
CANADA / JUDGMENT

N.H. v. M.H.

2018 BCSC 921

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 921 N.H. v. M.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

N.H. v. M.H.,

2018 BCSC 921

Date: 20180605

Docket: E49239

Registry: New Westminster

Between:

N.H.

Claimant

And

M.H.

Respondent

Before: The Honourable Madam Justice Marzari

Reasons for Judgment

Counsel for the Claimant:

R.L. Taylor

Counsel for the Respondent:

R.S. Gill

Place and Dates of Trial:

New Westminster, B.C.

February 13-16 and 23, 2018

Place and Date of Judgment:

New Westminster, B.C.

June 5, 2018

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INTRODUCTION

- [1] The parties were married in India on July 17, 2002. It was an arranged marriage, and one they both profess to have regretted almost immediately upon meeting each other the day before the wedding. She was 28 and he was 52.
- [2] Their accounts of this meeting is typical of their accounts of their marriage. Ms. K's evidence (as I shall refer to the claimant in this case) was that Mr. H had refused to tell her his age prior to the wedding, and that she was very surprised to find him so much older than herself. However, she had made a promise to God to marry him, and she is a very devout Muslim woman, so she agreed to follow through with the wedding with some trepidation.

Her devotion to God and to her husband as a matter of faith was a continuing factor throughout the marriage.

- [3] Mr. H's account was that Ms. K's father and her family had many debts, which he agreed to pay. It upset him that Ms. K admitted that his wealth was the reason that she was marrying him. However, when he saw that the wedding was all ready to proceed in her village he did not object to proceeding. This sense of toleration and indulgence of Ms. K pervaded Mr. H's general evidence regarding the marriage.
- [4] The parties not only have a significant age discrepancy (at the time of this trial Ms. K was 43 and Mr. H was 68), but there is also significant discrepancy in their financial and other resources, both coming into the marriage and at its dissolution. Mr. H is a Canadian citizen, having immigrated to Canada from Fiji decades ago, is fluent in English, has been working very successfully as a procurement officer at the University of British Columbia ("UBC"), and prior to that, worked for the federal government and for the City of Surrey in similar positions. Mr. H had been married before his marriage to Ms. K, and has adult children of that marriage. He has since married again. In 2016, Mr. H's reported income was over \$120,000 for the year. He intends to retire at the end of this year.
- [5] In contrast, Ms. K was born in 1974, the year that Mr. H arrived in Canada. She came to the marriage with no assets, and she leaves the marriage with very little in assets and income. While she has been studying English since the dissolution of the marriage, she testified at trial with the assistance of an interpreter, and her current employment, commenced since the dissolution of the marriage, is sporadic and part-time as she works to improve her English. Rather than leaving the workforce, Ms. K is in the position of just beginning her participation in the Canadian workforce.
- [6] There are two children of the marriage: the eldest was born on November 17, 2004, and the youngest was born in November 2009. The eldest is now 13 years old and in grade 8, while the younger child is eight years old and in grade school. Both attend French immersion schools as well as Muslim school. The eldest is fluent in four different languages, and both appeared to be very good and conscientious students.
- [7] The parties disagree as to the date of separation. Mr. H says that it was in May of 2014, whereas Ms. K initially took the position that it was later in 2015, but now submits that the date had been settled between them as February 17, 2015.
- [8] The dissolution of the parties' marriage raises a significant number of unresolved issues which include allegations of family violence and control during the course of the marriage, the extent of disclosure of assets, the determination and division of family property and debt, the extent of excluded property, and a request by Mr. H for a variation or cancellation of the spousal support payable to Ms. K in anticipation of his impending retirement. Central to the trial were both parties' positions that the value of the family assets, and specifically the family home, should be divided unequally as a result of significant unfairness factors pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA]. In this regard, I note that the FLA

applies to this matter as it was in effect at the time that the claim was commenced.

- [9] Section 206 of the FLA grants the court a statutory discretion to prohibit the publication of a party's identity in family law proceedings. This discretion is subject to the open court principle, and must be exercised in light of Charter values: *Dagenais v. Canadian Broadcasting Corp.*, [1994] S.C.J. No. 104 at para. 68; *R. V. Mentuck*, 2001 SCC 76 at paras. 22-23; *X. v. Y.*, 2011 BCSC 943 at paras. 14-20. An order by the court limiting access to information in a court case is an exceptional remedy: *X. v. Y.* at para. 4. When an anonymity order is justified, the most appropriate remedy will usually be replacing one or more of the parties' names with initials: *B.G. et al v. HM.T.Q. in Right of B.C.*, 2004 BCCA 345 at para. 26.
- [10] In my view, this is one of those rare cases where there are real and serious risks to the privacy of the children involved that would best and most minimally be addressed through an order to initialize the names of the parties. I make that order.

BACKGROUND

- [11] This claim has already been the subject of a number of court hearings that have resulted in court orders, some of which were final and not subject to any variation request.
- [12] By way of court order made November 20, 2015, a parenting schedule was determined granting Mr. H access to the children every weekend from Friday after school to 6:00 p.m. on Sunday. Both parties were prohibited from communicating with each other or exiting their vehicles during the access exchanges, and were to communicate only in writing and in English. Child support and spousal support orders were made commencing November 1, 2015 in monthly amounts of \$1,556 and \$1,520 respectively, with Ms. K being at liberty to apply for retroactive spousal support from the date of separation.
- [13] On June 6, 2017, by way of consent order, the following final orders were made:
- a) An order for divorce;
 - b) An order making both parties guardians of the children, with Ms. K having primary residency of the children, and with Mr. H having parenting time every weekend from Friday after school to Sunday evening;
 - c) An order requiring that the parties communicate in writing only, and only in English;
 - d) An order that Mr. H pay child support in the amount of \$1,631 per month on the basis of a Guideline income of \$111,961, reviewable annually based on incomes on or before June 30th of each calendar year; and
 - e) An order that Mr. H pay spousal support in the amount of \$1,520 per month "reviewable at the trial of this matter upon a material change in circumstances".
- [14] There were a series of additional orders regarding holidays, vacation travel and interim matters.

- [15] I note that of the matters claimed in the pleadings, a number have already been finally determined by way of these previous orders, including the granting of a divorce. In addition, the parenting issues have all been determined. Some of the pensions have been divided by consent or by order. For example, both parties have signed, in the presence of their counsel, an agreement to divide Mr. H's UBC pension as of February 2015, and the forms have been completed to do so.
- [16] Ms. K currently lives in the matrimonial home in Surrey, BC (the "Surrey home") and Mr. H is renting a basement suite in Delta.
- [17] At trial, Ms. K amended her claim to add an application to change her name back to her unmarried name. This amendment was not opposed, and it is granted.

CREDIBILITY

- [18] A great deal turns in this case on the credibility of the two parties, who were the only witnesses at the trial. Credibility was an issue in a number of contested areas, including the existence and degree of family violence in the relationship, the use of and income from the family home, Ms. K's opportunity to become self-sufficient, the circumstances of Ms. K signing a line of credit and its relationship to family debt, and the existence or nonexistence of additional bank accounts or savings.
- [19] The following passage in *Bradshaw v. Stenner*, 2010 BCSC 1398 contains a helpful review of the factors involved in assessing credibility:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.HC.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
- [20] The above is a modern statement of the well-established approach to the assessment of credibility set out by O'Halloran J.A. in *Farnya v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.):

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

- [21] I have considered the above in my assessment of the credibility of both witnesses.
- [22] Overall, I found Ms. K to be a credible witness. She is clearly a devout and humble person who puts great faith in her religion to sustain her and her children. She was quiet and understated. While her knowledge of the financial aspects of her marriage was limited, she generally admitted what she did not know and did not tend to exaggerate her evidence.
- [23] For his part, Mr. H impressed me as a hard worker. He could be eloquent and charming on the stand. Overall, however, there were significant discrepancies within his own testimony and between his testimony and the documentary evidence on key points. This is significant given that almost all of the documentary evidence was in his possession and depended upon his disclosure, particularly with respect to all financial matters.
- [24] Another difficulty is that Mr. H's evidence often directly contradicted the evidence of Ms. K, asserting facts and events that were not put to Ms. K in cross-examination. This issue, and the potential for unfairness in relation to such evidence, was raised early on with counsel for Mr. H, who explained that this was not the evidence he was expecting to elicit. Nevertheless, this pattern persisted.
- [25] There were many examples of Mr. H providing evidence that was evasive and inconsistent with the documentary evidence. One example arose in the context of an insurance claim which was put to Mr. H. The front page of the document shows a payment of \$7,000 to Mr. H for jewelry. Ms. K's evidence was that this payment was in relation to jewelry given to her at her wedding, that it was stolen in 2009 during a break-in, and that Mr. H kept those funds. Mr. H reviewed the claim documentation and agreed it was in relation to a 2009 break-in of their home and a \$7,000 claim for jewelry, but stated that this was merely a claim for the jewelry, that the jewelry was in a safety deposit box and not stolen, and that the insurance company did not pay out the funds.
- [26] Mr. H's evidence in this regard is entirely belied by the document itself, the front page of which is a "Claims-Closing Notice" dated November 16, 2009 on which the \$7,000 payment is listed as a "loss payment" made in June 2009 to Mr. H, among other payments. It is unbelievable that this document shows anything other than a payment of \$7,000 to Mr. H for the jewelry. If the jewelry was in fact kept (and perhaps still kept) in a safety deposit box at Mr. H's bank to Mr. H's knowledge, this is of no assistance to Mr. H's credibility in this case.

