

CANADA / JUDGMENT

Hunt v. Hunt

2024 BCSC 1048

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1048 Hunt v. Hunt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hunt v. Hunt,

2024 BCSC 1048

Date: 20240424

Docket: E11950

Registry: Prince Rupert

Between:

Marylynn Adoline Hunt also known as Marylynn Adoline Kristensen

Claimant

And

Brendan John Hunt and Sarah Midge Hunt

Respondents

Before: The Honourable Justice Mayer

Oral Reasons for Judgment

Counsel for the Claimant:

M. Wallace

The Respondent, Brendan Hunt, appearing in person:

B. Hunt

Place and Date of Trial:

Prince Rupert, B.C.

January 8-12 and 29-30 2024

Place and Date of Judgment:

Victoria, B.C.

April 24, 2024

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INTRODUCTION

- [1] In this family case filed January 6, 2022 and twice amended, Marilynn Hunt advances a number of claims against Brendan Hunt following the termination of their marriage in or about December 2015. In particular, Ms. Hunt seeks an order for payment of retroactive child support and special expenses for the parties' adult child, retroactive and ongoing

spousal support and an unequal division of family property and debt in her favour. Ms. Hunt also seeks damages for assault, including sexual assault, and battery she claims were committed by Mr. Hunt during the parties' marriage and afterwards. She advances a claim for recovery of healthcare costs on behalf of the Province of British Columbia under the Health Care Costs Recovery Act, S.B.C. 2008, c. 27. In addition to a divorce order, Ms. Hunt seeks protection orders including an order prohibiting communication and contact by Mr. Hunt.

- [2] Although Ms. Hunt also sought retroactive child support for her son Luke in her amended notice of family claim, she chose not to advance this claim at trial. As well, although she plead a claim under the novel tort of family violence, she also chose not to advance this claim.
- [3] In addition to her family law claims, Ms. Hunt claims a resulting trust or constructive trust in respect of the portion of Mr. Hunt's interest in the family home which he transferred to Sarah Hunt after the parties' separation. Sarah Hunt has filed a response to the claims made against her. Pursuant to the order of Justice Morley made December 4, 2023, the issue of the validity of Mr. Hunt's transfer of his interest in the family home to Sarah Hunt was bifurcated and is to be heard at a separate trial - to be scheduled.
- [4] Mr. Hunt filed a response to Ms. Hunt's original notice of family claim and a counterclaim seeking various relief including an order for divorce, orders respecting child and spousal support and division of family property and debt. Pursuant to the order of Justice Murray made January 13, 2023, as a result of his failures to comply with court orders and the rules of court, Mr. Hunt's response and counterclaim were struck. Mr. Hunt represented himself at trial and pursuant to the order of Justice Morley made January 4, 2024, as amended at trial, was given limited participation rights.

Overview

- [5] Mr. and Ms. Hunt met in 1998 and were married on April 10, 1999. The parties dispute the date of their separation, with Ms. Hunt alleging that they separated after an incident of family violence on December 15, 2015. Mr. Hunt contends they separated some time afterwards, although his evidence with respect to the date of the parties' separation is unclear.
- [6] Ms. Hunt is 51 years old and resides on Haida Gwaii, in the home the parties' purchased in the Long Hill area (the "family home"). She has a diploma in accounting and a tourism certificate and is two courses away from completing a bachelors' degree. She had worked as an educational assistant and then as an accounting clerk with a school district on Haida Gwaii until 2019 when she went on long term disability.

- [7] Mr. Hunt is 53 years old. At all relevant times he has worked as a carpenter, at times self-employed and at times for others. He is or was close to the time of trial employed by Fluor Construct Canada Ltd.
- [8] The parties have one adult child, Sarah, who was born in September 1999 and is now 24. As well Ms. Hunt has a 28-year-old son, Luke, whom Mr. Hunt has always treated as a son. Sarah lives with her partner in Port Clements on Haida Gwaii. Mr. Hunt is currently living with Sarah. Luke lives with Ms. Hunt at the family home.
- [9] The parties met through mutual church friends in 1998 at a time when Ms. Hunt was living with Luke in her home in Port Edward. During her direct examination Ms. Hunt testified that when they first met Mr. Hunt was living with friends and he later moved onto her uncle's boat which was moored in Port Edward.
- [10] In 1998 Ms. Hunt's trailer home in Port Edward was destroyed by a fire. Ms. Hunt testified that she obtained \$45,000 in insurance proceeds and used approximately \$27,500 as a down payment for a duplex she purchased in Port Edward, in January or February 1999. Ms. Hunt testified that Mr. Hunt moved into the duplex in April 1999, and the parties lived together as a married couple thereafter.
- [11] Mr. Hunt's, evidence is somewhat different. He testified that he had moved in with Ms. Hunt in her trailer home before it burned down. In addition, he testified that of the \$45,000 in insurance proceeds obtained by Ms. Hunt, only approximately \$15,000 was used to purchase the duplex and that his father also contributed towards the down payment.
- [12] During her cross-examination, Ms. Hunt did not recall Mr. Hunt's father contributing towards the purchase of this property. Ms. Hunt testified that of the \$82,500 she borrowed to purchase the duplex, \$17,000 of the mortgage funds were used to purchase a work truck for Mr. Hunt to use as a carpenter. She testified that Mr. Hunt was terrible with his money and had a bad credit rating. She testified that they rented out half of the duplex and used the rent to pay the monthly mortgage.
- [13] In 2003, Mr. Hunt found work on Haida Gwaii helping to construct a school. Ms. Hunt, along with Sarah and Luke, moved to Haida Gwaii and the parties lived together with the children in a rented trailer. After an incident at the trailer (which is described later in these reasons) Ms. Hunt returned to Port Edward with the children for a time before returning to Haida Gwaii in 2004 to live with Mr. Hunt in a rented home in Sandspit.
- [14] After Ms. Hunt returned to Sandspit she took correspondence courses, including courses in entrepreneurial tourism. When Sarah was in kindergarten, in approximately 2004, Ms. Hunt took a job with the school board in Sandspit as an educational assistant.

- [15] The parties sold the Port Edward duplex for \$124,000 and purchased the family home for \$215,000 in July 2005. Documents introduced into evidence at trial indicate that the parties made a down payment of approximately \$22,000 and financed the balance of the purchase price with a \$193,000 mortgage obtained from RBC. Ms. Hunt does not advance an excluded property claim.
- [16] In 2005 Ms. Hunt obtained work at a school in Sandspit, working part-time, five hours per day. She testified that she loved this job, but Mr. Hunt was resistant to her working and making her own money.
- [17] Ms. Hunt testified that after an incident which occurred on December 22, 2015, which resulted in Mr. Hunt being convicted of uttering threats (described in further detail below), being jailed for thirty days and banished from Haida Gwaii for 18 months, she considered the parties' relationship to be at an end.
- [18] Mr. Hunt returned to Haida Gwaii some time in 2017, but it does not appear he ever resided in the family home with Ms. Hunt again on a regular basis - or at all. According to Ms. Hunt he continued to attend at the property uninvited and unwanted from time to time for several years afterwards.

Issues

- [19] The issues in this case include the following:

Assault and Battery Claims

- a) Are any of Ms. Hunt's assault and battery claims statute barred by operation of the Limitation Act, S.B.C. 2012, c. 13?
- b) For any assault or battery claims which are not statute barred, what claims have been proven by Ms. Hunt?
- c) What damages is Ms. Hunt entitled to for her proven assault or battery claims?

Division of Family Property and Debt

- a) What family property and debt are subject to division in this case?
- b) Is an unequal division of family property and debt warranted in this case and if so, how should relevant property be divided?

Retroactive Child Support and Special and Extraordinary Expenses

- a) Given that Sarah Hunt was no longer a child of the marriage at the time this action was commenced, is Ms. Hunt able to advance a claim for retroactive child support?
- b) If so, for what period of time was Sarah Hunt a child of the marriage which results in an obligation on the part of Mr. Hunt to pay child support, and in what amount?

Retroactive and On-going Spousal Support

- a) Is Ms. Hunt entitled to retroactive spousal support and if so, for what period and in what amount?
- b) Is Ms. Hunt entitled to on-going spousal support and if so, for how long and in what amount?

Divorce and Protection Order

- a) Are the prerequisites for a divorce order made out in this case?
- b) Is Ms. Hunt entitled to the protection orders and related orders she seeks?

Assault and Battery Claims

- [20] As stated by Justice Williams in *Saether v. Irvine*, 2011 BCSC 1497 [Saether], "[a]ssault is the intentional creation of the apprehension of imminent harm or offensive contact (Allen M. Linden & Bruce Feldthusen, *Canadian Tort Law*, 9th ed.(Markham, ON: LexisNexis Canada Inc., 2011) at p.46)" and "[b]attery is the intentional application of force constituting harmful or offensive contact with another, without the other's consent.": Saether, at para. 49.
- [21] Where a party fears that they may be harmed in the future this does not constitute an apprehension of imminent harm under the tort of assault: *Ahluwalia v. Ahluwalia*, 2023 ONCA 476 at para. 66.
- [22] Ms. Hunt alleges that a number of incidents of assault and battery took place during the parties' marriage and afterwards, between 2001 and November 2018. Mr. Hunt denies that the alleged assaults or batteries occurred, or occurred in the way as alleged by Ms. Hunt.
- [23] I will start by reviewing relevant evidence.

Evidence Concerning the Alleged Assaults

2003 - Trailer Incident

- [24] Ms. Hunt testified that in 2003, when the parties were living together in a trailer on Haida Gwaii, that Mr. Hunt had a violent outburst. She says that during the outburst he trashed their rented trailer, including breaking a window and throwing things around. She says that he took a wooden cane he had made for her outside and broke it.
- [25] Ms. Hunt testified that she called police and ran outside with the children to hide in bushes across the street waiting for the police to arrive. She says that the police helped her load the children and some possessions into a vehicle and she left, staying at a friend's house until she boarded a ferry for Prince Rupert that night. She says that Mr. Hunt also boarded the ferry and got into her vehicle as she was driving off - she says this made her feel worthless and helpless. She does not believe that Mr. Hunt was charged for the events at the trailer.

[26] Mr. Hunt's version of the incident at the trailer was different. He testified that the owner of the rented trailer had died and he was paying rent to a trustee, a friend of the deceased owner. He said that the deceased owner's brother and a friend showed up demanding rent and there was an altercation resulting in a window being broken with a rock by someone else. He testified that he called the police and the two individuals ran off. He testified that he did break Ms. Hunt's cane but this occurred after she left with police to go back to Port Edward and because he was angry at everything that day.

2006 - Chasing Incident

- [27] Ms. Hunt testified that an incident occurred on or around February 22, 2006, during which Mr. Hunt chased down the road as she was driving to work in Sandspit. She testified that Mr. Hunt attempted to prevent her from leaving the family home to go to work, by barring the door with his arm. She says that after she was able to sneak out of the house with the children and had left in her vehicle that Mr. Hunt chased her down the road trying to pass her numerous times on the road. She says that a ferry worker helped her get onto the ferry from Skidegate to Sandspit and called the police. She says that she decided to stay with a friend at a bed and breakfast for a week.
- [28] Mr. Hunt testified that this event occurred one morning after Ms. Hunt threw coffee on him when he told her she was far too frantic as she was preparing to leave to take the ferry from Skidegate to Sandspit. He testified that Ms. Hunt hit him or threw things at him "thousands of times". He says that he threw her car keys onto the lawn and later heard his truck start and drive away. He says that he followed Ms. Hunt to the ferry terminal in her vehicle, where they argued and he took his truck back. During his cross-examination he agreed that he had to drive fast, caught up to Ms. Hunt's vehicle several times and did pull up beside her to get her to pull over and give him his truck back.
- [29] Mr. Hunt testified that a gun that was found by police at the family home after this incident was one he had previously found under the family home. He testified that he had shown the gun to Ms. Hunt and she agreed that they should just stash it - which he did. He said he plead guilty to illegally possessing the gun, even though arguably they both had possession of it.
- [30] Ms. Hunt testified that as a result of this incident Mr. Hunt was charged with unlawful confinement, harassment, uttering threats and firearms offences, but was not convicted. Provincial Court records indicate that Mr. Hunt plead guilty the charge of unlawful possession of a restricted firearm and that the balance of the charges against him were stayed. Ms. Hunt testified that he violated the condition of his probation order with respect to contact with her. She testified that after this incident she felt as though Mr. Hunt's violent behaviour was escalating and was terrified for the children. She also testified that after this incident Mr. Hunt agreed to and did attend at counselling and his condition improved - in part due to use of Wellbutrin.

