

CANADA / JUDGMENT

P.M.Z. v. D.J.T.

2023 BCSC 1444

COURT

Supreme Court of British Columbia

DECIDED

18 August 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 1444 P.M.Z. v. D.J.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.M.Z. v. D.J.T. ,

2023 BCSC 1444

Date: 20230818

Docket: E210455

Registry: Vancouver

Between:

P.M.Z.

Claimant

And

D.J.T.

Respondent

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Claimant:

K. Emond

R. Kinghorn

Respondent appearing on his own behalf:

D.J.T.

Place and Date of Trial:

Vancouver, B.C.

July 17-21, 24, and 26, 2023

Place and Date of Judgment:

Vancouver, B.C.

August 18, 2023

Introduction.. 4

Background Facts.. 6

Pre-Separation.. 6

Family and domestic violence during the relationship. 9

Post-Separation.. 13

Credibility and Reliability Findings.. 24

Issues.. 27

Issue 1: Should a divorce be granted?.. 28

Issue 2: Should Ms. Z be authorized to relocate to Stratford, Ontario with the Children?.. 29

Position of the Parties. 29

Ms. Z's Position.. 29

Mr. T's Position.. 29

Legal Framework. 30

Analysis. 31

Burden of Proof 31

General factors to be consider under s. 16(3) in assessing the best interests of the Children 33

Factor 1 - Needs of the Child. 33

Factor 2 - Nature and Strength of the Children's Relationship with each Spouse and Others Who Play Important Roles in Their Life. 34

Factor 3 - Each Spouse's Willingness to Support the Children's Relationship with the Other Spouse. 35

Factor 4 - History of Care of the Children.. 36

Factor 5 - Children's Views and Preferences. 37

Factor 6 - Children's Heritage. 37

Factor 7 - Plans for the Children's Care. 38

Factor 8 - The Parties' Ability to Care for and Meet the Needs of the Children. 39

Factor 9 - The Parties' Ability to Communicate and Cooperate. 39

Factor 10 - Family Violence. 40

Factor 11 - Court Orders Relevant to the Safety of the Children. 42

Factor 12 - Reasons for the Relocation.. 43

Factor 13 - Impact of the Relocation on the Children. 44

Factor 14 - Time Spent and Level of Involvement with the Children.. 44

Factor 15 - Compliance with by the Applicant with Legal Requirements. 45

Factor 16 - Orders or Agreements Specifying the Children's Residence. 45

Factor 17 - Reasonableness of the Proposal for Extent of Contact with the Non-Relocating Parent
46

Factor 18 - Compliance with Legislation, Orders, and Agreements. 47

Assessment 48

Issue 3: What Guardianship, Parenting Arrangements, and Parenting Responsibilities should be
ordered for the Children?.. 49

Issue 4: What amount should be paid for past and ongoing child support? 50

What income should be imputed to Mr. T?. 53

What income to be imputed to Ms. Z?. 56

What amount should be awarded for retroactive child support ?. 57

Should there be a lump sum award made for future child support?. 57

Legal Principles. 58

Analysis. 58

Issue 5: What are the Special or Extraordinary Expenses for the Children and what amount is
owed for Retroactive Special or Extraordinary Expenses?.. 61

Issue 6: What are the Family Assets and Debts and how should they be divided?.. 62

Legal Principles. 62

The Parties' Positions. 64

The identification and valuation of family property. 65

Whether Ms. Z should be reimbursed for expenses related to the Family Home incurred after separation?. 67

Whether the Family Home should be sold, and if so, who should have conduct of the sale? 68

If there would be significant unfairness to divide the family property equally. 69

Issue 7: Is Ms. Z entitled to Spousal Support, if so, in what amount and for how long?.. 73

Grounds for Entitlement 73

Quantum of Support 75

Duration of Support 76

Lump Sum Support 77

Issue 8: What amounts should be paid out of the Net Proceeds of the sale of the Family Home: 78

Issue 9: Should there be Conduct Orders made addressing how the parties communicate with each Other and the Children?.. 79

Issue 10: Who should keep the family dog?.. 81

Issue 11: What costs should be awarded?.. 82

Conclusion.. 85

Introduction

- [1] This is a high conflict family law proceeding involving the claimant P.M.Z. ("Ms. Z") and the respondent D.J.T. ("Mr. T"). The two children of the marriage are currently twelve ("L") and five ("N"), (collectively, the "Children"). The parties' and the Children's names are anonymized to protect the privacy of the Children.
- [2] Ms. Z seeks: a divorce, imputation of income to Mr. T, child and spousal support, division of family property and family debt, the sale of the family home, determination of parenting responsibilities and arrangements, conduct orders, and, most contentiously, an order authorizing her to relocate the Children to Stratford, Ontario.
- [3] The parties both testified. There were two other witnesses called. Ms. Z called her stepmother, Ms. K, who resides with her father in Ontario and Mr. T called his friend, Christopher Joseph.

- [4] On the morning of the first day of trial Mr. T sought an adjournment to permit him to retain counsel. After hearing submissions, I decided it was not in the interest of justice to adjourn the trial. It was my view that Ms. Z and the Children would suffer greater prejudice if the matter was adjourned than Mr. T would if the matter proceeded. The trial commenced with Mr. T representing himself, until the final day of the trial when he walked out of the courtroom.
- [5] There were generally two sheriffs in the courtroom during the trial. The necessity of their presence first became apparent at the adjournment application when Mr. T turned to Ms. Z, who was sitting in the public gallery and directed aggressive comments towards her. Similar behaviour throughout the trial demonstrated Mr. T's difficulty acting in an appropriate manner. He would swear, refuse to follow the direction of the Court, and demonstrated little respect for the justice system. As he put it, he does not base his life on "man-made laws", but on "natural laws". As he states in his email of May 11, 2022 to the claimant's counsel: "I have ZERO respect for any part of the legal system!" His behavior cemented in my mind that he carries a great deal of animosity and anger towards Ms. Z, has trouble controlling himself, and has little intention of changing his behavior.
- [6] Unfortunately, Mr. T's offensive behaviour continued on the last day of the trial. The parties were given a day out of court so they could prepare their submissions. I directed that the claimant provide her written submissions to Mr. T by 4:00 p.m. so that he had the evening to read them and consider what he wanted to say. The next day, shortly after the claimant's counsel commenced making their oral submissions, the counsel advised me Mr. T was on his phone. I asked Mr. T if there was something urgent he needed to address. His response was that he was keeping up with his friends on Facebook. I asked him to put his phone down. Mr. T then asked if he could leave, and I advised him that he is free to leave, but he would be unable to make his submissions. Mr. T replied that no one cares about his submissions, but remained in the courtroom.
- [7] As counsel continued making submissions Mr. T interrupted them, stating he objected. This then progressed to a tirade by Mr. T, in which he refused to allow counsel to continue submissions, but asserted that there was no point of him being here and that what counsel was saying were lies. Mr. T said, among other things, that "it's nuts"; that we did not acknowledge we were animals; that I, as the judge, was bias; that he has been deprived of justice; that everything was based on lies; and that he was "done with this shit" and "not submitting shit". After a prolonged exchanged in which I attempted to communicate to Mr. T the importance of providing the Court with his submissions, he expressed that he was "sick of this crap", got up and walked out of the courtroom. He did not return. The trial continued without Mr. T in attendance for the closing submissions.

Background Facts

- [8] The parties married on March 16, 2011, and separated on December 30, 2019.

- [9] Ms. Z is 47 years old. She has a bachelor's of science degree in environment science obtained in 2007 from Royal Rhodes University in Victoria, British Columbia. She has worked a variety of jobs in the past. She is currently operating a bed and breakfast out of the family home (the "B&B").
- [10] Mr. T is 49 years old. He obtained a diploma from Selkirk College in fish, wildlife and recreation. He moved to Squamish, British Columbia, to participate in rock climbing and outdoor activities. In 2007, he began operating his own roofing company. Recently, he decided to pursue some further education to become a veterinary assistant.
- [11] There are two children of the marriage: L born in April 2011 and N born in February 2018. The Children have resided with Ms. Z in the family home since the date of separation.

Pre-Separation

- [12] The parties began living together in February 2010 in Squamish. Ms. Z began working for Mr. T converting a trailer into a coffee cart and helping out with some roofing jobs. Mr. T was operating his own roofing company. They married on March 16, 2011, in Squamish, although they had a marriage ceremony in Mexico in November 2010.
- [13] In February 2011, the parties purchased a property located in Brackendale (the "Family Home"). It was purchased for \$370,000 and required extensive renovations. It ultimately was divided into two suites with the front unit being used for the family and the back unit being used to operate the B&B. Mr. T conducted the majority of the renovations to the Family Home.
- [14] The parties had their first child L, in April 2011. Ms. Z had a difficult pregnancy and possible issues relating to L's growth were identified in utero. She had to make multiple visits to Children's Hospital for testing. He was born at only 3 pounds 11 ounces. He had a number of challenges as a baby and required frequent feedings to improve his weight. He further experienced respiratory difficulties and had to be hospitalized at Lions Gate Hospital for four to five days due to low oxygen. Ms. Z was L's primary caregiver.
- [15] Due to the condition of the Family Home, Ms. Z and L did not move into it until the summer of 2011. The renovations were not yet complete and Mr. T continued to work on the Family Home. In the summer of 2011, Ms. Z occasionally worked on call and on the weekends doing fish salvage work, but primarily cared for L.
- [16] When L was around two or three years old he started at a Montessori pre-school and while he was at preschool Ms. Z began a one-year contract working full-time for Cascade Environmental. This job required some travelling doing environmental field work. For one month she had to commute from Squamish to Pitt Meadows. She stopped working for this company when L was about four years old. She testified that she had shoulder surgery and she felt that working away from the home was not conducive to having a family.

- [17] After a trip to Mexico, the parties thought it would be a good idea to run an Airbnb out of the Family Home. They started with renting out one bedroom and eventually expanded to renting out three rooms in the Family Home. Ms. Z did the cleaning, decorating, maintenance, the booking, getting licences, as well as looking after L who was no longer in day care. In 2015, the B&B began operating.
- [18] L entered Kindergarten in a French immersion school, but he only stayed a month or two as he was being bullied at school. He returned to the Montessori school for Grades 1 and 2. During this time the school recommended that L have an Orton-Gillingham tutor to help him with learning disabilities that had not been assessed. L struggled with reading and writing.
- [19] For Grades 3 to 5 he attended the Squamish Nature Learners, a new school started by a number of families which focused on outdoor education. He attended that school three days a week and he was home-schooled by Ms. Z for two days of the week. At that school, there was a tutor who assisted L. Ms. Z played an active role in this school, assisting on the financial end, acting as the treasurer, and volunteering in the hot lunch program. The parents were also required to attend monthly meetings and do volunteer shifts at the school.
- [20] L transferred to Brackendale Elementary for Grade 6. The parties had separated by this time, and it was difficult for Ms. Z, as the Children's primary caregiver, to provide the amount of time needed to commit to the Squamish Nature Learners. At Brackendale Elementary, L had one-to-one tutoring and a learning support teacher. He also has an individual education plan ("IEP").
- [21] L's teacher at Squamish Nature Learners recommended that L have a psycho-educational assessment done to help make a plan for him. Ms. Z requested that Mr. T sign the consent form so L could see Dr. Karla Saruk, psychologist. Mr. T refused to do so. Mr. T testified that his understanding was that L was going to have a psychological assessment as part of the family law proceeding and so he refused to sign the consent.
- [22] It is not clear to me why Mr. T held this belief since on February 15, 2022, counsel for Ms. Z wrote to Mr. T, advising him that:

Psychological-Education Assessment for [L]: Ms. [Z] believes that a psychological-educational assessment is necessary for [L]. A psychological-educational assessment is a standardized assessment of a child's intellectual and academic abilities. Ms. [Z] believes that the assessment is important for understanding how [L] learns best with a view to how he can be assisted with his education.

Ms. [Z] needs your consent for this assessment to take place. If you are not willing to provide your consent, Ms. [Z] has instructed us to bring a court application.

[Bold in original.]

- [23] As a result of Mr. T's refusal to sign the consent, Ms. Z was forced to apply to court. Master Muir ordered that the psycho-educational assessment of L proceed with Dr. Saruk on April 29, 2022, without the consent of Mr. T.
- [24] L has completed Grade 6 and will he will have to change schools for Grade 7. He is currently registered to attend a middle school in Squamish and one in Stratford, Ontario. L likes computer stuff and a variety of sports. He has excelled at art. He has lots of friends and makes friends easily.
- [25] In February 2018, their daughter N was born. L was six at the time. N was diagnosed with having febrile seizures and she has to be monitored if she has a seizure. The cause of the seizures is not clear, but the hope is that she will outgrow them. After N was born, Ms. Z continued to operate the B&B full-time while caring for the Children.
- [26] After N was born, Mr. T was involved in playing with her on the trampoline, taking her for walks, reading to her, taking her to the library, attending music classes together, and taking her swimming. Ms. Z testified to the special relationship that N and Mr. T have.
- [27] N is an active and outgoing child, who makes friends easily. She loves music and painting.
- Family and domestic violence during the relationship.
- [28] The parties testified to a number of concerning incidents of family and domestic violence that occurred during the relationship. The parties agreed that these events occurred, but disagree on their details.
- [29] The first occurred in approximately 2010. Ms. Z testified that she told Mr. T she was concerned about having open alcohol in a vehicle, in reference to one of Mr. T's employees. Mr. T became violent. He swung his fist and hit her in the shoulder stating "don't ever tell me what to do". Mr. T does not deny this incident, but recalls it differently. He testified that he had been waiting in the truck for Ms. Z to come down, a common occurrence, he thinks she was "prettying herself in the mirror" and he was upset from the delay. He agrees he was angry and swung his fist, intending to hit the back seat, but grazed her left shoulder accidentally. I accept Ms. Z's description of the incident.
- [30] Ms. Z testified she was shocked by the event. She called a friend to assist in finding a couple's counsellor and then left for a week to Maui. Upon her return, the parties attended one session of counselling, in which the topic of the division of labour within the relationship was discussed. Ms. Z testified that Mr. T viewed himself as the main contributor in the relationship and that she was "useless" and did not contribute. After one session Ms. Z felt the counselling session was unhelpful and left feeling that she was not contributing enough to the relationship. Ms. Z testified that this theme continued to surface throughout their relationship. Mr. T's frustration with the division of labour in the relationship was apparent in his testimony.

