
CANADA / JUDGMENT

P.C.D. v. R.Z.V.

2015 BCSC 1554

COURT

Supreme Court of British Columbia

DECIDED

22 July 2015

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2015 BCSC 1554 P.C.D. v. R.Z.V.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.C.D. v. R.Z.V.,

2015 BCSC 1554

Date: 20150722

Docket: E140787

Registry: Vancouver

Between:

P.C.D.

Claimant

And

R.Z.V.

Respondent

Before: The Honourable Madam Justice Fleming

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

S. Mirzaian

Counsel for Respondent:

R. Simunovic

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 12 - 16, 19 - 21, 2015

February 11, 2015, and

July 2 and 3, 2015

Place and Date of Judgment:

Vancouver, B.C.

July 22, 2015

- [1] THE COURT: The parties to this high conflict family law action are the parents of 11-year-old A. The evidence of the parties and their respective witnesses on almost all issues could not be in greater conflict. The allegations made by the parties against one another are serious. In brief, the claimant accuses the respondent of being a verbally, emotionally and, to some extent, physically abusive father and spouse. She also alleges he followed or stalked her and A. before and after the separation. The respondent denies all allegations of abuse and stalking or following. He alleges the claimant has alienated A. from him and his family members for some time.
- [2] The respondent and A. have had essentially no contact since late June 2014 despite an order for supervised parenting time. She and the claimant reside in a location unknown to the respondent, and until recently, he was also unaware of the name of the school she attends.
- [3] The parties shared a common-law relationship for several years until late February 2014. Each seeks relief pursuant to the provisions of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The one matter on which the parties agree is that family property and family debt should be valued as of the date of trial and divided equally. The claimant disputes, however, that a debt secured against the family home in favour of the respondent's son is a family debt or a bona fide debt at all.
- [4] The claimant seeks the following orders:
1. the respondent be removed as a guardian of A. or, in the alternative, that all of the parental responsibilities set out in s. 41 of the FLA be allocated to her excepting the respondent be permitted to request and receive any third party health education and other information regarding A. and to attend parent-teacher conferences;
 2. the respondent continue to have supervised contact or parenting time through a professional agency;
 3. the protection order granted November 5, 2014, be extended until further order of the court;

4. the Provincial Court matter be consolidated with this action and the child support payable by the respondent be adjusted and increased retroactively based on an imputed income and paid in the form of a lump sum amount;
 5. family property and debt be divided equally subject to the second mortgage registered on the family home in favour of M.V. not being found to be a family debt or, in the alternative, the family property be divided unequally such that the respondent shall be 100 percent responsible for that particular family debt.
- [5] The respondent opposes termination of his guardianship and asks for orders the parties share equally parental responsibilities and parenting time. He is prepared to accept that A. be gradually reintroduced to his care. He asks that the protection order be cancelled, the claimant be required to disclose A.'s address, re-enrol her in the school she attended prior to separation, and be prohibited from changing her school again absent further court order. He opposes income being imputed to him for the purpose of determining appropriate child support.

Background

- [6] The claimant is 51 years old and the respondent 73. The claimant has two adult sons from a previous marriage and the respondent an adult son and an adult daughter. The claimant was born in Portugal. She came to Canada as a child but did not complete her education and struggles with reading and writing. She and her first husband divorced. It is unclear what arrangements were made for their children's care after the marriage ended.
- [7] The respondent is Croatian. He was born and raised in what was then Yugoslavia. He came to Canada as a young adult and married his first wife. After she died, he sent their children back to Yugoslavia to live with family members while he continued to work in Canada. His son M.V. later returned to Vancouver. He resides in Burnaby with his wife, M.K. The respondent's daughter lives in Croatia.
- [8] The parties met in or about November 1999 and began dating. They both describe their relationship as positive in the early days. The claimant worked as a hairdresser and the respondent as a carpenter.
- [9] In or about 2002, the respondent bought what became the family home located on East Pender Street in Vancouver. The house had been significantly damaged by a marijuana grow operation and required extensive renovations. The claimant moved into the home when she was pregnant with A. It is unclear whether the parties lived together prior to that in another location. The respondent's son M.V. also lived in the home for a period of time.
- [10] On January 16, 2004, A. was born. After her birth, the parties' relationship deteriorated. Over time it involved frequent conflict in her presence.

- [11] When the claimant returned to work as a hairdresser while A. was still an infant, she took A. with her. Her mother also assisted in caring for A.
- [12] In or about 2008, the claimant began receiving disability benefits at her mother's address from the provincial government because of a chronic pain condition. She has continued to receive those benefits, which are her main if not only source of income.
- [13] In February 2009, the Provincial Court granted a child support order by consent that required the respondent to pay the claimant \$106 per month in response to an application brought by the Minister pursuant to the Employment and Assistance Act, S.B.C. 2002, c. 40.
- [14] A. was enrolled in the French Immersion program at Hastings Elementary School located a short distance from the family home. Over time, she struggled academically. The claimant arranged for private tutoring. The respondent's son M.V. and his wife also tutored A. briefly.
- [15] The parties have been involved with MCFD on a number of occasions in response to various child protection reports. As a result, they have participated in therapeutic services directed at improving their relationship and limiting A.'s exposure to conflict between them. The respondent has also completed a course or program focused on anger management.
- [16] The parties separated on or about February 24, 2014, when the claimant and A. left the home for a women's shelter. They remained there for some time and then stayed with the claimant's mother, after which they returned to a shelter before settling in their current residence in the fall of 2014.
- [17] The claimant withdrew A. from Hastings school after they left the family home. She received some educational support there. The claimant then enrolled her in a school located close to her mother's home where A. remained until the end of the school year. In the fall of 2014, A. began to attend her current school, where she is flourishing.

Procedural History

- [18] On March 21, 2014, Master Muir granted the claimant's application for a without notice protection order against the respondent and his son M.V. that restrained them from having any direct or indirect contact with the claimant or A. and from following them or attending any residence they may have.
- [19] On May 5, 2014, Master Scarth set aside that order in response to an application by the respondent. He also sought sole interim parenting of A., her re-enrolment in Hastings school, and various other reliefs. The protection order was replaced by a conduct order prohibiting both parties from communicating with each other except through counsel. The order also required the claimant to provide the name of A.'s school which he was not permitted to attend. A judicial case conference was scheduled for May 9, and a supervised visit between the respondent and A. was ordered to occur prior to the conference. The respondent's application for parenting time was adjourned generally, and his application for school enrolment was adjourned to a date after June 30, 2014.

- [20] A visit occurred on May 7, 2014, supervised by a friend of the claimant's.
- [21] On May 9, 2014, the parties attended a JCC. Among the orders they agreed to were the following: they and their lawyers would approach particular persons to supervise the respondent's parenting time with A. If MCFD was willing to pay for counselling for A., the respondent's parenting time with her would remain supervised until the counsellor was of the view that she was ready to see her father without supervision.
- [22] The respondent reset his application for sole parenting time and other relief for June 5, 2014. Instead of granting his application, the court ordered that he have supervised parenting time with A. through an agency called NICCSS twice per week for a minimum of two hours per visit. A. was to attend counselling with Dr. Marcelle Blancato. Supervised visits occurred on June 19, 23, and 26, 2014, through NICCSS. There is no dispute that A. was highly resistant to attending and was largely unresponsive to the respondent during the visits. Since then, the respondent has not sought any further supervised visits through the agency.
- [23] In June and July 2014, A. attended four counselling sessions with Dr. Blancato. In September, Dr. Blancato proposed a plan for the reintegration of A. and the respondent that involved the parties attending individual and joint counselling with Dr. Gamache, another psychologist, further individual sessions for A. with Dr. Blancato, and joint sessions with A. and each parent. Dr. Blancato also suggested A. have visits with her father at the family home supervised by a childcare worker. The respondent agreed to pay the cost.
- [24] Dr. Blancato explained her proposal was based upon a three-way counselling model which contemplates each parent and the child having a separate therapist.
- [25] Through counsel, the claimant expressed opposition to the plan. She said she was uncomfortable at the thought of joint sessions with the respondent. She advised Dr. Blancato she was afraid of him and alleged that he had continued to stalk and harass her and A. throughout the summer. She also told Dr. Blancato that A.'s anxiety had increased as a result.
- [26] Dr. Blancato responded that the joint sessions could be altered, but the plan remained for Dr. Gamache to provide all of the individual sessions to both parties and for visits to occur at the family home.
- [27] At trial, the claimant testified she thought visits at the home would be harmful to A. because of bad memories of what had happened there.
- [28] When the claimant told Dr. Blancato she was not opposed to A.'s individual counselling continuing, Dr. Blancato advised it was unlikely to be productive without a comprehensive plan.
- [29] On October 14, 2014, the respondent filed yet another application for sole interim parenting of A. along with interim supervised parenting time for the claimant or, in the alternative, shared interim parenting along with various other orders.

- [30] On October 27, 2014, the claimant applied for a protection order and an order the parties undergo a s. 211 report.
- [31] On November 5, 2014, Master Taylor heard both applications and granted the protection order against the respondent that remains in place. He ordered a views of the child report be prepared instead of a s. 211 report and adjourned the respondent's application for parenting time and other orders pending production of the report.
- [32] Counsel for the respondent advised Dr. Blancato that counselling appeared to be on hold and of the court's order for a views of the child report after the application. In response, she wrote:

I would strongly suggest researching when a view of the child report is contraindicated. JP Boyd has written a number of articles on the subject.

- [33] Dr. Blancato did not send her response to counsel for the claimant. She later explained she thought she had.
- [34] In any event, counsel for the claimant took the position that Dr. Blancato had compromised her neutrality and exceeded her role of providing counselling services to A.
- [35] The views of the child report dated December 15, 2014, provides that A. expressed, in considerable detail, a very negative view of her father to the author, Carla Lewis. She described him as aggressive, rude, and violent and complained that he had violated her privacy. A. told Ms. Lewis that she did not want to see her father and that he scared her. Ms. Lewis described A. as in good spirits and having no difficulty focusing or understanding what she was asked. She made good eye contact and was polite.
- [36] During the trial in this proceeding, I heard lengthy testimony from both parties. The claimant also relied upon the evidence of her close friend C.G. and her husband W.G. In support of the respondent's case, his son M.V. and his son's wife, M.K., testified. A range of documents, including the records of MCFD, were admitted into evidence by consent. After several days of trial, I ordered the parties and A. to undergo an assessment and production of a report pursuant to s. 211 of the FLA. A report was subsequently prepared by a Robert Colby, a registered psychologist, dated June 25, 2015. The report was admitted into evidence at the continuation of the trial. Neither party sought to cross-examine Mr. Colby. By consent, an appraisal report dated February 16, 2015, prepared by Adam Lawrenson of Adlaw Appraisal Ltd., regarding the value of the family home was also admitted into evidence.

