

CANADA / JUDGMENT

F.N. v. R.P.

2024 BCSC 118

COURT

Supreme Court of British Columbia

DECIDED

29 January 2024

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2024 BCSC 118 F.N. v. R.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

F.N. v. R.P.,

2024 BCSC 118

Date: 20240129

Docket: E62827

Registry: New Westminster

Between:

F.N.

Claimant

And

R.P.

Respondent

- and -

Docket: S231501

Registry: Vancouver

Between:

Mohammad Najiba and Tehran Internet Company and

Iranian Omid Internet Bazaar

Plaintiffs

And

R.P. and F.N.

Defendants

Corrected Judgment: The text of the judgment was corrected on the front page on
March 27, 2024

Before: The Honourable Justice Francis

Reasons for Judgment

The Claimant appearing in person in Action No. E62827 and the Defendant in Action No. S231501:
F.N.

The Respondent appearing in person in Action Nos. :E26827 and S231501:

R.P.

Counsel for the Plaintiffs in Action No. S231501:

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Place and Date of Trial/Hearing:

Vancouver, B.C.

October 10-13, 16-20,23-27,

30-31, and November 1-3, 2023

Place and Date of Judgment:

New Westminster, B.C.

January 29, 2024

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I. Introduction

- [1] In this high-conflict family dispute, the claimant, F.N. (the "Mother"), and the respondent, R.P. (the "Father") were self-represented. All issues of parenting time and parenting responsibilities were contested at trial. In addition to parenting issues, the Mother and Father disagree about division of family property, the Guideline income of each party, child support, and spousal support. There are also a number of ancillary orders sought by the Mother, including an order changing the last names of the children, orders about travel, and orders about the process for selling the family home, all of which are opposed by the Father.
- [2] There have been multiple allegations of family violence since the parties separated in 2021, in which the police and MCFD have frequently been involved. Each party has claimed at different times that they, and their two children, were not safe in the presence of the other. Nevertheless, by the time of trial, the parties were sharing equal parenting time pursuant to a consent order made in February 2022.
- [3] In early 2023, a civil claim was launched by the Father's former business associate and employer, Mohammed Najiba, along with two related companies (the "Civil Action"). The plaintiffs in the Civil Action have sued the Mother and the Father for sums alleged to be family debts. The Civil Action was heard concurrently with the family law claim.
- [4] A number of witnesses testified, including the Father's mother, F.O. (the "Grandmother"), some family friends, teachers, social workers, and business associates. I have not summarized the evidence of these witnesses in these reasons, as most of their evidence was not relevant to the issues I have to determine. Where a third-party witness provided evidence that is relevant, I have incorporated their evidence into the facts as found below.

II. Factual Overview

- [5] In 2013, the Mother and the Father were both employees at an Iranian telecommunications company called Tehran Internet Company ("Tehran Internet"), of which Mr. Najiba is a part owner. The Mother worked as a graphic designer and the Father was a sales manager. In September 2013, they began a workplace romance. Within weeks, the Mother was pregnant and, on December 26, 2013, the couple was married. Their eldest child, K, was born in August 2014. Another child, D, was born in March 2017.
- [6] At the time of the marriage, the Father owned 50% of a technology start-up company called Iranian Omid Internet Bazaar ("Bazaar"). Bazaar was incorporated earlier in 2013 by the Father and Mr. Najiba. The concept behind Bazaar was to provide an online sales platform, akin to Amazon, for stores and businesses in Iran. The other shareholders in Bazaar were Mr. Najiba, who owned 49% of the company's shares, and Mr. Najiba's nephew, who owned

1% of the shares. At some point shortly after the incorporation of Bazaar, the Father quit his job as a sales manager at Tehran Internet in order to devote himself full-time to building what was then a fledgling company. Bazaar had some early success and, by 2018, it was a relatively large company with approximately 300 employees.

- [7] From the time of their marriage until 2018, the couple lived in Tehran, first in a home owned by the Grandmother, and later in a home that they purchased with a loan from Mr. Najiba that they later paid off. While the Father worked full time as CEO of Bazaar, the Mother pursued some part-time work, in addition to looking after the home and being the primary caregiver of the two children.
- [8] In early 2018, the Father was exploring the idea of expanding Bazaar's business to Oman, and the couple spent a month living there while the Father pursued business opportunities. These efforts were not successful and the family decided to move to Canada instead.
- [9] In April 2018, the family arrived in the Lower Mainland. They originally planned for the Father to continue working for Bazaar remotely from Canada, while also seeking out opportunities to expand the business in Canada. The Father, who had been successful in growing Bazaar into a prosperous company in Iran, was not able to replicate his business success in the Canadian market.
- [10] In 2018, while he was still the CEO of Bazaar, the Father pursued employment with Hossein Tayyebi, a local Iranian-Canadian businessman who owns a number of different business enterprises, including a company called NovaGreen Technologies Inc. ("NovaGreen"). The Father successfully pitched Mr. Tayyebi on the possibility of growing a similar business to Bazaar in Canada under the rubric of NovaGreen. Mr. Tayyebi hired the Father as an employee, but the venture was not successful. At present, the Father continues to be employed by NovaGreen, but his income from NovaGreen is nominal.
- [11] In April 2018, Tehran Internet and Bazaar entered into a financing agreement in which Tehran Internet agreed to advance 500 billion Iranian rials to Bazaar (the "Financing Agreement"). The Father and Mr. Najiba were guarantors under this agreement, agreeing to be personally liable for Bazaar's debt to Tehran Internet.
- [12] Little evidence was provided about how Bazaar used the funds it received under the Financing Agreement, but it appears that this debt to Tehran Internet was never paid. In early 2023, Tehran Internet sought to collect the debt from the Father in Iranian court based on his personal guarantee under the Financing Agreement. On February 13, 2023, Tehran Internet obtained a judgment against the Father in the amount of Rls 500 billion (the "Iran Order").

- [13] Separately, between April 30, 2018 and December 15, 2020, the Father received a number of large transfers of funds from Bazaar, amounting to a total of \$360,000 (the "Bazaar Payments"). The Father says these funds were advances on future profits of Bazaar that did not materialize, so he must pay them back. The Mother submits that these advances were simply compensation for the Father's services to the company and there is no amount owing by the Father to Bazaar.
- [14] In April 2020, the Mother and Father purchased a home in Coquitlam (the "Family Home"). The Mother submits that the Family Home was purchased in part with inheritance funds she received from her deceased father's estate.
- [15] In late 2020, the Grandmother came from Iran to live with the family in Canada. According to both the Mother and the Father, the marriage began to deteriorate soon after the arrival of the Grandmother to the Family Home. The couple separated in May 2021 in circumstances that both parties describe as involving family violence, though each argues that the other was the perpetrator.
- [16] At the time of trial, the Father was working as a screening officer at Vancouver International Airport and making approximately \$50,000 a year. The Mother, due mostly to challenges with the English language, has only worked on a very part time basis since the family moved to Canada. At the time of trial, she was receiving social assistance.

III. Issues

- [17] As noted, the Mother and the Father were both self-represented. Their obvious animosity towards one another made it difficult for them to adhere to the requirement that evidence at trial must be relevant to the matters at issue. The Mother, whose English language skills are modest, used an interpreter for only part of the trial. It was therefore challenging for the Court to discern all the issues and determine each party's position on those issues. If there is a discrete issue (such as an item of family property) that the Mother or the Father sought to resolve at trial that these reasons do not address, the parties have leave to come back before me for a one-hour hearing to deal with that issue.
- [18] In the family law proceeding, I understand the following issues to be in dispute:
- a) What order with respect to parenting responsibilities and parenting time is in the best interests of the children?
 - b) To the extent that the Family Home was partially purchased with funds that the Mother received from her deceased father's estate, is a portion of the equity in the Family Home excluded property?
 - c) What are the Guideline incomes of each of the parties and what child support is payable?
 - d) Is the Mother entitled to spousal support and, if so, in what amount?

[19] The Civil Action also raises a number of issues. However, in oral submissions, counsel for the plaintiffs in the Civil Action conceded that only two issues need to be determined. They are:

- a) Were the Bazaar Payments loans from Bazaar to the Father that must now be repaid?
- b) Is the Iran Order pronouncing judgment against the Father in favour of Tehran Internet in the amount of Rls 500 billion enforceable in British Columbia?

IV. what parenting arrangements are in the children's best interests?

A. Facts relevant to parenting issues

1. Marriage breakdown

[20] The Grandmother came to live with the family in November 2020. There were many conflicts between the Mother and the Grandmother, and, by January 2021, tensions between the two had reached a point where the Mother no longer felt she could live in the same house as the Father and the Grandmother. At least once in January 2021, she left the Family Home and slept in her car. Another night that month, she left the family home and spent the night in a transition house, returning the next day. The Mother's short absences did not improve things in the Family Home; the conflict between the Mother on the one hand, and the Father and the Grandmother on the other, only continued to escalate.

[21] The earliest involvement of MCFD appears to be on January 16, 2021, when the Mother contacted MCFD to report an incident that took place the prior evening, in which the Father kicked her out of the house and would not let her back in. She spent the night in her car and went to work at 5:00 am. She called the police and MCFD when she got off work at 4:00 pm. She advised the MCFD social worker that she did not feel safe at home. She reported that there was no physical violence at home or in the relationship, but that the Father took out his frustration on her verbally. It appears that the MCFD social worker gave the Mother some information about the resources available to her. A follow-up call took place on April 22, 2021, at which point the Mother advised the MCFD social worker that things had improved in the home and she was no longer concerned for her safety.

[22] At some point in late April or early May 2021, an incident took place that both parties referred to as the "watermelon incident". The Mother describes the watermelon incident as follows: she was cleaning the bathroom while the two children were in the bathtub having a bath. While they were bathing, they were snacking on a tray of fruit that the Mother had brought them to enjoy in the bath. One of the children threw a watermelon rind at the Mother's back while she was cleaning. She turned around and threw it back in the direction of the tub. The watermelon rind hit K on the nose and left a mark.