- [31] The second incident occurred in the spring of 2012, when L was about a year old. Ms. Z was not feeling well and was lying on the couch when Mr. T came home from work. Ms. Z testified that Mr. T expected she have dinner on the table at a certain time. Mr. T was upset because his dinner was not ready and told her to start the BBQ. She continued lying on the couch, and when he returned he threw a lighter at her, hitting her above the eye. Her brother drove her to the hospital where she received stitches above her eye where the lighter struck her. While there, she found out she was pregnant. This pregnancy was ended.
- [32] Mr. T does not deny the incident, but explains that he did not mean to hit Ms. Z in the face with the lighter. He agreed he threw it in her direction to get her attention, but it hit her because he has a "bad aim". In court, he apologised to Ms. Z. He does not recall that she was injured, although he agreed she went to the hospital. He asserts that the decision to end this pregnancy was because Ms. Z was spiteful and was trying to hurt him.
- [33] The third occurred in approximately May 2019, when N was just over a year old. N had been sick for a couple of nights, and Ms. Z had been up all night with her. At about 5:30 a.m., Ms. Z asked Mr. T to care for N so she could get a few hours of sleep. Mr. T's response was "If you ever wake me up to take her again I'm going to smash her fucking face in".
- [34] Mr. T does not deny this event nor the use of the language, which he agreed was a "pretty mean thing" which was "totally uncalled for". He explained that just prior to this event he was sleep deprived, over-worked, not feeling appreciated, and had suffered from heat exhaustion while working an out-of-town job.
- [35] Ms. Z again sought a counsellor and the parties attended one session. Mr. T was of the view that attending counselling was a waste of money, and they instead needed to connect more. The parties did not attend any further couple's counselling.
- [36] The final incident that prompted the separation occurred on the evening of December 29, 2019. The parties disagree on the description of what happened.
- [37] Ms. Z testified that she met Mr. T at the Squamish Hospital after he received IV treatment for an infection in his arm. When they got home, the Children wanted to watch a movie. Ms. Z and the Children were sitting on a couch and started watching the Nutcracker. L asked his dad if he would make them popcorn. Mr. T went to make popcorn and came into the living room with it. He suddenly changed his mind and started ranting about his parents while pacing back and forth. He appeared very angry and said that they were not going to watch a movie because it was too late and wanted to Children to go to bed. Mr. T grabbed Ms. Z's head, put his hands on her temples, and began to compress them. Ms. Z was worried he was going to smash her head or snap her neck. The Children were on the sofa with her. She tried to relax and not challenge Mr. T.
- [38] N began screaming, and Mr. T yelled that it was bedtime and everyone had to go to bed. He picked up N and Ms. Z stepped towards him to get her, but Mr. T stepped backwards. Ms. Z decided to take L upstairs, who appeared scared. They were in the upstairs bedroom and she

was trying to calm her son down. Mr. T came upstairs and handed N to her. She went into the bedroom and began to close the door. N was on her hip. Mr. T decided the door should not be closed; he pushed it open, entered the room, and shoved Ms. Z. As a result, N came out of her arms and landed on the bed. N would have been almost two years old at the time. Mr. T was yelling that the door had to be left open since there was no heat in the room. Ms. Z did not understand Mr. T's comments, as an electrician had installed a base board heater.

- [39] The next morning, Ms. Z decided to leave with the Children. She gathered a few items and spoke to a friend to arrange that L could go to the house for a play date. The Children were in the car when Mr. T approached and removed N from the car. L put N back into the car and they locked the doors. Mr. T jumped on the hood of the car while screaming. Eventually, Mr. T got off the hood and Ms. Z drove away. She was too scared to stay in Squamish, so she booked an Airbnb in Vancouver. Mr. T texted her and told her that he knew where she was, presumably through their joint Airbnb app, so she returned to Squamish to stay at a friend's house. She was able to convince Mr. T to move out of the Family Home and she returned there with the Children. On the advice of her friend, she went to the police and provided a statement to Constable Wu of the Squamish Police department.
- [40] A few days later when Mr. T wanted to see the Children, L disclosed to Ms. Z that Mr. T had held him down as he was trying to get into the car and that he did not want to see his dad.
- [41] Mr. T provided a different version of these events. He testified that on December 24, 2019, they had discussed the need for the Children to go to bed earlier and for L to have less screen time. He recalls that on December 29, 2019, he went to the hospital for an IV treatment and he arrived back home around 9:15 p.m. On his arrival, Ms. Z and the Children were sitting on the sofa. L asked if he would make some popcorn. He remembers returning with popcorn and putting it down. He then gently placed one hand on Ms. Z's head, moving it forward and backwards, telling her that they had agreed to put the Children to bed earlier. She hauled back and punched him in his face and he dumped the popcorn over her head. Both Children were crying and he grabbed N and told everyone they had to go to bed. Ms. Z and L went upstairs. About five minutes later, he brought N upstairs and handed her to Ms. Z. Ms. Z went into the bedroom and slammed the door on him. He opened the door and agreed that he pushed Ms. Z and N "a bit forcefully" out of frustration.
- [42] Mr. T agreed that the next morning he did remove N from the car and that after Ms. Z and the Children were in the car with the doors locked he "did act like a monkey and I jumped on the hood of the car".
- [43] Ms. Z denied punching Mr. T in the face during this incident.
- [44] Mr. T consistently refers to this event as a "consensual argument" at trial and prior to trial in his emails to Ms. Z's counsel. I will refer to the event of December 29, 2019 as "the Assault", since that is what it was. There is absolutely no excuse for his behavior.

[45] In addition to these instances of violence, I also note that Ms. Z described Mr. T's driving during the relationship as being dangerous. He would often swerve between lanes and there was an incident when he was doing donuts down the Sea to Sky highway. On some occasions the Children were in the car. He received many tickets for speeding and not following the traffic laws. Mr. T did not dispute these assertions.

Post-Separation

[46] About three days after the Assault, Ms. Z attended at the hospital where Mr. T was receiving treatment. She went there since she wanted to make sure he was getting treatment and she wanted to find out if he had reported what had happened to the doctor. She was hoping he would get some treatment for any mental health issues he had.

[47] Mr. T recalls that Ms. Z got into his car and they were alone in the hospital parking lot. It was dusk. He recalls she asked him what he thought of her, to which Mr. T told her she was "lazy and useless".

[48] Mr. T relies on this incident to support that Ms. Z was not scared of him, since if she was, she would not have gotten into a car with him.

[49] On January 4, 2020, Mr. T was arrested by the police and placed on an undertaking (the "Undertaking"). The conditions of the Undertaking included:

- (d) You must not communicate, directly or indirectly with [Ms. Z] except in accordance with the following conditions: Arranging child care.
- (e) You must not go to [the Family Home], except in accordance with the following conditions: One-time, accompanied by the police for the purpose of retrieving your personal belongings.

[]

- (l) You must comply with the following condition(s): You must immediately leave the presence of [Ms. Z, L, and N] upon their request.

[Bold in original.]

[50] On January 13, 2020, Mr. T was charged with one count of assault of Ms. Z contrary to s. 266 of the Criminal Code relating to the Assault.

[51] Mr. T agreed that he was aware of the Undertaking and that he had breached the conditions of the Undertaking. As a result of the breaches of his Undertaking he was charged.

[52] Mr. T did see the Children on an inconsistent basis in 2020. He would care for N on Sunday when Ms. Z took L for his cross-country ski lessons. He would show up at random times at the Family House and play with them. He would not agree to any fixed parenting schedule. Ms. Z planned and took the Children to all of their activities. She did ask Mr. T to get involved in planning L's baseball schedule but he did not do so. At one point Mr. T did agree to assist

with taking the Children to their activities while Ms. Z was ill, but when he showed up, he verbally berated and swore at Ms. Z in front of the Children.

- [53] On one occasion in February 2020, when they met at a coffee shop to exchange the Children Mr. T was angry about not having a car seat. He started calling Ms. Z a "fucking bitch" and "you fucking cunt" in front of the Children. L later reported that after he left with Mr. T, Mr. T continued to rant about Ms. Z and at one point stated to L "if you are going to be a little bitch like your mum I'm not going to talk to you anymore". Mr. T does not dispute that he used disparaging language towards Ms. Z. He agrees he might have made that comment to L.
- [54] On another occasion, Mr. T had come over and he was helping L with a physics project. He wanted to see N and began reading a nursery rhyme to her; however, he changed to words to "your mum doesn't want me to see you" and "she is a bitch". Ms. Z asked him to leave but he would not. Ms. Z reported this incident to the police.
- [55] Ms. Z testified to how Mr. T would text her constantly. He would begin by discussing the Children and then would start in about other stuff. It was "relentless". Mr. T was obsessed with the Assault and when he saw her and L he wanted to go over it, continuing to call it a "consensual" argument. The screen shots of the texted messages were provided to the police.
- [56] On November 20, 2020, Mr. T pleaded guilty to the Assault and was given a suspended sentence and 18-months probation. The conditions of his probation included:

Condition 6: You must have no contact or communication, directly or indirectly, with [Ms. Z]. The exceptions are as follows: Through email for the sole purpose of arranging, picking up, and dropping off your children for parenting time. As allowed by a family or child protection order made by a judge or master who has been given a copy of this probation order. You must immediately file a copy of this order in any family or child protection proceeding in which you are a party or become a party. Through or in the immediate presence of a lawyer who has been given a copy of this probation order. Through or in the immediate presence of one or more of the following professionals, after they have been given a copy of this probation order: counsellor, family justice counsellor, mediator, or restorative justice counsellor. Through court documents served through a third party and during scheduled court appearances or case conferences only with a sheriff present unless a master or judge waives this requirement.

Condition 7: You must not go to any place where [Ms. Z] lives, works, attends school, worships, or happens to be. If you see them, you must leave their presence immediately without any words or gestures. The exceptions are as follows: For picking up, and dropping off your children for parenting time (you must remain inside your vehicle during pickups and drop-offs). As allowed by a family or child protection order made by a judge or master who has been given a copy of this probation order. You must immediately file a copy of this order in any family or child protection proceeding in which you are a party or becomes a party.

Condition 8: You must not go within a two block radius of [the Family Home].

(the "Probation Order")

- [57] Mr. T agreed that after the Probation Order he continued to text, Facebook message, and email Ms. Z in contravention of this order. He agreed that he knew he was not following the Probation Order. On cross-examination, Mr. T agreed that he had no respect for the law and it was unlikely that he would follow future court orders.
- [58] In 2021, Mr. T saw the Children sporadically.
- [59] Ms. Z testified that Mr. T's behaviour escalated over time. There were a couple of incidents when he came to the Family Home and would not leave. He demanded that Ms. Z do his laundry and then locked himself in the bathroom of the Family Home. On that occasion he entered her bedroom and began reading her diary. There was another occasion when he was looking after N while Ms. Z attended a parent-teacher interview for L. When Mr. T was leaving he asked N for a hug and N did not want to hug him. He then called N "vindictive" like her Mum.
- [60] He continued to send Facebook messages and emails to her about issues totally unrelated to child care. As he was breaching the Probation Order, Ms. Z provided copies of these to Cst. Wu of the Squamish Police Department.
- [61] On February 4, 2021, Mr. T was charged with one count of breaching the Probation Order for contacting Ms. Z directly or indirectly without a reasonable excuse, contrary to s. 733.1(1) of the Criminal Code. Mr. T was placed on a release order which contained the same condition as Condition 6 of his Probation Order.
- [62] On March 8, 2021, Ms. Z filed the notice of family claim. Mr. T filed a response on July 13, 2021, agreeing to a divorce and the division of family property and family debt. He stated that the income cited was not correct and that he was "filing a financial statement in this action to outline my [sic] for the court." He stated that the claimant was not allowing him to see the Children. Mr. T had a lawyer, Shawn Jones, acting on his behalf. There was no counterclaim filed.
- [63] On March 18, 2021, Mr. T was convicted and found guilty of the breach of the Probation Order and was given a suspended sentence and placed on probation for 12 months. He was placed under the same conditions.
- [64] In November 2021, Ms. Z tried through her lawyer to arrange for Mr. T to have some parenting time with the Children. There were one or two visits. Mr. T was not supposed to get out of the car during parenting exchanges. However, he would show up without a car seat and tell L to go and tell Ms. Z to give him the car seat. Ms. Z was frustrated that Mr. T was using L as a messenger. Mr. T would get out of his car and come and take the car seat from Ms. Z's car. In addition, he was making Facebook posts harassing and shaming her, saying that she was not allowing him to see the Children. Mr. T admitted to making the public Facebook posts.

