictate the parenting arrangements.
- [146] C.L.D testified that J.J.P.D. plays inappropriate video games with H.A.D. for inappropriate lengths of time. She testified that after they separated, J.J.P.D would spend hours of his time playing video games with H.A.D. It is not apparent how she knows this since she was not there. This proposition was not put to J.J.P.D. in cross examination. There is evidence that before and after separation, H.A.D. liked to play video games and sometimes has meltdowns when either of his parents end the video game session. There is evidence that he does play video games while at the farm, but there is also evidence that he spends a lot of time out doors at the farm with J.J.P.D. and with his grandparents. Witnesses including J.J.P.D., M.F.D., Ms. Van Pulver, and Wayne Thompson (a co-worker and friend of J.J.P.D.) testified that H.A.D. spends a lot of time out of doors including riding in quad bikes (they have a child's quad bike), looking for rocks by the river, a hobby that J.J.P.D. engages in, in J.J.P.D.'s shop working on projects, and in the green house with his grandmother.
- [147] Mr. Thompson testified that he and J.J.P.D. go rocking hounding together, and sometimes J.J.P.D. brings H.A.D. and Mr. Thompson brings his nephew. He testified that the two boys have a good time together.
- [148] The evidence does not support the proposition that H.A.D. spends too much time playing video games or inappropriate video games during parenting time with J.J.P.D.
- [149] With regard to attentive parenting, C.L.D. testified that H.A.D. told her that sometimes when he is at the farm, his dad is not there and he spends time with his grandmother and one time he mentioned that he spent the day with "some lady".
- [150] M.F.D. testified that over the last summer, J.J.P.D. was replacing the room on his house, and while he was doing that, M.F.D. would supervise H.A.D. She testified about the things they do in her green house where she grows many vegetables and some fruit including watermelons. She has involved H.A.D. in growing watermelons. M.F.D. is an artist and arranges for activities for H.A.D. to explore his artistic side.
- [151] I have addressed the marijuana issues that C.L.D. has raised. Including that issue, I have no concerns about H.A.D. having time with his paternal grandparents when he is at the farm.
- [152] It is not clear who the "some lady" that C.L.D. testified that H.A.D. mentioned. J.J.P.D. Ms. Van Pulver testified that over several months, she saw H.A.D. once or twice a week but did not spend a lot of time with them because she knew that J.J.P.D.'s parenting time with H.A.D. was precious and she did not want to get into the way. She described H.A.D. as a shy

child who did not open up to her for a long time but gradually seemed to be more comfortable around her. There was nothing about her evidence or that of J.J.P.D that gave me any concern or led me to believe that J.J.P.D. was neglecting H.A.D. during parenting times.

- [153] I reject the proposition that J.J.P.D. is an inattentive parent who leaves H.A.D. only in the care of others. The objective evidence does not support this. H.A.D. has been watched by his grandmother and other persons. That is not neglectful parenting. Separated parents do not have the ability to be present every minute of their parenting time no more than non-separated parents do. It is not neglectful to involve other people.

Nature and Strength of the Relationships Between H.A.D. and Significant Persons in his Life

- [154] There is no doubt that H.A.D. has a close relationship with his mother. J.J.P.D. does not dispute that. He asserts that he and H.A.D. also have a good relationship, and until the separation he was very involved in H.A.D.'s life. Since then, the relationship has been limited by the time they spend together.
- [155] C.L.D. was asked if she considered J.J.P.D. a good father. She answered that she thought he was good at the fun things. The impression left by her evidence is that she does not respect his day to day parenting skills on health issues, nutrition and discipline. I have addressed the division of parenting work between C.L.D. and J.J.P.D. in the pre-separation period, and the fact that the parenting time post-separation has relegated J.J.P.D. to the role of the fun parent as he does not have the opportunity to engage in day to day parenting with the current parenting arrangements.
- [156] Having said that, I agree with J.J.P.D.'s submission that the activities in which he engages with H.A.D., including time out of doors, time tapping into his creative side with his grandmother and playing with other children, is valuable parenting time. He does different things with J.J.P.D. than with his mother, and combined, their parenting can expose him to a wide range of activities and interests and give him a well-rounded childhood.
- [157] It is not open to the Court to tell either parent that they must respect the parenting skills of the other. The Court can make conduct orders about how the parents behave in this regard, but in this case neither party has requested one and it would be inappropriate to do so without such a request having been made. The Court can observe the best interests of H.A.D. are served by each parent showing respect to the other parent, and by supporting his relationship with the other parent.
- [158] Based on the evidence, I conclude that one of the reasons that C.L.D. resists J.J.P.D. having more time with H.A.D. is that C.L.D. does not want H.A.D. spending a lot of time with his paternal grandparents. C.L.D. and M.F.D. do not get along.

- [159] C.L.D. testified that M.F.D. and P.D. were not welcoming when C.L.D. and her daughters moved to the farm. She testified that M.F.D. inappropriately involved herself in their business and favoured her biological grandchildren, J.D. and H.A.D. C.L.D. testified that P.D. was scary around the children, including telling J.J.P.D. to spank one of C.L.D.'s daughters. A.L. did not testify that M.F.D. or P.D. were scary or that they favoured H.A.D. and J.D. over her and her sister.
- [160] M.F.D. testified that during the time that C.L.D. and her daughters lived at the farm with J.J.P.D., she tried to be a welcoming mother in law and supportive of all of them. She testified that she had a warm relationship with C.L.D.'s daughters who would talk to her about their young girl woes and she denied that she caused problems with C.L.D.'s daughters or with C.L.D. However, from the whole of M.F.D.'s evidence it is clear that at some point, the animosity between C.L.D. and M.F.D. became mutual. After C.L.D. and J.J.P.D. moved to Hayman Crescent, C.L.D. and M.F.D. did not communicate. H.A.D. only saw his paternal grandparents when J.J.P.D. took him to the farm, a relatively infrequent occurrence.
- [161] After separation, H.A.D. has seen more of his paternal grandparents. M.F.D. and J.J.P.D. testified that H.A.D. enjoys time with them. Until last year, M.F.D. grew fruits and vegetables that she sold at the Quesnel Farmers Market. She is an artist who weaves and paints and has previously been employed running art classes. M.F.D. helps J.J.P.D. out by watching H.A.D. and also engages in activities with H.A.D. such as learning to grow vegetables in her hothouse arts and crafts.
- [162] When J.J.P.D. could not drive due to sprained ankle, M.F.D. offered to pick up H.A.D. for his parenting time and drive him back. C.L.D. refused which resulted in no parenting time. C.L.D. testified that she believes that M.F.D. and P.D. have health conditions that make it dangerous for them to drive and to have H.A.D. in their care. M.F.D. testified about these. M.F.D. has a heart condition which troubles her, but is not one that is unusual or prevents her from driving. P.D. had a temporary suspension of driving privileges a few years ago due to an unexplained black out. After investigation of this, his driving privileges were restored and he has not had any further problems.
- [163] The evidence is that M.F.D. and P.D. are positive influences in H.A.D.'s life. The opportunity to spend time with them supports the parenting time regime that J.J.P.D. promotes.