Other Incidents - 2015 Forward

- [31] Ms. Hunt testified that after the 2006 chasing incident, until approximately 2012 or 2013, her relationship with Mr. Hunt was relatively calm.
- [32] She testified concerning several incidents starting in 2015, which she contends constitute assaults, during which Mr. Hunt damaged the family home. These include the following: punching a door in December 2015; kicking two holes in a wall in April 2019; and, breaking down the door to her bedroom, kicking a hole in a wall, and a bifold door in June 2019.
- [33] During her direct examination she testified that on December 22, 2015, Mr. Hunt made his first and only explicit death threat to her. She testified that he told Luke to get her away from the family home or he would kill her. Ms. Hunt testified that Mr. Hunt was convicted of assault and uttering threats and jailed for thirty days, and his probation conditions included being banished from Haida Gwaii for 18 months and an order that he not contact her. The probation order made after Mr. Hunt was convicted for the events of December 22, 2015, only shows that Mr. Hunt was convicted of uttering threats.
- [34] Ms. Hunt testified that Mr. Hunt breached the no contact order by writing to her every day from jail and that he asked her to agree to vary the no-contact condition - which she agreed to do. Ms. Hunt testified that despite the fact that she considered that her relationship with Mr. Hunt was at an end at this time, she paid the \$300 victim surcharge levied against Mr. Hunt.
- [35] During her cross-examination, when taken to Mr. Hunt's probation order for the December 22, 2015 events, her evidence changed significantly. She testified that the mischief charge (concerning an unrelated event on December 1, 2015, involving damage caused by Mr. Hunt to a man named Conrad Collinson's truck) and uttering threats charge did not have anything to do with her. She also testified that she was not sure if the banishment condition had to do with her or the charges involving Conrad Collinson. She confirmed, when taken to a document issued by the Skidegate Band Counsel, that she recalled the band banishing Mr. Hunt from their reserve lands at this time. She maintained that the assault charge, which concerned Mr. Hunt punching a door, did occur in December 2015.
- [36] Mr. Hunt testified that the December 2015 charges all related to his conflict with Conrad Collinson arising from complaints Mr. Hunt made about a person selling drugs to Sarah. He says that the charges of uttering threats and assault, and his banishment from Haida Gwaii all arose from an altercation during which he ended up striking Mr. Collinson's truck with a sledge hammer for half an hour. He says that he plead guilty rather than being remanded in custody in Prince George. Mr. Hunt says that during his banishment for 16-18 months he was not separated from Ms. Hunt.
- [37] During cross-examination Mr. Hunt did not recall if he told Luke he would kill Ms. Hunt, but did remember an argument taking place. He said he plead guilty to uttering threats to avoid spending more time in custody before trial.

Evidence Concerning Ms. Hunt's Battery Allegations**May 2001 - Pushing Incident**

- [38] Ms. Hunt testified that on or about May 20, 2001, shortly after she had her second back surgery, that she and Mr. Hunt got into an argument regarding two individuals Mr. Hunt had invited to stay at Ms. Hunt's Port Edward home. She testified that during the argument she tried to push past Mr. Hunt while walking with the aid of a walker and was pushed by him hard into a wall and then fell to the ground. She testified that Mr. Hunt and his friends stepped over her and left her on the ground and that later Mr. Hunt picked her up over his shoulder, carried her to their bedroom and threw her on the bed and then screamed loudly in her ear. She testified that someone called an ambulance and she was taken to hospital.
- [39] Mr. Hunt testified that the events of May 2001, involved a mutual fight between him and Ms. Hunt. He testified that his friend had been staying with them for a few days and brought his girlfriend over, which Ms. Hunt did not like. He says that at one point, Ms. Hunt chased his friend out of the house and then attacked him with her arms in the air, that he pushed her and she then stumbled backwards on some shoes in the entry to the duplex and fell backwards into a door and then on a pile of shoes. He says he carried her to bed and later called an ambulance as she said her back was sore. He denies screaming into Ms. Hunt's ear and stated that Ms. Hunt has always had ear infections.
- [40] Ms. Hunt testified that someone called the police and that Mr. Hunt was charged and convicted of assault causing bodily harm. She testified that despite a no-contact order Mr. Hunt did not comply with the order and then convinced her to speak to crown counsel to allow him to communicate with her.
- [41] She said that as a result of this altercation she sustained a bruise to her back, and right hip. She testified that her back was re-broken although no medical evidence confirming this was called at trial. Ms. Hunt testified that she still experiences back pain from this incident and that her ear has never been the same, and she continues to experience a persistent dull ear ache. The outpatient emergency record for Prince Rupert Hospital dated May 20, 2001, notes Ms. Hunt's back pain but does not refer to any complaints concerning her ear.
- [42] Provincial Court records indicate that Mr. Hunt plead guilty to assault and received a suspended sentence with probation with various conditions imposed, including a no contact order. Mr. Hunt was subsequently charged and convicted for not reporting to his probation officer as required and received a \$700 fine which Ms. Hunt says she paid.

2002 - Headbutting Incident

- [43] Ms. Hunt testified that some time in 2002, after Mr. Hunt had moved back into the Port Edward home, that they had a fight during which she asked him to leave. She says that during this altercation she remembers him yelling at the top of his lungs and spit hitting her face. She says that his forehead contacted her nose and it felt like her nose was broken and that she suffered bruising.
- [44] Mr. Hunt denies that his forehead contacted Ms. Hunt's. He testified, in my understanding, that while on the way to get ice cream with Sarah, he and Ms. Hunt were having an argument and were pulled over by police. He says he was arrested and released and that at his trial Ms. Hunt testified that he did not headbutt her and he was found not guilty of assault.

July 13, 2005 - Yelling/Spitting Incident

- [45] During her direct examination Ms. Hunt testified that after the parties returned to Haida Gwaii, during a time when her brother was visiting, that Mr. Hunt became angry after her brother made a long-distance telephone call using their telephone. She said that Mr. Hunt's screaming in her face caused her to pass out.
- [46] During cross-examination Ms. Hunt denied that she passed out due to low blood sugar but agreed that she did not know what caused her to do so.

Fall 2018 - Assault and Sexual Assault

- [47] Ms. Hunt testified that in the fall of 2018, when Mr. Hunt was at the family home uninvited, under the pretext of retrieving machinery from the property, that he became angry because she had brought guests into the family home. She says that he swung a chair damaging a cedar beam, damaged linoleum, smashed a glass jar and pushed her into a doorframe injuring her back and arm.
- [48] Ms. Hunt also testified, although it was unclear from her testimony if this event took place before or after the pushing incident, or even on the same day, that Mr. Hunt dragged her off her bed by her collar and around the bedroom "like a rag doll" and asked her if she wanted to die. She testified that he bent her over the bed, held her arms behind her back with one hand and her throat with the other, and had sex with her. She says she was gasping for air and did not have the capacity to say no.
- [49] Ms. Hunt testified that after this event she went to stay at a friend's house for a few days and called the police. She testified that Mr. Hunt was charged with assault, uttering threats and mischief. It is not disputed that Mr. Hunt plead guilty to these charges. She testified that she told the police about the sexual assault, but did not wish to pursue charges for this assault.

- [50] Provincial Court records indicate that Mr. Hunt had been charged with an assault which occurred between October 25 and 31, 2018 and another assault charge and uttering threats charged for an event which occurred on November 13, 2018. It appears that Mr. Hunt plead guilty to these charges, given that he was convicted within a few days, on November 19, 2018. The probation order shows that he was sentenced to jail for four months and probation for two years.
- [51] Mr. Hunt denies that the alleged threats of assault, assault or sexual assault occurred. He denied that he ever had non-consensual sex with Ms. Hunt but admitted that at times when they had sex, he would hold Ms. Hunt's arms behind her back and pull her hair. He denied that he ever choked Ms. Hunt during sex.

November 2019 - Pushing into Clavicle

- [52] Ms. Hunt testified that some time between November 1 and 20, 2019, Mr. Hunt attended at the family property uninvited and during a violent outburst broke her walker and pushed her against a door, pushing his fists into her clavicle. Later in her testimony Ms. Hunt added that Mr. Hunt was holding the fabric of her collar in her hands, that he was not angry, but in her words, was "stone cold". She says that she feared for her life and begged him not to kill her. She says that he made a comment about pulling her tongue out and made a motion which she interpreted as him doing so with a pair of pliers.
- [53] Ms. Hunt testified that after this incident she went to her bedroom to lay down and that Mr. Hunt, took her phone away and then watched her from the outside deck and later bedroom hall of the family home. She says she stayed in bed all night and in the morning found a bag of tools in the living room - which she described as a "kill kit" including a roofing hammer, other hammers, pliers, a blow torch, a coil of wire, and X-Acto blades.
- [54] Ms. Hunt testified that she did not report this incident to police until January 2020, when Mr. Hunt was no longer on Haida Gwaii. She says that Mr. Hunt was charged with breach of his probation order, mischief and unlawful confinement. The Information dated February 20, 2020 indicates that Mr. Hunt was charged with mischief (for breaking Ms. Hunt's walker), unlawful confinement, and various breaches of an earlier probation order or orders - including an order not to contact or communicate with Ms. Hunt. Records shows that Mr. Hunt was convicted of breach of undertaking or recognizance and sentenced to probation. He plead guilty to these charges. His probation order prohibited contact with or attendance at or near the family residence or other places where Ms. Hunt may be. Ms. Hunt testified that she was not allowed to testify at Mr. Hunt's trial.
- [55] Mr. Hunt testified that he plead guilty to these charges after his arrest because he just wanted to go home. He denies that he threatened or assaulted Ms. Hunt, broke her walker or confined her to the bedroom. He says that he did sit in his daughter's room and outside on a chair, as he often did, but was not spying on Ms. Hunt. He says the tools Ms. Hunt described as a "kill kit" were just random tools he had gathered up around the property that day.

During his cross-examination he denied that Ms. Hunt asked him to leave, when she returned home but rather, had called him earlier to say she was picking up Chinese food. He testified that when Police showed up that Ms. Hunt told him to hide in the bedroom and he did so and later went out to speak with police.

Mr. Hunt's Allegations of Family Violence by Ms. Hunt

- [56] I pause to set out Mr. Hunt's allegations of family violence. These allegations provide helpful context for the assessment of the reliability and credibility of the parties' evidence concerning the alleged assaults and batteries.
- [57] Mr. Hunt testified that when they first got together Ms. Hunt used to hit, yell and throw things on an almost daily basis. He testified that on one occasion, as he was walking into an office (or storage room) in the family home that he heard a bang as he was closing the door - and later discovered that a knife had been thrust into the door behind him as he closed it.
- [58] He says that during the marriage Ms. Hunt exercised financial control over him by controlling expenditures of his income. He raised one example, being a time in around 2016, when was working in Cold Lake Alberta and couldn't gas up his truck because Ms. Hunt had drained their bank account. He testified that during the marriage Ms. Hunt sought to methodically isolate him from his friends and family.
- [59] Mr. Hunt's testimony concerning the knife incident was corroborated by Sarah Hunt. She testified that when she was in the living room reading a book, she saw Mr. Hunt running into his office and close the door. She says that Ms. Hunt was yelling at Mr. Hunt and tried to open the door to the office and then stuck something, believed to be a knife, into the door.
- [60] Sarah Hunt also testified, in summary, that she witnessed both her parents acting violently towards each other during their marriage on a number of occasions. She recalls both parents breaking things in the family home but was unable to provide details, saying that she has tried to put these events out of her head. She testified that she remembers Ms. Hunt throwing things during the marriage, but did not remember seeing Mr. Hunt do so.
- [61] Sarah Hunt testified that when she was 14 or 15 years old Ms. Hunt became angry during a dispute with her about how to load a dishwasher and hit her in the face with a coffee cup, breaking her tooth. She believes that police were called and she went to live with a friend for two weeks for her safety. She testified that she was never threatened by Mr. Hunt.
- [62] During her cross-examination Ms. Hunt testified that she remembered one incident, which she says occurred during a week of sleep deprivation, where she stabbed a pairing knife into a door. She testified that other than jokingly smacking Mr. Hunt's forehead when they were dating she never hit him to cause harm. She denied instigating any violent incidents. She admitted to breaking Sarah's tooth with a coffee cup but says she was attacked by Sarah first.

Analysis of Assault and Battery Claims

Limitation Act

[63] Section 6(1) of the Limitation Act, S.B.C. 2012, c. 13, provides that the basic limitation period for a claim is two years from the day on which the claim was discovered. Section 3(1) sets out claims which are not subject to a limitation period and includes, of relevance, the following:

3 (1) This Act does not apply to the following:

(j) a claim relating to sexual assault, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period;

(k) a claim relating to assault or battery, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period, if the assault or battery occurred while the claimant

(ii) was living in an intimate and personal relationship with, or was in a relationship of financial, emotional, physical or other dependency with, a person who performed, contributed to, consented to or acquiesced in the assault or battery;

[64] There is no question that the exception set out in subsection 3(1)(j) applies in respect of Ms. Hunt's claim regarding an alleged sexual assault in the fall of 2018. This claim is not statute barred.

