
CANADA / JUDGMENT

J.S.R. v. P.K.R.

2017 BCSC 928

COURT

Supreme Court of British Columbia

DECIDED

5 June 2017

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2017 BCSC 928 J.S.R. v. P.K.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.S.R. v. P.K.R.,

2017 BCSC 928

Date: 20170605

Docket: E042468

Registry: New Westminster

Between:

J.S.R.

Claimant

And

P.K.R.

Respondent

Before: The Honourable Madam Justice E.A. Arnold-Bailey

Reasons for Judgment

Counsel for the Claimant:

Pawanjit S. Joshi

Counsel for the Respondent:

Sumandeep Singh

Place and Dates of Trial/Hearing:

New Westminster, B.C.

July 6-10, 2015

December 14-18, 2015

February 10-12, 2016

February 26, 2016

May 24-25 and 29, 2016

November 29, 2016

January 4, 2017

Place and Date of Judgment:

New Westminster, B.C.

June 5, 2017

Introduction

- [1] This is a family law action where the issues are division of property and debt, retroactive and prospective spousal and child support, and parenting and guardianship arrangements for the parties' two children. A divorce order was granted on May 25, 2016, to take effect on the 31st day after the making of the order.
- [2] J.S.R. ("the Claimant") and P.K.R. ("the Respondent") married on June 9, 2002, in Surrey, BC, in an arranged marriage that was followed by a Sikh religious ceremony on September 21, 2002. They have two sons, H.R. ("H.") born March 18, 2006, and A.R. ("A."), born March 23, 2009. H. is presently 11 years old and A. is eight years old. The parties separated the first time on October 2, 2012, reconciled in July 2013 and lived together until May 8, 2014, when they separated again. They have remained separate and apart since May 8, 2014.
- [3] This is an unfortunate case in many respects. The parties' versions of key events are diametrically opposed. Much trial time was taken up with disputes about financial matters during the marriage, and the history of the parties' predominantly unhappy relationship. Serious allegations of family violence were made by the Respondent against the Claimant. The children have been subjected to a very difficult home environment, and they have paid a high emotional price for their parents' destructive relationship. The end result is that H., the oldest child, wants nothing to do with his father, the Claimant, and all efforts to change that have been fruitless. Whereas A., the younger child, remains emotionally torn as between his parents, but is also reluctant to spend much time with his father. A. remains very close to his older brother, who is also very close to him.

- [4] Because the parties and most other witnesses required the services of a Punjabi-speaking interpreter this trial took a very long time, and had to be conducted in segments. It was initially set for five days, but took a total of 16 days between July 2015 and May 2016. This was followed by two further appearances. Counsel appeared to update the Court on November 29, 2016, with regard to the outcome of family reunification therapy that took place in the summer of 2016. Thereafter, on January 4, 2017 the Court interviewed both of the children.
- [5] Efforts to improve relationships within the family, in particular between the Claimant and the parties' eldest son, H., have failed. Prior to the trial Master Caldwell ordered the younger son, A., to live with his father for a period of time before it was agreed during the trial that he return to live with the Respondent and his older brother.
- [6] The parties have expended a great deal of their modest means on this litigation, including legal fees, a s. 211 report, an updated views-of-the-child report, and costly family therapy in 2016, all without appreciable benefit. Their sole significant asset, the family residence, was sold pursuant to an order of the Court in the face of imminent foreclosure, and the net proceeds remain in a lawyer's trust account. The Respondent stated that she suffers from depression. Although she qualified as an insurance agent in 2014, and received a minimal income in 2015 from policies written in 2014, the Respondent has not worked outside the home since 2014 except for hourly employment with Tim Hortons from March to October, 2015. Timely disclosure of information relevant to the parties' finances, on the part of the Respondent in particular, was not forthcoming and was ordered in the first several days of trial in order to not have the matter further delayed. The Claimant has also had some serious health issues in the past.

The Date of Separation and the Pleadings

- [7] When the matter came on for trial the Trial Record contained an Amended Notice of Family Claim, filed May 4, 2015; a Response filed September 10, 2014, and a Counterclaim filed by the Respondent September 10, 2014. No Response to the Counterclaim had been filed.
- [8] Prior court orders had not been entered and were not provided to the Court, despite the fact that Master Caldwell had extensive previous dealings with issues related to the parenting arrangements for the children, and a s. 211 report had been ordered and prepared by Mr. Robert Colby, a registered psychologist.
- [9] The original Notice of Family Claim was filed on behalf of the Claimant on November 6, 2012, and included reference to a separation date for the parties of October 2, 2012. Both these events preceded the coming into force of the Family Law Act, S.B.C. 2011, c. 25 [FLA] on March 18, 2013. The Claimant sought equal division of property under the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA].

- [10] The parties then reconciled in July 2013 and lived together until May 8, 2014, when they separated again. Thus, they resumed cohabitation for a period of time greater than 90 days, and I find that they cannot be regarded as having lived separate and apart since October 2, 2012, pursuant to s. 8(3)(b)(ii) of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) [DA]. This finding is also consistent with s. 83(1) of the FLA.
- [11] On July 18, 2014, the Claimant filed and served the Respondent with a Notice of Intention to Proceed with the action. He then filed an Amended Notice of Family Claim that included reference to a second separation date of May 8, 2014, under the schedule pertaining to divorce. On September 10, 2014, the Response filed on behalf of the Respondent was that she disagreed with the relief sought regarding property, and specifically referenced the relief sought by the Claimant for property under provisions of the FRA. On the same date she also filed a Counterclaim seeking orders respecting the children, spousal support, family property, and debt, including an order for the unequal division of property, and an order that the Claimant contribute to the mortgage payments on the matrimonial home, sign for a second line of credit, and provide information about money he transferred to India. All pertinent references to the relief sought by her refer to the FLA, not the FRA. No Response to the Counterclaim was filed on behalf of the Claimant.
- [12] At the outset of the trial the Court raised the matter of s. 252 of the FLA with the parties, which states:
- 252 (1) This section applies despite the repeal of the former Act and the enactment of Part 5 [Property Division] of this Act.
- (2) Unless the spouses agree otherwise,
- (a) a proceeding to enforce, set aside or replace an agreement respecting property division made before the coming into force of this section, or
- (b) a proceeding respecting property division started under the former Act
- must be started or continued, as applicable, under the former Act as if the former Act had not been repealed.
- [13] Despite what he stated in the Counterclaim, counsel for the Respondent indicated that he wished to proceed under the FRA as he was seeking reapportionment to the Respondent of family property, as opposed to equal division.
- [14] Counsel for the Claimant stated, despite there being two dates of separation in his Amended Notice of Family Claim, he relied on the Respondent's Counterclaim and the later separation date to bring the property issues, and presumably issues regarding the parenting of the children, under the FLA. To further confuse matters this Amended Notice of Claim sought relief regarding parenting arrangements under the DA, and at p. 5 referred to the "Family Relations Law Act", the DA, and then to the FLA at p.6.

- [15] In my view, without a separation date prior to the implementation of the FLA, given the parties reconciliation for a period of greater than 90 days, there is no triggering event during the period that the FRA remained in force. I find that the correct date of separation of these married parties is the later date of May 8, 2014. There cannot be two separation dates for different purposes in relation to the same parties.
- [16] Therefore, I find, given there is now no legally recognized separation date prior to March 18, 2013, when the FLA came into force, it would be incorrect to proceed under the FRA.
- [17] Pursuant to a ruling to this effect from the Court at the beginning of the trial, and then an order made on July 6, 2015, (the second day of trial) with the consent of the parties, the Claimant filed a Further Amended Notice of Family Claim on July 7, 2015, the Respondent filed a Response and a Counterclaim, and the Claimant filed a Response to the Counterclaim. The Claimant sought relief in relation to the children under the DA and the FLA.
- [18] At the commencement of the trial H. was living with his mother, the Respondent, and A. was living with his father, the Claimant, pursuant to an interim order made by Master Caldwell on May 25, 2015; and A. had one overnight each week with the Respondent and H. The Claimant was paying child support to the Respondent for H., and sought child support and an amount for s. 7 expenses from the Respondent for A.
- [19] In his pleadings, the Claimant seeks an equal division of family property and family debt as between himself and the Respondent. He also claims an interest in personal property in the possession of the Respondent, including property she held in trust for him, an interest in household contents, an interest in vehicles in the Respondent's name, co-owned by the Respondent, or in which she has an interest, an interest in all bank accounts other accounts and RRSP accounts belonging to the Respondent, an interest in disclosed and undisclosed assets, vested during the relationship or yet to vest in the Respondent, an interest in any gifts made directly or indirectly to the Respondent during the relationship or as discussed for the parties' future, and in addition, or in the alternative, an order regarding his claims in the property referred to on the basis of quantum meruit. He also seeks an order for compensation in relation to his share of personal property in the possession of the Respondent.
- [20] In addition, the Claimant seeks numerous declarations under the FLA, including declarations as to family assets, determinations of family property and debts pursuant to ss. 84, 85, and 86 of the FLA, an order restraining the Respondent from removing the children of the marriage outside of Lower Mainland region of BC, without the prior written and notarized consent of the Claimant or further court order, an order for disclosure of the Respondent's employment records, an order for an accounting and disclosure of financial records, and costs.

- [21] The Response filed on behalf of the Respondent disagreed with all the relief sought by the Claimant, except she did not indicate a position with regard to an order for divorce. In the Respondent's Counterclaim she seeks a determination of the Claimant's income for each year post-separation, retroactive spousal support and ongoing monthly spousal support for an indefinite period. She indicated that she believed the Claimant's annual Guidelines' income to be \$60,000. With regard to family property, the Respondent seeks an unequal division in her favour, specifying the parties' Surrey residence as a family asset, and claims an interest in property of the Claimant's properties in Spain and India.
- [22] With regard to "Other Orders" the Respondent sought to have the Claimant contribute towards monthly mortgage payments on the family residence, provide documentation regarding the money he transferred to India to pay off his parents' loan since the date of the marriage, determinations under the relevant sections of the FLA of family property, excluded property, family debts, and a determination of the value of family property and family debts, a s. 91 order restraining the Claimant from disposing of family assets, a s. 97 order to compensate the Respondent for any property disposed of or dissipated, a s. 97 declaration of ownership of property, an order for tracing and accounting, pursuant to the Court's inherent jurisdiction an order that "the Claimant shall compensate the Respondent of all the cost involved to have the Claimant [immigrate] to Canada", and an order for costs.
- [23] In the Claimant's Response to Counterclaim he indicates that he is paying child support, and his annual Guidelines' income is \$40,000, not \$60,000 as the Respondent alleges. He also indicates that he is paying spousal support to the Respondent of \$250 per month pursuant to the order of Master Caldwell made on June 1, 2015. He disputes the other relief sought by the Respondent, except he indicates that he is willing to pay child support based on a Guidelines' income of \$40,000.
- [24] A number of the claims articulated in the pleadings have not materialized at trial. This includes no viable claim by the Respondent to property said to be owned by the Claimant in India and Spain, as there is no proof of any such property.

Issues to be decided

- [25] The issues to be decided in this case in the order they will be addressed are:
1. Parenting arrangements and guardianship for the children;
 2. Child support, retroactively and prospectively, which includes a determination of the parties' Guidelines' incomes;
 3. Determination of family property and family debts, and with regard to the division of family property whether the division should be an unequal one in favour of the Respondent;
 4. Other claims by either party with regard to property or debts;
 5. Retroactive and ongoing spousal support payable to the Respondent by the Claimant;

6. The lack of timely disclosure and s. 213 of the FLA; and
7. Costs.

Prior Court Orders

[26] There were many pre-trial orders made in this case. I do not propose to set out the terms of all of them. Nor am I satisfied that all the orders made were actually drawn up and entered. However, to provide a context for matters between the parties as they stood at the time the trial commenced it is useful to briefly refer to some of them, as follows:

o On September 17, 2014, the parties' counsel appeared before Madam Justice Duncan at a Judicial Case Conference ("JCC"). Counsel for both parties may have been present, but the Respondent was not present as she was at a job training session. Her counsel was directed to communicate to the Respondent that she was to provide the Claimant with reasonable parenting time and advise the Claimant's counsel of parenting time for the Claimant by September 30, 2014. If that did not occur then the Claimant was at liberty to bring an application in chambers for reasonable parenting time.

o On October 16, 2014, Master Caldwell made an order that: the Claimant have parenting time with the children every Sunday from 9 a.m. to 1 p.m., the Claimant not consume alcohol or illicit drugs for a period of 24 hours prior to his parenting time with the children and submit to a breathalyzer upon the demand of the Respondent or her representative to be paid for by her; neither party to discuss the litigation with or in front of the children; neither party to remove the children from BC without the written consent of the other or further court order; and the Respondent "to pay costs for the preparation and hearing of this application to the Claimant, in the cause." I note that this is contrary to the clerk's notes and also to what the Master said according to the DARS recording.

o On November 5, 2014, the matter was re-scheduled before Master Caldwell by the Claimant, in view of an allegation that the Respondent had not complied with the October 16, 2014, order by not facilitating the Claimant's parenting time, and after hearing from the parties Master Caldwell made an order that the children be present outside the courtroom on November 10, 2014.

o On November 10, 2014, Master Caldwell met with the children and ordered that the children were to leave the court with their father, the Claimant, and then spend time with him, going for a visit to Toys R Us, lunch, and a particular movie, and then be returned to the Respondent between 5 p.m. and 6 p.m. the same day. The order included terms that for further visits with the Claimant no other relatives or guests were to be present, and the focus was to be on the Claimant re-establishing his relationship with the two children. The terms of the previous order remained in force except that the Claimant's parenting time on Sundays was increased by an hour, from 9 a.m. to 2 p.m. For visits the Claimant was to pick up the children at the Sikh Temple and drop them at their mother's residence. Other terms were made with regard to the parents' fostering a good relationship between the children and each parent, and refraining from discussing the litigation or making disparaging remarks about the other parent to or in front of the children.

Master Caldwell remained seized.

o On November 20, 2014, a Judicial Case Conference (JCC) was held before Mr. Justice Armstrong during which a number of consent orders were made. The Claimant was to pay the Respondent child support in the amount of \$630 per month each month on a "without prejudice basis", commencing December 1, 2014, and continuing each month thereafter. Other orders were made for financial disclosure, including both parties were to produce their full income tax returns for 2011, 2012, and 2013 by December 29, 2014; and the Claimant was to produce copies of his profit and loss statement for 2013 and 2014 by December 29, 2014. Each party was to provide credit card and bank records for 2013 and 2014. The parties' lists of documents were to be provided by December 29, 2014, with additional documents to be provided by January 16, 2015, and any application for further document production was to be made by February 28, 2015. I note that although no Guidelines' income was specified by Armstrong J. in this order as a basis for the monthly amount of \$630 in child support payable by the Claimant, I note that the monthly amount corresponds with an income of \$41,200 as per the federal child support tables for BC.

o On February 6, 2015, the parties agreed that the Claimant's application for parenting time should be adjourned to determine if a s. 211 report could be completed and by whom. Master Caldwell directed comments to H. that the Court order for parenting time with his father was to be complied with. The matter was then adjourned to March 13, 2015, but for some reason did not proceed. According to Mr. Colby, the psychologist who wrote the s. 211 report, on February 6, 2015, Master Caldwell ordered its preparation.

o On May 12, 2015, on application by the Claimant, Master Caldwell ordered that A. be removed from the care of the Respondent and placed in the full-time care of the Claimant until further order of the court, with the transition to occur on May 13, 2015. The Respondent was permitted to contact A. during two specified time periods by phone or Skype, and the Claimant's application was adjourned to May 25, 2015, back before Master Caldwell.

o On May 25, 2015, on application by the Claimant, Master Caldwell ordered that the Respondent was permitted to pick up A. after school on May 27, 2015, and drop him back at school on May 28, 2015. There was to be no discussion with A. regarding this litigation, and no negative comments were to be made by either party about the other. The Respondent was also permitted telephone or Skype access to A. on May 28 and May 30, 2015. The Trial Management Conference scheduled for June 1, 2015, was to be moved to Chilliwack to occur before Master Caldwell.

o On June 1, 2015, on application by the Claimant, Master Caldwell ordered that the parenting schedule made on May 25, 2015, was to continue until the school year ended, when A. was to have parenting time with the Respondent from Wednesdays at noon to Thursdays at 7 p.m., and her telephone contact with A. was to be on Mondays and Fridays between 5 and 5:30 p.m. Both parties were to make efforts to arrange for professional counselling for the children, preferably before the trial commenced. The Claimant was to have telephone contact with H. on Saturdays and Sundays for up to half an hour commencing at 6 p.m. The Claimant's Guidelines' income was to be fixed at \$40,000, and the Respondent's was fixed at \$18,000 for the purposes of child and

spousal support. The Claimant was ordered to pay the Respondent \$212 per month in child support, commencing June 1, 2015, and on the first day of each month thereafter until further court order. The Claimant was also to pay the Respondent \$250 per month in spousal support commencing on June 1, 2015, payable on the first day of each month thereafter until further court order. Both parties were to file updated Form F8 Financial Statements within two weeks. Costs were in the cause.

o On July 10, 2015, the fifth day of trial (of a total of five days set for trial when the trial had not completed), as the trial judge I made a number of orders with consent of the parties. A. was to spend additional parenting time with the Respondent, specifically Saturday July 11 and August 8, 2015, from 10 a.m. to 7 p.m. The Claimant was to take A. to his Punjabi lesson, swimming and library activities, and the Respondent was to provide the times and details. The parties agreed to list their former matrimonial home and to have joint conduct of sale, however if there were any problems with access to the home, or any action by either party to frustrate or delay listing it for sale, then the court would give one party sole conduct of sale. Each party was to provide their counsel with their choice of real estate agent, the lawyers were to flip a coin to see which agent got the listing, and the listing agreement was to be for 90 days. The proceeds of the sale were to be held in the trust account of the Claimant's counsel, Mr. Joshi, with the funds to be placed in a separate interest-bearing account. The parties were permitted to agree to an amount to be received by each of them from those funds. The sole listing agent was determined to be Mr. Karam Bath, and he was to provide the Respondent and other occupants of the house with 24 hours' notice of showings. The days when the Respondent was permitted to telephone A. were changed to Tuesdays and Fridays at the same times. The Claimant was to provide a phone number to the Respondent in order that she could contact A., and he was to facilitate this communication as soon as possible. A copy of the Claimant's personal notes as redacted by his counsel was to be provided to counsel for the Respondent by July 30, 2015. As the Claimant was under cross-examination and the trial had adjourned, he was not permitted to discuss his evidence with his counsel, but he was permitted to discuss matters related to the listing and sale of the house, and issues of concern with regard to the children. Both parties agreed that they would not discuss this litigation with the children, that neither would say anything unkind or disparaging to the children about the other parent, and that they would do their utmost to make the contact between the children and their parents occur smoothly and without any problems.

o On October 22, 2015, on application by the Claimant, Master Caldwell made a number of orders with regard to the sale of the family home at a sale price of \$720,000.

o On February 10, 2016, upon the resumption of the trial (following a further five days of hearing, December 14 - 18, 2015), and counsel and the Court receiving an updated views-of-the-child report from Mr. Colby, the Court ordered that commencing February 11, 2016, A.'s primary residence was to change back from the Claimant's to the Respondent's, by consent. The Claimant was to have parenting time with A. on Wednesdays from 2:30 p.m. until Thursdays at 8:30 a.m., with pick up and drop off at school unless the parties made other arrangement in advance. The Claimant, the Respondent, and the children were to engage forthwith in a reunification program

with the ReConnect Program, as directed by Robert Finlay, the cost of which was to be shared equally by the parties. If either party missed an appointment or session then that party was to be solely liable to pay for the missed appointment or session. Further, it was the responsibility of the Claimant and the Respondent, whoever had care of A. and H. that particular day, to make sure that A. and H. attended and participated in the reunification program.

o On February 11, 2016, the Court ordered, by consent, that from the proceeds of sale from the parties' matrimonial home be held in trust, the Claimant was to receive \$15,198.75 to reimburse him for money he paid to the psychologist, Mr. Colby for the s. 211 report, and the subsequent views-of-the child report. In addition, each party was to receive \$20,000 from the proceeds of the sale of the matrimonial home on "a without prejudice basis."

o On May 24, 2016, the Court ordered by consent that \$8,000 of the net sale proceeds of the parties' matrimonial home presently held in trust by the Claimant's counsel be paid to Bob Finlay of Finlay Counselling and Mediation Services Ltd. for counselling, assessment and a reunification counselling program, this cost to be shared equally between the parties.

o On May 25, 2016, (the last day of trial scheduled day for closing submissions) the Court ordered on an interim basis that the children, H. and A., continue to reside with the Respondent as their primary residence, pending a further update, and if necessary the receipt of further evidence as to the children's best interests, after their participation in family reunification therapy with both parents in Mr. Finlay's program. This order also provided that both parents had guardianship rights under the FLA, and each had the right to make decisions as necessary to deal with an emergency, advising the other parent of the same immediately. The Respondent had the final decision-making authority in relation to the children, with an obligation to advise the Claimant of any significant decision with which, if he disagreed, he could make an application to court. The Claimant's parenting time with A. remained as it was while school remained in session, and then over the summer the Claimant was to have A. in his care for one overnight per week to be agreed upon by the parties, from noon of one day to noon of the next day. The order included provision for the Respondent to take the children on vacation, provision for travel to the U.S. and parenting time for the Claimant with A. to be for two overnight periods once in July and once in August, with the additional day being added to the Claimant's weekly parenting time with A. on two occasions. Both parties agreed to follow up on and abide by any recommendations in relation to more or less parenting time as recommended to them by Mr. Finlay in the course of the family reunification therapy (to occur over the summer of 2016). The parties' counsel were to provide the Court with an update regarding Mr. Finlay and the reunification program by September 1, 2016. Within 14 days counsel for the Claimant was to provide the Court with any further final submissions in response in writing (due to a lack of time), with a copy to the Respondent's counsel.

o Also, on May 25, 2016, the Court granted an order of divorce to take effect on the 31st day after the date of the order.

The Evidence - A Summary and Findings

Approach

- [27] The Claimant testified in direct, cross-examination, and re-examination for six-and-a-half days, with the assistance of a Punjabi-speaking interpreter. His uncle, Pargan Sohal testified briefly as part of the Claimant's case. The Respondent also testified in direct, cross-examination, and re-examination for approximately six-and-a-half days with the assistance of a Punjabi-speaking interpreter. Her sister, Sarbjit Dhanoya, testified for almost a day.
- [28] There is, therefore, a very large body of testimony before the Court that I have carefully reviewed. The parties agree on the basic facts of their relationship in terms of its chronology. They agree that they often argued and had verbal fights. They do not agree about anything else. In particular, they disagree as to where monies spent came from and where money said to be family savings went with regard to many financial transactions. They disagree as to the value of some family property and the amount of family debts. They disagree as to whether the Claimant frequently consumed alcohol and became drunk. They disagree as to whether the Claimant engaged in physical violence when arguing with the Respondent or threatened to commit suicide. They disagree as to the nature of the Claimant's relationships and his level of involvement with the children. With this in mind, I move to set out the facts and will refer to some matters in dispute between the parties. Where the matters in dispute relate to family property or debt at issue I will deal with them when I address those issues.

The parties' backgrounds and marriage

- [29] The Claimant was born in India in June 1976. At the time of these reasons he is almost 41 years old. He received his Grade 12 in India in 1994, and then helped his father with farming until he went to Spain to work in 1998 with the assistance of a cousin. He worked there for about two years and returned to India in 2001 for about two months to attend a cousin's wedding. At that wedding he met his maternal uncle, Pargan Sohal, who lived in Canada. Mr. Sohal invited him to Canada to attend the wedding of another relative, and after returning for a time to Spain the Claimant received a visa to come to Canada for six months. He arrived on March 20, 2002, with 200 or 300 EUR in his pocket, and attended the wedding of his relative. The Claimant, with the assistance of Mr. Sohal, set about to find a woman in Canada to be his wife.
- [30] The Respondent was also born in India in December 1979. At the time of these reasons she is 38 years old. She immigrated to Canada with her parents in February 2000 when she was 19 years old. She was eligible to be married. She had worked outside the home at a potato farm, and had some personal savings.

- [31] The parties' marriage was an arranged one. There were meetings with a matchmaker, rounds of discussions, and each family made inquiries about the other through relatives in India. The plan was for the Claimant to marry here and remain in Canada. The Respondent and her family were looking for an observant Sikh man who was vegetarian, and who did not drink alcohol or use drugs.
- [32] There was an engagement ceremony in May 2002, and then the parties' legal marriage occurred on June 9, 2002. The Respondent sponsored the Claimant's immigration application, which was handled by a lawyer. The Respondent paid the lawyer's fees from her savings, in the amount of \$3,000. The parties did not begin to cohabit until after their Sikh religious wedding, which occurred on September 21, 2002. The Claimant's maternal uncle, Pargan Sohal, paid for a large reception in the evening. The parties then commenced living together in a basement suite in Mr. Sohal's house in Ladner where they lived for about a year.