- [27] Another example arose in the context of an immigration application for a visitor visa filled out by Mr. H. Ms. K's evidence was that in 2013, Mr. H had asked her to sign some papers for immigration purposes stating that they were divorced, so that he could apply to support the immigration of another woman as his wife. Ms. K's testimony was that she refused to sign those papers, and was never made aware of the name of the woman.
- [28] Mr. H initially admitted that he did make an immigration related application but denied that it was for his current wife, whom he married in 2017. However, when taken to the actual document, Mr. H agreed that the application was in fact for his current wife, but stated that he prepared it much later, after the separation in 2015.
- [29] A review of the document indicates on its face that it was made for the purpose of facilitating a visit to Canada in 2014. Mr. H is described as the applicant's "cousin brother" on that form. This immigration form was found by Ms. K upon returning to the family home in August 2015 just after Mr. H had vacated the home. It is not credible that this was an application filled out after the 2015 separation, given that it relates to a proposed visit in 2014. Nor is it credible that this was an application for someone other than Mr. H's current wife, whose name is stated on the application (though the documentation references a second person as well).
- [30] I also note that the documentary evidence presented in this case was far from complete. With respect to financial records, Mr. H controlled all of the family financial dealings and records throughout the marriage, and where his evidence was not supported by financial records that would have been in his control, this also affects the weight I am able to give his evidence.
- [31] Overall, I am unable to accept Mr. H's oral evidence at face value. Where his oral testimony was not supported by documentary evidence, I am unable to attribute any significant weight to it. Where Mr. H's evidence was contradicted by the evidence of Ms. K, I prefer the evidence of Ms. K.

ISSUES

- [32] The resolution of the matters between the parties require determinations on the following issues raised at trial:
1. Is family violence a factor in this case?
 2. What is the extent of Mr. H's excluded property entering the marriage?
 3. Should there be an unequal division of the family home on the basis of significant unfairness to either party?
 4. Should there be an equal division of family debt?

5. Should Mr. H's spousal support obligation be cancelled or varied on the basis of his impending retirement?
6. Is Ms. K entitled to retroactive spousal support or child support between the date of separation and the commencement of receipt of that support, or an increase in child support going forward?
7. What is the value of other family assets, and how should they be divided?
8. Are there any other ancillary orders that should be made in this case?

SUMMARY

- [33] I find that family violence is a significant factor in this case. I accept Ms. K's evidence that throughout the marriage, Mr. H ensured that she had little or no access to a bank account, funds of her own, or educational or employment opportunities, including opportunities to improve her ability to speak English. I further find that Mr. H controlled Ms. K through physical punishment, and that he also threatened to hurt or kill her and the children on more than one occasion.
- [34] This has had a significant impact on Ms. K's ability to become self-sufficient, and has resulted in a higher than usual requirement for the children to achieve and maintain a level of stability in their home and school life.
- [35] With respect to the division of family property, I find that the net value of the matrimonial home at the time of marriage in June 2002 is excluded property held by Mr. H. However, I find that Mr. H did not establish that the Surrey home was his excluded property until 2008, or that the value of the mortgage on the property should also be considered as his excluded property.
- [36] Both parties sought a valuation of the family home as of December 2015 to allow them to purchase it from the other, recognizing that the children need the stability of their home and school community. I find that there should be an unequal division of the family home on the basis of significant unfairness, which arises specifically from Mr. H's failure to disclose all family property and the unique burdens placed on Ms. K and the two children if they are required to leave the family home at this time. This unequal division shall be made by vesting the home in Ms. K on the basis of the value of the home as of the 2015 valuation as requested by both parties, rather than at the time of trial in 2018. This is roughly equivalent to the 60% reapportionment of the family home sought by Ms. K.
- [37] I find that the line of credit taken out on the house in 2011 for the purposes of Mr. H's investment with a friend was not incurred in the ordinary course of the spousal relationship. Mr. H has been pursuing recovery of those funds, and the debt and the mortgages held over third party property to secure that debt shall be entirely his responsibility.

- [38] I find that Mr. H's spousal support obligation should be varied in light of his impending retirement. I find that spousal support is required to support Ms. K on both compensatory and non-compensatory grounds, for a further period of 11 years from the date of trial. However, I order that this amount be paid as a lump sum, which may be most conveniently paid through an adjustment of the amount Ms. K must pay to Mr. H with respect to his share of the family home.
- [39] Given this lump sum award, I do not order any retroactive spousal support to Ms. K.
- [40] I find that Ms. K is entitled to retroactive child support from the date that Mr. H left the matrimonial home in August 2015 to the date he began paying child support on November 1, 2015. These retroactive payments amount to \$4,668. In addition, Mr. H has not been paying any special expenses. I find that he is required to pay 75% of the children's special expenses retroactively and on an ongoing basis.
- [41] With respect to the other family assets, I have set out how they should be divided in this decision, and I have made a series of ancillary orders set out below.

DETERMINATION OF ISSUES

A. To what extent is family violence a factor in this case?

Legal Framework

- [42] Family violence is defined under the FLA to include physical abuse and psychological or emotional abuse, including intimidation, threats and "unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy". Family violence is also defined to include direct or indirect exposure of a child to physical violence.

Review of the Evidence

- [43] Throughout Ms. K's testimony, frequent incidents of control and physical abuse by Mr. H were evident. When it came to describing these incidents, Ms. K was generally understated and somewhat reluctant. She described these incidents very plainly, with a degree of humiliation and sadness, but never with anger. The evidence that she had been beaten or "thrashed" for a specific incident was almost presented as an aside, or a given, in much of her evidence about other matters.
- [44] Specific examples of Ms. K's evidence that relate to the issue of family violence under the FLA include:
- a) Ms. K stated that from the outset of their relationship and marriage, Mr. H did not tell her anything about his age or his previous family and adult children, and that he deliberately withheld information from her in many aspects of their lives together.

- b) She testified that once she was in Canada, she was generally not allowed to receive or open the mail, to attend courses other than six weeks of free English courses offered through immigrant services, or to work outside the home. She did take a janitorial services course, however, in or about 2012.
- c) Mr. H would get very upset over small things and slap her very hard "even outside" and on holidays. When he got angry, Ms. K said "he would beat me up for that." He threatened to kill her if she told anyone.
- d) Ms. K did tell her father about the beatings. She told him that she had made a grave mistake in marrying Mr. H. Her father's response was that now she was married, she had to continue in the marriage until her "last breath" and to pray to Allah to give Mr. H the wisdom to follow the right path and to treat her decently. He also reminded her that after Allah, the next most important person was her husband. She never told her mother. She turned to Allah for support and courage, but did not disclose the beatings to anyone until after she had received an Islamic divorce from Mr. H in 2015.
- e) Ms. K's evidence was that she had no bank account, bank card or credit card until she was added as a joint account holder and joint owner of the Surrey home in 2011 to facilitate a loan to Mr. H's friend, Mr. Ram. When she received a bank card as a result of the bank account being opened in 2011, she was instructed by Mr. H not to use it.
- f) In 2011, Mr. H asked her to sign documents loaning money to his friend Mr. Ram. When Ms. K stated she would not sign them because she did not know what they were about, she says "Mr. H gave me one slap on my face, and said tomorrow you have to go and sign at the bank".
- g) In addition to this, her evidence was that she was given no cash allowance, and that Mr. H preferred to accompany her on shopping trips and pay for the groceries himself.
- h) She could not take the children anywhere in a vehicle because she did not have a driver's license until approximately 2014, and Mr. H, she says, did not want her to take any sort of lessons. When she did learn to drive, her evidence was that her friend taught her secretly and paid for her test. She then strategically presented her license as a "surprise" to Mr. H with her friend present at the time.
- i) In or about 2013, the beatings got worse. It was around this time that she also saw "lovebird messages" on Mr. H's phone with another woman.
- j) At some point, one of the children told his teachers at school about the beatings at home. The Ministry of Children and Family Development (the "Ministry") contacted Ms. K and came and interviewed her and both of the children. Ms. K's understanding was that one of the children had reported his father pushing her against the wall, beating her up, pulling her hair and brandishing a knife. A few weeks later the police came and wanted to interview her about the knife incident and to arrest Mr. H, but she denied anything had happened. Ms. K states that they were angry with her for not cooperating, but she said she was not ready, but would call them when she was. Mr. H blamed her for the Ministry's involvement and she

testified that he "gave her a thrashing" for that.

- k) Mr. H granted her the first step in an Islamic divorce in February 2015, after which they were both required to wait four months before taking further steps. Upon receiving the Islamic divorce, she locked herself in the master bedroom and told Mr. H he could no longer sleep with her. At some point, Mr. H kicked open the door to the bedroom, declaring that the house was his and that he could sleep wherever he wanted.
- l) She explained that there was only one occasion where she did use a credit card: to purchase an airline ticket back to India when her father died in 2015. She testified that she did so only after receiving permission from Mr. H, but that he then did not buy her the ticket. She admitted to gathering her courage and withdrawing funds from the joint account for the first time in May 2015 to pay for that charge, but that Mr. H cancelled the ticket. She was not able to go to her father's funeral or to see her family.
- m) Ms. K testified that when Mr. H found out she withdrew money from the joint bank account to pay back the credit card company in May 2015, Mr. H beat her "so much" that he crossed a limit. He told her he would "make her beg across Canada" and said "you mother fucker I will cut you to pieces." Their elder son called 911. Mr. H took the phone from his hand and gave the boy "one slap" and told them that when the police arrived they were to say nothing or he would cut them. Ms. K stated that when the police arrived, she was so scared she was not able to make any statement to the police, and could not stop crying. The eldest son "made an excuse" and told the police that his grandfather had passed away and that was why she was crying. The police determined that she needed assistance and arranged for an ambulance to take her and the eldest boy to the hospital. She returned home the next morning.
- n) Mr. H presented her with Canadian divorce papers in June that would have disentitled her to any share in the home or support for the children, and was very angry when she did not agree to sign them. After the Islamic divorce he told her that she could no longer eat his food, and she depended on her friend for support.
- o) When Ms. K refused to sign the papers, Mr. H and his family confronted her. Mr. H's sister said Mr. H would kill her if she did not sign the papers. Ultimately, she called a lawyer, and that lawyer called the Ministry, and she and the children were taken to a shelter in July 2015.
- p) This Court issued a protection order on August 6, 2015 pursuant to s. 183 of the FLA, requiring Mr. H to leave the Surrey home and to have no direct contact with Ms. K. She and the children then returned to the family home in August with assistance from shelter staff.
- q) Since then, Ms. K said that Mr. H did continue to attend at the house from time to time, but the locks were changed and she would call the police when he came. She is seeking to keep the orders in place to ensure that contact occurs only in writing and in English, and that the parties remain in their cars when picking up or dropping off the children.

