

CANADA / JUDGMENT

M.A.J. v. M.E.J.

2025 BCSC 1046

COURT

Supreme Court of British Columbia

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2025 BCSC 1046 M.A.J. v. M.E.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.A.J. v. M.E.J.,

2025 BCSC 1046

Date: 20250606

Docket: E63747

Registry: New Westminster

Between:

M.A.J.

Claimant

And

M.E.J.

Respondent

Before: The Honourable Justice Marzari

Reasons for Judgment

Counsel for the Claimant:

D.P. Kuhn

The Respondent, appearing in person:

M. E.J.

Place and Dates of Trial:

Vancouver, B.C.

March 3-7, 13-14, 2025

April 23-24, 2025

Place and Date of Judgment:

New Westminster, B.C.

June 6, 2025

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INTRODUCTION

- [1] In this family law dispute, the claimant, MAJ, and the respondent, MEJ, seek a divorce from each other, and a final determination of division of property, parenting time and responsibilities, and spousal and child support.
- [2] MEJ was born January 24, 1965, in Beirut, Lebanon. He has a master's degree in engineering, but when he moved to the Lower Mainland in 2001, he found his credentials were not recognized. Instead, he found work as an elevator mechanic in 2003 at the age of 38 and has steadily and impressively gained experience and seniority in his new career. Only once he had established himself in Canada did he seek to start a family. At that time, he was introduced to MAJ, who was living in his home country of Lebanon at that time.

- [3] MAJ was born April 23, 1977, in Baghdad, Iraq. She was 25 years old when she moved to Lebanon in 2003 due to the Iraq war. She trained as a lawyer in Iraq and had worked as a lawyer for the government for almost two years when she moved to Lebanon with her whole family. There, she was introduced to and met with MEJ's sister and some of his other family members still living in Lebanon.
- [4] MAJ and MEJ spent several months speaking on the phone before they decided to marry. They met in person for the first time shortly before they were formally married in Syria, in May 2004. They then had a wedding ceremony in Beirut, Lebanon with their families in June 2004. They were 39 and 26 years old, respectively. After the wedding, MEJ returned to the Lower Mainland and worked to file all the paperwork to bring MAJ to Canada as his wife. MAJ arrived just over a year later in August 2005. Unfortunately, the evidence indicates that neither got what they had hoped and expected from this union.
- [5] The parties' first child, a son, was born approximately one year later, on August 17, 2006. Two girls followed, the first on January 1, 2011, and the second on May 28, 2014.
- [6] The parties separated on October 11, 2021, which MAJ says was a result of MEJ punching her. MEJ denies this and accuses MAJ of throwing objects at him. I will address these allegations further below. In any event, it is uncontested that the police were called, and MEJ left the family home on this date.
- [7] MEJ was 56 at the time of separation and was 60 years old at trial. He continues to work full time as an elevator mechanic. MAJ was 44 years old at the time of separation, and 47 years old at the time of trial. Before separation, MAJ had just completed her legal assistant accreditation, and had worked briefly in this role at the time of separation. She currently works minimal part time hours at her friend's spa as a receptionist.
- [8] The children were 7, 10, and 15 years old at the time of separation and 10, 14, and 18 years old at the time of the trial. Since separation, the children have primarily lived with MAJ, except for approximately one month when the eldest lived with MEJ in 2024. MEJ has had one weekend day a week parenting time with the two younger girls by consent order since May 4, 2022, though MEJ's exercise of this parenting time has been inconsistent. MEJ blames MAJ for this, while MAJ blames MEJ.
- [9] The eldest child graduated from high school last June and has worked full time as part of a trade apprenticeship organized with MEJ's assistance as an elevator mechanic. He will be turning 19 in August, and both parties agree that he will then no longer be a child of the marriage in need of parental support.
- [10] The middle child experienced a period of blindness last fall and has recently been diagnosed with childhood onset of Multiple Sclerosis ("MS"). This diagnosis is still new to the parties, but both are understandably concerned about their daughter's need for greater supports in the coming years.

- [11] MEJ was briefly represented by counsel at the Judicial Case Conference ("JCC") and early on in the litigation, but he was self-represented throughout most of the interim applications brought before this Court and at trial.

ISSUES

- [12] Although I would characterize these proceedings as high conflict as a result of the parties' inability to effectively communicate, the parties' positions are not that far apart on many of the facts and legal issues before me at trial.
- [13] Both parties seek a divorce.
- [14] The parties agree that MAJ will continue to exercise primary parenting time with the children, which will allow MEJ to continue to work to support the family, as he has done throughout the marriage. They disagree, however, on whether MEJ should have more parenting time with the girls on the weekends, as MEJ seeks.
- [15] They also disagree about whether MEJ should be expected to maintain his pre-separation overtime hours post-separation as he enters his sixties for the purposes of support. They disagree also whether greater income should also be imputed to MAJ.
- [16] With respect to spousal support, MAJ's entitlement to spousal support is not challenged, but MEJ seeks to have it calculated on the basis of the lower income he has earned post-separation. He also seeks to have spousal support recalculated annually on the basis of each parties' income, rather than on a lump sum basis, as sought by MAJ.
- [17] Finally, the parties are generally agreed on the value of the main family assets worth over \$2 million, but disagree on the value of some smaller assets and accounts. The primary issue with respect to property division is MAJ's claim for unequal division of the family assets, which MEJ opposes.
- [18] The issues that require resolution in this trial are:
- (a) With respect to parenting:
 - i. Should MEJ's parenting time be increased to include overnight parenting time on the weekends with the girls?
 - ii. Is there a pattern of family violence that affects the best interests of the children in relation to parenting time and parenting responsibilities?
 - iii. Should the parties have shared parenting responsibilities, and if not, who should have final decision-making authority with respect to parenting responsibilities?
 - (b) With respect to support issues:
 - i. What is MEJ's income available for child support purposes?
 - ii. What is MAJ's income for support purposes, and should a higher income be imputed to her?

- iii. At what scale and duration should MAJ receive spousal support?
 - iv. Should MAJ receive a lump sum spousal award?
 - v. Should there be retroactive accounting of the amount of support paid by MEJ since separation?
 - (c) With respect to the division of property:
 - i. What is the total value of the family property and debt?
 - ii. Should MAJ be awarded an unequal share family property pursuant to s. 95(3) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] to allow her to retain the family home?
- [19] Before addressing these issues, I will briefly set out the procedural background and key events that provide context for the determinations below and briefly comment on the credibility and reliability issues before me at trial. I will also address the allegations of family violence in this case.

BACKGROUND AND PROCEDURAL HISTORY

- [20] The parties separated in October 2021, and MAJ filed a Notice of Family Claim on November 16 that same year.
- [21] The parties attended a JCC on May 4, 2022 with counsel. A number of orders were made by consent, including:
- (a) Conduct orders regarding the best interests of the children, prohibiting the questioning of the children or disparaging of the other parent to the children, and communications between the parties;
 - (b) Parenting time between MEJ and the girls every Saturday or Sunday from 10am to 4pm at a public location, not to be exercised at MEJ's sister's home, where he was then staying;
 - (c) Interim and without prejudice support orders requiring MEJ to pay MAJ \$3,008 per month in child support and 85% of the children's s. 7 expenses, including tutoring, basketball and swimming, with all other expenses to be agreed in advance;
 - (d) An interim without prejudice order granting MAJ exclusive occupancy of the main floors of the family home located at 18920 55 Avenue, Surrey, BC (the "Family Home");
 - (e) An order allowing MEJ to attend the basement suite at the Family Home to collect rent and deal with the tenants; and

- (f) An order that the parties would open a joint bank account into which all rental income from both the Family Home and the parties' rental property located at #6 13909 102 Avenue, Surrey, BC (the "Townhouse") would be deposited, and requiring the parties to jointly pay the mortgages, property taxes, strata fees and insurance of the Family Home and the Townhouse from this account, with any surplus or shortfall to be shared equally by the parties at the end of the year.

(Collectively, the "2022 Consent Order").

[22] MEJ paid the required child support from April to June 2022.

[23] It appears that the parties never opened the required joint account or paid the rental income into it. Instead, until June 2022, MEJ collected the rent from the two basement suites in the Family Home and unit in the Townhouse in the total amount of \$3,950 each month. He used these funds to pay the mortgage and other expenses on the Family Home and Townhouse.

[24] Commencing in June 2022, MAJ began to collect the \$1,750 per month from the Family Home tenants, which she collected until the first half of December 2022. In December 2022 there was a fire in the Family Home and MAJ, the children, and the tenants were all required to evacuate. The Family Home was not habitable again until the summer of 2024, and MAJ received insurance proceeds to cover the lost rental income, and to rent alternative accommodations for herself and the three children, for that period.

[25] Also, in June 2022, MEJ unilaterally evicted the tenants from the Townhouse, and moved himself into the Townhouse starting August 1, 2022. As a result, there was no rental income from the Townhouse as contemplated by the 2022 Consent Order to cover the mortgage, strata fees, insurance and taxes of the Townhouse. Nevertheless, MEJ took the position that both parties were equally bound by the 2022 Consent Order to contribute to the costs of the Townhouse. When MAJ was unable to contribute 50% of these costs, MEJ unilaterally withheld his child support payments in an amount he calculated was equivalent to her share of the Townhouse expenses.

[26] The best evidence I have of the amounts MEJ failed to pay during this period are the calculations performed by the Family Maintenance Enforcement Program ("FMEP"). FMEP calculated MEJ's child support arrears outstanding as \$22,662.48 up to February 2023, when the parties entered a further consent order, dated February 17, 2023, with the assistance of counsel (the "2023 Consent Order").

[27] The 2023 Consent Order provides that the parties agree on an interim and without prejudice basis that there are no child support arrears, but that the parties would also undertake in the following month an accounting of the housing expenses, rental income collected by each, and the support payments that were required pursuant to the JCC order the previous year.

[28] The 2023 Consent Order also provided that the parties would withdraw \$5,000 from their home line of credit against the Townhouse to pay outstanding mortgage amounts due on the Family Home and the Townhouse, and that this would be treated as family debt at the trial.

It also provided that MAJ would deposit the insurance money for lost rental income, due to a fire in December 2022, into the joint account, and that MAJ and MEJ would jointly instruct the insurance company with respect to repairs to the family home, with MAJ having final decision making authority with respect to any aesthetic decisions regarding the home repairs.

- [29] After the 2023 Consent Order, the respondent filed a notice of intention to act in person. The accounting of unpaid child support, rent collected, and house expenses paid never took place. Instead, the parties brought cross applications that were heard by Justice Mayer, who gave reasons for judgment on June 27, 2023. Justice Mayer's order varied the 2022 Consent Order and required that, commencing July 1, 2022, MEJ was exclusively responsible for any and all payments related to the Townhouse. Mayer J. also ordered as follows:
- (a) That MAJ could retain, on a without prejudice basis as to the adjustment of family debt at trial, an amount of \$125,000 that she unilaterally withdrew from the Townhouse line of credit after the 2023 Consent Order, but which she was solely required to service until that date;
 - (b) That MEJ was required to pay spousal support in the amount of \$2,436 going forward on the basis of his declared income of \$167,752, without imputing any income to MAJ, and calculated at the higher end of the spousal support guidelines; and
 - (c) Dismissing a number of other applications brought by MEJ including for a travel ban, and further disclosure orders, with costs to MAJ.
- [30] In November 2023, Justice Groves heard MEJ's application to reduce his support obligations based on his lower income in 2022. He was imputed an income of \$144,500 and MAJ was imputed an income of \$12,000 for the purposes of this interim award. As a result, MEJ's child support obligation was reduced to \$2,716 per month effective December 1, 2023, and his spousal support obligation was reduced to \$1,250 per month.
- [31] MEJ later made two applications to vary the 2022 Consent Order requiring him to contribute to the costs of the Family Home: one that was dismissed in December 2023, and one in October 2024 that was adjourned to the trial date. MEJ unilaterally stopped contributing towards the expenses of the Family Home in 2024. He made his last contribution in December 2023.
- [32] MEJ brought several more applications with respect to disclosure, and the adjournment of the trial, which was originally set for July 2024, and was ultimately adjourned twice before coming before me in the spring of 2025.
- [33] Against this background, I consider the issues before me at trial.