- [23] When the Father arrived home some time later, the Grandmother told him that the Mother had struck one of the children. This continues to be the Father's view of what happened, as on his direct examination he testified that the Mother "got angry and beat [K] with the watermelon skin."
- [24] The watermelon incident led to the further involvement of MCFD and, unfortunately, an escalating cycle of family violence allegations made by both parents. MCFD interviewed the Mother, the Father, and the children in May 2021 with respect to the watermelon incident. In a May 13, 2021 interview with an MCFD social worker, K described the incident. He told the social worker that his Mother accidentally threw a watermelon rind in his direction after his brother tossed it out of the bathtub. The watermelon rind hit him in the nose. He denied that his Mother was trying to hit him. He told the social worker that he missed his Mother.
- [25] There is no evidence whatsoever that the Mother beat K with anything during this incident. On January 20, 2022, MCFD wrote to the Mother and advised that they were closing their file with respect to this incident, as all child protection concerns had been addressed. The watermelon incident, like many incidents of alleged family violence in this family, appears to have been greatly overblown and used by one party to gain a strategic advantage over the other.
- [26] On May 3, 2021, the Mother told the Father that she wanted to separate. The next day, they had a meeting with their pastor and his wife and attempted to reach an agreement about the terms of their separation.
- [27] On May 5, 2021, the Mother left the family home with the two children and moved into the Tri-City Transitions Society house (the "Transition House"). Neither party gave clear evidence about what happened on this day, but due to the involvement of the police and MCFD, there are some third-party records that have assisted the Court in understanding the events that took place on the date of separation.
- [28] On May 5, during a verbal altercation between the Mother on the one hand, and the Father and the Grandmother on the other, the Mother called the police. The police attended, but no arrests were made. According to police records, the Mother advised the police that there was never any violence in the home, but she was upset because her Mother-in-law was intruding in her relationship with her husband. The police advised her to seek counselling and left. The Mother decided that night to take the children to the Transition House.
- [29] On May 6, 2021, the Father called MCFD to report that the Mother had left the family home with both children. He reported that he was concerned because of the watermelon incident and thought the children may not be safe. He asked for advice as to how to retrieve his children and was referred to the Family Justice Centre.

- [30] As it turned out, on May 6, 2021, the Mother agreed to bring the children to meet the Father in a park. After the family visited in the park, K ended up going home with the Father and D ended up staying at the Transition House with the Mother. For the next few days, K resided with the Father in the Family Home and D resided with the Mother at the Transition House. On May 12, the Father picked D up from daycare and, for the following months, the children were exclusively in his care.
- [31] On May 12, 2021, the Mother sent the Father a text stating that she was "ready for death".
- [32] On May 25, 2021, the Father obtained a mental health warrant from Provincial Court compelling the Mother to attend the hospital, as he professed to be concerned about the Mother's mental health. The Mother stayed on the psychiatric ward of Royal Columbian Hospital for three days as a voluntary patient. Ultimately, she was not diagnosed with any mental health disorder and no medication was prescribed.
- [33] On June 28, 2021, the Mother called MCFD and advised them that D had disclosed to her that the Grandmother had slapped him and locked him out of the house. She also advised MCFD that the Father had threatened to take the children to Iran, where she felt their safety would be at risk.
- [34] On July 1, 2021, the Mother moved from the Transition House to a studio apartment near the Family Home. The children remained with the Father, and the Mother continued to have regular parenting time with the children.
- [35] On July 9, according to MCFD records, it appears that MCFD became concerned that the Father was coaching the children to say that their Mother had hit them.
- [36] The parties attempted to reconcile in July 2021, but these attempts were unsuccessful.
- [37] On July 19, 2021, the Mother attended the Family Home with D to get some of his toys. No one was home. She discovered that the Father had covered up all the photos of her in the house and this upset her. The Father and the Grandmother arrived home while the Mother was there, and the Mother locked them out of the house. According to the MCFD records of interviews with the Father, the Mother insulted the Father in front of the children. Things escalated. At this point, both the Mother and Father were filming each other on their phones as they engaged in an argument. The Father called the police, but the police refused to attend.
- [38] At some point, the argument must have subsided because the parties started preparing lunch, which included barbequed steak. It was not long, however, before another argument ensued and, according to the Father, the Mother threw a hot steak at the Father and tried to push him down the stairs. The Father called the police a second time. The police attended and advised the Mother that she should leave the house. Once the Mother left, the Father changed the locks on the Family Home.

- [39] The Mother came back to the Family Home later that evening, despite the advice of the police to stay away. She brought D with her. Upon realizing that the locks had been changed, she tried to rip the screens on the window and kicked the door. The Father called 911. The police arrived and, having advised the parties that if they were called again, they would arrest someone, they arrested the Mother. She was detained for 5 or 6 hours, charged with assault, and released on an undertaking preventing her from communicating with, or being close to, the Father, except when picking up or dropping off the children and arranging parenting time. These charges against her were stayed on October 7, 2021.
- [40] Immediately after being discharged by the police, the Mother made a report to the police that she had been sexually assaulted by the Father on July 14 and 16, 2021.
- [41] On July 14, 2021, the Mother had invited the Father to her basement suite to discuss reconciliation. In her report to the police, the Mother alleged that the Father sexually assaulted her at this time. She also advised the police that the Father sexually assaulted her a second time in her basement suite on July 16, 2021. However, she offered no evidence in direct examination about either alleged sexual assault. When prompted by the court to testify about the alleged sexual assault on July 14, 2021, she testified that "he tried to have sex" and "I have bruises on my back."
- [42] The Mother was cross-examined by the Father about the alleged sexual assaults, and her evidence was not very clear. In response to a question about consent, she testified "although I consented to sexual relations, you injured me in the course of those relations". The extent to which the Mother alleges non-consensual sexual activity between her and the Father is therefore not entirely clear. In response to one cross-examination question, she replied: "until you threw me in jail, I wasn't going to report it."
- [43] It appears that no criminal charges arose from the complaint the Mother made to the police relating to the sexual assault allegations.
- [44] The Mother also contacted MCFD on July 19, 2021 and reported that the children were unsafe in the family home with the Father and the Grandmother.
- [45] There were four police files opened with respect to the family over the span of two days (July 19 and 20, 2021). These included the domestic violence complaints of both parties and the sexual assault complaint of the Mother.
- [46] In late July and early August, 2021, MCFD social workers interviewed the Mother, the Father, and the children. Interestingly, in his interview with an MCFD social worker in August 2021, K shared that his father had told him that his mother "did bad stuff". He asked the social worker how she could keep him safe, and expressed fear of his mother. The MCFD interview with D at around this time was also troubling. D advised the social worker that his mother pushed his father down the stairs and threw away his phone. When asked by the social worker how he knew about this, D replied that his father tells him this all the time.

- [47] Also concerning is the difference in K's account of the watermelon incident between his first MCFD interview, in May 2021, and his later interview in August 2021. Whereas in May 2021, K described the incident as an accident and professed to be unhurt, in August he advised MCFD social workers that his Mother hit him "so hard" that she hurt him and he bled and cried.
- [48] On September 25, 2021, during her supervised parenting time, the Mother noticed that D had a red mark on his neck. She reported this to MCFD and advised that she did not think the children were safe in the Father's home. MCFD social workers followed up with the Father. He advised that the mark on D's neck arose from the two boys playing on a bed in the house. No further steps were taken by MCFD with respect to this alleged family violence.
- [49] On October 12, 2021, Master Vos issued a protection order against the Mother. The protection order expired on December 8, 2021.
- [50] On December 8, 2021, the parties attended a judicial case conference in front of Master Keim (the "JCC"). A number of conduct orders were made at the JCC, including that the parents would encourage the children to have a good relationship with the other parent and would speak to the children about the other parent in a positive and respectful manner. The parties were also ordered not to question the children about the other parent or discuss court matters with the children. Unfortunately, it appears that neither party complied with these conduct orders; there is ample evidence that the children have been, and continue to be, regularly drawn into the conflict between their parents.
- [51] In December 2021, after the JCC, the Father made a number of attempts to access counselling services for the children and for the family. He reached out to a number of professionals seeking some form of counselling that would assist in repairing the dysfunction that had arisen between the Mother and the children.
- [52] By consent order dated February 11, 2022, the parties have been exercising shared parenting time with the children on a week on/week off basis.

2. Parenting issues from February 2022 - present

- [53] Both parties testified that the other parent was unsupportive of their choice of extracurricular activities for the children. They have each registered the children for separate soccer leagues, piano lessons, and swimming lessons. Considerable time was spent in evidence on questions about what activities the children preferred, with each party going to great lengths to establish that the other's choice of extracurricular activity demonstrated their shortcomings as a parent. For example, the Father does not agree with the Mother's decision to register the children in Tae Kwon Do. He testified that the sport is dangerous and claims that D has been seriously injured as a result of participating in this activity. The Mother submits that the Father does not take the children to activities they enjoy and that the children are bored and understimulated in his care. Each party testified that they enrolled the children with a superior piano teacher, and that their preferred soccer league

was more convenient for the children.

- [54] Both parties also testified about the lack of respectful communication from the other, and about the other party's failure to provide the children with necessary clothing, food, or access to medical and dental care when needed. Both the Mother and the Father have a habit of sending one another lengthy self-serving emails about the other parent's shortcomings, seemingly drafted with the intention of using them as evidence in this court case. Meanwhile, neither party appears to have the self-awareness to accept responsibility for even the smallest mistakes. Instead, they each appear to live in a black-and-white world, in which they are an exemplary parent and the other parent is negligent, incompetent and likely abusive. Both have spoken to the children about the other parent in a way that is inappropriate, and have sought to stoke conflict in the family rather than diffuse it.
- [55] The Grandmother has not been a helpful force in co-parenting. From her testimony at trial, it is clear that her ill will towards the Mother has clouded her ability to put the interests of her grandchildren first. She made outlandish claims that are not supported by the MCFD or police records, such as the claim that when the children argued, the Mother held one child and told the other child to hit his brother. She testified that the Mother regularly pushed and hit the children. Her evidence was exaggerated on many points. For example, she testified that the children cried "all the time" when they lived with the Mother, and she described the Mother as never doing domestic work because she was "always" sleeping, on her computer, or out of the house. On other points, her evidence was vague. For example, she could not describe what the Father did for a living even though she continues to live with him. I did not find her to be a credible witness and I have not based any of my findings on her testimony.
- [56] Both parties have worked to enroll the children in various forms of counselling and therapy during their parenting time. This demonstrates to me that, notwithstanding their difficulties in successfully co-parenting, both parties wish to see their children heal from the damage caused by the conflicts they have witnessed.