- r) In cross-examination, when challenged with the question of why she never called the police, Ms. K answered that Mr. H had threatened to kill her if she did.
- [45] Ms. K testified that she is taking medication for stress and pain. She attributes this to her marriage, and specifically when Mr. H would grab her hair and make her lean back and punch her.
- [46] The children have had the benefit of free counselling through their schools and through a community service for the past three years. In Ms. K's view, the eldest boy who is now 13 is particularly protective, afraid and affected by the violence in the marriage. Ms. K is particularly concerned that the children feel secure and are able to continue to see their counsellors at their school, and have the support of their existing friends and teachers. She is adamant that the children be provided with this stability, and very upset at the possibility that if the house is sold, they would not be able to stay in the same schools going forward.
- [47] At the time of the trial, the children believed that things had settled and that they would be able to stay in their house. However, during the trial, Ms. K told the court that Mr. H told the children about the trial and refused to pick them up for his parenting time on that basis.
- [48] Mr. H's response to the above allegations was that there was "no physical abuse" in the relationship.
- [49] With respect to the issues of control, Mr. H testified to a number of things. Although he was not happy with Ms. K when he met her in India, he "still let her come to Canada." Although he did not want a second child by Ms. K "because of all the bickering and nagging", he still "let her have" their second son. Ms. K wanted to go to work, but he said "no" because of the age of the children. He took care of her family debts in India so she would not need to work. Later he stated that he drove her to McDonald's and Walmart to look for jobs, but it is unclear when this occurred.
- [50] With respect to Ms. K's use of and access to bank accounts, bank cards and credit cards, Mr. H denied that Ms. K did not have any spending money or that he never provided such funds. However, unlike the regular transfers that he described providing to his current wife, he gave no evidence of a specific allowance or a regular stipend for household or other expenditures.
- [51] With respect to Ms. K's use of the credit card in 2015, he described that as a fraud and unauthorized use of his credit card. He refrained from pressing charges. It was clear from Mr. H's evidence that in his view, Ms. K had no right to use the credit cards or withdraw funds from the joint bank account, let alone to travel to her father's funeral without his permission.

- [52] With respect to Ms. K's efforts to improve her English, take courses, or work outside of the home, Mr. H's evidence was that she did not want to do this, but that he did "allow" her to. He paid for Ms. K to take a janitorial services course in 2012. He also bought a car in 2014 for Ms. K's use, although Mr. H emphasized that this was a family car and not a gift to Ms. K.
- [53] With respect to the Ministry's involvement with the family, he agreed that they were involved at one point. However, he said that this was because Ms. K slapped one of the children after they had separated. He did not say which child, when, or who called the Ministry on this occasion (there was no suggestion that he had made the call). Nor was this allegation put to Ms. K at any point.
- [54] Beyond this, Mr. H did not address in his evidence any of the specific incidents of family violence discussed above. He did not specifically deny threatening his ten-year-old, or deny that his ten-year-old called the police to report that Mr. H was beating Ms. K in May 2015. He did not give an alternative account for the attendance of the police on this occasion or the previous occasion.
- [55] For the most part, Mr. H relied on the fact that Ms. K generally did not complain to the public authorities, the Ministry took no further action, and the police did not arrest him.

Determination on Family Violence

- [56] Having considered all of the evidence, not all of which has been reviewed here, I find that family violence was a significant aspect of this marriage. I accept Ms. K's evidence in this respect. Specifically, I find that Mr. H exercised control over Ms. K during the marriage through physical violence and threats of physical violence, in addition to imposing unreasonable restrictions on Ms. K's financial and personal autonomy through limitations of her activities, educational and work opportunities, and access to basic household and personal finances. Finally, I find that the children were also subject to and exposed to some portion of this family violence, including being threatened directly.
- [57] As a result of this pattern of control and violence, I consider that Ms. K's prospects of achieving a reasonable level of financial independence have been significantly diminished, and that the timeframe required for her to become self-sustaining is significantly extended above the norm.
- [58] I also find that the family violence has taken a mental and emotional toll on both Ms. K and the children, giving rise to a higher than ordinary requirement on their part for stability and security in relation to their home, school and community.

B. What is the extent of Mr. H's excluded property for the purposes of division of assets?

- [59] Mr. H seeks orders from the court for division of family property on the basis that the Surrey home was excluded property up to and including the point when the mortgage on the home was paid in full in 2008. Alternatively, he argues that the value of the home in 2002 at the time of marriage is excluded property, but that the value of the mortgage on the property should be included as excluded property, rather than subtracted from the assessed value of the home.

Legal Framework

- [60] The regime under the FLA generally provides that anything owned by either or both spouses at separation is family property, unless one party can show that it is excluded. Subject to the exceptions in s. 85, "family property" is all real and personal property owned by one or both spouses at the date of separation: s. 84. Section 85 sets out which property is excluded from family property, and includes property that was "acquired by a spouse before the relationship between the spouses began".
- [61] The onus of establishing that property is excluded property is on the spouse making that claim, pursuant to s. 85(2). It is generally the net value of the property less any mortgage that is excluded.
- [62] The increase in value of excluded property over the course of the spousal relationship constitutes family property: s. 84(2)(g); J.D.G. v. J.J.V., 2016 BCSC 2389 at para. 129; M.C.V. v. F.V., 2018 BCSC 96 at para. 44.

Review of the Evidence

- [63] Mr. H owned two properties with his previous wife prior to his marriage to Ms. K in 2002. The evidence establishes that the Surrey home was purchased by Mr. H and his previous wife in 1996 for \$160,000, but that they lived at another home in New Westminster.
- [64] Upon his divorce to his previous wife, Mr. H received one-half of the proceeds of the sale of their New Westminster home, in the amount of approximately \$180,000, and took over the mortgage to buy out his wife on the Surrey home for approximately \$150,000. The title was changed to reflect Mr. H as the sole owner of the Surrey home in 2001, together with the mortgage.
- [65] At the time of the marriage in 2002, the matrimonial home was valued at \$215,000, with a mortgage of \$140,000. Therefore, the net value of the home was \$75,000 at that time.
- [66] The parties differed in their evidence as to when they first lived in the Surrey home, with Ms. K stating that they lived there for six to seven months after she arrived in Canada, and Mr. H stating that they did not live there until 2008. They both agreed that for most of the period between 2003 and 2008, they rented a basement suite in Mr. H's former New Westminster house, and rented out the Surrey home.

- [67] The mortgage on the Surrey home was paid off completely in March 2008. Mr. H stated that he used the \$180,000 that he received from his previous marriage to pay this amount, paying off the interest monthly and the bulk of the mortgage in a lump sum in 2008 from his personal account. He says that the Surrey home should not be considered family property until 2008, when he and Ms. K and their young sons moved back to the house and the mortgage was paid off. Alternatively, he argues that the full value of the Surrey home of \$215,000 in 2002, without reference to the mortgage owing at that time, was his excluded property.
- [68] There was some discrepancy between the parties with respect to their evidence regarding rental income from the Surrey home. Ms. K's evidence was that they moved to a basement suite in Mr. H's former New Westminster home in part for the purpose of paying off the mortgage on the Surrey home. Her understanding was that the rental income from the Surrey home was required to pay off the mortgage, and that by the time they were ready to move back, the mortgage would be paid in full. The mortgage was paid off in 2008, and they moved into the house at that time.
- [69] Mr. H's evidence was that he put the funds he received from the sale of the New Westminster home into his personal bank account, and that he used those funds to pay the mortgage on the Surrey home in March 2008.
- [70] Mr. H put into evidence banking records showing that he deposited \$180,000 into his bank account in May 2001. That record also shows that he withdrew all of this amount by June 2001. At the time of the marriage in July 2002, the bank statements show \$6,800 in that account. \$170,000 appears to have been deposited again in August 2002, withdrawn again in October 2002, deposited in July 2006, and withdrawn again in 2006, partly in the form of a \$70,000 cheque.
- [71] Mr. H also put into evidence the mortgage records showing payments toward an amount of \$145,797 in February 2000. This document shows that the mortgage was paid by way of weekly payments of roughly \$230-\$250 through to June 2005. In June 2005, monthly payments of \$500 began, and a balance of approximately \$40,000 was paid off in March 2008.

Determination of Excluded Property Claims

- [72] I find that the Surrey home became family property pursuant to s. 84 of the FLA in July 2002 at the time of marriage. At that time, Mr. H owned the property, and its net value of \$75,000 was excluded property pursuant to s. 85 of the FLA.
- [73] I reject the suggestion that the property did not become family property until 2008. This argument was advanced on the basis that the parties did not live in the Surrey home until 2008, and that Ms. K made no financial contributions to the house prior to this time.

