

CANADA / JUDGMENT

C.S.K. v. P.K.

2025 BCSC 1728

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Supreme Court of British Columbia

DECIDED

5 September 2025

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2025 BCSC 1728 C.S.K. v. P.K.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.S.K. v. P.K.,

2025 BCSC 1728

Date: 20250905

Docket: E61571

Registry: New Westminster

Between:

C.S.K.

Claimant

And

P.K.

Respondent

Before: The Honourable Justice Layton

Reasons for Judgment

Counsel for the Claimant:

S. Ahuja

Counsel for the Respondent:

B.S. Sandhu

K. Grewal

Place and Date of Trial:

Port Coquitlam, B.C.

April 22-25 & 28-30, 2025

May 1-2 & 8, 2025

Place and Date of Judgment:

New Westminster, B.C.

September 5, 2025

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Introduction

- [1] The key disputed issue in this family law proceeding is whether the equity in the parties' family home should be divided equally under the presumption in s. 81 of the Family Law Act, S.B.C. 2011 c. 25 [FLA], or if instead it should be divided unequally under s. 95.
- [2] Central to determining this issue is the extent to which the claimant's physical attack on the respondent on December 25, 2018, which led to their separation, has caused the respondent economic disadvantage.
- [3] Other issues for determination include divorce, parenting arrangements for one of the parties' children, and child and spousal support. In seeking orders relating to these matters, the parties' pleadings rely on both the Divorce Act, R.S.C. 1985, c. 3 [Divorce Act] and the FLA.
- [4] The respondent also seeks non-pecuniary, aggravated and punitive damages for the tort of battery, arising not only from the December 25, 2018 incident, but in addition from three other physical attacks that she says happened earlier in the marriage. The respondent does not seek pecuniary damages for any of the four alleged incidents of violence because: (a) she asks that her financial loss flowing from the December 25, 2018 incident be relied on to justify dividing the equity in the family home unequally under s. 95 of the FLA; and (b) she does not allege any adverse economic impact arising from the other three incidents.
- [5] The claimant's only witness at trial was himself. As for the respondent, in addition to her own evidence she relied on the testimony of the four other witnesses: the parties' adult daughter R.K.; family friends P.O. and B.K.; and her doctor Mandeep Sidhu.
- [6] To protect the privacy and well-being of the parties' children, and also of the respondent as a victim of family violence, I have initialized the name of the parties and witnesses. I have also anonymized identifying details where possible.

Background

- [7] The claimant was born in India and is 55 years old. He took some college courses in India, but stopped when he moved to Canada in 1993. On arrival, the claimant lived with his brother in the Lower Mainland. He brought no savings with him, and after briefly working at a farm began doing construction work.

- [8] The respondent was also born in India and is 46 years old. She finished high school, but cut short her postsecondary education due to her mother's health.
- [9] The claimant and respondent were married in India in 1998. He was 28 years old and she was 19 years of age. As the marriage was arranged, they had met only once before.
- [10] After their marriage, the parties lived together for about six months in India, mostly with respondent's parents. The claimant then returned to Canada. He sponsored the respondent for permanent residence, and she joined him in the Lower Mainland in 2000.
- [11] The parties initially lived in a suite in a house belonging to the claimant's brother. The claimant's father had passed away, and his mother lived in the same house. The parties moved to another apartment a couple of years later.
- [12] The claimant and respondent were both employed during this period. For much of the time, the claimant worked five days a week at two jobs, one as a cashier and the other cleaning rental cars. The respondent was briefly employed as a motel housekeeper and picking berries, then began working part-time at a Safeway store. By 2005, she was working full-time in the store's deli.
- [13] The parties' first child, R.K., was born in 2004. The respondent took maternity leave, after which she returned to work.
- [14] In early 2007, the parties used their savings to purchase a condo in the Lower Mainland as joint tenants. Their second child, a girl named A.K., was born in 2007. Once again, the respondent took maternity leave, after which she resumed working at Safeway.
- [15] Around this time, the respondent's parents came to Canada and lived with the parties for an extensive period, although precisely how long is unclear on the evidence.
- [16] In around 2009, the parties separated for a number of months, but ended up reconciling.
- [17] Also in 2009, the claimant began working as an "order picker" at a warehouse, although after some training he did forklift work as well. He was a full-time employee, but due to the seasonal nature of the business was often laid off for a time in the winter, during which he received employment insurance benefits.
- [18] In 2012, the parties bought a house in the Lower Mainland, which I will call the family home. Although the respondent's father is on title along with the two of them, the parties agree that he contributed no funds to the purchase and that his legal interest in the property is held for their joint benefit.
- [19] The parties' third child, G.K., was born in 2013, after which the respondent took maternity leave but then returned to work.

- [20] On December 25, 2018, an incident occurred in which the claimant struck the respondent and was criminally charged with assault. That same day, police removed the claimant from the family home and released him on an undertaking prohibiting him from contacting the respondent or their children, or from coming within 100 metres of the family home.
- [21] On October 30, 2019, the claimant pleaded guilty to the assault charge, as well as to one count of breaching his undertaking by being within 100 metres of the family home. His sentence included a 12-month probation order that, among other things, prohibited him from contacting the respondent or their children or being within 200 metres of the family home.
- [22] Around this same time, the respondent started an FLA proceeding against the claimant in the Provincial Court registry in Surrey.
- [23] On January 10, 2020, the respondent obtained an interim order in the provincial court action that included the following terms:
- (a) the parties are guardians of their children under s. 39 of the FLA;
 - (b) under s. 40(3)(a) of the FLA, the respondent has all parental responsibilities for the children;
 - (c) the respondent may apply for a passport, NEXUS pass, and any renewals of a passport or NEXUS pass for the children without the claimant's consent;
 - (d) the respondent may travel with the children without the claimant's written consent provided that for each travel in excess of 48 hours, she should provide one week notice to the claimant of any such travel, along with travel dates, itinerary with flight details, address and contact information where the children will be staying;
 - (e) the claimant is found to be a resident of British Columbia and to have a gross annual income of \$54,200;
 - (f) the claimant will pay to the respondent \$1,108 per month for the support of the children, commencing on January 15, 2020, and continuing on the 15th day of each month thereafter, for as long as the children are eligible for support under the FLA or until further court order;
 - (g) the child support arrears owing from the claimant to the respondent as of December 31, 2019 are \$12,188 including principal and interest; and
 - (h) the claimant will pay to the respondent a minimum of \$200 per month towards these arrears of support, in addition to regular monthly child support payments, commencing January 15, 2020 and continuing on the 15th day of each month thereafter until the arrears are paid in full or until further court order.

- [24] The claimant has failed to fully comply with his child support obligations in the January 10, 2020 order. At the start of the trial, his arrears including interest and default fees totalled \$61,635.08.
- [25] Although the "no contact" terms of the claimant's bail conditions and probation order expired in October 2020, he has spent no parenting time with the children since then, with the exception of a brief meeting with R.K. and A.K. in September 2024.
- [26] The respondent suffered injuries as a result of the December 25, 2018 incident. Since then, she has not worked at Safeway or anywhere else. Her income comprises long-term disability from Safeway's insurer, Blue Cross, plus CPP disability benefits.
- [27] The claimant filed his notice of family claim in this Court on December 22, 2020. The respondent filed her response to family claim and a counterclaim on January 28, 2021. On November 19, 2021, she filed an amended counterclaim seeking damages for the torts of family violence and assault and battery.
- [28] On February 23, 2022, the respondent filed a civil action against the claimant in this Court seeking damages for the same torts. On March 27, 2023, the claimant filed his response to that civil action.
- [29] At trial, the respondent did not rely on the tort of family violence given the uncertainty regarding its status pending release of the decision in *Ahluwalia v. Ahluwalia*, 2024 CanLII 43115 (S.C.C.), and grounded her claim for damages in the amended counterclaim and the civil action solely on the tort of battery. I will therefore say no more about the tort of family violence in these reasons.
- [30] On September 9, 2024, Justice Bantourakis by consent consolidated the provincial court action with the family law proceeding filed in this Court, and on October 23, 2024 Justice Elwood by consent joined the civil action with this family law proceeding.

Credibility and Reliability

- [31] Credibility refers to a witness's honesty, and assesses whether they are trying to be accurate. Reliability relates to whether the witness's evidence might be inaccurate for reasons other than dishonesty, for instance due to deficits in powers of observation, memory or narrative skills.
- [32] A multitude of factors can bear on whether a witness is credible and reliable, many of which are referenced in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187.
- [33] Having considered the evidence in light of the factors mentioned in *Bradshaw*, in my view the claimant is not a credible witness, and his testimony reveals problems with reliability as well. I will provide a few examples of the numerous reasons why I have come to this conclusion.

- [34] First, the claimant's testimony regarding his conduct on December 25, 2018 was undermined by prior inconsistent statements, some of which included admissions to more serious conduct (e.g., his guilty plea based on agreed facts that admitted choking), and others of which appeared to deny any wrongdoing at all (e.g., the denial at his examination for discovery ("EFD") that he had hit the respondent).
- [35] Second, at trial the claimant testified that he was forced to leave his job at Walmart in May 2023 because the company could not accommodate his request for lighter duties as a result of a medical condition. However, at his EFD the claimant testified that he quit working at Walmart because the company would not give him time off to travel to India.
- [36] Third, in cross-examination the claimant initially claimed not to know whether he had a high interest savings account in 2023. On being shown a 2023 T5 slip in his name for \$1,780 from the Bank of Nova Scotia ("BNS"), he stated "I don't know about this". But he then agreed that this amount was the same as an income entry on his 2023 tax return. After several more evasive answers, the claimant finally disclosed that in November 2023 he had received \$126,000 as beneficiary on a Canada Life insurance policy in his mother's name, which he had deposited into the BNS account.
- [37] Fourth, in cross-examination the claimant was asked whether he had received settlements in any other litigation cases recently. After pausing for ten seconds, he answered "yes". He then admitted to having received a settlement of about \$100,000 from a motor vehicle accident lawsuit in February 2023. Asked why he had claimed that this lawsuit was still ongoing when asked about it at his EFD on January 17, 2025, the claimant stated that he had not known what to say at that time and so answered the question negatively. He then attempted to attribute his false answer to depression, an explanation that I do not accept.
- [38] Fifth, the claimant's admission in cross-examination to receiving payouts totalling \$226,000 in 2023 demonstrate the falsity of his claim in chief that he was unable to keep up with child support because he lost his job at Walmart and could not find new employment. Given the payouts, he easily could have satisfied his child support obligations, including expunging all arrears. I also find that, because of those payouts, the claimant decided to quit his job at Walmart in 2023, travelled to India for six months in 2024, and has not worked since. In making these findings, I note that the respondent's tax returns establish that the motor vehicle accident underlying his lawsuit did not result in a decrease in his income.
- [39] My concerns regarding the claimant's testimony are not limited to his credibility. He often had significant difficulty remembering events or dates. While in some instances this difficulty was probably disingenuous, on other occasions I accept that he was simply unable to recall what had happened or when.

- [40] Turning to the respondent's evidence, I find her to have been generally credible and reliable. As I will elaborate on below, she sometimes struggled with emotions during her testimony, and occasionally seemed confused. But unlike the claimant, I do not believe she ever tried to deceive the court.
- [41] Moreover, on several important points the respondent's evidence was supported by the testimony of R.K., who as mentioned is the parties' 20-year-old daughter. R.K. was poised, articulate and mature for her age. She answered questions carefully and without exaggerating, and was not shaken in cross-examination. I found R.K. to be an impressive witness, and have no hesitation in accepting her evidence as credible and reliable.
- [42] I say this even though R.K. expressed dislike for the claimant. That dislike was not offered gratuitously, but only when relevant to questions posed to her. I never sensed that R.K. was embellishing her testimony because of an animus against the claimant.
- [43] Moreover, R.K.'s negative opinion of the claimant appears justified, and not only because of his treatment of her mother on December 25, 2018. A powerful moment in this trial occurred when, near the end of her testimony in chief, R.K. described meeting the claimant at his request in a coffee shop in September 2024, after having had no communication with him since that day in late 2018. With real emotion, R.K. described how, instead of asking her questions one would expect a father to ask a daughter after so many years, such as whether she was going to university, had learned to drive a car, or had attended her high school prom, he spoke only about personal grievances, for which he blamed R.K. and her mother.
- [44] R.K.'s description of this encounter jibes with the excessive self-pity and abdication of responsibility the claimant sometimes displayed in his own testimony. For example, the claimant complained that, because of the separation following the December 25, 2018 incident, he had no one to cook for him, and he recounted that incident in ways that, as I will describe below, significantly understated his culpability.
- [45] As a last point relating to the respondent's credibility and reliability, I will address some potentially prior inconsistent statements that emerged in the testimony of her family doctor, Dr. Sidhu.
- [46] In notes made regarding a June 3, 2024 appointment, Dr. Sidhu wrote in part that the respondent was, "still struggling financially/living in basement of her own home along with her 3 kids/renting her house/says cannot afford at all otherwise". With respect to an earlier appointment, on February 12, 2024, Dr. Sidhu similarly wrote: "Patient living in her own basement and has rented upstairs to help with the finances".
- [47] The claimant argues that these notes constitute prior inconsistent statements that undermine the respondent's credibility, because at trial she denied renting out the upstairs of her house while living in the basement.

- [48] However, both the respondent and R.K. testified that, while never living in the basement and renting out the upstairs, they had contemplated doing so. R.K. was a careful and alert witness, and I have no concerns about the accuracy of her testimony on this point. I therefore find it more likely than not that Dr. Sidhu's notes do not represent the true state of affairs at the family home.
- [49] This conclusion is supported by the fact that the respondent occasionally expressed herself awkwardly when testifying. This awkwardness may have caused Dr. Sidhu to record statements inaccurately or to have misunderstood the respondent's meaning. Given that the statements in question were not directly connected to the respondent's medical condition, Dr. Sidhu may not have taken the time to clarify what the respondent said or meant.
- [50] The other potentially prior inconsistent statement flagged by the claimant is found in Dr. Sidhu's notes from a visit on April 23, 2019, where she wrote that the respondent, "is dealing with financial issues as she is not able to pay home insurance. She mentioned that he is only paying the half a mortgage."
- [51] In her trial testimony, the respondent was asked whether the claimant made any contributions to the mortgage after separation. She initially stated that she did not think so, but was not sure. She then said it was just her paying the mortgage. In my view, taken together these responses were somewhat equivocal. The respondent was not definitively stating that the claimant made zero mortgage payments post-separation. Or she may have forgotten given the passage of time. I therefore reject that the note made by Dr. Sidhu undermines the respondent's credibility.
- [52] Even were I to have found that these excerpts from Dr. Sidhu's notes constituted prior inconsistent statements, given the magnitude of my concerns about the claimant's credibility and reliability it would not change my view that, subject to the particular context including the availability of independent corroborating evidence, where the parties' testimony conflicts hers should be preferred over his.
- [53] Turning to the testimony of Dr. Sidhu, she gave evidence as an expert witness for the respondent, but also provided evidence as to facts observed in treating the respondent. I found Dr. Sidhu to be an honest witness who complied with her duty of impartiality as an expert and whose evidence was generally reliable.
- [54] The evidence of the final two witnesses, P.O. and B.K., is more peripheral to my determination of the issues. I have approached the evidence of these two witnesses cautiously, because their friendship with the respondent may have caused unconscious partiality, something I occasionally detected with B.K. Nonetheless, with respect to certain material matters I have concluded that their evidence is both credible and reliable, as described later in these reasons.

