
CANADA / JUDGMENT

D.H. v. C.H.

2022 BCSC 1315

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1315 D.H. v. C.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.H. v. C.H.,

2022 BCSC 1315

Date: 20220804

Docket: E190511

Registry: Vancouver

Between:

D.H.

Claimant

And

C.H. also known as C.L.

Respondent

Before: The Honourable Justice MacNaughton

Reasons for Judgment

Counsel for the Claimant:

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Counsel for the Respondent:

L. Morfidis

Place and Date of Trial/Hearing:

Vancouver, B.C.

December 13-17, 2021

February 7-9 & 11, 2022

May 18, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 4, 2022

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Introduction

- [1] The parties live in two different communities. D.H. and his new partner, J.M., have purchased an acreage in Mission, BC, on which they hope to operate a lavender farm. C.H. continues to reside in Tsawwassen, BC.

- [2] When C.H. first received notice of D.H.'s intended move, she did not seek to prevent it as D.H. told her that it would not impact their shared parenting arrangement. However, D.H.'s move to Mission has disrupted the parties' shared parenting and caused significant additional conflict between them.
- [3] The primary issue for me to decide is where the parties' two children will attend school in September 2022. I must decide whether they will start school in Mission or will continue to attend school in Ladner, where they have both attended since starting kindergarten. Certain other orders flow from that decision.

The Family Background

- [4] D.H. is 43 years old and C.H. is 44 years old. They began living together in April 2000, married on April 16, 2005, and separated on either January 1, 2016, according to D.H., or on March 2016, according to C.H. D.H. has re-partnered with J.M. C.H. believes that he commenced his relationship with J.M. prior to their separation. Nothing turns on the timing of D.H.'s relationship with J.M., but C.H.'s belief has affected her view of J.M., with whom she was formerly friendly.
- [5] The parties have two children together, K.H., born in July 2009, and J.H., born in November 2014. Individually, I will refer to them by their initials; collectively, I will refer to them as the "children". They are now 13 and seven years of age respectively. In September 2022, K.H. will be starting middle school, and J.H. will be going into Grade 3.
- [6] D.H. testified, and I accept, that he asked C.H. for a divorce the week after J.H.'s birthday in 2015 and that, in January 2016, they told their respective families that they were separating. C.H. was not asked about this in cross-examination and did not testify about the circumstances of their separation. As a result of D.H.'s clear intention to separate in late 2015, confirmed by the parties in January or February 2016, I accept that the date of separation was January 1, 2016, although their physical separation did not occur until March 19, 2016.
- [7] The separation date is only relevant to the division of the parties' pensions and, in the circumstances of this case, the few months' difference will not have a significant impact on their entitlements.

The History of Parenting

- [8] Since September 2016, D.H. and C.H. have shared parenting time with their children on a 3-3-4-4 schedule. At a Judicial Case Conference on May 3, 2019, by consent, Justice Macintosh ordered a 2-2-5-5 schedule for a six-week period in July and August 2019. On September 3, 2019, the parties returned to a 3-3-4-4 schedule.

- [9] In December 2019, D.H. refused to return the children to C.H. On December 20, 2019, Justice Ball ordered the parties to return to the 3-3-4-4 schedule. Under the 3-3-4-4 schedule, the children were in D.H.'s care from Sunday to Wednesday, until D.H. dropped them off at school, and in C.H.'s care starting on Wednesday, with pick up from daycare after work, to Friday evening. They alternated Saturdays commencing at 9:00 a.m. (the "Ball Order"). To implement the schedule, D.H. was ordered to return the children to C.H. on Saturday, December 21, 2019, at 9:00 a.m. There have been issues regarding whose care the children are to be in during the school day on Wednesday, but those issues will be resolved based on the outcome of this trial.
- [10] Since the start of the pandemic in March 2020, D.H., who was then working for the City of Delta, began working remotely and did not put the children in daycare during his parenting days. J.M., who is not employed outside of the home, started homeschooling the children. The decision to homeschool the children was made without C.H.'s consent.
- [11] On November 18, 2020, D.H. advised C.H. that he would be moving to Mission in the last week of January 2021. D.H. and J.M. had purchased a small farm with money from the sale of J.M.'s townhouse and settlement funds she received for injuries she suffered in two motor vehicle accidents. D.H. did not provide the address of his new residence due to "concerns about privacy and safety" but said he would provide her with the address closer to the move date. During his evidence, he testified that he was concerned that C.H. might interfere with the transaction. On the evidence, that concern is inexplicable. As to the impact of the move on the parties' parenting schedule, D.H. wrote:
- I want to be clear that while the new home is further away from Ladner I'm not asking you to change the schedule or adjust our current parenting time or other changes like children's school.
- [12] C.H. testified that, as a result of D.H.'s assurances, she did not challenge the move.
- [13] D.H. and J.M. moved to Mission at the end of January 2021.
- [14] On March 2, 2021, the parties appeared before Justice Fleming. D.H. applied for document disclosure and for a s. 211 report, and C.H. applied for child support and certain other orders. Justice Fleming ordered that Dr. Elterman prepare a s. 211 report with respect to the needs and best interests of the children, the views of the children, and the ability and willingness of the parties to satisfy the children's needs. The s. 211 report was to contain recommendations for guardianship and parental responsibilities, how they should be allocated between the parties, and for a parenting schedule that was in the best interests of the children. Justice Fleming also ordered D.H. to pay child support.
- [15] Dr. Elterman prepared a report dated August 16, 2021.
- [16] When the school year started in September 2021, and the children's elementary school resumed in-classroom teaching, the children did not attend school during D.H.'s parenting time from Monday to Wednesday. Instead, J.M. continued to homeschool them.