B. Law

- [57] In her notice of family claim, the Mother seeks an order under both the Family Law Act, S.B.C. 2011, c. 25 [FLA] and the Divorce Act, R.S.C. 1985, c. 2 (2nd Supp.) [DA] to determine parenting arrangements. The parties did not make submissions on which statute ought to apply in making the parenting order.
- [58] The provisions in the FLA and the DA that deal with parenting arrangements have become more closely aligned following amendments to the DA in 2019. As past and future orders concerning the children have been and will be made under the FLA, I will make my orders respecting parenting arrangements under the FLA for consistency and clarity: see *Klebe v. Klebe*, 2020 BCSC 652 at para. 30; *Chapman v. Chapman*, 2020 BCSC 1029 at para. 102; *S.L.D. v. W.A.D.*, 2016 BCSC 616 at para. 313; *A.K. v. M.K.*, 2013 BCSC 1275 at paras. 29-31. However,

I note that my findings would be the same under the DA.

[59] Section 40 of the FLA addresses parenting arrangements, which includes parental responsibilities and parenting time:

- (1) Only a guardian may have parental responsibilities and parenting time with respect to a child.
- (2) Unless an agreement or order allocates parental responsibilities differently, each child's guardian may exercise all parental responsibilities with respect to the child in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances.
- (3) Parental responsibilities may be allocated under an agreement or order such that they may be exercised by
 - (a) one or more guardians only, or
 - (b) each guardian acting separately or all guardians acting together.
- (4) In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, the following must not be presumed:
 - (a) that parental responsibilities should be allocated equally among guardians;
 - (b) that parenting time should be shared equally among guardians;
 - (c) that decisions among guardians should be made separately or together.

[60] The FLA and the DA require the Court and the parties to make decisions respecting guardianship, parenting responsibilities and parenting time by considering the best interests of the children only.

[61] Section 37 of the FLA prescribes the considerations the court must take into account when considering the best interests of children:

- (1) 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.
- (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.
- (3) An agreement or order 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.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[62] Section 1 of the FLA defines "family violence":

"family violence" includes, with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and

(e) in the case of a child, direct or indirect exposure to family violence;

[63] Section 38 of the FLA provides guidance on how family violence must be considered under s. 37(g) and (h):

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

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[64] Similar provisions are now contained at s. 16 of the DA. Courts have found that the "best interests of the child" tests in both acts are consistent: K.A.C. v. J.D.E.C., 2020 BCSC 1373 at paras. 65-66; S.A.H. v. J.J.G.V., 2021 BCSC 2132 at para. 28; C.D.F.B. v. A.G.B., 2022 BCSC 511 at para. 55. In light of the common purpose of these sections, as well as their shared wording indicating that the factors included are not a closed list, my analysis will follow the FLA s. 37(2) framework and incorporate additional DA s. 16(3) factors where appropriate.

C. Positions of the Parties

[65] The Mother seeks to have the children in her care five days a week, with the Father having the children in his care during the weekends. She seeks to have all parental responsibilities allocated to her. The Father, on the other hand, says the children should reside primarily with him and he should have all parental responsibilities. Both parents cite family violence as the primary reason why equal parenting time is not in the best interests of the children.

D. Analysis of Best Interests of the Children

[66] I turn to my consideration of the factors under s. 37(2) of the FLA.

(a) The Children's Health and Emotional Well-Being

- [67] In this case, the Court did not have the benefit of expert evidence about how the children's physical and emotional health has been impacted by their parents' ongoing conflict. In their own testimony, both parents attempted to paint the other as negligent with respect to the well-being of the children.
- [68] Many of the allegations made, particularly those made by the Father against the Mother, can fairly be classified as petty and/or alarmist. The Father claimed that the children's health was at risk because the Mother sent the children to school without adequate rain clothes on rainy days. He noted that she once failed to make a timely appointment for K when he had a dental issue. He claimed that K almost drowned once when swimming with the Mother because she was not paying adequate attention.
- [69] The Mother, on the other hand, claims that the Grandmother once ignored D when he fell on the playground. When D had a bruise on his neck, the Mother refused to accept a fairly innocuous explanation and reported the matter to MCFD.
- [70] I find that both parties have seized on ordinary mishaps of the kind that would happen in any family with young children, and used them to paint the other parent in the worst possible light. As the MCFD file makes clear, all independent investigations of the multiple allegations of abuse made by each parent have concluded that there are no genuine child protection concerns in this family.
- [71] There is, however, clear evidence in the MCFD report that both parents have spoken negatively about the other parent to the children. This is manifestly harmful to the children and is a violation of the order made by Master Keim at the JCC.
- [72] Without wishing to diminish the seriousness of this breach, which is harmful to the emotional well-being of the children, I find that, with the exception of the parties' conflict and negative talk about each other, there is no evidence that the children's health and well being is at risk in the care of either parent. Both parents have, for the most part, behaved responsibly in discharging their obligations to protect the health and well-being of the children when they are in their care. Both parents have sought out appropriate medical and dental care when it has been needed. Both parents have registered the children for different forms of counselling and play therapy to assist the children to weather the storm of conflict that surrounds this family. I am satisfied that both parents are equally committed to supporting the health and well-being of their children. To the extent that they each point to the other as negligent and incompetent in this regard, I find those allegations to be without foundation.
- (b) The Children's Views
- [73] On October 27, 2023, I conducted a judicial interview of K. I did not interview D because of his young age.

- [74] K is now in Grade 4. He is a bright and thoughtful child who has found his parents' separation to be difficult. K enjoys playing soccer and playing with his friends. He likes playing Minecraft and Roblox and being outside. He does not enjoy his piano lessons. He told me that he is happy spending time with both his parents and gets along well with his little brother D. He is comfortable both in his mother's home and in his father's home. When something good happens in his life, he wants to tell both his mom and his dad about it. He wants the fighting between his parents to end.
- [75] Throughout my interview with K, I kept in mind the concern, evident from the MCFD reports, that the Father may have influenced the children to adopt negative views of the Mother. However, I was left with the impression that the wishes and views K expressed were authentically his own. He did not express any fear of his mother or concern about spending time with her, and I believe he was genuine when he told me that he has a happy and harmonious relationship with each of his parents.
- (c) Nature and Strength of Relationships between the Children and Significant Persons in Their Lives
- [76] In addition to their parents, the children are also bonded to the Grandmother. Unfortunately, due to most of the parties' extended family residing in Tehran, the children have no other family members or close family friends in the Lower Mainland. In my interview with K, he advised me that he and D have friends, and that they play with their friends both when they are at the Father's house and when they are at the Mother's house.
- (d) The History of the Children's Care
- [77] Prior to separation, both parents were significantly involved in the day-to-day lives of the children. Since moving to Canada in 2018, neither party has worked a conventional job that took them out of the home on a full-time basis. The Father was working remotely from home for most of the time since their move to Canada. The Mother worked intermittent part-time shifts at Superstore or at the same afterschool program that K and D attend. This meant that both parents were available to provide care to the children. I find that both parents were actively involved in caregiving.
- [78] Post-separation, between May 2021 and February 2022, the children were almost exclusively in the Father's care. For most of this time, the Mother had only supervised parenting time. Since February 2022, the parties have shared equal parenting time on a week on/week off basis. While there have been many disputes about extra-curricular activities, medical care, and other matters during this time, the children appear to have adjusted well to this arrangement.
- [79] In addition to the history of care, s. 16(3) of the DA requires the Court to consider "any plans for the child's care": at subsection (g). I have paid particular attention to the fact that the parties jointly developed and agreed to the week on/week off parenting plan, despite being unable to agree on most everything else. This arrangement has been working well.

(e) The Children's Need for Stability, Given Their Age and Stage of Development

[80] Given the children's young ages and the amount of conflict they have witnessed, the children have an important need for stability. I find this particularly so with respect to health and medical matters and extracurricular activities, which continue to be matters about which the parties cannot agree. I have sought to make an order with respect to parenting responsibilities that will assist in reducing the conflict and increase stability for D and K.

(f) The Ability of the Parties to Exercise Their Responsibilities

[81] It is clear to me that both the Mother and the Father love their children and genuinely wish to be good parents to them. The difficulty appears to be that their animosity towards one another has often clouded their judgment and caused each of them to behave in ways that are harmful to their children. The Mother has a history, documented in videos, of losing her temper in front of the children, yelling and behaving erratically in a manner that is clearly frightening. The Father has a history, clear from the MCFD report and evident even in the way he behaves in the videos he tendered in court, of manipulating the children. When the Mother is angry, he does not encourage the children to have a positive relationship with her, instead he assures them that they are "safe" with him, thereby setting up a dynamic that stokes further fear of their mother, and suggests to the children that they are only safe when they are in his care.

[82] Relatedly, the "best interests" analysis under s. 16(3) of the DA includes considering "each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse": at subsection c. I find that both parties have, in the past, failed equally in this regard.

[83] Nevertheless, the stormiest period in this family appears now to have passed. Since February 2022, when shared parenting began, there appear to have been very few outbursts on the Mother's part, and K at least expressed no fear at all of his Mother during the Court's interview with him. While each parent made significant mistakes in the early days of separation, I find that, at present, they are both quite capable of exercising their parenting responsibilities to their children.

g) and h) Family Violence

[84] Each parent has alleged family violence against the other. Each allegation is denied by the other parent. I have considered these allegations carefully.

1. Allegation of Sexual Assault

[85] I turn first to the family violence allegations made by the Mother, and particularly the allegation that the Father sexually assaulted the Mother twice in July 2021 during a brief reconciliation period.