[65] The exception set out in subsection 3(1)(k)(ii) would apply in this case, that is would allow Ms. Hunt's other claims for assault or battery to proceed, if the relevant assault or battery occurred while they were living together in an intimate or personal relationship or while Ms. Hunt remained in a relationship of financial, emotional, physical or other dependency with Mr. Hunt.

[66] The evidence establishes, as Ms. Hunt contends, that Mr. and Ms. Hunt ceased living together in an intimate or personal relationship when Mr. Hunt was arrested on or about December 22, 2015, and was then jailed and banished from Haida Gwaii for 18 months. Accordingly, any events of assault or battery which occurred prior to that time are not statute barred.

[67] With respect to events which occurred after December 22, 2015, the question is whether when those events occurred Ms. Hunt remained in a relationship of financial or emotional dependency with Mr. Hunt. During closing submissions Ms. Hunt advised the Court that she does not allege physical or other dependency.

[68] Ms. Hunt contends that she remained financially and emotionally dependant upon Mr. Hunt after December 2015. She points to the following evidence:

- a) She continued to pay off some of Mr. Hunt's debts after this date;
- b) She purchased a trailer for him;

- c) He continued to contact her despite a no-contact order from the Provincial Court prohibiting him from doing so, and she spoke to the Crown regarding a relaxation of this order when he asked her to do so;
 - d) In 2016 she and Mr. Hunt attended at a joint meeting in a lawyer's office because in her evidence, Mr. Hunt was trying to get her to consolidate all of their joint debt into a loan in her or Mr. Hunt's name; and
 - e) She and Mr. Hunt attended at some counselling sessions together in 2018 or 2019.
- [69] The onus is on Ms. Hunt to demonstrate that the exception set out at subsection 3(1)(k) applies. In my view, the evidence relied upon by Ms. Hunt does not demonstrate that she remained financially or emotionally dependant upon Mr. Hunt after December 2015.
- [70] Ms. Hunt was quite clear in her testimony that she considered her relationship with Mr. Hunt to be over after the events of December 2015. There is no evidence that Ms. Hunt relied upon Mr. Hunt for emotional support but rather, Ms. Hunt's testimony indicates that she tried to limit contact with him after that time. This implies the opposite of an emotional dependence.
- [71] With respect to financial dependency, Ms. Hunt testified at trial that Mr. Hunt stopped contributing to family expenses after December 2015 and in effect, financially abandoned her. In my view, this indicates that she was not prevented from advancing claims for events which occurred after this date as a result of the fear that Mr. Hunt would withdraw financial support. He had already done so - starting when he was jailed for 30 days and then banished from Haida Gwaii. In addition, the evidence that Ms. Hunt paid some of Mr. Hunt's debts (which I understand includes one or more this Court ordered victim impact surcharges) and may have purchased a trailer for him to live in when he was working off of Haida Gwaii (for between \$4,000 and \$6,000) is not indicative of financial dependence.
- [72] As a result, I find that all of Ms. Hunt's battery and assault claims arising after December 22, 2015 are statute barred. Again, this does not include the claim for the alleged fall 2018 sexual assault.

Findings Regarding the Available Assault and Battery Claims

- [73] In this case Mr. Hunt denies the allegations of assault and battery which have been made by Ms. Hunt. It is necessary therefore for this Court to assess both parties' credibility as part of the process of making necessary findings of fact.
- [74] Justice Fleming succinctly summarized the relevant approach to be applied in determining whether a witness is credible: *Schuetze v. Pyper*, 2021 BCSC 2209:
- [337] The proper approach to assessing the truthfulness of the testimony given by any interested witness was articulated many years ago in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, [1951] B.C.J. No. 152 (C.A.) at 357, with these words:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[338] The factors that may be considered when assessing credibility were identified in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296, which I summarize as follows:

- the capacity and opportunity of the witness to observe the events at issue;
- the witness's ability to remember those events;
- the ability of the witness to resist being influenced by their interest in recalling those events;
- inconsistency in the witness's evidence, meaning did their testimony change between direct and cross-examination, or inconsistencies between prior statements, discovery evidence and their evidence at trial;
- whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence;
- whether their evidence seems unreasonable, improbable or unlikely, bearing in mind the probabilities affecting the case; and
- the witness's demeanour, meaning the way they presented while testifying.

[339] Regarding the last factor, Faryna and other authorities have discussed the dangers of relying too heavily on demeanour to determine credibility, recognizing there is a risk of misinterpreting the testimony of the better actor as truthful, and conversely, the poor presentation of an honest witness as deceptive (see: *R. v. Jeng*, 2004 BCCA 464 at para. 54; *R. v. Tyers*, 2015 BCCA 507 at para. 18).

[340] I also remind myself of the civil burden of proof, on a balance of probabilities, and its relationship to the assessment of credibility, as described in *F.H. v. McDougall*, 2008 SCC 53:

[49] In the result, I would reaffirm that in civil cases there is only standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event has occurred.

- [86] However, in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case
- [75] In my view, the salient factors to be applied in an assessment of the credibility of the witnesses in this case includes inconsistencies in their evidence, the harmony of their evidence with other evidence - including available independent and documentary evidence and whether in consideration of the probabilities their evidence seems unreasonable, improbable or unlikely. I am reluctant to give much weight to the demeanour of either party at trial - given the intrinsic frailties of such evidence and in consideration of toxic nature of the parties' long relationship and its impact on the objectivity of their evidence.
- [76] I will first address the allegations of assault.
- [77] With respect to the alleged violent outburst in 2003 when the parties were living together in a trailer on Haida Gwaii, Ms. Hunt testified that during the trailer incident Mr. Hunt had a violent outburst and threw things around the trailer. Ms. Hunt did not testify or call any independent evidence, including from police, that this outburst was directed at her or the children or that she felt a threat of imminent harm because of Mr. Hunt's actions.
- [78] Mr. Hunt's evidence, which was not challenged during his cross-examination, was that this outburst occurred when two individuals attended at the trailer to, in my understanding, try to coerce payment of additional rent. The fact that Ms. Hunt and the children, according to Ms. Hunt's evidence, ran across the street to hide is equally consistent with Mr. Hunt's version of the events of that day concerning a confrontation with others. The breaking of Ms. Hunt's cane, if done in her presence in a threatening way, might constitute assault, but there is no evidence that this is what occurred. Ms. Hunt did not testify that Mr. Hunt broke her cane in her presence and Mr. Hunt testified that he broke the cane after Ms. Hunt had left with police.
- [79] I am not satisfied that Ms. Hunt has proven that the events at the trailer in 2003 constitute an action by Mr. Hunt to intentionally create the apprehension of imminent harm or offensive contact.
- [80] With respect to the alleged car chase incident which occurred on or around February 22, 2006, although Ms. Hunt testified that Mr. Hunt at one point barred the door to prevent her from leaving for work that day, she did not testify that this created the apprehension of imminent harm or offensive contact. In my view, Ms. Hunt's principle allegation concerned Mr. Hunt following her vehicle and pulling up along her driver's side as she drove down the road.

- [81] Mr. Hunt admitted that he followed Ms. Hunt and pulled up beside her in an attempt to get her to stop and give him his truck back. He denies that he did anything to put Ms. Hunt or the children, who were in the vehicle with her, at risk. Although his driving may have been irresponsible, I am not satisfied that Mr. Hunt was driving in a threatening manner with the intention of creating the fear of harm.
- [82] The information sworn for this incident shows that Mr. Hunt was charged with unlawful confinement, harassment, threatening and firearms offences. Provincial Court records show that he was only convicted of unlawful possession of a restricted firearm and that the balance of the charges against him were stayed.
- [83] Ultimately, I am not satisfied that the February 2006 chasing incident constitutes an assault.
- [84] The alleged assaults which occurred in December 2015 include Mr. Hunt allegedly punching a door close to Ms. Hunt and indirectly threatening, during a conversation with Luke, to kill her.
- [85] Ms. Hunt's testimony that Luke told her that Mr. Hunt told him she should get away from the family home or Mr. Hunt would kill her is inadmissible hearsay. Luke was not called to testify at trial and Mr. Hunt could not recall if he had made such a threat. Even if this hearsay evidence was admissible, Ms. Hunt did not testify when Luke told her about this threat and therefore it is not possible to determine if Mr. Hunt's alleged comments created the apprehension of imminent harm or offensive contact.
- [86] Ms. Hunt's evidence with respect to the alleged December 22, 2015 events changed during trial which negatively impacts the credibility of her evidence regarding these incidents. Contrary to her evidence during direct examination, when she was taken to Mr. Hunt's probation order, Ms. Hunt testified that the mischief charge and uttering threats charges did not have anything to do with her.
- [87] Ms. Hunt maintained that Mr. Hunt was convicted for assault for punching a door in December 2015. There is no evidence, for example from police notes or a narrative report or Provincial Court records or other witnesses, corroborating Ms. Hunt's testimony regarding the door punching incident. In any case, Ms. Hunt provided limited testimony concerning the circumstances of this alleged incident and its impact on her and I am unable to determine whether even if it occurred, it constitutes assault.
- [88] Mr. Hunt's evidence that the convictions for uttering threats and assault all arose from an altercation with Mr. Collinson, in which he hit Mr. Collinson's truck with a sledge hammer for half an hour. This evidence is somewhat corroborated by the letter from the Skidegate Band Counsel banishing Mr. Hunt from reserve lands which was introduced into evidence at trial. I note that the Warrant of Committal in respect of Mr. Hunt's conviction, dated December 30, 2015, required him not to have contact with Mr. Collinson, Luke and initially Ms. Hunt. The prohibition against Mr. Hunt contacting Ms. Hunt was later varied.

- [89] I do not find that Ms. Hunt has proven that the door punching or threatening incident occurred on December 22, 2015 as alleged.
- [90] The assault claims arising from the alleged events in April, June and November 2019, that Mr. Hunt damaged the family home and confined and threatened Ms. Hunt are statute barred.
- [91] I will now turn to Ms. Hunt's battery claims.
- [92] With respect to the alleged battery which occurred in May 2001 in Port Edward, Ms. Hunt alleges that Mr. Hunt pushed her into a wall and then screamed into her ear, causing injury. Mr. Hunt does not deny that he pushed Ms. Hunt, but says that he did so after she attacked him with her arms in the air and she then stumbled and fell backwards into a door. He denies screaming in her ear.
- [93] Ms. Hunt has not proven that Mr. Hunt screamed in her ear causing damage. She has not provided any contemporaneous evidence proving the screaming incident in 2001 including medical evidence that her ear was injured. Her testimony that she went to her family doctor six times regarding an ear injury and mentioned this injury to ambulance attendants is not admissible for the truth of its contents. The outpatient record dated May 20, 2001 references only "back pain" under the heading "Nature of Visit".
- [94] Mr. Hunt denies that he screamed in Ms. Hunt's ear. He testified that Ms. Hunt has had ear infections on many occasions. His evidence which suggests ear infections as the cause for Ms. Hunt's ear issues is arguably consistent with Ms. Hunt's testimony at trial that she always has a dull ache in her ear and that this pain gets worse when she is sick - although I do not purport to draw a conclusion with respect to cause of her ear aches.
- [95] I find that the elements of the civil tort of battery are made out for the May 2001 pushing event. Mr. Hunt applied force to Ms. Hunt, by pushing her, he intended to apply such force and Ms. Hunt sustained an injury- consisting of at least bruising to her back and buttocks. I will further address the extent of Ms. Hunt's injuries and resulting symptoms arising from this incident later in my reasons.
- [96] The next question is whether the defence of self-defence is available to Mr. Hunt for pushing Ms. Hunt. Self-defence is the use of a reasonable degree of force to protect oneself against an unlawful use of force: see *Bruce v. Dyer*, [1966] O.R. 705, at para 75. The force used in self defence is not reasonable if it is unnecessary or disproportionate to the force defended against: *Salmond and Heuston The Law of Torts*, (19th ed., 1987) at p. 142; *McNeill v. Hill*, [1929] 2 D.L.R. 296, at 297 (Sask. C.A., per Martin J.A.); *Cottreau v. Rodgeron and Saulnier* (1965), 53 D.L.R. (2d) 549 at p. 554 (N.S.); *Hartlen v. Chaddock* (1957), 11 D.L.R. (2d) 705, at p. 707 (N.S.), per *Ilsley C.J.*; *Roundall v. Brodie* (1972), 7 N.B.R. (2d) 486 at p. 489, per *Stevenson J.*

