

CANADA / JUDGMENT

H.M. v. P.D.

2020 BCSC 1008

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Supreme Court of British Columbia

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2020 BCSC 1008 H.M. v. P.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

H.M. v. P.D.,

2020 BCSC 1008

Date: 20200707

Docket: E1650179

Registry: Prince George

Between:

H.M.

Claimant

And

P.D.

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraphs 24, 29, 85, 220 and 469 on July 16, 2020

Before: The Honourable Mr. Justice Schultes

Reasons for Judgment

Counsel for the Claimant:

D.M. Smith

The Respondent, appearing in person:

P. D.

Place and Date of Trial:

Prince George, B.C.

October 2-5, 24-26, 2018

December 19-21, 2018;

January 22, November 25-27, 2019

Place and Date of Judgment:

Prince George, B.C.

July 7, 2020

Introduction.. 4

Background.. 5

Pre-Separation Roles, Property and Finances. 9

H.M. 9

P.D. 14

Pre-Separation Events in Prince George. 24

H.M. 24

P.D. 31

Separation.. 34

H.M. 35

P.D. 37

Post-Separation Parenting Issues. 38

H.M. 38

P.D. 45

Post-Separation Financial Issues. 48

H.M. 48

P.D. 53

Potential Supporting Evidence for Mr. D.'s Positions. 60

C.F. 60

J.F. 62

The Views of the Child Reports. 63

M. 63

O. 65

S. 67

Interim Parenting Orders in December 2018. 67

2019 Summer Parenting Time. 67

Changes of Circumstances as of the November 2019 Trial Reopening.. 68

H.M. 68

P.D. 76

Resulting Orders. 80

Positions. 80

H.M. 80

P.D. 82

Discussion.. 83

Credibility Assessment and Essential Findings of Fact 83

Parenting Arrangements. 88

Child Support 90

Property Division. 92

Spousal Support 97

Ongoing Disclosure. 103

Divorce. 103

Protection Order 104

Costs. 104

Introduction

- [1] This family law trial dealt with the consequences of the end of the relationship between the claimant H.M. and the respondent P.D. They spent 14 years in a marriage-like relationship and were then married for six years.

- [2] The contentious issues in this trial were the parenting arrangements for the three children of their marriage, the date and circumstances of their separation, property division, and Mr. D.'s entitlement to spousal support.
- [3] Underlying those issues are stark factual disputes about their financial circumstances and respective roles during their relationship, and their actions since separation in relation to each other, their children and their finances.
- [4] Ms. M. contends that Mr. D., after losing his job, made no contribution to the support of the family, leaving her to manage their steadily-mounting debts and handle the bulk of the domestic responsibilities, while she pursued her education to become a doctor. She also contends that after their separation he began to deny her contact with their children and harass her in various ways.
- [5] For his part, Mr. D. claims to have given up a lucrative career as a stockbroker in order to support her career plans, in return for her agreement to support him once she became a doctor. He maintains that her limited post-separation contact with the children was a result of their preferences, and that his poor relationship with the child who has returned to her care is a result of her influence.
- [6] While the original trial decision was on reserve, major changes in Ms. M.'s relationship, health and employment situations occurred. This required a reopening of the trial to address their effects on the support issue. Changes relevant to parenting arrangements and property division had also occurred since the last court appearance, and also had to be addressed.
- [7] Mr. D. represented himself in the trial. He experienced difficulties in making proper document disclosure, confining himself to relevant matters, framing non-argumentative questions in cross-examination, and confronting Ms. M. with his version of events before testifying to them himself. These difficulties required ongoing assistance from me to address. Despite them however, I am satisfied that at the end of the day his positions on the issues and any admissible evidence concerning them that he chose to provide were fully presented, and that Ms. M. had an adequate opportunity to respond to them.
- [8] As often occurs in family trials, a great deal of potential hearsay evidence was led by both parties; in particular, statements that were attributed to the children. Rather than repeating the same self-instruction every time such a statement arises in my summary of the evidence, I will simply say at the outset that anywhere the statement of someone other than the parties is quoted, it has been done in order to explain the actions that were taken in response to those statements, and not to establish the truth of the matters they assert. The exceptions are the Views of the Child reports referred to in the evidence, which are *prima facie* evidence of the facts they contain: *L.D.K. v. M.A.K.*, 2015 BCSC 226 at para. 50, citing *K.M.W. v. L.J.W.*, 2010 BCCA 572, also at para. 50.

- [9] The trial proceeded under the Divorce Act, although some provisions of the Family Law Act that are not inconsistent with it also became relevant.

Background

- [10] While the parties disagree on many facts, there is still a baseline of uncontentious or objectively verifiable background facts against which their respective versions can be considered.
- [11] Ms. M. is now 43 years old. Mr. D. is 59. They met in 1996 in Kelowna. Ms. M., who was then 19 years old, lived in Kelowna and worked as a hairdresser and a ski instructor. Mr. D., who was then 35, was a stockbroker from Vancouver. She was living with her parents and was the mother of one-and-a-half year old daughter, G. He was separated from his first wife, with whom he had two young children.
- [12] The relationship progressed quickly, and Ms. M. moved in with Mr. D. in his condo in Vancouver later that year, bringing G. with her shortly afterwards. Their relationship became marriage-like, Mr. D. stood in the role of father to G., and they ultimately had three more children together - a daughter M., born in 2002; and sons O. and S., born in 2004 and 2005 respectively. (I mention the genders of the children only because the anonymization of their first names will otherwise make further references to them confusing.)
- [13] While they were in Vancouver the parties lived in several different homes. They moved to a larger condo, then bought a house on the west side of Vancouver in 2001. (Ms. M. also described an intervening rental house on the west side, before their purchase of a house in that area.) In early 2009 they bought a house in Delta. The relevant feature of these properties for our purposes is that they were all held in the name of Mr. D.'s mother. The Delta house was subsequently transferred into Ms. M.'s name.
- [14] During the relationship Ms. M. upgraded her secondary school academic courses and then obtained a science degree, first attending community colleges and eventually transferring to UBC. In 2009 she was admitted to UBC's medical school, at its satellite campus in Prince George, and in 2015 she completed her residency in family medicine and was qualified to practice. At the time of the main trial she was employed as a family physician in the internal medicine department at the hospital in Prince George.
- [15] Mr. D. carried on his career as a stockbroker with two brokerage firms in Vancouver. The circumstances under which it occurred are in dispute, but it is common ground that he left the second of these brokerages in 2005 and did not work as a stockbroker after that. At the time of the main trial he considered himself to be retired and had essentially no income other than spousal support.

- [16] Ms. M. began medical school in the fall of 2009. The classes for the first semester were held in Vancouver, and the rest of the program was carried out in Prince George, starting in January 2010. She and Mr. D. were married early that month, after which she and G. moved up to Prince George so that she could continue her classes. Mr. D. and the other three children followed a few months later.
- [17] Using the proceeds from the sale of the Delta house, they bought the family residence in Prince George - a house on an acreage - in September 2010. It remains the principal item of family property. Like the Delta house, Ms. M. was its only registered owner. It was not subject to any encumbrances when they first bought it.
- [18] The way in which the family debt arose is another disputed issue, but there is no question that an RBC Homeline mortgage (technically a line of credit, but since it is secured against the property both parties referred to it as a mortgage) was placed on the property in 2015, and that it remains in place. As of the reopened trial it was in default because of the non-payment of property taxes.
- [19] Ms. M.'s medical studies were financed by a student line of credit from RBC that is offered to future professionals. Once she entered her residency period in July of 2013, she began to earn a salary, the amount of which is disputed. When she qualified as a doctor her earnings became very substantial - in the financial statement that she filed just before the main trial she estimated it to be \$300,000 per year.
- [20] Although the specific date is in dispute, the parties certainly separated no later than April 16, 2016. The separation involved Ms. M. moving out of the family residence and the children remaining with Mr. D. (G. was living independently as an adult by this time, so I will refer only to the three younger children when dealing with parenting issues).
- [21] After separation, Ms. M. experienced difficulties in seeing the children regularly and being able to take them on holidays, although once again the parties differ on why that occurred.
- [22] Ms. M. began this action in October 2016.
- [23] The oldest of the three children, M., began living with Ms. M. in January 2017. O. and S. remained with Mr. D. His relationship with M. was troubled and they did not see each other regularly.
- [24] When the main trial began in the fall of 2018, all three children were in Ms. M.'s primary care, with Mr. D.'s acquiescence, following her vacation time with them in August. After the initial trial dates concluded in January 2019, the parties were able to exercise week on/week off parenting time with O. and S. until about June, with M. remaining with Ms. D. By the time the trial was reopened in November of 2019, M. and S. were living primarily with Ms. M. and O. was living primarily with Mr. D.

- [25] Views of the Child reports were completed for all three children in May of 2018. It is common ground that the children's preferences about parenting arrangements as expressed in those reports have largely been superseded by subsequent events.
- [26] Ms. M. supported Mr. D. after the separation. At first the support was provided informally, as a combined child and spousal support payment of \$8000 per month. In December of 2016, an order was made for her to pay interim support totalling \$10,000 per month, broken down into \$4800 for child support and \$5200 for spousal support. Ms. M. paid these amounts until October of 2019, when her income as a physician was interrupted by the change in circumstances I have referred to. As a result, I ordered that her support obligations were suspended, effective October 15, pending delivery of these reasons for judgment.

Pre-Separation Roles, Property and Finances

H.M.

- [27] According to Ms. M., when they began to live together in his condo in Vancouver, Mr. D. told her that it was registered in his mother's name because he had previously declared bankruptcy, had no credit, and was engaged in an acrimonious divorce action and did not want to have assets in his name that his ex-wife could freeze. He made the mortgage payments however. . She was not involved in any of the decisions about real estate that were made by Mr. D. and his parents, although she heard them discussing such matters frequently.
- [28] The family moved to their second condo, which was larger, in 1998-1999. They only lived there for six months because there was a downturn in the market and Mr. D. began to have financial problems at work. As a result, they moved to the rental house, where they lived for about two years, until 2001.
- [29] Ms. M. began to pursue her schooling about six months after moving to Vancouver. From 1997-1999 this consisted of one or two high school upgrading courses per semester. Once G. turned four and began preschool, Ms. D. was able to take her classes during the hours that G. was attending it. She rejected Mr. D.'s suggestion that the family incurred daycare costs for G. in 1997. When G. was in kindergarten and her subsequent elementary grades, Ms. M. could take three or four courses per semester, again during school hours. This continued until 2001.
- [30] Her employment during the early years of the relationship was limited. Mr. D. told her at first that she did not need to work and should relax, and that he wanted to "spoil" her. Her only work during the first six months was as a barista. After that, she did some work as a hairdresser and from time to time assisted a realtor friend of Mr. D.'s by cleaning and painting apartments for resale. During the period that Mr. D. was under financial stress and they were living in the rental house, she also did tutoring and some shifts working in the laboratory at school, which she described as "odds and ends that would help bring money in." Her upgrading courses were free and she had scholarships for the university-level ones,

but Mr. D. paid the balance of her education costs.

- [31] During these first few years she described the family's lifestyle as "nothing to brag about in terms of wealth". Mr. D. had an older Mercedes, and they had a new Jeep Cherokee that was registered in her name. Mr. D.'s socializing with his stockbroker associates took place at the relatively modest venue of a Keg restaurant. While they were living in their first condo their only holiday consisted of a week in Cancun, and after they moved to the rental house they spent a week in Cuba.
- [32] The domestic duties during this period were divided on the basis that she did the cooking, Mr. D. did the laundry and both did the cleaning.
- [33] The Vancouver house was purchased in 2001. It was large - 5500 square feet with five or six bedrooms. She recalled the purchase price as being in the \$880,000 range. The down payment came from the sale of the last condo they had owned. In addition, Mr. D.'s business had improved by then, so they were able to put more money down on the purchase. Although the house was held in his mother's name, once again Mr. D. made the mortgage payments.
- [34] The improvement in his business also resulted in there being more money in the household generally. However, she still did not describe any lavish spending by the family. Mr. D. bought a new Mercedes at some point and they upgraded to a minivan after she damaged the jeep in an accident. She recalled one two-week family vacation outside of the country, during which they stayed in two different locations. She continued to do what she described as "random jobs" herself, including cleaning up files in Mr. D.'s office. She rejected the suggestion that the family spent \$100,000 per month - she did not think they "saw [that amount] in a year."
- [35] When M. was born in 2002, Ms. M. was working on her degree at Langara College. She continued her studies after the birth, taking three courses at a time. M. and the two children who were born after her all began to attend daycare from a very young age, first at Langara and then, after Ms. M. transferred, at UBC. She did not take a maternity leave in the traditional sense - the two youngest children were born during natural breaks in her studies, and being close to the university allowed her to schedule her classes around the children's needs. Mr. D. was against them being in daycare and cancelled it when she was at Langara, but "that didn't work so well" she said, and within a few months ("at most half a year") they were back in.
- [36] In 2005, Mr. D. was let go from his position at the brokerage. Ms. M. said his business had "really started faltering" and he was not bringing in commissions. (At one point in her evidence she referred to the pressure on the stock market due to 9-11 and the resulting changes that Mr. D.'s important clients made to their businesses, in connection with his termination, but of course that catastrophic event occurred four years earlier, and she had previously testified about an intervening period of family prosperity until 2005.) In cross-examination she said that there had been several years of financial hardship before his

termination - he told her that 9-11 and the growth of online trading had affected his business. She believed that he was already "drawing money from the house" (that is, by increasing the mortgage) by then.

- [37] Ms. M. testified that even though it was "horrible" that his work had fallen apart, they talked about how it could be a positive development for him to work at home. He had told her that he was able to do so, and she thought that was where their income would come from. She saw it as a temporary interval before things turned around for him again. However, things did not work out that way.
- [38] Mr. D. engaged in day trading (buying and selling stocks himself with a view to profiting on the difference between the purchase and subsequent sale prices) from home, but was not bringing in any money and was "squandering money we don't have", with the family getting deeper into debt. In cross-examination, she explained that "the capital he was trading with came from the house" and that it "went down the drain very quickly."
- [39] She added that he had actually begun the day trading before he was let go from his job.
- [40] She denied that Mr. D. had said that he would quit his job to support her, or that she ever asked him to give up his "career and success" in order for her to continue what she was already doing. As she put it, "No one had to give anything up in order for [the pursuit of her education] to occur." She enjoyed being with the children and was taking the number of courses at a time that would allow her to balance family responsibilities with her studies.
- [41] After he lost his job, she initially worked at Safeway "for whatever little amount [she] could bring in" and odd jobs. She later worked as a research assistant at UBC and, after obtaining her science degree, with the BC Cancer Agency.
- [42] As to household duties while they were living in this house, she described doing all of the duties necessary to get the children ready for school, and then cooking, assisting them with homework, giving them baths, and preparing them for bed. After they were in bed, she would do her own schoolwork or go to the school to do research. She also did the grocery shopping for the family.
- [43] The family began renting out some of their bedrooms and providing room and board to foreign students who were studying English at UBC, for which they received \$750 per month for each student. This project started out to earn pocket money for her but eventually became the only money they were earning. There were always at least four students in the home and the children had to give up their bedrooms in order to accommodate the students.
- [44] She implored Mr. D. to get a job in an alternative field, such as banking, or to upgrade his employment skills. She disagreed with his decision to "sit at home while we [were] living with strangers." All of the money she earned as a research assistant, which even at the cancer agency was less than \$40,000 per year, went to repaying debt. Among their other debt issues, Mr. D.'s Mercedes was repossessed because of his failure to make the payments on it.

- [45] The decision to sell the Vancouver house was taken by Mr. D. and his mother. By then it was heavily mortgaged. There were ongoing arguments among Mr. D., his mother and the realtor because the offers being received on the house would not be enough to pay the mortgage amount, so they would not "get ahead". It was on the market for a year and eventually the losses got so big that it "sold for what it sold for" in April 2009 - for \$1.5 million, with 50% of that mortgaged.
- [46] Mr. D. next wanted to buy a house in Delta. Ms. M. was concerned about such a move because she had already applied to medical school. According to her, he was aware that she was applying (she also applied to other academic programs) and that if she got into medical school at UBC it could be in one of its satellite programs, which were in Victoria or Prince George. (She also conceded that he knew that there was "a great chance" she would not get in.) When she asked him if he was "going to be okay" if she got one of the other sites, he said, "We'll deal with it when we come to it".
- [47] As a result, she asked Mr. D. to wait two weeks to purchase the Delta house, until she found out whether she had been admitted to one of the satellite sites. Despite this request, he and his mother went ahead with the purchase - of a 6000 square foot "fixer upper" that needed its flooring completed and its kitchen redone - for about \$800,000. Once again, it was registered in Mr. D.'s mother's name. Two weeks later Ms. M. found out she had been admitted to the Prince George medical program.
- [48] There was no money for the extensive finishing that this house required. Mr. D. wanted to borrow more money from the equity in it, but his mother would not allow him to do so. This led to a major disagreement between him and his parents, who did not want to be responsible for any more borrowing. He decided to put the house in Ms. M.'s name in order to have more autonomy on that issue. His parents agreed, on the condition that he and Ms. M. would get married, which they did on January 1, 2010. Ms. M. rejected his suggestion that he had requested the change in ownership because she did not get along with his mother and he wanted to protect her in case something happened to him. In fact she had, and continues to have, a good relationship with his mother.
- [49] Mr. D. still could not own the house in his own name because he had not paid child support to his wife for many years. His drivers licence and passport had been "frozen" previously for non-payment. She recalled Mr. D. having communications with the Family Maintenance Enforcement Program asking them to lift the freeze and that he succeeded in having those documents returned, on the basis that he needed them for work. She rejected his suggestion that those enforcement measures had ended in 2000 - she also recalled seeing documents from the FMEP around 2012-2013 that set out his support arrears. In addition to the support arrears, his car had been repossessed so "his credit was in his boots", and he could not qualify for a mortgage.
- [50] The house was registered in her name in February.

[51] As I will discuss, Mr. D.'s position is that the pending expiry of his stockbroker's licence in 2010 played a crucial role in his alleged agreement to give up his career and move to Prince George, in return for Ms. M.'s financial support once she became a doctor. She testified that she did not know that his licence was expiring that year because he did not tell her. More importantly, she said he was adamant that he did not want to go back to being a stockbroker - he did not like it anymore because the rules had changed. Day trading and the internet had taken over, so the only way to be a stockbroker was to work for a bank, with a minimal basic salary. His rejection of that career option continued once they had moved to Prince George.

P.D.

[52] Mr. D. recalled that at the point that Ms. M. moved in with him, he had about \$40,000 worth of equity in his condominium, and a \$180,000 mortgage.

[53] He said that he "spoiled" Ms. M. in various ways, such as by buying her the new Jeep. She worked at Safeway only so that she could meet people, because she had no friends in Vancouver.

[54] With respect to her position painting apartments for his realtor friend, he said that her supplies cost him more than she was paid for the first job, so he did not allow her to do it again. She did some work organizing his office files for a few months as well. He stood by his assertion in his 2018 affidavit in this action that she "never worked at an income producing job" (until she became a medical resident). When her paid research positions during and after her science degree were put to him in cross-examination, he said that they did not count because she had to do them in order to get her credits, and only received "a couple hundred dollars here or there".

[55] He recalled Ms. M taking "a couple of courses" every year, at different colleges, to address the fact that she had not finished high school.

[56] In 1997, he was working 18 hours a day to build up his business as a stockbroker and by 1998, he was making "good money". Because of his bankruptcy he did not have a credit card, although he had bank accounts, so he held a secondary card under his mother's name but paid all the charges on it himself. His mother did not wish to provide a credit card to Ms. M., so he asked a friend to give her a secondary card under his name.