Living with the claimant's uncle, Pargan Sohal, and his family in Ladner

- [33] Having worked before marriage, the Respondent returned to work a week after the wedding. She first worked for United Labour and for a catering company. Then she worked in a flower warehouse. She said that after October 1, 2002, they paid \$600 per month to Mr. Sohal for rent, living in an upstairs' bedroom. The Claimant, while waiting for authorization to work, said that he would attend work sites with his uncle and be paid in cash for work he did there.
- [34] According to the Respondent she was unhappy living with Mr. Sohal and his family as his daughters were unkind to her. In addition to working outside the house, she said she had to do all the housework and cleaning. She was not allowed to talk to her own family without others listening in. The Respondent wanted to move out but the Claimant told her to wait as he owed his uncle about \$25,000 to \$30,000 from the wedding. Mr. Sohal's evidence on this point was that he spent the money on the wedding and the Claimant returned some but not all to him. Mr. Sohal said the Claimant paid him back the big amounts but Mr. Sohal did not worry about the small ones. He estimated that the total was "maybe \$10,000, the party \$6,000" and then there were other expenses.
- [35] In my view the evidence about the Claimant's debt to the Mr. Sohal for the wedding relates only to whether the Respondent is entitled to more than an equal division of family property.
- [36] After living with Mr. Sohal and his family for about a year, the parties moved to a basement suite in a house in Surrey.

Living in Surrey 2003-2004

- [37] According to the Respondent their relationship was good during this period except when the Claimant would drink alcohol, in which case they would fight. The Respondent said that both the Claimant and Mr. Sohal had lied to the Court about how much alcohol the Claimant drank. The Claimant's alcohol consumption and intoxication from alcohol was a recurring topic in the Respondent's evidence, as she testified that on many occasions during their marriage the Claimant was drunk. The Claimant's answer to any and all such allegations was that he hardly drank any alcohol at all, taking only the occasional sip. Mr. Sohal said he did not know if the Claimant drank alcohol but he had offered him drinks.
- [38] In January 2004 the Claimant received his permanent resident status in Canada. The Respondent described an incident upsetting to her that occurred at the party with Mr. Sohal and other relatives, at Mr. Sohal's house in Ladner. The gathering was to celebrate the Claimant becoming a permanent resident. The topic arose as to how to get the Claimant's parents to Canada, along with his brother who was 23 years old at the time and was therefore, too old to come as a dependant. The Respondent said that it was suggested that she divorce the Claimant, and then marry and sponsor his brother. This upset her greatly. She said she would not do that. She said that Mr. Sohal's daughters laughed at her, accused her of not fitting into the family, and said that she was ugly. They said other insulting things to her. She sought the Claimant's assistance to leave, but when she approached him his uncle said that the Claimant did not need her anymore now that he was a permanent resident. The Respondent said she started to feel "a bit unconscious" and fell down. When she regained consciousness ambulance attendants were trying to talk to her and her sisters arrived and took her and the Claimant home. Her younger sister, Ranjit, drove their car home and she and the Claimant went home with her older sister, Sarbjit Dhanoya. The Respondent said that the Claimant was drinking alcohol on that occasion, and the next day he apologized to her and her sister, saying that he was sorry for drinking.
- [39] In their testimony both the Claimant and Mr. Sohal denied that this incident occurred as described by the Respondent. In particular, they both say that an ambulance did not attend. The Respondent's sister, Sarbjit Dhanoya, testified in some detail about this event, including about being called by Mr. Sohal's grandmother to go and help the Claimant and the Respondent who were fighting. She drove there with another sister and found the Respondent lying down. She understood the Respondent to have fainted. Ambulance attendants were there but left when they understood the Respondent to be alright. Ms. Dhanoya said she drove her sister and the Claimant home.

- [40] Considering the nature and quality of the testimony of the witnesses regarding this incident, I find the evidence of the Respondent and Ms. Dhanoya to be credible and reliable. In particular, Ms. Dhanoya's evidence on this point was clear, cogent, and infused with relevant detail. The evidence of the Claimant and Mr. Sohal, which amounts to a vague denial of the entire event, is not. The Respondent's account of this incident does not damage her overall credibility as the Claimant's counsel has suggested.
- [41] Once the Claimant had his permanent resident status, he was keen to sponsor his parents to come to Canada. Both the Claimant and the Respondent were required to sponsor the Claimant's parents, and they filled in the papers to do so in 2004.
- [42] The Claimant provided tax return summaries for 2003 and 2004 that indicated his line 150 income for each year to be \$10,528 and \$38,584, respectively. The Respondent said that the Claimant's 2004 income included about \$8,000 in false income from a pizza business to make it appear larger, in order to meet the required amount to qualify to sponsor for immigration purposes.
- [43] The parties decided to relocate to Calgary, but first they took a trip to India in February 2005 for about two months to visit family, and for the Claimant to attend to some family business. The Respondent said that she purchased their tickets to go to India, using her own Visa card.
- [44] Both the Claimant and the Respondent agreed that the Respondent looked after the family finances.

The trip to India

- [45] In relation to this family business the Respondent said the Claimant's parents owed other relatives money and property in India was to be divided to pay the debt. She said the Claimant had told her he owed money to his cousin, Jagdev Johal, in Spain. The Respondent said while they lived in the basement suite in Surrey she would take calls from Jagdev Johal in Spain, who wanted the Claimant to repay him the money he had loaned to the Claimant. The Respondent said that the Claimant sent money to him via a cousin who lived in Toronto.
- [46] When they were in India land owned by the Claimant's father and the father's brother was divided to repay the Claimant's father's debt. Jagdev Johal was there, and the Respondent said the Claimant and Jagdev had a meeting and "did an accounting". She produced a piece of paper with writing and figures on it (Exhibit 34), which she said the Claimant gave her after the meeting which he told her to keep safe so that Jagdev did not ask for more money. The Respondent reviewed this paper in court, said to be in Jagdev's writing. It contained various notations in Punjabi, referred to different currencies and to people by their nick names.
- [47] The Respondent said that when she saw this paper she became very stressed and questioned the Claimant about how many people he owed money to, and how much his debts were. She said that they had already repaid Pargan Sohal, done the accounting to settle his parents'

debts, and then this substantial debt to Jagdev Johal arose. According to the Respondent, the Claimant's debt was 353,000 rupees in total. The Claimant told her he was planning to go back to Canada and work hard to pay off this debt. Upon returning to Canada the Respondent kept the paper in a binder with other important papers. In cross-examination the Respondent said the Claimant repaid this debt that amounted to \$10,000. When asked what had happened to the money the Claimant earned from 2003 to 2005, she said it went to pay these debts.

- [48] The Respondent also produced documents in relation to a Western Union account from which, between 2006 and 2008, the Claimant sent a total of \$1,280 to his brother in India.
- [49] In cross-examination the Claimant was asked whether he owed his cousin, Jagdev Johal, in Spain some money to repay a loan, and was shown a transfer of money to him, sent by a "Singh J." produced by the Respondent (Exhibit 33). The Claimant said that in 2004 he was using Singh as his last name, but he did not know whether he was this "J. Singh" or not. This document has Jagdev's address in Spain on one side and a bank document transferring \$3,000 through an Indian currency exchange on the other. There was a second transaction record between the same parties date stamped August 18, 2004, for \$3,000. The Claimant said he was sure he did not owe Jagdev Johal any money, and there was no loan. However, he said it was possible that he would have handed that money over to the Respondent, and "if I sent it", it was not to repay a loan. As to whether he could have sent these two amounts to someone from his account, the Claimant then said it could be possible. He also said at one point that he did not recall if he sent money to Spain.
- [50] I find the Claimant's testimony on this point to be evasive and unreliable. Clearly he directed the Respondent to send money to Jagdev Johal for whatever purpose. Otherwise, there would be no reason for the Respondent to be sending their family funds to Jagdev Johal. Its only relevance must be to the Respondent seeking an unequal division of family property in her favour.

The move to Calgary and life there - April 2005 to the end of 2009

- [51] Upon their return from India the parties moved to Calgary in April or May 2005. Both the Claimant and the Respondent got jobs on arrival. He found a job as a framer in several days. She started working in a bakery, and also in a cleaning job. Next, the Claimant worked in a window factory, and in about August 2005 he got his Class 1 driver's licence and started to drive long haul trucks. According to the Respondent, it took the Claimant about three months to get his Class 1 licence during which he was not working at any kind of job. He had to drive with someone else for about two months and then in about December 2005 he was able to drive a truck on his own.

- [52] The Respondent's line 150 income for 2005 was \$20,444.62. In that tax return she pointed out a T4RSP withdrawal of \$3,017.35 that she said was money from before the marriage. She also pointed to a T5 with interest paid to her on two one year GICs at a branch of the Royal Bank in Delta, BC.
- [53] In Calgary the parties first lived in a basement suite with the Respondent's mother and brother. The Claimant said that he and the Respondent split the rent and living expenses equally with the Respondent's mother and brother. The Respondent said that they did not pay rent to her mother, and for most of that time the Claimant was training to become a truck driver, and was not working. He had debts and no income.
- [54] The Claimant said the Respondent looked after the family finances, and he gave her his pay cheques.
- [55] The Respondent said that it was her idea to buy a house in Calgary. She had two GICs, one was for \$15,000 and the other for \$17,000, that were part of her pre-marriage savings, which she said were between \$35,000 and \$40,000.
- [56] She had worked two jobs from when they arrived in Calgary in April 2005 until November 2005, when a doctor told her that she ought not to continue working as she was pregnant.
- [57] The Claimant described the purchase of the Calgary house. He said it was purchased in about 2006 for about \$243,000. They paid between \$20,000 and \$25,000 down and got a mortgage for the balance. In relation to the down payment he said they borrowed about \$10,000 from a friend and gradually repaid it. He confirmed that this house was in both their names.
- [58] The Respondent's testimony was more precise. She said she found a house for sale for \$232,789.05 and went and looked at it. Then she and the Claimant went and looked at it. In evidence there are two cheques she signed, one in June 2005 and the other in July 2005 as a deposit on the house. They total \$18,000 and the cheques are written on the parties' joint account. To get the funds the Respondent said she had to transfer all her money into that account from the Metro Credit Union in Surrey, BC. The mortgage funds were \$212,382.36. The statement of adjustments (Exhibit 18) shows a deposit of \$18,000, the mortgage funds in the amount of \$212,382.36, and that a further amount of \$17,364.58 was required to close. The Respondent claims that the deposit and the cash to close, which total \$35,364.58, were paid from her pre-marriage savings.
- [59] The Claimant disputes this. He maintains the Respondent had separate accounts, and that she would deposit their savings into those accounts. Then when they needed money they would withdraw it from these accounts. He said the family savings included his money, and that it was from these savings that the funds needed to complete the house purchase came from, combined with the friend's loan of \$10,000.

- [60] I find that I accept the testimony of the Respondent on this point over that of the Claimant. Having lived as they did after their marriage, first with the Claimant's uncle in Ladner and then in the basement suite in Surrey, followed by their trip to India and relocation to Calgary, combined with the Claimant not being legally able to work until January 2004, and then training as a truck driver, it is highly unlikely that their family unit since marriage had accumulated sufficient funds to come up with \$35,364. This is particularly so when one considers their living expenses and the Claimant's other financial obligations to his uncle and others. These circumstances tend to support the Respondent's account of where the funds came from. In addition, her T5 interest for two GICs included in her 2005 income, and the fact that she paid the fees for the Claimant's immigration lawyer provide additional evidence of her pre-marriage savings. Therefore, I accept the Respondent's evidence that she paid the \$35,364.58 from her pre-marriage savings to facilitate the purchase of the Calgary house over the Claimant's evidence that the funds came from family savings and a \$10,000 loan from an unnamed friend.
- [61] The Respondent said that she made ends meet in Calgary by working and with contributions from her family. Their son H. was born March 18, 2006. Her family helped with childcare. The Claimant had a seizure in May 2006 and was not able to work driving trucks. His doctor placed him on medication. He did not work again until early in 2007, when he worked moving cars for Enterprise car rentals.
- [62] In May 2007 the Claimant's parents came to live with the parties in the Calgary house. At that time the Respondent's sister and husband were living with them, paying \$600 to \$700 per month. The Respondent said that she was the person looking after the monthly expenses and bill payments.
- [63] With the arrival of the Claimant's parents there were six adults and H. living in the house. The Respondent said that initially her relationship with the Claimant's parents was fine, but later it deteriorated. The Claimant's parents lived with them from May 2007 to January 2010.
- [64] The Respondent also said the parties' relationship was fine in Calgary until after the Claimant's parents arrived. His mother would "incite" the Claimant, saying that the Respondent was not beautiful, her skin was too dark, and that the Respondent should let the Claimant drink alcohol. According to the Respondent his parents did not contribute to the family finances, whereas the Claimant says they did. The parties also disagree as to the extent the Claimant's parents helped with childcare.
- [65] The Respondent said that she did not want the Claimant to drink alcohol because the doctor had prescribed him an anti-seizure medication. The Respondent wanted him to fully recover, find a good job, and start earning a good income.

- [66] During the summer of 2007 the Claimant continued to work moving cars but his hours were limited and he did not make much money. According to the Respondent, his doctor did not consider the Claimant to be fully recovered. The Claimant had to take three pills every night, and he was not to skip his medication. The Respondent said that the Claimant would drink alcohol and then skip his medication.
- [67] The Claimant's line 150 income for 2007 was \$43,463 based on a summary of his 2007 income tax (Exhibit 62).
- [68] The parties' second son, A., was born on March 23, 2009. Again the Respondent was unable to work due to her pregnancy. She stopped work in November 2008, and was on disability and then maternity benefits.
- [69] With regard to H., the Respondent said that for the most part her sister would look after H. when she was at work. The Respondent took H. to swimming classes and to pre-school. When she was home on maternity leave with A. she would drop H. off at pre-school and pick him up. Once she was back at work a friend would pick H. up.

Their return to Surrey in late 2010

- [70] The parties decided in 2009 to move back to Surrey. The Claimant wanted to get into the construction business. The Respondent said she did not want to move back because she felt that there would be fights between them. However, according to her, the Claimant promised that he would not drink. He wanted to start a company with Pargan Sohal's son, Amarjit. They returned to Surrey and rented a basement suite, where they lived with H. and A., and the Claimant's parents. Their Calgary house sold in January 2010, and their net sale proceeds were \$230,264.28 (Exhibit 19).
- [71] In March 2010 the Respondent's maternity benefits were over and she got a job in a greenhouse for minimum wage. Then she got a job at a chicken factory where she was able to put in a lot of overtime and the pay was better.
- [72] According to the Respondent, the Claimant started working as a framer for a construction company, but then fell and was injured. He was on Workers' Compensation benefits for a time that ended in April 2010. He did not work again until 2011 when he started a company with Amarjit Sohal that was to do home renovations and build fences and decks. The Claimant's evidence was that he was off work in 2010, taking a little break, but then he started working again driving trucks. The Claimant's 2010 line 150 income was \$12,855.
- [73] The Claimant and the Respondent agree that the money obtained from the sale of the Calgary house was spent on the lot in Surrey on which the Claimant built their family home (which was where the Respondent continued to live with H. and A. after separation). In addition, they got a construction mortgage of up to \$400,000 of which they used about \$300,000. Pargan Sohal and his wife, Gurnam Sohal, had to guarantee this mortgage because, according to the Respondent, the Claimant was not earning an income at this time.

- [74] The Claimant said he framed their new house in Surrey himself, and did whatever other jobs he could. His uncle came and helped him. The house they built was 4000 sq. ft. with four bedrooms, a number of bathrooms, a double garage, and two basement suites. The house was approved for occupancy on March 7, 2011, and they moved in. At that time the Respondent said that the Claimant was not working, nor were his parents contributing to household expenses. She was making \$1,600 bi-weekly at the chicken factory. She said she would ask her family for money, telling them that she would repay them when the Claimant started working. The basement suite was not completed and occupied until the summer of 2011, when the Respondent's sister, Sarbjit Dhanoya rented it.
- [75] According to the Respondent the Claimant required a \$425 damage deposit and charged her \$850 per month in rent which he kept himself. She referred to an undated but signed lease agreement between them (Exhibit 24). The Claimant denied taking the damage deposit or receiving the rent.
- [76] In 2011 the Respondent said that her relationship with the Claimant became "extremely bad". There was a shortage of money in the family, and whenever she asked the Claimant when he was going to bring home a cheque their arguments would start. His response was that he was just starting a company and although they were quoting work, they were not getting any houses to build. His parents continued to live with them after their move from Calgary back to Surrey.
- [77] The bank account statements for the parties' joint bank account with the Royal Bank between July 31, 2011, and October 22, 2012, were commented on by both of them. The Claimant did not identify any deposits of income earned by him going into this account. Included in these statements were transfers of funds into this account shown as branch to branch transfers or funds from loans that were then used to cover Visa and Amex accounts and the monthly mortgage payments. Initially the mortgage payment (\$1,617.07) was regularly paid, then several months were missed and then larger payments were made, and then it became twice monthly payments of \$681.58.
- [78] During this time the Respondent claims the Claimant was not contributing any income to the family, and if he had given her cheques for money he had earned that she would have deposited them into their joint account. The Respondent said that when she needed money during this time her sisters would transfer her funds into this account from their Royal Bank accounts for which she will have to reimburse them.
- [79] The Claimant said he was getting paid by cheque when he was working with A.J. Construction Ltd. (the company he set up with his cousin) and also when driving trucks for Pro West Transport Ltd. Sometimes when he worked in construction he was paid in cash. He said he would give his cheques to the Respondent. No cheques relating to the Claimant's employment were identified as being deposited in the parties' joint account. The Claimant said he understood that the Respondent had other savings accounts where she deposited family money.

- [80] The Claimant said that in their Surrey house the one-bedroom suite rented for \$550 per month, and the two-bedroom suite rented for \$650 per month. When he moved out in May 2014 both suites were rented.
- [81] The Claimant agreed that when he appeared to drink alcohol it caused problems in his marriage. He described an earlier similar incident in Calgary when, although he did not drink, he held a beer. When the Respondent saw she started to fight with him, and she took the children and clothing and went to her mother's place.
- [82] The Claimant claimed that he did not drink alcohol, but said prior to 2006 he would just sip beer at gatherings. However, he stopped this in about 2006 because the doctor asked him to. His wife was very against him drinking alcohol and if she saw him holding a beer she would start to fight. He also said that he did not keep alcohol at home, but if they had people over then the Respondent would insist that he go and buy some alcohol.
- [83] With regard to his own health the Claimant did not say much, except that after he had the seizure in 2006 he was on many medications, and then he was required to take one Dilantin daily. He stopped that medication for about nine or ten months from October 2012, when he and the Respondent first separated because of side effects. He then resumed this medication and continues to take it daily. He said this separation occurred when the Respondent got him arrested by the police.

The "Lunchbox" Incident - September 2011

- [84] The Claimant described an incident when the Respondent was cooking his lunch for him and she was saying bad things. He told her that if she continued she should not cook for him, and he would not take the lunch she was making. He put the lunch on the table. He said the Respondent wanted to spill it on the floor, and his mother intervened and stopped her from spilling the lunch on the floor. The Respondent tried to hit his mother, and then she "badmouthed" his mother. The children were upstairs in their room. The incident ended when the Respondent's sister came upstairs and calmed the Respondent down. The Claimant denied hitting the Respondent on this occasion. He denied hitting or beating her on any occasion.
- [85] The Respondent described this incident very differently. She said it occurred on their wedding anniversary, September 21, 2011. She was discussing celebrating their anniversary with the Claimant, and he said that they did not have the money to celebrate. Then he accused her of spending money. She had just finished preparing his lunch when he started to hit her with his lunch bag. The Respondent said that then his mother grabbed her hand, and his parents held her and told the Claimant to slap her. They swore at her and said vulgar things to her in Punjabi. H. was in the kitchen where this was occurring. Her sister, Sarbjit, heard the uproar and came to the kitchen. The Claimant left. The Respondent said she was going to call the police. Her sister discouraged her from doing so, saying they should sit down and discuss things. The Respondent said that her mother-in-law continued to say

obscene things to her. H. was crying a lot, and then she and both H. and A. went downstairs to be with her sister. The Respondent said that the Claimant beat her with his lunch bag that had a box inside of it. His parents supported him in doing so. She said this was the first time he had physically assaulted her, although they had many heated arguments previously.

- [86] The Respondent's sister, Ms. Dhanoya, testified about what she observed in relation to this incident. She was living in the basement and was sleeping when she heard loud noises upstairs. The children were crying. She ran upstairs and knocked on the door which was opened by H. who said that his mummy and daddy were having a fight. The Claimant was holding a lunch bag with his hands, throwing it and banging it on the floor. Ms. Dhanoya thought that maybe he was beating the Respondent with it and her arrival made him stop, but she was not sure. It was a heavy lunch bag with full bottles. She said the Claimant was throwing it, trying to hit the Respondent with it. Ms. Dhanoya first saw the Respondent "holding up and saving herself from it and then it went on the ground and it hit her." The children were standing by the Respondent, and they were crying. She said that when she first came upstairs the Respondent was standing in front of the Claimant at arm's length, close to the family room in the hallway between the family room and kitchen. The Claimant's parents were there, sitting at the table. Ms. Dhanoya said she did not see the Claimant's mother involved in hitting the Respondent, but Ms. Dhanoya saw her go and sit down at the table when Ms. Dhanoya came into the room from downstairs.
- [87] Ms. Dhanoya spoke briefly to the Claimant and also talked to his mother. The Claimant denied that he had done anything and he left. By that time Ms. Dhanoya said the parties' relationship was "getting worse every day."
- [88] With regard to this incident and generally, the Court finds Ms. Dhanoya to be an excellent witness. Her evidence was reliable and clear. She had a good recall of the event with cogent detail, and she did not jump to conclusions to paint the Claimant or his mother in a negative light. I find that either the Claimant struck the Respondent with this lunch box or was threatening to do so. What is of most concern at this point is that this altercation occurred in the presence of the children, and was clearly very upsetting to them.

Further Difficulties in 2010, 2011, and 2012

- [89] The Claimant said there was another incident between himself and the Respondent at the end of 2010 or the beginning of 2011, when he left home for a week. This happened because the Respondent was fighting with him about trivial issues, trying to control him, and where he went in terms of going to a party or to see his relatives. He got a call from the police who suggested that he stay away from home for a while until things cooled down. His parents left the home also. He returned from being at his uncle's for four or five days. No one was there, but when he and his mother checked their belongings they found that her gold jewellery and other ornaments were missing. He called the police and told them that these items were missing. The police told them to sleep in one room at the house. When the Respondent returned to the home she banged at their door, and told them to get out of the house. The

Claimant called the police and the police attended. Officers spoke to each of them separately. They were told to sleep in separate rooms, and not to talk to each other. The next day he went to work and while he was gone the Respondent got into a fight with his parents. His parents left. After that the Claimant said he was trying to have a good relationship with the Respondent, but it was not good.

- [90] The Claimant also stated that the Respondent took about \$35,000 worth of gold jewellery from their safety deposit box that belonged to him and his parents, as well as to her and the children. He said the card for the safety deposit box only bears her signature. The record at Exhibit 4, Tab 4, shows signatures that appear to be the Respondent's, the last legible one dated February 21, 2011, followed by the last entry by an illegible date that is also in 2011.
- [91] The Respondent indicated that she kept jewellery in the safety deposit box that had been given to her by her mother and her sister, in particular ear bangles from her mother. When the Claimant went to his brother's wedding in India he told her to hand over the jewellery to take to India and then he would bring it back. The jewellery was going to be given to his brother's bride to wear for the wedding. She asked the Claimant to return her jewellery to her and he did not. He said his mother would bring them over and she did not get them, so she discontinued renting the safety deposit box as she did not want to pay \$35 or \$40 per month for an empty box. As the Claimant's brother is now involved in a divorce, the Respondent said there is no hope of her receiving her jewellery back.
- [92] Although I find the Respondent's evidence on this point to be more compelling than that of the Claimant, I note that there is no proof of who owned or possessed any such gold jewellery or its value, and no clear evidence of what was in the safety deposit box when the Respondent last had access to it. The Court will not be making any award in relation to the jewellery.
- [93] The Respondent said that in 2011 and 2012 the Claimant did not take his seizure medicine in front of her and he continued to drink alcohol. The Respondent explained how during this time she had the whole responsibility for the children in terms of their education and the additional activities for them. She liked to take them to the library, to Playland in the summer, and enrolled them in swimming. H. was enrolled in skating. In the Respondent's view, the Claimant did not spend time doing things with the children. When he was around them, he was hard on them, saying that they needed to be taught manners, how to sit still and watch the Punjabi television channel. In the mornings the Claimant would leave for work after she had made his lunch. By this time the Claimant had opened up his company with his cousin. He would go and meet people and look at their building plans. She said he would come home at night intoxicated with liquor. During this time the Respondent said she worked outside the home and cared for the children.
- [94] The Respondent said that in November 2011 she learned about the Claimant's relationship with a female relative of hers. When the Respondent and her sisters questioned the Claimant about this - apparently they had proof he had sent "dirty messages" to this woman -

the Claimant apparently responded that he was a man and could keep a girlfriend. When her sisters tried to explain that this was a wrong thing to do, the Respondent said the Claimant started to beat her and throw items at her. He then left the house for about two or three weeks. She called the police that day. Her sisters discouraged her from proceeding with a charge as it would break up the family. However, the police officer said he would deliver a warning. She said that during that time the Claimant did not provide any money for family expenses. Then he returned to live with them. He had apologized to her in front of her sisters and promised not to drink alcohol or assault or beat her again. Ms. Dhanoya testified that she and the Respondent had found the text messages that the Claimant sent to his girlfriend, which hurt her sister a lot, making it "a big issue between them."