Review of the Evidence

- [37] In reviewing the evidence, I note the parties and their respective witnesses presented entirely contradictory accounts of the parties' conduct with one another and with A., each side blaming the other for A.'s apparent refusal to have any contact with the respondent.

[38] I wish to comment at this point on the concerns I have about the credibility and reliability of the parties' evidence. Both struggled to answer questions directly and were at times evasive. Some of the claimant's evidence regarding the respondent's abusive behaviour and his alleged stalking or following of both her and A. lacked specificity. On occasion, she appeared to have trouble focusing and to misinterpret what she was being asked. The respondent was argumentative if not combative during much of his cross-examination. He was loud and appeared angry often. His testimony was at times entirely unreasonable and improbable. The same is true of his son M.V., the details of which I will come to later in these reasons when discussing the loan agreements they said were made between them. With respect to M.V.'s other evidence and that of his wife, it is my impression both were generally unable to resist the influence of interest in recalling events. Collateral witnesses for the claimant were credible. Some of their concerns about the respondent and their perspective regarding the claimant, however, were influenced to a limited extent by an incomplete picture of the relationship between the parties.

A's Early Years

- [39] Both parties are Catholic and apparently attended their respective churches with some regularity. Apart from their common faith, it is obvious there are significant cultural differences between them.
- [40] Although both parties describe the early years of their relationship as positive, the claimant describes the respondent as embarrassed by her pregnancy and the thought of becoming a father at his advanced age. She complained that he became upset with her when she told M.V. she was pregnant, who was angry his father was having a child. As his unmarried partner, the claimant felt unaccepted if not rejected by the respondent and his adult children much of the time. She regarded the respondent as not treating her and A. as his family.
- [41] There is no dispute the respondent places great value on formal education. He and his son are undeniably proud of M., the respondent's older daughter who earned a PhD. M.V. and Ms. M.K. are educated and successfully employed.
- [42] The claimant testified that while she was pregnant, she intervened in a fight between the respondent and M.V. during which the respondent pulled a knife and threatened to kill him if he did not get his life in order. At the time, according to the claimant, M.V. had become involved in smoking marihuana and was not attending school. The circumstances were denied by M.V., but the respondent gave no evidence about them.
- [43] The claimant testified that she has always been entirely responsible for A.'s care, describing that care in some detail. She characterized the respondent as showing little interest in A. as a baby and becoming angry when she would cry at night. She said the respondent was rarely home, spending his time at work, with his other family, or out with friends having coffee on Commercial Drive.

- [44] She testified that when A. was just three months old, she walked with her in a stroller to surprise the respondent at the coffee shop on Commercial Drive. He was furious with the claimant, took her outside, manhandled the stroller, told her to leave, and said if she ever came back again he would throw A. in the dumpster. The respondent does not deny the incident, but denies threatening any harm to A. or being excessively angry. He indicated the coffee shop was simply no place for women and children.
- [45] The claimant said when the respondent did become involved in A.'s care by helping her dress, for example, he was aggressive and rough with her. He would spit on her head, call her names, and hit her on the buttocks with a shoe. At the park, the respondent did not like A. to get her hands dirty or play with other children. He was never warm and always cold. He would grab A. and pull her away from the claimant when she was being affectionate with her mother. The claimant complained the respondent spoke disparagingly about how both of them dressed at times.
- [46] The respondent's version of events was different. He said when A. was a baby, he did have some involvement in her care. He bathed her and carried her around, and it was him, not the claimant, who spent hundreds of dollars each month on her diapers. He strongly denied behaving aggressively with A. or being unreasonable in his concern for her appearance or cleanliness.
- [47] His son M.V. testified that the claimant was always resistant to other people getting close to A. The respondent did not give the same evidence, focusing his accusations of alienation on the claimant's conduct later on.
- [48] The claimant testified she was responsible for organizing all of A.'s medical care. The respondent was informed but never attended any of her appointments. At three, she was diagnosed with a thyroid condition which requires medication. Over time, the claimant also organized and took A. to all of her various activities, for example, piano, art, and skating lessons. She complained that the respondent would follow them at times. She said he later did the same thing when A. attended school. She also said he would go to the school at recess and lunch and watch what A. was doing. She alleges he sometimes became angry with other children and the playground supervisor, particularly about the children getting dirty. The claimant described the respondent as overly concerned with A.'s school performance and highly agitated with her when apparently attempting to help her. On several occasions, she mentioned his preoccupation with how A. held her pencil, becoming angry at her and verbally abusive when he saw her doing so incorrectly.
- [49] The claimant alleged the respondent was always rude to both of them. She gave a number of examples of his ongoing verbal abuse which involved much swearing and the use of the word retarded. She alleges that on one occasion in 2011 he put his hands on her throat, pushed her against the wall, threatening to damage or break her face and her teeth so no doctor could fix her. She said A. was present.

- [50] The claimant denied the respondent and A. engaged in any activities or outings alone together other than on one occasion he said he was taking her to shopping malls in North Vancouver, but instead took her to M.V.'s home.
- [51] The respondent strongly denied all allegations of abuse and name calling. He was adamant he regards it as wrong to hit a woman. He said the claimant's first husband was abusive to her. He testified that the claimant frequently misinterprets what is being said and the threat she alleges he made was not a threat, but a comment to her that an Italian or Portuguese man would have damaged her face in response to her behaviour.
- [52] The respondent described the family engaging in more activities and outings than the claimant acknowledged and less discord and unhappiness between them. He said he took A. fishing at times. The claimant says it was her who did this with A.

MCFD Involvement

- [53] The claimant testified that social workers from MCFD were involved with the family on several occasions starting in 2009 in response to reports of abuse of A. and poor conditions in the home. She said social workers would come to the home and see that she was not abusive, the house was clean, and then close the file. At the same time, she complained there was no food in the house unless she bought it and no heat because of the respondent.
- [54] The MCFD records indicate the first report was made after the claimant and A. attended a hospital emergency because the claimant was experiencing blurred vision. At some point during the hospital visit, A. said words to the effect that her daddy was mean. According to the records, the claimant denied any violence in the home at the time. The report led to no ongoing MCFD involvement.
- [55] In May 2011, another report was received. The caller alleged the respondent had spit in A.'s hair after she gave him a hug. The caller described problems in the claimant's relationship with the respondent who was said to be undergoing cancer treatment at the time. Both parties were interviewed. The records indicate they stated they were undergoing financial stress. Counselling services were offered but declined.
- [56] In November 2011, it was reported that the claimant and A. were terrified of the respondent. He was described by the caller as verbally abusive and intimidating to both of them. The caller also complained of chronic arguments between the parties witnessed by A. as well as the absence of heat in the home. MCFD began to provide ongoing service to the family at that time. A social worker's visit to the home found the temperature to be cold. The records from that time describe the claimant as very loving toward A., but sharing her inappropriate personal information with her about the parties' relationship. A. expressed to the social worker that her father was often mean and abusive and she was afraid of and embarrassed by his behaviour. The records indicate at the same time she also stated that she loved him very much. Similarly, the records provide the claimant described A. as sometimes afraid of the respondent but idolizing him. She denied the respondent had hit A.

- [57] In cross-examination, the claimant said if she in fact made such a statement it was because she was afraid. She claimed she said many things to keep the peace.
- [58] The MCFD records for 2011 and 2012 describe both parents as verbally abusive with one another, and the respondent as quite controlling and militant. A. is said to have told the social worker she had on occasion stepped in between her parents when they were yelling and swearing at each other in an effort to make them stop. She disclosed that both parents had used physical discipline with her. According to these same records, the social worker spoke with the parties repeatedly about the need to protect A. from witnessing chronic domestic violence between them.
- [59] In January 2012, the MCFD social worker referred the family to the family preservation program provided by Westcoast Family Services, which they attended for approximately eight months. During this time, the claimant and A. also attended eight sessions of the children who witness abuse program and the respondent participated in an anger management program.
- [60] In March 2012, the conflict between the parties escalated and records indicate MCFD asked or directed them to separate for two weeks to ensure A.'s safety. The arrangement was the respondent was to stay with M.V. and the claimant and A. were to remain in the family home. At some point prior to March 16, 2012, the claimant and A. left the home to stay with her mother. The claimant says this occurred after the choking incident when the respondent also threatened to damage her face or break her teeth. The claimant indicates that at the time, she was following MCFD's direction and describes A. as in protective custody. She testified she went back to the family home on or about March 16, 2012 to retrieve some belongings. She said it was agreed the respondent would not be there during that time. Instead, he arrived and would not allow her to leave.
- [61] Police records confirm she called 9-1-1 from the home on March 16, 2012, asking for help. A recording of the call was played during the trial. The respondent regards it as crystal clear evidence of the claimant's efforts to alienate A. from him. During the course of the call, the respondent denies he is preventing the claimant from leaving the home, but makes it clear she must first disclose A.'s location before he will allow her to go. The claimant identifies the family's MCFD social worker and encourages the operator to call her, stating the social worker told her to leave the house. In response, the respondent shouts in the background the claimant is lying. He is directed by the 9-1-1 operator to let the claimant step outside. He resists, saying she will flee and he wants to know where his daughter is. He is extremely argumentative. At one point, the 9-1-1 operator says to the respondent, "You are not the boss of her". His agitation and anger are evident throughout the call. At times, it is impossible to understand what he is saying due to his yelling. Ultimately, the police arrive.
- [62] Despite the consistency between her evidence on this point and the MCFD records, during cross-examination the claimant was accused of making up the fact that MCFD was involved in a plan for the parties to live apart temporarily or for her to take A. to her mother's. An

MCFD document entitled "action alert," also dated March 16, 2012, and authored by the family's social worker at the time, specifically identifies a safety plan that involves A. staying at the maternal grandmother's home for the weekend pending further assessment. In the action alert, the social worker asks that a social worker from the after-hours office visit the family home to ensure that A. was not present.