CREDIBILITY

- [34] MEJ and MAJ each make significant allegations that the other is not to be believed by this Court. The parties challenge the reliability and credibility of the other, and the witnesses called by the other party. Many of these allegations were not directly relevant to the issues that I am required to resolve to settle the legal issues between the parties. Where relevant to a particular finding, I will address those allegations directly.
- [35] In making my findings of credibility and reliability, I keep in mind the guidance of this Court in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013), which discusses the oft-considered factors that are utilized when assessing the credibility of witnesses, including that "the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.).
- [36] I also keep in mind the distinction between credibility and reliability, as explained by this Court in *Hardychuk v. Johnstone*, 2012 BCSC 1359:
- [10] The typical starting point in a credibility assessment is to presume truthfulness: Halteren. Truthfulness and reliability are not, however, necessarily the same. A witness may sincerely attempt to be truthful but lack the perceptive, recall or narrative capacity to provide reliable testimony. Alternatively, he or she may unconsciously indulge in the human tendency to reconstruct and distort history in a manner that favours a desired outcome. There is, of course, also the possibility that a witness may choose, consciously and deliberately, to lie out of perceived self-interest or for some other reason. Accordingly, when a witness's evidence is demonstrably inaccurate the challenge from an assessment perspective is to identify the likely reason for the inaccuracy in a cautious, balanced and contextually sensitive way.
- [37] I found both parties to have limitations in terms of both their credibility and reliability in their testimony before me. I cannot say that I consistently prefer the evidence of one party over the other. The same is true of their witnesses, who were generally strongly partisan in their evidence. Instead, I have considered the evidence as a whole on each issue upon which there is a factual dispute, and I have made my findings on the preponderance of the probabilities before me.

FAMILY VIOLENCE

- [38] Section 1 of the FLA defines family violence as follows:

"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;

[39] Section 38 of the FLA sets out required considerations in assessing the best interests of the children in relation to family violence:

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.

[40] The broad and inclusive language of these family violence provisions recognizes that harm to children may extend beyond physical violence: *Morgadinho v. Morgadinho*, 2014 BCSC 192 at para. 59. Furthermore, a single act of family violence may suffice to conclude a likelihood in the future: *Dawson v. Dawson*, 2014 BCSC 44 at para. 44.

- [41] Family violence need not be directed at a child to harm that child. In the recent decision of *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada provided further guidance regarding the scope of family violence as it relates to parenting determinations:
- [143] The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 I.J.C.Y.F.S. 493, at p. 497.
- [42] In some cases, a pattern of coercive and controlling behaviour is sufficient to find that family violence has occurred and to consider its impact on the safety and well-being of the children involved. For example, in *R.C.T. v. A.K.T.*, 2023 BCSC 654, Justice Donegan found that a pattern of coercive and controlling behaviour, including threats of physical force, demeaning remarks, and abusive communications, both before and after separation, constituted psychological and emotional abuse: at paras. 175-178.
- [43] Before me in this trial are allegations by both parties of physical violence. MAJ also alleges that MEJ exercised a level of financial control over her that was abusive throughout the marriage, and stalking behaviour after separation.
- [44] I will deal first with MEJ's allegations that MAJ would hurt and scratch him, which he gave little evidence about, but which he says was the subject of various police reports during the marriage. I find the trial evidence does not establish MEJ's allegations in this respect.
- [45] The only evidence of police involvement in this marriage before me at trial was the involvement of the police on the separation date, October 11, 2021, when the police escorted MEJ from the Family Home. Neither party sought to introduce the police reports or investigations with respect to that intervention, including what allegations of violence were made by each of the parties of that time. MEJ admits that he was charged but says the charges were stayed or dropped, and there is no evidence that they proceeded. I infer from the trial evidence that some sort of peace bond or other no contact provisions were in place between the parties for several months after the separation.
- [46] MAJ says that this incident was the result of MEJ punching her in the stomach, threatening to sexually assault her, and threatening to slash her tires if she tried to take the car to see her friends. MEJ denies punching MAJ and says that it was MEJ who threw a heavy object at him that could have hurt him badly but did not. He agrees he threatened to slash her tires but says he never would have actually done so because he would have been responsible for fixing them. He thought this was funny. He also admitted to blocking her ability to leave the garage that morning by driving his work car across the driveway.

- [47] MEJ also admitted to threatening to sexually assault MAJ and to sending MAJ a text message demanding certain sex acts for money the morning of the separation. He says that MAJ would regularly demand money from him for acts of intimacy, but that this was an example of him demanding acts that she would never agree to because he did not want to pay her. The money for which he demanded the sex acts related to a grocery bill for items MAJ purchased to cook a Thanksgiving dinner the previous night for the family and two other families that joined them. MEJ's testimony was that the fight was about MAJ refusing to cook a similar meal for his friends.
- [48] I find that this was the genesis of the fight that occurred the morning of the separation--a fight about MAJ's spending money on groceries and MEJ's pattern of controlling and negotiating what he would pay for and what he would not. I find that this pattern was not unusual, and that MEJ exerted a high degree of control over MAJ's spending throughout the marriage. The evidence establishes that MEJ provided MAJ with a monthly allowance and a credit card with a fixed limit for groceries and other items for herself, the children and the family, which she considered inadequate, and he considered generous. Throughout the marriage, MEJ would regularly review MAJ's expenses, including gas and specific grocery items, and question MAJ on the necessity for various items.
- [49] Setting aside for the moment MAJ's allegations of two incidents of physical violence, one on the day of separation and one 16 days earlier, which are categorically denied by MEJ, I find that the largely uncontroverted evidence at trial establishes an ongoing pattern of coercion and control exercised by MEJ over MAJ, in terms of her finances and where she could go.
- [50] I find that this pattern did not extend to restricting MAJ from working outside the home and earning money. MEJ clearly supported MAJ to improve her English, pursue her education, learn to drive, and wanted her to contribute financially to the family expenses. However, I find that MEJ's expectation was that this would be done without sacrificing her primary role as mother and wife, which involved primary care of the children and home cooked meals, three meals a day when the family was home. I accept MAJ's evidence that she never felt adequate in this regard, and that MEJ would deride her cooking and her performance of her duties to their friends.
- [51] Overall, I find that MAJ has established a level of coercion and control in the marriage that amounts to family violence under the FLA.
- [52] Furthermore, I find that MEJ's controlling behaviours extended beyond separation. MEJ continued to attempt to monitor MAJ, including her comings and goings at the Family Home through monitoring the parties' home security system, and her places of work where he would appear, and video tape her.
- [53] In light of the seriousness of the above findings and the limitations noted above with respect to the testimonial evidence of the parties, I decline to make any further factual determinations with respect to MAJ's strongly contested allegations of specific acts of physical violence in the three weeks leading up to separation. These further allegations of

physical violence would not affect or change my finding that family violence is a significant factor in this case, and must be considered in relation to the parenting and property division issues before me.

- [54] I am also satisfied that any ongoing risk of physical violence between MEJ and MAJ is now low, and will be further reduced by the achievement of some finality in the parties financial and parenting arrangements.

DIVORCE

- [55] The parties both seek a divorce order. They have been living separate and apart since October 2021. I am satisfied that the requirements for a divorce pursuant to s. 12 of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3 are met in this case. I therefore grant an order of divorce that will take effect on the 31st day of the month after the date of these Reasons.

PARENTING

- [56] As set out above, the only parenting issue before me for decision is whether to grant MEJ additional parenting time on weekends as he seeks.
- [57] Since May 2022, MEJ has had ordered parenting time with the girls one day each weekend from 10am to 4pm. MEJ says that he has not been able to exercise this parenting time consistently, including a period of time between July 2022 and February 2023 when he had no parenting time with the children at all, until the 2023 Consent Order. Since then, MEJ says his parenting time has been inconsistent, and he points to a time where the girls went to a birthday party at a mall and he waited for them to come to him, and they never did. He says that their middle child often makes excuses and does not want to see him.
- [58] Overall, the evidence was unclear on how often MEJ was able to exercise his court ordered parenting time, and when he has not. MEJ blames MAJ for alienating the girls against him, and his sister testified that she strongly believes this alienation is occurring based on a conversation she heard between MAJ and the middle child in early 2022 when the child was 11 years old.
- [59] For her part, MAJ says that she does not interfere with the children's relationship with their father and indeed encourages it. She says, however, that the children themselves choose when and if they see their father for the most part, and it is not her fault if they choose not to. She suggests that it is MEJ's own controlling behaviours that are alienating the children from him. In any event, the children have always primarily relied upon her for parental support, and that this has not changed since separation.
- [60] It is well established that the best interests of the children are the sole consideration of this Court when considering a parenting regime under the FLA.
- [61] The best interests of the child are defined in s. 37 of the FLA:

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 his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[62] With respect to parenting arrangements and responsibilities, s. 40 of the FLA provides that:

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:

that parental responsibilities should be allocated equally among guardians;

- (a) that parenting time should be shared equally among guardians;
- (b) that decisions among guardians should be made separately or together.

Parenting Time

- [63] All of these factors have some role to play in my determination of the appropriate parenting regime in the best interests of the parties' children, and in particular whether MEJ should be granted additional weekend parenting time with his daughters. Rather than address each factor in turn, however, I prefer to address the factual and legal issues that the parties raise that engage with these factors.
- [64] First, I will note that there is no dispute with respect to the history and care of the children. I find that the daily care of the children was always understood to be MAJ's responsibility in the marriage. MEJ sees his role as providing for his children economically, so that they can have a better life than he did. I have no doubts about his love for his children, and the sacrifices he has made in this regard, including moving to Canada before starting a family, and working long hours to provide for them. However, the division of labour in this family has been clear from the outset, with MAJ being responsible for the day-to-day care of the children as they grew, including feeding, clothing, and emotionally supporting them.
- [65] Second, I note that, although the parties' cast aspersions on the other's parenting skills and style, fundamentally neither party challenged the ability and capacity of the other party to parent, at least not for the limited purposes before me. Despite his allegations in this regard, and his many criticisms leveled against MAJ and her abilities as a mother in his testimony, MEJ is not seeking a change to the parenting regime that would remove MAJ from the role as the primary caregiver, or in a way that would require him to be responsible for the children's needs during the week.

- [66] For example, the evidence establishes that when MEJ was asked by MAJ if he could take the children for a month or more in the late spring/early summer of 2024 when the Family Home was not habitable, but the insurance company ceased providing an allowance for MAJ to rent a home for herself and the children, MEJ's response was not enthusiastic. Instead, he indicated he would be willing to have the children with him at the Townhouse that summer, but only if MAJ did all the pick ups and drops offs for the children each day, organized driving lessons for the eldest child, and rented a car for that purpose. I infer from the correspondence in this regard that MEJ was not willing to take time off work to have parenting time, and that he imposed conditions on MAJ that she would be unlikely to agree to (I note there are other such instances in the evidence where he testified to such a negotiating tactic).
- [67] Similarly, although MAJ raised issues with how much the children might want to spend time with MEJ due to his parenting style, and more specific concerns regarding the children living with MEJ's elderly father (who lives with MEJ at the Townhouse), her request that the children live with MEJ and his father for several months in June 2024 suggests that her concerns do not rise to the level of concern for the children's safety in their father's care.
- [68] There is also evidence of considerable animosity between MEJ and MAJ's family, including conflict between MAJ and one of MEJ's sisters, who testified at trial. It was this sister that, in January 2022, not long after the separation, overheard and audio-taped a conversation MAJ had with the middle child that was visibly very distressing for the middle child.
- [69] In this conversation, MEJ's sister testified that she heard MAJ questioning their daughter about what she was doing with MEJ and disparaging MEJ to her, and the child rocking back and forth in distress and attempting weakly to defend her father. I did not accept this audiotape into evidence because it had not been translated into English, and because I have fundamental concerns about surreptitious recordings made by one parent (or their family member) of the other parent, that are outlined in cases such as *C.C. v. S.P.R.*, 2022 BCSC 1057. I also note that this was still fairly early on in the separation between the parties, and before the parties appeared at the JCC and agreed to the conduct orders in the 2022 Consent Order that prohibited this type of interaction between the parties and their children, and brought the harms of this conduct to their attention.
- [70] The 2022 Consent Order also prevented MEJ from exercising his parenting time at his sister's home, where he was living at the time. MEJ's sister says that she has had limited time with the girls since then, but that she continues to worry about them in their mother's care. I am concerned that the conflict that existed between MEJ's sister and MAJ during the marriage, and which has continued and escalated after separation, is also harmful to the children.