[86] Because the Mother only had the assistance of an interpreter for part of the trial, and she does not have full proficiency in the English language, I must approach my analysis of the credibility of her allegations with a great deal of care. Her evidence often seemed to me to be vague and confusing. Her answers to direct questions from the Court, including questions seeking her direct evidence about the events of the alleged sexual assault, were usually non-responsive. However, it is very difficult to discern the extent to which the Mother's confusing and apparently evasive evidence was the result of her struggles to express herself in English, rather than an attempt to obfuscate or mislead the Court. Even when she did have the assistance of an interpreter, the Mother appeared extremely confused by the court process, and persisted in redirecting her evidence to matters of no relevance, such as her dispute with the Grandmother about a shipping container, rather than answering the Court's questions about matters of high relevance to the issues at play in the litigation.

[87] With respect to the sexual assault allegations, I note that it is often the case in family law that the evidence before the Court resists a definitive factual finding on a balance of probabilities with respect to past events. Given the nature of this kind of evidence, it is not always necessary, nor is it possible, to make definitive conclusions about all allegations of family violence: *N.D.T. v. T.F.T.*, 2016 BCSC 134 at para. 103; *M.H. v A.M.*, 2016 BCSC 1664 at para. 73.

[88] In *N.D.T.* at para. 103, Justice Saunders noted the importance of focussing on the best interests of the child when engaging in fact-finding about allegations of family violence:

It is well recognized that the best interests of a child are promoted and protected by making orders that contemplate real and substantial risks to the safety, security and well-being, in respect of both the possibility of a risk apprehended by the court actually existing or becoming manifest, and the risk of potential harm to a child as a result, while at the same time balancing the possibility of a child's interests being harmed by any order that might be too broad.

[89] In this case, the children were not present during the alleged sexual assaults and there is no evidence that they are aware of the allegations. While the sexual assaults, if proven, would constitute a criminal offence, they do not in this case have a significant impact on my analysis of the best interests of the children. This is because, if the allegations were proven to be true, in light of all of the other evidence, they would not constitute a real and substantial risk to the future safety, security and well-being of the children. Therefore, I find that it is not necessary for me to determine whether the Father sexually assaulted the Mother in July 2021 when considering the parenting arrangements that are in the best interests of the children in this case.

2. Allegation of family violence by the Mother

- [90] The Father's multiple allegations of family violence against the Mother are well documented in the MCFD file, and were testified to in court by the Father and the Grandmother, as well as by Natasha Kiteman, an MCFD social worker. The Father submits that the children do not feel safe with their mother due to numerous incidences of the Mother being violent with them.
- [91] The Father's evidence at trial, and his interviews with MCFD social workers and police, suggest a tendency towards exaggeration and alarmism that is not helpful to the children. There is a clear pattern of the Father escalating minor incidences, such as the watermelon incident or verbal arguments between the parties, to involve the police and child protection authorities. This happened on multiple occasions in the spring and summer of 2021. After escalating such instances and involving the police, which itself is bound to have been stressful and upsetting to the children, the Father then used such incidents to stoke fear of the Mother on the part of the children.
- [92] I find that many of the concerns the Father has expressed about the parenting of the Mother are intentionally overblown in order to portray modest human shortcomings as disabling character flaws. Moreover, I find he has been manipulative in seeking to capitalize on those occasions where the Mother did lose her temper by encouraging a dynamic in which the children see him as the "safe" parent, and see their mother as someone to fear.
- [93] There are four factors that I have relied on in finding that any concerns that the children are not safe in the care of either parent are overblown and without foundation. One is the fact that in February 2022, the parties agreed to equal parenting time by way of a consent order. If either party truly believed their children to be at risk in the other party's care, it is unlikely that they would have consented to the other party having equal parenting time. Second, notwithstanding the numerous incidents in which family violence was alleged, the MCFD closed its file on the basis that there were no family protection concerns. Third, almost all of the allegations of family violence that have been made took place during the tumultuous initial separation period in 2021. There is no evidence that any family violence, to the extent it ever took place, is escalating or is part of a pattern such that there is a risk to the children's safety in the future. Finally, in my interview with K, he expressed to me that he was comfortable in both of his parents' homes, that he turns to both his parents for support, and that his only complaint about his life is the fact that his parents fight all the time.
- [94] While there has certainly been some family violence in the past, I am satisfied that there are no present family violence concerns that impact the analysis of which parenting arrangements are in the best interests of the children.
- (i) The Appropriateness of an Arrangement that Requires Cooperation

[95] Sadly, the parties have demonstrated a complete inability to cooperate about anything. They also lack the financial resources to hire a parenting coordinator. Therefore, the parties will be best served by a parallel parenting arrangement that will minimize the need for the parties to communicate and coordinate matters relating to the care of their children.

(j) Any Civil or Criminal Proceedings

[96] All criminal charges against the Mother have been stayed. No criminal charges were ever laid against the Father. There are no civil proceeding pending.

E. Conclusion on Parenting Time

[97] Considering all of the above factors, I find that the parenting time arrangement that reflects the best interests of the children is for the parties to have equal parenting time on a week on/week off basis.

F. Parenting Responsibilities

[98] Due to the parents' inability to cooperate, it is not practical to order the parties to jointly discharge their parental responsibilities. At the same time, I do not find it appropriate to allocate final decision-making authority over all parenting responsibilities to the Father or the Mother. Both the Mother and the Father are perfectly capable of discharging their parenting responsibilities in a way that is in the best interests of their children; the issue is their complete inability to agree about anything.

[99] I have considered the strengths and temperaments of each of the parties. However, I am aware that, in any division of decision-making responsibilities, there is some element of arbitrariness. It is impossible to foresee every parenting decision that will need to be made over the course of K's and D's childhoods, nor is it possible to precisely determine which parent is ideally suited to have final authority over each of those decisions. However, I have endeavoured below to ensure that parenting decisions, if the parties cannot agree, are allocated to the parent best suited to meet those decisions.

[100] I therefore make the following order regarding the parental responsibilities listed at s. 41 of the FLA:

- a) During their own parenting time, each of the Mother and Father will be solely responsible for the following matters:
 - i. making the day-to-day decisions affecting the children and having day-to-day care, control and supervision of the children;
 - ii. making decisions respecting where the children will reside and with whom the children will associate, though each party has an accompanying responsibility to give notice to the other of any change of address and of any other adults living in their residence who will be sharing living space with the children;

- iii. making emergency health decisions for the children if the other parent is not available for immediate consultation;
 - iv. requesting and receiving health, education or other information about the children from third parties;
 - v. receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
 - vi. giving, refusing or withdrawing consent for the children in relation to any activities taking place during their parenting time.
- b) Both parents have the obligation to discuss and try to agree on any of the following significant decisions that may have to be made concerning the children:
- i. decisions respecting the children's cultural, linguistic, religious and spiritual upbringing and heritage;
 - ii. decisions respecting the children's education and participation in extracurricular activities, including their nature, extent, location and cost;
 - iii. subject to s. 17 of the Infants Act, R.S.B.C. 1996, c. 223, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the children;
 - iv. applying for a passport, license, permit, benefit, privilege or other thing for the children;
 - v. giving, refusing or withdrawing any required consent for the children on matters other than activities during each parent's parenting time; and
 - vi. subject to any applicable provincial legislation,
 - i. starting, defending, compromising or settling any proceeding relating to the children; and
 - ii. identifying, advancing and protecting the children's legal and financial interests.
- c) In the event that, despite their best efforts, the parents cannot reach agreement about any of the parenting responsibilities listed at paragraph (b) above, final decision-making authority will be divided as follows:
- i. The Father will be entitled to make decisions with respect to:
 - (1) subject to s. 17 of the Infants Act, R.S.B.C. 1996, c. 223, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the children;
 - (2) subject to any applicable provincial legislation,
 - i. starting, defending, compromising or settling any proceeding relating to the children; and
 - ii. identifying, advancing and protecting the children's legal and financial interests; and
 - (3) applying for a passport, license, permit, benefit, privilege or other thing for the children.

ii. The Mother will be entitled to make decisions respecting:

- (1) the children's cultural, linguistic, religious and spiritual upbringing and heritage; and
- (2) the children's education and participation in extracurricular activities, including their nature, extent, location and cost.

iii. Each parent will have the obligation to advise the other parent of any important matters affecting the children;

iv. Each parent will have the right to obtain information about the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party caregivers.

- v. With respect to the above division of responsibilities between the Father and the Mother, if one parent believes that the other parent is making a decision that is contrary to the best interests of the children, they may apply to the Court for directions under s. 49 of the FLA.

G. Travel with the Children to Iran

[101] The Father wishes to take the children on a trip to Iran to visit his ailing father. The Mother is opposed to this for a number of reasons, including that the Iranian legal regime is one in which women do not share equal human rights to men. She is concerned that, if the Father were to stay in Iran with the children, she may not have any remedy to get her children back. She also expressed concern about the Iranian state's hostility to religious minorities, since she and the children are practicing Christians, as well as the general instability and violence in the country.

[102] I agree with the Mother that it is not in the children's best interests for the Father to take them to Iran at this time. The children need to regain their sense of stability and routine after a very tumultuous couple of years, and an international trip would upset that stability. While a visit to see family in Iran may be beneficial for the children at a future date, any such trip should be made with the agreement of both parents.

[103] I therefore order that neither parent shall take the children outside of Canada without the written authorization of the other parent.

H. Change of children's names

[104] No evidence was tendered to support the notion that the children's best interests would be served by changing their last names, and I decline to make such an order.