Family Violence and the Tort of Battery

- [55] The respondent's claim for the tort of battery is based on four alleged incidents of physical violence that she described in her evidence. R.K. also gave evidence about the fourth incident, which as already mentioned took place on December 25, 2018.
- [56] In his testimony, the claimant admitted two of the incidents, including the one on December 25, 2018, but disagreed as to the extent of the violence. He denied physically assaulting the respondent on the other two occasions.
- [57] The respondent testified that the claimant committed further acts of physical violence against her during the marriage, although for the most part she did not describe them with any specificity. Her evidence in this respect was corroborated by R.K., who testified that the claimant frequently shoved or choked the respondent.
- [58] I accept the evidence of the respondent and R.K. regarding the frequency with which the claimant physically assaulted the respondent. However, as noted the respondent relies only on four specific incidents as a basis for her tort claim.
- [59] In this section of my reasons, I will set out my findings regarding those four alleged incidents. There is no dispute that these incidents, if found to have occurred, will constitute the tort of battery, which is the intentional application of force constituting a harmful or offensive contact with another person without their consent: *Vassilaki v. Vassilakakis*, 2023 BCSC 1487 at paras. 54-56; *Khan v. School District No. 39*, 2021 BCSC 49 at para. 18.
- [60] The first alleged incident of violence occurred very soon after the parties' marriage in India.
- [61] The respondent testified that, on the night of their wedding, the claimant was upset that her family had not given him cash or other assets as part of the marriage agreement. He forced sex on the respondent, over her protestations, and slapped her. Later that night, despite the respondent's attempts to calm him down, the claimant beat her about the head with a slipper.
- [62] The respondent testified that their respective families became involved the next day or soon after, and at one point the claimant picked up a knife and demanded that the respondent's father take her back, otherwise he would kill her. The claimant was charged with assault with respect to the wedding night incident, but later apologized and the parties reconciled.
- [63] The claimant admitted slapping the respondent once on their wedding night, but denied hitting her repeatedly, and also denied sexually assaulting her. The claimant rejected that the violence arose from his disappointment in not receiving a dowry, and also rejected that it resulted in a criminal charge.

- [64] For the reasons provided regarding the parties' credibility and reliability, I reject the claimant's evidence regarding this incident, wherever inconsistent with the respondent's testimony, and accept as credible and reliable her evidence about what happened. I also find that the assault charge laid in India was dropped.
- [65] The second alleged incident of violence took place in 2000, on the day the respondent arrived in Canada. She testified that the claimant had wanted her to transfer a property owned by her father into his name. When she told him this had not happened, he grabbed her firmly by the hair, spun her hard into a closet area, then began kicking her forcefully. The assault ended when family members came into the room in response to her screams. The respondent did not report this incident the police.
- [66] I reject the claimant's testimony that he did not physically assault the respondent on this occasion, and find that this incident happened as she described it in her evidence.
- [67] The third alleged incident of violence involved an even more extensive beating, in the parties' suite in the claimant's brother's house sometime in 2001. The respondent testified that the claimant choked and hit her forcefully, and kept saying he would kill her. She ran outside and sought help by banging on the door of a nearby neighbour and friend, P.O.
- [68] The respondent said that this beating left many marks on her body, including bite marks on her chest. P.O. corroborated the respondent's evidence regarding her injuries, as well as describing her extreme state of distress on arriving at P.O.'s residence.
- [69] The respondent testified that she reported this incident to the police because the beating was so extensive. The claimant was charged with assault and uttering threats. He pleaded guilty and received a conditional discharge. It is unclear whether the guilty plea was to one or both counts, and I have no evidence as to the facts upon which the plea was based.
- [70] In chief, the claimant denied assaulting the respondent in Canada apart from the fourth incident in 2018, which I will describe shortly. Asked whether there were nonetheless other occasions when the police were called, he claimed not to recall apart from an event relating to missing jewelry in 2010, which the parties agree did not involve violence. When confronted in cross-examination with court documents pertaining to the 2001 incident, the claimant denied hitting the respondent, stating that the allegations were never proven and the matter was closed with the consent of both parties.
- [71] Once again, I reject the claimant's denial, and find that he physically assaulted and threatened the respondent as described in her testimony and corroborated by the testimony of P.O.
- [72] This 2001 beating resulted in the parties separating for a number of months, but they eventually reconciled.

- [73] The final incident of violence upon which the respondent's tort claim is based occurred on December 25, 2018. My findings of fact regarding this incident, set out below, are based on the evidence of the respondent and R.K. Their evidence occasionally differed, but in my view contained no material inconsistencies. I also accept P.O.'s evidence about her observations of the respondent's injuries and state of mind the day after the incident.
- [74] On December 25, 2018, the parties' children R.K., A. K. and G.K. were 14, 11 and 5 years old.
- [75] That morning, G.K. was in the living room playing a game on the claimant's phone. The claimant was taking a shower. R.K. and the respondent took the phone from G.K. so as to reduce his screen time. On doing so, they noticed information on the phone indicating that the claimant was having an affair with another woman and planned to meet her that day to give her some Christmas gifts.
- [76] Once the claimant had finished his shower, the children opened Christmas presents. The respondent then suggested attending a gift exchange at P.O.'s house, something the family had done for many years. But the claimant refused to attend, saying he had other plans, and became angry when the respondent and children asked him to reconsider. He yelled at the respondent, and told the children to tell her that if she did not shut her mouth he would hit her.
- [77] The respondent went into the kitchen to prepare food in an attempt to placate the claimant, because he had said he did not want to eat at P.O.'s house. R.K. took a shower to get ready to go to P.O.'s house, while the claimant and the other two children stayed in the living room.
- [78] Not long afterwards, the claimant entered the kitchen. He dragged the claimant by her hair towards the living room, and began to choke her. A.K. called out for R.K., and tried to pull the claimant's arm away from the respondent's neck. R.K. was finishing getting dressed, and joined A.K. in trying to stop the claimant from choking the respondent. After a few seconds, they managed to free her from him.
- [79] The respondent then told the claimant she was tired of taking beatings from him, and that she knew he wanted to skip the gift exchange to spend time with his girlfriend. He reacted by pulling her into the living room by her hair, and slapping her three times in the face. The first couple of slaps were quite quick, and the final one was extremely forceful. R.K. described it as "boom". The respondent was immediately rendered unconscious. R.K. tried to hold the respondent up, but was not strong enough and only managed to ease her fall to the ground.
- [80] Once on the ground, the respondent's eyes were closed and she was unresponsive. R.K. tried to check for a pulse, and thinking that her mother was dead started to scream. The claimant ignored R.K.'s pleas for him to help.

- [81] A.K. called 911, but when the dispatcher answered she became scared and brought the phone to R.K. R.K. managed only a few words to the dispatcher before the claimant took the phone from her hand and ended the call.
- [82] Only at this point did the claimant make any effort to assist the respondent. He completely changed his demeanour, and told R.K. that the claimant was going to be fine. He asked A.K. to bring water in a cup, then poured some on his hand and splashed it on the respondent's face. A few seconds later the respondent regained consciousness. But she experienced a banging in her ear and had trouble hearing.
- [83] R.K. and the claimant dragged the respondent to the couch and propped her up in a sitting position. The claimant told the respondent that it was okay and that nothing had happened.
- [84] Around this time, the police arrived in response to the interrupted 911 call. A.K. let them inside. The police took the three children into a bedroom. A.K. told R.K. that she was very scared because she thought the claimant might kill her for calling 911. R.K. was scared and confused because the police had taken her away from her mother. G.K. was crying inconsolably and kept repeating that daddy had killed momma.
- [85] The assault left marks on the claimant's neck and her face was swollen. Although she did not go to the hospital, she spent the rest of the day on the couch. Her head felt heavy and she felt very confused. The respondent saw Dr. Sidhu a couple of days later, who diagnosed her with a ruptured left eardrum.
- [86] Based on the above evidence and Dr. Sidhu's testimony, I conclude that the respondent suffered a concussion as a result of being slapped extremely forcefully on the side of the head by the claimant. I will provide more detail regarding the physical and emotional impact of this incident on the respondent later in these reasons.
- [87] Following his arrest, the claimant was charged with assault and placed on conditions pending trial, including that he not come within 100 metres of the family home. He breached that condition on July 9, 2019 by driving past the family home, and was charged with failing to comply with his bail conditions.
- [88] The claimant pleaded guilty to both the assault and failure to comply with bail charges. On October 30, 2019, a provincial court judge accepted a joint submission by the Crown and defence, pursuant to which the claimant was sentenced to eight days in jail, including credit for time already served in custody, and 12 months' probation.
- [89] In his trial testimony, the claimant gave a dramatically different account of the December 25, 2018 incident. He recounted telling the respondent that he did not want to attend the gift exchange because there would only be ladies there. He said she became angry and threw dishes around, and falsely accused him of having a relationship with someone. She then scratched him with her nails, causing him to bleed. She would not stop, despite his requests, so for his own safety he slapped her once and she fell to the floor. The claimant also denied cutting off the 911 call.

- [90] I reject the claimant's testimony regarding the events of December 18, 2025, to the extent that it is inconsistent with the evidence of the respondent and R.K.
- [91] Based on my findings above, I conclude that on the four occasions in issue the claimant committed the tort of battery against the respondent because he intentionally applied force constituting a harmful or offensive contact with her, and she did not consent to this application of force.

Impact of Family Violence on Respondent

- [92] In this section of my reasons, I will make findings regarding the impact of the claimant's December 25, 2018 physical attack on the respondent, which implicates the legal concept of causation.
- [93] Causation asks whether it has been established on a balance of probabilities that the defendant's conduct caused the plaintiff's injuries and loss. In most cases, this question can be answered by determining whether the plaintiff would have suffered the injuries and loss but for the defendant's wrong. The defendant's conduct need not be the sole cause as long as it is a necessary cause. Causation need not be determined with scientific precision, but is a question of fact best answered by applying ordinary common-sense. See *Emil Anderson Maintenance Co. Ltd. v. Taylor*, 2024 BCCA 156 at paras. 119-120, 130; *Zenone v. Knight*, 2024 BCCA 200 at paras. 54-56; *Farrant v. Laktin*, 2011 BCCA 336 at paras. 9-11.
- [94] The law aims to put the plaintiff in the position they would have been in if not for the defendant's tortious conduct, which means that tortfeasors must take their victims as they find them, even if the plaintiff's injuries and losses are more severe than would be the case for most people. On the other hand, a defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition the plaintiff would have experienced in any event. Likewise, if there is a "measurable risk", or real and substantial possibility, that the pre-existing condition would have negatively impacted the plaintiff in the future regardless of the defendant's conduct, this will be taken into account in reducing the overall award. See *Dornan v. Silva*, 2021 BCCA 228 at paras. 41-45, 60-64; *Zenone* at para. 57-59; *Sharma v. Sagoo*, 2024 BCCA 319 at para. 36; *Athey v. Leonati*, 1996 CanLII 183 at paras. 32-35.
- [95] Turning to the evidence in this case, prior to the December 25, 2018 incident the respondent worked full-time as an assistant manager in the deli department of a Safeway store. Her job included doing inventory, preparing orders, and attending meetings. She was actively involved in her children's lives and was by far the primary caregiver in the household. I accept her evidence, and R.K.'s, in this respect.
- [96] For example, R.K. described her mother, pre-separation, as having leadership skills, an active person who worked full-time, made the family's food, cleaned the house, helped the children with their homework, and took care of everyone's needs. R.K. described her mother as very bright and able to do everything on her own.

- [97] The respondent visibly struggled when asked to describe the impact of the December 25, 2018 assault on her life, and had difficulty articulating her responses, which were at times separated by long pauses, crying and stuttering. The respondent said that she was, "in so much pain", was totally disabled, and could no longer work. She was taking "so much" medication for depression and anxiety. The respondent also spoke of dizziness and difficulty hearing. She stated that she had become a burden on her children, on whom she was now dependent, for example, needing them to accompany her to places or help her write emails.
- [98] I accept R.K.'s evidence as to the profound change in the respondent's functional capacity and abilities, and hence her role in the household, after the December 25, 2025 incident. The respondent no longer worked at Safeway, and R.K. had to help her with many things around the house, such as chores, reading documents and writing emails. R.K. also attended appointments with her. R.K. described how the respondent sometimes had difficulty following conversations, and had to have things repeated. As a result, R.K. took on a substantial role in raising her siblings A.K. and G.K., and also in caring for the respondent. R.K. described needing to be a mother, not only to her younger brother and sister, but also to the respondent, with the result that she had to grow up too fast and assume an adult role.
- [99] R.K.'s evidence on these points finds support in the evidence of family friends B.K. and P.O., which I also accept as reliable in this regard.
- [100] B.K. knew the respondent before the December 25, 2018 incident, and since then has visited the respondent's home fairly regularly. B.K. has observed anxiousness and sadness in the respondent post-incident, as well as limitations in the tasks the respondent can do around the house.
- [101] P.O. described how, prior to the December 25, 2018, the respondent often visited P.O.'s house and was very social. By contrast, after the incident she rarely visited P.O. When visiting the respondent's house, P.O. observed that the respondent no longer seemed social, did not speak much, and would sometimes cry or shake.
- [102] Although I did not see the respondent prior to the December 25, 2018 incident, I observed her testify over several days at trial. Her demeanour on the stand confirms aspects of the testimony of R.K., B.K. and P.O.
- [103] To provides some examples, the respondent spoke and moved quite slowly on the stand, and appeared to lack energy. Occasionally her speech would slow very substantially, with lengthy pauses. She sometimes had trouble following questions, and would close her eyes, stutter repeatedly, cry and/or breath heavily. On a couple of occasions, the respondent appeared almost catatonic, and an adjournment was necessary.
- [104] In my view, the respondent's presentation while testifying was genuine and in particular jibes with R.K.'s testimony, as well as with some of the observations made by Dr. Sidhu, to whose evidence I now turn.