[57] He disagreed with the assertion in his November 2016 affidavit in this proceeding that he had been making a "six figure income" when he met Ms. M. in 1996 - at that time he was still moving furniture on weekends for additional income. It was by 1997-1998 that he stated making money. However, he then agreed that in a passage in the reasons for judgment on a child support application brought by his ex-wife in 1998 [E.A.D. v. P.D., citations omitted] he had described himself in his affidavit as "impoverished and that his gross income for 1997 will be approximately \$30,000". He said that his wife took "all the assets and all the money", so he accurately told the judge that he was going to make "nothing". He then said that it was by 1998-1999 that he was making the six-figure income. However, later in cross-examination

he said that "1996, November, December, I started making big dollars".

- [58] When it was pointed out that the E.A.D. v. P.D. judgment also reflected his assertion that he was renting his condo from his parents at that time, he maintained that he had actually put in \$80,000 as a down payment, which had been provided by a friend. He explained that the condo was in fact his, and that he had an understanding with his parents that "we'll carry the mortgage for you, you carry the rent - the mortgage payments and the house is yours." As of the hearing date for the application in January 1998 he had no money and "had to live somewhere". His parents had told him to get out of their basement and "get back on [his] feet".
- [59] He agreed that he could have said in his affidavit for that application that Ms. M.'s parents had bought her the Jeep Cherokee, but in fact he had leased it for her. When her counsel pointed out that he had testified earlier in the trial that he had bought it for her, he professed to see no difference between buying and leasing in that regard.
- [60] Despite being represented by counsel in that application, whom he described as "legal aid", he said Ms. M. became his lawyer and told him what to say and do during it.
- [61] In 2000, he settled with his ex-wife on her outstanding claims, so those obligations were resolved. Ms. M. got along well with his children from that relationship.
- [62] Over the next four years the family was able to take extensive vacations, including three times per year to Club Med, for a week or two at a time. They also travelled to the Caribbean, Mexico, Hawaii and various locations in Canada. His brokerage firm paid for vacations as well, the highlight being a trip to Disneyland in which "we must have spent \$10,000 in a week". In addition, they dined out regularly in what he described as "fancy" restaurants, courtesy of the firm. Overall Ms. M. "was spoiled and so were the kids. Money was never an object".
- [63] As a further example of his financial resources during that period and his generosity towards Ms. M., he said that he bought her \$20,000 worth of appliances in 2002.
- [64] His relationship with Ms. M. was good during this period, except that she had no friends. His friends' wives were 15-20 years older than she was, and they did not like the fact that she was "younger and spoiled".
- [65] He described doing a specialized type of work as a stockbroker, for groups of investors in different parts of the world who had "lots and lots of money". He "made the market activity" for them by buying and selling. He was in control of large blocks of stock, which he unloaded in three specific markets around the world. These clients came to him because he "got the job done", with the assistance of his firm's traders and back office staff, who he paid extra out of his own pocket. Very little computer work was involved - he was mainly on the phone or yelling instructions to traders across the room. There were only four or five brokerages in Vancouver that were capable of doing this kind of work and handling the risk involved.

- [66] Between 2000 and 2002 he decided "to make even more money" by taking over an oil and gas company that was listed on the Vancouver Stock Exchange. Because his role as a stockbroker prevented him from having any such involvement in a company, he bought up that stock under Ms. M.'s name and provided her Kelowna address so there would be no apparent connection between them. He spent \$2 million obtaining 51% of the stock, and placed Ms. M. on the board of directors. However, people he trusted then went behind his back and carried out steps to gain control of the company, which forced him to sell his shares, at a loss to him of about \$1.5 million.
- [67] In 2003 he and the other top producers at his firm were persuaded to switch to a different firm, in return for bonuses equal to 10% of their income. His bonus was \$200,000 he said.
- [68] Mr. D. was cross-examined at some length about his earnings during this period. He clarified that this bonus was based on the \$2 million that he brought into the brokerage that year. He kept half of what he brought in, and then had to pay tax on it. When he was asked about his assertion in his examination for discovery that he had made \$1 million a year between 2000 and 2005, he said "I assume so, not every year", then clarified that what this actually meant was that he had earned \$1 million for the brokerage each year "gross", which meant \$500,000 for him and \$250,000 after taxes. He then said that what he had meant was that between \$500,000 and \$2 million was what he was "pulling into the house" (that is, the brokerage), and that his earnings varied between these amounts.
- [69] He was asked about his response to counsel's request during the examination for discovery for his tax records going back to 1997, which his accountant has not kept - "I'll make it easy for you, they're going to show zero income". He explained that he was not paying any tax and in fact had a tax credit. That company that he had bought out between 2000-2002 had losses and "other things that were being deducted as well". He then said, "when I say zero I don't mean exactly zero pull in 500, pay tax on 250 after the accountant got through with it" and "When I say zero I don't mean exactly close to zero. But my accountant would take care of it, yes".
- [70] At one point in his cross-examination he said that he had other money coming in besides what was shown on his T4 slip - another \$50-\$100,000 per month.
- [71] In his examination for discovery he had answered that the reason that the family had no money to show for his income was that Ms. M. was spending \$100,000 per month, "which is a million bucks we spent easily". He explained that he had meant \$100,000 per year and that it was the family that spent it, not just Ms. M. Later he returned to the assertion that "as a house we roughly spent a hundred thousand dollars a month yes" and agreed that "a million bucks" was spent, "easily".

- [72] After S. was born in 2004, Ms. M. became pregnant again, and looking after three children while he was working long hours was very stressful for her, he said. She was depressed and had no other friends except for him. There was lots of money coming in, but they were fighting and the children were too much for her to handle. They then agreed that he would take time off from work so that she could "go into the medical field".
- [73] As a result, once O. was born, Mr. D. was looking after the four children full- time, with no help from Ms. M., who was attending school. None of the children were in daycare "anytime", he maintained. She expressed milk for the children who were breastfeeding, then went to school, after which he fed the children and changed their diapers.
- [74] He explained that he did not worry about being in this situation, because he could always go back to work. His licence was not going to expire until 2010. In the meantime there was money in the bank, no mortgage on the house, which he said was worth \$1.5 million, and he needed some time off anyway, so staying at home was no big deal. As he put it, money was important to him, but Ms. M. not being depressed was more important. He did not want the marriage to fall apart because she was miserable. At that point he did not think that she was going to succeed and expected that he would be going back to work by 2007-2008.
- [75] On the subject of money, he emphasized that Ms. M. did not understand the family's cost of living during this period. Payments for their three new vehicles, the household expenses, combined with shopping, entertainment and vacations, were in the range of \$14,000-\$15,000 per month. He described the situation as "money was going out the window but my wife was happy". She was going to school and "hopefully could make something of herself". He added that when he tried to explain these various costs to her, she responded that he was the stockbroker, and that it was his family and his responsibility.
- [76] He could not leave his big clients "high and dry" when he stepped down from his position. He knew that they would eventually go to other firms, but in the meantime he left them in the care of a broker at his firm. He continued to be involved with them, and relayed their orders on to that broker to be placed. In return, that broker paid him 20% of the net commissions in cash. This amounted to \$5000-\$10,000 per month. These client were only placing a few trades per month while they waited to move to a broker that they trusted (they did not trust the broker at his firm he had left them with). He knew that at any time he could go back to work, get his clientele back and make money all over again. He was not day trading at this point, but rather was looking after "\$10-\$50 million accounts". By 2008 he was not receiving any further income from these accounts.
- [77] When he left his position the house was worth \$1.5 million and he had \$200,000 in cash. He could not recall the amount that it had been purchased for, but suggested \$1-1.2 million. When he was asked how they were going to live on that during the period of Ms. M.'s studies, he said that he "did not think about it that way" - until 2010 he could always go back to work and he did not mind losing "per month" because the money could all be replenished within a year.

- [78] In his 2016 affidavit he had stated that some of his wealth was "tied up in the Vancouver house" and that he had "other liquid assets". He had also stated that they began "living on the disposition of those assets" shortly after S.'s birth. In addition, "[t]hose assets had originally been intended to be my retirement money" and "[t]he liquid assets available to me totalled approximately \$1 million". In cross-examination he said that these statements were incorrect and that he had been referring to the house as the "liquid assets". Addressing the discrepancy between the value he had claimed for those assets in the affidavit and his testimony about the value of the house he explained that "a million or a half million there for me is absolutely nothing". Still later in his cross-examination he said that the liquid assets he had been referring to were during the period of 2000-2010, not 2005 as the paragraph in his affidavit indicated. When his earlier comment that he had \$200,000 in cash when he quit as a broker was put to him, he said that the house was the liquid asset, because it "could be liquidated for \$1 million" (that is, despite having a higher actual value). He elaborated that "liquid" meant what he could get by selling it "tomorrow". He added that the cash he had when he quit in 2005 was in the range of \$150,000-\$200,000.
- [79] He also disagreed that after he quit they "began living on the disposition of those liquid assets", as the affidavit described. Instead, he was referring to the \$200,000 he had saved. His explanation for this passage in the affidavit was that his lawyer had written it.
- [80] After initially advising that they were still spending \$100,000 per month and that it "adds up", he said that actually they were spending \$10,000 per month and \$100,000 per year. When it was put to him that he had advanced the figure of \$100,000 per month at his examination for discovery he said that he had "just thought that number up" and that what he had meant was that Ms. M. "was spending money". He said that back then he was making \$100,000 per month on commission, plus \$50-\$60,000 per month on "trades alone". He then made the apparently facetious comment that Ms. M. was spending "a million dollars a month".
- [81] He rejected the suggestion that he was home because he had been fired. He explained that stockbrokers do not get fired due to lack of production - they simply get moved from view offices to desks in the hallway. They are on a 50/50 commission split with the brokerage and the only required equipment is a phone and a computer, so overhead costs and space are not a problem. He also denied that he day traded stocks from home. It is more advantageous for brokers to trade online from the office, because they then receive commission on the trades. Many brokers trade the accounts of their family and friends in order to generate commissions, he explained.
- [82] The international students were not brought into their home to earn income, as Ms. M. described, but so that she would have someone to talk to. In fact, the \$500 per month that he maintained they received for each student did not cover the costs of caring for them, because they ate with the family and Mr. D. was not content to eat low-quality food. The children also enjoyed having the students around to talk to.

- [83] The Vancouver house was only sold because he wanted to move to a more family-friendly neighbourhood. It was not solely his decision to move - he and Ms. M. discussed it first. The house sold in one day because it was in a prime location (in cross-examination he said that it was on the market for one week). He did not accept his assertion in his 2016 affidavit that the net proceeds of sale from that house were used as a down payment for the Delta house. He continued to maintain that they had bought the Delta house "free and clear".
- [84] The Delta house had many positive attributes, including an indoor pool, a hilltop cul-de-sac location and proximity to schools.
- [85] Later in his evidence he said that he kept the properties in his mother's name after his divorce and bankruptcy had ceased to have any effect because his mother had raised a concern about Ms. M. leaving him. In the case of the Delta house, he began to have the same concerns himself, saying that he was "never too sure" about Ms. M. and G.'s "other father". In cross-examination he was more direct - his parents did not trust Ms. D. He did "to an extent", but he was not going to make the same mistake he had made with his ex-wife. He agreed that in his examination for discovery that he had suggested that Ms. M. had tried to "trap" him by having more children than he had agreed to, and that he "would not marry her" at that time, so he did not put the house into his own name.
- [86] He added that his parents did not contribute financially to any of his properties.
- [87] In response to the paragraph of his 2018 affidavit in which he stated that between 2005 and when the Delta house was sold for them to move to Prince George they spent about \$1 million from his liquid assets he said, "We spent money, yes". When it was suggested that \$800,000 must have come from the house (plus the \$200,000 cash he had described) he said, "\$1 million is just a figure, not a big deal, 200, 300, 400 " He disagreed that in order for that assertion to be true they must have been drawing from the equity in the Vancouver house. When it was put to him that the \$1 million figure was false he said, "Perhaps maybe \$500,000 - you're tossing numbers around, I was making \$200,000 a month".
- [88] Later in his cross-examination, he said that the November 2016 affidavit was done in a rush for court and some of the wording was "not quite there". He should have said that Ms. M. received \$500,000 from the sale of the Delta house and \$500,000 was transferred into a TD trading account.
- [89] Addressing Ms. M.'s acceptance into medical school in 2009, Mr. D. said that he "didn't think she would do it but she did". At that point, he retired from the brokerage business. He described it as a hard decision, being the father of six children and now supporting four of them, as well as a wife who "may or may not finish" school. They talked about it daily and he believed her when she "told me she would become a doctor and support all of us", or as he later expressed it, "She promised she would take care of me and the family". At one point she spoke of being able to earn a million dollars a year. He then said that he knew she would finish medical school - she was very "book-smart", ambitious and "had something to prove".

- [90] As a result, he let his licence expire and informed his clients in the business that he was "officially resigning". He elaborated that he trusted her, was totally committed and that there was "no turning back for him".
- [91] In cross-examination, he clarified that the "big deal" in terms of their agreement was moving to Prince George - if they did that his stockbroker business was finished. He described the reasoning underlying his decision to get married as, "If we were going to Prince George we'd better get married". When they purchased the Delta house, he had seen no necessity to do so, as they already had four children (including G.) together.
- [92] When it was put to him directly that there had never been an agreement that he could retire and she would earn enough money to support everyone he said, "She was living off my money 'til 2015, 'til she started making big bucks. That's another five years."

Pre-Separation Events in Prince George

H.M.

- [93] Ms. M. was scheduled to start her classes in Prince George in early January. She had rented a house and registered the children in school. At the last minute, Mr. D. said he did not want to move to Prince George, so at first she only brought G., who was in high school, with her. She had never been separated from her younger children before.
- [94] Additional borrowing was done against the house once it was in her name. Her bank records show that on February 8, 2010, \$124,278 was transferred into her savings account. She described this money as the funds from the mortgage, or line of credit that he had put on the house. She said that she was required to fly back to Vancouver several times to give Mr. D. cashier's cheques or bank drafts for portions of the money, after she had transferred it to her chequing account. Her records show transfers into and then out of her chequing account corresponding to the process that she described.
- [95] In April, she went back to Vancouver, rented a trailer and told Mr. D. that the children and everything that could fit in the trailer were coming with her. Mr. D. appeared to realize that she was serious, so he helped load the trailer and drove the vehicle to Prince George.
- [96] Once they arrived however, he had a "meltdown" about living in a rental house. She told him that they could not keep having these crises, and that they needed to have a plan - she was either going to quit medical school or commit to it. Mr. D. told her he would be "okay" (that is, with staying in Prince George) if they bought a house, so they looked for and found a property that they were both happy with. It was purchased in September of 2010, in conjunction with the sale of the Delta house.
- [97] The closing documents show that the proceeds of the sale of the Delta house were \$838,240, of which \$225,547 went to pay off an RBC first mortgage on the property. This mortgage included the additional \$124,000 that they had previously drawn on the Delta property. After paying \$478,884 for the Prince George house, Ms. M received the balance of \$128,248, which

she testified became a cheque that she gave to Mr. D. She later described it as "his trading money" and said that it "got depleted". In what I took to be circumstantial support for her assertion that she provided him with that money, she pointed out that her bank records from that period show no deposit into her savings account in that amount, or anything approaching it.

- [98] When they moved to Prince George, she opened a combination chequing/trading account at Scotiabank in her name for Mr. D. to use. His ex-wife had frozen his other bank accounts so he did not have one to trade stocks with. After being let go from his brokerage he would trade on her accounts, or on those of his parents and friends. She also gave him the bankcard and password that were associated with the account to use as his own. Her records, which cover the period of 2013-2017, show that account being used almost entirely for point of sale purchases, and occasional deposits, usually in the \$500-\$1,000 range, being made into it. Ms. M. said she made the deposits so that Mr. D. would have some money of his own. (These records do not contain any transactions that are readily identifiable as stock trades. In addition, Ms. M. said that account was closed in 2013-2014 when there was no money left in it to trade, but the records that were provided continue up to 2017. It appears that either she was mistaken about the purpose of this account and the periods it encompasses, or there was another account opened at Scotiabank for which records were not submitted.)
- [99] Ms. M. also described opening a TD account of a similar nature for Mr. D. She became aware that at some point he stopped trading on that account as well. Despite providing her authorization for their release, she was unable to obtain the records of the TD account from that bank, so there was no direct evidence of the trading on that account in the trial. She did not know why TD had been so uncooperative in providing the records.
- [100] As I will describe, Mr. D. contends that Ms. M. actually used the TD account that she opened to carry out extensive trading herself. These trades generated large non-capital losses, which she later used to reduce her income for tax purposes. In particular, he claimed she was in possession of a \$500,000 tax credit generated by the losses.
- [101] Ms. M. testified that she has never purchased a stock in her life, that she would need the assistance of a broker in order to do so, and that she had no interest in putting money into the stock market. In cross-examination she added that as the mother of young children and being in school, she would not have had time to engage in such an activity.
- [102] Her 2011 and 2012 tax returns each contain a statement of business and professional activities listing the main "product or service" as "day trader". Each of these forms described a large gross business income for that year (\$14 million in 2011 and \$2.93 million in 2012) which, when set against slightly larger losses, yielded an overall net loss - \$61,148 and \$58,908 respectively.

- [103] Ms. M. explained that the accountant that she and Mr. D. had used in Vancouver continued to prepare her taxes once they moved to Prince George. This was because the accountant was familiar with the day trading activities that were going through her account and the amount that was lost. If he needed to clarify anything about the trading he would speak to Mr. D., as she "did not have a single clue" about trading. He prepared the 2011 and 2012 returns that contained her large trading losses.
- [104] In response to Mr. D.'s suggestion that these losses are "dollar for dollar" deductions that reduce her income, she said that they represent money that they lost every year that was borrowed from the line of credit and the mortgages. She was not aware they were an asset to her - that was a matter within the knowledge of her accountant.
- [105] Howard Karpes, her current accountant, filed her 2015-2017 tax returns in 2018. He testified that he found \$113,396 in available losses, which he applied against her penalties and interest charges for late filing for 2015 and 2016. He found no trace in Ms. M.'s notices of assessment, which he was able to access electronically through the Canada Revenue Agency, of the further \$500,000 credit for losses that Mr. D. claimed she was still holding. (Mr. D. later refined this suggestion during his cross-examination of Ms. M. - that she was in possession of a further \$380,000 in losses, after Mr. Karpes had used the ones for 2015 and 2016.) When he offered during cross-examination to pull the CRA information up on his computer to show that there were no other credits available to Ms. M., Mr. D. declined, saying that he was sure that Mr. Karpes was not going to find it.
- [106] Mr. Karpes did not consider Ms. M.'s 2016 return to be accurate because the CRA had not yet given her credit for the spousal support she had paid during that year. He had just finished her 2017 return on the morning that he testified, but he said that Ms. M. would not get assessed that quickly because the spousal support issue was under review. She needed to provide the CRA with "irrefutable proof that she had paid it."
- [107] As I will summarize, Mr. D. also alleged that Ms. M. falsely filed income tax returns from 2010-2014 that indicated that she was separated. However, Mr. Karpes indicated that her notices of assessment for those years, which reflect the CRA's understanding of her marital status, show her as married.
- [108] Before she began earning her salary as a resident, Ms. M.'s student line of credit with RBC became a source of family income. She began by asking for a limit of \$75,000, intending to be frugal with it. By the time she moved up to Prince George she had drawn \$36,900 for the educational expenses that had arisen in her first semester in Vancouver. She said that when Mr. D. found out about the line of credit he began demanding that she "max it out" so that he could use it to make money on the stock market. She took the position that she needed it for school and "so we can eat", which led to ongoing arguments between them. He began demanding small amounts from it at a time, until there was only \$50,000 of the maximum \$200,000 available left. When he asked for that remaining money, she told him that if he lost it, "You've destroyed us". In due course, it was lost as well. According to Ms. M., this line of

credit was not secured by the family residence.