- [63] By the conclusion of the parties' involvement with the family preservation program in August 2012, the family counsellor assigned by the program expressed the view the parties were a little more in control of their emotions and their behaviour seemed more appropriate both around A. and in the community. The counsellor indicated during the program the parties discussed "cycles of abuse, different kinds of abuse, and identifying the ways the abuse has impacted on their lives and A.". The MCFD's file was closed because it seemed the conflict between the parties had reduced and their communications had improved.
- [64] In April 2013, MCFD received a complaint about what the caller described as the claimant's disturbing behaviour. She alleged the claimant had not been allowing A. to see her father and was wrongly accusing him of being abusive. The caller reported the claimant had done the same thing about a year before. The caller also alleged the claimant slapped and pushed A. on the hands and faced and verbally abused her as well as denigrated the respondent to A. She later indicated the slapping and pushing had occurred three or four years earlier. While the complaint was being investigated, the respondent came to the MCFD office and met with the social worker. He complained the claimant was not allowing him to take A. out on her own. He attributed this to the negative influence of C.G. He said A. was now afraid to talk to him because of what the claimant was telling her. He denied being concerned, however, about the claimant hitting or screaming at A.
- [65] During an unscheduled interview with a social worker at her school, A. denied her parents even argued and described her father as very quiet.
- [66] A letter from social worker Mary Inglis to the parties dated April 24, 2014, indicates a further investigation occurred in response to another report that A. was being exposed to violence between the parties and alienated from the respondent. Ms. Inglis states in the letter that although she found the parties had engaged in verbal arguments, they both denied physical violence.
- [67] During cross-examination, the claimant said she did report violence to MCFD.
- [68] Again, the family was referred to Westcoast Family Resources. The discharge report prepared by the therapist indicates the parties agreed their relationship had deteriorated significantly since their previous involvement with the program in 2012. By the time the family therapist began to work with the family in 2014, A. and the claimant were living in a transition house. Prior to the separation, A. and the claimant were described as essentially holed up in her bedroom whenever the respondent was at home. The records indicate during their work with the therapist, both parties took the position that all the difficulties in the relationship were the fault of the other and neither showed the ability to take any form

of personal responsibility.

- [69] According to the therapist, despite their love for A., they struggled to concentrate on creating a healthy transition for A. By the end of the therapist's involvement, the parties' mutual hostility continued to dominate their interactions.
- [70] The evidence of the parties given at trial about the family's functioning before and after the 9-1-1 call in March 2012 loosely follows many of the events described in the MCFD records. In addition, the parties described other events.

Parties' Ongoing Relationship and Care of A

- [71] The respondent testified that when A. was in grade two and in the year before separation, the claimant and A. were away from the family home every evening until 9:30 or 10 p.m. When they would finally arrive, A. was not given a chance to talk to him and was taken immediately to the bedroom. He said he asked the claimant what was happening, but she did not want to talk to him. He also said he was advised by a friend they were spending their time at Brentwood Mall. He went there and observed that this was true. The respondent said he spoke to M.V. about the problem as well as the teacher, the principal, and the social worker.
- [72] M.V. testified his father called him several times not knowing what to do about this problem. M.V. specified he tried to reassure his father and on one occasion rushed over after work at 10:15 p.m. He said he waited until 12:15 a.m. but the claimant and A. had still not returned. The next day he dropped by the house on his way to work to speak with the claimant. After answering the door, she went to her car as he asked her where she had been, et cetera. M.V. said he kneeled in front of the car door and she tried to close the door on him. When he let the door go, it slammed, and the claimant accused him of breaking her hand. She threatened to go to the police, and the police were called.
- [73] The claimant denied that she and A. were out late every night for long stretches of time. She alleged that M.V. slammed the car door on her, causing injury.
- [74] The claimant says A. struggled at school and received poor grades prior to their separation. When she was in fourth grade, her teacher suggested they find an older student to help her. So the claimant arranged for this to happen after school, paying the student \$10 for each session. In or about early 2013, the respondent insisted that M.V. tutor A. According to the claimant, this only happened a couple of times because on one occasion they worked all night, and he became angry when A. got pen on her pants. The claimant says she told M.V., "A. doesn't need this". According to M.V., he met with A. about a dozen times, and M.K. testified that she tutored A. as well. The claimant denies this ever occurred, but C.G.'s evidence confirms it happened on at least one occasion. C.G. said she dropped off math sheets because M.K. was tutoring A., although what she observed was M.K. playing on her phone and A. on a whiteboard.

- [75] In her evidence, M.K. stated she focused on math and reading with A. and tutored her in her room because it was too disruptive in the kitchen. She said the claimant would not allow her to be alone with A. Eventually, the claimant asked her to leave after standing in the room during a session and calling M.K. an abuser. M.K. said that that was a word she used often when speaking of the respondent.
- [76] Both M.V. and M.K. testified the claimant generally opposed their efforts to spend time with A., including their invitation that she be a flower girl at their wedding in 2012. M.K. testified that she was allowed to take A. to Science World once and to the park occasionally, but when the parties and A. would visit the couple, the claimant refused her request to take A. for a walk with the dog.
- [77] At the same time, M.V. and M.K. indicated they attended the parties' home several times a year for holiday dinners and birthdays, and the family came to their home regularly. They described the claimant as a wonderful cook. M.K. testified the claimant expressed a strong dislike of M., the respondent's older daughter, and was very angry, unpleasant, and impatient with her on those occasions when M. was visiting from Croatia. Although M.K. acknowledged the parties had a volatile, angry relationship, she described the claimant as the aggressor. According to M.K., the claimant would make angry accusations against the respondent and criticize everything about him. M.K. said the respondent was often silent in response. She dreaded their visits. On one occasion, she alleges the claimant slapped and yelled at A., although she provided no details about the circumstances. She also accused the claimant of verbally abusing A. at times.
- [78] M.K. accuses further the claimant of spitting on her the last time they saw one another. She said she ran into the parties and A. at Ambleside Beach in 2013. She said she texted the claimant after the incident, telling her the relationship was over. M.K. also testified to receiving a Facebook message from the claimant she then copied into a word document. She says she did not alter the text of the exchange, but may have added bolding, dates, her name and that of the claimant. She did not really explain why she copied the exchange rather than printed the Facebook messages. The apparent exchange begins with an invitation from M.K. to the claimant and A. The response, said to be from the claimant, is written in very broken English and is extremely hostile, accusatory, and offensive.
- [79] The claimant denied recognizing the exchange set out in the word document or engaging in such an exchange as well as the Ambleside Beach incident. She said the only time the two of them exchanged a text message was when M.K. told her she would be making a report to MCFD.
- [80] The claimant testified at various points about her concerns regarding M.V. and, to a lesser extent, M.K. She described M.V. as aggressive and using rough language like his father. She said she found him unpleasant to be around, indicating he lacked warmth and was unaffectionate with A. She said typically he spoke Croatian with the respondent, thereby excluding her and A. She said she did not want to attend his wedding because of his poor

behaviour at the family home. The claimant also described M.K. as aggressive with her on those occasions when she would try to talk about the respondent. According to the claimant, M.K. told her about her own childhood abuse that caused her to run away from home and harm herself. The claimant said she was concerned that M.K. would talk about such things in front of A. She acknowledged accusing M.V. of sexualized behaviour because he patted A.'s bottom while hugging her.

- [81] In cross-examination, it was strongly put to the claimant that she had kept A. from M.V. and M.K. because she hated and resented them. Essentially, she was accused of being jealous of their superior education and success. She was subjected to much the same line of questioning with respect to the respondent's daughter Melita. The claimant was somewhat unresponsive to these questions but certainly did not agree with the suggestions that were made.
- [82] In her evidence, the claimant described the respondent as violating A.'s privacy at times. She said she put a lock on A.'s bedroom door because he would walk in while she was getting dressed or using the bathroom. The claimant said she consulted with MCFD being doing so. She also complained the respondent would come home late at night and go into A.'s room and wake her, asking her questions about where she was and where she and her mother had been and with whom. The claimant denied ever swearing at A. or force-feeding her, as was suggested by the respondent. She could not remember ever hitting A. with a spatula. She denied behaving or speaking inappropriately with the respondent's daughter M., or M.V., as well as M.V., or raising her voice during arguments with the respondent or calling the respondent an abuser in A.'s presence.

Separation

- [83] On February 24, 2014, the claimant said she took A. to school and the respondent followed. She said she told the office at the school that A. had a doctor's appointment. He followed them there as well. According to the claimant, the respondent had never before attended A.'s medical appointments, but that day he walked in and told the doctor the claimant needed to see a psychologist.
- [84] The claimant indicated she was concerned and called the social worker, who suggested she and A. stay at a shelter. The claimant then withdrew A. from Hastings Elementary School. The respondent later spoke with the school principal and called police, alleging the claimant had abducted A. The claimant testified that she asked MCFD to make sure the respondent knew they were in a shelter. After staying there for a month, the two stayed with the claimant's elderly mother. The claimant enrolled her in a school close to her mother's home, where she finished the school year. The claimant said the respondent began to attend that school and follow them again once he was advised of the name of the school, but no details were provided in her evidence.

- [85] She also alleges the respondent was coming around her mother's home often and parking on the side of the street or in the lane at the back and then looking through the gates. She estimated this happened about 25 times. It upset her 92-year-old mother, so she and A. left the home at the beginning of August for a shelter where they spent about two months.
- [86] She also alleges the respondent followed her to a store called Mobilicity located on Commercial Drive on a few occasions.

