
CANADA / JUDGMENT

O.O. v. L.M.

2017 BCSC 1411

COURT

Supreme Court of British Columbia

DECIDED

11 August 2017

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2017 BCSC 1411 O.O. v. L.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

O.O. v. L.M.,

2017 BCSC 1411

Date: 20170811

Docket: E048389

Registry: New Westminster

Between:

O.O.

Claimant

And

L.M.

Respondent

Before: The Honourable Madam Justice DeWitt-Van Oosten

Reasons for Judgment

Counsel for the Claimant:

Joseph K. Broadhurst

Counsel for the Respondent:

Warda A. Negyal

Place and Dates of Trial:

New Westminster, B.C.

July 24-28, 2017

Place and Date of Judgment:

New Westminster, B.C.

August 11, 2017

I. INTRODUCTION

- [1] The parties began a marriage-like relationship sometime between 2002 and 2003. The precise date is unclear. At the time, they were residing in Quebec.
- [2] In 2015, they separated. They currently live in Surrey and Abbotsford, having moved to this province to accommodate the respondent's employment with the Royal Canadian Mounted Police ("R.C.M.P").
- [3] There is one child of the relationship, born April 1, 2010 ("K.M."). The claimant wants to move back to Montréal, largely for employment-related reasons. She asks that K.M. be allowed to relocate with her. The respondent is opposed.

II. ISSUES

- [4] A notice of family claim was filed in March 2015, but not served until September 2015. A month later, the respondent filed a counterclaim. Both claims were tried in New Westminster on July 24-28, 2017. Judgment was reserved.
- [5] The issues for determination are:
 - guardianship;
 - relocation to Montréal;
 - parental responsibilities;
 - parenting time;
 - child support;
 - health care and life insurance coverage;
 - name change for K.M.;
 - spousal support;
 - division of family property;
 - the necessity of enforcement orders; and,

· costs.

III. BACKGROUND

A. Preliminary Comments

- [6] I will not set out the entirety of the evidence. Rather, I will focus on what I see as the salient points.
- [7] Considerable detail was provided on various issues that arose between the parties during the relationship and post-separation. It is not necessary that I capture the whole of this detail in the Reasons for Judgment. Suffice to say that in reaching my conclusions, I have considered the evidence in its totality.
- [8] There is an additional point I wish to address. It is clear to me from the evidence that these parties do not trust each other. They are quick to point out each other's faults, including a perception by both that the other is manipulative and dishonest.
- [9] For instance, the claimant believes that the respondent misled her about the circumstances surrounding his British Columbia posting with the R.C.M.P. and the flexibility of returning to Quebec, or another Francophone location, within three years of becoming a member. She also believes he has exaggerated the level of care he has provided for K.M. over the years and, in closing submissions, it was suggested that the respondent has intentionally "put down roots" in Surrey in a manner designed to frustrate the claimant's relocation application, including purchasing a home in Abbotsford less than two weeks before trial. At the very least, the claimant is suspicious that such is the case.
- [10] For his part, the respondent believes that the claimant has been disingenuous in her efforts to find employment in Surrey; she unilaterally makes decisions about K.M. without consulting him; she has not been forthright about financial assistance received from her mother; and, he believes she is prepared to make false allegations against him to further her position as parent.
- [11] After observing both parties during their testimony, I am not satisfied that either of them is dishonest. Instead, what emerges from their evidence are different communication styles, which often leads to a misperception and resulting conflict; they both feel very strongly about the rightness of their respective positions; and, because of this, each has a tendency to reconstitute what is said or done by the other in a manner that aligns with their already-established perspective.
- [12] There appears to be little tolerance for idiosyncrasies or foibles, particularly when it comes to parental responsibilities. As soon as one of them makes a decision, or does something that the other does not favour, they respond by refusing to accommodate a special request, or becoming inflexible and insisting on strict adherence to the already agreed-upon schedule. They are both reactive.

[13] My observations are consistent with what was noted by Dr. Nicole Aubé, a registered psychologist who completed an assessment of both parents and K.M.'s need for the purpose of trial. The substance of the report will be addressed later. For present purposes, I simply note the following observations made by Dr. Aubé:

- [The parties] are both stubborn people. [The respondent] reacts to challenges and incertitude with a certain level of rigidity, while [the claimant's] reaction is more apparent to be anxiety;
- It appears that a great amount of energy and resources have been spent by both parties in fighting. They both have approached the parenting abilities of the other parent with reluctance, scruples, scepticism and mistrust. They both have scrutinized the other parent's style and behaviour, not only with a demanding attitude, but also with a harsh regard. No, or little, credit has been provided to the other parent. There has been miniscule or no space for mistakes or learning, despite the fact that we are all aware that good parenting requires a learning curve, and that experience is an essential tool that assists parents to become versed in the art of parenting.

[14] I have kept this overarching context in mind when assessing the parties' evidence and assigning weight to the many assertions they make about each other.

B. Claimant's Circumstances

[15] The claimant testified with the assistance of an interpreter. Her first language is French. She did not require full translation; rather, the interpreter was made available in the event the claimant did not understand a particular question, or could not provide a full answer without assistance. She testified in English and I am satisfied she was able to adequately and accurately give her evidence. It was readily apparent that she understood many of the questions that were put to her in English, including during cross-examination. When she required clarity, she asked for it. She was able to answer many questions without assistance from the interpreter. The answers were fulsome and coherent.

[16] The claimant is 39 years old. She was born in Romania. As a child, she lived in Gabon and France. She moved to Montréal in January 1998 to attend the Université Laval. Approximately one year and a half later, the claimant's sister passed away and she went to Gabon to recover. She then spent a year in Romania with her grandmother.

[17] She returned to Montréal in 2001 and studied at the Université de Montréal. She believes she began living with the respondent in 2002. She completed two years in a bio-medical program. However, her GPA was not high enough and she was unable to continue with the program.

[18] In 2003, the claimant transferred to a business program at the Université du Québec en Outaouais. She substantially finished this program in 2005, with one on-line course left to complete in 2006. She obtained a Bachelor degree in business administration.

- [19] At some point after graduation, the claimant began work at a call centre in Montréal. She remained there for five months. She moved to the Scotiabank in 2007 and worked on database entry. After a couple of months, she was offered a higher position as an assistant underwriter in the mortgage centre.
- [20] In 2008, the claimant moved to Desjardins as an assistant financial planner. She was promoted to financial advisor and held this position until the birth of K.M.
- [21] In 2010, the claimant took maternity leave for one year. She remained at home while the respondent worked. At that time, he was also employed in the financial industry.
- [22] In 2013, the respondent began to talk about joining the R.C.M.P. The claimant testified that when this subject first arose, the respondent said he would likely be posted to a Francophone province. His chances were higher than most because both parties were Francophone. Up to this point, the claimant had never lived in a community that was predominantly Anglophone.
- [23] The claimant says she wanted to stay in Quebec. They owned a house together; they had a young child; and, the claimant's boss at Desjardins was accommodating of childcare issues. The claimant was concerned that if they moved from Quebec, she would "lose a lot".
- [24] From her perspective, she was the one who would make the bigger sacrifice. She would give up seniority with Desjardins; her pension; a great work environment; and, because English is a third language for her, she was concerned that she would not find work in her chosen field as a financial advisor.
- [25] A financial advisor needs to be "confident"; to present as someone who is sure about the recommendations she makes to clients. An advisor cannot "close a deal" if not trusted by the client. When speaking French, the claimant sees herself as a confident advisor. This is not the case when speaking English.
- [26] Ultimately, the respondent applied to join the R.C.M.P. and left for training in Regina in January 2014. The training lasted six months. He returned to Montréal twice during that period, but only for a few days at a time.
- [27] During the training, the claimant looked after K.M. For part of this time, her mother visited from Gabon and stayed with her. For another period, a good friend of her mother, A.D., stayed at the claimant's residence. The respondent had two brothers living in Montréal in 2014. They were available to assist if necessary.
- [28] The claimant became pregnant at the end of 2013. She miscarried on February 21, 2014. It was a difficult time for her. She asked the respondent to return to Montréal. He could not do so because of his training. She did not insist on him coming back. She had her mother and A.D. for support.