Need for Stability, Given H.A.D.'s Age and Stage of Development

- [164] While under developed, the medical evidence and other evidence demonstrates that H.A.D. needs routine and does not do well with change.
- [165] For example, the first attempt to start kindergarten failed. C.L.D. testified that when H.A.D. was four turning five, he started kindergarten. H.A.D. did not want to go and his resistance including a physical altercation involving the teacher, H.A.D. and C.L.D. C.L.D. decided that H.A.D. was not ready for kindergarten. She testified that she kept him back one year and

employed a tutor to get H.A.D. used to having someone teaching him. She also testified that she spoke to him frequently about the school and the teachers. The next attempt, a year later, was more successful.

- [166] In my view, this evidence demonstrates that although H.A.D. reacted badly to that major change the first time, C.L.D.'s concerted effort to prepare him for the transition the next year worked.
- [167] Post separation, there have been conflicts around parenting time between J.J.P.D and C.L.D. due to C.L.D. unilaterally setting and sometimes withholding J.J.P.D.'s parenting time and J.J.P.D. being late for pick ups and drop offs.
- [168] C.L.D. testified about one occasion where the exchange was to be at Extra Foods and when J.J.P.D. had not shown up by 45 minutes after the time he was supposed to return H.D. and she could not get him on the telephone, she drove out to the farm. He said that he had lost track of the time and had not heard his phone ringing. C.L.D. did not permit H.A.D. and J.J.P.D to have the next scheduled parenting time.
- [169] On one occasion, J.J.P.D. got the parenting day wrong and picked up H.A.D. after school. On that day, H.A.D. was supposed to get on the bus which would take him to A.L.'s school where he would meet her. C.L.D. was working. He did not get off the bus. A.L. called C.L.D. who called H.A.D.'s school. H.A.D.'s teacher reported that she had walked him to the bus. The bus driver said H.A.D. did not get on the bus. Not surprisingly, C.L.D., A.L., the school personnel and the bus driver were all very concerned. C.L.D. contacted J.J.P.D. and learned that H.A.D. was with him.
- [170] J.J.P.D. has also been late for pick ups and drop offs. C.L.D. and J.J.P.D. started involving A.L. in the pickups and drop-offs to avoid angry exchanges. On one occasion, A.L. went outside the apartment but J.J.P.D was over an hour late. On one occasion, C.L.D. and J.J.P.D. disputed whether J.J.P.D. could pick up H.A.D. early for a trip to Barkerville. When C.L.D relented, and had H.A.D. ready at the early time, J.J.P.D. was late.
- [171] This conduct on the part of J.J.P.D. is disruptive and concerning. It is hard on H.A.D. in part because it causes unnecessary conflict between C.L.D. and J.J.P.D. It is hard on C.L.D., who is an anxious person and who takes it as J.J.P.D. being disrespectful. J.J.P.D. knows this.
- [172] I also accept that it may be a manifestation of J.J.P.D. flouting C.L.D.'s dictates about H.A.D.'s parenting time because he is caught in a situation where she does dictate parenting time and treats J.J.P.D. like he has no decision-making role around H.A.D. The content of post-separation texts demonstrate that C.L.D., with disrespectful and authoritarian language, dictates all matters pertaining to H.A.D. C.L.D. unilaterally cancels parenting time and determines where J.J.P.D. can exercise his parenting time.

- [173] For H.A.D., stability includes regular, frequent and predictable parenting time with J.J.P.D. J.J.P.D. must strive to show respect for C.L.D. and H.A.D. by being on time. It is not open to C.L.D. or J.J.P.D. to unilaterally change parenting time or place restrictions on it.
- [174] I consider that while it is in H.A.D.'s best interests to have more parenting time with J.J.P.D., he also needs a lot of stability and carefully managed changes. The transitions to more parenting time must be very incremental, with one change at a time, months between changes, and starting with the first change adding one evening meal to parenting time, and going from there. I will describe the incremental change below.

Ability of Each Person to Exercise Parenting Time

- [175] At the time the parties commenced living together, J.J.P.D. took dispatch work through the Boilermakers Union. In 2017, he went to work at Gibraltar Mines. He works seven days on, seven days off. These two weeks are referred to as a "set". Four of five sets are day shifts. On day shifts, J.J.P.D. leaves his house at about 5:30 am and returns at about 8 pm. Every fifth set are night shifts. For those shifts, J.J.P.D. leaves his house at about 5:30 pm and gets home at about 8 am. He sleeps from 8 am to 4 pm when he works night shifts. He receives his schedule of shifts for the year in advance. Occasionally there are changes due to shortages in welders, but he testified that there is also usually advance notice of those changes.
- [176] J.J.P.D. has availability to parent during days between sets, which are generally equal in length to the sets.
- [177] C.L.D. works full days Mondays through Fridays. She has arranged for after school care for H.A.D. through his sisters and she is available on the weekends. Through this routine, she has the ability to care for H.A.D. appropriately. But H.A.D.'s after school and weekend care can be enhanced by increased parenting time with J.J.P.D.

Family Violence

- [178] C.L.D. testified that J.J.P.D. was a critical husband and step father who constantly complained and criticized her daughters. She testified that he engaged in physical discipline including, for example, grabbing her younger daughter's wrist if she reached for the ketchup bottle. C.L.D. testified that J.J.P.D. yelled and swore at her and at her daughters.
- [179] A.L. gave evidence similar to this. She testified that J.J.P.D. would get upset over the slightest thing and he would be in their faces, yelling and grabbing their wrists. She testified that she had seen him drag her sister and H.A.D. When she was asked for more detail about that, she testified that she was not fully aware if he does that with H.A.D. but she had heard H.A.D. say he does. At this point she was looking at C.L.D., as if for reassurance or assistance with her evidence.