[65] The parties attended a judicial case conference on February 2, 2022, before Justice Fleming. At that time the parties were represented by counsel. They agreed to the following orders:

1. The Respondent shall file and serve his completed Form F8 no later than March 2, 2022.
2. The Claimant shall provide the Respondent with further information, if any, regarding the income generating units in the family home no later than March 2, 2022.
3. On an interim and without prejudice basis the Respondent, based on the guideline income of \$35,371, shall pay the Claimant child support for the Children in the amount of \$570 per month, commencing March 1, 2022, and thereafter on the 1st day of each month until further order of this Honourable Court or further agreement of the parties.
4. Neither party may draw funds from the CIBC Line of Credit without the written permission of the other party.
5. On an interim and without prejudice basis, the Respondent shall have supervised parenting time with the Children every second Saturday from 10:00 a.m. until 7:00 p.m., commencing Saturday, February 5, 2022, unless otherwise agreed upon in advance and in writing by the parties.
6. Neither party shall speak negatively with the Children about the other party.
7. Neither party shall speak or communicate negatively about the other to any third party.
8. Neither party shall be under the influence of alcohol or drugs while caring for the children.
9. On an interim and without prejudice basis, the Respondent's supervised parenting time will be supervised by [C.T., the respondent's mother, G.T. or S.T., the respondent's brothers], or any other supervisor agreed upon in advance and in writing by the parties.
10. By consent, after six supervised visits with the Children, if the Respondent complies with paragraphs 5, 6 and 7 of this Order, the Respondent shall have unsupervised parenting time with the Children on a schedule to be agreed upon in advance and in writing by the parties.
11. The parties are released from the JCC program.

(the "JCC Order")

[66] Mr. T saw the Children on a visit supervised by the respondent's mother on the Sunshine Coast on February 5, 2022, in accordance with the JCC Order. Ms. Z handed the Children to Mr. T's mother. After the Children returned home L told Ms. Z that his grandmother and Mr. T had an argument at a public park about telling the Children the truth about events that had transpired between the parties. L reported that he was embarrassed. Mr. T's mother did not report any of these events to Ms. Z.

- [67] Mr. T fired his counsel shortly after the JCC. Mr. Jones filed a notice of intention to withdraw as lawyer on February 9, 2022. February 5, 2022 was the last scheduled visit that Mr. T had with the Children. On one or more occasion, Mr. T showed up at N's school and tried to pick her up. He would not returned N to Ms. Z when she showed up. He also followed L home from school and attended at L's school. Mr. T testified that he sent an email to the principal of L's school since he wanted to put pressure on Ms. Z to "mediate and communicate."
- [68] Mr. T did not provide his F8 financial statement in compliance with the JCC Order.
- [69] On April 12, 2022, Ms. Z applied for and obtained the following order from Master Muir:
1. The Respondent shall file and serve his completed Supreme Court Financial Statement (Form F8) by no later than April 15, 2022
 2. Pursuant to s. 213(2)(d) of the Family Law Act, the Respondent shall pay \$500.00 to the Applicant for his failure to pay child support for March 2022 and the non-disclosure of his Financial Statement (Form F8) in breach of the JCC Order granted on February 2, 2022.
 3. On an interim basis, pursuant to s. 41(f) of the Family Law Act, and subject to s. 17 of the Infant's Act, the Applicant shall have all parental responsibilities for giving, refusing or withdrawing consent for medical, dental and other health-related treatments for the Children.
 4. The psychoeducational assessment of the child [L] can proceed with Dr. Karla Saruk on April 29, 2022, without the consent of the Respondent.
 5. On an interim basis, pursuant to s. 40(3)(a) of the Family Law Act, the Applicant will solely have all the parental responsibilities for the Children as set out in s. 41 of the Family Law Act:
 6. []
 7. On an interim basis, pursuant to section 215 of the Family Law Act, clause 5 of the JCC Order filed March 28, 2022 is suspended.
 8. On an interim basis, Respondent will have reasonable supervised parenting time at dates and times agreed in writing between the Applicant, the Respondent and a supervisor pursuant to the JCC Order.
 9. The Applicant is entitled to costs of this Application in any event of the cause.
 10. The signature of the Respondent is not required for this Order.
- (the "Muir Order")
- [70] On April 14, 2022, Master Muir granted a protection order that included:

- a) THIS COURT ORDERS that, under section 183 of the Family Law Act, [Mr. T] is restrained from directly or indirectly communicating with or contacting [Ms. Z], except as follows: through or in the immediate presence of a lawyer who has been given a copy of this protection order; through or in the immediate presence of a family dispute resolution professional who has been given a copy of this protection order; through court documents served by a third party, and during scheduled court.
- b) THIS COURT ORDERS that, under section 183 of the Family Law Act, [Mr. T] is restrained from attending at, nearing or entering within a two block radius of [the Family Home].
- c) THIS COURT ORDERS that any police officer, including any R.C.M.P. officer having jurisdiction in the province of British Columbia, who is provided with a copy of this order is directed to remove [Mr. T] from [the Family Home] immediately.
- d) THIS COURT ORDERS that this order expires on 12/Jul/2023.
- e) THIS COURT ORDERS, under section 183(3)(a) of the Family Law Act, that [Mr. T] is restrained from attending at, nearing or entering any place where [Ms. Z] lives, works, attends school, worships, or happens to be. If the Respondent sees [Ms. Z], [Mr. T] must leave their presence immediately without any words or gestures.

("Protection Order #1")

[71] Mr. T did not provide his F8 financial statement in accordance with the Muir Order.

[72] After Mr. T fired his counsel, Mr. T began to correspond with Ms. Z's counsel, sending in excess of 350 emails. The emails he sent are in evidence. The content of those emails provide a less than flattering profile of Mr. T. Some of the content of the emails is disturbing for the manner in which Mr. T refers to Ms. Z and her lawyers:

- He consistently refers to Ms. Z as a "lying, spiteful, vindictive" and "mentally challenged" person. He accuses her of being a "toxic individual" and "sick person" who is trying to "fuck" him and the Children over.
- He refers to her counsel as "snakes", "blood sucking lawyers", "assholes", "asswipes", "crooks" including comments like "you assholes are f-ed". He accuses them of being "corrupt".
- He also refers to his own former lawyer as a "crook".

[73] Some of Mr. T's emails to counsel contain threatening language, including:

- On June 15, 2022: "I'm going to take matters into my own hands. Enough of this petty stonewalling bs";
- On July 11, 2022: "Has never a woman lied in the course of history! You make a person want to go do what you fear!";
- On July 28, 2022: "Yea you assholes know what's best. I hope you jerks die due to the heat";

- On August 26, 2022: "You a_swipes will learn the hard way.";
- On September 22, 2022: "Your obviously a spineless soulless person who lives their life sponging off of others. I'm sure the devil will meet your sad persona in due time.";
- On November 12, 2022: "I hope I don't do something Everyone is going to regret!";
- On December 2, 2022: "What goes around comes around and I know karma will be a bitch";
- On December 10, 2022: "Karma's a b_tch and I know you and my spiteful, vindictive, lying ex will get your turn in the end";
- On December 13, 2022:

How the hell does your lying client not need supervision? You people are a disease. I'm planning something for her and the crown.

- Again on December 13, 2022, a few minutes later:

Once there has been mediation and communication with your lying client than I will share my tax return bs. I'm not talking something In person simply a zoom meeting. If the crown can't provide this then I may do something I and the crown regret.

- On January 25, 2023:

One day they will know the truth about this baby bs. I'll save all your snakey emails bullying and fearing me to comply with this bs! I bet more people get killed when u assholes get involved.

- [74] After the February 5, 2022 supervised visit, Mr. T did not arrange for any further supervised visits with the Children. There were many communications between Ms. Z's counsel and Mr. T respecting parenting time and efforts made to arrange parenting time for him with the Children.
- [75] Mr. T in emails explained two different requirements he had before he would set down any further parenting time with the Children. The first requirement was that Ms. Z admit that she did not tell the Crown the truth in regard to the Assault. He states this in an email to Ms. Z's counsel on February 9, 2022. The second requirement was that Ms. Z agree to "mediate and communicate".
- [76] Mr. T testified at trial that he tried to use his visitation with the Children as "peer pressure" against Ms. Z. He explained he would not set up a Zoom call, nor see the Children, so that the Children would ask their mother to see their father and that would be pressure on Ms. Z to agree to "mediation and communication".
- [77] In August 2022, Mr. T saw Ms. Z driving and he followed her on his motorcycle. He approached her in the parking lot of a store and took N and placed her on his motorcycle. He held her for a few minutes and then returned her to Ms. Z calling her "immature" and "a bitch". Ms. Z reported this incident to the police. Mr. T also texted her accusing her of having an abortion to spite him. It is Ms. Z's understanding that Mr. T has breached the terms of the

Protection Order #1 and, as a result, there is a further criminal matter proceeding on September 25, 2023.

- [78] Ms. Z registered with the Family Maintenance Enforcement Program ("FMEP") and it appears that the child support payment fixed in the JCC Order has been generally paid.
- [79] On February 8, 2023, Ms. Z applied for an order for the production of the respondent's financial statement and for records from the RBC Royal Bank and CIBC. Master Nielsen ordered the records produced, the respondent to file and serve his Financial Statement by no later than March 1, 2023, and he was fined \$1,000 for his breach of the JCC Order and the Muir Order. In addition, Master Nielsen directed that Ms. Z was entitled to keep the Chevrolet Bolt as her sole property and Mr. T was entitled to keep the Nissan Leaf as his sole property (the "Nielsen Order").
- [80] Mr. T did not file and serve his Financial Statement as required by the Nielsen Order. He continued to take the position in emails to Ms. Z's counsel that unless Ms. Z agreed to "mediation and communication" he would not file his financial statement.
- [81] Mr. T continued to refuse to file and serve a financial statement and at trial he still had not done so. His excuse for not filing a financial statement is that he was using this as a strategy to pressure Ms. Z into a mediation. He also stated that he would only provide it if Ms. Z admitted she did not tell the truth in her statement to the Crown.
- [82] On April 27, 2023, the claimant filed an amended notice of family claim seeking an unequal division of family property and debt, a relocation order, and a protection order. The respondent did not file a response to this amended pleading.
- [83] On June 6, 2023, the parties attended a trial management conference ("TMC") before Master Harper. The orders included that Mr. T file and serve a completed schedule of assets and debts, also known as a Scott Schedule, at least three weeks before the start of the trial (the "TMC Order"). Mr. T did not file and serve a Scott Schedule in contravention of the TMC Order.
- [84] On June 22, 2023, Master Robertson made a further protection order on the same terms as Protection Order #1, which expires on June 22, 2024.
- [85] The Chevrolet Bolt was registered in the name of Mr. T. Ms. Z asked him to sign papers in order to transfer the Chevrolet Bolt to her as her sole property, as provided for in the Nielsen Order. Mr. T refused to do so. On June 22, 2023, Master Robertson ordered that the Insurance Company of British Columbia transfer the Chevrolet Bolt to her without Mr. T's signature.

Credibility and Reliability Findings

- [86] Before I consider each of the specific issues in this family law proceeding, I will address my findings on the credibility and reliability of the evidence of the parties and witnesses.

- [87] I find that Ms. Z's stepmother and Mr. Joseph both gave evidence in a balanced manner.
- [88] The Court's fact-finding role requires an assessment of the credibility of witnesses and the reliability of their evidence. Credibility refers to truthfulness or honesty, and reliability refers to accuracy. Both credibility and reliability are to be assessed in the context of the evidence as a whole. This requires consideration of many factors.
- [89] Justice Crabtree provided a helpful summary of the principles governing the assessment of reliability and credibility in *Yang v. Duralia*, 2020 BCSC 806:
- [40] Reliability is focused on the accuracy of a witness's evidence, while credibility has to do with whether the witness is telling the truth. Credibility involves the consideration whether the evidence is honestly given. Each involves an assessment of the witness's testimony, in the context of the evidence adduced at trial and in the consideration of various factors.
- [41] The distinction between reliability and credibility was explained in *R. v. H.C.*, 2009 ONCA 56, by Watt J.A. at para. 41:
- [41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately
- i. observe;
 - ii. recall; and
 - iii. recount
- events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514, at 526 (C.A.).
- [90] Justice Crabtree then discussed, at paras. 42-43, the well-known decisions of *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.) and *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, before providing the following useful summary:
- [45] In summary, the assessment of a witness's credibility and reliability must include a critical assessment of the witness's evidence in the context of the evidence as a whole. This involves an assessment of whether the witness's evidence is at odds with other evidence in the case, and whether the testimony is implausible or improbable, having regard to the surrounding circumstances. The real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions. A trier of fact must also bear in mind that an apparently honest, confident or convincing witness may not necessarily be an accurate witness.