- [74] I find that the parties did live in the Surrey house upon Ms. K's arrival to Canada in 2003. I make this finding on the basis of Ms. K's evidence, which I find to be more credible. I also note that Mr. H's evidence included reference to the two of them "moving" to the New Westminster home because the Surrey home was bigger than they needed. Finally, I find that Ms. K did make a contribution to the family property, including the Surrey home, through her contributions to the household both as a homemaker and through her agreement to move to and live in a basement suite to put money toward the mortgage on the Surrey home. She continued to live in the suite while raising an infant and being pregnant with a second. This saved the family money over the course of the rental period, allowed the Surrey home to be a source of income for the family, and very likely assisted in the payment of the mortgage over the Surrey home.
- [75] With respect to Mr. H's assertion that the entire \$215,000 value of the home in 2002 should be excluded property, this could have been established had the funds he received from the settlement of his previous divorce been applied to the mortgage on the Surrey home in 2001. No account was given for how these funds were invested between 2002 and 2008, other than Mr. H's statement that he kept them in his own bank account. However, as discussed above, all of the family banking at this time was through Mr. H's personal accounts. In any event, the bank records provided by Mr. H do not support this claim for exclusion.
- [76] While I accept that Mr. H used some combination of money he earned or saved to pay down the mortgage between 2002 and 2008, no accounting or information was provided in evidence to show how funds Mr. H earned in income during this period were distinct or separate from funds that Mr. H held before the marriage and might have invested or saved. Furthermore, there was no accounting of how the \$180,000 was invested, whether it was retained or diminished, and what income was earned or assets lost from those funds. This is of particular concern given the specific evidence of at least two investments that Mr. H made during the course of the marriage through friends and family that did not turn out as he had hoped. He described one of these as a "Ponzi scheme" in which he lost his entire investment.
- [77] In any event, the mortgage was not paid by way of a lump sum traceable to the funds Mr. H received during his previous marriage in 2002 or at any other time, as Mr. H claims. The mortgage was largely paid in weekly and later monthly installments, mostly during the course of the marriage.
- [78] Overall, Mr. H has the burden of establishing his claim for the total value of the house in 2002 as excluded property as if there were no mortgage on it. The evidence adduced by Mr. H is wholly insufficient to establish that proposition.
- [79] Although this disposes of Mr. H's claim to include the full value of the Surrey home as excluded property as of 2008 or 2002, I also note that in 2011, Mr. H arranged for Ms. K to be added to the title of the Surrey home as a joint tenant. On all the evidence, I find that this was likely for the purpose of assisting Mr. H in obtaining a \$300,000 line of credit against the home for the purpose of loaning it to his friend Mr. Ram. Nevertheless, it is also arguable

that this was a gift of a full joint interest in the home at that time, such that no portion of the value of the home should be excluded from family property. However, as this argument was not advanced before me, I do not make any determinations in this regard.

- [80] I conclude that the total value of Mr. H's excluded property is the net value of the Surrey home in 2002, which amounts to \$75,000. This amount shall be deducted from the value of the Surrey home for the purposes of division of that family property, and added to Mr. H's share in the Surrey home.

C. Should there be an unequal division of the value of the family home on the basis of significant unfairness to either party?

- [81] Both parties seek a reapportionment of the value of the Surrey home in their favour. Mr. H seeks reapportionment on the basis of his exclusive financial contribution to the home. Ms. K seeks reapportionment of 60% of the home's value in her favour on the basis that it would be significantly unfair not to reapportion the home given the circumstances of the marriage and the importance of providing the children with the security of continuing to live in their own home, with their existing friends and support networks, and within their existing school catchments. She also argues that Mr. H has not fully disclosed all of the family property.
- [82] Both parties seek an order that the Surrey home be vested in them and that the home be valued at \$520,000, the assessed value of the home as of December 2015 according to a jointly prepared evaluation report. They both agree that the children would significantly benefit from staying in their existing home.

Legal Framework

- [83] Under s. 81 of the FLA, each spouse is presumptively entitled to a one-half undivided interest in each family asset as a tenant in common upon separation. The opening words of s. 81 make it clear that the presumptive one-half undivided interest under s.81(b) is "subject to an order that provides otherwise", including an order for reapportionment under s. 95.
- [84] The relevant provisions of the FLA with respect to the issues of reapportionment and compensation are ss. 95, 96 and 97.
- [85] Unlike the regime under the former Family Relations Act, R.S.B.C. 1996, c. 128 that permitted an unequal division of family property if an equal division would result in unfairness, the FLA raises that bar. Under the FLA, the court is only to reapportion family property if an equal division would be "significantly unfair". Justice Brown touched on this difference in *L.G. v. R.G.*, 2013 BCSC 983, stating at para. 71:

- [71] In my view, the term "significantly unfair" in s. 95(1) of the FLA essentially is a caution against a departure from the default of equal division in an attempt to achieve "perfect fairness". Only when an equal division brings consequences sufficiently weighty to render an equal division unjust or unreasonable should a judge order depart from the default equal division.
- [86] This distinction was also discussed in *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44, where Justice Butler explained that under the current legislation, "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)." In *Jaszczewska v. Kostanski*, 2016 BCCA 286, the Court of Appeal stated at para. 42 that reapportionment requires "something objectively unjust, unreasonable or unfair in some important or substantial sense."
- [87] Pursuant to s. 87 of the FLA, all family property and family debt is to be valued according to its fair market value at the date of the hearing respecting division of family property and debt. Setting the valuation date at another date is essentially a form of reapportionment and requires a finding of significant unfairness: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76; *Blair v. Johnson*, 2015 BCSC 761 at para. 69.
- [88] Non-disclosure of assets by one party may be a basis for a reapportionment between the parties pursuant to s. 5, s. 213 and s. 95(2)(i) of the FLA where there is a strong evidentiary basis for the proposition that the party has hidden assets of some significance: *C.P. v. KW.A.*, 2018 BCSC 332 at paras. 255-257.

Review of the Evidence

- [89] The parties presented a joint valuation of the Surrey home as at December 2015 at \$520,000. They both seek to have the home vested in their name at that amount, and say they have the ability to pay the other party's portion out. They both also seek a further reapportionment of the value of the home in their favour.
- [90] The application for reapportionment raises the following issues for review and consideration:
- a) Does Mr. H's financial contribution to the purchase and maintenance of the Surrey home entitle him to a greater apportionment of the value of the home?
 - b) Has Mr. H failed to disclose all of the family property held in his name such that a greater portion of the Surrey home should be apportioned to Ms. K?
 - c) Should the Surrey home be reapportioned to Ms. K on the basis of significant unfairness arising from the circumstances of the marriage?
 - d) Should the valuation date of the Surrey home be December 2015 for the purposes of vesting the Surrey home in one of the parties?

a. Mr. H's Financial Contributions

- [91] There is no question that the money used to pay for the Surrey home originated from Mr. H. Ms. K has had no source of income throughout the marriage with which to contribute.
- [92] Mr. H's primary argument is for the exclusion of the Surrey home from family property until 2008, or in the alternative the exclusion of the full value of the home in 2002 without regard to the mortgage due and owing on the property at that time. I have found that those positions are not supportable on the evidence.
- [93] In the alternative, Mr. H argues that his financial contributions during this period should give rise to reapportionment of the value of the home in his favour.
- [94] I do not agree. The presence of differing financial contributions to family property is not a listed ground for reapportionment in s. 95(2) of the FLA. To the contrary, s. 95(2)(c) calls specifically for the recognition of the indirect contributions of spouses rather than an a simple focus on direct financial contributions. Indeed, differing financial contributions are more likely to be the norm than to be an exception giving rise to "significant unfairness" under the FLA.
- [95] While such a finding is not precluded under the FLA, the circumstances under which unequal financial contributions may be considered in giving rise to reapportionment were "intended to be much constrained" by the current legislation: *Jaszczewska* at para. 44. Significant or extraordinary contributions may be accounted for where excluded property is established on the evidence. As stated in *Slavenova v. Rangelov*, 2015 BCSC 79 at para. 60:
- [60] The "significant unfairness" contemplated by s. 95 requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the FLA recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of "family property" and "excluded property". The starting point in the division of property analysis already applies significant exclusions.
- [96] In this case, I have already found that Mr. H's financial contributions to the mortgage on the Surrey home did not make the Surrey home his excluded property prior to March 2008, nor did it render the value of the mortgage as being included in his excluded property as of 2002. I may still consider whether there is significant unfairness if these contributions are not accounted for through reapportionment. I find no significant unfairness on the evidence in this case on that basis.

b. Undisclosed Property

- [97] Ms. K professed very little knowledge of the financial arrangements or assets of her marriage with Mr. H. Her knowledge of the banking was that she would accompany Mr. H to various banks at various times, including Vancity, CIBC and TD Canada Trust. He would pay for some services in cash, and would withdraw significant amounts of money for the

purposes of things like purchasing the new Honda CRV in 2014. It appeared to her that he had significant reserves of funds for various purposes. However, in Mr. H's disclosure statements, he lists the bank accounts as holding no more than a few thousand dollars at the time of separation, and no investments were disclosed.

- [98] Mr. H flatly denied having any additional bank accounts or assets other than those that are disclosed in his financial statements. In cross-examination, he admitted that he had other accounts, some at other banks, such as TD Canada Trust, which are not listed in his disclosure statements, but stated that these accounts have since been closed. It was not clear whether they were closed before or after separation.
- [99] However, there is considerable evidence that such accounts or investments existed, and continued after separation. In bank statements put into evidence, it is clear that many transactions by Mr. H were transfers throughout the marriage. Some of those transfers were to mortgage accounts, but not all. In addition, not all of the accounts open during the marriage were accounted for in Mr. H's financial statements.
- [100] In addition, after Mr. H left the Surrey home in August 2015, Ms. K found a file in the house which contained a number of documents, including Mr. H's immigration application for the woman who is now his wife. With those documents was a portion of an email chain with the header: "Welcome to RBC!" dated August 1, 2012. That document contains an inquiry between Mr. H and RBC representatives regarding the process for obtaining a bank card for a woman who is now Mr. H's new wife on a joint account with him that would allow her to withdraw funds from outside the country. It also states that the "RBC Disclosure and Agreements are for your records" and presents options for purchasing a GIC.
- [101] Mr. H did not object to the authenticity or admissibility of this email. However, he denied that a bank account was actually opened at that time, and said that the email only related to enquiries about a potential account that he did not open until 2016.
- [102] I do not accept this evidence. I find on a balance of probabilities that RBC would not be sending an email to Mr. H in 2014 welcoming him and discussing disclosure statements had no account been opened with them, nor would Mr. H have been making bank card inquiries without such an account. Furthermore, Mr. H gave evidence that he provides a regular stipend to his wife of \$500 per month in Fiji, but that he has no mechanism of doing so other than through occasional visits where he leaves money there with her, or sends cash with other people travelling back and forth to Fiji. This is simply not credible.
- [103] On all the evidence, I find that Mr. H had at least one other undisclosed bank account and other investments at the time of separation that he used to provide funds to his now current wife, with whom he was having a relationship since at least 2012. I also find that it is highly likely, given his significant salary and lack of debt, that he continues to hold assets in his name that are family property and that were not disclosed.

