

CANADA / JUDGMENT

M.J.H.I.G. v. F.M.E.G.

2024 BCSC 2372

COURT

Supreme Court of British Columbia

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2024 BCSC 2372 M.J.H.I.G. v. F.M.E.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.J.H.I.G. v. F.M.E.G.,

2024 BCSC 2372

Date: 20241224

Docket: E230584

Registry: Victoria

Between:

M.J.H.I.G.

Claimant

And:

F.M.E.G.

Respondent

Before: The Honourable Justice Wolfe

Reasons for Judgment

Counsel for the Claimant:

K. Melbye

The Respondent appearing on his own behalf:

F.M.E.G.

Place and Date of Summary Trial:

Victoria, B.C.

June 11-13, 2024

Place and Date of Judgment:

Victoria, B.C.

December 24, 2024

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Introduction

- [1] These reasons concern a summary trial to settle all issues in the parties' family law proceedings. The respondent father, F.M.E.G. (the "Father"), and the claimant mother, M.J.H.I.G. (the "Mother") were in a marriage-like relationship for almost 18 years before they separated on February 14, 2023. The parties' one child, E.L.G. (the "Child"), was born in July 2007 and is now 17 years old. Since July 2023, the parties have shared parenting of the Child on a week-on, week-off schedule.
- [2] This family law proceeding began in February 2023 when the Mother filed a notice of family claim after separation. The Father subsequently filed a response and a counterclaim. The issues between the parties include guardianship and parental responsibilities, parenting time, support (child support, special expenses and spousal support) and division of family property including pensions. As the parties never married, their claims are governed by the Family Law Act, S.B.C. 2011, c. 25 [FLA]. There are three consent orders that addressed certain issues on an interim basis, as well as a fourth order with a consent term regarding disclosure.
- [3] The parties' efforts to reach a separation agreement were unsuccessful. As a result, in late May 2024, the Father applied for summary trial to address all issues in the parties' family law proceeding except pension division. The Mother filed a separate application seeking orders that the Father's pensions are family property to be divided under the Family Law Act or equalized. The Father then filed a third application, seeking to adjourn the pension issues, or alternatively, seeking mirror relief regarding the Mother's pensions. Given the shared factual background, the parties agreed I should hear all three applications together, with a view to resolving as many issues as possible and providing one comprehensive final order. The parties also agreed all matters were suitable for disposition by way of summary trial.
- [4] The parties agree on many issues concerning guardianship, parental responsibilities and parenting. They disagree on final decision-making responsibility, holiday parenting time, and certain travel-related and communications matters. With respect to support, the Father has paid both child and spousal support since March 2023, but says he has overpaid since July 1, 2023 because income should be imputed to the Mother. He seeks repayment of those

amounts and wants the Mother to pay a nominal amount of child support going forward for tax purposes. The parties also disagree on certain categories of special expenses, how to treat the Mother's tuition bursary or exemption for the Child's schooling and whether the Mother owes arrears for special expenses. Given the Father's request to impute income, the parties do not agree on quantum or duration of spousal support, but entitlement, at least in the shorter term, is not contested.

- [5] The parties generally agree that each should retain their own property (with some minor disagreements over personal effects, including those relating to the Child). Although the parties made mirror proposals regarding pensions in their applications, during the hearing, the Father suggested the parties take more time to consider the implications. In some cases, the parties' disagreements are relatively minor; in others, the parties' positions are quite far apart.
- [6] In addressing the issues in dispute between the parties, I must also deal with allegations of family violence.
- [7] To protect the privacy and well-being of the Child, and as discussed with the parties during the hearing, I have initialized the names of the parties in the style of cause. I have also used initials for the parties and the Child, and have anonymized certain personal or identifying details in this judgment.

Issues

- [8] On their face, the three sets of applications raise a considerable number of individual issues, however there is also substantial agreement on many terms. In my view, the specific issues to be decided by the Court are best framed as follows:
 - a) With respect to guardianship, parental responsibilities and parenting time:
 - i. Who should have final decision-making authority for decisions affecting the Child if the parties are unable to agree?
 - ii. What arrangements should be made respecting travel and the Child's passport?
 - iii. How should the parties communicate with each other?
 - iv. How should parenting time be allocated for the Child's summer and winter holidays?
 - b) With respect to support:
 - i. What are the parties' incomes for support purposes and should income be imputed to the Mother?
 - ii. What past and prospective child support is payable?
 - iii. How should special or extraordinary expenses be allocated and what expenses are included?
 - iv. What past and prospective spousal support is payable?

- v. Are any arrears of support and / or special expenses payable?
- c) With respect to division of family property:
 - i. What order, if any, should be made respecting division of certain remaining personal effects, including those relating to the Child?
 - ii. What order, if any, should be made respecting the parties' pensions?
- [9] There is also a preliminary issue of suitability for disposition by summary trial as well as the matter of costs.

Background facts

- [10] Perhaps because of the course of this litigation and the multiple applications that preceded the summary trial, the record before the Court included what might be considered serial responding affidavits. While there are conflicts in relation to certain details and allegations, given what is agreed between the parties, not all of those conflicts require resolution. I will begin with an overview of factual matters that are common to all issues and are largely uncontroversial, noting where there is dispute. Facts specific to particular issues are addressed under each issue below.

The parties' relationship

- [11] The parties began cohabitating in a marriage-like relationship in July 2005, while living in Montreal, Quebec. At the time, the Mother was working as a sessional instructor at the Université du Québec at Montreal and the Father was working at McGill University. In July 2006, the parties moved to Victoria, British Columbia, as the Father had accepted a position with the University of Victoria, where he remains employed today. There is a dispute about how long the parties intended to stay in Victoria which I will discuss below in relation to spousal support. Shortly after moving to Victoria, the Mother became pregnant with the Child, who was born in late July 2007.
- [12] The Mother says she was primarily responsible for caring for the Child and dealing with the family household, while the Father focused on his career. The Father says the parties shared responsibility for the Child's care and activities, as well as for decision-making and many household responsibilities. The Mother did return to the workforce, but not full-time. The Child attends a private school in Victoria; neither party suggested the Child should do otherwise.
- [13] The parties separated on February 14, 2023. On that date, while the Child (who was then 15) was away on a school trip, the Mother, with the assistance of the Women's Transition House, moved herself and the Child out of the family residence and into transitional housing. The Mother deposes the Child was aware this was happening. The Mother does not dispute that she and the Child left without notice to the Father, while he was away from the residence. The Mother alleges she and the Child suffered from family violence during the relationship,

and that was why she fled. The Father strongly disputes those allegations.

- [14] After separation, the Child resided full-time with the Mother for a period of time. The Father initially had parenting time for a few hours each week; his time was slowly increased with the Mother's agreement, but nothing was formalized in a written agreement or order until several months later. At a Judicial Case Conference ("JCC") held May 29, 2023, the parties entered into a consent order (the "JCC Order") which, among other things, set a parenting time schedule where the Child alternated between being with the Mother for nine days and then with the Father for five days. In July 2023, the parties entered into a further consent order under which the parties moved to an alternating week-on, week-off parenting time schedule. With certain exceptions for holidays, the week-on, week-off schedule remained in place as of the date of the summary trial. As a result, the parties have had equal shared parenting, as that term is used for support purposes, since early July 2023.
- [15] As of May 1, 2024, when the Mother swore her 3rd Affidavit in this proceeding, she was still residing in transitional housing accommodations. However, she deposed that she would be moving in May 2024 as her time in transitional subsidized housing was coming to an end. The Court was not provided with any more up-to-date information on the Mother's living situation before or during the hearing.

Procedural history

- [16] As noted, the Mother filed her notice of family claim in February 2023. The Father filed a response and a counterclaim in March 2023. The Father voluntarily began paying the Mother child and spousal support in March 2023 but the amounts were based on a shared parenting situation, which did not occur until July 2023. The Mother consistently took the position that support was not being paid on the correct basis, but also recognized that dispute could be addressed in future. The Mother responded to the counterclaim in April 2023.
- [17] On May 29, 2023, the parties attended a JCC. Both parties were represented. The resulting JCC Order addressed parenting time, support, decision-making, conduct and the exchange of documents.
- [18] The JCC Order provided that the Child would reside primarily with the Mother, and set a 9-5 parenting time schedule under which the Child was to spend the larger proportion of time with the Mother. Despite consenting to the JCC Order, the Father says the parenting time schedule did not align with his request, or that of the Child, for parenting time to be split 50-50.
- [19] The JCC Order required the Father to pay, on an interim and without prejudice basis, monthly child support of \$1,216 and monthly spousal support of \$1,360, commencing June 1, 2023. The support amounts were based on the 9-5 parenting time schedule and the parties' respective incomes under the Federal Child Support Guidelines, SOR/97-175 [Guidelines], which were stated to be \$48,651 for the Mother and \$132,473 for the Father. The order expressly preserved the Father's ability to argue that additional income should be imputed to

the Mother and / or that his Guidelines income was different. The JCC Order also provided that special expenses would be paid 35 percent by the Mother and 65 percent by the Father.

- [20] The JCC Order prohibited the parties from making school-related decisions for the Child without agreement, and prohibited either party from relocating the Child outside the Greater Victoria area. The JCC Order also imposed common conduct terms designed to ensure the parties put the Child's best interests ahead of their own, communicate respectfully and avoid involving the Child in the family law proceedings or the parties' conflict generally.
- [21] Following the JCC, the Father continued to seek 50-50 shared parenting of the Child. While the Father initially filed an application, he withdrew it in late June 2023, in the hopes of addressing matters through mediation. He also decided to represent himself and has continued to do so since that time. The Mother agreed to 50-50 parenting and parties discussed drafting a separation agreement rather than attending mediation. The Father says he waited until the end of July 2023 for the Mother's counsel to provide a draft agreement. When one did not materialize, he provided his own draft on August 2, 2023. He says there was no response until early October 2023, at which point, the Mother's counsel indicated she did not intend to review the Father's draft agreement.
- [22] In the interim, on July 12, 2023, the parties entered into a further consent order (the "July Order") that: established a week-on, week-off parenting time schedule commencing July 7, 2023; permitted the preparation of a views of the child report if necessary; allowed the Mother to travel with the Child to Montreal for two weeks during the summer; and postponed mediation "until such time it is needed". The July Order did not adjust the amount of child and spousal support the Father was required to pay under the JCC Order.
- [23] In the fall of 2023, the Father proposed mediation. The Mother responded through counsel that she lacked the funds to mediate, so the Father filed a further application seeking to vary the JCC Order regarding support, special expenses and communication. The parties eventually negotiated and entered into a consent order dated December 14, 2023 (the "December Order"), making the Father's application unnecessary. Among other things, the December Order adjusted the amount of monthly support payable by the Father effective July 1, 2023 to \$759 in child support and \$1,580 in spousal support. The amounts were based on the same incomes set out in the JCC Order, but modified to reflect the equal shared parenting time schedule. These adjustments were again without prejudice to the Father's ability to seek to impute income to the Mother or adjust his own income. The December Order also modified terms of the JCC Order regarding decision-making, special expenses and communication.

- [24] As part of the December 2023 negotiations, the Father continued to anticipate receipt of a draft separation agreement for his review. Although the Mother's counsel provided a draft agreement in February 2024, the Father maintains it did not include any elements from his August 2023 draft, and did not reflect the JCC Order or the amendments from the December Order. The parties continued to exchange further correspondence about the draft separation agreement in the first part of 2024, but were unable to reach agreement.
- [25] Part of the disagreement related to the Mother's income and the Father's belief that the Mother had failed to make adequate disclosure. As a result, the Father filed an application seeking disclosure (among other things). His application was heard May 7, 2024 before Associate Judge Scarth. In the resulting order, the Mother consented to providing disclosure of certain financial information, the remainder of the Father's relief was adjourned, and the matter was deemed appropriate for a summary trial and ordered to be scheduled during the week of June 10, 2024. The May 7, 2024 order made after application also set a filing deadline for any other notices of application sought to be heard at the same time as the application for summary trial.
- [26] The Father spent considerable time in his written materials and his oral submissions setting out his frustrations with the litigation process and what he perceived to be refusals to collaborate and find out-of-court solutions going back as far as the date of separation. As noted, the Father also took issue with some of the terms included in various consent orders. As explained to the Father during the hearing, there were multiple court applications and consent orders in this proceeding, and none of those orders were appealed on substantive or procedural grounds. Accordingly, concerns with respect to alleged errors in the orders, as well as concerns about delays and lack of collaboration (particularly where dated and where the issues were subsequently addressed in consent orders) are not properly before me nor relevant to the issues I must decide. I will not address them further.

Analysis

- [27] As noted above, because the parties were not married, the FLA governs these proceedings. Before addressing the individual issues above, I will briefly address the preliminary issue of suitability for summary trial.

Suitability for Summary Trial

- [28] The Father applied for summary trial and the Mother agreed the matters were suitable for summary disposition. The parties agree on many issues and on a number of other issues, their disagreements are relatively minor in nature. The major disagreements relate to final decision-making, holiday parenting time, imputation of income for support purposes and how to address certain issues regarding special or extraordinary expenses. The parties submitted those issues can be determined, and the necessary facts found, in the parties' various affidavits. While there are a number of issues on which the affidavit evidence conflicts, including family violence allegations, as noted above, not all of those conflicts

require resolution given what is and is not in issue between the parties. Neither party suggests the conflicts relate to critical decision points that would make it unjust to decide the matters summarily.