- [71] I am alive to the harmful effects on the children of being caught in what I find to be a high conflict separation between their parents. Even if the parties have improved somewhat in their ability to shelter the children from this conflict since the early days of their separation, the evidence suggests that the children continue to be affected by this conflict, with the middle child feeling the effects the most acutely.
- [72] MEJ's controlling behaviour during the marriage, and after the separation, are also related to the family violence factor that I must consider with respect to parenting arrangements. I have little to no evidence as to how this behaviour has affected the children, but I have no difficulty in finding that it is not in the children's best interests to be further exposed to this.
- [73] Both parties led evidence of the children's attachment to them, and in particular the girls who are still young enough that parenting time orders are meaningful. I have no independent views of the child report or other information to draw on in this respect; however, on the evidence I do have, I find that the children continue to love both their parents, even if they find it difficult to spend significant time with their father, in part because of how this implicates them in the conflict between their parents, in part because of the limited time they have spent with him (exacerbated by the separation of their parents), and likely in part because of his expectations and behaviours.
- [74] It is against these findings that I am required to consider whether it is appropriate to increase the girl's parenting time with MEJ. There is no issue that the eldest child is almost an adult now and able to make decisions about the time he spends with both of his parents.
- [75] Overall, I find that the evidence establishes that MEJ was, and is, a loving parent who cares a great deal for his children. I accept as sincere his expressions of love for his children, and that his focus on the financial aspects of this marriage and separation largely relate to his desire to provide for his children's future.
- [76] However, I find that he focused primarily on providing economic support to them during their upbringing. During the marriage and since separation, MEJ left much of the daily parenting work to MAJ, and has been primarily focused on the financial ramifications of separation since 2021. He has not been focused on increasing his parenting time with the children since then, and has little experience or knowledge of what is involved in their daily care, coordinating school and extracurricular activities, or their medical care requirements, all areas where the children and MEJ continue to rely on MAJ.
- [77] Nevertheless, I find on the evidence that it would benefit both the girls to develop a closer parent-child relationship with their father, in which MEJ is not simply seeing them mid-day on a weekend or showering them with gifts on a special occasion. I make this finding despite MEJ's limitations that I have discussed above.

- [78] I also find that the girls are less in need of their mother than they may have been when they were younger. Since separation, MAJ has left the children overnight, on occasion, in the care of the eldest child, and has asked MEJ to take the children for extended periods when she was pressed to house them. I find that the children are no longer dependent on MAJ's consistent care and are now in a better position to benefit from time in their father's care.
- [79] In my view, it is in the best interests of the younger children to move to a parenting regime that includes some overnights with their father. I am also of the view that MEJ organizing this time directly with the children has not been successful or beneficial to the children in that it places them in the centre of the conflict with their parents, and that more structure around this parenting time should be put in place, especially for the youngest child.
- [80] At the same time, I do not consider it would be in the best interests of the two girls to spend their entire weekend, every weekend, with their father as he requests. In my view, a more gradual increase in parenting time is warranted, and the girls need to continue to have non-school days with their mother as well.
- [81] When asked about which night would work best for an overnight with MEJ, MEJ said that Saturday night to Sunday would be best for him. He works Fridays, and he would need to take time off work to pick the girls up from school on Fridays (though he would be willing to do this if he could have a full weekend with them). MAJ took the position that MEJ having parenting time on Friday nights was better from her perspective.
- [82] This is a high conflict family matter, with a history of family violence. It is important to reduce the contact between the parties, especially around the children. Also, the evidence suggests that MEJ making plans to pick the children up from the Family Home is problematic.
- [83] Although it may require him to leave work early some Fridays, or enlist a family member to assist, I am satisfied that MEJ is able to do so if required, and that picking up the girls from school on Fridays will decrease their exposure to the conflict between their parents.
- [84] With the above in mind, I make the following parenting time orders:
- (a) MEJ shall have parenting time with the two girls every other Friday, commencing at the time school ends on Friday, or 3pm if there is no school that day, until 5pm the following Saturday. I am not imposing any restrictions on members of MEJ's family that may be present or who may assist by picking up the children, subject to the conduct orders below;
 - (b) MEJ shall be responsible for taking the girls to whatever extracurricular activities, medical appointments, or special events that are scheduled during his parenting time, and for dropping them at the Family Home or other agreed upon location at the end of his parenting time;

- (c) MAJ will ensure that the two girls are equipped with whatever they need for an overnight with their father on the Friday morning of his parenting time before they leave for school so that they are not required to return to the Family Home that evening;
- (d) This order shall take effect on the second Friday after release of these Reasons;
- (e) MEJ may apply to increase his parenting time to include the Saturday night following his Friday parenting time on evidence that the Friday night and Saturday parenting time has been consistently working well, with at least one of the children. This application shall not be made earlier than January 1, 2026; and
- (f) MEJ may also arrange with MAJ for additional or alternate parenting time as may be agreed between the parties or with any of the children.

[85] I also canvassed with the parties the use of the program Our Family Wizard to coordinate any changes or developments in the schedule, such as scheduled extracurricular activities, medical appointments or birthday parties. Both parties indicated a willingness to use this program to reduce the need for written exchanges or negotiations between them in this respect. I therefore also order that the parties both subscribe to the Our Family Wizard application, and that they use this program to advise each other of extracurricular activities, medical appointments, and other events occurring in the children's lives, whether during their parenting time or not.

[86] Requests for alterations to the parenting schedule set out above shall be communicated through Our Family Wizard. The parties shall generally use the Yes/No option to respond to these requests and will refrain from using these requests as an opportunity to negotiate other conditions.

[87] I turn then to parenting responsibilities.

Parenting Responsibilities

[88] Both parties seek orders that would require consultation with the other on the parenting responsibilities, but MAJ seeks final decision-making authority if an agreement cannot be reached, while MEJ seeks an order that applications may be made in those circumstances.

[89] Given the level of conflict in this family, the delay and expense involved in court-based dispute resolutions, and the amount of pre-trial litigation and applications that have already occurred between these parties, I do not consider it in the best interests of the children to institute a parenting responsibility regime that relies upon court determinations of every significant issue upon which the parties are unable to agree. Such a system would generally be inconsistent with the purpose of assigning parenting responsibilities under the FLA and Divorce Act, and harmful to the children who depend on the timeliness and clarity of such decisions: *J.E.H. v. P.L.H.*, 2013 BCSC 752 at para. 58, citing *Andrew-Reed v. Reed*, 2002 BCSC 513 at paras. 17-18; see also *C.M.L. v. A.J.*, 2022 BCSC 1537 at paras. 57-58.

- [90] Therefore, other than the immediate day-to-day decision making that MEJ may exercise while parenting the girls during his parenting time pursuant to s. 16.2(2) of the Divorce Act, I direct that MAJ shall have final decision-making authority with respect to significant parenting decisions if the parties are unable to agree after consulting each other.
- [91] I find that it is in the best interests of the children that MAJ should have this final decision-making authority in light of her history as the primary caregiver to the children, and her ongoing role as the main organizer and facilitator of the children's activities and schooling.
- [92] The parties shall use Our Family Wizard to post and calendarize significant events in the children's lives, including report cards, parent-teacher conferences, birthday party invitations during the other parent's parenting time, sporting or dance events, and doctor's appointments, etc.
- [93] For non-routine doctor's appointments, including anything having to do with the middle child's diagnosis or treatment for MS, MAJ shall provide MEJ with at least a week's notice of any such appointments, unless the appointment is offered on a last-minute basis, in which case MAJ shall immediately notify MEJ of this appointment.
- [94] The parties will ensure that both parents are listed as contacts for all service providers to the children, including teachers, counsellors and medical professionals, and both parties shall have the right to obtain information directly from these persons.

Conduct Orders

- [95] Many of the conduct orders already in place, including that the parties shall not speak negatively about the other parent to, or in front of, the children, are still required and shall remain in place.
- [96] Given the animosity and conflict between the parties' family members that was apparent to me during this trial, I will also add the following conduct orders:
- (a) The parties will strongly encourage their respective families to refrain from any negative comments about the other parent and their extended family, from questioning the children about the other parent or time spent with the other parent beyond simple conversational questions, and from discussions in front of the children concerning family issues or litigation; and
 - (b) If the children or one of the children is being subjected to comments about their other parent by a family member, or is being harmed emotionally or physically by a family member of that party, that party shall remove their family member from further contact with the child or children.

[97] When consultation is required with respect to a decision concerning a parenting responsibility, such as a change in school program, the middle child's treatment options, or adding to or ending one of the children's extracurricular activities, the parties may use the general communication function of Our Family Wizard. Communications shall be civil and no longer than necessary to convey each parent's position and concern.

SUPPORT ISSUES

[98] There is no issue that MEJ will continue to be required to pay child support in accordance with the Federal Child Support Guidelines, SOR/97-175 [Guidelines], and that MAJ is entitled to spousal support. The main issues that require determination with respect to the financial support of the family are as follows:

- (a) MEJ's income for ongoing child and spousal support purposes;
- (b) MAJ's income for s. 7 and spousal support purposes;
- (c) Section 7 expenses and relative RESP contributions by the parties; and
- (d) Retroactive adjustments to child and spousal support paid (or not paid) by MEJ pursuant to interim orders made prior to trial.

[99] I will start with MEJ's income for support purposes.

Legal Principles regarding the Determination of Income for Support Purposes

[100] The Supreme Court of Canada's decision in *D.B.S. v. S.R.G.*, 2006 SCC 37 identifies the following core principles underlying child support obligations (at paras. 38, 107):

- a) Child support is the right of the child;
- b) The right to support survives the breakdown of a child's parents' marriage;
- c) Child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together; and
- d) The specific amounts of child support owed will vary based on the income of the payor parent.

[101] A payor parent who knowingly avoids or diminishes their support obligation to their children should not be allowed to profit from that conduct: *D.B.S.* at para. 107.

[102] The calculation of a spouse's income for child support purposes is governed by ss. 16-20 of the Guidelines. The starting point is that a party's annual income for support purposes is determined using the sources of income set out under the heading "Total Income" at Line 15000 of the CRA T1 general form.

[103] However, where the court is of the view that the Line 15000 income "would not be the fairest determination of that income," then "the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income, or receipt of a non-recurring amount during those years": Guidelines, s. 17(1). Often, the court will average those three years, but s. 17(1) provides the court with broad discretion to consider a greater span of years, or to find that some years are more reliably indicative of the amounts available to that spouse to pay support obligations: Reid v. Reid, 2017 BCCA 73 at para. 122, citing Harras v. Lhotka, 2016 BCCA 246 at para. 21. While this discretion is broad, "it is not to be exercised arbitrarily": Reid at para. 122.

MEJ's Guideline Income

[104] The evidence establishes that MEJ earns income as a T4 employee, making his income relatively straightforward for support purposes. However, after separation, MEJ began working significantly fewer hours, resulting in a drop in his income every year since separation. MEJ says that his interim support should be adjusted to reflect his actual income during this period and his going forward income should reflect his now reduced work hours. MAJ argues that he should be imputed income at his average pre-separation level and capacity.

[105] MEJ's line 150 income in the years prior to separation and trial has been as follows:

- a) 2018: \$169,627
- b) 2019: \$169,944
- c) 2020: \$180,388
- d) 2021: \$169,096

[106] In 2022, MEJ's post-separation income dropped to \$144,498. Justice Groves imputed an income of \$144,500 to MEJ on MEJ's application to reduce his support requirements at the end of 2023 based on this 2022 income.

[107] In 2023, MEJ declared a line 150 income of \$131,144 in his financial statement, which is supported by his T4 for that year.

[108] In 2024, MEJ provided his T4 which showed an income of \$118,500, to which he would add approximately \$2,400 in pension income he received, for a declared income of \$120,900.

[109] MEJ seeks to have his income for support purposes calculated on his 2024 income, or at the highest, his 2023 income, which he says best reflects his full-time income without overtime that year.

- [110] MAJ seeks to have me impute an income of \$170,000 to MEJ since separation, relying upon MEJ's average pre-separation income as best reflective of his income-earning capacity post-separation and going forward. She relies on s. 17(1) of the Guidelines in this regard, suggesting that MEJ has been underemployed by choice since separation, and noting that it was only after she brought an application for spousal support in 2023 that MEJ revised his stated income downward for support purposes. She relies upon the following authorities in this respect: *Chwilkowski v. Tylicka*, 2022 BCSC 732 at para. 32; *A.J.S.A. v. K.L.W.*, 2024 BCSC 453 at para. 120; *Shih v. Shih*, 2015 BCSC 2108, rev'd in part 2017 BCCA 37; and *Harras*.

Determination

- [111] The evidence establishes that MEJ has worked full time as an elevator mechanic since the parties' marriage and that his wages have steadily increased over that time. By his own admission, MEJ generally worked on call two weekends a month overtime from the outset of his employment, though he says he only received a small amount for being on call unless a service call came in. He testified this would be different if his workplace was unionized, because the union secures minimum hours for being on call. He also reported at the end of the trial that his workplace had just voted to unionize. He argued that this would be good for his son, who also works with him, but that overall I should find his income would go down because of the requirement to pay union dues.
- [112] I find that MEJ regularly worked one weekend day a week of overtime most of the marriage. I also find that the unionization of his workplace will likely result in a net increase to his income, as he predicts it will for his son's income.
- [113] MEJ testified that in 2016 and 2017 due to escalating costs (which he blamed on MAJ but was also likely due to their third child), he began to regularly work overtime most weekends, at least one weekend day each week and sometimes both weekend days. He says this resulted in his income being above average in the four years before separation.
- [114] I find that MEJ likely did increase his overtime from one weekend day to two starting around the time of his youngest child's birth, and that he did so to best support his growing family. I find that MEJ was committed to the financial support of his family and children, and it was through his efforts that the family moved from renting a basement suite when the parties were first married, to owning a large home and a rental townhouse at the time of separation.
- [115] I find that, had there been no separation, MEJ would likely have continued to work these longer hours to continue to support his children through their high school years, which would have required MEJ to work at least until the age of 70. I find that he would have continued to work at least one weekend day per week as he did for the last 20 years, but that he may well have stopped working two weekend days of overtime once his son was out of high school. He was also committed to supporting all three children through university.