- [109] While there was no mortgage on the family residence at the time it was purchased, it became necessary for the family to borrow against the house. Because Mr. D. was not employed outside the home and Ms. M. was a student, they were not able to borrow from a bank. Instead, they turned to a secondary lender, at a higher rate of interest. She said that they renewed these mortgages from year to year until 2015, when her employment as a doctor allowed her to obtain the RBC Homeline mortgage to take over this debt.
- [110] While none of the actual secondary mortgage documents were provided, the documents contain an agreement by Mr. D. from 2012 granting priority to the Classic Mortgage Corporation over any interest in the property that he might have in the event of separation, in relation to a \$100,000 loan to Ms. M. The records for the Homeline mortgage begin in November 2015, with a balance on November 30 of \$204,523, and end in January 2017. (In re-examination Ms. M. suggested that this mortgage had been "maxed out" before she qualified as a doctor and that she had been aggressively paying it down since then, however her financial statement still listed it at \$204,331 in September 2018.)
- [111] As she expressed it in cross-examination, from 2010-2013 "our lives were paid for" by the student line of credit and the mortgage. Any money that was not used for essentials was spent by Mr. D. on day trading.
- [112] Ms. M. described further strains in the marriage in 2013 arising from the fact that her debt load was by then in the \$400,000 range. There was "no end to the financial destruction" and Mr. D. was unwilling to stop day trading. Ultimately, she put her foot down about day trading on her bank accounts and he stopped.
- [113] She described him spending significant amounts of time in his office, on the internet and watching a business television channel. After she cancelled his access to the trading accounts his days did not change - "they were what your Sunday would be like". He just sat on the computer, but she could not tell if he was still trading.
- [114] As she had in relation to their time in Vancouver, she rejected Mr. D.'s suggestion that their expenses were \$100,000 per month, or that any of the money they were drawing on had ever come from him. In her view, they were able to get by on her resident's salary and her use of the student line of credit was just to "bring comfort" in terms of the household needs. However, at another point she said that from 2013 onwards her salary as a resident paid for "everything".
- [115] At one point Mr. D. began demanding a divorce and they had discussions about that possibility. According to Ms. M. she was unable to transfer the house to him because he could not keep up with the mortgage. In October of 2013, in response to his complaint that she was leaving him with nothing, she transferred the older pickup truck that they used for farm tasks to him, and attempted to transfer the trailer for her horses (a transfer form completed by her in October 2013 was entered as an exhibit, but an ICBC search conducted

in 2018 showed that the trailer was still registered in her name).

- [116] Mr. D. also raised this concern about "getting nothing" in the context of Ms. M. unexpectedly dying with everything in her name. This led to her granting him a power of attorney to use if she became hospitalized. His alleged misuse of the power of attorney became a relevant issue in the post-separation period.
- [117] Mr. D. would leave for a week at a time every two or three months, refusing to say where he was going. As examples, Ms. M. received calls from him when he was in Calgary and then Banff, in the latter case after discharging himself from hospital against medical advice. At one point during her residency period he left for an unknown location from June to August, requiring her to bring the children with her to her temporary work location in 100 Mile House for two of those months.
- [118] With respect to domestic responsibilities in Prince George in the period before their separation, Ms. M. described being responsible for such tasks as driving the children to their daycare facility before school and picking them up from it afterwards (although Mr. D. would sometimes do the morning drop-off), cooking, the majority of the housecleaning, and the major cleanings of the facilities that housed their horses and other farm animals (the family also had multiple dogs and cats). She conceded Mr. D.'s main responsibility for laundry, his equal participation in other domestic tasks, and his equal attendance at events such as parent-teacher interviews. She would be mainly responsible for following up with matters that arose from those interviews.
- [119] It was not a situation, as Mr. D. alleged, in which he was completely responsible for the care of the children and the home, leaving her free to pursue her studies. Instead, she fulfilled a wide range of domestic duties in addition to those studies. She emphasized that she was not denying that Mr. D. played a fatherly role and did things with the children; it was rather that he was not acting as the primary caregiver so that she could attend school. She neither needed nor wanted him to stay at home.
- [120] Far from telling Mr. D. that he did not need to work because she was going to be making so much money, as he described, she explained that "right until the very last day" she was telling him that he needed to change things - to stop trading and "gambling away their future". Once again the problem was that they were borrowing still more money under her name. In addition to the alternative careers she had previously suggested, she added the suggestions that he get a job at the local pulp mill, or as a financial planner. He resisted both on the basis that he would have to retrain.
- [121] She described Mr. D. as a "very angry and unhappy man" during this period, who was not going out to meet people or to do productive things. She did not actually care how much money he would have earned in the jobs she was suggesting - the value was that he would have felt good about himself, she believed.

P.D.

- [122] Mr. D agreed that after they were married Ms. M. went ahead to Prince George with G. while he stayed with the younger children. It was not that he was refusing to move at that time, as she had described - the idea was for her to go first and find a place for them to move to. The plan was to sell the house in the summer and move up. The house also needed finishing before it could be put on the market. Moving the family there, along with their pets, during winter was "not that easy". She did not understand this because she was spoiled, he said.
- [123] He denied the incident she described arriving in Delta with a U-Haul and taking the children to Prince George whether he was coming or not. She would never have done so, he suggested, because then there would have been no one to look after the children.
- [124] He put the Delta house into her name a month later. She did not get along with his mother, so if something were to happen to him she would be left with nothing. He later said that he put the house in her name so that she could concentrate on her studies.
- [125] He said that "the family was now in her hands" and "the future depended on her". Later in his evidence, in response to clarifying questions from me, he said that he told her that it was "a million dollar house" and that she could take over the bills. This was in the context of her assuming the financial responsibilities after he retired.
- [126] He explained that in his 2018 affidavit he had rounded up the net \$607,000 proceeds from the sale of the Delta house that were paid to Ms. M. to "approximately \$1 million". When it was suggested that this paragraph was not true he said, "She did get a million, roughly 880". He continued to insist that "she had \$500,000 in her account" despite the documents showing that after purchasing the family residence in Prince George there was \$128,248 remaining. He repeated that she had sold a \$1 million dollar house and purchased one for approximately \$500,000, and asked rhetorically, "Am I missing something?"
- [127] He then added that the \$225,000 mortgage on the Delta property was in her name and she had taken it as "a loan out of the house".
- [128] He went on to assert later in his cross-examination that she had actually received the \$128,248, plus an additional \$500,000, which would be shown in the documents (from TD) that Ms. M. was unable to get. I took him to be referring to the \$500,000 credit for non-capital losses that he has alleged, which at another point in his cross-examination he said she had received in 2014.
- [129] With respect to the transfers out of her account in 2010 that Ms. M. testified were for cheques to him, he initially accepted that she could have transferred the \$20,000 and \$50,000 amounts in February, "but she still received \$500,000". Then, after denying that he received any of these amounts in 2010, he acknowledged that he could have received some percentage of them. He did not remember, but maintained that "I know I gave her half a million in TD".

- [130] She began trading stocks on the TD account in 2010. He told her, "Go ahead. We have money. That's fine" and "Whatever, just try it out". His only condition, on the instructions of his accountant, was that she make it an income loss, rather than a capital loss. That way once she became a doctor all of the losses could be utilized to reduce her income. Because she was going to be a doctor "even if we lost money we'd get it back the next time."
- [131] Once they all moved up to Prince George and found the family residence, he looked after the children full time, as well as the property and their various animals. He disagreed that there was more pressure on Ms. M., as she had described - the only work she ever did was go to school, studying night and day.
- [132] When her father died, Ms. M. bought her mother a new condo. Mr. D. claimed that as of the main trial dates she was still financially supporting her mother. He alleged that Ms. M. had chequing and saving accounts and a credit card in her mother's name. Despite this, he never stood in the way of her providing such support.
- [133] According to him, Ms. M. made only \$3000 per month as a resident. The role required her to be away from home for extended periods, including for four months in second or third year, and two months on other occasions. He said that this was expected and "part of what she had to do".
- [134] In response to a question from me at the end of his direct evidence, Mr. D. said that from the time he quit being a stockbroker to the point that Ms. M. qualified as a doctor, they first lived on the \$200,000 that he had put aside, and then began drawing money from the house.
- [135] When Ms. M. became a doctor, she thanked Mr. D. during her graduation ceremony for his financial support and for taking care of the children, without which she said it would not have happened.
- [136] She worked long hours and found the work exciting. She enjoyed what was essentially a single life and did not have to worry about "the four children". She preferred to stay at the hospital even on her days off and once she qualified to assist with surgery she began sleeping there on nights and weekends, on the basis that some surgeries took place after midnight and there were areas for doctors to sleep in between them. She would come home, play with the children and then go back to work by 10:00 pm.
- [137] In cross-examination, Mr. D. maintained an assertion he had made in his 2018 affidavit that while Ms. M. was in medical school she was aware that they were "cheating on social assistance" - specifically that he was claiming it as a separated person while they were still together. He explained that she had set it up for him and that in fact he was collecting it on her behalf. She had also been filing her income taxes as a separated person from 2010 onwards. This was not done for the money, but rather so that she could represent herself as being separated with four children and "squeeze by medical school a lot easier". He elaborated that she needed an official form to show to RBC for loans and tuition and to "claim hardship, get better treatment and make school a lot easier". He later added that her

parents also needed money. Apparently she needed "official forms" such as tax returns to demonstrate this. To facilitate the process, she filed her returns using the address of the family residence and he used their accountant's address, with his accountant's knowledge "and recommendation".

- [138] He agreed that the tax returns from 2013-2015, in which he declared social assistance benefits, were filed from home using HR Block software, but he denied that going back to his accountant in 2016 had anything to do with the fact that he was no longer collecting the benefits, responding that Ms. M. had begun claiming that she was separated on her tax returns as far back as 2010. When it was put to him that she had received the student line of credit in 2009, he responded that he could not remember the year that she had the student loan. He added that the value of making this claim was not just for the student loan, it was preferential treatment as a separated mother of children.
- [139] In cross-examination he said that at the beginning of their relationship she had said "she could get some money for me right away because she was a single mother" and had received some money the next day. (In her evidence Ms. M. had agreed that she collected social assistance briefly when she was first in Vancouver).
- [140] At his examination for discovery he had said, "I made her go collect welfare so we could make our mortgage for our daily bread". Despite this, he insisted that she had brought the subject up and then they agreed. As an apparent explanation, he said that "sometimes my English or my wording is not 100%".

Separation

- [141] The main significance of a factual finding on the date of separation is on the allocation of family debt, in relation to credit card debt incurred by Ms. M. before the date that she claimed. The parties' respective versions of the circumstances under which the separation occurred are also relevant to the assessment of their credibility.

H.M.

- [142] She testified that by the beginning of 2016 she knew that she was going to be moving out. She had actually had discussions with the children about the possibility late in 2015, in which they expressed their concerns about what would happen. After the family had Christmas together, she went down to Vancouver in early January to visit with a friend. This was to prepare herself to speak to Mr. D. about separating, which she then did on January 9 or 10. She told him that one of them had to move out and, after he refused to do so, said she would be the one.
- [143] He told her that he would destroy her personally and professionally and demanded money. She responded that she would pay him spousal support, initially \$4,000 per month. He also told her that she was not going to be able to see the children. Although this did not turn out to be correct in the early stages, her ability to see them became "strictly on his terms".

- [144] In February he told her, "You're paying me peanuts" and demanded \$8000 per month, or he would make her life miserable. She increased her payments to that amount, which continued until the support order was made, in December of that year. She described this process as agreeing to an arbitrary amount "until we could get our affairs sorted."
- [145] Ms. M. gave her version of an incident on April 16, 2016, which Mr. D. relied on as constituting the separation. In order to understand this incident from her perspective, it is necessary to know that sometime before that day she had begun a relationship with L.P., a fellow doctor at the hospital. Mr. P. lived in a rural area outside of Prince George, where Ms. M. encountered Mr. D. on April 16.
- [146] Her direct evidence was that she was "on a wilderness course" outside of Prince George, when she turned a corner in her vehicle and came upon Mr. D. in his vehicle. He had no business being in that area as far as she was aware. Although the location where he saw her was not right at Mr. P.'s driveway, and she conceded that Mr. D. would not necessarily have known which house was Mr. P.'s, she maintained that it would have been easy for Mr. D. to see her vehicle in the driveway from the road.
- [147] When they spoke, he said he had hired someone to follow her and then described her exact whereabouts in the previous 24 hours (in his evidence he admitted attaching an electronic luggage locator to her vehicle to track her movements). She told him that it was not appropriate for him to be stalking her.
- [148] He angrily accused her of being involved in a romantic relationship with someone else. She tried to calm him down. He threatened to burn down her house and her "boyfriend's" house, as well as to harm two other doctors with whom she worked. She said that he then jumped in his car and drove off. She called the police and he was arrested and later released.
- [149] In response to Mr. D.'s suggestion that after meeting in that area they actually went for coffee and then to the family residence for a further extended discussion, all in a civilized manner, she said that he was very hostile and she wanted to calm him down, so that they could have a civil discussion. She tried to have coffee and described it as trying to "appease the situation", because the consequences of what he was threatening were so serious.
- [150] Her purpose in then going to the family residence was to visit the children. While she was there Mr. D. would fluctuate between being angry - threatening to injure her boyfriend and burn people's houses down - and calm. When he left the house, she unsuccessfully tried to block his vehicle with hers.
- [151] Although he had not uttered a specific threat at that point, he had earlier referred to having a plan, and when he left the house he said he was executing the plan, which caused her to be concerned. She then drove to the home of the woman she was sharing a residence with and also phoned Mr. P., as a result of which the police were called.

[152] Mr. D. was placed on bail conditions that prohibited him from having contact with her. Despite these conditions, she said that she had some email and text contact with him after that, I infer with respect to parenting issues.

[153] In support of his contention that they had reached an agreement to settle their financial issues, Mr. D. cross-examined her on comments to that effect in the statement that she gave to the RCMP on April 16. She agreed that she had said that Mr. D. "deserves to be supported financially with alimony" and that "I'm the sole income earner so they depend on me".

P.D.

[154] Mr. D. did not describe any events that correspond to the incidents in January that Ms. M. described. Instead he testified that on the evening of April 15 she came home, had a bath and then went back to work. He had taped a tracking device to her vehicle, which revealed that she was at the hospital until 4:00 am and then in the rural area where Mr. P. lives. Mr. D. then parked by the mailboxes in that area.

[155] When Ms. M. saw him, they got out of their vehicles and spoke. She admitted to being in another relationship, which Mr. D. described as "no big deal". They went for coffee. He could see that he "was in trouble already" because of his lack of funds and asked her to transfer some to him, otherwise he would be under a lot of pressure. She originally agreed to go to the bank with him to carry that out, then changed her mind and said she would send him money by email if he needed it.

[156] He did not utter any threats during this interaction to Ms. M.'s co-workers, whom he has never met.

[157] They then went to the family residence and talked for eight hours. The children were having a sleepover so "the house was full of kids". They agreed on \$8,000 per month in support for him and the children. They looked up "on the web page" (which I took to be a support calculation tool on the internet) the amount that should be paid to him at her income. Ms. M. also said that she would transfer the house "and all the assets to him." Eventually they got into more arguments and he got into his car and sped off. When he came back home she had gone. The RCMP arrived at 8:00 pm and arrested him.

[158] When they met at the White Spot a week later, she said that she had not wanted to call the police but her boyfriend had panicked (and called them, I infer).

Post-Separation Parenting Issues

H.M.

[159] After first staying in hotels and bed and breakfasts, in February Ms. M. moved in with a friend whose home was near the children's school. She felt it would be traumatic for the children to bring them with her, since the family residence was their home and she was just re-establishing herself in a new location.

- [160] Mr. D. maintained strict control over her contact with them. She was able to visit them for a few hours while he went out. If she took them out or Mr. D. brought them to her, she would be required to return them, or Mr. D. would pick them up, at a specific time. Sometimes when she went to the family residence for visits the children would not be there, or they would tell her that they were not allowed to see her that day. During the first spring break after the separation she was not allowed to see them, even though they were home from school.
- [161] From April 2016 onwards she was not able to contact the children at the family residence. They communicated by emails that Mr. D. was unaware of and she would see them at lunchtime at their school. Having heard from the children that the home phone was unplugged when it was not being used for outgoing calls, she expressed a concern about the children's safety in the event of a problem like a fire, because the front gate of the residence had a lock on it.
- [162] In May she received a call from the Ministry of Children and Family Development advising that Mr. D. had dropped the children off at school and said that there would be no one to pick them up. Mr. D. was then gone for three weeks - one of the unannounced absences that I referred to previously - before returning for his criminal court appearance arising from the April 16 incident. He picked the children up from school without advising her. She returned to seeing them only at lunchtime.
- [163] After Mr. D. was in a motorcycle accident, she received another call from MCFD because he was attempting to discharge himself from hospital and they wanted her to pick up the children. Instead, he had arranged with a neighbour, C.F, to pick them up, and Ms. F. would not permit Ms. M. to take them. Ms. M. offered to look after the children while he recuperated at home, including giving up a hiking trip with M. and her class that she was going to be chaperoning, but again he refused.
- [164] Ms. M.'s contact with the children was then sporadic - at lunchtime and when Mr. D. would accede to their requests for contact.
- [165] In August he repeated the behaviour of informing MCFD that he would not be picking the children up, as a result of which she had them in her care until school began in September.
- [166] Once school resumed there was an incident in which he refused to let her pick O. and S. up from their school (by this point M. was attending high school). He put them in his vehicle (not forcefully, she fairly added) and told them that they would not see their mother again. O. and S. were crying. He then kept them out of school for the rest of the week. M. was returned to her school on the Thursday of that week.
- [167] Mr. D. said that the children could see her on the Saturday but then changed his mind, with the result that she did not see them for several weeks. She was able to see O. and S. for a day and half on the weekend of M.'s birthday but not M. herself.

- [168] In December, M. told Ms. M. she wanted to live with her. She was able to see O. and S. for "a couple of days" at that point, but Mr. D. took them out of school a day before the Christmas holidays started and would not cooperate with her efforts to spend time with them during that holiday period.
- [169] When the holidays ended, Mr. D. tried to pick M. up again. When she told him she was staying with Ms. M. he told her that harm would come to her animals, which left her crying. From that time to the trial date, M. only spent four days with Mr. D. Ms. M. said that M. and Mr. D. had one good weekend together and then one in which he threatened to keep her home from school for the week and prevent her from seeing Ms. M. the following weekend. That incident led to a "massive breakdown" in his relationship with M.
- [170] From January of 2017 until September of that year, she was only able to see O. and S. at school. Subtracting days on which they preferred to spend time with their friends over lunch, or she had an urgent work commitment, this meant that she saw them only two or three times per week. If Mr. D. became aware that they would be meeting, O. and S. would be taken out of school.
- [171] She was unable to see them at all in June and July. When the problem was raised in the course of an application by Mr. D.'s counsel for document disclosure, Mr. D. said that she could see them anytime. However, when she then went to the school after court they were not there.
- [172] In the fall there was an apparent agreement by Mr. D. to Ms. M. spending one-and-a-half days per week with O. and S., with pick up to be carried out at a local Tim Hortons. As it turned out, the times at which Mr. D. would show up with the children "were completely variable" and sometimes he would not show up at all.
- [173] In September Ms. M. successfully applied for the Views of the Child reports, over Mr. D.'s objection. She then had significant difficulties in getting O. and S. to the interviews with Leanne Toews, who prepared the reports.
- [174] Ms. Toews wanted one parent to drop the children off for their interviews and the other one to pick them up. After Ms. M. dropped M. off for her appointment with Ms. Toews, Mr. D. did not pick her up. In the case of O. and S., on the first two appointment dates they were not in school to be picked up. Mr. D. had said he was "too busy" in relation to the second of these appointments. When they were not in school on the third attempt, Ms. M. drove to the family residence and sent M. in to get them. Mr. D. told M. that she was not welcome on the property and that O. and S. were not coming.