[104] While I do not have specific evidence of the amounts in these accounts or investments, I consider it probable that Mr. H was directing family property to his current wife during his marriage to Ms. K, and I find that this supports a reapportionment of the value of the Surrey home in favour of Ms. K on the basis of significant unfairness.

c. Circumstances of the Marriage

[105] While it was not fully articulated in her submissions, Ms. K argues that the family violence and control that she and the children experienced during the marriage should give rise to reapportionment of the Surrey home in her favour. She seeks this primarily for the purposes of enabling her to afford to purchase the home from Mr. H so that the children will have a stable home and can remain in their existing schools.

[106] Family violence is not explicitly listed as a factor in the bases for reapportionment of family property, and I was referred to no case that expressly considered family violence in this context.

[107] However, s. 95(3) provides that the court may consider:

the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 have not been met.

[108] In this case, I have found that family violence was part of the "circumstances of the relationship between the spouses" that have and will continue to affect Ms. K's achievement of economic self-sufficiency. However, I also consider that this can be addressed through an award of lump sum spousal support. In the absence of the availability of such a lump sum, this factor would be very significant in this case and would support a substantial further reapportionment of the value of the home. However, as I have ordered lump sum spousal support, the achievement of the objectives stated in s. 161 of the FLA is a less significant factor with respect to the question of reapportionment more generally.

d. Valuation Date of the Surrey Home

[109] Both parties seek a vesting of the Surrey home in their own name based on a third party valuation of the home in December 2015. While neither approached this as a reapportionment in their favour, it is clear that such an order would result in a reapportionment of the value of the home in favour of the party who receives the home.

[110] The evidence establishes that the value of the Surrey home in December 2015 was \$520,000. The evidence also establishes that the value has increased since December 2015. Mr. H tendered a second valuation (that was not commissioned jointly) stating that the value of the house in 2017 was approximately \$655,000. I do not have any reliable evidence of the value of the home since that date.

- [111] By my calculations, vesting the property in one party on the basis of the December 2015 valuation rather than the 2017 valuation is the equivalent of a reapportionment of approximately 60% of the home's value in that party's favour.
- [112] Both parties seek this valuation date on the basis that it would be beneficial to the children, as it would allow them to buy out the other party's interest, and allow the children to continue to live in the family home. I note that while Mr. H only currently has access to the children on weekends in accordance with the 2017 parenting time order, he advised the court that he might seek more time with the children upon his retirement and they could live with him in the Surrey house.
- [113] Ms. K, who currently has the children from Sunday night to Friday night under the 2017 order, and in practice has them significantly more often than this, would likely not be able to afford the home without such a reapportionment.
- [114] In *C.M. v. M.S.*, 2015 BCSC 1031, Justice Grist granted a one year delay in the sale of the home so that the child could finish middle school, stating:
- [36] Whereas a delay in sale of the matrimonial home in favour of a parent who is filling a substantial role in providing a residence for the parties' children found its justification under the former FRA in meeting that parent's needs for independence and self-sufficiency, or the capacity or liability of a spouse, this was a somewhat roundabout or derivative means of dealing with the more direct cause of unfairness: that of the children being forced to adapt to a new setting, often a new school and a new peer group, during an otherwise very difficult time in their lives; and the challenges this presents to the parent primarily responsible for providing a home for them. In light of the more open discretion expressed in s. 95(2)(i), I am of the view that this section can be used directly to deal with these sources of significant unfairness separate from the consideration of the need for independence and self-sufficiency, a matter which the FLA directs the court to consider by way of spousal support before having any effect on distribution of property.
- [115] Generally speaking, the sale of a family home is often required upon family breakdown and children and families are required to, and do, find a new equilibrium in the circumstances of their new lives. Avoiding the relocation of children cannot be, in the ordinary course, a "significant unfairness" justifying reapportionment in all such cases. However, in cases where reapportionment through valuation of the home at a date closer to separation would address a significant unfairness that relates in part to the need for stability arising from a history of family violence, I consider that s. 95(2)(i) allows consideration of this factor.
- [116] In all the circumstances, I have found that the children of this marriage have a unique and particularly significant need for stability and continuity in their housing, community and schooling arising from the family violence they experienced. Furthermore, I consider that Ms. K's well-being and ability to support herself is dependent upon having confidence in the well-being and security of her children separate and apart from her requirement for spousal support. I also consider that the parties' parallel positions that December 2015 is an

appropriate date from which to value the Surrey home, which are based in part on their desire to provide a stable home for the children, support reapportionment to the December 2015 valuation date.

Determination on Reapportionment of the Surrey Home

- [117] On all the evidence, including my finding that Mr. H likely has retained or redirected significant undisclosed family property, and that the history of family violence also gives rise to a unique and significant unfairness to the children and Ms. K, I find that the value of the Surrey home should be reapportioned through vesting it in Ms. K at the value it had in December 2015, which is roughly equivalent to a 60% reapportionment of the current value.
- [118] Ms. K is required to compensate Mr. H for his excluded interest in the property of \$75,000 and half the remaining value of the property as of December 2015, which amounts to \$222,500. This amounts to a total of \$297,500. This amount is subject to further adjustments required to address the division of other family property, retroactive child support, and the payment of lump sum spousal support.

D. Should there be an equal division of family debt?

- [119] Mr. H takes the position that the line of credit on the Surrey home in the amount of approximately \$150,000 should be split equally between them. Ms. K takes the position that this debt is entirely Mr. H's responsibility and that the full amount should be reapportioned to him.

Legal Framework

- [120] Section 86 of the FLA makes all financial obligations incurred by a spouse during the course of the relationship family debt. Valuation of the family debt is determined as of the date of the hearing before the court pursuant to s. 87, although there is some precedent for including debt that is paid after separation so as to avoid penalties and interest.
- [121] Section 95 of the FLA provides the court with limited jurisdiction to reapportion family debt if equal division would be significantly unfair. This provision is "not an invitation to the parties to review every financial transaction that occurred during a marriage, to which one of the parties upon separation takes objection": J.S.R. v. P.K.R., 2017 BCSC 928 at para. 296.

Review of the Evidence

- [122] At the time of the trial, the evidence establishes that there is a line of credit ("LOC") secured against the Surrey home in the amount of approximately \$150,000.
- [123] Both parties agree that this LOC is the result of a loan that was made to Mr. H's friend Mr. Ram in 2011 in the amount of \$300,000, in relation to an investment being undertaken by Mr. Ram. In exchange for this loan, Mr. Ram offered Mr. H mortgages over two properties in Chilliwack, one of which he owned, of \$150,000 each.

- [124] The parties also agree that when Mr. H agreed to extend this loan to Mr. Ram, he required a loan from the bank. Mr. H added Ms. K to the title to the Surrey home at that time for the purposes of taking out the loan. Ms. K signed the requisite forms to approve the loan at that time, as well as a form indicating that she did not require delivery of any information regarding the loan.
- [125] There was no dispute in the evidence that the loan was initially not paid back in the expected timeframe, and that Mr. H was convinced to proceed with foreclosure to recover the loan amounts. The parties also agree that Mr. H has sole conduct through his lawyer of these foreclosure proceedings. Ms. K is not represented in these proceedings, and has generally not been informed of the interim agreements regarding payments on the mortgages or the legal progress made to recover the amounts.
- [126] One of the Chilliwack properties was sold in 2017, and the line of credit was then paid down such that the amount outstanding was \$144,685 at the time of trial.
- [127] Finally, the parties agree that Mr. H has been collecting monthly payments from Mr. Ram and depositing them in his personal account, and then using that account to pay down the interest and perhaps some of the principal. These installments were \$1,000 monthly for many years, but Mr. H agreed that they could be reduced to \$500 monthly after the initial \$150,000 payment.
- [128] The parties' evidence diverges significantly on the events leading up to this loan.
- [129] Mr. H says it was a mutual decision reached through discussion with Ms. K, and she willingly signed the loan documents.
- [130] Ms. K says she had no idea how much the loan was initially for. When she asked Mr. H in 2011, he told her it was for \$3,000, and she was confused because that seemed too little to require a loan. Mr. H called her a "stupid woman".
- [131] She also testified that she originally refused to sign the loan documentation because she did not know what she was signing. Mr. H slapped her, and told her that she had to go to the bank the following day to sign the loan papers. Her evidence was that she did so because she was afraid. The loan documents were in English and were not translated for her. She did not understand what she was signing and felt she could not refuse.
- [132] Approximately one year later in 2012, Ms. K testified that Mr. H was very sad and started to cry. He said it was because of his friend and the loan. She then asked how much the loan was, and he wrote down the amount and showed it to her. It was \$300,000, and that is how she found out how much had been loaned.

- [133] Ms. K testified that Mr. H then asked for her forgiveness and that she pray for him. She gave him courage to go to a lawyer to file a claim against Mr. Ram. He also directed her to go to the bank where Mr. Ram was working to beg and cry for him to repay the money. He would drive her to the bank for this purpose every few days, and showed her who Mr. Ram was because she had not met him before.
- [134] Overall, Ms. K's evidence on this point was consistent and credible. Mr. H's evidence, however, was fraught with inconsistencies and evasiveness. When asked direct questions regarding the loan, and how it was that Mr. H became a mortgage holder on Mr. Ram's two Chilliwack properties in 2011, or why a second mortgage was placed on those properties in 2013 with Ms. K's name on them, Mr. H became visibly agitated, aggressive in his responses to questioning, and ultimately entirely evasive.
- [135] Mr. H continues to seek recovery of the remaining \$150,000 from Mr. Ram, though it is not clear whether he is doing so through foreclosure or allowing his friend additional time to find a buyer for the remaining Chilliwack property. He considers that the remaining property will be sold in the near future.