- [180] J.J.P.D. denied using physical discipline with A.L. and I.L. He testified that he may have held I.L.'s hand or grabbed her arm during episodes when I.L. became angry and screamed. He testified that C.L.D.'s evidence that he would get in the face of her daughters and scream at them was exaggerated but he testified that he had yelled at them.
- [181] C.L.D. testified that after parenting one day, H.A.D. was upset and told her that J.J.P.D. had grabbed his face when he would not listen to him, and spanked him when he would not stop playing video games. J.J.P.D. testified that on this occasion, and on other occasions, H.A.D. kicks, hits and scratches, sometimes himself, sometimes his parents, when he is having a meltdown. By the evidence of both, H.A.D. has meltdowns frequently. J.J.P.D. testified that he did not hit H.A.D, or grab his face, but he did restrain him to stop him from hitting himself or J.J.P.D.
- [182] Ms. Van Pulver testified that when she was around J.J.P.D. and H.A.D., she observed J.J.P.D. to be calm in the face of bad behaviour from H.A.D. She gave an example of an occasion when H.A.D. was acting out physically and knocked J.J.P.D.'s hat and hearing aid off. She testified that J.J.P.D. restrained H.A.D. gently and explained to him that he had to calm down.
- [183] I do not accept C.L.D.'s evidence characterizing J.J.P.D. as a parent who engages in abusive yelling and abusive physical discipline. I perceive C.L.D.'s evidence on this topic to be distorted by seeing the worst in J.J.P.D. while not being able to acknowledge her own imperfections as a parent. For example, while testifying about her concerns about J.J.P.D.'s physical interactions with her children, she testified that she would never hit her child. She was confronted with texts in which she told J.J.P.D. that she had smacked one of her daughters twice during a dispute and said, in the text, that the daughter had deserved it.
- [184] There is evidence about angry interactions between J.J.P.D. and C.L.D. post separation. One of C.L.D.'s neighbours saw what he described as a fight involving a lot of shouting. The neighbour described J.J.P.D. as the aggressor. He saw J.J.P.D. drive away and described that he did so with squealing tires. This neighbour also observed C.L.D. having phone conversations with J.J.P.D. and although he could only hear C.L.D.'s end, he testified he could hear J.J.P.D. on the other end getting loud and aggressive and he observed C.L.D. trying to stay calm and moving away from H.A.D. so he could not overhear the phone call. He also described that sometimes J.J.P.D. picks up or drops off H.A.D. with no incident, and sometimes A.L. was involved which seemed to work better.
- [185] Another neighbour witnessed an angry confrontation or confrontations on drop offs and pick ups but could not hear who said what.
- [186] I accept this evidence and accept that at times, J.J.P.D. has been angry and aggressive over parenting issues. However, based on C.L.D.'s own evidence and the text messages I reviewed about the post-separation exchanges, C.L.D. has been angry and dictatorial over parenting issues, more so than J.J.P.D.

- [187] When confronted with some of these exchanges, C.L.D. provided two explanations, neither of which are credible.
- [188] First, she testified that due to his previous marital breakdown, J.J.P.D. learned to use certain language in communications to come out like the good guy. There is absolutely no corroborating evidence of this and it was not put to J.J.P.D. in cross examination. I reject it.
- [189] Second, C.L.D. testified that some of the texts were missing and they would shed a different light on things. She confirmed that she still has her texts. She was invited to review them at the break and identify any missing texts. She did not identify any. I am not persuaded that there are missing texts that would shed a different light on things. However, as stated above, I also accept that texts do not provide complete evidence.
- [190] The evidence of physical contact is restraining H.A.D. when he is having a meltdown. Accordingly, there is evidence of physical contact during discipline but there is no evidence of family violence directed at H.A.D.

Parenting Schedule

- [191] I have considered all of the evidence I have reviewed above, including the concerns that C.L.D. identified. I find that J.J.P.D.'s parenting skills do not raise any concerns that should prevent him from having any amount of parenting time with H.A.D. including over night parenting at the farm.
- [192] Based on the evidence of the unresolved sleeping issues, H.A.D.'s young age, his need for stability, J.J.P.D.'s need to improve his reliability on timing and the need for both parties to reduce stress and conflict during exchanges, I am of the view that H.A.D.'s parenting time with J.J.P.D. should increase very incrementally with the goals of increasing the time that J.J.P.D. and H.A.D. have together, increasing the stability of the schedule, and decreasing the number of exchanges while minimizing disruptive changes for H.A.D.
- [193] At present, J.J.P.D. has parenting time with H.A.D. from 9:30 am to five pm on weekends when he is not on shift and after school Wednesday and/or Friday mid week when he is not on shift. This basic structure shall continue with incremental increases in H.A.D.'s parenting time with J.J.P.D. until December 2025, at which time H.A.D. shall transition to a shared parenting structure.
- [194] The first incremental steps are to provide opportunities for J.J.P.D. and H.A.D. to have the evening meal together. Commencing July 1, 2024, on weekends when J.J.P.D. is not working, H.A.D. will have parenting time with J.J.P.D. on Saturday and Sunday but the Saturday parenting time shall extend to 6:30.
- [195] Commencing in the month of September 2024, when J.J.P.D. and H.A.D. have Tuesday mid week parenting time, the parenting time shall extend to 6:30 pm and J.J.P.D. and H.A.D. shall have the evening meal together.

- [196] Commencing with the month of November 2024, when J.J.P.D. and H.A.D. have Sunday parenting time, the parenting time shall extend to 6:30 pm.
- [197] The next steps will be to provide for overnight parenting.
- [198] Commencing in January 2025, when J.J.P.D. and H.A.D. have Saturday and Sunday parenting time, it shall be overnight. The parenting time will commence Saturday at 9:30 am and end Sunday at 6:30 pm.
- [199] Commencing in March 2025, when J.J.P.D. and H.A.D. have weekend parenting time, it shall commence Friday after school, so long as J.J.P.D. is not working that Friday, and include Friday and Saturday overnights. The weekend parenting time shall end on Sunday at 6:30 pm. If J.J.P.D. is working Sunday, but not Friday and Saturday, the weekend parenting time shall commence Friday after school and end Saturday at 6:30 pm. If he is working Friday, but not Saturday and Sunday, the parenting time shall commence Saturday at 9:30 am and end Sunday at 6:30 pm.
- [200] Commencing in June 2025, when J.J.P.D. and H.A.D. have mid week parenting time, it shall be overnight. It shall commence Tuesday after school and end when J.J.P.D. takes H.A.D. to school on Thursday. During the break from school in the summer of 2025, J.J.P.D. and H.A.D. shall have midweek parenting time from 9 am on Wednesday until 5:00 pm on Thursday.
- [201] Commencing in September 2025, when J.J.P.D. and H.A.D. have midweek parenting time, it shall be overnight if J.J.P.D. is not working on the Tuesday before the Wednesday parenting time or the Thursday after. In other words, depending on J.J.P.D.'s work schedule, he will have parenting time commencing after school on Tuesday and ending with school drop off on Thursday morning, or commencing after school on Wednesday and ending with school drop off on Friday morning.
- [202] In addition, there shall be provision for vacation time starting in the summer of 2025.
- [203] During the summer of 2025, J.J.P.D. and H.A.D. shall have five days of holidays together in July and five days of holiday together in August in addition to other parenting time. Those five-day blocks must be scheduled so that C.L.D. and H.A.D. are not apart for more than five days at a time.
- [204] During the Christmas break from school in December 2025 /January 2026, H.A.D. shall have five consecutive days with J.J.P.D. which the parties shall arrange, taking into account J.J.P.D.'s work schedule.
- [205] In January 2026, H.A.D. will be 9 years old. Assuming the gradual transition has occurred as I have set out, he will have had several months where he has blocks of two and one-half days on two weekends and two days on midweeks when J.J.P.D. is not on shift as well as five day holidays with J.J.P.D. Subject to a review, which I will address, in January 2026, H.A.D. shall transition to having parenting time with J.J.P.D. when J.J.P.D. is not on shift.

