

CANADA / JUDGMENT

D.A.B. v. C.A.S.

2020 BCSC 807

COURT

Supreme Court of British Columbia

DECIDED

3 June 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 807 D.A.B. v. C.A.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.A.B. v. C.A.S.,

2020 BCSC 807

Date: 20200603

Docket: E55619

Registry: New Westminster

Between:

D.A.B.

Claimant

And

C.A.S

Respondent

Corrected Judgment: The cover page and text of the Judgment were anonymized for publication purposes on July 15, 2020

Before: The Honourable Madam Justice D. MacDonald

Reasons for Judgment

The Claimant, appearing in person:

D.A.B.

Counsel for the Respondent:

S.W. Wong appearing as agent for S.T. Taylor

S. McKenzie

G. Sohal, Articled Student

Place and Dates of Trial:

New Westminster, B.C.

December 9-13, 2019,

January 15-17, and March 5, 2020

Written Submissions filed by the Claimant:

May 1, 2020

Written Submissions filed by the Respondent:

May 8, 2020

Place and Date of Judgment:

New Westminster, B.C.

June 3, 2020

Table of Contents

Introduction. 4

Orders Sought. 4

Issues. 6

Factual Background. 7

The s. 211 Report. 14

Positions of the Parties. 15

The claimant 15

The respondent 16

Legal Principles. 17

Parenting Time and Responsibilities. 17

Alienation. 19

Agreements Regarding Parenting Arrangements. 20

Section 211 Report 21

Police Enforcement Clauses.	22
Variations to Child Support	23
Section 7 Expenses.	24
Analysis.	25
Testimony of Children.	25
Credibility.	26
Has there been parental alienation?.	27
Should I Vary the 50/50 Shared Parenting Arrangement?.	32
History of the Children's Care.	32
Ability of Each Parent to Exercise their Responsibilities.	32
Impact of Family Violence.	35
Actions of the Person Responsible for Family Violence.	36
Nature and Strength of the Relationships between the Children and Significant Persons in the Children's Life.	36
Children's Views.	37
Children's Health and Emotional Well-being.	38
Children's Need for Stability.	39
Conclusion Regarding Parenting Time.	39
Police Enforcement Clause.	40
Parental Responsibilities.	41
Retroactive and Prospective Child Support	42
Section 7 Expenses.	44
Miscellaneous.	45
Mediation.	45
Appointment of a Parenting Coordinator	45
New Arguments and Issues.	46
Disposition.	47
costs.	49

Introduction

- [1] This is a high conflict family dispute between D.A.B., the claimant, and C.A.S., the respondent.
- [2] The parties were married on August 17, 2002 and separated on June 1, 2016. There are two children of the marriage: A.B., born in 2004 (now 15 years old), and M.B., born in 2008 (now 12 years old). They are collectively referred to as the "children".
- [3] The parties signed a separation agreement on January 1, 2017 (the "Separation Agreement"). Pursuant to the Separation Agreement, they share custody and parenting time of the children equally. Neither party pays child support based on their similar incomes. They share s. 7 special or extraordinary expenses ("s. 7 expenses") equally.
- [4] The respondent makes approximately \$81,000 a year as an environmental officer. The claimant makes approximately \$80,000 per year as a power engineer.

Orders Sought

- [5] The respondent, in her written submissions, seeks the following orders :
 - 1. That paragraph 3.1 of the parties' Separation Agreement be varied such that C.A.S. is given primary residence of the children as outlined in Exhibit 25 with respect to regular parenting time. This is subject to the agreed sharing of holidays in paragraph 3.2 of the parties' Separation Agreement.
 - In brief, the children shall be in The respondent's care during school days;
 - The claimant shall exercise parenting time during weekends, Statutory holidays, Pro-D days, and school breaks when he is not working. This is subject to the sharing with respect to holidays as agreed in the Separation Agreement.
 - The claimant shall advise The respondent when he is working overtime afternoon or night shifts such that she shall take care of the children while the claimant is working such shifts.
 - 2. That pursuant to section 231 of the Family Law Act, an Order permitting a police officer to take the children to the parent who is denied of their parenting time.
 - 3. That the current parenting time transitions to remain the same as follows:
 - After school on school days;
 - 10:00 a.m. on any other days, except when the claimant comes off an overtime graveyard or an overtime afternoon shift the transition is to be at 12:00 p.m.
 - 4. That paragraph 3.2 of the Separation Agreement be varied such that each party will have 3 weeks' vacation each year with the children. One week of vacation is counted from Sunday to Saturday.

5. That any additional days taken with the children beyond that specified in paragraph 3.2 of the Separation Agreement will be considered vacation time.
6. The vacation to be selected using a fair method such as each party selecting one week of their time on a rotating basis (no first come first serve). Said selection to be completed no later than January 31 of each calendar year in which the vacation is to be scheduled.
7. That pursuant to section 222 of the Family Law Act, a conduct order indicating neither party to make arrangements on the other party's parenting time unless mutually agreed upon 48 hours in advance.
8. That pursuant to section 222 of the Family Law Act, a conduct order indicating neither party shall restrict the children from bringing their belongings between households.
9. That paragraph 3.4 of the Separation Agreement be varied such that the respondent has final decision making for all s41 parental responsibilities including, but not limited to, selection of dentists, doctors, and counsellors for the children.
10. The respondent to hold the children's documents (BC services cards, passports, birth certificates etc.), and to provide to the claimant when requested. The respondent will not unreasonably withhold such documents.
11. The claimant to reimburse the respondent for 50% of the children's extracurricular activities costs incurred since September 2018, and continue to equally share in extracurricular activity costs for the children.
12. The parties to share orthodontic treatment costs for A.B. and M.B. The claimant to pay his share for A.B.'s orthodontics treatment forthwith.
13. The claimant to pay the respondent child support based on Federal Child Support Guidelines.
14. Costs for this proceeding.

[6] As stated in his written submissions, the claimant seeks the following orders:

The wishes of the child to be considered and granted.

I seek to have A.B. and M.B.'s primary residence at my house.

I seek to have sole guardianship and responsibilities of both children. I want to have the final say in all matters as outlined in "Section 39(2) & 40(1) & 41 of the Family Law Act".

I seek have all the legal and travel documents for the children.

I want to be responsible for making the parenting time schedule as well as the vacation time allocation/slotting for the year/coming year.

I seek to use my parenting time calendar template, which is basically what we have now, without the respondent's manipulations and modifications.

I seek, A.B. as a 15 year old teenager, be allowed to choose which days and how often he wants to see his mother.

I seek financial restitution (damages) for the respondent deliberately damaging the children's affections to me and my wife J. \$5,000

I seek financial compensation for the Section 211 Report costs. \$7,000

I seek financial compensation for the respondent deliberately making me sick for the past 3 and a half years and for the many days and months I had to take off work on stress leave because of her. \$16,000

The children and I seek \$8,500 (just hard costs, flights, condo, car) for the trip to Hawaii that the respondent ruined for the kids.

I seek Child support of \$850/m for the 13 months that A.B. was at my house from July 1, 2018 to August 2019 and any child support \$1,280/m prospective. \$11,050

I seek legal and court costs. \$65,000

I want the court costs of Sept. 2018 overturned as you are able to see what happened after the Sept. 2018 court date.

I seek that the respondent be told in no uncertain words by "you", about the 2 free access clauses and for her to stop breaking the Separation Agreement.

I seek for you to make the respondent go through some kind of vetting process or something where she can't start fights directly with us. They have to be approved first before they are sent to me.

I seek permission to inform the children of the changes in their lives.

I seek that the S211 Report and its recommendations not be used or that it has limited influence in this case.

I seek changes or amendments to the separation agreement as outline at the end of this document. Use the exact wording I provided.

Issues

[7] The primary issues before me are:

- i. whether there has been parental alienation by the claimant with respect to A.B.;
- ii. whether I should vary the 50/50 shared parenting arrangement in the Separation Agreement;
- iii. whether a police enforcement clause should be ordered to enforce parenting time;

- iv. how vacation schedules and the yearly parenting calendar for the children are to be determined;
 - v. whether I should order child support to either party; and
 - vi. how to allocate s. 7 expenses.
- [8] I note that both parties raised issues in their written submissions that were not pleaded. Neither party sought to amend their pleadings during or at the end of the trial to reflect new issues raised at trial.
- [9] While I allow some flexibility so the real issues between the parties can be addressed, if an order sought strayed too far from the pleadings and/or the evidence, I do not address it in these reasons.

Factual Background

- [10] The following is a summary of the evidence. Many facts are uncontested; I note where the parties have disputes. I make most factual findings when addressing the issues. Although I do not refer to all aspects of the evidence, I have considered the totality of the evidence in reaching my conclusions.
- [11] The respondent has an older son, R., from a previous relationship. She was very young when he was born and her parents helped raise him. The claimant has two children from a former relationship. He has less contact with them than the respondent has with R.
- [12] The respondent works four days per week and did so when the parties were married. As a result, they previously had nannies and assistance from her mother to look after the children. The claimant testified he was the primary caregiver during the marriage. The respondent disputes this. I find both parties were actively involved in the care of the children.
- [13] The respondent found the relationship during the marriage difficult. She alleges the claimant was abusive, both verbally and emotionally. He would call her names and swear and yell at her. The claimant did not deny this verbal abuse at trial.
- [14] The respondent also alleges the claimant was physically abusive on occasion. He would push her or try to spank her. The respondent testified that the claimant did not act violently toward her in front of the children. The claimant admitted that he threatened to spank the respondent, but he did not admit doing so or physically abusing her in any way. He alleges the respondent was physically abusive and he had to restrain her.
- [15] After the parties separated, the respondent and the children moved into her mother's basement suite while waiting for their condominium to be built. The children were able to spend more time with their grandmother. The respondent continued taking the children to their activities.