- [29] The claimant took sick leave from her employment following the miscarriage. She tried to return to work in March 2014, but was sent home because it was too early. The claimant sought assistance from a psychologist during this time. In 2014, her full-time salary with Desjardins was about \$60,000 per year.
- [30] The parties purchased a home together in Montréal. It has since been sold. Sale proceeds of about \$95,000 were divided between them in 2015.
- [31] While living in Quebec, the claimant had an additional property registered in her name. This house was purchased on behalf of her mother. It was in the claimant's name because her mother was not a resident of Canada. The house was purchased for \$330,000 on July 25, 2011. The claimant did not put any of her own money toward this house. It sold on April 23, 2014.
- [32] The respondent passed his training with the R.C.M.P. At the end of May 2014, he was posted to Surrey. When she was asked about her top three choices for a posting, the claimant says she chose New Brunswick; British Columbia; and Alberta, in that order. She was told that Quebec and Ontario were not available.
- [33] The claimant says she expressed concern about a move to Surrey; in particular, the fact that Surrey was primarily Anglophone. She was concerned about job prospects. She said the respondent assured her that his salary would grow quickly to \$86,000 per year. As such, even if she did not work right away, they could manage financially. She believed him.
- [34] The claimant had misgivings, but she wanted the move to work for the family. She says the respondent told her that after three years with the R.C.M.P., he could seek a transfer back to Quebec.
- [35] The respondent officially moved to Surrey at the end of June 2014. The family drove across Canada to facilitate the move and arrived in Surrey the first week of July. The claimant and K.M. returned to Montréal on July 9. This was to sell the house that was jointly owned by the parties and complete the move. They returned to Surrey on September 18, 2014. The claimant cared for K.M. by herself in the interim. From September 18 forward, all three resided in Surrey.
- [36] The respondent covered the costs of rental accommodation in Surrey. The claimant says she used her monies to purchase food and other necessities. The accommodation consisted of a two-bedroom basement suite.
- [37] The parties began having problems shortly after the September move. From the claimant's perspective, they had already become "cold" toward each other after the miscarriage in February 2014.

- [38] It was her understanding that once they sold their house in Montréal, they would buy a house in the new location. She says the respondent changed his mind because the claimant did not have a job. She thought they needed a bigger place. They had a lot of things in storage. Her employment status, and the need for more living space, was an ongoing source of friction.
- [39] The claimant was actively looking for other places to live, but felt the respondent was obstreperous. Everything she looked at failed to meet with his approval. Eventually, she decided to find a place on her own. She called her mother and asked for money to buy a house. With these funds, she purchased a Surrey townhouse for \$336,000 in January 2015. It has three bedrooms and a den. She did not tell the respondent she was doing this.
- [40] None of the claimant's personal money went into the purchase. None of the respondent's money went into the purchase. Instead, the claimant used the proceeds from the sale of her mother's house in Quebec. The claimant made this purchase on January 8, 2015. The house was intended to be for her. By this time, she had decided to leave the respondent, but had not yet separated from him.
- [41] The respondent learned of the new place by following the claimant to the location. This was on January 21, 2015. It was clear the relationship was over. The claimant stayed in the basement suite for a short time, ensuring K.M. had a place to live before the move to the townhouse. She left the suite on February 4, 2015.
- [42] The claimant filed a notice of family claim on March 9, 2015. This included notice that she wanted to return to Quebec with K.M. "so [that] she [could] accept employment in her chosen career". The claim was not served until September 2015.
- [43] There is no court order or formal agreement that governs parenting time with K.M. The parties have shared time with her since separation. The schedule has largely revolved around the respondent's work commitments with the R.C.M.P.
- [44] K.M. is with the respondent on his days off; she is with the claimant when the respondent is working. The respondent works a four-days-on, four-days-off schedule. The start times will vary. On two of the four work days, he will start in the morning. On the remaining two days, he will work nights shift.
- [45] The claimant finds this schedule difficult to work with. The respondent's four-day parenting block is forever shifting and the varied start times render parenting exchange times uncertain. She feels that the respondent's needs have been allowed to define the schedule and, as a result, they have been rendered paramount since 2015.
- [46] When the claimant moved to Surrey, she began looking for work. She saw a case manager with WorkBC and they developed an action plan for job-seeking. This included translating her resume to English and producing a letter for prospective employers indicating the availability of a wage subsidy.

- [47] Although the claimant acknowledges that her English has improved since moving to Surrey, she does not think it is good enough for a position as a financial advisor. After looking for jobs in her field without success, it was recommended that she "widen her horizons" and consider an entry-level position. As a result, she began to apply for numerous other positions, largely on-line. Some of them paid minimum wage. This included a position at Tim Horton's. They required that she be available for evening shifts. She could not do so because of K.M.
- [48] In August 2015, the claimant went back to Montréal. She met with her former boss. The latter recommended her to Hunt International. She went for an interview with this company and was offered a position in Montréal. Although the offer was in 2015, the claimant has recently been in contact with Hunt International. She understands that if she returns to Montréal, the offer remains open. There is no evidence to the contrary.
- [49] A copy of the 2015 Hunt International contract was filed at trial. It confirms that the claimant was offered work at the Caisses Desjardins Du Québec. After a training program, she would work in the role of "Financial Advisor in Personal Finances". This position pays \$27.50 per hour, with readjustment to \$28.50 after six months. The work is full time and requires one or two evenings per week (until 8:00 p.m.), and the occasional Saturday. The claimant believes she can avoid evening shifts and possibly Saturdays by working at a location that does not have extended hours. With this job, her annual income would be just over \$50,000.
- [50] In summer 2016, the claimant decided she should not sacrifice her education and take a minimum wage job. This would be worrisome to prospective employers and make them wonder why she was not using her skills. Rather than run this risk, she decided to hold out for a position in her field. As such, she stopped looking for other types of work in British Columbia.
- [51] At one point, the claimant thought about going back to school. However, she did not achieve the requisite threshold on an English-requirement test that is mandatory for Simon Fraser University and Capilano University.
- [52] The claimant does not have a support network in Surrey. She has friends in Montréal, as well as A.D., who she considers a "second mother". For many years, she has thought of her mother moving to Canada. Her mother does not speak English and if the claimant moved back to Montréal, she is sure her mother would move to be with her. If she relocates, she can stay initially with A.D. There is room for K.M. as well. The claimant visited with A.D. at Christmas 2016 and there was plenty of room.
- [53] Once back in Montréal, the claimant would look for her own place. From her perspective, the cost of living is significantly lower in Quebec. While in Montréal, the claimant would have access to other persons with a Gabonese background. This form of connection is important to her.

- [54] The respondent began paying child support in May 2015. Initially, he paid \$450 per month. This has since increased. Spousal support did not begin until February 2017. Currently, the respondent pays \$856 every second week for child and spousal support, combined.
- [55] According to the claimant's most recent Financial Statement, her monthly income is \$2,162. This consists of child support, spousal support and government supplements. Her monthly expenses amount to \$3,751.
- [56] The claimant owns the Surrey townhouse, purchased with her mother's funds. It has a current value of \$452,000. There is no mortgage; however, the claimant pays a monthly strata fee. She has a 2014 vehicle worth approximately \$11,444. It is financed. As at July 5, 2017, she had \$19,453 in cash and \$38,818.76 in RRSPs. She receives assistance from her mother and owes her mother about \$164,915. This is in addition to the monies used to purchase the townhouse. The claimant lists both amounts as unsecured debt in the form of "personal loans".