[206] The parenting times will depend on whether J.J.P.D. is working days or nights and whether the start and end of his parenting time shall be a school day. It shall occur as follows.

[207] If J.J.P.D.'s shifts before a parenting time are day shifts:

- a) he shall pick up H.A.D. from school on school days the day after a set of dayshifts end and shall have parenting time with H.A.D. until he drops H.A.D. off at school the day before his next day shift or the morning of his next night shift;
- b) if the pick up day is not a school day, he shall pick up H.A.D. at noon;
- c) if the drop off day is not a school day, he shall drop H.A.D. off at noon.

[208] If J.J.P.D.'s shifts before a parenting time are night shifts:

- a) he shall pick up H.A.D. from school on school days the day on which a set of night shifts end and shall have parenting time with H.A.D. until he drops H.A.D. off at school the day before his next day shift or the morning of his next night shift;
- b) if the pick up day is not a school day, he shall pick up H.A.D. at 4 pm;
- c) if the drop off day is not a school day, he shall drop H.A.D. off at noon.

[209] Regardless of the regular schedule, H.A.D. shall have parenting time with C.L.D. on her birthday and Mother's Day, and with J.J.P.D. on J.J.P.D.'s birthday and Father's Day unless J.J.P.D. is on shift. On H.A.D.'s birthday, the regular parenting schedule shall apply.

[210] C.L.D. sought an order for the right of first refusal so that she is entitled to have parenting time with H.A.D. if J.J.P.D. is not available. I am of the view that the parties should be able to change the schedule if they agree in writing. I am of the view that a right of first refusal is not appropriate. J.J.P.D. has involved his parents with H.A.D. in a manner that I consider to be aligned with H.A.D.'s best interests. Curtailing that through a right of first refusal is not appropriate.

[211] With regard to a review, it is my view that it is appropriate to build in a review by January 2026 since H.A.D. is young, has the developmental issues I have described, and there may be more medical or other insight into what will serve his best interests. Accordingly, either party is free to seek a review between October and December 2025 in anticipation of the transition I have described to commence in January 2026.

[212] In addition, H.A.D.'s best interests must govern throughout the incremental parenting transitions I have described. The parties may agree on different parenting times based on how H.A.D. is doing so long as they commit their agreement to writing. If the parties have concerns, they may seek a s. 211 assessment or to seek a court order providing for one.

- [213] Prior to the review, if there is an issue with the parenting transitions that I have set out that is detrimentally affected H.A.D. in a significant manner, and the parties do not agree on how to address it, both or either may apply to the court. I suggest that if a change is to be made, the parties would be well advised to have it supported with evidence from someone with appropriate expertise to guide the court.
- [214] J.J.P.D. sought an order that the parties may travel with H.A.D. within British Columbia without first obtaining the consent of the other parent. C.L.D. did not express any disagreement with this term. Given the evidence, such an order will reduce some of the conflict that has arisen and there is no reason to be concerned about such travel with either parent. I permit both parties to travel within British Columbia with H.A.D. during their parenting time without first obtaining the consent of the other.

Parental Responsibilities for H.A.D.

- [215] Section 41 of the Family Law Act sets out parental responsibilities including decision-making responsibility covering all aspects of parenting: day-to-day care and control; where the child will reside and with whom; education; participation in extracurricular activities; cultural, linguistic, religious and spiritual upbringing and heritage; medical, dental and other health-related matters; applications for passports, licences, permits, and benefits; consenting or withdrawing consent on behalf of the child; receiving and responding to any notice that a parent is entitled or required by law to receive; starting, defending, compromising or settling any proceeding relating to the child; and advancing and protecting the child's legal and financial interests.
- [216] Section 43 of the Family Law Act stipulates that parents must exercise their parental responsibilities in the best interests of the children.
- [217] There are several different models for allocating parental responsibilities. With regard to day to day decision-making (e.g. what the child eats, play time, bed time), the default is that is to be undertaken by the parent in whose care the child is. This will reduce conflict. Neither C.L.D. or J.J.P.D. asked for an order different from this and I so order.
- [218] With regard to matters other than day to day matters, C.L.D. and J.J.P.D. both submit that they should be joint decision-makers but they do not agree with what should happen if they do not agree on a particular decision.
- [219] Options to break an impasse include ordering that one parent have final decision-making or ordering that the issues on which the parents have final decision-making authority be divided between them because of the particular circumstances of the child and the parents and/or to address a balance of power.
- [220] In addition to the s. 37(2) factors I have reviewed above, s. 37(2)(g) is relevant to this issue. It requires the Court to consider the appropriateness of an arrangement that would require H.A.D.'s parents to cooperate on issues affecting him, including whether requiring cooperation would increase any risks to the safety, security or well-being of H.A.D. In this

case, the question is whether requiring C.L.D. and J.J.P.D. to work together on parental responsibilities will cause the existing level of conflict to continue or create more conflict and therefore be harmful to H.A.D.