- [29] Rule 11-3(15) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR] permits a summary trial unless the Court is unable, on the whole of the evidence, to find the facts necessary to decide the issues, or the Court considers it to be unjust to decide the matter summarily. The governing principles remain as set out in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 1989 CanLII 229 (BC CA), 36 B.C.L.R. (2d) 202 (C.A.).
- [30] With respect to finding the necessary facts, a conflict in the evidence is not necessarily fatal to a summary trial application, however a judge should not decide issues of fact or law solely on the basis of conflicting affidavits: *Cory v. Cory*, 2016 BCCA 409 at para. 10; *Morin v. 0865580 B.C. Ltd.*, 2015 BCCA 502 at para. 56; *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 485 at paras. 58-60. Where other admissible evidence corroborates or contradicts one side's affidavits, the Court may be able to find the necessary facts despite a conflict in the evidence: *Greater Vancouver Water District* at paras. 59-60.
- [31] When assessing whether summary disposition would be unjust, the relevant factors include, but are not limited to: the amount involved, the complexity of the matters, urgency, prejudice by reason of delay, the cost of a conventional trial in relation to the amount involved, the course of the proceedings, whether credibility is a critical factor and whether the summary trial will create unnecessary complexity or result in litigation in slices: *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-31. This is not a checklist but provides a good indication of the factors that may concern the Court: *Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83 at para. 28.
- [32] On an application for summary trial, the Court must satisfy itself that the matter is suitable for summary trial, even if the parties agree: *Westsea Construction Ltd. v. 0759553 BC Ltd.*, 2012 BCSC 1799 at para. 93. I acknowledge that paragraph 3 of the May 7, 2024 order made after application provides that the matters "be deemed appropriate for and set for a summary trial". At that point, the notices of application had not yet been filed and a substantial number of affidavits had not yet been sworn. It is uncontroversial that suitability for summary trial depends on the facts and legal issues of each case. In my view, the justice who presides over the summary trial application retains discretion to determine suitability, based on the materials before them.
- [33] In this case, I agree with the parties that the issues are suitable for summary trial. The factual and legal questions surrounding decision-making, holiday parenting time, imputation of income, support, special expenses and family property are detailed, but not complex. They do not require exploration through the full trial process and I am able to find the facts necessary to decide them on the basis of the affidavit evidence and documentary exhibits before me. There are no significant issues of credibility at play in respect of the issues that I must decide. Rather than delaying or complicating the proceedings, especially

given the number of issues on which there is full or qualified consent, proceeding summarily will allow me to address and resolve this family law claim as a whole. In the circumstances, I exercise my discretion to decide these matters by way of summary trial.

Issue 1: Guardianship, Parental Responsibilities and Parenting Time

- [34] The parties agree on many orders relating to guardianship and parental responsibilities. Their disputes relate primarily to decision-making in the event they cannot agree, certain requirements with respect to travel and communications. In relation to parenting time, the parties main dispute is with respect to holiday parenting time with the Child. As these orders relate to parenting arrangements, s. 37(1) of the FLA requires that I consider the best interests of the Child. All of the child's needs and circumstances must be considered, including the factors set out in s. 37(2) of the FLA, namely:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs; and
 - (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.
- [35] To be in a child's best interests, an order must protect, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being: FLA s. 37(3). A person's conduct may only be considered by the Court if it substantially affects a factor set out in s. 37(2) and then only to the extent that it affects that factor: FLA s. 37(4).
- [36] Given that family violence is a relevant factor to be considered on a best interests analysis and the disputed allegations of family violence in this matter, I will address them first.

Family violence allegations

[37] The Mother raised a number of allegations of family violence in her evidence and submissions on summary trial. Under s. 1 of the FLA, "family violence" is defined broadly:

"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;

[38] For purposes of the best interests of the child analysis, s. 38 of the FLA requires a court to 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.

- [39] There is no suggestion of physical or sexual abuse in this matter. Instead, the Mother alleges behaviour that might be characterized as coercive control, both of herself and of the Child, which would primarily fall within subparagraph (d) of the definition in the FLA.
- [40] For example, the Mother deposes the Father subjected the Mother and the Child to yelling and screaming, as well as threats (including threats of self-harm if he did not get his way). The Mother says this is why she initially controlled the Father's parenting time after separation, and only agreed to incremental increases. The Mother deposes she was not allowed to have friends over to the former family residence and that she was isolated in the relationship and unable to exercise any independence. She also alleges the Father exercised financial control over her, requiring her to beg for money from him when required. She asserts there was a significant power imbalance in the relationship. The Mother also alleges the Father attempted to bully her after separation, including through the litigation process. Further, the Mother's counsel submitted it was significant that the Mother fled to transitional housing with the Child, suggesting that type of support is only offered to women leaving troubled relationships. There was no independent corroborating evidence of that statement and on a summary trial application, where the allegations are disputed and neither party was cross-examined, I give no weight to that particular submission.
- [41] For his part, the Father strenuously denies all allegations of family violence. He says the Mother's allegations are vague and unparticularized, pointing to various attempts, both by himself and his previous counsel, to obtain details regarding the Mother's allegations. He says he has never physically, mentally or emotionally abused either the Mother or the Child. He maintains he has and continues to have a very close and loving relationship with the Child and to the extent the Mother's narrative suggests he and the Child do not speak and discuss matters, or he is unaware of her needs, it is simply untrue. The Father says it is difficult to respond to the allegations directly because they lack specifics and have evolved over time.
- [42] The Mother suggested the Father's controlling nature was evident in some of the relief the Father sought on summary trial. For example, the Father requested the Mother surrender the Child's passport to him since he is the parent who travels internationally with the Child and is therefore the natural person to safeguard it. The Father also opposed the Mother adding the Child to the Mother's extended health and dental plans on the basis that the Father's plan is sufficient. The Father responds that the Mother also seeks orders to exert control, such as her request for final decision-making authority in the event of a disagreement, and her unwillingness to agree to share responsibility to safeguard mementos relating to the Child (and this after the Mother removed all of those items from the former family residence while the Father was away). He also maintains the Mother continued to withhold parenting time with him against the Child's wishes.
- [43] While there may be some truth to certain allegations made by each party, at the end of the day, all of the allegations are strongly denied. There are direct conflicts in the evidence on these points and there is no independent evidence before the Court that was offered, or that

is admissible, for the truth of its contents that could be used to corroborate either side's version of events. While the Mother did attach a letter to her 4th Affidavit that was labelled as a "psychological impact report," it was expressly not put forward as expert evidence or for the truth of its contents. Rather, counsel advised it was included to support the Mother's evidence of her own subjective experience in the relationship and of the fact that she sought medical and counselling assistance after separation. The Father objected to its admissibility at all. In my view, having not been offered for the truth of its contents, the letter could not provide the kind of independent evidence necessary to allow me to resolve the evidentiary conflicts on these points. On the whole, I find I am unable to determine the veracity of the allegations of family violence in this matter.

- [44] That said, given the issues in dispute between the parties, it is not necessary to do so. Family violence concerns are often relied on to oppose a child spending significant time with one parent. That is not the case here. While the Mother says her experience in the relationship is what prompted her to leave in February 2023, after an initial period of reduced parenting time in the immediate wake of separation, by July 2023, the Mother was willing to agree to equally shared parenting with the Child spending at least 50 percent of her time with the Father. By the time of the summary trial, the Child had been spending half of her time with the Father for nearly a year. There are no assertions of particular concerns during that timeframe, and neither party sought to change the regular parenting time schedule. Further, both parties agreed that they should share equally all parental responsibilities under the FLA. In the circumstances, the allegations of family violence are not a relevant consideration when determining what is in the Child's best interests going forward.

Guardianship and parental responsibilities

- [45] As noted, the parties agree on many orders relating to guardianship and parental responsibilities. The orders made by consent are addressed at the conclusion of these reasons. I will therefore only address where there was qualified consent or disagreement.

Emergency contacts and final decision-making

- [46] As part of the guardianship orders, the Father sought an order that both parents be listed as the first emergency contacts for the Child with various organizations. The Mother agreed in principle, but sought a modification to allow each party to add an additional emergency contact for the Child beyond the two parents. The Father did not directly oppose the suggested modification, but also did not expressly consent to it. In my view, the Mother's proposed modification is in the Child's best interests, as it ensures that there are additional persons who may be contacted in the event of an emergency where neither of the parents is immediately available. I will so order.
- [47] The more contentious modification sought by the Mother was in respect of final decision-making for important issues relating to the Child. The December Order provided that neither party was to make decisions for the Child without agreement of the other party and

without consulting the Child. The Father's proposed order tracks that language. He proposes that both parties will consult each other about important decisions relating to the Child and will attempt to reach agreement, and that neither party will make decisions for the Child without the agreement of the other and without consulting the Child. The Mother wishes to add a further sentence to provide that in the event the parties are unable to reach agreement, she will have the final decision-making authority and the Father will be at liberty to apply to the Court in respect of any decision he considers contrary to the Child's best interests.

- [48] The Mother says her modification is warranted for a number of reasons. She says mediation is not a viable option for these parties, pointing to the fact that, despite multiple proposals to mediate, they have not been able to even attend mediation yet. Further, the Mother says she has always been the primary caregiver for the Child and, particularly in light of her allegations of family violence, she is better placed to make the final decision about what is in the Child's best interests. While recognizing that there were distinguishing features, including the degree of family violence alleged, the Mother relied on the case of *L.A.R. v. E.J.R.*, 2014 BCSC 966, in support of her position that she should be given final decision-making authority in the event of a disagreement.
- [49] The Father says there is no evidence the Mother is better placed to make decisions for the Child in the event of a disagreement. He disputes the Mother's assertion that she was the primary caregiver for the Child. He also points to what he characterizes as examples of the Mother pressuring the Child post-separation, and not listening to the Child's needs and desires (particularly around the parenting time schedule). The Father says the parties should focus on reaching agreement in consultation with the Child, who is at an age and of a maturity that her views should be given significant weight. He says there is no need to specify who has the ultimate decision-making authority if they cannot agree.
- [50] In my view, this is not a situation that warrants the modification sought by the Mother. As noted, I am unable to determine the truth of the allegations of family violence during the relationship, given the conflicts in the affidavits and the lack of independent evidence that would allow me to resolve them. This is a very different situation from that in *L.A.R.* where, among other things, the father conceded the children should reside primarily with the mother, there were multiple serious incidents of family violence (including physical violence) by the father and the Court found it appropriate to grant all parental responsibilities to the mother and to order the father have supervised parenting to start. It was in that context, and only if the father were able to progressively earn a full level of parenting time through demonstrating appropriate behaviour, that the Court ordered the mother would retain ultimate decision-making authority in the event of a disagreement. There is no comparison to the facts here.
- [51] In any event, there is no specific evidence before me that the term in the December Order was insufficient to allow the parties to move forward, such that it now requires modification. To the contrary, the evidence demonstrates the parties were able to reach agreement on a

holiday parenting time schedule for the Child's winter break in December 2023 and January 2024, and on summer holiday time for 2024. While they have not yet attended mediation, and the evidence indicates the Mother did not wish to pursue a parenting coordinator early in the litigation, I understand that some of the hesitation related to the costs of those options. As my goal with this decision is to resolve all outstanding matters between the parties, the scope of mediation or a referral to a parenting coordinator to resolve a particular decision-making disagreement would presumably be considerably narrower, permitting a more focused process, and alleviating some of those cost concerns.

- [52] I am also very conscious that the Child is now 17 and in her final year of high school. As discussed with the parties during the hearing, the Child is at an age where decisions about important issues affecting her, such as whether the Child pursues additional education and where, are not decisions that can be made without significant consideration being given to her input, if not deferring to her views. As this Court has often recognized, at a certain stage, a child who disagrees will simply "vote with their feet", so to speak. Further, the Child will reach the age of majority in approximately 18 months, when these decisions will be hers to make.
- [53] Lastly, to the extent the Mother's proposal was an attempt to avoid further applications to court, the history of this matter does support that as a realistic outcome. Both parties are clearly passionate about doing what they think is best for the Child. Where the parties have been unable to agree after making best efforts and consulting with the Child, I am not convinced that giving final decision-making authority to either party, when the other party would be at liberty to apply to Court, would serve to prevent a court application. In fact, it may simply delay an eventual application and prolong the time it takes for the dispute to be resolved.
- [54] Accordingly, as set out below, I will grant the form of order respecting decision-making that was sought by the Father, with additional clarifications that it obviously applies only until the Child reaches the age of majority.

Travel

- [55] The Father requested a number of orders relating to travel with the Child. He advised that the terms sought at paragraph 9 of his May 22, 2024 notice of application were based on terms in draft separation agreements, but with certain modifications to ensure that travel within and outside of Canada would be treated equally, since the Child has family both within and outside of the country. The Mother agrees that the parents can travel within and outside Canada during their parenting time without the other's consent. She also agrees to the general terms sought by Father subject to the following two qualifications.
- [56] First, the Mother requests more advanced notice of approximate plans for international travel in particular, but also for any travel longer than the party's usual parenting time. As the desired language was not expressly set out in the Mother's application response, through

discussion at the hearing, it crystallized into a request for a term that any party proposing to travel internationally with the Child, or proposing to travel with the Child for a period longer than that party's usual parenting time, provide notice to the other party as soon as possible, but in any event, not less than 60 days before the proposed travel (unless the travel is for an emergency), of the proposed travel dates, location and as much information as possible. The goal is to permit both parties to plan accordingly. The Father was initially concerned that the request would impose different obligations on him as the parent most likely to travel internationally. As I indicated during the hearing, I do not view the request to operate that way. In my view, the Mother's requested modification is a reasonable one to make, in order to ensure that there is timely communication of any travel plans involving the Child.

- [57] Second, the Mother proposes to delete a clause set out at subparagraph 9(b) of the Father's May 22, 2024 notice of application suggesting that travel expenses for the Child might be special or extraordinary expenses. In the Mother's view, that clause does not make sense and risks confusion about how travel costs are to be addressed. She says it would be clearer for the order to simply provide that the Child's travel costs are borne by the travelling parent unless otherwise agreed. Since costs and expenses have been a source of conflict between the parties, I consider it appropriate to reduce the potential for confusion. I will grant the order with the Mother's requested modification. In my view, this does not in any way preclude the parties from agreeing to different arrangements with respect to travel costs.
- [58] Related to travel, the Father requests an order requiring the Mother to surrender the Child's passport to him. The Father says that while the Child has travelled within Canada with the Mother alone, the Child has only travelled alone internationally with him. As a result, he says the history of the Child's international travel makes him the natural person to safeguard the Child's passport. He submits the last parent who travels with the Child internationally can simply keep the Child's passport, with the other parent at liberty to request it if required. At the summary trial, the Father advised the Court of his scheduled plans to take the Child to France in July 2024 to see family and the Olympics. This would necessitate him having possession of the Child's passport in any event.
- [59] At the hearing, the Mother submitted the Child should safeguard her own passport, as she has the maturity to do so. The Mother says the Child should be able to keep the passport in her possession, at whichever residence she chooses. The Mother says the parent who is next going to travel with the Child can simply ask the Child to bring her passport to their residence.
- [60] While I appreciate that events may well have overtaken the Father's request while this decision was under reserve, in my view, there is no basis on which to order the Child's passport be surrendered to the Father. While the Father may have previously been the one to travel internationally with the Child, I am not persuaded that situation will necessarily continue. I am also conscious that, given the Child's age, she may well begin to travel by herself outside of Canada. While I make no definitive finding, there is a ring of truth to the Mother's concern that the Father's request to surrender the passport was, consciously or

not, a form of exercising control. Lastly, while travel may be the primary reason for needing a passport, there are other reasons why one or the other parent may require the Child's passport - such as for identification purposes or to complete certain paperwork.