- [95] In November 2011 the Respondent said she went into a depression. According to her, her doctor told her that she could not work, and she applied for Employment Insurance benefits. If she needed money for groceries she asked her family. The Claimant's parents had moved out of the house. Her mother and sisters helped her to care for the children and with household chores.
- [96] The Respondent said that things did not improve at home. The same types of arguments occurred, and the Claimant would leave the house. He would return intoxicated and start a physical fight with her in front of the children. The children cried a lot. The Claimant would say to her that he was going to die, that he was going to commit suicide, and then he would leave the house. Then she and H. would phone the Claimant, and H. would become very worried that the Claimant was going to commit suicide. The Claimant would be gone for a week or two. H. would keep trying to phone him. She said that H. was very smart for his age. He had known his father's cell phone number since they moved back to Surrey.
- [97] The Respondent also recalled that early in January 2012, the Claimant left the house one day for work and did not come back. He would not pick up his phone. The children were calling and still he did not pick up his phone. The children became very upset and kept asking where he was. The Respondent told them that he would return, and he did after two weeks. When she asked him where he had been, he just said that he had been in Surrey, and she did not need to know where he had been. Then after a few weeks the Claimant disappeared again. As she had been diagnosed with depression after the November 2011 incident, she was not working. She was told that she could apply for disability benefits and her family doctor, Dr. Sahota, signed the form.
- [98] Dr. Sahota's physician's statement for disability benefits is in evidence (Exhibit 5, pp. 41-42), dated March 14, 2013. In it Dr. Sahota refers to previous reports and sets out clearly that the Respondent was suffering from "Major depression" and was unable to work. He referred to seeing her repeatedly since December 2, 2011. He started treating her with medication on December 30, 2011, and as of March 14, 2013, he was waiting for a report from a psychiatrist to whom he had referred her.

- [99] In the period of time from November 2011 up to October 2, 2012, the Respondent said that her relationship with the Claimant was very bad. They would fight daily and he would beat her daily. Every time expenses would come up an altercation would take place. She said the Claimant was on his medications, but he would skip them because of drinking alcohol. During these fights he would use obscenities and say that she was not beautiful, her skin was too black and that he was going to divorce her. He was not bringing home any money and the family finances were very bad. She managed expenses for herself and the children by transferring funds from her line of credit, and sometimes she borrowed from her family.
- [100] In February 2011 the Claimant said that his brother was getting married in India and he wanted the Respondent and the children to go. They had an argument and he left the home. The Respondent's brother-in-law became involved with the Claimant, and they worked out a compromise. The Respondent would not fight with him anymore, but she did not accompany him to India. The Claimant believed the Respondent had broken the mirrors on his truck on the day he went to leave.
- [101] When the Claimant returned from India about a month later, he said at times his relationship with the Respondent was alright. He brought her and the children gifts. Then the arguments resumed. If he was late home from work they would have a fight. He would show her the books for his truck, with its start and stop times, but still she was not satisfied. She would fight with him if he went to a relative's house. His family doctor suggested counselling and he went to 10 to 15 sessions individually, and then to three or four sessions jointly with her. The Claimant said he learned a lot from the counselling, including how to deal with arguments, which was for him to leave the home and go to the playground or the Sikh temple until he felt that the Respondent had calmed down. He thought this period was from early 2011 to October 2012. However, with regard to the timing of these events the Claimant said he was not sure that he always had things in the right order.
- [102] The Claimant described a \$50,000 investment of family savings on a house made with his cousin, Amarjit Sohal, which then the Respondent insisted be returned. This investment was paid back with a share of the profits into the parties' joint account, Exhibit 4, Tab 1, (somewhat circuitously, given an initial NSF cheque for \$70,000 from his cousin) in the amount of \$66,000, paid by cheque dated July 6, 2012. Subsequently, the Claimant thought the additional \$4,000 was also paid.
- [103] The Respondent then made two transfers from their joint account on July 9, 2012, of \$13,000 and \$50,000. Then she made a further transfer of \$1,800 out of the same account on July 12, 2012. Thereafter, lesser amounts were transferred into this account to cover monthly expenses and the mortgage payments.

- [104] The Claimant said he did not know where the funds returned from the investment went. In addition, he said there were an additional two transfers from the same account, September 4, 2012, and October 2, 2012, that totalled \$6,000. He did not make these transfers, so by the process of elimination, given they were the only two signatories on the account, he said the Respondent must have.
- [105] With regard to this investment, the Claimant said they invested \$50,000 of their family savings and the additional \$16,000 was a return on the investment. The Respondent says she borrowed \$50,000 from her younger sister, Ranjit Mohein, and the remaining \$16,000 came from her own line of credit at the TD Bank, and whatever she had left in her accounts at the Royal Bank.
- [106] The Respondent said that she did not trust the Claimant after she learned about his affair in November 2011. She demanded that all the money that had been invested be returned to her, as she had borrowed it from Ranjeet Mohein, her sister. Initially both men were reluctant to return the money and the Respondent said she would go to the police and say that they had cheated her. After the first cheque in repayment for \$70,000 bounced, she then received a cheque for \$66,000, which the Claimant told her was how much she had provided, and that there was no profit. She said she used the \$13,000 she transferred to put on her line of credit, and put the \$50,000 into her chequing account. Her account (Exhibit 36, pp. 1-2) shows a deposit of \$50,000 on July 9, 2012, and a cash withdrawal of \$45,007.50 on November 14, 2012, which she said was money repaid to her sister. Then, a little later in her evidence she said that she may have told her sister she would keep those funds and repay them later. From the same account the Respondent pointed out a payment on the Claimant's TD Visa on August 13, 2012, and a further payment on his Visa of \$4,000 on September 28, 2012.
- [107] This investment was discussed by the parties in their evidence at some length. I find I am unable to decide the source of the funds for it. On the one hand, it seems unlikely that the parties had sufficient funds at this time to invest, particularly with the Claimant's low 2010 income, which makes the Respondent's version more likely. However, there is no proof the funds came from the Respondent's younger sister. However, if they did, it appears Ranjit Mohein was repaid.
- [108] Turning to the children during this difficult period, the evidence of Ms. Dhanoya makes it very clear how upset the children became, H. in particular, when the Claimant absented himself from the home without telling them where he was going, and when he would be back. This had happened a number of times prior to the parties' first separation in October 2012. She said H. would call her many times and ask her to come over, saying that his daddy was not there. At times the children waited for him to come and he did not. Ms. Dhanoya also described an incident when the Claimant apparently returned home drunk, and had been driving. Her concern was that he would be caught by the police, and would lose his driver's licence. On that occasion she enlisted the help of her husband.

- [109] Ms. Dhanoya also said that H. got very upset when his father would say he was going to commit suicide. She said this was because he was the "older kid" in the house and he was very close to the Claimant. When the Claimant and the Respondent were fighting and the Claimant would leave without reason, H. would wait for him to return and when the Claimant did not "H. got hurt and he is still in stress."
- [110] In 2011 and 2012 the Respondent said the Claimant was away a lot and not involved much in parenting the children. She was the one who cared for the children. She arranged for H. and A. to join the "Jump Start" program where they did sports and gymnastics. She also arranged for them to go to swimming regularly and they attended Punjabi classes. As of September 2012 A. was attending pre-school, and H. was in Grade 1.

The assault charge and the parties' first separation - October 2, 2012 - July 2013

- [111] The Claimant said that the Respondent called the police in relation to him in October 2012. One day he was late coming home from work and the next day when he came home from work the Respondent demanded proof as to where he had been. They started arguing, and the Claimant became concerned that she was going to hit him. He told her that if she hit him he would call the police. Then he left the house and went to the playground nearby. He received a call from the police asking where he was, if he had hit her, and if he had been drinking. The Claimant responded that he had not and returned to the house, where he was arrested and taken away. The Claimant denies hitting the Respondent that day. He also denies pushing or beating her. He said there was no physical altercation between them. He was released on bail and went to stay with his parents. The Claimant said he wanted to see his children, but the Respondent would not let him. There is no evidence that he was prevented from seeing the children based on the terms of his bail. The Claimant did not see the children during this time.
- [112] With regard to the same incident, the Respondent said that on October 2, 2012, the Claimant came home from work, started to fight with her, and then started to beat her up, assaulting her in front of the children. Depending on the interpretation from Punjabi, he said to her that either he was going to hit or kill her with a chair. She called the police, and the police came and arrested him. From October 2, 2012, to the trial in the spring of 2013, the Respondent said neither she nor the children saw the Claimant. The Claimant did not call the children or even send them a birthday card. His cousin used to come and see the children, but the Respondent said the Claimant did not send as much as a message to the children. He filed a Notice of Family Claim during that time that she received towards the end of October 2012. He did not pay any child or spousal support during that time. She was still suffering from depression and had not worked since November 2011.

- [113] The parties disagree as to who transferred funds from their joint account on October 2, 2012. However, after a withdrawal of \$720 on October 9, 2012, there were 93 cents remaining to pay the mortgage payment of \$681.58, which then did not go through, that was then covered by a transfer of \$690 made on October 16, 2012. However, when it was put to the Claimant that he did this, he said he did not remember, but admitted it was possible.
- [114] With regard to this matter, which is not of great import at the end of the day, except as a demonstration of ill will, I am inclined to find that the Claimant withdrew these funds as I find it is highly unlikely that the Respondent would have jeopardized the mortgage payment at that time, particularly as she and the children continued to live in the Surrey house.
- [115] The Respondent said that after he was charged with assault, the Claimant got his relatives involved and they met with her elder sisters and their husbands. The Claimant said he had made mistakes and wanted to have his family back. She was to have the charge against him dropped and he would go to the temple and swear there that such things would not happen again. The relatives came to see the Respondent and said that they would take responsibility for his behaviour and he would not beat her up again. They said they would take the Claimant to the temple and make him swear to that effect in front of the Holy Book. She was to go to court and testify the way that the Claimant's lawyer wanted her to. She was to draft a letter saying that she was suffering from depression and got confused.
- [116] The Respondent said she went to court and said she wanted to retract her statement and that she wanted him to be allowed to live at home with her and the children. The criminal trial was on June 4, 2013. In court the Respondent said that she was in a state of depression, and that there had been a misunderstanding between them. She told the court it seemed to her that the Claimant was about to hit her with something, but then he did not hit her, and he was acquitted of assaulting her.
- [117] The Claimant described embarking on the court process related to this action. He said he wanted to see the children in March 2013 around the time of their birthdays, but the Respondent would not permit it. He did not see the children from when he left in October 2012 until they reconciled and he moved back home in July 2013.
- [118] With regard to the charge of assault against him, the Claimant said that the Respondent wanted him to plead guilty, and then they could get back together. She approached him by sending a message through her relatives to his relatives in the same village that if he pleaded guilty he would be able to come home early. The Claimant said he refused because he was not guilty. Ms. Dhanoya testified that on many occasions she, her husband, and her mother had tried to talk to the Claimant about making things better for the family. She was at the house on October 2, 2012, and was taking the children to swimming when the police came to arrest the Claimant in October. She understood that he was charged because he had been beating the Respondent. After that day the Claimant and Respondent were living separately. Friends and family from the same village in India as relatives of the Claimant came to her house and talked to Ms. Dhanoya. The general sentiment was that the parties

should not be living separately. They had children, a house, and were a good-looking family. Ms. Dhanoya said to them that she would discuss the situation with the Respondent, her mother, and her other sister's husband. They all decided that the Respondent should give the Claimant one more chance. Ms. Dhanoya said that she and the other members of the Respondent's family asked her to drop the charges against the Claimant.

From reconciliation in July 2013 to the parties' final separation on May 8, 2014

- [119] The parties reconciled and the Claimant moved back home to live with the Respondent, H., and A. in July 2013. From the Claimant's point of view, his relationship with the Respondent was still not good. She wanted to control what he did and where he went. She would not let him see his parents or other relatives, and she would not let him take the children to see his parents. His parents were not allowed to come to their house.
- [120] On September 26, 2013, the Claimant said the Respondent made a \$20,000 transfer into their joint account to assist him in paying some bills. This was after the bank had declined to give him a line of credit.
- [121] The Respondent provided a more fulsome explanation and indicated a different source for the \$20,000. She said that after reconciling with the Claimant the family needed money. The Claimant applied for a personal line of credit and was turned down. She went with him to the bank on September 26, 2013. His credit cards were up to their limits. The Claimant's application for personal credit with the TD Canada Trust is in evidence (Exhibit 5, pp. 56-57). It is a typed form, dated September 26, 2013, and states that the Claimant's gross annual income was \$60,000 with his primary employer, ProWest Transport Ltd., with whom he had been employed since May 2, 2012. It referred to his previous employment as a renovator with AJ Construction and Reno Ltd. It referred to approximately \$8,500 in various accounts and valued his truck at \$30,000. When asked about the accuracy of this information, the Claimant said it did not accurately reflect his true situation. He said he had not typed it, but admitted that it was possibly typed on his instructions.
- [122] The same day their joint bank accounts shows a transfer of funds into it in the amount of \$20,000, which the Respondent says came from her credit line, that went first to her bank account, and then to their joint account. The joint account shows payment of \$4,573 that day described as "Credit card payment" and a \$9,970 payment to Amex.
- [123] While this evidence reflects very poorly on the overall credibility of the Claimant - it being totally preposterous that a person interviewing him at the bank and typing in the information got it from anyone other than him - the Respondent had decided to reconcile with the Claimant and pay off his debts as a means of moving forward. The Respondent did not provide sufficient evidence of this transfer of funds constituting a debt at the time of final separation. The only statement available shows a balance owing on her Royal Bank credit line of \$3,019.14 as of October 1, 2014. There is no statement in evidence for the period preceding May 8, 2014, when the parties finally separated.

- [124] The Respondent's bank account showed a deposit of \$12,000 on October 21, 2013. She said she borrowed money from her sister, Ranjit Mohein. She said sometimes she would also return money to her sisters. She would also take money from her credit line to pay household expenses. She pointed to two deposits into her account that came from her mother, one for \$5,300 on January 2, 2013, and another for \$2,000 on February 7, 2013.
- [125] The Respondent prepared a list of loans by members of her family to help her through her financial difficulties (Exhibit 37). She said that these loans still need to be repaid and claims them as family debts.
- [126] Included in those debts, are amounts owed to Ms. Dhanoya, who testified that she paid the property taxes due in 2011 and 2013 for the parties' residence in Surrey in the amount of approximately \$3,200 in 2011 and \$3,400 in 2013. As the elder sister of the Respondent Ms. Dhanoya was very supportive of her sister, and H. and A. throughout. She gave cogent detailed evidence about a number of matters, including her payment of the property taxes for these years. I accept her evidence on this point and find those amounts to be family debts.
- [127] While I also accept that Ms. Dhanoya contributed other amounts to the household in terms of groceries, I find there is insufficient proof of the amounts. With regard to the \$2,500 Ms. Dhanoya loaned to the Respondent to get a car when the parties first were married, I find too much time has passed during which the Respondent could have repaid this amount if it really was a debt, for it to be considered a family debt at this time.
- [128] The Claimant submits that there is insufficient proof of the amounts said to have been loaned to the Respondent by members of her family. With the exception of the property taxes that Ms. Dhanoya testified that she paid, I agree.
- [129] From July 2013 to May 2014 when the parties separated the last time, the Respondent said her relationship with the Claimant was not good. When they reconciled the Claimant was to spend time with the children. This did not happen. On his days off he would go to his mother's. Other days he would say he was going to work and go to his mother's. His truck was in the truck yard in front of the Sikh temple. He ran up his credit cards again. She would ask him where he had deposited his pay and he would tell her that she had no right to know, that it was his cheque, and he could do with it what he wanted.
- [130] For his part, the Claimant said he finally made up his mind he wanted a divorce when he left home the last time, which was in May 2014. He said he felt he had done everything he could to make the marriage work, including helping around the house and with the children, and going to counselling. He discussed the matter with his uncle, who spoke to the Respondent. That did not help. The day he left the Claimant took the children to see his parents for an hour. Then when the Respondent went to drop off the children at school he took his clothes and left. He did not want to do it in the presence of the children for fear of another argument. He told her he was renting a basement. Then he worked to make some money to get a lawyer to help him see his children.

- [131] The Respondent said that the Claimant came home late on May 7, 2014, when she and the children were already asleep. He slept in the other room. She got up to make his lunch and breakfast and lunch for the children. He said he was going to work late. When she got back from taking the children to school he was gone. He had taken his clothing, his passport, and other necessary items. She tried to call him and he did not respond. Then at the end of July the Claimant's lawyer filed papers to re-start the family case and she realized that he was not going to return.
- [132] The evidence of the Claimant was that prior to his leaving the family in May 2014, his relationship with the children was good. When he was free or had a day off work he would take the children to do various things, to the park or going out to visit places. He took them swimming and to the library. He would play street hockey with them in the driveway. On a day off he would drop them at school. When H. was registered for school, the Claimant said that the Respondent went to those meetings because he was at work.
- [133] At that time the Claimant said his relationship with H. was good. H. said that he had missed him. The Claimant said H. liked him and they used to play together. He would go to the park, and H. would want to come. Both children told him that they had missed him while he was away, and told him to stay at home. They had wanted him to come back home because they had missed him.
- [134] Regarding allegations by the Respondent that he was overly harsh in his dealings with the children, the Claimant denied punishing the children by slapping or hitting them. He denied locking them outside of their home. He said he would discipline them in a loving and affectionate manner, telling them they could not do a certain thing. He said the children would listen, and stop doing whatever it was.

Regarding the children since the final separation on May 8, 2014

- [135] After the final separation in May 2014, the Claimant said he did not know what had happened to his relationship with H. He felt somebody was forcing H. to behave differently. Up to February 8, 2015, H. had come with A. for parenting time with the Claimant only three times. After the February 6, 2015, court date, between February 8 to May 3, 2015, the Claimant said that H. came with A. twice, and A. came a total of five times, up to and including March 8, 2015. Then after that A. also did not come. The Claimant said he continued to go to the Sikh temple on Sundays to meet the children, but they did not come. Then after the court appearance on May 12, 2015, A.'s primary residence was ordered by Master Caldwell to be with him.
- [136] The Claimant agreed to the children having counselling at Diversecity, and took steps to make it happen. However, once he realized that the Respondent wanted them to get counselling in a program called "Children who witness abuse", the counselling was cancelled.

- [137] The Respondent said before the Claimant left the house the last time the children had been doing well. They went to school regularly. H. got a certificate for no absences from school. They were both taking swimming. The two boys had, and continue to have, a very good relationship with each other. They sleep together. They care for each other. They play together and they share things. She described their daily routine and the things the three of them like to do together.
- [138] The Respondent also described the various camps and programs that H. and A. have been in since separation. She also entered into evidence the certificates and awards they have received. She described how, after the Claimant got a court order for visiting the children that they would not want to go with him and would go and hide. She said that she would take the boys to the Sikh temple as directed in the court order, but as men and women sit separately, the children would not go to see the Claimant on the men's side. Therefore, she said that she went with the children to sit on the men's side, which was very odd for her. In her opinion H. and A. were reluctant to see the Claimant because he had not spent time with them, had not been involved in their lives or their care, and they had only seen him do bad things like when he was beating her up. Nor was he involved in their school, their homework, parent-teacher meetings, or sports practices.
- [139] When the Respondent was directed to bring the children to court by Master Caldwell in order that they spend time with the Claimant, she said the children did not want to go, and a sheriff became involved to get them to go to a movie with their father. When they came home they said they had not enjoyed the movie. H. started to cry and said that the next time he would not go. The children seemed hungry so she made them dinner, gave them a shower, and put them to bed. A. was watching H., and was sad but he was not crying. After that H. did not have another parenting time with his father. A. went once or twice but said it was boring without H. When the meeting spot was at the temple, she had to force the children to go with her to the temple.
- [140] The Respondent said that she encouraged the boys to have a relationship with their father and has told them that he is a "good dad", to which they would say, "Don't lie." H. would say that he had seen otherwise. The Respondent said that H. is intelligent and being older he saw more.
- [141] After the parties separated in May 2014, the Claimant did not see the children for six months. He got a court order permitting him to pick them up on Sunday, October 19, 2014, from home, and see them from 9 a.m. to 1 p.m. When he went to pick them up on this occasion the children did not come. They were hiding. He told the Respondent to get them ready, but they did not get ready and come. After that the Claimant said he would go every Sunday, and sometimes he would be able to pick them up, and sometimes not.
- [142] Then the Claimant described going to court and the court ordering that the Respondent bring the children to court, which happened on November 10, 2014. That day he took the children with him. They went for lunch, to a toy store and then to a movie. He said this was

a good interaction and the children were happy. This was the first time he had seen them since May 2014, despite the court order of October 16, 2014. After that he was to pick them up at the Sikh temple on Sundays. A. would go with him, but H. would not; and then A. became reluctant to go with him as well.

[143] The Claimant then described subsequent visits with the children. When they did come with him for parenting time, the Claimant took them to where he was living, played X Box with them, they would study, and he would take them to McDonald's for lunch. He was living in the basement of his uncle's house. He took them there as they did not have time to go elsewhere. However, the children did not continue to come to him for the regular parenting time.

[144] In December 2014 the Claimant asked his lawyer to have the matter brought back before Master Caldwell, which occurred on February 6, 2015, at which time Master Caldwell directed that a psychologist be retained. The Claimant then described his involvement in the process undertaken by Mr. Colby for the s. 211 report, stating that the Respondent would not let him take the children to meet with Mr. Colby, but he saw Mr. Colby once with the children, and Mr. Colby did visit his house.

May 13, 2015 - A. moves to live with the Claimant pursuant to Master Caldwell's order

[145] The Claimant described the very unhappy events surrounding the transfer of custody of A. from the Respondent's care to his after school on May 13, 2015. Both boys' teachers became involved to try to reduce the emotional upset to the boys, which I find must have been considerable. H. became very angry and upset with his father for taking A. away.

[146] When the Claimant testified in direct in this trial, A. was living with him, and H. was living with the Respondent. He said everything was very well with A. He said he had changed his work schedule since A. had started to live with him, working three days on and three days off. He said sometimes he would work night shift and that he did not have a fixed schedule, but that he was working less because he needed to pick up and drop A. off at school.

[147] The Claimant said that he played soccer with A., took him to the library, and took him to the temple, Chuck E. Cheese or Boston Pizza - wherever A. wanted to go. As the Claimant was living with his parents, they were there for A. as well. He considered school to be going well for A., who he encouraged to read. The Claimant said that he had no concerns about how A. was doing, and his behaviour seemed good.

[148] During the time that A. was ordered to live with the Claimant, the Respondent said that both children were negatively affected. They were both at the same school and when A. had to return to live with the Claimant after his Wednesday visit both boys would cry. A. lost weight, would not eat his lunch, appeared very tired during the day, and came to school in torn clothing. His lunch box remained full and he did not eat his fruit. He complained of a pain in his stomach and was taken to their family doctor. The Respondent sent a note to the

Claimant about A.'s favourite bread with the hope he might eat more. Pictures of his torn clothing and full lunch box were put into evidence by the Respondent.