- [105] Dr. Sidhu, the respondent's family doctor since 2016, gave evidence about her observations of the respondent, and also proffered opinions as an expert in general/family medicine to diagnose and provide a prognosis for the respondent's injuries and illnesses, including mental health issues. Dr. Sidhu's expert report was filed in evidence.
- [106] The claimant did not oppose Dr. Sidhu being qualified as an expert for this purpose, subject to arguments regarding weight, given that Dr. Sidhu was not a psychiatrist, psychologist or neurologist.
- [107] Dr. Sidhu testified that she examined the respondent on December 27, 2018. The respondent presented as very distressed and complained of ear pain. She appeared "quite lost" and was constantly crying. On examination, her left eardrum was perforated. However, the rest of the neurological examination was normal.
- [108] Dr. Sidhu's report and testimony largely focused on five aspects of the respondent's medical condition.
- [109] First, the respondent had suffered from migraine headaches over the past 22 years, but prior to the December 25, 2018 incident they would ameliorate with proper sleep and the help of medications. Post-incident, the migraines became significantly worse, and almost daily, preventing the respondent from performing simple tasks and causing her to struggle with quotidian routine. These headaches were multi-factorial, but were most likely triggered by the assault on December 25, 2018.
- [110] In this respect, Dr. Sidhu testified that, given the respondent's loss of consciousness after being struck in the head, there was a high probability she had suffered a concussion. Head trauma can contribute significantly to headaches, and for a person with a history of headaches may increase the severity of symptoms.
- [111] Second, Dr. Sidhu offered the opinion that, since the December 25, 2018 incident, the respondent had suffered from a significantly low mood that became worse over time, and her energy was quite low. She was tearful and emotionally distressed on most visits, and suffered from major depression and severe anxiety that completely disabled her from being employed or managing many household tasks.
- [112] One symptom of this depression was psychomotor retardation, which means a slowing down of everything, where a person is not motivated to do much and has slow mobility. Another symptom was photophobia, which means a sensitivity to light.
- [113] Dr. Sidhu had put the respondent on trials of numerous medications, several of which she had been unable to tolerate. Currently the respondent was taking Cymbalta and Seroquel, which had resulted in a slight mood improvement, but she still experienced a lot of anxiety and depressive symptoms.

- [114] Dr. Sidhu testified that the respondent had not suffered from depression before the December 25, 2018 incident. And while the respondent had experienced anxiety in the past, it was related to a particular work situation during a single time period in 2016.
- [115] Dr. Sidhu further explained that, although the respondent had previously experienced photophobia, it became much worse after the December 25, 2018 incident. Dr. Sidhu testified that photophobia can be made worse by a concussion.
- [116] Third, Dr. Sidhu gave evidence that the respondent had ongoing neck pain after the assault, and was not able to lift her head as it created headaches and a vertigo-like sensation. The causative factors were most likely stress-induced cervicogenic (i.e., neck) headaches along with possible neck trauma at the time of the assault.
- [117] Fourth, Dr. Sidhu indicated that the respondent's left ear perforation had healed, but she still had a slight subjective hearing loss and was sound-sensitive in that ear, and was awaiting an audiometry test from an ENT surgeon.
- [118] Fifth, Dr. Sidhu indicated that the respondent suffered from a lot of vertigo symptoms, which were worse during periods of headaches. The vertigo was secondary to concussion and ear trauma, but seemed to have improved over time.
- [119] Overall, Dr. Sidhu gave the opinion that there had been a significant decline in the respondent's functional capacity following the December 25, 2018 incident, which was most likely the result of having been physically abused by the claimant.
- [120] In cross-examination, Dr. Sidhu agreed that the respondent had a number of pre-existing conditions as indicated in her written report, but those conditions constituted only about 20% of what she experienced afterwards. While prior to the incident the respondent would come into Dr. Sidhu's office with a smile, was quite functional and never looked in much distress, post-incident Dr. Sidhu observed her to be totally shattered, both physically and emotionally.
- [121] Looking ahead in time, Dr. Sidhu opined that the respondent's symptoms had plateaued. The prognosis for her major depression and severe anxiety was guarded. Her anxiety was usually triggered by the legal process in her family law case and financial worries, and if she received financial support the anxiety might be in part alleviated. She might also learn new skills to cope better. But the respondent's anxiety symptoms would most likely persist for the rest of her life. And she would always need medications and counselling for mental health.
- [122] Somewhat similarly, Dr. Sidhu offered the opinion that the respondent's more severe chronic migraines after the December 25, 2018 incident were mainly triggered by emotional distress related to financial worries about providing for her children. If her stressors continued, the prognosis was guarded, but there might be an improvement if she received financial support.

- [123] More specifically, Dr. Sidhu indicated that the respondent's prognosis for returning to work was guarded, and that her disability was most likely permanent, given that six years had passed without her being able to work and that her significant emotional distress had proven intolerant to many treatments.
- [124] The claimant challenged Dr. Sidhu's opinion in a number of respects.
- [125] One challenge related to Dr. Sidhu's failure to mention in her report certain pre-December 2018 injuries suffered by the respondent.
- [126] In my view, however, these injuries are of scant if any relevance to the respondent's current condition or her future ability to work. For example, she injured her knee at a wedding in May 2018, and appears to have received short-term disability payments as a result, but by mid-August 2018 appeared ready to resume full-time shifts. It was never suggested to the respondent or Dr. Sidhu that, as at December 25, 2018, this knee injury might have impeded her ability to work in the future, nor is there any foundation in the evidence for me to so conclude.
- [127] Similarly, while the respondent strained her lower back in 2016 from lifting a heavy box at work, in relation to which Dr. Sidhu filled out a WCB report, that report indicated that the respondent was still at work and would benefit from light duties and Advil. There is no basis for concluding that this injury lingered for several years and as a result would have negatively impacted the respondent's ability to work after December 25, 2018.
- [128] Also in 2016, the respondent felt anxious because her manager was on leave, during which all of the deli responsibilities fell on her. But Dr. Sidhu testified that this was the only time prior to December 2018 that the respondent reported anxiety, and although she briefly took medication the symptoms resolved using mindfulness techniques.
- [129] I also reject the claimant's submission that the absence of documentation underlying the respondent's post-December 2018 application for disability benefits from Blue Cross should cause me to infer that her current disability may be the result, not of the physical abuse she suffered on the day of the parties' separation, but rather of other causes. In my view, the evidence of the respondent and R.K., as well as Dr. Sidhu's evidence, fully rules out this possibility. The testimony of B.K. and P.O. also supports my conclusion.
- [130] The claimant further challenges Dr. Sidhu's diagnoses, and perhaps more so her prognoses, given that the respondent had previously suffered from migraine headaches. Dr. Sidhu was not, however, shaken in her testimony that these headaches became worse following the December 25, 2018 head trauma, and that a concussion can have this effect. Indeed, in his written closing submissions, the claimant conceded that there was evidence that the migraines had become worse after December 25, 2018, and simply argued that the migraines could not be solely attributed to that incident.

- [131] In the same vein, the claimant points out that Dr. Sidhu's evidence indicates a pre-existing condition called Ankylosing Spondylitis ("AS"), a chronic disorder causing inflammation of the joints or spine. Dr. Sidhu agreed that, in a note from September 2016, she wrote that the AS mainly affected the respondent's neck. She further agreed that the respondent had quite a bit of neck pain prior to December 2018, and also stated that the neck pain may be caused by the headaches.
- [132] I agree with the claimant that in her report Dr. Sidhu should have expressly mentioned neck pain as a pre-existing condition. For a non-medically trained reader, simply mentioning AS and headaches as pre-existing conditions was insufficient to encompass neck pain. I nonetheless accept Dr. Sidhu's testimony that the respondent's neck pain became more severe after the December 25, 2018 incident, and that being struck on the head or choked can contribute to neck pain.
- [133] The claimant also cross-examined Dr. Sidhu regarding the respondent's pre-existing condition of iron deficiency anemia, which was not mentioned in her expert report. While Dr. Sidhu agreed that iron deficiency and anemia may cause body pain and fatigue, and had diagnosed it in the respondent in 2020, she noted that it is very common in women and was not enough to explain the severity of the respondent's symptoms. I accept this evidence, which finds support in R.K.'s testimony regarding the stark contrast in the respondent's activities and abilities before versus after the December 25, 2018 incident.
- [134] On this point, I should add that Dr. Sidhu's note from April 26, 2017 does not suggest that she diagnosed the respondent with an iron deficiency at that point, merely that she might check the respondent's iron and thyroid if reported symptoms of leg pain in the vicinity of AS did not alleviate with time, regular exercise or vitamin D. Contrary to the submissions made in the claimant's closing written argument, it does not appear to me that Dr. Sidhu diagnosed "iron deficiency anemia" prior to December 25, 2018.
- [135] In addition, the claimant points to aspects of Dr. Sidhu's report that indicate negative results for certain tests or symptoms. For example, a post-incident MRI on the respondent's head came back normal. Dr. Sidhu further indicated that the respondent exhibited no disorders of thought form, perceptual disturbances or delusions of ideas or reference, and that her cognitive function was grossly intact and her insight regarding her issues was good.
- [136] Yet the claimant did not suggest to Dr. Sidhu that the absence of such conditions or symptoms somehow undermined or rendered less reliable her opinions regarding the respondent's other health issues, for example major depression and severe anxiety, or the associated psychomotor retardation. Regardless, I reject any such suggestion.

- [137] Finally, while the claimant does not appear to take serious issue with Dr. Sidhu's diagnosis regarding major depression and severe anxiety, he asks that I give limited weight to her prognosis regarding the respondent's likelihood of being able to work in the future, given that Dr. Sidhu is neither a psychiatrist nor psychologist. He also notes that the respondent did not lead evidence from a functional capacity evaluation or her neurologist.
- [138] I do not accept the claimant's submission on this point.
- [139] For one thing, he has provided me with no case law to the effect that I must give Dr. Sidhu's evidence less weight for this reason. Nor does he suggest that I must give Dr. Sidhu's evidence no weight - to the contrary, he conceded her qualification to diagnose and provide a prognosis for the respondent's injuries and illnesses, including mental health issues.
- [140] Indeed, while medical evidence can be helpful in determining the impact of family violence on a spouse's mental health, including whether it has negatively impacted the spouse's ability to obtain employment, it is not essential: *S.A.T. v. D.I.T.*, 2022 BCSC 1176 at paras. 276-279, 296, 308; *Hagman v. Yasmina*, 2024 BCSC 807 at para. 157; *Leskun v. Leskun*, 2006 SCC 25 at para. 28; *Saadati v. Moorhead*, 2017 SCC 28 at paras. 2, 36-38. See also *Petrie v. Lindsay*, 2019 BCSC 371 at paras. 38, 86(i), 100, 117, 157, 160, where the court concluded that family violence had left the claimant permanently disabled and unable to work, apparently without any expert evidence in support.
- [141] Of course, in this case in addition to the respondent's own testimony there is supporting medical evidence, from Dr. Sidhu regarding her diagnosis and prognosis, which I accept as reliable for the reasons stated above. There is also supporting evidence from R.K., P.O. and B.K, and I have in addition been assisted by being able to observe the respondent while she was on the stand.
- [142] In my view, this body of evidence compellingly establishes that, as a result of the claimant's physical assault on the respondent on December 25, 2018, she has suffered a devastating decline in her ability to function, which has rendered her unable to work in any capacity for the past six years.
- [143] I further find that this devastating decline in the ability to function is the result of a number of consequences flowing from the claimant's tortious conduct such as:
- (a) a significant worsening of the respondent's migraine headaches, which became an almost daily occurrence, arising from her concussion as well as emotional distress;
 - (b) major depression and severe anxiety, which in turn led to psychomotor retardation and a substantial worsening of her photophobia, the latter of which was also made more severe by her concussion;
 - (c) more severe neck pain, which became ongoing, and was caused by being struck on the head;

- (d) even after her perforated eardrum healed, a slight subjective hearing loss and sound sensitivity in her left ear; and
- (e) significant vertigo symptoms, which were worse during periods of headaches but seemed to have improved over time.

[144] I therefore conclude that, but for the claimant's violent attack on the respondent on December 25, 2018, she would have been able and continued to work full-time while maintaining her earnings up until the date of the trial, almost certainly at her long-standing job at Safeway.

[145] Based on this same body of evidence, I further find that it is unlikely that the respondent will be able to return to work in the future, and accept Dr. Sidhu's opinion that, despite a guarded prognosis regarding the respondent's return to work, her disability is most likely permanent. So too is her loss of income-earning capacity. That is, the December 25, 2018 incident caused a significant and lasting injury that has left the respondent unable to work at the time of trial and for the foreseeable future. Indeed, the most likely future scenario for the respondent is that she will remain permanently disabled from any kind of employment. See *Canada (Minister of Public Safety and Solicitor General) v. McLellan*, 2023 BCCA 279 at paras. 51-52.

[146] In my view, at best the respondent may at some point in the distant future be able to work part-time in an undemanding and low-paying job. But even if this hopeful scenario comes to pass, I find that there is no real and substantial possibility that, prior to reaching retirement age, the respondent will ever have an income greater than what she now earns from CPP and Blue Cross disability payments, let alone an income equal to what she would have been earning had the claimant not attacked her on December 25, 2018.

[147] The evidence also leads me to conclude that there is no real and substantial possibility that, had the claimant not physically attacked the respondent, any of her pre-existing conditions, such as but not limited to AS or migraine headaches, would have become progressively worse, so as to prevent her from working full-time and thereby materially decreasing her income from what it was at the time of the attack. I come to this conclusion regarding both the respondent's ability to work between the time of the attack and the trial, and her ability to work following the trial up to retirement age.

Applicable Statutory Regime

[148] Whether to grant a divorce is governed exclusively by the Divorce Act, which also permits orders on corollary issues such as parenting matters and child and spousal support. These corollary issues can also be addressed under the FLA. But unlike the Divorce Act, the FLA in addition permits orders addressing the division of family property and debt.

- [149] In their pleadings, the parties seek orders under both the Divorce Act and the FLA. Neither party suggests any operational inconsistencies between the statutes that, on the facts of this case, would engage the paramountcy doctrine in favour of the Divorce Act.
- [150] As the parties have focussed more on the FLA in their closing submissions, I will mostly do the same, and will make all of my orders under that statute except regarding the non-contentious issue of divorce. See *C.L.D. v. J.J.P.D.*, 2024 BCSC 1123 at paras. 8-21; *K.M.N. v. S.Z.M.*, 2024 BCCA 70 at paras. 63-64.

Divorce

- [151] The respondent seeks a divorce in her counterclaim, and the claimant does not oppose this relief being granted.
- [152] The evidence supports making the requested order.
- [153] The parties are residents of British Columbia, their marriage has broken down and there is no possibility of reconciliation. They have lived separate and apart since December 25, 2018. There is no collusion in relation to the request for a divorce. And as explained below, I have made appropriate arrangements pertaining to their children A.K. and G.K.
- [154] I am thus granting the parties a divorce effective on the thirty-first day after the date of my order.

Parenting Issues

- [155] On the evidence, I agree with the parties that R.K., who is 20 years old, is no longer a child of the marriage within the meaning of the Divorce Act or a child under the FLA. I will therefore make no parenting orders referable to R.K.
- [156] However, A.K. and G.K. are aged 17 and 11, respectively, meaning that parenting arrangements are necessary for them. The parties mostly concur on the nature of these arrangements. Having applied the relevant statutory provisions, which I recently reviewed in *E.G. v. M.A.*, 2025 BCSC 1463 at paras. 165-185, I agree that the requested orders are in the best interests of A.K. and G.K.
- [157] The parties shall both remain guardians of A.K. and G.K. by operation of s. 39 of the FLA.
- [158] The respondent will have sole parental responsibilities for A.K. and G.K.
- [159] A.K. and G.K. will continue to reside with the respondent.
- [160] Given that A.K. is 17 years old, she is free to decide whether and the extent to which she will have parenting time with the claimant or engage in counselling with him. If A.K. engages in such counselling, the claimant will pay for it.