- [16] The claimant found another place to live where he has sufficient space for the children. In the Separation Agreement, the parties each released the other from a claim for spousal support. They also agreed to a 50/50 split for parenting time with the children and no child support since they made approximately the same amount of money. Child support could be reviewed on a regular basis. They agreed that each child should be limited to one extracurricular activity and they would share this section 7 expense equally.
- [17] The respondent drafted the parenting calendar post-separation. She drafted it to be a 50/50 split "with a bit of tweaking on occasion". The respondent sends the schedule over to the claimant and he occasionally points out an error. The children spend 50% of their time with each parent.
- [18] The parties have had many issues regarding the parenting schedule.
- [19] The parties divorced in 2017. Both parties have remarried since their divorce. The children get along well with Mr. P., the respondent's new husband. They also like J., the claimant's new wife, although they know her only through video discussions as she is still in the Philippines and is not living in Canada. As a result, the claimant's wife does not live with the family.
- [20] The verbal abuse that started during the marriage continued after the parties separated. The claimant insults the respondent's intelligence. He does this in the parties' electronic communications and sometimes in front of the children.
- [21] In the early post-separation period, while the parties had many conflicts and inappropriate communications, they managed to work most of their issues out.
- [22] The parties' ability to work most disputes out changed in May 2018. The respondent testified that in May 2018 she was of the view that the parenting schedule was too chaotic and there were too many switchovers midweek. She was also concerned that the children had no parental supervision when the claimant worked night shifts and the children were in his care.
- [23] The respondent's counsel sent a letter to the claimant on May 15, 2018 with a proposal. The respondent testified in direct examination that she proposed changes to the parenting time schedule due to her concerns with the children being left home alone overnight. She also wanted to provide greater stability for the children during the school week because the claimant works afternoon and night shifts. The claimant did not immediately respond to the respondent's proposal. However, the respondent's counsel's May 15, 2018 letter significantly escalated the issues between the parties. For example, following the respondent's proposal there was a serious conflict over one of M.B.'s bathing suits which resulted in an altercation between Mr. P. and the claimant. There were also several incidents where the respondent learned that the claimant had left the children alone overnight. This culminated in the respondent taking the children from the claimant's home on June 4, 2018 when she discovered they were staying overnight alone at his place while the claimant was working

night shift.

- [24] The claimant characterized the June 4, 2018 incident as the respondent kidnapping the children. The respondent testified that she did not take the children from the home without first informing the claimant. The claimant takes the position that A.B. is old enough to care for M.B. and himself overnight.
- [25] On July 1, 2018, A.B. approached the respondent to say he and M.B. wanted to live with their father full-time. A.B. would not answer the respondent's questions. When the respondent spoke to M.B., M.B. denied that she wanted to live full-time with her father. The respondent testified that M.B. did not want A.B. to leave. After A.B. left, the respondent texted him and he did not reply. It was upsetting for M.B. as she saw the stress it caused her mother.
- [26] After A.B. left to live with his father, the respondent was unable to contact A.B. or the claimant that evening or the following morning. She called the RCMP and they advised her they could do a "wellness check" on the situation at the claimant's home.
- [27] The respondent subsequently became aware that A.B. was at his father's work, a power plant. She testified she did not believe that it was a safe environment for a child to be and the claimant likely did not have permission from his supervisor for his son to be there. She called the Chief Facilities Officer to complain.
- [28] Not surprisingly, these actions further escalated the issues between the parties.
- [29] On July 5, 2018, the same week A.B. left the respondent's home, the claimant served a notice of family claim on the respondent. The claimant requested that A.B. live "most of the time" with him and that the respondent pay child support for A.B. This served to further increase tensions between the parties.
- [30] The respondent testified A.B. would not talk to her about why he left her home. He was 13 years old so she felt she could not stop him. According to the respondent, nothing significant had changed between her and the children after the separation. They had a good relationship up until the time A.B. decided to leave her household.
- [31] The respondent testified she was unnerved by the situation and took some time off work due to the stress of the situation.
- [32] When the respondent took time off work, she and Mr. P. did a lot with M.B. If the respondent ever mentioned A.B. in front of M.B., M.B. would get upset. M.B. did not want to be involved.
- [33] On July 9, 2018, when the respondent was picking up M.B. from the claimant's home, she questioned A.B. why he was not coming to her home. The respondent testified that A.B. started to cry and rocked back and forth. He did not answer her. The claimant kept interrupting and saying "he already told you he does not want to come to your place".

- [34] In August 2018, A.B. went on the annual camping trip to Anderson Lake with his mother, her husband, and his sister. He stayed with the respondent following the camping trip during her parenting time. After the trip, the respondent's contact with A.B. was mostly limited to her taking him to his judo classes.
- [35] The respondent testified there was one occasion in October 2018 when she was driving A.B. to his judo class that she asked him why he was not coming over to her place. She spoke for approximately ten minutes. A.B. looked away and would not talk. The respondent testified that at no other time did she ask A.B. why he was not spending time at her place. The claimant alleges the respondent continually questioned A.B. and she drove him away from her.
- [36] In an email exchange between the respondent and A.B., A.B. stated he left her house due to all the fighting between his parents, because he did not want to move to Chilliwack[1], and because he was afraid his mother would stop him from going to his dad's house.
- [37] On September 5, 2018, Justice Armstrong ordered that a s. 211 report be prepared to elicit A.B.'s views by a registered psychologist, or another professional to whom the parties agreed. The parties were ordered to share the costs of the report equally. Justice Armstrong also ordered that the children attend counselling and the parties share that costs equally. These orders were followed. The claimant and A.B. were not happy when they found out the counsellor that the children saw, Mr. Weibelzahl, was a counsellor the respondent had seen post-separation.
- [38] In May 2019, the claimant advised the respondent that he would not be home for a period of time so both children could stay at her house. He was going to the Philippines to see his wife. The claimant advised A.B. he could return to his house if the situation at his mother's house became upsetting for him. He would leave money and food for A.B. The respondent testified that the children stayed with her and she did not discuss any matters with A.B. A.B. stayed the whole three weeks the claimant was away and there were no disagreements.
- [39] Once the claimant returned, A.B. again started to reject the respondent without providing a reason. The respondent continued telling A.B. that she wanted him to come to her place and that she loved him. She received a limited response. Each month was different regarding whether A.B. came over to her place or not.
- [40] The respondent testified that when A.B. did come over, it was typical parenting time. A.B. would go to school, he would bring his friends over, they would enjoy the building's amenities, they would buy chips, and they had pizza parties. She would take him and his friends to the skate park. The respondent testified that A.B. enjoyed meals, said he loved her, and asked her to scratch his back. They did "all the regular things [they] used to do".

- [41] After July 1, 2018, A.B. did not regularly go to the respondent's home for her parenting time until August 2019 when Justice Crossin confirmed that the equal parenting time in the Separation Agreement remained in effect. He ordered the parenting time exchanges subsequent to the claimant's overnight overtime shifts to take place at noon. Justice Crossin also made a number of conduct orders.
- [42] Since August 2019, A.B. has been spending 50% of his time with his mother.
- [43] The respondent testified that when M.B. talks about her father, M.B. generally says positive things. However, the respondent testified that on one occasion M.B. was sobbing in the bathtub. The respondent waited for her to come out and then asked her what was wrong. She hugged the respondent and started crying again. She stated "daddy said he wants you to die like his first wife did, he wants you to die of cancer like his first wife". This conversation between M.B. and her father was also reported to Ms. Leanne Harder, the author of the s. 211 report. M.B. was crying when she told this to Ms. Harder.
- [44] The respondent testified that the claimant makes false allegations and does things such as forbidding her to take the children to the dentist. He makes derogatory comments about her in front of the children. The respondent took me to a number of problematic emails from the claimant which certainly established that he makes derogatory and wholly inappropriate comments. For example, he has made the following statements in writing:

Unbelievable what a crap parent you are!

You are pathetic as a parent.

You stupid ass

Shut up.

So blow it out your ass.

You are the worst mother I can think of!

You are PATHETIC !!!!!

- [45] This is just a sample of the many derogatory and disparaging comments the claimant has made to the respondent since their separation.
- [46] The claimant testified he has been diagnosed with chronic pain and has some mental health issues. The respondent testified that she had some difficulties after A.B. left her care but testified that she is coping better now. She saw a counsellor during this stressful period.