- [17] When C.H.'s counsel raised concerns about the continued homeschooling, D.H.'s counsel responded that it was D.H.'s intention to continue to homeschool the children "due to being unable to practically take the children to school [in Ladner] from Mission, as it coincides with his work hours".
- [18] The parties had a dispute about the pickup and drop-off of the children on the Wednesday exchange. D.H. objected to driving the children to Ladner and, at one point, insisted that as the Ball Order provided for picking up on Wednesday after daycare, and "daycare" was now at the farm in Mission, C.H. was required to drive to Mission to pick up the children for the start of her parenting time. C.H. insisted that D.H. should have considered the additional driving time before deciding to move to Mission. The parties were unable to compromise on a pickup and drop-off location.
- [19] The parties appeared before Justice Baker on September 9, 2021, for the purposes of D.H.'s application to vary the Ball Order to implement Dr. Elterman's recommendations, and to terminate the child support ordered by Justice Fleming effective September 1, 2021. Justice Baker dismissed D.H.'s application.
- [20] The parties next appeared before Justice Mayer on October 15, 2021, for the purposes of C.H.'s application to vary Justice Ball's order to have the children reside with her during the school week and with D.H. on three of every four weekends. Justice Mayer ordered, by consent, that Justice Ball's order would remain in place until further order of the court; the children would remain enrolled at their current school and attend from Monday to Friday regardless of who had parenting time on the relevant day; D.H., or someone on his behalf, would pick the children up after school on Wednesdays and drop them off at the Tim Hortons located at 1982 96th Ave, in Surrey, BC, at 5:30 p.m. where they would be picked up by C.H.; and the exchange on every other Saturday or Sunday would be at 9:00 a.m. at the same Tim Hortons.
- [21] Dr. Elterman was cross-examined at trial at C.H.'s request. I have considered Dr. Elterman's recommendations, and his trial evidence, in reaching my conclusions in this case. I also interviewed the children about their wishes and what they would like me to consider in making my decision. I explained that while I would consider their wishes, the decision was mine to make.

Conclusion

- [22] On the basis that the parents will continue to reside in Mission and Tsawwassen, and for the reasons that follow, I have concluded that the parenting schedule should be varied effective September 2, 2022, so that the children will attend school in Mission, and live with D.H. and J.M. during the school week, but spend extended periods of time with their mother on weekends, school professional development days, and during school holidays.

- [23] During the closing submissions, which were made some months after the last day of evidence, I learned that C.H. had lost her job and had decided not to seek alternative employment until after she had completed her undergraduate degree, which was nearing completion. Her counsel advised that she was considering moving closer to Mission.
- [24] If C.H. moves closer to Mission, the parents are to commence a week-on-week-off parenting schedule.
- [25] Certain other orders flow from my decision and will be dealt with below.

Considerations Leading to My Parenting Decision

- [26] In my interview of the children, it was clear that they are close to each other despite the differences in their ages. I agree with Dr. Elterman that it is not in the children's best interests to split them up. As a result, the children need to be enrolled in schools in one or the other of their parents' communities.
- [27] Pursuant to s. 37 of the Family Law Act, S.B.C 2011, c. 25, when making parenting orders, the court must only consider the best interests of the children. Section 37(2) provides that, in determining what is in the best interests of the children, all of their needs and circumstances must be considered including, as they apply to this case:
- (a) their health and emotional well-being;
 - (b) their wishes;
 - (c) the nature and strength of the children's relationships with others;
 - (d) the history of the children's care;
 - (e) the children's need for stability;
 - (f) the abilities of the guardians to exercise their responsibilities;
 - (g) the impact of family violence on the children's safety, security or well-being;
 - (i) the appropriateness of a parenting arrangement requiring parental cooperation.

[28] I will consider each of those factors based on the evidence I heard.

The Children's Health and Emotional Well-Being

- [29] There is clear evidence that C.H. and K.H.'s relationship is strained, although the reasons for that are not at all clear.
- [30] Both parents agree that K.H. was a healthy but difficult baby who demanded a lot of the parties' time and attention. She cried a lot, and the parties had a very difficult time getting her to sleep. D.H. said that in the few years following K.H.'s birth, he did not think they would survive.

- [31] C.H. was the stricter parent, expecting better behaviour from K.H. than D.H. did.
- [32] K.H. suffers from anxiety and has been attending counselling with Juliana Fruhling, who also provides counselling to J.M. The counselling started without C.H.'s consent despite the fact that the parties shared parenting responsibilities.
- [33] D.H. testified that in the summer of 2019, K.H. became more afraid of her mother's anger. On a number of occasions, she secretly called him from her mother's home, crying, asking for his help and for him to come and pick her up. D.H. said that he told K.H. that he could not help her. He testified that he felt like a total failure for having to say that to his daughter.
- [34] D.H.'s reaction worsened matters between K.H. and her mother. Instead of reassuring K.H. that she was safe in her mother's care, he said he could not "help" her, suggesting that K.H. needed help. D.H. then contacted the police and asked them to do a welfare check on the children. C.H. described the police attending at her home and concluding that the children were safe with her.
- [35] There was also an incident in November 2019 when a man attempted to get into C.H.'s apartment when the children were in her care. K.H. saw the man and was frightened. C.H. said she called the Delta police to report the incident. She tried to reassure K.H., who was clearly shaken. C.H. later learned that the man was a friend of her landlady's son and he had been trying to enter the home through the wrong door. After the incident, K.H. was afraid to go with C.H. for her parenting time.
- [36] C.H. testified that, on December 9, 2019, she received a phone call from a social worker at the Ministry of Children and Family Development ("Ministry") advising her that there had been a complaint made. D.H. acknowledged that he called the Ministry. A Ministry representative attended at C.H.'s home on December 26, 2019. They looked around the home, interviewed her, and spoke to the children privately. The Ministry did not have any concerns, and no further inquiries were made.
- [37] It was at about this time that D.H. refused to return the children to C.H.'s care, leading to the Ball Order.
- [38] At another point in his evidence, in reference to C.H., D.H. said that he did not believe that his children should be living with an "abuser". He said that K.H. had spoken to the police and told them that she was scared that her mother was going to shoot her and her brother with a handgun. D.H. took K.H. to the police station to make the report. D.H. said that K.H. had called social workers and written to her school principal seeking help and asking why they would not help her.
- [39] When questioned by C.H.'s counsel, Dr. Elterman testified that he did not think taking a child to the police-station was appropriate and D.H. should not have done it.