Determination regarding Family Debt

- [136] I find that this is a rare case where debt incurred during the course of the marriage should be reapportioned entirely to one of the spouses, Mr. H.
- [137] Section 95(2)(d) of the FLA allows the court to order an unequal division of family debt if equal division would be significantly unfair, having regard to whether the debt was "incurred in the normal course of the relationship between the spouses".
- [138] There is no question that the LOC, now sitting at just under \$150,000, was incurred during the course of the marriage and qualifies as family debt. However, I find that the debt was taken out over the house for the purposes of an investment scheme that was entirely Mr. H's and not incurred in the normal course of the spousal relationship. This was not a debt that was incurred through mutual agreement or even forbearance, but as a result of the control that Mr. H had over Ms. K in this relationship. Finally, I find that Mr. H also has complete control over the repayment terms and the ultimate satisfaction of this debt, and has not included Ms. K or her counsel in the negotiations or legal proceedings involved in recovering the debt. It would be significantly unfair in all the circumstances to require Ms. K to be responsible for repayment of a debt that she did not willingly incur and which she is excluded from the process for recovering.
- [139] I therefore order that Mr. H is entirely responsible for repayment of the amounts owing on the LOC over the Surrey home in full.
- [140] Ms. K should be removed as a mortgage holder over the remaining Chilliwack property, or if this is not feasible, I would simply order that the mortgage over that property benefit only Mr. H.

[141] As the LOC is attached to and secured by the family home, which shall be vested in Ms. K, this payment may be most conveniently made through a reduction to the amount Ms. K must pay to Mr. H for his share of the Surrey home in the amount of \$150,000, together with a removal of Mr. H from responsibility for the LOC over the home.

E. Should the spousal support be cancelled or varied?

[142] Mr. H seeks a cancellation of spousal support on the basis of his intention to retire at the end of this year. Ms. K would support the discontinuation of spousal support on the basis of an appropriate lump sum payment through the division of property in this case. Mr. H does not agree to a lump sum payment and seeks an outright cancellation of his spousal support obligations.

Legal Framework

[143] This Court's order of June 2017 sets the amount of spousal support to be paid at \$1,520 per month. It does not set out a term, and notes that an application may be made to vary this amount upon a material change in circumstances. This is in the mid-range of the Spousal Support Advisory Guidelines [SSAG] on the basis of the parties' incomes in 2016 and 2017.

[144] An application to vary or cancel an award of spousal support may be made pursuant to s. 167(2) of the FLA on a number of bases, including a material change in circumstances. Generally speaking, the original award should be presumed to be correct.

[145] Retirement may be considered a material change in some circumstances, and gives rise to issues regarding double recovery of spousal support after pension division. Imminent retirement is also a reason that lump sum spousal support may be awarded pursuant to s. 170(c) of the FLA: *Rees v. Rees*, [1980] B.C.J. No. 1680 (S.C.) at para. 14. It also may be appropriate where the payor spouse lives abroad with a new family: *Wilson v. Wilson*, [1997] B.C.J. No. 723 (Q.L.), 27 R.F.L. (4th) 131 (C.A.) at paras. 16-19.

Determination of Spousal Support Variation

[146] Mr. H says his imminent retirement is a material change in circumstances that warrants cancellation of his spousal support obligation.

[147] Ms. K argues that in addition to Mr. H's imminent retirement, with his remarriage he may choose to spend some if not all of his retirement with his new wife in Fiji. Although Mr. H says that he intends to bring his new wife here, he also admits that he has made several attempts to get permission for her to join him in Canada and that none of his applications have been successful. He allowed that it was a possibility that he could move to Fiji.

[148] Overall, I find that Mr. H's imminent retirement is a material change in circumstances, but not one that warrants cancellation of spousal support.

- [149] I consider that Ms. K's requirement for ongoing spousal support is at the higher end given her English proficiency level and her history of being largely removed from the Canadian workforce. Ms. K has an admirable plan to expand her work at the Surrey school district from being a lunch time monitor to becoming an educational assistant. However, she still needs to pass a series of English exams and complete coursework for this purpose.
- [150] I find that her entitlement to spousal support should ordinarily continue for another 11 years based on the length of the marriage, the circumstances of her forced financial dependence, her English skills, and her lack of experience in the Canadian workforce.
- [151] I accept that Mr. H's imminent retirement is a material change in circumstances. I also consider that it will raise significant complications around double recovery for spousal support when Mr. H's income is largely based on pension income, some of which will be allocated to Ms. K.
- [152] In my view, this issue is one that is preferable to address here, rather than to postpone to a future variation application. In doing so, I recognize that the parties' income in 2018 is perhaps less certain than it would be if the application was made in a year's time. Nevertheless, I have enough information to conclude that Mr. H will be relying on his savings and pensions once he retires, that they may be considerable given his length of service with the federal government, that 13 years of those pensions were accrued during the course of this marriage, and that there may be other pension funds accrued before the marriage that would still be available to provide both child support and spousal support. However, recovery is more likely to be difficult after Mr. H's retirement, and it remains highly unlikely, even if Ms. K is successful in her education and employment plans, that she will have sufficient income in the next 11 years to meet the objectives of spousal support set out in the FLA.
- [153] I find that in all the circumstances, a variation should be ordered of the current spousal support award, from bi-monthly installments to a lump sum payment that takes into account the stated anticipated material change in Mr. H's circumstances and Ms. K's efforts and prospects to become self-sufficient over time.
- [154] In reviewing the SSAG and DivorceMate calculations based on the current ordered spousal support amount term that I find appropriate for the support to be paid, and taking into account the various tax benefits and liabilities to the parties of such an order, I order that Mr. H pay lump sum spousal support to Ms. K in the amount of \$150,000.
- [155] I therefore order that an adjustment of \$150,000 be made to the amounts Ms. K is required to pay to Mr. H for the Surrey home. Mr. H may cease to make spousal support payments upon the transfer of the home to Ms. K in accordance with this order.

F. Retroactive and Ongoing Support

- [156] Ms. K seeks retroactive spousal support and child support from the date of separation to the date when Mr. H first started making payments in November 2015. She also seeks an increase in child support going forward in accordance with the Federal Child Support Guidelines [CSG] and the current income of herself and Mr. H, as contemplated in the June 2017 order.
- [157] The claim for retroactive child support requires a determination of the appropriateness of an award of retroactive support payments, and if found appropriate, the date upon which the calculation should commence. In this case, these issues also require a determination of the parties' current incomes.

Legal Framework

- [158] The leading case regarding when the court should order retroactive child support is the Supreme Court of Canada's decision in *D.B.S. v. S.R.G.*, 2006 SCC 37. This case reiterates the long-standing principle that child support is the right of the child, arising on birth and extending beyond a requirement to pay for the simple necessities of life. *D.B.S.* outlines four factors the court should take into account when asked to make a retroactive order:
1. the reasons for the recipient's delay in asking for an order updating the amount of child support;
 2. any misconduct on the part of the payor, such as hiding or lying about income or pressuring the recipient to not ask for more support;
 3. any hardship suffered by the child as a result of the shortfall; and
 4. any hardship the payor might suffer if required to pay retroactive child support.
- [159] In *Petrie v. Senay*, 2015 BCSC 1083 at para. 49, Justice Greyell noted that "an award of retroactive child support should not generally exceed three years before formal notice was given".
- [160] While the *D.B.S.* factors were developed in the context of retroactive child support, they also apply to retroactive spousal support: *Ducharme v. Rempel*, 2016 BCCA 198 at paras. 16-17.
- [161] Section 3(4) of the FLA provides the following guidance on how to determine when two spouses have separated:
- (4) For the purposes of this Act,
 - (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,

- (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
- (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

Review of Evidence and Determination

- [162] In this case, Ms. K has consistently sought retroactive child support and spousal support from the date of separation to the date Mr. H began making payments in November 2015, and the order entered with respect to support in 2017 notes that this remains an issue. Mr. H has not consented to retroactive payment of these amounts.
- [163] Reviewing the factors in D.B.S., I do not consider delay to be a significant factor here. Nor is there any issue regarding uncertainty: this is not an instance where the amounts to be paid are unsettled or being revised retroactively. Overall, I find that Ms. K is entitled to retroactive child support.
- [164] In terms of the date that the support should be retroactive to, Ms. K seeks payment back to the date of separation. The parties disagree as to what the date of separation is.
- [165] Mr. H pled that separation occurred in May 2014. Ms. K suggested a later date closer to their physical separation in July 2015. Ms. K submits, however, that the date was settled as the date of the first Islamic divorce on February 17, 2015.
- [166] The evidence is consistent that in February 2015, Mr. H granted Ms. K the first step in an Islamic divorce. After that date, it is apparent that the parties lived together until July 2015, but generally considered themselves to be separated for the purposes of the divorce. Furthermore, both parties signed a pension division form for Mr. H's UBC pension specifying February 17, 2015 as the date of separation for those purposes. Although Mr. H's counsel argues that this was just to determine potential amounts available upon potential pension division, I find that the form was executed and effectively divided the UBC pension as of that date.
- [167] In all the circumstances, I consider February 17, 2015 to be the date of separation.
- [168] However, I do not consider that to be the most appropriate date for the commencement of retroactive child and spousal support.
- [169] With respect to child support, there was no evidence that Mr. H did not continue to pay the for the children's expenses prior to the date when he vacated the home in August 2015. I find that child support should be retroactive to August 1, 2015. This is a period of three months, at a monthly rate of \$1,556, for a total retroactive payment of \$4,668 owing.
- [170] In addition, Mr. H has not been paying any portion of the children's special and extraordinary expenses, which I accept to be \$770 on average since 2015, including child care and Islamic school tuition. Based on the CSG apportionment of after tax costs, I order

that Mr. H must pay 75% of the children's special expenses on an ongoing basis. In addition, he must retroactively compensate Ms. K in the amount of \$577.50 per month since August 1, 2015. This amounts to an additional \$19,635 in child support owed to Ms. K. up to June 1, 2017.