- c) family property
 - a. Facts relevant to family property
 - i. Early Years

- [105] The Mother grew up in Tehran. Her father died when she was in her late teens. Shortly after her father's death, the Mother married her first husband. At the time she met the Father, she was recently divorced from her first husband and working as a graphic designer.
- [106] The Father also grew up in Tehran. He has two living parents, who are divorced. Due to his parents' separation, the Father considers himself to be solely responsible for the financial and emotional well-being of his mother, the Grandmother.
- [107] When the parties got married, the Mother had some outstanding debt from her first marriage and no assets. The Father had some cash in his bank accounts, but did not own any real property.
- [108] The Father has an MBA and has spent most of his career working in the information technology sphere. He was working as a senior sales manager at Tehran Internet when Mr. Najiba, who was a colleague at that company as well as one of its owners, approached him about the idea of starting Bazaar. Bazaar was incorporated in 2013 with the following share ownership structure: Father: 50%; Mr. Najiba: 49%; and Mr. Najiba's nephew: 1%.
- [109] After the parties married, they purchased an apartment in Saadatabad, Tehran (the "Saadatabad Apartment") in July 2014. Mr. Najiba loaned them the money for this purchase.
- [110] In May 2015, the Grandmother sold an apartment she owned and gifted the proceeds to the Father. The Father used that money to repay Mr. Najiba for the loan he had advanced to allow the parties to purchase the Saadatabad Apartment.
- [111] In June 2016, the parties purchased a second apartment located on Molavi Street in Tehran (the "Molavi Street Apartment"). At this time, they moved into the Molavi Street Apartment and the Grandmother moved into the Saadatabad Apartment.
- [112] At the time the parties moved to Canada in 2018, they owned two apartments in Tehran (the Saadatabad Apartment and the Molavi Street Apartment) and had no debt to Mr. Najiba or his companies. They also owned a car in Tehran, which was subsequently sold and the proceeds were deposited into their Canadian joint account.

ii. Inheritance Funds

- [113] The Mother first testified in direct examination that she inherited an apartment in Tehran in 2018. Over the course of her direct and cross-examination, it became evident that the matter was not quite so clear. When the Mother's father died in 2003, all his assets passed to the Mother's mother, including three apartments in Tehran. In 2018, the Mother asked her mother to sell one of the Tehran apartments and send her the proceeds. The Mother's mother sold the apartment as requested, but she wired the proceeds to the Father, not to the Mother, in separate wire transfers. On February 12, 2018, she transferred Rls 3,100,000,000, which the Father estimates to have had a 2018 value of \$75,609, to the Father's bank account in Iran. On May 13, 2018, she made a second wire transfer of Rls 215,000,000 to the Father's bank account in Iran. The total 2018 value of the two wire transfers, according to the Father,

is about \$80,000.

[114] Prior to moving to Canada in the spring of 2018, the parties spent a lengthy period of time in Oman and appear to have considered moving there. The Father was seeking to establish business ties for Bazaar in Oman. While this originally seemed like a promising possibility, after at least one high-level meeting with Omani businesspeople and officials, it became clear that Bazaar would not be able to succeed in Oman. At this point, the Father set his sights on Canada as a possible place to expand his business.

[115] The Father testified that the entire amount of funds he received from the Mother's mother in 2018 were spent on family expenses, mostly in Oman. The Father was trying to project an image of success as he sought to start a new business in Oman, which involved purchasing luxury cars, living in expensive homes, and maintaining an unsustainably high cost of living. The Father testified that any funds that were not spent in Oman made their way to Canada and were used to fund the living expenses of the family.

iii. Family Home

[116] On April 22, 2020, the parties purchased the Family Home. The purchase price was \$1,549,000. The parties obtained a mortgage from the Bank of Nova Scotia in the amount of \$1,229,300 (the "Scotiabank Mortgage").

[117] The source of the funds used to purchase the Family Home was a significant point of disagreement at trial. The Mother submits that her inheritance was used to purchase the Family Home, along with family savings. The Father submits that the Family Home was purchased with the combined savings of both parties.

[118] Statements from the Father's Scotiabank account show that on April 20, 2020, two days before the parties took title to the Family Home, \$210,609.75 was deposited into the account, and \$279,131.98 was transferred out. The Father testified that the \$210,609.75 deposited into his account consisted of the family savings in Iran, which were transferred to his bank account in Canada via an intermediary. The \$279,131.98 was withdrawn to pay the down payment on the Family Home.

[119] According to a joint appraisal tendered on consent, the value of the Family Home as at September 18, 2023 is \$2,100,000. The principal balance on the Scotiabank Mortgage as at September 8, 2023 was \$1,158,918.52.

iv. Other Assets

[120] At some point, the Father had an account at Bank Muscat in Oman (the "Oman Account"). A bank statement produced by the Mother, dated January 15, 2020, states that the Father held the equivalent of approximately \$300,000 in the Oman Account. However, the Father did not disclose this account on his Form F8 financial statement. The Mother cross-examined the Father about whether the Oman Account still contains funds. The Father denies having any access to the account at this time. He explained that the Oman Account was a bank account

that contained Omani funds advanced by Mr. Najiba for the Father to use to develop the business of Bazaar in Oman in 2018. Since this operation never got off the ground, the Father did not use all these funds.

[121] The Father admitted that in 2018 and 2019, after coming to Canada, he occasionally used a credit card that was linked to and paid out of the Oman Account. However, he has not done so since 2019. He testified that he believes that Mr. Najiba has since removed the funds from this account. Mr. Najiba testified that he was unable to recall the details of the Oman Account, but did remember that approximately 117,000 Omani Rials (about \$300,000) was advanced and then returned to him by the Father.

[122] In July 2020, the Saadatabad Apartment was sold and the net proceeds were deposited into the couple's joint account at Scotiabank.

[123] While the Father still owns the Molavi Street Apartment, he testified that title has been seized by Tehran Internet as judgment creditor as part of its collection efforts under the Iran Order. In his Statement of Finances, the Father states that the property was transferred as security for the parties' personal debt to Bazaar.

b. Is any portion of the Family Home excluded property?

[124] The Mother claims that the Family Home was purchased with inheritance funds she received from her father's estate. This claim was simply not supported by the evidence. The approximately \$280,000 down payment for the Family Home came from the Father's Scotiabank account. The Father testified that the funds used to purchase the Family Home were the family's savings in Iran, which were sent to Canada through a number of wire transfers with the help of third parties.

[125] The Mother's mother transferred the alleged inheritance funds to the Father in February 2018, shortly after she sold a property she owned in Tehran. This transfer took place more than two years before the Family Home was purchased, before the parties moved to Canada. The Father testified that the funds he received from the Mother's mother, amounting to the equivalent of around \$80,000, were deposited into his Iranian bank account and used for family expenses in Iran, Oman, and later in Canada. Therefore, even if the Mother received a gift of excluded property by way of inheritance from her father's estate (a contention that is questionable for a number of reasons, including the lack of evidence that the Mother in fact received an inheritance from her Father's estate, and the fact that the funds were sent to the Father, not the Mother), the funds were deposited to the joint account and spent on family expenses. There is no evidence that the family used any portion of the funds sent by the Mother's mother to the Father in 2018 to purchase the Family Home.

[126] As such, I find that the equity in the home is family property and no portion is the excluded property of the Mother.

c. Other Family Property

- [127] With respect to the other family property, I understand that the Molavi Street Apartment, presently worth the equivalent of \$179,128, is still owned by the Father. However, it appears that Mr. Najiba has seized title to this property as part of collection efforts against the Father in Iran, through a power of attorney granted to him by the Father in 2021.
- [128] The evidence on the current status of the Molavi Street Apartment was not particularly clear. The Court was not provided with any expert evidence on the impact of Mr. Najiba's collection efforts on the beneficial ownership of a title holder to real property in Iran. For example, it is possible that Mr. Najiba presently holds the title as a form of security until the Father's debts are paid. It is equally possible that the Father no longer has any beneficial interest in the Molavi Street Apartment. Since the Molavi Street Apartment is real property located in Iran, it is outside the jurisdiction of this Court to make an in rem order with respect to its disposition in any event. However, for the purposes of the family property analysis, to the extent that the Father still owns any equity in the Molavi Apartment, it is family property and the parties have an equal interest in it.
- [129] Another family asset with potentially significant value is the Father's 50% share in Bazaar. The Father explained that, like the Molavi Street Apartment, his shares were seized on February 2, 2023 as part of collection efforts by Tehran Internet in Iran. However, he listed the Bazaar shares as excluded property on his Statement of Finances filed September 13, 2023. If the Father continues to have any beneficial interest in his shares in Bazaar, any growth in the value of the shares that accrued during the marriage would be family property. However, absent any evidence that would allow the Court to determine what, if any, equitable interest the Father continues to have in his shares after their seizure in February 2023, the portion that is family property cannot be determined.
- [130] With respect to the Oman Account, I am satisfied, based on the testimony of the Father and Mr. Najiba, that this account was never beneficially owned by the Father. It was used as a way to fund Bazaar's business expenses in Oman, and the Father has long since lost access to it. It has never been, and is not presently, a family asset.
- [131] Any other bank accounts, investments accounts or cash assets owned by either the Father or the Mother are family property and must be divided equally between the parties.
- [132] In her trial brief, the Mother seeks an order that the Father must return her dowry, which she says includes jewelry and furniture. She did not make any submissions about this at trial. Further, the Mother did not advance evidence of the formation or existence of the dowry, nor did either party supply an expert to explain the legal effect of such a dowry. Thus, I cannot enforce it: see e.g., *A.M. v M.S.*, 2017 BCSC 2061 at para. 138. Any jewelry and furniture that was obtained by one of the parties during the marriage or for the purpose of the marriage, or was gifted by one party to the other at any time, is family property to be divided equally between the parties.

[133] There may be vehicles or other assets of value owned by the parties. However, I did not receive sufficient submissions to meaningfully determine the disposition of those assets. If the parties are unable to agree on how to allocate family property that is personal property, including cars, jewelry, and furniture, I order that those assets be sold and the proceeds of sale equally divided between the parties.

d) Civil Action

a. What is being claimed in the Civil Action?

[134] The plaintiffs (Tehran Internet, Bazaar and Mr. Najiba) make the following claims in their second amended notice of civil claim:

- a) The Bazaar Payments were loans from Bazaar to the Father and the Mother, which are now repayable;
- b) Funds provided by Tehran Internet to Bazaar under the Financing Agreement were used by the Father and the Mother as family property in British Columbia in breach of the terms of the Financing Agreement. As such, the full amount owing under the Financing Agreement is payable by the Father and the Mother; and
- c) The Iran Order meets the common law test for enforceability in the province of British Columbia and should be executed upon.

[135] The Civil Action therefore consists of two distinct debt claims: the claim of Bazaar against the Father and Mother for repayment of the Bazaar Payments; and the claim of Tehran Internet against the Father as a guarantor under the Financing Agreement. Additionally, the plaintiffs make a separate claim to enforce a foreign judgment. I point this out because the claims and issues were often conflated in the plaintiffs' written and oral submissions. In my view, they are conceptually distinct and must be considered separately.