The s. 211 Report

- [47] Ms. Leanne Harder, a registered social worker with the BC College of Social Workers, was retained by the parties. She interviewed the respondent, the claimant, the children, and other family members and prepared a s. 211 report. I accept the factual findings of the s. 211 report as prima facie evidence of the truth of those facts. Where I disagree with Mr. Harder's factual findings or conclusions, I say so.
- [48] Ms. Harder testified there is extensive verbal conflict between the parents. They are both highly reactive to each other and being in each other's presence is problematic. Ms. Harder testified that it impacts on both of their ability to co-parent.
- [49] Ms. Harder's primary concern with the claimant was the level of adult information (e.g., legal and financial details) to which he was exposing the children. He also shared negative information and opinions about their mother. He would say things such as he hated their mother to the children. Ms. Harder observed that the claimant would actively encourage A.B. to complain about his mother and he would add to A.B.'s negative comments.
- [50] Ms. Harder's primary concerns with the respondent were that she was not emotionally attuned to the children and her reactivity with respect to the claimant. Ms. Harder found out from A.B. that the respondent told A.B. that his father is mentally unstable. However, M.B. advised Ms. Harder that her mother does not say anything negative to her about her father.
- [51] Ms. Harder observed that the respondent has more ability to control her negative feelings about the claimant than the claimant in this regard, but the respondent does tend to show her frustration.
- [52] In terms of A.B., Ms. Harder testified that, in his interviews, A.B. would often use similar negative phrases towards his mother as those used by his father. A.B. said his mother yelled a lot and would say negative things about his dad. She felt A.B. did not use teenage language and was likely repeating what he heard from his father. Ms. Harder observed A.B.'s behaviour around his mother and found it to be inconsistent with what A.B. said about her. Ms. Harder summarizes The claimant's influence in her report:
- [I]n my opinion, [A.B.] appears to be choosing to align with the parent who he is most fearful of losing. Since his father has indicated that A.B. would rarely if ever see his father in the event of the parenting time being more heavily weighted with [the respondent], A.B. is extremely fearful of this. Based on multiple sources, A.B. has heard his father screaming in anger at his mother. Exposure to this level of anger is also likely to result in him feeling fearful about expressing any desire he may have to spend more time with his mother.
- [53] Like A.B., M.B. has heard her father speak negatively about her mother.

- [54] According to Ms. Harder, M.B. wants to see both parents and currently spends 50% of her time with each parent. A.B. wants to live full-time with his father but he does not want to be separated from M.B. Ms. Harder stated A.B. thinks having "both siblings apart is the worst option."

Positions of the Parties

The claimant

- [55] The claimant takes the position that he has not alienated A.B. from his mother. He testified that A.B. left before there was any allegation of alienation. He left his mother because she did things A.B. thought were unreasonable. For example, she did not help A.B. with his homework and she did not provide him his passport when he and his father requested it.
- [56] The claimant argues that the respondent yells at A.B. when A.B. is in her household. A.B. also complained about having too few weekend days with his father because his mother controls the schedule. The claimant takes issue with the schedule, which the respondent drafts. His primary issue with the schedule is that after his last night shift on a weekend, before transitioning to a daytime schedule, he only sleeps for a couple of hours after he gets home at approximately 8 a.m. This allows him to prepare for the transition to a daytime schedule and to spend quality time with the children. Despite only sleeping for a couple of hours, the respondent keeps that weekend day for herself on the schedule. She reasons that the claimant will be sleeping all day. The claimant testified the respondent knows this is not true. The claimant wants to draft the base parenting time calendar so that the respondent can no longer manipulate the schedule to her advantage.
- [57] The claimant requests a clause ensuring that the parties not move the children out of their immediate area. He requests that A.B.'s primary residence be at his house, although in testimony he stated he was content to have both children continue to split their time 50/50 between their parents. In his written argument, he modified this statement, as set out below.
- [58] The claimant argues that the respondent should pay child support retroactive from July 1, 2018 to August 2019 when A.B. was in his sole care.

The respondent

- [59] The respondent asserts that the claimant has been speaking negatively about her and alienating A.B. from her. When A.B. is with the respondent he is fine, but he becomes cold when in his father's care. For example, she testified that she and Mr. P. planned a vacation with A.B. A.B. was very excited about going to San Diego and talked about it all the time. But when he returned to his father's home, he abruptly shifted and said he would rather go with M.B. They had planned a separate vacation with M.B.

- [60] The respondent requests that this court grant her primary care of the children. The respondent takes the position that the biggest difficulty with parenting time is the rotating schedule. There is no consistency and transitions during school week are difficult. She strongly opposes the children staying alone at the claimant's place when he works an overnight shift.
- [61] Both parties allege the other is not following the Separation Agreement. Both parties want to make the major decisions regarding the children's education, healthcare, and religion.
- [62] Both parties have issues with the s. 211 report. I will deal with their concerns in the appropriate sections of this decision.

Legal Principles

Parenting Time and Responsibilities

- [63] The court may only consider the best interests of the child when making orders for parenting time or contact. Section 37(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides:

In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only."

- [64] The allocation of parenting responsibilities is made under s. 40 of the FLA. Parenting responsibilities set out under s. 41 may be allocated to one parent entirely, shared equally between both parents, or specifically allocated in various ways to each parent.
- [65] Section 37(2) of the FLA sets out a non-exhaustive list of factors for the court to consider in determining what is in the best interests of the child: *Pozzobon v. Pozzobon*, 2013 BCSC 1226 at para. 30. Section 37(2) provides:
- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

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

[66] Section 37(4) of the FLA mandates that, in making parenting orders under Part 4, "Care of and Time with Children", a person's conduct may only be considered if it substantially affects a factor set out in s. 37(2).

[67] Section 37(2)(g) of the FLA specifically requires the court to consider family violence when considering the best interests of the child. Section 38 sets out how to assess family violence in this context:

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

the nature and seriousness of the family violence;

how recently the family violence occurred;

the frequency of the family violence;

whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;

whether the family violence was directed toward the child;

whether the child was exposed to family violence that was not directed toward the child;

the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;

any steps the person responsible for the family violence has taken to prevent further family violence from occurring;

any other relevant matter.

[68] Section 37(3) of the FLA provides that an agreement is not in the best interests of a child unless "it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being."

[69] Family violence includes "psychological and emotional abuse": FLA, s. 1. As stated by Justice Milman in *Y.Z. v. A.C.*, 2019 BCSC 1564:

[65] A.C. cites a number of authorities in which "family violence" was found to have occurred by way of psychological or emotional abuse (as opposed to physical violence). In *D.N.L. v. C.N.S.*, 2014 BCSC 1417, for example, the respondent was denied parenting time because of a history of family violence that was found to include the following conduct:

demeaning remarks about the claimant, his repeated assertions to the child that she has been 'brain washed' or manipulated by her mother, his threats to use physical force to compel her to accompany him and his suggestions to the child that her mother is responsible for the conflict that divides this family (at para. 72).

[66] In *K.R. v. J.D.*, 2017 BCSC 182, after citing *D.N.L.*, Jenkins J. likewise took away the respondent's parenting time upon finding that, "derogatory and demeaning comments regarding the claimant, on occasion in [the child]'s presence, clearly amount to family violence. They have disturbed [the child] and caused [the child] emotional harm" (at para. 17).

[70] In summary, verbal abuse is family violence.

Alienation

[71] In *N.R.G. v. G.R.G.*, 2015 BCSC 1062 [N.R.G.], Justice Kent describes alienation as follows:

[278] An alienated child, on the other hand, is the label frequently applied when there is little or no objectively reasonable cause for the child's rejection of the parent and particularly when it is the product of the other parent's hostility and antipathy towards his/her former spouse and the intentional undermining by the former of the child's relationship with the latter. While the undermining of the relationship can arise from direct or indirect behaviours, in its worst form the parental conduct is expressly designed to alienate the child from the other parent. Such conduct is pernicious and unpardonable.

[72] Justice Kent explained that alienation is becoming increasingly common in high-conflict separations and has been recognized by numerous Canadian courts. While the label is important, the remedies to address alienation may be more important. Relying on Bala et al., "Alienated Children and Parental Separation: Legal Responses in Canada's Family Courts", 33 *Queen's L.J.* 79 (2007), Kent J. articulates the following approaches taken by the courts to address alienation in an attempt "to ensure the protection of psycho-emotional well-being [of children] in both the short- and long-term" (paras. 287-288). The various mechanisms used by the courts include:

- Detailed case management and parental conduct orders with cost consequences for non-compliance;
- Judicial exhortation urging compliance and emphasizing the emotional harm caused to the children (generally only effective in less severe cases of alienation);

- Court-ordered therapeutic intervention where appropriate, while recognizing "force-marching" a child to reunification may in some cases be unrealistic and harmful;
- Ordering supervised access/parenting time to allay any child anxiety and possibly pave the way for further strategies to achieve positive relationships;
- Suspension of child or spousal support as a sanction to enforce more engagement with the other parent;
- Transferring custody from the alienating parent to the rejected parent where expert testimony establishes the long-term benefits will outweigh any short-term emotional trauma to the child;
- Terminating access by/parenting time of the alienated parent when the alienation is so entrenched that the "cure is worse than the illness", recognizing that children do sometimes resume a relationship with a rejected non-custodial parent after a long period without contact, albeit perhaps only in later years.