- [175] At what she described as "the eleventh hour", Mr. D. agreed that Ms. M. could have the second week of spring break with the children. She was able to get O. and S. in to see Ms. Toews during that week, before taking the three children on a holiday, but then there were further delays before she could get them back in for the final step of reviewing their respective reports before Ms. Toews released them. Those meetings did not take place until May.
- [176] After spring break, O. and S. asked to spend more time with her. Mr. D. then agreed that on some weekends she could pick them up on Friday or he would drop them off on Saturday morning. If she was picking up on Friday she would first check at lunch to make sure they were actually in school. On the following Mondays he would sometimes take them out of the school before the end of the day, which she inferred was to ensure that they were not picked up again by her, even though she had not been planning to do so.
- [177] During this period she had developed code words with O. and S. when they were talking to her on their cell phones to let her know that Mr. D. was in the room, because she would hear him screaming, "Tell your mother " followed by various negative comments.
- [178] After the school year ended she did not see them again until August. Because O. was in high school by then, that meant that she stopped seeing him when his exams were over, at the beginning of June.
- [179] She had proposed to Mr. D. well in advance that she have vacation time with O. and S. (along with M., who was already in her care) beginning on July 15. She booked coverage for herself at work and made plans for a trip with the children to Haida Gwaii, followed by a fishing charter in Prince Rupert.
- [180] She did not try to see them early in July, even though it was O.'s birthday, thinking that she would leave the first two weeks for Mr. D. As the vacation dates approached, Mr. D. was advising to her by email that it was "not going to happen", and she discussed with the children various approaches to picking them up despite this, including having M. go into the house or involving the police.
- [181] Closer to the departure date, she began to hear from O. and S. that in fact Mr. D. would be allowing them to go. The night before they were to depart she confirmed with O. that their vacation "was really happening".
- [182] The next day she received a text from O. saying, "Daddy lied" and that he was taking them to Barkerville instead. She called the police but they were unable to help her in the absence of a custody order. As a result, the Haida Gwaii portion of their planned vacation did not take place.

- [183] Similar problems arose in relation to Ms. M.'s vacation time with the children in 2018. She sought a court order for time in August. As the court date approached, Mr. D. flooded the human resources department at the hospital and Mr. P.'s office with faxes. He followed her vehicle to a rural area and when she stopped to wait for a train he got out of his vehicle, yelled at her and uttered a threat. He also filed a missing persons report with the police concerning her that suggested she was suicidal, or had been murdered.
- [184] After the police officer who responded to her about these incidents advised that she had given Mr. D. a strong warning about his behaviour, he dropped the children off at the hospital on August 4, with no advance notice.
- [185] On August 7 the court application she had scheduled was held. She pursued it in an attempt to "bring some stability" to her contact with the children. She asked for two weeks, but Mr. D. then said he was going to be away for a month. As a result, she was ordered to have parenting time with the children until September 4th. Two days after the hearing he went to G.'s workplace and made a statement to her concerning Ms. M. that resulted in an additional "restraining order" being made against him (I took this to be additional criminal bail conditions).
- [186] She rejected Mr. D.'s suggestion that she had deliberately frustrated his attempt to take the children to Slovakia earlier that summer by withholding the children's passports. He did not tell her that he was intending to take such a trip, and when she told him that he could have the passports he did not respond to her accompanying question about when she would be seeing O. and S., who were being withheld from her at that point. As for M., she was estranged from Mr. D. by then, and Ms. M. was reluctant to part with her passport because she had a school trip to Japan scheduled (for the following school year).
- [187] Mr. D. also raised concerns about the effect on the children's schooling and extra-curricular activities of living with Ms. M. at Mr. P.'s rural home, however, in light of subsequent developments, as revealed in the reopened trial, any such concerns are no longer relevant.
- [188] In her testimony during the main trial dates, Ms. M. said that although she was moving cautiously, she and the children were going to be living with Mr. P. at his house. As of that day of her testimony she said that they were all physically at that residence, but there were still a few things that she needed to adjust for the children.
- [189] She rejected Mr. D.'s suggestion, based on Mr. P.'s address appearing on her 2016 tax return and a plumbing invoice for repairs at that home in January 2018 mistakenly being sent to her at the family residence, that she was not being truthful and was already living there at those earlier times. She did not know why that address was on her tax return and the fact that she may have called a plumber for Mr. P. did not mean that she was living there yet.
- [190] In re-examination, which took place in December 2018, Ms. M. elaborated on more recent developments in M.'s situation.

- [191] As I will summarize, Mr. D. called J.F., his friend Ms. F.'s daughter who had been friends with M. until grade eight, as a witness in his case. J. gave some evidence from which it could be inferred that M.'s attitude towards Mr. D. had changed after she moved in with Ms. M. According to Ms. M., after M. learned that J. had testified, it impacted her severely - she became very angry and said that she "wanted to go on the stand" herself - that is, testify in the trial. Ms. M. was not aware of how M. had learned about J.'s testimony. After that, M. would not leave her bed and suddenly showed no interest in her schoolwork. Before then she had been doing well in school, was liked by her teachers and had various plans, such as going on the Japan trip and taking a driving course.
- [192] Ms. M. set up a crisis counsellor to meet with her, but she would not go to school. She eventually returned, but Ms. M. described the situation as "hit and miss". There were still days when M. was "down" and did not attend. Her longest period absent from school by that point had been two weeks. Ms. M. said, "We're all trying to help her" with this attendance issue.
- [193] Ms. M. went on to describe M. as being under a lot of stress and quite depressed. In particular "this divorce thing" has her stressed out. When she learned that Ms. M. was in court again for the continuation dates in the main trial, she would lie in bed and refuse to get up. When asked to summarize her overall impression of M.'s difficulties, Ms. M. described them as "normal teenage angst mixed with mild depression." M. was resistant to counselling however, and was not taking any medication.
- [194] In Ms. M.'s view, M.'s relationship with Mr. D. played a big part in her difficulties. She had encouraged M. to have contact with him and believed that they "still have a relationship to repair", ideally through counselling. Actions by Mr. D. like calling the RCMP to force M. to attend school (which he did in November of 2019) were not conducive to that process, she observed. That incident "hurt [M.] terribly".
- [195] In her view, each of the children was dealing with the impact of their parents' separation in a different way. She noted that O. was "failing everything" and becoming defiant to everyone. During her usual weeks with him she permitted him to go to Mr. D.'s house when he requested it, once when he was unhappy with a curfew that she had imposed, and also when he wanted to ride his motorbikes and spend time at the family residence.
- [196] On a related issue, Ms. M. rejected Mr. D.'s accusation that she had cut off his ability to contact M.'s school. She said that the only change she made to M.'s contact information at the school was that she became the primary contact person, while Mr. D. was the primary contact for O. and S. Mr. D. was still listed as M.'s parent and was able to obtain information about her from the school.

P.D.

- [197] He denied preventing the children from seeing Ms. M., or that she was required to send them secret text messages in order to be able to communicate with them. (He later observed that if she could not contact them she could just have gone to the school and asked them to come to the principal's office.) All O. and S. have to do in order to see Ms. M., he explained, was text her and then walk out of the house (to be picked up by her, I took it). There was nothing that he could do to stop it, he said - O. is taller than he is, and he would not just take them away from their mother.
- [198] He said that O. and S. love to spend time with Ms. M. but when she was staying in a one-bedroom apartment after the separation there was not enough room for three children during the week. On many weekends they did not go with her because they had a friend coming over or they preferred to engage in the activities that are available at the family residence.
- [199] He admitted that it was "stupid" for him to have called MCFD and told them to pick up the children. It was a response to Ms. M. having been in Paris on holiday for a month-and-a-half. He did not know what to do so he called the hospital and asked them to pass on the message for her to see the children. As it turned out she did not want to see them for longer than the weekend, which she spent with them in a local hotel. She did the same thing for the three weekends that she spent with them that July.
- [200] His version of the encounter with Ms. M. when they were both stopped for a train was that he had gone to the area where Mr. P. lived to pick up S. from a birthday party. There had been no mention of Ms. M.'s relationship with Mr. P. in the Views of the Child reports that Mr. D. had received, so he felt comfortable going out to that area. The vehicles in line were stuck waiting for the train for half-an-hour. He noticed that Ms. M. was there, and after 10 minutes he tapped on the window of her vehicle. She asked him what he was doing there and after he told her, she accused him of harassing her and told him that she was going to call the RCMP. He responded that it had been "nice talking" to her and went back to his car.
- [201] When he got home, O. showed him text messages from Ms. M. accusing him of harassing and following her. He drove both O. and S. out to the area to show O. that it was the area where he was picking S. up, and specifically showed them the train tracks where he had met her.
- [202] When he broke his ribs and ended up in the hospital after his motorcycle accident, Ms. M. came there and spoke to him for half-an-hour, which indicated to him that she was not frightened of him. Contrary to her version of events, he said that she was aware that his neighbour Ms. F. was going to be picking the children up.
- [203] It was suggested to him in cross-examination that he had told the children that if they switch to a week on/week off parenting arrangement with Ms. M., the animals at the family residence will be euthanized. He agreed, as he had said at his examination for discovery, that he had told them he would "get rid" of the animals in that case, and that he did not need to be "looking after his wife's farm." But he explained that he had done so in the

context of asking them when Ms. M. would be taking the animals, which she had been promising to do for three years. He also told the children, in response to Ms. M's request to have the animals with her, that he "did not want them to die" and that if they went to her "she would just get rid of them". He suggested that she did not have any space for them, would not keep them at her boyfriend's house and in general did not want them. When Ms. M.'s counsel put to him directly that any time the children raised the issue of wanting to spend a week with her he told them the animals were going to get euthanized he responded, "By their mother, correct, not by me".

- [204] In addition to the children needing to be at the family residence to look after the animals, his other reason for resisting the week on/week off arrangement is to instil responsibility in the children. He said that he has told them "not to be like their mother and just walk away from everything".
- [205] His belief is that Ms. M. turned M. against him when they went on a trip to Quebec together in December of 2016. This was just before M. decided to live with her. O. and S. did not want to accompany Ms. M. on that trip.
- [206] In cross-examination, he said that M. was scared of him and agreed that at that point he was hardly seeing her at all. However, he had not offered to reduce the amount of child support he was receiving from Ms. M. to reflect that fact. He agreed that during his examination for discovery he had initially maintained that she was still living at the family residence, before conceding that what he meant was that she was still coming over at times.
- [207] He expressed concern about Ms. M.'s willingness to permit M. to miss school for extended periods. He also claimed that she had him removed from the school's contact list, requiring him to attend in November 2018 to have himself put back on. He called the RCMP on November 19 in order to have them direct Ms. M. to take M. to school. When he was asked why involving the police was necessary for such an issue, he said that he could not contact Ms. M. or go to her house (I took him to be referring to the no contact conditions of his bail.)
- [208] On the issue of receiving the children's passports for a trip to visit family in Slovakia, he said that he never received M.'s, and Ms. M.'s counsel told him that M. would travel with him "as she [saw] fit". Mr. D.'s position was that the trip would involve "all three [of the children] or nothing", so even though he had O. and S.'s passports it did not proceed.
- [209] He said that he allowed Ms. M. to have the children for all of August and September to "see how she would do with them". When he told her that he wanted to see them on October 1, he was only able to pick up O. and S. at school. M. was kept home while Ms. M. was in court, and he did not get to talk to her.

- [210] He claimed not to have received the Views of the Child report with respect to M. until July 2018, when Ms. M.'s counsel sent it to him after he complained that he did not have it. When he was shown an email from Leanne Toews to his email address on February 5, 2018, attaching the report, he said that he "never saw it", or maybe he had deleted it, or "when I put it into counsel's file it all loops into one".
- [211] He denied keeping O. and S. out of school on the days that they were supposed to see Ms. Toews. He only cancelled one appointment, when they had a karate tournament, and Ms. Toews said she would just rebook. He added that Ms. Toews has interview times on the weekends as well, so Ms. M. could have taken them then, rather than going through him. Or, she could have picked them up at school and returned them by noon, without him even knowing.
- [212] More generally, he denied refusing to allow O. and S. to leave when Ms. M. sent in M. to retrieve them, as Ms. M. described. He repeated his position that there was no order in place and that she could see them anytime.
- [213] He also denied going to G.'s workplace threatening to kill Ms. M. if he "did not get [his] million dollars". As he explained it, "I would not even say to my daughter that I was going to even punch my wife in the mouth."

Post-Separation Financial Issues

H.M.

- [214] In February 2016, when Ms. M. was working in Mackenzie for a short period, she was advised by the bank that Mr. D. had attempted to use the power of attorney that she had previously granted to him to withdraw money. As a result, she cancelled it.
- [215] In March, she gave Mr. D. \$64,000 to buy a vehicle. He claimed to be poverty-stricken despite the spousal support he was receiving, and pointed out that he needed security in the event that something happened to her. He also pointed out that he had been driving the same vehicle for a long time. This was one of many discussions they had about how to part ways amicably. He said that he was going to "come after" her whether she paid it or not, so she paid the money to make her life easier. She provided it to him in the form of a cashier's cheque. She had previously put it aside to pay her taxes, and she told him "not to blow it all on the stock market". He ended up spending it on a Mercedes 600L convertible.
- [216] Ms. M. described having left the family home with only the clothes on her back. Among the items she needed to retrieve were her personal documents, in order to do her taxes. Mr. D. refused to return them. She attempted to retrieve them when she went to the residence in July to pick up the children for a visit. In the office, which was mainly used by Mr. D., she found a piece of paper, which she photographed, containing a list of the purchase dates, descriptions and values of all of the computers in the house, along with an insurance claim number. At the bottom of the page were what appear to be several attempts to imitate her signature.

- [217] The significance of the computer information and the claim number is that the previous month Ms. M. had received a call from the RCMP advising that Mr. P. was being accused (by Mr. D.) of breaking into the home and stealing all of the computers. She had not made any insurance claim in relation to them.
- [218] Similarly, her horse trailer was recovered, abandoned, after Mr. D. advised her that it had been stolen and an insurance claim had been made by him in relation to it. Once again, she had not made any such claim herself, and said that in the four years that she had it "it never really left the property" although it was insured to be on the road.
- [219] The attempts to imitate her signature in the document she found at the home in July may relate to three cheques written on her account in August and September, for a total of \$13,250, that she testified she did not write or sign. Two purported to be payable to her and one was to her "and/or" Mr. D. These cheques were paid out from her account.
- [220] Another financial controversy had to do with the \$8000 support payment that Mr. D. was to receive in November 2016. Ms. D. intended to give him the cheque for it when he dropped off the children for a visit with her. When he arrived for the exchange at the Tim Hortons parking lot, only O. and S. were with him. Because of the no-contact order arising from the April incident, she asked one of the children to give him the envelope containing the support cheque. Mr. D. threw it on the ground. One of the children gave it to him and he threw it on the ground again. Ms. M. came over, told him to stop being ridiculous and slipped the envelope into the back seat of his vehicle. Mr. D. told her, "Wait until you see what happens on Monday". On Monday his counsel wrote to hers complaining of the missed payment. The next month the combined \$10,000 child and spousal support payments were ordered, following a court hearing.
- [221] Mr. D. accused her of cashing the November cheque herself. In her direct evidence she explained that the bank, after investigating the circumstances (because the cheque had not been cashed) cancelled it, which resulted in the money being returned to her account. In cross-examination, she elaborated that she was required to sign a "bond of indemnity" with the bank to have that done. She waited until four days after the court hearing to do so. Immediately after leaving the cheque in Mr. D.'s vehicle, she waited to see what would happen. She knew that he had it, so she could not write him another one (in case he cashed the first one). Once she was ordered to pay the \$10,000 combined support at the hearing, which she then began to comply with, she went to the bank and asked them to cancel it. Her view was that she was starting her support "fresh" with that order.
- [222] Mr. D. also accused her of neglecting to pay certain essential family expenses: the property taxes for the family residence, the family's Medical Services plan premiums (a statutory notice had been registered against the property as a result), and M.'s hearing aids (M. needs them to address sensory processing issues). Ms. M. explained that the bills for such expenses, which also included household utilities, were being mailed to the family residence, but Mr. D. was not forwarding them to her to be paid. She had since transferred

the billing for the MSP premiums to her address and was paying them, had paid for the hearing aids and had sent a partial payment of the property taxes (\$6,144) to the city, just enough to keep the house "off the auction block", and had agreed to pay the balance once the outcome of this trial is known.

- [223] With respect to the hearing aids, she then qualified her answer to say that she either had paid them or was paying them, and would clarify the situation after court that day. She could not tell from the invoice that Mr. D. presented whether that amount was still owing. Northern Health actually had her credit card number to pay for the hearing aids, but that card had expired. (She added that because she was prevented from seeing M. for a period of time she could not bring her back to get the hearing aids calibrated.)
- [224] In support of his contention that Ms. M. earned substantially more from her practice than she was claiming, Mr. D. cross-examined her on her bank statements from August and September of 2015, which appear to show earnings of \$50,000 per month. This extrapolates to the type of yearly income that he was alleging. She explained that during that period she was working at a teaching clinic in the internal medicine department, which required 11-12 hour days. That was not sustainable for family purposes and the position was not going to continue anyway, so she switched to another position that paid less.
- [225] With respect to her further career plans at the time of the first trial, she explained that she was planning to cut back her hospital work to 50% of her practice and work the rest of her time in two private clinics as a family doctor. This would give her more flexibility with her time, for example allowing her to schedule pick ups and drop offs of the children as required. However, she would then have overhead costs to pay, and it would take up to two years to get her private practice established. The overall result was expected to be a lower income.
- [226] No appraisal was done of the family residence as part of this case. The most recent and reliable information about its value as of the trial dates was the 2017 property assessment, which listed it as \$447,000, less than its purchase price in 2010. Ms. M. listed it at \$408,000 in her September 2018 financial statement, but that was its value in the 2015 assessment.
- [227] The Homeline mortgage secured by the residence was at \$204,331. Ms. M. explained that she was currently only paying the interest on it, pending the resolution of this case. In November 2015, following the advice of a banker, she paid the savings that she had put aside for her taxes down on the mortgage, because the interest rate on it was higher than the interest she would receive from keeping the money in her savings account. This reduced the balance on the mortgage to \$129,331 from \$199,331. After reflecting on the decision, she decided that the money really belonged to the Government of Canada for her taxes and with litigation looming (she had already decided to separate from Mr. D.), it should be in her savings. She put it back, which returned the mortgage to its previous balance, but was well aware that in the context of this acrimonious litigation "someone was going to make a stink about it". She emphasized that this was all money that she had earned

after separation in any event.

- [228] Ms. M.'s student line of credit was at \$166,398.59. She had \$43,000 in credit card debt, mainly on her RBC Visa card. At that point, she estimated her income tax liability for the years 2016-2018 at \$240,000.
- [229] Her only significant assets were \$152,235 in two bank accounts (\$151,364 of which had been put aside to pay taxes) and RRSPs of \$68,649. Her vehicle was leased.
- [230] Ms. M. described the family residence as being in "extreme jeopardy" (I took it because of the size of the mortgage relative to its value Mr. D.'s long-term inability to afford the mortgage on it.) She wanted to salvage the situation by purchasing it herself as part of the division of property, then treat it as an asset belonging to her children and have them visit their animals there. She did not intend to live there herself, but would consider having G. live there or renting it out.
- [231] She was not claiming any of the personal property from the home, including furniture.
- [232] She valued the family's four horses at \$9900 in her financial statement. One of the horses and its tack were the only property that she ever removed from the residence after the separation. If Mr. D. had not prevented her, she would have taken all of the livestock and family pets with her. She proposed that they now be allocated to her in the property division. She had been requesting that they come to her since the separation, but Mr. D. would not allow it.
- [233] She intended to give two of the dogs to G. (one of them was formerly G.'s pet), to give one of the horses to a sister who runs an equestrian school, and to donate M.'s sheep to a 4H program, but said that he had a place for the other animals (in the event, I took it, that she was not able to purchase the family residence and keep them there).
- [234] The horse trailer, which originally cost \$10,000 and a tractor, which originally cost \$30,000 and was "conservatively" worth \$15,000 now, should both be sold and the proceeds divided, in her view.