- [40] D.H.'s reaction to K.H.'s expressed fears is concerning. He did not calm K.H.'s fears or try to find out what was at the core of her anxiety. He testified that he had seen C.H.'s anger and "it was terrifying". He testified that he knew "how scared my kids are of her". He testified that, on her own initiative, K.H. went to speak to the police, called the child helpline, and wrote to the principal of her school seeking help. Whether these steps were on K.H.'s initiative, D.H. clearly assisted her, and doing so escalated her anxiety. D.H.'s involvement in secret calls with his daughter and his handling of K.H.'s expressed fears have contributed to K.H.'s anxiety and showed a lack of parental judgment on his part.
- [41] D.H.'s evidence about C.H. as a parent was exaggerated and overly emotional. If he truly believed that his children were at risk in C.H.'s care, he did not express that to Dr. Elterman. Instead, as reported at page 8 of Dr. Elterman's report, D.H. expressed concerns about the "cycle of abuse" continuing. When he was asked to explain what he meant he said that C.H. withholds affection and the children are not allowed to share their feelings. He said that C.H. tells them they should not cry or ignores them.
- [42] The validity of K.H.'s concerns was not borne out in K.H.'s interview with Dr. Elterman. At page 19 of his report, he said that K.H. told him that she and her mother get along pretty well except that they get into arguments sometimes. When asked what their arguments were about, K.H. said "I can be mean sometimes because I don't think she actually listens to me". She said that C.H. yells at her and J.H. when they do not listen to C.H. and "don't respond".
- [43] At page 27 of his report, Dr. Elterman said that neither of the children demonstrated any nervousness or anxiety during the time that he observed them with C.H. He said that from time to time, C.H. and K.H. chatted, particularly after he asked a question and they both consecutively answered. On a couple of occasions, when C.H. spoke, K.H. turned her head slightly away and looked up at the ceiling. He said her behaviour was clearly directed at him and indicated a certain amount of posturing on K.H.'s part.
- [44] I conclude that D.H. is, at least in part, responsible for the difficulties in the mother/daughter relationship. Nonetheless, those difficulties are real, and Dr. Elterman recommended that they attend counselling together. C.H. is not blameless. Although she received Dr. Elterman's report in August 2021, she did not seek D.H.'s consent to start counselling with K.H. until January 2022. At trial, she had only recently begun that counselling.
- [45] Both parents have work to do in order to be able to meet K.H.'s emotional needs, but I conclude that, with self-reflection and work, both are able to do so. C.H. does not realize the seriousness of the difficulties in her relationship with K.H., and D.H. does not realize that by his suggestion that he is unable to "help" K.H. when she is in her mother's care, he is, in fact, affirming that K.H. is at risk and needs help.

- [46] I am satisfied on the evidence that both parents are able to meet J.H.'s health and emotional needs. His relationship with both parents is much less complex than his sister's. He is, however, affected by the strain or conflict between his mother and sister.
- [47] Dr. Elterman noted that the strain affects J.H. a great deal as he has to witness it. J.H. similarly experiences anxiety, but not to the same extent. He has also been attending counselling with Ms. Fruhling.

The Children's Views

- [48] K.H. told Dr. Elterman that she wished to primarily reside with her father in Mission during the week, and with her mother and brother in Tsawwassen on the weekends.
- [49] K.H. described to Dr. Elterman the difficulties in her relationship with her mother, feeling closer to her father, and getting the most help with her school work from J.M. She also expressed a dislike for the hours she spent in daycare during her mother's parenting time. I note that this is not going to be an issue in September 2022 as K.H. will no longer be attending daycare.
- [50] In her interview with me, K.H. also expressed concern about the amount of time she spends in a car driving between her father's home and her mother's home in Tsawwassen.
- [51] J.H. was six years old when he was interviewed by Dr. Elterman. He said that he saw his mom and dad the right amount of time. He did not want the parenting time or arrangements to change. He liked being around his sister. He said he gets the most help with his school work from J.M.
- [52] In his interview with me, J.H. said he wished to primarily live in Mission. This represented a change in his views. I suspect that his views have been influenced by his sister's strong views and the fact that he did not want to be separated from K.H. The difference in their ages and maturity mean that J.H. is susceptible to his sister's influence.

The Nature and Strength of the Children's Relationships with Others

- [53] On the evidence of the parties and their witnesses, it is clear that both parents deeply love their children and that the children have strong relationships with their extended families on both sides. It is also clear that they have friendships developed in school.
- [54] Both children expressed real affection for J.M., and she plays an important role in their lives. After interviewing them, I concluded that, when they are with their mother, they feel constrained in their ability to talk about J.M. and would like to be more open with her about their feelings for J.M.
- [55] C.H. believes that J.M. was, in part, responsible for the break-up of her marriage and suspects that D.H. and J.M. were in a relationship before the separation. The antipathy between the two women was palpable in the courtroom.

- [56] J.M. has been a constant in the children's lives since at least 2017. She spent a lot of time with them during the pandemic and was principally involved in their homeschooling. It is not surprising that they feel that they get more support from her than from either of their parents with their school work. As it appears that the relationship between D.H. and J.M. is stable and that she will continue to play an important part in the children's lives, both women need to learn to respect the importance of the other's role.

The History of the Children's Care

- [57] I accept C.H.'s evidence that, after K.H.'s birth, she was her primary care parent. It was clear from the evidence that D.H. was working hard to make a success of Fire and Fuel, the joint business they then operated. It had been affected by the economic downturn in the year before K.H. was born. The parties were financially stressed as C.H. did not qualify for maternity leave benefits.
- [58] C.H. was responsible for feeding, bathing, changing, and entertaining K.H. She said that she took K.H. on walks or for day trips so that D.H. could work uninterrupted. K.H. was in full-time daycare when she was 18 months old so that C.H. could return to work. The parties needed her income.
- [59] Over time, D.H. took on more responsibility for K.H.'s care, and since separation, both parents have been actively involved with both of their children.
- [60] After D.H. shut down Fire and Fuel, he started working for Paul Cheung, one of his former customers. Mr. Cheung was an entrepreneur who owned 56 cars that he rotated through Fire and Fuel. In 2013, Mr. Cheung hired D.H. to work with him at an airport hotel he owned. D.H. described himself as Mr. Cheung's "fixer".
- [61] Mr. Cheung purchased a farm in Ladner to store his cars. His in-house construction crew was based out of the farm. For about eight months, and until a farm house on the property was renovated, the parties and K.H. lived in a double-wide trailer on the property. They moved into the farmhouse in February 2015. After her paid maternity leave, C.H. took an extended unpaid leave from her then employment with the Ministry of Forests. She was still on leave when the parties separated.
- [62] After separation, D.H. spent limited time with J.H., but, since approximately September 2016, the parties have had a shared parenting regime. That schedule was formalized by the Ball Order.