- [161] The respondent will, through her counsel, provide the claimant with A.K.'s contact information so that he can contact A.K. to ascertain whether she wishes to engage in parenting time or counselling with him. In making such contact, he must be respectful and not unreasonably pressure A.K., whether through the content or frequency of his communications.
- [162] With respect to G.K., the parties have generally agreed on an approach whereby reunification counselling will be used to work towards supervised parenting time by the claimant. G.K. is already receiving counselling from a registered psychologist, who I expect will likely be involved in this reunification counselling.
- [163] To this end, my understanding is that the claimant does not disagree with the following terms proposed by the respondent in her closing submissions (mostly taken from a case with somewhat similar facts, *K.R. v. S.R.*, 2023 BCSC 941):
- (a) the claimant and G.K. will engage in reunification counselling paid for entirely by the claimant;
 - (b) the reunification counsellors will be requested to provide an assessment of the advisability of joint counselling between the claimant and G.K., and a timeline, if determined to be appropriate in the best interests of G.K., for supervised parenting time to commence between the claimant and G.K.;
 - (c) at the direction of the reunification counsellors, the claimant will have parenting time, to be supervised by a professional supervisor agreed upon by the respondent and paid for by the claimant, and that supervisor will be asked to provide written reports to both parties.
- [164] The respondent may apply for a passport, NEXUS pass, and any renewals of a passport or NEXUS pass for A.K. or G.K., without the claimant's consent.
- [165] The respondent may travel with A.K. or G.K. without the claimant's consent. Given the passage of time since the January 10, 2020 order was made in the provincial court action, and the age of A.K. or G.K., in my view it is no longer necessary to require that the respondent provide notice to the claimant each time they travel in excess of 48 hours.

Child Support

- [166] Because A.K. and G.K. will continue to reside with the respondent, the parties agree that the claimant should pay child support to the respondent. They further agree that he should have income imputed to him in calculating future child support payments. But they disagree as to the amount of imputed income.

[167] In this part of my reasons, I will address three matters relevant to child support. First, whether income should be imputed to the claimant in calculating child support, and if so in what amount. Second, whether the claimant should pay table child support on a lump-sum basis. And third, the future apportionment of section 7 expenses under the Federal Child Support Guidelines, SOR/97-175 [Guidelines].

Imputation of Income

[168] The January 10, 2020 provincial court order obligated the claimant to pay child support for A.K. and G.K. based on an imputed income of \$54,200. As at the start of trial, the arrears under this order were \$61,635.08.

[169] The parties agree that the claimant shall pay to the respondent this amount plus any further arrears in child support that have accumulated to the date of my judgment. The total amount of arrears will be paid from or offset against his share of the equity in the family home.

[170] In closing submissions, the claimant indicated that he would not seek to reduce his arrears pending release of my judgment. But to be safe, I further order that, in the event the claimant has reduced the total arrears owing as at the date of this judgment to below \$61,635.08, he only need pay the respondent that reduced amount of arrears.

[171] The claimant's primary position is that his income for the purposes of child support moving forward should be imputed at \$38,000, which he says equates to minimum wage. He nonetheless offers alternative amounts based on his annual income from 2016 until 2019.

[172] The respondent argues that the claimant's post-trial income should be imputed at \$60,000, a figure calculated by extrapolating what his 2023 income would have been had he not quit his job at Walmart.

[173] Sections 16 to 20 of the Guidelines set out the framework for determining income for child support purposes.

[174] Under s. 16 of the Guidelines, a spouse's annual income is calculated using sources of income set out under the heading "total income" in the T1 General form issued by Canada Revenue Agency, subject to adjustments available under Schedule III. The court must then address whether any of the circumstances described in ss. 17 to 20 of the Guidelines exist so as to require an adjustment to arrive at the fairest determination of income available for support, keeping in mind the objectives of s. 1 of the Guidelines. See *Adair v. Barylka*, 2025 BCSC 565 at para. 144.

[175] Section 19 of the Guidelines permits a court to impute such amount of income to a spouse as it considers appropriate in the circumstances, which include that the spouse is intentionally underemployed or unemployed.

- [176] The test for imputing income for intentional underemployment or unemployment is one of reasonableness, having regard to the party's capacity to earn income in light of age, education, health, work history and work availability. A party's capacity to earn income will include that person's ability to work or to be trained for work. See *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37.
- [177] It is not necessary to show an intent to evade child support; what matters is whether the parent is earning what the parent is capable of earning: *Barker v. Barker*, 2005 BCCA 177 at para. 19.
- [178] The party seeking to impute income to the other spouse has the burden of establishing an evidentiary basis for such a finding: *Willms v. Willms*, 2020 BCCA 51 at para. 41.
- [179] In this case, the claimant was consistently employed pretty much since his arrival in Canada until May 2023. However, as noted in the section of these reasons dealing with credibility and reliability, in that month he quit his job at Walmart.
- [180] I find that the claimant decided to stop working at Walmart because in February 2023 he had received about \$100,000 from settling a personal injury lawsuit and wanted to travel to India. Later that same year, he received a further \$126,000 as beneficiary of the Canada Life insurance policy in his mother's name. I find that receiving these life insurance proceeds increased the claimant's motivation not to work at a paying job.
- [181] Consistent with this motivation, in 2024 the claimant travelled to India, staying there for about six months, and since then he has not been employed.
- [182] Given my significant concerns about the claimant's credibility, I reject his evidence that, despite best efforts, he has been unable to find other employment since returning from India in July 2024. Rather, in my view the claimant has not worked since May 2023 because of the \$226,000 he received that year from the personal injury settlement and life insurance payout.
- [183] In so finding, I reject the claimant's testimony that a medical condition has restricted the types of work he is able to do and that his criminal record has made it difficult to find employment. He has provided no supporting evidence for either claim. He was able to obtain a job at Walmart following his 2019 conviction for assault. In his testimony, he mentioned unsuccessfully searching for work through an online portal, but filed no confirmatory evidence regarding these purported searches, nor did he mention taking any other steps in pursuing employment.
- [184] For these reasons, I conclude that the claimant has been intentionally unemployed from May 2023 to the present.

- [185] Although unnecessary to my conclusion in this regard, the claimant effectively acknowledged the legitimacy of imputing income to him on the basis of intentional unemployment when, in his closing submissions, he proposed that the minimum wage amount of \$38,000 be used to calculate his annual income: *Olson v. Lavallee*, 2025 BCSC 320 at para. 38.
- [186] I do not, however, accept that the claimant's annual income should be imputed at \$38,000. The available evidence shows that he consistently earned much more than \$38,000 in the three years before separation, and also in the two years following.
- [187] Granted, the claimant testified that he lost his job at the warehouse in 2022 due to automation, but by the start of 2023 he was working full-time at Walmart, and there is no credible evidence suggesting any material change in circumstances that would restrict him to a future income of \$38,000 per year.
- [188] Nor do I accept the claimant's alternative submission that his income should be imputed based on the average Line 15000 income from his 2016 through to 2019 T1 General forms, but only after excluding any amounts received from employment insurance.
- [189] The claimant provided no case law or rationale to support ignoring his employment insurance income for imputation purposes, and I do not find this submission to be persuasive. The claimant's job at the warehouse included routine periods where he received employment insurance because of seasonal drops in consumption of the product being stored. But there is no evidence to suggest that the claimant, were he to make reasonable efforts to find work in the future, would be restricted to jobs paying his average income from 2016 to 2019 net of employment insurance payments.
- [190] More persuasive is the claimant's alternative position, which is that his imputed income should be the average of his employment and employment insurance income from his 2016 to 2019 tax returns. However, I see no reason to exclude the modest amount of other income he received in 2018 or 2019. I also see no reason to ignore his income in 2020 and 2021, when he testified he was working full-time at the warehouse. I have decided not to consider his income in 2022, which was an anomaly because he lost his job at the warehouse.
- [191] As for 2023, by this point the claimant was working full-time at Walmart. As the respondent notes, had he not quit that job his income extrapolated for the whole year would have been about \$60,000.
- [192] I agree with the respondent that this extrapolated figure is relevant in determining the claimant's capacity to earn income in light of his age, education, health, work history and work availability. However, contrary to the respondent's submission, I decline to use it as the sole basis for imputing income. Instead, I have considered this extrapolated amount together with his income from the years 2016 to 2021. The average income from all of these years is about \$54,500. I will therefore impute this level of income to the claimant.

- [193] In arriving at this figure, I have considered the respondent's submission that, in imputing income to the claimant for future child support payments, I should take into account his failure to use the \$236,000 he received from settlement and Canada Life insurance payout in 2023 to generate income.
- [194] However, over the past couple of years the claimant has likely spent much of this money, including on living expenses, two trips to India and a music video. I am not prepared to conclude that he has retained enough of the proceeds to generate the \$10,000 or so the respondent says he would be able to earn were the money invested in a GIC or high interest savings account. I have therefore not relied on s. 19(1)(e) of the Guidelines, which permits a court to impute income based on a spouse's failure to reasonably utilize their property to generate income.
- [195] The respondent also suggested that the claimant may be earning money as a musical artist, given his admission that he has made a music video and that the associated song is available for sale on various online platforms.
- [196] I appreciate that the claimant has failed to provide information that would enable me to determine with certainty whether he has earned income from this video or the associated song, which may be relevant to imputing income under s. 19(1)(f) of the Guidelines.
- [197] But I find it highly unlikely that the claimant has received more than a trifling amount in proceeds from his video and song, if any. I come to this conclusion because there is no evidence to suggest he has any experience or aptitude as a musical artist, and the Google search results filed by the respondent give no indication that the video has received the slightest amount of critical attention or commercial success. It is therefore much more likely than not that this video is purely a vanity project, paid for by the claimant out of the \$226,000 in payouts he received in 2023, which has yielded him little or no revenue and certainly no profit.
- [198] Given that I have attributed to the claimant an annual income of \$54,500, his monthly payment to the respondent for Guidelines child support for A.K. and G.K. is \$847 until January 2027, at which point A.K. will have reached the age of maturity. His monthly payment will thus be reduced to \$512 from January 2027 until August 2032, at which point G.K. will also have reached the age of maturity.

Lump-sum Payment

- [199] The respondent says the claimant should pay his future child support amounts as a single lump-sum instead of on a monthly basis. The claimant does not strongly oppose this request, given that in his testimony he expressed a preference for the lump sum option, but he appears not to fully concede the point.
- [200] Section 11 of the Guidelines allows a court to require that child support be payable in periodic payments, a lump-sum or a combination.

- [201] Prospective lump-sum support orders are reserved for cases with special circumstances: Santelli v. Trinetti, 2019 BCCA 319 at para. 166.
- [202] I have considered the factors bearing on whether to order lump-sum child support as discussed in cases such as Santelli at paras. 164-166, Lan v. Buchanan, 2024 BCSC 302 at para. 329; J.A.A. v. C.G.A., 2024 BCSC 1817 at para. 169; P.M.Z. v. D.J.T., 2023 BCSC 1444 at para. 244; and J.K.P. v. L.S.B., 2025 BCSC 1494 at paras. 112-113.
- [203] In my view, the circumstances in this case are exceptional so as to justify a lump-sum award for post-trial child support.
- [204] First, the claimant has a track record of failing to make support payments in contravention of the January 10, 2020 provincial court order.
- [205] Second, the claimant did not use the \$226,000 he received in 2023 from the personal injury settlement and the Canada Life insurance payout to expunge his child support arrears and fully comply with future child support obligations. Instead, he quit his job and probably dissipated much of the money on living expenses, two trips to India and what appears to be a vanity music video.
- [206] Third, in this litigation the claimant attempted to hide receipt of the \$226,000. For example, at his EFD he falsely denied that his personal injury lawsuit had settled. Similarly, in chief he falsely claimed to have been unable to pay child support because he lost his job due to a medical condition and was unable to find a new one. In my view, the claimant only disclosed the \$226,000 in cross-examination because, after visibly struggling to decide how to answer, he concluded that opposing counsel might be able to prove that he had received the money. This mendacious and self-interested conduct suggests the claimant will try to evade future child support obligations to the extent possible.
- [207] Fourth, the claimant is intentionally unemployed, which has led me to impute income to him for the purposes of determining child support obligations. He may remain intentionally unemployed or underemployed in the future, making it difficult for him to obtain the funds needed to pay the child support to which A.K. and G.K are entitled.
- [208] Fifth, as recently as last year the claimant expressed animus towards R.K., A.K. and the respondent for ruining his life, and told R.K. that the respondent was the reason why everything had happened. R.K.'s evidence in this regard, which I accept, further indicates that the respondent may be motivated to evade child support obligations if able to do so.
- [209] Sixth, there is a history of violence perpetrated by the claimant against the respondent, including a serious physical assault on the day of their separation. Since that time, the parties have had almost no contact, and the respondent quite understandably wishes to keep it that way.

- [210] Seventh, in his testimony the claimant expressed a preference for paying future child support by way of lump-sum, and he has identified no prejudice that would arise to him if required to do so.
- [211] The claimant nonetheless requests that his lump-sum payment be discounted by 20%, as was done in *P.M.Z.* at paras. 250-256. However, in that case the size of the discount was substantially impacted by the likelihood that the payor's income would lessen during the almost 14-year period for which the child support was attributable, due to his age and medical challenges, combined with the physically demanding nature of his work.
- [212] Here, the claimant argues that the same 20% discount is justified because in his testimony he indicated that he was suffering from depression. Given the claimant's serious credibility problems, I reject that he has been or will be unable to work in the future by reason of depression. There is no credible or reliable evidence upon which I am prepared to make such a finding.
- [213] While the respondent objected to the claimant's request for a 20% discount, she submitted that a discount rate of 2.5% per annum is acceptable, consistent with the approach taken in *Dorey v. Havens*, 2011 BCSC 1777 at para. 173. There, a lump-sum child support payment was reduced by this amount using the discount rate provided for in s. 56 of the Law and Equity Act, R.S.B.C. 1996, c.253 and s. 1(b) of Law and Equity Regulation, B.C. Reg. 352/81.
- [214] However, the applicable discount rate is now 2%, as used in the more recent case of *Hammond v. Holtz*, 2024 BCSC 447 at para. 129. I therefore order that the claimant pay the respondent prospective table child support for A.K. and G.K. in a lump-sum amount based on an imputed income of \$54,500 for A.K. and G.K., at a discount rate of 2% per annum. I will leave it to the parties to calculate the lump sum amount, but I anticipate that it will be slightly less than \$55,000.
- [215] This lump-sum order is made for table child support payable until A.K. and G.K. turn 19. But should one or both of them thereafter remain a child under s. 146 of FLA or a child of the marriage under s. 2(1) of the Divorce Act, either party may bring an application for continuing child support.