[136] It is somewhat perplexing that the civil claim was brought as a single claim with three plaintiffs (Tehran Internet, Bazaar, and Mr. Najiba), who clearly have differing, and in some cases conflicting, interests, all being represented by the same counsel. Tehran Internet's action seeking to enforce the guarantee under the Financing Agreement is one in which Bazaar and Mr. Najiba, as the other two debtors under the Financing Agreement, clearly do not have the same interests as Tehran Internet. This has raised questions for the Court about the bona fides of the Tehran Internet claim being pursued against the Father alone and not against Bazaar or Mr. Najiba. This concern is discussed in greater detail below.

b. Are the Bazaar Payments payable?

i. Facts Relevant to the Bazaar Payments

[137] Mr. Najiba is an Iranian businessperson who currently lives in the Lower Mainland on a work permit. He owns or has an interest in several companies, mostly in telecommunications. He has been the vice-CEO of Tehran Internet for the last fifteen years.

In addition to Mr. Najiba, Tehran Internet has six other shareholders. The Father is not a shareholder in Tehran Internet. In his testimony, Mr. Najiba described Tehran Internet as a company similar to Rogers, which provides cellphone and internet service to customers in Iran.

- [138] As noted, Mr. Najiba is also a shareholder in Bazaar. He owns 49% of that company and is presently its CEO.
- [139] Mr. Najiba testified that he and the Father were close work associates and friends. Their families socialized together. They founded and developed Bazaar together in Iran. In the early days of the company, from its incorporation in 2013, the Father was the CEO and was primarily responsible for Bazaar. Mr. Najiba was the chair of the board of directors and attended Bazaar's offices approximately once a week.
- [140] When the Mother and the Father moved to Canada in 2018, Mr. Najiba understood that the Father would attempt to continue his role as CEO of Bazaar, and would travel back and forth between the two countries as needed to fulfil his CEO duties. Because of this, Mr. Najiba did not hesitate to authorize large advances of cash to the Father from Bazaar, because he anticipated that the Father would be entitled to dividends that equalled or exceeded the advances in the coming years.
- [141] Between April 30, 2018 and December 15, 2020, Bazaar made a number of advances to the Father, totalling the equivalent of approximately \$360,000.
- [142] Mr. Najiba testified that, in 2020, he expressed concerns to the Father about the Bazaar Payments and the Father's ability to pay Bazaar back if the expected profit in the company was not realized. The Father reassured Mr. Najiba that if his share of the profits from Bazaar turned out to be less than the Bazaar Payments, he would sell the Family Home to pay back the company.
- [143] On January 24, 2021, Bazaar's board of directors demanded that the Father repay his debts to the company in the amount of \$361,313 by March 20, 2022.
- [144] The Bazaar Payments have not been repaid. In the second amended notice of civil claim, Bazaar has claimed against both the Father and the Mother for their repayment.

ii. Are the Bazaar Payments loans or compensation to the Father for work performed?

- [145] The Mother submits that the Bazaar Payments were compensation to the Father for services he performed for the company. The Father and Mr. Najiba testified that the Bazaar Payments were always intended to be loans that the Father would repay from future dividend payments he received as shareholder. Unfortunately, those dividend payments were never made, and the Father is now personally liable. The Bazaar Payments are reflected in the financial statements of the company as an account receivable. The Bazaar's board of directors has made a formal demand to the Father that they be repaid.

[146] The Mother advanced no evidence to support her contention that the Bazaar Payments were compensation, rather than a loan from Bazaar to the Father. Based on sworn evidence of the Father and Mr. Najiba, the financial statements of Bazaar, and evidence of the formal demand for payment from Bazaar's board of directors, I am satisfied on a balance of probabilities that the Bazaar Payments were always intended to be a loan to the Father that was to be repaid from dividends that were never received. The Father is liable to Bazaar for the full amount of the Bazaar Payments.

iii. Are the Bazaar Payments family debt?

[147] The Bazaar Payments were debts accrued by the Father during the course of the marriage. The Bazaar Payments funded the parties' lifestyle for the first two years they were in Canada. In my view, there is no reasonable basis on which I could find that the Bazaar Payments are anything other than family debt.

[148] However, the finding that the Bazaar Payments are family debt because they are a liability accrued by the Father during the course of the marriage does not establish that the Mother is civilly liable to Bazaar in the Civil Claim. As noted by Justice Smith in *Pallan v. Pallan*, 2022 BCSC 1347 at para. 29, family debt may include a debt owed by a spouse to a third-party creditor but that doesn't make both spouses jointly liable to the creditor when only one of them incurred the debt. In this case, it is clear that the Mother was entirely unaware that the Bazaar Payments were advances that would have to be paid back. She never took on liability to repay these amounts.

[149] Therefore, properly conceived, under the Civil Action, the Father is liable to repay the full amount of the Bazaar Payments to Bazaar. However, under the family law proceeding, the Father has a right of contribution from the Mother, in the amount of 50%, or \$180,500, of this debt, because the Bazaar Payments are family debt.

[150] To the extent that Bazaar seeks to argue that it has an equity interest in the Family Home (an issue that was pleaded in the notice of civil claim but not argued at trial), the evidence simply does not bear this out. On the evidence, the Bazaar Payments were not used to purchase the Family Home, nor did Bazaar take any steps to establish an interest on title to the Family Home.

c. Are the Father and the Mother Indebted to Tehran Internet under the Financing Agreement?

[151] On April 9, 2018, Tehran Internet and Bazaar entered into the Financing Agreement under which Bazaar borrowed Rls 400 billion from Tehran Internet. According to the conversion rate the parties have agreed to use,[1] the current value of Rls 400 billion is just over \$1 million. Under the Financing Agreement, both the Father and Mr. Najiba are personal guarantors. They pledged a promissory note of Rls 500 billion (about \$1.3 million) as security for Bazaar's obligations to Tehran Internet under the Financing Agreement.

- [152] In the second amended notice of civil claim, the plaintiffs allege that the Mother and the Father used funds that Tehran Internet loaned Bazaar under the Financing Agreement as family property in British Columbia. In addition to seeking the enforcement of the Iran Order, they seek damages for breach of the Financing Agreement and a declaration of an equitable interest in the Family Home.
- [153] The plaintiffs led no evidence to support the allegation that the Father and Mother used Tehran Internet funds on family property or expenses, or at all. Mr. Najiba testified about the funds that were provided by Tehran Internet to Bazaar under the Financing Agreement. He explained that Bazaar used these funds to purchase products and infrastructure for the company operations. Because the Father was not there to oversee the company, these products remained unused and the expenses associated with the loan remain a burden for Bazaar. A large portion of the financing provided by Tehran Internet was used for large scale purchases of digital accessories, such as older model iPhones, which became obsolete with the passage of time.
- [154] Mr. Najiba's evidence therefore contradicts his pleading that the funds Tehran Internet loaned to Bazaar were somehow used by the Father and the Mother as family property. Indeed, no evidence of any kind was proffered to suggest any connection between the money Tehran Internet loaned to Bazaar and the Father and Mother, other than the Father's personal guarantee under the Financing Agreement.
- [155] Also absent from the evidence was any testimony or documentary evidence to suggest a default by Bazaar of its obligations under the Financing Agreement, a demand from Tehran Internet to Bazaar for payment under the Financing Agreement, or any collection steps taken by Tehran Internet to recover its loan from Bazaar, the primary debtor.
- [156] An expert valuation of Bazaar was tendered on consent. The financial statements of the company suggest that it remains an operating company with significant assets, although it has operated at a loss for the two years in which financial information was provided (2021 and 2022). The company has assets worth approximately Rls 1.2 trillion, which, on the conversion rate agreed to by the parties, is about \$3.5 million. It also has considerable liabilities, including the liability to Tehran Internet under the Financing Agreement. As at the end of the March 2022 fiscal year, the company had 209 employees and operating revenues of Rls 33,842,917,118,625 (about \$89 million).
- [157] It is unusual, to say the least, for an arm's length corporate party to a loan agreement to take no steps to collect against a solvent corporate debtor and instead choose to pursue an insolvent, individual guarantor in a foreign jurisdiction. If I needed to determine the Father's indebtedness to Tehran Internet, I would be troubled by the unusual nature of the claim against the Father by Tehran Internet.
- [158] However, the question of the Father's indebtedness to Tehran Internet has already been adjudicated by the Iranian courts applying Iranian law, which is the governing law of the Financing Agreement. In oral submissions, counsel for the plaintiffs conceded that Tehran

Internet's claim was properly characterized strictly as a claim for enforcement of the Iran Order, not a separate claim that the Father and Mother are indebted to Tehran Internet. Therefore, though the plaintiff's pleadings ask me to make substantive findings about the Father's indebtedness to Tehran Internet, I have only considered the enforceability of the Iran Order in these reasons for judgment.

d. Is the Iran Order enforceable in British Columbia?

i. Facts relevant to Enforcement of the Iran Order

[159] At some point in early 2023, the directors of Tehran Internet commenced a lawsuit against the Father, suing him for Rls 500 billion pursuant to his guarantee under the Financing Agreement (the "Iranian Proceeding"). This resulted in the Iran Order. The Iran Order includes the following term:

Because the elements and condition of the request are provided; therefor, the court has notified and issued the provisional remedy of the petition equal to Rls 500,000,000,000/- from jointly unclaimed properties of the defendants except for the liabilities exceptions for the check No 332414 dated 25.01.2023 to Bank Mellat up to ending the file investigation.

[160] When asked about the Iran Order, Mr. Najiba explained that it was "the very first step" in pursuing a claim against the Father and that there would be other steps to claim the entire amount owing by the Father to Tehran Internet.

[161] On February 15, 2023, the Father's shares in Bazaar were confiscated by court order as part of the Iranian Proceeding.

ii. Enforceability of Foreign Judgments at Common Law

[162] Foreign judgements are not enforceable "as of right", and must therefore be recognized (i.e., converted into an order of the local jurisdiction) to be enforced in BC. If the foreign judgement is not from a "reciprocating state" under the Court Order Enforcement Act, R.S.B.C. 1996, c. 78, as in the present case, the Court must apply the common law test.

[163] At common law, the party seeking to enforce an order must demonstrate that it is for a definite sum of money, that it is "final and conclusive", and that the foreign court had "jurisdiction in the international sense". The party opposing enforcement may bring a few limited defences.

