

CANADA / JUDGMENT

L.V.J. v. E.M.S.

2023 BCSC 2087

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 2087 L.V.J. v. E.M.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.V.J. v. E.M.S.,

2023 BCSC 2087

Date: 20231128

Docket: E2058056

Registry: Smithers

Between:

L.V.J.

Claimant

And

E.M.S.

Respondent

Before: The Honourable Justice Kent

Reasons for Judgment

Counsel for the Claimant:

D. Duncan

Counsel for the Respondent:

B. Haberstock

Place and Dates of Trial:

Smithers, B.C.

August 21-24, 2023 and September 25-28, 2023

Place and Date of Judgment:

Smithers, B.C.

November 28, 2023

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- [1] I have anonymized the parties in these Reasons for Judgment to protect the privacy interests of the child involved in this family law case.

Introduction and Basic Factual Background

- [2] The claimant, L.V.J. (the "Father") is 35 years old and lives in Telkwa, British Columbia. Since 2016, he had been working full-time out-of-town at the BruceJack mine on a rotating schedule whereby he lives in a remote camp for two weeks and then comes home for two weeks.
- [3] The respondent, E.M.S. (the "Mother") is currently 37 years old and resides in Smithers, British Columbia, 16km away from Telkwa. She is currently employed by the BC public service.
- [4] The parties lived in a marriage-like relationship between September 21, 2013 and August 23, 2016, a period of almost 3 years. They had one child together, K.M.J. (the "Child"), on September 11, 2014. The Child is now nine years old.
- [5] The Father identifies as Indigenous, from the Nak'azdli Whut'en first nation. The Nak'azdli are members of the Carrier Nation of the Dene. The Father's Indigenous identity has played a significant role in his life.
- [6] On July 20, 2017, the parties entered into a written separation agreement (the "Separation Agreement") which was filed the following day, July 21, 2017, in the Smithers Provincial Court under file number 17830. The Separation Agreement addressed parenting and child support. It provided that both parents would be the guardians of the Child and listed their various parental responsibilities as guardians. It required the parents to consult and try to reach agreement on any important decisions but granted the Mother final decision-making authority in the event of disagreement or any immediately required decision where Father could not be reached in camp.
- [7] The Separation Agreement provided that the Child would live primarily with the Mother, however so long as the Father continue to have camp-based employment, he would have parenting time with the Child on the following basis:
- Tuesday through Friday from 8 a.m. to 6:30 p.m. during the weeks he was not scheduled to be in camp;
 - Sundays from 9:30 a.m. to 6:30 p.m. on the second weekend that he is not scheduled to be in camp; and,
 - any other time as the parties might agree.

- [8] The Separation Agreement also provided for parenting time on various birthdays and holidays.
- [9] As well, the Separation Agreement contained a "dispute resolution" provision whereby each promised to make best efforts to resolve parenting or child support disputes "through mediation or collaborative family law before taking court proceedings".
- [10] Although the Separation Agreement did not expressly provide for overnight parenting time of the Child with the Father, this did in fact occur by agreement of the parties. In the year before February 2020, the Father often had six overnights with the Child during each two week rotation, typically two consecutive nights at a time, including on weekends.
- [11] The Child's maternal grandparents were living in Costa Rica when the maternal grandmother became ill in mid-February 2020 and ultimately died in that country a short while later. The Mother and the Child traveled to Costa Rica, returning to Smithers in early March 2020, by which time the COVID pandemic arrived and caused havoc with the parenting regimes for children of separated or divorced parents.
- [12] The Father had no in-person parenting time with the Child between March 21, 2020 and August 21, 2020, a period of five months and again no parenting time between September 9, 2020 to approximately the end of May 2021, a further eight months. Between August 21, 2020 and September 9, 2020 there were some court-ordered supervised parenting visits.
- [13] COVID was not the only reason for this reduced/stopped parenting time. In April, 2020, the Mother reported to the Ministry of Children and Family Development ("MCFD") concerns regarding certain vaginal infections the Child was experiencing along with upsetting statements from the Child about watching certain movies at her Father's house. She also wrote an email to the MCFD respecting "naked snuggling" and concerns she had regarding the Father's "manipulative and emotionally abusive behaviour towards" the Child.
- [14] The MCFD conducted an investigation including an RCMP interview with the Child which contained no disclosures of abuse. The MCFD concluded there were "no sexual interference concerns" and their safety assessment was that:

This family appears to be experiencing high conflict separation with custody and access issues that would be best addressed through the FLA. Based on current information, there are no immediate safety concerns for [the Child]. She appears to be a healthy child who has a strong and positive attachment to her parents.

- [15] The MCFD informed the Father of its conclusion and their file was closed. I also wish to make it clear in these Reasons for Judgment, and I am finding as a fact, that no form of sexual interference or sexual abuse of any sort has ever been perpetrated by the Father on the Child in this case.

- [16] Nonetheless, the unfounded but reported sexual abuse "concerns" have exacted a toll on the Father. He described it as an "unnerving feeling" which has caused significant stress and a "damaging label" in a small town where word travels fast, likely being a "life lasting event". He is distressed by the extensive missed parenting time with the Child, time which he will "never get back".

The Pleadings and Litigation Chronology

- [17] Exasperated by the denial of parenting time, the Father filed his Notice of Family Claim in the Prince George registry of this Court on July 22, 2020. He claimed that the Mother had "unilaterally and without good cause" denied him parenting time since March 15, 2020 and he sought an order that he have "equal parenting time with the child on a week on/week off (seven days) basis" during the time that he is not working in camp.
- [18] The Mother filed her Response to Family Claim on December 17, 2020. The pleading was focused on parenting time, essentially alleging that in-person parenting by the Father was prevented by the COVID-19 pandemic, except for the supervised court-ordered visitation in August and September 2020 which was frustrated by the Father's failure to comply with COVID protocols.
- [19] The Mother filed a Counterclaim in the proceeding on January 11, 2021 setting out her proposed arrangements for parenting time (essentially short supervised visits conditional upon compliance with COVID protocols, appointment of a parenting coordinator, and a "needs of the child" report under s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]). She also sought child support, an order requiring the Father to provide updated tax returns, and an order for the payment of child support arrears.
- [20] On December 2, 2021 the Mother filed an Amended Counterclaim which included a claim for a Certificate of Pending Litigation to be registered against certain residential property owned by the Father in Telkwa, British Columbia "as security for both court costs and child maintenance arrears and future support".
- [21] There have been numerous pre-trial applications, mostly before Justice Tindale of this Court who issued formal reasons for judgment on three occasions (August 17, 2020, March 30, 2021 and July 8, 2022).
- [22] On August 17, 2020, the Father's application for parenting time was adjourned, however the court ordered in-person parenting time between 8:00 a.m. and 6:30 p.m. on Mondays, Wednesdays and Fridays conditional upon the Father observing COVID-19 health protocols and that it was "supervised by an independent third party".
- [23] The Father's application eventually came on for hearing on February 11 and 12, 2021, at which time the court ordered that:
- the parties must forthwith attend mediation regarding parenting time; and,

- the application was adjourned generally, however if the mediation was unsuccessful, either party could apply to review the parenting regime.

[24] In his reasons for judgment released on March 30, 2021, Justice Tindale noted the Mother's evidence regarding the Child's behaviour dysregulation following visits with her Father and the investigation of sexual abuse allegations made against the Father. He also noted:

- the Separation Agreement made between the parties had been filed in the provincial court and was enforceable under the FLA as if it were an order of the court this included the mandatory mediation provisions of that agreement;
- "the claimant also has not taken seriously the potential risks of COVID-19 as they relate to his parenting time with [the Child]" "the concerns with the claimant not adhering to COVID-19 protocols was the basis for the making of the August 17 order" (paras. 53, 57);
- "these parties do not effectively communicate with one another. The respondent has allowed her father to interfere with the claimant's parenting time. The claimant has ignored the Agreement as it relates to mediation and is dismissive about the respondent's concerns relating to [the Child's] behaviour after she has visits for the claimant", (para 48);
- "while it is in the best interests of [the Child] to have parenting time with her father, it is also in the best interests of [the Child] that her parents effectively communicate with one another and that she is safe during her visits with the claimant" (para. 50);
- "I am not able on the material before me to determine whether [the Child's] behaviours are a result of the claimant's action or as a result of other influences on [the Child]. I can say, however, that the claimant's refusal to communicate with the respondent or to engage in mediation is not in the best interests of [the Child]" (para. 50); and,
- "it is in the best interest of [the Child] that caution be exercised until the cause of [her] behavioural problems is determined and resolved" "The August 17 Order requiring supervised visits of the claimant is still warranted because of the COVID-19 concerns and the evidence of [the Child's] behaviours after visits with the claimant."

[25] The Mother filed an omnibus Notice of Application which came on for hearing before Justice Tindale on February 17 and 18, 2022. Judgment was reserved on most issues although orders were immediately made regarding production of documents and conduct of the parties.

[26] On March 7, 2022 Justice Tindale granted a consent order regarding production of documents, including the MCFD and RCMP files. On an interim basis, he granted the Father three two-hour visits per week with the Child to be supervised by either Angelika Langen or Cheryl Johnson, to be held outdoors with any unvaccinated parties wearing masks. A review of the parenting time was to occur six weeks later.