- [61] In my view, this is primarily a logistical matter. However, given the dispute between the parties, I find it appropriate to order that the Child safeguard the Child's passport and that the Child may keep the passport at whichever residence the Child chooses. The Child may, of course, change where the Child chooses to keep the passport as she sees fit. Should either parent require the Child's passport for travel or identification-related purposes, that parent may request the Child to bring the Child's passport to their residence. The specific terms of my travel-related orders are set out in the final section of these reasons.

Communications

- [62] The parties largely agree on the terms of an order respecting their communications, which would vary and replace paragraph 6 of the December Order. The Mother requested two minor modifications to ensure that each party's choice of email and choice of language in their communications be respected. The Mother points to the Father's past insistence that the parties communicate in French, noting that she would prefer to communicate in English since that makes the parties communications easier for her to share with her counsel, and also facilitates their use in court if required, without the need for a translation.
- [63] Father says he does not care which email the Mother uses, but explains that he raised concerns because he did not recognize the email the Mother was using, so was uncertain who was contacting him. Further, the Father says, because the person was writing in English, rather than French, he was concerned it was counsel communicating with him, rather than the Mother. At the end of the day, however, the Father says he has no concerns with the Mother's requested modifications and will respect whatever email she chooses to use as well as her choice of language. His main hope is that the parties will be able to stop communicating through lawyers.
- [64] In the circumstances, I will grant the base order sought by the Father, with the two additions requested by the Mother. In light of the Father's concerns about not knowing who was contacting him, I will also order the parties to confirm the email address that they will use to communicate with each other. The specific language of my communications order is set out at the end of these reasons.

Holiday parenting time

- [65] In his May 22, 2024 notice of application, the Father sought orders respecting holiday parenting time during the Child's summer holidays and winter break. The Mother largely agreed with respect to summer holidays, but opposed the Father's request in respect of the winter break.

- [66] For the Child's summer holidays, the Mother is agreeable to each parent having at least one two-week period of vacation time during the summer, with the parties at liberty to make other arrangements, including for longer periods of time, by agreement in advance. However, the Mother asks that the order expressly require consultation with the Child given the Child's own needs and plans, including summer employment. The Father says he would consult the Child in any event and is aware of her various needs, but did not object to the Mother's proposed adjustments. Accordingly, I will make an order on the adjusted terms, which will vary and replace paragraph 3 of the July Order.
- [67] For the Child's winter break, the Father proposes an order based on the agreement the parties reached for the previous year. That agreement essentially provided that the Child would spend one week of the winter break with each parent, except that in each week, the Child would travel to the other parent's house for one day. The Father says this aligns with the fact that, prior to separation, the Child spent both Christmas Eve / Day and New Year's Eve / Day with both parents. He says his proposed schedule would ensure the Child could still see both parents around each of those two special days. The schedule would then alternate in the following year. The Father also says he only has one week of vacation during that time, and it important that his time with the Child be when he is not working.
- [68] The Mother proposes the parties simply split the two weeks equally, and eliminate the single day with the other parent in each week. The Mother says because neither party drives or has a car, transportation is by bus or sometimes taxi, and the one-day transfer creates significant disruption, including for the Child. In the Mother's view, it would be less disruptive (and more in keeping with the Child's age) to alternate Christmas Day, so that she has Christmas Day in 2024 and the Father has Christmas Day in 2025 (since there are only two more years left anyways). The Father disputes the logistical challenges, saying the parties live about 10 minutes away from each other.
- [69] I agree with the Mother that parenting time should be equally split for the Child's winter break going forwards, without a one-day transfer in the middle of each week. At the Child's age, the specific day has less significance than it would have if she were younger. While understandable, the Father's desire to continue seeing the Child on each of Christmas Day and New Year's appears to reflect more his interests as a parent, when my focus must be on what is in the best interests for the Child. At 17, it is reasonable to expect the Child will have her own plans for the winter break, and I am also conscious that the Child's winter break situation may be different next year, depending on her next life steps.
- [70] I recognize that while this decision has been under reserve, the parties may well have made arrangements for the Child's winter break in 2024-2025 that differ from those set out in the order at the conclusion of these reasons. To address that, the order permits the parties to make different arrangements by agreement. Given the timing of these reasons, my intent is not to disrupt plans that have already been agreed to between the parties. If there is an agreement, that agreement should govern for this year. In the event there is no agreement, my order will govern as it reflects my determination of how the Child's best interests are

served.

- [71] Although neither party sought an order with respect to the Child's spring break from school, I consider it appropriate to address it in order to provide direction in respect of all lengthier breaks from school. Since spring break is usually two weeks, it is appropriate to order that the regular parenting schedule continue, so that each parent has one week of spring break with the Child.
- [72] All orders for holiday parenting time that I make at the conclusion of these reasons are subject to the parties' ability to agree otherwise.

Issue 2: Child Support, Special Expenses and Spousal Support

- [73] The Father has paid child support and spousal support since March 2023. From March through end of May 2023, the Father paid on a voluntary basis, but the amount of support was based on shared parenting. A shared parenting schedule was not implemented until July 2023. Beginning June 1, 2023, the Father paid pursuant to the JCC Order, which set interim, without prejudice amounts for support and also addressed special or extraordinary expenses.
- [74] By virtue of the December Order, the interim, without prejudice amounts for support were changed effective July 1, 2023. However, given the timing of the negotiations leading up to the December Order, there is no dispute that the Father did not begin making adjusted support payments until October 1, 2023. No reconciliation of past support has been undertaken.
- [75] All support orders between the parties are interim, without prejudice orders, made by consent and without hearings. This summary trial represents the first point at which the issues of child and spousal support have been before the Court for determination based on evidence. Accordingly, the legal principles that apply are those for determining support at first instance, rather than those that apply where a party seeks a variation.
- [76] The history of monthly support payments to be made by the Father is set out in the following table:

Time Period

Parenting Time Schedule

Child Support

Spousal Support

Total Support

March to end of May 2023

Child with Mother more than 60%

\$747

\$1,751

\$2,498

June 2023

9-5 schedule in favour of Mother (more than 60%)

\$1,216

\$1,360

\$2,576

Since July 1, 2023*

50-50 Shared Parenting (began July 7, 2023)

\$759

\$1,580

\$2,339

* As noted above, the Father continued to pay the support amounts for June 2023 through July, August and September 2023. He began paying the adjusted support amounts set out in the last row of the table on October 1, 2023.

[77] The Father seeks determinations of child and spousal support from July 1, 2023 forward, including alleged arrears based not just on overpayments, but also based on the income he says should be imputed to the Mother as of July 1, 2023.

[78] The Mother admits the Father overpaid for July, August and September 2023, and admits he is entitled to reimbursement of some amount for that period. However, the Mother maintains she is also owed reimbursement for underpayments of support in March, April and May 2023. For those months, the Father's voluntary payments were not based on the parties' actual parenting time arrangements. The Mother disagrees that income should be imputed to her at all.

[79] The parties' incomes are the starting point for determining support. This is true whether the Court is considering child support under the Guidelines as required by s. 150 of the FLA, or spousal support under ss. 160-162 of the FLA as informed by the Spousal Support Advisory Guidelines [SSAG]. On their face, the JCC Order and the December Order each based the child support and spousal support amounts on the parties' annual or Guidelines incomes for 2022, as reported in the Form F8 Financial Statements each party filed in May 2023. The Mother filed hers May 12, 2023; the Father filed his May 23, 2023. Both were completed based on the parties' 2022 income tax information.

[80] While the evidence before the Court includes the Mother's income tax return from 2023, the Father did not provide any updated financial information before or during the hearing of the summary trial. It would not be appropriate to use the Mother's 2023 income tax information alongside the Father's 2022 income tax information to determine their support obligations. Accordingly, I will use the 2022 information that I have for both parties, as reflected in their Form F8 Financial Statements. While it would have been preferable to have updated financial information from both parties for 2023, the Father deposed that he was waiting for information from the Mother before he could complete his taxes. In any event, both parties agreed that there must be provision for reviews of support, which will ensure that adjustments can be made.

What are the parties' incomes for support purposes and should income be imputed to the Mother?

[81] The parties disagree on their respective incomes for support purposes.

[82] The Father says his Guidelines income for 2022 was \$132,473, as reported in his Form F8 Financial Statement. That figure reflects an employment income of \$136,096.80, with claimed deductions of \$1,123.20 for union and professional dues, and \$2,500 for yearly travel for work conferences. The Mother agrees with the claimed deduction for union and professional fees, but at the hearing and in certain materials, disputes the \$2,500 claimed for work conference travel. The Mother submits when the conference travel amount is properly added back in, the Father's income should instead be calculated as \$134,973 for 2022. This is the figure the Mother used for the DivorceMate calculations she provided to the Court.

[83] The Mother says her Guidelines income for 2022 was \$48,651, as reported in her Form F8 Financial Statement. That figure reflects an employment income of \$49,612.82 and deductions of \$961.22 for union and professional dues. The Father does not challenge the facial amounts reflected in the Mother's Form F8 Financial Statement, but says income should be imputed to the Mother from July 1, 2023 forward. He says the Mother's choice to work part-time, rather than full-time, constitutes deliberate under-employment. The Father seeks to impute an income of \$82,854 to the Mother for support purposes, based on the 2022 full-time salary for an instructor at Camosun College.

[84] I will deal first with the Father's income. Section 19(1)(g) of the Guidelines allows the Court to impute income where a spouse unreasonably deducts expenses from income. That determination is not solely governed by the whether the deduction is permitted under federal tax legislation: Guidelines, s. 19(2). In practical terms, the Mother seeks to have the Court find the Father's deduction of \$2,500 for work conference travel is an unreasonable deduction from his Guidelines income. The effect would be to add the \$2,500 deduction back into his income. The Father has the onus to show that the expenses are reasonable deductions from income. Where there is little evidence about the reasonableness of the deductions and the matter is not explored in depth at the hearing, the Court may employ common sense when considering the financial information provided: *Lupien v. Leblanc*,

2019 BCSC 431 at paras. 85-86.

- [85] The Mother says the Father has provided no actual evidence (in the form of invoices or other documentation) to support the \$2,500 deduction for work conference travel. In the absence of evidence, the Mother says the amount is not a reasonable deduction. The Father admits he has not provided express evidence of his travel expenses, but says he did not understand the need to provide all documentation when he was affirming the truth of the contents of his financial statement. He says no request was ever made to provide documentation and there are, in fact, many other work-related deductions that he could have claimed but chose not to, so the \$2,500 was a conservative figure. He effectively says it is well-known that his employment as a university professor requires him to travel to conferences, and such expenses are properly deductible.
- [86] In this case, the disputed deduction is relatively modest sum, unlike in certain other cases where much more significant deductions have been challenged: *M.P. v. P.P.*, 2024 BCSC 2138. The Father affirmed the accuracy of the information set out in his filed financial statement and provided an explanation for why he did not attach or provide further supporting documentation. Further, the Father's rationale for not appreciating that this would be an issue makes sense in light of the fact that, prior to the summary trial, the Mother has, on at least two occasions, sworn affidavits confirming that the Father's 2022 Guidelines income to be \$132,473 (see, for example: the Mother's 2nd Affidavit made December 6, 2023 at para. 7; the Mother's 3rd Affidavit made May 1, 2024 at para. 21). In addition, albeit in the context of special or extraordinary expenses, the Mother asks the Court to accept figures for certain expenses for which no independent documentation has been provided, on the basis that she asserts the Father did not request such documentation. Those figures are included in correspondence exhibited to an affidavit, rather than forming part of the sworn contents of the affidavit itself.
- [87] In all the circumstances, I am prepared to apply a common-sense approach to the Father's evidence in his affirmed financial statement, and to accept that in 2022, it is not unrealistic to expect that the Father, as a university professor, incurred conference-related travel costs of at least \$2,500. On that basis, I reject the Mother's submission and find that the Father had a 2022 Guidelines income of \$132,473 for support purposes.
- [88] With respect to whether income should be imputed to the Mother, s. 19(1)(a) of the Guidelines provides that the Court may impute income it considers appropriate when a parent is intentionally under-employed or unemployed, unless the under-employment or unemployment is required by the needs of a child or by the reasonable educational or health needs of the parent. To impute income to a parent, the Court only needs to determine that the parent is earning less than what they are capable of earning, not that the parent is intentionally under-employed or seeking to evade their support obligations: *K.P.B. v. A.S.R.*, 2016 BCCA 382 at para. 20, citing *Beissner v. Matheusik*, 2015 BCCA 308, at para. 44; *Barker v. Barker*, 2005 BCCA 177 at paras. 18-19. Imputing income to a payor parent is an inherently discretionary process, not a mathematical exercise: *Pousette v. Janssen*, 2023 BCCA 176, at

para. 48. The party seeking to impute income has the burden of establishing an evidentiary basis for such a finding: Lupien at para. 78, citing P.K.F. v. J.R.R., 2014 BCSC 932 at para. 98.

- [89] The Father says the Mother has deliberately chosen to work part-time for less income and has declined full-time job offers that would have provided her increased income. In particular, he points to a fall 2022 offer for a full-time position with the provincial Government that the Mother declined to accept, despite the fact that the Father says she could have earned more and had greater opportunities for advancement. Further, the Father says that since 2019, the Child has been able to make her own way to and from school, so there are no childcare responsibilities that preclude the Mother from working full-time or at least more than part-time.
- [90] The Father says the Mother is qualified for multiple jobs involving "teaching and/or using French" in the Greater Victoria area, which would pay her a salary of between \$75,000 to \$90,000 - considerably more than her current part-time position at Camosun College. The Father says the Mother's teaching schedule has involved teaching three to four courses a year over the fall and winter terms, which he says could easily be supplemented with additional teaching either during those terms or during the summer term, when she chooses not to work at all. The Father asserts the Mother did not make sufficient efforts to apply for additional employment until he indicated he would be seeking to impute income. He also says the Mother provides inconsistent evidence in her 3rd and 4th Affidavits about why she began to more actively seek other employment. In one instance, she suggests she was motivated by the Father's position that she was under-employed; in another, she suggests she was seeking to create new professional relationships.
- [91] The Father admitted he was uncertain what level of income would be fair for the Court to impute to the Mother. However, he maintains it is not fair that he works full-time but is required to pay the Mother support based on her choice not to work more than part-time. The Father says, in the circumstances, the Mother should be found to be under-employed. Given his research about possible jobs and salaries, he asks the Court to impute an annual income of \$82,854 to the Mother from July 1, 2023 forward, based on the 2022 salary for a full-time instructor (Step 5) at Camosun College.
- [92] The Mother says she is not under-employed. She says she has faced a number of different and significant barriers to finding a greater level of employment in Victoria than what she currently has. For example, the Mother says the post-secondary education system in Quebec is very different, such that her experience in Quebec did not easily translate to teaching positions in Victoria. Also, the Mother says she became pregnant not long after arriving in Victoria, and gave birth in July 2007, which impacted her job prospects. The Mother also says English is her second language and French-language employment opportunities are limited in Victoria. The Mother provides evidence that despite these barriers, she worked in contract teaching positions from 2006 to 2016, before securing her present 50 percent faculty position at Camosun College.