- [149] Ms. Dhanoya testified that "H. felt so bad when A. went and started living with his dad, and H. was totally upset and lonely. He is so hurt inside so much." She reiterated that H.'s behaviour in relation to his father is wrong, but she said "Even still he is thinking when A. is back, he is thinking, he is happy now, but sometimes he forget. She said that both brothers, A. and H., are happy to be together".
- [150] Ultimately, despite the positive picture the Claimant painted about A.'s life living with him, it appears that the Claimant did not spend much time with A. Clearly, A. did not thrive while living with his father. His school work suffered. He did not eat as usual. Both boys missed each other intensely. A. missed his mother very much. As of February 11, 2016, A. moved back to live with H. and the Respondent by way of a consent order agreed to during a continuation of the trial following an update from Mr. Colby with regard to both boys.
- [151] Ms. Dhanoya said the Respondent, H., and A. live with her and her family now, since their Surrey house sold. Initially the Respondent was going to try to find a basement suite but it was very hard for her and the children, as the Respondent is not working. She said that H. cried a lot the day he heard their house had sold. She said that H. still gets very upset when he is reminded of A. being away. She also said that H. liked the Surrey house, which is why she and her sisters offered to buy it (which did not occur for undisclosed reasons). Ms. Dhanoya decided since her sister was facing "all these troubles" that she was not going anywhere else, and that the Respondent and the children would come and live with her, her husband and their children. This has meant a move to Aldergrove from Surrey, and a move for H. and A. to a different school, but she says the boys are happy.

Family violence

- [152] At various points in his evidence, the Claimant denied striking, hitting, or beating the Respondent.
- [153] In addition to the incidents, previously set out, on cross-examination, the Respondent was asked about past allegations she had made of physical violence she had suffered at the hands of the Claimant in affidavits sworn for pre-trial applications.
- [154] Although the Respondent's evidence was somewhat hard to follow, what emerged was that the incident on September 21, 2011, was not the first time the Claimant had struck her, but rather she wanted to call the police because he hit her very badly. She said that there had been prior incidents when he hit her while they lived in Calgary, and he had been drinking. She referred to numerous fights when he was drunk and used to beat her. The Respondent gave several unclear answers about when he first hit her, but then said it was when they were living in Surrey in 2004. She also said she had told her counsel, Mr. Singh, to write the letter dated October 2, 2014, which included a reference to the Claimant threatening to kill the children many times. As to why she did not put that in a subsequent affidavit, she said

that she had told Mr. Singh what had happened, and she had gone into a depression at that time.

- [155] Asked why she did not tell this to Mr. Colby when he was interviewing her for the s. 211 report, the Respondent said that she mentioned it to the police in October 2012, and she did not remember if she had mentioned it to Mr. Colby. She also said she had mentioned to Mr. Singh that the Claimant used to go to the tracks threatening to commit suicide. She said H. was very upset at this time and was wetting his bed every day. H. was given a medication. She could not recall if she told Mr. Colby about the bed wetting. Asked if she remembered if the children had told Mr. Colby about the Claimant physically punishing them, she said she thought that H. did. The Respondent said that the Claimant had shaken A. in the garage when the children had been playing outside, and did not want to go with their father to Mr. Sohal's home. The Respondent confirmed that was why she had wanted supervised parenting time. She confirmed that she had the police check up on A. when he was living with the Claimant.

Some post-separation financial matters

- [156] The Claimant confirmed his income for various years. In 2011 his line 150 income was \$24,789, of which \$22,259 was earned from framing houses. In 2012 his line 150 income was \$43,256.20 earned from truck driving. In 2013 his line 150 income was \$41,130, and for 2014 it was \$39,806. He said that for 2015 he was not sure what it would be as he was working less given that he had A. in his care, which I note was then not the case after February 11, 2016.
- [157] The Claimant had worked as a truck driver for Pro-West Transport Ltd. and was paid an hourly wage until he bought his own truck so as to make more money. He confirmed that at the time he testified he did not own his own truck as he had previously sold it due to all the repairs it required and he provided an estimate of the required repairs, Exhibit 15, dated November 20, 2014. The Claimant sold this truck for \$6,500 in January 2015 because it was not working and was defective. He said it required an inspection every six months and to do the necessary repairs would have cost him too much. This is the same truck valued at \$30,000 in his application for personal credit.
- [158] Of note is that the Claimant has a RRSP with a value of \$11,863.96 (Exhibit 4, Tab 6).
- [159] The parties' mortgage payments on the Surrey house fell into arrears. The Claimant's uncle and aunt, Pargan Sohal and Gurnam Sohal were the covenantors of the mortgage. A letter to them, dated May 13, 2015, (Exhibit 4, Tab 14) indicated that the Royal Bank was demanding payment in the amount of \$282,801.63. Foreclosure proceedings were commenced.
- [160] The Claimant claims that the Respondent collected the rent for the entire time she remained in the house after separation, and he claims a half share. Whereas the Claimant said when he resided there they had income from both suites (\$550 per month for the one bedroom suite and \$650 per month for the two bedroom suite), the Respondent testified only one basement suite in the house was rented after separation, and said it was rented for

\$700 per month. She said she used the rent money to help with household expenses. According to her, the other suite was not rented and only used for storage.

- [161] The house was sold, the mortgage debts and other charges paid. The parties do not disagree as to matters related to the net proceeds from the sale of the house, which I will set out when dealing with family property and debt.
- [162] After the second separation the Claimant purchased a 2009 Mercedes for approximately \$53,000 including taxes. He purchased it for a deposit of \$5,000 and the balance was paid pursuant to a line of credit. About \$43,000 were owing when he completed his Form F8, and he thought the amount was somewhat lower at trial, but he did not have a current statement regarding the line of credit. He also used \$4,000 on his line of credit towards the deposit on the Mercedes (Exhibit 4, Tab 7). Later, the Claimant said he made some inquiries about selling the Mercedes, but the value had decreased so he decided to keep it. Much was made of this expenditure at trial by counsel for the Respondent. At the end of the day the vehicle and the debt will be his.
- [163] There is no doubt that the Respondent failed to make timely disclosure of documents requested by the Claimant's counsel. She also failed to put into evidence some documents that would likely have supported some of the claims she is making. Pressed about why she had failed to provide documents requested at her examination for discovery, she thought the information sought from Dr. Sahota about her health, in particular, her depression, had been provided, as had her bank documents. She said that she had gone into depression again when A. was moved to live with the Claimant and when the house had to be sold. Ultimately, her response to the 17 outstanding requests for information from the examination for discovery was that she had provided what she had to Mr. Singh. I will address aspects of this in more detail in relation to the s. 213 demand made on behalf of the Claimant, for which he now seeks a \$5,000 payment and an order for special costs.
- [164] The Respondent's Form F8, filed May 13, 2015, provides some information about her past income and expenses. For 2012 her line 150 income was \$19,578, for 2013 it was \$1,401, and for 2014 it was \$5,601. Other than the Surrey house with its mortgage and a Honda Accord valued at \$2,900, she has no assets. Under debts she listed \$10,074.65 in a joint account with the Claimant at the Royal Bank, a Royal Bank credit line of \$10,000 and loans from family and friends totalling \$18,000. She referred to self-employment income in the amount of \$5,601.
- [165] The Respondent said that this \$5,601 represented income to her from a couple of insurance policies she had written in 2014. She said that when the Claimant left she took the course to become a licenced insurance agent in June 2014. She said she still had the licence but her depression had prevented her from working. She said she had not written any policies since that time. When she feels depressed she is unable to make calls to get business. She said that when A. was ordered to live with the Claimant her depression got worse and having to sell the Surrey house contributed to her poor state of mind.

- [166] The Respondent had apparently failed to disclose that she had been working at Tim Hortons outlets from March to the end of October 2015. She admitted that she had worked some hours at different locations but then was not put on the schedule to continue. She said that she had provided her pay stubs from this work to her counsel. She opened a new account at the BMO in April 2015 because the Royal Bank had closed her accounts and she could not use her Royal Bank Visa. She was concerned that the TD would close her other account in the event payments were not covered in it. She said that she did not open this account to conceal it in these proceedings, as she expected everything to be disclosed given an April court order that all the accounts be checked. Her total income from Tim Hortons based on deposits into the BMO account (Exhibit 36, Tab 1, pp. 1-16) for the period of March to October 2015 was approximately \$10,193.
- [167] When it was put to her that she did not disclose this bank account she said that she had not named the bank, "did not say this bank or that bank, but [she] did mention how many banks [she] had accounts at." She also said with regard to the letter from the Claimant's counsel (Exhibit 53) seeking her authorization to access bank records and listing the banks, that she signed that authorization, although the Claimant's counsel said he never received it.
- [168] With regard to the Respondent's credit lines, the evidence shows that in relation to the TD credit line the balance owing upon separation in May 2014 was \$0. With regard to her Royal Bank credit line, the Royal Bank obtained a judgment against the Respondent in the amount of \$11,032.94 and registered it against the title of the Surrey house (Exhibit 44). The judgment had to be paid to transfer the house to the purchasers and it was therefore paid from the joint proceeds. However, the only statement provided close to the date of separation (May 8, 2014) is from October 2014 and it indicates a balance owing of \$3,019, as opposed to the increased amount reflected in the judgment. The Claimant argues that he is to be reimbursed \$5,516.47 for the amount paid out on the judgment.

Overall findings as to the parties' reliability and credibility

- [169] Considering all the evidence I have heard from the Claimant, the Respondent, and Ms. Dhanoya, I find the Respondent generally to be the more truthful of the parties. At times, however, I find that she is not a reliable witness, perhaps due to stress, depression, her negative feelings for the Claimant, or a combination thereof. I find that there has been a history of family violence in this case perpetrated by the Claimant upon the Respondent.
- [170] The term "family violence" as defined in s. 1 of the FLA includes physical abuse, such as assault, but it also encompasses psychological and emotional abuse. Subsection (e) of the definition includes exposure of a child to the behaviour included in subsections (a) to (d) of the definition in s. 1, as commented upon in *S.(K.H.R.) v. A.(J.V.)*, 2015 BCSC 25. The broad nature of the definition is intended to provide protection to a very broad range of vulnerable people: *B.(C.A.) v. B.(M.S.)*, 2015 BCPC 12.

- [171] I find it is more likely than not that the Claimant has struck the Respondent on a number of occasions when they were arguing. The lack of clarity in the Respondent's testimony as to the frequency or intensity of the incidents when the Claimant struck her prevents the Court from making any further or more specific findings. In some of her answers on cross-examination she may also have exaggerated aspects of the frequency of Claimant's physical abuse directed towards her. However, I find that such events likely did occur, although perhaps not with the frequency she claimed.
- [172] I also find that the Claimant on several occasions threatened to kill himself, directing his threats at the Respondent, but also delivering them in a manner that they became known to H., and possibly to A. as well. This too, constitutes family violence as a form of psychological abuse, which is included in the definition of "family violence" (at ss. (d), s.1 of the FLA). It is behaviour that is particularly terrifying to children.
- [173] I find the evidence of Ms. Dhanoya in particular supports these findings. It is also clear that she and other members of the Respondent's family, and the Respondent herself tried to address the issue of the Claimant's violence on a number of occasions, albeit not in a manner that remedied the situation. At this point, the most important aspect of this finding is its effect on the children, and what will be in their best interests in the future.
- [174] With regard to financial matters, I find overall that the Respondent was the more accurate witness. Generally, she had a clear memory with regard to finances and was able to produce some documents to support her version of certain events and financial transactions. In relation to other transactions she was less clear. She either failed to make the required disclosure, or if some of it was made, her counsel failed to provide it to the other side. With regard to loans to her from her family and certain other financial transactions, the Respondent's evidence is lacking in specificity. She appears to have been very adept in obtaining credit and using multiple bank accounts. She also is motivated to work given her overall work history, the steps she took to become a licenced insurance agent post-separation, and her efforts to work at Tim Hortons in 2015. What is very clear is that she is a very committed parent and the children have a very close relationship with her. Despite her problems and her depression she has consistently put them first, which is evident looking at the entire chronology of events.
- [175] The Claimant, on the other hand, was less sure of aspects of his evidence. I find he was more inclined to hide behind a blanket denial when it came to his own behaviour, whether it was in relation to losing his temper with his wife or his alcohol consumption.
- [176] I have already indicated that I accept the evidence of the Respondent and Ms. Dhanoya over that of the Claimant and Mr. Sohal as to the incident where the Respondent fainted and an ambulance was called after she was insulted and became very upset at the family gathering to celebrate the Claimant becoming a permanent resident.

- [177] I also find that the Claimant was vague about financial matters he considered potentially to his detriment, even if they lack overall significance.
- [178] For example, with regard to the cultural wedding, it took place on September 21, 2002, at the Sikh temple and the banquet afterwards attended by 200 to 250 people, and the arrangements made by Pargan Sohal, the Claimant confirmed that Mr. Sohal bore the cost for all these expenses. He said he did not know how much his uncle paid, and he gave to his uncle whatever gift money he received. He recalled being told a figure that he cannot now recall. Then, as to whether, when they were living in his uncle's basement suite right after their marriage they were paying rent, the Claimant said he was not sure, as his uncle knew that the Claimant had spent a lot of money on the wedding. When it was put to him that this conflicted with his previous evidence, the Claimant said he had to repay his uncle for the money spent on the wedding over the next few years. Later he said that he gave the gift money to his uncle. Then he agreed that he did not owe his uncle for the money his uncle spent on the wedding. At one point he also said that he did not inquire as to whether the Respondent was paying money to his uncle for rent and household expenses when the parties were living with his uncle, which is not credible.
- [179] Another example of the Claimant's lack of forthrightness was in relation to whether he worked prior to getting a work permit. When it was put to him that for at least a year after the marriage he did not work, the Claimant said that when he got his work permit he started to work and his first job was with Punjab Construction in Surrey, working as a framer, the clear inference being he had not worked before receiving his work permit. He also stated that sometimes he would accompany his uncle to a job site and his uncle would give him some money for doing so. He would help his uncle, who would not let him work where he could get injured, the clear inference here being that this was work and occurred before he received his permanent resident status.
- [180] Whereas the Respondent testified with clear detail as to the Claimant's family business in India and the settling of accounts with Jagdev Johal, the Claimant denied that he owed any money to Jagdev Johal, saying that the paper at Exhibit 5, p. 120 is not in his handwriting. He agreed that his nickname "Bolu" was noted on the paper but he did not know who had written it there. It was never suggested that the writing on the paper was his, but rather, that it reflected an accounting that occurred in India while he and the Respondent were there that he asked the Respondent to keep.
- [181] As to the Claimant's earlier answers at examination for discovery when he said that he did not send money to India, at trial he said he did send money to his brother in India for a community event. However, he said mostly it was the Respondent who sent money to India and agreed it was possible that they had an account with Western Union, which they clearly did and which was used to send the money to his brother.

[182] When it was put to him that he assaulted the Respondent on an occasion when Sarbjit was living in the basement suite and his mother and H. were present, he agreed they were all present but denied hitting the Respondent, saying they had an argument over lunch. By all other accounts that is a complete understatement of what occurred and one that fails to address the seriousness of the incident and the upset to the children and the Respondent.

[183] At the end of the day, I find with regard to much of his evidence the Claimant was evasive. He sought to put a spin on many of his answers that underplayed aspects not in his interest such that they were not wholly accurate and truthful.

Guardianship and parenting arrangements for the Children: H. and A.

The Claimant's position

[184] From the outset the Claimant sought reasonable parenting time with H. and A. Both children were reluctant to see their father, H. much more so than A. Despite the considerable efforts to improve the situation little real progress has been made. The Claimant now seeks whatever parenting time that the Court considers to be in the best interests of each child; and he does not wish H. to be forced into counselling with him to the extent of involving the police. The Claimant has had limited parenting time with A. that he wishes to continue to the extent that the Court considers it to be in A.'s best interests.

The Respondent's position

[185] The Respondent claims that she had been the primary caregiver of both children since birth, although she acknowledges that the Claimant did things with children when the parties lived together. She wants the children to thrive. A. did not thrive while living with the Claimant, separated from her and from H. She claims to have done her best to encourage the children to spend time with their father, and at this point says she cannot force H. to go. She claims the Claimant's behaviour in the past has deeply upset the children, as did his past prolonged absences during which he was not in contact with the children. She says the children are doing well in their new home, new school, and their new living situation next door to members of her extended family.

Overview

[186] One benefit of the prolonged court involvement in this case is that various things have been tried in order to improve the situation for these children, both by Master Caldwell prior to trial, and by the Court during period of time when the trial was heard.

[187] As indicated previously, the parties agreed to and paid for a psychological assessment of the family by Mr. Colby, a registered psychologist, with expertise and experience in family and child psychology.

[188] Mr. Colby's detailed report dated May 27, 2015, was filed as Exhibit 1. By the time the s. 211 report was in progress Master Caldwell had already changed the primary residence of A. to be with the Claimant, and had limited his contact with his mother due to concerns that A. would become as alienated from his father as H. had become. This was a move that could have been a positive development, but that was not. As indicated previously, A. did not thrive. He missed his mother and his brother terribly, and seemed to spend most of his time with his paternal grandmother when he was not at school, as opposed to spending it with the Claimant. His performance at school deteriorated and the Ministry of Children and Families investigated a complaint from an undisclosed source about inappropriate discipline being used in relation to A., ultimately dismissing the complaint.

The s. 211 report

[189] The s. 211 report is quite detailed in terms of the history of the parties and their conflict. Mr. Colby's review of the affidavit material he was provided with by counsel from the various court applications shows just how diametrically opposed the parties' accounts are as to what happened between them, including the extent of the alleged family violence perpetrated upon the Respondent by the Claimant, and other disturbing allegations that the Claimant upon occasion threatened to commit suicide in circumstances where the children were present or were aware of the same.

[190] The s. 211 report by Mr. Colby contained the following findings and recommendations at pp. 55-58:

Family Violence

Under s. 37(2) of the Family Law Act, consideration was given to matters related to family violence. Each of these parties raised issue[s] about the other's actions in regards to each of them accusing the other of engaging in initiating hostile and aggressive acts.

Allegations had been raised regarding [the Claimant], which were not found.

The children have raised minor issue[s] about being hit on the back in a manner that does not allow a conclusion to be drawn that this was punitive, painful or intentionally negative event, in terms of parenting disciplinary strategies.

More of an issue is the raising of allegations, rather than there being risk of violence from either one of the parents.

In regards to the above, the Psychologist presents the following recommendations.

1. Considering the views of the children and the current status of the parent-child relationship, it is felt there needs to be support[ed] for these children in regards to current emotional and psychological status and their ability to deal with the issues of a conflicted parental relationship and their engagement with each of their parents.

It is recommended that the children be referred to a Child Specialist who can work with the children, while also communicating with the parents, especially [the Claimant] regarding the children's status, in dealing with matters of the children feeling pressured in relationship to the conflict between their mother and father.

2. In relationship to the above, it is important that neither of the children be placed in a position of having to make decisions or engage in a manner that increases their awareness of conflict, by being placed in a position where they have to deal with issues of loyalty and decision making regarding either of the parents.
3. It is important that these parents maintain responsibility for assuring that the children are engaged in the scheduled parenting time, as arranged, and abide by the direction of the Court in that regard.
4. These children have an extremely close bond with each other and it is important that they be maintained as a sibling pair and that parenting arrangements incorporate both children into the timeframes and recommendations presented.
5. It is important that these children have a sense of corporation between the parents and a sense of acceptability of their engagement with each of their parents.

It is important that these children have pictures of the absent parent in their bedrooms at each of the paternal homes.

It is further recommended that there is a daily arrangement for the children to be able to have contact with the absent parent by telephone, briefly, of no more than fifteen minutes [to] a half-hour prior to their bedtime, and that each parent take responsibility for assuring the children engaged with the other parent by telephone or electronic means.

6. Concerns are raised in regards to [the Respondent's] willingness to cooperate with [the Claimant's] having parenting time with the children. If this continues to be an issue, it is recommended that this may be an extremely stressful engagement for [H.], and that appropriate mental health facilities and support services be made available to him to assure for his emotional and psychological and wellbeing, should that occur.
7. In the interim, it would be most beneficial to progressively expand the father-child contact. It is recommended that [the Claimant] have one evening a week to spend with [H.], to have dinner with him for a two-hour period, and that this be initiated by [the Claimant]. The decision about whether [A.] would attend at such time would be left to [H.], in order to decrease his sense of anxiety in relationship to him engaging at that level.
8. It is recommended that [the Claimant's] be allocated weekly parenting time from Friday after school to Sunday evening. If parenting time is shared between the parents, it is recommended that for the first three sessions, that time be from Friday to Saturday evening, before expanding to Sunday evening by the fourth session, giving [H.] time to accommodate to that process.

9. It is recommended that these parents work with a Parenting Coach. [Balance of this point omitted.]
10. As stated above, it is recommended that these parents share parental responsibility in regards to the children. [The Respondent] has played a major role in making decision relevant to the children's status. It is recommended that her engagement remain in terms of reaching mutual parenting decisions. However, [the Claimant] is capable of making relevant and cogent decisions regarding the children, and if there is a point of disagreement in regards to any decisions, it is recommended that [the Claimant] be able to make decisions regarding education, schooling, and religious matters.

[Recommendations re parenting schedule omitted.]

12. It is recommended that these arrangements be on an interim basis, and can be reviewed in six months or at the request of the Child Specialist, to address the emotional and psychological status of the children and matters of parenting.

[Emphasis added.]

Mr. Colby's updated report - the views-of-the-child report dated February 5, 2016

[191] Pursuant to my direction on December 18, 2015, Mr. Colby interviewed both children again and prepared a views-of-the-child assessment report, dated February 5, 2016 (the "updated report"). His updated report is marked Exhibit 47. Mr. Colby did not testify at the trial.

[192] At the time of the updated report A. had been residing with the Claimant pursuant to Master Caldwell's order with limited contact with the Respondent since May 12, 2015, a period of almost nine months. Subsequent orders permitted the Respondent to have A. on Wednesdays after school and overnight to Thursday morning. Then from December 18, 2015, on, in addition to the overnight during the week, the Court ordered that the Respondent was to have A. on the weekends, from Friday after school to Monday morning, in order that he could spend more time with the Respondent and H.

[193] It was as a result of the updated report that the parties consented, and the Court ordered, on February 10, 2016, that A. should return to live with the Respondent and H., and see the Claimant for specified periods of time.

[194] The views-of-the-child report by Mr. Colby contained the following information regarding A. at pp. 9-11:

[A.] separated from his mother and brother to enter the Psychologist's office. He says that living with his father he spends most of his time in the living room or the bedroom watching TV.

His main activity is to have basketball on Wednesday nights. [A.] says he is bored at his father's house. He does not want to be there. On Sunday he stayed home.

[A.] says that he likes spending the weekend with his mother and brother. He likes playing board games. [A.] says his older brother will yell and swear at him and he swears at his brother and they get into trouble about that. [A.] says he likes sharing things with his brother and he and his brother both sleep with his mother.

Questioned what he likes doing with his father, [A.] stated that he did not know. He says he does not spend much time with his father. His father leaves for work and comes back at night time. Sometimes he will see his father and sometimes he is asleep.

He says his mother takes him to basketball. He says his father has never been to his basketball.

[A.] states that his grandmother generally takes care of him. Sometimes he will have dinner with his father but it is mostly his grandmother who takes care of him.

Asked if he had three wishes that he would wish for, [A.] stated that he wants to live with his mother forever.

[A.] stated that his second wish is that he be the smartest person in class.

[A.'s] third wish is that he had all powers in the universe and he could take care of the bad guys.

[A.] says if he built his own house, he would want to live with his mother, brother and his cousins.

[A.] says he wants to see his father less. [A.] stated that if he did not see his father he would be happy.

[A.] stated that for Christmas he got Ninja Turtles and a remote control car from his mother. From his father, he got a colouring book and chocolates.

[A.] says his favourite things at school are Gym and Spelling.

Questioned what time he would like to spend with his father, [A.] said he would like to spend five days with each of them, as long as it was not the weekend because that is the time he spends with his mother.

[A.] stated that he did not want to see his father without his brother being present.

During the interview, [A.] asked for paper so that he could draw some pictures.

[A.] drew a picture of himself and his brother playing soccer.

[A.] drew a picture of the word 'cool'.

Arrangements were made for [the Claimant] to return for a second interview that day with [A.] and [H.] in the office.

On his second visit to the office, [A.] was interviewed when brought by himself to the office by his father.

[A.] stated that he last saw his brother the day before at his mother's house.

[A.] stated that if he has three wishes his first wish would be [to be] with his brother at his mother's house.

[A.'s] second wish is to stay at his mother's house forever.

[A.'s] third wish is not to see his father.

Questioned why he did not want to see his father, [A.] stated that is because his father is always late coming home from work. He says the second reason is that his father never talks to his teachers and never goes to the parent-teacher meetings. He says his mother always takes him but his father is not there.

[A.] stated further that no one at his father's house helps him with his homework. He says at his mother's house, his mother helps him.

[A.] stated that if he had his own house he would want to live with his brother, his mother, his mother and his panda, which he shares with his brother. [A.] stated that he has named his panda 'Joseph'. He has been told Joseph helped with the Christmas decorations at his mother's house.