C.G. and W.G.'s Evidence

- [87] Both C.G. and her husband W.G. gave evidence about their involvement with the parties and A. Their daughter attends Hastings Elementary School and she and A. became friends after meeting in grade two. The friendship continued until the spring of 2013 when they and the claimant say A. began to bully their daughter. The girls became friends again after the parties separated. Although the girls now attend separate schools, they are once again very close.
- [88] The G.'s met the claimant in or about June 2012 and also became friends. Prior to knowing the parties, C.G. observed an incident at the school. She described the respondent as appearing very angry after meeting with a teacher. According to C.G., the respondent was very loud with A. She saw him reach to hit her, and she moved to hide behind her mother. C.G. alleges the respondent took the claimant and pushed her into a wall.
- [89] She described another incident when the children were skating. The respondent wanted to put on A.'s skates. A. was adamant about doing it herself. He grabbed her shoes and smacked her foot with the back of the heel of her shoe. A. was crying. On another occasion at science club, C.G. said she observed the respondent being abrupt with A. and calling her stupid. She said she had never seen the respondent and A. have a conversation.
- [90] Similarly, W.G. says he saw the respondent criticize A. after a race at a track meet in which she did fairly well and was very pleased with her own performance. According to W.G., the respondent told A. she would have done much better if she was not so fat. W.G. described A. as devastated by the comment.
- [91] Both he and C.G. also testified about listening to a voicemail message from the claimant in which the respondent was in the background calling her an "f-ing liar," and A. was crying. C.G. said she never witnessed loud arguments between the parties. She testified the respondent spoke gruffly with the claimant but she did not respond. C.G. described him as standing close to the claimant and barking at her. She said it was unpleasant and frightening.
- [92] When asked about the claimant's allegation that the respondent followed or stalked them, C.G. described two particular incidents from prior to separation. She said on one occasion, she drove past him on the way to the piano teacher's home. A. and the claimant were already there for her lesson. According to C.G., the respondent was parked a few blocks away up a

hill from a location with a view of the piano teacher's home. On another occasion, she saw the respondent on a corner near the school watching the claimant and A. but not with them and apparently not wanting them to see him. C.G. said she then observed the respondent outside the school as the claimant and A. were coming into the main entrance. He was peering around the corner.

- [93] After the parties separated, C.G. went with the claimant to an interview at NICCSS regarding the respondent's supervised access but not on a day when a visit occurred. She and the claimant both testified the respondent's van was parked close by when they left the building. She then said she observed the respondent running to the van in order to follow them. The respondent says he was in the area that day attending a computer course at the community centre. He denies stalking or following the claimant and A.
- [94] C.G. also testified the claimant and A. visited her home often until the bullying started. C.G. also attended the parties' home many times, including Thanksgiving dinner. She described the home as in poor physical condition, with uneven floors, ill-fitted doors, and bare drywall in spots as well as mold around the windows. She said it was "as cold as hell" in the winter, and she was able to see her own breath. There were baseboard heaters in A.'s room. The first time she went, there was a bucket to catch water dripping from the ceiling. C.G. said she met both M.V. and M.K. when she attended the home at times. She described M.V. as aloof, arrogant, and not a warm person, although he was pleasant when attending the Thanksgiving dinner. She testified to reading an ugly text message from M.K. to the claimant threatening to keep reporting her to MCFD.
- [95] On a particular day in the spring of 2013, A. stayed at the G.s' home while the claimant went to the hospital to seek treatment for an eye infection. The claimant and C.G. testified that she called the respondent to advise him but he did not answer. The claimant called the G. from the hospital at 10 p.m. and it was arranged that A. would stay overnight. According to the claimant, she was unable to reach the respondent until 4 a.m. She told him then A. was safe at the G.s'. She testified she went home at 7 a.m. but had to go back to the hospital. Again, she told the respondent where A. was but that she would still be sleeping.
- [96] C.G. testified that early in the morning, A. ran down the hallway stating, "My dad's here. Don't let him in". C.G. heard the distinctive sound of his VW van and then pounding on the door. She described A. as white and shaking. C.G. did not answer the door because she was alone with A. and her daughter. After W.G. returned to the home, A. told him she hid in the closet when she heard her father's van.
- [97] The respondent came back later in the day and, according to the G., was again pounding on the door. W.G. opened the door around the same time C.G. found A. in the closet upstairs. She then went down the stairs. When asked by W.G., she said she did not want to go with her father and fled back upstairs. Both W.G. and C.G. described A. as appearing frightened. C.G.'s evidence was she was again white and shaking. The respondent became really angry and started yelling. He threatened to call the police, and W.G. offered the use of his phone.

- [98] At some point during the incident, C.G. called the claimant who was still at the hospital. The claimant testified that she asked them not to let the respondent take A. given his level of aggression.
- [99] Apart from the incident at her home in 2013, C.G. said she had one other particularly unpleasant encounter with the respondent. The claimant had asked her to let A. know she was running late and to meet her in the library at school. She went to A.'s classroom at the end of the day and found her in the cloakroom. C.G. was there only briefly because she had to get to her own daughter's class. From behind her, she heard the respondent say, "I'm the father here". According to C.G., he chased her out of the room and called her an "f-ing bitch."
- [100] C.G. gave detailed evidence about several positive changes she has observed in A. since the parties' separation, describing her as a different child. Before the separation, C.G. says A. was pale, morose, and solemn some days. Although she could be cheerful, she was often snarky with the other children. Her behaviour would change quickly from nice to mean-spirited. On one occasion, she told C.G. she wished she had never been born.
- [101] Since the separation, C.G. says A. seems happier. Her face is brighter. She is less wilful and listens more. She expresses feeling better about school and is actually trying to do well at school. She said A. has talked to her a great deal about how she feels and what has happened. She expresses being happy with her mother and not wanting to see her father. A. has described to C.G. experiencing the same verbal abuse from the respondent the claimant did in her evidence and many of the same complaints about her father's conduct that she relayed to and more recently Robert Colby. She has also told C.G. she does not want to return to Hastings School because everybody knows her big secret there. She has told C.G. she wants to stay where she is and live with her mother.
- [102] C.G. also gave evidence that A. has talked to her about being followed by her father. She reported seeing him drive around her grandmother's house, hearing his van, and seeing him in the back lane. She also said on one occasion she saw him at the Mobilicity store on Commercial Drive. She said she hid behind the counter so he would not see her.
- [103] The G. have been to the claimant's new residence. C.G. described it as a nice two-bedroom which is very clean and well-organized. According to the G., the claimant and A. share a very loving, affectionate relationship.

Section 211 Report

- [104] Robert Colby prepared a s. 211 report dated June 25, 2015. He did not testify, as I have said earlier, because neither party sought to cross-examine him. In preparing his report, he reviewed many if not all of the same documents that are before me. Mr. Colby's assessment included clinical interviews with the parties, an analysis of psychometric testing they completed, observations of A. and her mother and an attempt to observe her with her father, two separate interviews with A., a visit to the home of each parent, and collateral interviews.

- [105] In an attempt to meet with A. and the respondent together, Mr. Colby explained to her she would not be forced to interact with him but she was required to come to the office after which he would arrive. She and her mother attended as arranged. The respondent arrived earlier than planned. He came into the office while the claimant and A. were there. They left and the respondent remained. Mr. Colby asked him to leave and come back at the appointed time. He returned while A. was in Mr. Colby's office. She stated that she did not wish to see him, and so they did not meet. She expressed shock at seeing him in the waiting room and said she felt he followed them after he was asked to come back.
- [106] During two meetings with Mr. Colby, A. described the respondent very negatively again. She said she was afraid of him but also uncomfortable in his presence. She also said he had been "stalking" her in the past. When she and her mother were staying at her grandmother's house, she looked out the window and saw him there. On another occasion, he was driving behind them. A. described him coming into her room while she was changing her clothes and unlocking the bathroom door with a knife while she was using it. She gave a number of reasons for not wanting to see him. She stated he is often rude and mean and yells at her if she does not want to do something. She also complained he slams doors, uses the "f" word, and yells at her in Croatian.
- [107] When asked about her three wishes during both interviews, they included a wish to live with her mother.
- [108] Mr. Colby described A. as adamant in her views of her father.
- [109] As part of his assessment of A., Mr. Colby considered the child behaviour checklist completed by the parties and A.'s school classroom teacher. The teacher stated she has no concerns for A. and that she is doing well socially and performing well academically at an above average range. A. was described as helpful and respectful. She accepts feedback and makes a conscientious effort to complete her work. To the teacher, she appears happy and confident.
- [110] When Mr. Colby observed A. with her mother, he found it unusual there was little or no conversation between them. In response to his request, they sat quietly together engaging in building blocks.
- [111] Mr. Colby spoke with three collateral persons for each party. They all provided positive references.
- [112] In summarizing his findings, Mr. Colby pointed out that both parents tended to present themselves positively while being highly critical of the other. Both displayed a defensive pattern in response to some of the psychometric testing, most notably, the child abuse potential inventory. In analyzing the ability and willingness of each parent to meet A.'s needs, Mr. Colby writes:

Mr. [V.] presents as a person who is defensive, feeling misunderstood and being treated unfairly. He responds to being imposed upon by being angry and over-reacting. He is suspicious of others and his suspicions may not be confirmed by the observations of others, as he may tend to be over-reactive. Further, he presents as similar to parents who can be overly rigid and rule-oriented in regards to the parenting process.

Further on:

[Ms. D] presents as an individual who is vulnerable. She feels tense and stressed and feels isolated in the process of parenting. Her need for acceptance from others makes it difficult as she felt rejected by Mr. [V.] through the pregnancy and child-rearing.

There is no common ground for these parents to be able to communicate with each other. The problem-solving strategy for Mr. [V.] is to directly address and confront situations. Ms. [D.'s] proclivity to retreat from situations when confronted would break down any communication between them. They have very different models of parenting

While each of these parents have qualities that are admirable in terms of being able to enter into the dynamic of the parenting process, those qualities are also conflicted in terms of being able to mutually engage in the parenting task.

[113] Regarding the issues of family violence raised by the claimant, Mr. Colby offers no clear conclusions. He expresses some concern about the absence of a timeline with respect to her allegation the respondent choked her. He also observes an absence of information to corroborate the references to chronic domestic violence in the MCFD records. He writes that based on what was presented, he could not determine that Mr. V. presents a risk to his daughter. He opines, however, that any movement towards parenting time for the respondent must be accompanied by a process to address the development of their relationship. His opinion is that any change to A.'s residence would be highly stressful for her. He reports he would be concerned for her well-being if any such change were to be made precipitously, unless the court found the claimant was noncompliant with its direction.

[114] With respect to the question of alienation, Mr. Colby writes:

[I]t does appear that [the claimant], both historically and presently, takes a position that encourages A. to be rejecting of her father, and not accepting of intervention [namely, Dr. Blancato's proposal] [that may] lead to [a] resolution of the detachment [between them].

[115] In their meetings, A. told Mr. Colby her mother said she can see her father if she wants but it is okay if she does not want to see him. Mr. Colby does not indicate A. reported the claimant speaking badly of her father to her or in her presence.