Agreements Regarding Parenting Arrangements

- [73] The parents of a child may make agreements respecting parenting arrangements post-separation: FLA, s. 44(1). On application by a party, a separation agreement must be set aside if the court is satisfied the agreement is not in the best interests of the children: FLA, s. 44(4). As Justice Schultes explained in *S.C.B. v. K.M.B.*, 2018 BCSC 1148 [S.C.B.]:
- [51] In *Nijjar v. Gill*, 2017 BCSC 1362 at paras. 110 to 112, Justice Griffin, then still a member of this court, held that the filing of a parenting agreement with the court made it enforceable as an order, but did not convert it to one. This relieves the party seeking to set it aside from having to meet the material change in circumstances test. This conclusion was adopted by the CLEBC Family Law Sourcebook for British Columbia at chapter 2.57.
- [74] The party seeking to set aside the terms need not establish there has been a material change; however, that party bears the onus of demonstrating that different terms are in the child's best interests. That is the only consideration: S.C.B. at paras. 53 and 58. The court must set aside or replace the terms of an agreement if it is satisfied that the terms in an agreement are not in the best interests of the child: FLA, s. 44(4).
- [75] While there is no presumption that the status quo is the preferred position, it is a factor the court must consider: *Nunweiler v. Nunweiler*, 2000 BCCA 300 at para. 30.

Section 211 Report

- [76] The courts do not want to put children in the middle of the parents' dispute and generally resist having children testify at trial. Section 211 of the FLA provides the court with a mechanism to obtain expert insight into the specific needs and views of the child caught in the middle of a family law dispute. Section 211 reports often provide the court with useful information regarding parenting issues from a neutral and independent interviewer. This avoids the need to have children testify.
- [77] Section 202 of the FLA provides the court with broad discretion to admit hearsay evidence of children. The facts stated in a s. 211 report are considered to be prima facie evidence of their truth: *K.M.W. v. L.J.W.*, 2010 BCCA 572 at para. 50. In *Wu v. Sun et al.*, 2006 BCSC 1891 at para. 3, Justice Burnyeat, citing *Goudie v. Goudie* (1993), 40 A.C.W.S. (3d) 294 (B.C.S.C.), described the authors of s. 15 reports [now s. 211 reports] as the "eyes and ears" of the court.
- [78] The court is not obliged to accept the opinions of the author of a s. 211 report. The parties generally have an opportunity to respond to the report through other evidence: *Banni v. Muir*, 2016 BCSC 2194. The court must assess the weight of the opinions based on proof of the underlying facts and assumptions at trial. As stated by Justice Groberman in *J.E.S.D. v. Y.E.P.*, 2018 BCCA 286:
- [50] Under s. 37(2)(b) of the Family Law Act, the views of children are a relevant consideration in determining their best interests, unless it would be inappropriate to consider them. This consideration, however, is only one among many that helps a court determine what is in the best interests of the child.
- .
- [52] Inherent in the Court's analysis in [*A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30] is the recognition that circumstances will exist when the child's wishes do not conform to what is in his or her best interests. Children are sometimes incapable of identifying what is in their own best interests.
- [53] While the views and wishes of a mature child, such as [the daughter], will be important in determining what is in her best interests, they will not be determinative.
- [79] The court should give weight to the views of children, proportionate to their age and level of maturity. However, a child's views are not determinative. The court carries out an independent assessment based on the evidence at trial and may come to a different conclusion as to the best interests of the child: *Plant v. Kempton*, 2011 BCCA 171, a decision of Justice Chiasson in Chambers, at para. 11. The s. 211 report is additional evidence to ensure that the views of the children are before the court. However, it is up to the court to determine the report's ultimate weight.

Police Enforcement Clauses

- [80] In *D.J.S. v. J.M.D.*, 2014 BCSC 1143 [D.J.S.], Justice Power discussed circumstances where a police enforcement clause may be ordered:
- [36] Considering the provision in the Family Law Act, as with s. 62 of the Family Law Act, I am of the view that the ordinary meaning of s. 231 forecloses an ongoing police enforcement clause. The section only applies where a person has failed to comply and the court is satisfied that no other order is sufficient to secure their compliance. If the person is not currently failing to comply but may only prospectively fail to comply, it is difficult to see how the court could be satisfied that no other order under the act would be sufficient to secure compliance. There is no compliance to secure, as currently the father is currently compliant.
- [37] Second, all of the evidence is that s. 231 is meant to be used only in limited circumstances which is not consistent with a continuous order. The Ministry of Justice in its comments on s. 231 in the Family Law Act Explained says that it allows for the limited use of two extraordinary remedies. These two remedies may only be used when there is no other less severe remedy under the act sufficient to secure compliance. The Ministry notes that where the issue involves wrongfully withholding a child from a guardian, i.e. the situation addressed by s. 231(5), the court can only order police enforcement where the court determines that no other remedy under s. 61 will be sufficient to force compliance. The comments conclude as follows:

Although these extraordinary remedies should not be regularly used, because they have such a negative impact on children, there are rare cases where a court may require them.

Variations to Child Support

- [81] A court may change a child support order if there has been a material change in circumstance: FLA, s. 152. The change must be of the kind that, if known by the judge when the original order was made, "would have resulted in a different order": *Earle v. Earle* (1999), 86 A.C.W.S. (3d) 764 (B.C.S.C.) at para. 19.
- [82] Here, there was no order but the parties made an agreement regarding child support in their Separation Agreement. Again, the party seeking to set aside the terms need not establish there has been a material change; however, that party bears the onus of demonstrating that different terms are in the child's best interests.
- [83] The discretion to make an order of retroactive child support is found in s. 152(1) of the FLA. In *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.] at para. 133, the Supreme Court of Canada directed trial judges to adopt a broad and holistic approach to determining retroactive child support, considering four factors:
1. whether the recipient parent has supplied a reasonable excuse for his/her delay in seeking child support;

2. the conduct of the payor parent;
3. the circumstances of the child; and
4. the hardship the retroactive award might cause.

[84] As explained in *B.P.E. v A.E.*, 2016 BCCA 335 at para. 52, a new partner's income may be considered under the rubric of the "conditions, means, needs and other circumstances" set out in s. 9(c) of the Federal Child Support Guidelines, SOR/97-175 [Guidelines]. Such a consideration is aimed at ensuring basic needs are met and ensuring there are not inordinate disparities between the household incomes: *B.P.E.* at paras. 54-55. However, the court offered a caution:

[62] Varying support to account for third and fourth incomes under s. 9(c) as a matter of course would degrade the certainty and predictability of the legislative scheme and risk returning us to the ad hoc unpredictability of the old child support regime. It tends to increase the volatility of child support obligations. By contrast, giving weight to total household incomes for a more limited purpose - that is, to assess whether basic needs can be met and whether disparate standards of living between households can be avoided - maintains the flexibility of the s. 9 scheme while drawing predictable boundaries around the s. 9(c) enquiry.

[Emphasis in original.]

Section 7 Expenses

[85] In *Sigalet v. Hunt*, 2019 BCSC 1428, Justice Hori summarized the law on section 7 expenses:

[67] Section 7 of the Guidelines has been considered and interpreted by the Court of Appeal in *Bodine-Shah v. Shah*, 2014 BCCA 191. Special expenses listed in section 7(1)(a) to (c) and (e) are defined as expenses relating to child care, medical or dental insurance premiums, health related costs and post secondary education.

[68] Section 7 of the Guidelines also includes extraordinary expenses but limits extraordinary expenses to expenses for:

- a) primary or secondary school education or for any other educational programs that meet the child's particular needs; or
- b) extracurricular activities.

[69] Extraordinary expenses are to be assessed by taking into account the combined income of the parents, the nature and amount of the individual expense, the nature and number of activities, any special needs or talents of the child and the overall cost of the activities.

- [70] Section 7 of the Guidelines also requires that any expense be reasonable and necessary. The Court of Appeal in *Bodine-Shah* has determined that relevant considerations to determine necessity and reasonableness include whether the expenses are necessary in relation to the child's best interests and reasonable having regard to the means of the spouses, the child and to the family's spending pattern prior to separation.
- [86] Recreational sports and other similar extracurricular activities such as dance lessons, community sports leagues, and similar activities do not qualify as s. 7 expenses unless the child's participation extends beyond that of an ordinary child: *Dorey v. Havens*, 2019 BCCA 47 [Dorey] at para. 44.
- [87] Applying *D.B.S., Hori J. in Sigalet* held the same considerations apply when awarding retroactive section 7 expenses as when awarding retroactive child support: para. 75.

Analysis

Testimony of Children

- [88] As a preliminary matter, the claimant wanted A.B. to testify at trial. The claimant argued that A.B. wants to testify to tell the court his concerns with the situation at his mother's home. I dismissed the application for A.B. to testify on the basis that it is inappropriate to have a child testify as to their views. It is not up to the child to determine how their mother and father resolve their disputes. In any event, the information I would have received would be of little value given the claimant's influence over A.B.'s reasoning and behaviour. Moreover, there is a s. 211 report in evidence which contains A.B.'s views.
- [89] The claimant also wanted to introduce into evidence recorded statements of the children complaining about their mother. I dismissed the application to allow the recordings of the two children to be entered into evidence. Ms. Harder, who was jointly retained by the parties to produce a s. 211 report, listened to the recordings and incorporated them into her report and recommendations. In addition, there had been selective editing of the recordings[2] and the recordings would only serve to escalate the parents' dispute and place the children in the middle of their parents' conflict.
- [90] I have disregarded all references to these recordings in the claimant's submissions.

Credibility

- [91] I found that both parties testified to the best of their memories; however, each party viewed the issues from their own perspectives. A credibility issue arose in the claimant's testimony. On the one hand, the claimant testified that A.B. was old enough to receive adult information and agreed that he has talked to A.B. about the disputes he has with the respondent. On the other hand, the claimant denied giving A.B. detailed information regarding the court proceeding. He also gave contradictory evidence regarding how A.B. obtained information on his laptop about the court proceedings.