- [116] I find that MEJ's ability to work long hours post-separation and pre-trial were reduced due to some health issues, including a diagnosis of bladder cancer in the summer of 2024. Fortunately, after some treatment, he is now in remission, and he reports this diagnosis is no longer affecting his ability to work.
- [117] However, the larger health factor that reduced MEJ's ability to work in 2023 and 2024 related directly to this litigation, his decision to represent himself, and acute attacks of anxiety that he suffered as a result. This led him to take several months off work in 2024 as he adjusted to various anxiety medications. Arguably, MEJ contributed to his own anxiety by bringing many pre-trial applications (with mixed success), including serving one on MAJ on the same day their middle child was hospitalized for blindness. While I have sympathy for MEJ with respect to the stress of litigation and his diagnosis of acute anxiety, especially as a self-represented person, I also find that MEJ had much more control of his litigation costs and his resources to pay them than MAJ did.
- [118] Ultimately, MEJ had the ability to choose to represent himself and save on his legal costs at the expense of his income, which was not a real option for MAJ despite her lack of resources. MEJ also testified that he was optimistic that after the trial, his need for anxiety medication would be reduced.
- [119] I am also sympathetic to MEJ's argument that he is now 60 years old, and ready to start working less overtime. At the same time, MEJ still has a 10-year-old child in need of support, and who will likely need support for another 10 years at least given both parties' desire that she attend university. Had it not been for the separation, I find that MEJ would have continued to work at a similar pace as he did throughout the marriage for the next 10 years, though perhaps he would have reduced some of his overtime in future years as his older children became less dependent on him.
- [120] MEJ did not provide me with any 2025 income information, so I am left with only his 2024 income. I am satisfied on the evidence before me that if he only worked regular hours with no overtime, his income in 2024 would have been approximately \$135,000, as he testified. I am also satisfied that this has never been his ordinary work pattern in his industry.
- [121] I find that in 2025, with the trial largely completed early in the year, that MEJ has the capacity to work closer to his 2021 hours, and that, with the unionization of his workplace, his entitlements are likely to increase.
- [122] Overall, for the purposes of child and spousal support going forward for 2025, I find it is appropriate to impute income of \$160,000 to MEJ, taking into account that he may not have the capacity at 60 to work the amount of overtime he did 5 years ago, but that, with the trial completed, he will have the capacity to return to work at closer to his pre-separation hours. I have also considered the changes to his parenting time in 2025 which may diminish some of these hours, but also the opportunities MEJ has had for hourly wage increases since 2021, and benefits such as being paid for minimum on-call shifts moving forward.

[123] I would expect MEJ's income will likely be sustainable at close to this pace until at least the age of 65, subject to health complications. I therefore would impute the same income going forward to MEJ, subject to a material change in circumstances not considered here.

MAJ's Guidelines Income

[124] MAJ argues her current income of \$12,000/year, through her work at her friend's spa, is representative of her income earning capacity, and no further income should be imputed to her. MAJ argues that she had to leave her work as a part-time legal assistant in August 2022 because of back pain, and she does not have the physical ability to work any more than she currently is.

[125] MEJ argues that MAJ should be imputed an income of \$22,500 based on her current income of \$1,000 per month, together with income she earns as a DJ at community events and parties, and through the running of semi-regular bazaars. He notes that her income in 2021 and 2022 was over \$20,000 and that she was working part-time as a legal assistant at the time of separation. He argues that she is not physically disabled from returning to this work, which she is now fully qualified to do.

[126] MEJ relies on video evidence he took showing the success of the bazaars MAJ runs with a partner, with many vendors renting tables, and of MAJ's social media accounts advertising events where she was the DJ. He argues that MAJ has not fully accounted for the income she has earned through these ventures. He also relied on videos of MAJ dancing at events that she has DJ'd since separation, posted to social media, and at parties or dance classes both before and after separation, to argue that MAJ is more physically capable of work than she suggests.

Determination

[127] For almost a year after separation, I find MAJ continued her part-time work as a legal assistant. Her earnings for the last third of 2021 were approximately \$9,000 and she earned just over \$15,000 in the 9 months she worked part time in 2022. In 2021, she also reported income from student loans, bursaries and RRSP savings, which I do not consider indicative of her capacity to earn income.

[128] I accept MAJ's evidence that she was only working part-time during this period, and that her back pain limited the hours she could work. There is medical evidence for her chronic low back pain and its exacerbation by sitting for long periods. I also accept that MAJ receives treatment for this back pain, including injections and prescription pain medication. However, the trial evidence does not establish that MAJ was incapable of continuing this part-time work post-separation. I also have little medical evidence that would allow me to determine to what extent her back pain physically limits her ability to work going forward.

- [129] In any event, the evidence establishes that MAJ ceased to work as a legal assistant in August 2022. MAJ testified that, faced with the legal requirement that she seek out some employment income when making her application for spousal support, her good friend offered to hire her as a receptionist at her spa in 2024, initially for \$500/month with no set hours, and later for \$1,000/month.
- [130] I have little evidence as to how many hours MAJ works to earn these funds, and I suspect that there is an element of these payments that are more indicative of friendship than of a traditional job. However, I am satisfied that this job is well suited to MAJ, who is able to relieve the pain in her back by changing positions as needed, sitting in a massage chair at the spa from time to time, and having an employer who is very tolerant of her need to attend a medical appointment for the children, or deal with matters arising from the repair of the house after the 2022 fire, or with a litigation matter arising from these proceedings. Her friend testified that she is satisfied with MAJ's improvement and contribution, and that she is able to provide MAJ with a flexible work schedule.
- [131] However, I am not satisfied that MAJ is working to her full capacity, either as a receptionist at her friend's spa or as a legal assistant, as she is trained. I find, based on the evidence as a whole, including MAJ's appearance before me, the videos of her activity and her evidence about them and her regular work-out routine, and the evidence of her employer, that MAJ has the physical capacity to earn income above the \$12,000 she currently earns.
- [132] MEJ would have me impute significant income to MAJ for her DJ gigs and community bazaars. I accept MAJ's evidence that she is not earning a significant income from these endeavours, and that the costs of equipment, rentals and other event expenses absorbs much of the revenue of these ventures. MAJ suggests she has earned less than \$1,000 net from these activities, and I would impute that amount of income to her going forward, particularly as the bazaars grow larger and more frequent.
- [133] Overall, I consider that the total income that MEJ seeks to impute to MAJ is a reasonable one: I impute an income of \$22,500 to MAJ for support purposes for 2025 and going forward, absent a material change in circumstances.

Child Support

- [134] Based on MEJ's income of \$160,000 for 2025, I find that MEJ is required to pay MAJ \$2,958 in child support until the eldest child's 19th birthday on August 17, 2025. After that date, the parties are agreed that the eldest child will no longer be a child of the marriage, and that MEJ will only be required to pay child support for the two girls. The table amount of child support at that point will be \$2,277.
- [135] I will deal with retroactive support below.

Section 7 Special or Extraordinary Expenses

- [136] Special or extraordinary expenses are provided for in s. 7(1) of the Guidelines. Generally, s. 7 expenses must be necessary based on the child's best interests, and reasonable relative to the means of the parents and the family's spending pattern before separation: *J.D.G. v. J.J.V.*, 2016 BCSC 2389 at para. 325.
- [137] At the JCC, the parties agreed that basketball, swimming and tutoring were all important extracurricular activities for the girls, and appropriate s. 7 expenses. To this I would add any medically recommended therapies or activities that may arise for the middle child due to her MS diagnosis.
- [138] Given my findings of the incomes of the parties for support purposes, I would allocate these expenses on an 80/20 basis.

Spousal Support

- [139] Section 15.2 of the Divorce Act governs entitlement to spousal support. Subsection 15.2(6) provides that a spousal support order should meet the following objectives:
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [140] These objectives are also mirrored in the language of s. 161 of the FLA.
- [141] In order to achieve a fair and equitable distribution of the economic consequences of marriage and marriage breakdown, all four of the objectives must be taken into account: *Moge v. Moge*, [1992] 3 S.C.R. 813 at 850-853, 1992 CanLII 25. Having regard to these objectives, courts must consider the condition, means, needs and other circumstances of each spouse, including the factors set out in s. 15.2(4):
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either.

- [142] Consistent with the objectives, our courts have recognized three grounds for entitlement to spousal support: compensatory, non-compensatory and contractual: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 49, 1999 CanLII 715; and *Chutter v. Chutter*, 2008 BCCA 507, leave to appeal to SCC ref'd, 33002 (28 May 2009). A court is not called upon to decide on one basis for support to the exclusion of the other but rather to "[apply] the relevant factors and strik[e] the balance that best achieves justice in the particular case": *Chutter* at para. 49, citing *Bracklow* at para. 32. Moreover, the doctrine of equitable sharing is the overarching principle that must be borne in mind: *Chutter* at para. 49, citing *Moge* at 864.
- [143] MAJ claims spousal support from MEJ on both a compensatory and a non-compensatory basis, as outlined in *Chutter*. MAJ seeks a substantial lump sum spousal support award together with a 55% reapportionment of family property to address what she argues is a strong compensatory claim which MEJ will be unable to fulfill on a periodic basis given his potential for retirement. Alternatively, she seeks a substantial 65% reapportionment of family property pursuant to s. 95(3) of the FLA to address her ongoing compensatory claim.
- [144] MEJ does not contest MAJ's entitlement to spousal support but argues that support should be on the basis of his current income not his pre-separation income, and adjusted annually rather than paid as a lump sum or through property reapportionment.
- [145] I find that this marriage, where MAJ was assigned and performed the role of raising three children, shopping for and preparing home made meals, and maintaining the home, engages the requirement of compensatory spousal support pursuant to the principles set out in *Chutter*. I note that it is not necessary for MAJ to prove on a balance of probabilities the existence of any particular loss of opportunity she has suffered: *Chutter* at para. 67.
- [146] Once a party has established entitlement to support, the Spousal Support Advisory Guidelines ("SSAG") should generally be followed for the purposes of quantifying that support. Exceptional circumstances may be required to justify a substantial departure from the SSAG: *Sebok v. Babits*, 2022 BCCA 2 at para. 24.
- [147] With respect to non-compensatory grounds, the evidence establishes a stark disparity between MAJ's income post-separation and that of MEJ. MEJ's efforts to build his career throughout the marriage and to earn income for the family, would not have been possible without the assistance of MAJ managing their home and being primarily responsible for the children, including when MEJ would return tired from work at the end of each workday, including on weekends. This investment by both parties has left MEJ with job security and a well-paying job, but the same cannot be said for MAJ. While I find the MEJ encouraged MAJ to improve her English and pursue part-time studies to supplement the family income, I find that she was expected to do so without compromise to her primary role as a mother and wife. I therefore find that she is also entitled to spousal support on a non-compensatory basis.

- [148] Chapter 9 of the SSAG provides an overview of factors which may be considered in determining where spousal support should fall within the applicable range. As noted in the SSAG, no single factor is determinative, and several factors may be at play in any given case. I consider the following factors to be significant in this case:
- (a) Section 9.1: A strong compensatory claim is a factor that favours a support award at the higher end of the ranges for amount and duration;
 - (b) Section 9.2: When a recipient has limited income and/or earning capacity their needs may push an award to the higher end of the range for spousal support; and
 - (c) Section 9.3: A child with special needs will usually demand more time and resources from the care-giving parent, thus reducing that parent's ability to earn in the paid labour market and pushing spousal support towards the upper end.
- [149] In my view, these factors support an award at the higher end of the range. MAJ is younger than MEJ and is qualified to work as a legal assistant. However, she is also limited by her proficiency in English which, while good, is likely an obstacle in professions that need strong English skills. She is also limited by her lack of work history approaching her fifties, and her need for a flexible workplace that allows her to change positions as she works. I also recognize that, as the primary caregiver, MAJ may require heightened flexibility from her employer, particularly regarding the middle child's recent diagnosis with MS, and that this demand may increase over time. Given the length of this marriage, and that MAJ will continue to be the primary caregiver to the youngest child for another decade, and to the middle child for a potentially longer period given her diagnosis, I also consider that MAJ will continue to have family demands on her time and her ability to become self-sufficient that are not present for MEJ.
- [150] Considering the above factors and objectives, I would award MAJ spousal support at the higher end of the spectrum.
- [151] With respect to the duration of that support, the SSAG would suggest indefinite support given the length of this marriage. There is also a case to be made for indefinite support given the unknown future impact of MAJ being the primary caregiver of the middle child beyond her teenage years. Recently, in *Szeto v. Szeto*, 2025 BCSC 914, this Court observed that spousal support may be the most appropriate mechanism under the FLA to address the long term sacrifices that a parent with primary care-giving responsibilities may incur where a child of the marriage needs support due to a disability into the future. This makes a spousal support award that reflects the potential for this sacrifice to continue for an indefinite period also appropriate.
- [152] However, given that MAJ seeks a lump sum spousal support in this case, additional considerations must be made in relation to the duration of support in the context of this request, as a lump sum award removes the ability to readjust spousal support based on changing income and contingencies on an indefinite basis.