- [27] On June 10, 2022, Justice Tindale ordered further parenting time for the Father on specified dates between June and August 2022 with a further review to be scheduled at the end of August. All court-imposed conditions related to COVID-19 protocols were removed. At that time the five-day trial in this case was scheduled to proceed on November 21, 2022.
- [28] On July 8, 2022, Justice Tindale released his reasons for judgment respecting outstanding matters arising from the February 17-18, 2022 hearing. At that time he adjourned to the trial the Mother's application for a declaration that the Father had engaged in family violence. He also adjourned the Mother's application to fix child support arrears. He dismissed the Mother's application to limit the Father's parenting time as well as her application for an order requiring the Father to post security for future child support.
- [29] In his reasons for judgment dated July 8, 2022, Justice Tindale set out at length the various submissions of each party. In particular, the Mother was alleging family violence by the Father and was arguing financial abuse (not paying the proper amount of child support), litigation abuse, coercive behaviour (unnecessary "wellness checks" by the police), and "potential sexual abuse" of the Child by the Father. She sought changes to the Father's parenting time with the Child by limiting it to one hour per week at an outdoor venue and to grant her authority to make schedule changes to the Father's parenting time to accommodate the Child's extracurricular activities.
- [30] Justice Tindale observed that the Mother's allegations of family violence would likely be determined with reference to a credibility assessment of the parties, a matter that should be left for trial. He noted that there was no need to change the Father's parenting schedule and stated:

The supervised and relatively limited duration of the parenting time visits by the claimant with [the Child] satisfy any pressing present concerns of family violence involving [the Child] (para. 59).

- [31] By November 2022, both parties had changed lawyers. A review of the Father's parenting time with the Child occurred before Justice Tindale on November 3, 2022 at which time he ordered that:

- the parents would communicate through the Our Family Wizard ("OFW") app;
- supervision of the Father's parenting time was no longer required; and,
- the Father's parenting time would occur between 3:00 p.m. to 5:00 p.m. on Mondays and on Sundays on a gradually "stepped up" basis i.e. four hours on Sundays between October 19, 2022 and January 11, 2023, six hours on Sundays between January 11, 2023 and April 5, 2023, eight hours on Sundays starting April 5, 2023 and, from May 31, 2023 onwards, 24 hours from Saturday at 12:00 noon until Sunday at 12:00 noon.

- [32] The overnight parenting contemplated to start at the end of May 2023 represented the first time that the Father had overnight parenting time since early 2020, a period of over three years.
- [33] The November 2022 trial date was adjourned and on April 17, 2023 this Court granted an order commissioning a "full" s. 211 Report by Ms. Leanne Harder respecting the need the needs and views of the Child, and the ability and willingness of each parent to satisfy those needs. The Father was to pay the initial cost of the s. 211 Report subject to possible reapportionment by the trial judge.
- [34] Ms. Harder's s. 211 report is dated July 11, 2023. The text comprises some 90 pages excluding the table of contents and various appendices. It was filed with the court on July 11, 2023 and was also marked as an exhibit during the trial.
- [35] On July 27, 2023, the Mother filed a second application seeking to have the Father post security for costs. The application was dismissed with costs in the cause to the Father.
- [36] And so it is that the trial started before me in Smithers on August 21, 2023 for a period of five days. That time estimate turned out to be wholly inadequate and a further four days of trial ensued on September 25-28, 2023.

Issues in Dispute at Trial

- [37] Fortunately, by the end of the evidentiary portion of the trial, the parties had consented to an order resolving their dispute regarding child support, parental conduct and travel. That order was signed by me and was entered in the Smithers registry on September 27, 2023. Among other things it provided that:
1. the Father and Mother had annual guideline incomes of \$152,664 and \$71,045 respectively;
 2. the Father would pay \$5,293 in retroactive child support to the Mother along with \$1,377 per month for ongoing support of the Child;
 3. the parties would share special or extraordinary expenses in proportion to their incomes, currently 68% for the Father and 32% for the Mother;
 4. such expenses would include medical expenses and music lessons and such other expenses that are agreed to by the parties in advance or endorsed by further court order; and,
 5. the parties would exchange all appropriate financial information annually and would vary the amount of child support payable pursuant to the Child Support Guidelines with leave to apply for directions from the court in the event of any dispute.
- [38] The remaining issues in dispute at trial include:
- division of parental responsibilities pursuant to s. 40 of the FLA;
 - the Father's parenting time regime;

- other miscellaneous matters related to counselling, communications, fines, and the inclusion of certain childcare costs (including day camps) as special or extraordinary expenses for child support purposes; and,

- costs, including reapportionment of the costs incurred with respect to the s. 211 report and Ms. Harder's required attendance as a witness for cross-examination at trial.

[39] Insofar as parenting responsibilities are concerned, the Father seeks a Joyce form of order which would require the parents to discuss and try to reach agreement on significant decisions, failing which final decision-making authority would be allocated to the Mother with the Father having the right to apply for directions from the court on such matters of disagreement.

[40] With respect to his parenting time, the Father seeks a significant increase, essentially returning to the pre-COVID parenting regime that the parties were following in the late 2019 and January 2020.

[41] For her part, the Mother urges the court to give her final decision-making authority in several areas of parental responsibility and to impose a "stepped" regime of gradually increased parenting time for the Father leading eventually to a regime of two overnights and one weekday visit each week when he is home from camp, subject to further increases in parenting time upon agreement between the parties, all subject to various conditions.

[42] The Mother also wishes to have childcare expenses, including any camp costs, included as special or extraordinary expenses to be paid proportionately by the Father. She asks that two fines be imposed upon the Father up to \$5,000 each for his various perceived breaches/misconduct pursuant to ss. 213 and 228 of the FLA, and seeks a formal communication protocol for information exchanges.

Ms. Harder's s. 211 Report

[43] Section 211 of the FLA provides as follows:

SECTION 211

Orders respecting reports

211 (1) A court may appoint a person to assess, for the purposes of a proceeding under Part 4 [Care of and Time with Children], one or more of the following:

- (a) the needs of a child in relation to a family law dispute;
 - (b) the views of a child in relation to a family law dispute;
 - (c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.
- (2) A person appointed under subsection (1)

- (a) must be a family justice counsellor, a social worker or another person approved by the court, and
 - (b) unless each party consents, must not have had any previous connection with the parties.
 - (3) An application under this section may be made without notice to any other person.
 - (4) A person who carries out an assessment under this section must
 - (a) prepare a report respecting the results of the assessment,
 - (b) unless the court orders otherwise, give a copy of the report to each party, and
 - (c) give a copy of the report to the court.
 - (5) The court may allocate among the parties, or require one party alone to pay, the fees relating to an assessment under this section.
- [44] In family law cases generally and in parenting disputes in particular, issues are often obscured by the emotional overtones of such proceedings. The court's power to order an investigation and assessment by an independent and impartial person with specialized training is thus an invaluable tool. The s. 211 investigator acts as the "eyes and ears" of the court. They interview the parties, the children and other persons involved in their lives such as family members, physicians, teachers, and the like. They often observe interactions in the home setting and will review relevant records. Those who are licensed psychologists, will often conduct psychological testing. A detailed report is then prepared respecting the needs and views of the children and the ability of the parents to meet those needs.
- [45] The s. 211 report will often contain recommendations regarding parenting regimes based on the report writer's observations and experience in such matters and usually reflecting authoritative social science and best practices in the field.
- [46] It is important to note, however, that trial judges do not abdicate their role in determining the best interests of a child in favour of any recommendations that might be made by a s. 211 report writer. The factual matters set out in the report are received as prima facie evidence of the truth of those facts. However, as occurred here, the parties have the opportunity to call the report writer to the witness stand for cross-examination and are also permitted to respond to the report by adducing their own evidence on matters in dispute.
- [47] In this particular case, Ms. Harder was appointed by the court to conduct the s. 211 assessment. She has both a bachelor and masters degree in social work as well as a masters degree in adult education. She has been a registered member of the British Columbia College of Social Workers ("BCCSW") for many years and is accountable to the BCCSW Standards of Practice. She was employed for several years by MCFD and has been the principal of her own consulting firm for over 20 years. She has considerable expertise in family assessment matters including, importantly in this case, involvement with the Vancouver Aboriginal Child and Family Services Society.

- [48] Ms. Harder's sources of information for her report included multiple individual interviews with the Mother, Father and the Child, observations of their respective homes and interactions with the Child, interviews of educators, counsellors and physicians, as well as interviews of other "personal collateral sources" (family members and friends of the parties) most of whom were called as witnesses in the trial.
- [49] The Father required Ms. Harder's attendance at trial for cross-examination on her report. An attempt was made to challenge the degree to which Ms. Harder had incorporated indigenous values into her assessment of parenting skills and ultimately her recommendations. She pointed out that the Father did not raise these issues as matters of concern, although she has had considerable experience working with indigenous people within her area of expertise. She acknowledged that culture is embedded in many significant decisions affecting education, healthcare and the like. This is why she recommended that both parents have decision-making authority with respect to cultural development and she noted that it would be important for the child's sense of identity for her Father to share his indigenous culture with her in a regular, meaningful way.
- [50] The Father's witnesses and, indeed, the Father himself, were invited by counsel to point out inaccuracies in Ms. Harder's report insofar as it related to her summary of the information provided in their interviews. There were indeed some inaccuracies in that regard but they were all minor in nature and do not appear to have had any meaningful influence on her assessment or recommendations.
- [51] Indeed, Ms. Harder's report is an excellent example of a very thorough, unbiased and independent assessment of the sort required by s. 211 of the FLA. She was very diligent in identifying and collecting collateral information upon both professional and personal (individual) sources. Her assessment and concerns regarding the parties' parenting skills were reasonable and fair. Her recommendations reflected those matters as well as the social science to which she referred. She also expressly addressed the various "best interests of the child" factors referred to in s. 37(2) of the FLA.
- [52] Ms. Harder was provided with various medical records relating to consultations with a variety of the Child's physicians, including a pediatric gynecologist and psychiatrist. The former addressed the Child's vulvovaginitis which was being managed without medication and which is generally thought to be triggered by anxiety, and the latter diagnosed the Child's various episodes of "acting out"/behavioural dysregulation as an "adjustment disorder" perpetuated by parental disagreements on parenting arrangements. The family physician who has been caring for the Child since birth is also stated in a brief report,

From a medical perspective, it would be important for the court to know that stability in her home environment is crucial for [the Child] to function as well as possible.