P.D.

- [235] He explained that he tried to use the power of attorney to get funds in February 2016 because Ms. M. was out of town and he needed money. He thought he could just withdraw against the line of credit, as she did, by using the power of attorney. They had a joint account at that bank as well. The bank officials could not reach her so they were unable to process the transaction. Any impression that he was trying to steal the money should be counteracted, in his view, by the fact that she gave him \$65,000 the following month.

- [236] He agreed that the paragraph in his December 2016 affidavit, in which he denied attempting to obtain money and claimed he had only asked to see an account statement, was not true. He said the paragraph should have read that he "did not withdraw" rather than "did not attempt to withdraw" the money, although he added that "for me it's the same thing".
- [237] He could not recall what he had needed the money for, perhaps groceries. Ms. M. was giving him \$2,000-\$5,000, "every month or if I asked for it or whenever". He then described it as "\$2000 more or less when I needed it" for groceries or "looking after the kids". She kept control of all the money.
- [238] After being shown his banking records, he agreed that there were \$2,000 deposits on February 8, 15, 22, and 26 that were "more than likely", he "could not deny", or "could have been" from Ms. M., although one of them could also have been from a friend. By the time he was shown the last one he acknowledged "she's transferring money to me, yes."
- [239] When he attempted to use the power of attorney he still had at least \$1,900 in his account. The withdrawal could have been for the horses, hay, or "many things" and that if he needed \$5,000 it must have been for "something special".
- [240] The \$65,000 she gave him was intended to purchase a Honda Odyssey. He did not buy one after receiving the money because the new models were coming in in another month. He did not end up needing the van after he found out about her affair with Mr. P. and she began paying him the support.
- [241] He bought the Mercedes "two seater" in June and July, but then said that it was lucky that he did not spend the money (on the van I took it) because he did not believe that he received anymore money from Ms. M. In particular, he denied receiving spousal support from her up until the November bank draft incident. All he received was the money that she transferred him for various living expenses.
- [242] Ms. M. knew about the insurance claim for the computer theft because he had to go through her in order to make the claim. He thought that she and her boyfriend had stolen them, looking for information, because it had to be someone with knowledge of their presence. In addition, he "has no enemies" and items of greater value were not taken. The computers were all new, so he had no reason to claim replacements for them falsely.
- [243] Once she contacted the insurance company 'things went very smoothly'. He also maintained that the allegedly fraudulent cheques that were cashed were in reality signed by her.

- [244] He denied that the paper that Ms. M. found in the office represented his efforts to practice her signature. Ms. M. had come to the house for one day to look after the children. He said that there was a piece of paper like it there previously, but without the signatures on it. When he was asked whether anyone had ever taken this paper away, he said he could not remember. He had not seen this version of it until it was disclosed for the trial. It was not on his desk when he got home that day.
- [245] He said that the cheques that Ms. M. had denied signing were from a joint account to which they both had access, which was opened when they separated in April 2016. The one for \$5,000 marked "lawyer fees" was provided based on Ms. M.'s agreement to pay for his lawyer for the criminal charge.
- [246] He agreed that he had written to Ms. M.'s counsel alleging that she had made an insurance claim for the stolen horse trailer and then received a \$10,000 payout but kept the trailer. He said that he was present in the home when Ms. M. received the cheque, sometime between 2012 and 2014. He also informed the RCMP that there was a horse trailer in Ms. M.'s name on his property that he wanted removed, although he added that he could not recall if he had said that it was stolen. After briefly suggesting that his actions had something to do with the November bank draft incident, he said that he wrote to counsel to get in touch with Ms. M. to get the trailer off of his property, although he then added that "she can't, it's been stolen".
- [247] In his description, Ms. M. was the one who insisted on paying him support in bank drafts. Electronic transfers would have been much simpler. If she had actually put the November 2016 draft in the pocket behind his seat he would have found it and cashed it, because he needed the money.
- [248] At one stage of his evidence he expressed his perspective on the end of the marriage as, "I did not expect her to leave me and start making money for someone else." His position was that she should "give me back my \$1.5 million", which was intended to be his retirement money, but was spent on Ms. M.'s education so that she could take care of the family.
- [249] By searching her account on a credit check website using a computer that she had left in the family residence, he found information suggesting that she had \$40,000 in credit card debt at the time of trial. This was an account that they had together when they were still together - he knew her password, which he said she could have changed if she wanted to. He claimed not to be trying to cause her any disadvantage by accessing the information; he was trying to find out why numerous debts are being written off against the family residence as liens. He also took issue with her decision to put aside money for her taxes in a savings account at very low interest, while debts accumulate against the house.
- [250] Other relevant aspects of Mr. D.'s post-separation finances were explored during his cross-examination.

- [251] Despite a direction at the trial management conference, he did not file an updated financial statement. His most recent statement was from July 2017.
- [252] It was revealed that he has additional bank accounts - at Scotiabank and CIBC - that he did not disclose in that statement because they have no money in them. It was also pointed out that the balances of the accounts at TD and RBC that he disclosed in his 2016 financial statement were identical to the ones in his 2017 statement, which seems highly unlikely. The amounts owing on his two credit cards - \$5,000 and \$8,000 respectively - also did not change between the two financial statements. He agreed that both of those amounts had been incurred after separation.
- [253] He purchased a 2013 Mercedes GL (which I feel comfortable taking notice is a sports utility model) in April 2018. His previous van had broken down by then. He financed it after putting down \$20,000 in cash and \$26,000 from a credit card. The \$20,000 came from a loan he had obtained from Scotiabank to pay into an RRSP. While he would not normally be able to get a loan from a bank, due to his financial circumstances, he explained that the bank would provide one to make RRSP deposits to keep his taxes down. A month after obtaining the loan he "cashed [the RRSP] in", with the result that he then owed the bank \$34,000 for the lesser amount of cash he had received. When it was suggested that he had purchased the RRSP intending to cash it out he said, "I know how to work that system, yes". He then claimed that he had actually cashed it two or three months later, after his accountant said he had RRSP carryovers from previous years and did not need this deduction.
- [254] He agreed that at his examination for discovery he had said that the \$20,000 was available to him because he did not have to pay a lawyer, but said that he was just "being a smart aleck" at that time, as he had been in response to numerous other questions from Ms. M.'s counsel.
- [255] In re-examination it emerged that he had leased a new Ford 350 crew cab truck, once the older truck that was used for farm-related purposes stopped working. He only uses the new truck a couple of times a month, to pick up hay. He explained, "I don't drive Ford, I like Mercedes". Addressing his need for such a costly vehicle as a replacement, he said that his current credit situation he does not qualify for anything except a new vehicle.
- [256] He received \$23,388 in child tax benefit payments in November of 2017. He did not inform the authorities that M. had not been in his care since January of that year. He was still hoping she would come back and it had only been "two months, three months". He agreed that the monthly amount for three children meant that the benefits were being paid to him effective November 2015, before the separation occurred. He explained that he just filed the papers and the tax authorities took care of the rest. He claimed that they wanted to go back to 2010, when Ms. M. first falsely claimed to be separated, but he told them that the separation had been in April 2016. His view is that Ms. M. received the benefit for two years when she was not entitled to it (by which I took him to mean, from separation until November 2017).

- [257] An issue arose with respect to his ongoing involvement in stock trading. He claimed to have had a trading account at TD for two months and then closed it or stopped. He said he thought he lost "3000 bucks". He was then shown an excerpt from the records of one of his credit cards for February to April 2017 - showing payments to TD totaling \$11,900, in amounts of roughly \$2,000. Ms. M.'s counsel suggested that these payments were for a trading account and he responded that "you need to put money in to trade", which he did for two months, "then to take it out you transfer it back". When counsel pointed out that nothing was coming back he responded that he was losing money on the trading, but that it was \$2,500 not \$12,000. When Ms. M.'s counsel put to him later in the cross-examination that he had agreed that money from his credit card was going into a TD trading account, he said he did not recall.
- [258] He did not recall trading in 2016, "but even there it was only for a month or so" and believed it was with respect to an RRSP. He then said "it depends what you call day trading" - he "put a couple trades in the oil and gas". His statement of business and professional activities for his 2016 tax return listed the main product or service as "day trader", but he said that those are people who sit in front of a computer and buy and sell stocks on a daily basis. He was not day trading, but "that's what you call it" for income tax purposes. The statement lists \$191,325.72 in "gross commissions, sales or fees" for that activity.
- [259] He was emphatic that he had opened up the TD trading account in 2017. He said that his 2016 account (for trading) could have been with RBC. He was then shown a "TD Trading Summary" attached to his tax return for that year, showing "proceeds" over \$60,000, in response to which he "guessed" that he had a TD trading account that year. When he was shown a trading summary from RBC for 2016 showing "disposition totals" in approximately the same amount, he did not provide any documents for that trading account because it had no money in it.
- [260] When he was asked to confirm his position that Ms. M. had done the significant day trading, he said, "She put in a couple of investments, correct" and that it was in an account in her name. He stressed that depending on the value of the shares, the large amounts of trading losses recorded on her returns could be done in five days, or by trading twice per month for a year. All that a person needs to do it is an iPhone.
- [261] On the question of his current ability to work, Mr. D. referred to some long-standing medical issues. He suffered a serious head injury in a car accident in 1980. Residual effects include a feeling of being "spaced out" and the inability to operate high-powered tools or climb heights greater than three feet. He referred to needing four years to finish a one-year finance diploma at Langara, by which I took him to be saying there have been some cognitive effects as well. He said that as long as he is not "running around or spinning too fast [he is] okay". He had to give up playing hockey in 2008. In addition, he has colitis "or it's called Crohn's disease" as he put it, for which he takes medication.

- [262] In response to my question about providing evidence in support of his claimed health conditions, he said, "[H.M.], that's my doctor." In re-examination he produced receipts and a prescription for medications that he said were for symptoms of colitis, difficulty sleeping and dizziness. However in addition to zopiclone, which he specifically identified as being for sleeping, there was only one other medication listed - "mesalamine" or "mesalazine" (spelled differently on the prescription and the receipt).
- [263] He explained further that the symptoms of colitis had become worse in November (this testimony was the following month) because of stress. He had to go to the washroom every half-an-hour to pass blood. He also provided what he initially claimed was a requisition for an MRI, but he agreed in cross-examination that it was actually for blood work, although he maintained that he had also been referred for an MRI. He said that these were to inquire further into the cause of his dizziness. He began seeing a doctor at a walk-in clinic in October, after the first court dates. He denied that he had done so only to obtain evidence to support his claimed inability to work.
- [264] He confirmed that he has not made any efforts to find work since separating from Ms. M. and has not looked into any retraining. When he was asked if, in view of his situation, he had applied for a disability benefit he responded, "I'm not going to play dead, if that's what you're asking". I took him to be saying that he had not applied, and did not intend to.

Potential Supporting Evidence for Mr. D.'s Positions

- [265] As I have mentioned, Mr. D. called C.F. and her daughter J.F. as witnesses, to support some of the assertions of his relationship with Ms. M. and their respective parenting roles.

C.F.

- [266] She described herself as a friend of Mr. D.'s. She was not a close friend of Ms. M.'s, but had no reason to believe that they were not friends. She and her husband had gotten to know them after they moved to Prince George, because M. and her daughter were in the same class.
- [267] Echoing the term used by Mr. D., she said that Ms. M. was "spoiled" by him. He purchased a "big fancy horse" and a variety of special farm animals for her. Her view was that she "pretty much got whatever she wanted". When commenting on his treatment of the children she said that they were "just as spoiled" as Ms. M.
- [268] Her observation was that Ms. M. and Mr. D. had a normal family life in the first few years they lived there. After that it seemed that Ms. M. was "not in the picture anymore" - very busy with her studies and not having time to do things with the children. Many times when she went to the house Ms. M. would be studying or at school.

- [269] Mr. D. brought the children to school and the majority of the time picked them up. Ms. M. did not come to many of the children's activities, in particular had not come to M.'s band recitals in the last three years. In response to his suggestion that he looked after the children the majority of the time, she said, "I believe so." She characterized Ms. M.'s "passion" as being for her work.
- [270] She believed that the parties had separated in April, as contended by Mr. D. Ms. M. was still around the house before then. She also works at the hospital and had heard from a co-worker in November 2015 that Ms. M. had left, but did not mention this to Mr. D. until after the separation.
- [271] She also noted that since the separation M. would not speak to her, although O. and S. still say hello to her and "seem like they've always been".
- [272] Ms. F. did not recall Mr. D. ever being out of town for more than "a couple of days" at a time. Especially in the last three years, he would usually let her know when this was occurring and ask her to either look after or pick up the children. He also asked her to look over the animals. She had been paying him \$240 per month to house and provide feed for her two horses, for the last two years.
- [273] Although she initially said that she had never seen Mr. D. interfere with Ms. M.'s access to the children, she agreed that he asked her to pick them up after his motorcycle accident and that as a result she would not allow Ms. M. to do so. She did not recall if she had said, "After what you've done to [Mr. D.]" to Ms. M. during this incident, but she did remark during her testimony that Ms. M. "was the one who moved out of the house", and that she did not agree with the things that Ms. M. was doing during this time; that is, leaving Mr. D. for a relationship with someone else.
- [274] Her perception was that Ms. M. was more "vocal and intimidating" than Mr. D., who just listened to her. She never had the impression that Ms. M. was afraid of him. After he was charged with the criminal offence in relation to Ms. M., she still saw her approach him at school pick-ups to discuss things. Ms. F. said that she would not let her daughter be around Mr. D. if she had ever felt threatened by him.
- [275] Ms. F. also supported Mr. D.'s description and photos of the various fences and gates surrounding the property, to contradict Ms. M.'s concern that the children would be unable to escape in the event of an emergency if they were left alone.
- [276] In cross-examination Ms. F. confirmed that other than some socializing with Ms. M. and Mr. D. in the first few years, she would drop her daughter off at the family residence, have a social visit with Ms. M. and then leave. She would only go in the house if Ms. M. was there, otherwise she would speak to Mr. D. outside. After their daughters stopped being friends, at the end of grade seven, her observations of Mr. D with the children were confined to the school parking lot.

J.F.

- [277] She testified that she and M. had drifted apart in grade eight but that she was still friends with O. and S. She said that before "the divorce" M. was "definitely Daddy's girl", but since moving in with Ms. M. she did not want to talk to Mr. D. and did not speak well of him.
- [278] M.'s involvement in band, which practiced four days per week, had decreased in grade eight and ended completely by grade nine. In grade eight M.'s explanation was that she was unable to get rides to the practices. Recently she told J. that she is tone deaf and so is unable to hear herself playing.
- [279] When she was younger and she and M. were still friends, Ms. M. and Mr. D. treated her "like family". Mr. D. spent a lot of time with the children, especially when they were in elementary school. Ms. M. did as well, until she "started school" and J. saw "a bit less" of her. She then clarified that by the time she was in grade three, Mr. D. was the main caregiver.
- [280] Ms. M. never said anything or acted in a way that suggested that she was frightened of Mr. D.
- [281] As her mother had, she confirmed that it was easy to climb over the fence that surrounds the family residence.

The Views of the Child Reports

- [282] As I mentioned at the outset, the children have essentially adopted their own preferred parenting arrangements, which the parties have not resisted. Despite this, some of the children's comments in these reports about the behaviour of each parent towards them remain helpful in determining their ongoing best interests.

M.

- [283] She expressed the strong wish to see her brothers more. She said that Ms. M. knew that she wanted "50/50", but that Mr. D. wanted "full-time custody" of her. As an alternative, she suggested that a schedule of two weeks with Ms. M. followed by one week with Mr. D. She said that she liked living with her mother, but that the only way to see O. and S., given her father's unwillingness to bring them to her mother's house, was to spend time with him.
- [284] A crucial aspect of any parenting schedule, in her view, would be that it cannot be changed by either parent. She also referred to having a plan for dealing with their animals, which Mr. D. had threatened to drop off, leave behind or have adopted out.
- [285] She quoted Mr. D. as making comments such as, "Your mother can't care for you, she's too busy at the hospital, she doesn't want you", "Why are you doing this, your mother doesn't love you" and "You're mother's an idiot". She said that he yells at her and her brothers when they said they want to see their mother. In one particularly concerning passage, she quoted him as saying that Ms. M. "does not love us, that she abandoned us and she wants to make

money and when she gets enough money she's going to go on vacation and she's never going to return and we're going to be in Child Services " If they told him that they had just "hung out" with her during a visit, rather than going out anywhere, he would say that she was "an unfit parent."

- [286] He would yell at them whenever they wanted to call Ms. M. He also had unhooked the home phone from the wall so that they could not call her. If she called when he was out, he would yell at her when he recognized Ms. M.'s number on the call display.
- [287] He put a program on the cellphone that he gave her that tracked its whereabouts, because he wanted to find out where Ms. M. was living. After the program was removed she resisted letting him have the phone back for fear that he would install it again.
- [288] She expressed concern about Mr. D. yelling at them, as well as raising his hand and threatening to slap them, when he was angry.
- [289] She was worried that he would learn of her comments in the report and accuse Ms. M. of influencing her. If a shared parenting arrangement were to be imposed and she resumed staying with him, he would accuse her of betraying him by making those comments.
- [290] When she told him in January 2017 that she wanted to live with Ms. M., Mr. D. told her that he was going to kill all of her animals and that "something would happen" to her brothers. After she resisted seeing him when he contacted her at school after spring break, he told her, "Okay I don't want you to come back ever again."
- [291] She described Mr. D. as brainwashing her and her brothers to believe that Ms. M. did not want them. These efforts had succeeded with O., who sought to please Mr. D. with his behaviour. She described that her brothers "did not want to grow up", because they did not want to be yelled at by him. M. said that she previously had not wanted to see Ms. M. because "my Dad was lying" about her "to the point that we didn't want to talk to her anymore." However, she then decided to give Ms. M. a "second chance".
- [292] She would have been willing to see Mr. D. if "he stops yelling and stuff like that". She elaborated that she wanted him to "just be normal for once" which she defined as not yelling, saying they are stupid, or swearing at them after every sentence.
- [293] Ms. M. regularly encouraged her to see Mr. D., whereas he "would never ever do that [encourage her to see her mother] as long as he is living". If she said she did not want to see him, Ms. M. would say that it was her decision, but that any time she wanted to see him it would be arranged. When she was previously living with Mr. D. and said she did not want to see Ms. M. he would say, "Okay that's fine your mother never loved you anyways so why would you even want to see her". He would then "yell at us more".