When questioned about his favourite thing to do with his father, [A.] stated he does not know.

Questioned about his favourite thing to do with his mother, [A.] said, "Everything", especially sleeping in bed with her and his brother.

[A.] states that his father does not take him to school, that his grandmother takes him and picks him up at school.

[A.] asked to be able to draw pictures. He drew a number of pictures. The first one he drew he stated he did not know the content of it but it included him and his brother. His second picture was of the house that he goes to. In the third picture he drew a picture of two zombies.

At the end of the session, [the Respondent] returned to pick up [H.]. [H.] invited [A.] to come with him and his mother and they walked out of the office together, while [the Claimant] was objecting that [A.] was still scheduled to be with him until after dinner. [The Respondent] did not limit [A.] from coming with her so [the Claimant] held on to [A.] while [H.] and his mother got on the elevator to depart. [A.] was angry at that and was punching the elevator button, while [the Claimant] assured him that he would be with his mother at another time.

[195] The updated report by Mr. Colby contained the following information regarding H. at pp. 7-9:

[H.] readily separated from his brother and mother to enter the Psychologist's office.

[H.] stated that at his mother's house he has his own room. He does share his room with his brother on Wednesday nights and every other weekend.

[H.] says he does not want to see his father. He says he does not like him. He says his father is responsible for separating from his mother. His father is also responsible for selling the house.

[H.] stated, "He left us."

[H.] says his mother has told him that it is okay for him to be mad at his father. She told him other people do not have fathers and he is not the only one. [H.] went on to say that "It never can be better." He says his father calls on Saturdays and Sundays. His father says 'Hi' to him and [H.] says, 'Bye'.

[H.] says he is a community league basketball player and he practices on Mondays and Fridays. He states that his father never comes to his games.

[H.] says that when his father showed up to bring him to the Psychologist's office, he had only heard about it the night before. He had a Math test and his favourite subjects are Art and Math.

[H.] says that he would come to the office in the future if he was required to do so but he does not like being with his father.

[H.] states he does not like living in two places.

[H.] states that he received no direction from his mother about what he should or should not discuss at today's session.

Asked if he had three wishes what he would wish for, [H.] stated that his first wish is to have his brother back with him.

[H.'s] second wish is to have a new house. He would build it with his mother, brother, himself, his grandmother and have cousins for guests. He says he has two older cousins where he is now living.

On [H.'s] second visit to the office he was dropped off at the office by his mother. His father and brother were already there.

[H.] stated to the Psychologist that his father said 'Hello' to him but he did not respond. He says he did not respond because, "I don't like him." [H.] stated that nothing his father does is good. Even in the summer time when they were going to the PNE as a family, he wanted [A.] to go with them and phoned them but his father would not let that happen.

[H.] says his favourite thing to do with his mother is go to the Mall to buy shoes and clothes.

[H.] says he attends parent-teacher meetings, brought by his mother. His father never comes, not even in regards to [A.'s] teacher.

[H.] stated that if he had three wishes his first wish is to "get my brother back".

[H.'s] second wish is to build a large house. He says he no longer has a house because his Dad sold the house. If he had his own house he would want his mother and brother to live with him. His mother's mother and guests could come to visit. He says that he would like to have his own house for his birthday and that his mother, brother and he could live there, with friends, cousins and other relatives, but not his father.

[H.] reports that at the Christmas holidays he did not have contact with his father.

Questioned if he had any advice for his father, [H.] stated that he had nothing to advise his father. He says that he would tell his mother that she is doing the right thing and that she does not need advice.

[H.] went on to say there is nothing that his father can do to improve the relationship because it is not fixable. He adds that his father's parents took everything from the house that were his mother's from the house.

[H.] says the last time he saw his father was in March at his birthday.

[H.] says he [is] working at not having any lates or absences from school, and he is doing well in his endeavour this year.

During his interview [H.] said he wanted to return to the waiting room so that he could be with his brother and talk to him. Sitting in the waiting room, [the Claimant] tried talking to [H.] but he ignored his father's input.

[196] In the updated report Mr. Colby set out his summary and recommendations as follows at pp. 12-14:

Since the initial s. 211 Family Law Act Assessment was conducted and a report produced May 27, 2015, these children have spent the majority of their time separated from each other.

[A.] resides primarily with his father, having weekends with his mother. [H.] resides with his mother and is rejecting of any involvement with his father. Both boys are rejecting of their father. At the same time, the children have a close relationship with each other.

Concern is that [H.] was not made available for the scheduled father-child observation session and that [the Respondent] deferred to [H.'s] refusal to attend. There was a lack of facilitation between the parents in order to have [H.] attend at the office with his brother and father. It was only due to the assertion of the Assessor that process occurred.

[H.] has taken a very strong position, rejecting his father. He gives as his rationale that it his father who is responsible for the separation of him and his mother, saying that his father has "left us". Concern is raised that the reasons [H.] has presented are not matters in [relation] to him and his father on an experiential basis, but are based on a judgment that incorporates his mother and to some extent, his brother, within that framework. A ten-year-old child presenting reasons that encompass his family matters, raises concern as to what influences him in that regard. That, in conjunction with his knowledge that he can refuse paternal telephone calls or paternal direction

that he attend a scheduled appointment with his father, raises concern in regards to what external influences are presented that allow [H.] to maintain his position.

When seen in the office with his father, [H.] would not respond to a statement of 'Hello' from his father. Information presented has [H.] swearing at his father. He hides from his father if his father comes to the school building. [H.] refuses to take telephone calls from his father or swears at his father on the telephone. It is noted [H.'s] rejection of his father is universal, as he can name no things that he enjoys doing with his father.

[H.] also seeks to have [A.] join him in the household with himself and his mother.

[A.] presents more experiential factors in relationship to his rejection of his father. He says his father does not spend time with him and he is primarily looked after by his grandmother. He stated that he does not know what he likes to do with his father.

[A.] has raised concerns that his father's unavailability to him has created a breach in the father-child relationship as he is being parented by his paternal grandparents.

The current situation presents a blanket and universal rejection of their father by both boys. The boys also find a sense of dissociation from each other that they are seeking to resolve with both boys saying they wish to be together at their mother's home.

Some concerns are raised regarding [H.'s] stated reasons for dissociation from his father being based on carrying issues which are related to the generating blame for the marital breakdown and the consequences being of his father's doing. The current parenting communication does not provide for a framework either for parental cooperation or a joint parental involvement in regards to parenting.

The current situation between the parents presents as an uncooperative endeavour which does not facilitate co-parenting.

The recommendations for ongoing parenting based on the current assessment and prior s. 211 assessment is to establish a parenting paradigm that allows these children to engage with both parents requires that the matter of parental rejection first be addressed.

For that to occur, firstly [the Claimant] has to be available for parenting time with the children when they are in his care. Secondly, there is a strong bond between these children which requires that both children be engaged jointly in all parental involvement because they do identify strongly with each other. It undermines the sibling relationship with [the Claimant]. With [H.] not engaging with his father, it places [A.] in a difficult position in that he is dissociated from his brother and seeks ongoing contact. That leaves [A.] in a position where he seeks therefore to return to maternal care in part to maintain the sibling relationship.

Recommendations presented would engage both children jointly in both parenting time and any interventions that may take place.

It is recommended that these children maintain their sibling relationship in regards to any arrangements that are made.

At this time, recommending paternal child involvement is counter-productive, as the dynamic of the relationship has to change prior to building acceptance of an engagement with their father. Currently, such involvement is not seen as being supportive of their emotional and psychological status.

It is recommended firstly that the children engage in a Reunification Program with their father as a team effort to attempt to reverse the children's universal rejection of their father. A number of programs are available in the Lower Mainland. Referral can be made to:

1. R.E.A.C.H. program directed by Susan Gamache, Registered Psychologist.
2. Family First program directed by Alyson Jones & Associates.
3. ReConnect program directed [by] Robert Finlay.

[]

Without an intense involvement program engaging both parents and the children to redefine the parent-child relationships, any parenting time recommendations with [the Claimant] will be a failure.

The children's rejection of their father is all encompassing and [the Respondent] has not presented in a manner that encourages the children to engage with their father.

[H.'s] mother has told him that it is okay for him to be mad at his father.

Within each of those programs the children have an educationally supportive and emotionally engaging program to address issues of the breakdown of the relationship with the rejected parent. At the same time, the rejected parent is engaged in a therapeutic endeavour to assist them in developing the skills necessary to rebuild the parent-child dynamic. The favoured parent is also engaged in the process and provided with direction about what their role is, while also addressing the parents' issues in regards to the children's status and the dynamic of the children's relationship with the rejected parent.

The above program also incorporates into it a knowledge base in regards to matters of parenting, child development, children's emotional and psychological status, and the requirements of the parents to build a more productive relationship with the children.

[Emphasis added.]

[197] The difficulties described in the updated report, in terms of having H. attend with the Claimant, highlight H.'s continued resistance to having anything to do with his father, and the inability of the Respondent to manage the situation to ensure H's attendance.

- [198] This report provided the Court with more recent helpful information, particularly as A. had been living with the Claimant for about seven months when it was prepared. It was after the updated report was received that the February 10, 2016, consent order, was made that returned A. to live with H. and the Respondent with specified parenting time for the Claimant and terms relating to the ReConnect Program for reunification counselling.
- [199] On May 25, 2016, upon the conclusion of counsels' submissions at trial, it was agreed that over the summer of 2016 the parties and their children would engage in a reunification program to see what progress could be made with regard to H.'s continued resistance to seeing the Claimant, the effect of the family's turmoil upon A., and improving communication regarding parenting between the parties.

Counselling for the family in the summer of 2016 through the ReConnect Program

- [200] The parties and the children then embarked on the ReConnect Program directed by Robert Finlay, one of the programs recommended above by Mr. Colby.
- [201] In September 2016 the Court received information from the parties' counsel as to how this counselling had progressed. Specifically, Greg Daily, a child and youth counsellor employed by the ReConnect Program, sent a report dated September 3, 2016, to Robert Finlay, which was forwarded to the Court. Accompanying it was an email report by Mr. Finlay to the parties' counsel. These reports indicated that despite the participation of all concerned little real progress was made in improving the overall family dynamics.
- [202] Of particular note are the following portions of Mr. Daily's report, marked Exhibit 66, at pp. 1, 2-5, 7-8:

Mr. Finlay under your direction as Team Leader and as part of the counselling team, I have been providing counselling to [H.] and [A.] working towards reunifying [H.] with his father, [the Claimant]

IMPRESSIONS:

[H.] is a tall boy that appears older than his stated age of 10. [H.] presented as an articulate, confident and intelligent boy.

Throughout my involvement with [H.] as his counsellor, he presented as a friendly, caring, strong willed and passive aggressive youth. [H.] seemed to be a youth that was accustomed to rationalizing and using his behaviour to avoid uncomfortable subjects or circumstances. During discussions regarding visiting his father that [H.] stated that he did not want to talk about and he would ignore me, change the subject or walk out of the room during our discussions to go to his bedroom to avoid the conversations.

[A.] presented as an active, friendly and caring boy [who] is highly impressionable. [A.] seems to be a boy [who] is 'caught in the middle' between his love and allegiance for his mom, [the Respondent] and his brother, [H.] and his love for his father, [the Claimant].

[H.]

[H.] presented as an enthusiastic, intelligent and strong willed boy during the sessions. [H.] appeared to be looking forward to my arrival each session. [H.] talked freely and happily about the activities and interactions he has with his brother, [A.], his mom and the extended family living next door.

During discussions regarding his father, [the Claimant], [H.'s] emotional state would dramatically change from smiling and enthusiastic to being sullen, sad, angry and passive aggressive.

In two sessions I asked [H.] to draw pictures of how he was feeling towards his father. [H.] readily agreed to draw me pictures. In each of these drawings that [H.] drew, it displayed [the Claimant] as dead or dying (falling off a cliff into shark infested water to die) and [H.] smiling standing with [A.] and his mother.

[H.] provided the following reasons that he did not want to see his father:

- He is boring, he does not have any fun
- [A.] told me that he does not have any fun with dad
- I hate him
- He left our family
- He never returned my phone calls
- He does not like me
- He had an affair

I provided several approaches to address [H.'s] reasons for not seeing his father. [H.] adamantly refused to engage in any of the processes I suggested.

1. [H.] insisted that he would not talk or meet with his father.
2. [H.] walked away from me when I insisted on discussing ways to repair the relationship.
3. [H.] refused to meet his father at the local community center.

On July 21, 2016, I had arranged for [H.], [A.] and [the Claimant] to meet at the Aldergrove Community Center (two blocks from [the Respondent's] home) with me attending the session. [The Claimant] arrived at the community centre as planned. We waited approximately 15 minutes and then texted [the Respondent] asking her when [H.] was coming to the community centre. [The Respondent] phoned to inform me that [H.] refused to leave the house to meet [A.], [the Claimant] and me. [The Respondent] informed me that she did not know what to do with [H.'s] behaviour. I went to [the Respondent's] home to encourage [H.] to go to the park to meet with [the Claimant]. [H.] refused to leave the house despite [the Respondent] informing [H.] he would lose privileges (computer and Xbox). [H.] walked away from [the Respondent] as she was telling him to go meet his father.

On August 19, 2016, I had arranged for [H.] and [the Claimant] to meet at the Aldergrove Community Center with me attending the session. [The Claimant] arrived at the community centre as planned. We waited approximately 15 minutes for [the Respondent] to bring [H.] to the community centre. I texted [the Respondent] enquiring when [H.] would be arriving. [The Respondent] texted back informing me, [H.] told her "I don't want to" "I don't want to meet anyone anywhere." [The Respondent] informed me that she had taken away his iPhone, iPad upon my recommendation. [The Respondent] texted, that [H.] was saying, "I hate him, I don't like play with a liar." "He is not my dad." [The Respondent] stated "What can I do?"

On August 31, 2016, I had arranged for [H.] and [the Claimant] to meet at the Aldergrove Community Center with me attending the session. [The Claimant] arrived at the community centre as planned. We waited for 15 minutes before I texted [the Respondent] inquiring when [H.] was arriving. [The Respondent] replied that [H.] was in the shower singing. [The Respondent] informed me through texts that [H.] was refusing to come to the community centre. [The Respondent] texted, "I am saying to him to hurry up, he said I am not going." [The Respondent] texted stating, "I am trying my best, but he already knows. I don't know what to do. I am sorry."

[A.]

[A.] presented as an enthusiastic, energetic and impressionable boy. [A.] appeared to alter his behaviour and emotional responses depending on the emotions and behaviours exhibited by [H.] or [the Respondent].

[A.] informed me that he did not want to see his father for the following reasons:

- He is boring, we don't have any fun
- I hate him
- I want to stay with [H.] and Mom

[A.] informed me that he did not have any fun at his father's home. He stated that his dad does not have any toys to play with and that he sleeps on the floor while his dad sleeps on the bed.

I asked [A.] to draw pictures of how he was feeling towards his father. [A.] readily agreed to draw me pictures. In each of these drawings that [A.] drew, it displayed [the Claimant] as dead or dying (falling off a cliff into lava to die, or a sketch depicting a dead person) and [A.] standing with [H.] and his mother with smiles shown on their faces.

The behaviours and emotions that A. displayed during the sessions held at [the Respondent's] home [were] vastly dissimilar from the behaviours and emotions [of] [A.] that I observed during [the Claimant's] parenting time.

[A.] informed me that he wanted his brother to come on the visits with his father. [A.] reported that he misses his brother when he is visiting with his father.

[The Respondent]

[The Respondent] has strong beliefs and reservations regarding the reunification process.

- [The Respondent] stated that she does not believe that [A.] and [H.] will benefit from having a relationship with their father. [The Respondent] explained that [the Claimant] had not been actively involved in the boy's life prior to the divorce.
- [The Respondent] has stated that she believes [the Claimant] will not maintain the interactions and relationship with [A.] and [H.] after the counselling and court proceedings. [The Respondent] does not believe that [the Claimant] wants a relationship with the children but believes that [the Claimant] has an alternative motive in requesting parenting time with the boys.
- [The Respondent] has expressed concern that the boys will be emotionally hurt when [the Claimant] stops his interactions with the boys.
- [The Respondent] has expressed concern that [H.] could become depressed due to the stress of the reunification process.
- [The Respondent] has expressed concern for [A.'s] physical and emotional health as [A.] complains of stomach aches and nausea prior to the visits with [the Claimant] [A.] cries and expresses anger each time [the Respondent] tells him that he has to have parenting time with [the Claimant].
- [The Respondent] has expressed concern that she could become depressed due to the stress of watching the boy's emotional distress and her involvement of the reunification process. [The Respondent] has shared that she had been depressed in the past and will consult with her doctor.

[The Respondent's] beliefs and opinions in relation to [the Claimant's] parenting abilities and motivations for reunifying with the boys can negatively influence the reunification process with [H.]

[The Respondent] appeared to have difficulty in managing [H.'s] resistant behaviours during the counselling sessions. [The Respondent] stated that she did not know what to do to get [H.] to attend the sessions with his father.

[The Respondent] presents as if she [is] in a quandary in relation to the reunification of [H.] and [A.] [The Respondent] has followed the court order to participate in the ReConnect Program but she is concerned for the emotional and mental health of herself and the boys.

[The Claimant]

[The Claimant] has consistently shown through his interactions and conversations with the counselling team [willingness] and motivation to have a positive relationship with his children. [The Claimant] has followed the team's direction and suggestions without reservation.

[The Claimant] will require coaching and education:

- How to address [H.'s] questions and concerns regarding the divorce and [H.'s] feelings towards [the Claimant]

- How to build and maintain his relationship with both boys
- How to communicate and co-parent effectively with [the Respondent]

RECOMMENDATIONS:

1. [The Respondent] to receive counselling:
 - a. To address her concerns regarding the reunification of her sons to [the Claimant]
 - b. To teach [the Respondent] effective ways to support the reunification of [H.] and [A.] to [the Claimant]
 - c. To provide [the Respondent] strategies to prevent depression
2. Ongoing structured weekly sessions for [H.] and [the Claimant] to occur
3. Court order stating that [H.] must attend the sessions involving his dad
4. Bi-weekly Parent meeting to work on communication and co-parenting relationship

[203] Following up on Mr. Daily's report, Mr. Finlay sent an email to the parties' counsel dated September 7, 2016, marked Exhibit 65, that included the following:

As per our phone call on August 25/16, please find attached a counselling summary written by Greg Daily who has conducted the bulk of the counselling with this family. He and I have discussed the recommendations at the end of his report and we submit these as our plan for next steps.

As Team Leader I have the following report. The parents signed a counselling contract on June 24/16 for a period of 3 months. In month one there were to be weekly sessions for each of the children and the parents together and separately. In month two, bi-weekly sessions and in month three joint counselling sessions between the father and each child and family sessions. A retainer of \$8000 was paid by the parents.

There were parents meetings held on June 24/16, June 29/16, July 6/16, July 20/16, July 25/16, August 10/16, and August 17/16. Greg Daily attended all of the parents meetings except for one. [The Claimant's] cousin attended to assist with interpretation. I chaired and facilitated each meeting. A joint counselling session with [H.], the parents, the cousin, and Greg Daily and myself took place on August 17/16. [H.] and his father were able to converse for about 30 minutes with assistance from the counselling team. [H.] was very resistant to sitting in the same room as his father and at one point tried to run away from the office and had to be retrieved by his mother. Subsequently Greg Daily tried to have sessions and visits in the community with [H.] and his father however [the Respondent] could not get him to attend. This is concerning as I believe that once [H.] and his father can talk then his resistance could be reduced as was noted in the one joint session. In working with [the Respondent] in the individual and parent's meetings she has cooperated in attending and following our advice however she does not believe that it is in the boys interests to have a relationship with [the Claimant] She believes that the boys will be hurt by

this, that they will become sad and depressed. The evidence gathered during counselling suggests the opposite. [A.] enjoys his visits however when returning home he pretends as if it was a negative experience. Despite Greg Daily's assurances that [A.] is happy with his father, [the Respondent] doesn't believe it.

Given that the Court Order gives me the authority to make decisions on parenting time during the reunification process, I recommended to the parents that [A.] have 2 overnights each week in the month of July and then review it. [The Respondent] agreed to this however then she told the boys that this was ending in August. I recommended that the 2 overnights continue in August after receiving feedback from Greg Daily that [A.] was happy with his father. [The Respondent] was not happy with that and wouldn't agree to it.

We believe that [H.] can also have a positive relationship with his father however he needs to be taken out of the role of being enmeshed with his mother where he believes the negative false beliefs that his mother believes about his father. [H.] also appears to have been given too much power by his mother. He believes that he doesn't have to comply with her directives, that he can do what he wants and his mother does not appear to have established parental authority with him. She said in the joint meeting with [H.] present that this is too much pressure for her, that she is afraid she and the children will get depressed and she plans to talk to her Doctor. We anticipate that she will obtain a Doctor's note saying she can't participate in counselling.

My observations of [the Claimant] [are] that he has cooperated with all aspects of our program. He appears to be sincerely devoted to reconnecting with [H.] and has successfully reconnected with [A.] He has rearranged his work schedule on several occasions to accommodate counselling and visits.

[204] Then Mr. Finlay outlined how the parties' retainer of \$8,000 had been spent and indicated for services rendered to date a balance was owed of \$211.44. He requested an additional retainer of \$8,000 to cover two additional months of counselling that would include weekly sessions with H. and the Claimant, individual counselling for the Respondent and meetings with the parents.

[205] Mr. Finlay also recommended a police enforcement provision to compel H. to attend further counselling to aid in the reunification of this family as follows:

In addition to the recommendations outlined in Greg Daily's report, we recommend that the Court consider a police enforcement clause if [the Respondent] cannot get [H.] to attend or she withdraws from the program. It is important that counselling between [H.] and his father as well as weekly visits be ordered by the Court so that [the Respondent] gets the strong message that the Court will not accept anything less than reunification. If this additional counselling cannot reunify [H.] with his father then we recommend residential treatment followed by a reversal of guardianship and parenting time to the father with [H.'s] parenting time with his mother supervised.

[Emphasis added.]

[206] When this matter came back before the Court on November 29, 2016, neither party expressed interest in pursuing this form of counselling. More importantly, neither party wished the police to be involved in compelling H. to attend counselling to improve his relationship with his father. The parties simply wished the Court to order what it considered to be in H.'s and A.'s best interests in light of the evidence.

[207] The situation at this point is that structured reunification therapy recommended by Mr. Colby, to the extent it was engaged in, has not been successful. Therefore, the findings of Mr. Colby in his more recent report and the outstanding issues with regard to parenting H. and A. have not been ameliorated. They include:

- the current parenting communication does not provide for a framework for parental coordination or joint parental involvement;
- issues of parental rejection have not been addressed;
- the strong bond between H. and A. is very important and their sibling relationship is to be maintained in any parenting arrangements;
- without H.'s rejection of the Claimant being resolved, it undermines A.'s relationship with the Claimant, and places A. in a most difficult emotional situation;
- parent-child involvement between the Claimant and H. and A. at this time is counter-productive as the nature of their relationships with their father has to change prior to them accepting engagement with their father; and
- without such a change, involvement with their father is not considered to be "supportive of their emotional and psychological status."

[208] Thus, while in theory having both H. and A. experience positive parenting time with the Claimant would be best, based on Mr. Colby's assessment of the situation and the failed treatment experience, it not only remains impossible to achieve but continued efforts are contra-indicated in terms of the children's best interests.

[209] Upon receiving the update with regard to the unsuccessful attempt at reunification on November 29, 2016, I indicated that I would be prepared to interview the children to hear their views and assess their current well-being, but that I would only do so if the parents consented, and the children wanted to meet with me. Subsequently, the Court received a message that the children did want to meet and their parents consented. A time on January 4, 2017 was arranged.

The Court's interview with H. and A.

[210] I met first with H. and then with A. in a small, conference-style room with a court clerk attending to recording, sitting unobtrusively to the side. No parents or legal counsel were present. I told each child that it was my job to decide what was best for them, and that it was not their decision. I also told each of them that I was very interested in how they were

doing, and what they wanted to tell me about how life had been for them. As the trial was over, and all submissions had been concluded, I had advised counsel that I would share in general terms the content of the interview with each child in these reasons.