[53] The Father points out that, although she denies accusing him of sexually abusing the Child, the Mother has in one way or another reported such abuse to at least 15 professionals, including doctors, social workers, counsellors and police officers. The medical records seem to confirm this did occur.

[54] The Child has been seeing her own counsellor since March 2021. This occurred weekly for a period of six months and approximately once a month since that time. The counsellor was not called as a witness and no reports from her were put into evidence. However, Ms. Harder interviewed the counsellor extensively and devoted two pages of her report to the counsellor's various observations of the Child. Among other things, these include:

- the reasons for the referral were that the Child was acting out behaviourally at home and at school;
- the Mother informed her of the Child's disclosure of "inappropriate behaviour" by the Father, however the allegations "could not be verified by MCFD";
- the Child's attendance at counselling was usually requested by the Mother;
- the Child is really happy about how her time with her Father is going and she is enjoying the increased time with him she wants to sleep over at her Father's but she is scared she will miss her Mother when she is there;
- the counsellor does not have any concerns about the Child's mental health and has not observed the behaviour dysregulation that the Mother has reported; and,
- the Child has benefited from having increased time with her Father but she needs predictability and for others to "make a plan and stick to it".

[55] Ms. Harder listed her concerns regarding each parents' parenting abilities. Her concerns regarding the Mother included:

- the Mother's anxiety about the Father's behaviour and the co-parenting conflict is apparent to, and is being mirrored by, the Child;
- the Mother's avoidance of communication with the Father can be detrimental to the Child and a workable plan for communicating, particularly in short notice situations, is required;
- the Mother lacks insight into the extent to which her own stress is impacting the Child, particularly the messaging that the Mother does not want her to sleep over at her Father's home;
- the Mother often frames the Child's emotional well-being as being improved when she does not have contact with her Father and she is minimizing the positive role that the Father could have in the child's life the child's stress and behaviours are likely the result of exposure to the co-parent conflict, scheduling uncertainty, and confusion about the conflicting information she hears; and,

· the Mother's "triggers" regarding sexual abuse may be genuine and understandable but, since these concerns were not substantiated, it is important for the Mother to support the Child to develop a sense of safety with her Father.

[56] Ms. Harder lists the Father's parenting skill shortcomings as follows:

- he lacks insight into the impact of his behaviour on the Child, tending to attribute the latter's emotional and behavioural challenges to the Mother's behaviours he has changed plans on short notice, been inconsistent in attending the Child's activities and events (including, importantly, missing a recent piano recital and a school talent show), and he is reluctant to take the Child to activities when he would rather do other things;
- he has been resistant to professional recommendations and the terms of conduct orders i.e. attending parenting courses, following COVID protocols, etc., which has increased the co-parent conflict; and,
- while the information regarding the extent of the Father's cannabis use has been inconsistent, if that use was at the level of what certain witnesses described, this might result in low motivation levels and difficulties managing parenting responsibilities.

[57] Ms. Harder identifies certain current barriers to effective co-parenting for the parents:

- disrespectful communication by the Father towards the Mother (blaming her for depriving him of quality parenting time);
- delays in responding to scheduling and activity requests;
- ineffective co-parenting communication;
- frequent changes to the parenting schedule to accommodate both the Father's schedule and the Child's activities; and,
- divergent views about the number of extracurricular activities that the Child should be involved in.

[58] Ms. Harder concludes that, while the Mother has been the Child's primary caregiver and primary decision maker in the past, it is clear that the Father is also capable of making decisions which consider the Child's best interests. Both parents have different but reasonable approaches which fit their respective parenting styles and preferences. However, they have significant conflicts on issues that have a significant impact on the Child (extracurricular activities etc.) if they are not addressed promptly and with consideration to the Child's emotional and physical needs.

[59] In the result, Ms. Harder recommends that the Mother be the parent making the ongoing significant decisions regarding the Child. She has a demonstrated ability to follow communication protocols and has invested time in learning communication skills related to high conflict situations. While the Father is also capable of making decisions, Ms. Harder is concerned that he will not do so in a timely manner, he will focus more on the need to prove

his perspective rather than on the needs of the Child, and he has a history of not participating in the Child's various activities and appointments. At least for the moment, Ms. Harder believes the Father has not demonstrated the level of commitment necessary to be a sole decision-maker in several domains.

Applicable Legal Principles

[60] The parents were never formally married and hence the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) has no application to this case. Rather, it is Part 4 of the FLA which governs the determination of any parenting regime and allocation of parental responsibility or decision-making with respect to the Child. The relevant provisions of the FLA include:

Part 1 - Interpretation

Definitions

1 In this Act:

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

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

Part 4 - Care of and Time with Children

Division 1 - Best Interests of Child

Best interests of child

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 the person's 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 the person's 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.

Assessing family violence

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

- (a) the nature and seriousness of the family violence;

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

Division 2 - Parenting Arrangements

Parents are generally guardians

39 (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.

Parenting arrangements

40 (1) Only a guardian may have parental responsibilities and parenting time with respect to a child.

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

Parental responsibilities

41 For the purposes of this Part, parental responsibilities with respect to a child are as follows:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an Indigenous child, the child's Indigenous identity;
- (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
- (i) starting, defending, compromising or settling any proceeding relating to the child, and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.

Parenting time

42 (1) For the purposes of this Part, parenting time is the time that a child is with a guardian, as allocated under an agreement or order.

- (2) During parenting time, a guardian may exercise, subject to an agreement or order that provides otherwise, the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child.

Exercise of parental responsibilities

43 (1) A child's guardian must exercise parental responsibilities in the best interests of the child.

Orders respecting parenting arrangements

45 (1) On application by a guardian, a court may make an order respecting one or more of the following:

- (a) the allocation of parental responsibilities;
- (b) parenting time;
- (c) the implementation of an order made under this Division;
- (d) the means for resolving disputes respecting an order made under this Division.

Changing, suspending or terminating orders respecting parenting arrangements

47 On application, a court may change, suspend or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.

Referral of questions to court

49 A child's guardian may apply to a court for directions respecting an issue affecting the child, and the court may make an order giving the directions it considers appropriate.

[61] The FLA contemplates the use of parenting coordinators as a possible alternative to court proceedings to resolve parenting disputes. Such a parenting coordinator can be appointed by agreement of the parties (a parenting coordination agreement) or by order of the court.

[62] A parenting coordinator is usually appointed for a two-year period but the appointment can be extended or terminated pursuant to agreement between the parties or by an order of the court. Sections 17 and 18 of the FLA grants the parenting coordinator authority to both assist the parties in their decision-making and/or to make binding determinations of certain issues in dispute. Any such determinations can, however, be changed or set aside on application to the court pursuant to s. 19 of the FLA.

[63] Sections 17 and 18 of the FLA combine with s. 6(3) and (4) of the Family Law Regulation, B.C. Reg. 347/2012 ("FLA Regulation") to authorize the following:

Assistance from parenting coordinators

17 A parenting coordinator may assist the parties in the following manner:

- (a) by building consensus between the parties, including by
 - (i) creating guidelines respecting how an agreement or order will be implemented,
 - (ii) creating guidelines respecting communication between the parties,
 - (iii) identifying, and creating strategies for resolving, conflicts between the parties, and

(iv) providing information respecting resources available to the parties for the purposes of improving communication or parenting skills;

(b) by making determinations respecting the matters prescribed for the purposes of section 18 [determinations by parenting coordinators].

Determinations by parenting coordinators

18 (1) A parenting coordinator

(a) may make determinations respecting prescribed matters only, subject to any limits or conditions set out in the regulations,

(b) must not make a determination respecting any matter excluded by the parenting coordination agreement or order, even if the matter is a prescribed matter, and

(c) must not make a determination that would affect the division or possession of property, or the division of family debt.

(2) In making a determination respecting parenting arrangements or contact with a child, a parenting coordinator must consider the best interests of the child only, as set out in section 37 [best interests of child].

(3) A parenting coordinator may make a determination at any time.

(4) A parenting coordinator may make an oral determination, but must put the determination into writing and sign it as soon as practicable after the oral determination is made.

(5) Subject to section 19 [confirming, changing or setting aside determinations], a determination

(a) is binding on the parties, effective on the date the determination is made or on a later date specified by the parenting coordinator, and

(b) if filed in the court, is enforceable under this Act as if it were an order of the court.

Parenting coordinators

6(3) The following are the matters in respect of which a parenting coordinator may make determinations:

(a) parenting arrangements;

(b) contact with a child.

(4) For the purposes of subsection (3), a parenting coordinator

(a) may make determinations in respect of

(i) a child's daily routine, including a child's schedule in relation to parenting time or contact with the child,

- (ii) the education of a child, including in relation to the child's special needs,
 - (iii) the participation of a child in extracurricular activities and special events,
 - (iv) the temporary care of a child by a person other than
 - (A) the child's guardian, or
 - (B) a person who has contact with the child under an agreement or order,
 - (v) the provision of routine medical, dental or other health care to a child,
 - (vi) the discipline of a child,
 - (vii) the transportation and exchange of a child for the purposes of exercising parenting time or contact with the child,
 - (viii) parenting time or contact with a child during vacations and special occasions, and
 - (ix) any other matters, other than matters referred to in paragraph (b), that are agreed on by the parties and the parenting coordinator, and
- (b) must not make determinations in respect of
- (i) a change to the guardianship of a child,
 - (ii) a change to the allocation of parental responsibilities,
 - (iii) giving parenting time or contact with a child to a person who does not have parenting time or contact with the child,
 - (iv) a substantial change to the parenting time or contact with a child, or
 - (v) the relocation of a child.