- [294] Overall, she and her brothers were inhibited in their ability to discuss the situation with each parent because their mother would become sad and their father would be come angry. M.'s general request was for both parents to stop discussing the circumstances of their divorce with her.
- [295] Mr. D. disputed some of M.'s comments. Those disputes were with respect to M.'s comments about his lifestyle (the amount of beer he consumes and the amount of time that she spends playing video games), which were not raised by Ms. M. as parenting issues and which as a result I have not quoted. More to the point, he described M. as "highly influenced" by Ms. M. and asserted that if O. and S. say they want more time with Ms. M. that is fine with him. He denied restricting contact between the children and Ms. M. by unplugging the phone. In any case, O. and S. have their own electronic devices, so they could contact Ms. M. anytime. He also attached significance to the fact that M. did not refer to Ms. M. being in a relationship with Mr. P. during the interviews, even though it was ongoing at that point.
- O.
- [296] When he was asked if Mr. D. had spoken to him about the interview for the report, O. said. "He doesn't really know I'm here "
- [297] O.'s preference at the time of his interviews was for "half-and-half" parenting arrangements. He said that Mr. D., who "always makes pretty much the decisions", had said that if the children want a week on/week off arrangement they have to take all of the animals to Ms. M.'s house when they stay with her. He described Mr. D. as "basically saying" that they only had to go to her for weekends.
- [298] In his view the only thing that was "going bad" at that time, was not getting to see Ms. M. every other week. The hardest thing about the separation was that "I don't really get to see my Mom that much". He described the fighting between the parents as being, from Mr. D.'s side, about not receiving money and about the animals. On the other hand, Ms. M. was only fighting over getting to see the children for more than weekends.
- [299] While he responded affirmatively to the question of whether Mr. D. encouraged the children to see Ms. M., he added that "it didn't really seem like it", because Mr. D. "kept making excuses" about why it could not occur, such as that Ms. M. had not sent an email confirming the visit. She would later show him emails to Mr. D. saying that she wanted to see them. Similarly, he would say they should see Ms. M., but then not bring them to school on a Friday so that she could not pick them up for a weekend. He also referred to Mr. D.'s disruptive influence on vacations with Ms. M. as "then my Dad would make an excuse or would just not take us on the vacation so my Mom would just waste a plane ticket for nothing "

- [300] Similarly, he had not previously been able to receive calls from or call Ms. M., until he found out that her number had been blocked on his cellphone. He discovered this when Ms. M. came over with M. and told him that she had called him a hundred times but the number was not working, which caused her to check his phone.
- [301] When he was asked if anything had made him feel like he did not want to spend time with Ms. M., he said that he had "never really felt like that". The only time he asked Mr. D. not to take him to see her was when he wanted to hang out with a friend. Although he agreed when she suggested a week on/week off arrangement, Mr. D. "pretty much wouldn't let me 'cause he would just make up that we have to take all the animals again "

S.

- [302] He also felt that an equal parenting situation would be better, because he wanted to see Ms. M. more, and did not like only being able to spend weekends with her. He also wanted M. to be there when he was at Mr. D.'s house "because that's a big thing missing".
- [303] When he was asked to describe how things have changed since his parents had separated, he referred to the fact that Mr. D. "always yells" and that there would be "this really mean thing" in his tone of voice.
- [304] Like O., he reported that Mr. D. had told him that he would have to take the animals with him to Ms. M.'s house if he wanted to have equal time with her.
- [305] He described being unable to call Ms. M. from the family residence "because the home phones don't work".

Interim Parenting Orders in December 2018

- [306] The first trial dates extended encompassed the December 2018 - January 2019 vacation period. On the last court date in December, I made an order dividing parenting time during the vacation equally between the parents, after which they were to resume the informal week on/week off access that they had been exercising up to that point.
- [307] In relation to M. I ordered that "Ms. M. will exercise all possible support and encouragement in M.'s best interest's, to encourage her to spend the designated parenting time with Mr D., however no degree of persuasion or compulsion inconsistent with her mental well being will be applied by either parent".

2019 Summer Parenting Time

- [308] In July of 2019, an issue arose with Ms. M.'s vacation time with the children that required an urgent chambers application to address.

- [309] Ms. M. made an application seeking confirmation of her ability to have vacation parenting time with O. and S. from July 15-31 and August 15-31. On July 19, I ordered that she would have those times, in the case of the July dates effective immediately, and that Mr. D. would have vacation time in the intervening two weeks (bearing in mind that he had already had O. and S. with him since the beginning of the vacation period).
- [310] Mr. D. did not produce O. and S. in accordance with that order or disclose their location to Ms. M.'s counsel. At a further hearing on July 23, he claimed that they were in Squamish, in the care of an undisclosed person, and that he did not have a means of contacting them.
- [311] As a result, I ordered that he immediately disclose the name, address and contact information for the person who had them in their care, and directed the police to provide all necessary assistance to Ms. M. to locate and return them pursuant to the order.
- [312] I will describe some of the circumstances surrounding these applications in my summary of the evidence at the reopened trial.

Changes of Circumstances as of the November 2019 Trial Reopening

H.M.

- [313] When the main trial ended in January 2019, she was living with Mr. P. and M. at his home. Her financial affairs were not intertwined with Mr. P.'s however; she only had discrete household expenses that she was responsible for.
- [314] The week on/week off parenting arrangements for O. and S. continued after the original trial dates.
- [315] There were difficulties with her parenting time during spring break. She was supposed to have O. and S. with her for half of that two-week break, but they were not provided to her by Mr. D. until later in her week, for only four days. This disrupted their travel plans and meant that she was actually only able to spend 48 hours with O. and S., in the second of the two destinations that they had been planning to visit.
- [316] The alternating weeks of parenting time then continued "more or less" until June.
- [317] Ms. M. had long-standing arrangements for summer vacation trips that included O. and S. and these were to take place on the dates that she ultimately sought in her application in July. The first two weeks were to be the Haida Gwaii and Prince Rupert trips that had been disrupted after Mr. D. withheld O. and S. the previous summer. The second two weeks were to be in Ottawa and Gatineau.
- [318] Despite these arrangements, she received an email from Mr. D. around June 14, in which he advised her that it was O. and S.'s last day of school, and that he would be travelling with them to Slovakia and then "taking off" for the rest of the summer. After she dropped O. and S. off for Mr. D.'s parenting week on June 11, she did not see them again until after the applications in July.

- [319] She said that after the first hearing in July, in which I ordered Mr. D to make O. and S. available to her, he stormed out of the courtroom and refused to say where they were.
- [320] O. and S. were located by the RCMP at the family residence on July 23 and, as ordered, they were placed in her care for the remaining portion of her planned July 15-31 vacation period. Of those first two weeks that she had planned they managed to salvage the portion in Price Rupert. She was also able to pick O. and S. up for the Ottawa/Gatineau vacation in August.
- [321] While she was in Prince Rupert with the children however, another serious event occurred. By this time she owed just under \$180,000 to the CRA. As a result of this debt, the CRA exercised its power to garnish all of the funds from her bank accounts: \$2,636 and \$44,798 respectively.
- [322] By the time she testified she had also received her notices of assessment for 2016 and 2017, which Mr. Karpes filed on her behalf. They showed Line 150 income of \$296,514 and \$338,809 respectively. Her 2018 return was due in March of 2019, and she had been working on completing it when she became unwell. She estimated her income for 2019 as \$200,000, which reflected her inability to work after the end of September.
- [323] She believed that Mr. Karpes had paid \$20,000 on her behalf about a year previously, but her 2017 notice of assessment, which she received in January of 2019, did not show the payment.
- [324] She explained that she had had a choice between paying Mr. D. or her tax installments and had chosen the former. When he challenged her in cross-examination on this issue, again suggesting that she had another \$400,000 hidden somewhere, she elaborated that she had paid him \$500,000 in support over the years. The other \$500,000 she earned was owed as taxes, but since she "had to live too", she did not pay them fully.
- [325] In response to his further suggestion that money that she spent on taking the children on a week-long ski holiday to Quebec, which she did when she and Mr. P. were still together, would have been better used for taxes, she said that she works hard and likes to take off the time she has lost to spend with the children, who are more valuable (than making tax payments, I took it).
- [326] When he put to her that the amounts she owes will be reduced once CRA accepts that the spousal support portion of her payments to him are deductible, she agreed that would be beneficial, but pointed out that a reduction in her indebtedness does not put money in her account, and that once her 2018 taxes are calculated she will still owe the CRA a very large amount.
- [327] The roughly \$100,000 that she had described putting away for taxes in her previous testimony was mainly used to pay the support. The \$44,798 that had been garnished by the CRA was intended for taxes as well. When Mr. D. cross-examined her on her 2016 financial statement, in which she had referred to putting away \$10,500 per month for taxes, she

explained that this was that same \$100,000 - she had "guesstimated" the amount she planned to put aside that year and divided by 12, to produce the monthly amount for the statement.

- [328] She was also paying the mortgage on the family residence, which amounted to about \$96,000 since separation. In addition, she had been paying twice for M.'s support since January 17 - both her actual expenses for M.'s care and that portion of her support to Mr. D. was based on three children being in his care.
- [329] Another contributing factor was that she had transitioned to working partly as a hospitalist (a physician who focuses on the care of patients within the hospital) and partly in the private practice that she was establishing. These changes, which were intended to lead to a more balanced lifestyle, reduced her monthly income, which was also stressful. Somewhat paradoxically in light of that purpose, she then started working even harder to earn more money to meet expenses.
- [330] All of this led to her suffering a breakdown. After the incident that led to the July court applications, she started to fall apart, experiencing anxiety and depression. She was prescribed medication but it did not help. On September 26, after missing an appointment with her psychiatrist and behaving in a manner that raised concerns that she would harm herself, she was involuntarily admitted to a psychiatric ward, where she remained until October 9.
- [331] Mr. P. found these events too stressful and ended their relationship. He asked her not to return to his residence, in order to make a clean break.
- [332] By this point S. had come to live with her as well, after being "kicked out" of the family residence following a dispute with Mr. D. When Ms. M.'s breakup with Mr. P. occurred, S. was given the opportunity to return to Mr. D.'s care but declined. Mr. P. was willing to have M. and S. stay with him and his son while Ms. M. got back on her feet after being discharged from hospital, and he drove them to school regularly using her vehicle.
- [333] Her mental health issues had to be reported to the College of Physicians and Surgeons, which then placed her on "temporarily inactive" status. She was unable to practice as a result.
- [334] At the time she testified, she was engaged in the process of demonstrating to the College her fitness to return to practice. She was receiving assistance in that process from a lawyer from the Canadian Medical Protective Association, as well as from a doctor who was helping her "deal with the bureaucracy". She was seeing a psychiatrist and a psychologist regularly in Prince George, and had also travelled to Vancouver to obtain a "back up opinion" from a second psychiatrist, to ensure that she has the correct diagnosis and she is receiving the correct medication, as well as to speed up the return process. She had to pay the \$2,500 cost of that second report herself.

- [335] Everyone involved had told her to expect a period of three to six months before she would be able to return to work. Given that she had been off for two months when she testified and was not very far along in the process, she believed that was realistic. Her return will involve her care providers writing a report explaining the causes of her breakdown, the College approving a plan to prevent any repetition of her mental health problems and, once she is allowed to start practising again, a gradual increase in the number of days that she works. She said she was getting close to feeling well enough to work and wished that she were working already.
- [336] She was able to pay Mr. D. his usual support in August and September despite the loss of the contents of her bank accounts to the CRA, although not the entire monthly amount at the same time. She was able to pay him \$2,000 in mid-October based on income that she had earned before she was required to stop working, but when that ended she was unable to continue.
- [337] On November 21, she redeemed a \$14,500 RRSP because her accounts were overdrawn and she had no other source of funds. After the applicable penalties she actually received \$11,600. She has a further \$75,000 in RRSPs but because the funds in them are in guaranteed investment certificates, she will not be permitted to redeem any more of them.
- [338] She has no disability insurance.
- [339] Once her relationship with Mr. P. ended, she found a rental house to live in with M. and S. When she testified, all of their belongings had been moved in and she and M. were living there and S. was expected to move from Mr. P.'s shortly. The rent was \$1800 per month and she had to pay a \$900 deposit. She estimated that her utilities would be \$650 per month. Another meaningful ongoing household payment is for the care of her horse, at \$600 per month.
- [340] The fees for her College membership and the CMLA are mandatory in order for her to be able to practice again, and those are over \$10,000 per year. She was recently informed that the software she needs for work will cost a further \$6,000, and she was also responsible for her portion of the salaries of the administrative staff she uses.
- [341] The family debt situation was dire. As of October 9, the mortgage on the family home was \$225,417, the line of credit was \$156,330 and the VISA was \$49,541. When she returned to her office after being discharged she found a letter from the City of Prince George advising that the family home was sold at auction for unpaid property taxes, with a one year redemption period. Her plan had been to take the same steps and she had in 2018 - pay enough to keep the house from being auctioned until this litigation has been decided, but I took it that she had not been able to do so when she became ill.

- [342] Keeping the property taxes current was a condition of RBC's lending agreement, so the mortgage on the family residence went into default and RBC exercised its right to demand payment of all of the debts secured by the property, which included the line of credit and the VISA. No foreclosure petition had been served at the point that Ms. M. testified, but she was expecting it soon. She had reached the reluctant decision that she had to "let the house go" and divide whatever equity remains after it has been sold with Mr. D.
- [343] Mr. D. cross-examined her on the fact that she had assisted in obtaining a car for M. (who had since obtained her drivers licence) and G. She explained that she had only co-signed the loan for it and had not put any money down. She described herself as "using whatever credit she had left" to help them out. G., who now had a child of her own and needed a reliable vehicle for work and to transport the child. She needed her own vehicle to be able to work once she is reinstated.
- [344] On Wednesday November 20, the week before the trial was to reopen, Mr. D. picked up S., who was then absent from school on the Thursday and Friday and remained in Mr. D.'s care until the first day of the trial on Monday, November 25. At the point that Mr. D. picked up S. and kept him, S. had not finished packing his belongings for the move from Mr. P.'s home to the rental house. (Mr. D. brought O. and S. to court with him on November 25, and also had subpoenas issued for M. and Mr. P., in an effort to call them all as witnesses.)
- [345] S. told Ms. M. while they were at the courthouse that he was prepared to remain with Mr. D. until the following Monday, after which he wanted to resume living with her.
- [346] Ms. M. had not seen O. from the first or second week of September until she saw him at school a week or ten days before she testified. An issue had arisen, which she believed was entirely created by Mr. D., that had caused O. to be angry with her. It involved an allegation that O. had physically assaulted Mr. P.'s six year old son.
- [347] This allegation arose during a week in September in which O. and S. were in Mr. D.'s care. The version that Mr. D. put to her in cross-examination was that Mr. P.'s son had said something to his teacher about O., which led the RCMP to be called to the school and Mr. P. to accuse O. of assaulting his son.
- [348] She was emphatic that O. had "never touched a hair on [the child's] head" and that neither she nor Mr. P. had any concerns about physical abuse having been committed by O. There was also no police file. However, she said that O. now believed that there has been an incident and an investigation with respect to the child, because he had been told that by Mr. D.
- [349] Mr. D. referred to text messages from O.'s phone accusing her of lying about the matter and saying that he did not want to see her until she told the truth. She was not convinced that O. had written those texts, and kept texting him to call her so that she would know it was him. When she later spoke to him, he said that Mr. D. would not let him visit her until she and her lawyer answered his emails on the subject. There is circumstantial support for this

phone conversation in that one of the texts referred to in this exchange she wrote, "FYI all letters have been replied to". Her position is that Mr. D. "cooked this all up" and that it "never even happened". O. later told her that Mr. D. was demanding the name of the child's school so that he could go there.

- [350] The only "background" she had with respect to the matter (by which I took her to mean the only accurate information) was that O., as "a big boy who did not know his own strength", had to be told to be gentle when he was play fighting with Mr. P.'s son.
- [351] She found Mr. D.'s use of O.'s phone to send her messages disturbing. As another example of that practice, she received a message from that phone indicating that her vehicle was still at Mr. P.'s house. What was disturbing is that the location of that vehicle, which was still at Mr. P.'s house while she completed the move to her rental, was not visible from the road. She remained concerned that he will come after her in some manner, which is why the no contact order pursuant to the criminal charges remains in place.
- [352] With respect to M.'s current situation, she attended school from January until spring break, including the school trip to Japan. However, after the incident in which O. and S. did not come over as planned at spring break, she became depressed and was unable to attend school for the rest of that academic year. This was despite efforts by a school counsellor to assist her and Ms. M.'s efforts to get her to see a psychologist.
- [353] In the fall of 2019 M. decided that changing schools would help her have a fresh start, however, Mr. D.'s permission was also required for the change and he was not prepared to give it. While Ms. M. also thought it would be better for her to remain at the same school, in her view M. was old enough that her wishes should be respected. Despite this setback, Ms. M. said that M. was attending more often than she misses school. Her non-attendance was random - she would state that she was not "in the right mindset".
- [354] She has continued to encourage a healthy relationship between M. and Mr. D. but M. "does not want it."

P.D.

- [355] Not surprisingly, his perspective on the parenting issues that had arisen, since the main trial dates had completed was very different from Ms. M.'s.
- [356] He maintained his general position from the main trial that the parenting arrangements from time to time should be governed by the children's preferences, rather than by an order directing specific times with each parent. He was agreeable to the children's winter and spring breaks and summer vacations being equally divided, with Ms. M. having first choice of dates once she returned to work, because of the demands of her schedule. The summer could consist of alternating two-week periods, or a month with each parent to accommodate longer trips. To accommodate travel, he wanted to receive the children's passports well in advance of any departure date.

- [357] In his view, there had been no problems with the children that year - the parents each had a week of spring break with them, and other than having to come to court, the summer "went okay".
- [358] On the summer court application, he claimed in cross-examination to have spent the night of July 23 at his girlfriend's house. Unknown to him, O. and S. were driven back from Squamish late that night. He did not say who had driven them. When he got home the next day he did not realize they were there until they got up in the afternoon. The police arrived shortly after that.
- [359] He was prepared to accept M.'s decision not to visit with him. Responding to a question from me, he said that he would be willing to participate in counselling with her to assist in restoring their relationship. (He volunteered that he would also be willing to participate in counselling with Ms. M. or to "sit down as a family" and "see what they want to do".)
- [360] He said that the estrangement from M. was due to the comments that she had made in the Views of the Child report. When he read her comments to O. and S., they laughed.
- [361] The vice principal and school counsellor had agreed with him that it would be in M.'s best interests to remain at her current school, rather than being allowed to transfer as she had requested, and so far the decision to keep her there "was working out pretty well". When he asked M. why she was not going to school her answer was that she did not want to.
- [362] He explained that O. wanted to live with him exclusively until the "situation" with Ms. M. and Mr. P. (that is, the suggestion that he had assaulted Mr. P.'s son) had been resolved.
- [363] He submitted screen shots of text conversations that he had with O. on October 20 and 21. During them, he asked O. if Ms. M. had been sick or complained about being sick "at anytime", or had ever said that she was sick and could not work. He also asked O. to confirm that he did not believe that Ms. M. was sick. Other relevant questions included "Do you love your mother", "Her lawyer says she cannot [work] and is very sick[.] What do you think" and "[O.] I just received emails from mommies lawyer[.] Is your mother sick".
- [364] In cross-examination he expressed his own view that Ms. M. was "playing more legal games" and that her illness "is just a big act".
- [365] He maintained that there had been no inappropriate contact with her since the original trial dates. He obtained the information about her vehicle still being at Mr. P.'s property from the "bailiff" who went there to serve subpoenas, and had not gone out there himself. He also does not go to the hospital - he served Mr. P. with his subpoena at the children's school, when he was picking up M. Mr. D. said that his son (I assume O.) pointed Mr. P. out to him. (He also denied an incident that Ms. M. had described in which he attended a restaurant while she and O. were eating, claiming instead that she had arrive there while he was with O., but to resist his efforts to call O. as a witness to resolve that dispute, her counsel said he would not be relying on the incident.)