- [97] Mr. Hunt has the onus of proving that he acted in self defence, which includes proving that he used a reasonable amount of force. In my view, he has not done so. The evidence at trial establishes that at the time of this assault Ms. Hunt was recovering from recent back surgery and using a cane or a walker to move about. Although it is possible that she may have been able to raise her arms and strike Mr. Hunt, in my view, Mr. Hunt likely had other options other than pushing Ms. Hunt, such as leaving the area or holding her arms. I find given Ms. Hunt's condition at the time that Mr. Hunt pushing in May 2001 constituted an unnecessary or disproportionate use of force.
- [98] With respect to the alleged 2002 headbutting incident the parties' provided different versions of this event. Ms. Hunt's testimony was that Mr. Hunt headbutted her in the nose during an argument at home causing a broken nose - but provided very little evidence with respect to the circumstances surrounding this incident. There is no medical or other evidence corroborating Ms. Hunt's testimony. Ms. Hunt testified that the police became involved but tendered no police records as evidence at trial.
- [99] Mr. Hunt provided a more detailed explanation that he had an argument with Ms. Hunt in the car on the way to get ice-cream for Sarah but denied headbutting her. He testified that at a subsequent trial, under which he was charged with in his words "assault by gesture" that Ms. Hunt testified that he did not headbutt her. I am simply not able to determine on a balance of probabilities whether this incident occurred as alleged by Ms. Hunt.
- [100] With respect to the alleged incident in July 2005 on Haida Gwaii, during which Ms. Hunt alleges Mr. Hunt screamed at her causing her to pass out and fall to the ground, the evidence is unclear as to what occurred. As noted earlier, during her cross-examination Ms. Hunt testified that she did not know what caused her to pass out. She denied that she passed out due to low blood sugar, but the emergency outpatient record for Queen Charlotte Hospital indicates that Ms. Hunt had experienced a seizure and that Ms. Hunt reported "headaches all week - seeing spots - believes caused by ibuprofen". I am not satisfied that Ms. Hunt passed out in July 2005 as a result of Mr. Hunt screaming at her.
- [101] The most serious alleged incidents are those which Ms. Hunt says occurred in October and November 2018. In her written submissions Ms. Hunt submitted that Mr. Hunt sexually assaulted her on or around October 25, 2018 and "as well on other occasions before and after that" although no evidence concerning the other occasions was presented at trial.
- [102] In addition, Ms. Hunt submitted that on or around November 13, 2018, Mr. Hunt dragged her from bed by her neck and threw her around the bedroom "rag-dolling her". With respect to this incident of alleged rag-dolling in November 2018, the claim for battery is also statute-barred, as it does not, in my understanding, relate to the allegations of sexual assault, which are not.

- [103] Ms. Hunt's testimony at trial was not consistent with her written submissions with respect to the sequence of assaults alleged to have occurred in October and November 2018. I am only able to rely on Ms. Hunt's testimony at trial.
- [104] Ms. Hunt testified that in the fall of 2018 Mr. Hunt became angry about her bringing guests into the family home and pushed her into a doorframe and she fell, but was later picked up by a guest after Mr. Hunt had stormed out. If these events occurred, any claim in respect of those events would be statute-barred.
- [105] Ms. Hunt testified that within days of this incident Mr. Hunt came to the family home and dragged her off the bed by her collar and asked her if she wanted to die. Her evidence at trial suggested that the alleged sexual assault occurred on the same day. She testified that after the sex assault she went to her a friend's house to hide for a few days and friends encouraged her to call police.
- [106] It is unclear on the evidence at trial whether Ms. Hunt had gone to a friend's house after the alleged incidents in October or the incident in November 2018. Given the rapid sequence of events after Mr. Hunt was charged on November 13, it would seem that she only went to police after the November incident, but I am not certain if this was the case.
- [107] In evaluating the credibility of Ms. Hunt's allegations this Court may consider as a factor, the plausibility of her evidence that she reported a sexual assault to police but decided not to proceed with charges. Ms. Hunt did not call any evidence from police or from the friend she says to stayed with, who may be able to corroborate this testimony. I find it unlikely that if Ms. Hunt had reported a sexual assault of the nature she described during this trial, a very serious offence, that Mr. Hunt would not have been charged.
- [108] There is objective evidence that supports Ms. Hunt's claim that she was assaulted by Mr. Hunt, either in October or November 2018, but again absent a connection to the sex assault claim which is not statute-barred, those allegations of assault are not sustainable.
- [109] It is exceedingly unfortunate that this Court was not provided with relevant police records or evidence from independent witnesses concerning the allegedly serious events of October or November and the impact of them on Ms. Hunt. This evidence may well have addressed many of the court's concerns with respect to what exactly happened on the relevant dates.
- [110] In summary, the battery claims arising from alleged events in October or November 2018 the alleged events in 2019, including the allegation that Mr. Hunt threw Ms. Hunt's walker and pushed her against a door and pushed his fists into her clavicle, are statute barred. On the available evidence, I do not find that Mr. Hunt sexually assaulted Ms. Hunt in either October or November 2018.

Non-Pecuniary Damages

Causation

- [111] Ms. Hunt is entitled to damages for the pain, suffering, loss of enjoyment of life and loss of amenities which were caused by the assault battery committed by Mr. Hunt in 2001.
- [112] As set out above I find that Mr. Hunt committed a battery against Ms. Hunt when he pushed her in May 2001. There is very little medical evidence with respect to the physical injuries sustained by Ms. Hunt in 2001.
- [113] As set out above, I find that as a result of the May 2001 incident Ms. Hunt sustained a bruise to her back, and right hip. I am not satisfied that her back was re-broken during this incident. I accept that this incident resulted in hospitalization and caused pain and potentially delayed her recovery from back surgery, resulting in additional pain of uncertain duration. Although Ms. Hunt testified that she still experiences back pain from this incident, but there is insufficient evidence on which I can conclude that this incident, which occurred over 22 years ago, caused or significantly contributes to her current chronic pain.
- [114] I note the evidence at trial that when Ms. Hunt was in high school she sustained a workplace back injury while working at a bakery, which required surgery and resulted in chronic back pain. Ms. Hunt also testified that she had a second back surgery in or about 2001, which did not go well. She has had surgery to replace both hips. In 2021 she began to experience symptoms in her left knee and is awaiting knee replacement surgery. Ms. Hunt currently takes drugs for rheumatoid arthritis. I find that it is more likely than not that Ms. Hunt's pre-existing back injury and unrelated conditions, including hip and knee pain, are the primary causes of her chronic pain.
- [115] Ms. Hunt called expert evidence from Dr. Ingrid Friesen regarding psychological and neurocognitive injuries resulting from alleged assaults and batteries. Dr. Friesen's opinion evidence as an expert psychologist, set out in a written report, was admitted at trial.
- [116] In her report Dr. Friesen set out her opinion that as a result of "various assaults" Ms. Hunt has developed post-traumatic stress disorder, generalized anxiety disorder, and a mild neurocognitive disorder due to traumatic brain injury. Dr. Friesen's opinion is that Ms. Hunt is partially disabled from performing work and participating in recreational activities as a result of "prolonged domestic abuse".
- [117] In forming these opinions Dr. Friesen relied upon a number of assumptions concerning alleged historical assaults committed by Mr. Hunt, which I have found have not been proven. For example, Dr. Friesen assumed that the May 2001 incident was unprovoked and that Mr. Hunt threw Ms. Hunt against a wall resulting in broken bones. In addition, Dr. Friesen referred to the 2003 trailer incident as a tantrum, during which Mr. Hunt destroyed the home. As set out above, I did not find the trailer incident involved threats of harm directed at Ms. Hunt. In addition, Dr. Friesen assumed that Ms. Hunt had been thrown against walls and repeatedly choked by Mr. Hunt over the course of the marriage. Ms. Hunt

did not testify that such events occurred repeatedly over the course of the marriage. I do not find that she had proven an alleged choking incident in the fall of 2018.

- [118] As a result of the lack of a factual underpinning for a number of Dr. Friesen's assumptions I give her report little weight with respect to the cause of Ms. Hunt's psychological conditions. Although Ms. Hunt may suffer from PTSD and a generalized anxiety disorder it has not been proven that these conditions are causally linked to the proven incidents of battery in this case. It may well be that these conditions, in particular anxiety, arise from the parties' toxic marriage, including Mr. Hunt's repeated breaches of various protection orders imposed by Provincial Court judges, but that does not result in a damages award for battery.
- [119] With respect to Dr. Friesen's opinion that Ms. Hunt sustained a neurocognitive disorder due to a traumatic brain injury, there is insufficient evidence on which I can conclude that the 2001 battery which I have found was committed by Mr. Hunt caused this disorder. Ms. Hunt has not proven that Mr. Hunt's actions resulted in concussion or caused hypoxia - which is the basis for Dr. Friesen's opinion that it was "plausible" that she sustained a traumatic brain injury. I am also not satisfied that Dr. Friesen, as a psychologist, is qualified to provide an opinion with respect to such injury.

Assessment of Ms. Hunt's Non-Pecuniary Damages

- [120] Ms. Hunt submits that she should be awarded non-pecuniary damages of \$150,000 including \$50,000 for aggravated damages.
- [121] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide. Each case depends on its own unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188-189.
- [122] I will address the relevant factors to be considered in an assessment of non-pecuniary damages which are set out at para. 46 of *Stapley v. Hejslet*, 2006 BCCA 34.
- [123] Ms. Hunt is currently 51 years old. The nature of her proven injuries resulting from the May 2001 battery is described above. As alluded to earlier I do not have sufficient evidence on which I can conclude that these injuries have resulted in more than short term injury and pain symptoms. With respect to the May 2001 incident, this includes bruising and back pain for a period of approximately three weeks.
- [124] I am not satisfied that the physical injuries sustained by Ms. Hunt during the 2001 battery have caused on-going disability or have resulted in an impairment of life which prevents Ms. Hunt from participating in social, recreational or employment activities.

- [125] Both Mr. and Ms. Hunt accuse each other of on-going violence. In this case, the objective evidence provided by Sarah Hunt indicates that Mr. Hunt and Ms. Hunt acted violently towards each other. In addition, according to Sarah Hunt, both parties abused substances at times.
- [126] Although I have rejected Dr. Friesen's conclusion that Mr. Hunt is responsible for Ms. Hunt's PTSD and anxiety, the incidents of battery, when considered along with the history of the parties' toxic relationship, likely contributed to Ms. Hunt's level of emotional suffering.
- [127] I am satisfied that the May 2001 battery likely resulted, at least for a time, in Ms. Hunt feeling less secure in the family home.
- [128] In general, I am satisfied that Mr. and Ms. Hunt's relationship during the marriage can be described as toxic. Despite this conclusion, in evaluating Ms. Hunt's damages for battery, I am conscious of the fact that the proven incidents constitute intimate partner violence.
- [129] Ms. Hunt refers to a number of authorities which she submits support her submission with respect to the quantum of non-pecuniary damages to be awarded in this case. Two of the cases cited by Ms. Hunt: *Seymour v. Nole*, 2022 BCSC 867 and *N.C. v. W.R.B.* [1999] O.J. No. 3633 (Ont. S.C.J.) involved sexual violence and therefore do not assist.
- [130] Many of the cases involving battery cited by Ms. Hunt[1] involved circumstances where the injuries and symptoms resulting from the battery at issue were more severe. For example, in *Schuetze* the plaintiff, who was awarded \$100,000 in non-pecuniary damages was found to have sustained an MTBI and various neurocognitive or neurological symptoms during one incident of family violence, which resulted in a significant impact to her recreational and vocational pursuits. In *S.C.* the plaintiff was found to have been routinely struck in the back of the head, neck and shoulders by the defendant, perhaps as much as five to six times per week, and lived in constant pain, suffered from severe PTSD, anxiety and depression and required ongoing treatment. Justice Murray awarded \$110,000 in non-pecuniary damages and \$20,000 in aggravated damages.
- [131] In my view, Ms. Hunt's injuries and resulting symptoms caused by the proven battery are not nearly as severe those in the cases relied upon by her. In all of the circumstances, I award Ms. Hunt's general damages for the battery which occurred in May 2001 of \$20,000.
- [132] As set out in *Andrews v. Shelemey*, 2021 BCSC 2221, aggravated damages awards are made in consideration of intangible injuries such as distress and humiliation and damages are measured by the extent: paras.114-115.

[133] I find that the May 2001 battery resulted in humiliation and distress. Ms. Hunt's testimony, which was not challenged by credible evidence on the part of Mr. Hunt, was that after she was pushed by Mr. Hunt she fell in the presence of strangers onto the floor, was unceremoniously and painfully picked up by Mr. Hunt, carried upstairs, and placed in her bed.

[134] I award aggravated damages for the May 2001 battery of \$5,000.

Punitive Damages

[135] Ms. Hunt seeks punitive damages although she has not provided a submission with respect to amount.

[136] Punitive damages are awarded to punish the wrongdoer for conduct which is harsh, vindictive, reprehensible or malicious in nature. As the term suggests, this head of damages is intended to punish the wrongdoer as opposed to compensating a plaintiff, and includes as an object, deterring others from acting in a similar way.