Determination Regarding Parenting Issues

[64] In a family law case such as this it is always worthwhile to re-state the wise observations of Goepel J. (as he then was) in *K.D.P. v. A.R.K.*, 2011 BCSC 1085 as follows:

1 No parents are perfect. All have flaws of one kind or another. If families stay together, except in those rare circumstances in which a child is found to be in need of protection, the state and the courts allow imperfect parents to raise their children as best they can. The children, in most cases, are no worse for wear for the experience.

2 If families separate, however, and issues of custody and access arise, in the guise of determining the best interests of the child, a parent's flaws of character and conduct are put under a microscope. In such circumstances, care must be taken not to lose sight of the strengths that a party brings to the challenge of raising a child.

- [65] So too in this case. In their final submissions, neither party made any mention of the strengths and possible positive impacts that the other might bring to the table. The Mother's submissions in particular focused almost entirely on the Father's perceived shortcomings, emphasizing particular non-physical "family violence" mostly in the form of emotional, psychological and financial abuse.
- [66] Several times in his testimony the Father stated that he was the Child's "father, teacher, guardian and protector". Both his past conduct and his testimony at trial was focused on his "rights as a father" which, in his view, "have not been respected" by the Mother. He is an intelligent, articulate and hardworking individual, one who clearly loves his daughter dearly. He is also very strong-willed, perhaps to a fault. He said little about the many fine characteristics of the Mother and is dismissive of her various concerns regarding the Child.
- [67] The Mother has been the Child's primary caregiver since birth and, by and large, she has performed commendably in that role. However, she is very protective of the Child and she exudes anxiety about what she perceives as self-centred and irresponsible behaviour on the part of the Father. This includes a casual attitude towards deadlines and a failure to appreciate how his conduct and communication style is hurtful to others.
- [68] Until he testified at trial, the Mother likely had little idea about the extent of personal anguish caused to the Father by the unfounded allegations of sexual abuse. She conveys the impression of harboring a belief that, even if it did not amount to sexual abuse, something inappropriate must have occurred. She perhaps does not realize how this might continue to poison the co-parenting atmosphere.
- [69] Whether these two parents will be able to set aside their respective emotional obstacles to some form of parenting reconciliation in the best interest of the child remains to be seen. The court has no doubt they are each capable of doing so. In the meantime, however, it now falls to the court to impose a parenting regime for the long term benefit of the Child.

Parenting Time

- [70] Having made the general observations set out above, I now turn to each of the mandatory considerations in s. 37(2), bearing in mind that, at the end of the day, all must be considered as a whole with a view to protecting and encouraging to the greatest extent possible the Child's physical, psychological and emotional security and well-being.
- (a) The Child's Health and Emotional Well-Being
- [71] I was particularly impressed by the evidence of Angelika Langen who testified in a frank, down to earth and balanced manner. She has run a horse camp since 1986 which introduces children to working with animals and helps them to develop confidence and experience unconditional love. She has known the Mother since she was 10 years old and the Child since her birth. She sees the latter several times a week not only for camp activities but also because the Child spends a lot of time with Ms. Langen's granddaughter.

- [72] She describes the Child as being "very intelligent" and a "normal, happy, affectionate kid". She did note that the Child went through a "phase" of extreme anger and tantrums, particularly with boundaries set by the Mother, and particularly during the pandemic. She says that the child is now "a lot more calm", even if things do not go the way she wants.
- [73] Ms. Langen also acted as a supervisor for the Father's parenting time during the pandemic. She stated that the Child was "very happy to see her father" and she never saw her "acting out" with him ("probably because he never says "no" to her"). She says she had no cause for concern about the Father's conduct when he was with the Child.
- [74] Ms. Langen has observed that change makes the child insecure: "promise is not kept, throw her off" and "her safety net is to know what is happening". She described the Mother as the Child's "rock in the current of life", stating that she was "a great mum", one who was extremely patient and always put the Child first.
- [75] Ms. Langen suggested that, in light of the Child's insecurity, "her safety net is to know what is happening" and that changing schedules or outcomes will get her easily upset.
- [76] Counsel elicited Ms. Langen's opinion, with which I am inclined to agree, that the Child would "not do well" if the Father's parenting meant missing out on her activities. However, should that occur and if she has access to the Mother if she wants, "it would probably work out".
- [77] The Child has, of course, been diagnosed as having an "adjustment disorder". She has also experienced physical health issues in the form of vaginitis which appears to be triggered by stress.
- [78] The evidence satisfies me that the Child's exposure to the conflict between the parents is a clear cause of distress for the Child. A change in her parenting regime will likely cause some anxiety for her until she becomes adjusted. Any such change to the parenting regime will require advance notice to the Child but, given her age, she should be able to feel safe and secure with her Father if the changes are gradual and the parents improve their co-parenting dynamic.

(b) The Child's Views

- [79] At nine years of age, the Child is far too young for her wishes to govern the parenting issues in this case. Nevertheless, some notice should be given to her preferences to the extent that they have been reliably disclosed to others.
- [80] It should be borne in mind that the Child was reluctant to speak with Ms. Harder and to talk about aspects of her parenting schedule other than to initially state that she wanted overnights with her Father on the weekends only. Ms. Harder's impression is that the Child has an insecure attachment to her Father as a result of not seeing him during the pandemic and also because of the conflict she has observed between her parents. According to Ms. Harder, these experiences have likely internalized a belief in the Child that the Father is not

able to adequately care for her and this is why she strongly recommends a more structured schedule that promotes predictability and an opportunity for quality time with both parents.

- [81] According to Ms. Harder, the Child likes her room at her Father's home and she wishes to have sleepovers only on the weekends so they can do more activities together and she also does not have to get up earlier to get to school.
- [82] I am satisfied that the Child's expressed preference for overnights only on the weekend is not an outright or long term rejection of overnights during the week but is simply a manifestation of internalized insecurity on the part of the Child. If security reassurance occurs, it is likely that the child will be receptive to more overnights in due course. Of course, a great deal will depend upon the extent to which the parents can modify their own behaviours in support of such a graduated transition.
- (c) The Nature and Strength of Relationships between the Child and Significant Persons in her Life
- [83] This factor is closely related to the history of the child's care. The Mother has been the primary caregiver throughout the Child's life to date. The two are fully and securely bonded.
- [84] On the other hand, the Father's relationship with the Child is less bonded, primarily due to the interruption of the parenting regime as a result of the COVID pandemic and the unfounded allegations of sexual abuse. While the Child enjoys her time with her Father, such as it has been over the past year or so, her attachment to him is insecure. There is fragility in the relationship between the Father and the Child in this case that requires careful reinforcement.
- [85] Ms. Harder's s. 211 report makes reference to generally accepted social science respecting parenting. The work of one of the renowned experts in the field Dr. Joan Kelly, referred to in Ms. Harder's report, supports the following propositions which I accept and with which I generally agree:

- quality of parenting is the central variable and major predictor of child outcomes;
- independent of the positive outcomes of secure attachments with mothers, secure attachments of children with their fathers are associated with later positive measures of self-esteem, self-regulation and compliance, social competence and peer relationships, cognitive and verbal skills, IQ, and emotional and behavioural adjustment;
- young children with involved fathers are more likely to be sociable and to have a greater capacity for empathy, better peer relationships and fewer behavioural problems;
- as children with involved fathers grow older, they are more likely to solve problems better, had higher educational achievement and more satisfying adult relationships, and cope and adapt better to difficult life situations; and,

- the differences between fathers and mothers should not be exaggerated both parents can make independent, overlapping and positive contribution to the child's development.

[86] Another social science-based "Parenting Plan Guide" produced by the Ontario chapter of the Association of Family and Conciliation Courts (AFCC Ontario, December 2021) is frequently referred to by the courts in Ontario. It was endorsed by Ms. Harder during her testimony and, indeed, extensively quoted by counsel for both parties in their final submissions. It states:

There is a growing body of research on the effects of separation and divorce on children. Using this research makes it possible to better assess children's needs and to develop plans that meet those needs and promote children's healthy development. It is generally accepted that in most cases where parents are separated:

- children do best in both short-term and the long-run when they feel loved and cared for by both parents;
- children generally do better when both parents have stable and meaningful involvement in their children's lives;
- the strength of a parents relationship to a child is affected more by parental commitment, warmth and the ability to meet the child's needs than it is by the amount of time spent with the child;
- each parent has different and valuable contributions to make to their children's development;
- children should have both structured routine time (such as bathing or doing homework) with each parent, as well as unstructured time (such as playing in the park);
- parents should help their children maintain positive existing relationships, routines and activities;
- children find security in personal possessions, like a favourite stuffed animal, and should be permitted to bring personal possessions back and forth between homes, regardless of which parent purchased them;
- parenting plans will need to be adjusted over time as the needs and circumstances of parents and children change

[87] I expect both parties would agree with the above general propositions. Where they may disagree is with respect to the quality of the parenting each of them has brought to the table to date and which will be a factor in the future.

(d) The Child's Need for Stability given the Child's Age and Stage of Development

[88] All of the professional assessors involved in this case (Ms. Harder, the Child's counsellor, and the Child's physicians) agree that the Child needs predictability and consistency and that she will benefit most from a structured parenting schedule with minimal variation. The Father's

"two weeks on/two weeks off" work schedule makes it impossible for the Child to have a similar schedule every week. Care must therefore be taken in constructing a schedule which will maximize the Child's need for predictability but also provide for quality time with both parents.

[89] Ms. Harder strongly recommends, and I am inclined to agree, that the Child should continue with extracurricular activities which she currently enjoys (music lessons, girl guides and pony club) and emphasizes that the Father's proactive support of such activities would fortify the quality and security of her attachment to him. These, however, are decisions for the parents to make, not the court at first instance: see *N.R.G. v. G.R.G.*, 2017 BCCA 407, discussed later in these Reasons.