- [221] I am concerned about C.L.D. having final decision-making because it is in the best interests of H.A.D. for J.J.P.D. to know what issues need to be addressed and to participate in addressing them. C.L.D. has demonstrated indifference to that including not keeping J.J.P.D. informed about H.A.D.'s medical issues and investigations such as the Youth and Child Mental Health assessment and the more recent referrals to a pediatrician and a pediatric psychiatrist. If C.L.D. has final decision-making authority, she might reason that she does not need to involve J.J.P.D. in some decisions or all of the information pertaining to that decision.
- [222] J.J.P.D. does not seek to be able to make decisions if C.L.D. and he disagree. I agree with that approach. At this time, C.L.D. has more detailed information about H.A.D.'s health and developmental challenges. Even though it is desirable that the informational imbalance be corrected, it is not in H.A.D.'s interests to allow J.J.P.D. to override C.L.D.
- [223] The concern is the level of conflict that currently exists between J.J.P.D. and C.L.D. and whether that will preclude them agreeing on matters and/or spillover to H.A.D. In some cases, the court will order a parenting coordinator to assist in circumstances like these. I have not been provided with any evidence about the availability and affordability of a parenting coordinator for H.A.D. Neither party has sought it.
- [224] I have considered dividing the s. 41 parental responsibilities between the parties. This was the approach in *L.E.G. v. A.G.*, 2002 BCSC 970 where the court held that both parents loved their children and were competent parents, but were unable to communicate with each other effectively and had not been able to agree on basic decisions for the children. Justice Martinson observed that as non-conflictual joint decisions were not possible, dividing decision-making between the parents with the right to apply to the court for review of any decision on which they did not agree was the next best solution.
- [225] As in *L.E.G.*, the parties are both competent parents who love H.A.D. but have great difficulty communicating with each other. However, dividing s. 41 decision making responsibilities is not appropriate in this case. The issue is not whether particular issues need to be addressed by a parent with particular skills or knowledge. Nor is it a case where allocating parental responsibilities can address a power imbalance. In this case, the information imbalance is in favour of C.L.D., especially around health issues. Making C.L.D. the or final decision-maker on those issues is likely to exacerbate the information imbalance.
- [226] The remaining method is for the parties to have shared decision-making responsibilities with neither having final decision-making authority. The downside to this arrangement is that if the parties are not able to agree, they will engage in court applications.

- [227] Given H.A.D.'s young age, the parties will be co-parenting for a long time. It is in H.A.D.'s best interests that they work on the ability to communicate and collaborate, and to accept that the other parent's views demand respect and may be the better approach in some circumstances. I am of the view that shared parenting offers the best opportunity for the best interests of H.A.D. to be put first in all matters. Under such an arrangement, neither party can assert control and they can only be effective by working together. This will require the parties to think objectively, to be determined to set aside their negative views of the other and to be determined to achieve a good outcome for H.A.D. It requires the parties to accept that conflict between them about H.A.D. is not in the best interests of H.A.D. and may harm him.
- [228] While there is significant conflict of the type that sometimes mandates against joint decision-making with no final decision-making authority, the parties have not tried true co-parenting and joint decision-making. C.L.D. has, to date, been of the view that she is the sole decision maker. It should now be clear to her that she needs to work with J.J.P.D. on decisions in the best interests of H.A.D.
- [229] Because of H.A.D.'s young age, his evolving health and developmental issues, and that this is a new approach for these parties, I am of the view that a review of this issue is appropriate at the same time that I have allowed for a review of parenting time, at the request of either party, regardless of whether there has been a material change in circumstances.

Support

- [230] J.J.P.D. has been paying child support since December 2021 but it needs to be formalized based on the parties' respective incomes and the parenting arrangements.
- [231] C.L.D. seeks spousal support. J.J.P.D.'s position is that C.L.D. is not entitled to spousal support because she is able to earn what she was earning when their relationship began and that if she is, the quantum and duration of spousal support should be at the low end because it was a short marriage that had minimal impact on her earning ability.

C.L.D.'s Work History and Current Earnings

- [232] C.L.D. was born November 6, 1979. She was born and raised in Quesnel.
- [233] C.L.D. had a varied work experience before meeting J.J.P.D. After graduating from high school, C.L.D. earned a living serving and waitressing. When C.L.D. was in her early thirties, she took training as a healthcare assistant at the New College of Caledonia. In 2013, after one year of training, she was certified as a health care assistant. With this certification, C.L.D. has worked with individuals with mental and intellectual disabilities, she has been a home support worker, she has run programs on life skills for adults with disabilities, and she has worked in a doctors' office.

- [234] When C.L.D. met J.J.P.D she was working for Quesnel Community Living Association full time, paid hourly. Her benefits included a pension plan. She ran a program for adults with disabilities.
- [235] H.A.D. was born in October 2016. C.L.D. went off work at that time.
- [236] C.L.D testified that when H.A.D. was one year old, she tried going back to Quesnel Community Living for two shifts a week but J.J.P.D. could not cope with H.A.D and in particular trying to get H.A.D. to nap.
- [237] In 2018, C.L.D. she started a daycare in the couples' Hayman Crescent home which she ran until approximately September 2021. C.L.D. testified that she shut down the daycare. While the parties were still living under the same roof, she began training in certain esthetic services including microblading.
- [238] J.J.P.D. does not take issue with C.L.D.'s decision to shut down the daycare. Regardless of whether it was prompted by the separation, it was inevitable given that the daycare was run out of the basement of the Hayman Crescent house and they have since sold that home due to their separation.
- [239] After separation, C.L.D. took part time jobs waitressing and working for a bank. At the time of trial, C.L.D. was working as a nurse's aide with Fraserview Medical. She has held that position since March 2023. She has a 31 hour work week consisting of roughly 7.5 hour shifts Monday through Thursday. C.L.D. testified that the clinic does not staff nurses aides on Fridays because the doctors only do telehealth appointments on those days.
- [240] C.L.D.'s F8 financial statement is from September 2022 so it does not reflect her current work. At that time her income was reported to be \$15,600. Her 2021 income tax return reported income of just under \$20,000 from her child care work in that year. In March 2023, she started working at her present position earning \$21 per hour for 31 hours per week, which results in an income of \$33,852 annually. At the end of 2023, her hourly rate increased to \$23 per hour. She agreed with her counsel's suggestion that given that her pay is \$1,400 each pay period and she has 26 pay periods a year, that amounts to \$28,000, but she qualified that answer with, "if that is the math". It was an apt qualification because that amounts to pay of \$37,076 per year.
- [241] For the purposes of child support, C.L.D.'s income for the years prior to 2026 is only relevant to s. 7 special and extraordinary expenses because up until 2026, H.A.D. will be primarily resident with C.L.D. and only J.J.P.D. will pay basic child support.
- [242] Both C.L.D. and J.J.P.D. have had significant swings in their income between when they separated and now. For that reason, I consider it appropriate to average 2021-2023 incomes for the purposes of child support up to and including 2024 pursuant to s. 16 of the Federal Child Support Guidelines Federal, SOR/97-175,. The average of C.L.D.'s 2021-2023 income is \$23,150.

[243] In submissions, counsel for C.L.D. agreed that the DivorceMate calculations proposed by counsel for J.J.P.D. based on C.L.D. having an income of \$37,076 per year are appropriate for the purpose of spousal support. I will use \$37,076 for spousal support.