- [171] Ms. K seeks an order that contributions to the children's RESP be included as part of the special expenses. She was not able to find any case law in support of this. However, since separation, she has been diligently putting aside money for the children's post-secondary education in an RESP. Mr. H, however, does not agree with RESPs. His father did not provide him with any such support, and if the children do not continue with post-secondary degrees, he believes it will be a waste. He says, however, that he will support his sons if they do go on to post-secondary education.
- [172] The court in *Pereverzoff v. Pereverzoff*, 2017 BCSC 687 found at para. 96 "that the RESP payments are not an extraordinary expense, but are voluntary payments towards a future expense for the children." I find that these amounts should not be included in the special expenses, and Mr. H is not required to contribute to the children's RESP. However, should either of the children draw upon the RESP in the future, that amount shall be credited towards Ms. K's contributions to post secondary education of the children.
- [173] Finally, the 2017 order provides for a review of relative incomes each May and an adjustment to the child support amounts by June 30 of each year. Based on the financial statements provided in evidence, and taking into account the additional revenue for the rental of the basement suite that Ms. K admitted to in testimony, I find that Mr. H has an income for CSG purposes of \$114,776 and Ms. K has income for CSG purposes of \$15,000. Mr. H's child support obligation should therefore be adjusted as of June 30, 2018 to \$1,714 per month, to be paid in equal installments on the 1st and 15th of each month, together with his 75% share of special and extraordinary expenses.
- [174] With respect to spousal support, Ms. K says that Mr. H refused to pay for her food after the Islamic divorce, and that she had to rely on friends for support. Mr. H denies this.
- [175] On the evidence, it is clear that by May 2015, Mr. H was refusing to pay for at least some of Ms. K's expenses. Ordinarily I would find that some retroactive spousal support would be payable for the period of six months from May 1 to November 1, 2015 when Mr. H began paying spousal support. However, I consider the lump sum award of spousal support sufficient to address this period.

G. How should the remaining assets be divided?

India Property

- [176] The parties both disclosed a vacant rural property in India purchased during the marriage that is family property, but their suggested valuation of the property is significantly different, and no current assessed value was provided.

- [177] Ms. K presented the deed relating to the property's purchase. The deed is in English, and shows that the sale is for vacant land in India in April 2011 for the price of 460,000 rupees. Ms. K is the registered owner, but it was agreed that Mr. H provided the funds. The rupee has gone through some fluctuations since then, but Ms. K's evidence is that this was roughly equivalent to \$9,000 CAD. She cannot say whether the value would have increased or decreased since 2011, and noted that this is variable with the value of the rupee.
- [178] Mr. H stated that the purchase price was closer to \$30,000, but that he estimated the present value at \$60,000 generally because values can be expected to go up. In support of this valuation, he tendered a record of over 50 Western Union wire transfers made to India between May 2008 and February 2017 in amounts varying from a couple hundred to just over \$1,000, roughly totalling \$30,000. His initial evidence was that all of the transfers on that record were made to Ms. K's family and related to the purchase of the property, although he quickly admitted that not all of the transactions shown could have been related to the purchase and suggested that the last property-related payment was in January 2014.
- [179] It is apparent from the wire transfer record that many more transactions must be excluded, particularly transfers well before 2011, and I find that the record as a whole gives no clear indication of the value of the property at the time of purchase or at the time of trial. Ultimately, Mr. H admitted he had no idea what the current value of the property was.
- [180] Overall, I consider that the best evidence of the value of the property, in the absence of any admissible evidence of the relative value of vacant rural farmland in India since 2011, is the original purchase price of the property as shown on the sales receipt, of \$9,000 CAD. A review of the value of the rupee suggests that this value may have changed by a few hundred dollars over time, but that \$9,000 is a reasonable estimate of both the purchase price and its present value.
- [181] This property is in Ms. K's name as she was an Indian citizen at the time and able to purchase the property. There is some evidence that Mr. H has a designation that might also allow him to own property in India. Overall, however, I consider that the evidence supports that it would be logistically very difficult for Mr. H to have conduct of the sale of the property. Ms. K is therefore required to buy Mr. H out of his interest in the India property at 50% of its value, or \$4,500.

Vehicles

- [182] At the time of separation, there were three cars that were family property: a 2014 CRV, a 2008 Dodge Caravan, and a 1994 van. By way of the 2015 court order, the CRV was allocated to Ms. K for her use, and the other vehicles were allocated to Mr. H, subject to any adjustments at trial.

- [183] After separation, the 1994 van was in the possession of Mr. H. Mr. H testified that in March 2016 it was in an accident, and he received \$900 for its total value from ICBC. Mr. H says the trade-in value of the Dodge Caravan is \$3,600. That is the only evidence I have of the value of either van.
- [184] Ms. K says that the CRV was a gift from Mr. H for her 40th birthday in 2014. She says it was the first time Mr. H ever got her any gifts, including for religious holidays. However, she admits that he refused to put it in her name, or to name her on the insurance. Mr. H says that the car was approximately \$34,000 new in 2014, and has a present value of \$25,000, though he did not provide any evidence for the current value. Ms. K submits on the basis of internet searches for similarly dated CRVs that its value is between \$16,000 and \$21,000.
- [185] I find that the value of the CRV is \$18,000, and the Dodge Caravan is \$3,600. Mr. H also had the benefit of a \$900 payout on the 1994 van.
- [186] Ms. K shall keep the 2014 CRV and Mr. H shall keep the 2008 caravan. Ms. K shall pay compensation for the difference in the values of the vehicles to Mr. H in the amount of \$6,750.

RRSP and Pensions

- [187] Ms. K seeks a division of Mr. H's pensions from his previous employment with the federal government and his current employment at UBC in accordance with the rules relating to division of pensions. She also seeks a 50% share in Mr. H's RRSP.
- [188] With respect to the pensions, Mr. H has already executed the form pursuant to Part 6 of the FLA to divide his UBC pension. I direct him to do the same with respect to the federal government pension, with the same separation date of February 17, 2015.
- [189] In addition, Mr. H's CPP should be divided in accordance with the Canada Pension Plan Act, R.S.C. 1985, c. C-8, and regulations based on the separation date of February 17, 2015.
- [190] With respect to the RRSP, the financial statements and evidence show that Mr. H has an RRSP valued at approximately \$170,120 as of January 2017. Ms. K also has a spousal RRSP valued at approximately \$19,000.
- [191] RRSPs are treated as family property under Part 5 of the FLA. In *Lade v. Perreault*, 2016 BCSC 535 at para. 24, Justice Hyslop referred to the British Columbia Law Institute Study Plan No. 6 dated March 2013, which, in a question and answer format, stated the following:

1.18 Do the Part 6 rules regarding the division of benefits apply to RRSPs. Does it make any difference if the RRSP was funded by a transfer from a pension plan and the benefits are locked-in?

Commentary: Part 6 does not apply to RRSPs, whether or not the benefits were transferred from a pension plan.

Although Part 6 doesn't apply to RRSPs, this presents no practical problem. RRSPs are family property under Part 5 of the FLA (s. 84(2)(e)). The Income Tax Act accommodates transfers from RRSPs and RRIF's on the breakdown of a relationship. [See ITA Form 2220(e), ITA ss. 146(16)(b) and 146.3(14)]. B.C. pension division rules do not replace or otherwise affect those options for dividing the account balance between former spouses.

If the RRSP is locked-in (see para. 10.4), however, the transferred funds would be subject to the same locking-in rules.

[192] I find that both RRSPs are family property and subject to the presumptive 50/50 division, although to the extent that these funds are locked in, it is unlikely that Ms. K would be able to access her share of the funds for some time.

[193] Mr. H argued that a portion of his RRSP is excluded property on the basis that he had it prior to 2002. Mr. H has the burden of proof of establishing that some portion of the RRSP is excluded property.

[194] Mr. H's evidence in this respect was to provide the court with a document showing his contribution record to his RRSP that he says indicates that he personally contributed approximately \$70,000 to his RRSP after 2002. However, he agrees this record does not show what amount of funds were in the account in July 2002 at the time of marriage, what the funds have been invested in, what income and interest has been generated by those funds and the funds deposited since 2002, or what other contributions may have been made during that period. For example, it was established that Mr. H received a payout to his RRSP in lieu of a pension from the City of Surrey. Given that Mr. H was recently divorced at the time of his marriage to Ms. K, some clearer statement as to what his share of his RRSP was in 2001 would have been expected.

[195] Overall, Mr. H has not adduced the evidence necessary to determine what portion of Mr. H's current RRSP was excluded property at the time of his marriage. The court is therefore left without the evidence necessary to make a specific finding of excluded property. Nevertheless, I accept that it is improbable that contributions of \$70,000 since 2002, even with potential additional transfers from other sources, would account for an additional value of \$100,000. While my finding is necessarily imprecise, I find that half of that additional amount was more likely than not already held by Mr. H at the time of the marriage. I therefore find that Mr. H holds \$50,000 of his RRSP as his own excluded property. The remaining amount held in the RRSP account of over \$120,000 is family property and Ms. K is entitled to 50% of that amount. Mr. H is entitled to 50% of Ms. K's RRSP. The appropriate adjustments should therefore be made and arrangements made to vest the RRSPs accordingly.

Bank Accounts

[196] There is approximately \$2,750 in the accounts disclosed as family accounts in this matter. I direct that they be divided equally, and the accounts closed. Although Mr. H stated that there is outstanding family credit card debt, the statements provided in evidence do not support this.