[92] It is difficult to accept that the claimant did not give A.B. detailed information given that the claimant brought A.B. to court with him in August 2019. I find that the claimant shared detailed information about the court proceeding with A.B.

[93] I also have concerns that the claimant's written submissions overstate matters. For example, he writes:

[The respondent] told the children that she had plans to sell the condo next year and move to Chilliwack and make me pay child support. S211 pg 34 par 2 & 3. There, her scheme would be complete and she would eliminate me from the children's lives and from hers, all in a single blow and get paid for it to boot.

[94] This is not what the s. 211 report states. All Ms. Harder states is that A.B.'s "mom told him that bigger properties were cheaper in Chilliwack."

[95] I did not find Ms. C., the claimant's sister, who testified at trial as the claimant's witness, to be of assistance. Ms. C. came across as more concerned about the dispute between the adults than the well-being of the children. It is clear she is not fond of the respondent. For example, Ms. C. testified that "if she gets the kids, I will never contact her to see them." It appeared her information came largely from the claimant and echoed his subjective perspectives regarding the issues.

Has there been parental alienation?

[96] The respondent alleges that the claimant has alienated A.B. from her. This is a serious allegation. Some background assists in making a determination regarding whether there has been parental alienation.

[97] The parties have largely followed the terms of their Separation Agreement, which is comprehensive and reasonable. Since their separation, there were heated exchanges and inappropriate electronic communications, especially on the part of the claimant. However, while there were numerous minor disagreements, such as exchange days and assistance with homework, the parties were managing to work most things out. Their disagreements did not result in significant non-compliance with the Separation Agreement.

[98] The May 15, 2018 letter from the respondent's counsel to the claimant escalated the issues between the parties. The claimant did not react well. He admitted, in his written submission, he "saw this as a real threat since [The respondent] is the gatekeeper of the parenting schedule". The escalation ultimately resulted in A.B. deciding to live only with his father. Not only was this inconsistent with the Separation Agreement, it was very upsetting for the respondent and M.B. A.B. did not live at his mother's home between July 2018 and August 2019. This situation resulted in the respondent alleging parental alienation by the claimant with respect to A.B.

- [99] Within five days of A.B. moving full-time into his home, the claimant filed a notice of family claim seeking additional parenting time with A.B. (i.e., recognizing the current situation was inconsistent with the Separation Agreement) and child support from the respondent.
- [100] Since the spring of 2018, there have been multiple verbal disputes as well as highly inappropriate email and text exchanges between the parties regarding the parenting time schedule, healthcare decisions, and access to each other's homes. There have also been disputes regarding vacation times and what clothing and other items belonging to the children should be at which parent's home. There have been heated conflicts in front of the children.
- [101] There is a live issue regarding leaving the children unattended and unsupervised when the claimant works afternoon and night shifts. This issue was raised prior to the May 15, 2018 letter but came to a head on June 4, 2018 when the respondent arrived at the claimant's home and insisted the children come with her. While I would not characterize this as kidnapping, as did the claimant, it escalated the dispute between the parties. A.B. missed an appointment with the dental surgeon the following morning. He started to closely align with his father after this incident.
- [102] There is additionally the issue of inappropriate communications with the children. The claimant admitted he shares some details about the family dispute with A.B., including showing him parts of the Separation Agreement. I found under the credibility section that the claimant shared more than he was willing to admit at trial.
- [103] The claimant testified he makes A.B. see his mother and he supports the children having a positive relationship with her. This is contrary to the evidence at trial and contrary to the findings of Ms. Harder in the s. 211 report. The claimant did not remain neutral, much less encourage A.B. to spend time with his mother in the situation described above. The respondent missed most of her parenting time with A.B. from July 1, 2018 to August 2019.
- [104] Further, the claimant recorded the children making complaints about their mother. It also appears the claimant encouraged M.B. to find fault with her mother. A.B. was actively encouraged to react to any shortcomings his mother displayed.
- [105] Ms. Harder had concerns about why A.B. was aligning with his father. She states in her report that A.B. does not feel important at his mother's house. She also stated: "He frames his mother's attempts to show him affection (e.g. the personal vacation) as negative". A.B. has concerns about his mother yelling at him but he could name few examples of when she did yell. Ms. Harder analyzed the situation as follows:

A.B.'s fears about his mother's behavior seem out of proportion to the complaints he expresses about being at her home. A.B. made a number of comments about adult information that was shared with him by his dad. He acknowledges missing his sister and seems to feel lonely when he is home alone at either home. He also discusses frustration about M.B.'s behavior and the impact this has on the time he spends with his father. A.B.'s suspicion about his mom trying to buy him

with a vacation is not typical of thirteen year old language and may be an indicator of him adopting language that his father uses in describing this situation .

A.B.'s comments about what he would like to be different with his mom and his dad were indicative of his exposure to co-parent conflict. He is negatively impacted by his father's depression, and the negative information (regardless of accuracy) he receives about his parents' disputes. His reference to the amount of time he spends thinking about the stuff between his parents is a sign of anxiety and stress.

[106] The claimant's communications with the respondent and his communications with the children demonstrate that he involved the children, especially A.B., in the ongoing disputes between the parents. He was not facilitating A.B. having time with the respondent and, as Ms. Harder stated, the claimant's views of the respondent "are projected onto A.B.". A.B. used language to describe his mother that was not typical language for a 13-year-old child. Ms. Harder believes this is an indication he is adopting the claimant's language. Consequently, it is impossible to ascertain A.B.'s true wishes.

[107] A.B. wrote an email to his mother shortly after leaving her home listing the reasons why he left. I summarize his concerns follows:

- His mother did not help him with his math homework and she would not let him go to his dad's as often as he would like for extra help.
- "[B]ecause of all the fighting between you and dad. You fight so much with dad and never leave him alone".
- His mother told him his father was mentally unstable.
- He did not want to move to Chilliwack which his mother had suggested she might do.
- His mother told the mother of Levi [a friend] something which had Levi withdraw from their trip to Vernon.
- His mother took him and M.B. from their father's home [on June 4, 2018].

[108] There is nothing in the email to establish abusive behaviour by the respondent. That said, I find that the respondent contributed to her poor relationship with A.B. through some of her conduct. However, the likely reason A.B. was looking for fault was because the claimant was discussing adult information with him. Such discussions were totally inappropriate.

[109] I understand from my review of the s. 211 report, as well as the email exchanges, that A.B. identifies with his father. I find his reaction to his mother out of proportion to his complaints about her. As Ms. Harder observed, A.B.'s positive interactions with the respondent were inconsistent with not wanting to live in her home. When questioned, Ms. Harder observed: "A.B. had trouble thinking about the last time he was upset with his mom."

- [110] Another example of this inconsistency is when the claimant visited his wife in the Philippines in June 2019. A.B. and M.B. were to stay full-time with the respondent during this time. Nevertheless, the claimant left food and money for A.B. should he prefer to return to his father's place while the claimant was away. A.B. stayed with the respondent the entire time without incident. However, upon the claimant's return, A.B. advised his mother that he no longer wanted to spend time with her.
- [111] It is evident from the emails and other evidence that both parents are responsible for the fighting and it has taken its toll on the children. While neither side has exhibited exemplary behaviour, I find the claimant's conduct to be more problematic. Ms. Harder found that he lacks insight into the negative impact the parental conflict has on the children and his need for counselling. The children heard him swearing at their mother, he has told them he hates their mother, and they hear the notification on his phone whenever their mother texts him. Ms. Harder observed the claimant involving A.B. in a parental role with M.B. He projects his own desires onto his children. The claimant encourages the children to think negatively about their mother.
- [112] I find that the claimant's inappropriate conduct influenced A.B.'s decision to live full-time with him. However, the claimant's influence does not entirely explain A.B.'s behaviour. There was evidence that A.B. was fed up with the negative relationship and angry communications between his parents and the respondent constantly questioning all decisions the claimant made regarding A.B. A.B. also had serious concerns regarding his father being denied weekend time with him and M.B., as well as his mother's comments about moving to Chilliwack. While A.B. was more aware of the issues between his parents than he should have been, he had some legitimate concerns.
- [113] Moreover, A.B. (and M.B.) do not exhibit what I would expect to be symptoms of parental alienation. While the children have experienced emotional stress due to the claimant's comments and actions aimed at their mother, they both continue to have a loving relationship with the respondent. While inappropriate, I am not persuaded that the claimant's behaviour has alienated A.B. from the respondent. I note Ms. Harder similarly did not specifically find parental alienation, although she found the claimant undermines the respondent's parenting role.
- [114] Despite not finding parental alienation, I have serious concerns regarding the claimant's conduct and his influence over A.B.'s decision to remove himself from his mother's care. This behaviour occurred over more than a year, a year the respondent can never get back. It was also difficult for M.B. and the extended family. The respondent missed approximately 128 days of parenting time. This should never have occurred.

Should I Vary the 50/50 Shared Parenting Arrangement?

- [115] The respondent seeks primary care of the children. In his notice of family claim, the claimant sought to have A.B. "most of the time". In testimony, the claimant stated he is satisfied with the 50/50 shared parenting arrangement. In his final submissions, he requests a 50/50 parenting arrangement "unless things go bad at the mother's house" or the respondent "moves out of the area", in which case he would get to decide how much time the children were able to see their mother.
- [116] The Separation Agreement provides that the children will spend equal time with each parent.
- [117] An agreement between the parties must be set aside if the court is satisfied the agreement is not in the best interests of the child: FLA, s. 44(4). I have considered the factors set out in s. 37(2) of the FLA in assessing the children's best interests. In this section, I review the factors which significantly affect my decision.