Lump Sum Support

- [153] This Court and the Court of Appeal have held in several cases that lump sum spousal support is appropriate where there has been previous disregard of a support order, where there is a concern that the payor will not pay or be able to pay periodic support, or where there is a high level of conflict between the parties; see e.g., *Foster v. Foster*, 2007 BCCA 83 at paras. 15, 53, 58; and *Zhang v. Sun*, 2016 BCSC 1418 at paras. 302-306. All of these factors apply in this case.
- [154] In *Parton v. Parton*, 2018 BCCA 273 the Court of Appeal set out certain considerations with respect to its determination of an appropriate lump sum spousal support award of \$388,591 in that case. More recently, in *R.L. v. M.L.*, 2024 BCSC 106, Justice MacNaughton summarized the law pertaining to lump sum awards, including the circumstances in which lump sum support may be awarded:
- [241] The advantages and disadvantages of lump sum spousal support were discussed in *Davis v. Crawford*, 2011 ONCA 294 [Davis]:
- [67] The advantages of making [a lump sum] award will be highly variable and case-specific. They can include but are not limited to terminating ongoing contact or ties between the spouses for any number of reasons (for example, short-term marriage; domestic violence; second marriage with no children, etc.); providing capital to meet an immediate need on the part of a dependent spouse; ensuring adequate support will be paid in circumstances where there is a real risk of non-payment of periodic support, a lack of proper financial disclosure or where the payor has the ability to pay lump sum but not periodic support; and satisfying immediately an award of retroactive spousal support.
- [68] Similarly, the disadvantages of such an award can include the real possibility that the means and needs of the parties will change over time, leading to the need for a variation; the fact that the parties will be effectively deprived of the right to apply for a variation of the lump sum award; and the difficulties inherent in calculating an appropriate award of lump sum spousal support where lump sum support is awarded in place of ongoing indefinite periodic support.
- See also *Parton v. Parton*, 2018 BCCA 273 at para. 27 and *Robinson v. Robinson*, 2011 BCSC 1489, *aff'd* 2012 BCCA 497.
- [242] In *Davis*, the Ontario Court of Appeal went on to discuss the four practical reasons why most spousal support orders will be for periodic payments rather than lump sum amounts: see paras. 70-74. Those reasons are: the inability to fund a lump sum; property equalization payments may obviate the need for transitional capital to be available to a dependent spouse; there may not be any considerations favouring a lump sum from the perspective of either spouse; and the general exigencies of life, including the possibility that a parties' means and needs will change, may outweigh the considerations favouring a lump sum award.

[243] Recently in *Zilic v. Zilic*, 2021 BCCA 107, the Court of Appeal accepted the analysis in *Davis* and upheld a lump sum award, noting that such an award is appropriate where, amongst other reasons, there is a real risk of non-payment should monthly support be ordered and there is a need for the recipient spouse to become self-sufficient and a lump sum may better assist in that regard: see paras. 24, 207-209. Specifically, the Court stated:

[207] A number of factors were relevant in this case: the need for the recipient spouse to become self-sufficient and the ability of a lump sum to better assist in that regard; the ability of the payor spouse to use capital to pay the award; a high-conflict relationship; and the real risk of non-payment in the future should monthly support be ordered, given the track record of the payor spouse.

[209] The judge cannot be said to be clearly wrong in considering it more reasonable to order a lump-sum spousal support award, based on a limited duration, rather than to leave open the likelihood of future ongoing litigation about support payments. This is especially so where the lump-sum amount, while significant to the parties, could easily be exceeded by legal fees if there was ongoing litigation. The historical power dynamics between the two parties, where Mr. Zilic had the benefit of more income to fund legal fees and more incentive to be difficult in revealing the details of his actual self-employment income, also made a lump-sum award appropriate.

[Emphasis added.]

[155] There are several factors that indicate that a lump sum spousal award is appropriate in this case, including:

- (a) The history of family violence and in particular a pattern of controlling behaviour by MEJ regarding MAJ's financial decision making;
- (b) A history of MEJ acting unilaterally to reduce his court-ordered support obligations;
- (c) A history of many pre-trial applications regarding financial issues;
- (d) The greater ability of MEJ to satisfy a lump sum spousal support award through the division of assets, thereby avoiding any incentive for MEJ to reduce his income post-trial similar to what occurred post-separation, or to retire earlier than originally expected as he has threatened in the past.

[156] I also consider that a lump sum award in this case also better serves the goals of spousal support in allowing MAJ to become self-sufficient. To the extent that it may allow her to purchase MEJ's interest in the Family Home, it may also provide an ongoing source of income through rental of the suites, well past MEJ's ability to support both MAJ and the children due to his retirement, which may well come before either of the girls are out of their mother's care.

- [157] At the same time, I must consider that a lump sum award, although discounted for its net present value, will not necessarily capture changes to the parties' incomes, including MEJ's eventual retirement and the positive contingencies of MAJ increasing her income beyond what I have imputed to her.
- [158] Taking into account the various contingencies, I have considered various potential lump sum awards using the DivorceMate software at the midpoint of the net present value and after-tax impact to each party, for both shorter terms and for indefinite terms on the basis set out above, and in scenarios where MEJ's income decreases and MAJ's income increases over the next ten years.
- [159] Taking the above into consideration, I find that MAJ is entitled to a lump sum award of spousal support in the amount of \$300,000. This award is at the low end of the spousal support range for an indefinite period at the incomes I have imputed to the parties, and at the mid-range should MAJ's income increase substantially over the next 10 years but MEJ's income remain where I have imputed it. An award of \$300,000 would also reflect the high end of a shorter duration of spousal support.

Retroactive Support

Retroactive Child Support

- [160] The Supreme Court of Canada has recently reviewed the law on retroactive support orders in *Colucci v. Colucci*, 2021 SCC 24. Colucci confirms that the guidance from D.B.S. still applies to applications for retroactive variation of child support, namely that such variations "should generally extend no further than three years before the date of formal notice": Colucci at para. 39. Effective notice requires disclosure of a material change in circumstances where the payor seeks a retroactive decrease: at para. 87. Colucci also provides guidance on what type of hardship on the part of the payor might deprive a child of retroactive support, but sets a high bar: at paras. 107-108.
- [161] FMEP calculated MEJ's child support arrears outstanding as \$22,662 up to February 2023. After that date, MEJ has been paying his court ordered support based on the various interim orders made in 2023. I accept FMEP's calculation of support unpaid between the 2022 Consent Order and February 2023.
- [162] To this calculation by FMEP, MAJ suggests that I add retroactive child support during the period immediately after separation, between November 2021 and April 2022, before the 2022 Consent Order. During this time, MEJ was paying the full carrying costs of the Townhouse and the Family Home, but he was also collecting the rents from these properties which covered much of these costs before he moved into the Townhouse himself.

- [163] MAJ also seeks that I perform an accounting of the amounts paid and unpaid by the parties in relation to the Family Home and the Townhouse as contemplated in the 2023 Consent Order, based on the requirement that rental income be put toward the mortgage and other expenses, and that an equal sharing of any additional expenses or profits was contemplated by the 2022 Consent Order.
- [164] If I were to do this, MAJ says that I would find that MEJ owed her \$3,008 per month in child support for the period between November 2021 and April 2022, for a total of \$15,040. Adding this to the outstanding child support between April 2022 and February 2023 calculated by FMEP, she says that the total unpaid but owed child support is \$37,702. However, she would offset this figure by support payments she did receive during this period, plus amounts she collected from the insurance, for which she would credit MEJ \$18,100. The difference, and the amount the Claimant seeks as retroactive support is \$19,602.48, which is less than the outstanding amounts calculated by FMEP. MAJ also seeks additional adjustments to her award for amounts related to the insurance claim, house expenses and rental income.
- [165] I am unable, from the evidence, to follow MAJ's calculations or to understand why I would be offsetting rental income and insurance payments from child support obligations. I therefore prefer to deal with the insurance, housing and rental figures separately from this child support determination.
- [166] Based on the interim orders made with respect to child support, I find that MEJ is in arrears in the amount of \$22,662 on his child support ordered pursuant to the 2022 Consent Order up to February 2023, because he deducted what he viewed as MAJ's required contribution towards the costs of the Townhouse mortgage from his child support obligations.
- [167] On MAJ's evidence, I find that MEJ began paying MAJ just over \$3,000 per month starting in February 2022 for child support. Before that, her evidence was that he had made three payments in the months following separation--November, December and January--totalling \$5,500.
- [168] Based on MEJ's admitted income in 2021 and at the JCC in early 2022, MEJ should have been paying just over \$3,000 for each of November, December and January, and MEJ had formal notice from MAJ in November 2021 that she would be seeking this support.
- [169] I find it appropriate to award a total sum of \$3,500 in retroactive child support for these three months, adjusted for the amounts MEJ paid in support during this time. MEJ's total outstanding child support arrears are therefore \$26,162 based on his undisputed income in 2021, and the interim orders made for support.

- [170] MEJ asks that I find that there are no arrears owing, in part on the basis of the 2023 Consent Order that stated that the parties agreed on an interim basis that there would be no arrears and that an accounting would be done of what the parties owed each other in this respect in light of the parties' failure to comply with the JCC order dealing with the sharing of costs. I do not find this interim without prejudice agreement to be binding on me.
- [171] Additionally, MEJ asks that I give him credit for the difference between what Mayer J. ordered him to pay in June 2023, on the basis of an income of \$167,752, and the amount that Groves J. ordered him to pay in December 2023, on the basis of an income of 144,500. For the period between July 1, 2023, and December 1, 2023, MEJ paid \$1,186 more per month in spousal support than he says he should have. He was also still paying \$3,008 per month in child support since the 2022 Consent Order (on essentially the same income that Mayer J. relied upon in June 2023), and he says that his child support was therefore \$292 higher than it should have been. He asks that this adjustment be made retroactively, which would credit him with \$7,390.
- [172] I am not inclined to make this adjustment. Although Groves J. accepted MEJ's evidence towards the end of 2023 that his income had decreased below what it was at the JCC in 2022, I have found that the decrease in his income was in part due to choices he made--about reducing his hours and income--that I find he likely would not have made but for the separation. While for 2024, I have medical documentation as to MEJ's reasons for being off work, I have no such information for 2023.
- [173] I note that MAJ does not seek an award of retroactive child support on the basis of the income that I have imputed to MAJ going forward, which is also in the range upon which the interim orders for child support were based up until the end of 2023. That is, she does not seek that I impute a higher income to MEJ for the purposes of retroactive support.
- [174] Overall, I am not inclined to disturb the interim awards for child support based on the income information available at the time they were made for the purposes of retroactively adjusting paid child support.
- [175] I find that MEJ must pay a total of \$26,162 in retroactive child support.

Retroactive Spousal Support

- [176] Although pleaded, MAJ does not seek payment of retroactive spousal support. Instead, she has incorporated the years since separation towards the total duration of spousal support that she seeks by way of lump sum award.
- [177] I have calculated the lump sum spousal support award on a going forward basis. Nevertheless, I consider that that award also adequately addresses any retroactive support award that MAJ may have sought.

[178] I am not prepared to retroactively reduce the spousal support payments paid by MEJ after Mayer J.'s order for the same reasons I have declined to do so with respect to the child support orders.

DIVISION OF FAMILY PROPERTY

Statutory Framework

[179] Both parties seek a division of family property pursuant to the FLA. Section 81 of the FLA provides that on the date of separation, each spouse is entitled to an undivided half interest in all family property and is equally responsible for family debt regardless of their use or contribution to it.

[180] Family property is defined in s. 84(1)(a) of the FLA as all real and personal property that is owned by either spouse on the date of separation, unless the property is excluded from family property under s. 85(1). Any real or personal property owned by at least one spouse at the time of separation is family property. The value of the family property is generally the fair market value at the date of the trial, subject to agreement or as otherwise ordered: FLA s. 87; *D.Z. v. M.Z.*, 2022 BCSC 706 at para. 152.

[181] Where property is established to be family property, exclusions may apply pursuant to the FLA, including amounts contributed solely by one spouse. Although the original value of excluded property is not family property, any increase in its value from the time of the marriage to the time of the trial is family property: FLA s. 84(2)(g).

[182] Family debt is defined by s. 86(a) of the FLA as including all financial obligations incurred by a spouse during the period of the relationship. Debt incurred after the date of separation is only family debt if it is incurred for the purpose of maintaining family property: FLA s. 86(b).