The Children's Need for Stability

- [63] Both K.H. and J.H. have lived in a number of homes during their lives. In her 12 years, K.H. lived in the parties' Burnaby home, at two different places in Maple Ridge, on Mr. Cheung's farm, and in three different properties with her father and another three with her mother.

- [64] In his seven years, J.H. lived on Mr. Cheung's farm and in three different properties with his father and another three with his mother.
- [65] C.H. is still renting a property but expects that this will change due to an inheritance she received from her late mother. She did not say that she had any firm plans.
- [66] D.H. is now settled on the farm in Mission. K.H. and J.H. have their own bedrooms at the farm and said that they are happy there. C.H.'s residence is likely to change again.
- [67] K.H. and J.H. have attended the same elementary school in Delta since they each started school.
- [68] If K.H. and J.H. live in Mission, they will be changing schools. However, as K.H. is going into Grade 8, she would have changed schools in September 2022 in any event. J.H. is going into Grade 3.
- [69] The children have spent time in the Ladner/Delta area and in the South Surrey/White Rock areas, and K.H. spent the first four years of her life in and around Maple Ridge. There is no evidence that they have had difficulty in adapting in the past, and, as it is now possible that C.H. will move from Ladner/Delta, the children's living situation might well have changed in any event.
- [70] C.H. did not give any evidence about the plans she has in place for K.H. in September 2022 when she will be too old to be in daycare.
- [71] At trial, C.H. was employed with a law firm and worked hours that would result in K.H. being home alone until C.H. arrived home with J.H. Although many 12-year-olds are home alone after school, in Mission, K.H. will have the assistance of J.M. who does not work. She will be able to do her homework and free up her weekends for when she is spending time with C.H.

The Ability of C.H. and D.H. to Exercise Their Parenting Responsibilities

- [72] There was no evidence that either party is unable to exercise their parenting responsibilities.

The Impact of Family Violence on the Children's Safety, Security or Well-Being

- [73] There is no evidence of family violence in this case. Counsel for D.H. argues that C.H.'s refusal to accept the children's views as to where they wish to live and to acknowledge the difficulties in her relationship with K.H. is "akin" to emotional abuse as defined in the FLA. I do not accept that argument.
- [74] First, based on Dr. Elterman's report as set out below, the children had different views about where they wished to live. Second, C.H. has engaged in counselling and is now attending counselling with K.H. She has not refused to acknowledge the difficulties in her relationship with K.H. and, as I have found, D.H. has contributed to those difficulties.

The Appropriateness of an Arrangement Requiring Parental Cooperation

- [75] To date, the parties have not demonstrated their ability to cooperate effectively on issues relating to the children.
- [76] D.H. blames C.H. for the fact that he spends excessive time driving the children to and from Mission for his parenting time, and I accept that this has increased the conflict between the parents. However, it was D.H. who chose to move to Mission knowing that it would create difficulties for the parties' shared parenting arrangement. The parenting arrangement included a mid-week and weekend parenting exchange.
- [77] By the time D.H. notified C.H. of his pending move to Mission, he and J.M. had already put in an offer on the Mission property. He was not acting cooperatively when he made that decision based on an irrational belief that C.H. would somehow interfere with the transaction.
- [78] Both parents have failed to appropriately communicate with the other. For example, D.H. arranged counselling for K.H. and J.H. without consulting C.H. The fact that Ms. Fruhling provides counselling to J.M. and, to a lesser extent to D.H., is problematic as she may be unable to objectively view or assess the mother/daughter relationship. D.H. and J.M. elected to homeschool K.H. and J.H., while they were in their care, without discussing it with C.H. On the other hand, C.H. tried to register J.H. in Kindergarten under her maiden name, and C.H. has not been supportive of K.H.'s and J.H.'s relationship with J.M.
- [79] The tone of D.H.'s written communication with C.H. is unnecessarily antagonistic, and, as a result, she does not always respond.
- [80] The parties would benefit from a communication tool to assist them in their communications.
- [81] I turn now to discuss the content of Dr. Elterman's report.

Dr. Elterman's Report

- [82] Dr. Elterman is a qualified and registered clinical and forensic psychologist. He has prepared over 4,000 reports for court purposes.
- [83] In preparing his report, Dr. Elterman interviewed both parties and J.M. All three adults completed psychological testing. The children were interviewed separately when brought by each parent. Dr. Elterman observed the children with the parents in his office, and he conducted a video tour of each home.
- [84] In addition, Dr. Elterman spoke to eight collateral witnesses.

[85] Dr. Elterman noted, and I agree, that the decision about where the children go to school will have the effect of determining the parenting plan. He did not consider it viable to split the children up during weekdays, so that they would attend different schools in Mission and in Ladner. In addition to recommending that the parents share joint guardianship of the children, he made the following recommendation as to where the children attend school in September 2022:

I recommend that the children attend school in Mission and reside on weekdays with [D.H.]. My reasons for recommending this are that this is [K.H.'s] preference and while Jack says that he would prefer to stay in school in Tsawwassen, he is more even in his perception of the two parents and his relationship with them. I also do not see sufficient reason why the children would be separated and living apart on weekdays. They have an attachment and provide each other with security going between the two homes. I am also recommending that the children go to public school in Mission because [D.H.] works from home and the children get [the] most academic support at [D.H.'s] home. [K.H.] says that at her [mother's], she has to attend daycare for 3 hours after school whereas at her [father's] she can go home and do homework. She says that she would prefer not [to] go to daycare in the afternoons. There is the additional factor of [K.H.'s] anxiety and [C.H.'s] frustration tolerance which seems to have been causing conflict between the mother and daughter. C.H. has talked about having changed after attending counselling but there still seem to be issues between them which cause [K.H.] distress. Both children say that [C.H.] gets mad the quickest of the adults. Both children also say that they get most help with their schoolwork from [J.M.]. Between the academic support, [K.H.'s] preference, the relationship difficulties between [C.H.] and [K.H.], these together suggest this change in the arrangement.

[86] I note that K.H.'s concern about attending daycare is no longer a concern as K.H. is now 13 years old and has "aged-out of daycare". However, if she were to attend school in Ladner, she would be at home for a number of hours before C.H. gets home after picking up J.H. from daycare.