1. "Final and Conclusive"

[164] To be enforced, a foreign judgement must be both final (i.e., *res judicata*) and conclusive (i.e., sufficiently clear and specific): *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52 at para. 10.

[165] Final orders conclusively, finally, and forever ground the existence of the party's obligation in that jurisdiction; further litigation between the parties must be precluded on the issue. The decision must only be subject to reversal by a higher court, rather than the same level of court: *in re Henderson, Novion v. Freeman* (1889) 15 App. Cas. 1 (H.L.).

[166] Judgements for debt that require the debtor to pay a definite sum of money are generally considered to be sufficiently "clear and specific": *Pro Swing Inc. at para. 10*; *South Pacific Import, Inc. v. Ho*, 2009 BCCA 163 at para. 52.

2. "Jurisdiction in the International Sense"

[167] To recognize a foreign judgement, a court must also be satisfied that the foreign court had jurisdiction over the defendant. This can be established through presence, submission, or a "real and substantial connection" between the cause of action and the jurisdiction.

[168] The "real and substantial connection" factor requires that the defendant has "participated in something of significance or was actively involved in that foreign jurisdiction", such as by owning property or assets in the jurisdiction: *Beals v. Saldanha*, 2003 SCC 72 at para. 32.

3. Defences

[169] The party opposing enforcement can raise the following defences: fraud on the foreign court, a breach of natural justice in the foreign court, and forum public policy: *Beals* at paras. 40-77.

[170] To rely on the defence of a breach of natural justice in the foreign court, the party resisting enforcement must prove that the foreign legal system is contrary to Canadian notions of natural justice: *Beals* at para. 59. The enforcing court must be satisfied that "fair process was used in awarding the judgement": *Beals* at para. 62. Examples of possible breaches of natural justice include a lack of judicial independence or a lack of procedural safeguards (such as failing to provide adequate notice, denying the party an opportunity to defend their case on the merits, or a failure to provide adequate reasons): *Beals* at paras. 62, 65.

iii. Application to Claim of Tehran Internet Against Father

[171] There are two primary concerns I have with respect to the enforceability of the Iran Order: a lack of expert evidence to establish that the Iran Order was final and conclusive, and a lack of evidence to suggest that natural justice was observed.

1. Lack of Evidence that Order was Final and Conclusive

[172] The amount of the order is clearly stated as RIs 500,000,000,000. Some elements of the Iran Order suggest that it is final, such as the reference at the top left page to a "final verdict" number, and the last sentence stating that the provisional remedy will be objectionable for 10 days at that court branch, following which it presumably cannot be challenged at the same level of court. The Iran Order also does not give a date range or end date on which it will cease to be effective. However, the reference to issuing a "provisional" remedy suggests

that the Iran Order could be temporary or subject to change. Mr. Najiba testified that the Iran Order was a "first step", implying that there are further steps required before the Iran Order becomes final in the sense required for its enforceability in BC.

[173] The Court was not given the assistance of an expert in Iranian law who could explain whether, under Iranian law, the Iran Order would be deemed to be a provisional order or final order. Matters of foreign law must be proven as matters of fact by experts. In applying foreign law, "a BC court must rely on the evidence of an expert competent to explain and interpret the foreign law": *Friedl v. Friedl*, 2009 BCCA 314 at paras. 20, 26. As was noted by the Court in *Upjohn v. Upjohn*, 1975 CanLII 415 (Ont. Sup. Ct.) at p. 3, it is often difficult to determine with confidence whether a foreign order is final without hearing from a legal expert on the issue.

[174] In the absence of such evidence, I find myself unable to determine whether the Iran Order is final. As such, I find that Tehran Internet has failed to meet the burden of proof in establishing this requirement for enforceability.

2. Natural Justice Concerns

[175] It is not clear on my reading of the Order whether or not the Father was given notice of the Iranian Proceeding, although Mr. Najiba asserted that, as an officer of Bazaar, the Father would have been served through some form of internet portal. Whether this complies with the service requirements under Iranian law is a matter on which I had no expert evidence. In any case, in order to enforce the order, this Court must be satisfied that natural justice was observed and that the Father was given actual notice and an opportunity to make submissions.

[176] In addition to concerns about notice, it is not clear from the order itself, nor was there any evidence to indicate, whether a hearing was held in the Iranian Proceeding. Wording such as "the provisional remedy was issued through accepting the petition, referring to the court and its registration in aforesaid classification file number through signing by the curator and checking the file papers as specified herein below" could suggest that no hearing was conducted, and/or no response documents were accepted or considered. Again, this is a matter that ought to have been resolved by expert evidence on Iranian legal procedures. Without such evidence, it is not possible for me to conclude that natural justice was observed.

[177] In this sense, this case differs from *Gharavi v. Khouzani*, 2017 BCSC 48, a case relied on by Tehran Internet. In *Gharavi*, Justice Burnyeat considered an application to enforce in British Columbia a monetary judgment obtained in Iran. The defendant in that case had actively participated in the proceedings in Iran, including by launching an application and an appeal before the Iranian courts. Had the Father in this case so robustly participated in the Iranian proceedings, I would have some basis to infer that a measure of natural justice had been observed in the Iranian Proceeding. No such evidence has been tendered in this case.

iv. Conclusion on the Iran Order

[178] I am not satisfied that Tehran Internet has met the fairly low bar of establishing that the Iran Order is enforceable in British Columbia. Insufficient evidence has been tendered to allow me to conclude that the order is a final order, and I have not been provided with any evidence to satisfy me that natural justice has been observed. I therefore decline to find that the Iran Order is enforceable in British Columbia.

[179] As a result of this conclusion, it is not necessary for me to consider whether the Father's liability under the Iran Order is family debt.

e. Costs of the Civil Action

[180] As the plaintiffs have been successful in establishing liability for the Bazaar Payments, they should be entitled to their costs of pursuing the Civil Action. However, if there are matters relevant to costs of the Civil Action about which I am unaware, the parties may schedule a short hearing before me to speak to same.

e) THE SALE OF the family home

[181] Pursuant to R. 15-8 of the Rules, the Court may order a sale of family property where it appears necessary or expedient that the property be sold. In light of the family's significant debts and uncertain ability to access family assets in Iran, I have decided that such an order is expedient.

[182] Section 97(2) of the FLA allows the Court to make orders for the payment of the proceeds of sale to give effect to the division of property, including making orders about who will have conduct of sale, how the home will be sold, how the home should be valued, the sales price, the conditions of sale, and what will happen to the proceeds of sale.

[183] In my view, it is appropriate for the Father and the Mother to have joint conduct of sale. They must select a realtor and list the property for sale no later than April 1, 2024. If they are unable to agree on the terms under which the Family Home is to be sold, they may appear before me for further direction.

f) support

a. Mother's Guideline income

[184] The Mother has a master's degree in illustration and graphic design, obtained from a university in Iran.

[185] The Mother spent the early part of her career working as a graphic designer for Tehran Internet and later for Bazaar. Once the children were born, she did some work as a party planner, but was not consistently employed for the remaining time the parties were living in Iran and raising their two small children.

- [186] After the parties moved to Canada, the Mother worked in a number of part-time jobs, including at Superstore and as a daycare assistant at the BC Christian Academy. She did seasonal work as a graphic designer for the photo lab at London Drugs one year. She has not worked full time since arriving in Canada.
- [187] In September 2021, the Mother started taking classes at Discovery College and obtained a certificate in accounting and payroll administration.
- [188] The Mother went on social assistance in the spring of 2022. In October 2022, she started a part-time job doing office administration. At the time of trial, she was still employed in this position. She makes about \$700 per month from this job, and this income is supplemented by social assistance payments.
- [189] The Mother takes English classes for approximately six hours per week, on Tuesday and Thursday mornings. She testified that she needs to improve her English before she can reasonably be expected to find full-time employment in Canada. In light of the Mother's English language deficiencies, which were very evident at trial, I agree that her career options will be extremely limited until her English can improve. Therefore, in my view, her focus on taking English classes rather than working full time is reasonable and more likely to provide long-term financial stability for the children.
- [190] According to the Mother's Form F8 financial statement, her Guideline income before adjustments is \$20,000. This includes \$3,500 in self-employment income and \$16,500 in social assistance. In my view, since she only attends English classes for 6 hours a week, and the children are only with her fifty percent of the time, the Mother is capable of working more than she is presently working and is certainly capable of earning more than \$3,500 a year.
- [191] In my view, the Mother could earn about \$20,000 annually from part-time, minimum wage employment. I find that this is a realistic Guideline income for the Mother, until she is able to improve her language skills. Once her English proficiency improves, her employment prospects will also improve.

b. Father's Guideline Income

- [192] When the parties first came to Canada in the spring of 2018, the Father intended to continue in his role as CEO of Bazaar, working remotely and travelling back and forth to Iran as needed. This plan did not succeed, in part because the Father was not able to travel for work until he obtained his permanent residency status, which happened shortly before the COVID-19 pandemic shut down all international travel for a period of time. As a result, the Father did not earn any income from Bazaar after coming to Canada and, as discussed, the family instead drew down heavily on loans from Bazaar to fund their living expenses.