- [91] To this I would add that a court may believe some, all, or none of the evidence, and may assign different weight to different parts of that evidence.
- [92] It is important not to base determinations on credibility on emotional evaluations, stereotypes, guesswork or other impermissible forms of reasoning. Credibility and reliability determinations have to be grounded in reason and made as objectively as possible.
- [93] I am also mindful to exercise caution in placing too much reliance on demeanour or courtroom presentation of a witness. I have no baseline upon which to assess those things and I know that a courtroom can be an unfamiliar and intimidating place for some people. Everyone reacts to its pressures differently.
- [94] It is with all of these principles in mind that I turn to my assessment of the parties' evidence in light of the evidence as a whole. I will begin with Ms. Z.
- [95] I find Ms. Z was, in general, a credible and honest witness. She was careful and balanced in her testimony. She was willing to acknowledge that Mr. T was a hard working and devoted father during the early years of their marriage. She did not seek to vilify him. During her cross-examination, she patiently attempted to answer questions posed by Mr. T. She did not react to Mr. T's offensive questioning except to show some emotional upset. I have complete confidence in her truthfulness.
- [96] In respect to the reliability of her evidence, she conceded when she could not remember certain dates, particularly relating to the times she started and finished various jobs. She did explain that testifying about the past incidences of violence was traumatic for her and there were some gaps in her memory. She did have a good memory of the care she provided to the Children and the steps she took to address their needs.
- [97] Mr. T challenges Ms. Z's testimony in respect to the Assault. He claims that Ms. Z made "false misrepresentations" and lied about what happened to the police and to the Court. I will address the Assault in detail later in these reasons, since it was the impetus for the parties' separation.
- [98] I have reached a different conclusion on the credibility of Mr. T and the reliability of his evidence. The claimant's submissions are that Mr. T appeared to give honest testimony. I disagree. In my view, Mr. T was not a balanced witness and his evidence was marked by a lack of candour. It is clear that Mr. T has become obsessed with a number of issues. The first being the fact that he was charged with assault by the Crown. Although he pleaded guilty to the assault charge, he is of the view that it really was not an assault since Ms. Z suffered what he describes as "zero injuries". He continuously referred to the events of December 29, 2019 as a "consensual argument". He further became fixated that there was a failure of Ms. Z and her counsel to agree to have the matter resolved by way of "mediation and communication". He harbors a great deal of anger and resentment against Ms. Z and her counsel for this. His evidence and statements in court were permeated with references to topics irrelevant to the

issue before me, such as global warming, the garbage on the streets of Vancouver, the failures of the government relating to climate change, that the Crown is somehow involved in his family law trial, and his opposition to the zero tolerance policy on domestic violence.

- [99] Mr. T was willing to make statements without a shred of support. An example was when I was determining whether to admit into evidence affidavits which attached various emails Mr. T sent to counsel. I asked him if he agreed he had sent the various emails to the counsel and he initially agreed he had, but then stated that he did not send the emails. During his cross-examination, he confirmed that the email address that sent the emails was his and that he had sent the emails.
- [100] Mr. T's credibility was further undermined by his own assertions that he would be prepared to lie since, in his view, Ms. Z was lying.
- [101] Overall, I find that Mr. T lacked credibility and his evidence was generally unreliable. Where Mr. T's evidence conflicts with Ms. Z, I prefer to accept the evidence of Ms. Z. I turn now to the issues raised.

Issues

[102] The pleadings, evidence, and submissions raise the following issues:

1. Should a divorce be granted?
2. Should Ms. Z be authorized to relocate to Stratford, Ontario with the Children?
3. What guardianship, parenting arrangements, and parenting responsibilities should be ordered for the Children?
4. What amount should be paid for past and ongoing child support?
5. What are the special or extraordinary expenses for the Children and what amount is owed for retroactive special or extraordinary expenses?
6. What are the family assets and debts and how should they be divided?
7. Is Ms. Z entitled to spousal support, if so, in what amount and for how long?
8. What amounts should be paid from the net proceeds of the Family Home?
9. Should there be conduct orders made addressing how the parties communicate with each other and the Children?
10. Who should keep the family dog?
11. What costs should be awarded?

Issue 1: Should a divorce be granted?

[103] The parties seek a divorce. This was the one aspect that they both agree upon. Sections 8 to 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) [DA] sets out the requirements that must be satisfied for me to grant the divorce. I conclude those requirements are satisfied, based on the following evidence presented at trial:

- a) The parties were married on March 16, 2011, in Squamish, British Columbia;
- b) The parties have been living separate and apart since December 30, 2019;
- c) There is no collusion in respect of this application for a divorce and the parties are not seeking the divorce for any improper purpose or upon false evidence;
- d) There is no chance that the parties will reconcile; and
- e) With the orders I will make later in these reasons, I am satisfied that there are reasonable arrangements made for the support of the Children having regard to the Federal Child Support Guidelines, SOR/97-175 [Guidelines].

[104] Based on the foregoing, I am satisfied that the requirements of the DA have been met.

Issue 2: Should Ms. Z be authorized to relocate to Stratford, Ontario with the Children?

[105] I will next deal with Ms. Z's application for relocation, since it impacts on issues relating to the parenting responsibilities, parenting time, and child support.

Position of the Parties

Ms. Z's Position

[106] Ms. Z submits that the relocation is in the best interests of the Children. She wants to return to Stratford where she grew up and where the vast majority of her extended family lives near. The evidence of Ms. K supports that Stratford is an appropriate place for the Children to live. Ms. Z and the Children are welcome to stay in Ms. Z's childhood home, which is close to parks and schools, until they find a home of their own.

Mr. T's Position

[107] Mr. T was not exact in his position on Ms. Z's application to relocate the Children. He testified that he understood why she wanted to move. When I asked Mr. T for his position, he explained that if she were to move, he might move there as well so he could see the Children on a regular schedule. He suggested the advantage that it was closer to Ottawa and he might then become a politician, or start a solar farm.

[108] Mr. T later stated that he objected to Ms. Z moving to Stratford because it would require the use of airplanes, both for the initial move and in order for him to see the Children. Mr. T testified that if the Children are taken to Ontario then they will not see their father. I have interpreted this to mean that Mr. T is not consenting to the relocation.

Legal Framework

- [109] The amendments to the DA that came into effect in March 2021 provide a process to be applied. Ms. Z seeks an order pursuant to s. 16.91(1) of the DA authorizing her to relocate the Children to Stratford, Ontario.
- [110] Sections 16 to 16.96 of the DA address the orders a court may make concerning parenting arrangements of the children of a marriage in the context of a divorce. Section 16 sets out the principles that govern all parenting orders, beginning with the requirement that the court shall take into consideration only the best interests of the child in question. Section 16(2) requires the court to give primary consideration to the child's physical, emotional and psychological safety, security and well-being. Section 16(3) lists factors that must all be considered in determining the best interests of the child.
- [111] I will address the section 16(3) factors in detail later in these reasons. The DA stipulates one factor that may not be considered in deciding to authorize the relocation of a child at s. 16.92(2):
- (2) In deciding whether to authorize a relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the person who intends to relocate the child would relocate without the child or not relocate.
- [112] The balance of s. 16 lists further general principles. In determining the best interests of the child, past conduct is only to be taken into account if it is relevant to the exercise of parenting time, decision-making responsibility, or contact with the child under a contact order: s. 16(5). In allocating parenting time, the court must give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of the child: s. 16(6). This is the "parenting time factor"; *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 135.
- [113] Sections 16.9 to 16.96 deal specifically with "relocation" of a child, which are defined in s. 1 to include a change in the place of residence of a child that is likely to have a significant impact on the child's relationship with a person who has parenting time, decision-making responsibilities, or a contact order pertaining to the child.
- [114] Section 16.92(1) lists factors that must be considered, in addition to the general considerations listed in s. 16(3), in determining whether a proposed relocation is in the best interests of the child. I will address those considerations in detail in these reasons.
- [115] In *Barendregt*, the Supreme Court reviewed these statutory requirements and described them largely as a codification of jurisprudence since the Supreme Court established a common law framework for the consideration of relocation applications in *Gordon v. Goertz*, [1996] 2 S.C.R. 27, 1996 CanLII 191. It described the inquiry that must be undertaken by the court as "highly fact-specific and discretionary": *Barendregt* para. 152.

- [116] Without resiling in any way from the fundamental proposition that the best interests of the child are paramount, Barendregt notes that the interests of child and nurturing parent are intertwined, so that a relocation that benefits a parent may well serve the child's best interests. Speaking for an eight-judge majority, Karakatsanis J. states:
- [171] Relocation that provides a parent with more education, employment opportunities, and economic stability can contribute to a child's wellbeing: [citations omitted]
- [173] It is often difficult to disentangle the interests of a parent from the interests of a child. Indeed, "the reality that the nurture of children is inextricably intertwined with the wellbeing of the nurturing parent" is far from novel: [citations omitted]. A child's welfare is often advanced in tandem with improvements in the parent's financial, social, and emotional circumstances .

Analysis

Burden of Proof

- [117] Section 16.93 allocates the burden of proof on a relocation application in three cases:
- a) The burden to establish that the proposed relocation is in the best interests of the child is on the proponent of the relocation "[if] the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party": s. 16.93(1);
 - b) The burden to establish that the proposed relocation is not in the best interest of the child is on the opponent of the relocation "[if] the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child": s. 16.93(a); and
 - c) In any other case, the parties of the proceeding have the burden of proving whether the relocation is in the best interests of the child: 16.93(3). That is, both proponent and opponent have the burden of proving their respective assertions.

[Underlining added.]

- [118] The Children spend the majority of time with Ms. Z, with Mr. T being permitted to have some supervised parenting time if agreed between the parties. The reality is that since February 2022, the Children have not spent any parenting time with Mr. T. There is no doubt that the threshold of "vast majority", as contemplated in *Rinetti v. Kent*, 2022 ABQB 1 at para. 21, of being "around 80% mark", has been met.

[119] Accordingly, the issue I must determine is whether Mr. T has established that the relocation would not be in the Children's best interest. I note that Mr. T made no closing submissions and his position on the relocation was not entirely clear. Since Mr. T was not represented during the trial and made no closing submissions, I will address each of the factors under the DA in order to satisfy myself that the relocation is in the best interest of the Children, regardless of Mr. T's burden.

General factors to be consider under s. 16(3) in assessing the best interests of the Children

[120] I will first address the relevant considerations listed in s. 16(3) of the DA.

Factor 1 - Needs of the Child

[121] The first factor to be considered is the child's needs, given their age, stage of development, and need for stability: DA s. 16(3)(a).

[122] L is 12 years old and has just finished Grade 6. He will be starting Grade 7 in September. He requires learning support and is on an IEP. Ms. Z testified that this past year he has thrived in the local Squamish elementary school. He has various supports in place. Since he has completed elementary school, he will have to start at a new school for Grade 7 regardless of where he is living. He is active in a variety of sports including mountain biking, skiing, and Akido, a type of martial arts.

[123] It is clear that L will need further learning supports as he moves into higher grades. There is no evidence that supports that his educational needs will not be well supported in either Stratford or Squamish.

[124] N is five years old and will be entering Kindergarten in September 2023. Aside from a seizure disorder that she has had since birth, she is doing well. She is a happy, well-adjusted child.

[125] Ms. Z testified to how social both children are and how they are able to make friends easily.

[126] Ms. Z testified to the family support she would have in Stratford which is totally lacking in Squamish. She would not only have her father and stepmother in close vicinity, she would also have her mother and many aunts, uncles and cousins in the same area. She has an extensive family network in Stratford to provide her with support.

[127] Relocation would cause disruption to the Children by removing them from the Family Home and their home community. This is more pressing for L, as he is older. While he would attend a new school in Squamish in September, it is likely that many of his peers would be at the same school, and he could maintain engagement in his activities in the community. I note it is unlikely that the Children could continue living in the Family Home if they remained in Squamish since the home will have to be sold

[128] However, in my view, the family and community that Ms. Z has in Stratford will assist in providing the Children with further emotional support as they make the transition. It will also create stability in the Children's lives by having family supports to assist Ms. Z while she shifts into a new city and a new career.

[129] Overall, I find this factor mitigates in favour of the relocation

Factor 2 - Nature and Strength of the Children's Relationship with each Spouse and Others Who Play Important Roles in Their Life

[130] The second factor to be considered is the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents, and any other person who plays an important role in the child's life: DA s. 16(3)(b).

[131] The most important relationship the Children have are with their parents and grandparents. It is clear that the Children are well attached to Ms. Z. She has played the greater role in raising and caring for the Children since they were born, which has continued since separation. The evidence is not entirely clear as to L's attachment to Mr. T. It appears that when he was younger they had a good relationship but according to Ms. Z, witnessing the Assault impacted L and his view of his father. For a period of time after the Assault, her perception was that L was afraid to see his father.

[132] N appears to still have a close attachment to her father. Ms. Z testified to the close relationship between N and Mr. T and how she "lights up" when she sees him. I have no hesitation in accepting that Mr. T loves both his children and wants to be a part of their lives. However, he was prepared to forgo seeing the Children since February 2022 with a deliberate strategy of using them as a "pressure" tactic against Ms. Z. This shows a callous disregard on his part to the Children's well-being and how he is prepared to use them to advance his own agenda.

[133] The Children's paternal grandmother lives on the Sunshine Coast and she has played a role in caring for the Children in the past. To Ms. Z's credit, she has continued to facilitate visits between the Children and their paternal grandmother. Mr. T is estranged from his middle brother and only occasionally sees his older brother. It was unclear to me whether the Children have any meaningful relationships with their paternal uncles. Mr. T testified that there is an underlying animosity with his family due to their failure to recognize climate change.

[134] Ms. Z's brother did live with them for a period of time, but he has moved to Alberta. She has no relatives living in Squamish. Her stepmother and father live in Stratford and her mother in Waterloo, Ontario. She has many aunts, uncles and cousins living in that part of Ontario.

[135] This factor also mitigates in favour of relocation.

Factor 3 - Each Spouse's Willingness to Support the Children's Relationship with the Other Spouse

[136] The third factor to be considered is each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse: DA s. 16(3)(c).

[137] I accept that Ms. Z was willing to have Mr. T spend time with the Children even after the Assault. She was understandably concerned after the first and only supervised visit in which Mr. T's mother failed to advise her of issues that arose in the visit. She testified that she continues to support that the Children have a relationship with their father and proposes that if she is permitted to relocate to Stratford, Ontario, she will support regular supervised Zoom visits and she would return the Children to British Columbia for two trips each year. The costs for the trips back to British Columbia could be split. She would expect Mr. T to pay for a professional supervisor. They could see Mr. T and their grandmother, and the trips would initially be supervised so that a professional can assist Mr. T in fostering a relationship with the Children. In addition, Mr. T could come to Ontario to visit the Children, as long as the Children were safe and he acts in an appropriate fashion.