Section 7 Expenses

- [216] The respondent does not seek any contribution from the claimant under section 7 of the Guidelines for special and extraordinary expenses she has incurred with respect to R.K., A.K. or G.K. from separation up to the conclusion of the trial.
- [217] However, the parties agree that from the end of trial forward they will share special and extraordinary expenses for A.K. and G.K. under section 7 the Guidelines in proportion to their respective incomes.

- [218] Based on the claimant's imputed income of \$54,500, and the respondent's 2024 income of \$31,548.98, which has been grossed up because her Blue Cross disability income is not taxable, by my calculation their proportionate shares of these expenses would be 63% for the claimant and 37% for the respondent.
- [219] However, as explained below I am dividing the equity in the family home unequally to reflect the income that the respondent has lost since separation, and will lose in the future, as a result of the family violence on December 25, 2018. Furthermore, she will likely have some rental income from the family home moving forward. For these reasons, I find that the parties should share section 7 expenses equally.
- [220] Special or extraordinary expenses for A.K. and G.K. shall include out-of-pocket medical expenses, counselling, dental expenses and such other expenses as agreed on by the parties.
- [221] The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement within 14 days of that receipt becoming available, and the other party shall pay their proportionate share of the expense no later than 14 days after being provided with the receipt.

Division of Family Property and Debt

- [222] By far the most valuable family property in this case is the equity in the family home, and it is with respect to this asset that one of the parties' main disputes arises.
- [223] The respondent seeks an unequal division of the equity, with 75% going to her, primarily because of the adverse economic impact upon her of the family violence perpetrated by the respondent on December 25, 2018.
- [224] The claimant argues that the equity should be divided equally, but in the alternative suggests that the case authorities support a reallocation in the respondent's favour of only 60% or at the very most 65%.
- [225] In this part of my reasons, I will begin by setting out the legal principles relevant to the division of family property and debt. I will then identify the family property at issue in this case, resolving a couple of minor disputes between the parties in this regard.
- [226] After that, I will focus on whether there should be an unequal division of the equity in the family home, which as elaborated on below will require me to consider the issue of spousal support.
- [227] Along the way, I will address whether and to what extent post-separation rental income and expenses for the family home should be allocated between the parties.

Legal Principles

- [228] Under s. 81 of the FLA, on separation each spouse is presumptively entitled to an undivided half interest in all family property and is equally responsible for family debt, regardless of their respective use or contribution. The right to family property and responsibility for family debt thus crystallizes on separation: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38; *Weaver Estate v. Weaver*, 2022 BCCA 79 at paras. 36, 41, 57.
- [229] Section 84(1)(a) defines family property as all real and personal property, legally or beneficially owned by at least one spouse at separation, as well as property acquired after separation if derived from family property: *Dignard v. Dignard*, 2025 BCCA 43 at para. 29.
- [230] However, s. 85 excludes certain categories of property from family property, including property acquired by a spouse before the relationship began, inheritances and gifts from a third party.
- [231] The party seeking to rely on s. 85 must establish the exclusion and its value on a balance of probabilities. If documentary evidence is unavailable, the party will need to testify as to their recollection. A trial judge is nonetheless permitted to draw reasonable inferences from evidence that is less than certain or precise to do justice between the parties. See s. 85(2) FLA; *Shih v. Shih*, 2017 BCCA 37 at paras. 42-45; *Brazinski v. Brazinski*, 2023 BCCA 359 at para. 81.
- [232] While property derived from excluded property or its disposition is also excluded property (s. 85(1)(g)), the increase in value of excluded property, after the latter of the date when the relationship began or the property was acquired, is family property and thus presumptively shared equally (s. 84(2)(g)). The increase in value must be proven by the spouse making the claim. See *Mills v. O'Connor*, 2025 BCCA 34 at para. 51; *Loberg v. Loberg*, 2023 BCSC 2283 at para. 15.
- [233] Pursuant to s. 86, family debt includes all financial obligations incurred by a spouse from the beginning of the relationship until separation, but also after separation where incurred to maintain family property.
- [234] Section 87 provides that the presumptive date for valuing family property or debt is the date of the trial, and that the value of family property must be based on its fair market value.
- [235] Section 97(1)(b) permits a court to make any order that is necessary, reasonable or ancillary to give effect to a division of property or family debt.
- [236] Under s. 95(1), the court may order an unequal division of family property or debt based on significant unfairness. The relevant factors the court may consider in deciding whether to order an unequal division are set out in ss. 95(2) and (3):

- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.
- [237] Section 95 seeks to increase certainty, predictability and fairness in property division by reducing, but not eliminating, the discretion of the courts to depart from equal division. This purpose is accomplished in two ways. First, by requiring significant unfairness, as opposed to just unfairness, as a precondition for departing from equal division. And second, by more precisely identifying the factors to be considered in applying this threshold. See Jaszczewska at paras. 36-37, 41.

[238] Significant unfairness connotes something compelling or meaningful having regard to the factors in s. 95(2). The general rule of equal division thus prevails unless persuasive reasons can be shown for a different result. Ultimately, a different result requires, "something objectively unjust, unreasonable or unfair in some important or substantial sense". See Jaszczewska at paras. 41-42; Dignard at para. 33; Mills at para. 54.

Focus on the Family Home

[239] The family home was appraised at \$1,680,000 as at September 21, 2024. The claimant submitted that I could either rely on this appraisal or order a new one, while the respondent asked me to rely on this appraisal. As neither party opposed me relying on the appraisal or suggested it might be materially inaccurate given the passage of time, I will treat the appraisal as reflecting the value of the property as at the time of the trial.

[240] The amount outstanding on the mortgage on the family home was \$320,225 as at March 27, 2025, which is shortly before the start of trial. Based on the appraisal and this mortgage, I therefore find that the equity in the family home as at the time of trial was about \$1,360,000.

[241] In closing submissions, the parties said little about any other assets in addressing the division family property. The only additional assets that received any real attention were their properties in India, and insurance policies previously held with Desjardins and Canada Life.

[242] The parties' focus on the family home is the result not only of its vastly disproportionate value compared with their other assets. This focus likely also reflects the fact that the respondent seeks an order for unequal division of the family home substantially in her favour, but does not seek the division of any other family assets and instead submits that, apart from the family home, the parties should keep all other assets in their name and possession as their sole property.

[243] The claimant did not appear to strongly oppose the respondent's suggested approach, at least if I determined that a substantially unequal division of the equity in the family home was justified.

[244] In any event, as explained below in addressing the issue of unequal division, I agree with the respondent's proposed approach. I will address the two insurance policies in that part of my reasons, but at this point I want to comment briefly on the parties' properties in India, since evidence was led about these properties at trial.

[245] The claimant testified that he has property in India, which appears to have been acquired for ₹310,000 in 2009, and thus during the marriage. In closing submissions, the respondent conceded that this land was family property, and indicated that this purchase price amounts to around \$5,000.

- [246] Based on the claimant's April 2, 2025 financial statement, in which he references owning an "ancestral property" in India, and his answers in cross-examination regarding a copy of land records from the same district in which he owns the property purchased in 2009, I conclude that the claimant has a second property in India that was acquired after the marriage and is therefore also family property. To the extent the claimant denied owning this second property, I reject his testimony in this regard.
- [247] In closing submissions, the respondent submitted that the second India property belonging to the claimant was worth about ₹319,000, and I do not understand the claimant to contest that valuation.
- [248] I have no evidence to suggest that the claimant's two India properties increased in value between the time of their acquisition and the time of trial, and neither party submitted that any such increase might have occurred. I am therefore treating the total value of these two properties as ₹329,000 as at the end of the trial. The Bank of Canada currency converter indicates a conversion value of \$10,277 as at that date.
- [249] The respondent also owns a property in India, which is her parents' home, but I accept her evidence that she only acquired an interest in it in April 2024. This property is therefore not family property under the FLA.
- [250] To the extent the claimant testified that he holds an interest in this property by virtue of having contributed to the purchase price when the respondent's father bought it, I reject that testimony because I have grave concerns regarding his credibility on disputed issues with respect to which he does not proffer reliable supporting evidence.
- [251] As a final point, the parties agree that the roughly \$100,000 received by the claimant as part of the motor vehicle accident settlement is not family property. The respondent made this concession because the claimant's tax returns indicate that he suffered no wage loss following that accident. For this reason, the settlement monies are excluded property under s. 85(1)(d) of the FLA.

Spousal Support

- [252] Courts usually address property division before spousal support, because the outcome of property division may in a spouse being able to generate further income, thus affecting the relative condition, means and needs of the parties, which in turn may impact whether and to what extent spousal support is justified. However, where s. 95(3) is relevant, as it is here, it may be necessary to consider spousal support as part of the analysis of the claim for unequal division of family property. See *Healey v. Healey*, 2024 BCCA 68 at paras. 63-65.
- [253] Section 161 of the FLA and s. 15.2(6) of the Divorce Act use very similar language in setting out the objectives of a spousal support order. Section 161 of the FLA states these objectives as follows:

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

[254] These objectives encompass three conceptual bases for spousal support: compensatory, non-compensatory or needs based, and contractual: *Parton v. Parton*, 2018 BCCA 273 at para. 43.

[255] Compensatory support aims to provide redress to the recipient spouse for economic disadvantage arising from the marriage, such as diminished earning capacity or sacrificed career opportunities resulting from childcare and household responsibilities. It also recognizes that the recipient spouse, by taking on such responsibilities, may leave the other spouse free to pursue career opportunities and with them concomitant economic advantage. The main goal of compensatory spousal support is thus to provide for an equitable sharing of the economic consequences of the marriage. See *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-51; *Parton* at para. 39; *Healey* at para. 60.

[256] Non-compensatory support focuses on the needs and means of the spouses, and the nature and duration of the marital relationship. It is based on the concept that spouses have an ongoing responsibility to care for one another. In this context, the concept of "need" covers more than the basic necessities of life and varies with the parties' circumstances. Those circumstances include the length of the relationship and the marital standard of living. See *Chutter* at paras. 54-61; *Parton* at paras. 39-41; *Healey* at para. 61.

[257] Where entitlement is established, the amount and duration of spousal support is determined by considering the conditions, means, needs and other circumstances of each spouse, including the length of time they lived together and the functions performed by each during that time. See s. 162 of the FLA; s. 15.2(4) of the Divorce Act; *Parton* at para. 43.

[258] The Spousal Support Advisory Guidelines (Ottawa: Department of Justice, 2008) [SSAG], while not legally binding, is a useful tool in guiding the determination of the appropriate amount and duration of spousal support. A substantial departure from SSAG amounts requires exceptional circumstances, and should be accompanied by an explanation. See *Sebok v. Babits*, 2022 BCCA 2 at paras. 21-26.

[259] Property division, even if based on reapportionment, does not necessarily negate entitlement to spousal support. This is particularly so where entitlement to spousal support is based predominantly on compensatory principles. It may also be the case where a

spouse must encroach on capital to address a disadvantage in standard of living after marriage breakdown and the payor spouse has the means to pay support. See *H.S.S. v. S.H.D.*, 2018 BCCA 199 at paras. 136-137, leave ref'd, 2019 CanLII 7962 (S.C.C.); Parton at para. 42; Healey at para. 100.

- [260] Section 166 of the FLA states that spousal misconduct is not a consideration in making an order regarding spousal support unless that misconduct unreasonably or arbitrarily causes, prolongs or aggravates the need for spousal support or affects the ability to provide spousal support. Section 15.2(5) of the Divorce Act is comparable in nature, at least as interpreted by the jurisprudence. See *Leskun* at para. 21; *S.A.T.* at paras. 257-259.
- [261] Applying these principles to the circumstances of this case, I have no difficulty in accepting the respondent's submission that she is entitled to spousal support because she has suffered significant economic disadvantage arising from her relationship with the claimant and its breakdown.
- [262] Specifically, the physical assault perpetrated by the claimant on the respondent on December 25, 2018, which occurred before the relationship ended but precipitated its termination, has left her unable to work and so resulted in a significant decrease in her income. The prohibition in s. 166 of the FLA and s. 15.2(5) of the Divorce Act is therefore not engaged.
- [263] Regardless of whether the respondent's entitlement to spousal support is viewed as compensatory, non-compensatory, or both, in my view that entitlement is strong given the substantial and lengthy economic disadvantage she has suffered arising from the violent incident on December 25, 2018. However, the DivorceMate calculations indicate that under the SSAG no spousal support is payable by the claimant to the respondent. This result arises, not because her entitlement is weak, but for other reasons including that the claimant's attributed income is not particularly high and he is paying child support.
- [264] It is at least in part for this reason that the respondent asks that her entitlement to spousal support be taken into account under s. 95(3) of the FLA in determining whether the equity in the family home should be divided unequally on the basis of significant unfairness, and if so by how much.
- [265] I do not understand the claimant to dispute that this is an acceptable analytical approach for considering whether reapportionment is justified under s. 95(1), although he argues that an equal division of the equity in the family home would not be significantly unfair, or at least not as significantly unfair as the respondent contends.

Section 95 of the FLA and Significant Unfairness

- [266] The dominant factor relied on by the respondent in seeking an unequal division of family property is the economic disadvantage she has suffered due to the incident on December 25, 2018.

- [267] I agree that this is the key consideration in undertaking the s. 95 analysis, and the claimant accepts that family violence can be considered in applying s. 95 where that violence has impacted the economic characteristics of the spousal relationship.
- [268] This can occur in either of two ways, both of which apply in this case.
- [269] First, s. 95(2)(i) permits a court to take into account any other factor, other than the consideration referred to in s. 95(3), which may lead to significant unfairness, provided it relates to the economic characteristics of the spousal relationship: *Singh v. Singh*, 2020 BCCA 21 at paras. 138-139.
- [270] Family violence by one spouse against the other spouse can thus be considered under s. 95(2)(i) where it has negatively impacted that other spouses' economic self-sufficiency: *S.A.T.* at paras. 246; *Salman v. Astifan*, 2021 BCSC 1395 at paras. 118-122; *O.M. v. V.G.*, 2025 BCSC 209 at paras. 272-273, 307-308; *He v. Guo*, 2022 BCCA 355 at paras. 34-36; *Loss v. Walters*, 2024 BCSC 1012 at paras. 108-111; *Chander v. Janif*, 2024 BCSC 1505 at para. 77.
- [271] Second, and as mentioned above, s. 95(3) allows a court to consider the degree to which the parties' earning capacities have been impacted by other circumstances of the relationship, including family violence, if on making a determination respecting spousal support the court determines that the objectives of spousal support have not been met: *Petrie* at paras. 159-160; *S.A.T.* at paras. 368-370; *N.H. v. M.H.*, 2020 BCCA 121 at paras. 19 (fourth bullet), 88-90.
- [272] In determining the extent to which reapportionment may be justified because of one spouse's violence against the other, the resulting economic disadvantage need not be precisely quantified: *Salman* at para. 122.
- [273] However, in this case it is possible to determine with some specificity the economic disadvantage visited on the respondent by virtue of the claimant's family violence committed on December 25, 2018.
- [274] The respondent has calculated the difference between her post-tax income in 2018, the last year in which she worked prior to this incident, and her income in each year from 2019 until and including 2024. The total difference for this post-separation period is \$79,825, or \$13,304 per year. Pro-rating this figure for the four months in 2025 prior to the end of trial establishes an additional loss of income of \$4,434, for a total past loss of earning capacity of \$84,259. I find that this is the additional amount the respondent would have earned to the time of trial but for the injuries sustained on December 25, 2018. See *Hartman v. MMS Homes Ltd.*, 2023 BCCA 400 at para. 64.
- [275] Using this same figure \$13,304 per year, the respondent's reduction in income from May 2025 to her retirement age of 65 would be \$235,037. In this respect, see *Rab v. Prescott*, 2021 BCCA 345 at para. 29 and *Lewis v. Gibeau*, 2025 BCCA 127 at paras. 45-48, including the discussion of the earnings approach to valuing the loss of earning capacity, which I have adopted here because the respondent had an identifiable loss of income at the time of trial,

and prior to the December 25, 2018 incident had a demonstrated and lengthy work history. Her loss is thus easily measurable in a pecuniary way: Prasad v. Moriyama, 2025 BCSC 752 at paras. 167-169.