C. Respondent's Circumstances

- [57] The respondent is 39 years old. He is currently in a marriage-like relationship with someone he met after separation. He has a four-month-old son with his new partner, A.V., and they are engaged to be married. This will likely take place in the summer 2018.
- [58] The respondent says that while living in Quebec, he was equally responsible for the care of K.M. He took eight weeks' paternity leave. When not working, he was actively engaged in her care. When working, he would assist after work. He would help feed K.M., bathe her and change her diapers. He would put K.M. to bed. He assisted with taking her to appointments. For three and one-half years, K.M. was in child care and pre-school in Montréal. Both parents would take her to daycare, and pick her up, depending on the circumstances.
- [59] When K.M. was born, the respondent was working as a financial advisor. He later moved to the Canada Revenue Agency. Like the claimant, he has a Bachelor degree in business administration. They went to the same university. He also has a certificate in international trade.
- [60] While working with the Canada Revenue Agency, the respondent began to consider the R.C.M.P. He was looking for ways to increase his income and provide a better quality of life for the family. Initially, he applied for a civilian position as a "Financial Crime Analyst". The position was cancelled for budget reasons. He began to consider the R.C.M.P. more broadly.
- [61] This was in late 2012. The respondent discussed the issue with the claimant. He says he explained it would require six months of training in Regina. If successful, he would be posted somewhere. The posting could be anywhere in Canada. The claimant was agreeable to pursuing a position in light of the salary potential. They talked about the fact that she might be able to transfer her own position, or seek a new one. She could start out in a lower position to get comfortable with the new environment, and then go from there.

- [62] The respondent does not recall the claimant expressing substantive concerns. He made it clear that if she did not want to do this, there was no point in going to Regina. She did not resist.
- [63] R.C.M.P. training began in January 2014. About three months into the program, he was asked to specify his preferences for a posting. After discussing the matter with the claimant, he listed British Columbia, New Brunswick and Alberta, in that order. He believed this was consistent with preferences expressed by the claimant. Ultimately, it was the R.C.M.P. that would make the final decision.
- [64] Before he left for training, K.M. began receiving instruction in English. The respondent says this was a choice made by the parties in the event they moved to an Anglophone community.
- [65] The respondent successfully completed his training. He went back to Montréal. The family took a road trip to Surrey, arriving the first week of July 2014. The claimant and K.M. stayed for five or six days and returned to Quebec. They came back to Surrey in September 2014 and moved into his rental accommodation.
- [66] After September, the parties began to argue. Every time the respondent enquired about her job search, the claimant would get angry. She was also unhappy with the accommodations. She began to pressure him to get a mortgage, even though she was not working. She wanted the respondent to buy a place in Surrey.
- [67] In January 2015, the respondent discovered that the claimant purchased a townhouse. This was the final straw. Separation was inevitable.
- [68] The claimant stayed in the basement suite for a bit longer, to ensure K.M. had a place to live, and then moved out.
- [69] After separation, they agreed that the claimant would care for K.M. when he was working. He would have K.M. on his days off. He proposed the parenting schedule; they both agreed. The claimant was not working and was not going to school.
- [70] The respondent has a five-year contract with the R.C.M.P. in Surrey. After that, the R.C.M.P. will decide if he remains there, or is posted elsewhere, depending on operational needs. In his experience, because the Surrey detachment is often short-staffed, it is rare that members who work general duty in Surrey get posted elsewhere. He only knows of one colleague of ten years' seniority who was relocated to Alberta. If it looks like the respondent will be posted elsewhere, he could seek to transfer to a specialized position that would keep him in Surrey.

- [71] When K.M. is in his care, the respondent drops her off and picks her up from day care when necessary. They do activities together. He has tried to widen her circle of friends. He started swimming lessons with her in March 2015. K.M. is also involved in two other extra-curricular activities that are gymnastics-based. He takes her to one of these; the other is managed by the claimant.
- [72] K.M. spends time with the respondent, A.V. and their infant son. She has a good relationship with A.V. and has bonded with her new brother. In the summer 2015, before the baby was born, the three of them went to Mexico. Things went well.
- [73] K.M. also spends time with the parents of A.V. She calls them "Oma" and "Opa". When K.M. is in the respondent's care, he is the one that looks after her unless he has to be at work. On those occasions, A.V. steps in and manages things, such as returning K.M. at the end of the respondent's scheduled parenting time.
- [74] The respondent testified about an incident that occurred between the parties in March 2016. He said he told the claimant he wanted to take K.M. to the Seattle Zoo. As the child had previously travelled out of the country with him, he did not think there would be any concerns. He asked for K.M.'s passport and a parental consent letter. When he went to the claimant's residence to pick up the documents, she refused to provide them.
- [75] A week later, he repeated his request and also asked for K.M.'s immunization card. He wanted to provide the claimant with the child's report card at the same time. He went to the claimant's residence. K.M. emerged and went to his vehicle. The claimant handed over the immunization card, but refused to provide the passport and consent letter. She said she was no longer comfortable with K.M. travelling outside of the country with the respondent. The respondent turned around and walked back to his vehicle, still carrying the report card. The claimant "snatched" it from him. She opened the door to his vehicle and began to reach for K.M. The respondent put his hand or arm in between them and told her to stop. She walked away. He was upset and yelled at her. K.M. watched this unfold.
- [76] Later that day, he received a call from police indicating that the claimant reported an assault. No criminal charges were laid, but the respondent was taken off duty for one day while enquiries were completed. He found this situation very stressful.
- [77] After that point, exchanges involving K.M. no longer took place at the claimant's home. The respondent insisted they occur in public or through a third party. In fact, his preference is for surveillance video to be in place where the exchange occurs. He is worried about the claimant making false allegations. At present, a neighbour (G.C.) in the claimant's complex facilitates the exchange.
- [78] The parties agreed to evening Skype calls when K.M. is in the other's care. A few weeks after his son was born, the respondent noticed that the claimant began placing a time limit on his call, using an alarm to notify K.M. that her time is up.

- [79] In November 2016, the respondent enquired whether it would be possible for him to transfer to Montreal on compassionate grounds. The answer was "no". To move there now would in all likelihood require that he resign from his position with the R.C.M.P. and look for new employment. He does not see himself relocating to Montréal. He has a spouse in Surrey; K.M. has a little brother there; he cannot see forcing everyone to Montréal and cutting them off from the people they love and are connected to. None of K.M.'s natural grandparents live in Canada. The parents of A.V. do, and they reside in Maple Ridge.
- [80] The respondent anticipates an income of about \$86,000 for 2017. His most recent Financial Statement puts his total monthly expenses at \$9,753 and his annual expenses at \$117,036. He is not able to meet these expenses because of his legal fees. His parents are assisting with financial support of \$30,000 per year. He takes vacation only once per year. He could make more money working overtime, but he has two children and he does not wish to sacrifice his time with them.
- [81] In July 2017, the respondent purchased a home in Abbotsford with A.V. It was built in 2013 and has six bedrooms. A.V.'s parents provided \$300,000 toward the house. A.V. also contributed. The house was purchased for \$952,500. The mortgage payment is just over \$2,200 per month.
- [82] As at July 12, 2017, the respondent had approximately \$31,210 in liquid assets, as well as \$60,269 in RRSPs.
- [83] A.V. works for the federal Immigration and Refugee Board. She is currently on maternity leave. They are in the process of discussing return to work options.
- [84] The respondent was aware of the house that was purchased in Quebec using the claimant's mother's funds. He was not consulted about it. He acknowledged that no family money went in to the purchase. He never lived there. He did not contribute to the mortgage. The claimant's mother spent time there when she was in Canada. He had no involvement in the sale. He believes it was sold in 2014. He has no personal knowledge of what happened to the proceeds.
- [85] The respondent confirmed that the Quebec property in both names sold in late 2014. All sale proceeds went into their joint Scotiabank account (cumulatively, just under \$100,000). In January 2015, he removed about half of these funds. Shortly after that, the claimant removed the other half. He has used his portion for legal fees. Apart from their respective RRSPs, the parties did not have other significant assets at the time of separation.
- [86] With respect to the Surrey property in the claimant's name, the respondent did not contribute anything toward its purchase. No family funds went toward the purchase. He has never contributed to its maintenance.

- [87] The respondent acknowledges that he did not pay spousal support right away after separation. The parties were having communications issues. He asked the claimant what amount she considered appropriate. She did not respond and accordingly, he did not pay. It was not until February 2017 that he made his first spousal support payment.
- [88] He started paying child support in May 2015. He suggested a formal financial separation to the claimant. He emailed his pay stub and most recent tax report to her. He asked for the same information from the claimant. She said she was in the process of doing her taxes. He did not receive a response until served with the notice of family claim in September 2015.