(e) The Ability of Each Parent to Exercise their Responsibilities

[90] While the ability of the Mother to exercise her parental responsibilities is unquestioned, Ms. Harder has nevertheless identified certain parenting skill shortcomings which will need to be addressed if co-parenting conflict is to be reduced. So too, of course, with the Father. These are discussed in paras. 55 to 58 of these Reasons for Judgment. It is Ms. Harder's assessment, again one with which I agree, that in the event the parents are unable to agree on significant issues regarding the Child, it is the Mother who should have final decision-making authority on such matters.

[91] I should also note here that the Father does not actually disagree with Ms. Harder's recommendation. Indeed, he is proposing a Joyce model order which grants such final decision-making authority to the Mother, albeit subject to the Father's ability to seek directions from the court pursuant to s. 49 of the FLA.

[92] In my view, these parents are each fully capable of parenting the Child in their own way. As Justice Goepel's quote set out above reminds us, perfection is not required.

(f) Family Violence

[93] Section 37(1)(g) and (h) require the court to consider whether there exists any "family violence" (as defined by the Act) and if so, (1) the impact of that family violence on the child's safety security or well-being and (2) whether that violence indicates "impairment" of the perpetrators ability to care for and meet the needs of the child.

[94] Section 38 of the FLA specified nine separate considerations that the court must take into account when assessing family violence.

[95] At trial, the Mother no longer claims that the Father perpetrated sexual abuse upon the Child. She argues that she acted appropriately when she reported to the MCFD certain disclosures made to her by the Child in April 2020, disclosures which were reasonably interpreted as indicating possible sexual abuse.

- [96] I have already made a finding that the Father has at no time engaged in any form of sexual interference with the Child. He says bluntly that "nothing happened and nothing ever will" in that regard and I accept his testimony on this point.
- [97] When questioned at trial about what the Mother was expected to do upon these disclosures being made, the Father suggested that she could and should have simply called him up or arranged to meet him to discuss the matter. The allegation of possible sexual abuse, subsequently determined to be completely unfounded, has caused him much anguish. He suggests, perhaps ironically, that it was actually a form of abuse by the Mother towards him, a proposition which was also pressed upon and acknowledged by Ms. Harder during her cross-examination.
- [98] Section 1 of the FLA defines "family violence" to include physical or sexual abuse, and psychological or emotional abuse of a family member, whether with or without a specific intent to harm. In the case of a child, it includes direct or indirect exposure of that child to such abuse even when it is directed to another member of the family, in this case for example by the parents to each other.
- [99] In this case, the Mother argues that the Father has perpetrated a pattern of emotional, psychological and financial abuse upon her, various incidents of which have occurred before or become obvious to the Child. She points to numerous communications from the Father (many of which were not provided to Ms. Harder and were thus not considered in her report) that are offensive, derogatory, wholly inaccurate or simply inappropriate. These include text messages where the Father is threatening the Mother with the police or court action, and accusations that the Mother was being "crazy", "unstable", "reckless" and "sad". The Mother also points to the Father's numerous court applications which have "drained her time and her emotional resources". She points to behaviours that can be interpreted as "attempts to use coercive control" including calling the police for wellness checks on her, calling multiple times in a day when she did not respond, threatening to withhold consent for certain events unless more parenting time was granted, and the like.
- [100] Finally, the Mother notes the Father deliberately refused to provide his annual financial information and to increase his annual child support payments as required by the Separation Agreement. She implies that he only agreed to the consent support order at the very last minute in the trial process so as to avoid inevitable criticism by the court about his refusal to increase support.
- [101] Counsel for the Mother observes "maybe alone each of these things wouldn't be so bad but together, they are insidious". The Father might respond that none of this would have occurred had the Mother not radically altered the parenting regime that was in place up to January 2020.

[102] I find as a fact that many of the behaviours of which the Mother complains did occur and they have caused significant distress for the Mother, distress which is in turn perceived by the Child and contributes to the latter's insecurities.

[103] The next question, however, is whether the Father is capable of changing his behaviours for the better or whether his past behaviour indicates an "impairment" of his parenting abilities that warrants a complete denial or, alternatively, certain restrictions on his parenting time in the future.

[104] Ms. Harder is not a registered psychologist and she did not undertake any psychological testing of the parents. However, doing the best I can with the evidence before me, I conclude that the Father's behaviour and, in particular, his unrelenting focus on enforcing perceived "parental rights" is capable of being changed for the benefit of the Child. He is an intelligent individual, albeit strong-willed. These Reasons for Judgment are perhaps the first time he will have received a frank plain language assessment by the Court as follows:

- decisions about parenting regimes are not a matter of "parental rights" the first and only governing principle is the best interests of the child;
- there are many positive outcomes for children who have involved fathers as well as involved mothers and an accomplished individual such as himself has much to offer in that regard;
- emotional distress and conflict is a common feature of separation or divorce, however it is essential for the parents to find a way to communicate and cooperate regarding the children intimidation, harassment, threats or other behaviour which amounts to psychological or emotional abuse will simply not be tolerated;
- any father who wishes to have a continuing significant role in the upbringing of his child primarily cared for by the mother following separation must do everything he reasonably can to avoid exposing the child to any conflict with the mother or to otherwise cause unnecessary stress to the child; and,
- any such father who fails to do these things runs the risk of having his parenting time with, or any decision-making power regarding, the child curtailed or even eliminated altogether in severe cases.

[105] I have every confidence the Father has the ability to be an excellent parent if he so chooses and that any of his past behaviours do not represent some sort of permanent "impairment" or shortcoming on his part. In this Judgment I intend to provide him with a reasonable opportunity to demonstrate his abilities because I am satisfied a successful outcome would very much be in the best interests of the Child. Should that confidence turn out to be misplaced, the court has the ability to make whatever changes may later prove necessary to better protect and promote the Child's physical and emotional security and well-being.

(9) Appropriateness and Risks of Requiring Cooperation between the Parents

- [106] It follows from the above that I do not consider ongoing cooperation between the parents on issues affecting the Child to be either impossible or inappropriate. Both are intelligent, caring individuals in their own way and they each love their Child dearly. Cooperation is by no means a lost cause, all the more so where the parties are assisted by counselling and the institution of graduated adjustments to the parenting regime designed to suit the Child's particular needs.
- [107] Counsel for the Mother submits that the parents "have already been trying the Joyce model [of decision-making] since 2017 and it has caused [and will likely continue to cause] significant conflict which is not in the child's best interests".
- [108] I do not agree with this submission. I certainly agree that further significant conflict between the parties would not be in the Child's best interests, but I am not satisfied that such significant conflict will actually continue, if an appropriate communication protocol is established, perhaps reinforced by parenting counselling. Ms. Harder evidently agrees with this assessment given the parenting regime she recommends in her s. 211 report.
- (h) Any Relevant Civil or Criminal Proceeding
- [109] The existence of any such proceeding has not been brought to the attention of the court and this factor appears to have no relevance to the to this case.
- (i) Other Observations on Parenting Time Issues
- [110] During his testimony the Father stated that he is "ready and willing to accommodate [the Child's] needs at any time". He said he would "love to have her for two weeks" when he is back from camp and in town but he "accepts a gradual increase" may be required although he would like for it to occur sooner rather than later because in his opinion, the Child benefits from increased contact with him.
- [111] The Father also stated that he was not at all opposed to a parenting counsellor or a parenting coordinator being involved and that he would attend co-parenting counselling if that is required. He did point out that counselling would be a less expensive option than a parenting coordinator but he expressed the belief that he would be able to pay whatever the costs might be. He also confirmed that he would abide by any court orders made with respect to parenting time or parenting responsibilities.
- [112] During submissions, counsel for the Father argued that "given the current [negative] relationship between the father and the mother, a regime of "parallel parenting" would be appropriate." Counsel suggested that the benefit of such a model was that the parents had very little interaction with each other and that a properly crafted order could maximize the parties parenting time with the Child while also minimizing the conflict between them. He did not provide the court with a draft of any such parallel parenting order but in his submissions he suggested "afterschool exchanges where the father or the mother drops the child off at school in the morning and the other parent picks the child up from school when school ends."

- [113] In her report, Ms. Harder says the schedule that would best meet the Child's needs is a "gradually increasing schedule with approximately four months for each step, and consistent days and times when she has parenting time with her father on his time off of work". Before moving from one step to another, Ms. Harder says the parents should enter into the OFW app a minimum of three months of the Child's activities and parenting schedule, including all known scheduled extracurricular activities. Both parents should confirm that they have reviewed the information. Any concerns about scheduling conflicts should be resolved by co-parent counselling or a parenting coordinator before graduation to the next step is started.
- [114] Ms. Harder also recommended that, before moving from step one to step two of her proposed plan,
- if they have not already done so, both parents should complete two specified parenting courses ("Confident Parent/Thriving Kids" and "Love and Logic");
 - the Child's therapist should provide feedback to both parents, whether jointly or individually, about what is working for the Child and any concerns she has so they can incorporate suggestions for improvement in their behaviours; and,
 - both parents should have completed no less than three co-parent counselling sessions (whether individually or jointly) and have demonstrated consistency in the Child's routines.
- [115] Ms. Harder pointed out that it would be important for the Child that schedule changes be minimized until she has adjusted to the new schedule and is feeling safe and secure with each of her parents. She recommends that both parents have an identified person who is to be their consistent "backup" in the event they are running late or having an unexpected schedule change.
- [116] Ms. Harder also observed that the child needs her parents to share regular information about her and she recommended various items of information that the parents should exchange "on a minimum weekly basis, particularly on transition days". In this way the child will not have to "be the messenger" and she will develop a sense of confidence in her parent's ability to work together for her benefit.
- [117] Counsel for the Mother provided to the court five pages of specific terms for the parenting order sought on the Mother's behalf. The proposed order essentially adopts the graduated approach recommended by Ms. Harder, albeit with further tweaking.
- [118] It would be easy for the court to simply adopt the Mother's requested order, particularly since the Father has more or less indicated that he will do whatever it takes (i.e. whatever the court orders) so that he can have more parenting time with the Child. However, I am concerned that some of the parenting time recommendations of Ms. Harder and the form of order proposed by the Mother are problematic both in law and practice.