- [193] After arriving in Canada, the Father also sought out business opportunities in the Lower Mainland. In May 2018, the Father met Hossein Tayyebi, a local Iranian-Canadian businessman and owner of NovaGreen. The Father started doing some contract work for NovaGreen and eventually, in early 2020, was offered a full-time position with a salary of \$288,000 per year.
- [194] Hossein Tayyebi testified that he is the founder of NovaGreen. When the Father first met with Mr. Tayyebi, Mr. Tayyebi was optimistic that the Father could employ the same software platform he had developed under Bazaar in Canada with the support of NovaGreen. He anticipated that the Father would end up becoming a business partner in NovaGreen. Unfortunately, this never happened. Mr. Tayyebi attributes the Father's failure to bring his software platform to NovaGreen to COVID-related travel restrictions and the breakdown of the Mother's and Father's marriage.
- [195] At present, the Father works very intermittently for NovaGreen. He produced recent paystubs to show that he works approximately 20 hours a month, at minimum wage, for the company.
- [196] The Mother asks the Court to infer that the Father has under-reported his income. She points to the fact that, in 2020, the parties were able to obtain a mortgage of over \$1 million based on the Father's alleged salary at NovaGreen. On February 20, 2020, Mr. Tayyebi wrote a letter on NovaGreen letterhead to assist the Father with the mortgage application for the Family Home (the "NovaGreen Letter"). The NovaGreen Letter states that the Father has been employed on a full-time basis at NovaGreen since February 1, 2020 with annual compensation of \$288,000. According to the Father, he only received this level of compensation for a month or less, before it was reduced to almost nothing as a result of the COVID-19 pandemic.
- [197] The Father now works primarily as a screening officer at Vancouver International Airport. He makes \$27 per hour. During the trial, he was only working on weekends, but he testified that his normal schedule is 40 hours a week.
- [198] The Mother submits that the Father's change of fortune is perplexing. While the COVID-19 pandemic was disruptive to many businesses, the Father was not fired from NovaGreen in March 2020. Instead, his salary was reduced from \$288,000 a year, or \$12,307 gross wages per biweekly pay period, to only a few hours a week at minimum wage. It is not surprising that the Mother would find this arrangement suspicious. However, it is not open to me to make factual findings on the basis of suspicion or speculation, particularly in the face of the sworn evidence of Mr. Tayyebi. Mr. Tayyebi testified that NovaGreen is no longer an active company; it has no reasonable prospect of earning significant income for the Father or Mr. Tayyebi in the future.

- [199] The Father's total income stated on his 2020 tax returns was \$52,028, which is consistent with his and Mr. Tayyebi's evidence that he only received an annual salary of \$288,000 for a month or two in early 2020, before his salary was substantially reduced. The deep reduction in his income happened more than a year before the parties' separation, at a time when both parties have testified that the marriage was happy.
- [200] I am satisfied, on a balance of probabilities, that the most lucrative income earning opportunity presently available to the Father is his job as a screening officer at YVR.
- [201] On his Form F8, the Father declares employment income of \$45,074, plus rental income in the amount of \$9,654, for total Guideline income of \$54,728.
- [202] When the Family Home is sold, the Father will no longer have rental income from the rental of the suite in the family home. However, this reduction in rental income can be offset by the Father increasing his working hours to full-time, which is something he testified that he intended to do. Therefore, I find that the Father's Guideline income is appropriately set at \$54,728.

c. Conclusion on child support

- [203] The Mother's Guideline income is \$20,000. The Father's Guideline income is \$54,728.00. On the basis of these incomes, and shared parenting, the table amount payable by the Father to the Mother is \$850, and the amount payable by the Mother to the Father is \$324. Therefore, the Father shall pay an offset amount of \$526 to the Mother, on the first day of every month, commencing January 1, 2024.
- [204] The Father must also pay the Mother for child support arrears from the point they began exercising shared parenting time in mid-February 2022 until December 31, 2023, totalling \$11,835.
- [205] The parties shall exchange income tax information annually, comprised of their complete tax returns (including all schedules and T-slips) and Notices of Assessment, by no later than July 1, and shall adjust child support payable in accordance with the table amounts, should their incomes change.

d. Spousal Support

- [206] In oral submissions, the Mother clarified that she seeks spousal support retrospectively to the date of separation, and prospectively for two years following the trial.
- [207] The Mother's entitlement to spousal support must be determined with reference to the following factors set out at s. 15.2(4) of the DA:
- a) the length of time the spouses cohabited;
 - b) the functions performed by each spouse during cohabitation; and
 - c) any order, agreement or arrangement relating to support of either spouse.

[208] Entitlement to spousal support may be based on compensatory or non-compensatory grounds. Compensatory support is intended to give redress to the recipient spouse for economic disadvantage resulting from the marriage or for an economic advantage conferred upon the other spouse: *Chutter v. Chutter*, 2008 BCCA 507 at para. 50. Non-compensatory support is grounded in the "social obligation model" of marriage. It embraces the idea that, upon the dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state: *Chutter* at para. 54.

[209] Any spousal support order must be made under the DA, because it is ancillary to the divorce action: *Domirti v. Domirti*, 2010 BCCA 472 at para. 7; *K.R. v. J.R.*, 2022 BCSC 1856 at para. 345; *B.S.D. v. S.K.D.*, 2021 BCSC 2327 at para. 340; and *L.A.M. v. F.B.M.*, 2022 BCSC 2187 at para. 9.

i. Compensatory

[210] With respect to the Mother's compensatory claim, it is relevant that this was not a long marriage. The parties cohabited for a period of approximately seven-and-a-half years. However, the Mother did play a traditional role in the household when the parties were living in Iran, and when they briefly lived in Oman; it is not seriously contested that the Mother performed the majority of domestic responsibilities in the home. This allowed the Father to pursue his career as a technology entrepreneur. I find that the Father would not have been able to achieve the early success of Bazaar if the Mother had not been at home looking after the children and the household.

[211] However, the Father's career trajectory changed in 2020, if not earlier. As the Father's entrepreneurial success turned to failure, and the pandemic grounded any business travel, the Father was no longer going on work trips, or even leaving the house to go to work. His hours with NovaGreen were dramatically reduced and he stopped doing any work for Bazaar. He spent more time at home and was more available to assist with the children and the home. Further, since November 2020, the Grandmother has also lived in the family home. The parties testified that the primary purpose of the Grandmother moving to Canada was to assist the Mother with the home and the children. These factors reduce the Mother's compensatory claim, but only marginally; for the majority of the almost-eight-year marriage, the Mother was mostly out of the workforce and managing the domestic sphere, which allowed the Father to focus his attention on his career.

ii. Non-compensatory

[212] Non-compensatory claims are based on need. "Need" can include a significant decline in the standard of living from the marital standard. This is based on the notion that, in long marriages, the spouses should not be economically disadvantaged by the breakdown of the marriage: *McKenzie v. McKenzie*, 2014 BCCA 381 at para. 111.

[213] The Mother is on social assistance and, on all the evidence, I am satisfied she is in need. However, the Father's income is also extremely modest.

iii. Conclusion on Spousal Support

[214] Overall, I find that the Mother has a modest compensatory and non-compensatory claim. The Spousal Support Advisory Guidelines provide for a "with child support" spousal support amount of 0 at the low range, \$208 at the mid range and \$414 at the high range. Having considered all the factors discussed above, I find that the mid range is appropriate in this case. The Mother should receive spousal support in the amount of \$208 per month, commencing January 1, 2024. The Father must also pay the Mother for spousal support arrears from the date her notice of family claim was filed (June 29, 2021). Using the mid-range of \$196 per month for 2021 and 2022, and \$200 per month for 2023, these arrears total \$5,934. The Mother's entitlement to spousal support will terminate on December 31, 2025.

g) Orders

[215] For convenience, I have summarized the orders I have made in the text of these reasons for judgment below.

[216] I make the following orders in the Civil Action:

- 1) Judgment is granted to Bazaar against the Father for the \$361,000 debt owing for the Bazaar Payments (the "Bazaar Payments Judgment").
- 2) The plaintiffs' claim for judgment against the parties for any outstanding debts or damages under the Financing Agreement is dismissed.
- 3) The plaintiffs' claim to recognize and enforce the Iran Order is dismissed.
- 4) The plaintiffs' claims for a declaration of an equitable interest in the Family Home, and for exclusive conduct of sale of the Family Home, are dismissed.
- 5) All claims made by the plaintiffs against the Mother are dismissed.
- 6) Subject to further submissions, the plaintiffs shall have costs of the Civil Action against the defendants at Scale B.

[217] I make the following orders in the family law proceeding:

- 1) The parties will share parenting time on a week on/week off basis.
- 2) Parenting responsibilities shall be allocated between the parties in the manner set out in Part IV (F) of these reasons for judgment.
- 3) Neither party will take the children outside of Canada without the other party's permission. The Father's request to take the children to Iran is denied.
- 4) The Mother's request to change the names of the children is denied.

- 5) The parties each have an undivided one-half interest in the net equity in the Family Home, and any cars, jewelry, bank accounts, or other personal property that is family property. The parties also each have an undivided one-half interest in any remaining equity held by the Father the Molavi Street Apartment, as well as in any growth in value of the Father's beneficial interest in his shares in Bazaar since the date of the parties' marriage.
- 6) The Scotia Bank Mortgage and the Bazaar Payments Judgment are family debt for which the parties are each 50% responsible.
- 7) The Family Home is to be sold, with the parties to have joint conduct of sale. The Family Home shall be listed for sale no later than April 1, 2024.
- 8) The Mother's Guideline income is \$20,000 and the Father's Guideline income is \$54,728.00. Pursuant to the Guideline table amounts and on the basis of shared parenting, the Father must pay the Mother \$526 in child support on the 1st day of each month, commencing January 1, 2024.
- 9) The Father shall pay the Mother child support arrears from February 15, 2022 - December 31, 2023 in the amount of \$11,835.
- 10) The Father must pay \$208 to the Mother each month in spousal support. The first payment is due January 1, 2024. Spousal support is payable on the first day of every month until the end of 2025.
- 11) The Father shall pay the Mother arrears of spousal support in the amount of \$5,934.
- 12) I shall remain seized of this matter for 12 months following the date of these reasons for judgment.
- 13) As all matters in issue between the parties have now been adjudicated, the parties are at liberty to file for a divorce under Rule 10-10 of the Supreme Court Family Rules.
- 14) As the family law proceeding resulted in mixed success, the parties should bear their own costs.

"Francis J."

- [1] The Court asked the parties to make submissions about what exchange rate the court should use in considering the Canadian dollar value of assets that were valued in this litigation in Iranian Rial. This is a particularly difficult issue when considering the historical value of assets, given the well-known volatility of the Iranian Rial. The parties did not make submissions about the historical rate that should be used in order to value assets at certain points in time, which would have been helpful to the Court. Rather, the parties simply agreed that the rates posted on a website (<https://bonbast.com/>) should be used by the court and the date-of-judgment exchange rate should be employed in valuing Iranian assets. In the plaintiffs' written submissions, counsel used a conversion rate of 378,500 rials = 1 Canadian dollar, based on the rates on bombast.com. For simplicity, I have also used this conversion

rate in these reasons for judgment.

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