- [116] Mr. Colby includes in his report a discussion of the concepts of alienation and estrangement with reference to the relevant social science research. The same concepts were also reviewed based on much the same research by Mr. Justice Kent in 2015 BCSC 1062 and may be summarized as follows.
- [117] High-conflict separations undermine the psychological and emotional status of children and their relationships with their parents. Occasionally, a child will reject one of her parents, resisting, or, as in this case, refusing contact. The terms estrangement and alienation are often used to characterize the reason for the rejection. If the breakdown of the child's relationship with a parent is based on that parent's own actions, even if that parent is presented negatively by the other parent, the child's actual experience of the rejected parent may well be the cause of the breakdown. This is referred to as "estrangement." Abuse, rigid or restrictive parenting and/or dysfunctional conduct, including family violence toward the other parent, are examples of actions that may contribute to a child's estrangement from such a parent.
- [118] Alienation is said to occur when one parent and the child reject the other parent and there is little objective reason for the child's position. However, alienation is not inevitably the outcome for a child when one parent rejects the other. It depends upon the child accepting the negative view expressed by that parent about the other.
- [119] Mr. Colby writes that simply moving a child from an alienating parent's home to the home of the rejected parent presents risks to the child that need to be considered, namely, the security of the child's emotional status. According to Mr. Colby, none of the research suggests that enforced contact with the rejected parent in and of itself will offset the rejection.
- [120] Given his view of the claimant as a vulnerable, sensitive, significantly conflict-avoidant, and having difficulty coping with the respondent, he identifies any contact between A. and the respondent as a stress for the claimant. He specifies it as important that the claimant have the benefit of a support system and she engage in supportive therapy to assist her in dealing with such contact. He also writes that the respondent's rigidity and rules relating to his beliefs and values regarding parenting would be counterproductive if he were to incorporate them into a relationship with A. at this point. In other words, the respondent needs to make some changes before attempts to establish a positive relationship with A. are likely to be successful. Noting the respondent's high level of distrust and despite his prior completion of anger management, Mr. Colby nonetheless recommends the respondent also engage with a therapist to assist him with his emotional reactivity as well as the dynamics of the current situation.
- [121] He concludes that trying to re-establish a relationship between the respondent and A. would be a benefit to her. However, to do so, in his view, requires a reorientation of the parties' communications with each other and A. as well as a rebuilding of the relationship. He recommends a reunification program that incorporates separately but in a dynamic

manner both parents and A. as a primary intervention. He identifies three specific programs as suitable. All of them are based on a team approach that addresses broken relationships between one parent and a child through alienation and/or estrangement. He also recommends, if the family can successfully engage in one of these programs, that issues of parenting time and parenting responsibility be addressed after completion of the program, including any provision for supervised parenting time for the respondent and A.

- [122] Mr. Colby remarks that the reunification program might well determine parenting involvement that would include limited and/or specific parenting time for the respondent with or without supervision. I take that to mean if the family is ordered to participate in the program, Mr. Colby recommends the therapist involved should be given the power to implement parenting time for the respondent and A. based on their assessment of her best interests during the course of the intervention.

Parenting Arrangements

Parties' Positions

- [123] The claimant seeks sole guardianship or, in the alternative, the allocation of almost all parental responsibilities to her and any parenting time provided to the respondent should be supervised. She asks that the existing protection order be extended.
- [124] The respondent seeks orders requiring the parties to share equally all parental responsibilities and parenting time. He is agreeable to a gradual reintroduction of A. to his care. He also asks that the claimant be ordered to disclose the location of their residence, A.'s school, and the claimant be required to re-enrol her in Hastings Elementary. He argues the protection order should be cancelled given that he poses no risk to A. or the claimant.
- [125] Neither party is eager to participate in the reunification program recommended by Mr. Colby, the claimant because of the cost and the respondent because he expects the claimant to avoid participating or ensuring A.'s participation.
- [126] At its heart, the parties' dispute over parenting arrangements for A. is about whether her refusal to see her father is caused by family violence or alienation. The claimant argues A.'s views derive entirely from her own experience of the respondent's family violence toward her and the claimant in her presence. The respondent's view is that the claimant has alienated A. from him and his family members and therefore he bears no responsibility.
- [127] Despite the respondent's position that A. has been alienated from him, and Mr. Colby's opinion, he also argues that A. will not be harmed in any way by an order for shared parenting because she is a smart girl who knows what is really going on. She will simply accept a court order that she live with both parents. To the extent this is a sincere assertion, it is uninformed in the extreme.

Statutory Framework

- [128] The FLA provides that in making an order respecting guardianship and parenting arrangements, the court must consider the best interests of the child only. Section 37(2) requires the court to consider all of the child's needs and circumstances in determining his or her best interests including a non-exhaustive list of mandatory factors. Two of the mandatory factors relate to issues of family violence which is broadly defined in the FLA to include emotional and psychological abuse and, in the case of a child, direct or indirect exposure to family violence.
- [129] Section 38 of the FLA requires the court to engage in a nuanced assessment of the risk posed by family violence and the harm it has caused to the child as well as what steps may have been taken by the person responsible for the violence to prevent further violence, recognizing that not all acts of family violence are the same or will have the same impact.
- [130] Section 37(3) of the FLA provides that an order is not in the best interests of a child unless it protects to the greatest extent possible the child's physical, psychological, and emotional safety, security, or well-being.

Analysis

Credibility

- [131] At the outset of these reasons, I discussed my concerns regarding the credibility of both parties and some of the collateral witnesses. Based on those concerns, my view is that I must approach the evidence of the respondent with considerable caution. I find below that both his evidence and that of M.V. regarding the loan agreements was false. I am not concerned in the same way or to the same extent about the claimant's evidence. My impression is that she sought to testify honestly, but her deeply held negative feelings regarding the respondent significantly impacted her recollection of some events.
- [132] Accordingly, with respect to both parties' evidence, I must look to the probabilities affecting the case and credible corroborating evidence to determine as accurately as possible what occurred between the parties and in their relationships with A. I accept for the most part the evidence of W.G. and C.G.

Findings of Fact and Conclusions

- [133] I begin with the rather obvious point that it is not the case A.'s opposition to involvement with her father must either be caused by alienation or by family violence. What is abundantly clear from the evidence as a whole is that A. was exposed for years to the highly dysfunctional relationship of her parents. This was harmful to her. It is also clear the claimant was primarily if not entirely responsible for A.'s care throughout the relationship and the respondent spent a great deal of time away from the home. I find that when he did spend time with A. and the claimant, he was impatient, abrupt, and focused on ensuring

compliance with his standards. I have no difficulty accepting he was critical and verbally abusive to them as described in the claimant's testimony and that of C.G. in relaying her own observations of the respondent and what A. has disclosed to her.

[134] I note that while both M.V. and M.K. deny the respondent was abusive to A. in their presence, neither described a positive or involved relationship between the two.

[135] I accept Mr. Colby's opinion evidence about both parties set out above.

[136] Based on the credible evidence and the respondent's presentation, I am left with a very strong impression he is highly reactive, if not volatile and, at times, brooding. His presentation, when angry or disapproving, was and would remain frightening for A. as well as the claimant.

[137] Although I accept Mr. Colby's assessment of the claimant as vulnerable and conflict-avoidant, I find the parties fought intensely in A.'s presence. In other words, while C.G. may not have observed the claimant responding to the respondent's harsh words, I have no doubt she engaged in considerable conflict with him on many other occasions.

[138] In addition, although I am concerned about the accuracy of some of M.K.'s evidence regarding the claimant, and in particular the Word document which purports to copy a Facebook exchange between the two, I accept the claimant spoke critically and disparagingly to and about the respondent in her presence and was at times hostile and offensive.

[139] That is not to say, however, I find the violence between the parties was entirely mutual. It is clear to me the claimant fears the respondent because of his conduct toward her. The reverse is not true. Whether the respondent threatened to break the claimant's face and/or teeth or told her other men would do so, as he suggests, matters little. I am inclined to accept the claimant's evidence that on one occasion he put his hands around her neck and that of C.G. that he pushed her against a wall at the school. In my view, however physical violence was not a marked feature of the respondent's aggressive behaviour. Similarly, although I accept that both parties used some physical discipline with A. that was inappropriate, I am satisfied there is little risk either would do so in the future.

[140] I do not accept the claimant's evidence that the family never engaged in activities together and that the respondent's interactions with both of them was always negative. It is clear to me the claimant felt entirely rejected by the respondent quite early on. This sense of rejection, along with mistrust and fear of the respondent, motivated her actions and shaped her perceptions. She saw him as a threat to her and to A. particularly during the last two years of their relationship. Neither party has the capacity or skill to manage appropriately their negative feelings toward the other, therefore reinforcing A.'s own fears and concerns about her father.

- [141] I accept the respondent was in the habit of "following" the claimant and A. But I do not regard this behaviour as stalking or harassment. Afraid and suspicious of the respondent, the claimant did her best to limit her own and A.'s interactions with the respondent. She drove her to school. She drove her to her activities and otherwise determined A.'s schedule. Eventually, she limited A.'s contact with her father in the home itself. The respondent attended the school and, in particular, the schoolyard to simply watch, based in large part on his own fear and concern about what was happening for A. I have no doubt the respondent loves his daughter. Given his own mistrust of the claimant, his preoccupation with educational matters, his suspicion of others such as C.G. and her husband, and his rigid approach and values, I accept that when he went to the school, as he frequently did, he appeared aloof and uncaring rather than concerned.
- [142] The claimant's evidence regarding the respondent's attendance at the school located near her mother's home is vague and insufficient for me to find that he also began to attend there in breach of the conduct order after the parties' separation. I do accept, however, that he frequently drove to the claimant's mother's home while she and A. were staying there, much as she described in her evidence, and that by doing so, he intensified A.'s apprehension about him. Again, I expect his behaviour was motivated at least in part by concern and desperation, but given all of the circumstances, it had negative consequences for A. and also made the claimant even more fearful and determined to protect A. by limiting his contact with her.
- [143] I firmly reject, therefore, the respondent's categorical stance that A. is alienated from him solely because of the claimant. His position flows from an apparent inability to see himself clearly and understand the impact of his actions on others who are vulnerable to him. To suggest the 9-1-1 call provides indisputable proof of alienation is an excellent example of his impoverished and, frankly, self-serving perspective. What I take away from that evidence is his palpable anger and efforts to control the claimant and her equally palpable fear. The MCFD records confirm a safety plan was in place at the time to keep the parties apart and A. with the claimant. Whether he knew at the time where his daughter was is hardly the primary issue.
- [144] The claimant argues the respondent's acts of family violence include his litigation conduct. Three times prior to trial he sought sole parenting time and supervised access for the claimant or shared parenting in the alternative. She submits he brought these applications to punish her and A. Consistent with this assertion, his last notice of application provides that he was seeking supervised parenting time for the claimant "so that Paula learns what has happened." With respect to his alternative application for shared parenting, he writes "so that A. learns what has happened."