[138] I have little confidence in Mr. T supporting the Children's relationship with their mother. He is convinced that the mother is a vindictive liar. He has used offensive language to describe Ms. Z in the presence of the Children. He has demonstrated an inability to speak in a civil manner to Ms. Z, even in the courtroom. During the trial he referred to Ms. Z as being "a soulless thing", his "enemy" and a "very vindictive person". He has engaged in violent, erratic and harmful behavior since the date of separation.

[139] The evidence on this issue leads me to conclude that Ms. Z exhibits more willingness to support the Children's relationship with Mr. T than Mr. T is willing to undertake with Ms. Z.

[140] This factor mitigates in favour of relocation.

Factor 4 - History of Care of the Children

[141] The fourth factor to be considered is the history of care of the child: DA s. 16(3)(d).

[142] I have already reviewed the parenting time for pre- and post-separation. Ms. Z was the primary caregiver prior to separation and, for the most part, the sole care giver since separation. She has looked after all of the Children's medical needs. She advocated for L to have a psycho-educational assessment to better understand his learning needs, whereas Mr. T refused to sign the consent for such an assessment because he believed it was for this lawsuit. Even after he had been advised that it was to assist L with his educational challenges, he refused to consent. In addition, he testified that he would not sign the consent unless Ms. Z agreed to mediate. There was no rational basis for Mr. T to refuse to sign the consent. The psycho-educational report has been used to assist in preparing an IEP for L to support his need for educational supports.

- [143] Ms. Z has been active in L's education volunteering when he attended the Squamish Nature Learners.
- [144] Mr. T did play a role in caring for the Children when they were together. He changed diapers, gave them baths, read them stories, and took them on outings such as swimming, biking and rock climbing. It appears he may have helped out to some extent with the housekeeping chores, although clearly his view was that was Ms. Z's responsibility.
- [145] N has a medical condition for which Ms. Z has in place a protocol to deal with. Mr. T gave no evidence about N's medical condition and how to deal with it.
- [146] This factor mitigates in favour of relocation

Factor 5 - Children's Views and Preferences

- [147] The fifth factor to be considered is the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained: DA s. 16(3)(e).
- [148] No independent evidence was provided with respect to the views of the Children on the proposed relocation to Stratford. There is no evidence before me of any hesitation or reluctance on the part of the Children to relocate to Stratford.
- [149] With the little evidence I have, I find this is a neutral factor.

Factor 6 - Children's Heritage

- [150] The sixth factor to be considered is the child's cultural, linguistic, religious, and spiritual upbringing and heritage, including Indigenous upbringing and heritage: DA s. 16(3)(f).
- [151] Neither party led any evidence that might suggest that relocation would be either beneficial or prejudicial to the Children in this respect. Accordingly, I find that this is a neutral factor.

Factor 7 - Plans for the Children's Care

- [152] The seventh factor to be considered is any plans for the child's care: DA s. 16(3)(g).
- [153] Ms. Z has already registered L to attend a middle school in Stratford. The school is close to her father's home, where she would plan to initially live. Ms. Z has also pre-registered N in a local Kindergarten. Ms. Z testified that she would look for employment and she would have support of her parents and other extended family members to help provide care for the Children. Currently, in Squamish she has no family members to assist her and she has to rely on friends.
- [154] She understands that the same type of sports activities would be available for the Children in Stratford. There is a nearby pool and park, and there are ski hills that they could continue their skiing activities. She has looked into continuing martial arts for L.

- [155] On the medical front, she has checked with Dr. Stock, a specialist that is monitoring L's growth, who has confirmed that a referral could be made to a specialist in London, Ontario.
- [156] If the Children remain in Squamish, L is registered to attend a middle school. Ms. Z has heard the school has a "tough reputation", but I place no weight on this information.
- [157] On the relevant evidence, this factor mitigates in favour of relocation.

Factor 8 - The Parties' Ability to Care for and Meet the Needs of the Children

- [158] The eighth factor to be considered is the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child: DA s. 16(3)(h).
- [159] I have every confidence in Ms. Z to meet the needs of the Children. I have less confidence in Mr. T. He continues to be fueled by anger and animosity towards Ms. Z that in my mind overwhelms his ability to withstand from making disparaging remarks about Ms. Z to the Children. I note that even in the courtroom he could not control himself--he called Ms. Z a liar and swore at her while she was giving her direct evidence. Although initially he was able to restrain himself during cross-examination he ultimately ended up accusing her of being a liar and a vindictive person.
- [160] His refusal to sign the consent for his son to be assessed was unreasonable and demonstrative of his controlling nature. Mr. T has done nothing to contribute to the Children's health and well-being since separation. I accept that some of his actions have caused stress to the Children. In addition, he chose to use his relationship with the Children as collateral to coerce Ms. Z into mediation. This demonstrates an inability, or an aversion, to recognize the relational and emotional needs of the Children. I find that Mr. T has not demonstrated a willingness to care for and meet the needs of the Children going forward.
- [161] This mitigates in favour of relocation.

Factor 9 - The Parties' Ability to Communicate and Cooperate

- [162] The ninth factor to be considered is the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child: DA s. 16(3)(i).
- [163] It is clear that currently the parties have no ability to communicate or cooperate with respect to parenting of the Children. The parties do need to start communicating in a respectful manner that allows them to focus on the best interest of the Children. At this time, I am not confident this will happen without a significant change in attitude and approach by Mr. T. The language he used in the various emails he sent to the lawyers is inappropriate and offensive. He needs to learn how to communicate without the use of insults, swearing, and name calling.

- [164] I am hopeful that he can do so in the future. The future of his relationship with his Children depends on him taking steps to show that he is prepared to act in a respectful manner towards Ms. Z, not to make disparaging remarks about Ms. Z, and not engage the Children in any of the legal issues.
- [165] In light of the nature of Mr. T's past communications with Ms. Z and her lawyers, this factor mitigates in favour of relocation.

Factor 10 - Family Violence

- [166] The tenth factor to be considered is any family violence and its impact on, among other things, (i) the ability and willingness of any person who engaged in family violence to care for and meet the needs of the child, and (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child: DA s. 16(3)(j).
- [167] The DA defines "family violence" to include conduct by a family member that constitutes a pattern of coercive and controlling behavior that causes another family member to fear for their own safety, including harassment, stalking, and psychological abuse: DA s. 2(1).
- [168] The use of derogatory and demeaning comments directed to a party, particularly in the presence of children, amounts to family violence: K.W. v. L.H., 2018 BCCA 204 at para. 122-123, leave to appeal to SCC ref'd, 38253 (22 November 2018).
- [169] In considering how family violence impacts the best interests of the Children, I am to take into account the additional factors set out in s. 16(4) of the DA which reads:
- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
- (a) the nature, seriousness and frequency of the family violence and when it occurred;
 - (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
 - (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
 - (d) the physical, emotional and psychological harm or risk of harm to the child;
 - (e) any compromise to the safety of the child or other family member;
 - (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
 - (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and

(h) any other relevant factor.

[170] I have no hesitation in finding that Mr. T has committed family violence and has directly exposed the Children to various instances of physical and non-physical abuse of Ms. Z. The particulars of which include:

- the use of inappropriate, demeaning and derogatory language in front of the Children to describe their mother;
- trying to wrongfully influence the Children about their mother;
- driving erratically and in a dangerous fashion while in a vehicle with one or more of the Children;
- the circumstances surrounding the Assault of Ms. Z which took place in the presence of the Children and caused them emotional distress;
- the admission by Mr. T that he pushed Ms. Z while she had N in her arms; and
- the actions of Mr. T on the morning after the Assault when he climbed onto the hood of the vehicle and screamed at his family who had locked themselves in the vehicle.

[171] I find that Mr. T has continued with incidents of family violence by disparaging the mother in N's presence. The evidence supports that Mr. T sang a nursery rhyme to N while changing with words to add in that her mother was a "bitch". I further find that he suggested to L that he was acting like a "little bitch". His relentless texting Ms. Z supported a pattern of coercive and controlling behavior.

[172] Mr. T faces a further criminal trial for the breach of the Protection Order #1, which is scheduled for trial on September 25, 2023.

[173] This is a strong factor that mitigates in favour of relocation.

Factor 11 - Court Orders Relevant to the Safety of the Children

[174] The eleventh factor to be considered is any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security, and well-being of the Children: DA s. 16(3) (k).

[175] Mr. T pleaded guilty to assault of Ms. Z. He received a suspended sentence with 18 months of probation which included a term that he not communicate either directly or indirectly with Ms. Z, except for child care issues. He has been found in breach of the Probation Order. As I have noted, he faces a further criminal trial in September 2023 for the breach of the Protection Order #1.

[176] There have been two protection orders issued by this Court as a result of Mr. T's behavior.

[177] The JCC and Muir Order restricts Mr. T to supervised parenting time only.

[178] This factor mitigates in favour of the relocation.

Factor 12 - Reasons for the Relocation

[179] The twelfth factor to be considered is the reasons for the relocation: DA s. 16.92(1)(a).

[180] The reasons for the relocation are so Ms. Z has support raising the Children. As she testified, she does not have any family in Squamish. She has to rely on friends to assist her. The move would allow her Children to establish and cement relationships with her extended family. She would be raising the Children in the town where she was raised. She further fears Mr. T and what he might do in the future in light of the past conduct of family violence and the harassments in the form of insulting and disrespectful texted messages and emails she has suffered. I find that her fear is supported in light of the extreme animosity that Mr. T has shown towards her and the family violence that has occurred in the past. His behavior in court is indicative that he has trouble controlling himself even in a courtroom with sheriffs' present.

[181] I find that her reasons for proposing to relocated the Children and her proposal was advanced in good faith. Wanting to be closer to her family and extended family, to being able to better financially support herself and rent or purchase a new home are eminently reasonable. The evidence supports that the costs of housing is more reasonable in Stratford than in Squamish.

[182] I am satisfied that there exists a community of family ready to embrace Ms. Z and the Children and provide them with emotional support which will enhance the Children's stability. In my view the move will improve Ms. Z's emotional state and restored some self-confidence which will allow her to be a better parent to the Children.

[183] In the particular circumstances of this case, I find that these reasons are legitimate and that this is a factor that also mitigates in favour of relocation.

Factor 13 - Impact of the Relocation on the Children

[184] The thirteenth factor to be considered is the impact of the relocation on the child: DA s. 16.92(1)(b).

[185] On the positive side, the relocation will give Ms. Z an opportunity for stability in her life and a chance for the Children to be involved with their extended family. The further benefits are Ms. Z will be more likely to achieve a degree of self-sufficiency, since the cost of living and renting or buying a house is much lower in Stratford compared to Squamish.

[186] On the negative side, is that the Children will be far away from their father and there will be challenges for them to maintain a relationship with him; although, I note that the Children have not seen Mr. T on any regular schedule since February 2022. The current relationship is impaired and unless Mr. T takes a different approach it is likely to be impaired in the future, regardless of where Ms. Z and the Children live.

[187] These are the challenges that the Children will have to meet. They will need to make new friends, but they both will be attending school and both have been described as very social and able to make friends easily.

[188] This factor mitigates in favour of relocation.

Factor 14 - Time Spent and Level of Involvement with the Children

[189] The fourteenth factor to be considered is the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons: DA s. 16.92(1)(c).

[190] I have already described the time the Children spent with the parties both before and since separation. Mr. T professes that he wants to spend time with the Children, yet he has not made any efforts to have time with the Children except for one supervised visit in February 2022. He has focused his time and energy since the February 2022 visit to demand that Ms. Z mediate and communicate with him. His admission that he adopted the strategy of using the Children as "peer pressure" against Ms. Z is astonishing and demonstrates a complete abandonment of a role as a father. He was willing to deprave the Children of their relationship with him so he could exert pressure on Ms. Z in the family law proceeding. It is clear to me that Mr. T remains unable to recognize what a destructive position this was to adopt.

[191] This factor mitigates in favour of relocation.

Factor 15 - Compliance with by the Applicant with Legal Requirements

[192] The fifteenth factor to be considered is whether the person who intends to relocate the child has complied with any applicable notice requirement under s. 16.9, provincial family law legislation, an order, arbitral award, or agreement: DA s. 16.92(1)(d).

[193] Section 16.9(1) and (2) requires a party intending a relocation to give notice in a prescribed form. Ms. Z did not give the notice in the prescribed form as required. She did provide notice of seeking to relocate in the amended notice of family claim. Section 16.9(1)(3) allows for the waiver of the requirements for notice if there is a risk of family violence. Ms. Z testified that she did not give notice because she feared Mr. T and feared retribution by him. In light of the findings I have made respecting the family violence, I am prepared to waive the requirements of ss. 16.9(1) and (2) of the DA.

Factor 16 - Orders or Agreements Specifying the Children's Residence

[194] The sixteenth factor to be considered is the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside: DA s. 16.92(1)(e).

[195] There is no such order, award, or agreement in this case. This factor is therefore inapplicable.

Factor 17 - Reasonableness of the Proposal for Extent of Contact with the Non-Relocating Parent

[196] The seventeenth factor to be considered is the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility, or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses: DA s. 16.92(1)(f).

[197] Ms. Z proposes as follows:

- a) The Children would have weekly or bi-weekly Zoom calls with Mr. T, initially to be supervised;
- b) Ms. Z and the Children would return to British Columbia twice a year, during Christmas break, spring break or summer break, for one week each time during which the Children could see Mr. T and other family such as Mr. T's mother, initially with the visits being supervised;
- c) Mr. T would be welcome to come to Ontario to visit with the Children at any time so long as the Children were safe to be with him;
- d) The costs of any supervising professional will be paid by Mr. T; and
- e) The costs to return to British Columbia twice a year would be shared by the parties.