- [93] The Mother provides evidence of a number of job opportunities she has pursued over the years without long-term success. For example, she obtained an independent school teaching certificate and was hired as a substitute teacher at two private schools, but only received three calls in two years before her certificate expired. She was offered a position in Vancouver but was not able to move from Victoria given the Father was her only support. She deposes to the efforts she has made to obtain a full-time teaching position at Camosun, or to have her teaching recognized as being greater than 50 percent, but she has been unsuccessful in doing so.
- [94] The Mother explains that she declined the full-time position in the fall of 2022 for a number of reasons. She was preparing to leave the Father and did not believe she could make the necessary arrangements and meet with her counsellor and lawyer if working full-time. She also says she was "in a terrible psychological state" which would not have permitted her to succeed in a new professional environment. She applied for the job largely in an attempt to boost her self-esteem, and in the end, despite being significantly overqualified for the position, and despite her request that the provincial government consider increasing their offer, she was only offered a salary of \$64,000 per year, when the low end of the range for the position was \$57,000. She did not consider it worthwhile to work full-time for that rate of pay when she was making almost \$50,000 working part-time at Camosun with benefits.
- [95] Post-separation, the Mother says she has continued to look for employment as her health and the family law litigation proceedings have permitted. Although she remains working at Camosun, she deposes to having taken sick leave from October 16, 2023 to January 1, 2024. She also applied for and secured a six-week contract position with the University of Victoria in the spring of 2024, which paid a modest gross amount of approximately \$2,000. She also explains that many of the positions the Father identified as being more lucrative are not realistic opportunities for her. For example, one of the positions was a temporary contract; another was located in Metcheson, to which she could not feasibly commute; others are minimum wage or lack job security, and even if they could be used to supplement her current stable employment, she says she could not earn the more than \$80,000 the Father seeks to impute to her.
- [96] In *Beissner*, the British Columbia Court of Appeal confirmed the principles that guide a Court's decision about whether to impute income (as adopted from *Donovan v. Donovan*, 2000 MBCA 80, at para. 21). The principles relevant to this case can be summarized as follows:
- a) A parent has a duty to seek employment to support their child where they are healthy and there is no reason they cannot work, even if the parent cannot obtain interesting or highly paid work, or requires re-training.
 - b) The test is what is reasonable for the parent to earn, in light of factors such as the parent's age, education, experience, skills, health, work availability, freedom to relocate and other obligations.

- c) A court may impute income where a parent is persistently unemployed or under-employed.
- d) A parent can generally not avoid child support obligations by a self-induced reduction of income.

[97] Considering the above factors, I am not satisfied that the Father has established an evidentiary basis on which to impute income to the Mother, either of the amount he seeks to impute or at all. The Mother has been employed in a stable position, with good benefits, since 2016. She has pursued various avenues to find full-time employment or to improve her standing with her current employer, and has been unable to do so. Unlike in *Yeung v. Silva*, 2016 BCSC 1682, a case to which the Father referred me, the Mother has been employed for some time in a fairly well-paid, albeit part-time position. There has been no self-induced reduction of income. Instead, the Mother has provided evidence of her reasonable attempts to pursue better employment and why the options the Father identified are unworkable in a real sense. Further, it is understandable that the Mother would be hesitant to give up her current stable position without being certain about what she might be taking on. She has explained the barriers that she faced since well before separation, as well as the additional challenges she has faced post-separation, including in terms of her health and her obligations to respond to the family law litigation.

[98] In the latter regard, the Mother's affidavits detail a continuing series of correspondence and demands to which she and her counsel have been required to respond, which has detracted from her efforts to find both full-time or at least supplemental employment, as well as replacement housing. In about the first year after the parties separated, the Father filed 10 affidavits and brought four court applications. For his part, the Father has provided evidence he considers demonstrates that the Mother and her counsel have been unfair and slow in their approach to the family law proceedings and have thwarted the just, speedy and inexpensive resolution of these matters. Neither party can reasonably dispute the toll the litigation has taken on both of them.

[99] With respect to her personal characteristics, while the Mother has a lot of qualifications, she was 53 years old at the time of the summary trial application, having only exited what she considered to be a difficult relationship after nearly 18 years, during which time she was predominantly employed either part-time or on contract. She has not worked full-time since before the parties moved west in 2006. As noted, the Mother also provided some evidence that after the separation, she was required to take sick leave, which further impacted her employment and attempts to obtain additional or full-time employment since separation. While the Father questioned the causal connection between the relationship and a sick leave the Mother took six months after separation, the Mother evidence's that she has experienced some health struggles and was off work for a period of time is undisputed. Again, it is not necessary that I resolve what happened during the parties' relationship in order to accept the Mother's evidence that she her health post-separation has negatively impacted her ability to find full-time employment.

[100] Based on the above, I decline to impute income to the Mother, and find instead that her 2022 Guidelines income is \$48,651 for support purposes.

Child support

- [101] Both parties accept that they have a duty, under s. 147 of the FLA, to provide support to the Child for as long as she remains eligible for such support. The parties also accept that, under s. 150 of the FLA, child support is to determined based on the Guidelines, which take into account the parties' incomes and their equal shared parenting arrangement. The main disputes between the parties regarding child support concern the amount payable (based on their disagreement about incomes) and whether there is a requirement for the Mother to pay a nominal amount. The parties also recognize and agree that child support should be reviewed periodically, as parents have a duty to support their child in a manner commensurate with their incomes. This means that support should increase if a payor's income increases, and more generally, that support should be adjusted to reflect any material changes in circumstances: *D.B.S. v. S.R.G.*, 2006 SCC 37 at paras. 48, 131.
- [102] I have determined that income should not be imputed to the Mother beginning in July 2023, or indeed at any point. As the December Order required the Father to pay child support based on the 2022 Guidelines incomes for each party that I have confirmed above, I am satisfied that there is no basis on which to adjust the amount of child support payable from July 1, 2023 forward. This conclusion does not address the Mother's allegations of underpayment in the months of March, April and May 2023, and the Father's recognized entitlement to reimbursement for overpayments in July, August and September 2023. I will address those issues in the separate section relating to arrears below.
- [103] With respect to the Father's request that the Mother pay a nominal amount of child support, the Father believes that if he can be characterized as a "recipient" as well as a "payor" of child support, there are resulting tax benefits. While the Mother's counsel advised she had not encountered an order that required one spouse to pay the other \$1 in child support despite the Guidelines amounts, in my view, the Father's request, while not properly framed, is not actually unusual in the context of a child support order for a shared parenting arrangement.
- [104] Section 9 of the Guidelines governs support where the parties have shared parenting time (i.e. not less than 40 percent over the course of a year). Section 9 requires child support to be determined by taking into account the amounts set out in the applicable tables for each spouse, the increased costs of shared parenting time arrangements; and the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought. While the analysis under s. 9 of the Guidelines clearly involves more than a straight set-off of each parent's table amount (as addressed in *Contino v. Leonelli-Contino*, 2005 SCC 63), depending on the circumstances of the particular file, the Court may exercise is discretion to require each party to pay child support based on their respective table amounts, with the result that what is actually paid is the set-off amount between their

Guidelines obligations.

[105] The usual language for a child support order with a set-off amount in a shared parenting situation expressly recognizes that each party has an obligation to pay child support (because the other party has the child for at least 40 percent of the time), but provides that the parties' obligations can be satisfied by payment of the set-off amount alone. While the December Order requires the Father to pay what is for all intents and purposes the set-off amount, it is not worded in a manner that reflects an obligation on both parties to make child support payments.

[106] In the present circumstances, the parties did not provide me with evidence sufficient to permit a full analysis of all the factors under s. 9 of the Guidelines. However, it is not appropriate in the context of this file to adjourn the child support issues any further. Instead, I exercise my discretion to vary and replace paragraph 1 of the December Order with an order requiring child support to be paid by both parties beginning July 1, 2023, based on their respective Guidelines incomes as determined in these reasons, and the resulting set-off amount. This does not result in a practical change to the amount of child support payable. The monthly set-off amount that the Father must pay remains \$759. However, the language of the order will reflect that that amount is arrived at by virtue of both parties having child support obligations. In my view, this addresses what the Father was attempting to accomplish with his request for payment of \$1 of child support, and is consistent with the applicable legal principles. The specific terms of my order are set out at the conclusion of these reasons.

Special expenses

[107] The parties agree that special expenses should be payable based on their respective proportionate incomes. Under the December Order, the Mother's proportionate share was 35 percent and the Father's was 65 percent. However, because of the parties' disagreement over incomes, it is not clear if the intention was to maintain the current proportionate sharing levels, or to adjust them on the basis of any change in income. The parties also agree on many special expenses to be shared, as previously consented to in the December Order. They disagree on how two specific expenses should be addressed: the bursary or exemption the Mother received for the Child's tuition fees for 2024-2025 and whether both parties are entitled to claim their premiums for extended health and dental coverage. The Father also alleges arrears in relation to special expenses. I address those arrears as part of the overall discussion of support arrears in the separate section below.

[108] Given my findings above with respect to the parties' incomes, and the parties' agreement that their incomes should be reviewed at least annually for support purposes, I find the current proportional sharing between the parties remains appropriate. That conclusion is subject to the order below that requires the parties to review child support (and therefore proportional sharing of expenses) based on their 2023 Guidelines income.

- [109] With respect to the disagreement about the bursary or exemption for the Child's private school fees, the December Order provided that the Child's tuition fees were special and extraordinary expenses to be proportionally shared between the parties "after applying all bursaries received by any parent". The Father says he understood that term to mean that the amount of any bursary received by either parent would be deducted from the total fees, with the remaining fees to be shared proportionally. For the Child's 2024-2025 fees, the Father says the Mother arranged for each party to pay their respective proportional shares directly to the school, which he was okay with in principle. However, while the Father paid his 65 percent share to the school, he says he did not learn until he received the Mother's 4th Affidavit (sworn May 30, 2024 for the summary trial), that the school provided the Mother an exemption from the full 35 percent of the fees that she was to pay. The Father says it is unfair for only one parent to be exempted from the tuition fees. He does not challenge the Mother's entitlement to an exemption, but says the benefit of the exemption should be shared between both parents and the Mother should be required to pay 35 percent of the total amount charged.
- [110] The Mother admits that she received an exemption from her portion of the Child's tuition fees for 2024-2025, and that she applied it only against the \$400 tuition amount she was to pay each month. She says that when she shared with the school administrator the stress she was experiencing with respect to tuition fees, she was offered the fee exemption. The Mother acknowledges that the December Order states that tuition expenses will be shared proportionally after applying all bursaries but she maintains this is not a bursary. She says it was an exemption the school granted to her specifically because of her particular situation. As a result, she says the 2024-2025 exemption should not be applied to the Child's tuition fees in the same way that a bursary or tax credit would be.
- [111] The Father says the Mother's position amounts to semantics and, in any event, the school has referred to it as a bursary in its communications. The Father says the practical effect is the same regardless of the name - the Mother has been relieved of her burden to pay. He says she cannot seek to retain the entire benefit for herself when the parties had agreed that assistance with the Child's tuition burden would be shared.
- [112] I agree with the Father that where, as here, the parties have agreed that a particular expense is a special expense to be shared proportionally, it is unfair for one parent to be the sole beneficiary of any exemptions or bursaries in relation to that expense, regardless of what they might be called. I was not referred to any authority for the position advanced by the Mother. Further, the Mother consents to the Father's request for an order that post-secondary school fees be shared after applying any scholarships and bursaries received by either parent or by the Child. I find the Mother's positions to be inconsistent. This is especially the case in light of the evidence that appears to confirm that a bursary of \$1,200 for the 2023-2024 school year was applied against the total payable by both parties. The practical impact of the Mother's position regarding the "exemption" is that the Father bears the entire burden of the Child's tuition fees. The Mother has not provided a reasonable

explanation for why the Child's current private school fees should be treated in this manner.

- [113] Even if there are logistical reasons why the tuition fees must be paid directly to the school in order for the Mother to qualify for the fee exemption, that does not and, in my view, should not preclude the parties from proportionally sharing the amount of fees that the school charges between themselves. Accordingly, I find it appropriate to maintain the wording of the December Order such that tuition fees are to be shared proportionally with a clarification that this means after applying any scholarships, bursaries or other exemptions received by any parent. I have addressed the specific wording of this term in the final section of these reasons. I address what I anticipate may be a necessary adjustment in respect of the 2024-25 tuition fees paid by the parties below where I address other alleged arrears of support and expenses.
- [114] With respect to including the premiums for extended health and dental benefits as special or extraordinary expenses, the Father maintains that the coverage provided through his plan at the University of Victoria is much better than the Mother's plan through Camosun College. As a result, he says there is no need for the parties to incur the expense of having the Child covered under both extended plans, and seeks an order confirming only his extended coverage premiums are to be shared as special or extraordinary expenses. He disputes that his request is about control; he says it is purely a question of attempting to avoid an unnecessary additional expense for both parties.
- [115] The Mother says she enrolled the Child under her plan in December 2023, and there are benefits to having the Child covered under both plans. For example, there may be limits to coverage for a particular expense, or a certain type of expense may be covered under one plan, but not the other. The Mother also says it is not unusual for a child to be covered under both parents' plans when the parents are no longer together. In fact, s. 7(1)(b) of the Guidelines expressly contemplates that the Court may, on either spouse's request, provide an order that includes all or any "portion of the medial and dental insurance premiums attributable to the child" as a special expense to be shared. The Mother says it is in the Child's best interests to have as much health care coverage as possible. As well, the Mother says the additional premiums for the Child under her plan are not a significant expense. The evidence demonstrates that for 2024, the Father's premiums for the Child are \$51.90 per month, while the Mother's are \$68.40 per month.
- [116] The Mother also deposes that the Father previously refused to provide the Child (or the Mother) with a copy of his insurance benefits card so that the service providers could bill the insurance company directly. The Father disputes this. The Mother says where the Child's services have had to be paid up front, such that the Father must submit a request for reimbursement, this has resulted in delays or conflicts regarding reimbursement. If the Child is on the Mother's plan, at least when the Mother takes her to an appointment, the insurance can be billed directly and the Mother will not be out of pocket.