- [145] I agree these reasons are a far cry from the requirement that parents seek orders they regard as in their child's best interests. I also agree the main and alternative applications are entirely contradictory, further undermining their sincerity. The respondent says he brought them because he has been wrongfully denied all contact with his daughter and he wished to provide care to her.
- [146] His position throughout was the claimant's alienating behaviour was driven by mental illness. The allegation the claimant suffers from any significant mental illness is not supported by the evidence.
- [147] In addition to his applications, the claimant complains about some of the respondent's correspondence as part of his concerted effort to intimidate her and wear her down. One letter does concern me. These are the circumstances: After receiving a letter from respondent's counsel dated September 23, 2014, claimant's counsel responds courteously to his assertion the claimant is alienating A. and his command that it stop. She advises him she is in the process of seeking instructions on other matters he has raised.
- [148] On September 25, 2014, respondent's counsel then writes, in part:
- Third, your client isn't competent to give instructions. Therefore, please don't talk about instructions. You have a legal duty and obligation both to control your client, and to make decisions on her behalf when your client refuses to act in A.'s best interests.
- Fourth, I didn't allege anything. Alienation is a fact.
- [149] There is no basis for asserting the claimant was not competent to provide instructions and no doubt the suggestion was more than hurtful to the claimant. I am confident that future correspondence between counsel will be respectful and consistent with the ultimate goal here of fostering an improved relationship between the parties and between A. and her father.
- [150] Having considered the evidence carefully, I conclude A.'s present opposition to contact with her father and her statements about his behaviour toward her, as well as her expressed fear, are based in the main on what Mr. Colby refers to as estrangement. In other words, her views and feelings are driven for the most part by her own experience of the respondent.
- [151] I also conclude, however, the claimant has likely worsened A.'s negative feelings and opposition. In my view, her efforts to protect A. by keeping her away from the respondent were disproportionate based on an objective view of the risk he may pose. It is not my impression, however, that her behaviour was in any way malicious or intentional. She truly believes the respondent has been and will continue to be harmful to A. and is afraid of him.
- [152] In concluding A. is largely estranged from her father, I accept that she is doing very well in her mother's care both emotionally and academically. I accept C.G.'s evidence about the positive changes she has observed in A. Although the respondent has made much of her

refusal to participate in the three-way counselling proposed by Dr. Blancato as proof of alienation, I conclude she was fearful and highly vulnerable at that stage. Without the authority of the court's decision on the facts of this matter, I expect, had she accepted Dr. Blancato's proposal, it is unlikely the parties and A. would have successfully participated. In my view, the parties and A. required the court's judgment before they could benefit fully from therapeutic intervention.

- [153] Despite fairly prolonged involvement with Westcoast Family Services in 2012 and 2014, the parties' mutual disregard and high conflict have continued. Mr. Colby was aware of this history when he recommended the family's involvement in a reunification program with an integrated approach that involves therapy for both parents and for A. In my view, there is no alternative to the intervention he proposes, if A.'s relationship with the respondent is to be salvaged and improved, which is clearly in her best interests. Both parties will have to work very hard to succeed in this program. I implore them to do so for A.'s sake. Blame has proven an unworkable, harmful strategy.
- [154] The claimant has sought an order removing the respondent as a guardian but, in the main, argued in support of an order allocating all the parental responsibilities to her, with some exceptions. The approach of the court to applications for removal of a parent guardian has been to refuse them except in the extreme circumstances or where a guardian is not participating in decision-making to the detriment of a child. Instead, the court has been inclined to allocate parental responsibilities to the more capable parent where a child can, in this way, safely retain the benefit of the parent remaining a significant part of his or her life. In my view, this is not one of those extreme cases, and so I decline to remove the respondent as A.'s guardian.
- [155] Accepting Mr. Colby's recommendation that the parties and A. engage in a reunification program before determining the parenting arrangement, and having considered all of the evidence and the submissions of the parties, I conclude it is in A.'s best interests to defer the making of final orders for parenting time or the allocation of parental responsibilities.
- [156] Instead, I make the following interim orders which shall remain in effect pending a review after the participation of the parties and A. in the reunification program as set out below:
- a) Pursuant to ss. 40 and 216 of the FLA, I allocate the parental responsibilities set out s. 41 to the claimant subject to the following. Both parties shall share equally the responsibility and the entitlement to seek information regarding A. from any third party professional involved in providing services to her in the past, present, or future. In the event A.'s therapist as set out below provides his or her written approval for the respondent to exercise unsupervised parenting time with A., during any such time, he shall be responsible to make day-to-day decisions affecting A. and care, control, and supervision.

- b) I decline to require the claimant to provide her current address to the respondent at this time. I encourage him and his family members to send cards, letters, and gifts for A. through counsel or a third party approved by both parties. I accept that he is already aware of the school A. currently attends.
 - c) I decline his request to require the claimant to re-enrol A. in Hastings Elementary School. Based on the evidence, as I have said, I am satisfied she is flourishing at her present school. It is abundantly clear that forcing a return to Hastings would not be in her best interests.
 - d) However, the claimant is not permitted to make any further changes to A.'s school absent the consent of the respondent or further order of this Court.
 - e) Pursuant to s. 42, A. shall continue to reside full-time with the claimant. The respondent's interim parenting time with A. shall be determined as set out below.
 - f) Pursuant to s. 224 of the FLA, the parties are required to enrol themselves and A. in the Family Forward program provided by Alyson Jones & Associates forthwith for the purpose of reunifying A. and the respondent, providing the therapy recommended by Mr. Colby for each party and A., and improving the parenting relationship between the parties.
- 1) The parties shall provide the program with a copy of Mr. Colby's s. 211 report and a copy of these reasons at the outset of the family's participation. The parties will also provide to the program any other documents in their possession requested by the program to facilitate the effective provision of therapeutic intervention.
 - 2) The parties shall comply fully with the recommendations and directions made by the program's therapists during their participation.
 - 3) Subject to the conduct order set out below, the therapist assigned to A. by the Family Forward program will have the discretion to determine what, if any, parenting time with the respondent is in A.'s best interests, including any requirement for supervision while the family is participating in the program.
 - 4) The parties shall share the cost of their participation in the program proportionate to their Guideline incomes set out below.
 - 5) Upon the parties' completion of the program in less than six months, or in the event they have not successfully met the goals of the program after participating for six months, Ms. Jones or her delegate will prepare a written report for both parties and the court that outlines the participation of the parties and A. in the program and discusses any parenting time approved of by A.'s therapist for the respondent, what progress has been made, and what barriers to progress exist. The report will also include recommendations for the family's ongoing involvement in the program or other therapy, services, or intervention that would facilitate the protection and promotion of A.'s emotional and psychological well-being and the development of healthy family relationships, as well as any recommendations Ms. Jones or her delegate wish to make regarding A.'s parenting time with the respondent and

the claimant.

- 6) Following receipt of the report, the parties shall schedule a hearing before the court for a determination of the ongoing parenting regime of which I seize myself.

[157] Turning to the question of the protection order.

[158] The claimant asks that the order granted by Master Taylor in November 2014 be extended, and the respondent asks that it be cancelled. Their positions are driven by their competing views of the risk of further family violence in the event the respondent is not restricted in his contact both direct and indirect with the claimant and A. I have concluded that the risk of further harm to both A. and the claimant is emotional or psychological rather than physical. I have found the claimant's allegations of stalking or following are based in part on her misunderstanding of the respondent's motivation as entirely negative.

[159] Accepting the opinion of Mr. Colby regarding the parties' psychological status and parenting approaches, I have concluded the respondent's angry reactive approach to the claimant and A. caused them to fear him, particularly during the last two years of the parties' relationship.

[160] As I have said, blame is not useful here. In fact, it is harmful to the future building of healthier relationships between the parties as separated parents of A. and her relationship with the respondent. Section 183 of the FLA provides the court may make a protection order if the court determines family violence is likely to occur and the family members are at risk. The court's discretion to make the order after making those determinations is subject to a number of mandatory considerations set out in s. 184.

[161] In my view, given the therapeutic intervention this family is required to attend with the goal of improving both parties' psychological and emotional functioning, their relationships with one another and the respondent's relationship with A., a conduct order is now more appropriate than a protection order. Such an order will continue to restrict and regulate the parties' contact with one another and the respondent's contact with A. and therefore ensure her safety and well-being pending the determinations of a parenting regime that will follow the family's completion of the reunification program.

[162] Accordingly, I cancel the protection order and make the following conduct order:

- a) The claimant and the respondent shall not communicate directly or indirectly with each other except through counsel or a third party agreed to by consent of both parties or for purposes relating to attending and participating in the family reunification program.
- b) The respondent shall not communicate with A. except as approved by A.'s therapist assigned through the family reunification program. Such approval shall be in writing and provided to the claimant in advance of any approved communication.

- c) The respondent shall not attend any location where the claimant and A. reside or within a five-block radius of any such location.
- d) The respondent shall not attend A.'s school except to participate in scheduled meetings with her teacher or the school administration after first notifying the claimant of any such scheduled meeting through her counsel or an approved third party.
- e) With the written approval of A.'s therapist, the respondent may also attend the school for school performances or concerts in which A. is involved or her community activities.
- f) All other contact between A. and the respondent pending the review will be as set out above.
- g) The parties shall not directly or indirectly discuss this litigation with A. nor make or convey any negative or disparaging comments about one another to her or in her presence. The parties shall not show A. a copy of these reasons for judgment, and any copy they possess must be kept inaccessible to her by any means.
- h) The parties shall not directly or indirectly make disparaging remarks about the other to third parties unless incidental to frank discussions during the therapy provided through the family reunification program.