[198] At present, since Mr. T is not seeing the Children at all, there would be no loss of significant parenting time. However, relocation would impact Mr. T's ability to reconnect with the Children and spend quality time with them.

[199] Hopefully, in the future if Mr. T can comply with an appropriate code of conduct the he can resume unsupervised time with his Children. Also, as the Children grow older, then it is possible that they could fly back to Squamish unaccompanied and spend more time with their father.

[200] Mr. T raised the possibility that he might move to Stratford as well. This would change the situation, since he then would be living in the same community as Ms. Z and perhaps a more scheduled parenting time could be agreed upon.

[201] This factor therefore mitigates in favour of relocation.

Factor 18 - Compliance with Legislation, Orders, and Agreements

- [202] The eighteenth and final factor to be considered is whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance: DA s. 16.92(1)(g).
- [203] Mr. T has failed to pay child support. It is clear that upon separation, Mr. T did not pay any child support. Section 147 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] imposes a duty on each parent to provide support for their child. As a result, Ms. Z registered with FMEP to ensure the child support ordered would be paid.
- [204] Mr. T has also failed to provide a financial statement. Rule 5-1 of the Supreme Court Family Law Rules requires each party who is required under the child support guidelines to file and serve a Form F8 financial statement. Mr. T did not provide this financial statement, even after the JCC Order, the Muir Order, and the Nielsen Order required him to do so.
- [205] Mr. T is therefore in breach of three court orders. He provided no legitimate explanation for his lack of compliance with court orders. By his conduct and his evidence, Mr. T had indicated an unwillingness to comply with court orders. He has been fined twice but has refused to pay the fines. He has breached the criminal conditions and is currently facing a further criminal proceeding relating to the breach of a protection order.
- [206] This factor mitigates in support of relocation.

Assessment

- [207] The onus is on Mr. T to establish that the relocation would not be in the Children's best interests having regard to their physical, emotional and psychological safety, security, and well-being. Mr. T opted to make no submissions setting out how the relocation would be contrary to the Children's best interests. The majority of the factors supports the relocation.
- [208] I accept that if the Children relocate to Ontario, this necessarily will impact on the potential ability of Mr. T to see them. Concerning the parenting time factor, as Barendregt points out at para. 135, the maximization of contact between parent and child is not an end in itself, rather, what is important is promoting parenting time consistent with the best interests of the child; parenting time is important insofar as it is consistent with and promotes the best interests of the child.
- [209] While I take the parenting time factor into account, I cannot allow the question of the frequency of Mr. T's parenting time to "overwhelm the analysis" if the Children's best interests lie in relocating with Ms. Z to Ontario. As the Court of Appeal stated in *K.W. v. L.H.* at para. 132:

- [132] While there is no question that it is in the interests of N to maintain his relationship with his Father, the maintaining of that regular contact cannot be allowed to overwhelm the analysis of N's best interests. It is, as noted in Stav, but one factor to be considered. As stated in Nunweiler, the maximum contact principle must be subordinated to the overall consideration of the best interests of the child. If it was otherwise, then a parent would never be allowed to relocate because in almost every case, relocation will lessen the contact between the child and one of the parents. [Emphasis added.]
- [210] Ms. Z is and has always has been the Children's primary caregiver. She has spent the vast majority of time with them and has been responsible for the substantial duties of parenting. I find that it is in their best interests to remain with her in that capacity.
- [211] I find that allowing Ms. Z to move to Stratford is clearly in her best interest since it will improve her emotional and psychological state and provide her with support from her family, which in turn will enrich her ability to cultivate a healthy, supportive, and positive environment for the Children. The move will provide the Children with stability and much needed emotional support from their extended family. More importantly, and as canvassed above, I find the relocation is in the Children's best interests.
- [212] Ultimately, I am persuaded that it is in the Children's best interests to relocate with their mother to Stratford, Ontario.

Issue 3: What Guardianship, Parenting Arrangements, and Parenting Responsibilities should be ordered for the Children?

- [213] I see no basis to have Mr. T removed as the Children's guardian. He will remain a guardian.
- [214] I have already canvassed the same considerations that would be considered under s. 37(2) of the FLA when deciding parenting arrangements for the relocation analysis. It is clear that Mr. T has not acted in the best interests of the Children. His conduct in front of the Children, including the language he has used and incidents of family violence, is concerning. Some of his abusive behaviour was directed at the Children, such as when he accused L of being a "little bitch" and described N as "vindictive" like her mother. The Children also witnessed some of Mr. T's abusive behaviour toward Ms. Z.
- [215] His behavior in court and the speed in which he would become enraged supports that he has great difficulty controlling his anger. The evidence is clear that when he sees the Children he intends to tell them that Ms. Z is a liar and what he believes is the "truth". I agree that he should take counselling to assist him in better dealing with his anger management issues and learn co-parenting skills.
- [216] I further agree that until he has provided proof he has taken such counselling by a psychologist he should not have any parenting time with the Children. After he has completed the course, then Mr. T is entitled to commence virtual and in-person parenting time with the Children under professional supervision. I will not make any specific orders for specific parenting times. Mr. T has indicated that he was unlikely to follow any court

orders I make. It is also unclear to me if Mr. T will move to Stratford, as he suggested he would. Regardless of where Mr. T chooses to live, after he has completed the court ordered counselling sessions, he should begin to have supervised parenting time, whether in-person or virtually. I have confidence that Ms. Z will agree to supervised parenting arrangements in the future.

- [217] I accept that indefinite supervised access is unusual and it is not generally a long-term solution: *G.K.D. v. C.S.D.*, 2021 BCSC 367 at paras. 79-80. I have reviewed the factors set out by Justice Griffin (as she then was) in *F.K. v. M.K.*, 2010 BCSC 563 and find that such an order is appropriate. I am ordering supervised access until Mr. T can demonstrate his ability to be safe and appropriate in the presence of the Children. Whether it needs to be long-term is in the hands of Mr. T.
- [218] Since Ms. Z will be solely caring for the Children in Stratford, I am satisfied that she should have all parenting responsibilities for the time being. I will permit Mr. T the ability to obtain medical and school records from third parties so he is kept apprised of how the Children are doing. Ms. Z has agreed to keeping Mr. T informed of any matters of a significant nature concerning the Children.

Issue 4: What amount should be paid for past and ongoing child support?

- [219] Ms. Z claims for past and ongoing child support.
- [220] Mr. T is required to pay child support pursuant to s. 147(1) of the FLA which provides "[e]ach parent and guardian of a child has a duty to provide support for the child". A child's right to support, and a parent's obligation to provide support, exists independently of any court order or statute: *D.B.S. v. S.R.G.*, 2006 SCC 37 at para. 54. It is the responsibility of both parents to ensure that the payor parent fulfils their actual obligation and, where they fail in this obligation, a court may order an award that recognizes and corrects that failure: *Semancik v. Saunders*, 2011 BCCA 264 at para. 40.
- [221] It does not appear that Mr. T disputes this obligation to pay child support.
- [222] The discretion to make an order of retroactive child support is found in ss. 15.1 and 17 of the DA and s. 170(b) of the FLA. The circumstances in which retroactive child support may be awarded were addressed in *D.B.S.* The Supreme Court of Canada directed trial judges to adopt a broad and holistic approach in the application of four factors, summarized at para. 133, none of which is determinative on its own:
- Is there a reasonable excuse for why support was not sought earlier?
 - Was there any blameworthy conduct on the part of the payor parent?
 - Is a retroactive award appropriate in light of the child's past and present circumstances?
 - Will a retroactive award cause hardship to the payor parent or to his or her other children?

[223] These principles were recently affirmed by the Supreme Court of Canada in *Michel v. Graydon*, 2020 SCC 24 at para. 29.

[224] The Court in *D.B.S.* further held, at paras. 114-116, that in determining whether a retroactive award is appropriate, a court must broadly examine all the circumstances when considering the hardship implications on a payor parent of such a retroactive award. Whereas prospective awards are based upon what the payor parent can currently afford from current income, retroactive awards are based on past income. Thus, the calculation of retroactive awards are not "intrinsically linked to what the payor parent can currently afford", particularly if they have new families and new family obligations. Courts, therefore, should attempt to craft the retroactive award in such a way as to minimize hardships.

[225] Based on the principles enunciated above, I find that it is appropriate to make an award of retroactive child support for the following reasons:

- a) I find that there was a reasonable excuse for Ms. Z not to seek child support prior to the JCC Order. Prior to that date, and even subsequent, Ms. Z had no financial disclosure from Mr. T. She was also dealing with his ongoing harassment of her and her fear of him. Her focus was trying to appease Mr. T and allowing him some parenting time under very difficult circumstances.
- b) There is blameworthy conduct on the part of Mr. T. He had a duty to pay child support and failed to do so until he agreed at the JCC. He further refused to make any financial disclosure after the notice of family claim was filed as required by Rule 5-1. Rule 9-1 requires the parties list and produce documents, which Mr. T also failed to do.
- c) A retroactive award is appropriate in light of the past and present circumstances of the Children. Ms. Z had to bear the burden of caring for the Children while at the same time carrying on the B&B business, with no support from Mr. T until the JCC Order. At the JCC, Mr. T agreed to an imputed income far below his actual income.
- d) There is no evidence that the payment of a retroactive award will cause hardship to Mr. T. At present, he is not supporting any other family.

[226] Accordingly, a retroactive award of child support is appropriate.

[227] Since separation Ms. Z has been caring for the Children almost 100% of the time. There are the following issues to address:

- a) What income should be imputed to Mr. T?
- b) What income should be imputed to Ms. Z?
- c) What amount should be awarded for retroactive child support?
- d) Should there be a lump sum award for future child support?

What income should be imputed to Mr. T?

[228] Under s. 16 of the Guidelines, the starting point for determining a spouse's annual income for the Guidelines is line 150, or now 15000, income, adjusted in accordance with any allowable adjustments under Schedule III. The Court retains a discretion under s. 17 of the Guidelines to use the spouse's tax returns for the last three years if the most recent line 15000 income would not be the fairest determination of that income. The Court also has discretion to impute income under s. 19.

[229] Section 19 of the Guidelines provides that:

Imputing income

19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

[230] There were challenges in determining Mr. T's income since he refused to produce a financial statement or any financial documents prior to trial, contrary to three court orders and the Rules. I directed on Friday, July 22, 2023, that Mr. T bring his tax returns for 2020, 2021 and 2022, to court on Monday, July 25, 2023. He was also directed to bring information from the Wave Accounting software he has for what he has earned so far in 2023. He agreed to do so. The first time counsel for the claimant saw these documents was on the morning of July 25, 2023, just prior to commencing Mr. T's cross-examination.

[231] During Mr. T's evidence it became clear that his tax returns were not reliable. The following concerns arose:

- In 2020, 2021 and 2022, Mr. T claimed gas and oil for the use of a 2015 Nissan Leaf, but testified that he would not have incurred gas or oil expenses since it was a fully electric vehicle. He had no explanation why this was claimed, except that he did not do his own bookkeeping.
- Mr. T agreed that he did cash jobs at the request of customers and that he did not report all of his income on his tax returns.
- Mr. T admitted that his tax returns did not reflect his actual earnings and that he could earn net \$20,000 a month.
- In 2020, Mr. T deducted business-use-of home for items such as mortgage interest, property taxes, and insurance, all of which he admits related to the Family Home, which he has not lived in since 2019 and agreed he did not pay these amounts. He does not know why these were deducted on his tax return.
- It appears Mr. T deducted 100% of his rent in 2021 and 2022 instead of a portion of it related to running his roofing business.
- In 2020 he claimed no employee wages, whereas in 2021 he claimed wage expenses of approximately \$50,000. He agreed he had employees both years. He had no explanation for this except to comment that it was a "good question".
- He agreed that the net business income in his 2021 and 2022 tax returns seemed low.
- Mr. T produced a Wave Accounting document, which shows his 2023 income to date, but also his previous year income of \$243,566.57. This would be for 2022, and yet this did not match with his 2022 tax return which stated a gross income of \$122,056 and a net income of \$29,954.02. He had no explanation for this discrepancy.

[232] In my view, Mr. T's tax returns are unreliable, contain erroneous information, and do not support what his actual income was. In light of the failure of Mr. T to provide the necessary and court ordered financial information, I accept that I should impute income to him of \$120,000 a year. Support for this number can be found on Mr. T's evidence that he could earn \$20,000 net per month. Assuming that he would not be making that every month, due to weather restrictions and the availability of jobs, using \$120,000 per year is a fair and reasonable assessment.

[233] If Mr. T remains in Squamish he is likely to continue to operate the roofing business. He did testify that he has faced some medical challenges. Six months ago, he had shoulder replacement surgery and a year and a half ago he suffered a meniscus tear in his left knee. He is currently 49 years old and roofing is a very physically demanding occupation. He can have other employees do more of the physically demanding work but, as he put it, he likes to make sure it is done right. I expect that in a few years he may experience challenges in maintaining this income level.

[234] If Mr. T moves to Stratford, Ontario, I expect he will be able to either return to roofing or find some other type of occupation. I anticipate that he will ultimately be able to make an income in the range of \$120,000, but it will take him some time to establish a roofing company and develop clientele or find some equivalent occupation.

What income to be imputed to Ms. Z?

[235] Unlike Mr. T, Ms. Z did comply with the rules on financial production. She has been operating the B&B since separation.