J.J.P.D.'s Work History and Current Earnings

[244] J.J.P.D. is a welder. As I have described, up until around the time that H.A.D. was born he worked as a dispatch welder at various locations. For many years now, he has worked for Gibraltar Mines. In 2023 he had an injury and was off work for a few months. He returned to work during the trial. His combined employment income and disability income in 2023 was \$113,252. His 2022 income was \$126,721. His 2021 income was \$138,932. I understand that was higher due to a one-time payout. He does not know whether his current injury will limit his ability to work after he returns to work but he testified that he cannot afford to stay on disability and so he intends to go back to work.

[245] As I have said, I consider that a three year average of J.J.P.D.'s income is appropriate for child support up to and including 2024. The three year average is \$126,301.

Child Support

[246] J.J.P.D. has been primarily resident with C.L.D. since separation. There is no dispute that he began paying child support in December 2021 and has paid it since. There is no dispute that the amounts he has paid should be compared to his actual income and any adjustments made in his favour or in favour of paying more support retroactively. In addition, the parties seek an order for child support for the current year.

[247] Although I found the date of separation to be September 15, 2021, the evidence is that while C.L.D. and the children lived at Hayman Crescent until mid November 2021, J.J.P.D. paid all of the family living expenses. I find that his responsibility to pay child support commenced mid November 2021.

[248] J.J.P.D. began paying child support in December 2021. He started at \$500 every two weeks. It has increased. He currently pays \$577 every two weeks. Up to December 31, 2023 he paid a total of \$30,307. Based on an income of \$126,301, he was required to pay \$1,165 per month starting November 15, 2021, or for 25.5 months which totals \$29,707.50. To December 31, 2023, he overpaid child support in the amount of \$599.50.

[249] At the time of trial, J.J.P.D. testified that due to an accident in September 2023 he has been off work. He was transitioning back to work in late February and early March when the trial ended. He testified that due to delays in between switching from short term disability to long term disability, he was not able to keep up his child support payments in January and February 2024. I understand that once he was back to work, he intended to recommence paying child support of \$577 per month.

- [250] For the months of January through June 2024, J.J.P.D.'s child support obligations are \$1,165 per month and if he has paid less than that, he must make up the difference less the \$599.50 he over paid between 2021 and 2023. If his child support payments have been made and he still has an overpayment, that shall be credited against his July 1, 2024 child support obligation
- [251] For July 1, 2024, forward, J.J.P.D. must pay \$1,165 per month. That rate will continue to be applicable until and unless the parties have exchanged their 2024 income tax returns and made any adjustments to child support based on those returns.
- [252] Commencing January 1, 2026, H.A.D. will be in a shared parenting arrangement and having roughly equal parenting time with J.J.P.D. and H.A.D. Child support from January 1, 2026 shall be based on the offset of the table amounts payable by J.J.P.D. based on his 2024 income tax return and by C.L.D. based on her 2024 income tax return.
- [253] Neither party made submissions about s. 7 special and extraordinary expenses incurred to date. For the purpose of future expenses, and taking into account the spousal support provided for below, up until December 31, 2025, the sharing ratios are 66.7% payable by J.J.P.D. and 33.3% payable by C.L.D. Those ratios will be applicable until and unless the parties have exchanged their 2024 income tax returns and made any adjustments to child support based on those returns.
- [254] If the spousal support order commencing January 1, 2026 that I have provided for below, subject to review, is implemented, then the sharing ratios for s. 7 expenses shall be 67.4% payable by J.J.P.D. and 32.6% payable by C.L.D.
- [255] Consistent with the standard orders, I order that the parties exchange income tax returns by May 31 of each year and address any appropriate changes to child support by June 30 of each year. If they do not agree, they may apply to the court.

Spousal Support

- [256] J.J.P.D. challenges C.L.D.'s entitlement to spousal support. Although there is significant disparity in the parties' incomes, he argues that C.L.D. is currently earning the same hourly rate she earned at the commencement of the marriage and when she went on maternity leave. He argues that the marriage was short - they married in 2017 and separated in 2020. He also argues that C.L.D.'s financial disclosure is inadequate to establish entitlement because she only filed one F8 in 2022 and has not provided clear, consistent or complete information regarding her earnings between separation and now.
- [257] I note that they commenced living together in May 2016 when expecting H.A.D. in 2016. I have found they separated in September 2021, for a relationship of a little over five and one third years.

- [258] The Family Law Act sets out the circumstances in which spousal support shall be paid in ss. 160 and 161. Essentially, s. 160 provides that the objectives of spousal support described in s.161 govern entitlement. The first two objectives are to recognize economic advantages or disadvantages arising from the relationship or its breakdown and to apportion between spouses the financial consequences arising from the care of child or children. These objectives give rise to compensatory spousal support: *Chutter v. Chutter*, 2008 BCCA 507 at para. 48. The third and fourth objectives are to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses and to promote the economic self-sufficiency of each spouse within a reasonable period of time. These objectives give rise to non-compensatory support: *Chutter* at para. 48.
- [259] In *Chutter* at para. 49, the Court of Appeal for British Columbia explained that compensatory and non-compensatory objectives are not binary; relationships do not give rise to entitlement of one or the other or neither. In many cases, the relationship will engage some aspects of both types and so the overarching consideration is equitable sharing, citing *Moge v. Moge*, [1992] 3 S.C.R. 813 at 864, 1992 CanLII 25.
- [260] At paras. 50-54, the Court in *Chutter* discussed the compensatory and non-compensatory models. Compensatory support accepts that spouses remain independent financial beings while accepting that marriage can cause disadvantage in relation to earning income, including whether the sacrifices made by the disadvantaged spouse created advantages for the other spouse. There is special focus on any disadvantages associated with child bearing and agreeing to be responsible for child raising activities. Non-compensatory support is grounded in the "social obligation model" of marriage where there is no longer financial independence but rather an interdependent union. Non-compensatory support focusses on 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. In longer relationships, it aims to equalize the standards of living of the spouses after marriage dissolution.
- [261] J.J.P.D.'s argument that C.L.D.'s financial disclosure is inadequate to establish entitlement cannot be lightly dismissed. The burden to prove entitlement is not furthered by a F8 which does not have up to date income information in it, or by the failure to lead clear evidence about income at trial. Having said that, it is clear that C.L.D. earns a very modest income and so that will be affecting her ability to pay for counsel for this trial. In addition, C.L.D. and her newly retained counsel were pressed to trial very quickly because J.J.P.D., understandably, wanted parenting time addressed.
- [262] J.J.P.D.'s counsel also acknowledged that despite his argument, C.L.D. has an arguable entitlement claim for spousal support based on the compensatory model and the law as explained in *Chutter*.
- [263] I agree. The evidence is not disputed that H.A.D. was the reason the relationship became marriage-like and the reason for the marriage after he was born. C.L.D. stopped working at the time of his birth and stayed off work for several years after a brief return to work when

he was about one year old. There was no evidence that the decision that she would stay at home was anything but a family decision and C.L.D. became the parent most responsible for child care. While J.J.P.D. participated in parental activities, C.L.D. accepted the major child raising role and that allowed J.J.P.D to pursue his remunerative shift work at Gibraltar Mines.