History of the Children's Care

- [118] Since both parties have been significantly involved in the children's care, I find this to be a neutral factor.

Ability of Each Parent to Exercise their Responsibilities

- [119] I am satisfied both parents love their children and want to have a positive relationship with them. However, this is a high conflict dispute and neither parent has exhibited exemplary behaviour in their communications with each other or with the children. This is especially the case with the claimant, who often uses inflammatory and derogatory language when speaking to, or about, the respondent.
- [120] The parties' communications exhibit hostility and distrust that has become entrenched over time. Their communications are not constructive and are often without the best interests of their children in mind.
- [121] The claimant has sent many emails to the respondent which are wholly inappropriate. The claimant testified that his mental health issues cause him to make inappropriate comments to the respondent on occasion, especially when communicating with her electronically. It may be an underlying reason for his behaviour toward the respondent. However, there was no expert evidence regarding the claimant's health issues[3]. As a result, I do not have the medical evidence to make such a finding.
- [122] The claimant has a rotating shift schedule at work. He admits he has difficulty keeping track of the children's appointments. The parties have addressed this issue by having the respondent be largely responsible, even during the claimant's parenting time, for ensuring the children attend their appointments and activities. This is a reasonable and responsible accommodation.

- [123] I am concerned with the extent to which the claimant involves A.B. in the disputes between him and the respondent. This culminated in A.B. moving to his father's place full-time on July 1, 2018 and attempting to take M.B. with him.
- [124] I also have concerns with the children being home alone simply so the claimant can exercise his parenting time. He is not present to interact with the children, a primary goal of parenting time. I find it is unreasonable to keep the children from the respondent when the claimant is not home. As Ms. Harder stated in cross-examination, allocation of time that one parent is working to the other parent maximizes parenting time.
- [125] I find it very troubling that the claimant encourages the children to find fault with their mother. He attempts to curry their favour by pointing out the respondent's faults. He also gets angry with the children for bringing items that have been purchased for them between the houses. This behaviour is not in the best interests of the children.
- [126] For her part, the respondent made an inappropriate comment when she advised A.B. that the claimant is mentally unstable. The respondent tends to micro-manage situations. One example is when she made an issue about not being able to contact M.B. when the claimant took the children to Hawaii. However, when she later took M.B. to California, she did not provide any contact information to the claimant, apart from her mother's telephone number in B.C. Another example is when A.B. had many homework assignments in June 2018. Despite being unwilling or unable to help A.B. with his studies, she would not allow him to go to the claimant's home as often as A.B. wanted to go to study. She insisted this was her parenting time.
- [127] Further, the respondent controls the parenting schedule. A review of the calendar the respondent drafted looks less fair than the calendar the claimant drafted. The respondent testified the parenting schedule is too chaotic and there are too many transitions midweek. She is also understandably concerned that the children had no parental supervision when the claimant accepts overtime night shifts when the children are in his care. However, she could have approached these issues in a more conciliatory manner.
- [128] According to Ms. Harder, The respondent at times finds it hard to hide her negative feelings regarding the claimant. The respondent admitted that prior to June 2018 "she told A.B. that his dad has mental health issues, doesn't treat people appropriately and has been abusive to her". Ms. Harder concluded that the respondent "demonstrates a genuine desire to support a positive relationship between [the claimant] and the children, however she has difficulty protecting them from some of her negative feelings toward him". Ms. Harder found the respondent to be highly reactive and exposed the children to some of the conflicts between her and the claimant. The respondent also discussed parts of the Separation Agreement with the children.

- [129] An example of the respondent reacting to the claimant was her email to the claimant, which she forwarded to his sisters. This added fuel to the fire. However, Ms. Harder confirmed in cross-examination that the respondent has a greater ability than the claimant to shield the children from the conflict between the parents.
- [130] Apart from her reactivity, I have no concerns with the respondent's ability to parent her children. I also note that the respondent, the claimant, and Ms. Harder testified the children have a good relationship with the respondent's husband. The claimant confirmed A.B. loves talking about him. According to the evidence, the children are safe and well taken care of in this family unit.
- [131] I have concerns about the claimant's parenting skills given his negative influence on A.B. There is documentary evidence of the claimant placing A.B. in the middle of the disputes between his parents. In July 2019, the claimant involved A.B. in a text message communication between himself and the respondent regarding A.B.'s passport. Placing a teenager in the middle of the parenting conflict is evidence of very poor judgment.

Impact of Family Violence

- [132] I have serious concerns with the claimant's abusive behaviour toward the respondent which has been witnessed by the children. He has made disparaging and inappropriate comments, including telling M.B. he wishes her mother would die. In her cross-examination, Ms. Harder corroborated that M.B. was emotionally distressed by this comment. The children have been exposed to the conflict between their parents on many occasions.
- [133] There was an example of the claimant arriving at the respondent's home unannounced. This is unacceptable given the poor relationship between the parties. The claimant has a history of verbal violence toward the respondent and has made extremely troubling comments about her, even to the children. There have been no allegations of physical violence between the parties since they separated.
- [134] The claimant testified the medication he is taking for his depression and anxiety causes him to get emotional. He testified that "doesn't make for good emails". There was no expert evidence before me permitting me to take the claimant's medical issues into account.
- [135] The claimant's abusive comments falls within the definition of family violence in s. 38 of the FLA. Section 1 of the FLA provides family violence includes "psychological or emotional abuse of a family member, including (i) intimidation, harassment, coercion or threats".
- [136] Family violence includes derogatory and demeaning comments made in front of children: *K.R. v. J.D.*, unreported, Vancouver Registry Action E141270, aff'd 2018 BCCA 232. In *L.A.R. v. E.J.R.*, 2014 BCSC 966 at para. 149, Justice Schultes found a father's disparaging comments to the children's mother, in their presence, as well as the father showing the oldest child acrimonious text messages between the parents, amounted to emotional abuse.

[137] I find the claimant engaged in family violence.

Actions of the Person Responsible for Family Violence

[138] The family violence is directed at the respondent, not explicitly at the children. Consequently, I do not believe the violence impairs the claimant's ability to care for the children and meet their needs. However, the claimant lacks insight into the impact his negative comments and his undermining of the respondent's parental role have on the children.

[139] The claimant should exercise more control and refrain from making negative comments about the respondent in the presence of the children.

[140] I find it is in the best interests of the children for there to be minimal communications between the parents. Communications between the parents should not be shared with the children. In addition, the conduct orders put in place by Crossin J. continue to govern the parties.

Nature and Strength of the Relationships between the Children and Significant Persons in the Children's Life

[141] Ms. Harder observed a lack of emotional connection between the respondent and A.B. I note this was during a period when the respondent had virtually no parenting time with A.B. and A.B. was being highly influenced by his father's views. In addition, the respondent's son from her previous relationship, her brother, Mr. S., and her husband, all testified that the respondent is a good mother. In these circumstances, I place little weight on Ms. Harder's observations in this regard.

[142] Both parents connect with their children, albeit in different ways. The children have strong emotional ties to their parents. The strength of the relationship of the children with each parent is a neutral factor in this case.

Children's Views

[143] In terms of the children's views, A.B. is at an age where his views are important. However, it is clear that the claimant has undermined A.B.'s relationship with his mother. Justice Arnold-Bailey summarized the principles to apply in these circumstances in *I.S. v. D.S.*, 2010 BCSC 306:

[126] I note that the courts generally support placing a great deal of weight on the views and preferences of children, particularly those over 12 years old, but there are clear exceptions. One of those exceptions is when one parent has undermined the child's relationship with the other parent.

- [127] For example, in [A.A. v. S.N.A., 2009 BCSC 387], Martinson J. declined, at para. 64, to interview the child in question "[b]ecause of the attachment disorder, it is unlikely that [the child] would be in a position to make independent choices which are in her best interests and advise the Court of those choices". This refusal was despite a great deal of evidence that seemed to indicate that the child preferred to live with her mother, with whom she was eventually ordered to have no contact with for at least a full year.
- [128] In [A.G.L. v. K.B.D. (2009), 93 O.R. (3d) 409 (S.C.J.)], McWatt J., while considering the views of the three children who had been alienated from their father and did not want to live with him, stated at para. 148: "I find that they have formed their views and preferences solely from the unrelenting influences and behaviour of [the mother]". None of the children had been able to express a reason for not wanting access with their father, and as a result McWatt J. gave little to no weight to the children's views and preferences.
- [144] Through his conduct, the claimant has encouraged A.B. to resist seeing his mother. I am unable to separate his influence from A.B.'s views of his mother.
- [145] Ms. Harder's opinion is that A.B. should have more time with his father. In my view, A.B.'s views have been tainted by the information from his father. As a result, I do not place much weight on Ms. Harder's comments that A.B. aligns with his father and therefore should spend more time with him going forward. Nor I am inclined to provide the claimant with primary parenting time of A.B. when he has manipulated A.B.'s views of his mother and cast her in a negative light.
- [146] A.B. continued living full-time with his father until August 2019 when Crossin J. ordered that he spend 50% of his time with his mother. After the order, A.B. began spending 50% of his time at his mother's house and there have been no issues with this arrangement. I note that M.B. wants to see both parents and continues to spend 50% of her time with each parent, consistent with the Separation Agreement.
- [147] I will say more about the children's views in the next section.