D. The Child

- [89] The claimant describes K.M. as a spirited, joyful and social child. She likes to play. She is especially fond of gymnastics and is friendly with everyone, irrespective of age. She is fluent in French.
- [90] K.M. is enrolled in French immersion in Surrey. She is seven years old and scheduled to enter Grade 2 in September 2017.
- [91] The claimant says she has a strong bond with K.M. and it is difficult for her daughter to be separated from her. She believes it is harder for K.M. to be away from her mother, than her father. From her perspective, she has been the primary caregiver and the person most involved with K.M. since her birth.
- [92] She accepts that the respondent is a good father and devoted to K.M. If allowed to relocate K.M. to Montréal, she would ensure generous contact between K.M. and the respondent. Although she says the respondent did push her during the conflict outside her home in March 2016, she does not allege family violence in support of her application to relocate.
- [93] The respondent says he is also closely bonded with K.M. He is an active parent who cares for his daughter's physical well-being; arranges playdates for her; engages in extra-curricular activities with her; helps her with her homework; and, they are openly affectionate with each other. The claimant went to Romania without K.M. at Christmas 2015 (the respondent refused to consent). He took time away from work and stayed with the child. He was fully capable of looking after her.
- [94] If the claimant is allowed to relocate K.M. to Montréal, he believes it will affect the child "dramatically". She has strong ties to him, as well as the others who are now involved in his life. He believes equal parenting is in K.M.'s best interest.

E. Third Party Witnesses

- [95] In addition to the parties, four other witnesses testified. They consisted of: A.D. (the claimant's "second mother"); N.H. (her best friend); A.V. (the respondent's spouse); and G.M. (the respondent's brother). I accept their evidence.

- [96] A.D. has known the claimant for 18 years. She has observed the claimant with her daughter. It is obvious that K.M. loves her mother. They are openly affectionate with each other. She is patient and attentive to her daughter's needs. A.D. testified that if the claimant and K.M. return to Montréal, she has a flexible schedule and will do whatever she can to assist. They are free to stay with her until they find their own place.
- [97] N.H. lives in Montréal. She met the claimant in 2008 when they worked together at Desjardins. She has known K.M. since birth. She describes her as a happy child. Her children have an ongoing relationship with K.M. They have visited in Surrey. There is a strong bond between the claimant and K.M. She has witnessed this relationship grow. The bond is "special". You can see the child's strong affection for her mother. If the claimant returns to Montréal with K.M., she would be welcome to stay with N.H. until no longer necessary. She will be there for the claimant whenever she needs her.
- [98] A.V. is the respondent's new partner. She met the respondent at the end of April 2015. She first met K.M. in May or June 2015. It was clear to her that if she wanted to have a relationship with the respondent, it would have to "work well" between herself and K.M. The respondent's daughter was his priority.
- [99] Over time, she got to know K.M. They have been on vacation together. A.V. finds K.M. "very accepting". They do sports together, as well as other activities. They have a good relationship. K.M. has met A.V.'s parents, who live in Maple Ridge. She has a good relationship with them as well.
- [100] A.V. has an infant son with the respondent. K.M. loves to spend time with her brother and assist in his care. A.V. described the respondent as a devoted father. He shares responsibility around the house and when not working, he spends as much time as he can with his children. He is aware of his children's needs, "sensitive" to their circumstances and attentive.
- [101] A.V. is currently on maternity leave with the federal government. She and the respondent are discussing their options. At this point, she is likely to return to work. However, she may attempt a lateral transfer so that she can work closer to Abbotsford.
- [102] G.M. is the respondent's brother. He currently lives in Toronto. From 1997 to December 2011, he lived in Montréal. He was there when K.M. was born.
- [103] At the start, he believes he saw the family about three times per week. He was not working and would assist the claimant in caring for K.M. He also saw the respondent interact with K.M. He saw a close bond. The respondent would play with her, bathe her, assist with the feeding and put her to bed. On some weekends, the respondent, two of his brothers and K.M. would do activities outside the home (such as attend an amusement park). Occasionally, the respondent's mother would accompany them if she was visiting from overseas.

F. Section 211 Report

[104] By agreement, a report was produced under s. 211 of the Family Law Act, S.B.C. 2011, c. 25 ("FLA"). It was completed by Dr. Nicole Aubé, a registered psychologist. The report addresses guardianship, parenting times and parental responsibilities for K.M.

[105] Dr. Aubé interviewed the claimant, the respondent, K.M. and collateral sources. She was not called as a witness at trial. Rather, her report was admitted by consent.

[106] In *B. v. B.*, 2004 BCSC 72, Parrett J. addressed the use to be made of a report of this nature:

[36] the proper approach is, in my view, to consider the factual aspects of the report to be prima facie evidence as to the truth of those facts. Where, as in the present case, neither party has challenged the report itself and neither has required the attendance of its author, the report should be considered a part of the evidence as a whole placed before the court.

[107] Dr. Aubé made several findings that I consider of direct relevance to the issues before me. These include (but are not limited to):

[K.M.] has expressed attachment towards both parents. She genuinely cares deeply for her mom and her dad. [K.M.] expressed a desire to keep the same amount of parenting time between mom and dad. The observation sessions revealed a child at ease at her mom's as well as at her dad's home. She also appeared to have a good relationship with her stepmother;

In principle, [K.M.] needs parental care that is stable, organized, predictable, nurturing and child-centred. She needs her parents to understand that their dissention is affecting her negatively and that they must shield her from their conflicts. Actually, it quite meaningful that 2 of her wishes are related to her parents: to have mom and dad back together and that they would not fight.

[K.M.] needs to feel that her parents have accepted that they both play an important role in her life and that they are respectful toward the other parent;

[K.M.] needs also to have consistent boundaries and structure from both parents. She needs to be permitted to love both with the same intensity. She needs to be shielded from her parents' conflicts, which has not been the case lately;

both parents love dearly their daughter. [K.M.] has formed a very strong attachment with both parents. Both parents have been able to attend to their daughter's physical and intellectual needs. Both parents have excellent resources to offer to [K.M.]; and,

it is evident that [the claimant] and [respondent] have been very nurturing parents; they both have been, all along, very dedicated to [K.M.'s] needs and interests. [The claimant] and [respondent] are both resourceful and devoted parents. Consequently, it would be detrimental for [K.M.] not to be able to benefit from regular input from each of them.

[108] Ultimately, Dr. Aubé recommends that "both parents share equally the guardianship" of K.M. They "should be involved in every aspect of their child's life". She recommends a "50/50 model" for parenting time.

IV. LEGAL PRINCIPLES AND ANALYSIS

A. Guardianship

- [109] Section 39(1) of the FLA presumes that "[w]hile a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian", unless an agreement or court order provides to the contrary.
- [110] No such agreement or court order exists in this case. No evidence was called at trial that would warrant overriding this presumption. As such, I declare both parties to be guardians of K.M.

B. Relocation

- [111] As noted, there is no written agreement or court order that governs parenting arrangements. Section 46(2) of the FLA therefore applies to the issue of relocation:
- (2) To determine the parenting arrangements that would be in the best interests of the child in the circumstances set out in subsection (1) of this section, the court
 - (a) must consider, in addition to the factors set out in section 37 (2) [best interests of child], the reasons for the change in the location of the child's residence, and
 - (b) must not consider whether the guardian who is planning to move would do so without the child.
- [112] Section 37(2) guides the analysis. The only consideration is the best interests of K.M. Relevant factors include, but are not limited to: (a) the child's health and emotional well-being; (b) the nature and strength of the relationships between the child and significant persons in the child's life; (c) the history of the child's care; (d) the child's need for stability, given the age and stage of development; and (f) the ability of each guardian to exercise his or her parental responsibilities.
- [113] As correctly pointed out by the claimant, in deciding the application to relocate, the Court must avoid presuming that the status quo is in the best interests of K.M.: *Fotsch v. Begin*, 2015 BCCA 403, at para. 76.
- [114] Although not exclusive, the claimant's primary reason for wanting to return to Montréal is economic. She has been unable to find employment in Surrey. She desires meaningful work in her chosen field that will allow her to become financially self-sufficient. From her perspective, the likelihood of obtaining this work is significantly greater in Quebec because of the language barriers she faces when speaking English. She does not want to be financially dependent on the respondent or her mother. She believes she can achieve a "better life" in Quebec than British Columbia. In turn, this will prove beneficial for K.M.