- [276] Given my findings regarding the devastating negative impact of the December 25, 2018 incident on the respondent's ability to work, I agree with the respondent that her total economic disadvantage in terms of past and future loss of income-earning capacity can be assessed at about \$320,000.
- [277] As noted, there is approximately \$1,360,000 in equity in the family home. Split equally, each party would receive \$680,000. Reapportioning this equity 75/25 in the respondent's favour would result in her receiving \$1,020,000, and the claimant \$340,000. Put another way, on a 75/25 split the respondent would receive \$340,000 more, and the claimant \$340,000 less, then would be the case on an equal division.
- [278] In my view, this result is not only justifiable, but necessary to prevent significant unfairness, given the very substantial economic disadvantage - somewhere around \$320,000 - suffered by the respondent as a result of the family violence on December 25, 2018. As noted, this family violence is a critical factor to consider under ss. 95(2)(i) and/or 95(3) of the FLA.
- [279] The claimant relies on S.A.T. in arguing that, if the equity in the family home is to be divided unequally, it should be on a more modest 60/40 split, or at the highest 65/35, in the respondent's favour.
- [280] But in my view, focussing only on the proportionate split in another case, without also looking at why, and the amounts reapportioned as a result, is unhelpful. For example, S.A.T. is a different case because a more substantial reapportionment would likely have been ordered but for the fact that: (a) the wife intended to re-enter the workplace, was much younger than the husband, who was in his 70s, and was currently able to work part-time and likely to have the capacity to work full-time again, although it was unclear when; and (b) the husband had used a substantial amount of excluded funds for a down payment on the former family home and to pay off family debt prior to separation (S.A.T., para. 371-373). Neither of these factors is present in the case at bar.
- [281] To the extent that a 75/25 split is slightly on the high side in the respondent's favour, given my calculation of her past and future loss of income arising from the December 25, 2018 incident, she relies on several other factors in support of her argument for a 75/25 division of the equity in the family home.
- [282] I will consider each of these other factors in turn.

- [283] To begin with, the respondent notes that she has paid all of the post-separation expenses for the family home, specifically regarding the mortgage, property insurance, property tax and repairs. She is not seeking that the claimant repay her for half of these expenses, but rather argues that her payment of them bolsters her claim for a 75/25 split.
- [284] The claimant disagrees. He says that he was entitled to one-half of the rental income received after separation, because it was derived from family property. He also points out that the respondent has had the benefit of living in the family home during the period of separation, while he has had to make other arrangements for accommodation. He therefore claims occupational rent, but only to off-set his half share of the mortgage payments, as part of his argument against an unequal division under s. 95(1), or if an unequal division is ordered to support his position that it be at the "lower end".
- [285] The claimant nonetheless concedes that he should be required to reimburse the respondent for half the post-separation payments she made for property taxes and property insurance.
- [286] In addressing these arguments, I note that comparing the parties' respective contributions to family property is generally discouraged, though not prohibited, when considering unequal division under the "any other factor" heading in s. 95(2)(i): *Rana v. Ullah*, 2022 BCCA 192 at para. 48; *Jaszczewska* at paras. 38, 41, and 44. Cases where an unequal contribution by one spouse meets the significantly unfair threshold have thus tended to involve marked, prolonged, and intentional or unexplained disparities in the contributions to family burdens: *Khan v. Gilbert*, 2019 BCCA 80 at paras. 32 and 36.
- [287] The calculations provided by the respondent's counsel in closing submissions, which were based on the trial evidence and not contested by the claimant, show that: (a) from 2019 until the end of 2024 she paid \$36,691 for property tax and property insurance on the family home; (b) from 2019 until the time of trial she paid \$146,320 towards its mortgage, of which about \$70,500 went towards reducing principal; and (c) during the postseparation period she paid \$8,065 for repairs and renovations. The payments under these headings total \$191,076.
- [288] Regarding the rental income, I find that the total amount received by the respondent from January 2019 until April 2025 is \$90,600. I have arrived at this figure on the following basis:
- (a) the parties appear to agree, and I in any event find based on the respondent's testimony, that the basement suite was rented for about \$1,300 per month throughout 2019 and 2020, and from January until September 2021, for a total rental income of \$42,900;
 - (b) a rental agreement with a tenant who occupied the suite starting in October 2021 indicates a rent of \$1,450 per month, and this tenant appears to have stayed in the suite until the end of January 2023, for a total rental income of \$23,200;

- (c) based on the evidence of R.K., corroborated by the respondent, I accept that after this tenant left the suite was not rented for about a year, which means that it was empty until around the end of 2023;
 - (d) the evidence is unclear regarding the rental income received for 2024 and 2025, including because during part of the respondent's testimony on this issue she appeared confused, was mumbling and seemed extremely lethargic;
 - (e) my best estimate given the respondent's testimony, together with her EFD evidence, is that the suite was rented from January to September 2024 for \$1,300 per month, for \$2,200 for the next four months, and then for \$2,000 per month from February to March 2025, for a total of \$24,500.
- [289] I do not understand the respondent to take issue with the claimant's argument that he is entitled to half the rental income and that this entitlement can notionally reduce any obligation he might have to contribute to the expenses associated with family home.
- [290] Conversely, I do not understand the claimant to take issue with the respondent's testimony that all of the rental income was used to help defray expenses associated with the mortgage, property taxes, property insurance and repairs.
- [291] Deducting the rental income from these expenses, the respondent would have been left with a shortfall of about \$100,000 spread over six-and-a-half years. In my view, her payment of this amount does not establish marked, prolonged, and intentional or unexplained disparities in the contributions to family burdens within the meaning of s. 95(2), because she had the benefit of living in the family home during this lengthy period of time.
- [292] However, in coming to this conclusion I have taken into account that the claimant concedes that he should be required to pay the respondent one half, or \$18,345, of the \$36,691 she paid for property taxes and property insurance. Given this concession, I am taking the respondent's payment of the property taxes and property insurance into account under s. 95(2)(i) as a factor favouring somewhat the unequal division of the equity in the family home.
- [293] In reaching this conclusion, I have considered not only the claimant's concession regarding property taxes and property insurance, but also the case law and factors mentioned in *A.T.H. v. W.D.G.*, 2025 BCSC 1302 at paras. 301-302.
- [294] To elaborate somewhat, the respondent should receive some contribution from the claimant given that she was solely responsible for fairly significant household expenses, had sole care of their three children, and was receiving substantially less child support from him than was required under the January 20, 2019 provincial court order.
- [295] I accept that the respondent may have had to pay some rent during this period, but the evidence is not sufficient for me to conclude that he was consistently paying market rates for accommodation between separation and trial. He did not testify to this effect, and his

trial evidence suggests that he was living for a period or periods of time with his brother, which may have been rent free. Given my concerns about the claimant's credibility, I not prepared to accept that he was paying the rental amounts claimed in his financial statements.

- [296] The next factor the respondent relies on in support of her argument for an unequal division of the equity in the family home is the lack of disclosure by the respondent regarding his assets.
- [297] For instance, and as the respondent noted in her closing submissions, the claimant has not provided any information about his pension or registered savings plan from the warehouse job. He has also failed to provide satisfactory information regarding his Vancity, TD and BNS bank accounts, or the joint Desjardins life-insurance policy that he cancelled in return for a payout that he kept for himself. The failure to provide some of this information was in breach of a consent order made on April 11, 2025, and the claimant further breached this order by failing to provide an affidavit explaining why he was unable to obtain certain asset-related documents.
- [298] The lack of financial disclosure is a factor that may be taken into account under s. 95(2)(i) in considering whether an unequal distribution is appropriate: He at para. 26; O.M. at para. 271(c); A.K.K. v. A.S.K., 2024 BCSC 1237 at paras. 304-306.
- [299] Based on the claimant's failure to provide satisfactory financial disclosure, I am drawing the adverse inference that he is hiding family property that he would otherwise likely be required to share with the respondent. This inference is bolstered by his attempts, albeit ultimately unsuccessful, to hide the substantial payouts he received in 2023 regarding the motor vehicle accident settlement and the insurance policy on his mother's life. See s. 213(1)(a) and (2)(b), FLA.
- [300] It is impossible to know what family property the claimant is concealing or its value. Given his modest income over the years, and the absence of any evidence to suggest the presence of valuable assets received from other sources, I find it unlikely that the claimant is currently hiding very substantial amounts of family property. Nonetheless, I am taking into account what I have found to be his nondisclosure of family property as a factor that supports the unequal division of property in favour of the respondent.
- [301] The final two factors relied on by the respondent in seeking an unequal division of the equity in the family home are: (a) the claimant's cancellation of the Desjardins life insurance policy the parties had obtained on both their lives; and (b) his receipt of \$126,000 in proceeds from the Canada Life insurance policy on his mother's life. I will consider each of these insurance-related factors in turn.

- [302] The Desjardins policy was purchased to provide financial security for the family. Each month, the parties paid about \$250 on the policy by preauthorized debit from their joint account. The documentary evidence shows these payments were made as early as December 2012, but I do not know if that is when they started.
- [303] The claimant cancelled the Desjardins policy after the separation. I reject his evidence that he did so only after attempting through a third party to determine whether the respondent wanted to continue paying the premiums herself.
- [304] Although I do not know what amount the respondent received from Desjardins on cancellation, I give no weight to his evidence that he received only \$1,000. I also give no weight to his evidence that he cannot recall whether he deposited these proceeds into a bank account.
- [305] As noted, the claimant failed to comply with the term of the April 11, 2025 consent order requiring that he provide information regarding the Desjardins policy. He also failed to comply with a request to provide information about the policy at his EFD. I reject the claimant's explanation that he neglected to provide this information because he has had a lot of depression and thus lost a lot of his memory.
- [306] I accept the respondent's evidence that once she discovered the claimant had cancelled the Desjardins policy, she tried to obtain life insurance but was unable to do so because of her health problems. I also accept that these health problems arose from the claimant physically assaulting her on December 25, 2018.
- [307] The claimant accepts that the Desjardin policy and the payout made on its cancellation were family property.
- [308] I conclude that, in cancelling the Desjardins policy and keeping the cancellation proceeds for himself, the claimant adversely affected the respondent's economic interests because he did not share with her one-half of those proceeds.
- [309] However, based on the evidence I cannot conclude that his failure to share moves the needle appreciably in assessing the extent to which the equity of the family home should be divided unequally. Furthermore, the respondent has not explained how her inability to obtain replacement life insurance has negatively impacted her economic interests, as opposed to those of her intended beneficiaries. Accordingly, apart from its connection to the claimant's failure to provide disclosure I ascribe no appreciable weight to his cancellation of the Desjardins policy in my analysis under s. 95 of the FLA.
- [310] As for the Canada Life policy, the claimant argues that the \$126,000 payout received by the claimant on the death of his mother is excluded property under s.85(1)(d) of the FLA. However, the respondent argues that she has a constructive trust claim against the proceeds based on the doctrine of unjust judgement.

- [311] In assessing the respondent's unjust enrichment claim, I will begin by reviewing the relevant evidence from trial.
- [312] The Canada Life policy insured the life of the claimant's mother, with him as policy owner, and was issued in 2000. I accept the respondent's testimony that this policy was obtained after she arrived in Canada. Both parties were named as beneficiaries, for the purpose of providing financial security for their family. For most of the period up until separation, the parties paid premiums of about \$200 per month from their joint bank account.
- [313] The respondent testified that "we" took out the Canada Life policy, explaining that "we" meant both of them. Her use of the first-person plural reflects the reality that, while the claimant was listed as the policy owner, the parties' viewed the policy as an asset acquired for the benefit of the family unit.
- [314] More specifically, I find that when the Canada Life policy was first obtained the parties orally agreed and mutually understood that they would pay the premiums so that the policy proceeds would go to both of them on the passing of his mother, for the purpose of providing financial security for the family. This is therefore not a situation where the respondent had no more than some general belief that she ought to be named as a designated beneficiary, and otherwise had no legal or equitable right to be treated as the proper recipient of the insurance money. See *Moore v. Sweet*, 2018 SCC 52 at para. 47; *Knowles v. LeBlanc*, 2021 BCSC 482 at para. 41.
- [315] Around the time that the claimant violently assaulted the respondent in 2001, causing her to temporarily leave the family home, her name was removed as a beneficiary without her knowledge. I find that as the policy owner the claimant was instrumental in making this change, whether because the parties were then separated or because they had gotten back together but he wanted to keep the money for himself in case of a future separation. I reject the claimant's evidence that his mother was the prime mover in making the decision. Given the available documentation, I also reject the claimant's testimony, given late in cross-examination, that the respondent was not removed as beneficiary until 2018. And I accept the respondent's evidence that she was never told or knew about being removed as beneficiary.
- [316] I would have rejected the claimant's evidence on the above points solely on the basis that he has little if any credibility. But his evidence about the Canada Life policy is also undermined by relevant aspects of his testimony that were clearly inaccurate. For example, the claimant denied that the respondent was ever a beneficiary under the policy or that the premiums were paid out of their joint account, at least until these claims were proven false by documents put to him in cross-examination.