Child Support

- [163] The order granted by the Provincial Court in February 2009 remains in place. Based on an income of \$14,070, it requires the respondent to pay child support of \$106 each month. The claimant's evidence is the order was pronounced when the parties were separated briefly. No steps were taken to suspend or cancel it after that.
- [164] In my view, it is clear the order was sought because the claimant was receiving disability benefits. The address provided to the Ministry responsible for paying those benefits was her mother's home. Whether or not the parties were actually separated at the time the order was sought, the application was made on the claimant's behalf by the Ministry. I expect her entitlement to those benefits may well depend upon her living separate and apart from the respondent and/or certainly without access to his income.
- [165] It is likely, for this reason, that the parties took no steps to change the order after it was granted. Both benefited from the claimant's disability income, and while the claimant and A. may have stayed elsewhere at times, I find the family mostly lived together at the family home until the date of separation.
- [166] The claimant asks the court to impute income to the respondent based on his testimony that in addition to the \$1,800 per month he receives each month in pension income, he could rent out the basement suite in the family home for \$800 per month resulting in an annual income of \$31,200. The claimant seeks an order retroactively varying the existing child support order to reflect his actual income as \$21,600 commencing March 1, 2014, through to August 1, 2015, and then ordering ongoing support based on an income of

\$31,200. Such orders would result in arrears of \$1,377.

[167] The respondent is opposed to a retroactive award and any imputation of income to him.

[168] Three fundamental principles apply to all child support applications:

1. Parents have a joint and ongoing legal obligation to support their children.
2. The children, not the parent with custody, have the right to support.
3. Support payments are based on earning capacity and not only on what parents actually earn.

As a result, a parent has a legal obligation to earn as much as he or she reasonably is capable of earning.

[169] The court's jurisdiction to award child support in this case derives from the FLA which requires the amount of child support to be in accordance with the Federal Child Support Guidelines, SOR/97-175 ("Guidelines") and is therefore based on a parent's annual income. Under the Guidelines, the starting point for determining a parent's annual income is his or her total income as disclosed in his or her income tax return. Schedule III of the Guidelines sets out various adjustments that can be made to that figure, whether as deductions or add-backs.

[170] Pursuant to s. 19 of the Guidelines, the court has the ability to impute income to a parent in a wide variety of circumstances, including intentional underemployment, diversion of income to affect the level of child support, failure to utilize property to generate income, failure to provide income information, and others. Imputing income is a way the court gives effect to the principle that a parent must earn what he or she is capable of earning. The court considers what is reasonable in the circumstances.

Retroactive Child Support

[171] The court can issue orders requiring that child support be paid retroactively and prospectively. It also has the power to vary, rescind, or suspend orders that have already been made, governed in part by the Guidelines.

Respondent's Income

[172] Here, the claimant seeks to retroactively increase the existing child support order based on an apparent change in the respondent's annual income since the 2009 order was made. The income information attached to his sworn Form 8 financial statement filed in November 2014 makes it clear his income was much higher in 2012, \$46,150, than the amount included in the 2009 order. His notice of assessment for 2011 shows a total income of \$21,596 and for 2013, \$15,521. I note that in 2011 and 2012, the respondent received RRSP income but none was reported in 2013. Again, the Form F8 estimates the respondent's current income at \$19,695 based on pension income which is not particularized. He lists no RRSP assets in that same document. Attached to the Form 8, however, are bank statements showing

monthly OAS and CPP deposits which would provide annual income of approximately \$15,000.

- [173] In his direct examination, the respondent testified to an income of \$1,800 per month. In cross-examination, he said he receives \$2,200 per month, altogether, with a few hundred from work, for a total of approximately \$26,000 per year. I am left to conclude, therefore, that the respondent has another source of income that he has not identified on his Form F8.
- [174] Despite the respondent's other evidence that he could rent the basement suite in the family home, when the home was appraised in February 2015, the appraiser found no such suite and described the basement as mostly unfinished. The claimant has also provided evidence of a one-bedroom basement suite in the home which the respondent rented to a tenant at one point. The discrepancy between the evidence of the parties and the appraiser is bizarre and troubling. The only inference to be drawn is the respondent has taken steps to remove the suite that was there. The result is, however, the respondent is not presently in a position to take on a tenant and earn the additional income the claimant asks me to impute to him. In any event, it is not clear to me how the respondent could afford to remain in the home given the compensation payments set out below that he will be required to make to the claimant based on his known financial circumstances. Accordingly, I decline to impute income to the respondent based on his failure to earn income from his property.
- [175] In cross-examination, the respondent acknowledged working on and off doing construction projects after retiring at age 65. If he worked a full week, he said he made between \$600 and \$700 but he has not worked since the separation, claiming it has been a bad season. He testified that future work remains a possibility, and he wants to work. He specified his hourly rate is \$15 to \$18 per hour.
- [176] Bearing in mind the respondent's advanced age and his uncertain health status and the absence of evidence to contradict his testimony that he has not worked since separation, I do not regard it as reasonable to impute income to the respondent beyond the \$1,800 per month he testified to receiving in direct examination each month. Accordingly, I set his Guideline income at \$21,600.
- [177] There is no real dispute regarding the claimant's income. She has continued to receive disability benefits as her only source of income subject to very modest earnings from occasional haircuts. Notices of deposit issued by the Ministry set out that she has received monthly payments of \$1,242.08 which equal \$14,904.96 annually. The respondent has not suggested further income should be imputed to the claimant. Her Guideline income is therefore in that amount.
- [178] Turning to the question of whether the respondent's child support obligation should be varied retroactively. In *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.], the Supreme Court of Canada prescribed a broad holistic approach to deciding the issue based on four factors, none of which are individually decisive. They include (1) the circumstances surrounding the recipient's decision not to apply for support earlier, (2) the conduct of the payor parent, (3)

the circumstances of the child, and (4) any hardship a retroactive award would cause the payor.

- [179] With respect to the first factor, delay in seeking child support is not presumed to be justified. At the same time, the court must be sensitive to the practical concerns associated with child support applications. The majority in D.B.S. discussed two specific concerns that arise from delay in seeking support, neither of which are applicable here. They also stated that from a child's perspective, a retroactive award is a poor substitute for past obligations not met, and although such awards are discretionary, they are not meant to be exceptional.
- [180] I note that in the notice of family claim, the claimant pled that she did not know the respondent's income, which I accept in light of the parties' very poor communication during the relationship and after. In his counterclaim, the respondent pleaded there are no arrangements for child support. His Form F8 was not sworn until November 2014. I have not been made aware of the respondent providing significant financial disclosure prior to then. Accordingly, I conclude that the claimant was justified in delaying her application for a retroactive award.
- [181] Turning to the second factor, the court in D.B.S. prescribed an expansive view of blameworthy conduct and characterized it as any conduct that privileges the payor's interests over the rights of the child to appropriate support. The respondent acknowledges in his response to notice of family claim that he stopped paying child support after the claimant and A. left the family home. It has not been suggested to me, however, that he is presently in arrears based on the existing order. This factor therefore appears neutral.
- [182] The third factor considers the child's past and present circumstances. A child who is enjoying a relatively high standard of living may benefit less from a retroactive award than one who is in need. Similarly, a child who experienced a hardship in the past may benefit from being compensated by a retroactive award. A. lived in modest circumstances during the parties' relationship and, since the separation, has suffered a deterioration in her standard of living. Having been in her mother's sole care, who relies on a very low income provided by her disability pension and just over \$100 per month in child support, I find that A. has been in need since their separation and therefore would benefit from a retroactive award.
- [183] The fourth factor for the court to consider is any potential hardship to the payor that would be caused by a retroactive award. In D.B.S., the majority noted that the Guidelines already detail the role of undue hardship in determining the quantum of child support. A broad consideration of hardship is, however, also appropriate in determining whether a retroactive award is justified, and such awards should be crafted in a way that minimizes hardship to the payor.
- [184] Although hardship is much less a concern where it is a product of the payor's blameworthy conduct, it remains a significant one where that is not the case. The respondent made no submissions about the hardship that would arise from the retroactive award sought by the

claimant. The respondent's income is based on pension income and other identified income which is likely from an undisclosed asset. In the face of his modest income, the retroactive award may involve some hardship. However, entitlement to an equal share of the net equity in the family property will provide him with the ability to pay such an award.

[185] Applying the factors holistically to the circumstances of this case, I conclude a somewhat lesser retroactive award than the one sought by the claimant is appropriate. In addition to the four factors, I have considered and given limited weight to the unusual fact that the respondent paid child support to the claimant for several years while they lived together. The respondent took no steps to cancel or suspend the award despite the persistence of the common-law relationship and instead simply complied. Rather than setting the respondent's Guideline income at \$21,600 effective March 1, 2014, I conclude a total award of \$1,000 rather than approximately \$1,300 is justified and shall be paid to the claimant by the respondent.

Variation

[186] The claimant also asks that the Provincial Court proceeding be consolidated with this one pursuant to s. 194.1 of the FLA. In my view, s. 152 of the FLA permits me to change the 2009 order granted by the Provincial Court upon a change in circumstances as provided for in the Guidelines, among other grounds. The respondent does not dispute there are grounds to change the current order. I am satisfied a change of circumstances has been established, and it is preferable, in my view, to change the order rather than consolidate proceedings.

[187] Accordingly, the respondent must pay the claimant the retroactive award I have set out above and, as of August 1, 2015, the respondent must pay to the claimant \$187 per month in child support. The parties shall pay s. 7 expenses for A. proportionate to their Guideline incomes. I have not been asked to determine what those expenses include, and so I shall say nothing further about them.

Lump Sum Payment

[188] The claimant asks me to order the lump sum payment of child support the respondent will owe until A.'s nineteenth birthday. She argues he has the ability to pay this amount from his share of the division of family property. Given he is 73 and suffering from either a pneumonia or a type of cancer and avoided answering questions about what arrangements he has made for A.'s financial future in the event he dies when giving evidence, a lump sum payment would be in her best interests.

[189] Section 170 of the FLA provides the court with the discretion to order such a payment. The respondent opposes lump sum child support, arguing he has always paid.

- [190] It is true the respondent was vague and unresponsive to questions about his financial planning for A., indicating only that her educational needs would be taken care of, including university. He also indicated the plan involved not only himself but other family members. His health status is also less than clear. The respondent denies the claimant's evidence he suffered from and was treated for cancer a few years ago, referring to his health problem as pneumonia or wet lung.
- [191] Given the respondent's age, his uncertain health, A.'s relatively young age, my impression that his retirement income is unlikely to change significantly, the claimant's very low income, and his ability to pay such an award out of his share of the division of family property, I regard lump sum payment of child support as appropriate. I would ask counsel to recalculate the amount of such an award and order that it be paid.
- [192] In her opening statement, the claimant advised she would be asking the court to order support binding upon the respondent's estate. She made no submissions on this point in her closing argument. I note that s. 170 of the FLA provides that in an order for child support, the court may require the duty to pay child support continue after the death of the payor and that it is a debt on the estate of the payor's estate. Section 171 requires the court to consider the mandatory factors set out in subsection (1) before making the order, among them, whether the estate of the person paying support is sufficient to meet the need for child support taking into account all claims on the estate, including those of creditors and beneficiaries. In the absence of any evidence relevant to that factor, I decline to consider the matter further.