- [115] The respondent opposes relocation. He is an active parent, closely bonded with K.M., regularly involved in her life, and, he has started a new family. His daughter forms an integral part of this family and is closely connected to A.V., as well as K.M.'s infant brother. The respondent says it is not in K.M.'s best interests to return to Montréal and only see her father and extended family on a periodic basis. He is in the midst of a five-year contractual commitment to the R.C.M.P. in Surrey. For this reason, as well as others, it would be impractical for him to return to Montréal.
- [116] After considering the evidence as a whole, and mindful of s. 37(2) of the FLA, I am satisfied that relocation to Montréal is not in the best interests of K.M.
- [117] In reaching this conclusion, I have taken the following facts into consideration, which I find to be established on the evidence.
- [118] The claimant's belief that Montréal holds better employment prospects is genuine. She was able to confirm the availability of a position relatively quickly once she began looking in 2015. She is entitled to pursue work that aligns with her educational background, career goals and expertise. I accept that limitations in the English language present difficulty in obtaining a position as financial advisor in British Columbia. I also appreciate that economic self-sufficiency and providing independently for K.M. are important to her, consistent with her demonstrated commitment to be a responsible and effective parent.
- [119] However, I am not persuaded that Quebec holds the only possibility of meaningful employment with income potential similar to what the claimant earned in Montréal. She testified at trial and was able to express herself well in English. She was articulate; able to make her point; and it was clear to me that she had an effective understanding of English when questions were put to her. I do not accept that the claimant is rendered unable to find work in British Columbia because of language barriers. Instead, I find as a fact that she has convinced herself that Quebec is the only option for her. Moreover, she is only prepared to work in a role that she considers consistent with "her qualifications". When the claimant filed her notice of family claim in March 2015 (before it was served), she had already reached the conclusion that returning to Montréal was a necessary pre-requisite to securing employment. This is reflected in the notice itself. I find that this determination has shaped her perspective since then, as well as her job-seeking conduct. The efforts she has made to seek work in British Columbia have been less than robust. They seem to have been largely limited to on-line applications, with little demonstrated follow-up.
- [120] In summer 2016, the claimant decided to stop looking for anything other than a position in her chosen field. Although I appreciate the assertion that returning to this type of work is important to her, and anything less may cause prospective employers to question her commitment (or perhaps even her capabilities), she has now been unemployed since the fall 2014, notwithstanding a strong educational background, a solid work history and obvious ability. I do not accept that employment is not available to her in British Columbia for anything other than a minimum wage role. She speaks three languages; has post-

secondary education; considerable experience in business administration; and, in previous roles, she has been promoted more than once. She clearly has the capacity to learn, adapt and excel.

- [121] I accept that both the claimant and K.M. have continuing ties to Montréal. This is a place known to them and they have a history there. A.D. and N.H. live in Montréal. Both have indicated support for the claimant and her daughter if they moved to Montréal. They will assist in the transition wherever necessary. I have no reason to doubt the sincerity of this commitment. I am satisfied that a positive social network exists for the claimant and K.M. in Montréal, one they can reasonably rely upon. The claimant testified that her mother will move to Canada if the claimant resides in Montréal and that this will be an additional form of support to her. On the evidence, I find this assertion speculative. I have no doubt that the claimant believes her mother will follow her to Montréal, but it is a belief only. There is no evidence to substantiate this assertion in any real way, or provide an indication of how long it might take.
- [122] I accept that culturally, and on the issue of language, Montréal is a place in which both the claimant and K.M. would flourish.
- [123] I am also satisfied that if the claimant moved to Montréal, she would conduct herself as a responsible parent and ensure that the respondent remained an active part of K.M.'s life. In September 2015, the claimant provided the respondent with a letter which committed to generous contact between himself and K.M. if she relocated, including one month during summer vacation; 50% of the remaining school holidays; alternate Christmas vacations; unlimited contact whenever the respondent is in Montréal; and daily phone contact. There is no reason to believe she would not follow through on this commitment.
- [124] Both parties testified about occasions for which K.M. was returned late from parenting time, or not otherwise made accessible in accordance with the agreed-upon schedule. These incidents were cast in the language of "depriving" or "denying" parenting time. The parties are suspicious of each other's motives. However, on the whole, they have actually done relatively well in ensuring that K.M. receives the benefit of shared parenting. This is particularly so in light of the fact that they have been operating under a shared parenting regime for more than two years without a formal agreement or court order in place. On my view of the evidence, the incidents or disputes that have occurred between them are largely a product of misunderstanding, or imputed intent based on a reactive approach to each other, rather than deliberate attempts to thwart parenting time.
- [125] There is no question that K.M. is closely bonded to her mother. I also accept that the claimant is an engaged, attentive and effective parent. This much is clear from the evidence, as well as the assessment completed by Dr. Aubé.

- [126] However, the same can be said for the respondent. K.M. is also closely bonded to her father. Although there have been periods where the claimant was solely responsible for K.M.'s care, principally during the respondent's R.C.M.P. training in 2014, I find that both parties have been actively responsible for K.M. since her birth.
- [127] I accept Dr. Aubé's opinion that K.M.'s best interests lay in the stability of regular, active contact with both parents. I agree that both parties "should be involved in every aspect of their child's life".
- [128] K.M. is closely connected to a number of people in the Lower Mainland and Fraser Valley, including: A.V.; the latter's parents; school and neighbourhood friends; and K.M.'s infant brother. All indications are that notwithstanding his young age, K.M. is already attached to him, delighting in each moment they have together.
- [129] I accept that at least until the respondent completes his five-year commitment with the Surrey R.C.M.P. detachment, it is improbable that he can relocate to Quebec without resigning from his current position. He made enquiries about the possibility of a compassionate transfer mid-contract. He was told it was not workable. Although A.V. is currently on maternity leave, she also has employment ties to the Lower Mainland. Both her parents live here and she is closely connected to them.
- [130] To move K.M. from her current location would not only remove her from a stable environment in which she is established in school and extra-curricular activities, and has many close and positive relationships, but most importantly, it would deprive her of the regular presence of her father. He is actively involved in K.M.'s physical and emotional care; homework; extra-curricular activities; building friendships; leisure time; and other aspects of her personal development. She is only seven years of age.
- [131] The claimant suggests that the respondent deliberately "put down roots" in British Columbia post-separation to undermine her relocation application. She points to the respondent's new relationship, the birth of his son, and the fact that shortly before the trial, he purchased a home in Abbotsford. I do not accept this characterization. With specific reference to the evidence of A.V., who I found to be a credible witness, I conclude that the developments in the respondent's personal life post-separation were mutually planned with A.V. and bona fides.
- [132] I have not listed all facts relevant to the issue of relocation. There were others. I considered the application within the context of the evidence as a whole. This is a highly individualized enquiry. Ultimately, the claimant has not persuaded me that relocating K.M. to Montréal is in her daughter's best interests.

[133] Instead, I find that K.M.'s physical, psychological and emotional safety, as well as her security and well-being, are best protected if she remains in British Columbia. At present, British Columbia holds the only "realistic option" for regular and equally shared participation in her daily life by both parents: s. 37(3), FLA; *Walker v. Maxell*, 2015 BCCA 282, at paras. 20-21, 30, 36.

[134] The claimant's application to relocate K.M. from Surrey to Montréal is denied.

C. Parental Responsibilities

[135] Although not a factor I took into account on relocation, I have been told there is a possibility the claimant will return to Montréal even if K.M. remains in British Columbia.