[87] As to the change in the parenting arrangements, Dr. Elterman recommended:

Between schoolwork and her job, [C.H.] would have more time on the weekend than on weekdays. I would therefore, recommend that the children spend 3 out of 4 weekends with [C.H.] which would start on a Friday, at 5pm and finish on a Sunday at 6pm. I would recommend that on a fourth weekend which could be the first full weekend of the month, that they would spend this [with D.H.] so that he can also plan to have a weekend once every 4 weeks. As this would involve the children not seeing [C.H.] for 2 weeks after [D.H.'s] weekend, I would recommend that [once a month] they be picked up by [C.H.] on the Sunday at 5pm and they would then return to D.H. after school on Tuesday as normal.

[88] As to parenting responsibilities, Dr. Elterman recommended:

[G]iven that [D.H.] would have the majority of the week, he would have parenting responsibility for matters relating to education. The parents would be equally responsible for health matters. [C.H.] can put the children into activities on the weekends when they are with her and [D.H.] can put them in activities during weekdays when they are with him. They would, therefore, each be responsible for activities on weekends and weekdays separately.

[89] As to counselling between K.H. and her mother, Dr. Elterman recommended:

that [C.H.] find a counsellor and that for a minimum of 6 sessions that she and [K.H.] attend on a Saturday with a counsellor in order to work through some of the issues in their relationship.

[90] As to the children's transportation between the parents' homes, Dr. Elterman recommended:

[The parents should] pick a location equidistant between them where they can wait comfortably such as at a fast food restaurant, a Starbucks, or some other place where, if they have to wait for 10 minutes, then it would be less onerous.

Immediately after [D.H.'s] weekend [C.H.] would be responsible for getting the children to and from school on the Monday and Tuesday once a month. I would recommend that on weekdays, [C.H.] FaceTime the children for 30 minutes between 6pm and 7pm on Tuesday and Thursday.

[91] As to parenting time on special occasions and school breaks, Dr. Elterman recommended:

If the children are not with the appropriate parent on Mother's Day and Father's Day[,] an allowance should be made for them to have contact with the other parent either in person or on FaceTime. Similarly[,] if the children are not with a parent on the child's birthday, there should be an allowance for contact between the child and the non-resident parent on that day. I would recommend that during Spring Break and Christmas Break, the parents alternate the first and second half of these vacations such that the parent who has the first half of Spring Break has the second half of Christmas and that this alternate from year-to-year. I would recommend that during the summer from the end of school until the beginning of the term in September that the parents have a week-on week-off arrangement when school is not in session.

[92] Having heard his evidence, I conclude that Dr. Elterman's recommendations were arrived at thoughtfully and are based on what he heard and observed. He explained the difficulties presented by this case during his evidence and in his recommendations. I concur with his recommendations and, with minor variations, agree they should be implemented.

My Interview of the Children

[93] On March 2, 2022, I interviewed K.H. and J.H. They were brought to the interview by D.H. and J.M. and were to be dropped off with C.H. afterwards.

[94] They struck me as thoughtful and intelligent children who understood that their parents were unable to decide where they should go to school in September and that the parenting plan would depend on where they went to school.

- [95] I explained that despite what they said to me, it was up to me to decide where they would attend school. Neither child wanted to be separated from the other, and they demonstrated a close bond.
- [96] After my interview, I was satisfied that both children wish to attend school in Mission. Both are aware of the impact that change will have on their lives and the friends they have made at their former elementary school in Ladner.
- [97] K.H. understood that she would be attending a new school, in a new community, and that she would need to make new friends. She said that, because she was leaving elementary school and moving to middle school, she would be facing a change anyway and that she and J.H. would no longer be attending the same school. She expressed some anxiety about interacting with children from higher grades.
- [98] J.H. was less enthusiastic about not going to the same school as K.H., but he knew that would have happened in Ladner anyway. He was confident that he would make new friends in Mission. He said he was a "funny guy" and made friends easily.
- [99] J.M. is clearly important in the children's lives, and they said they wish they could talk about her when they are with their mom.
- [100] Assuming that C.H. does not change her residence to a location closer to Mission, and taking all of the information available to me into account, I make the following parenting orders:

Guardianship and Parental Responsibilities

- a) Under s. 39(1) of the FLA, the parties are the guardians of the children, K.H., born July 2009, and J.H., born November 2014.
- b) The parties will exercise the parental responsibilities set out in s. 41 of the FLA as follows:
 - i. they must advise each other of any matters of a significant nature affecting either or both of the children;
 - ii. they must discuss with each other any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 - iii. they must discuss significant decisions with each other and endeavour to reach agreement on those decisions;
 - iv. in the event the parties cannot agree on a significant decision, despite their best efforts, D.H. will be entitled to make those decisions as they relate to the children's education and C.H. may apply under s. 49 of the FLA for directions on any such decision that she considers to be contrary to the best interests of the children;

- v. in respect of all other significant decisions, C.H. will be entitled to make them and D.H. may apply under s. 49 of the FLA for directions on any such decision that he considers to be contrary to the best interests of the children;
- vi. without the consent of the other parent, each parent may enroll the children in one activity per child during their parenting time. The cost of such activities will be a s. 7 expense contributed to proportionally based on their incomes as determined below.

Parenting Time

- c) The parties will have parenting time with the children on the following schedule during the school year:
 - D.H. - from Sunday at 7:00 p.m. to Friday at 3:00 p.m. every week.
 - C.H. - three of every four weekends, commencing on Friday at 3:00 p.m. to Sunday at 7:00 p.m.
 - D.H. - the fourth weekend from Friday at 3:00 p.m. to Sunday at 5:00 p.m.
 - C.H. - following D.H.'s weekend from Sunday at 5:00 p.m. to Tuesday drop-off at school.
 - In the event that a professional development day or a statutory holiday falls on a Friday, C.H.'s parenting time will start on Thursday at 3:00 p.m. and end on Sunday at 7:00 p.m.
 - In the event that a professional development day or a statutory holiday falls on a Monday, C.H.'s parenting time will start on Friday at 3:00 p.m. and end on Monday at 7:00 p.m.

Summer Parenting Time

- d) In each year, C.H. will have parenting time with the children during the first and last two weeks of the summer school holidays. For the balance of the summer, the parties will share parenting on a week-on/week-off basis. The parties will exchange the children on Sunday at 7:00 p.m.