- [317] As a last point regarding the evidence in this area, after it emerged for the first time in cross-examination that the claimant had received the \$126,000 payout on the Canada Life policy, his counsel obtained a document showing that, as at June 2018, the claimant was making premium payments on that policy from his own bank account instead of the parties' joint account.
- [318] The evidence is somewhat murky as to why this happened. However, the respondent testified, albeit not in relation to these premium payments, that in 2017 or 2018 she noticed there was no money in their joint account. When she asked the claimant about it, he said they were in debt. I infer from her testimony that this explanation was unexpected and caused her real concern regarding his competence and honesty in managing the family finances. She also testified that, around this same time, the claimant beat her up badly.
- [319] I find that, for one or more likely both of these reasons, as the respondent testified she proposed that they each deposit their employment earnings into their own bank accounts and then contribute half of what was needed for family expenses to the joint account. The claimant agreed to do so after R.K. helped mediate.
- [320] Based on this evidence from the respondent, I find that in around June 2018 the claimant started to pay the Canada Life premiums from his own bank account. I further find that his doing so did not reflect any change in how the parties viewed the Canada Life policy. Rather, it was part of the fallout from a decision to separate their finances to some degree because of increased strains in the relationship, caused by missing money and significant violence recently perpetrated by the claimant on the respondent.
- [321] I will now consider whether, based on my findings of fact in this area, the respondent has a valid claim for unjust enrichment regarding the proceeds of the Canada Life policy.
- [322] To establish unjust enrichment, the respondent must show that: (a) the claimant was enriched by receipt of the Canada Life proceeds; (b) she suffered a corresponding deprivation; and (c) his enrichment and her deprivation occurred in the absence of a juristic reason: Moore at para. 37.
- [323] Here, the claimant was enriched by \$126,000 by receiving the insurance proceeds as sole beneficiary under the Canada Life policy: Moore at para. 42.
- [324] The respondent suffered a corresponding deprivation because the vast majority of the policy premiums were paid from the parties' joint account, thus using family property to which she had contributed her employment income. But her corresponding deprivation is not limited to the benefit taken directly from her in the form of these out-of-pocket expenditures.

- [325] Rather, the concept of corresponding deprivation also captures the benefit that would have accrued to the respondent's advantage had the entirety of the insurance proceeds not been received by the respondent, namely, one half of the payout on the death of the claimant's mother. It matters not to the analysis that this benefit was paid to the claimant by Canada Life and not directly by the respondent. See Moore at paras. 43-47.
- [326] Moving on to the third component of the test for unjust enrichment, there is no established category of juristic reason for the claimant's enrichment at the respondent's expense.
- [327] In particular, the claimant's removal of the respondent as joint beneficiary under the Canada Life policy, without her knowledge and in violation of the parties' oral agreement, does not provide a juristic reason for her deprivation. While this change to the policy in 2001 thereafter legally obliged Canada Life to pay all of the proceeds to the claimant on the death of his mother, and nothing to the respondent, it did not give the claimant a right to keep the entirety of those proceeds as against the respondent. See Moore at paras. 57-72; Knowles at paras. 47-51.
- [328] There being no established category of juristic reason for the claimant to have been enriched at the respondent's expense, she has shown a prima facie case of unjust enrichment, and the onus switches to the claimant to rebut that case by demonstrating a residual reason why the enrichment should be retained by him: Moore at paras. 58, 82; *Kerr v. Baranow*, 2011 SCC 10 at paras. 43-44.
- [329] The claimant has not suggested any residual reason to deny recovery, such as the parties' reasonable expectations and moral and policy-based arguments, including relating to the way in which the parties organized their relationship: Moore at para. 83.
- [330] Although not argued by the claimant, I reject that the 2018 alteration to the source of the premium payments reflects a change in the parties' organization of their relationship whereby the respondent no longer expected or would be entitled to any part of the benefits available under the Canada Life policy. Residual considerations therefore remain in favour of the respondent, given the parties' oral agreement on acquiring the Canada Life policy and the payment of premiums from their joint account during almost all of their relationship, until shortly before separation.
- [331] Furthermore, it would be bad policy to ignore the fact that the claimant effectively tricked the respondent into continuing to agree to pay the premiums of the policy using family property after he had surreptitiously removed her as a beneficiary, which I find that he did in bad faith: Moore at paras. 87.
- [332] I therefore conclude that the claimant has not met his burden of rebutting the respondent's prima facie case, and that she has made out each of the requisite elements of unjust enrichment with respect to the proceeds of the Canada Life policy.

- [333] It may be that the respondent nonetheless has some obligation to contribute her share of the premium payments between the date of separation and the death of the claimant's mother. Or perhaps there is another way in which the claimant's payments during this period could legitimately impact the extent of the respondent's unjust enrichment claim.
- [334] However, issues of this sort were not addressed by the parties at trial, probably because the respondent is not asking me to set a dollar figure for her unjust enrichment claim. Rather, she is asking that this claim be viewed as a factor favouring an unequal division of the equity in the family home.
- [335] I accept the respondent's argument on this point, whether under s. 95(2)(g)(ii), as she argues, or as an "other factor" under s. 95(2)(i).
- [336] Because I am considering the respondent's unjust enrichment claim as a factor under s. 95, it is unnecessary to consider whether she has a constructive trust claim over the proceeds received by the claimant from Canada Life. But it is questionable whether, given the passage of time and the claimant's apparent unemployment, he retains much of those proceeds. Alternatively, it is quite possible that he has hidden them. Either way, a proprietary remedy would likely not do the respondent much good.

Conclusion

- [337] Based mostly on the substantial economic disadvantage experienced by the respondent as a result of the December 25, 2018 violence committed against her by the claimant, I conclude that dividing the equity in the family home 75/25 in her favour is necessary to avoid significant unfairness.
- [338] To the extent that a 75/25 split slightly exceeds what is necessary to prevent significant unfairness arising from the incident on December 25, 2018, this reapportionment is supported by the other considerations I have mentioned, namely: (a) the property taxes and property insurance paid by the respondent on the family home after separation; (b) the claimant's failure to disclose relevant financial documentation; and (c) the claimant's unjust enrichment at the respondent's expense in taking the entirety of the proceeds of the Canada life insurance policy on his mother's death.
- [339] I am therefore ordering that the equity in the family home, based on the September 21, 2024 appraisal after deducting the amount outstanding on the mortgage as at March 27, 2025, be split 75/25 in the respondent's favour.
- [340] I further order that the claimant transfer his interest in the family home to the respondent in exchange for 25% of the value of that equity. However, the respondent may deduct the other awards granted in her favour in this judgment from the claimant's 25% equity in the family home.

- [341] The respondent will be solely responsible for all financial charges registered against the family home, including the mortgage, and will indemnify the claimant for any liability he may have in relation to those charges.
- [342] Apart from the family home, the parties will keep all assets in their name and possession as their sole property, including any pensions or RRSPs.
- [343] Similarly, apart from any financial charges registered against the family home, which I have already addressed above, the parties will be responsible for the payment of any and all liabilities in their names, and will indemnify and keep harmless each other against all claims, costs and expenses in respect of those liabilities.

Damages for Tort of Battery

- [344] I have already concluded that the claimant committed the tort of battery against the respondent in respect of four incidents of violence.
- [345] The respondent seeks non-pecuniary, aggravated, punitive and special damages regarding these incidents. She does not seek damages for past wage loss or future income-earning capacity, because these losses have already been taken into account in applying s. 95 of the FLA to reapportion the equity in the family home in her favour.
- [346] The claimant opposes paying non-pecuniary damages regarding these four incidents, to avoid what he says would be improper double recovery. In the alternative, he contends that non-pecuniary damages should be far less than the amount sought by the respondent. I take him to also oppose the payment of aggravated or punitive damages.

Non-Pecuniary and Aggravated Damages

- [347] Non-pecuniary damages compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities: *Langford (City) v. Matthews*, 2024 BCCA 214 [Matthews] at para. 44.
- [348] The assessment of non-pecuniary damages is guided by the following non-exhaustive list of factors from *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, leave ref'd, 2006 CanLII 35804 (S.C.C.): (a) age of the plaintiff; (b) nature of the injury; (c) severity and duration of pain; (d) level of disability; (e) emotional suffering; (f) loss or impairment of life; (f) impairment of family, marital and social relationships; (g) impairment of physical and mental abilities; and (h) loss of lifestyle: *Matthews* at para. 44.
- [349] The amount of compensation is determined by a functional approach that depends not only on the gravity of the injury but also on the plaintiff's circumstances: *Matthews* at para. 44. The assessment is necessarily influenced by the plaintiff's personal experience in dealing with the injuries and their consequences, and the plaintiff's ability to articulate that experience: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.

[350] This approach reflects the guidance in *Lindal v. Lindal*, 1981 CanLII 35 (S.C.C.), [1981] 2 S.C.R. 629 at 637, which was endorsed in *Stapley* at para. 45 and more recently reinforced in *Wolber v. Ivanova*, 2024 BCCA 203 at para. 83:

the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury"

[citation omitted]

[351] I have also taken into account that the plaintiff's pain, suffering and loss of enjoyment of life may be amplified where the battery occurs in the context of a marriage-like relationship, including because abuse taking place in the plaintiff's home and family environment, perpetrated by someone with whom they are in a relationship of trust, often undermines their sense of personal security. See *S.C. v. I.E.W.*, 2023 BCSC 1653 at paras. 64-65; *Schuetz v. Pyper*, 2021 BCSC 2209 at para. 409

[352] While an assessment of awards made in comparable cases is important, such cases provide but a rough guide, and damage awards must vary to meet the specific circumstances of each case: *Matthews* at para. 44; *Stapley* at para. 45.

[353] Aggravated damages aim to compensate a plaintiff for intangible injuries such as distress and humiliation that result from the defendant's insulting behaviour or high-handed conduct. They augment compensatory damages for non-pecuniary loss, and are measured by the plaintiff's suffering, as distinct from punitive damages, which are measured by the wrongdoer's moral culpability. Suffering may arise from factors such as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, and similar matters caused by the conduct of the defendant. See *Thomson v. Friedman*, 2008 BCSC 703 at paras. 29-30, *aff'd* 2010 BCCA 277; *Andrews v. Shelemey*, 2021 BCSC 2221 at paras. 114-115.

[354] Turning to the parties' submissions, the respondent seeks \$140,000 for non-pecuniary damages for the four batteries, broken down as: (a) \$5,000 for the 1998 incident; (b) \$5,000 for the 2000 incident; (c) \$10,000 for the 2001 incident; and (d) \$120,000 for the incident on December 25, 2018.

[355] In support of this submission, she relies on *Schuetz* (\$100,000); *Andrews* (\$100,000); *Patridge v. Buskop*, 2019 BCSC 459 (\$90,000); *Weber v. deBrouwer*, 2012 BCSC 1039 (\$150,000); and *S.C.* (\$110,000). In some of these cases, the plaintiff received an additional amount for aggravated damages.

- [356] The claimant seeks an additional \$20,000 for aggravated damages because of the severe humiliation caused to her by the battery that took place in front of the parties' children on December 25, 2018, and its destructive impact on her self-confidence and sense of self, which for example is reflected in her feeling that she has become a burden on her children.
- [357] The claimant argues that awarding the respondent substantial non-pecuniary and aggravated damages, in addition to favouring her with a significant reapportionment of the equity in the family home under the FLA, would constitute an improper "double recovery". More specifically, he contends that reapportionment under s. 95(3) of the FLA is premised on the aim of helping promote the respondent's economic self-sufficiency, yet her economic self-sufficiency will be dramatically improved if she receives a substantial award of non-pecuniary and aggravated damages. He therefore asserts that she should either benefit from a reapportionment of the equity in the home, or from an award of non-pecuniary and aggravated damages, but not both.
- [358] I reject this argument for either or both of the following two reasons.
- [359] First, I have not reapportioned the equity in the family home based on considerations relevant to awarding non-pecuniary or aggravated damages. Rather, the reapportionment justified by the December 25, 2018 incident is driven entirely by the respondent's resulting loss of income. Double recovery is avoided by not in addition awarding the respondent pecuniary damages for that incident.
- [360] Second, even assuming for the sake of argument that the weight accorded s. 95(3) in the reapportionment analysis should be reduced in some proportion to the amount of non-pecuniary and aggravated damages awarded to the respondent, I would rely on s. 95(2)(i) to consider fully the economic disadvantage she has suffered in terms of income loss. In other words, any reduction in weight given to this economic disadvantage in applying s. 95(3) would be matched by increased weight given to it under s. 95(2)(i). The outcome of the s. 95 analysis would thus remain the same.
- [361] The claimant's alternative argument is that the amount of non-pecuniary damages should be much less than what is sought by the respondent. In making this submission, he relies on *H. v. H.*, 1998 CanLII 4129 (B.C.S.C.) (\$30,000); *K.R.W. v. S.A.W.*, 2003 BCSC 522 (\$10,000); *Kovacic v. Kovacic*, 1998 CanLII 1083 (B.C.S.C.) (2,000); *R.Y.W. v. D.W.W.*, 2013 BCSC 472 (\$2,000); *Dhillon v. Gaba*, 2014 BCSC 1474 (\$2,000); *Hunt v. Hunt*, 2024 BCSC 1048 (\$20,000); *Hammond v. Holtz*, 2024 BCSC 447 (\$10,000).
- [362] Having considered the factors relevant to awarding non-pecuniary damages, and the comparator cases referred to me by the parties, I have come to the following conclusions with respect to the appropriate amount of non-pecuniary damages for each of the four batteries.
- [363] With respect to the 1998 physical assault at a house belonging to one of the claimant's family members or a friend of the family in India:

- a. The respondent was only 19 years of age, whereas the claimant was 28 years old, and the physical abuse occurred on the night of the parties' wedding.
- b. While she did not describe any specific injuries, the respondent testified that she was crying at various points, and that there were at least two periods during which he slapped or hit her. I conclude that she experienced significant pain at the time. However, there is no evidence upon which I can conclude that the respondent suffered more than transient physical injuries.
- c. Importantly, the claimant also raped the respondent despite her pleas that he stop. This sexual element of the abuse constitutes a deep affront to the respondent's dignity as well as a violation of her personal and physical autonomy: Hammond at paras. 109-115.
- d. Given these circumstances, as well as the significant emotion exhibited by the respondent as she described this incident in her testimony, I conclude that it caused her very substantial psychological suffering at the time.

[364] In Hammond, one spouse was awarded \$10,000 in non-pecuniary damages against the other for a single act of non-consensual sexual intercourse committed against her as she slept. I recognize that being asleep constitutes particular vulnerability, but so too does being a young bride in an unfamiliar house with an unfamiliar and older husband. Furthermore, in this case there was substantial additional violence in addition to the sexual battery. I have therefore concluded that an award of \$15,000 in non-pecuniary damages is warranted for this incident.

[365] With respect to the second physical assault, which occurred in 2000:

- a. The respondent was 22 years old, had just arrived in Canada, and the abuse occurred in the home where the parties were living, which belonged to the claimant's brother.
- b. The physical assault happened because the claimant was angry that the respondent's father had not transferred property into the claimant's name.
- c. The violence was significant, and included the claimant grabbing the respondent firmly by the hair, spinning her hard into a closet and then kicking her forcefully. It only ended when family members came into the room in response to her screams.
- d. Given the respondent's description of the violence and the surrounding circumstances, I infer that she experienced substantial pain at the time and suffered emotionally as well.