[136] As such, for some of the remaining issues, I will address them within the context of two scenarios: one in which both parties reside in British Columbia, and a second in which the respondent lives in British Columbia with primary residential care of K.M., but the claimant resides in Montréal.

[137] Consistent with the recommendation of Dr. Aubé, I am satisfied that an equally shared parenting model is in the best interests of K.M. Both parties have been actively involved in caring for K.M. from birth. This should continue wherever possible.

[138] Applying the approach taken in *Van Kooten v. More*, 2013 BCSC 1076, the parties are therefore to exercise guardianship and their parental responsibilities as defined in s. 41 of the FLA, on the following terms:

- in the event of the death of either parent, the remaining parent will be the sole guardian of the person of the child;
- when the child is in their care, each guardian is entitled to make day-to-day s. 41 decisions affecting the child and shall have day-to-day care, control and supervision of the child;
- however, each guardian will have the obligation to discuss with the other any significant decisions that have to be made concerning the child, including significant decisions about the child's health (except emergency decisions), education, religious instruction and general welfare;
- the guardians have the good faith obligation to try to reach agreement on these decisions;
- each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party care givers; and,
- the guardians are to maintain, update and regularly exchange with each other key contact information for doctors, dentists, daycare, sitters, schools, regularly-scheduled extra-curricular activities and emergency contact numbers.

- [139] Should the claimant move to Montréal, K.M.'s primary residence will be with the respondent in British Columbia. In the event the parties cannot reach agreement on a particular parental responsibility while she is in his care, the respondent will have final decision-making authority for K.M.
- [140] If the claimant disagrees with a final decision made by the respondent, she has the right to apply for directions under s. 49 of the FLA.
- [141] If the respondent has primary residential care of K.M., he must provide bi-weekly updates to the claimant about K.M.'s progress in school, as well as bi-weekly updates on her health and extra-curricular activities. These updates must be provided in French.

D. Parenting Time

- [142] I am satisfied that the current schedule for parenting time leaves the claimant, as well as K.M., in an ongoing state of uncertainty for planning purposes. This is because the schedule revolves around the respondent's days off in an effort to maximize the amount of free time he can spend with K.M. The different start and end times of the respondent's shifts have sometimes resulted in confusion or conflict over pick-up and drop-off times.
- [143] Consistent with the recommendation of Dr. Aubé, I conclude that a regularized 50/50 parenting time model is in the best interests of K.M. I am also satisfied that this transition should occur now, rather than await the possibility of the claimant finding employment should she choose to remain in British Columbia. In fact, having a regularized schedule now, rather than later, enables the claimant to seek work within a more predictable context.
- [144] The proposal put forward by the claimant for a 5-5-2-2 day rotation is reasonable. In my view, it provides enhanced stability for this aspect of K.M.'s life. If the claimant does not move to Montréal, effective September 2017 the parties shall equally share parenting time with K.M. on the following basis:
- the respondent shall have parenting time from 9:00 a.m. Friday to 9:00 a.m. Wednesday;
 - the claimant shall have parenting time from 9:00 a.m. Wednesday to 9:00 a.m. Monday;
 - the respondent shall have parenting time from 9:00 a.m. Monday to 9:00 a.m. Wednesday; and,
 - the claimant shall have parenting time from 9:00 a.m. Wednesday to 9:00 a.m. Friday.
- [145] This schedule is subject to variation with agreement of the parties. Variation may be necessary to accommodate vacation times, annual holidays, special occasions, travel with K.M. or otherwise. Any variation must be consistent with, and account for, an equally shared parenting regime. The parties are encouraged to develop a schedule to address holiday and vacation times as soon as practicable. If developed prior to entry of the final order in this matter, they may include this schedule in the order by consent, for the Court's approval.

- [146] Exchanges of K.M. for the purpose of parenting time shall take place at K.M.'s school, a public place, or through a third party, as agreed between the parties.
- [147] The parent who does not have care of K.M. on a given day is entitled to speak with her at 7:30 p.m. through Skype, another form of electronic communication, as may be available, or by telephone. This communication will be for a maximum 15 minutes; is not to be recorded by the other parent; and is to be private, except in the case of an emergency. The parties may agree to a different time for the daily contact if 7:30 p.m. is not workable.
- [148] K.M. is not to be removed outside of British Columbia without the consent of the other parent.
- [149] If travel outside this area is required for the purpose of vacation, school events, or otherwise, including travel that extends outside of Canada, this shall be managed between the parties with notice to each other at least two weeks in advance, except in exigent circumstances, and the non-travelling parent shall not unreasonably withhold his or her consent to the travel.
- [150] Where consent is provided, each party shall co-operate in the production of any documents required to affect K.M.'s travel. The party who travels with K.M. shall bear the cost of her travel; the non-travelling parent shall be provided with an itinerary showing the confirmed places of travel and accommodation, the departure and return dates, and details of the transportation arrangements. The non-travelling parent shall also be provided with contact numbers for emergency purposes during travel. The daily communication referenced in para. 147 above shall continue while K.M. is away, at a time agreed between the parties.
- [151] If the claimant moves to Montréal, and, in accordance with a schedule agreed between the parties, she shall have one month of parenting time with K.M. in the summer, every spring break, half of every Christmas break, daily skype, electronic or telephone time as described above, and any further time during the school year that she wishes to have in British Columbia, provided she gives the respondent at least two weeks' notice. The cost of travel for K.M. between Montréal and British Columbia to facilitate the claimant's parenting time for the summer, spring break and Christmas break shall be borne equally by the parties.
- [152] If the claimant moves to Montréal, the travel restrictions set out in paras. 149-150 apply, as modified to fit the circumstances.

E. Child Support

- [153] The respondent has been paying child support for K.M. since May 2015. However, he has not been paying the monthly amount provided under the Federal Child Support Guidelines (SOR/97-175) (the "Guidelines"). Instead, he initially paid \$450 per month. This amount increased to \$512 per month effective January 1, 2016.

- [154] The child support has not met the needs of K.M. Since separation, the claimant has had to seek financial assistance to assist in meeting her obligations.
- [155] In these circumstances, I consider it appropriate that K.M.'s child support be brought into line with the Guidelines, including retroactive support to February 2015: *D.B.S. v. S.R.G.*, 2006 SCC 37.
- [156] The respondent's 2015 income was \$74,839. His 2016 income was \$81,448. It is expected that for 2017, his income will be \$86,000. I understand that this latter amount represents the ceiling in his current role.
- [157] The claimant's 2015 income was \$12,336 (consisting of Employment Insurance benefits). She had no employment income for 2016. Instead, her income consisted of child support and government supplements. She is currently unemployed and in the absence of finding work within the next short while, I assume she will similarly have no employment income for 2017.
- [158] The respondent asks that the Court impute income to the claimant before determining the issue of child support. In his closing submission, he did not propose a specific amount.
- [159] Although I have rejected the claimant's assertion that meaningful work at more than minimum wage is not available to her in British Columbia, she did give up her financial advisor position to accommodate the respondent's career choice, and she has had to adapt to a new environment, with significant transitions, including language. This has impacted her employment prospects. The claimant's job-seeking efforts have not been robust, particularly since the summer of 2016, when she chose to restrict the scope of positions she is prepared to accept. However, she has made some efforts to find work and she has been working to improve her English skills post-separation. On balance, it is my view that it would be unfair to impute income to the claimant for the years 2015, 2016 and 2017. I decline to do so.
- [160] However, the claimant has a positive obligation to provide support for K.M: s. 147(1), FLA. She has no other dependents. K.M. attends school full time, leaving the claimant with the opportunity to seek employment. She is competent, educated and, based on her antecedents, I find she has the capacity to make good progress in the work force once initial adjustments have been made.
- [161] In light of these factors, I am satisfied that if the claimant is not employed by the start of 2018, income should be imputed to her for that year and beyond, in the minimum amount of \$20,657 (calculated on the basis of British Columbia's minimum wage of \$11.35 per hour effective September 2017, using a 35-hour work week).