[137] Punitive damages are justified where the impugned conduct represents a marked departure from ordinary standards of reasonable behaviour: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 36.

[138] Although I found Mr. Hunt liable for the battery which occurred in May 2001, I do not consider that Mr. Hunt's conduct was harsh, vindictive reprehensible or malicious. Based on the evidence before me at trial Mr. Hunt essentially acted with undue force during a dispute between both parties.

[139] I do not find that an award of punitive damages is appropriate in this case. Ms. Hunt's claim for punitive damages is dismissed.

Future Loss of Income Earning Capacity

[140] I now turn to the question of future loss of income earning capacity.

[141] Ms. Hunt does not seek an award for past loss of income earning capacity. She seeks an award for future loss of income earning capacity, premised on a diminished loss of income earning capacity, which she submits can be calculated premised upon an income loss of approximately \$16,000 per year until she turns 65.

[142] Compensation for loss of future income capacity is to be based on what the plaintiff would have, not could have, earned but for the injury that was sustained: *Ibbitson v. Cooper*, 2012 BCCA 249 at para. 19 [Ibbitson]; *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49. [underline added]

- [143] Ms. Hunt submits that the evidence in this case supports a finding that if the batteries by Mr. Hunt had not happened that she may have been able to continue working in come capacity - that is that they have caused or may cause an inability to earn income in the future. I do not agree.
- [144] Ms. Hunt testified that she has been on long term disability since 2019 as a result of unrelated medical conditions. These unrelated conditions include back, hip and knee problems compounded by (or in some cases perhaps caused by) rheumatoid arthritis. She concedes that these unrelated medical conditions are the primary cause of her being on long term disability.
- [145] In this case I do not find that Ms. Hunt has proven a causal link between the batteries which occurred in May 2001 and her ability to earn income in the future. That is, she has not proven a loss of capacity resulting from the injuries and symptoms which were caused by those incidents. Further, I am not satisfied that there is a real and substantial possibility that battery related symptoms and corresponding limitations resulting in a loss of capacity will manifest in the future.
- [146] Ms. Hunt has not proven that as a result of the injuries sustained in the proven battery that she is less capable overall from earning income from all types of employment, is less marketable or attractive as an employee, has lost the ability to take advantage of job opportunities, and is less valuable to herself as a person capable of earning income in a competitive market.
- [147] Ms. Hunt's claim for damages for future loss of income earning capacity is dismissed.

Cost of Future Care

- [148] Ms. Hunt seeks an award for the cost of future care arising assaults and batteries committed by Mr. Hunt. In particular, she seeks an award for the cost of attending at a further ten counselling sessions at a cost of \$150 per session. Given my findings above this claim is limited to any potential costs which arise from the proven batteries.
- [149] The purpose of an award for the cost of future care is to restore an injured party to the position they would have been in had the accident (or in this case the battery) not occurred: *Pang v. Nowakowski*, 2021 BCCA 478, at para. 56.
- [150] To make an award the court must be satisfied that the care item for which a cost of future care award is sought was made necessary by the injury in question: *Pang*, at para. 57(ii).
- [151] Ms. Hunt has not proven that the battery in May 2001 resulted in a condition or symptom which requires Ms. Hunt to attend at counselling.
- [152] Ms. Hunt's claim for damages for cost of future care is dismissed. For the same reason, Ms. Hunt's claim for an award pursuant to the Health Care Costs Recovery Act is also dismissed.

Special Damages

- [153] With respect to special damages, Ms. Hunt seeks special damages to compensate her for the cost of property damage she says Mr. Hunt caused during various assaults. Again, this claim is limited to any potential special damages which arise from the proven batteries. Ms. Hunt seeks a total of \$8,450 in special damages for the cost of repairs to the family residence, and repairs to and replacement of furniture required as a result of damage she contends was caused by Mr. Hunt on November 13, 2018. This includes the destruction of four chairs, damage to a table top, damage to an overhead beam, drywall repair, and damage to electronic devices.
- [154] An injured person is entitled to recover reasonable out-of-pocket expenses incurred as a result of the commission of a tort.
- [155] With respect to these claims, Ms. Hunt has not proven that she incurred out-of-pocket expenses as a result of the May 2001 battery. This includes the claim she advances in respect of damage to various pieces of furniture, damage to drywall, or other portions of the family home and, as well, to Ms. Hunt's claim for special damages to allow her to purchase a GPS tracker unit and surveillance equipment to be placed on or around the family home.

Conclusion on Damages for Battery

- [156] I award Ms. Hunt damages for batteries which she has proven were committed against her by Mr. Hunt in May 2001 and the fall of 2018 as follows:
- a) Non-Pecuniary Damages in the amount of \$20,000; and
 - b) Aggravated Damages in the amount of \$5,000.
- [157] Ms. Hunt's claims for various assaults, all remaining battery claims, punitive damages, future loss of earning capacity, cost of future care and special damages are dismissed.

Retroactive Child Support

- [158] Ms. Hunt seeks retroactive child support for Sarah Hunt payable from the date of separation, which I have found was December 22, 2015 to November 19, 2019, which is the date Ms. Hunt says Sarah finally moved out of the family home. She advances this claim under both s. 149 of the FLA and s. 15.1 of the Divorce Act.
- [159] Two issues arise from this claim. First, this Court must determine, in light of relevant appellant authority, it has the jurisdiction under either the FLA or Divorce Act to make a child support order, given that this claim was made in 2022 at a time when Sarah was no longer a child of the marriage[2]. Second, the court must consider whether and for how long Sarah continued to be a child of the marriage after December 22, 2015.

[160] For the reasons that follow I find that this Court does not have the jurisdiction to make any orders, nor is such an order warranted, for retroactive child support.

Jurisdiction to Award Retroactive Child Support

[161] It is not in dispute that Sarah was not a child of the marriage, under either the Divorce Act or FLA at the time that this action was commenced in 2022. No previous applications or orders for child support have been made in this case.

[162] In *Dring v. Ghelye*, 2018 BCCA 435, a five-judge division (five determined, in summary, that this Court does not have the jurisdiction to make a statutory retroactive award for child support unless at the time of the application the child remained a child of the marriage or there has been a previous application for support: *Dring*, at para. 97.

[163] In *Michel v. Graydon*, 2020 SCC 24, Justice Brown held that s. 152 of the FLA, "authorizes a court to retroactively vary a child support order, irrespective of whether the beneficiary is a "child" at the time of the application, and irrespective of whether the order has expired": at para. 9 (emphasis added).

[164] Justice Brown, referring to the decision in *D.B.S. v. S.R.G.*, 2006 SCC 37 concerning retroactive support, stated that the principle that an application for child support under the Divorce Act must be made while the child is still a "child of the marriage" is limited to original applications for child support specifically brought under s. 15.1 of the Divorce Act.

[165] This is not a variance application. It is an application in the first instance.

[166] In the subsequent decision in *Deng v. Zhang*, 2022 BCCA 271, and consistent with the decision of the Supreme Court in *Michel*, the Court of Appeal confirmed its ruling in *Dring*, referring to the analysis set out by Justice Lyster in *L.L.M. V. D.R.M.*, 2022 BCSC 143, that a court does not have jurisdiction to entertain an original application for child support for a child who is no longer a child of the marriage - at the time the application was made: *Deng*, at paras. 86-87.

[167] Ms. Hunt submits that *Dring* and *Deng* were wrongly decided or alternatively that this case can be distinguished on the basis that neither of those cases involved circumstances of violence. That is, as part of her alternative argument, Ms. Hunt submits that an exception should be granted in cases where family violence has prevented an applicant from bringing an application while the child remained a child for support purposes.

[168] The relevant decisions of the Court of Appeal in *Dring* and *Deng*, which are not overruled by the ruling of the Supreme Court of Canada in *Michel*, are binding on this Court. This Court does not have the jurisdiction to make a retroactive child support order in this case and there are no provisions under the Divorce Act or FLA, or common-law authority, which provides this Court with the ability to take jurisdiction to order retroactive child support in this case.

Sarah Hunt Ceased to be a Child of the Marriage

- [169] Even if I was to find that this Court had the jurisdiction to consider Ms. Hunt's application for retroactive child support I would still find that such support is not available on the basis that Sarah Hunt ceased to be a child of the marriage before the parties' separated in December 2015.
- [170] Ms. Hunt testified that Sarah did not move out until some time in June 2018 and that afterwards she supported her financially, including paying her rent and contributing towards her post secondary educational costs. She says that Sarah moved back into the family home in or about December 2018 and did not finally move out until the end of 2019.
- [171] I prefer Sarah Hunt's evidence concerning the date that she moved away from the family home and her financial independence to that of Ms. Hunt.
- [172] Sarah provided detailed evidence regarding her status as a child of the marriage at the relevant time. She says that she moved out of the family home and lived with her boyfriend, before she graduated from high school, either just before or just after she turned 16 - which would be around September 2015. She testified she moved into an apartment owned by her boyfriend's parents, which was a three-minute walk from her school, which she had helped renovate.
- [173] She testified that she worked part time for her boyfriend's parents and used her earnings to pay rent of \$500 per month in rent. She testified that no one else paid her rent and that on the one occasion where Ms. Hunt loaned her money to pay her rent, she paid her back within a couple of days. She admitted that she probably received minor financial help from her parents on occasion, twenty dollars here or there, but was adamant that she was financially independent after she moved out.
- [174] Sarah testified that after she broke up with her boyfriend in November 2018 she moved some family possessions into and slept on a couch in the workshop of the family residence and stayed with friends for a couple of months, until she moved in with a new boyfriend in Port Clements a few months later.
- [175] With respect to her educational costs Sarah testified that she used scholarships and bursaries totalling approximately \$5,500 to pay for her post secondary education with Athabasca University.
- [176] I find that in September 2015 Sarah Hunt voluntarily withdrew from the charge of her parents and ceased to be a child of the marriage. Further I find that she did not resume her status as a child of the marriage when she returned to stay at the family home for a few months around November 2018.

Division of Family Property

- [177] It is the general practice of the British Columbia courts to determine property division before making a final order for spousal support: *Legge v. Legge*, 2021 BCCA 365 at para. 47; *Cphoon v. Stobo*, 2023 BCCA 479 at para. 27.
- [178] Ms. Hunt seeks an unequal division of family property and debt which she submits is necessary to remedy what would be a significant unfairness if the value of family property and debt were divided equally at trial.
- [179] I will first make relevant findings with respect to what constitutes family property and debt subject to division.
- [180] The parties' only significant asset is the family home. Pursuant to the order of Justice Morley made in December 2023, the parties obtained a joint appraisal for this property which establishes its value at the time of trial to be \$590,000.
- [181] With respect to family property which she has retained or has control over, Ms. Hunt testified that the value of the parties' Co-op account is \$2,631.68 and the value of her Toyota Matrix is \$2,000. As well she admits that there may be some value in salvaged tin which remains at the family home. There is no dispute with respect to value of these items.
- [182] Ms. Hunt testified that Mr. Hunt retained a number of tools he used in the construction trade which were acquired during the marriage which are family property. She testified that the tools Mr. Hunt retained include a generator, welders, contractor ladders, scaffolding parts, fall harnesses, drills, impact guns, nail guns, various saws, an air compressor and impact tools, a paint gun, chain saws and an Alaska mill and tarps. Ms. Hunt estimated that the value of the tools Mr. Hunt retained was approximately \$100,000.
- [183] It is not entirely clear if Ms. Hunt was referring to the estimated purchase price or estimated current market value for the tools she says were retained by Mr. Hunt. She did not provide any evidence at trial with respect to purchase price or independent evidence with respect to their current value. I am not satisfied that the tools retained by Mr. Hunt are worth \$100,000. Based on the listing of tools Ms. Hunt says were removed from the property and assuming that the tools are at least 9 years old at the time of trial, and have likely significantly depreciated in value I ascribe a value of between \$30-40,000 to them.
- [184] Ms. Hunt testified that a 1986 Dodge truck, which was family property, which she estimates was worth \$10,000, was transferred by Mr. Hunt to Sarah Hunt in approximately 2017 or 2018. Sarah Hunt remembered Mr. Hunt transferring the Dodge truck to her in or about 2016 after she obtained her learner's licence.
- [185] Ms. Hunt testified that the truck was owned by her while the parties were married and then transferred to Mr. Hunt who then sold it to Sarah for \$1,300. She submits that this truck should be considered family property and valued at \$10,000.