Pickups and Drop-Offs

- e) All weekday pick ups and drop offs will occur at the children's schools.
- f) All pick ups and drop offs on non-school days will occur at 19218 96th Ave. Surrey, BC.

Children's Birthdays

- g) The children will remain with the parent who has parenting time on either of the children's birthdays but the other parent will have video call parenting time with the birthday child between 6:00 and 7:00 p.m.

Parent's Birthdays

- h) The children will remain with the parent who has parenting on the parent's birthdays but the children will have video call parenting time with the birthday parent between 6:00 and 7:00 p.m.

Winter Holidays

- i) Commencing December 2022, the parties will divide the winter holidays equally with C.H. having the first week of the holidays in even years and D.H. having the second week. They will alternate weeks in the odd numbered years. Regardless of the parenting schedule, C.H. will have parenting time on December 24 at 11:00 a.m. to December 25 at 11:00 a.m. and D.H. will have parenting time from December 25 at 11:00 a.m. to December 26 at 11:00 a.m.

Travel

- j) Either parent may travel with the children during their parenting time within BC or to the State of Washington, without the written consent of the other.
- k) Neither parent may travel with the children outside of BC and the State of Washington without the written consent of the other. Such consent is not to be unreasonably withheld.
- l) Neither parent will apply for or renew a passport or a NEXUS pass for the children without the written consent of the other parent.

Conduct Orders

- m) The parties are to communicate by email, except in emergencies and incidental to pick-up and drop-off during parenting exchanges. They are to subscribe to a parenting communication tool, such as Our Family Wizard, and the cost will be considered a s. 7 expense shared by the parents in proportion to their incomes as determined below.
- n) The parties 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, and that parent's partner, in a positive and respectful manner; and
 - iii. make a real effort to maintain polite, respectful communications with each other and each other's partners, refraining from any negative or hostile criticism, communication or argument in front of the children.
- o) The parties will not:
 - i. question the children about the other parent or time spent with the other parent beyond simple conversational questions;

- ii. discuss with the children any inappropriate adult, court or legal matters; or
- iii. blame, criticize or disparage the other parent, or that parent's partner, to the children.

What are the Parties' Respective Incomes for Child Support?

D.H.'s Income

- [101] During the parties' relationship, at different times, D.H. was a salaried employee and was self-employed. He did not graduate from high school, but he has IT skills from which he has built a career.
- [102] He began working at Computer City and then began working with an advertising agency providing Apple Macintosh computer support. He was laid off at the end of 1998. He then took a job in systems administration for the Technical University of BC ("Tech U"), which was taken over by Simon Fraser University ("SFU") in 2003. He worked at SFU until October 2009.
- [103] D.H. always had a passion for working on his own cars. He developed a sideline of installing do-it-yourself kit computers into cars to enhance their engine's performance. He purchased the kits from the United States and gradually built up a clientele, often installing the computers in high-end cars.
- [104] The parties decided to start a business together, which they registered as Fire and Fuel. The company's business was assembling and installing computers in cars. C.H. said there was a good market for what they were doing.
- [105] D.H. said that he started attracting a high-end clientele. He did the hands-on installation, software programming, and tuning. C.H. left her job to work in the business, maintaining their website, providing customer service and building customer relationships, and doing the bookkeeping. She also assembled a few of the computers.
- [106] The parties rented shop space and lived above Fire and Fuel. K.H. was born in 2009. In early 2011, the parties ran out of money, and they agreed to put K.H. in daycare so that C.H. could go back to work. Due to financial pressure, D.H. took a job with the City of Maple Ridge in 2012, and, by early 2013, he finished the remaining vehicles and shut down Fire and Fuel.
- [107] The parties worked together at Fire and Fuel until sometime in 2010 although it appears that the business was not fully wound down until 2011. The 2008 economic downturn affected their business, and it was not successful.
- [108] D.H. then went to work for Mr. Cheung.
- [109] Since June 2017, D.H. has been a T4 employee working with the City of Delta, and, latterly, with the City of Maple Ridge.

- [110] According to his 2020 Notice of Assessment, he earned \$93,846 that year and paid union dues of \$1,874. As a result, his Federal Child Support Guidelines, SOR/97-175 [Guidelines] income is \$91,972. As of the date of trial, he had not received his 2021 Notice of Assessment, but he did not expect either his income or his union dues to be significantly different.

C.H.'s Income

- [111] Up until some time in May 2022, C.H. was a T4 employee working as a legal secretary/conveyancer with Eastwood and Associates in Ladner, BC. During her counsel's closing submissions on May 18, 2022, I was advised that she lost that job, had not been paid severance, and intended to take some time off to complete her degree before returning to work.
- [112] According to C.H.'s F8 Financial Statement, filed on November 30, 2021, C.H. earned \$60,064 in employment income and \$3,672 in net rental income from a property located in Port Moody (the "Property"). C.H. and her sister inherited the Property from their mother.
- [113] The sisters decided to rent both the upper and lower floors of the Property. Before they could do so, they needed to clear out their mother's belongings and then clean, repair, and paint the home. It was rented starting in July 2019. I am satisfied that an additional amount of rental income should be included in C.H.'s income for the purposes of the Guidelines.
- [114] D.H. submits that the annual gross rent is \$43,638 from which annual property taxes of \$6,358.20, mortgage payments of \$19,960, and utilities payments of \$5,319 should be deducted. He submits that these deductions leave approximately \$12,000 in net rental income to be divided between C.H. and her sister. He submits that the calculation cannot be more precise due to C.H.'s failure to disclose documents and failure to report net rental income on her income tax returns.
- [115] C.H. calculates that her share of the net rental income for the Property is \$3,396.50. In addition to the expenses set out by D.H., she says that the utility payments are higher, and that the expenses do not reflect maintenance costs or insurance on the Property.
- [116] Based on the evidence provided, I conclude that it is appropriate to use the net rental income figure from C.H.'s financial statement, which may slightly overestimate her share. Doing the best I can with the evidence available, I conclude that C.H. is earning an additional \$3,672 each year in rental income. That amount should be added to her income for the calculation of child support under the Guidelines.
- [117] In addition, since May 2020, C.H. and her sister receive \$1,000 a month from a developer as part of an agreement to sell the Property at a fixed price if a development permit is granted to develop the Property and other nearby properties.