- [211] H. told me about his school where he is in Grade 5. He enjoys it. In particular he enjoys math and helping around the school at lunch time, and playing games with the Grade 3 students in a type of monitor role. H. wants to be a lawyer.
- [212] H. likes living with his mother and A. in their new house next to his cousins' house where there is a big back yard. He enjoys playing with his cousins, and said that his grandma (maternal) is also there.
- [213] H. described the things he enjoys doing with his mother, including going to the mall to buy and trade video games, and playing various games including a math game called Uno, which he usually wins.
- [214] H. remains very upset with his father, who he feels abandoned them. H. said of his father that he did not care about them then, and now he wants to care. He said that when his dad left them it hurt his feelings. He said he had scared feelings, and was hurt inside by his father. He did not think his feelings would get less with time.
- [215] H. described in some detail how he saw his father beat up his mother with a lunch kit. He said his aunt who lived downstairs came up and asked what the racket was. A. was upstairs. H. said he ran out and closed his eyes.
- [216] He said that his father started to come home late and his mother started to notice. One day H. said his father went to the tracks to commit suicide if his mother did not do certain things. He said that day his mother was saying to his father, "Don't go, don't go". H. said "We saw him walking, it was two blocks from the house and then he finally came home." He said that he, A., and his mother spent two weeks at his cousin's house because his mother was scared, this was two weeks in March, and then his father came back on his (H.'s) birthday. H. said, "We would call and he wouldn't pick up and he never came back since."
- [217] When I suggested to him it was generally better for children to have two parents, H. said he was okay just being with his mum. He spoke of his Uncle Lakh (phonetic), and said that he really did not miss his dad. When I asked if it would be alright with him if his father went to his basketball games H. said that he did not want him there, adding that his father never went to A.'s games either. When I suggested that he could let A. do what A. wants to do, H. said that he did not want to spend time with his father even if he missed out on things. He said the worst thing his dad did was "when he left, he never told us, for a year or two " He also described an incident when A. wanted to go with him and his mother, and his father made A. leave with him. He agreed that A. could visit his father, but not stay all the time. H. said very clearly that he did not want to be apart from A. He asked if the Court was going to make orders that day and would they be forever?

- [218] Next I interviewed A. After A. got comfortable he told me that he would not want to be a judge because people cry in court and he doesn't like that. He said that before he cried in court because H. was getting angry. He told me about his favourite t.v. program that included people singing. A. said he likes to sing and he makes up his own songs. He also really likes to draw. He likes playing outside with his cousin having a snowball fight. He also likes playing Lego inside and watching t.v. With regard to his parents, he said, "They don't talk to each other and they go to court."
- [219] A. told me about being in Grade 2 at his new school. He likes gym, getting exercise, running, and stretching. A. said he likes his new school more than the old one because there are no uniforms, and the teachers are "much nicer and funner." He likes spelling and said he thought he had a good brain. A. said he likes living with his uncle, aunt, and his two cousins.
- [220] A. said that he was not happy when he was living with his dad. He said his dad never came home from work, never came home until night time. He spent his time with Grandma (paternal). He said he was in the room watching movies and he was sad and bored.
- [221] A. said that he likes doing some things with his dad, like going to the park. When he stays at his dad's he watches t.v., but not with his dad. He doesn't play games with his dad. A. also said that he did not know if his mother wanted him to spend time with his dad.
- [222] A. said that it was ok to go to the park with his dad after school on Wednesdays and that his dad could pick him up. Asked whether it would be alright with him if his father came to his basketball games, A. said that even with his mother dropping him off and his dad watching "wouldn't work so much as they would probably get in a fight." A. said his parents had a fight when his dad left, "My Dad started hitting my mum and stuff." Asked what he would like to be different, A. said "that my mum and dad don't fight."

Findings

- [223] I make the following findings with regard to the children and what is and is not in their best interests:
- Had the Respondent been more forthcoming about the extent of family violence she had experienced at the hand of the Claimant and the effect of his suicide threats, Mr. Colby would have likely made stronger findings with regard to the presence of family violence, particularly if he had the benefit of interviewing Ms. Dhanoya. The fact that the Respondent required an interpreter for the interviews may have been an impediment.
 - As indicated previously, more likely than not there is a history of family violence in this case that involved the Claimant striking the Respondent on more than one occasion, and threatening to commit suicide. Some of these instances have occurred in front of the children. These events have had a strongly negative effect on H., and also to a lesser but appreciable extent on A. The parties have also had many verbal fights that the children have witnessed or overheard.

- The lives of H. and A. have been very significantly disrupted by parental conflict. They have had to leave the home with their mother at times, witness police attendances, and experience the involvement of a psychologist, family relatives, Ministry of Children and Families staff (in relation to A.), and teachers at school to investigate or diffuse conflict situations. They have had to move homes and change schools. They have also been to court on two occasions and interviewed by a master and a judge. A. also was ordered by the Court to move and live with his father and then ordered to return to live with his mother. They have engaged in reunification therapy last summer.
- The Claimant's absences and lack of contact with the boys during them have had a very negative effect of their relationships with him. This history has had a significant impact on how the children view their father.
- It must be remembered that both parties come from traditional Sikh backgrounds, and that their marriage was an arranged one, that at least in part facilitated the Claimant immigrating to Canada. The role of the husband, uncle or son appears to carry with it additional authority. It is difficult for the Respondent to exercise authority in terms of H. to force him to interact respectfully with his father.
- Also, in the context of family dynamics, the Respondent, being the victim of family violence, has been disempowered in her own eyes and also in the eyes of H., which in turn limits her ability to direct the behaviour of H. to the extent of compelling him to interact with his father.
- Despite the previous point, the Respondent has done her best to encourage the children to see more of their father. Viewed objectively, she most certainly could have done more to support them having positive interactions with the Claimant. However, it is important to note that she has borne a heavy burden in terms of caring for the children, suffering from serious depression, and experiencing significant financial concerns.
- Until she became severely depressed in November 2011, except while on disability leave related to pregnancy health issues and maternity leaves, the Respondent worked outside the home in addition to doing the majority of childcare, sometimes at two jobs or working overtime. Despite the stress of being a victim of family violence and enduring financial and emotional difficulties, the Respondent by all indications has provided excellent care to H. and A., even during their father's absences.
- The Claimant has worked at various jobs over the years. When A. was ordered to live with him, A. clearly did not thrive. The Claimant either did not see the child's unhappiness or chose to ignore it. For whatever reason, the Claimant was not available for parenting activities that otherwise the Respondent would have engaged in, which left A. feeling miserable and lonely, missing the company of his mother and brother.
- Both boys are remarkably well-adjusted socially and academically given their family upheaval. They are bright, well-mannered, attractive children who both like school and express their other interests in positive terms. They are well cared for living with the Respondent. She has a close,

positive, and productive relationship with each of them. They are very closely bonded with their mother who has been their primary caregiver, and the person who has overseen their development and tended to their well-being since they were small. She and the children also have close relationships with members of her extended family, with whom she and the children have lived at various times, some of whom now live next door.

- The Claimant's lengthy absences from the family prior to the last separation and since have caused the children to view him with increased distrust. It is hard to understand why he has not attended at least some of their basketball practices or games, or gone to parent-teacher nights. During at least some of those absences the children, in particular H., were apparently unable to contact him, and he appears to have lost their trust.
- It is telling that when A. lived with the Claimant pursuant to Master Caldwell's order for about nine months, A. did not thrive. He did not see much of the Claimant. While it is understandable that parents have pressures from work and other commitments, A.'s relationship with the Claimant was not enhanced by living with his father. In fact, overall, A.'s time living with the Claimant, separated from H. and his mother, had a significantly negative effect on A.'s relationship with the Claimant.
- To force H. to interact with his father at this point would only cause H. to become more entrenched in his present dislike of his father, and would serve to increase the animosity that he bears him. The parties wisely decided not to press for a court order for police enforcement of counselling and therapeutic interaction between H. and the Claimant. Neither party sought such enforcement in relation to H., nor would the Court have made such an order in light of the failed family reunification counselling to date, and the Court's recent interview with H.
- H.'s views of his father may change over time if the Claimant consistently reaches out to H. in a positive way. It will take great patience and resolve on behalf of the Claimant to break down the barriers that H. has erected to distance himself from the Claimant. H. has erected these barriers to protect himself, A., and his mother from the risk of further abandonment, harm and disruption by the Claimant of the family unit, which H. now perceives to be comprised of himself, A., and the Respondent.
- Professional opinion and the views of the children strongly militate against separating H. and A. for anything other than short periods of time. Their way of coping with the emotional trauma and upset in their parents' relationship, as well as the sale of their previous home, and changing schools, and neighbourhoods, has been the very strong bond that exists between them.
- Once the family is no longer embroiled in litigation and matters between the parents have been decided by the Court, it is hoped the tension between the Claimant and the Respondent will diminish over time. This may clear the way for H. to have a more positive relationship with the Claimant, and for A. to spend increased time with the Claimant, either with or without H.

Parenting arrangements are determined by the child's best interests

[224] Parenting arrangements are to be determined based solely on what is in the child's best interests: s. 16(8) of the DA; and s. 37 of the FLA.

[225] In particular, s. 37(2) of the FLA sets out how such a determination is to be made:

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

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

- [226] Each of the s. 37(2) factors must be separately considered but "in the end, the evidence has to be considered as a whole" (B. (M.W.) v. B. (A.R.), 2013 BCSC 885, at para. 254).
- [227] The s. 37(2) factors however are not exhaustive, and may also be considered when assessing the best interests of the child on an application for custody under the DA: *Puzzobon v. Puzzobon*, 2013 BCSC 1226, at para. 30; and *E.D.A. v. M.A.A.*, 2014 BCSC 1084, at para. 40.
- [228] In making a custody order under s. 16(1) of the DA, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child (s. 16(9)). Additionally, in making a custody order under s. 16(1), the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact (s. 16(10)).
- [229] There is neither a presumption in favour of the status quo nor joint or sole custody. The only issue is the best interests of the child, which must be determined in the particular circumstances of that case (*E.L.S. v. C.A.S.*, 2012 BCSC 1224, at para. 36; *Nunweiler v. Nunweiler*, 2000 BCCA 300, at para. 30; *Robinson v. Flyk* (1996), 28 B.C.L.R. (3d) 21 (C.A.), at paras. 28-30).

The best interests of H. and A.

- [230] Turning to what parenting arrangements are in the best interests of H. and A., I will deal first with H.
- [231] H.'s health, emotional well-being, his own views, and the nature and strength of his relationship with the Respondent (FLA s. 37(2)(a)-(c)) all point towards him continuing to be parented by the Respondent. Given the nature and strength of his relationship with her, and the continuing dysfunctional relationship he has with the Claimant, this is the only viable positive path forward. In terms of the history of H.'s care past and present (FLA s. 37(2)(d)), while he clearly had a close relationship with the Claimant in earlier times, that relationship is so damaged now by H.'s perceptions of the Claimant's destructive behaviour within the family, that absent its reparation, which is highly unlikely, the Court must support H. being parented where he has the best opportunity to thrive, and that is living with his mother.
- [232] In terms of H.'s need for stability as he enters adolescence (FLA s. 37(2)(e)), that need is best met living with his mother and brother in the extended family situation provided by Ms. Dhanoya, her husband, and their family.

- [233] With regard to the abilities of these parents to exercise their parental responsibilities (FLA s. 37(2)(f), the Respondent is clearly the more devoted and available parent. The Claimant is not able to parent H. at this time or in the foreseeable future, given the fundamental breakdown of their relationship from H.'s point of view.
- [234] The history of family violence here (FLA s. 37(2)(g)-(h)) does not support shared parenting responsibilities in relation to H. He remains fearful and very upset by his perceptions of his father's behaviour. To engage both his parents in aspects of his parenting is only to risk further arguments and escalation of family violence, in terms of the Claimant becoming physically violent towards the Respondent, potentially in front of both children.
- [235] Interaction between H.'s parents causes nothing but anxiety and stress to him, and it is not possible for the Claimant and Respondent to cooperate on issues affecting H. in a productive manner (FLA s.37(2)(i)). Such cooperation would increase risk to the safety, security or well-being of H. and/or other family members.
- [236] Therefore, based on the evidence and findings I have made and consideration of these factors in the context of the best interests of the child test, I find that it is in H.'s best interests to reside with the Respondent, and to have decisions regarding his life, including his health, schooling, and other activities be made by her alone. H. is not to be forced to interact with the Claimant but may do so if H. decides to participate in the limited parenting time A. will have with the Claimant. The Claimant may phone, text or email H. up to three times a week and invite him to attend activities as the Claimant wishes. It may be that once the situation is settled and H. feels more secure in his life he will choose to spend time with his father. Absent further counselling with police-enforced attendance, which neither parent wants or is able to pay for, this is the only route forward that is in H.'s best interests.
- [237] I turn now to what is in A.'s best interests.
- [238] A.'s health, emotional well-being, his own views, and the nature and strength of his relationship with the Respondent (FLA s. 37(2)(a)-(c)) all point towards him continuing to be parented by the Respondent. Given the nature and strength of his relationship with her, his very close relationship with H., and the clear need to keep the boys living together, combined with his recent unfortunate parenting experience living with the Claimant, this is what I find to be in A.'s best interests going forward. In terms of the history of A.'s care, past and present (FLA s. 37(2)(d)), the Respondent has been the committed, engaged parent, while the Claimant has come and gone from A. life, causing hurt and disruption. A.'s best opportunity to thrive is living with the Respondent and H. in the extended family situation that exists presently.

- [239] In terms of A.'s need for stability in these tender years of childhood (FLA s. 37(2)(e)), A. needs a break from conflict and needs to feel safe and secure in his family relationships. These needs are best met living with his mother and brother in the extended family situation provided by Ms. Dhanoya, her husband, and their family, with an opportunity to enjoy spending time with the Claimant in a limited and regular way that will not cause him to miss H. or the Respondent.
- [240] With regard to the abilities of these parents to exercise their parental responsibilities (FLA s. 37(2)(f), the Respondent is clearly the more devoted and available parent. The Claimant is not able to parent A. at this time or in the foreseeable future, given the fundamental breakdown of family relationships that puts A. in a most untenable and unhealthy position. However, that does not mean that the Claimant may not see or have contact with A.; just that such parenting time be positive, stress-free, and time-limited. The Claimant is to be reminded that it is the arrangement that is in the best interests of A. that rules the day, and not about winners and losers. His focus going forward, if he wishes to nurture his relationship with A., is to spend regular, stress-free parenting time with A. doing activities together they both enjoy. Over time, once the situation is defused, it may improve and the Respondent may consent to additional parenting time for the Claimant with A.
- [241] However, the history of family violence (FLA s. 37(2)(g)-(h) in this case does not support shared parenting responsibilities in relation to A. A. remains very concerned about conflict between his parents, even to the extent that he did not think they could be at the same sports practice or event. A. has obviously witnessed too many difficult and destructive interactions between his parents to risk another. To engage both his parents in aspects of his parenting is only to risk further arguments and an escalation of family violence, potentially in front of both children.
- [242] Given past history it is not possible for the Claimant and Respondent to cooperate on issues affecting A. in a productive manner (FLA s. 37(2)(i)). Such cooperation would increase risk to the safety, security or well-being of A. and/or other family members.
- [243] Therefore, based on the evidence and findings I have made and consideration of these factors in the context of the best interests of the child test, I find that it is in A.'s best interests to reside with the Respondent, and to have decisions regarding his life, including his health, schooling, and other activities be made by her alone. A. is to be encouraged but not physically forced to spend parenting time with the Claimant as I will specify. The Claimant may phone, text or email A. up to three times a week to see how he is, and discuss their next parenting time together. It may be that once the situation is settled and A. feels more secure in his life he will choose to spend more time with his father.
- [244] I will set out the orders pertaining to parenting and guardianship at the end of these reasons for judgment.

Child support

Child support - retroactively and prospectively

- [245] Although not expressly stated under s. 15.1 of the DA, the court has the authority to award child support retroactively as well as prospectively: *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.], at paras. 81-83.
- [246] Parents have an obligation to support their children in accordance with their income. Accordingly, a payor parent who does not increase child support payments to correspond with increases in their income will not have fulfilled their obligation to the child.
- [247] The circumstances in which retroactive child support may be ordered were addressed by the Supreme Court of Canada in *D.B.S.* In making such an order, the court must balance the principles of certainty and flexibility to achieve a fair result. Fairness demands that child support obligations change to meet evolving situations. Yet fairness also demands that child support obligations that appear to be settled are not gratuitously disrupted.
- [248] The Court in *D.B.S.* identified four factors to be considered in determining whether a retroactive award is appropriate at para. 133:
1. Whether there is a reasonable excuse for why the recipient parent did not seek a variation of support earlier.
 2. The conduct of the payor parent.
 3. The circumstances of the child.
 4. Any hardship that would be occasioned to the payor parent by a retroactive award.
- [249] None of these factors are determinative; rather, the court should "strive for a holistic view of the matter and decide each case on the basis of its particular factual matrix": *D.B.S.* at para. 99.
- [250] Once the court has established that a retroactive award is appropriate, the court must go on to determine the date to which the award should be retroactive. It is usually inappropriate to make a child support award that is retroactive to a date more than three years before formal notice was given to the payor parent unless the payor parent engaged in blameworthy conduct. Instead, as a general rule, a child support award should be retroactive to the date of effective notice, defined as the date when the recipient parent "broached the topic" of increased support: *D.B.S.* at para. 121.
- [251] As stated in *D.B.S.* at para. 125:

The proper approach can therefore be summarized in the following way: payor parents will have their interest in certainty protected only up to the point when that interest becomes unreasonable. In the majority of circumstances, that interest will be reasonable up to the point when the recipient parent broaches the subject, up to three years in the past. However, in order to avoid having the presumptive date of retroactivity set prior to the date of effective notice, the payor parent must act responsibly: (s)he must disclose the material change in circumstances to

the recipient parent. Where the payor parent does not do so, and thus engages in blameworthy behaviour, I see no reason to continue to protect his/her interest in certainty beyond the date when circumstances changed materially. A payor parent should not be permitted to profit from his/her wrongdoing.

[252] Section 3(1) of the Federal Child Support Guidelines, SOR/97-175, requires the amount of child support to be paid to be based on the payor's income and the number of children to be supported according to the applicable table.

The Claimant's position

[253] The Claimant notes that the Respondent filed her Counterclaim seeking child support on September 10, 2014, and the Claimant started to pay monthly child support in the amount of \$630 for two children, commencing December 1, 2014, after the JCC before Mr. Justice Armstrong. This amount of monthly child support payable by the Claimant was based on a Guidelines' income of \$41,130, pursuant to his 2013 line 150 tax return amount. The Claimant agrees that he owes child support for three months in 2014, namely for September through November, in the monthly amount of \$630, resulting in an amount owed of \$1,890.

[254] On May 12, 2015, Master Caldwell made the order changing A.'s primary residence to the Claimant's residence, and child support payable by the Claimant to the Respondent was reduced to \$212 per month to take into account the split custody situation as of June 1, 2015.

[255] Then A. was returned to live with the Respondent in February 2016, resulting in the Claimant being obliged to pay child support to the Respondent for both A. and H. For the months of March, April, and May 2016, the Claimant paid \$212 per month and, according to his counsel he should have paid \$612 per month on a Guidelines' income of \$40,000. Therefore, the Claimant owes a difference of \$400 per month for those three months, which totals \$1,200.

[256] Except for the three month period in 2014 referred to above, and the adjustment referred to above, the Claimant submits he has paid the amounts ordered.

The Respondent's position

[257] The Respondent submits that the Claimant should pay retroactive child support for two periods of separation: the first from October 2, 2012, to early July 2013 when the parties reconciled; and the second from May 8, 2014, to December 1, 2014, when child support of \$630 per month for both children became payable by the Claimant according to the consent order made at the JCC held before Armstrong J. on November 20, 2014. This amount was based on the Claimant's 2013 Guidelines' income.

- [258] The Respondent also claims that the Claimant owes child support for time while this trial was underway. This is because A. lived with the Claimant from May 12, 2015 to February 11, 2016, and the child support payable by Claimant was reduced on June 1, 2015, to \$212 per month for H. only (based also on Guidelines' incomes of \$40,000 for the Claimant, and \$18,000 for the Respondent). Once A. returned to live with the Respondent, the Claimant did not increase the amount of child support payable to the correct amount. Therefore, the Claimant also owes child support at his correct Guidelines' income amount for two children from March 1, 2016 onwards less the \$212 per month he has paid.
- [259] The Respondent's position is the income that should be imputed to the Claimant is \$60,000, based on a careful look at his past earnings and ability to earn, as opposed to the \$40,000 income attributed to him by Master Caldwell on an interim basis. The Respondent points to various aspects of the evidence to support this view, including the fact that the Claimant declared an income of \$60,000 on the credit application in September 2013 (Ex. 5, p. 56), and that he purchased an expensive Mercedes SUV on lease loan in 2014 by paying \$4,000 down while financing \$45,000. Therefore, the Respondent submits that had the Claimant been required to pay child support for two children based on an income of \$60,000 from November 20, 2014, he would have been obliged to commence paying \$910 per month in child support from December 1, 2014, as opposed to the \$630 per month ordered at the JCC.
- [260] The Respondent claims child support from November 2012 to May 2015 (when A. was ordered to live with the Claimant) at \$910 per month for 30 months, for a total of \$27,300, during which the Claimant paid \$630 per month for six months, amounting to \$3,780. Based on the interim order dated June 1, 2015, up to and including February 2016 (when A. was ordered to return to live with the Respondent) the Claimant paid nine months of child support at \$212 per month, for a total of \$1,908, which the Respondent submits is \$6,282 less that the Claimant ought to have paid had he been required to pay \$910 per month. From March 2016 going forward the Respondent submits that the Claimant ought to have paid \$910 per month, which up to and including June 2016 (final submissions were made May 24, 2016) amounts to \$3,640 in child support.
- [261] The Respondent's claim for retroactive child support for the periods discussed above totals \$37,222 ($\$27,300 + \$6,282 + \$3,640 = \$37,222$), not taking into account amounts of child support actually paid by the Claimant.
- [262] Alternatively, the Respondent submits that based on the Claimant's 2013 Notice of Assessment, his Guidelines' income ought to be \$43,386, and the amount of monthly support payable for two children is \$661.

Responses to the Court's inquiry by memorandum

- [263] The Court inquired recently by a memorandum to counsel whether the Claimant had increased the amount of child support he was obliged to pay for both children from \$212 per month to \$612 per month commencing June 1, 2016, as referred to in his counsel's final submissions.
- [264] The Court was advised the Claimant has continued to pay \$212 per month in child support, and \$250 per month in spousal support pursuant to the order of June 1, 2015, and that his payments are up to date. Counsel for the Respondent also advised that the Claimant had been in India from December 15, 2016, to March 3, 2017, and that the Respondent had been looking after all the expenses for the children.

Findings with regard to child support

- [265] Having determined that the correct separation date for the parties is May 8, 2014, and not the earlier date of October 2, 2012, given the parties' reconciliation in July 2013, I find that the Claimant does not owe child support retroactively to October 2, 2012.
- [266] The Claimant owes retroactive child support in the amount of \$630 per month for the months of September, October and November, 2014, based on the Respondent's Counterclaim filed September 10, 2014, and the order commencing December 1, 2014, made at the JCC held November 20, 2014. I find that the Claimant is required to pay child support on his 2013 tax return line 150 amount of \$41,130. The child support owed for this period is \$1,890.
- [267] For the months of December 2014 to May 2015 inclusive the Claimant was required to pay \$630 per month in child support. No indication has been given in these proceedings that he has failed to do so.
- [268] Given that A. moved to live with the Claimant on May 12, 2015, the Claimant's child support obligation was reduced by Master Caldwell on June 1, 2015, to \$212 per month payable to the Respondent for H. only. The Court has been advised that he has made these payments on the first day of every month thereafter up to and including for the month of April 2017.
- [269] However, given that A. moved back to live with the Respondent and H. in February 2016, the Claimant's child support obligation increased to again require him to pay for two children as of March 1, 2016, through the present month of May 2017, a period of 14 months, whereas he has continued only to pay the \$212 amount for one child.
- [270] The Claimant is required to pay the increased amount based on his Guidelines' income in his most recent tax return. His Guidelines' income for 2015 is \$39,806 based on his 2014 tax return. The Court has no more recent information except the Claimant's evidence that as he had A. in his care in 2015 he expected his income to decrease. However, A. did not remain in his care.

- [271] To a significant extent the Claimant can control how much he works. Since March 2016 he has not had the added responsibility of daily child care. He recently travelled to India for almost three months from December 2016 to March 2017, when presumably he did not earn any income that he would be required to declare in Canada. Considering his Guidelines' incomes for 2014 (\$39,806), for 2013 (\$41,625), and for 2012 (\$43,386) the Court considers it appropriate to average his incomes for the three years for which there is information available pursuant to s. 17 of the Guidelines. This results in a finding that the Claimant has a Guidelines' income of \$41,605, and based on that income and the applicable table he is obliged to pay \$635 per month in child support for H. and A.
- [272] Whereas the Claimant has paid \$212 per month in child support for 14 months when he should have been paying \$635, he has paid \$2,968, and he owes \$5,922 ($\$635 - \$212 = \$423 \times 14 \text{ months} = \$5,922$).
- [273] The Claimant is reminded of his continuing obligation to provide income information as set out in s. 25(1) of the Guidelines, which requires provision of the information specified in s. 21(1).
- [274] The Claimant's ongoing child support obligation commencing June 1, 2017, and payable on the first day of each month thereafter for the support of H. and A., is \$635 per month until each child is no longer a child of the marriage entitled to support under the DA, or until further order of the court. The Claimant is required to provide the financial information set out in s. 21(1) of the Guidelines on an annual basis and to pay the required table amount.