- [186] The truck is no longer owned by either party and therefore is not family property. The evidence at trial establishes that the truck was sold by Mr. Hunt to Sarah for \$1,300 in or about 2016. Even if I was to find that the truck is family property subject to division I would ascribe nominal value to it.
- [187] Finally, Ms. Hunt submits that a partially completed argillite whale carving retained by Mr. Hunt is family property. She submits that a value of \$1,000 should be ascribed to this item - although at trial she testified that Mr. Hunt had said the carving might be worth \$25-30,000 if it was completed. Mr. Hunt did not dispute ascribing a value of \$1,000 to this carving.
- [188] Ms. Hunt testified that the remaining vehicles and other chattels remaining at the family residence, including a backhoe and skidder (and I assume furniture) have no value. Mr. Hunt did not challenge this testimony, including providing contrary evidence, at trial. With respect to the tin which remains at the family residence, Mr. Hunt testified that there is approximately 10,000 square feet of tin sitting in a reefer van. He says that the tin is worth approximately \$30-40,000, but provided no independent evidence of value and did not explain how he determined this value. I am not satisfied that any value should be ascribed to these other items, except perhaps tin. In my view, it is reasonable to set the value of the tin off against the estimated value of tools removed from the property by Mr. Hunt.
- [189] I find that the items and value of family property subject to division, not including pensions which I will address below, includes the following:
1. Family Home \$590,000
 2. Coop Account \$2,632
 3. Toyota Matrix \$2,000
 4. Argillite Carving \$1,000
- TOTAL: \$595,632.
- [190] The starting point is that this property would be divided equally between the parties, that is \$297,816. Ms. Hunt submits that it would be significantly unfair to do so in light of various expenses that she has incurred since the parties separated in 2015.
- [191] The expenses which Ms. Hunt claims she incurred which she submits should be divided equally, total \$216,790.56 and include the following:
- a) Housing costs including mortgage payments, property taxes and insurance - totalling \$176,391;
 - b) Home maintenance and upkeep costs including deck replacement, exterior stair replacement, chimney replacement and repairs, garbage removal and replacement appliances - totalling approximately \$16,300; and

- c) Repayment of family debt consisting of a loan and line of credit from RBC and Scotiabank, RBC and BMO credit card debt - totalling \$24,099.56.
- [192] Mr. Hunt did not challenge Ms. Hunt's evidence concerning housing or home maintenance costs or the amount of family debt she repaid. I accept Ms. Hunt's evidence concerning these expenses.
- [193] Pursuant to s. 95(1) of the FLA, a court may order unequal division of family property if equal division would be "significantly unfair". The relevant factors set out in s. 95(2) include the duration of the relationship between the spouses and whether family debt was incurred in the normal course of the relationship between the spouses and any other factor. In this case Ms. Hunt has the onus of showing that an equal division of family property would be objectively unjust, unreasonable or unfair in some important or substantial sense: *Singh v. Singh*, 2020 BCCA 21, at para. 134.
- [194] I find that it would be significantly unfair not to reapportion the division of family property in favour of Ms. Hunt, to reflect 50% of the amount she paid by her for maintaining and repairing the family home and paying off family debt, being \$108,395. This results in \$406,211 of the family property (which I have valued at \$595,632) being apportioned to Ms. Hunt and \$189,421 being apportioned to Mr. Hunt.
- [195] In her written submission Ms. Hunt contends that a further apportionment should be made in her favour because the source of the \$21,200 down payment for the family property were proceeds from the sale of her home in Port Edward. Ms. Hunt concedes that these proceeds from the sale of the Port Edward property were excluded property but were converted into joint family property. She relies on *Venables v. Venables*, 2019 BCCA 28, in which the court found that the FLA does not preclude considering the origins of the property as formerly excluded when determining whether equal division of family property would be significantly unfair.
- [196] In addition, Ms. Hunt contends that there should be a further adjustment to account for the \$4,000 she paid to purchase a trailer for Mr. Hunt after separation.
- [197] There is no evidence that Ms. Hunt paid for the trailer with the expectation of repayment - despite the fact that she made this payment after separation. The evidence indicates that the trailer was purchased for Mr. Hunt's use at a time when he was prohibited from being on Haida Gwaii or off island for work purposes.
- [198] Finally, Ms. Hunt contends that Mr. Hunt caused damage to the family home before and after separation which justifies a further apportionment of family property in her favour. Although the evidence supports a finding that Mr. Hunt caused some damage to the family home, including damage to drywall and to a cedar beam inside the home, the cost of repairs is relatively nominal. There is also evidence that Ms. Hunt caused some minor damage to the family home. I am not satisfied that Mr. Hunt caused damage to the exterior cedar siding of the home as is alleged by Ms. Hunt. He denies that he did so and testified

that someone else backed into the side of the house, in my understanding causing some relatively minor damage.

[199] In this case, after Ms. Hunt's damages for battery including aggravated damages and lump sum spousal support (which I will discuss below), Mr. Hunt will not receive any amount from the division of family property. I am not satisfied that a further apportionment of family property in Ms. Hunt's favour, other than that set out above, is required to remedy significant unfairness which is not addressed through orders for spousal support going forward.

Pension Division

[200] The evidence at trial proves that Mr. Hunt has an Alberta carpenters' pension. Under s. 123(1) and 123(2) Ms. Hunt is entitled to a division of benefits under this plan. Ms. Hunt submits that the value of Mr. Hunt's carpenters' plan, calculated from the date of marriage to the date of separation should be divided equally. I make this order.

[201] In respect of Mr. Hunt's contributions to the Canada Pension Plan, Ms. Hunt seeks an order for equalization of their unadjusted pensionable earnings under the Canada Pension Plan - from the date of marriage to the date of separation. I make this order.

[202] Ms. Hunt's pension plan was not contributed to by her until after separation and therefore is not a family asset subject to division.

Retroactive and Prospective Spousal Support

[203] Ms. Hunt seeks spousal support retroactively and prospectively at the highest end of the range based on the parties' respective guideline incomes during the relevant times. She submits that such support is payable on a compensatory and non-compensatory basis, and seeks a lump-sum award for past and, in my understanding, depending on the court's rulings on other points, as well, for prospective spousal support.

[204] For the reasons that follow I find that Ms. Hunt is entitled to retroactive spousal support from January 1, 2019 to trial and ongoing spousal support on an indefinite basis. I find that payment of retroactive and prospective spousal support on a lump sum basis is appropriate in this case.

Entitlement to Support

[205] Under s. 15.2(6) of the Divorce Act, an order for spousal support should:

- (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.

[206] These objectives are mirrored in s. 161 of the FLA.

[207] Under s. 15.2(4) of the Divorce Act, in determining the quantum and nature of spousal support, the court must consider the condition, means and needs of each spouse, including considering the following factors:

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[208] Chapter 9 of the SSAG provides a helpful overview of these and other factors which may be considered in determining where spousal support should fall within the applicable range. As noted in the SSAG, no single factor is determinative and several factors may be at play in any given case. I consider the following factors to be significant in this case:

- a) Section 9.1: A strong compensatory claim is a factor that favours a support award at the higher end of the ranges for amount and duration; and.
- b) Section 9.2: When a recipient has limited income and/or earning capacity their needs may push an award to higher end of the range for spousal support.

[209] In this case, I have little difficulty concluding that Ms. Hunt has a strong claim for compensatory support given the length of the marriage and the parties' roles. At all times throughout the marriage Mr. Hunt was the primary earner, generally earning three times as much as Ms. Hunt. As well the evidence at trial demonstrates that Ms. Hunt played the role of primary caregiver for Luke and Sarah, in part because Mr. Hunt was often required to work on construction projects away from home for extended periods of time and during times that he was in prison or banished from Haida Gwaii. Although Ms. Hunt was able to study and eventually obtained work with a school board during the marriage, she did not have the same opportunity to develop skills and to obtain jobs as lucrative as those of Mr. Hunt. As a result, I find that Ms. Hunt sustained a loss of income earning potential during the marriage justifying a claim for compensatory support.

[210] In addition, Ms. Hunt has a strong claim for non-compensatory support. She has limited income from disability benefits and I am satisfied that her physical limitations have significantly impacted her ability to earn income going forward. Although I do not find that Ms. Hunt has proven that batteries committed by Mr. Hunt are responsible for her primary physical limitations, I accept Dr. Friesen's opinion that Ms. Hunt is partially disabled from performing work and engaging in recreational activities. It is not relevant whether all of

this disability results from the parties' history of family violence.

[211] I find that it is fair and reasonable that Ms. Hunt receive spousal support at the high end of the range. I will first address the merits of Ms. Hunt's claim for retroactive support including quantum of such support and will then address the quantum and duration of support going forward.

Is Ms. Hunt entitled to retroactive spousal support?

[212] In *Petrie v. Lindsay*, 2019 BCSC 371, at paras 108-110, Justice Sharma summarized the law concerning entitlement to retroactive spousal support:

[108] In *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.], the Supreme Court of Canada set out the test for retroactive child support. The Court of Appeal has since confirmed that this test is also applicable to retroactive spousal support, although the weighing of the factors differ: *Ducharme v. Rempel*, 2016 BCCA 198 at para. 17 [Ducharme]. Specifically, "concerns about notice, delay and misconduct generally carry more weight" for claims of retroactive spousal support compared to retroactive child support because a spouse is under no obligation to look out for the legal rights of a separated spouse: *Kerr v. Baranow*, 2011 SCC 10 at paras. 207-208.

[109] The factors to consider are:

- a) whether there is a reasonable excuse why support was not sought earlier;
- b) the conduct of the spouse being asked to pay support;
- c) the circumstances of the recipient spouse; and,
- d) if the award will visit any hardship upon the payor.

Kraft v. Kraft, 2018 BCSC 496 (citing D.B.S.)

[110] No factor is decisive and the court should consider the matter from a holistic perspective: *L.W. v. F.W.*, 2018 BCSC 1924 at para. 144 [L.W.].

[213] In determining whether a retroactive award is due, the focus is on whether the reason provided by the party seeking a retroactive award is understandable: *Legge v. Legge*, 2021 BCCA 365, at para. 111.

[214] Once a court has established that a retroactive award is due, the court must determine the date to which the award should be retroactive. The choices include: the date when an application is heard (in this case, the date of trial); the date when formal notice was given (the date on which Ms. Hunt's notice of family claim was served); the date when effective notice of an intention to seek a retroactive award is given; and the date when the amount of child support should have increased. As a general rule, the date of effective notice is the default option: *D.B.S.*, at paras. 119 - 121.

- [215] In applying the D.B.S. factors I have little difficulty concluding that Ms. Hunt is entitled to retroactive spousal support. She has provided a reasonable and understandable excuse for not seeking such support until she filed her notice of family claim. She was suffering financially after being, in her words, financially abandoned by Mr. Hunt after their separation in 2015, she was dealing with a number of physical and psychological health conditions after this date which further impacted her ability to apply for such support - including by family violence, including the 2018 battery.
- [216] I am not satisfied that the period of retroactivity should be extended back to December 2015, as is sought by Ms. Hunt. Although I find that Ms. Hunt's explanation why she did not make an application for spousal support within the first years after separation understandable, it becomes less so as the years progressed. In my view, there is insufficient evidence upon which I can conclude that Ms. Hunt could not reasonably have applied for spousal support after approximately November 2019. This is the last time that Ms. Hunt says she suffered family violence from Mr. Hunt.
- [217] I am conscious of the reasons in D.B.S. that in most cases, it is inappropriate to make an award retroactive to a date which is more than three years before formal notice is given to the payor parent: D.B.S. at para. 123. I find that Ms. Hunt is entitled to retroactive support from the period commencing January 1, 2019 - approximately three years prior to formal notice being given when Ms. Hunt commenced this family claim.

Quantum of Retroactive Spousal Support

- [218] Ms. Hunt has provided DivorceMate calculations for 2020 to 2023, made applying a "without child formula" based on an imputed guideline income for Mr. Hunt of \$120,000 for each year and for her, based on her income reported for tax purposes. The court has completed a without child DivorceMate calculation for 2019.
- [219] The DivorceMate calculations indicate that monthly spousal support payable by Mr. Hunt for 2019, at the high end of the range, is \$ 2,260; \$2,523 for 2020; \$2,072 for 2021; \$2,059 for 2022 and for \$2,150 for 2023. Assuming that the same support paid in 2023 is payable in 2024 this results in a calculation of retroactive spousal support of \$141,368, for the period January 1, 2019 to April 30, 2024.
- [220] Ms. Hunt's evidence of her pre-trial earnings at trial was not shaken during her testimony at trial. During her cross-examination Mr. Hunt sought to elicit testimony that Ms. Hunt earned additional income by selling garden items, bread and kombucha at farmers markets through an artisanal food products sole proprietorship she owned called St. Mary's Spring Estate Farm. I accept Ms. Hunt's testimony that after setting off costs she never earned any income from these activities.