[236] In 2020, Ms. Z had a gross business income of \$53,490.01 and a net business income of \$16,527.08. She received \$6,000 in CERB benefits that year, for a total line 15000 income of \$22,765.61. She agrees that about 50% of the meals and entertainment expenses she claimed should be added back into her income. She submits that her income for 2020 should be imputed at \$25,000, which I find is a reasonable amount.

[237] In 2021, Ms. Z had a gross business income of \$47,548 and net business income of \$24,346.97. She also collected \$12,000 in CERB benefits and a tuition subsidy. Her line 15000 income was \$39,614.84 for 2021, from which she paid \$8,262.35 in child care expenses. She justified all of the deductions related to the B&B. She submits that her income in 2021 should be imputed at \$40,000, which I find is a reasonable amount.

[238] In 2022, Ms. Z had a gross business income of \$76,243.00 and a net business income of \$43,476.04. Her line 15000 income was \$43,665.29. She agrees that 50% of the meal and entertaining expenses she claimed should be added back into her income. She submits that her income in 2022, should be imputed at \$45,000, which I find is a reasonable amount.

[239] With Ms. Z's move to Stratford she will lose the B&B income. She accepts that she should be able to find a job that pays her the equivalent of \$45,000 a year. She agrees that amount should be imputed to her for the future. I agree that this is reasonable. I expect it will take her some time to find employment and if she decides to start operating a new bed and breakfast in the Stratford area this will take some time to set up.

What amount should be awarded for retroactive child support ?

[240] When using the imputed incomes for the parties that I have found, the child support payment for each month is \$1,781.00. On that basis, I would order that the total retroactive child support, dating back to January 1, 2020, is as follows:

Period

of

Months

Monthly

Obligations

Total Child

Support

2020

12

\$1,781

\$21,371

2021

12

\$1,781

\$21,372

2021

12

\$1,781

\$21,372

2023

8

\$1,781

\$14,248

TOTAL:

\$78,363

[241] Mr. T has paid the sum of \$8,799.11 since February 2022, including for the month of July 2023, through FMEP. This payment was based on an income of \$35,000 and a monthly payment of \$570 a month. Since these reasons are being issued after the first of August, the date the child support payment is to be made under the JCC Order, I will also deduct the August payment of \$570 on the assumption that Mr. T will make that payment. The total amount deducted for past child support payments is \$9,369.11 (\$8,799.11 + \$570), leaving the amount owed for retroactive child support of \$68,994.89, rounded to \$69,000 (\$78,364 - \$9,369.11). If Mr. T does not make the August child support payment, the \$570 August sum can be added back in.

Should there be a lump sum award made for future child support?

[242] Ms. Z seeks an order for lump sum child support and spousal support as she maintains that Mr. T will likely never voluntarily pay support, as evidenced by his hostility and lack of cooperation throughout this litigation, his failure to produce any income or financial documents, and his overall failure to comply with court orders. She seeks the lump sum payment be paid from Mr. T's share of the proceeds of the sale of the Family Home, relying on the decisions of *K.A.J. v. B.G.J.*, 2021 BCSC 142 at paras. 130-140 and *Santelli v. Trinetti*, 2019 BCCA 319 at paras. 168-170.

Legal Principles

[243] Section 11 of the Guidelines provides that the Court may require a child support order to be paid periodically, in a lump sum or in a lump sum and periodic payments.

[244] In *Myatt v. Myatt*, 45 R.F.L. (3d) 45 at paras. 26-36, 1993 CanLII 1144, Madam Justice Kirkpatrick (as she then was) canvassed the jurisprudence relating to lump sum child support awards: see also *Zhang v. Sun*, 2016 BCSC 1418 at paras. 279-281; *Brintnell v. Grasley*, 2000 BCSC 1322 at para. 67.

[245] The relevant principles in assessing whether lump sum child support should be awarded include:

- i. The existence of animosity between the parties may favour a lump-sum order to reduce future sources of conflict.
- ii. Lump sum awards may be appropriate where a parent has disobeyed a previous support order or there is a history of non-compliance with orders, or where a parent is likely to ignore future orders.
- iii. Lump sum awards may be made when it is neither practical nor feasible for a parent to pay periodic support.
- iv. Lump sum child support awards are exceptional and should be made only where there are specific or special circumstances that render it appropriate.
- v. The same considerations that apply to orders for lump sum spousal support apply to lump sum child support.

Analysis

[246] I consider a lump sum payment warranted in the circumstances. Mr. T has shown in the past, and continues to demonstrate, a great deal of animosity towards Ms. Z. I am concerned that the anger he holds will not abate with the ending of this family law proceeding. In some cases, a resolution of the litigation becomes a positive step to allow both parties to move forward. Mr. T's conduct during the trial does not support that he is willing to put the past behind him and act in an appropriate manner in the future.

- [247] Mr. T has not disobeyed a previous support order, but he has shown a history of non-compliance with orders respecting financial disclosure, probation, and protection orders. When Mr. T did ultimately provide some information on his earnings during the trial, this information was incomplete and inaccurate. He indicated in his evidence that he was unlikely to comply with any court orders I make and he has no respect for "man-made law". He is consumed with his belief that he has been unfairly treated and is entrenched in his view that Ms. Z is a spiteful and vindictive person. Ms. Z testified that she only began receiving child support payments from Mr. T after the JCC Order. These payments were all made through FMEP. I am persuaded that there is a significant likelihood that Mr. T will not voluntarily pay any type of support to Ms. Z, including the support for the Children.
- [248] I am persuaded that Ms. Z will have difficulty collecting on periodic support and that Mr. T is likely to put up as many barriers as he can along the way.
- [249] However, I am also concerned that awarding a lump sum child support in the amount proposed by Ms. Z, which equates to \$231,965, could be unjust. This number is based on child support payments for the next 14 years, broken up into two periods:
- Payments for two children (at \$1,781 per month) from September 2023, until L turns 19 in April 2030 (79 months), equalling \$140,699; and
 - payments for only one child (at \$1,113 per month) from April 2030 until N turns 19 in February 2037 (82 months), equalling \$91,266.
- [250] Mr. T is currently 49 years old, turning 50 in November, so his obligation to pay child support will end when he is about 64 years old. He testified to how physically demanding roofing is. Both Ms. Z and Mr. T testified to the very long hours he puts in. He says he sometimes works up to 16 hours, and in challenging hot weather. He has had some medical challenges, including a shoulder replacement and ongoing knee issues. It may be in the future he can have his employees do more of the physically demanding jobs, but if he does he will have to pay for that work.
- [251] I am persuaded that there is a substantial risk that due to his age, the nature of the physically demanding work, and his medical challenges, that he is unlikely to continue earning \$120,000 each year, for the next 14 years.
- [252] In addition, there is the potential, that one day the Children, when they are older, may want to spend time with their father and even return to Squamish to enjoy the spectacular scenery and outdoor activities that this part of British Columbia offers.
- [253] In light of Mr. T's conduct in this litigation, his past and likely future conduct of breaching court orders, and his anger and resentment towards Ms. Z, I am persuaded that special circumstances exist for making a lump sum child support order. However, it is also in the interest of justice, to address for the two contingencies I have outlined above with a percentage reduction of the lump sum amount.

- [254] In some instances, courts will discount a lump sum child support award to a present value: see Santelli at para. 171; Dorey v. Havens, 2011 BCSC 1777 at para. 173. In Santelli, the Court of Appeal applies the discount rate as provided for in s. 56(2)(a) of the Law and Equity Act, R.S.B.C. 1996, c. 253.
- [255] Additional discounts were made by Justice Grey in J.S.P. v. J.H.S., 2015 BCSC 1239 at para. 321, where she discounted a lump sum child support award for eight years from \$206,700 to \$190,000, being approximately 10%.
- [256] Given the length of the award for child support that I am making, and the contingencies I have noted above, I would apply a discount of 20%. I further note that applying this contingency will also address the issue noted by the Court of Appeal in Santelli at para. 171, that the lump sum payment had to be calculated using a discount rate.
- [257] The lump sum child support awarded is \$185,572.
- [258] Given this lump sum order is made in respect of the amount of support payable until the Children turn 19, should one or both of the Children remain a child of the marriage after they turn 19, either party may bring an application for continuing child support.

Issue 5: What are the Special or Extraordinary Expenses for the Children and what amount is owed for Retroactive Special or Extraordinary Expenses?

- [259] Mr. T did not disagree with the amount of special expenses listed on Ms. Z's financial statement. The amount she paid included care expenses, school and tutoring expenses, and various sports programs and equipment for the Children. Mr. T testified that he supported the Children's participation in the various sports activities. The total of the expenses was \$16,451.74. She submits that based on an income of \$120,000 for Mr. T and an income of \$40,000 for herself that is a 75/25% split. This approach makes sense and was not objected to by Mr. T. I find the amount of retroactive section 7 expenses owed by Mr. T is \$12,338.
- [260] Given that I have imputed Ms. Z's income at \$45,000, the apportionment of the special expenses will be with Mr. T responsible for 70% and Ms. Z responsible for 30%.
- [261] In the future, the following expenses will be special or extraordinary expenses:
- All child care expenses incurred as a result of a party's employment, illness, disability, or as necessary given the specific needs of the Children;
 - Health-related expenses that exceed insurance requirements;
 - Extracurricular activities including the Children's sporting activities such as swimming, martial arts, skiing and other sports activities that Ms. Z decides to put the Children in;
 - Day camps;
 - Tutoring fees; and

- f) Expenses arising in the future that the parties agree qualify as special or extraordinary expenses within the meaning of the Guidelines.

Issue 6: What are the Family Assets and Debts and how should they be divided?

Legal Principles

[262] The division of family property and family debt is addressed in Part 5 of the FLA. Pursuant to s. 81, each spouse is presumed to be entitled to a one-half undivided interest in family property and are responsible for one-half of the family debt.

[263] The presumptive equal division of family property is subject to an order for reapportionment under s. 95(1) of the FLA, if an equal division would be "significantly unfair." The factors to be considered in determining whether family property should be divided unequally are set out in s. 95(2):

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses, other than an agreement described in section 93(1) ;
- (c) a spouse's contribution to the career or career potential of the other spouse;
- (e) whether the family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
- (g) the fact that a spouse, other than a spouse acting in good faith,
- (i) substantially reduced the value of the family property, or
- (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[264] Section 95(3) provides that this Court may also consider the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship, if the objectives of spousal support under s. 161 have not been met.

- [265] Section 95(2)(i) provides trial judges significant discretion, which must be exercised judicially. In *Hopson v. Hannon*, 2020 BCSC 794, Justice Warren summarized the law regarding "any other factor" in s. 95(2)(i):
- [206] In *Singh v. Singh*, 2020 BCCA 21 at paras. 128-140, the Court of Appeal recently reviewed the jurisprudence on the scope of s. 95, the meaning of significant unfairness in this context, and the interpretation of s. 95(2)(i), which allows for the consideration of "any other factor that may lead to significant unfairness." The following principles emerge from that discussion:
- In enacting s. 95 of the FLA, the Legislature intended the general rule of equal division to prevail unless persuasive reasons are established for a different result.
 - The test of "significant unfairness" under the FLA imposes a higher threshold than the unfairness test under the predecessor FRA. This is due at least in part to the legislative objective of increasing certainty, fairness, and predictability in property division matters by reducing the discretion of the courts to depart from equal division.
 - Departing from the presumption of equal division on grounds of "significant unfairness" under s. 95 requires "something objectively unjust, unreasonable or unfair in some important or substantial sense". There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.
 - Section 95(2)(i) is a general term allowing consideration of "any other factor that may lead to significant unfairness." As a general term preceded by a list of specific items, the rule of statutory interpretation known as *ejusdem generis* ("of the same kind"), or the limited class rule, applies. The specific factors enumerated in s. 95(2) are broad but they all relate to the economic characteristics of a spousal relationship. As such, on application of the limited class rule, s. 95(2)(i) is properly construed as encompassing other factors related to the economic characteristics of the spousal relationship.
- [207] The significant unfairness contemplated by s. 95 requires much more than differing financial contributions: *Khan v. Gilbert*, 2019 BCCA 80 at para. 31. In most marriages and marriage-like relationships, one spouse will earn more than the other and therefore contribute more to the family finances. Accordingly, cases where unequal contributions have been found to make an equal division of family property significantly unfair involve "marked, prolonged, and intentional or unexplained disparities in contributions to family burdens": *Khan* at para. 32.
- [266] Lack of financial disclosure can be a relevant factor in considering whether equal distribution is significantly unfair: *Nanara v. Nanara*, 2017 BCSC 1447 at para. 63.
- [267] Section 87 of the FLA prescribes that the value of family property and debt is the fair market value as of the date of the hearing, unless an agreement or order provides otherwise.

The Parties' Positions

[268] The claimant prepared a Scott Schedule, which sets out the family assets and debts held by each party as of the date of trial in accordance with the TMC Order. Mr. T did not comply with the TMC Order and he did not prepare a Scott Schedule. Since Mr. T never provided any financial disclosure prior to trial, there was additional information obtained during the trial which resulted in the claimant amending the Scott Schedule. The amended Scott Schedule was provided during the claimant's closing submissions. She claimed an equalization payment of \$178,434.87.

[269] The claimant submits that the family property should be unequally divided in her favour and that Mr. T should be provided his share of the net proceeds after taking into account post-separation expenses related to the Family Home, retroactive and prospective lump sum spousal support, and retroactive child and lump sum prospective child support. She further seeks that title to the Family Home be transferred and vested in her alone for her to achieve a sale of it.

[270] Mr. T's position was not entirely clear, but based on his evidence it appears that he is seeking unequal division of the Family Home in his favour based on the extensive work he provided in renovating it. He also takes the position that the New Hazelton property was purchased prior to the relationship and it belongs to him.