- [264] Deficiencies in C.L.D.'s financial disclosure can be addressed by using the evidence of her current income \$37,076, to calculate spousal support. C.L.D.'s counsel conceded this was appropriate.
- [265] Based on J.J.P.D.'s average income of \$126,301 and C.L.D.'s current income of \$37,076, as well as child support of \$1,165 per month until December 31, 2025, and set off child support after that time, the Spousal Support Advisory Guidelines produce the following ranges:
- a) During the time when C.L.D. is the primary parent: low: \$976; mid: \$1,448; and high: \$1,917.
 - b) After January 1, 2026 when H.A.D. will be in a shared parenting regime with offset child support: low: \$1,348; mid: \$1,974; and high: \$2,240.
- [266] The duration is indefinite (not specified) with a minimum 2.75 years and a maximum 14 years.
- [267] With regard to the range, for the pre-2026 period, the mid range comes closest to equal net disposable income. I consider it appropriate to also take into account that C.L.D.'s income is based on a four day work week. According to her evidence, there are two reasons for that. The medical clinic at which she works only see patients in the office Mondays through Thursdays and so her position is a four day work week position. She also testified that she needs Friday to keep herself organized and to regroup.
- [268] C.L.D.'s preference for a four day work week is shared by many people but it is not the standard work week. A person must work to capacity for the purposes of determining child support and spousal support. Having said that, there was no evidence that C.L.D. could obtain a similar job that has a five day position or that she could supplement her four day work week with a part time job one day a week. J.J.P.D. has not sought that additional income be imputed to C.L.D.
- [269] In all of the circumstances, I consider it inappropriate to reduce spousal support on that factor at this time. It may become more relevant on a review of spousal support in the future if C.L.D. continues to work below capacity and so is not maximizing her ability to be economically independent.
- [270] In addition, while the evidence about C.L.D.'s post separation employment demonstrates that after a little more than a year, she was able to obtain employment in the field and at a level that was consistent with her work prior to the birth of H.A.D., I do not accept J.J.P.D.'s argument that she is earning an equivalent income to her pre-relationship income. That argument is based on the fact that her hourly rate in 2016 is similar to the hourly rate she

earns now. That argument fails because of the seven to eight years that have passed since 2016 rendering those hourly rates to be substantively different despite that they have the same number.

- [271] Because the mid range provides for close to equal net disposable income, I award spousal support at \$1,448 per month retroactive to November 15, 2021 and go forward in the same amount up to December 31, 2025.
- [272] With regard to the period commencing January 1, 2026 when H.A.D. will be in a shared parenting regime, the high end of the range produces numbers that most closely equalizes net disposable income. However, by that time, the parties will have been separated for over four years after a relationship that had a duration of only five and one quarter years. At the time of separation, H.A.D. was school age and by the beginning of 2026 he will be nine years old. Given that C.L.D. is not currently working full time, and the comments I have made about that, her income may very well have increased by that time.
- [273] For those reasons, I consider it appropriate to build a review of entitlement and quantum of spousal support to take place in the period leading up to 2026. If the review has not been undertaken or completed by January 1, 2026, then spousal support shall be at the low end of the range for a shared parenting regime, \$1,348, because the imperative for C.L.D. to become economically independent will be increasing and the imperative to equalize standards of living will be less important.

Divorce

- [274] Both parties seek a divorce in their pleadings.
- [275] As noted above, this trial is to address parenting, child and spousal support, and issues ancillary thereto pursuant to the order of Master Robertson made at the joint request of the parties.
- [276] J.J.P.D. takes the position that divorce is an issue ancillary to parenting, child and spousal support, and that the court can issue a divorce at this portion of the trial. C.L.D. argues that divorce is not an ancillary issue to parenting, child support and spousal support and is intended to be tried with the property and debt division issues. She argues it is not relief that can be granted at this trial. She has not explained or offered any prejudice if it is granted now.
- [277] The Divorce Act describes parenting, child and spousal support as issues corollary to divorce. It does not use the term ancillary. Property and debt division are not addressed in the Divorce Act. They are only addressed in the Family Law Act which does not address divorce and so property and debt division have no legislative relationship to divorce.
- [278] A divorce cannot be issued until the court is satisfied that the appropriate arrangements have been made pertaining to any child of the marriage: Divorce Act, s. 11(2)(b). In that sense, in the terms of this bifurcated trial, divorce cannot be addressed until the parenting

and child support issues have been addressed. That is conceptually consistent with considering divorce ancillary to the child support and parenting issues for the purposes of applying the order the parties asked Master Robertson to make. The order that the parties asked Master Robertson to make is differentiates this case from cases where corollary issues are described as ancillary to divorce, see for example: Greco v. Greco, 2017 BCSC 172 at para 7.

- [279] C.L.D. submits that the order should be interpreted as divorce being part of the property and debt division issues. However, property and debt division are dealt with under a different statute and the right to have them adjudicated are triggered by separation, not divorce. Divorce is clearly not part of property and debt division.
- [280] Accordingly, if the order is not interpreted to mean that divorce is ancillary to child support and parenting, then the order does not provide for a trial of the divorce issue, which would result in an absurdity.
- [281] In addition, given that both parties ultimately seek a divorce and so long as I am satisfied that all the requirements for a divorce have been met, I would consider it to be contrary to the object of the Supreme Court Family Rules to secure the just, speedy and inexpensive determination of every family law case on its merits to delay granting the divorce to some other unspecified time.
- [282] The evidence satisfies me that the parties have been separated for more than a year, that they both are residents of British Columbia, that there is no prospect of reconciliation, and that there is no collusion with regard to a divorce. My order makes reasonable arrangements for H.A.D. Accordingly, all of the requirements for a divorce have been met.
- [283] I grant a divorce effective the 31st day after the day of this order.