- [221] Mr. Hunt did not file an updated financial statement before trial despite being ordered to do so. Ms. Hunt tendered Mr. Hunt's 2012 Notice of Assessment into evidence which showed that he earned approximately \$120,000 in 2012. She submits that guideline income of \$120,000 should be imputed to him based on his historical earnings.
- [222] During his cross-examination Mr. Hunt was evasive regarding his historical income. He testified that he earned between \$0 and \$130,000 in the three years prior to the parties' separation in December 2015. The evidence does not support his ever making \$0 during this period of time. In response to questions from the Court, Mr. Hunt testified that the most he ever earned prior to 2015 was \$135,000 and that he made \$154,000 working for Fleur in 2023. His testimony regarding his 2023 income is corroborated by his pay stub from Fleur which was put into evidence at trial, which shows year to date earnings to July 8, 2023 of \$75,995.
- [223] Section 19(1) of the Federal Child Support Guidelines, SOR/97-175 provides that a court may impute income to a spouse as it considers appropriate in various circumstances. Of relevance in this case is subsection (f) which allows the court to impute income where a spouse has failed to provide income information when under a legal obligation to do so.
- [224] In this case, I find that Mr. Hunt has failed to provide information with respect to his recent earnings. Although he claimed at trial that relevant earnings documentation is with his previous counsel he has not provided a satisfactory explanation why he has not been able to obtain these documents from his previous counsel or to gather documents from his employer, bank and Canada Revenue Agency.
- [225] Mr. Hunt has testified that he earned \$154,000 in 2023 and the evidence establishes that in previous years, although it is not clear how many, he earned between \$100,000 and \$130,000. Some deduction from his total income is required for payment of union dues. I find that Ms. Hunt's submission that income of \$120,000 per year should be imputed to Mr. Hunt for the three year period before trial to be reasonable. I impute this amount.
- [226] As a result, I find that Mr. Hunt is responsible for payment of retroactive spousal support to Ms. Hunt in the amount of \$141,368 for the period January 1, 2019 to April 30, 2024.

Quantum and Duration of Spousal Support Going Forward

- [227] As set out above Ms. Hunt is entitled to spousal support on a compensatory and non-compensatory basis. With respect to the amount of support it is necessary to determine the parties' current guideline incomes.

[228] The evidence at trial establishes that in 2023 Ms. Hunt earned \$6,516 per year in workers compensation benefits and \$37,368 in long term disability benefits from her employer's insurer - for a total of \$43,888. Ms. Hunt does not have a date to return to work and expects to be on permanent disability until she turns 65 and then will have to rely on CPP and a small municipal pension. She says that her medical and dental coverage will remain in place for two years from August 2023.

[229] I find Ms. Hunt's guideline income for support purposes for the period commencing, May 1, 2024 to be \$43,888. I impute guideline income to Mr. Hunt of \$120,000. I have imputed this amount in recognition of the fact that Mr. Hunt's income in 2023 may result or may reflect an anomaly, and in recognition of the fact that it is possible, given Mr. Hunt's work in the construction industry, that his income may fluctuate.

[230] Applying these amounts results in monthly spousal support going forward of \$2,093 per month.

[231] With respect to the duration of support as is set out at s. 8.5.4 of the SSAG, in general, the "length-of-the-marriage" test applies for longer marriages--that is, those of ten years or more. For marriages of 20 years or longer, as is the case here, support is generally awarded for an indefinite duration. I find that Ms. Hunt is entitled to indefinite support.

[232] The next question to be addressed is whether ongoing support should be paid on a lump sum basis.

Is lump sum spousal support appropriate in this case?

[233] Section 15.2(1) of the Divorce Act permits an order for spousal support in the form of a lump sum or periodic payments, as the court thinks reasonable.

[234] In *Parton v. Parton*, 2018 BCCA 273, at para. 48, the Court of Appeal stated that the factors discussed in *Davis v. Crawford*, 2011 ONCA 294 at paras. 60-69, apply in British Columbia when considering whether to order lump sum spousal support. Determining whether to order spousal support in the form of a lump sum payment requires weighing the "highly variable and case-specific" advantages and disadvantages, including of relevance:

a) Advantages:

i. terminating ongoing contact or ties between the spouses;

ii. relieving against financial hardship;

iv. ensuring adequate support will be paid in circumstances where there is a real risk of non-payment of periodic support, a lack of proper financial disclosure, or where the payor has the ability to pay lump sum but not periodic support; and

v. immediately satisfying an award of retroactive spousal support.

b) Disadvantages:

- i. the real possibility that the means and needs of the parties will change over time, leading to the need for a variation;
- ii. the fact that the parties will be effectively deprived of the right to apply for a variation of the lump sum award;
- iii. the payors ability to make a lump sum payment, possibly undermining their future self-sufficiency; and
- iv. the difficulties inherent in calculating an appropriate award of lump sum spousal support where lump sum support is awarded in place of ongoing indefinite periodic support.

(Davis at paras. 67-68; Parton at paras. 47-48)

[235] The court may also consider self-sufficiency and assisting a payee spouse to achieve an appropriate standard of living: Robinson v. Robinson, 2011 BCSC 1489 at para. 103, aff'd 2012 BCCA 497.

[236] An order for a lump sum payment should not be used for the purpose of redistributing assets; however, it may have this effect: Davis at paras. 60, 62.

[237] The character of the assets from which the payor spouse may use to pay a lump sum spousal support order, being family, excluded or other property, is irrelevant: Parton at para. 78. The focus of the analysis is the purpose of spousal support, along with the advantages and disadvantages of the order.

[238] In this case, I find that it is appropriate to make an order for spousal support going forward on a lump sum basis. Given the toxic relationship between the parties and the history of family violence it is appropriate to minimize the requirement for ongoing contact between them. In addition, it is my understanding that Ms. Hunt wishes to remain in the family residence. A lump sum award for spousal support will allow her to do so and will reduce or eliminate a requirement that she obtain financing to purchase Mr. Hunt's interest in the family home, which given her assets and current earnings she would be unlikely to do.

[239] In addition, given that Mr. Hunt has not paid any support since the parties' separated and has not provided any explanation for not doing so, it can be inferred that he may refuse to pay on-going support.

[240] Finally, as noted above, Mr. Hunt has failed to provide relevant documents or information with respect to his earnings. Considered as a whole, these factors justify payment of spousal support on a lump sum basis.

[241] I am not satisfied that the negative factors, which I find include the possibility that the means and needs of the parties will change over time and the fact that both will be effectively deprived of the right to apply for a variation of the lump sum award, outweigh the factors in support of a lump sum award for support.

[242] The Court has completed a DivorceMate calculation for the purposes of determining lump sum spousal support, which is attached as Appendix A to these reasons. Based on this calculation lump sum spousal support for support going forward is \$197,551.

Conclusion on Spousal Support

[243] Based on the foregoing, and pursuant to s. 15.2(1) of the Divorce Act, I order that Mr. Hunt pay Ms. Hunt retroactive spousal support of \$141,368 for the period January 1, 2019 to April 30, 2024.

[244] I order that Mr. Hunt pay ongoing spousal support on a lump sum basis in the amount of \$197,551.

[245] In total Ms. Hunt is entitled to payment of spousal support, retroactive and prospective in the amount of \$338,919, which I find should be set off against Mr. Hunt's share of the value family property subject to division in this case.

[246] As set out above, Ms. Hunt's damages for battery (\$25,000) are also to be set off against Mr. Hunt's share of the value of family property. The set off amount totals \$363,919. Mr. Hunt's share of the value of family is \$189,421 resulting in a shortfall of \$174,498. In this case I am not satisfied on the available evidence that Mr. Hunt is able to pay the shortfall at this time.

[247] Section 170 of the FLA provides that an order for spousal support may require payments to be made periodically, annually or otherwise, for an indefinite or limited period or until a specified event occurs. Section 15.2(1) of the Divorce Act, provides that a court may order "such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse". In my view, it is open to this Court to order what is in effect hybrid spousal support.

[248] I order that Mr. Hunt pay partial lump sum in the amount of \$23,053 to be set off against his interest in the value of family property. In respect of the \$174,498 shortfall, I order that Mr. Hunt pay spousal support on the first day of each month in an amount calculated by the registrar, or by agreement of the parties, commencing May 1, 2024, until Ms. Hunt reaches the age of 65 years old. The registrar's calculation will have to account for inflation on \$174,498 - applying a discount rate of 1.75%.

Divorce and Protection Order

[249] I am satisfied that the conditions set out at ss. 10 and 11 of the Divorce Act are met in this case. As a result I grant the parties for application for a divorce order which pursuant to s. 12 takes effect 31 days from the date of this order.

- [250] Ms. Hunt seeks an order, pursuant to ss. 183 and 184 of the FLA, that the protection order of Justice Baird made June 8, 2022 remain in force without expiration. Justice Baird ordered, in summary, that Mr. Hunt be restrained from communicating with Ms. Hunt, not travel south of Port Clements except for specified reasons, not follow Ms. Hunt, not possess a weapon or firearm, and not be present in the Village of Massett on any Friday between the hours of 10:00am and 3:00 pm.
- [251] Subsection 183(2)(a) provides that such an order may be made if the court determines that family violence is likely to occur and the party seeking the order is at-risk. Subsection 183(3) (a) sets out the prohibitions which may be ordered which include restraining a person from communicating with or attending at or near the at-risk family member and prohibiting the possession of weapons. Section 184(1) sets out factors the court must consider in determining whether a person is at-risk. Relevant factors include the history of family violence and whether it is repetitive or escalating, evidence of a pattern of coercive and controlling behavior, the current status of the relationship between the parties, the at risk-family members perception of risks.
- [252] Ms. Hunt submits that the evidence establishes that Mr. Hunt knowingly breached Justice Baird's protection order on several occasions - including when he visited a friend in hospital, attending in court in Daajing Giids to lay a private information against Ms. Hunt (the details of the private information are not relevant), flying into Masset on several occasions.
- [253] I am satisfied that Ms. Hunt continues to perceive herself to be at risk as a result of the history of family violence in this case, and Mr. Hunt's failure to abide by the protection order imposed by Justice Baird. I am not satisfied that it would be appropriate to impose a protection order as broad as that imposed by Justice Baird in June 2022 - closer to the time when this family law action was commenced.
- [254] Mr. Hunt resides and works on Haida Gwaii and it would be unduly restrictive to continue, in perpetuity, the geographical restrictions imposed by Justice Baird. I order that Mr. Hunt is prohibited from being on the backroad access to the family residence (or subsequent residence of Ms. Hunt) and except in an emergency situation, that he be prohibited from stopping anywhere along the highway within 1km of such residence. As well I find that Mr. Hunt should be required to stay at least 100 meters away from Ms. Hunt and should immediately leave any place that she may be, should he inadvertently encounter her.
- [255] I am not satisfied that the basis for a prohibition against Mr. Hunt communicating with Ms. Hunt by for example, email or telephone, is made out in this case and decline to make such an order. Mr. Hunt should be aware that it remains open to Ms. Hunt to seek such an order in the future.
- [256] There is no evidence that Mr. Hunt has ever threatened Ms. Hunt with a weapon or has a history of violence using weapons. I decline to order a weapons prohibition.

Conclusion

[257] In summary, I make the following orders in this family case:

- a) Mr. Hunt shall pay Ms. Hunt general damages for the batteries which I have found occurred in May 2001 and October or November 2018 in the amount of \$20,000 and aggravated damages for such batteries in the amount of \$5,000 - to be set off against Mr. Hunt's share of the value of family property;
- b) Ms. Hunt's claims for punitive damages, future loss of earning capacity, cost of future care, special damages and an amount under the Healthcare Costs Recovery Act are dismissed;
- c) Ms. Hunt's claim for retroactive child support for the parties' adult child is dismissed;
- d) The value of family property subject to division between the parties in this case is found to be \$595,632. Ms. Hunt's application for an order that the value of this family property be divided unequally is granted - with Ms. Hunt being apportioned \$406, 231 and Mr. Hunt being apportioned \$189,421.
- e) Ms. Hunt is awarded retroactive spousal support in the amount of \$141,368 and lump sum spousal support going forward in the amount of \$197,551.
- f) Ms. Hunt's award for retroactive spousal support is to be set off against Mr. Hunt's share of the value of family property.
- g) Ongoing spousal support shall be paid on a hybrid basis with \$23,053 paid on a lump sum basis, to be set off against Mr. Hunt's share of the value of family property, and the remainder, \$174,498, paid on a monthly basis until Ms. Hunt is 65 - with the monthly amount to be determined by agreement or calculated the registrar.
- h) Mr. Hunt's pensions are to be divided or adjusted as set out above.
- i) A protection order is granted as set out above.
- j) The parties' application for a divorce is granted with the divorce to take effect 31 days from the date of this order.

[258] Now, I am going to make some additional comments. The court recognizes that there will be a second file or application to deal with the question of whether or not the transfer by Mr. Hunt of his interest in the family residence to Sarah Hunt was justifiable. I expect that the findings at a hearing or trial on that issue will have an impact on whether or not Ms. Hunt will be able to remain within the family residence.