- [118] While this may not be taxable income for income tax purposes - I make no finding in that regard - I am satisfied that it is part of C.H.'s income for the purposes of the Guidelines. C.H.'s share amounts to \$6,000 a year.
- [119] As a result, I impute to C.H. a Guidelines income of \$69,736.
- [120] I am satisfied that, based on the parenting plan I have ordered, the children are in C.H.'s care at least 40 percent of the time, thereby entitling her to set-off child support.
- [121] Section 16 of the Guidelines provides that a spouse's annual income for the purposes of child support is determined using the sources of income set out under the heading "Total income" in the T1 General income tax return, adjusted in accordance with Schedule III.
- [122] As a result, and based on a set-off calculation, D.H. is to pay C.H. monthly child support of \$333. This number is based on C.H. claiming a dependant credit for income tax purposes. If the parties disagree on my calculation, and are unable to resolve their differences, they may seek to appear before me to speak to the issue.
- [123] By July 1 of each year, commencing July 2023, the parties will exchange their T1 general tax returns and notices of assessment, and shall review child support. Beginning on August 1 of each year, commencing August 2023, the new child support amount will commence.

Are There Arrears of Child Support and, if so, in What Amount?

- [124] D.H. argues that C.H. has not provided a reasonable excuse for why she did not seek child support from D.H. prior to March 2021 and is, therefore, not entitled to an award for child support dating back to May 2017, the date on which he lost his job with Mr. Cheung and ceased paying any support to C.H.
- [125] Following the loss of his job, D.H. was only unemployed for a short time, but he did not restart paying support.
- [126] C.H. testified that after the parties separated, she was under a lot of financial stress and felt overwhelmed. C.H.'s mother, whom she was very close to, died unexpectedly in November 2017.
- [127] At the time, she was in the process of moving to a new home as, after D.H. stopped paying her child support, she could no longer afford the rent on her home. She received the proceeds of her mother's life insurance, and she used it to pay down debt and buy herself a used car.
- [128] D.H. was aware of his obligation to pay child support. He said he did not restart paying it because he did not believe that he was receiving appropriate financial disclosure from C.H. He seemed fixated on how much C.H. was going to inherit, which would not immediately affect his child support obligation.

- [129] Child support was payable by him for the benefit of his children. His failure to restart support once he became re-employed was not justifiable.
- [130] I am satisfied on the evidence that D.H. owes child support dating back to May 2017 when he ceased paying it. If the parties are unable to agree on the amount of the arrears, they may seek to appear before me to speak to the issue.

What Orders Should be Made for S. 7 Expenses for the Children?

- [131] During her evidence, C.H. acknowledged that she would pay her share of the cost of the children's counselling and medical costs, not otherwise covered by D.H.'s employment benefits, from the commencement of this action.
- [132] With respect to K.H., D.H. has provided evidence that he paid \$9,450.03 for her counselling and medical expenses. He has been reimbursed \$2,814.56, leaving a balance of \$6,635.47. C.H. is to pay her proportionate share of that amount.
- [133] With respect to J.H., D.H. has provided evidence that he paid \$3,477.71 for his counselling and medical expenses. He has been reimbursed \$2,136.32, leaving a balance of \$1,341.39. C.H. is to pay her proportionate share of that amount.
- [134] Based on the parties' incomes as set out above, 57 percent of the special expenses are payable by D.H. and 43 percent are payable by C.H. As a result, C.H. owes D.H. \$3,430 for special expenses from March 20, 2018, to March 15, 2022. I accept that C.H.'s income was not at current levels in all years between 2018 and 2022, as her mother died at the end of November 2017 and it is not clear on the evidence when C.H. and her sister made the arrangements with respect to the sale of their mother's home to a developer.
- [135] Nonetheless, as it is C.H.'s failure to disclose the documents to allow the calculation to be made precisely, I conclude that it is fair, in all the circumstances, to order C.H. to pay to D.H. the sum of \$3,430, the full amount of the arrears of s. 7 expenses as calculated above.
- [136] That amount is to be set off against the outstanding child support arrears owed to C.H. by D.H.

Is C.H. Entitled to Retroactive and/or Prospective Spousal Support?

- [137] At the commencement of the trial, I permitted C.H. to file a counterclaim seeking retroactive and prospective spousal support.
- [138] Despite the amendment, in C.H.'s counsel's closing submissions, he did not list spousal support as an issue and made no submissions in that regard. However, he did not waive the claim.
- [139] D.H. argues that C.H. has not established that she is entitled to spousal support on either a compensatory or non-compensatory basis. Contractual spousal support is not an issue in this case.

- [140] I agree that C.H. has not established entitlement to compensatory support. As has been said in many decisions of this Court and others, compensatory support is intended to compensate a spouse for lost economic opportunities resulting from decisions made during the marriage.
- [141] C.H. testified that prior to the parties' relationship, she had always worked. She worked throughout high school. She received a scholarship from Douglas College, but it did not cover all of her expenses and she worked at the same time. She worked in computer service and sales, did administrative work in an engineering firm, and worked at the Vancouver Aquarium doing sleepovers with children and adults. She continued with the Aquarium until 2014, when J.H. was born.
- [142] C.H. spent two years at Douglas College, in a university transfer course that she did not complete.
- [143] From 2000 or 2001 to 2003, when the parties were cohabiting, C.H. worked for Shaw Cable providing internet technical support.
- [144] C.H. pursued further education during the parties' relationship. In the early 2000s, she enrolled in a full-time business and technical management program at Tech U where D.H. worked. After SFU absorbed Tech U, the program C.H. was enrolled in was cancelled. For a few months in the following fall, she attended SFU, but withdrew due to her father's illness. She unsuccessfully tried to return to Shaw Cable on a full-time basis. She then went to work for competing internet domain registrars, and then, in about 2003, she began working for e-Bay. She remained there until January 2004, when she left to work full time in the parties' fledgling business, Fire and Fuel.
- [145] Based on the parties' evidence, they divided responsibilities for the business with D.H. primarily doing the technical work and C.H. primarily doing the administrative work. In addition, C.H. worked in her mother's notary business on a part-time basis and continued to work at the Aquarium.
- [146] In 2009, the parties moved into an industrial complex in Maple Ridge. There was a shop, bathroom, and office area downstairs and a caretaker's suite upstairs. During this time, C.H. was primarily responsible for K.H. in the day time. D.H. was working as much as he could to earn money. When K.H. slept, C.H. worked in the business. The parties were increasingly financially strapped.
- [147] Starting when K.H. was about 18 months' old, due to the continuing financial pressure facing the parties, C.H. began a short-term, full-time contract with the Wildlife Rescue Association of BC in Burnaby. She worked there from May until August 2011, when she left for a job as a bilingual court clerk.