Children's Health and Emotional Well-being

- [148] The claimant lacks insight into how his negative and wholly inappropriate comments affect the children or how his actions contribute to the co-parenting conflict between him and the respondent. He did not, or chose not to, see how emotionally distressing it was for M.B. to hear him indicate that he wanted the respondent to die. He intentionally undermined the respondent's relationship with her children, resulting in emotional harm to them both. Ms. Harder determined that he does not demonstrate an awareness of how his personal contributions negatively affect others. The claimant's above conduct is not in the best interests of the children.

- [149] A.B. advised Ms. Harder that he thought he and M.B. being separated was the "worst option". He advised Ms. Harder that he does not like being apart from M.B. and thinks they should both be at the same parent's home at the same time. M.B. also likes to be with her brother.
- [150] I find it is better for the children's emotional well-being for them to be parented together. I am not persuaded that having A.B. in one household while M.B. is at the other is healthy for either child.
- [151] The maximum-contact principle set out in s. 16(10) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) is not replicated in the FLA. However, maximum contact with both parents is consistent and harmonious with promoting the children's emotional well-being in s. 37(2) of the FLA: *K.L.G. v. D.J.T.*, 2013 BCSC 1684 at para. 104.

Children's Need for Stability

- [152] The respondent seeks to reduce the claimant's time with the children. She wants them with her full-time during the school weeks. The claimant would have time with the children on weekends when he is not working. The respondent argues the children should be with her during the school week to provide stability to the parenting schedule so the children can focus on their academics. The respondent believes she is more suited to provide a stable schedule for the children because of her regular work schedule and her general ability to organize. She ensures the children attend their appointments and their extracurricular activities.
- [153] One destabilizing factor was the respondent mentioning the possibility of moving to Chilliwack because houses there are cheaper. This upset A.B. and pushed him toward his father. However, the respondent testified this was never a serious plan. She has purchased a condominium relatively close to the claimant's place.
- [154] I was not persuaded that the claimant cannot provide sufficient stability to the children. However, I agree that the claimant should not have parenting time with the children when he is working afternoon or night shifts because he is not available to parent.

Conclusion Regarding Parenting Time

- [155] The status quo is an important consideration when determining parenting time. Moreover, contact with both parents is a factor I should consider under s. 37(2) of the FLA. As stated in *A.P. v. S.T.*, 2019 BCSC 1780:
- [51] In addition to the factors set out in s. 37 this Court has also considered it important to maintain the right of a child to know and have a healthy relationship with both of their parents. This may include ensuring that the child has maximum contact with both parents: see, *F.K. v. M.K.*, 2010 BCSC 563 at para. 147, citing *V.S.J. v. L.J.G.*, [2004] O.T.C. 460 (S.C.J.) at para. 143.

- [156] Children should have maximum contact with both parents where possible.
- [157] While extremely concerning, I do not find the family violence indicates that the claimant is unable to care for the children. Although it affected the children, the violence was not directed at them. The children love their father and want him in their lives. The children have a strong emotional connection with the claimant.
- [158] I do not find that the claimant's conduct is at the level where I should significantly reduce his parenting time with his children. This would punish the children for the wrongdoing of the parent. The claimant's past behaviour should not deprive the children of time with their father as this would not be in their best interests. While they have different parenting styles, the children will benefit from regular exposure to both parents. However, to be very clear, the claimant's behaviour must change.
- [159] The family violence does indicate that there should be no direct contact between the parties, and no telephone or electronic communications to which the children could be exposed.
- [160] I find it is in the best interests of the children to have equal parenting time with both their parents. The evidence of family violence, while troubling, has not persuaded me to vary the status quo as set out in the Separation Agreement. This is subject to the respondent having the children when the claimant works evening or nights shifts and cannot be home with the children.

Police Enforcement Clause

- [161] The respondent seeks a police enforcement clause to enforce parenting time.
- [162] Police enforcement orders are not granted unless there are extraordinary circumstances and no other remedy is sufficient to enforce compliance: D.J.S. Not only are enforcement clauses harmful to children, the police have important work to do and should not be diverted from their usual law enforcement responsibilities unless absolutely necessary. Here, there is no need for an enforcement order when A.B. has been spending 50% of his time with his mother since Crossin J. confirmed the Separation Agreement governs the parties. These facts do not present the type of extraordinary circumstances where the police need to be involved.
- [163] It is expected that both parties comply with court orders and their Separation Agreement without the need for an enforcement clause.

Parental Responsibilities

- [164] Neither party pleaded changes to parental responsibilities. Justice Donegan set out the function of pleadings in *Simon v. Canada (Attorney General)*, 2015 BCSC 924, aff'd 2016 BCCA 52:

- [17] The function of pleadings is to clearly define the issues of fact and law to be determined by a court. A plaintiff must state, for each cause of action, the material facts. Material facts are those necessary for the purpose of formulating the cause of action. The defendant then sees the case to be met and may respond to the allegations. By referring to the pleadings, the court will understand what issues of fact and law it will be called upon to decide: *Homalco Indian Band v. British Columbia*, [1998] B.C.J. No. 2703 (S.C.) at para. 5.
- [165] The purpose of pleadings is to ensure the parties know the case they have to meet and the court is aware of the issues it must decide. In *Taylor v. Blenz The Canadian Coffee Company Ltd.*, 2019 BCSC 906, Justice Warren articulated the general principles to consider if there is an application to amend pleadings:
- [32] The general approach to applications to amend pleadings is generous and non-technical so as to permit amendments that are necessary to determine the real questions between the parties, considering always the interests of justice: *Century Services Inc. v. LeRoy*, 2015 BCCA 120 at para. 10. In *Preferred Steel Construction Inc. v. M3 Steel (Kamloops) Ltd.*, 2015 BCCA 16 at para. 47, the Court of Appeal emphasized the need for flexibility in dealing with applications to amend pleadings given the evolutionary quality of litigation and the resulting requirement to ensure that pleadings adapt to changing circumstances. These foundational principles were recently reiterated in *Swiss Reinsurance Co. v. Camarin Ltd.*, 2018 BCCA 122 at paras. 22 and 23.
- [33] Granting leave to amend pleadings is a highly discretionary decision. Ultimately, the question is whether it is just and convenient to allow the amendments: *Swiss* at para. 21; *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.* (1996), 19 B.C.L.R. (3d) 282 (C.A.) at paras. 36-38.
- [34] The objective is to balance the interests of justice and convenience in relation to all the parties. Delay, the reasons for delay, the expiry of a limitation period, the presence or absence of prejudice, and the extent of the connection between the proposed amendments and the existing claims are all factors to be considered and none, on their own, are decisive: *Teal Cedar Products* at paras. 41 and 67.
- [166] Here, neither party put the other on notice through their pleadings that parental responsibilities were in issue. Both parties testified regarding parental responsibilities and I would have considered granting leave to amend the pleadings had either party applied. No application was before me.
- [167] In any event, parental responsibilities are set out in the Separation Agreement and I was not persuaded by the evidence that there is any reason to change these provisions. These provisions in the Separation Agreement remain in effect. If the parties are unable to agree, a parenting coordinator can assist.

Retroactive and Prospective Child Support

- [168] Pursuant to their Separation Agreement, neither party pays child support to the other based on their similar incomes.
- [169] The claimant argues that the respondent should pay child support retroactive from July 1, 2018 to August 2019 when A.B. was in his sole care. D.B.S. requires this court to consider, inter alia, whether there was delay in bringing a claim or blameworthy conduct on the part of the payor parent. There was no delay in bringing the claim. The claimant pleaded child support for A.B. in his notice of family claim on July 5, 2018, just days after A.B. started to live with him full-time.
- [170] However, I find that the claimant actively persuaded A.B. to live with him full-time in violation of the parties' Separation Agreement. It is telling that when Crossin J. confirmed the Separation Agreement provisions continue to govern the parties, A.B. began spending 50% of his time with the respondent without incident.
- [171] The claimant is guilty of blameworthy conduct by not respecting the 50/50 parenting time schedule that both parties agreed to post-separation. In my view, he should not be financially rewarded for such behaviour. Therefore, I decline to order retroactive child support for the period of time in which A.B. did not regularly live with his mother.
- [172] Going forward, the claimant argues I should take Mr. P.'s income into account when considering child support. I do not have Mr. P.'s income before me but it was not denied that he contributes to the respondent's household finances. Here, I find the comments of Justice Branch in *Nair v. Nair*, 2020 BCSC 677 helpful:
- [17] Mr. Nair argues that any child support adjustments should take into account that Ms. Nair now receives some support from a new partner. Although her new partner declined to provide any income tax information, it is reasonable to infer that he is employed, and it is also known that he received \$250,000 in lottery winnings. Ms. Nair also acknowledges that the partner was contributing to certain expenses at their home. However, on the other side of the ledger, Mr. Nair also has a new partner who is contributing to the expenses of his home. To the extent that the broader family resources should be considered, I find that this new partner issue is effectively neutral as between the two households. Most importantly, there is no indication that the children will have a substantially different lifestyle as between the two households after the adjustment made below: *B.P.E. v. A.E.*, 2016 BCCA 335, at paras. 49-65.
- [173] Similarly, there was evidence that the claimant's wife will be contributing to the household income as soon as she comes to Canada. The claimant testified that J. is a nurse at a teaching hospital in the Philippines. She is likely to be in BC this summer and there will then be two household incomes.