- [117] Finally, before the summary trial, the Mother proposed that if the Father would not agree to including both sets of premiums as special or extraordinary expenses, then beginning January 1, 2024, each party should simply pay for their own premiums and those costs should not be included as special expenses. The Mother made the same proposal at the hearing of the summary trial.
- [118] In the circumstances, where the Father remains opposed to sharing the costs of each party's health premiums, and the Mother is willing to assume the full costs of her premiums for the Child, I consider it appropriate to accept the Mother's proposal. It is not fair for only one party's premiums to count as a special expense to be shared. Further, if only one set of premiums can be included as a special expense, it seems likely the Child would lose out on extended health benefits that could be of assistance to her. On the other hand, ordering that both sets of premiums be included as special expenses imposes a much greater monthly burden on the Father than if he simply paid for his premiums himself. As the Mother wishes to maintain separate coverage for the Child under her plan, and is willing to absorb that cost, I am satisfied I should make the order she proposed. I order that from January 1, 2024 forward, each party is responsible for their own premiums for the Child's extended health and dental coverage with such expenses not to be shared as special or extraordinary expenses unless the parties otherwise agree. For clarity, any premiums paid by either party between March 2023 and December 31, 2023 can be claimed as special expenses to be shared. My specific order is set out below.

Spousal support

- [119] The parties agree, at least in the shorter term, that the Mother is entitled to spousal support. The Father has been paying since March 2023 and accepts the Mother is entitled to continue to receive support. Given the parties' disagreement on incomes, and on the nature of their roles during the relationship, there are disputes with respect to the amount of support and the duration, at least in the sense of how soon a review should be available. The Mother seeks an indefinite award of support on both compensatory and non-compensatory bases. The Father, perhaps understandably, did not make submissions about the specific bases for the Mother's support or the strength of her claim of entitlement.
- [120] Even where, as here, entitlement is conceded, the basis or bases for spousal support and the strength of a party's entitlement remain important to assessing how much support that party should receive and for how long: M.P. at para. 207.
- [121] Spousal support is addressed in Part 7, Division 4 of the FLA. Section 160 of the FLA specifies that where a spouse establishes entitlement to spousal support on consideration of the objectives set out in s. 161, the other spouse has a duty to provide support in accordance with s. 162. The objectives set out at s. 161 of the FLA are very similar to those in s. 15.2(6) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). Section 161 provides:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[122] The starting point for an analysis of spousal support is income disparity between the parties, but income disparity alone is not enough to establish entitlement to support. The Court must inquire about why there is an income disparity; that inquiry determines the basis for spousal support.

[123] There are three bases upon which a spousal support award may be made: compensatory (economic advantage and/or disadvantage); non-compensatory (needs-based); and contractual: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paras. 15, 49, 1999 CanLII 715; *Chutter v. Chutter*, 2008 BCCA 507 at para. 47, leave to appeal ref'd [2009] S.C.C.A. No. 41. A party may be entitled to spousal support on more than one basis, but the award is not divisible: *Zacharias v. Zacharias*, 2015 BCCA 376 at para. 39

[124] The premise of compensatory support is that the parties should equitably share the economic consequences of the relationship and its breakdown. Thus, where one spouse has foregone career opportunities in order to assume greater household and child-rearing responsibilities, or where one spouse has increased income-earning capacity as a result of the roles the parties played during the relationship, compensatory support may be warranted: *Zacharias* at para. 26. Generally, the longer the relationship, the greater the presumptive claim to an equal standard of living upon its breakdown: *Bath v. Bath*, 2024 BCSC 2215 at para. 241, citing *Chutter* at paras. 50-52.

[125] Non-compensatory support is needs-based support, designed to narrow the gap between the needs and the means of spouse upon relationship breakdown. In this context, need is a relative concept, going beyond basic necessities to consider the standard of living of the parties during the relationship: *Bath* at para. 242.

[126] Once entitlement is established (or conceded), the Court must determine the amount and duration of support to be provided, by considering the "conditions, means, needs and other circumstances of each spouse," including the length of time the spouses lived together and the functions performed by each spouse during the time they lived together: *FLA* s. 162. While the SSAG do not have the force of legislation, they are widely recognized as a useful

tool for determining the amount and duration of support: Chutter at para. 100. The application of the SSAG to the circumstances of particular parties will produce a range for both the amount and the duration of spousal support.

- [127] The parties were together for almost 18 years. They met in Montreal where each was working in academics and teaching. The Mother says she was working full-time in an established career. About a year into the relationship, the Father was offered a position in Victoria. The Mother maintains she understood the intention was only to move west for three years, and because she could take a three-year leave of absence from her position, she chose to move with the Father. When they did not return east, she lost her position in Montreal and was isolated from family and friends.
- [128] The Mother says further that shortly after arriving in Victoria, she became pregnant with the Child, giving birth in July 2007. She says she was the Child's primary caregiver and was responsible for most of the household chores, including meal preparation, cleaning and child-rearing. She says the Father was always focused on his work and career, and was busy with other commitments. Although the Mother did find contract work, and eventually a stable part-time position in 2016 at Camosun, as detailed above, she says she faced many barriers to obtaining employment in Victoria and effectively put her career goals on hold for the sake of the family. She did not work more than part-time after the parties moved west. Despite this, the Mother says the Father required her to pay the family's rent and expenses beginning in 2016.
- [129] The Father disputes the Mother's career was "established" in Montreal before they moved. He says she was only working part-time (in the sense of only teaching four courses, when full-time teaching load is eight courses). He says that is why she followed him to Victoria after only one year in the relationship. The Father also disputes that the intention was only to stay in Victoria for three years, noting that it would not have made sense for him to give up a tenure track position at McGill for a three-year temporary teaching job in Victoria. It is not necessary to resolve this conflict; it is clear the parties had very different understandings about their move out west.
- [130] The Father also disputes that the Mother was the primary caregiver for the Child. He says he participated equally. He also disputes the Mother's narrative regarding family finances, saying that because they did not have a joint account, they each worked out of their separate accounts, but treated them as if they were joint. Again, I am not able to conclusively resolve the conflict between the parties regarding their respective roles in the relationship. But it is not controversial that despite having a young child, and in the absence of evidence of any additional caregivers (such as a nanny), the Father was able to continue working full-time throughout the parties' relationship, while the Mother worked part-time. He maintains she chose to do so. I am satisfied that, at the very least until the Child reached school age, the Mother's part-time work and care of the Child facilitated the Father's career to some extent.

- [131] I will not repeat what I have set out above in relation to imputation of income and the Mother's evidence of the challenges she faced in obtaining full-time employment, particularly with a young child and without any family or close friends to assist with childcare. I am satisfied the Mother is entitled to support on a compensatory basis, given the disparity in the parties' incomes, and the role she must have played in the relationship, particularly when the Child was young and the Father was working full-time. I am also satisfied that the Mother forewent career opportunities by moving west and then having the Child in a city that lacked job opportunities for her and in which she did not have a support network.
- [132] I also agree the Mother has a needs-based entitlement to support. The Mother was 52 when the parties separated and has not worked full-time since at least 2006. While she has good qualifications, she lacks current full-time job experience, and has been unable to secure a higher level of employment at a salary commensurate with her skills, despite her best efforts. The Father has a significantly higher paid position and many years of full-time work and achievements on which he can rely. While the parties have some investments, there is no evidence that either party has any significant real property or other means of income generation apart from employment. The Mother has established a needs-based entitlement but it is not as strong as her compensatory entitlement.
- [133] There is no question the Father has a clear ability to pay, given his annual income. Based on SSAG calculations using the income he sought to impute to the Mother, the Father proposed to pay spousal support of \$249 per month until January 29, 2027 (six months after the Child turns 19), at which time, he proposed that support be reviewed.
- [134] The Mother seeks an order for indefinite spousal support with a review after 10 years, at the high end of the SSAG range. The Mother provided DivorceMate calculations showing the high end of the range would be \$2,194 per month. The Mother's calculations, however, were performed using the income she sought for the Father, which is different from the income I found above.
- [135] As noted earlier, I only have 2022 incomes from the parties, given the timing of the hearing of the summary trial. Accordingly, I have done a calculation using the "with child formula" in the SSAG, and inputting the parties' 2022 Guidelines incomes as I have found them, after 18 years of a relationship. The resulting SSAG range is \$1,090 (low); \$1,580 (mid); and \$2,129 (high) per month, for an indefinite (unspecified) period subject to variation and possibly review.
- [136] The parties appear to accept that the spousal support order should be indefinite, given the length of the parties' relationship, the existence of the Child as a dependent, and the fact that this is the first time spousal support has been determined by the Court. The questions then are where to locate the amount of support within the range (which is driven by the factors in Chapter 9 of the SSAG) and if a review is to be scheduled, for when.

- [137] In the circumstances, while I consider the Mother to have a relatively strong compensatory claim and a moderate non-compensatory claim, the strength of the Mother's claim is balanced against the fact that she has worked at least part-time so has built good qualifications and has a good employment base despite the challenges she encountered. The Child is only 18 months from reaching the age of majority, meaning the Mother's childcare responsibilities are not as intense as they would have been earlier in the relationship, supporting an award in the lower range. Parenting is also shared equally on a week-on, week-off basis, creating more space for the Mother to continue working towards self-sufficiency.
- [138] While the Mother's age is a more neutral factor where she has an established position, in the last six months, she has had to move from subsidized housing to different accommodations, suggesting an award towards the higher end of the range. The Father has an ability to pay, but also childcare expense of his own arising from the shared parenting. As noted, the parties do not have real property to be divided. While there are factors that weigh in favour of a higher end award, there are also factors that weigh in favour of an award towards the lower end of the range. I therefore consider it appropriate to award the Mother spousal support at the mid-range, and order the Father to pay the Mother spousal support of \$1,580 beginning July 1, 2023.
- [139] As I agree the award should be for an indefinite period, I turn to the question of a review. While review orders are not appropriate in all circumstances, I consider it appropriate to order a review here, based on the fact that this award is based on the parties' 2022 incomes, and in my view, there is a good possibility that once free of the pressures of the litigation and a bit farther removed from the separation, the Mother may well succeed in obtaining a full-time position or at least greater than part-time employment on a more regular basis. She has already made positive steps in this regard in the first year after separation by applying for and accepting the contract with the University of Victoria.
- [140] I also anticipate that given the Child's age and stage of life, there could be some significant changes for both the Mother and the Father in the next several years, depending on what the Child chooses to do following high school. I do not consider either the Father's proposal of a review after 4.5 years, or the Mother's proposal of a review after 10 years, to strike the right balance. In my view, the relevant factors and these parties' circumstances warrant a review 5.5 years after separation, which will be after August 2028. At that point, there should be further information respecting the parties' incomes and employment status, and the Child's next steps will be known, including the extent to which she continues to be eligible for child support. The review may address entitlement and/or quantum. My order in this regard is set out below.

Arrears of Support and Special Expenses

[141] The parties make multiple different claims of arrears in relation to support and special expenses. As a result of the decisions I have made above, certain other adjustments are also required. I will deal with each in turn.

Alleged underpayments by Father

[142] The Mother seeks reimbursement of child and spousal support amounts she says the Father underpaid for the months of March, April and May 2023. As set out in her counsel's letter of March 21, 2024 to the Father (attached as Exhibit "A" to the Mother's 4th Affidavit), the Mother says she was underpaid by \$200 per month (total of \$600). This is because the Father was paying support as if the Child was living in a shared parenting arrangement, when that schedule was not implemented until July 2023. The March 21, 2024 letter references an enclosed DivorceMate calculation but unfortunately, that document is not appended to the Mother's 4th Affidavit. I was unable to locate a copy of that calculation elsewhere in the Application Record, and was unable to replicate it.

[143] The Father did not wish to deal with support matters before July 1, 2023 in the summary trial, despite the Mother's position that all arrears should be addressed at the same time. As a result, I do not have the Father's position on whether he agrees with the specific amounts said to have been underpaid. The Father appeared to suggest, in certain affidavit materials and during the hearing of the summary trial, that because there was no agreement or order pursuant to which support was being paid for those months, it need not be paid at a particular amount. I do not accept that proposition, given the principles that underlie the payment of both child and spousal support, even in the absence of an agreement or an order.

[144] On the basis of the evidence before me, including repeated correspondence from the Mother's counsel during the relevant months confirming that the Mother did not agree that support should be based on shared parenting, I am satisfied there was an underpayment of support. I therefore order the Father to reimburse the Mother for his underpayment of child and spousal support for the months of March, April and May 2023. If the parties are unable to agree on the specific amount to be reimbursed, they may seek leave to make further brief written submissions through Supreme Court Scheduling. Any such request must be accompanied by a proposed timeline for an exchange of submissions, which are not to exceed five pages of text, plus any necessary calculation pages.

Alleged overpayments by Father

- [145] At paragraph 12 of his May 22, 2024 notice of application, the Father seeks reimbursement of \$20,703 of child and spousal support for which he says he overpaid the Mother between July 1, 2023 and June 10, 2024. I understand the Father to have arrived at that figure based on his request to impute annual income of \$82,854 to the Mother starting July 1, 2023. As I have dismissed the Father's request to impute income to the Mother at that amount or at all, the specific order sought at paragraph 12 is dismissed.
- [146] However, the Mother admits the Father overpaid child and spousal support for the months of July, August and September 2023. As noted in the table above, for those months, the Father paid support based on the June 2023 support amounts. He did not begin making payments based on the July 1, 2023 adjusted amounts until October 1, 2023. The Mother calculates the Father is owed \$237 per month (for a total of \$711). The Mother's calculations are consistent with the support amounts set out in the table above. They were also included in a table that accompanied the March 21, 2024 letter from the Mother's counsel to the Father.
- [147] Leaving aside the Father's request to impute income, at paragraph 25 of the Father's 5th Affidavit, made April 24, 2024, the Father agrees he overpaid for those three months in the amount of \$237 per month. Based on the Mother's admission and the Father's acceptance of the amounts he overpaid, I order the Mother to reimburse the Father for his overpayment of child and spousal support for the months of July, August and September 2023, in the amount of \$237 per month, for a total of \$711.