[366] Given these circumstances, I agree with the respondent that \$5,000 is an appropriate award of non-pecuniary damages.

[367] Turning next to the claimant's third violent assault against the respondent, which occurred in 2001:

- a. She was 23 years of age, and the physical abuse took place in the parties' basement apartment in his brother's house.
- b. This attack was much more extensive than the one in 2000, a prolonged beating in which the claimant choked and hit the respondent forcefully and repeatedly threatened to kill her.
- c. The beating left the respondent with many marks on her body, including bite marks on her chest, and caused her to flee to P.O.'s nearby house and bang on the door for help.
- d. The severity of this beating, and its significant adverse emotional impact on the respondent, is reflected in her decision to temporarily separate from the claimant. I further infer that the respondent did not return to the apartment where they had been living for a significant period of time because she no longer felt safe there.

[368] In Hunt, the plaintiff was awarded \$20,000 in non-pecuniary damages for a historical physical assault in which the defendant, her then spouse, pushed her into a wall, bruising her back and buttocks. While the defendant may have pushed her to avoid being struck first, he used disproportionate force. The plaintiff was hospitalized as a result, because she had been recovering from back surgery, and the incident caused her additional pain for about three weeks. For a time, it also caused her to feel less safe in the family home.

[369] In light of the circumstances in this case, and taking into account the result in Hunt, I award the respondent \$15,000 in non-pecuniary damages for the 2001 incident.

[370] Regarding the incident that occurred on December 25, 2018:

- a. The respondent was 40 years old at the time, and the attack took place in front of the parties' three children.
- b. The respondent was knocked unconscious, and suffered a concussion and a perforated eardrum. Although the perforation has healed, she still has a slight subjective hearing loss in her left ear.
- c. The attack led to a substantial worsening of the respondent's migraine headaches, neck pain, photophobia and vertigo, causing her significant pain that she endures to this day. While these conditions were pre-existing, their frequency and severity increased very greatly as a result of the physical attack.
- d. The claimant's attack also resulted in the respondent suffering major depression and severe anxiety, a symptom of which was psychomotor retardation (i.e., a slowing down of everything, where a person is not motivated to do much and has slow mobility).
- e. These injuries have mostly been resistant to effective treatment, and have caused a devastating decline in the respondent's ability to function, leaving her withdrawn and reclusive, whereas prior to the incident she had a full-time job, was very active in her family's life, and engaged socially with family and friends.

- f. The respondent's family and social relationships, previously rewarding and rich, are a shadow of what they once were, which has dramatically impaired her enjoyment of life. She also feels humiliated and worthless because her children have had to take on a caregiving role for her.
 - g. The pronounced difference between the respondent's physical and mental abilities and condition, before versus after the attack, was starkly and comprehensively described in the testimony of R.K., whose evidence I accept.
 - h. I have also accepted Dr. Sidhu's evidence that the respondent is permanently disabled, which I find is the result of this attack. Her suffering will therefore continue in a significant way in the future. As Dr. Sidhu noted, the respondent's anxiety and migraines may in part be alleviated if she receives financial support, and I have taken this contingency into account in assessing non-pecuniary damages, but her anxiety symptoms will most likely persist for the rest of her life. And she will always need medications and counselling for mental health.
- [371] In my view, the cases the respondent relies on in support of the amount of non-pecuniary damages she seeks for the December 25, 2018 incident involve circumstances much closer to the circumstances in this case than do the cases relied on by the claimant.
- [372] For example, in S.C. the defendant abused the claimant throughout their three-year spousal relationship by hitting her on the upper back, and the back of her shoulders, neck and head, with his fist or a liquor bottle (usually plastic). Her self-esteem plummeted and her joyfulness and positivity were crushed. The plaintiff was slowly building herself up again, but continued to suffer physically and emotionally. Her neck and shoulders and back ached constantly, and she had headaches every day. It was unlikely that she would fully recover from the chronic pain and headaches. She continued to have nightmares and suffered flashbacks, and had been diagnosed with PTSD, major depression and severe anxiety disorder, with respect to which her prognosis was guarded. The plaintiff was awarded \$110,000 for non-pecuniary damages and \$20,000 for aggravated damages.
- [373] In Andrews, the defendants entered the plaintiff's house to discuss a financial dispute, took his phone so he could not call for help, and then wrestled him to the ground, choking and beating him until he passed out. The plaintiff suffered fractured ribs, a fractured sternum and vertebrae, a broken tooth and minor cuts and abrasions. He continued to experience lower back and neck pain and had reduced mobility, which would likely continue and had stopped him from working as a mechanic or doing certain things he had previously enjoyed like cooking. He also suffered from psychological injuries such as deterioration in mood, anxiety and a major depressive episode. The mental health problems had largely resolved after four years, but the plaintiff continued to have minor psychological symptoms such as decreased motivation. He was awarded \$100,000 in non-pecuniary damages and \$10,000 in aggravated damages.

- [374] In Weber, the defendant harboured a grudge against the plaintiff because of workplace tensions, and on encountering the plaintiff on the street knocked him to the ground and punched and kicked him until the plaintiff's spouse intervened. The plaintiff suffered numerous physical injuries including facial fractures, and dental and chest injuries, which had since healed. He had a mild traumatic brain injury with ongoing balance, cognitive and speech difficulties that had mostly but not entirely resolved. He was diagnosed with PTSD in mild remission, and although no longer on medication remained affected by this condition and by depression and anxiety. He had subsequently lost a job, at least in part, because he had difficulty supervising employees following the assault. The plaintiff was awarded \$150,000 in non-pecuniary damages, which also covered the intangible elements intended to be addressed by aggravated damages.
- [375] Finally, in Schuetz the defendant attacked his spouse, the plaintiff, over a period of several minutes, kicking and hitting her, and pushing her to the ground. She suffered substantial bruising, which healed in time, although her chest pain persisted for several months. The plaintiff also suffered a concussion, and her physical symptoms included significant and frequent headaches, dizziness, ear ringing, sensitivity to light, and difficulty concentrating and reading. She was diagnosed with PTSD, and felt very depressed, anxious and intensely fearful. The intense fear had abated somewhat, and with that her ongoing symptoms had improved. There was reason to be optimistic about her future recovery. She was only able to work for 12 hours per week at a job she had loved and at which she had previously excelled, her recreational pursuits were negatively impacted, and she felt ashamed and embarrassed by the battery and her condition. The plaintiff was awarded \$100,000 covering both nonpecuniary and aggravated damages. The amount would have been close to \$130,000 but for the likelihood of future improvement.
- [376] Given the devastating impact that the December 25, 2018 attack had on the respondent, which has shattered and impoverished her life in many respects for close to six years and has left her permanently disabled, I have concluded that an award of \$140,000 for non-pecuniary damages is appropriate, which includes the aspects of her suffering covered by aggravated damages.

Punitive Damages

- [377] The respondent seeks \$20,000 in punitive damages because the claimant has not been remorseful and has outright denied or downplayed his culpability for the four incidents. She adds that he appears to view himself as the victim of the fallout from the 2018 incident, and seems unable to appreciate the gravity of his actions on the respondent and their children.

- [378] Punitive damages seek to punish the wrongdoer for conduct that is high-handed, malicious, oppressive, arbitrary or highly reprehensible, the objectives of which are retribution, deterrence and denunciation, rather than compensating the victim. Punitive damages are justified where the impugned conduct represents a marked departure from the ordinary standards of reasonable or decent behaviour. See *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 36, 68, 73, 94.
- [379] The factors considered in assessing a claim for punitive damages include: (a) whether the misconduct was planned and deliberate; (b) the defendant's intent and motive; (c) whether the defendant's outrageous conduct persisted over a lengthy period; (d) whether the defendant concealed or attempted to cover up their misconduct; (e) the defendant's awareness that what they were doing was wrong; (f) whether the defendant profited from the misconduct; and (g) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff or a thing that was irreplaceable: *Whiten* at para. 113; *M.R.P. v. Smith*, 2025 BCSC 1002 at para. 368
- [380] Where awarded, punitive damages should be assessed in an amount reasonably proportionate to: (a) the harm or potential harm caused to the plaintiff; (b) the plaintiff's relative vulnerability; (c) the need for deterrence; (d) other criminal or civil penalties that have been or are likely to be inflicted on the defendant for the same misconduct; and (e) any advantage or profit gained by the defendant, having regard to other fines or penalties suffered by the defendant. See *Whiten* at paras. 94, 114-126; *M.R.P.* at para. 369.
- [381] As intimated in the preceding paragraph, punishment imposed by a criminal court for an offence arising out of substantially the same facts is a factor to be considered in determining whether punitive damages should be awarded, albeit a factor of potentially great importance: *Whiten* at para. 69. See also *A.B. v. Henry*, 2025 BCSC 137 at para. 946; *Weber* at paras. 106-107.
- [382] Here, the claimant was convicted of the 2018 battery, and received a short jail sentence and 12 months of probation. He was found guilty of the 2001 battery and given a conditional discharge. I also recognize that the substantial reapportionment of the equity in the family home, as well as the award of non-pecuniary and aggravated damages, has had some retributive, deterrent and denunciatory effect.
- [383] I nonetheless conclude that there is a residual need to denounce and deter the claimant's conduct, which I find was in each of the four incidents high-handed, malicious, oppressive, and highly reprehensible.
- [384] For one thing, only the 2001 and 2018 batteries were the subject of criminal sanctions. The incidents in 1998 and 2000 were not prosecuted. Moreover, in this proceeding the claimant denied the 2000 and 2001 batteries, and materially downplayed his culpability for the 1998 and 2018 incidents. In my view, he has not demonstrated genuine remorse for the four batteries.

- [385] To the contrary, the claimant sees himself as a victim, and as reflected in his comments to R.K. at the coffee shop in 2024, he blames her and the respondent for the predicament in which he now finds himself.
- [386] I have also taken into account the pervasive social problem of intimate partner violence in this province, and the need to deter and denounce it. See J.K.P. at paras. 178-181; S.C. at paras. 84-85.
- [387] In the circumstances, I am satisfied that an award of \$15,000 in punitive damages is appropriate.

Special Damages

- [388] The respondent seeks special damages of \$559.19 for payments made to PainPro Therapeutics for treatment for pain that I find was caused by the December 25, 2018 incident. I do not understand the claimant to oppose this award, which I therefore make in the respondent's favour.

Conclusion

- [389] The claimant and respondent, who were married in 1998 in India, are divorced from each other. The divorce will take effect on the 31st day after the date of this order.
- [390] R.K. is no longer a child within the meaning of s. 1 of the FLA or a child of the marriage within the meaning of s. 2(1) of the Divorce Act.
- [391] The claimant and respondent shall both remain the guardians of A.K. and G.K.
- [392] The respondent will have sole parental responsibilities for A.K. and G.K.
- [393] A.K. and G.K. will continue to reside with the respondent.
- [394] A.K. is free to decide whether and the extent to which she has parenting time with the claimant or engages in counselling with the claimant. If A.K. engages in such counselling, it will be paid for by the claimant.
- [395] The respondent will, through her counsel, provide the claimant with A.K.'s contact information so that he can contact A.K. to ascertain whether she wishes to engage in parenting time or counselling with him. In making such contact, the respondent must be respectful and not unreasonably pressure A.K., whether through the content or frequency of his communications.
- [396] The claimant and G.K. will engage in reunification counselling paid for entirely by the claimant. The reunification counsellors will be requested to provide an assessment of the advisability of joint counselling between the claimant and G.K., and a timeline, if determined to be appropriate in the best interests of G.K., for supervised parenting time to commence between the claimant and G.K.

- [397] At the direction of the reunification counsellors, the claimant will have parenting time with G.K., to be supervised by a professional supervisor agreed upon by the respondent and paid for by the claimant, and that supervisor will be asked to provide written reports to both parties.
- [398] The respondent may apply for passport, NEXUS pass, and any renewals of a passport or NEXUS pass for A.K. or G.K., without the claimant's consent.
- [399] The respondent may travel with A.K. or G.K. without the claimant's consent.
- [400] The legal interest held in the family home by the respondent's father is held entirely for the parties' joint benefit. The respondent's father therefore has no beneficial interest in the property.
- [401] The equity in the family home as at the time of trial, based on the September 21, 2024 appraisal minus the amount outstanding on the mortgage as at March 27, 2025, will be split 75/25 between the parties in the respondent's favour.
- [402] The claimant will transfer his interest in family home to the respondent in exchange for 25% of the value of the equity at the time of trial. However, the respondent may deduct the other awards granted in her favour in this judgment from the claimant's 25% equity in the family home.
- [403] The respondent will be solely responsible for all financial charges registered against the family home, including the mortgage, and will indemnify the claimant for any liability he may have in relation to those charges.
- [404] Apart from the family home, the parties will keep all assets in their name and possession as their sole property, including any pensions or RRSPs.
- [405] Apart from any financial charges registered against the family home, the parties will be responsible for the payment of any and all liabilities in their names, and will indemnify each other against all claims, costs and expenses in respect of those liabilities.
- [406] The claimant shall pay to the respondent his arrears in Guidelines child support as at the start of trial of \$61,635.08.
- [407] In the event the claimant has reduced to below \$61,635.08 the total amount of Guidelines child support arrears owing as at the date of this judgment, he is only required to pay the respondent that reduced amount of arrears.
- [408] The claimant shall pay to the respondent prospective Guidelines child support for A.K. and G.K. until they both reach the age of 19 in a lump-sum amount from the date of this judgment based on an imputed income of \$54,500, at a discount rate of 2% per annum.
- [409] Starting from the end of the trial, each party will contribute equally to special and extraordinary expenses for A.K. and G.K.

- [410] Special and extraordinary expenses for A.K. and G.K. shall include out-of-pocket medical expenses, counselling, dental expenses and such other expenses as agreed on by the parties.
- [411] The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement within 14 days of that receipt becoming available, and the other party shall pay their proportionate share of the expense no later than 14 days after being provided with the receipt.
- [412] Should A.K. or G.K. remain a child under s. 146 of FLA or a child of the marriage under s. 2(1) of the Divorce Act after reaching the age of 19, either party may bring an application for continuing child support.
- [413] The claimant shall pay the respondent a total of \$175,000 in non-pecuniary and aggravated damages regarding the four incidents of battery that he committed against her in 1998, 2000, 2001 and 2018.
- [414] The claimant shall pay the respondent \$15,000 in punitive damages in respect of these four batteries.
- [415] The claimant shall pay to the respondent \$559.19 in special damages for the payments she made to a treatment provider to treat pain that she suffered as a result of the December 25, 2018 battery.
- [416] Subject to relevant information of which I am unaware, as the substantially successful party the claimant is entitled to her costs at a scale of ordinary difficulty. However, if costs issues arise with respect to which the parties cannot agree, within 30 days of these reasons either party may contact Supreme Court Scheduling with a request to make submissions on that issue. It may be that the court will direct the parties to exchange and file written submissions, and after reviewing those written submissions will further determine whether oral submissions are also necessary.

"D. Layton J."

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Prepared on 27 October 2026 · Esheria