- [148] C.H. worked as a court clerk for about 19 months, after which she obtained a position as a portfolio administrator for the Ministry of Forests. She continued that work until she took a maternity leave after J.H. was born. She returned to work at the Ministry of Forests after the parties separated in 2016.
- [149] In March 2017, C.H. began working as a legal secretary/conveyancer for Eastwood and Associates. During her counsel's final submissions, I was advised that she had been let go from that employment. Her counsel said that, rather than seek work, she intended to complete her undergraduate degree at SFU this year. She had been taking part-time courses for a number of years. Her ultimate goal is to attend law school.
- [150] After the separation, until April 2017, D.H. paid all of C.H.'s living expenses including groceries, rent, utilities (including cable and internet), and fuel for her car. For a few months, after C.H. returned to work from maternity leave, and before she was able to find daycare, D.H. also paid for a nanny.
- [151] According to C.H.'s evidence, after the parties separated, D.H. paid monthly spousal and child support in the approximate amounts of \$600 and \$1,200 respectively. In her submissions, she said that D.H. paid \$800 in child support and \$550 in spousal support. There was not explanation for the difference. C.H. testified that D.H. stopped paying any support in May 2017 and told her that he would be unemployed as of June 2017. She agreed to put spousal support on hold. D.H. was hired weeks later by the City of Delta.
- [152] Since the parties' separation, when K.H. was six years old and J.H. was one year old, the parties have had shared parenting responsibilities.
- [153] On all of the evidence, I am not satisfied that C.H. is entitled to compensatory spousal support.
- [154] With respect to non-compensatory spousal support, the primary focus is on C.H.'s needs and the parties' post-separation standards of living.
- [155] C.H. did not provide any evidence of her need for non-compensatory spousal support. There is a difference in their current living situations, but that is a result of D.H.'s relationship with J.M., and her financial resources, as opposed to D.H.'s own financial resources.
- [156] I also note that there was a significant delay in C.H. seeking spousal support. Although the parties have been involved in court proceedings since mid-2018, she did not file a counterclaim seeking spousal support until August 2021, about five years after the parties separated.
- [157] On all of the evidence, I am not satisfied that C.H. is entitled to non-compensatory spousal support.
- [158] I dismiss C.H.'s claim for spousal support.

What is the Family Property and Debt and How Should it be Divided?

[159] The parties have little family property. They did not own real estate during their cohabitation or marriage.

Family Property

Vehicles

[160] The only assets remaining from Fire and Fuel were some old vehicles that the parties had during the marriage. D.H. testified that he moved them to his various rental properties and disposed of them over time.

[161] C.H. did not give any evidence about the value of the vehicles, and I am satisfied that the vehicles were essentially valueless and that no division is required.

Retroactive Child Tax Benefit

[162] In December 2017, after the parties separated, C.H. received retroactive federal and provincial child tax benefits for 2014 and 2015. A deposit was made into her account. The amount was retroactive because the parties had not filed income tax returns in the latter years of their relationship.

[163] The combined retroactive child tax credit for 2014 and 2015 was \$13,674.73, as calculated by counsel for D.H. For reasons that were not entirely clear on the evidence, the tax credit was later reduced by \$6,515.82. The remaining balance is \$7,158.91. It is family property to be divided equally. C.H. owes D.H. \$3,579.45.

Pensions

[164] During the marriage, D.H. contributed to an SFU pension and a municipal pension, and C.H. contributed to the provincial government employees' pension. The parties agree that their pensions are to be divided equally at source pursuant to Part 6 of the FLA based on a cohabitation date of April 1, 2000, and a separation date of January 1, 2016.

[165] The parties also agree to divide their CPP credits equally based on the same cohabitation and separation dates.

E-Bay Shares

[166] Starting in about 2003 and ending in about January 2004, C.H. worked for e-Bay. During her time there, she received e-Bay shares. Most of them were sold, but she recently learned that she had three remaining shares.

[167] The e-Bay shares are family property and are to be divided equally.

Family Debt

Loan from D.H.'s Parents

- [168] During the parties' relationship, they borrowed \$50,000 from D.H.'s parents. They signed a loan agreement and began paying the loan back starting in January 2008. As of the date of separation, \$11,895 remained outstanding on that debt.
- [169] Both parties acknowledge that the loan is a family debt. The parties each owe \$5,947.50 to D.H.'s parents.

Loan from Nic Zucs

- [170] D.H. testified that, in 2008 or 2009, when the parties were struggling financially, his friend Nick Zucs sent him \$10,000. The parties used it to pay bills, buy food, and buy things for K.H. It is not clear on the evidence whether the \$10,000 was intended as a loan or a gift. If a loan, it was not documented, and Mr. Zucs has never asked D.H. to repay it.
- [171] D.H. said that he is not currently in a position to repay Mr. Zucs, but he intends to do so in the future if he can.
- [172] Mr. Zucs did not testify, and C.H. was not asked about the loan during her evidence.
- [173] I am not satisfied that the funds from Mr. Zucs were a loan and conclude that D.H. has not established that this is a family debt to be divided. D.H. may feel morally obliged to repay Mr. Zucs, but he has not done so in 13 or 14 years. If he chooses to repay Mr. Zucs in the future, D.H. will be solely responsible for that payment.

Divorce

- [174] As the parties have been separated for more than a year, they have met all the procedural requirements for a divorce. Both parties agree to a divorce, and I am satisfied that there is no reasonable prospect of them reconciling.
- [175] As a result, subject to s. 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), D.H. and C.H., who were married in Coquitlam, BC, on April 16, 2005, are divorced from each other. The divorce is to take effect on the 31st day after the date of this order.

Costs

- [176] The parties did not make costs submissions. If, in light of their divided success on the issues, they are unable to agree on costs, or if there are other factors of which I am not aware, they may file written costs submissions, not to exceed five pages.

"MacNaughton J."

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