[174] In these circumstances, I am not persuaded there is a substantially different lifestyle between the two households based on Mr. P's income. On the basis of the evidence before me, I decline to consider his income for the purposes of calculating income for child support.

[175] There is no persuasive reason to vary the provisions in the Separation Agreement regarding child support.

Section 7 Expenses

[176] Sections 4.2 and 4.3 of the Separation Agreement stipulate the parties will share s. 7 expenses on a 50/50 basis as long as the expenses are consented to, in advance, in writing. Recently, the claimant has stopped paying for his half of the children's extracurricular activities on the basis that he does not make a sufficient income. He did this unilaterally without availing himself of the dispute resolution clause in the Separation Agreement.

[177] The respondent is asking that the claimant reimburse her for his 50% contribution towards M.B.'s dance and judo lessons, as well as A.B.'s judo lessons. Moving forward, the respondent seeks an order that the parties equally share in orthodontics treatment costs (net of insurance coverage) for the children and one extracurricular activity for each child of their choosing.

[178] Section 7 expenses are to be assessed by taking into account the combined income of the parents, the nature and amount of the individual expense, the nature and number of activities, any special needs or talents of the children, and the overall cost of the activities: Sigalet at para. 69.

[179] Section 7 of the Guidelines requires that any expense be reasonable and necessary. The Court of Appeal in *Bodine-Shah v. Shah*, 2014 BCCA 191 at para. 66 held that necessary means necessary for the child's best interests, and reasonable means reasonable with respect to the means of the spouses, the child, and the family's spending pattern prior to separation.

[180] Here, the parties Separation Agreement states:

4.2 In respect of special or extraordinary expenses, each party's income is approximately equal, so each party will pay 50% of the children's special or extraordinary expenses in each year.

4.3 The parties will only contribute to a child's special or extraordinary expenses if the parties consent to the expenses in advance, in writing. Neither party will unreasonably withhold consent. If the parties cannot agree, they will use the section of this Agreement entitled "Dispute Resolution" to resolve this issue.

[181] Agreement under this clause is not subject to hardship or ability to pay.

- [182] The respondent paid out of pocket for M.B.'s dance and judo lessons without reimbursement from the claimant, as well as for A.B.'s judo lessons. Generally, ordinary extracurricular activities are not s. 7 expenses: Dorey at para. 44. Here, the parties interpreted their Separation Agreement to mean that each child would enroll in one extracurricular activity and the parties would share the cost equally. As a result, unilaterally terminating payments violated the parties' Separation Agreement.
- [183] I order that the claimant pay any outstanding amounts for M.B.'s dance lessons from September 2018 forward. Going forward, the parties will continue to equally share the costs for one extracurricular activity for each child.
- [184] Orthodontic treatments qualify as a proper s. 7 expense. The parties shall share orthodontic treatment costs for A.B. and M.B. that are not covered by their respective insurance plans. The claimant should pay his share for A.B.'s orthodontics treatment forthwith.

Miscellaneous

Mediation

- [185] I have ignored the claimant's comments in his written submissions regarding the parties' mediation.

Appointment of a Parenting Coordinator

- [186] The parties have significant conflict regarding the parenting calendar, vacation times, and various medical appointments. Based on the recommendations of Ms. Harder and the significant and ongoing conflict between the parties, I believe this is an appropriate case to appoint a parenting coordinator pursuant to s. 15 of the FLA: Seganfreddo v. Seganfreddo, 2016 BCSC 1171 at para. 37. While money is tight in both households, at this point money spent on a parenting coordinator is more important than money spent on family vacations and similar activities.
- [187] In terms of vacations, I am not varying the Separation Agreement to provide for three weeks' vacation. The evidence does not establish why four weeks is difficult to schedule. I am also not having the claimant prepare the initial parenting time calendar as he requested. While there have been difficulties with the calendar, this can be handled by the claimant being entitled to his weekend day after his last night shift before transitioning to a day time schedule. The parenting coordinator can assist with other disputes.
- [188] The parenting coordinator is to assist the parents with parenting disputes regarding the parenting calendar, the scheduling of vacation time, the reasonableness of extracurricular activities, booking medical appointments, and similar disputes.

New Arguments and Issues

[189] I am not addressing new arguments and issues not raised at least indirectly in the pleadings. In addition to parental responsibilities, I am not addressing:

- The claimant's request for financial restitution from the respondent for her "deliberately damaging the children's affections to me and my wife J."
- The claimant's request for compensation "for [C.A.S.] deliberately making me sick for the past 3 and a half years and for the many days and months I had to take off work on stress leave because of her."
- The claimant's request for "\$8,500 (just hard costs, flights, condo, car) for the trip to Hawaii that [C.A.S.] ruined for the kids."
- The claimant's request "that [C.A.S.] be told in no uncertain words by "you", about the 2 free access clauses and for her to stop breaking the Separation Agreement."
- The claimant's request that this Court "make [C.A.S.] go through some kind of vetting process or something where she can't start fights directly with us. They have to be approved first before they are sent to me."

[190] I am not overturning Armstrong J.'s order that the parties share equally in cost of the s. 211 report or his order that the respondent is entitled to costs of the September 5, 2018 application in the cause. This trial is not an appeal of those orders.

Disposition

[191] In this case, the parties require a detailed parenting order. I make the following specific orders:

1. Each parent will:
 - i. put the best interests of the children before their own interests;
 - ii. encourage the children to have a good relationship with the other parent and speak to the children about the other parent in a positive and respectful manner;
 - iii. not make arrangements during the other parent's parenting time unless mutually agreed upon 48 hours in advance;
 - iv. not restrict the children from bringing their own belongings between households; and
 - v. comply with the terms of the Separation Agreement, as varied by this order, until it is varied by agreement or court order.
2. The parties' Separation Agreement is varied as follows:

- i. While the 50/50 parenting time is to be maintained, this is subject to the respondent having the children when the claimant works evening or nights shifts and cannot be home with the children. The claimant is to advise the respondent when he is working overtime afternoon or night shifts so that she can take care of the children while he is working such shifts.
- ii. In terms of transitions, the children are to go to the next parent's home after school. On weekends where the children are transitioning, they are to arrive at the other parent's home no later than 10 a.m. When a transition occurs after the claimant's last night shift on a weekend, he should have the children by 11 a.m. on the day following the end of his shift.
- iii. There should be no person-to-person contact between the parents at transitions. If the children are being dropped off by a parent, the parent should not enter the others' building or property.
- iv. If both parents attend the children's school or special events there should be no person-to-person contact between the parents.
- v. The parties are to retain a parenting coordinator within 30 days of the release of this judgment. Within three months of this decision, each parent shall complete a minimum of two individual co-parenting counselling sessions with the parenting coordinator. After this initial counselling, the parenting coordinator is to assist the parents with parenting disputes. This should be tried before accessing the dispute resolution provision in the parties' Separation Agreement.
- vi. The claimant is to choose his vacation dates for the odd numbered years no later than December 15 of the prior year. The respondent will respond with her chosen vacation dates by December 31. The respondent is to choose her vacation dates for the even numbered years no later than December 15 of the prior year. The claimant will respond with his chosen vacation dates by December 31. The parties are to be flexible if dates are required to be changed for a valid reason.
- vii. The days provided in 3.2(e) of the Separation Agreement are not vacation days. Any additional days taken with the children beyond that specified in paragraph 3.2(e) of the Separation Agreement will be considered vacation days.
- viii. Notice is to be given at least four weeks prior to the vacation of the actual destination(s). The non-traveling parent will provide a notarized letter and other necessary travel documents such as the passports at least two weeks prior to the departure date if the children will be traveling outside of the country.
- ix. The claimant is to reimburse The respondent for 50% of the children's extracurricular activities (one activity each) incurred since September 2018, and continue to equally share in extracurricular activity costs for one activity for each child.

- x. The parties are to share orthodontic treatment costs for A.B. and M.B. not covered by their respective insurance plans. The claimant is to pay his share for A.B.'s orthodontics treatment forthwith.
- xi. The claimant will hold the children's Nexus cards. The respondent will hold the passports, social insurance cards, personal health cards, and birth certificates issued in the children's names. These documents will be provided to the claimant when requested for a valid reason. The respondent will not unreasonably withhold such documents.
- xii. Given the significant conflict between the parties when communicating, I encourage the parties to use the OurFamilyWizard application, or a similar application, to address scheduling and appointments instead of emails and texts. If used, they are to split the cost of the application. This is intended to minimize conflict between the parties.

costs

[192] While the respondent was successful on some issues, I do not view either party as having succeeded on their primary issues as pleaded. In these circumstances, each party will bear their own costs.

"MacDonald J."

- [1] There was contradictory testimony regarding whether the respondent and her husband were considering moving to Chilliwack. The claimant testified that the children told him this. The respondent denies that this was ever a serious plan. However, she did not deny this had been discussed with the children.
- [2] The claimant admitted removing certain parts of the recordings.
- [3] The claimant attempted to tender a letter from a doctor into evidence. It was admitted for narrative purposes but not for the truth of its contents. It is improper opinion evidence that did not meet the requirements for expert evidence in R. 13 of the Supreme Court Family Rules.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/08/2020BCSC0807cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/d-a-b-v-c-a-s-2020>

Prepared on 25 October 2026 · Esheria