Arrears of special expenses and adjustments based on these reasons

- [148] Both parties prepared tables setting out their respective tallies of the amounts paid and not paid by each for special expenses since separation. Unfortunately, the tables include different categories of expenses (not all of which appear to be "special expenses") and cover different periods of time.
- [149] The Mother's table, which is attached as part of Exhibit "A" to the Mother's 4th Affidavit, includes the amounts for underpayments of support and overpayments of support set out above. I will not address them again.
- [150] The Mother's table appears to capture special expenses from February 2023 to January 2024 and reflects amounts owing by both the Mother and the Father. There are recognizable special expense costs for the Child's health care, extended coverage premiums, and school tuition fees for March through June 2023. During the hearing, the Mother's counsel adjusted the second page of the table to remove the top three entries, two on the basis they had been paid by the Father, and one of which the Mother removed because it had not been submitted for reimbursement. The Mother did not remove the request for reimbursement for \$254.80 for the Child's cell phone from February 2023 to March 2024, despite the Father having advised during the hearing that, contrary to the December Order, he had not been

provided with a receipt for that expense.

- [151] The Mother's table also includes a claim requesting reimbursement from the Father for \$846.86. This amount is said to represent the Father's half-share of the rent and storage locker costs at the former family residence for February 2023, based on the Mother and Child having left half-way through the month. When asked about that request for reimbursement, the Mother's counsel admitted that, unlike the other expenses set out in the table, there was no agreement or consent order between the parties addressing that cost or how it would be shared. While it is briefly addressed in counsel's letter of March 21, 2024, unlike the other requests for arrears of support and special expenses, a request for reimbursement of those amounts was not set out in any of the notices of application or application responses that were before me on the summary trial. While it may well be a legitimate cost for the Mother to request be reimbursed, based on the date of the parties' separation, in my view, it is not properly in issue before me, and I decline to address it. I encourage the parties to use their best efforts to resolve this issue without the need for a further court application. The amount involved is too modest.
- [152] The Father's table captures some of the same special expenses, but was updated to May 16, 2024, so it captures more recent special expenses as well as including more recent payments by the Mother. The Father's table does not include arrears of support. It also does not include the cell phone expense said to have been incurred by the Mother, which may again be because the Father has not been provided with a receipt for that expense. The Father's table does include amounts for his extended health care premiums for January through April 2024. His table is attached in several different places in the Application Record, including as Exhibit "I" to the Father's 10th Affidavit, made June 6, 2024.
- [153] The Father urged me to examine the two tables closely, as he disputed the Mother's calculation of the overall amount owing to him. I have done so but have also considered the two further categories of adjustments in respect of special expenses that need to be made based on these reasons.
- [154] First, and most relevant to the expenses on the Father's table, I have made an order that, as of January 2024, the parties are to be responsible for the cost of their own premiums for extended health coverage for the Child. As a result, the costs for the Father's premiums for January through April 2024 no longer constitute special expenses to be shared between the parties. When those expenses are removed, there is alignment between the parties' tables in respect of special expenses owed by the Mother from March 2023 to January 2024. The Father's table indicates the dates on which the more recent receipts were sent to the Mother and I am satisfied those expenses are properly shared between the parties. Taking into account the expenses which the Father's table reflects have now been paid by the Mother, I am satisfied that the Mother owes the Father \$1,383.56 in arrears for special expenses up to May 16, 2024. I order the Mother to reimburse the Father for arrears of \$1,383.56 for special or extraordinary expenses.

- [155] With respect to arrears of special expenses owing by the Father, given my findings above, when the rent and storage locker cost and the underpayments of support are removed, the only expense which could potentially be outstanding on the Father's side of the ledger is the \$254.80 for the Child's cell phone from February 2023 to March 2024. In the orders below, I retain the requirement for the parties to provide receipts when seeking reimbursement of special expenses. Accordingly, to the extent that expense remains unpaid, I direct the Mother to provide the Father a receipt for that expense, so that the Father may pay his proportionate share in accordance with the usual process for reimbursing shared special expenses. I have deliberately not made an order, as in my view, the expense cannot be considered in arrears if the process for seeking reimbursement has not been followed.
- [156] Lastly, an adjustment is required with respect to payment of the 2024-2025 tuition fees for the Child's school. I have made an order requiring that tuition fees be shared proportionally after applying all scholarships, bursaries and exemptions received by any parent. As the Mother only applied the exemption to her 35 percent share, rather than to the total amount of tuition to be paid, the Mother has not yet contributed her 35 percent share of the 2024-2025 tuition fees. I order the Mother to reimburse the Father for her 35 percent share of the amount the Father paid for the Child's 2024-2025 tuition fees. If the parties are unable to agree on the specific amount to be reimbursed, they may seek leave to make further brief written submissions through Supreme Court Scheduling. Any such request must be accompanied by a proposed timeline for an exchange of submissions, which are not to exceed five pages of text, plus any necessary calculation pages.
- [157] For clarity, the parties are at liberty to set-off the amounts owing under the various arrears orders as convenient and agreed between the parties. The specific terms of my orders are set out in the conclusion of these reasons.

Issue 3: Division of Family Property including Pensions

Family Property

- [158] Part 5 of the FLA addresses family property and family debt. The default presumption is for equal entitlement to and responsibility for family property and family debt subject to an agreement or order that provides otherwise (FLA s. 81). A Court may order unequal division if satisfied that an order for equal division would be "significantly unfair" (FLA s. 95). There is a high bar to establish the kind of significant unfairness that warrants a departure from the presumption of equal division.
- [159] Section 84 of the FLA broadly defines family property as all real or personal property owned by at least one spouse, or in which at least one spouse has a beneficial interest, on the date of separation, unless it is excluded property (FLA ss. 84 and 85). Family debt includes all financial obligations incurred by a spouse from the beginning of the relationship to the date of separation and after separation if incurred to maintain family property (FLA s. 86).

- [160] The parties did not own any real property or vehicles. The former family residence, where the Father continues to live, is a rented apartment. As a result, the parties' claims respecting division of family property are different than in many family law proceedings.
- [161] The parties do have bank accounts and investments, as well as both employment pensions and Canada Pension Plan / Quebec Pension Plan pensions. While I deal with pensions separately below, all of these financial assets are agreed to be family property under the FLA. In his May 22, 2024 notice of application, the Father proposed that each party should retain the assets in their own name free from claims by the other party, with some additional terms to address what happens in the event a party failed to disclose an asset. The Mother agrees that each party should retain the assets in their own name, as long as it is clear that such an order does not address pensions. The Mother seeks division and equalization of the parties' pensions, and by way of her own separate notice of application, sought to have the pension issues addressed at the same time as the Father's May 22, 2024 application for summary trial.
- [162] There are also disputes between the parties with respect to certain smaller items of personal property, such as books and music, as well as documents and mementos in relation to the Child, such as her birth stories, pictures, school work and gifts given to her parents. Neither party seeks any orders in respect of specifically identified family debt.
- [163] As there is a lot of agreement on many of the details regarding division of family property, I will address these issues by reference to the specific relief sought in the parties' respective notices of application. Before turning to the issues, I note that in support of his positions regarding division of family property, the Father sought to rely on certain privileged materials prepared for the May 2023 JCC. I do not attribute the Father's actions in this regard to anything other than a lack of understanding about the use that can properly be made of materials prepared for a JCC. At the hearing, I ruled those materials, including Exhibit "S" to the Father's 7th Affidavit, inadmissible on the basis of privilege.
- [164] Turning first to the relief sought at paragraph 17 of the Father's May 22, 2024 notice of application, as noted, the Mother agrees that each party should retain the assets in their sole name free from claims by the other party, with the caveat that the order sought should not apply to the parties' pensions. Consistent with her own notice of application filed May 22, 2024, the Mother seeks division and equalization of the Father's employment and other pensions. The Father's May 23, 2024 notice of application sought mirror relief in respect of the Mother's employment and other pensions. I address pensions below, but given the parties' agreement in principle, I consider it appropriate to grant a general order that the parties retain the assets in their sole name, with the clarification that the order does not apply to pensions.
- [165] The Father sought an additional order at subparagraph 17(b) of his May 22, 2024 notice of application requiring either party to reimburse or indemnify the other party for any expenses incurred to pursue the division of assets that the party failed to disclose. This

followed a request for another additional order at subparagraph 17(a) that, if either party failed to disclose an asset on their Form F8 Financial Statement, including an asset disposed of before separation, the party who failed to disclose will pay the other party 50 percent of the value of the undisclosed asset. The Mother's counsel advised that while a term requiring payment of 50 percent of the value of any undisclosed asset is not uncommon, the second order seeking reimbursement of the costs for pursuing such an asset is not one she has previously encountered. The Father advised he believed that term had been proposed in one of the draft separation agreements the parties had exchanged.

[166] In the circumstances, and without any concrete evidence that there are assets that either party has failed to disclose, I am comfortable making the first additional order that requires payment of 50 percent of the value of any undisclosed asset, but I do not consider it appropriate to go further and make the second order. In my view, such an order would be speculative. There may be many reasons why an asset could have been missed, and I do not wish to presuppose that the parties will be unable to agree should such an asset come to light. To the extent a situation arises where one party must incur expenses to pursue the division of an undisclosed asset, the reimbursement of such expenses is more properly addressed at that time, in light of the particular facts at play. An advanced order is not warranted.

[167] With respect to items of personal property, and the relief sought at paragraph 18 of the Father's May 22, 2024 notice of application, the Mother agrees in principle that each party should be the sole owner of items of personal property in their possession. She also agrees that if items solely and clearly belonging to the other party are subsequently located, each party should make arrangements to return them. I will make that general order. However, the Mother's specific concern is that there are a significant number of her personal property items that she says have not been returned to her. She identified them on a list at Exhibit "P" to her 4th Affidavit, made May 30, 2024.

[168] The Father says that on April 29, 2023, he provided the Mother more than 30 boxes of belongings the Mother had requested and the Mother inspected the contents of the boxes before she left the building. The Father acknowledges that on September 25, 2023, the Mother requested further belongings which she did not believe had been included in the boxes already returned to her. The Father says he has reviewed the list attached as Exhibit "P" to the Mother's 4th Affidavit, and in some cases, he does not agree the items belong solely to the Mother; in other cases, he does not believe the items remain in his possession. Given the length of time that has passed since the Mother left the former family residence, the Father is understandably not comfortable with the Mother returning to the former family residence to search for outstanding items herself.

[169] In the circumstances, and as discussed with the parties during the hearing, the only assistance I can usefully provide to the parties is to require the Father to make best efforts to locate and return any outstanding materials listed on Exhibit "P" to the Mother's 4th Affidavit that he agrees are solely hers by January 30, 2025. If the Father is unable to locate

any of the items, he must indicate which items could not be found and provide a brief explanation of how he searched for those items. For clarity, should any of the items be found subsequent to January 30, 2025, they will be captured by the general requirement that the Father make arrangements to return any such items.

- [170] With respect to the documents and materials relating to the Child, and the orders sought at paragraph 19 of the Father's May 22, 2024 notice of application, the Father says the Mother removed all such material from the former family residence in February 2023. He says this deprived him of important mementos and memories involving the Child, including gifts the Child made specifically for him. He seeks an overarching order that the Child be permitted to control and handle all such materials but also more specific orders that would at least allow him to digitize them, so that he has access to those memories. He proposed that the parties divide the materials for safeguarding at both parents' residences on behalf of the Child.
- [171] The Mother says the Child should be allowed to safeguard all such materials as she sees fit. The Mother says the more specific orders sought by the Father are inconsistent with that overarching goal. When asked if she would oppose an order clarifying that the Child was not precluded from bringing materials to either residence if she chose, the Mother raised concerns that the Child not be caught in the middle in respect of these issues. However, she did not recognize that a general order for the Child to safeguard those materials places the Child in the middle in any event.
- [172] In my view, and while I appreciate that there may have been particular rationales for having done so in the moment, I do not consider it fair for the Mother to both remove all of the materials relating to the Child from the former family residence and then to subsequently resist attempts by the Father to access those materials in any way, at the very least, for purposes of making copies for himself. I anticipate both parties would agree that, for a parent, such mementos and keepsakes have a value that cannot be quantified.
- [173] While I recognize the dangers of putting the Child in the middle, I agree that the Child is the appropriate person to safeguard the documents and materials that relate to her at the location or locations she chooses. She is old enough and mature enough to do so. In addition to the responsibility for safeguarding, in my view, the Child is also at liberty to decide whether any of those materials should properly be given to one or the other of her parents. For example only, the Child may consider it appropriate to gift a Father's Day card to the Father, and a birthday card she made for the Mother to the Mother. Her choice to do so must be respected by both parties. I also consider it appropriate to clarify that nothing precludes the Child from providing any of the materials that are hers to safeguard to either of her parents, to permit them to digitize or make copies of those materials. I add that if a parent requests such materials for that purpose, the parent must respect the Child's decision about whether to provide them, and neither parent is to interfere with or attempt to influence the Child's decisions in this regard. My specific orders are set out below.

Pensions

- [174] The parties filed what were essentially mirror notices of application on May 22, 2024 (the Mother's application) and May 23, 2024 (the Father's application) respecting pension division issues. The Mother wished to ensure that all matters at issue in the family law proceeding would be addressed at the same time, rather than leaving issues of pension division to be determined in future.
- [175] In his notice of application and at the hearing, the Father maintained the pensions division issues were too complicated to address at the same time as everything else, especially because each party has pensions based in Quebec. The Father believes the parties require further information, and potentially expert assistance (for example, from a pension expert or a family law lawyer in Quebec), with respect to pension division under the various applicable statutory regimes, including those which govern pensions and pension division in Quebec. I understood the Father's mirror request for pension division and equalization to be a position in the alternative, if the Court did not accept his primary invitation to adjourn those issues. However, he says that if the Court is inclined to address pension issues between the parties, then it should address both parties' pensions at the same time.
- [176] At the hearing, counsel for the Mother clarified that the orders sought in the Mother's May 22, 2024 notice of application (which were then mirrored in the Father's application) do not result in immediate division of pensions. Rather, they confirm that the parties' pensions are family property, confirm each party's entitlement to a portion of the other's pensions based on their period of cohabitation, and specify certain other pension-related rights and entitlements. In other words, the orders reflect that the parties' pensions are to be divided in principle, based on the duration of the parties' relationship and the applicable legislative schemes (including, but not limited to, the FLA, the Pension Benefits Standards Act, S.B.C. 2012, c. 30, federal legislation such as the Canada Pension Plan, R.S.C. 1985, c. C-8, and any applicable Quebec legislation). The details of the specific divisions are not directly addressed by the orders sought. However, the Mother's counsel properly conceded that pension division issues are complicated and specific information regarding the details of the parties' pensions was not before the Court.
- [177] Part 6 of the FLA deals with pension division, once a party is determined to be entitled to an interest in benefits under a pension plan pursuant to part 5 of the FLA. Section 111(1) of the FLA provides:

Benefits to be determined in accordance with this Part

111(1) If a spouse is entitled under Part 5 [Property Division] to an interest in benefits, the spouse's share of the benefits and the manner in which the spouse's entitlement to benefits is to be satisfied must be determined in accordance with this Part, unless an agreement or order provides otherwise.