[259] I recognize that Ms. Hunt is likely or at some point will be seeking an order that she be able to retain the family residence, but I am not going to make that order at this time. I think it is appropriate that that be dealt with at the time that a further application or trial is held to deal with the question of Sarah Hunt's interest in the family home.

[260] All right. Now, Ms. Wallace --

[261] BRENDAN HUNT: I have a question.

[262] THE COURT: I will ask you for your questions in a moment, Mr. Hunt, just stand by.

[263] Ms. Wallace?

[264] CNSL M. WALLACE: With respect to the order for lump-sum spousal support that's going to be paid on a periodic basis, my understanding is that if it's paid on a periodic basis, the CRA will tax that, will consider that taxable to Mr. Hunt -- sorry, taxable to Ms. Hunt and tax-deductible to Mr. Hunt, so the issue with using the lump-sum support calculator for that amount is that it -- when you do the lump-sum support calculator, it accounts for the tax neutrality.

[265] THE COURT: Okay. All right, I did not reference tax considerations. I represented -- sorry, I referenced essentially the loss that Ms. Hunt will suffer by not having that amount now, but rather being paid over time. But I agree with you, Ms. Wallace, I will modify my reasons to include that the tax consequences resulting from payments being made on a periodic basis will also have to be taken into consideration by the registrar in determining an appropriate amount of monthly support.

[266] The net effect of the payment of monthly spousal support should be that Ms. Hunt will receive \$174,000 just paid over time. Does that make sense?

[267] CNSL M. WALLACE: Yes. I think the issue with that is that when you calculate it, it will do -- okay, yes, I understand, because -- because of the purpose of -- of it being lump sum, I may be able -- I just don't know the answer if -- if there's some way of dealing with the tax effect of it, but --

[268] THE COURT: Well, you should go before the registrar. Let me just add this, all right, if there is any difficulty. This -- obviously some work will have to be done. The court was not in a position to do it at this time and it would not have been appropriate for the court to do that type of a calculation. It is going to require some calculation and perhaps the reference to some applicable law. If the registrar is unable to complete the calculation, then the matter may be brought back to this Court for decision. All right.

[269] CNSL M. WALLACE: Before yourself?

[270] THE COURT: Before myself. Okay, any other questions, Ms. Wallace.

[271] CNSL M. WALLACE: I'll draft the order once I have the written reasons, and -- but we'll -- could the signature of Mr. Hunt on the draft -- on the order be dispensed with?

- [272] THE COURT: I am not going to dispense with his -- this is a significant order, I do not think that is appropriate, but I am going to give him a period of two weeks to respond to the -- with any comments he has on the draft, and if he fails to respond then the requirement for his signature is dispensed with.
- [273] CNSL M. WALLACE: With respect to the order that Mr. Hunt be permitted to communicate with Ms. Hunt via -- I think you had said just generally he has to stay 100 metres away from her, but he can communicate with her, and on that, I guess if Mr. Hunt doesn't want to do that, because I'm not sure he wants to communicate with her either, could the court consider that as a consent order among the parties? I am concerned with him being able to communicate with her.
- [274] THE COURT: I am sorry, I am not sure what you are asking for. Are you asking -- are you asking if Mr. Hunt is prepared to consent to a prohibition against communication, whether by telephone or by email or other electronic means?
- [275] CNSL M. WALLACE: Yes.
- [276] THE COURT: All right, Mr. Hunt, do you have anything to say about that? Mr. Hunt? I do not see Mr. Hunt on the line anymore. He may have dropped off.
- [277] THE CLERK: My apologies, Justice. It looks like he has just left the meeting.
- [278] THE COURT: Okay, that is fine. So my -- he is not here, Ms. Wallace, so I am not going to amend my order, but I will clarify that Mr. Hunt is able to communicate with Ms. Hunt by telephone, or he is not prohibited, rather, from communicating with Ms. Hunt by telephone or electronic means.
- [279] So I suppose -- are you asking me if Mr. Hunt could be 100 metres away and yell at Ms. Hunt as a way to communicate?
- [280] CNSL M. WALLACE: No, I was asking if he doesn't want to communicate with her by telephone or by electronic means, then the parties could come to a variation of your order by consent, because I don't recall hear -- anyway, your order is -- your order is your order. I just know that that is going to be very concerning to Ms. Hunt that he can now communicate with her.
- [281] THE CLERK: Sorry, my apologies again, Justice. Mr. Hunt is just trying to enter the meeting again, so I am going to admit him.
- [282] THE COURT: Thank you. All right, Mr. Hunt, did you have a question?
- [283] BRENDAN HUNT: Yeah, the tax implications of money being paid, should that not be heard by both sides?
- [284] THE COURT: I am not sure what you mean.

- [285] BRENDAN HUNT: Well, you ordered a lump-sum payment, but I wasn't aware there was a tax implication. That's like why would I want to pay taxes on money I'm giving away.
- [286] THE COURT: No, the -- what Ms. Wallace had raised as an issue is -- and she has a good point, which is that if you were paying periodic -- if you were paying monthly spousal support going forward, that it is tax deductible for you and --
- [287] BRENDAN HUNT: Yeah, well, as it should be.
- [288] THE COURT: Hang on.
- [289] BRENDAN HUNT: And if I have to pay it in a lump-sum it's tax deductible for her and that's not right.
- [290] THE COURT: No, it is not. It is not, Mr. Hunt, because the lump-sum calculation is effectively tax neutral, in that it reflects the mid-point in -- no, I will just leave it at that, all right.
- [291] BRENDAN HUNT: But that wasn't -- the question that I had was I noticed somewhere in these proceedings that they were after the Co-op account money too, and I don't think that was addressed.
- [292] THE COURT: My order was that Ms. Hunt is able to keep that money. That -- incorporated as an order from the court. Any other questions, Mr. Hunt?
- [293] BRENDAN HUNT: No.
- [294] THE COURT: All right, Mr. Hunt, Ms. Wallace asked whether or not you -- I think you were off the line, you would be prepared to consent to an order that you not communicate in any way with Ms. Hunt, including by -- by telephone, cellphone, or electronic means. Are you prepared to consent to that order?
- [295] BRENDAN HUNT: Well, I have no intention of communicating with her. One question that I had was suppose I want to go to a festival and she's at the festival, and like I get there first, or a dance or something, like how does that work? Am I driven away? Is there -- should there not be some sort of -- like it's a very small island and these things are going to pop up constantly, and a hundred metres away, like that's -- that's reasonable if I'm going there to cause an issue or something, but if I'm just at a festival and there's only 200 metres at the festival, or 50 metres maybe, like that's -- it needs to be sorted out in an order of this magnitude, right?
- [296] THE COURT: Well, Mr. Hunt, the requirement is that you are not to be within 100 metres of Ms. Hunt and if you encounter her, then you are required to leave.
- [297] BRENDAN HUNT: But that does the same thing as not letting me go to any festival or restaurant or anything like that. That's blatantly unfair. There has been zero issues. No intention --

[298] THE COURT: Okay --

[299] BRENDAN HUNT: You're asking me to consent to an order not to communicate with her. I have no desire to communicate with her. You know, but you're -- I'm asking you guys for the ability to go and have a life on the islands, that's a very, very big point.

[300] THE COURT: Mr. Hunt, Mr. Hunt, I do not want to -- I do not want to get into a fine-strokes drafting exercise here, all right, but I will provide one further clarification, all right. If you are sitting in a -- if you are sitting in a restaurant and Ms. Hunt walks in, you are not required to get up and leave. If Ms. Hunt is in a restaurant and you walk in, you have to turn around and walk out the door.

[301] BRENDAN HUNT: Yeah, I can understand that, and does that apply for like other places too, not just restaurants?

[302] THE COURT: Well, no, because it is not practical to determine who got there first in the case of a public festival. I mean --

[303] BRENDAN HUNT: Well, I'm thinking more about mutual friends' houses, right, like 'cause there's places I haven't been able to go for a while and people that want me to do work on their houses.

[304] THE COURT: Again, Mr. Hunt --

[305] BRENDAN HUNT: So if I'm working on a house --

[306] THE COURT: All right, let me -- could you stop. Where it is easily and readily ascertainable as to whether or not you got there first or Ms. Hunt got there first, all right, if you arrive first in situations that you described and Ms. Hunt arrives, then she has the option of or leaving or she has the option of staying. The choice is always hers. She does not have to leave if she does not want to. If Ms. Hunt was there first and you arrive, in those circumstances, then the court order will require you to turn around and leave.

[307] BRENDAN HUNT: Yeah, okay. That's an important clarification because I'm not looking for issues, but I do want to go and visit people I haven't seen --

[308] THE COURT: All right, Mr. Hunt, I will say one thing. I expect that you will not play games with this circumstance. It would be -- if you are not complying with certainly the spirit of this order and in particular the terms of this order, the matter can come back before the court. There is a long history of negative interactions between the two of you when you are together, right, so I -- I trust this will not be a game, right, and situations will not be set up, you know, where one person or the other is put in a compromising situation.

[309] I think that is enough. Any other questions from you, Mr. Hunt?

[310] BRENDAN HUNT: No.

[311] THE COURT: Okay. Ms. Wallace, anything to follow up on that?

[312] CNSL M. WALLACE: No.

[313] THE COURT: So Ms. Wallace, I would ask you to incorporate this, the clarifications, in the term of the order, all right, to make it -- the clarifications --

[314] CNSL M. WALLACE: So that is part of the order. Okay, I do think I need more clarification on that, because I -- so if it is easily and readily ascertainable as to who arrived at the location first --

[315] THE COURT: Yes.

[316] CNSL M. WALLACE: -- then the second person to arrive will leave. Like this is on -- will leave the location.

[317] THE COURT: Will leave the location, but Ms. -- again, Ms. Hunt does not have to leave if she chooses not to. The choice is hers. If Mr. Hunt is the second person, then Mr. Hunt will be required to leave. Okay.

[318] BRENDAN HUNT: May I ask a question about that? Can I see what she drafts up before it's made as an order?

[319] THE COURT: I have asked her to send it to you, Mr. Hunt.

[320] BRENDAN HUNT: Okay, thank you, and then -- appreciate it.

[321] THE COURT: You only have two weeks to respond with any legitimate concerns you have regarding the draft form of order, and if you do not respond within that period of time, then Ms. Wallace can send it into the court for [indiscernible/videoconference] by me without your signature.

[322] BRENDAN HUNT: Okay. So the -- the official order is -- okay, so potentially two weeks from now or how does that go?

[323] THE COURT: There are two things. I just delivered reasons for judgment, those will be --

[324] BRENDAN HUNT: Yeah.

[325] THE COURT: Those will be printed and distributed. I am going to anonymize them. No one has asked, but the court on its own motion thinks it would be appropriate, given some of the allegations in this case, that the decision will be anonymized. Ms. Wallace, unless you disagree, it is my intention to do so, with initials.

[326] CNSL M. WALLACE: Yes, I understand. I have not sought those instructions from my client. I would like to ask her.

[327] THE COURT: All right, what I ask you to do then is to seek those -- obtain those instructions and advise the court. I do not -- if Ms. Hunt wants her name to be published, then I am not going to stand in the way of that either. I am assuming that she might not want that to be the case and might want initials to be published. But you are right, so fair enough, I will reserve making a decision as to whether I am going to anonymize these reasons or not. Sometimes it happens in family judgments, often it happens, but it does not always.

[328] CNSL M. WALLACE: Okay, and then in order to get that matter before you, would you want me to just do that by like a requisition or bring an application?

[329] THE COURT: Not a requisition or application. If you can just simply -- I am directing you to write to the registry and ask them to pass on correspondence indicating what -- essentially it will be a submission as to whether or not Ms. Hunt wants her name to be anonymized, okay.

[330] CNSL M. WALLACE: Thank you.

[331] THE COURT: All right, thank you.

"Mayer J."

Appendix

[1] The cases cited by Ms. Hunt include: *Olson v. Farran*, 2016 BCSC 1255, *Seymour v. Nole*, 2022 BCSC 867, *Jantzi v. Moore*, 2020 BCSC 1489, *Rattan v. Li*, 2022 BCSC 648, *Hewitt v. Tang*, 2023 BCSC 580, *O'Grady v. Virk*, 2023 BCSC 48, *Grewal v. Grewal sub nom J.K.G. v. T.S.G.*, 2005 BCSC 143, *S.C. v. I.E.W.*, 2023 BCSC 1653, *N.C. v. W.R.B.*, [1990] O.J. No. 3633 and *Bird v. Kohl*, 2012 BCSC 1424.

[2] The Divorce Act used the term "child of the marriage" and the FLA uses the term "child". The definitions of child in these statutes are for all intents and purposes indistinguishable. I use the term child of the marriage throughout these reasons.

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