- [366] Mr. D. described a precarious financial situation due to the interruption of the child and spousal support. He had borrowed everything that was available on his credit cards and was down to about \$500. He had sold his Mercedes sports car six months earlier and used up all of that money. He expected the Mercedes SUV to be repossessed when he stopped making payments on it the following month. He was still paying \$1000 per month on the new Ford truck he had described previously. He expected to eventually have to let it go as well. Overall, he described needing a minimum of \$5000 per month "just to survive".
- [367] He agreed that he continues to receive the Child Tax Benefit for all three children, but said that the CRA was unable to reduce it to reflect that only one child was primarily in his care until Ms. M. filed her 2016 taxes.
- [368] When he was cross-examined on his 2017 notice of assessment, which had been recently disclosed, he identified the \$37,000 deduction shown on it (against the \$62,400 in spousal support) as being for RRSPs that he purchased in 2018 before the April 30 deadline. The amount he received when he cashed in that RRSP showed as \$30,000 on his 2018 notice. Besides the fact that he required the additional income, he cashed in the RRSP to increase his income to allow him to qualify for vehicle loans and credit cards.
- [369] The \$44,393 in deductions for 2018 were old RRSP deductions available to him from before 2010. He still had about \$100,000 in such deductions available, he said.
- [370] His view is that only the Homeline mortgage, which he described as being \$205,000, was actually secured against the house. (Ms. M.'s counsel advised in his submissions that that the demand for repayment now encompasses all outstanding debts to RBC).
- [371] He also submitted receipts for \$7,625 for material to fence the property in 2017, which I infer was intended to be a claim for a post-separation expense to preserve the property. He handwrote on the first invoice that there had also been \$3,000 in labour costs.
- [372] Despite this situation, Mr. D. maintained his position that the only type of work he was qualified for was as a stockbroker, and said that he had not considered obtaining any short-term employment to bring in some money.
- [373] He confirmed that when Supreme Court Scheduling contacted him about his availability for the reopened trial he told them that he had travel plans on the proposed dates. He then admitted that "there were no travel plans" and that he was actually looking for a lawyer to assist him and needed an extension of time to carry that process out.
- [374] By the end of his case, Mr. D. was only seeking to call O. and Mr. P. as additional witnesses. I concluded that since Ms. M. was not relying on the restaurant incident that O. could apparently contradict, and O.'s other potential evidence (that he had had another lunch with her on a day on which she claimed she was still confined in hospital) would be collateral to any of the issues in the trial, the negligible benefit to calling him was greatly outweighed by the undesirability of enlisting him in an adversarial role in relation to one of his parents. With respect to Mr. P., who did not appear in answer to his subpoena, I

concluded that the expectation that he would contradict Ms. M.'s claims to have fallen ill were completely speculative and any evidence he could give about their former relationship was beyond the narrowly defined scope of the reopened trial.

Resulting Orders

[375] At the conclusion of the reopened trial, I made several interim orders pending the release of the reasons for judgment:

- The children were to reside or visit with each parent according to the children's wishes from time to time. Neither parent would restrict a child's ability to visit or communicate with the other parent. The parent with whom each child resided would be responsible for that child's support; and
- Ms. M.'s responsibility to pay interim child and spousal support was suspended as of October.

[376] The family residence was to be listed for sale, with Ms. M. having sole conduct of sale. Mr. D. was required to cooperate fully in the marketing of the property.

Positions

[377] Some of the parties' positions at the end of the original trial dates were no longer applicable when the reopened trial continued. I have updated my summaries of their respective submissions accordingly.

H.M.

[378] Her counsel took the position that the parenting arrangements set out in the interim order should be imposed - the children would reside with the parent of their choice and support for each child would then be the responsibility of the parent who had that child in their care. This was in contrast to the week on/week off parenting of O. and S. that she had originally sought.

[379] On these proposed support arrangements, her counsel frankly acknowledged that s. 11(b) of the Divorce Act requires me to be satisfied that reasonable arrangements have been made for the support of the children before granting a divorce. Despite this requirement, he pointed to the practical difficulties of showing that Mr. D. has an income, and the reality that Ms. M. will support the children in her care regardless of the absence of any assistance from him. While this approach may be unorthodox, her counsel submitted that it works in these circumstances.

[380] However, he did not depart from the original submission that while day to day decision-making could be exercised by the parent who has a child in their care, the majority of parenting responsibilities set out in s. 41 of the Family Law Act should be exercised by Ms. M.

- [381] Her counsel did not agree with my suggestion that Ms. M.'s support obligation should be treated as having been temporarily suspended, to resume upon her return to work. Nor should I specify a review date to monitor her employment situation for support purposes, he submitted.
- [382] Ms. M.'s position on spousal support remained essentially unchanged. On the critical factual issue, her counsel argued that I should prefer Ms. M.'s evidence that Mr. D. was fired from his position in 2005, and that there was no agreement in 2010 that he could retire if they moved to Prince George. Based on those findings he has not given up anything or suffered any disadvantage to assist her in her studies that now needs be compensated by spousal support. His maximum period of primary parenting responsibility during the relationship was six months. Instead he embroiled the family in steadily increasing amounts of debt that Ms. M. had to deal with.
- [383] As to support based on his current needs, Ms. M.'s counsel pointed to authorities that suggest that an award should not be made to reflect support that is self-induced (for example, *Hilton v. Hilton*, 2000 BSCS 1853). Mr. D.'s refusal to work is not based on any properly-documented disability, it was argued, but rather stems from the false position that he is entitled to be retired.
- [384] If I were to be persuaded that some needs-based support is justified, it should be "stepped down" quickly, in light of the lengthy period in which he has received substantial interim support and his clear ability to be self-sufficient, if only he were inclined to work. I should also consider the alternatives provided by the Spousal Support Advisory Guidelines, such as making an award at the low end of the range to reflect the weakness of his entitlement, or restructuring the award to reflect the very significant amounts he has already received.
- [385] Ms. M.'s counsel maintained the initial position that the family property should be evenly divided, which now only means an equal division of the remaining equity, if any, after the sale of the family residence to satisfy the RBC debts. The plan she initially advanced to have the residence appraised and purchase his interest is no longer viable. Similarly, it is no longer necessary to pursue the issue of who, as between Mr. D. and his mother, actually owned the various family residences before the Delta house was transferred to her. Counsel had argued that any excluded property claim by Mr. D. was extinguished by that gift.
- [386] If her evidence on the date of separation is correct, the \$9,000 in VISA debt that she incurred between January and April 2016 would be a further family debt. Her counsel concedes that she is completely responsible for increasing the mortgage after separation, which amounted to about \$70,000. The personal property should be divided or sold in accordance with the plan she described in her evidence.

P.D.

- [387] His position was that the children are old enough to make their own choices about parenting arrangements and that no order is required to govern that issue. He should be recognized as their primary caregiver in the exercise of any decision-making power, otherwise Ms. M. would exclude him and engage in the same poor parenting that had led M. to her current situation with school.
- [388] He maintained that he and Ms. M. agreed in 2010 that he could retire and she would support him when she became a doctor, in return for giving up his career so that they could move to Prince George for her medical studies. They reached a further agreement upon separation that she would provide him with the family residence free of any mortgage, and pay him substantial spousal support. This subsequent agreement is supported, he argued, by the comments that she agreed having made in her police interview after his alleged threats. At one point in his original submissions he suggested that an overall lump sum award to reflect his contributions and sacrifices (which I took to encompass both property division and spousal support) would be in the range of \$1.5 million.
- [389] He doubted the veracity of Ms. M.'s recent claim to have become mentally ill, as well as her alleged financial distress. In his view, the only financial pressure on the family residence was the balance of the unpaid property taxes (\$5,000), which she could address by cashing in more GICs. He also questioned her decision to rent a relatively expensive house rather than paying him support, when she has the option of living with G. In the alternative, "her rich doctor friends" could assist her.
- [390] More generally, he submitted that it was her decision to pursue luxuries such as expensive vacations instead of paying her taxes that has resulted in her inability to meet her support obligations and her ability to maintain the family residence. He is totally dependent on her for support pursuant to their agreements, and these unwise decisions should not be visited on him.
- [391] He maintained that her increase in the line of credit was to benefit herself, and did not represent the return to a savings account of money that she had previously put aside for taxes. There also remained the \$500,000 tax credit that he claimed she had access to, which functioned as the equivalent of cash in its ability to reduce her tax obligations dollar-for-dollar.

Discussion

Credibility Assessment and Essential Findings of Fact

- [392] On the whole, I found Ms. M. to be a very credible witness.
- [393] She described the relevant events in a balanced and largely factual manner, even when they had significant emotional content.
- [394] She also maintained her composure and refrained from personal invective even when she was being cross-examined by Mr. D. in a provocative way.

- [395] Her underlying state of mind when testifying seemed to be dismay, regret and a degree of resignation at how events have unfolded, rather than hostility towards Mr. D. She was fair to him in her testimony, such as in relation to his domestic contributions and the benefits of the children maintaining relationships with him, in circumstances where a less scrupulous witness might not have been. Even when she was obviously being pushed to the limit by his questioning, she was never more than mildly scornful in her descriptions of his actions.
- [396] Her narrative itself, as I have summarized it, sounded like a realistic portrait of actual human behaviour, both on her part and Mr. D.'s, with numerous idiosyncratic descriptions of events that seemed to me to defy invention. What emerged in totality was a compelling portrait of the decline in her relationship with Mr. D., the economic pressures on the family as a result of his inability to find a new career after losing his job, and his dysfunctional post-separation parenting behaviour and actions towards her.
- [397] There were a few occasions, as I have described, in which she made an assertion that was not supported by the available documents or other external evidence, such as whether 9-11 was the catalyst for the decline in Mr. D.'s business, and which of the accounts that she established for him was used for trading, but these were relatively infrequent in the factually dense history of this matter, and they seemed to me to be most consistent with the frailties of memory, rather than being suggestive of any deceptiveness. The same is true, I find, of her inconsistencies on the extent to which her resident's salary covered the family's expenses. The evidence on which of the overdue household expenses she had or had not paid when she testified was inconclusive, and there is no basis on which to draw an adverse inference from the absence of the TD records that she said she was unable to obtain.
- [398] Her direct evidence of the April 16 incident, without the subsequent cross-examination, would have left a misleading impression of her overall dealings with Mr. D. that day, suggesting that he left immediately after uttering the threat. However, she was completely forthcoming in response to Mr. D.'s suggestions about their subsequent contact and discussions, so any concern that she was originally seeking to conceal those events is moderated significantly.
- [399] Finally, on the question of contradictions, it is clear from the photos provided by Mr. D. and the supporting evidence of C.F. and J.F., that the children would not have been confined to the property if Mr. D. left them there with the gate locked. I regard this as an isolated instance of hyperbole in what was overall a very balanced and moderate description of events by her.
- [400] I found the allegation the she encouraged Mr. D. to collect social assistance and represented themselves as being separated to be unbelievable, despite the indications on his notices of assessment that he received such payments. Whatever was put on her tax returns, Mr. Karpes made it clear that the CRA understood her to be married during the years in question. It also strains credulity that Mr. D.'s accountant would knowingly

participate in this deception, and any suggestion that it would assist her in obtaining loans is contradicted by the fact that she already had her student line of credit before any such plan was put into action. More fundamentally, there was no evidence that Ms. M. represented herself to be a single parent while in medical school, or that any benefits would have been granted to her on that basis. I also reject the suggestion that she participated in any fraudulent insurance claims, as Mr. D. claimed.

[401] In contrast, I did not find Mr. D. to be a credible witness.

[402] I have made due allowance for the difficulties of presenting evidence as a self-represented litigant and for the challenges that he says he experiences when expressing himself. However, as my summary of his testimony demonstrates, the credibility concerns arise from the content of his evidence, not from any shortcomings in its presentation.

[403] He was meaningfully inconsistent, either with previous statements or with different parts of his testimony, on many important issues in the case. These were too numerous to list fully, but included contradictions arising from his evidence in the court application involving his first wife, his earnings as a stockbroker, the family's spending during that period, the financial assets on which they supposedly lived after he quit his job, the proceeds of the Delta house, the amount of support Ms. M. provided him after separation, his use of the power of attorney, and the extent of his post-separation day trading. In the course of these inconsistencies he showed a casual disregard for the very large discrepancies in the dollar figures that he had provided from time to time.

[404] He was also constantly evasive in cross-examination, shifting ground and qualifying previous answers whenever he seemed to perceive that a direct answer would be detrimental to his overall position. At times he seemed to be playing games with Ms. M.'s counsel with his answers, just as he admitted having done during the examination for discovery.

[405] His admission of lying to Scheduling about his unavailability for the July 2019 application dates shows a further troubling willingness to say whatever suited his needs of the moment.

[406] He was overtly hostile to Ms. M. throughout his testimony, and seemed to seize on every opportunity to disparage her actions during their relationship, rather than offering anything approaching objectivity in his descriptions.

[407] Overall, his motivation seemed to be to express his sense of aggrievement and entitlement, rather than to describe events accurately.

[408] His version of events was also not believable when considered according to common sense and ordinary human experience. He presented a one-dimensional portrait of himself as a generous provider and then stay at home parent, in contrast to Ms. M.'s supposedly spoiled and selfish rejection of her marital and parental roles, in sole pursuit of her education and career. There were none of the nuances or realistic details that one expects to find in a

recitation of actual events. Instead it sounded like he was working backwards from his desired outcome in the litigation, to create a scenario that would justify it.

- [409] Other than on the issue of the fences around the property, which was resolved by a review of the photos in any case, I found the evidence of C.F. and J.F. of very little use in supporting Mr. D.'s version of events.
- [410] C.F. is clearly allied with Mr. D.'s cause, and has adopted an attitude of moral condemnation towards Ms. M.'s departure from the family that renders her perspective on the events suspect. Her view of when the separation occurred was based on Ms. M. still being "around" the family residence before then, which she did not explain any further and which it is difficult to attach weight to as a result. The reality, as she conceded, is that since their daughters stopped being close friends her observations about Mr. D.'s parenting and his communications with Ms. M. were limited to pick ups and drop offs at school.
- [411] J.F.'s comments about the relationship between Mr. D. and M. before M. went to live with Ms. M., and Mr. D.'s role as primary caregiver from her and M.'s grade three onwards, are superficially supportive of Mr. D.'s positions, but it is difficult to attribute significant weight to them without knowing the particular factual observations, if any, on which they were based.
- [412] As a result, except where I have identified inaccuracies in the course of summarizing Ms. M.'s testimony, I accept it completely and, where it conflicts with Mr. D.'s, I prefer hers.
- [413] I will describe some specific findings of fact that flow from those overall conclusions when I deal with the issues.
- [414] Because I have rejected his evidence almost completely, it is unnecessary to consider whether less weight should be attributed to it because of his failure to confront Ms. M. with many of its essential features in cross-examination, in accordance with the so-called rule in *Browne v. Dunn*, (1893), 6 R. 67 (H.L. (Eng.)).

Parenting Arrangements

- [415] I am satisfied that since separation Mr. D. has sought to deny Ms. M. contact with the children, and to thwart those arrangements for parenting time and vacations that she was able to arrange. He has also engaged in inappropriate actions with respect to their care, such as leaving them with the MCFD, speaking disparagingly about Ms. M. towards them, implying that their animals would be euthanized if they moved to equal parenting and, in the case of O. and S., inappropriately sharing with them the details of his conflicts with her and, perhaps of great concern, M.'s Views of the Child report.
- [416] The specific comments quoted by M. in her report (which, despite his disagreement with other statements by her in it and his general submission that she was being influenced by Ms. M., he did not dispute), seem to represent efforts to alienate the children from Ms. M. It is particularly troubling that even in the case of M. herself, that appears to have succeeded

for a period of time. O., who appears to be most aligned with his viewpoint and whose comments he did not dispute, nevertheless also described him thwarting Ms. M.'s parenting time.

- [417] The most recent episode with O. seems to show Mr. D. continuing in the same vein - manufacturing a dispute between O. and Ms. M. out of an apparently non-existent assault allegation, in order to align O. with his own adversarial position towards Ms. M. His interrogation of O. by text about Ms. M.'s health situation shows a parent who has lost sight of the boundaries of appropriate parenting behaviour.
- [418] In contrast, Ms. M. has proceeded with a remarkable degree of patience and forbearance throughout this process. Except for M.'s references in the Views of the Child Report to her discussing the circumstances of the divorce and becoming sad as result, she appears to have largely succeeded in putting the children's well-being ahead of her issues with Mr. D., and not seeking to increase her parenting role by diminishing his.
- [419] I conclude that the interests of the children are best served by being in Ms. M.'s primary care, because she will not subject them to the kind of emotional manipulation that Mr. D. has engaged in towards them and because, unlike him, she is prepared to ensure that they have as much of a relationship with him as they wish to pursue.
- [420] In reaching this conclusion I acknowledge that the views of older and more mature children acquire increasing weight in the analysis of their best interests, and that at the time the reopened trial concluded O.'s preference was to live with Mr. D. Unfortunately on the current evidence I have no confidence that O.'s views are informed by an accurate understanding of Ms. M.'s actions towards him, or that Mr. D. can refrain from continuing to poison him against her. I reject the notion that the courts must accede to a status quo that has been created by parenting misbehavior, regardless of the age of the children.
- [421] Therefore, I order that Ms. M. will have sole custody of M., O. and S. and that they will primarily reside with her. She will permit Mr. D. to have liberal access to them, taking into account their wishes from time to time, which may include overnight stays and periods of multiple days or weeks, including during school vacation periods. The times at which that occurs and the duration of such visits must be approved by her in advance, and the children must be returned by Mr. D. or permitted to leave his care as the case may be, immediately upon the expiration of the period she has approved.
- [422] To be clear, I envision O. and perhaps S. spending significant time with Mr. D. if they express the wish to do so. The point is that Ms. M. is the only parent who can currently be trusted to ensure that whatever contact they have with the other parent is always in their best interests, and not to undermine their relationship with that other parent, so that time must be managed by her.

- [423] Ms. M. will continue to do everything possible to support M. in restoring her relationship with Mr. D., including arranging any counselling for M. that may be appropriate. Both she and Mr. D. will participate in any such counselling process to whatever degree is recommended by the counsellor.
- [424] Although we are proceeding under the Divorce Act, the list of parental responsibilities in s. 41 of the Family Law Act provides a useful reference point. Pursuant to her sole custody, Ms. M. will exercise all of those duties with respect to the children, except that Mr. D. is entitled to request and receive information concerning them from third parties as set out in s-s(j). I am allocating the responsibilities in this manner because Mr. D. has proven himself unable to avoid using his parental role as a weapon against Ms. M. and cannot be relied upon to exercise those responsibilities purely in the children's best interests.
- [425] Ms. M. will inform Mr. D. in advance of any major issue affecting their health, education or general well-being of each child and will consider his views before reaching a decision, as long as his views are provided in writing, are only provided once on each issue, and are expressed in a polite and respectful manner. She is not required to consider any views that do not comply with these requirements. Mr. D. has liberty to apply to court if he does not agree with her final decision on a major issue.

Child Support

- [426] Given that Ms. M. will have sole custody of the children, Mr. D. is required to pay her child support for them in accordance with the Federal Child Support Guidelines. Whatever amount of spousal support he might continue to receive does not form part of his income for determining the amount of support that is payable, by virtue of s. 3(a) of Schedule III of the Guidelines.
- [427] As I will discuss in more detail in relation to property division and spousal support, I do not accept that there was any agreement with Ms. M. that would allow Mr. D. to retire and be supported by her.
- [428] With respect to his current capacity to work, the prescriptions and receipts that he has provided are an inadequate basis on which to find the existence of any medical disability. Even accepting at face value the ailments he claims, they fall well short of disqualifying him from any productive employment whatsoever. The physical responsibilities of maintaining the animals on the family property are a good example of work he is able to do when required, and I feel comfortable taking notice that the age of 59 is by no means old in today's economy, and that many older adults currently work in entry-level service jobs to earn essential income. I am satisfied that he is capable of some type of work that is sedentary enough to accommodate his health. The real barrier, as I perceive it, is that he does not think he should have to obtain such a job.
- [429] Accordingly, there is an evidentiary basis on which to impute some income to him.

[430] For the sake of convenience I will reproduce the summary of principles governing the imputation of income from *Harris v. Visser*, 2019 BCSC 2438:

[39] [Section] 19 of the Guidelines permits a court to impute an income to a party if:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse ...

40 The Continuing Legal Education Society's Family Law Sourcebook for British Columbia at chapter 3.39(a) provides a very helpful summary of the principles to be applied when determining the capacity of a spouse to earn income:

In determining whether a party is intentionally unemployed or under-employed under s. 19(1)(a), the court must determine whether the party has taken reasonable steps to obtain employment commensurate with factors such as age, health, education, skill, and work history (*Van Gool v. Van Gool*, 1998 CanLII 5650 (BC CA), supplementary judgment 1999 BCCA 188).