[162] The parties have shared parenting since 2015. As explained in *C.A.M. v. T.C.H.*, 2016 BCSC 1756, at para. 19, the usual approach to child support in cases of shared parenting is to begin with the Guidelines amount attributable to each party and apply set-off. In this case, the monthly support payable by the respondent is calculated as:

Year

Respondent

Child Support

Claimant

Child Support

Set-off

2015

\$74,839

\$699.72

\$12,336

\$48.05

\$651.67

2016

\$81,448

\$762.21

\$0

\$0

\$762.21

2017

\$86,000

\$801.00

\$0

\$0

\$801.00

2018

\$86,000

\$801.00

\$20,657

\$179.39

\$621.61

- [163] If the claimant remains in British Columbia, the respondent must pay her \$801 per month in child support, commencing September 2017. Starting in January 2018, the monthly support is reduced to \$622 per month. If the claimant obtains employment by January 2018, the monthly amount payable that same month and moving forward, will be informed by her actual income.
- [164] For retroactive support, the respondent must pay the difference between what he has paid in monthly payments from February 2015 to the end of August 2017, and the amounts shown above. I leave it to the parties to complete these calculations. Any retroactive amount is payable forthwith.
- [165] If the claimant moves to Montréal, she agrees it is appropriate to impute an annual income to her in the amount of \$50,000. Moreover, K.M. will remain in British Columbia and the respondent will have primary custodial care. As such, there will no longer be equally shared parenting time. Effective the start of the first full month following the claimant's move, the respondent will no longer be required to make a child support payment. Instead, based on the claimant's imputed income, she will be obliged to pay the respondent \$458 per month.
- [166] Child support, whether payable by the respondent or the claimant, is to be paid in two equal installments per month, on a date agreed by the parties. These payments are to be made until K.M. is no longer a child within the meaning of the FLA.
- [167] For as long as child support is payable, the parties will exchange: (a) copies of their respective income tax returns for the previous year, including all attachments, not later than June 1 of each year; and (b) copies of any Notice of Assessment or Reassessment provided by the Canada Revenue Agency or equivalent, immediately upon receipt.

F. Health Care and Life Insurance

- [168] The claimant seeks to have the respondent maintain K.M. as a dependent on any medical, dental and extended health care coverage provided through his employer. This is not opposed.
- [169] I make this order and it shall be in place until K.M. is no longer eligible as a dependent under the said policy, or a child within the meaning of the FLA, whichever date is earlier.

[170] The claimant also seeks to have K.M. named as an irrevocable designated beneficiary on any life insurance policy that is obtained or maintained by the respondent, until such time that his child support obligations have been met.

[171] Again, this order is not opposed, on the understanding that it does not preclude the respondent from also naming other of his children as irrevocable designated beneficiaries.

[172] I grant this order pursuant to s. 170(e) of the FLA, with the noted caveat.

G. Name Change

[173] The claimant seeks a legal name change for K.M. She wants to have her name reflected as a guardian in K.M.'s last name.

[174] Ordinarily, name changes for minors are applied for and processed under the Name Act, R.S.B.C. 1996, c. 328. However, the claimant has raised it within the context of her family claim and the respondent takes no issue with my jurisdiction to make the determination.

[175] In exercise of the Court's *parens patriae* authority, I will accede to the request. Name changes must be in the best interests of the child: *von Hahn v. von Hahn*, 2014 BCSC 2157; *Landa-McAuliffe v. Boland*, 2012 BCSC 1354, at para. 16.

[176] I find it is in the best interests of K.M. to make this change, allowing her to more closely identify with both parents. K.M.'s last name is changed to M.O. I have chosen this order based on alphabetization. It is a neutral choice: *Landa-McAuliffe*, at para. 22.

H. Spousal Support

[177] The respondent did not pay spousal support until February 2017. At present, he pays \$1,200 per month. He has acknowledged that shortly following separation, he was aware the claimant was in need of spousal support. However, he asked that she quantify the amount. She did not do so and, as such, he did not pay until the issue was formally pursued during the course of these proceedings.

[178] Section 161 of the FLA sets out the objectives of spousal support. These include: (a) recognizing economic disadvantages arising from the relationship, or its breakdown; (b) apportioning financial consequences arising from the care of a child; (c) relieving economic hardship from the breakdown of the relationship; and (d) as far as practicable, promoting self-sufficiency within a reasonable period.

[179] On the evidence, I agree with the claimant that her entitlement to spousal support has both compensatory and non-compensatory components.

- [180] While the respondent was undergoing training in Surrey in 2014, the claimant bore primary responsibility for K.M. She then gave up a good position to move to Surrey and support the respondent in the new endeavour. This position was aligned with the claimant's educational background and expertise. It was meaningful to her. The relationship fell apart not long after and the claimant has struggled since then, in part due to language barriers. The move and breakdown have resulted in economic disadvantage.
- [181] Since September 2014, the claimant has been unemployed, out of her chosen field and unable to continue her career growth, with its attendant economic benefits. In these circumstances, I consider it appropriate that spousal support be paid at a level that not only compensates the claimant for the economic disadvantages she has sustained, but assists her in gaining self-sufficiency as soon as practicable. If she remains in British Columbia, it may take some time before the claimant is able to achieve a position similar to the one she held at Desjardins, either salary-wise or with respect to the nature of the work.
- [182] Recognizing the respondent's already-heavy expenses, I award the claimant spousal support in the mid-range. Moreover, it is retroactive to February 2015. I do not accept that the respondent was entitled to hold off on spousal support until the claimant quantified an amount for him. Post-separation, the claimant was entitled to support that provided a standard of living "reasonably commensurate with that enjoyed during the [relationship] and which compensated [her] to the extent possible, for the losses she had suffered": *Tedham v. Tedham*, 2005 BCCA 502, at para. 52.
- [183] For the year 2015, the claimant is entitled to \$1,393 per month in spousal support. For the year 2016, she is entitled to \$2,154 per month in spousal support. For 2017, she is entitled to \$2,277 per month. These amounts are based on a "With Child Support Formula".
- [184] If the claimant remains in British Columbia, effective the start of September 2017, the respondent shall pay the claimant \$2,277 per month in spousal support. For the retroactive award, he must pay the difference between what he has paid from February 2015 to the end of August 2017, and the amounts shown above. I leave it to the parties to complete these calculations. The retroactive amount is payable forthwith.
- [185] Consistent with the approach to child support, if the claimant is not employed by the start of 2018, income should be imputed to her for that year and beyond, in the minimum amount of \$20,657. If she obtains employment by the start of 2018, her actual income will govern for that year and moving forward.
- [186] This means that for 2018, the respondent's spousal support obligation will be a minimum \$1,342 per month.

- [187] If the claimant moves to Montréal, she agrees it is appropriate to impute an annual income in the amount of \$50,000. Moreover, she will not be receiving child support as long as K.M. resides in British Columbia. In these circumstances, the respondent's spousal support obligation will be \$544 per month, effective the first full month after the claimant moves to Montréal.
- [188] Spousal support is to be paid in two equal installments per month, on a date agreed upon by the parties.
- [189] The respondent's five-year commitment with the Surrey detachment of the R.C.M.P. expires in 2019. By that time, the claimant will have had a further two years to seek and obtain employment. Subject to an agreement to the contrary by the parties, both child support and spousal support are to be reviewed before the end of 2019.