Division of family assets and debts

The relevant law

- [275] With regard to the division of family assets and debts, I have considered the relevant sections of the FLA, namely sections 81, 84, 85, 86, 87, 94, 95, and 97.
- [276] Section 81 of the FLA sets out the right of each spouse to a half interest in family property:
- 81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],
- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
 - (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.
- [277] Section 85(1) of the FLA sets out property that is excluded from family property. It includes "property acquired by a spouse before the relationship between the spouses begins" (s. 85(1)(a)), and "property derived from property or the disposition of property referred to in any of paragraphs (a) to (f)" (s. 85(1)(g)).

[278] The term "family debt" recognizes that spouses jointly contribute not only to the accumulation of assets, but also debt. Section 86 of the FLA does not define "family debt", but states what the term includes:

Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property.

[279] A family debt is defined by the Supreme Court of Canada as a "liability of either or both of the spouses which has been incurred during the marriage for a family purpose: *Stein v. Stein*, [2008] 2 SCR 263, 2008 SCC 35, at para. 10.

[280] Section 95 of the FLA sets out the considerations that may support the Court deciding to divide family property other than equally. It states:

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;

- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[Emphasis added.]

[281] The term "significantly unfair", as used in s. 95(1) to support unequal division, has been interpreted as a caution against departing from the default of equal division in an attempt to achieve "perfect fairness" between the parties. It is only when the consequences of equal division are sufficiently weighty so as to render it unjust or unreasonable, that a judge's order ought to depart from the default of equal division in s. 81 of the FLA: *G. (L.) v. G.(R.)*, 2013 BCSC 983.

The Claimant's position

[282] The Claimant seeks equal division of family property with some specific adjustments. He seeks additional funds be added to his share of the net proceeds from the sale of the family home in Surrey, namely: \$48,027.01 for various withdrawals made by the Respondent; \$5,516.47 to reimburse him for payment of the judgment from the Respondent's credit line which had to be paid out prior to the sale of the family home; \$11,400 as his half share of rental income from the suites in the family home; and \$14,250 as his half share of occupational rent when the Respondent and the children resided in the Surrey family home after separation.

The Respondent's position

[283] The Respondent's position is that the family property is comprised of the net proceeds from the sale of the family home (\$315,779.12), the Claimant's work truck that he valued in the credit application made on September 26, 2013 (Exhibit 5, p. 56) at \$30,000, the Mercedes SUV the Claimant acquired post-separation valued at \$50,000, and the approximately \$11,000 he has in an RRSP at the TD Canada Trust. The Respondent's position is that these assets constitute the family property in this case, and that they total \$395,779.12. Her position is that unequal division is warranted for a number of reasons.

[284] The Respondent claims that the following amounts she borrowed from her mother are family debts: \$3,400 on December 20, 2012; \$5,300 on January 2, 2013; and \$2,000 on February 7, 2013. These amounts total \$10,700.

[285] In addition, the Respondent says she owes a total of \$89,573 to other family and friends due to being in dire financial straits after the Claimant left the family. She compiled a list of who loaned her funds and how much (Exhibit 27). Her counsel submits that she needed to borrow this money to keep food in the fridge and a roof over their heads after the Claimant abandoned his family. She claims the following as family debts that arose when she had to borrow money from the following people:

- from Ranjit Mohein a total of \$32,000 comprised of: \$15,000 to complete the basement at the family residence; and \$12,000 and \$5,000 to pay off credit cards on September 26, 2013.
- from Sarbjit Dhanoya a total of \$26,800 comprised of: \$3,000 borrowed on November 15, 2015 (cheque at p. 121 of Ex 5); \$3,400 for property taxes for the family residence for 2013; \$3,400 for property taxes for the family residence for 2011; \$2,000 borrowed for a mortgage payment on the family residence; and \$15,000 comprised of amounts borrowed from time to time for household expenses.
- from Gurmail Rannu and Sanjit Rannu a total of \$10,000 for household expenses.
- from Namtej Kang a total of \$20,773 for legal fees comprised of \$4,773, \$6,000, \$5,000, and \$5,000.

[286] In addition, the Respondent submits that the Claimant paid an amount of \$21,543.76 to pay off debts of his parents, which she submits ought not to be considered a family debt, but rather a debt to come from his share.

[287] With regard to the Respondent's position that she should receive an unequal division of more than half of the family property pursuant to s. 95(1) of the FLA, she submits this is the fair result because she made a larger contribution to the family property acquired during the marriage, both in terms of her physical and monetary contributions. In addition, the Claimant's payment of personal debts from their family income, and his failure to provide financial support when he left her and the children during their first separation, also support an unequal division in her favour.

[288] Furthermore, the Respondent also asks the Court to take into account that: she used her pre-marriage savings to assist in the down payment for the purchase of the parties' first house in Calgary; she paid airfares and other expenses for their trip to India in the amount of \$15,000; and she assisted the Claimant in achieving permanent resident status in Canada by virtue of their marriage and fees she paid. Meanwhile, during the marriage the Claimant paid off his pre-marriage debt to Jagdev Johal, paid his debt to Pargan Sohal for the wedding, paid for his debts of his parents, and sent money to his brother in India - all from funds that were family property.

[289] Ultimately, the Respondent's position is that the Claimant did not work regularly, did not provide much of his employment income to the family, and dissipated the family's limited resources on his pre-marriage debts to other members of his family of origin. Therefore, the Respondent seeks to have the family property, which is almost exclusively represented by the net proceeds from the sale of the parties' former matrimonial home, divided unequally, with all or most of the Claimant's share being attributed to her.

The sale of the parties' family home in Surrey

[290] The family home was the parties' main asset in terms of family property. It was sold by an order of the Court arising from these proceedings, although foreclosure proceedings had commenced. The property sold for \$720,000, which after the commission was paid, resulted in the parties receiving \$696,321.58. From that amount the outstanding balance on the mortgage was paid out in the amount of \$294,425.12. An amount of \$10,161.76 was also paid for a judgment on an account from which mortgage payments were paid for a time after separation that went to a negative balance, and a bill of costs related to the foreclosure action in the amount of \$4,759.93. The Respondent's Royal Bank line of credit had resulted in a judgment registered on title for \$11,032.94, which also was paid out. After certain other expenses and charges associated with the sale of the property were paid (which I have not listed here), the parties each received a \$20,000 amount from the net proceeds by consent, and the Claimant was reimbursed \$15,198.75 for the reports of Mr. Colby. Thus, the remaining balance held in trust from the sale of the family home is \$315,779.12.

Payment of the Respondent's Royal Bank credit line balance from the sale proceeds

[291] This debt of the Respondent's, an amount of \$11,032.94, was secured by a judgment registered on the title of the Surrey house. The Claimant seeks to be reimbursed for half of it that was paid from his share of the sale proceeds. The Respondent has not produced any statements to show what the balance on this line of credit was near or at the date of separation, May 8, 2014. All that she has produced is a statement showing that as of October 1, 2014, the balance was \$3,019.14. I find that the Respondent has failed to prove the amount of this debt as a family debt, and while it had to be paid to facilitate the sale of the property, the Claimant is entitled to be reimbursed for the half (\$5,516.47) deducted from his share of the proceeds by the Respondent.

The payment of the funds to purchase the Calgary home

[292] For the reasons I have previously set out, I accept that the Respondent provided the funds for the initial deposit and then the additional cash to complete the parties' purchase of the Calgary home from her pre-marriage savings, as opposed to from family savings accumulated with the Claimant. This amounts to \$35,364.78, and I find that she is entitled to be reimbursed for this amount from the net proceeds from the sale of the Surrey house, for which the proceeds from the sale of the Calgary house were used to buy the lot.

[293] I find this amount to be excluded from family property pursuant to s. 85(1)(a) and (g) of the FLA. I accept that the Respondent had pre-marriage savings of at least this amount, and that these funds provided the parties with the opportunity of buying a home in Calgary.

The Claimant's debts to family members, immigration expenses, the trip to India

[294] I decline to ascribe to the Claimant as personal debts, now to be accounted for, the amounts he paid to Pargan Sohal for the parties' wedding ceremony. There is no clear evidence as to amounts paid or owed, and there is an indication that Mr. Sohal received money gifts given to the couple at the time of their wedding as partial compensation. It is also not a debt owed by the parties outstanding at the time of separation.

[295] The Respondent's payment of immigration legal fees and costs associated with her husband when they were first married, and the cost of their trip to India also must be regarded as family expenses long since incurred and paid.

[296] Similarly, with regard to any amounts sent to Jagdev Johal or the Claimant's brother, these are amounts that were paid early on in the parties' marriage according to the wishes or obligations of the Claimant. These matters are not outstanding to a third party at the time of separation. These types of transactions are the regular fare of marriage. The concept of family debt to be addressed upon separation is not an invitation to the parties to review every financial transaction that occurred during a marriage, to which one of the parties upon separation takes objection. Indeed, this issue was dealt with in a case under the former legislation, the FRA, namely the Court of Appeal decision in *Newson v. Newson* (1986), 1986 CanLII 166 (BCCA), 3 B.C.L.R. (2d) 1 at 16 per Anderson J.A., who referred to the predecessor provision (s. 52) to s. 66 of the FRA, and stated:

Sections 51 and 52 do not provide a trial judge with a roving commission to inquire into the spending habits of the spouses during the marriage. Moreover, ss. 51 and 52 do not provide a basis for re-apportionment based on reckless, wasteful or improvident expenditures made by either of the spouses during the marriage. If the legislature had so intended, it would have made provision for such reapportionment in clear and explicit language.

The Claimant's claim for withdrawals from family funds by the Respondent just prior to and during their first separation

[297] The Claimant advances a claim for half of the amount of seven withdrawals or transfers of funds, said to be family funds, from various bank accounts made by the Respondent during the parties' first separation from October 2012 to July 2013. The amounts total \$96,054.03, and all but one on July 9, 2012, for \$13,000 occurred after the parties separated for the first time between October 2, 2012, and July 2013 when they reconciled.

[298] I have reviewed the bank statements that show these withdrawals. In the case of the one on July 9, 2012, the \$13,000 transfer out of their joint account was accompanied on the same day by a \$50,000 transfer from the same account. These funds were returned to the

Respondent after she objected to their continuing investment with the Claimant and his cousin. They may or may not in fact be family property. The \$50,000 went into the Respondent's account and the Court has her somewhat confused explanation about how she transferred the majority of these funds in and out of her account, and that she may have repaid her sister from whom she says they borrowed the money. The Claimant says there is no record of where the \$13,000 went. In my view the full answer to this is that the parties were not separated and it is of no import. At that time he could have made whatever inquiries he wished. The parties were living together and the funds were transferred from their Royal Bank joint account.

- [299] With regard to the subsequent transfers after October 2, 2012, and prior to July 2013 when the parties reconciled, I note several things. First, the parties reconciled for more than 90 days after these transfers, and again the Claimant could have made whatever inquiries he wished about the state of family finances. The parties did not legally separate until May 8, 2014. Second, during the period in which these transfers or withdrawals occurred the Claimant paid no child support or spousal support, and did not contribute to the household expenses. The Respondent was unable to continue working due to depression and she had full responsibility for the childcare and to financially provide for the children. The Claimant was certainly under no obligation to reconcile, and if he had not his claims for half these funds would be considerably stronger in the event they did not remain as family property. I also note that after the parties' reconciliation the Claimant returned home with considerable personal debt that the Respondent used her resources and credit to pay. For these reasons I do not accept that the Claimant is entitled to credit now for a half interest in these funds, which would be \$48,027.01.

The Claimant's claim for half the rental from the basement suites

- [300] While the appraisal of the Surrey house (Exhibit 13, dated July 7, 2015) refers to two suites, one with one bedroom, and the other with two bedrooms, the appraiser only viewed the two bedroom suite. Mr. Miller noted in his report that it appeared to be of standard quality and untidy throughout, and he did not view the second suite as "the owner" did not have a key to it.
- [301] The Court heard evidence about both suites being rented when the Claimant resided at the residence, which included Ms. Dhanoya renting one for \$850 per month. Since separation, the Respondent said that she only rented one suite for \$700 a month, and the other was used as storage. The Court has not been provided with the date of sale for the Surrey house, but has an undated statement of funds pertaining to it (Exhibit 44). During the Respondent's cross-examination on February 16, 2016, her counsel advised the Court that the Surrey house was sold and she and the children were moving to Aldergrove.
- [302] Based on this scant information, I find that the Claimant is entitled to half of the rent from the two bedroom suite, which I have determined is to be calculated at \$700 per month for June 2014 to November 2015, a period of 18 months, totalling \$12,600. Half this amount is

\$6,300. I derive the date of November 2015 based on the court order of October 22, 2015, approving the offer for sale of the Surrey house. I find there is insufficient evidence to support both suites being rented throughout this period. In this regard I accept the Respondent's evidence as to the rental of the larger suite at \$700 per month.

The Claimant's claim for occupational rent

[303] This claim must fail for several reasons. First, it was not pleaded. Second, there is no evidence what value ought to be ascribed to occupation of the main and upper floor where the Respondent, H., and A. continued to reside after the Claimant left on May 8, 2014, the date of separation. At that point the Respondent was unable to work due to depression, and the Claimant offered no financial support to his family until the JCC was held in November 2014.

The "Final Reckoning" with regard to family property

Equal v. Unequal division

[304] I find that I am unable to accept the submission on behalf of the Respondent that family property be divided other than equally, in other words that she be given most or all of the family property acquired by these parties during their marriage. While the Claimant was undoubtedly a disappointment in terms of not earning more income to contribute to the accumulation of family property and the payment of family expenses during the marriage, and also by not adhering to traditional Sikh values, in particular in abstaining from alcohol, I do not find it significantly unfair to divide the family property equally in this case, with some adjustments.

[305] In reaching this determination I have considered the factors that may result in an unequal division as set out in s. 95(1) of the FLA. This was a 12 year marriage resulting in two children, in which both parties worked outside the home. While the Respondent also appears to have done the majority of childcare, she had help from extended family. The Claimant had a seizure that curtailed his work as a truck driver for a time, and later a work-related injury. However, he made a reasonable income during some of the years of the marriage, and contributed his skill and connections to the construction of the Surrey house. While he paid off debts to his relatives he also contributed financially to the family. The parties made a profit on their Calgary house, and absent the costs related to foreclosure proceedings and judgments would have done reasonably well on their sale of the Surrey house. There is no "significant unfairness", as that term is used in s. 95(1) of the FLA, to either party in equal division, subject to the Respondent's pre-marriage contribution being recognized, and some adjustments being made resulting from claims that each of them have advanced.

Division of the monies in trust from the sale of the Surrey house

[306] The amount of the net proceeds held in trust from the sale of the Surrey house is \$315,779.12. From that amount the Respondent is entitled to \$35,364.78 in relation to her pre-marriage savings, which results in \$280,414.34, to be divided equally, resulting in each party receiving \$140,207.17, with some adjustments:

Claimant's share: \$140,207.17

Respondent's share: \$140,207.17

Payment to the Claimant by the Respondent for her Royal Bank line of credit - Add \$5,516.47

Deduct from the Respondent \$5,516.47

Payment to the Claimant by the Respondent - Add \$6,300 for rental income received

Deduct from the Respondent \$6,300 for his share of rental income

Claimant's share: \$152,023.64

Respondent's share: \$128,390.70, plus her pre-marriage contribution of \$35,364.78 = \$163,755.48

Other family property

[307] The parties had two vehicles at the time of separation, a Honda Accord, which is now in the possession of the Respondent, and a Ford F-150 now in the possession of the Claimant. To avoid further costs associated with disputes in value as to these vehicles the Claimant proposes that each of them keep the vehicle they have and that the vehicles together be valued at \$4,500 (\$3,000 for the Honda and \$1,500 for the Ford), which divided by two is \$2,250 each. Therefore, it is proposed that the Respondent pay the Claimant \$750 to equalize the value of the vehicles. I find this to be appropriate and therefore the Respondent owes the Claimant \$750 to equalize the value of vehicles that each have in their possession.

[308] With regard to the Claimant's commercial truck, he testified that he sold it for \$6,500, because it was costing him too much money in repairs. He produced an invoice for repairs. While the Respondent seeks to have this truck valued at \$30,000 based on the value ascribed to it in the Claimant's unsigned, unsuccessful personal credit application, I note that the Claimant was not asked any questions about the sale of the truck during cross-examination. I find that the value of the truck is the amount he sold it for, \$6,500. There is no evidence to support a different value except his incomplete and unsuccessful credit application, upon which the Court must put less weight in light of the subsequent sale of the truck for much less. I also note there is no evidence pointing to a non-arm's length transaction. Therefore, the Claimant owes the Respondent \$3,250 as her share from the proceeds of the sale of this truck, which was family property.

- [309] The Claimant has an RRSP valued at approximately \$11,000, and I find that its current balance is to be divided equally. The Respondent is entitled to half its current value to be transferred to her by way of a spousal roll over.
- [310] With regard to the Mercedes SUV 2009 that the Claimant purchased after separation on lease/loan using his credit, the debt in relation to it (approximately \$43,000) significantly exceeds its appraised value as of February 20, 2015, which was \$30,000. The Court finds that the Claimant may keep the Mercedes, and is wholly responsible for the debt associated with it.
- [311] For reasons already set out I decline to make any findings with regard to lost or missing gold jewellery.
- [312] The Claimant's request for personal property left in the family home has apparently been resolved.

Family Debt

The Respondent's claim in relation to loan from her mother

- [313] The Respondent claims to have borrowed \$10,700 from her mother: \$3,400 on December 20, 2012; \$5,300 on January 2, 2013; and \$2,000 on February 7, 2013. This was during the time of the parties' first separation. The proof of these loans is said to be three deposits into the Respondent's savings account, with the majority of the funds deposited then being taken in cash or transferred out shortly after deposit. Absent some evidence confirming these loans, for example testimony and/or written confirmation from her mother, the Court declines to accept this claim.

The Respondent's claims with regard to money loaned from other family

- [314] Exhibit 37 is the Respondent's list of loans from other family members that the Respondent seeks to have found to be family debts, the details of which are previously set out. These loans as claimed total \$89,573.
- [315] With the exception of amounts said to be loaned by Ms. Dhanoya, none of these individuals testified. The only document in evidence to prove these loans other than the Respondent's list is the photocopy of a cheque from Ms. Dhanoya to the Respondent, dated November 15, 2012, in the amount of \$3,000, that has a note on the memo line "Borrowing". Although Ms. Dhanoya was not asked about this cheque either in direct or cross, I accept that she loaned her sister these funds.
- [316] I have already indicated that I accept Ms. Dhanoya's evidence that she paid the taxes on the Surrey house for two years, in 2011 (\$3,200) and in 2013 (\$3,400), for a total of \$6,600.

[317] Therefore, with the exception of \$9,600 loaned to the Respondent by Ms. Dhanoya to assist with property taxes and family expenses, I find that the Respondent has failed to prove that the other loans she claims ought to be considered family debts.

[318] The Claimant is ordered to reimburse the Respondent for half of the money I find proven to be owed to Ms. Dhanoya, which is an amount of \$4,800.

The Respondent's claim for retroactive and/or ongoing spousal support

The Applicable Law

[319] Section 15.2 of the DA governs spousal support in this matter. In making an order for spousal support, a court must consider the condition, means, needs and other circumstances of each spouse, including the factors set out in s. 15.2(4):

- (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.

[320] In considering those factors, the Court must also be alive to the policy objectives behind ordering spousal support set out in s. 15.2(6) of the DA, namely:

- (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.

[321] Each of the objectives in s. 15.2(6) must be examined in order to achieve a fair and equitable distribution of resources: *Moge v. Moge*, [1992] 3 S.C.R. 813 [Moge] at 850-853.

[322] In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 [Bracklow], the Supreme Court of Canada identified three grounds for entitlement to spousal support: (1) compensatory support, relating primarily to the first two policy objectives set out above; (2) non-compensatory support, relating primarily to the third and fourth objectives above; and (3) contractual support.

[323] The leading case in this province with regards to spousal support is *Chutter v. Chutter*, 2008 BCCA 507 [Chutter]. It supports an award of spousal support even where the division of assets or reapportionment has resulted in the spouse seeking support receiving assets of

considerable value. Consideration of the jurisprudence pre-Chutter cautions that even where a significant division or reapportionment of assets has benefited a spouse, the Court must not to take an overly narrow approach to the issue of spousal support (*Hodgkinson v. Hodgkinson*, 2006 BCCA 158; *Tedham v. Tedham*, 2005 BCCA 502; *J.W.J. McC. v. T.E.R.*, 2007 BCSC 252; and *MacDonald v. MacDonald*, 2002 BCSC 1453, *aff'd* 2005 BCCA 23).

[324] In Chutter, as in the present case, the claim for spousal support was advanced on the grounds of compensatory and non-compensatory support, the interaction of which was described by Justice Rowles, writing for the court as follows:

[49] Although the compensatory and non-compensatory grounds for spousal support are animated by different models of marriage, the case authorities hold that there is no single basis of support or objective under the Divorce Act that supersedes the other, and that many claims involve aspects of both compensatory and non-compensatory principles (*Bracklow*, at para. 27; *Moge*, at 852). A court is not called upon to decide on one basis for support to the exclusion of the other but rather to "[apply] the relevant factors and strik[e] the balance that best achieves justice in the particular case" (*Bracklow*, at para. 32). Moreover, the doctrine of equitable sharing is the overarching principle that must be borne in mind (*Moge*, at 864).

[325] Regarding the ground of compensatory support, Rowles J.A. provided the following illustration:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (*Moge*, at 861-863; *Bracklow*, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868:

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

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

who makes such sacrifices and the economic advantages conferred upon the other spouse" (emphasis added by Rowles J.A.).

[326] The purpose of compensatory support is therefore to address the economic advantages and disadvantages arising from the marriage as a result of sacrifices and efforts made on account of either spouse for their family that either benefited or caused a detriment to the other spouse. Additionally, the cases instruct that the longer the marriage, the more intertwined the economic and non-economic lives of the parties become. There is therefore a greater presumptive claim that the spouses should enjoy roughly equal standards of living upon the dissolution of the marriage (Moge at para. 84). This addresses the reality that in a relationship, each spouse has made decisions that "accommodate the economic and non-economic needs of the other", including the way family responsibilities are handled and the way the spouses' respective careers will develop - decisions that can have a "significant impact upon the income earning ability of each at the time of separation"; *W. v. W.*, 2005 BCSC 1010, at para. 12.

[327] The ground for non-compensatory support is explained by Rowles J.A. in Chutter as follows:

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[56] The Ontario Court of Appeal in *Allaire v. Allaire* (2003), 170 O.A.C. 72, 35 R.F.L. (5th) 256, held that self-sufficiency, a spousal support objective primarily related to non-compensatory support (Bracklow, at paras. 41-42), was a relative concept informed by the standard of living previously enjoyed by the parties:

- [21] self-sufficiency is not a free-standing concept. It must be seen in the context of the standard of living previously enjoyed by the parties. Where, as here, the economic consequences of the marital relationship were to permanently reduce Ms. Allaire's income, it is inappropriate to consider Ms. Allaire's annual income of \$68,000 as "sufficient" without considering whether Mr. Allaire can financially assist her to live a lifestyle closer to what they shared as a couple.
- [57] In *Yemchuk v. Yemchuk*, 2005 BCCA 406 at paras. 41, 48-49, 16 R.F.L. (6th) 430, Prowse J.A. referred to *Myers* and further held that in the context of a long-term marriage involving a sharing of resources, the concept of "need" should take into account the relative standards of living of the spouses following the marriage breakdown. In *Yemchuk*, the husband had appealed the decision of the trial judge dismissing his claim for spousal support on the basis that he had not established any need. While Prowse J.A. found that the husband was entitled to spousal support on compensatory grounds, she also went on to state that the trial judge's treatment of the husband's need for support had been "unduly restrictive":
- [41] I am also satisfied that the trial judge erred in viewing Mr. Yemchuk's "need" for support from too narrow a perspective. He treated "need" as solely a question of whether Mr. Yemchuk could meet his stated expenses with the income available to him. After attributing \$800-\$1,000 per month to Mr. Yemchuk, the trial judge found that Mr. Yemchuk could meet his expenses and, therefore, was not entitled to support.
- [58] In *Tedham v. Tedham*, 2005 BCCA 502, 20 R.F.L. (6th) 217, Prowse J.A. referred to *Yemchuk* as illustrative of the fact that the courts, at least in longer marriages, are measuring need against the marital standard of living (para. 55), and followed *Allaire* in finding that the objective of self-sufficiency must be viewed in the context of the marital standard of living (para. 60).
- [328] In *Chutter*, Rowles J.A. concluded her reasons regarding non-compensatory support with the following:
- [61] Finally, I note that in *Fisher v. Fisher*, 2008 ONCA 11, 88 O.R. (3d) 241, the Ontario Court of Appeal recently reiterated the principle that self-sufficiency is a relative concept encompassing more than the ability to meet basic expenses:
- 53 Self-sufficiency, with its connotation of economic independence, is a relative concept. It is not achieved simply because a former spouse can meet basic expenses on a particular amount of income; rather, self-sufficiency relates to the ability to support a reasonable standard of living. It is to be assessed in relation to the economic partnership the parties enjoyed and could sustain during cohabitation, and that they can reasonably anticipate after separation.
- [329] It is well accepted in British Columbia that the Spousal Support Advisory Guidelines [SSAG] may be considered as a guide to the quantum and duration of spousal support, once a determination regarding the entitlement of a spouse to receive support has been made: *Yemchuk v. Yemchuk*, 2005 BCCA 406, paras. 61-70.