- [178] Part 6 of the FLA addresses division of pensions for "local plans", "extraprovincial plans" and "supplemental plans", as those terms are defined in s. 110. The FLA's rules for pension division are based on the kind of plan at issue. Defined benefit plans and target benefit plans are dealt with in one way (s. 115); defined contribution plans are addressed in another way (s. 114); and hybrid plans are addressed in a different way again (s. 116). There are different ways that pensions can be divided where former spouses have an entitlement; in many cases, the FLA contemplates that the administrators of the particular pension plans will be directly involved.
- [179] I do not have detailed information regarding the parties' pension plans. While it seems reasonable to expect that the Quebec pensions would be "extraprovincial plans" under the FLA, there may be nuances of which I am not aware. Nor do I know whether the parties' plans are defined benefit plans or some other kind of plan. In short, I do not have sufficient information to make detailed orders regarding the parties' pensions.
- [180] During the hearing, I engaged with discussions with the parties about how best to assist in addressing these issues, given that each party agrees their pensions are family property and each party also agrees the other party is entitled to a share of their respective pensions based on the duration of the parties' relationship. In the circumstances, I consider it appropriate to provide the more general relief sought in respect of each employment pension, namely, to confirm that the parties' employment pensions are "family property" and to confirm the duration of the parties' relationship for purposes of division of those pensions. I decline to provide orders for more specific pension-related rights and entitlements, such as designation of beneficiaries, in respect of the parties' employment pensions. I do not wish to make orders that may not be feasible when all the pertinent information is considered.
- [181] With respect to the parties' earnings under the Canada Pension Plan and Quebec Pension Plan, the parties agreed and I will grant orders providing for equalization of those earnings based on the applicable legislation and the duration of the parties' relationship. The parties will be at liberty to return to court for further directions regarding pensions if so required.
- [182] The Father also sought an order at subparagraph 3(b) of his May 23, 2024 notice of application requiring the Mother to reimburse or indemnify him for any expenses incurred to pursue the division of any pension benefits that she failed to disclose on her Form F8 Financial Statement. He advised he included that request for relief based on the Mother's statement in her 5th Affidavit that she was uncertain if she was entitled to any pension benefits as a result of her work at Concordia University. On the last day of the hearing, the Mother's counsel advised the Court that the Mother had received an email from Concordia University confirming that she does not have any entitlement to pension benefits from her brief contract work there. A copy of that email was provided to the Father. As that was the basis for the Father's request and I am satisfied that the Mother does not have any undisclosed pension benefits, I decline to make the order sought by the Father in respect of possible future reimbursement or indemnification.

[183] The specific orders I am making in respect of the parties' pensions are set out in the concluding section of these reasons.

Conclusion and summary of orders

[184] In conclusion, based on my findings and determinations above, and my consideration of all of the evidence and submissions provided during the summary trial, I make the orders that follow in respect of the issues between the parties.

[185] In the list of orders below, I have included terms to which both parties consented in their respective applications, even where I have not expressly addressed those terms in my reasons above. Those terms are indicated as being "by consent". I have also incorporated terms from the earlier consent orders which the parties did not seek to change, with modifications where I considered necessary, so that the order arising from this summary trial can serve as a comprehensive final order, without the need for the parties to refer back to earlier orders. To the extent the orders made below vary and replace the terms of earlier orders (for example, with respect to spousal support), I have made that express. Except where otherwise indicated, each of the orders below is made under the FLA.

[186] I grant the relief sought at paragraph 1 of the Father's May 22, 2024 notice of application, and, pursuant to Rule 11-3 of the SCFR, order that this matter is suitable for disposition by summary trial.

[187] In light of the Child's age, I replace term 1 of the July Order regarding the regular (non-holiday) parenting time schedule with the following order:

- a) Until the Child reaches the age of majority, and subject to further written agreement of the parties or order of the court, the Child will continue to have parenting time with the parties on a week-on / week-off basis, with the exchanges to occur each Friday at a time to be arranged directly with the Child. The parties may make adjustments to the regular parenting time schedule by agreement in writing. For clarity, once the Child reaches the age of majority (whichever is later), any parenting time schedules will terminate, and the Child is at liberty to determine when she sees each parent, even if the Child continues to reside with one or both parents.

[188] With respect to guardianship, parental responsibilities and holiday parenting time for the Child, and the relief sought at paragraphs 5-10 of the Father's May 22, 2024 notice of application, I make the following orders:

- a) By consent, the Mother and the Father are the guardians of the Child under s. 39(1) of the Family Law Act.
- b) By consent, the Mother and the Father will share equally all of the s. 41 parental responsibilities for the Child under s. 40(2) of the Family Law Act.

- c) By consent, if either parent dies, the surviving parent will be the sole guardian of the Child and will have all parental responsibilities for the Child.
- d) The Mother and the Father will ensure that both the Mother and Father are listed as first emergency contacts for the Child's school, for all medical purposes and for any other organizations that require an emergency contact, and each party may also add one additional name as a further emergency contact for the Child.
- e) By consent, the Mother and the Father will advise each other of any matters of a significant nature affecting the Child.
- f) With respect to decision-making, paragraph 2 of the December Order is varied and replaced with the following:
 - i. Until the Child reaches the age of majority, the Mother and the Father will consult each other about any important decisions that have to be made concerning the Child and will try to reach agreement on those decisions. The Mother and the Father will not make significant decisions concerning the Child without first consulting the Child. For clarity, once the Child reaches the age of majority, she is at liberty to make such decisions for herself.
 - g) The Mother and the Father are permitted to travel within Canada and outside of Canada with the Child during their parenting time without the consent of the other parent.
 - i. For any proposed international travel with the Child and for any travel for a period of time longer than the party's usual parenting time (other than emergency travel), the parties will provide each other with notice of the proposed trip (including proposed dates and location) as soon as possible, and in any event, not later than 60 days in advance of the proposed trip.
 - ii. At least 30 days in advance of any scheduled travel, the travelling parent is to provide the other parent with a travel itinerary, contact addresses, telephone numbers and evidence of reasonable travel medical / health insurance coverage obtained for the Child for the duration of the trip.
 - iii. The parent travelling with the Child will be responsible for the Child's travel costs, unless otherwise agreed in advance in writing.
 - iv. In the case of an emergency supported by documents, such as a death in the Child's extended family or an extended family member's admission to palliative care, the affected parent is permitted to travel with the Child for the emergency. Such emergency travel time will take priority over the regular parenting time schedule of the other parent, but the non-travelling parent will be entitled to a period of make-up time equivalent to the emergency travel time, to be scheduled in the same calendar year unless there are an insufficient number of days remaining in the calendar year.
 - v. Each party will sign a travel authorization for any international travel within 14 days (or within 24 hours in the case of emergency travel) of receiving the request from the other parent. Neither parent will withhold travel authorization unreasonably.

- h) The Child is to safeguard the Child's passport and may keep it at whichever residence the Child chooses. If either parent requires the Child's passport for travel or other identification-related purposes, that parent can request the Child to bring the passport to that parent's residence.
- i) With respect to holiday parenting time during the Child's summer, winter and spring breaks from school, I vary and replace paragraph 3 of the July Order with the following orders:
 - i. The Mother and the Father will have the following parenting time during the Child's summer holidays: each parent will have one two-week vacation period with the Child, as agreed in writing between the parties after consultation with the Child about her needs and plans for the summer. The parties are at liberty to agree in writing to the Child spending longer vacation periods with each parent, or having more than one two-week period with each parent, provided the parties consult with the Child about her needs and plans and provided the summer holiday time is divided equally between both parents. Other than during extended vacation periods that have been agreed to in advance, the alternating week-on / week-off parenting time schedule will remain in place during the summer holidays.
 - ii. On or before May 1st of each year, the parties will exchange their proposed summer holiday schedule for the coming year in writing.
 - iii. The Mother and the Father will have the following parenting time during the Child's winter holidays: Subject to any agreement the parties have reached otherwise, for 2024, the Child will spend the first week with the Mother and the second week with the Father, with the parties splitting the winter school holidays equally, commencing the Friday on or after school finishes. In the following year, the schedule will be reversed, such that the Child spends Christmas Day with the other parent in 2025. The parties will alternate parenting time during the winter school holidays in each subsequent year until the Child reaches the age of majority. For clarity, when Christmas Eve and Christmas Day fall wholly within one parent's scheduled week, the Child will spend both days with that parent for that year. The Child will then spend New Year's Eve and New Year's Day with the other parent. In the following year, the schedule will be reversed.
 - iv. The Mother and the Father will have the following parenting time during the spring school break: the regular week-on / week-off parenting schedule will continue, such that the parties split the spring school break equally, beginning the Friday on or after school finishes. The parties are at liberty to agree in writing to a different arrangement for the spring school break, in consultation with the Child.
 - v. The parties may make adjustments to the holiday parenting time schedule by agreement in writing, after consultation with the Child.
 - vi. For clarity, once the Child reaches the age of majority, the holiday parenting time schedule will terminate and the Child is at liberty to decide the extent to which she spends her holiday time with either or both parents.

j) With respect to communications, I vary and replace paragraph 6 of the December Order with the following: Subject to the modification below in the event of an emergency, under s. 225 of the Family Law Act, the Mother and the Father will communicate directly with each other only by email, using the personal email address of their choice and in the language of their choice, with the choice of email address and choice of language to be respected by the other parent. Within 30 days of the date of this order, both parties must confirm the email address they intend to use for such communications. A party must respond to an email from the other party within 10 days of the email being sent by that other party. In the event the Child requires emergency medical care while with one parent, that parent must promptly notify the other parent of the emergency by text message or phone.

[189] In light of the Child's age, and to consolidate all necessary orders, I vary and replace term 8 of the JCC Order regarding the Child's area of residence as follows:

a) Until the Child finishes high school, neither party will change the Child's residence from the Greater Victoria area, as bounded by Langford / Colwood to the West and Sidney to the North, without agreement of the other party and without consulting the Child.

[190] I similarly replace paragraphs 9 and 10 of the JCC Order regarding the parties' conduct with the following orders:

a) Pursuant to ss. 222 and 225 of the Family Law Act, the parties will:

- i. put the best interests of the Child before their own interests;
- ii. encourage the Child to have a good relationship with the other parent and speak to the Child about the other parent and that parent's partner, if any, 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 Child.

b) Pursuant to ss. 222 and 225 of the Family Law Act, the parties will not:

- i. question the Child about the other parent or time spent with the other parent beyond simple conversational questions;
- ii. discuss with the Child any inappropriate adult, court or legal matters; or
- iii. blame, criticize or disparage the other parent to the Child.

[191] With respect to the parties' incomes, and the relief sought at paragraph 11(a) of the Father's May 22, 2024 notice of application, I dismiss the Father's request to impute income to the Mother retroactively or prospectively. Instead, I make the following orders:

a) The Father is found to be a resident of British Columbia and is found to have an annual income of \$132,473 for purposes of both child support under the Guidelines and spousal support under the SSAG.

- b) The Mother is found to be a resident of British Columbia and is found to have an annual income of \$48,651 for purposes of both child support under the Guidelines and spousal support under the SSAG.

[192] With respect to child support and special expenses, and the relief sought at paragraphs 11(b) and 13-15 of the Father's May 22, 2024 notice of application, I vary and replace paragraph 1 (as it relates to child support) and paragraphs 3 and 4 of the December Order with the following orders:

- a) Based on each party's Guidelines income for 2022, and the 50-50 shared parenting time schedule, beginning July 1, 2023 and continuing on the first day of each month thereafter, the Father will pay the Mother monthly child support of \$1,216 for the support of the Child and the Mother will pay the Father monthly child support of \$457 for the support of the Child. To satisfy each party's obligations to pay child support, the Father will pay to the Mother the net sum of \$759 per month. These payments will continue for as long as the Child is eligible for support under the Family Law Act or until further agreement of the parties or order of the Court.
- b) For as long as the Child is eligible for support under the Family Law Act, the parties will share the special and extraordinary expenses for the Child in proportion to their incomes. By consent, commencing July 1, 2023, the parties' respective proportional shares are 35% for the Mother and 65% for the Father.
- c) The following expenses will be special or extraordinary expenses for the Child:
 - i. Private school tuition and other school fees, after applying all bursaries, scholarships or other exemptions received by any parent;
 - ii. By consent, post-secondary school fees, if agreed in writing in advance by the parties, and after applying all bursaries and scholarships received by any party or by the Child;
 - iii. Medical costs, including dental or paramedical expenses not covered under regular or extended health insurance;
 - iv. By consent, training and course fees required for any job opportunities such as lifeguard courses and driving lessons;
 - v. By consent, registration fees, travel costs and material cost for organized extra-curricular activities such as Model UN, sport, painting, acting, writing or dancing; and
 - vi. By consent, other expenses that the parties agree to qualify as special or extraordinary expenses, if agreed in writing in advance by the parties.

- d) For clarity, both parties are entitled to enrol the Child in their respective extended health and dental plans, but beginning January 1, 2024, the parties are each responsible for paying their own premiums for the Child. Those expenses are not special or extraordinary expenses to be shared unless otherwise agreed between the parties. The cost of premiums incurred by either party from March 2023 to the end of December 2023 are to be shared as special or extraordinary expenses.
- e) By consent, the Mother and the Father will not incur any special, extraordinary or medical expenses over \$150 without the written consent of the other parent.
- f) For so long as the Child is eligible for support under the Family Law Act, the parties will exchange:
 - i. copies of their respective income tax returns for the previous year, including all attachments, not later than May 31st each year; and
 - ii. copies of any notices of assessment or reassessment provided to them by Canada Revenue Agency immediately upon receipt.
- g) The parties will conduct a review of ongoing child support and the Child's special or extraordinary expenses (including the parties' proportional share of such expenses based on their respective incomes) as follows:
 - i. on an annual basis in June of each year for which support remains payable; and
 - ii. upon any material change in a party's income, being any increase or decrease in income of 15 percent or greater.
- h) Any adjustments to child support, and any adjustments to the proportional share of special or extraordinary expenses, arising from the June review are to be made effective July 1st of each year, based on the previous year's tax information. Any adjustments arising from a material change in circumstances are to be made effective on a date agreed between the parties, but no later than three months following the material change in income.
- i) By January 30, 2025, the Mother and the Father are to calculate and exchange their respective Guidelines incomes for 2023, based on their 2023 tax information, and are to agree on any adjustments to the child support amounts beginning July 1, 2024, based on the parties' 2023 Guidelines income, continued 50-50 shared parenting and the applicable support tables in the Guidelines. The amount of support payable by the Father in the applicable table should continue to be set off against the amount of support payable by the Mother in the applicable table, to arrive at a net amount payable by one party in satisfaction of both parties' child support obligations. To the extent the parties' Guidelines incomes for 2023 require a change in their proportional sharing of special and extraordinary expenses, that adjustment is to be made effective July 1, 2024.