[183] Under s. 87(b)(ii) of the FLA, the presumptive date for valuing family property and debt is the date of the trial. In most cases, departing from the presumptive date of valuation is effectively a reapportionment of family property and debt, which can only be achieved through an application of s. 95 of the FLA and a finding that an equal division would result in "significant unfairness": *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76; see also *Namdarpour v. Vahman*, 2019 BCCA 153 at paras. 52, 62.

[184] The court may consider the various factors in ordering an unequal division of family property and debt under s. 95(2) of the FLA, including:

(c) a spouse's contribution to the career or career potential of the other spouse;

...

(f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;

- [185] The parties' relative contributions to family assets and debts during the marriage is largely irrelevant to reapportionment under s. 95(2) of the FLA. Although the FLA does not preclude relative contributions as a factor that might be considered under s. 95(2)(i) as one of "any other factor[s] that may lead to significant unfairness," the circumstances in which it may be considered and relied on are now substantially constrained. It is for this reason that I have not considered evidence advanced by MEJ about his contributions to MAJ's father's business during the course of the marriage, or other evidence directed towards MAJ's spending during the marriage (which I note was tightly controlled by MEJ in any event).
- [186] In *Jaszczewska v. Kostanski*, 2016 BCCA 286, the Court of Appeal distinguished the approach to be taken under the FLA from its predecessor:
- [43] The determination of whether an equal division would be significantly unfair is also guided by a more precise identification of relevant factors than was found in the FRA. Importantly, the Legislature did not include in s. 95(2) the principle of relative contribution found in s. 65(1) of the FRA. Under s. 65(1)(f), a court could consider circumstances relating to the acquisition, preservation, maintenance, improvement or use of property. Section 95(2), by comparison, refers rather narrowly to career contributions (95(2)(c) and to post-separation increases in value beyond market trends caused by one spouse (95(s)(f)). I agree with the judge's view that if relative contribution to the acquisition, preservation, maintenance or improvement of family property during the relationship was intended to be a significant factor or one frequently relied on in justifying the conclusion that the equal division of family property is significantly unfair, the Legislature would have said so. Allowing relative contribution to become a regular consideration in the context of s. 95 would likely create uncertainty and complexity. This would be contrary to the legislative objectives discussed earlier that underlie the FLA division of property regime.
- [44] Having said that, in enacting s. 95(2)(i) the Legislature recognized that there may be factors other than those listed that could ground significant unfairness. Hence, while the Legislature intended to limit and constrain the exercise of judicial discretion to depart from equal division, it did not provide a closed list of factors and it did not eliminate the discretion. Accordingly, in my view, one cannot read the FLA as abolishing unequal contribution as a factor that may be relevant to reapportionment, although the circumstances in which it may be considered and relied on are intended to be much constrained.
- [187] Section 95(3) of the FLA provides that the court may also consider the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under s. 161--as discussed earlier in these Reasons--have not been met.
- [188] In *N.D.S. v J.A.S.*, 2020 BCSC 1034, Justice Riley considered s. 95(3):

[77] This brings me directly to s. 95(3), under which the Court must consider the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship. If a spousal support order is contemplated, but the objectives in s. 161 of the FLA have not been met by that spousal support order, this may result in or contribute to a finding of significant unfairness so as to justify an unequal division of family property.

[189] In *N.K. v. M.H.*, 2020 BCCA 121 the Court of Appeal set out the following guidance respecting the application of s. 95(3):

[74] Where a spousal support order is insufficient to meet the objectives of spousal support, s. 95(3) of the FLA provides that this is a factor in assessing a claim for an unequal division of property. Furthermore, in *Moge v. Moge*, [1992] 3 SCR 813 (S.C.C.), which dealt with an application to vary a support order made at the time of divorce, Justice L'Heureux-Dubé made the following oft-cited statement at 848-849:

[T]he purpose of spousal support is to relieve economic hardship that results from "marriage or its breakdown". Whatever the respective advantages to the parties of a marriage in other areas, the focus of the inquiry when assessing spousal support after the marriage has ended must be the effect of the marriage in either impairing or improving each party's economic prospects.

Equitable distribution can be achieved in many ways: by spousal and child support, by the division of property and assets or by a combination of property and support entitlements.

[Emphasis in original.]

[75] As this passage illustrates, a range of remedies is available to relieve the economic hardship of the relationship or its breakdown.

[190] The family property at issue in these proceedings is as follows:

- (a) The Family Home;
- (b) The Townhouse;
- (c) A 2009 Mercedes;
- (d) The parties' bank accounts, RRSPs, and pensions;
- (e) Items of gold jewelry given to MAJ by MEJ at the outset and throughout the marriage, over which she makes no claims of exclusion; and
- (f) Some household furniture, and insurance proceeds paid to replace household items lost during the fire in December 2022.

[191] MEJ seeks an equal division of family property and debt. MAJ seeks a reapportionment of the family property in her favour primarily pursuant to s. 95(3) on the basis that the lump sum spousal support award in this case, even at the high end of the support available to MAJ under the SSAG, is not sufficient in this case to address MAJ's strong compensatory claim

and the overarching goals of spousal support more broadly. She seeks a 55% reapportionment of family property that would allow her to continue to live in the Family Home with the children. In the alternative, she seeks a 65% reappointment of family property, and would be willing to forgo the lump sum spousal support in order to obtain that 65% reappointment.

The Family Home and Townhouse

[192] The parties own two properties:

- (a) The Family Home, which has an agreed value of \$1,750,000.00, and is encumbered by a mortgage with an outstanding balance of approximately \$457,431, for an agreed net value of \$1,292,569.
- (b) The Townhouse, which has an appraised value of \$845,000.00, and is encumbered by an RBC Mortgage with an outstanding balance of \$168,967, for a net value of \$676,033.

[193] MEJ wishes to buy out MAJ's share of the Townhouse.

[194] MAJ, if she is able to after the division of property is settled, wishes to buy out MEJ's share of the Family Home.

[195] Both parties seek conduct of sale of the Family Home in the event that MAJ is unable to refinance the Family Home and purchase MEJ's share.

[196] If there was to be no reapportionment of these properties,

- (a) MEJ would be required to pay MAJ \$338,017 for her 50% interest in the Townhouse;
- (b) MAJ would be required to pay MEJ \$646,285 for his 50% interest in the Family Home;
- (c) Resulting in a net transfer by MAJ to MEJ of \$308,268.

[197] I note that the Townhouse is also encumbered by a line of credit with an outstanding balance of \$130,000, \$5,000 of which is agreed to be family debt, and \$125,000 of which is exclusively MAJ's post-separation debt, which she has agreed she will have to account for and discharge as part of the overall resolution of this family trial, including as part of any transfer of the Townhouse to MEJ.

[198] MAJ argues that spousal support alone cannot adequately address the principles and purposes of spousal support in her case due to her strong compensatory claim, and MEJ's imminent threatened retirement. She argues that retaining the Family Home would provide her with the economic self-sufficiency that she has been deprived of as a result of the unequal results of the marriage breakdown, and which is a key objective of spousal support. Even with a lump sum award of spousal support, she argues that I should reapportion the family assets 55% in her favour in addition to the lump sum spousal support I have ordered so as to allow her to retain the Family Home. This would result in a net transfer by MAJ to MEJ of \$209,838 for his interest in the Family Home.

- [199] MAJ says that, with this reapportionment, she is confident that she could refinance the Family Home so that she and the children could continue to live there, although she did not produce any mortgage pre-approvals that would establish this at trial. She also suggested some optimism that a lump sum award of spousal support in the range made above might also allow her to refinance the family home.
- [200] MAJ was unable to point to any cases where the Court relied upon s. 95(3) of the FLA to reapportion family property in favour of a spouse where spousal support was available, either through monthly payments or through a lump sum payable as part of property division. MAJ is not in the same position as the spouse in *Delaurier v. Massicotte*, 2018 BCSC 1857 at para. 176, in which the spousal support was likely to cease once the claimant returned to work, or *K.J.P. v. B.S.J.G.*, 2024 BCSC 167 at para. 384, in which the child support component of the father's support obligations overwhelmed the availability of any spousal support element.
- [201] In this case, I am satisfied that the lump sum award above sufficiently addresses MAJ's compensatory claim and the goals of spousal support, without making it significantly unfair to equally divide the family properties. Further, I am not satisfied that it would be appropriate or necessary in this case to grant the 65% reapportionment sought by MAJ, for which she would be willing to forgo any spousal support. In my view, the objectives of spousal support and an equitable distribution of the economic consequences of the marriage and its dissolution are best achieved through the lump sum spousal support award I have already made above.
- [202] If MAJ is unable to refinance the Family Home without this reapportionment, I direct that she have conduct of sale of the Family Home, but I would set deadlines in this regard to ensure that any sale be completed expeditiously if one is necessary. I will set out those terms in the detailed orders below.
- [203] Based on my experience with the parties throughout this trial, and their ability to communicate and make joint decisions, I find it would not be in either's interest to order joint conduct of sale. MAJ is highly motivated to get the highest value possible for the Family Home and has proven that she is able to maximize rental income to date from that property. She is also in the best position to ensure that the Family Home shows well, and that all outstanding repairs and renovations are completed. While she does not have the same incentive to ensure that the sale is completed expeditiously, I am setting deadlines failing which, MEJ may take conduct of the sale.

The 2009 Mercedes

- [204] I understand that MEJ has a vehicle for work purposes over which there is no claim for division. At the time of separation, MAJ drove a 2009 Mercedes. However, she testified that it ceased working in 2023, and she was told that the cost to repair it exceeded its value. She was given \$10 towards the lease of a new car.

- [205] MEJ is of the view, based on his review of sales listings for other 2009 Mercedes, that the car should have been worth \$20,000. In his Scott Schedule he ascribes \$7,000 of debt to the vehicle and a net value of \$7,000. He has provided no documentary support for any of these values.
- [206] I accept MAJ's evidence that the Mercedes ceased to work in 2023, and that she sought two quotes for the repair of the 2009 Mercedes but was told that the repairs would be more than the vehicle was worth, before she traded it in for \$10 towards a new vehicle. I ascribe no value to this former family asset.

Bank Accounts

- [207] The parties held many bank accounts, investment accounts, RRSP and RESP accounts in their own names at the time of separation. The only joint accounts I have been advised of held negligible funds and there is no need to address them. They should simply be closed.
- [208] For the accounts in their own names, the parties have presented evidence of their funds in these accounts at the time of their separation, rather than at the time of trial, and I accept that this is appropriate in this case where it appears many of these accounts were dealt with regularly after separation. Some of these accounts are subject to claims of exclusion in all or in part. I will address these accounts by type, and consider the exclusion claims when I consider the total value of the accounts in each parties' name.

RESPs

- [209] MEJ holds an RESP for the children in the amount of \$32,212. MAJ also holds an RESP for the children in the amount of \$4,723. The parties agree that these RESPs should not be divided but rather held in trust for the children. I therefore do not include them in my calculation of family assets.

RRSPs

- [210] At the time of separation, I find that MAJ held \$82,775.28 in her spousal Scotiabank RRSP. Although she withdrew \$10,000 from that RRSP shortly after separation, the parties are agreed that as at the date of separation, the value of that account was \$82,775.
- [211] MAJ claims that she deposited a total of \$26,000 from an ICBC settlement she received in or around 2016 for non-pecuniary damages that she initially deposited into her sole account. However, at MEJ's urging, she withdrew \$16,000 from her ICBC funds and placed them into her spousal RRSP for which MEJ received a tax credit one year, and did that again the following year with \$10,000, again to reduce MEJ's taxes. She claims that \$26,000 of this RRSP is therefore her excluded property.

- [212] MEJ says that MAJ later withdrew \$10,000 from this RRSP to pay for her legal assistant course, which MAJ agreed with. However, there is no evidence that this affected the value of her excluded funds in that account. I accept MAJ's evidence on this point and find that \$26,000 of this RRSP account is MAJ's excluded property.
- [213] Subject to the offset below, I direct that the \$26,000 be deducted from the value of this account before division. This results in an order that \$28,387.64 be transferred by MAJ into MEJ's RRSP account by way of spousal rollover.
- [214] MAJ also has an HSBC RRSP in which the parties disagree on the value of the funds at separation. I find that the statement for the end of September 2021 is best reflective of the family property in this account, which is \$32,259. MEJ argues that MAJ at some point promised him \$16,000 of these funds and that amount should therefore be his excluded property. I find that he has not made out an excluded claim in this regard. Subject to the offset below, I order that \$16,129.50 be transferred from MAJ's HSBC RRSP account into MEJ's RRSP account by spousal rollover.
- [215] MEJ holds an RRSP at Scotiabank with an agreed value of \$42,203.24. Of this, \$21,101.62 of those funds shall be credited to MAJ against the RRSP funds she is required to transfer to MEJ.
- [216] In total, MAJ is required to transfer \$23,415.52 from her RRSP's by way of spousal rollover to MEJ's RRSP.