[330] Keeping these principles in mind, I will now turn to the issue of spousal support in this case.

The Claimant's position

[331] The Claimant's position is that based on his Guidelines' income of \$40,000 and the imputed Guidelines' income of the Respondent of \$18,000, there should be no ongoing spousal support payable to the Respondent after June 1, 2016.

[332] Further, the Claimant submits that he has actually overpaid spousal support. Specifically, according to DivorceMate calculations, when the custody of the children was split, the Claimant should have paid \$182 per month as spousal support from June 1, 2015, to February 1, 2016, inclusive, a period of nine months; however, he was paying \$250 per month, such that there was an overpayment of \$612 ($\$68 \times 9$ months).

[333] In addition, the Claimant submits that he has overpaid for the months of March, April, and May 2016, when according to DivorceMate calculations he was not obliged to pay any amount, thus resulting in an additional overpayment to the Respondent of \$750 ($\$250 \times 3$ months).

[334] Therefore, the Claimant submits that he is entitled to an adjustment in his favour in the amount of \$1,362 ($\$612 + \$750$).

[335] In support of his position, the Claimant points to the fact that the Respondent did not disclose the income she earned from working at Tim Hortons, which only came to light after the Court made an order at the beginning of the trial for certain financial institutions to disclose bank statements of the Respondent, which resulted in the disclosure of her new Bank of Montreal account (Exhibit 36, Tab 1, and Exhibit 45). This was despite being asked to provide information about her bank accounts at her Examination for Discovery.

The Respondent's position

[336] Regardless of when the Court found the date of separation to be (the earlier date of October 2, 2012, or May 8, 2014) counsel for the Respondent submits that the Respondent is entitled to spousal support of \$789 for a duration of five to 11 years, which if calculated for five years results in an award of spousal support to the Respondent of \$47,340. This is based on the Respondent having no income and the Claimant's Guidelines' income being \$60,000.

[337] Alternatively, if the Respondent's annual income is based on her 2015 Notice of Assessment, her Guidelines' income is \$12,000, and setting the Claimant's Guidelines' income at \$60,000, according to the calculations provided the Respondent would be entitled to \$683 per month for 12 months, totalling \$8,196. Counsel for the Respondent then deducted this figure from the amount of \$47,340 set out above, resulting in a claim for retroactive spousal support in the amount of \$39,144. For the period of time that A. resided with the Claimant, the Respondent's counsel submits that the Respondent was entitled to

spousal support in the amount of \$973, resulting in her being owed \$1,557 (\$173 X 9 months).

- [338] The Respondent submits, taking these calculations into account, that she is entitled to \$39,144 in spousal support arrears. Her counsel points out that while judges are not obliged to slavishly follow the SSAG, they are a starting point for the analysis: *McEachern v. McEachern*, 2006 BCCA 508, at para. 64.
- [339] The Respondent submits that the Claimant enjoyed many financial benefits as a result of her hard work during the marriage, that although they had the help of members of their extended family for some childcare when the children were young, she has been the children's primary caregiver throughout, and exclusively their caregiver when the Claimant was absent from the family and since separation, except for the period when A. lived with the Claimant. She has suffered from significant depression since November 2011. It should be noted that she has worked at jobs involving unskilled labour, as opposed to the more skilled types of employment engaged in by the Claimant, who is a skilled framer, has experience and skill in construction, and is employed as a truck driver.

Findings in relation to the Respondent's claim for spousal support

- [340] Considering the conditions, means, needs and other circumstances of each spouse, including the factors set out in s. 15.2 of the DA, the Court notes this 12 year marriage was a relatively traditional one in the sense that while both parties worked at jobs outside the home, the Respondent was also the primary caregiver to the children. Although she was clearly motivated to work outside the home during the marriage, she was off work on disability and then maternity leave in relation to the births of H. and A. The Claimant was the primary breadwinner when he was able to work, and his skills as a framer and truck driver enabled him to earn more when he worked than the Respondent.
- [341] In considering the objectives that inform an award of spousal support as set out in s. 15.2(6) of the DA there is an economic disadvantage to the Respondent arising from her role in the marriage as mother and primary caregiver, and she continues to be the primary caregiver of the children. This will limit to at least an appreciable degree the Respondent's ability to increase her income by working, or to take training to increase her job skills. Her history of major depression from November 2011, to at least a reasonable time after Dr. Sahota's last report dated March 14, 2013, is of lingering concern. As such her ability to earn a reasonable income in the future is likely to be at least somewhat impaired. On the other hand, the Respondent has a long history of hard work and resourcefulness that is evident in her obtaining her insurance licence after separation. She then became clinically depressed before she could become established in that field.
- [342] The Respondent returned to at least part-time work with Tim Hortons outlets from March to October 2015, from which she earned \$10,193 over a period of seven to eight months. No other evidence about the Respondent's mental and/or physical health is available to the

Court. Most unfortunately, there is no additional evidence with regard to her overall health or ability to work since separation, including up to and after her brief stint at Tim Hortons. However, on the basis of the available evidence I am obliged to impute to the Respondent an annual Guidelines' income of \$18,000 from June 1, 2017, onwards, based primarily on her employment income from work at Tim Hortons.

- [343] Considering the principles that inform entitlement to spousal support, I find that the Respondent has an overall entitlement to spousal support based on both the compensatory and non-compensatory grounds. In the event that the spread between the parties' Guidelines' incomes increases, or the Respondent becomes unable to work outside the home, the issue of spousal support ought to be revisited.
- [344] The Court also notes that the Claimant makes a very modest income and will be paying child support for two children for the foreseeable future. I have fixed his current Guidelines' income at \$41,605. He has continued to pay \$250 in spousal support each month since June 1, 2015.

Retroactive adjustment to spousal support

- [345] Counsel have provided the Court with a number of spousal support calculations based on the SSAG. Based on the Claimant having a Guidelines' income of \$40,000 and the Respondent having a Guidelines' income of \$18,000, and both the children living with her, the SSAG indicates \$0 in spousal support payable. When custody was split and A. was living with the Claimant and H. was living with the Respondent, with the same Guidelines' incomes, mid-range spousal support payable to the Respondent was \$182 per month.
- [346] It is this latter calculation that counsel for the Claimant relies upon to seek repayment of \$612 in interim spousal support received by the Respondent due to overpayment by the Claimant of \$68 per month for nine months (June 1, 2015, to February 1, 2016, inclusive, when only H. was living with the Respondent) when the Claimant was paying \$250 per month in spousal support pursuant to Master Caldwell's order of June 1, 2015. The Claimant seeks credit for an overpayment of \$612 (\$68 X 9 months).
- [347] The Claimant also claims an overpayment for the period after A. was returned to live with the Respondent and H., in the amount of \$250 per month based on the SSAG calculation first referred to, which indicates no spousal support is payable by the Claimant when the Respondent has both children living with her and their respective Guidelines' incomes are \$40,000 and \$18,000.
- [348] While this approach arises from an arguably overly rigid adherence to the SSAG, I note that it will not pose a hardship upon the Respondent to retroactively adjust these amounts, given that the Claimant owes a larger amount of child support for the same period.

[349] Therefore, in the present circumstances, it is appropriate for the Claimant to receive a credit for \$612, and also a credit for the \$250 per month in spousal support that he was not required to pay for the months of March 2016 up to and including May 2017, a period of 14 months, which amounts to \$3,500 ($\$250 \times 14 \text{ months} = \$3,500$). These amounts total \$4,112.

The Respondent's claim for retroactive spousal support

[350] I now consider whether it is appropriate to order retroactive spousal support for the months of June 2014 (the first month after separation) to February 2015 inclusive, (a period of nine months), after which the Respondent started to work at Tim Hortons. During that time the Claimant's Guidelines' 2014 income was \$41,625, and the Respondent's income would have been limited to her CPP disability income, about which there is no information. The only proof of income for the Respondent for this period is a line 150 income of \$12,000 as her 2015 Guidelines' income. She had both children living with her until May 12, 2015.

[351] The Court ran DivorceMate calculations to assist in consideration of the Respondent's entitlement to spousal support during this time period. With both children living with the Respondent and using a Guidelines' income for her of \$12,000 based on the SSAG, the low and mid-range spousal support amount per month is \$0 and the high-range amount is \$13. A second calculation with the same information except attributing to the Respondent a Guidelines' income of \$0, results in a monthly amount of spousal support in the low-range of \$304, mid-range of \$414, and high-range of \$525.

[352] Other SSAG calculations run by the Court indicate that even with the Claimant's annual Guidelines' income increasing to \$46,000 and to \$50,000, and the Respondent's annual Guidelines' income remaining at \$18,000 with the children residing with the Respondent, the amount of spousal support payable by the Claimant remains at \$0.

[353] Considering these calculations in the context of the Respondent having either a Guidelines' income of \$12,000 (2015) or \$18,000 (imputed) no spousal support is payable in the low to mid-range. Even if the Claimant's income increased somewhat (as shown above), if her income is imputed at \$18,000, there is still no spousal support payable.

[354] Therefore, I am unable to award the Respondent spousal support for the months of June 2014 to February 2015 inclusive.

The Respondent's claim for ongoing spousal support

[355] With regard to the Respondent's entitlement to ongoing spousal support, the Court remains concerned in the event her depression returns or escalates, that the Respondent might not be able to make any income at all. In that case I find she would be entitled to seek spousal support from the Claimant, as for the reasons set out above I find that in principle the Respondent has an entitlement to spousal support.

- [356] As previously noted, unfortunately at trial there was insufficient evidence led in relation to the Respondent's overall circumstances, currently or in the recent past (including in relation to her mental health and/or her ability to work), to enable the Court to more fully address this issue.
- [357] The information about her working at Tim Hortons in 2015 only came to light after the Court made an order at the outset of the trial (July 9, 2015) in relation to her bank records, and the only information with regard to her mental health is the brief report by Dr. Sahota to support her benefits, dated March 13, 2013.
- [358] At the present time, based on the parties' incomes as I have determined them, with the guidance provided by the SSAG and the case law, and given a lack of information about the Respondent's recovery or prognosis in terms of the major depression she suffered from November 2011 to at least March 2013, I find that the Respondent is not entitled to spousal support presently and going forward. This is due to the relatively low income of the Claimant and the application of the SSAG in light of an imputed Guidelines' income to her of \$18,000 per year based on her recent employment at Tim Hortons.
- [359] Pursuant to s. 15.2(3) of the DA, in the event that the Respondent is unable to work due to illness, including an escalation or reoccurrence of depression, she is at liberty to apply to vary this order, and such an event will constitute a change in circumstances permitting consideration of variation under s. 17(4.1) of the DA.

The Respondent's lack of timely disclosure, ss. 212 and 213 of the FLA

- [360] The Claimant seeks compensation for late and non-disclosure by the Respondent in relation to the Claimant's s. 213 demand that was filed with the Court and served on the Respondent's counsel on June 9, 2015. The Claimant made numerous requests to receive the required court-ordered materials and items requested from the Respondent at her examination for discovery, all to no avail. Filed in these proceedings are copies of the related documents, from the Respondent's incomplete Form F8 Financial statement (Exhibit 45), letters to her counsel requesting information (Exhibits 48 - 50), and a formal demand pursuant to s. 213 for 17 items, with which there was no compliance, and to which there was apparently no response.
- [361] I find that most if not all the items listed would have been relevant at trial, would have assisted in a more orderly and fulsome examination of the issues, in particular with regard to financial matters between the parties, and the Respondent's claim for spousal support in light of her health concerns.

- [362] Pursuant to s. 213(2)(d)(ii) of the FLA, I am entirely satisfied that it is appropriate to award to the Claimant the amount of \$3,000 to his benefit as his interests were adversely affected by the incomplete and non-disclosure of information relevant to these proceedings and properly requested to be provided in the Claimant's s. 213 demand served upon the Respondent in accordance with the Supreme Court Family Rules, B.C, Reg. 169/2009.
- [363] It is not clear to the Court whether the Respondent provided some of these documents to her counsel, or thought she had, or whether she, in fact, appreciated that she was required by law to do so. Regardless, I am of the view that she must pay the Claimant the sum of \$3,000 for the non-disclosure of the items requested.

Costs

- [364] The Claimant seeks special costs in light of the s. 213 FLA demand and the Respondent's non-compliance with it, and presumably in light of the protracted nature of the trial and its outcome.
- [365] It is premature to address the matter of costs at this time, without permitting counsel and the parties to consider these reasons for judgment, and the outcome of the trial in relation to any offers to settle that may have been made.
- [366] It will be necessary for counsel to make further submissions on costs to a judge of this Court in the event that they are unable to come to an agreement as to costs. It has been a lengthy trial. As I will not be available to hear any such application I have several suggestions. The parties' counsel should set one day for hearing and prepare brief written submissions in advance that they provide to the court. Also, it is my view that approximately one third of the trial time, and most of the pre-trial applications were in relation to matters regarding the children. For those applications and that period of time each party ought to bear their own costs. The remaining two thirds of the trial were spent on financial matters.
- [367] Therefore, the issue of costs with regard to the trial is adjourned, and so is the Claimant's application for special costs.

Conclusion and orders

Divorce

- [368] Pursuant to the order granted by the Court on May 25, 2016, the Claimant and Respondent were divorced from each other, the divorce to take effect on the 31st day after the date of the order.

Regarding the Children, H. and A.:

- [369] Based on my findings with regard to what is in the best interests of H. and A., the Court makes the following orders:

1. Pursuant to s. 16(1) of the DA, the Respondent shall have the sole custody of H. and A. Pursuant to s. 16(4) of the DA, the Claimant has access to H. and A. on the terms specified in this order.
2. Pursuant to s. 40 and s. 41 of the FLA, the Claimant and the Respondent, as the sole guardians of H. and A., will exercise parental responsibilities with respect to H. and A. on the following terms:
 - (a) The Respondent has the responsibility for making day-to-day decisions affecting A., and will have the day-to-day care, control and supervision of A., except that the Claimant will have the day-to-day care, control and supervision of A. during his parenting time with A.;
 - (b) The Respondent has the responsibility for making day-to-day decisions affecting H., and will have the day-to-day care, control and supervision of H.;
 - (c) In the event that the Claimant has parenting time with H. in the future, the Claimant will have the responsibility for making day-to-day decisions affecting H., and will have the day-to-day care, control and supervision of H. during his parenting time with H.;
 - (d) H. and A. will both have their primary residence with the Respondent unless the parties agree otherwise in writing, or upon further order of the Court;
 - (e) The Respondent will have the sole parenting responsibility for H. and A. in respect of those matters set out in s. 41(c) - (l) of the FLA, except that pursuant to s. 41(j) of the FLA and s. 16(5) of the DA, the Claimant shall also have the right to make inquiries of third parties, and to be given information, as to the health, welfare, and education of H. and A.;
 - (f) For further clarity, included in the Respondent's sole parenting responsibilities is the right, pursuant to s. 41(g) of the FLA for the Respondent only to apply for and retain passports for H. and A., and to consent to each of H. or A., or both of them, travelling either with or without either parent;
 - (g) In the event of the death of a guardian, the surviving guardian will be the only guardian of H. and A.;
 - (h) The Claimant and the Respondent as guardians, each have the obligation to advise the other guardian on any matters of a significant nature affecting H. or A.;
 - (i) The Respondent has the obligation to advise the Claimant of any significant decisions she has made concerning H. or A. in writing, including significant decisions about their health, education, religious instruction and general welfare;
 - (j) In the event of a medical emergency in relation to either child the Claimant or the Respondent may make the decision necessary to deal with the emergency, and is required to advise the other parent of the situation immediately;

- (k) The Claimant and the Respondent as guardians may discuss significant decisions regarding H. or A. with each other if they wish, and may do so by email, but the Respondent has the final decision making power with regard to H. and A.; and
 - (l) In the event that the Claimant disagrees with a parenting decision made by the Respondent, the Claimant has the right to apply to court for directions regarding any decision the Claimant considers contrary to the best interests of H. or A., under s. 49 of the FLA.
3. Pursuant to s. 16(4) of the DA, and pursuant to s. 45(1) of the FLA, during the school year the Claimant shall have access to, or parenting time with A.:
- (a) Every alternate Sunday between the hours of 10 a.m. and 5 p.m. commencing Sunday, June 11, 2015;
 - (b) During the intervening week when there is no Sunday parenting time during the upcoming weekend, one weekday from after school until 8:30 p.m., with the weekday chosen not to conflict with scheduled activities for A.;
 - (c) In the event the Claimant is unable to exercise this parenting time he must provide a minimum of 48 hours advance notice to the Respondent; and
 - (d) In addition, the Claimant may have such other parenting time with A. as the parties may agree to in advance in writing.
4. Pursuant to s. 16(4) of the DA, and pursuant to s. 45(1) of the FLA, with regard to parenting time not during the school year, the Claimant shall have access to, or holiday parenting time with A.:
- (a) During each of A.'s school spring break holiday and winter break holiday, for up to five days, with no one period of time to exceed three days in length with two overnights;
 - (b) During A.'s school summer break, for up to eight days, with no one period of time to exceed four days with three overnights;
 - (c) In addition to all other scheduled parenting time pursuant to this order, the Claimant may have parenting time with A. on Sikh religious holidays for up to 24 hours on up to three occasions per year;
 - (d) Furthermore, the Claimant may have such other parenting time with A. as the parties may agree to in advance in writing; and
 - (e) The Claimant is to advise the Respondent at least one month in advance of his preferred dates and times for holiday parenting time listed above in (a)-(c), and the Respondent is not to unreasonably withhold her consent. All such agreed holiday parenting time is to be confirmed in advance in writing.

5. Unless otherwise agreed to by the parties in advance, all pickups for parenting time during the school year are to occur at A.'s school after school on school days, with drop offs to be at the Respondent's residence, to be carried out by the Claimant or his designate.
6. Unless otherwise agreed to by the parties in advance, all pickups and drop offs for holiday parenting time shall occur at the Respondent's residence, to be carried out by the Claimant or his designate.
7. The Claimant is not permitted to enter onto the property where the Respondent resides, which includes not entering her residence.
8. The Claimant and the Respondent are to avoid being in the direct physical presence of each other in the presence of A. or H. Any telephone, email or text communications between them are to be limited to topics related to H. and A. and their well-being.
9. The Claimant and the Respondent are each to successfully complete the "Parenting after Separation" course in BC offered to those parenting after separation. In the event that either or both parties have taken the Parenting after Separation course, then they are required to take it again.
10. The Claimant and the Respondent are each required to take a minimum of six hours of psychological counselling, with each one paying for their own counselling, the focus of which is to be how best to parent A. and H. in the future, and to provide proof of doing so to each other and to their lawyers.
11. With regard to H., although the Court declines to order specified parenting time, there is no legal impediment to H. spending parenting time with the Claimant as the parties may agree to, and any such agreement must be made in writing in advance.
12. The Claimant may contact A. or H. up to three times a week each by telephone, text or email. With regard to H. the Claimant may seek to endeavour to engage H. in conversation, or to invite him to join A. when A. is spending parenting time with the Claimant. The Respondent is not to interfere or discourage this communication. Nor is the Respondent to discourage H. in the event he wishes to spend parenting time with the Claimant and A., or just with the Claimant. Instead, she is to encourage and foster it.
13. The Claimant and the Respondent will each have reasonable telephone, text or e-mail access to A. while he is in the care of the other parent; and the same applies to H. in the event that H. is in the Claimant's care for parenting time.
14. H. and A. will also be permitted to have reasonable telephone, text, or e-mail contact with each other while apart, and one is in the care of the other parent.

15. In the event that H. agrees to accompany A. for parenting time with the Claimant or spend parenting time with just the Claimant, the same arrangements for cancelling or changing parenting time with regard to 48 hours' notice of cancellation, and for pick up and drop off as specified for A., also apply with regard to H.

Child support

1. The Claimant owes the Respondent the following amounts for child support:
 - (a) Child support for both children for September, October, and November of 2014 in the monthly amount of \$630, for a total of \$1,890; and
 - (b) An adjusted child support amount to reflect both children again living with the Respondent from March 2016 to May 2017 inclusive, a period of 14 months, in the amount of \$5,922.
2. The Claimant is required to pay \$635 per month in child support to the Respondent for both children commencing June 1, 2017, and payable on the first day of each and every month thereafter until each child is no longer a child of the marriage entitled to support under the DA, or until further order of the Court. This is based on the Claimant having a current annual Guidelines' income of \$41,605.
3. The Claimant is required to provide to the Respondent the financial information set out in s. 21(1) of the Guidelines pursuant to s. 25(1) on an annual basis, and without limiting what he is otherwise required to provide, the Claimant must provide a full copy of his annual filed personal income tax return with all attachments and a copy of his Notice of Assessment.
4. No amounts for s. 7 special or extraordinary expenses have been sought and none are ordered.

Family property and family debt

[370] The Court makes the following orders with regard to family property and family debt:

1. From the monies held in trust that represent the net proceeds from the sale of the Surrey house, the Claimant's share is \$152,023.64 and the Respondent's share is \$163,755.48. These amounts include adjustments for the Respondent's line of credit, the Claimant's share of rental income, and the Respondent's contribution of pre-marriage savings to the purchase of the Calgary property.
2. With regard to other family property the Respondent owes the Claimant \$750 to equalize the value of the vehicle that each of them has in their possession.
3. In addition, the Claimant owes the Respondent \$3,250 as her share of the proceeds from the sale of the truck.
4. The Claimant's claims for half the amount of the seven withdrawals or transfers of funds are dismissed.

5. The Claimant owes the Respondent \$4,800 as half of the family debt to Ms. Dhanoya.
6. All the Respondent's other claims with regard to family debt are dismissed.
7. The Claimant is the sole owner and solely liable for the debt in relation to the Mercedes SUV 2009 that he purchased.
8. The Respondent is entitled to half of the current value of the Claimant's RRSP, which has an approximate value of \$11,000, to be transferred to her by way of a spousal roll over.
9. The Respondent, without the Claimant's consent or involvement, may continue to hold and contribute to the accounts at the Royal Bank of Canada that she holds jointly, one with each child (with H. ending in "479", and with A. ending in "176"), for the future education costs of each child.

Spousal support

[371] The Court makes the following orders regarding spousal support:

1. The Respondent is required to reimburse the Claimant \$612 for overpayments of spousal support from June 1, 2015, to February 1, 2016 (\$68 X 9 months); and \$3,500 for the months of March 2016 up to and including May 2017 (\$250 X 14 months) when he paid spousal support he was not required to pay. Therefore, the Respondent is required to pay the Claimant \$4,112 for the overpayment of spousal support (\$612+\$3,500).
2. The Respondent is not entitled for spousal support for the months of June 2014 to February 2015 inclusive.
3. The Respondent is not entitled to spousal support presently and going forward based on the parties' present Guidelines' incomes.
4. Pursuant to s. 15.2(3) of the DA, in the event that the Respondent is unable to work due to illness, including an escalation or reoccurrence of depression, she is at liberty to apply to vary this order, and such an event will constitute a change in circumstances permitting consideration of variation under s. 17(4.1) of the DA.

Sections 212 and 213 of the FLA

1. Pursuant to s. 213(2)(d)(ii) of the FLA, the Respondent must pay the Claimant the sum of \$3,000 for her incomplete and non-disclosure of items requested.

Costs

[372] The Court declines to make an order as to costs, and the issue of costs in this matter is adjourned. In the event that the parties are unable to come to an agreement as to costs, the parties shall schedule a hearing before a judge of this Court to make submissions on costs. The Claimant's application for special costs is also adjourned.

"The Honourable Madam Justice Arnold-Bailey"

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