- [119] Certain appellate case law in this province has made it clear that the court must not "assume a parenting role" beyond what is contemplated by the FLA, that "decisions on specific aspects of a child's life" or on "matters typically considered parental responsibilities" must be left for the parents to decide at first instance, whether jointly or as assigned to one of them, or as "guided by a parenting coordinator". It is only "when agreement cannot be reached [that] the court may need to step in and make orders on [such matters] at the behest of [the parents]".: N.R.G. as clarified in *Reda v. Birch*, 2022 BCCA 60.
- [120] N.R.G. was an alienation case involving a counselling program that included "conduct guidelines" imposed by counsellors which were designed to change the parents' behaviour. The same mechanics were recommended by the expert witness and ultimately imposed by the trial judge but high conflict continued and multiple court attendances ensued leading to the appeal of some of the orders made. The Court of Appeal criticized as "questionable" the assignment of decision-making authority to expert counsellors, stating that the latter's "program appears to fall outside the provisions of the Family Law Act" (para. 13). It is not clear what this last observation means.
- [121] I thus have reservations about the propriety of a graduated parenting time order which is dependent upon the parents completing any court-ordered counselling, whether online and/or in-person, particularly any vague requirement that the parents "make progress" regarding certain specified matters. I recognize s. 224 of the FLA permits the court to require counselling but I have concerns about the propriety and the practicality of requiring any parent to undergo counselling against their will.
- [122] Having said that, I wish to make it clear to both parents in this case that I endorse the recommendations of Ms. Harder on these and the various other matters set out in her report. They are based on considerable experience and peer-reviewed social science, and they also reflect a great deal of common sense. It would be wise for these parents to make a good faith effort to follow these recommendations, particularly co-parenting counselling, but I am not inclined to force them to do so if they do not wish to (and I would parenthetically observe that many of the recommendations are too vague to be technically enforceable in a court of law in any event).
- (j) Parenting Time Order
- [123] Judgment was reserved at the conclusion of the trial on September 28, 2023. At the request of the parties, I made an interim order regarding parenting time and invited counsel to put together a consent order reflecting those terms and any other matters upon which they were able to agree such as parenting during the Christmas season. No such order has been provided to me for signature.
- [124] The interim order made at the conclusion of the trial basically reflected the Mother's submissions and provided as follows:

- the Father would have parenting time with the Child from Saturday at 12 p.m. until Sunday at 12 p.m. for each week that the Father is regularly scheduled to be home from camp;
- the Father would also have parenting time with the Child each Tuesday of such weeks from afterschool until 6:30 p.m.;
- within five business days of the date of the interim order, the Mother would send to the Father the names of three potential co-parenting counsellors and within five business days of receiving those names, the Father will inform the Mother which counsellor he prefers to move forward with;
- co-parent counselling sessions would then occur individually unless both parties and the counsellor agree that a joint session would be appropriate and beneficial;
- the co-parenting counsellor would be provided with a copy of the s. 211 report prepared by Ms. Harder; and,
- the parties will share the cost of co-parent counselling in proportion to their incomes.

[125] The order I am issuing at this time will immediately supersede the interim order granted at the conclusion of trial. The terms of this new order are as follows:

Co-Parenting Counselling or Parenting Coordinator

1. If the parties agree to do so, they may jointly select and retain a co-parenting counsellor to assist them with co-parenting decision-making provided for in this order.
2. If such a retainer is not made on or before 30 days from the date these Reasons for Judgment are released or if such retainer is made but at any time terminated by one or both of the parties, then the parties must either forthwith themselves retain, or apply to this court for an order appointing, a properly qualified parenting coordinator for a period of not less than 2 years pursuant to Sections 17 and 18 of the Family Law Act and Sections 6(3) and (4) of the Family Law Regulation;

Father's Parenting Time - Step 1

3. Commencing immediately, the Father will have parenting time with the Child for each week that he is not scheduled to be working and is home from camp as follows:
 - 3.1 From Saturday at 12 p.m. until Sunday at 12 p.m.; and,
 - 3.2 On Tuesdays (or such other consistent weekday upon which the parties agree) from afterschool until 6:30 p.m. including dinner time
4. While the Father is away working in camp, he will have electronic parenting time with the Child three times per week between 6:30 - 7 p.m. and such additional times as the Child may reasonably request and the Mother will make sure that the Child has access to an electronic device for that purpose;

Father's Parenting Time - Step 2

5. If the Father has completed three co-parenting counselling sessions pursuant to the interim order made September 28, 2023 then the Father will have parenting time as set out below effective from the date of the release of these Reasons for Judgment.
6. Otherwise, commencing January 15, 2024, on each week that the Father is regularly scheduled to be home from camp, he will have parenting time with the Child,
 - 6.1 From Friday afterschool (3 p.m.) to Sunday at 12 p.m.; and,
 - 6.2 Afterschool on each Tuesday (or any other consistent weekday upon which the parties are able to agree) until 6:30 p.m. including dinner
7. If the parenting time outlined above for this Step 2 falls over Christmas, 2023, the Father will have parenting time with the Child from December 23, 2023 at 12 p.m. until December 25, 2023 at 12 p.m.
8. While the Father is away working in camp, he will have electronic parenting time with the Child three times per week between 6:30 - 7 p.m. and such additional times as the Child may reasonably request and the Mother will make sure that the Child has access to an electronic device for that purpose;

Father's Parenting Time - Step 3

9. Commencing three months (12 weeks) following the completion of the Parenting Time - Step 2 schedule, the Father will have parenting time with the Child each week he is regularly scheduled to be home from camp as follows:
 - 9.1 Friday after school until Sunday at 6 p.m.; and,
 - 9.2 Afterschool on Tuesdays (or such other consistent weekday as the parties may agree upon) until the following morning at school start time.
10. Once this Parenting Schedule - Step 3 has been in effect for three months (12 weeks), or on any earlier occasion upon which the parties may agree, the Father will have the right of first refusal to care for the Child when the Mother is away overnight either for work or for other reasons she is unable to be present with the Child, provided the parties can confirm arrangements with 14 days prior notice to each other and to the Child.
11. While the Father is away working in camp, he will have electronic parenting time with the Child three times per week between 6:30 - 7 p.m. and such additional times as the Child may reasonably request and the Mother will make sure that the Child has access to an electronic device for that purpose;

Parenting Time - General

12. During the Child's school breaks (spring break and Christmas) the Father will have five days of consecutive parenting time with the Child (this is including his regular 48 hours of parenting time during those weeks). The parties will reserve those dates three months in advance and they will be added to their OFW calendar.
13. The Father will have at least one full week of consecutive parenting time with the Child during the summer break, on dates to be agreed upon between the parties three months in advance and added to the OFW calendar. The Father shall also have such other additional parenting time with the Child during the summer break as the parties may agree.
14. Except as specified in the parenting time steps provided for above, the Mother will have all other parenting time with the Child. However, at all times the Mother has liberty to relinquish to the Father such additional portions of the parenting time as the parties may agree.
15. The parties will share parenting time on special days/holidays as follows:
 - 15.1 Regardless of the parenting time schedule, the parties will alternate Christmas morning with the Child each year. The Father will have odd years and the Mother will have even years. Christmas parenting time will be from 6 p.m. on December 24 until 12 p.m. on December 25.
 - 15.2 Regardless of the parenting time schedule, the Mother will have parenting time with the Child from 1 p.m. - 7 p.m. on January 1st for their annual New Years Day sleigh ride.
 - 15.3 The parties will alternate spending the Child's birthday with her each year from 10 a.m. - 6:30 p.m. The Father will have odd years and the Mother will have even years.
 - 15.4 Regardless of the parenting time schedule, The Father will have parenting time with the Child on June 21 from 10 a.m. - 6:30 p.m. each year for National Indigenous Peoples' Day. If the Father is in camp on that date, his mother or his sister may spend the day with the Child.
 - 15.5 Provided he is out of camp, regardless of the parenting time schedule, the Father will have parenting time with the Child from 10 a.m. - 6:30 p.m. on October 16 each year.
 - 15.6 Regardless of the parenting time schedule, the Mother shall have parenting time with the Child from 10 a.m. - 6:30 p.m. on May 17 of each year.
 - 15.7 Regardless of the parenting time schedule, the Mother shall have parenting time with the Child from 10 a.m. - 6:30 p.m. on Mother's day each year.
 - 15.8 Provided he is out of camp, regardless of the parenting time schedule, the Father will have parenting time with the Child 10 a.m. - 6:30 p.m. on Father's Day each year.
 - 15.9 Regardless of the parenting time schedule, the parties will have parenting time on Thanksgiving weekend as follows:

i. The Father will have parenting time with the Child from 10 a.m. - 6:30 p.m. on Thanksgiving Sunday; and,

ii. The Mother will have parenting time with the Child from 10 a.m. - 6:30 p.m. on Thanksgiving Monday

15.10 Regardless of the parenting time schedule, the parties will have parent on Easter weekend as follows:

i. The Father will have parenting time with the Child from 10 a.m. - 6:30 p.m. on Easter Sunday; and,

ii. The Mother will have parenting time with the Child from 10 a.m. - 6:30 p.m. on Easter Monday

16. The parties will ensure their OFW calendar is continually updated to accurately reflect the parenting schedule and the next three months of the Child's activities, whether school related or extra-curricular in nature.

17. During his parenting time with the child, the Father will take that the Child to all activities scheduled to occur during his parenting time.