I. Division of Property

- [190] Four separate properties were referenced in Part III of these Reasons. For ease of reference, these consist of:
- (a) 948 rue de la Rochelle in Boucherville, Quebec. This property was purchased for \$330,000 with funds provided by the claimant's mother and registered in the name of the claimant. It was intended to be for the benefit of the mother, who stayed there while visiting from overseas. The property sold on April 17, 2014;
 - (b) a residence in Montréal that was purchased and owned jointly by the parties. This property sold between January and September 2014. The net proceeds amounted to \$98,639.93. They were deposited into the parties' joint Scotiabank account on November 26, 2014 and split between them. The respondent withdrew \$48,365.00 from the account on January 21, 2015. The claimant withdrew \$47,965.89 on January 28, 2015;
 - (c) 37332-194A Street in Surrey, which is the claimant's current residence. It was purchased in her name on January 8, 2015 and she took possession on January 9. The purchase price was \$336,000. There is no mortgage on this property; and,
 - (d) the respondent's current residence in Abbotsford. The purchase completed on July 13, 2017. The price was \$952,500. A.V. contributed \$50,000 toward the purchase. Her parents provided another \$300,000. The remainder of the purchase was financed.
- [191] Of these properties, only one is at issue: 37332-194A Street in Surrey.
- [192] In his counterclaim, the respondent claimed an interest in any liquidated assets owned by the claimant (such as RRSPs); personal property that was owned by her, or in her possession; and "any other property as may be further disclosed".
- [193] In his Trial Brief, the respondent was more specific, seeking an equal division of 948 de la Rochelle in Boucherville, as well as "An interest in the Property that the Claimant bought in Surrey while the parties were still in a relationship".

- [194] In closing argument, the claim against real property was distilled even further. The respondent is now focused on an equal division of the fair market value of 37332-194A Street as at the date of trial. Alternatively, if this Court concludes that the Surrey townhouse is excluded property under the FLA, the respondent seeks an equal division of any increase in value between the date of acquisition and the date of trial.
- [195] On the whole of the evidence, I am satisfied that 37332-194A Street qualifies as family property within the meaning of s. 84(1) of the FLA.
- [196] The townhouse was purchased in the claimant's name on January 8, 2015. According to her evidence, the parties did not separate until January 21, 13 days later. This is when the end of the marriage-like relationship crystallized, for both parties. She left the basement suite on February 4 and moved into her new premises.
- [197] To constitute family property, it need not be shown that the property was used for the purpose of the marriage or that each spouse contributed to the property, financially or otherwise. Instead, the Court merely has to find that the property existed on the date of separation and that at least one spouse owned it, or had a beneficial interest in it: *Asselin v. Roy*, 2013 BCSC 1681, at para. 160. Such is the case here.
- [198] The claimant argues that she does not own the townhouse; rather, she holds this property in trust for her mother. I do not accept this assertion. It is inconsistent with the way in which the townhouse is addressed in the claimant's Financial Statement. There, the monies provided by her mother for the purchase are listed as a "personal loan" under the heading "Unsecured Debt Details". The claimant has exclusive possession and control of the townhouse; she is registered on title; and, according to her sworn Financial Statement, she has financed the purchase with her mother as the lender. In my view, the evidence does not support a "gratuitous transfer" within the meaning of *Kerr v. Baranow*, 2011 SCC 10. See also *Cabezas v. Maxim*, 2016 BCCA 82 and *Kuo v. Chu*, 2009 BCCA 405.
- [199] For this same reason, the claimant has not persuaded me that the Surrey townhouse meets the definition of excluded property under s. 85(1)(g). She bears the onus of doing so: s. 85(2), FLA. I reach this conclusion recognizing that the fact of exclusion need only be established on a balance of probabilities: *Shih v. Shih*, 2017 BCCA 37, at paras. 42-44.
- [200] However, I am satisfied that to do anything other than award the claimant 100% of the value of the Surrey townhouse would be "significantly unfair": s. 95(1). This property was acquired only 13 days prior to separation. According to the claimant's evidence, she had already turned her mind to separating. The townhouse was purchased in anticipation of the claimant living there, likely without the respondent. Although the marriage-like relationship had not formally ended, it was moving in that direction.
- [201] The respondent acknowledges that he did not contribute any funds toward the townhouse. Nor were any "family" funds used to buy the property. I accept the claimant's evidence that the monies for this property arose out of the sale of 948 rue de la Rochelle in Boucherville,

Quebec. I find as a fact that until lent to the claimant in January 2015, these proceeds belonged to the claimant's mother. Through her banking documentation, the claimant has shown a traceable nexus between the sale of the Boucherville home and the purchase of the Surrey townhouse. Since separation, 194A Street has been the exclusive residence of the claimant and K.M. The respondent does not assist with the costs; or contribute to its maintenance and preservation. The claimant is solely responsible for any debt associated with this property.

[202] I dismiss the respondent's claim for a division of 37332-194A Street.

[203] Both parties established and contributed to RRSPs during their relationship. They were students when they began living together. They started their careers when the marriage-like relationship was already in place. The RRSPs were in existence at the time of separation. These funds constitute family property within the meaning of s. 84(1) of the FLA.

[204] As at the date of trial, the claimant's RRSPs amount to approximately \$38,819. The respondent's RRSPs amount to \$60,269. The combined total is \$99,088. Applying the presumptive undivided one-half interest in family property under the FLA, the respondent shall roll over into the claimant's RRSP by way of inter-spousal rollover the sum of \$10,726 to equalize the parties' RRSPs.

J. Enforcement Orders

[205] The notice of family claim sought enforcement orders, including an order authorizing police to arrest the respondent for breach of court order. The respondent's counterclaim requested the same form of order in respect of the claimant.

[206] Enforcement orders were not identified as an issue in either party's Trial Brief. Nor were they pressed before me at the hearing. Accordingly, I decline to grant these orders. They are not routinely made.

K. Costs

[207] At the end of trial, it was suggested that the parties be given an opportunity to address costs once the Court has ruled on the merits.

[208] The parties are granted leave to file written submissions on the issue of costs. I leave it to them to set a mutually agreeable timeline for the exchange of submissions. Whatever this timeline might be, all submissions must be filed with the Court by no later than the end of September 1, 2017. They are limited to a maximum five pages each.

V. DISPOSITION

[209] For the reasons provided, I have made a number of final orders under the FLA.

[210] The entered order must reflect the entirety of the orders summarized below, including any specific terms found in the body of these Reasons:

- (a) both parties are declared guardians of K.M.;
- (b) the claimant's relocation of K.M. from Surrey to Montréal is denied;
- (c) the parties shall equally share parental responsibilities as defined in s. 41 of the FLA;
- (d) the parties shall equally share parenting time, unless the claimant moves to Montréal. In those circumstances, K.M.'s primary residence will be with the respondent in British Columbia. Parenting time is to be exercised in accordance with the terms set out in these Reasons;
- (e) effective September 2017, the respondent is to pay the claimant \$801 per month in child support. In 2018, the respondent's monthly child support payment will be reduced to \$622, or otherwise informed by the claimant's actual income. If the claimant moves to Montréal, she is obliged to pay \$458 per month in child support effective the first full month after her move;
- (f) retroactive child support is awarded for 2015, 2016 and 2017, based on the Federal Child Support Guidelines. Once calculated by the parties, this amount is payable forthwith;
- (g) the respondent is to maintain K.M. as a named dependent on any medical, dental and extended health care coverage provided through his employer;
- (h) the respondent is to maintain K.M. as an irrevocable designated beneficiary on any life insurance policy;
- (i) the last name of K.M. is changed to M.O.;
- (j) effective September 2017, the respondent is to pay the claimant \$2,277 per month in spousal support. In 2018, the respondent's monthly spousal support payment will be reduced to \$1,324 if she remains in British Columbia. If the claimant moves to Montréal, the respondent shall pay \$544 per month in spousal support, effective the first full month after her move;
- (k) retroactive spousal support has been awarded for 2015, 2016 and 2017. Once calculated by the parties, this amount is payable forthwith;
- (l) both child support and spousal support are to be reviewed by the end of 2019;
- (m) the respondent shall roll over into the claimant's RRSP by way of inter-spousal rollover the sum of \$10,726 to equalize the parties' RRSPs;
- (n) any personal chattels belonging to one party that remain in the possession of the other are to be exchanged by no later than August 31, 2017. The claimant is to provide the respondent with a list of the specific items she is seeking by no later than August 17, 2017;

- (o) the parties are granted leave to file written submissions on the issue of costs, in accordance with the terms set out in these Reasons;
- (p) all other claims for relief in the notice of family claim and counterclaim are dismissed; and,
- (q) if the parties are unable to settle the terms of these orders, they are at liberty to appear before me for that purpose.

"DeWitt-Van Oosten J."

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