Imputing income for intentional unemployment or under-employment does not require a finding of bad faith on the part of the payor, only that the payor is not earning to capacity (*Barker v. Barker*, 2005 BCCA 177, followed and cited in *Koch v. Koch*, 2012 BCCA 378). Generally, to determine if a parent is earning to capacity, the court will apply the following principles:

1. parents who are healthy and can work have a duty to seek employment;
2. reasonable income-earning capacity will be based on consideration of a parent's age, education, experience, skills, health, and on-the-job opportunities that are reasonably available;
3. limited experience and skills do not justify a failure to pursue employment;
5. self-induced reduction in income will not justify the avoidance of child support obligations

(*Fong v. Fong*, 2011 BCSC 42).

...

The onus is on the person seeking to impute income to show an evidentiary basis. The onus then shifts to the other party to prove that the deductions are reasonable (*M. (C.) v. M. (V.)*, 2016 BCSC 2144). There must be an evidentiary basis on which to impute income. The court must find that the parent is realistically capable of earning the income that is sought to be imputed (*Marquez v. Zapiola*, 2013 BCCA 433; *Shen v. Tong*, 2013 BCCA 519)

[431] I conclude that Mr. D. is at least capable of working 35 hours per week at the current minimum wage of \$14.60 per hour, for an annual income of \$26,572. Accordingly, effective July 1 he will pay child support to Ms. M. of \$568.07 per month, in equal installments on the 1st and 15th of each month.

Property Division

[432] As part of my general preference for her evidence, I accept that the parties separated on January 9 or 10, 2016, as Ms. M. described.

[433] Again for the sake of convenience, I will refer to the summary of principles governing property division set out in *Vidican v. Dinu*, 2020 BCSC 178:

59 Section 81 of the Family Law Act provides for a presumptive equal sharing of all family property at the time of separation, in the form of an undivided half interest for each spouse as a tenant in common.

60 Section 84 defines family property, in part, as property that is owned by at least one spouse on the date of separation. Section 85 excludes certain kinds of property from this definition

61 Family debt, which includes all financial obligations incurred by a spouse during the relationship, is also presumptively shared pursuant to s.81. [I]t includes obligations incurred by a spouse after separation, if that was done "for the purposes of maintaining family property" (s.86(b))

62 This presumptive equal sharing is subject to the spouses agreeing to an unequal division, or an order to that effect by the court.

63 Oral agreements to divide property or debt can be enforceable if they are properly proven on the evidence: *Asselin v. Roy*, 2013 BCSC 1681 (B.C. S.C.) at para. 132.

64 Unequal division of family property or debt by order can be ordered pursuant to s.95(1) if it would be "significantly unfair" to divide it equally. This includes the equal division of pensions. Section 95(2) lists the factors that the court may consider in determining whether that threshold has been met [which include]

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses [other than a written, witnessed agreement]...and
- (i) any other factor...that may lead to significant unfairness.

65 If an oral agreement is found to exist, the court may consider it under s.92(2)(b) on the issue of whether equal division would be significantly unfair.

66 What is required is a degree of unfairness resulting from equal division that is "compelling or meaningful having regard to the factors set out in s. 95(2)": *Remmem v. Remmem*, 2014 BCSC 1552 (B.C. S.C.), at para. 44. Put another way, it will require "something objectively unjust, unreasonable or unfair in some important or substantial sense": *Jaszczewska v. Kostanski*, 2016 BCCA 286 (B.C. C.A.) at para. 42.

67 The ability to consider "any other factor...that may lead to significant unfairness" means that the relative contributions of the spouses during the relationship, which courts were explicitly permitted to consider under the former Family Relations Act, have not been completely eliminated as a relevant factor. Nevertheless, the court in *Jaszczewska* agreed with the trial judge that "if relative contribution to the acquisition, preservation, maintenance or improvement of family property during the relationship was intended to be a significant factor or one frequently relied on in justifying the conclusion that the equal division of family property is significantly unfair, the Legislature would have said so". In addition, "[a]llowing relative contribution to become a regular consideration in the context of s. 95 would likely create uncertainty and complexity", contrary to the legislative objectives of the FLA's property division regime (para.43).

68 As it was explained in *Slavenova v. Ranguelov*, 2015 BCSC 79 (B.C. S.C.) at para.60:

The "significant unfairness" contemplated by s. 95 requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the FLA recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of "family property" and "excluded property". The starting point in the division of property analysis already applies significant exclusions.

69 In *Khan v. Gilbert*, 2019 BCCA 80 (B.C. C.A.) at para. 36, the court found that the trial judge had erred by approaching reapportionment on the basis of "a dollar for dollar comparison of contribution to expenses [,] which does not reflect the nature of marriage as a family venture". Such an approach failed to recognize that "in most marriages, one spouse will earn more than another and therefore contribute more to the family finances" (para. 36).

70 As explained in *Khan*, cases in which unequal contribution has led to reapportionment under s. 95 "involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens" (para.32). In contrast, factors such as one spouse providing two-thirds of the down payment for the family residence and performing most of the renovations to it were not sufficient to render an equal division significantly unfair: *Hamill v. Dunlop*, 2016 BCSC 1337 (B.C. S.C.).

[434] Because of my acceptance of Ms. M.'s evidence and my rejection of Mr. D.'s, I do not believe that there was any agreement to provide him with the family home free of any debts as part of their separation. The passages from her police statement from April 16 that were put to her show, at best, an inclination on her part to make fair provision for Mr. D.'s needs. They do not support a concluded agreement with anything approaching certainty of terms on property division.

- [435] I can identify no unfairness arising from equal division here, let alone significant unfairness. To the extent that Mr. D.'s financial contributions in the earlier years of the relationship remain a relevant factor under the FLA, they are balanced out by the significant debt load that the family was saddled with by his imprudent trading after he lost his job, which she began to assume responsibility for addressing once she began earning a salary as a resident and then as a doctor, and which still existed at the time of separation.
- [436] Ms. M.'s proposed disposition of the personal property struck me as sensible and fair. Mr. D. may retain all of the personal property in the family residence. Ms. M. will receive the horses and any surviving animals, and may allocate them to third parties or arrange for them to be housed as she sees fit, provided that it is done humanely. She will have conduct of sale of the tractor and horse trailer, with the proceeds to be divided equally.
- [437] I agree with Ms. M.'s counsel that there is no longer any reasonable basis on which the family residence can be preserved. I am satisfied that this is true even though the demand to repay all of the RBC debts was triggered only by the property taxes. If for some reason it is no longer listed pursuant to my interim order it should be re-listed, with Ms. M. once again having conduct of sale and Mr. D. having the obligation to cooperate in the marketing and showing of the property. The net proceeds of sale after paying the sale costs will be equally divided.
- [438] The funds in the parties' bank accounts at the time of separation will also be equally divided - \$3,214.55 in the RBC Signature No Limit account, \$530.02 in Ms. M.'s RBC personal savings Account and \$168.65 in the Scotiabank Momentum chequing account. The same will apply to her RRSP, which had a balance of \$24,126.85 of December 31, 2015.
- [439] Part of my rejection of Mr. D.'s evidence included his contention that Ms. M. has significant additional non-capital losses available to her, which can be applied against her future earnings. Quite aside from his lack of credibility, I am convinced by her evidence that she never engaged in stock trading and whatever losses were generated arose from Mr. D.'s own imprudent actions. Mr. Karpes's application towards her taxes of all available losses offers further proof that there is nothing else available to her. Even more fundamentally, non-capital losses are not an asset subject to division: *Salminen v. Garvie*, 2012 BCSC 407 at para. 46.
- [440] In reaching this conclusion I recognize that Ms. M. may have issues with the CRA about the origins of those losses, given my findings, but I accept Mr. Karpes's evidence that he simply accessed the losses that were available to her according to the CRA's records, and applied them to her debts to the full extent possible.

- [441] Another finding inherent in my rejection of Mr. D.'s evidence is that the Vancouver and Delta houses were bought and sold in the manner that Ms. M. described and the proceeds of the sale of the Delta house represented all of the family's assets at that time. In other words, there was no additional \$500,000 that she was provided with and now needs to account for in the division.
- [442] With respect to family debts, Ms. M. concedes that her tax liabilities arose after separation and are her complete responsibility.
- [443] Her student line of credit was \$195,677.75. There is no question that this amount should be equally divided.
- [444] The Homeline mortgage was at \$134,523.66. The records from the preceding two months show that she paid a total of \$70,000 down from the previous balance, which I am satisfied was money that she had allocated for her taxes, as she testified. However since those savings would have been family property and subject to equal division there is no prejudice to her in equally dividing the lower balance that resulted.
- [445] There are no statements indicating the balances on the parties' credit cards as of the date of separation. Ms. M.'s Visa statement begins on March 14 with a balance of \$11,861.31. In the absence of proof of a balance at the time of separation I would not make any order with respect to this debt.
- [446] It is not possible to determine yet whether any compensation payments are necessary, firstly because the family residence has not been sold, and secondly because the evidence about Ms. M.'s post-separation contributions to its preservation are not clear. In the main trial she described making only interest payments on the Homeline mortgage pending the resolution of the litigation, but in her cross-examination in the reopened trial she referred to having paid \$96,000 towards the mortgage which, since she was explaining why she had not paid her taxes, seemed to refer to the post-separation period. In addition, her counsel in final submissions on the main trial said that she took full responsibility for increasing the amount of the mortgage by \$70,000 since separation.
- [447] Since Ms. M. has clearly incurred some debt to preserve the family residence, I will order that the amount she has contributed to mortgage payments, interest on the mortgage, insurance and property taxes since separation, minus any amounts by which she has increased the mortgage since then, will be family debt and equally divided. If she has increased the mortgage by more than she has contributed, half that net amount will be allocated to Mr. D. as compensation. I will rely on Ms. M.'s counsel to perform the necessary calculations, and there can be a reference to the registrar if Mr. D. does not agree with the result.
- [448] In the absence of any evidence that it was required in order to preserve the family residence in any sense, I am not prepared to characterize Mr. D.'s claimed fencing costs as family debt.

[449] Once the family property has been sold and the family debts arising from the preservation of it are known, the net proceeds, if any, can be calculated and divided. Once again, I am content to have Ms. M.'s counsel perform that initial calculation, with a reference to the registrar available in the event of a disagreement.

[450] Finally on the issue of property division, my preference for Ms. M.'s evidence includes a finding that Mr. D. transferred the Delta house from his mother's name into hers because he wanted to keep it unavailable to his ex-wife while gaining a greater measure of autonomy over borrowing against it than his mother would allow. While Mr. D. did not advance an excluded property claim to trace the equity in the condo that he brought into the relationship, had he sought to do so I think any such excluded property would have become family property through the intention underlying his gift of his beneficial interest in the Delta home to her: see *A.M.F.D. v. S.T.D.*, 2020 BCSC 529 at paras. 147-150.

Spousal Support

[451] Section 15.2(4) of the Divorce Act provides that:

(4) In making an order under subsection (1) [for spousal support]... the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

(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.

[452] The objectives of a spousal support order, as set out in ss. (6) are to:

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[453] Again, for the sake of convenience, I will refer to the summary of the applicable principles that I provided in *Segura v. Segura*, 2020 BCSC 650:

117 The two main bases of entitlement to spousal support are compensatory, which addresses the first two objectives under ss. (6); and non-compensatory, or needs-based, which addresses the second two. The principles governing these basis were set out by the Supreme Court of Canada in *Moge v. Moge*, [1992] 3 SCR 813, and *Bracklow v. Bracklow*, [1999] 1 SCR 420. These principles were helpfully summarized in *Chutter v. Chutter*, 2008 BCCA 507.

118 Dealing first with compensatory support:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would ... have been [sic] suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (*Moge*, at 861-863; *Bracklow*, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868:

The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

[51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse" ...

[52] The Court in *Moge* discussed the relevance of the parties' standards of living in the context of compensatory support at 870:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement... As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution.

119 *Chutter* explained non-compensatory support as follows:

54 Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon 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 (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[454] On the principles underlying non-compensatory, or needs-based support, I will refer again to Vidican:

86 When considering the needs of a spouse for the purposes of non-compensatory support, the question goes beyond their ability to meet expenses. One must consider the marital standard of living and that spouse's post-separation standard: *Marquez v. Zapiola*, 2013 BCCA 433 (B.C. C.A.) at para.34. It is important to note however, that a mere disparity in the spouse's incomes is not sufficient to create entitlement (*Lee v. Lee*, 2014 BCCA 383 (B.C. C.A.) at para.60). Instead "there must at least be some evidence of how the applicant's lifestyle has been diminished and, even then, other factors may have to be considered": *Madruga v. Madruga*, 2015 BCSC 1605 (B.C. S.C.).

87 As to the objective of promoting self-sufficiency, the frequently-cited decision in *Tedham v. Tedham*, 2005 BCCA 502 (B.C. C.A.) is helpful:

[33]...As already stated, however, s.15.2(6) (d) of the Act does not require self-sufficiency, but simply seeks to promote self-sufficiency "in so far as practicable". In determining what is practicable, regard must be had to all of the circumstances, including the age and gender of the spouse, her/his skills and education, or lack thereof, the opportunities for retraining, and the realistic prospect of the spouse being able to find not just a job, but one which enables her/him to become self-sufficient, which may be quite a different matter.

[455] Further specific findings relevant to the issue of spousal support that arise from my overall credibility findings are that:

- before Mr. D. left his position as a stockbroker, the family, while financially comfortable, did not have the extravagant lifestyle that he claimed;
- He was fired from that position due to a decline in his earnings. He did not step back from it to take over responsibility for childcare from Ms. M.;
- He tried to work from home after being fired, but struggled to earn an income from his trading activity;
- He rejected Ms. M.'s encouragement for him to pursue an alternative career;

- He came to Prince George reluctantly after Ms. M. made it clear that she was taking the children and going with or without him. They did not agree, at the time they moved or any other time, that he would retire in return for her future financial support. By that point the expiry of his licence was of no particular significance because he was not seeking to return to being a stockbroker in any event;
- He played an active role in parenting and performed some household tasks, but did not become the children's primary caregiver or the person primarily responsible for managing the household after he lost his job. Rather, Ms. M. balanced those duties with her studies and later her employment. (It does appear that he would have played a greater role in childcare during the months in 2002, when he opposed the children being in daycare, and he would have been in charge of the children's care from January - April 2010 when Ms. M. went to Prince George with G.); and
- The parties' discussions after the April 16 incident did not result in a concluded agreement for Ms. M. to pay ongoing spousal support.

[456] Because of my finding that there was never an agreement for support, the third recognized type of spousal support - contractually-based - is not a consideration in this analysis.

[457] Based on my findings, I cannot identify any basis for compensatory support. I have rejected the assertion that Mr. D. stopped working to look after the children in 2005 and then agreed to permanently foreclose any return to his former occupation in 2010 so that Ms. M. could go to medical school. It is impossible to find that his role within the marriage left him at a disadvantage - his availability to stay at home was a function, I have found, of his refusal to seek other employment, and I accept Ms. M.'s evidence that she neither needed nor wanted him to act as a stay at home parent. In fact, she still shouldered the majority of the domestic responsibilities until after separation.

[458] Non-compensatory support is another matter. I take the point made by Ms. M.'s counsel that Mr. D. has already received significant support from her, from shortly after the separation until it was suspended in October. I have found that he is not disabled from all employment as a result of medical conditions, but rather remains unemployed in stubborn adherence to the belief that he should not have to work. It is also true that the standard of living against which his post-separation lifestyle should be compared was only based on a qualified doctor's salary for the approximately six months between Ms. M.'s qualification in July 2015 and the separation date. Before that, it was based on her relatively modest resident's salary, preceded by the family drawing on her student line of credit and the equity in the family residence.

[459] Despite these considerations, the reality is that Mr. D. has now been unemployed for 15 years, is in late middle age and will have to start at the bottom of whatever employment he now decides to pursue. Saying that he is capable of working and earning income, and in many ways is the author of his own misfortune, is not the same as concluding that he requires no assistance to become self-sufficient and can be motivated to do so within a

short period solely by the significant progressive reductions in the amount of support that Ms. M. seeks.

- [460] I conclude that he is entitled to needs-based support, and that a preferable means of ensuring that he makes reasonable efforts towards self-sufficiency in the immediate future is to make the entitlement indefinite but provide for a review within a relatively short period. I conclude that the review period should be two years and that the focus of the review at that time should be on his efforts towards attaining self-sufficiency.
- [461] The amount of support is not as straightforward. While I take into account Ms. M.'s tax debts as part of a consideration of her means, needs and circumstances, the reality is that for the most part she has paid interim spousal support pursuant to a court order, and if that left her in a position where she was not able to meet her obligations to the CRA while maintaining a reasonable lifestyle for herself and the children in her care, that would have been a basis to review the order. In other words, I cannot restrict the amount of an award to reflect the consequences of what were, at the end of the day, budgeting decisions, no matter how generously she has paid interim support.
- [462] More challenging still is identifying her income for support purposes. Part of my overall acceptance of her evidence is a finding that her mental breakdown was genuine and, despite the fact that the documents she relied on were hearsay that were not proven as business records, there was no reason to question her understanding of the nature of her inability to practice and the process for her return.
- [463] In this regard, contrary to her counsel's submissions, it was envisioned at the time of the reopening of the trial, as a virtual certainty, that she would return to work within six months at the outside, albeit with some form of gradual return. It would lead to an absurdity to proceed on the basis that she remains without an income when that state of affairs was so clearly on the horizon and, given the regrettable amount of time that it has taken me to complete these reasons for judgment, has likely already begun.
- [464] I would reflect Mr. D.'s own contribution to his current lack of self-sufficiency by situating this award at the low end of the range provided by the Spousal Support Advisory Guidelines.
- [465] Accordingly, starting July 1, Ms. M. will pay Mr. D. spousal support at the low end of the range under the SSAGs at her current income. If that income represents a gradual return to work directed by the College, the support will increase to reflect her full time income once she begins to earn it, without the requirement of a further order. The term will be indefinite, but there will be a review in two years on the issue of Mr. D.'s effort towards self-sufficiency.
- [466] As I have for previous calculations in these reasons, I will ask Ms. M.'s counsel to perform them, with recourse to an appearance before the registrar if they cannot be agreed on.

Ongoing Disclosure

[467] To ensure that the parties have an accurate basis on which to determine their ongoing obligations to each other, for the 2019 tax year and each succeeding year they will exchange copies of their income tax returns as soon as they are filed and their notices of assessment as soon as they are received.

Divorce

[468] All of the requirements for a divorce have been met, so the parties will be divorced on the 31st day following the date of this judgment.

Protection Order

[469] Ms. M.'s counsel did not seek a protection order in his submissions, despite the threats and monitoring of her movements that she described in her evidence, the existence of parallel criminal proceedings arising from them, and continuing concern she expressed during the reopened trial, that he will "come after her". Section 183(1)(a) provides that such an order may be made "on the court's own initiative" and I consider it appropriate to do so here, on the basis that family violence as defined in s.1, specifically, "psychological or emotional abuse of a family member, including harassment or threats " is likely to occur, and that Ms. M. is an "at risk family member" as defined in s. 182.

[470] Therefore I will order, pursuant to s.183(3)(a), that Mr. D. will not:

- have any contact or communication with Ms. M., whether directly or indirectly, except for written communication to provide input on major parenting decisions in accordance with these reasons for judgment;
- attend at or be within 200 metres of her residence or place of employment, except that he may attend the hospital in Prince George for emergency medical treatment or procedures arranged in advance by a licenced physician;
- access Ms. M.'s personal information, or represent himself as being entitled to access it, in any manner, including by using the internet;
- follow her at any time, whether she is on foot or in a vehicle; or
- possess a firearm or other weapon, or any licence or authorization under which a firearm or weapon may be possessed.

Costs

[471] Ms. M. has had substantial success on all of the important issues in dispute in this trial. Unless there are other matters affecting costs, in which case the parties can arrange an application to address them, she will receive her costs at the usual scale of difficulty. The costs of the Views of the Child reports will be shared equally by the parties.

"Schultes J."

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