18. Provided the child continues to receive counselling, the parties will regularly obtain feedback, either individually or jointly, from the Child's therapist regarding any concerns and recommendations she may have with respect to parenting of the Child. The parties will make best efforts to take all reasonable steps to resolve any concerns raised by the therapist.

19. All parenting exchanges that are not a school pickup will occur at the Bulkley Valley Wholesale parking lot, or such other location upon which the parties may from time to time agree.

20. In the event that the Father's work schedule changes such that he is able to have a weekly parenting schedule instead of a two week on/off schedule, the parties will adjust the Father's parenting schedule by consent, or if necessary, by any appointed parenting coordinator.

21. Any disagreements that may arise between the parties regarding parenting time matters will be resolved with the assistance of any co-parenting counsellor they have appointed or by the parenting coordinator appointed them or by the court. The co-parenting counsellor and/or parenting coordinator must be provided with a copy of the s. 211 report prepared by Ms. Harder and a copy of these Reasons for Judgment.

22. To the extent that the co-parent counselling costs are not covered by any insurance program available to either of the parties, through work or otherwise, they will be shared by the parties in the same proportion as provided in the child support order respecting special or extraordinary expenses for the child

Parental Responsibilities

[126] Section 40 of the FLA addresses allocation between the parents of "parental responsibilities", which in turn are defined in s. 41 of the FLA. Essentially, the FLA:

- contemplates that each parent will exercise all of the listed parental responsibilities with respect to the child in consultation with the other parent unless such consultation would be unreasonable or inappropriate, in which event,
- the court can allocate the parental responsibilities to one parent only, bearing in mind,
- no particular allocation is presumed to be in the best interest of the child.

[127] It will be recalled that the Father endorsed the Joyce model requiring consultation on everything other than "day-to-day" decisions affecting the Child (s. 41(a)) and, in the event of disagreement between the parents, the Mother would have final-decision-making authority on the matter, albeit subject to the Father's ability to seek directions from the court pursuant to s. 49 of the FLA.

[128] The Father also made reference to the possibility of "parallel parenting", one version of which sees the parent having parenting time with the Child being the decision-maker on all matters while the Child is in that parents' control and supervision.

[129] The Mother resists the Joyce model and instead proposes that each parent will have the right to exercise certain parental responsibilities during their own parenting time, however the Mother would have sole-decision-making responsibility for certain, presumably significant, matters such as extracurricular activities, non-emergency health care decisions, education decisions etc.

[130] With the benefit of these Reasons for Judgment in hand, it is my hope that the groundwork has been laid for the parents to improve the tone of their communications and their ability to co-parent on an amicable basis. If this were to occur, it would most certainly be in the best interests of the Child whom they both love dearly.

[131] Nevertheless, I will accept the parents desire for independent decision-making on certain matters but I nevertheless imposed a Joyce model requirement for consultation on others.

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

1. During their own parenting time, each of the Mother and Father will be solely responsible for the following matters:
 - (a) making the day-to-day decisions affecting the Child and having day-to-day care, control and supervision of the Child;

- (b) making decisions respecting where the Child will reside and with whom the Child will associate, provided that both parties will provide notice to the other of any change of address and of any other adults living in their residence who will be sharing living space with the Child;
 - (c) making emergency health decisions for the Child if the other parent is not available for immediate consultation;
 - (d) requesting and receiving from third parties health, education or other information respecting the Child;
 - (e) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
 - (f) giving, refusing or withdrawing consent for the Child in relation to any activities proposed to be undertaken during their parenting time.
2. Both parents have the obligation to discuss and try to agree on any of the following significant decisions that may have to be made concerning the Child:
- (a) decisions respecting the Child's cultural, linguistic, religious and spiritual upbringing and heritage, including, the Child's aboriginal identity;
 - (b) making decisions respecting the Child's education and participation in extracurricular activities, including the nature, extent, location and cost thereof;
 - (c) subject to s. 17 of the Infants Act, R.S.B.C. 1996, c. 223 giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the Child;
 - (d) applying for a passport license permit benefit privilege or other thing for the Child;
 - (e) giving, refusing or withdrawing any required consent for the Child on matters other than activities during each parent's parenting time;
 - (f) subject to any applicable provincial legislation,
 - i. starting, defending, compromising or settling any proceeding relating to the Child; and,
 - ii. identifying, advancing and protecting the Child's legal and financial interests.
3. In the event that, despite their best efforts and the involvement of any parenting counsellor they may have retained, the parents are unable to reach agreement on any of the significant matters listed above, then, (1) if a parenting coordinator has been retained or appointed, the matter will be referred to and determined by that parenting coordinator, failing which (2) the Mother will be entitled to make those decisions and the Father will have the right to apply to this court for a determination of the matter in the best interests of the Child under s. 49 of the FLA.

Other Miscellaneous Orders

[133] The Mother seeks a court-ordered communication protocol between the parents as well as certain fines payable by the Father up to \$5,000 pursuant to ss. 213 and 228 of the FLA. I will deal with each separately.

Communication Protocol

[134] Again, it is the courts hope that formal communication protocols will ultimately prove to be unnecessary but until both parents have successfully experimented otherwise by mutual consent, I agree that some sort of communication protocol should be imposed. I therefore make the following order:

1. All text-based communication between the parents shall be by OFW or email if OFW is unavailable. The parties may also communicate by phone in addition to text in the event of emergencies or short-notice events (e.g. running late);
2. If either party is sending an important email or message that has a time-sensitive response, they shall text the other parent to advise of the urgent message and the time by which the response is required
3. All communication about any changes or details of parenting events (e.g. scheduling, pickups, drop-offs, extracurricular activities etc.) must occur directly between the parents without the Child being used as a medium for communication; and,
4. As much as possible, communication about changes shall occur as soon as the parent becomes aware of a potential change, or as soon thereafter as reasonably possible. Communications requiring a response must generally be responded to within 48 hours.

[135] While it does not form part of the order, both parents are strongly encouraged by the court to regularly exchange information regarding the Child's activities and well-being, including for example, those matters identified in para. 653 of Ms. Harder's report which, for sake of convenience, I repeat here:

Information Sharing

653 [The Child] needs her parents to share regular information about her. At this time, [the Mother] is [the Child]'s primary caregiver and holds the most information about [the Child]'s day-to-day activities, health and education.

654 I recommend that the parents exchange the following information on a minimum basis, particularly on transition days this will allow [the Child] to develop a sense of confidence in her parents' ability to work together for her benefit, without her being the messenger:

- a. relationships with friends and social activities;
- b. school, extracurricular and religious activities;

- c. scheduled events and activities;
- d. homework and school projects;
- e. school progress;
- f. behavioural and disciplinary issues;
- g. bed bath and meal routines.

Fines

[136] Section 213 of the FLA is concerned with "enforcing orders respecting disclosure". It applies where a parent fails to comply with either a court order or the Supreme Court Family Rules. It sets out a variety of enforcement mechanisms, one of which includes requiring a payment "not exceeding \$5,000" either as a fine (payable to the court) or as a form of compensation to the other parent or the child whose interests were affected by the nondisclosure.

[137] Section 228 of the FLA addresses failure to comply with conduct orders. It contains very similar language to s. 213, including the option of requiring the breaching party to pay up to \$5,000 either as a fine or as a form of compensation.

[138] So too with s. 230 of the FLA which addresses "enforcing orders generally" in much the same language.

[139] In this case, there is no question that the Father has in the past failed to provide disclosure of his income as required by the Separation Agreement which was filed in court and hence had the effect of a court order. Once the litigation in this court was instituted, he failed to file timely or complete F8 Financial Statements and he sent demeaning messages to the Mother when she followed up with him in that regard.

[140] The Mother points to other breaches by the Father regarding court orders for polite communication, compliance with COVID 19 health protocols, and the like. Her counsel argues that,

there is currently no trust between these parties nor any real basis for the Mother to think the Father will follow "the conduct orders" requested at trial. She suggests that a fine should be imposed not just to penalize past noncompliance but rather to secure future compliance with the court orders.

[141] I do not think fines are required or appropriate at this time. Whatever nondisclosure may have occurred in the past has ultimately been remedied and the parties have been able to consent to a child support order. This type of cooperation is to be encouraged but requiring the Father to pay a fine after the problem has been remedied is heavy-handed and counterproductive.

[142] So too with respect to COVID 19 protocol compliance, all the more so now that the pandemic has passed and emergency protocols are no longer required.

[143] For sure, a concern remains whether the Father will in the future follow the recommendations of Ms. Harder respecting communication protocols and cooperation between the parents. Now that each party has had the opportunity to fully communicate their version of events to the court (and to each other) and they have received the messaging and directions set out in these Reasons for Judgment, and now that the court has issued orders increasing the Father's parenting time with the Child, (albeit on a graduated basis), it is entirely possible that the parties will be able to move forward constructively and, if not amicably, then at least without the same degree of conflict as may have occurred in the past. Only time will tell.

[144] The Mother's request for fines to be imposed upon the Father is declined.