MEJ's Bank Accounts

- [217] Aside from his RESP and RRSP accounts, MEJ held 5 accounts which are claimed to contain family property. MEJ claims that one of these, a TD term deposit worth \$20,232 in December 2023 is not family property as it represents funds that he borrowed in 2023 to make an RRSP contribution to reduce his taxes that year.
- [218] MAJ argues that I should be skeptical of this assertion, particularly in light of his failure at various points to pay his child support obligations and suggests that I should trace these funds back to pre-separation funds.
- [219] I accept MEJ's evidence with respect to this 2023 term deposit and find that it is not family property.
- [220] MAJ also claims as family property the value of MEJ's bitcoin account where he deposited the value of bitcoin he was mining. That account, which is referred to as Shakepay, held \$3,158.88 in early October 2021. This account later held \$41,012.53, all of which MAJ argues should be family property. MEJ says that the total value of this fund at separation, being \$3,158.88, should be used for division purposes. He also says that he was mining bitcoin for his father, who lost all of the value of this account in a scam.

- [2221] Given that the parties were dealing with all of their accounts without restriction post-separation, and the limited evidence I have with respect to this account, I set the value of family property in this account at the October 1, 2021 value of \$3,158.88, half of which is owed by MEJ to MAJ.
- [222] The parties are agreed that MEJ had \$634.34 in an RBC TFSA at separation that is family property.
- [223] Finally, the parties are a few thousand dollars apart on the value of an RBC account held by MEJ and an HSBC savings account held by MEJ. MAJ says that these accounts had \$4,561.28 and \$845.32, respectively, for a total of \$5,406.60 that should be divided. MEJ says that the accounts held \$2,274.24 and \$3,500, respectively, for a total of \$5,774.24 to be divided. After reviewing the account statements provided, I accept MAJ's assessment of the value of these accounts based on the account statements closest to separation. I would therefore order that MEJ is to account to MAJ for one half the value of these accounts valued at \$5,406.60.
- [224] In total, I find that MEJ must account to MAJ for one half the value of his various bank accounts in the following amount: \$4,599.91.

MAJ's Bank Accounts

- [225] MAJ held six accounts with some value at the time of separation. The parties are agreed (or do not dispute) the value of the following accounts:
- (a) MAJ's TD TFSA which had \$21,066.93 at the time of separation, \$11,000 of which is her own excluded property, leaving family property of \$10,066.93 for division;
 - (b) MAJ's RBC TFSA, of which MEJ and MAJ agreed at trial \$10,689 is family property;
 - (c) MAJ's RBC account with a value of \$13,891.21 at separation; and
 - (d) MAJ's TD high interest savings with a value of \$50.46 at separation.
- [226] The parties disagree regarding the value of MAJ's TD account ending in 3761, on the basis that they have used different dates for the valuation. I find that the most appropriate bank statement for the purposes of division is the September 30, 2021, statement used by MEJ in his calculations, which sets the value of this account at \$15,099.30.
- [227] A similar minor difference with respect to MAJ's TD account 7431 also exists between the parties. I find that the best evidence of the value of this account at separation is \$3,378.
- [228] In total, MAJ must account to MEJ for 50% of this family property she retained at separation for a total of \$26,587.45.
- [229] Against this, I would offset the \$4,599.91 for which MEJ must account to MAJ, calculated above, requiring MAJ to account to MEJ for a total of \$21,987.54.

Gold and Jewelry

- [230] MAJ has retained gold items and jewelry, some of which were given to her by MEJ at the time of their marriage, and some of which she purchased during the marriage at the behest of MEJ, who believed it was important to keep some investments in gold. He argues that these items are worth approximately \$70,000.
- [231] Some of these items, including several gold coins, MAJ says have not been recovered since the fire in the house in December 2022 and she has an outstanding \$10,000 insurance claim with respect to them. She says that she will share 50% of the proceeds of that claim with MEJ when she receives it. MEJ would like a direct accounting for the value of these coins, but I do not have sufficient evidence of their value to consider this option. I therefore order that MAJ will be required to pay to MEJ 50% of the insurance claim made with respect to these items if and when she receives it.
- [232] With respect to the jewelry, MAJ is not asserting an exclusion over these items and is prepared to return certain items (to the extent that they are not part of the insurance claim above) to MEJ. In the absence of any independent evidence of the value of these items, I consider that this is the fairest resolution to this issue.
- [233] MEJ has asked for the solid gold bracelets he provided MAJ at the time of marriage, which are important to his family, as well as the white gold marriage set he gave her at the time of marriage, which includes a necklace, bracelet and ring. The gold bracelets are shown in photographs at page 65 of Tab 20 of MEJ's book of documents and the white gold marriage set is shown on page 67 of the same tab. MAJ agreed to this at trial. I order that she transfer the bracelets and wedding set shown on pages 65 and 67. Finally, she will also transfer a gold keychain with his name on it if she still has it.

Personal Items, Furniture and Insurance Replacement Proceeds

- [234] The evidence establishes that MEJ took his own personal belongings and several items of furniture from the Family Home, including the entertainment centre, living room couch and chair and coffee table set, shortly after separation. Much of what remained in the home was damaged or destroyed in the December 2022 house fire. In terms of the remaining furniture, he asks for the metal and glass living room table that matches the coffee table he took at the time of separation. MAJ is agreeable to this, and I will make that order.
- [235] MEJ also says he forgot to bring his camera charger in 2021, and he wants MAJ to provide it. MAJ says she will look for this but is not sure she has it. This is not surprising given the passage of time and a house fire. If MAJ finds the camera charger, I direct that she returns it to MEJ.

- [236] MAJ also seeks 80% of the insurance paid to replace the contents of the house. The insurance company provided \$42,000 for this purpose, and MAJ says that the vast majority of the items it covered were her share of the furniture, as well as the children's beds, mattresses, clothing and shoes. The upstairs bedrooms with children's and MAJ's personal items were most affected by the fire. The insurance claim also lists a great deal of perishable food that was compensated for, all of which was purchased by MAJ for herself and the children well after separation.
- [237] I have reviewed the list of items the insurance provided replacement costs for after the December 2022 fire, which occurred more than a year after MEJ had left the home, and removed his preferred furniture and items. I am satisfied that the vast majority of the items compensated for were personal items belonging to MAJ or the children, and that MAJ required these funds to replace those items. Many of these items, like the food in the fridge and pantry, are not family property. I also find that it would be significantly unfair to divide the insurance proceeds equally in these circumstances. I award MAJ 80% of the \$42,000 paid by the insurance company to replace personal and household items in the family home. I direct that MEJ is to account to MAJ for the difference between the half of the insurance proceeds he has received and his share of these proceeds per my order, which amounts to \$12,600.
- [238] Both parties want copies of any photos or video tapes of the children that the other has. MEJ in particular asks for video tapes of the children being born. I direct that both parties review the photos and videos they have of the children and make electronic copies of them and send them to the other party. MAJ may provide MEJ with the video tapes after she has made a copy of them, or she may provide them to MEJ, and MEJ will be required to make the copies.
- [239] MAJ also seeks contribution from MEJ for certain expenses regarding the Family Home, including for a replacement boiler, about which she is currently in a dispute with the insurance company. She also seeks directions that would require MEJ to assist in the resolution of matters with the insurance company in a more expeditious way.
- [240] MAJ has exclusive occupancy of the Family Home, and the expectation is that she will purchase it outright. If she is unable to do so, I have directed that she have conduct of sale. There are many decisions that are regularly required to complete and close out the insurance claim on the Family Home, which the parties have not successfully been able to do jointly. The same will be true if the Family Home is required to be listed for sale.
- [241] In these circumstances, I consider that MAJ should have both the responsibility and the authority to deal exclusively with the Family Home. If the boiler needs replacement, whether that relates to the insurance claim or other causes, I find that MAJ should be responsible for this expense and should also benefit from any settlement with the insurance company in this regard. The same is true of other outstanding insurance payments or claims. I order that MAJ have the sole and final decision-making authority

with respect to matters relating to the Family Home and insurance matters.

Family Debt and Expenses

- [242] The parties agree that MAJ's \$24,000 student loan is family debt.
- [243] They also agree that \$5,000 of the \$130,000 line of credit against the Townhouse is family debt (and that the remaining \$125,000 is solely MAJ's debt and responsibility). Because it is contemplated that MEJ will retain this asset, MAJ must account to MEJ for \$127,500 in relation to this line of credit.
- [244] The parties also agree that \$2,022.37 of credit card debt on MAJ's credit card at separation is family debt, as is \$1,584.85 on MEJ's credit card.
- [245] The parties also claim minor amounts on other credit cards that are so insignificant as not to require division in my view. MEJ also listed \$1,552 in debt related to a first-time homebuyer plan and also argued that he should be paid out for capital gains on the Townhouse in the event he eventually seeks to sell it, but neither of these claims were made out in the evidence at trial.
- [246] The family debt that requires division is therefore \$26,022.37 in MAJ's name, requiring MEJ to account for 50% of that amount: \$13,011.19.
- [247] Offset against that, MAJ must account to MEJ for \$127,500 for the Townhouse line of credit and \$792.43 for MEJ's credit card debt. Setting aside the Townhouse line of credit for the time being, which I will account for in the final order, MEJ will be required to pay MAJ a total of \$12,218.76 to equalize the credit card and student debt.
- [248] MAJ also seeks an accounting of her contributions toward the mortgage and maintenance of the Family Home from January 2024 when MEJ stopped contributing towards these expenses. She relies upon the 2022 Consent Order that required both parties to contribute 50% towards these costs beyond the income from the rental suites. MAJ says that the mortgage expense on the house was approximately \$4,400 per month in 2024, and she received \$3,000 per month for the first six months and another \$3,700 from the insurance company in July to replace the rental income after the fire. In the summer of 2024, the insurance company deemed that the Family Home repairs were completed and ceased to pay for the rental income replacement; however, MAJ says that because the Family Home was not fully completed, she and the children had to move into the basement suite so she could not receive income to help pay for the mortgage for several months after that.
- [249] MAJ claims 50% of the mortgage payments she made on the Family Home, property taxes and insurance in 2024, and another \$13,700 to the end of March 2025 towards the mortgage and home insurance (I understand property taxes are now included in the mortgage payments). She says that, per the 2022 Consent Order, MEJ's share of this cost is just over \$35,000.

- [250] While MAJ relies on the 2022 Consent Order in this regard, the fact is neither of the parties ever complied with this order requiring the parties to pool the rental income into a joint account and jointly pay the property expenses. When MEJ collected the rents from the Townhouse and the basement suites in late 2021 and early 2022, he simply used them to pay the mortgages and expenses. When MEJ moved into the Townhouse in June 2022, he ceased collecting rent for that unit, but continued to demand MAJ's share of the Townhouse costs by unilaterally reducing his child support payment (which I have corrected above by finding those payments to be in arrears). By mid 2022, MAJ was collecting the rent from the basement suites in the family home, and since December 2022 she has been collecting the insurance proceeds in lieu of rent. Since mid to late 2024 she has controlled the rental of the suites, set the rental amounts, and is now collecting \$3,200 per month for the rental of the basement in the Family Home.
- [251] Since the summer of 2022, each of the parties has had exclusive occupancy of one of the family properties. After accounting for the rent (or rental replacement from insurance proceeds) MAJ has received for the Family Home each month, I find that the parties' mortgage and property carrying expenses have been comparable.
- [252] I find that, in these circumstances, neither party should account to the other for the housing expenses of the other. This order contemplates that each party will retain the property where they are currently living, and that they will continue to bear the expenses for that property solely going forward, as they have largely done since at least 2024. I decline to adjust the value of the Family Home in MAJ's favour, or otherwise account for her reasonable mortgage costs net of rental income, while she also had occupancy of that Family Home. MEJ's contribution towards the children's housing costs is a component of the child support he has paid (and is retroactively ordered to pay) pursuant to this order.
- [253] I therefore decline to reapportion the division of property to MAJ on this basis.

Conclusion on Property Division

- [254] In conclusion, with respect to the non-registered accounts, personal family debts and of liquidated family property:
- (a) MAJ is required to pay to MEJ the sum of \$21,987.54 to equalize the parties' non-registered accounts;
 - (b) MAJ shall be entitled to 80% of the insurance funds received related to damaged items in the Family Home as a result of the December 2022 fire. MEJ is therefore required to pay to MAJ the sum of \$12,600; and
 - (c) To equalize the family credit card debt and student debt, MEJ is required to pay MAJ the sum of 12,218.76.

[255] It is not necessary that the parties make separate transactions for each of the above monetary equalization payments. Instead, MEJ is required to pay MAJ a total of \$2,831.22 to address these items.

[256] The division of real property is addressed more specifically in the orders below.