[193] In light of the orders made above regarding child support and special or extraordinary expenses, I vary and replace paragraph 5 of the December Order, regarding the process for payment and review of such expenses, with the following order:

- a) Each party will pay the other party their share of any special expenses for the Child within 30 days after receipt of an invoice and proof of payment for the expense. In June of each year for which support remains payable, the parties will, in conjunction with their annual review of child support and special or extraordinary expenses, review all special expenses and payments for the previous one-year period of June 1 to May 31 to ensure each has paid their share of special expenses. If a party believes the other party has not paid their share of one or more expenses, they will advise the other party of any amounts owing by June 30, and the owing party will pay their outstanding share by July 31. The parties will make best efforts to resolve any disagreements about outstanding payments for special expenses before applying to court.

[194] With respect to spousal support, and the relief sought at paragraphs 11(c) of the Father's May 22, 2024 notice of application, I vary and replace paragraph 1 of the December Order (as it relates to spousal support) with the following orders:

- a) Pursuant to the Family Law Act, the Father will pay to the Mother for her support the sum of \$1,580 commencing on July 1, 2023 and continuing on the 1st day of each and every month thereafter for an indefinite period, but the Father may apply for a review of quantum and / or entitlement any time after August 2028.

[195] With respect to the underpayment and overpayment of child and spousal support, I make the following orders:

- a) The Father is to reimburse the Mother for his underpayment of child and spousal support for the months of March, April and May 2023 in an amount to be determined by the parties. If the parties are unable to agree on the specific amount to be reimbursed, they may seek leave to make further brief written submissions through Supreme Court Scheduling.
- b) The Mother is to reimburse the Father the sum of \$711 for his overpayment of child and spousal support for the months of July, August and September 2023.

[196] With respect to arrears of special or extraordinary expenses, I make the following orders:

- a) The Mother is to reimburse the Father for arrears of \$1,383.56 for special or extraordinary expenses.
- b) The Mother is to reimburse the Father for her 35 percent share of the Child's 2024-2025 tuition fees as paid, in an amount to be determined by the parties. If the parties are unable to agree on the specific amount to be reimbursed, they may seek leave to make further brief written submissions through Supreme Court Scheduling.

- c) The parties are at liberty to set-off the amounts owing under the various arrears orders as convenient and agreed between the parties.

[197] To the extent the special expense in relation to the Child's cell phone for February 2023 to March 2024 remains unpaid, I direct the Mother to provide the Father a receipt for that expense, so that the Father may pay his proportionate share in accordance with the usual process for reimbursing shared special expenses

[198] As I have declined to impute income to the Mother retroactively or prospectively for support purposes, and in light of the orders made above respecting support and arrears, the relief sought at paragraph 12 of the Father's May 22, 2024 notice of application is dismissed.

[199] I decline to grant the order sought at paragraph 16 of the Father's May 22, 2024 notice of application. That paragraph sought an order confirming, presumably for income tax purposes, that all spousal support paid by the Father to the Mother since March 1, 2023 would be included as income in the Mother's hands (and therefore taxable) for the years she received it, and conversely deducted from the Father's income for the years he paid it. While the Mother consented to this particular relief, in my view, such an order is unnecessary as the federal income tax legislation already treats spousal support payments in this manner. I did not understand there to be any dispute between the parties that the Father had in fact made spousal support payments since March 2023 and the Mother received them as such. To the extent the Father requires a finding for tax purposes that his voluntary payments of \$1,751 for March, April and May 2023 are spousal support payments, I make that finding, but I do not consider an order to be required. If I have misunderstood, the parties may request leave to make further written submissions before me on this issue by contacting Supreme Court Scheduling within 30 days of the date of this order.

[200] With respect the division of family property and the relief sought at paragraphs 17-19 of the Father's May 22, 2024 notice of application, and in light of the orders I am making below regarding the parties' pensions, I order that:

- a) The Mother and the Father will retain the assets in their sole names, free from any claim by the other party and without equalization of the balances, including, without limitation, personal bank accounts, RRSPs and TFSAs, but not including the parties' pensions.
- i. By consent, if the Mother or the Father have any additional accounts or, before separation disposed of any financial assets, that were not disclosed on their financial statements made in May 2023, the party who failed to disclose will pay to the other party 50% of the value of any such account or asset.
- b) Subject to the exception noted below, the Mother and the Father will each be the sole owner of personal clothing, media, books, recreational equipment, furniture and household goods in that person's possession. If the Mother or the Father discovers personal items that clearly and solely belong to the other party, the Mother or the Father will make arrangements to

return them to the other party. By way of exception, by January 30, 2025, the Father is to make best efforts to locate and return any outstanding items listed in Exhibit "P" to the Mother's 4th Affidavit, made May 30, 2024, that the Father agrees are solely the Mother's property. If the Father is unable to locate any of the items, the Father must indicate which items could not be found and provide a brief explanation of how the search was conducted. If the Father subsequently locates any additional items belonging solely to the Mother after January 30, 2025, he is to make arrangements for their return.

- c) The Mother and the Father will allow the Child to control and handle all documents and personal items that relate to her (including, but not limited to, pictures, school work, artwork, etc.), and to safeguard those materials at whichever residence the Child chooses. The Child is at liberty to decide if she wishes to give any of those materials to either party, and the parties must respect any choice made by the Child in this regard. Nothing in this order precludes the Child from providing any of these materials to either party so that the materials may be digitized or otherwise copied and then returned to the Child. If a party requests the Child to provide certain materials for such purposes, the party must respect the Child's decision about whether to provide them and neither party is to interfere with or influence the Child's decisions in this regard.

[201] The relief sought at paragraphs 2 and 4 of the Father's notice of application filed May 22, 2024 is dismissed. The relief sought is unnecessary. As noted, where I consider, or the parties agreed, that the terms of the earlier orders should continue, I have brought them forward into this final order, with any necessary modifications. In other cases, I have replaced terms in the earlier orders, with the ultimate goal that the parties will no longer need to refer back to the earlier orders.

[202] The relief sought at paragraph 3 of the Father's notice of application filed May 22, 2024 is granted, and paragraphs 2 and 4 of the July Order are set aside. In my view, in light of the summary trial and the comprehensive order I am making, it is no longer necessary to maintain a term of order postponing mediation that was contemplated more than 18 months ago. If there is a need to consider mediation in future, either party is at liberty to propose mediation anew.

[203] Similarly, given the stage of the proceedings, this decision and the age of the Child, an order permitting the preparation of a views of the child report at the Father's expense at some future point "if necessary" is no longer appropriate. I am hopeful there will not be a future need for such a report following this resolution of all issues between the parties. If the need does arise, I would strongly encourage the parties to co-operate in the preparation of such a report to assist the Court. Should agreement not be reached, any issues respecting the report's preparation and cost should be revisited in light of the circumstances that exist at that future point in time.

[204] With respect to the parties' pensions and the relief sought at paragraphs 1-4 of the Mother's May 22, 2024 notice of application, as well as the relief sought at paragraphs 1 and 4-7 of the Father's May 23, 2024 notice of application, I order that:

- a) By consent, the time for filing the Father's May 23, 2024 notice of application is abridged pursuant to Rule 21-2 of the SCFR.
- b) The benefits accrued by the Father's University of Victoria Pension Plan (the "UVic Pension"), including benefits in another plan that supplement the Pension, are family property.
 - i. The Mother is entitled to a share of the Father's UVic Pension determined and divided in accordance with Parts 5 and 6 of the Family Law Act, the Pension Benefits Standards Act, the Canada Pension Plan or any other applicable legislation (the "Mother's Proportionate Share").
 - ii. For purposes of determining the Mother's share of the UVic Pension, the portion of the UVic Pension subject to division is from July 1, 2005, the date the parties commenced cohabitation, to February 14, 2023, the date the parties separated (the "Entitlement Date").
- c) The benefits accrued by the Father's McGill University Pension Plan (the "McGill Pension"), including benefits in another plan that supplement the McGill Pension, are family property.
 - i. The Mother is entitled to a share of the Father's McGill Pension determined and divided in accordance with Parts 5 and 6 of the Family Law Act, the Pension Benefits Standards Act, the Canada Pension Plan or any other applicable legislation (the "Mother's Proportionate Share").
 - ii. For purposes of determining the Mother's share of the McGill Pension, the portion of the McGill Pension subject to division is from July 1, 2005, the date the parties commenced cohabitation, to February 14, 2023, the date the parties separated (the "Entitlement Date").
- d) By consent, the benefits accrued by the Mother's Camosun College Pension Plan (the "Camosun Pension"), including benefits in another plan that supplement the Camosun Pension, are family property.
 - i. The Father is entitled to a share of the Mother's Camosun Pension determined and divided in accordance with Parts 5 and 6 of the Family Law Act, the Pension Benefits Standards Act, the Canada Pension Plan or any other applicable legislation (the "Father's Proportionate Share").
 - ii. For purposes of determining the Father's share of the Camosun Pension, the portion of the Camosun Pension subject to division is from July 1, 2005, the date the parties commenced cohabitation, to February 14, 2023, the date the parties separated (the "Entitlement Date").

- e) The benefits accrued by the Mother's Université du Québec Pension Plan (the "UQAM Pension"), including benefits in another plan that supplement the UQAM Pension, are family property.
 - i. The Father is entitled to a share of the Mother's UQAM Pension determined and divided in accordance with Parts 5 and 6 of the Family Law Act, the Pension Benefits Standards Act, the Canada Pension Plan or any other applicable legislation (the "Father's Proportionate Share").
 - ii. For purposes of determining the Father's share of the UQAM Pension, the portion of the UQAM Pension subject to division is from July 1, 2005, the date the parties commenced cohabitation, to February 14, 2023, the date the parties separated (the "Entitlement Date").
 - f) By consent, the Father's unadjusted pensionable earnings under the Canada Pension Plan will be equalized under sections 55, 55.1 and 55.2 of the Canada Pension Plan. For purposes of the division of the Father's Canada Pension Plan, the parties began cohabitating on July 1, 2005 and separated on February 14, 2023.
 - g) By consent, the Mother's unadjusted pensionable earnings under the Canada Pension Plan will be equalized under sections 55, 55.1 and 55.2 of the Canada Pension Plan. For purposes of the division of the Mother's Canada Pension Plan, the parties began cohabitating on July 1, 2005 and separated on February 14, 2023.
 - h) By consent, the Father's unadjusted pensions earnings under the Quebec Pension Plan will be equalized under the applicable legislation. For purposes of the division of the Quebec Pension Plan, the parties began cohabitating on July 1, 2005 and separated on February 14, 2023.
 - i) By consent, the Mother's unadjusted pensions earnings under the Quebec Pension Plan will be equalized under the applicable legislation. For the purposes of the division of the Quebec Pension Plan, the parties began cohabitating on July 1, 2005 and separated on February 14, 2023.
 - j) The parties are at liberty to apply for further directions regarding division and equalization of their respective pensions as required.
- [205] I decline to make the orders sought at subparagraphs 1(c) and (d) and 2(c) and (d) of the Mother's May 22, 2024 notice of application, and the orders sought at subparagraphs 4(c) and (d) and 5(c) and (d) of the Father's May 23, 2024 notice of application. In declining that relief, I am not prescribing or precluding any particular outcome should either party die before the other party receives their proportionate share of the pension in question, nor am I precluding either party from naming a beneficiary under their respective pension plans. I am declining to make those particular orders because I agree with both parties that some additional information regarding their employment pensions is required, particularly their Quebec-based pensions, and I do not wish to make orders without being certain that they are practically feasible.

- [206] The parties requested that I seize myself at least of any further applications regarding directions for their pensions. I am conscious that seizing myself puts the parties at the mercy of my schedule in addition to their own schedules. Accordingly, I will not seize myself, but I will retain the file materials for the next six months. Should the parties wish to appear before me again in respect of pension matters, they are at liberty to make a request to appear before me and I will decide if the matter is one that would best be heard by me or if, including for the sake of timeliness, it is best addressed by another justice.
- [207] As I have addressed the pension issues with the above orders, the relief sought at paragraphs 2 and 3 of the Father's May 23, 2024 notice of application is dismissed.
- [208] Finally, with respect to costs, at paragraph 20 of the Father's May 22, 2024 notice of application, the Father sought costs of the summary trial. The Mother opposed that request. In family law proceedings, the usual rule, as codified in Rule 16-1(7) of the SCFR, is that costs are awarded to the successful party unless the Court orders otherwise. Success does not mean success on every issue; rather, the concept is one of "substantial success". While not a mathematical exercise, "substantial success" is often considered to approximate a 75 percent success rate when all matters in dispute are considered globally: *Fotheringham v. Fotheringham*, 2001 BCSC 1321, leave to appeal ref'd 2002 BCCA 454 (Chambers); *Marquez v. Zapiola*, 2014 BCCA 35. Courts have broad discretion in determining whether a party has been substantially successful: *Reid v. Reid*, 2017 BCCA 191 at para. 9.
- [209] On the facts of the present case, I consider the parties to have had divided success; neither can be said to have achieved substantial success. In many cases, the parties agreed to the terms sought, or their disagreements were minor. The Father's major request was to impute income to the Mother retroactive to July 1, 2023. I declined to grant that relief, which impacts all aspects of my support orders. However, I did grant other relief sought by the Father, and I recognize his efforts to move these matters forward to a resolution. I consider it appropriate to exercise my discretion under Rule 16-1(7) of the SCFR and to order that each side bear their own costs.
- [210] Given the comprehensive nature of the order that I am making, and the complications arising from its connections to the previous orders, I direct counsel for the Mother to prepare the draft order arising from these applications. It must be provided to the Father for his review and comment before signing and entry. I direct the Father to provide any comments on the draft form of order within 10 business days of receipt.

"K. Wolfe J."

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