Conclusion and Summary

[145] For the benefit of the parties, I repeat here the orders made by the court following trial:

Co-Parenting Counselling or Parenting Coordinator

1. If the parties agree to do so, they may jointly select and retain a co-parenting counsellor to assist them with co-parenting decision-making provided for in this order.
2. If such a retainer is not made on or before 30 days from the date these Reasons for Judgment are released or if such retainer is made but at any time terminated by one or both of the parties, then the parties must either forthwith themselves retain, or apply to this court for an order appointing, a properly qualified parenting coordinator for a period of not less than 2 years pursuant to Sections 17 and 18 of the Family Law Act and Sections 6(3) and (4) of the Family Law Regulation;

Father's Parenting Time - Step 1

3. Commencing immediately, the Father will have parenting time with the Child for each week that he is not scheduled to be working and is home from camp as follows:
 - 3.1 From Saturday at 12 p.m. until Sunday at 12 p.m.; and,
 - 3.2 On Tuesdays (or such other consistent weekday upon which the parties agree) from afterschool until 6:30 p.m. including dinner time
4. While the Father is away working in camp, he will have electronic parenting time with the Child three times per week between 6:30 - 7 p.m. and such additional times as the Child may reasonably request and the Mother will make sure that the Child has access to an electronic device for that purpose;

Father's Parenting Time - Step 2

5. If the Father has completed three co-parenting counselling sessions pursuant to the interim order made September 28, 2023 then the Father will have parenting time as set out below effective from the date of the release of these Reasons for Judgment.
6. Otherwise, commencing January 15, 2024, on each week that the Father is regularly scheduled to be home from camp, he will have parenting time with the Child,
 - 6.1 From Friday afterschool (3 p.m.) to Sunday at 12 p.m.; and,
 - 6.2 Afterschool on each Tuesday (or any other consistent weekday upon which the parties are able to agree) until 6:30 p.m. including dinner
7. If the parenting time outlined above for this Step 2 falls over Christmas, 2023, the Father will have parenting time with the Child from December 23, 2023 at 12 p.m. until December 25, 2023 at 12 p.m.
8. While the Father is away working in camp, he will have electronic parenting time with the Child three times per week between 6:30 - 7 p.m. and such additional times as the Child may reasonably request and the Mother will make sure that the Child has access to an electronic device for that purpose;

Father's Parenting Time - Step 3

9. Commencing three months (12 weeks) following the completion of the Parenting Time - Step 2 schedule, the Father will have parenting time with the Child each week he is regularly scheduled to be home from camp as follows:
 - 9.1 Friday after school until Sunday at 6 p.m.; and,
 - 9.2 Afterschool on Tuesdays (or such other consistent weekday as the parties may agree upon) until the following morning at school start time.
10. Once this Parenting Schedule - Step 3 has been in effect for three months (12 weeks), or on any earlier occasion upon which the parties may agree, the Father will have the right of first refusal to care for the Child when the Mother is away overnight either for work or for other reasons she is unable to be present with the Child, provided the parties can confirm arrangements with 14 days prior notice to each other and to the Child.
11. While the Father is away working in camp, he will have electronic parenting time with the Child three times per week between 6:30 - 7 p.m. and such additional times as the Child may reasonably request and the Mother will make sure that the Child has access to an electronic device for that purpose;

Parenting Time - General

12. During the Child's school breaks (spring break and Christmas) the Father will have five days of consecutive parenting time with the Child (this is including his regular 48 hours of parenting time during those weeks). The parties will reserve those dates three months in advance and they will be added to their OFW calendar.
13. The Father will have at least one full week of consecutive parenting time with the Child during the summer break, on dates to be agreed upon between the parties three months in advance and added to the OFW calendar. The Father shall also have such other additional parenting time with the Child during the summer break as the parties may agree.
14. Except as specified in the parenting time steps provided for above, the Mother will have all other parenting time with the Child. However, at all times the Mother has liberty to relinquish to the Father such additional portions of the parenting time as the parties may agree.
15. The parties will share parenting time on special days/holidays as follows:
 - 15.1 Regardless of the parenting time schedule, the parties will alternate Christmas morning with the Child each year. The Father will have odd years and the Mother will have even years. Christmas parenting time will be from 6 p.m. on December 24 until 12 p.m. on December 25.
 - 15.2 Regardless of the parenting time schedule, the Mother will have parenting time with the Child from 1 p.m. - 7 p.m. on January 1st for their annual New Years Day sleigh ride.
 - 15.3 The parties will alternate spending the Child's birthday with her each year from 10 a.m. - 6:30 p.m. The Father will have odd years and the Mother will have even years.
 - 15.4 Regardless of the parenting time schedule, The Father will have parenting time with the Child on June 21 from 10 a.m. - 6:30 p.m. each year for National Indigenous Peoples' Day. If the Father is in camp on that date, his mother or his sister may spend the day with the Child.
 - 15.5 Provided he is out of camp, regardless of the parenting time schedule, the Father will have parenting time with the Child from 10 a.m. - 6:30 p.m. on October 16 each year.
 - 15.6 Regardless of the parenting time schedule, the Mother shall have parenting time with the Child from 10 a.m. - 6:30 p.m. on May 17 of each year.
 - 15.7 Regardless of the parenting time schedule, the Mother shall have parenting time with the Child from 10 a.m. - 6:30 p.m. on Mother's day each year.
 - 15.8 Provided he is out of camp, regardless of the parenting time schedule, the Father will have parenting time with the Child 10 a.m. - 6:30 p.m. on Father's Day each year.
 - 15.9 Regardless of the parenting time schedule, the parties will have parenting time on Thanksgiving weekend as follows:

i. The Father will have parenting time with the Child from 10 a.m. - 6:30 p.m. on Thanksgiving Sunday; and,

ii. The Mother will have parenting time with the Child from 10 a.m. - 6:30 p.m. on Thanksgiving Monday

15.10 Regardless of the parenting time schedule, the parties will have parent on Easter weekend as follows:

i. The Father will have parenting time with the Child from 10 a.m. - 6:30 p.m. on Easter Sunday; and,

ii. The Mother will have parenting time with the Child from 10 a.m. - 6:30 p.m. on Easter Monday

16. The parties will ensure their OFW calendar is continually updated to accurately reflect the parenting schedule and the next three months of the Child's activities, whether school related or extra-curricular in nature.

17. During his parenting time with the child, the Father will take that the Child to all activities scheduled to occur during his parenting time.

18. Provided the child continues to receive counselling, the parties will regularly obtain feedback, either individually or jointly, from the Child's therapist regarding any concerns and recommendations she may have with respect to parenting of the Child. The parties will make best efforts to take all reasonable steps to resolve any concerns raised by the therapist.

19. All parenting exchanges that are not a school pickup will occur at the Bulkley Valley Wholesale parking lot, or such other location upon which the parties may from time to time agree.

20. In the event that the Father's work schedule changes such that he is able to have a weekly parenting schedule instead of a two week on/off schedule, the parties will adjust the Father's parenting schedule by consent, or if necessary, by any appointed parenting coordinator.

21. Any disagreements that may arise between the parties regarding parenting time matters will be resolved with the assistance of any co-parenting counsellor they have appointed or by the parenting coordinator appointed them or by the court. The co-parenting counsellor and/or parenting coordinator must be provided with a copy of the s. 211 report prepared by Ms. Harder and a copy of these Reasons for Judgment.

22. To the extent that the co-parent counselling costs are not covered by any insurance program available to either of the parties, through work or otherwise, they will be shared by the parties in the same proportion as provided in the child support order respecting special or extraordinary expenses for the child

23. During their own parenting time, each of the Mother and Father will be solely responsible for the following matters:

- a) making the day-to-day decisions affecting the Child and having day-to-day care, control and supervision of the Child;
 - b) making decisions respecting where the Child will reside and with whom the Child will associate, provided that both parties will provide notice to the other of any change of address and of any other adults living in their residence who will be sharing living space with the Child;
 - c) making emergency health decisions for the Child if the other parent is not available for immediate consultation;
 - d) requesting and receiving from third parties health, education or other information respecting the Child;
 - e) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
 - f) giving, refusing or withdrawing consent for the Child in relation to any activities proposed to be undertaken during their parenting time.
24. Both parents have the obligation to discuss and try to agree on any of the following significant decisions that may have to be made concerning the Child:
- g) decisions respecting the Child's cultural, linguistic, religious and spiritual upbringing and heritage, including, the Child's aboriginal identity;
 - h) making decisions respecting the Child's education and participation in extracurricular activities, including the nature, extent, location and cost thereof;
 - i) subject to s. 17 of the Infants Act, R.S.B.C. 1996, c. 223 giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the Child;
 - j) applying for a passport license permit benefit privilege or other thing for the Child;
 - k) giving, refusing or withdrawing any required consent for the Child on matters other than activities during each parent's parenting time;
 - l) subject to any applicable provincial legislation,
 - i. starting, defending, compromising or settling any proceeding relating to the Child; and,
 - ii. identifying, advancing and protecting the Child's legal and financial interests.
25. In the event that, despite their best efforts and the involvement of any parenting counsellor they may have retained, the parents are unable to reach agreement on any of the significant matters listed above, then, (1) if a parenting coordinator has been retained or appointed, the matter will be referred to and determined by that parenting coordinator, failing which (2) the Mother will be entitled to make those decisions and the Father will have the right to apply to this court for a determination of the matter in the best interests of the Child under

s. 49 of the FLA;

26. All text-based communication between the parents shall be by OFW or email if OFW is unavailable. The parties may also communicate by phone in addition to text in the event of emergencies or short-notice events (e.g. running late);
27. If either party is sending an important email or message that has a time sensitive response, they shall text the other parent to advise of the urgent message and the time by which the response is required
28. All communication about any changes or details of parenting events (e.g. scheduling, pickups, drop-offs, extracurricular activities etc.) must occur directly between the parents without the Child being used as a medium for communication; and,
29. As much as possible, communication about changes shall occur as soon as the parent becomes aware of a potential change, or as soon thereafter as reasonably possible. Communications requiring a response must generally be responded to within 48 hours.

[146] It is the court's preliminary view that success in this litigation has been divided and that it would be appropriate for each party to bear their own costs. Insofar as the costs of Ms. Harder's s. 211 report and her attendance at trial are concerned, I conclude that they should be reallocated/borne in the same portions that the court has already ordered with respect to special or extraordinary expenses, i.e. 68% by the father and 32% for the mother. An order to that effect is made accordingly.

[147] Should either of the parties wish to make further submissions with respect to the question of costs, whether in writing alone or in combination with oral submissions, they are at liberty to make the appropriate arrangements through the registry no later than 30 days following the release of these Reasons for Judgment.

Kent J.

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