SUMMARY OF ORDERS

[257] In conclusion, I order that:

Divorce

- (a) The parties are divorced from one another. The divorce will take effect on the 31st day after the date of this order, unless I receive an application for a stay of the divorce order from both parties before that date;

Parenting

- (b) MEJ and MAJ are the guardians of the children pursuant to s. 39(1) of the FLA;
- (c) During their own parenting time, the parties may exercise the parental responsibility of making day-to-day decisions affecting the children pursuant to s. 41(a) of the FLA, provided that parties must advise the other parent of any matters of a significant nature affecting the children;
- (d) In the event of the death of either party, the surviving party will be the only party with decision-making responsibility for the children;
- (e) Each party will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals and third party caregivers;
- (f) Each party will have the obligation to discuss with the other party any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
- (g) The parties will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
- (h) In the event that the parties cannot reach agreement on a significant decision despite their best efforts, MAJ will be entitled to make those decisions;
- (i) If MEJ disagrees with a decision made by MAJ on an important parenting decision, he may apply for directions pursuant to s. 49 of the FLA;
- (j) MAJ shall have the responsibility for making medical appointments for the children, but she shall provide notice to MEJ through Our Family Wizard of any specialist medical appointment immediately thereafter, so that he may attend;

- (k) MAJ shall have all of the parenting time with the children except as follows:
- i. Commencing the second Friday after this order is pronounced, MEJ shall have parenting time with the children as follows:
 - (1) MEJ shall have parenting time with the two girls every other Friday, commencing at the time school ends on Friday, or 3pm if there is no school that day, until 5pm the following Saturday.
 - (2) The 2022 Consent Order term preventing MEJ from exercising his parenting time with his sister present is vacated. MEJ may exercise his parenting time with any family member present or assisting (for example with pickups) subject to his compliance with the conduct orders below.
 - (3) MEJ shall be responsible for taking the girls to whatever extracurricular activities or special events that are scheduled during his parenting time, and for dropping them at the Family Home or other agreed upon location at the end of his parenting time;
 - (4) MEJ may also have additional parenting time as may be agreed between the parties or with any of the children.
 - (l) MAJ will ensure that the two girls are equipped with whatever they need for an overnight with their father on the Friday morning of his parenting time before they leave for school so that they are not required to return to the Family Home that evening;
- (m) MEJ may apply to increase his parenting time to include the Saturday overnight following his Friday parenting time on evidence that the Friday overnight and Saturday parenting time has been consistently working well, with at least one of the children. This application shall not be made earlier than January 1, 2026; and
- (n) Requests for alterations to the parenting schedule shall be communicated through Our Family Wizard. The parties shall use the Yes/No option to respond to these requests;
 - (o) MAJ shall hold the children's passports and all of their other important documents;
 - (p) MAJ and MEJ shall be permitted to travel with the children during their respective parenting time, so long as they provide advanced notice of the travel including locations, dates and any contact information, and evidence of reasonable travel medical/health coverage obtained for the children for the duration of the trip.

Conduct and Communication Orders

- (q) The parties will:
- i. put the best interests of the children before their own interests;
 - ii. encourage the children to have a good relationship with the other parent and speak to the children about the other parent and that parent's family in a positive and respectful manner; and

- iii. make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the children;
- (r) For all daily, non-emergency communications, like sharing third-party documents, such as the children's test results from school exams, posting photographs, calendarizing extracurricular activities, receipts for s. 7 expenses, or sharing birthday party invitations, the parties shall exclusively use the corresponding features of Our Family Wizard. These posts shall not include questions or demands. They shall be purely informational postings;
- (s) When consultation is required with respect to a decision engaging a parenting responsibility, the parties shall use the general messaging function of Our Family Wizard. Communications shall be civil and no longer than necessary to convey each parent's position and concern;
- (t) In the event of an emergency, the parent exercising parenting time will immediately inform the other parent so that both parents may attend the emergency;
- (u) The conduct orders made in September 2022 shall remain in force as follows:
 - i. Neither party will:
 - (1) question the children about the other parent or time spent with the other parent beyond simple conversational questions;
 - (2) discuss with the children any inappropriate adult, court, or legal matters; or
 - (3) blame, criticize, or disparage the other parent to the children.
 - ii. Neither party will attend at, or enter, the place of residence of the other party without their express knowledge and consent, with parenting time exchanges made pursuant to this order to constitute express knowledge and consent to attend outside of the other party's residence;
- (v) The parties will strongly encourage their respective families to refrain from any negative comments about the other parent and their extended family, from questioning the children about the other parent or time spent with the other parent beyond simple conversational questions and from discussions in front of the children concerning family issues or litigation; and
- (w) If the children or one of the children is being subjected to comments about their other parent by a family member, or is being harmed emotionally or physically by a family member of that party, that party shall remove their family member from further contact with the child or children.

Spousal Support

- (x) MEJ is imputed an income of \$160,000 for 2025 and going forward, subject to a proven material change in circumstances;

- (y) MAJ is imputed an income of \$22,500 for 2025 and going forward, subject to a proven material change in circumstances;
- (z) MEJ shall pay to MAJ lump sum spousal support in the amount of \$300,000 in relation to his future and any remaining outstanding past spousal support obligations;

Child Support

- (aa) Commencing on July 1, 2025, MEJ will pay MAJ \$2,958 for child support for the three children;
- (bb) Commencing September 1, 2025, MEJ will to pay MAJ \$2,277 per month in child support for the two remaining children of the marriage;

Review of Support

- (cc) By no later than June 1 of each year, the parties will exchange copies of:
 - i. Their respective income tax returns including all attachments; and
 - ii. Their respect Notices of Assessment for the previous tax year;
- (dd) Should either party seek a review of the child or spousal support payable under this order on the basis of a change in income above the amounts imputed by this order, or on the basis of a material change in circumstance, they shall advise the other party by June 30 in that calendar year, or within 30 days of receiving all of the required financial and income information, whichever is later, by giving written notice to the other party through their counsel or through Our Family Wizard. If the parties cannot agree to the appropriate adjustments, they may apply to court;

Section 7 Special Expenses

- (ee) Pursuant to s. 7 of the Guidelines, the following are special or extraordinary expenses in relation to the two younger children:
 - i. Health related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, physiotherapy, occupational therapy, speech therapy and prescription drugs, glasses, and contact lenses;
 - ii. extraordinary expenses for:
 - (1) Tutoring expenses for the two younger children;
 - (2) Swimming and basketball; and
 - (3) Expenses arising in the future that the parties agree qualify as special or extraordinary expenses within the meaning of the Guidelines;

(ff) Neither party will incur a special or extraordinary expense outside of the above specified categories for any of the children without the approval of the other party or an order of the court. Neither party will unreasonably withhold consent for any such expenses;

(gg) MEJ shall pay 80% of special expenses and MAJ shall pay 20% of special expenses. These expenses will be split at the provider level in this proportion wherever possible;

(hh) Where a special expense cannot be split by the provider, the paying party will post their receipt to Our Family Wizard within 7 days of incurring the expense, and the non-paying party will pay their proportionate share within 30 days of the receipt being posted on Our Family Wizard;

(ii) MEJ shall maintain the children on his extended medical and dental plans for so long as he is able to do so, and for so long as the children are eligible to receive such benefits;

Retroactive Support

(jj) MEJ shall pay MAJ \$22,162 in retroactive child support;

Family Property and Debt Division

(kk) The family property and debt shall be divided 50/50 between the parties, pursuant to this order, with the exception of the personal property insurance proceeds;

Accounts and Family Debts

(ll) In order to effect the division of the parties accounts, and liquidate personal property, and personal family debt, within 75 days of this order:

- i. MAJ shall transfer \$23,415.52 from her RRSP to MEJ's RRSP by way of a spousal rollover. MEJ shall cooperate by completing any forms and providing such reasonable information as MAJ may require to effect the same; and
- ii. MEJ shall transfer to MAJ the sum of \$2,831.22 to equalize the parties non-registered accounts, credit card and student debt, and insurance proceeds.

Family Home and Townhouse

(mm) Within 75 days of the date this order is entered:

- i. MAJ shall transfer her interest in the property at 6-13909 102 Avenue, Surrey, BC (the "Townhouse") to MEJ for his exclusive use and occupation and ownership;
- ii. Concurrently with the transfer of the Townhouse to MEJ from MAJ, MEJ shall pay to MAJ the sum of \$338,017 and will obtain a release of MAJ from the existing mortgage, or he shall refinance the home and discharge the existing mortgage. MEJ will be solely responsible for any penalties, interest, costs, legal fees, and other expenses resulting from the refinance.
- iii. Concurrently, MAJ will pay \$127,500 towards the line of credit against the Townhouse;

iv. MEJ will be solely responsible for any and all expenses related to the Townhouse, including but not limited to the existing mortgage;

v. MEJ shall transfer his interest in the property at 18920 55 Avenue, Surrey, BC (the "Family Home") to MAJ for her exclusive use, occupation and ownership;

vi. Concurrently with the transfer of the Family Home to MAJ from MEJ, MAJ shall pay to MEJ the sum of \$646,285 and will obtain a release of MEJ from the existing mortgage, or she shall refinance the home and discharge the existing mortgage. MAJ will be solely responsible for any penalties, interests, costs, legal fees and other expenses arising from the refinance;

vii. MAJ will be solely responsible for any and all expenses related to the Family Home, including but not limited to the existing mortgage;

(nn) Subject to the contingency provided for at (pp) for the refinancing of the Family Home, the transactions in paragraphs (z) (lump sum spousal support), (jj) (retroactive child support), (ll)(ii) (equalization of liquidated family property and debt), and (mm) shall be done concurrently, resulting in a transfer of the Townhouse to MEJ, and the Family Home to MAJ, with a total payment by MAJ to MEJ of \$106,774.78 in cash, and the transfer of \$23,415.52 by way of an RRSP spousal rollover;

(oo) MAJ will have full authority, without the signature of MEJ, to deal with the insurance company regarding the December 2022 fire and the Family Home. MEJ will cooperate and sign any documents required by MAJ regarding the fire insurance or any other insurance matters in the Family Home;

(pp) In the event that MAJ is unable to refinance the Family Home in her own name, then the Family Home shall be sold on the following terms:

i. MAJ will be solely responsible for any and all expenses related to the Family Home, including but not limited to the existing mortgage, insurance settlements and proceeds, and repairs, pending the sale;

ii. MAJ shall have sole conduct of the sale and will list the Family Home with a realtor promptly no later than 90 days after the entry of this order;

iii. MEJ shall be fully cooperative with the listing;

iv. MAJ shall instruct the listing agent to promptly advise MEJ of the list price and of any and all offers made;

v. If MAJ has not accepted an offer after 120 days of listing, or no sale has completed after 6 months of listing, MEJ may apply for conduct of the sale;

(qq) If the Family Home is sold under paragraph (pp), then upon the sale of the Family Home, the proceeds shall be disbursed as follows:

- i. Firstly, to the property taxes and all necessary and proper adjustments between the vendors and the purchaser(s);
- ii. Secondly, to the payment of the real estate commission and legal fees and disbursements in respect of the sale;
- iii. Thirdly, to the payment in full of the outstanding mortgage against the property, including interest to the date of payment and any prepayment penalty; and
- iv. The net sale proceeds shall be divided as follows:
 - (1) First, to MEJ the sum of \$646,285, less lump sum spousal support and retroactive child support ordered herein, and any other division of property outstanding, such as the completion of the transfer of the Townhouse to MEJ set out in mm(i-iii) above; and
 - (2) The balance to Dustin P. Kuhn Personal law corporation in trust.

Other Family Property

(rr) The parties' pensionable earnings under the Canada Pension Plan shall be equalized pursuant to the Canada Pension Plan, R.S.C. 1985, c. C-8, with either party being entitled to apply for this equalization;

(ss) The parties will continue to control the children's RESP accounts in their name solely for the benefit of the children;

(tt) MAJ shall provide to MEJ the following items from the Family Home within 60 days of entry of this order:

- i. The two gold bracelets and white gold wedding set, including a necklace, ring and bracelet, shown on pages 65 and 67 of Tab 20 of Exhibit D;
- ii. A gold keychain with MEJ's name on, it if she still has it;
- iii. The metal and glass table; and
- iv. MEJ's camera charger, if found;

(uu) Within 60 days of the date of this order, each party shall make digital copies of all photos and videos with the children and provide the same to the other party by way of a USB drive.

Alternatively, they may provide original versions of the photos and videos, again by the way of a USB drive, in which case the other party shall make digital copies of the originals and provide the copies to the other party.

(vv) Unless expressly stated herein, each party will retain their own assets and be responsible for all debts in their own names.

COSTS

[258] MAJ has been substantially successful in this family proceeding. MAJ is presumptively entitled to her costs in this proceeding at the ordinary scale. Should either party wish to speak to costs, the parties should promptly make arrangements with the Registry to appear before me to settle costs within two months of the delivery of these Reasons.

"Marzari J."

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