Disposition

- [284] Pursuant to the Family Law Act, I declare that the parties separated on September 9, 2021.
- [285] Pursuant to the Family Law Act, I declare both parties are guardians of H.A.D.
- [286] Pursuant to the Family Law Act, I order that H.A.D. shall have parenting time with C.L.D. except when he has parenting time with J.J.P.D.
- [287] J.J.P.D.'s regular parenting time with J.J.P.D. shall be as follows:
- a) according to the parties' current arrangements until June 30, 2024;
 - b) commencing July 1, 2024:
 - i. on weekends that J.J.P.D. does not have shifts, from 9:30 am to 6:30 pm on Saturdays and from 9:30 am to 5:00 pm on Sundays;

- ii. on Tuesdays and/or Fridays when J.J.P.D. does not have shifts, from 2:30 pm until 5:00 pm. If J.J.P.D. does not have school or agreed upon summer camp activities, the parenting time with J.J.P.D. shall be from 9:00 am to 5:00 pm;
- c) commencing September 1, 2024, the Tuesday parenting time shall be extended to 6:30 pm;
- d) commencing November 1, 2024, when J.J.P.D. and H.A.D. have Sunday parenting time, the parenting time shall end at 6:30 pm;
- e) commencing January 1, 2025, when J.J.P.D. and H.A.D. have Saturday and Sunday parenting time, it shall be overnight. The parenting time will commence Saturday at 9:30 am and end Sunday at 6:30 pm;
- f) commencing March 1, 2025, when J.J.P.D. and H.A.D. have weekend parenting time, it shall commence Friday after school so long as J.J.P.D. is not working that Friday. If J.J.P.D. is not in school, the parenting time shall commence at 9:30 am on Friday. The weekend parenting time shall end on Sunday at 6:30 pm. If J.J.P.D. is working Sunday, but not Friday and Saturday, the weekend parenting time shall commence Friday after school (or at noon if J.J.P.D. is not in school) and end Saturday at 6:30 pm. If he is working Friday, but not Saturday and Sunday, the parenting time shall commence Saturday at 9:30 am and end Sunday at 6:30 pm;
- g) commencing in June 2025, when J.J.P.D. and H.A.D. have Tuesday parenting time, it shall be overnight. It shall commence Tuesday after school and end when J.J.P.D. takes H.A.D. to school on Wednesday. During the break from school in the summer of 2025, J.J.P.D. and H.A.D. shall have midweek parenting time from 9:30 am on Tuesday until 5:00 pm on Wednesday so long as J.J.P.D. does not have shifts on those days;
- h) commencing January 1, 2026, H.A.D. will have regular parenting time with J.J.P.D. when J.J.P.D. is not on shift as follows:
- i. if J.J.P.D.'s shifts before a parenting time are day shifts he shall pick up H.A.D. from school on school days the day after a set of dayshifts end and shall have parenting time with H.A.D. until he drops H.A.D. off at school the day before his next day shift or the morning of his next night shift. If the pick up day is not a school day, he shall pick up H.A.D. at noon. If the drop off day is not a school day, he shall drop H.A.D. off at noon.
- ii. If J.J.P.D.'s shifts before a parenting time block are night shifts he shall pick up H.A.D. from school on school days the day on which a set of night shifts end and shall have parenting time with H.A.D. until he drops H.A.D. off at school the day before his next day shift or the morning of his next night shift. If the pick up day is not a school day, he shall pick up H.A.D. at 4:00 pm and if the drop off day is not a school day, he shall drop H.A.D. off at noon.

[288] In addition to regular parenting time:

- a) in 2025, J.J.P.D. and H.A.D. shall have five days of holidays together in July and five days of holiday together in August. These five-day blocks must be scheduled so that C.L.D. and H.A.D. are not apart for more than five days at a time;
- b) in the Christmas break from school in December 2025 /January 2026, H.A.D. shall have five consecutive days with J.J.P.D. which the parties shall arrange taking into account J.J.P.D.'s work schedule;
- c) H.A.D. shall have parenting time with C.L.D. on her birthday and Mother's Day, and with J.J.P.D. on J.J.P.D.'s birthday and Father's Day unless J.J.P.D. is on shift;
- d) on H.A.D.'s birthday, the regular parenting schedule shall apply.

[289] The parties may agree to adjust parenting times so long as they commit their agreement to writing.

[290] The parties may consent to a s. 211 assessment or to seek a court order providing for one at any time and may seek a change to parenting based on a s. 211 assessment once received.

[291] Either party may seek a review of parenting time and/or parental responsibilities between October and December 2025 in anticipation of the January 2026 change to the structure of regular parenting time. Prior to the review, if there is an issue with parenting time that is detrimentally affecting H.A.D. in a significant manner, and the parties do not agree on how to address it, both or either may apply to the court.

[292] Either party may travel within British Columbia with H.A.D. during their parenting time without first obtaining the consent of the other.

[293] I order that both parties shall share parental responsibilities pursuant to s. 41 of the Family Law Act. Each party shall have sole responsibility and decision-making authority for day to day matters while H.A.D. is in their respective care. With regard to matters other than day to day matters, in the event of an inability to agree, either party may apply to the court to resolve the impasse.

[294] Both parties must ensure the other is fully aware in a timely manner of all significant matters pertaining to H.A.D.'s health including any referrals for medical, developmental or psychological assessments, the ability to attend and be involved in any appointments or assessments, and the outcome of any appointments or assessments.

[295] J.J.P.D.'s income for child support purposes up to June 2025 is \$126,301 per year. C.L.D.'s income for child support purposes up to June 2025 is \$23,150.

[296] J.J.P.D.'s child support obligations are \$1,165 per month commencing November 2021 and each month thereafter to June 30, 2025, when it can be adjusted by agreement of the parties or order of the court, based on his 2024 income tax return.

- [297] Commencing January 1, 2026, child support shall be offset based on the table amount payable by each party based on their 2024 income tax returns.
- [298] The parties shall exchange income tax returns by May 31 of each year and address any appropriate changes to child support by June 30 of each year. If they do not agree, they may apply to the court.
- [299] For future s. 7 special and extraordinary expenses, up until December 31, 2025, the sharing ratios are 66.7% payable by J.J.P.D. and 33.3% payable by C.L.D. Those ratios will be applicable until and unless the parties have exchanged their 2024 income tax returns and made any applicable adjustments to child support.
- [300] If the spousal support order commencing January 1, 2026 that I have provided for is implemented, then the sharing ratios for s. 7 expenses shall be 67.4% payable by J.J.P.D. and 32.6% payable by C.L.D.
- [301] J.J.P.D. shall pay spousal support at \$1,448 per month retroactive to November 15, 2021 and go forward in the same amount up to December 31, 2025.
- [302] Between October and December 2025, either party may seek a review of entitlement and/or quantum of spousal support for the period commencing January 1, 2026.
- [303] Subject to a review of spousal support prior to January 1, 2026, or if that review has been sought but not concluded by January 1, 2026, then spousal support shall be paid at \$1,348 per month for an indefinite (not specified) duration.
- [304] The parties are divorced effective the 31st day after the day of this order.

"Matthews J."

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