Division of Family Property and Debt

- [193] The parties agree their family property and debt should be divided equally and valued as of the date of trial. The only significant dispute relates to a mortgage registered on the family home by M.V. shortly after the parties' separation. The claimant argues it is not a family debt, if a debt at all, but if so, it should be reapportioned entirely to the respondent.
- [194] Section 81 of the FLA provides that on separation each spouse is entitled to an undivided half-interest in all family property as tenants in common and is equally responsible for family debt regardless of their respective use or contribution. Pursuant to s. 84, family property includes all real and personal property owned by one or both spouses at the date of separation unless the property is excluded. Section 85 defines excluded property and includes the following: property acquired by a spouse before the relationship between the spouses began. The increase in value of excluded property during the relationship, however, is also family property. Family debt is defined in s. 86 to include all financial obligations incurred by a spouse during the relationship and until separation and after separation if incurred for the purpose of maintaining family property. Section 87 provides the value of family property and debt is the fair market value as of the date of hearing unless an agreement or order provides otherwise.

- [195] Early on in the trial, the respondent identified the family home as excluded property because he purchased it before the parties began living together. The evidence of the claimant is they lived together at other locations before the purchase of the home. In any event, the respondent adduced no evidence to establish what the value of the equity was when he first bought the property. In the absence of such evidence, I cannot determine what if any amount should be deducted from the current value of the home in determining the value of the family property. Therefore, no deduction will be made.
- [196] Similarly, the claimant testified to providing \$50,000 toward the purchase of the family home which the respondent denies. She admits to having no documents to confirm her investment. In submissions, she did not ask me to consider her contribution and so I will not.
- [197] The appraisal report of Adam Lawrenson dated February 16, 2015, assessed the value of the family home at \$750,000. The parties accept his valuation. The family home is therefore valued at that amount.

Mortgage Issue

- [198] With respect to the mortgage registered by M.V. on the family home which the respondent claims is a family debt, both the respondent and M.V. testified that he provided a series of cash loans to the respondent between January 18, 2008, and January 1, 2014, in the amount of \$130,000. The respondent never produced any documents proving the loans, asserting the loan documents were with M.V. and therefore a third party record application ought to be brought by the claimant if she wished to obtain them. M.V. brought documents with him when he came to court to testify during the trial. He gave evidence that he wrote by hand each of the 11 almost identical one-page loan agreements based on language he found on the Internet. I do not propose to set out the dates and the amounts of the purported loans, but most are for \$12,000 and occurred roughly every six months with the exception of some years.
- [199] Following the date reference, each of the documents reads:
- I, [M.V.], lend [R.V.] twelve thousand dollars (\$12,000.00) in cash [or \$10,000 in the case of the last document], to be repaid upon the sale of his house at (2565 E. Pender St., Vancouver, BC) or an agreed upon time before then. [Lender, M.V., date, signature. Borrower, R.V., date, signature].
- [200] M.V. testified first about the loans. The respondent was present for his testimony, raising the concern he may have adapted his evidence thus affecting its weight. M.V. stated he has worked for Molson Breweries since 2008 as a millwright, describing himself as a mechanical engineering technician. He specified his base salary is \$82,000 but on average he earns between \$110,000 and \$115,000 per year. According to M.V., his father indicated he was in financial difficulty and struggling to pay the mortgage and the bills, in part because he was not getting help from the claimant. They discussed the matter, and M.V. says he agreed to help by providing a supplement a couple of times each year. M.V. stated he would

withdraw cash from his bank accounts through a bank machine and let it accumulate to \$12,000, and in one instance \$10,000, over a couple of months. He denied having bank statements showing the withdrawals. When asked if he could obtain them, he said some of the withdrawals were made from closed accounts but he was willing to try. I heard nothing further about the matter.

- [201] M.V. provided the loan amounts to his father in cash because "it was easiest for him to deal with it," and cash is what the respondent had requested. M.V. testified to registering the mortgage on the family home on March 14, 2014, after the conclusion of their arrangement, denying it was because of the parties' separation. He stated all he knew at the time was the claimant had disappeared, but she had disappeared many times before. He specified he prepared each loan agreement on the day he met with the respondent and provided the cash amounts set out in the agreement. Each purported agreement is dated and signed by both the respondent and M.V. When asked in cross-examination what his wife thought of the arrangement, M.V. said he never told her. He testified the respondent did not ask him for the loan documents until the trial was underway.
- [202] In his evidence, the respondent said M.V. gave him money because the house needed a lot of fixing and he needed money to buy materials, et cetera. When asked what repairs he had done since 2008, he then said he used the money for "our living, to pay bills and buy groceries and diapers," which he estimated at \$400 per month. Of course, by 2008, it has likely been quite some time since A. needed diapers. The respondent claimed he paid all of the expenses which he estimated at between \$5,000 and \$6,000 per month. He also said a few times he gave the claimant \$1,000.
- [203] He testified the family went out every week and it was expensive. For two years he said he was too ill to work and was living on \$1,200 per month. When asked how he now manages to pay the expenses listed in his Form 8, which exceed his stated income by more than double, he indicated he has made the money he received from M.V. last. The respondent testified to telling M.V. he would get the money back when the house sold. The respondent also said he never told the claimant about the loans from M.V.
- [204] During the course of giving evidence on this issue, the respondent referred to handwritten notes which he initially refused to show to counsel for the claimant. They included references to the dates he purportedly received money from M.V. Neither M.V. nor the respondent provided any details as to where the cash was kept by either of them. I have to infer M.V. kept it in his home as the amount accumulated and the respondent likewise once he received it, meaning that each of them at any given time had substantial amounts of cash in their respective residences apparently unprotected.
- [205] I find the evidence of the respondent and M.V. on this issue improbable. The method in particular by which M.V. apparently provided cash loans to the respondent is simply not believable. To repeatedly and continuously over a period of years attend automated bank tellers and withdraw cash which then accumulated to \$12,000 without M.K.'s knowledge

until the date each agreement was signed, is contrary to basic common sense. Where did he hide the cash from M.K.? Was he not concerned about the security of keeping such large amounts of money in his home? I have the same questions about the respondent receiving and storing the money. Further, no reasonable explanation was offered as to why the respondent required or preferred cash loans over a more conventional form of lending. In addition, although M.V.'s testimony indicates he earns a good income, it is not so high as to allow for \$24,000 per year in after-tax income to be loaned to his father for several years without a significant impact on his lifestyle, again raising the question of how M.K. could have remained unaware. She and M.V. did not marry until 2012, but it was clear they lived together before that in various locations. As his common-law spouse and then his wife, surely she would have a basic knowledge of his income and expenses. Finally, the extent of the respondent's personal debt as set out in his Form F8 is also inconsistent with the funds he said he received and used on expenses.

[206] Accordingly, I do not accept the respondent's assertion he received \$130,000 in the form of loans from M.V. nor that this same amount forms a bona fide basis for the mortgage he has registered on the family home. To be clear, that mortgage is not a family debt.

Other Assets and Debts

[207] The respondent relies upon a Scott Schedule as accurately setting out the value of the parties' other assets and debts. The claimant largely agrees. Those assets include the respondent's 1998 Volkswagen cargo van to which he assigns a value of \$900 and the claimant's Ford Focus at \$500. These figures are at odds with the parties' estimates set out in their respective sworn financial statements. The respondent values his cargo van at \$2,000 in his Form F8 sworn November 19, 2014, and he gave no evidence on this point at trial. The claimant values her vehicle at \$1,000 in her financial statement and the respondent's van at \$10,000. In the absence of any appraisal evidence for either vehicle, I am left to accept each party's estimate of the value of their own vehicle as set out in their financial statement. A Scott Schedule is not evidence.

[208] Accordingly, the Eurovan is valued at \$2,000 and the Ford Focus at \$1,000.

[209] Underlying the schedule is the respondent's assumption the separation date provides a date of adjustment, although the trial date is the formal date of valuation for family debt and family property. Accordingly, the respondent includes within the schedule per diem interest calculations for the parties' respective credit card debts which are agreed to be family debts. The mortgage on the family home is valued as of the date of separation, as is property tax, which is then subject to its own per diem interest calculation.

[210] The respondent urges the court to expressly endorse this approach to calculating the value of family property and debt. Because the claimant agrees, I am prepared to accept the approach taken in the Scott Schedule with respect to the parties' individual bank accounts and unsecured debts. I do not accept, however, that the mortgage on the family home

should be valued as of the date of separation. The parties seek an equal division of family property and debt valued as of the date of trial. It has not been suggested the circumstances warrant the use of the separation date or, alternatively, an unequal division of family property or debt apart from the mortgage issue, nor in my view do the circumstances justify a departure from the use of the date of trial for valuation or an unequal division. The balance owing on the mortgage and the outstanding property taxes as of the first date of trial must therefore be used in effecting an equal division of family property and debt.

[211] The per diems proposed for each party's credit card debts identified in the Scott Schedule should be included in the calculation of the total amount of those debts only up to the first date of trial in order to value those debts in compliance with s. 87 of the FLA.

[212] I reject, as I have already said, that M.V.'s second mortgage is a family debt and therefore it will have no effect on the claimant's share of the equal division.

[213] The respondent has also included the cost of supervised access fees paid by the respondent for Dr. Blancato's services in the Scott Schedule as well as photocopying costs. Those are items not properly subject to an order dealing with a division of property and debt.

[214] The parties will appear before me as soon as possible for the limited purpose of providing documentary evidence regarding the amounts owing on the mortgage and any debt for outstanding property taxes as of the first date of trial. I trust counsel will then work cooperatively and efficiently to determine by agreement the amount of the compensation order owed by the respondent to the claimant to effect an equal division of family debt and property that accords with these reasons.

Costs

[215] In my view, the claimant has been substantially successful here, and unless there are circumstances of which I am unaware, she is entitled to her costs assessed in accordance with Appendix B.

"Fleming J."

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Prepared on 27 October 2026 · Esheria