[197] There is also a \$15,000 withdrawal from the joint bank account in May 2015 after separation that was not Ms. K's. Mr. H states that he does not recall what it was for. I direct that Mr. H account for 50% of those funds through payment of \$7,500 to Ms. K.

Jewelry

[198] As stated above, I find that Mr. H collected \$7,000 from an insurance company in relation to Ms. K's jewelry. I find that jewelry was her excluded property. Mr. H is directed to provide that jewelry back to Ms. K if, as he stated, it is still in a safety deposit box. If not, I direct that he pay \$7,000 to Ms. K.

Reapportionment of other Assets

[199] Mr. H is seeking 50% of the household goods and furniture, excluding furniture and electronics used by the children. Mr. H took his personal effects and some furniture with him when he left the family home in August 2015.

[200] No furniture of particular monetary or sentimental value was described or requested, and no valuations of the furniture provided. Most of the furniture and household appliances in the common areas would be expected to be used by the children, and Mr. H has agreed he is not seeking division of those items. Furthermore, it would not be appropriate for Mr. H to participate in an inventory of the current articles in the house.

[201] In these circumstances, where I have ordered that the home be vested in Ms. K, and the value of the furnishings are entirely incidental compared to the value of the house, I order that Ms. K keep the existing furnishings together with the home. An adjustment of \$2,500 shall be made in Mr. H's favour in this regard.

H. Are there any other ancillary orders that should be made in this case?

[202] I have already ordered that Ms. K is entitled to change her name back from her married name to her unmarried name. The authority to do so is found in s. 5 of the Name Act, R.S.B.C. 1996, c. 328, which provides that if a Canadian court has granted a divorce, the Supreme Court may, on the application of a former spouse, order that her name be changed to the name she desires. Pursuant to s. 5(5), the "district registrar of the court must transmit a copy of the order to the registrar general, who must register the change of name accordingly." I make this order. I have not stated Ms. K's unmarried name in these reasons for purposes of the children's privacy, but direct counsel for Ms. K to draft the name change order separately from the general order reflecting these reasons.

- [203] Ms. K also seeks an order that Mr. H reinstate her and the children as beneficiaries on his life insurance policy that he holds through UBC, for as long as that policy is available. I make that order, but only with respect to the children.
- [204] Ms. K also requests that I make an order that Mr. H's child support obligations shall be binding on his estate should he die before the children are no longer children of the marriage, pursuant to s. 170(g) of the FLA. I make this order.
- [205] With respect to the protection order made in 2015, that order has been set aside and varied by the orders of Master Caldwell in November 2015 and the order of Justice Brown in June 2017. For clarity, I make the following order which shall remain in effect indefinitely, unless otherwise ordered by this Court:
- a) The parties shall only communicate in writing, in English, and by email. They shall ensure that they provide each other with updated email contact information. The content of the communications shall be limited to communications regarding the children or any emergencies or contact information changes. All such communications will be respectful and not abusive or threatening.
 - b) Both parties shall be prohibited from exiting their vehicles at the pick-ups or drop-offs of the children at or near the home of the other party, and shall not communicate with each other verbally at these parenting access exchanges.
- [206] I note that guardianship and parenting time were settled and subject to a final order in June of 2017. Neither party requested a change to these arrangements at the trial of this matter. Furthermore, I canvassed with counsel whether they considered that the parenting arrangements should be reviewed in the context of the allegations of family violence. Mr. H, as noted, denies that there was any family violence. Ms. K supports Mr. H having the agreed upon parenting time on the basis that it allows the children to have a continued relationship with their father, and allows her to take shifts to support herself and the children on the days that they are not staying with her.
- [207] In addition, she says that the eldest child has a phone and she trusts him to contact her if he has any concerns or either child wants to leave. In the more than two year period during which this parenting arrangement has been in place, they have not raised any concerns regarding violence, and Mr. H has never taken the children for the entire period as she inevitably is asked by the children to pick them up on Saturday. She also says that Mr. H frequently goes on vacation without the children, or requests her to pick up the children on Fridays when he is not available.
- [208] Mr. H also agrees to the continuation of the current parenting arrangement, and says that he always advises Ms. K when he is unable to pick up the children or is away on vacation. For example, he states that he gave Ms. K plenty of notice regarding his absence of a number of weeks over the Christmas holidays in December 2017. He also believes the children should be entitled to "go home" if they want to, and tells them they can text their

mother if they want to be picked up early from their visits with him. He does not disagree that this is the norm.

[209] With respect to the allegations of violence made by Ms. K, she feels confident that her children would immediately phone her if they had any concerns. She also notes that they have both benefited from counselling, and that although the eldest did not want to see his father for some time after the separation, he was encouraged to re-establish his relationship with his father by others.

[210] I note that there were no incidents of family violence alleged or described in the past two years since this parenting arrangement has been in place. It is of considerable concern that Mr. H is not making use of his parenting time more fully to develop an ongoing relationship with his sons. It is also of concern that during the course of this trial, Mr. H told his children that he would not be taking them for the weekend because of this litigation. Nevertheless, where both parties are content to maintain the current parenting arrangement, and it is already the subject of a final consent order, that order shall remain in place.

CONCLUSION

[211] In conclusion, I make the following orders in this proceeding:

- a) The Surrey home is vested in Ms. K. at its December 2015 value of \$520,000. Ms. K. must compensate Mr. H. for his excluded interest in the property of \$75,000 and half the remaining value of the property as of December 2015, for a total of \$297,500, subject to the following adjustments:
 - a. Mr. H shall pay lump sum spousal support to Ms. K in the amount of \$150,000 by way of an adjustment of \$150,000 to the amounts Ms. K is required to pay to Mr. H for his share of the Surrey home. Mr. H may cease to make spousal support payments upon the transfer of the home to Ms. K in accordance with this order;
 - b. Mr. H is solely responsible for the \$150,000 LOC secured against the Surrey home. Rather than require closing of that LOC through payment by Mr. H, the amount owed by Ms. K to Mr. H shall be reduced by \$150,000, and Mr. H shall be removed from liability for payment of the LOC. Ms. K shall be removed as a mortgage holder over the Chilliwack property, or if this is not feasible, the full benefit of the mortgage over that property shall benefit only Mr. H.; and
 - c. Ms. K shall keep the existing furnishings together with the Surrey Home, and an adjustment of \$2,500 shall be made in Mr. H's favour in this regard;
- b) Mr. H owes Ms. K \$4,668 in child support retroactive to August 1, 2015, based on a monthly rate of \$1,556;

- c) Based on the CSG apportionment of after tax costs, Mr. H must pay 75% of the children's special expenses on an ongoing basis. In addition, he must retroactively compensate Ms. K in the amount of \$19,635 (\$577.50 per month since August 1, 2015 up to June 1, 2017);
- d) RESP amounts are not included in the special expenses, and Mr. H is not required to contribute to the RESP, but should either of the children draw upon the RESP in the future, that amount shall be credited towards Ms. K's contributions to the children's post-secondary education;
- e) Mr. H's income for CSG purposes is \$114,776 and Ms. K's is \$15,000. Mr. H's child support obligation shall therefore be adjusted beginning June 30, 2018 to \$1,714 per month, to be paid in equal installments on the 1st and 15th of each month, together with his 75% share of special and extraordinary expenses. The court's order of June 6, 2017 shall continue to apply to further adjustments of child support;
- f) Ms. K shall buy Mr. H out of his interest in the India property at 50% of its value, or \$4,500;
- g) Ms. K shall keep the 2014 CRV and Mr. H shall keep the 2008 Dodge Caravan. Ms. K shall pay to Mr. H \$6,750 in compensation for the difference in the values of the various vehicles;
- h) Mr. H shall either return Ms. K's jewelry to her or pay \$7,000 to Ms. K;
- i) Mr. H shall pay \$7,500 to Ms. K to account for the \$15,000 withdrawal from the joint bank account in May 2015;
- j) The parties' joint bank account shall be closed and the amounts divided equally between them;
- k) Mr. H shall execute the form pursuant to Part 6 of the FLA to divide his federal government pension with Ms. K based on the parties' separation date of February 17, 2015;
- l) Mr. H's CPP shall be divided in accordance with the Canada Pension Plan Act and regulations based on the separation date of February 17, 2015;
- m) \$120,000 of Mr. H's RRSP is family property, and half of that amount will vest in Ms. K. Half of Ms. K's approximately \$19,000 RRSP will vest in Mr. H. The parties shall make the required arrangements to ensure the appropriate values are transferred;
- n) The children shall be reinstated as beneficiaries on Mr. H's UBC life insurance policy, for as long as that policy is available;
- o) Mr. H's child support obligations shall be binding on his estate should he die before the children are no longer children of the marriage, pursuant to s. 170(g) of the FLA;
- p) Ms. K's application to change her name back to her unmarried name is granted, and her counsel shall draft a separate order to this effect;

- q) The parties shall only communicate in writing, in English, and by email or text. They shall ensure that they provide each other with updated email contact information. The content of the communications shall be limited to communications regarding the children or any emergencies or contact information changes. All such communications will be respectful and not abusive or threatening; and
- r) Both parties shall be prohibited from exiting their vehicles at the pick-ups or drop-offs of the children at or near the home of the other party, and shall not communicate with each other verbally at these parenting access exchanges.

[212] As a result of these orders, after adjustments and reapportionments, the Surrey home shall be vested in Ms. K. After factoring in the lump sum spousal support to Ms. K, and the payment for the household furnishings to Ms. K, Ms. K would owe Mr. H \$150,000 in relation to Mr. H's interest in the home, and Mr. H would owe Ms. K \$150,000 to pay off the LOC registered against the home. As the amounts are equal in value, Mr. H and Ms. K shall have completed their obligations regarding the Surrey home under this order upon the transfer of the Surrey home together with the LOC to Ms. K.

[213] Ms. K was substantially successful in this matter. She is entitled to her costs at the ordinary scale.

"Marzari J."

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