[271] I will deal with the following issues:

- a. The identification and valuation of family property and any excluded property;
- b. Whether Ms. Z should be reimbursed for expenses related to the Family Home incurred after separation;
- c. Whether the Family Home should be sold, and if so, who should have conduct of the sale; and
- d. If there would be significant unfairness to divide the family property equally?

The identification and valuation of family property.

[272] There is no dispute that the Family Home is family property. It was purchased during the relationship in February 2011.

[273] The evidence of valuation was by way of an appraisal report which was filed supporting a value of \$1,685,000 as of April 5, 2023. There is a mortgage and a Home Equity Line of Credit registered against title of a little less than \$400,000.

- [274] Subsections 85(1)(a) and (g), respectively, of the FLA define excluded property, in part, as: property acquired by a spouse before the relationship between them began and property derived from such excluded property. The increase in value of excluded property over the course of the spousal relationship constitutes family property: s. 84(2)(g); J.D.G. v. J.J.V., 2016 BCSC 2389 at para. 129; M.C.V. v. F.V., 2018 BCSC 96 at para. 44.
- [275] Since Mr. T did not prepare a Form 8 financial statement, it only came out at trial that Mr. T owns six lots near Smithers (the "New Hazelton Property") which he had purchased for \$9,000 prior to the relationship. Mr. T gave evidence that the current property assessment value of the New Hazelton Property is \$30,000.
- [276] I am satisfied that the evidence supports that the New Hazelton Property is excluded property. The only evidence I have is that between the date of purchase and present the value has increased by \$21,000. There is no evidence on the increase of value from the date of purchase until the commencement of the relationship. Since Mr. T failed to provide relevant financial information, I am prepared to find that the \$21,000 increase in value should be considered family property.
- [277] A further significant asset are the Tesla shares. Mr. T testified that during the relationship Tesla shares were purchased by both of them. In September 2020, he removed \$50,000 from the joint line of credit and deposited into his personal account. He used that money to purchase more Tesla shares. The value of the Tesla shares is included in Mr. T's CIBC TFSA, which he testified had a current value of approximately \$280,000. I am persuaded that the Tesla shares are family property.
- [278] I am prepared to find that the amended Scott Schedule fairly and accurately sets out the family property and values as were available at this trial. Mr. T made no attempt to cross-examine Ms. Z on the Scott Schedule served prior to the trial and made no submissions to challenge any aspects of the amended Scott Schedule. I have attached as Appendix A the amended Scott Schedule with revisions to remove any information that identifies the parties.
- [279] The major family debts relate to the mortgage and Home Line of Credit. These will be addressed as part of the issue of whether the Family Home should be sold.
- [280] I accept that there should be an equalization payment made of \$178,434.87, rounded to \$178,435, payable from Mr. T to Ms. Z.

Whether Ms. Z should be reimbursed for expenses related to the Family Home incurred after separation?

- [281] Ms. Z has incurred expenses relating to the Family Home including the payment of mortgage interests, mortgage principal, property taxes, insurance, and interest on the Home Line of Credit. She did claim 50% of the mortgage interest, and property taxes as expenses written off as part of the B&B business. The payments she has made to the Family Home since separation amount to approximately \$66,000. She seeks reimbursement from Mr. T of 50%, being \$33,000.
- [282] Ms. Z acknowledges that Mr. T incurred costs to rent accommodation after separation and conceded that he should be reimbursed 50% for those costs. Since separation, she has exclusively lived in the Family Home and Mr. T had to find alternative accommodation. Mr. T did not advance a claim for occupational rent. Ms. Z kept all of the rental income from the B&B.
- [283] During closing submissions, the amount Mr. T claimed for rent, as set out in his 2022 tax return of \$21,600, was acknowledged and the claimant agreed that he should receive a credit for 50%, which amounts to \$10,800. However, a review of Mr. T's 2021 tax return shows that he also claimed rental expense of \$28,800. Mr. T testified that for two years he was paying \$2,200 in rent. Although Mr. T chose to walk out of the courtroom and not make any closing submissions, it is my view if there is a credit that should be made on his behalf that should be recognised. Mr. T also testified that he is currently paying \$1,800 rent. This would amount to \$14,000 paid so far this year.
- [284] I find that Mr. T is entitled to the following credits to be deducted from the \$33,000 that Ms. Z is claiming from him:
- 50% of his 2021 rent of \$28,800, being \$14,400;
 - 50% of his 2022 rent of \$21,600, being \$10,800;
 - 50% of his 2023 rent as of August 2023 of \$14,400, being \$7,200.
- [285] This amounts to \$32,400. In light of the minor discrepancy in the amounts each have incurred since separation there will be no set-off made

Whether the Family Home should be sold, and if so, who should have conduct of the sale?

- [286] Rule 15-8(1) of the Rules provides that the Court can order a property sold where it is necessary or expedient:

Court may order sale

- (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

- [287] The Family Home has an appraised value of \$1,685,000 as of April 5, 2023. Ms. Z does not have the ability to buy out Mr. T's interest in the Family Home. Mr. T gave no evidence to support that he had the ability to buy out Ms. Z's interest, although he did express the view that he would like the Family Home to be kept and rented out. I find that neither party has the financial ability to buy out the other. I see the only remedy is that the Family Home be sold. The mortgage and Home Equity Line of Credit and other sale expenses will be deducted. The remaining net proceeds should be divided, subject to the amounts I have found is owed to Ms. Z in these reasons.
- [288] I agree that Ms. Z should have sole conduct of the sale of the Family Home, since there is no likelihood that Mr. T will cooperate in this process. He has not cooperated throughout this family law proceeding. He has adopted an abusive stance when dealing with Ms. Z's counsel. Based on his conduct in court, he is likely to put up as many barriers as he can to an orderly sales procedure.
- [289] There remains on the property the trailer that was used as a mobile coffee cart, which is registered in Mr. T's name. In addition, there are tools and other personal belongings of Mr. T stored in a container and in the shed. Mr. T should be given an opportunity to remove his personal belongings and the trailer. He is entitled to attend at the Family Home within 14 days of the pronouncement of these reasons. He must give 48 hours notice to the claimant's lawyer of when he will attend. He is not entitled to go into the Family Home, but is only entitled to remove the trailer and any of his personal belongings located on the exterior of the property.
- [290] If Mr. T does not attend within the time period provided, Ms. Z may arrange to have Mr. T's personal belongings located outside of the Family Home disposed of. She is entitled to be reimbursed out Mr. T's share of the net proceeds for these expenses, since Mr. T should have taken the responsibility to come and remove his personal belongings.
- [291] If there are other expenses relating to the clean-up of the property those expenses will be split equally by both parties. The costs will be reimbursed to Ms. Z out of the sale proceeds of the Family Property.

If there would be significant unfairness to divide the family property equally.

- [292] Although Mr. T's position was never entirely clear, I believe that he is seeking a reapportionment of the Family Home in his favor on the basis of his extensive work contribution to restore and improve the Family Home. Ms. Z seeks a reapportionment to pay off the amounts owed for past and future child and spousal support and costs of the family law proceeding.
- [293] The parties both agree that the Family Home was in very poor condition and needed extensive renovations. Work was required on the roof, walls, floors, decks--in essence, the structure was torn down to its studs and rebuilt. Ms. Z agrees that Mr. T spent long hours working on the Family House and hired others to assist him. Mr. T described the extensive

work he performed including: designing and installing a new roof; completing the framing, flooring, siding, drywalling, and interior and exterior painting; building two patios, a firepit, a porch and a shed; renovating two kitchens and five bathrooms; and completing additional landscaping work, including building a fence. Ms. Z agreed that he should be compensated for that time.

[294] Mr. T estimates the value of the hours he spent had a value of approximately \$380,000.

Other than Mr. T's approximation, I have no other evidence on the cost of the work he completed, nor the extent to which this work increased the value of the home. While the value of the Family Home has increase over the course of the parties' marriage, I have no opinion evidence as to what extent of that increase is attributable to the renovations, as opposed to an increase in the value of the land.

[295] The question is whether Mr. T's contributions to the renovations of the Family Home render equal division of the Family Home significantly unfair.

[296] The presence of differing financial contributions to family property is not a listed ground for reapportionment in s. 95(2) of the FLA. To the contrary, s. 95(2)(c) calls specifically for the recognition of the indirect contributions of spouses, rather than a simple focus on direct financial contributions. Indeed, differing financial contributions are more likely to be the norm than to be an exception giving rise to "significant unfairness" under the FLA.

[297] While such a finding is not precluded under the FLA, the circumstances under which unequal financial contributions may be considered in giving rise to reapportionment were "intended to be much constrained" by the current legislation: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 44. Significant or extraordinary contributions may be accounted for where excluded property is established on the evidence. As stated in *Slavenova v. Ranguelov*, 2015 BCSC 79 at para. 60:

The "significant unfairness" contemplated by s. 95 requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the FLA recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of "family property" and "excluded property". The starting point in the division of property analysis already applies significant exclusions.

[298] In *Jaszczewska*, the Court of Appeal found that relevant contributions to the "acquisition, preservation, maintenance or improvement of family property during the relationship" was not intended by the legislation to be a significant or common factor relied upon to conclude that equal division of family property is significantly unfair: at para. 43. However, unequal contribution remains a factor that may be considered at a trial judge's discretion: s. 95(2)(i); *Jaszczewska* at para. 44. Regularly relying on unequal contribution would create uncertainty and complexity, and be contrary to the legislative objectives of the division of property require in the FLA. Cases that do rely on unequal contributions involve "marked, prolonged, and intentional or unexplained disparities in contribution to family burdens":

Khan v. Gilbert, 2019 BCCA 80 at para. 32

- [299] The threshold for finding significant unfairness in equal division of family property is high; it requires something "objectively unjust, unreasonable, or unfair in some important or substantial sense": Singh at para. 134.
- [300] In my view, Mr. T's work to renovate and improve the Family Home during the parties' relationship does not render an equal division of the Family Home significantly unfair. In most marriages one spouse will earn more than another, and therefore contribute more to family finances; it is therefore an error to calculate "a dollar for dollar comparison of contribution to expenses which does not reflect the nature of marriage as a family venture": Khan at para. 36. In the same way, parties will bring different skills and labour to the relationship, and make differing contributions. This is to be expected. Further, as noted by Justice Griffin in Venables v. Venables, 2019 BCCA 281 at para. 85:
- [85] modern relationships are like a partnership or joint venture, with give and take and various forms of contribution, including indirect contribution through child care, household management and other means, and so presumptively any acquisition or growth in assets during that relationship should be shared equally upon the relationship ending.
- [301] The parties purchased the Family Home knowing renovations were required. They divided their household affairs, with Ms. Z being responsible for the domestic labour and being the primary caregiver for the Children, and Mr. T earning an income for the family. Had the parties chosen to exclusively hire contractors to complete the renovations, I would not find Mr. T's financial contributions to renovations makes equal division of the Family Home significantly unfair. His decision to complete the labour himself does not substantially alter my analysis. I do not doubt that Mr. T worked long and hard beyond his regular hours to complete the renovations, but, as was also clear in his testimony, he did so as part of a partnership or joint venture with Ms. Z. There is nothing objectively unjust, unreasonable, or unfair in some important or substantial sense that would make equal division of the Family Home significantly unjust.
- [302] A similar finding in relation to renovations was reached in Hamill v. Dunlop, 2016 BCSC 1337, where one spouse making greater financial contributions to the household and performing most of the renovations to the family home was insufficient to establish that equal division was significantly unfair: at paras. 118, 138.
- [303] In addition, Mr. T's failure to provide financial disclosure is another reason not to reapportion any family property in his favour. It may be that he does have other assets that he has not disclosed which Ms. Z is entitled a portion of. As such I am not prepared to find that Mr. T has met the high threshold of establishing an unequal division.
- [304] I do agree that in light of the hostility that Mr. T has for Ms. Z it is appropriate to order that the past and lump sum future child and spousal support be paid out of Mr. T's net proceeds of the sale of the Family Home.

Issue 7: Is Ms. Z entitled to Spousal Support, if so, in what amount and for how long?

Grounds for Entitlement

- [305] Ms. Z's entitlement to spousal support is a threshold issue and must be established before the Court analyzes the quantum and duration of spousal support: *James v. James*, 2016 BCSC 292 at para. 387. Her entitlement to spousal support must be considered in the context of the governing statutory and jurisprudential framework.
- [306] Section 15.2 of the DA provides the legislative framework for ordering spousal support in this case. In determining a claimant's entitlement to support, this Court must apply the conceptual framework formulated by the Supreme Court of Canada in *Moge v. Moge*, [1992] 3 S.C.R. 813, 1992 CanLII 25 and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 1999 CanLII 715. In its analysis, the Court must consider the four objectives set out in s. 15.2(6) of the DA:
- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [307] Section 15.2(4) of the DA further provides that the Court must, in its analysis of a claim for spousal support, consider the condition, means, needs, and other circumstances of each spouse, including the length of time the spouses cohabited and the functions performed by each spouse during cohabitation.
- [308] There are three conceptual models for determining entitlement to spousal support: compensatory, non-compensatory, and contractual. The authorities establish that these models are not mutually exclusive and there is no single basis of support or objective under the DA that supersedes another: *T.N. v. J.C.N.*, 2015 BCSC 439 at para. 144. While there may be more than one basis for a spouse's entitlement to support, the award is single and indivisible: *Zacharias v. Zacharias*, 2015 BCCA 376 at para. 39. The basis for spousal support, being contractual, compensatory or needs-based, or a combination thereof, will impact the quantum and duration of an award: *A.K. v. N.K.*, 2012 BCSC 1499 at para. 115.

- [309] The fundamental underpinning for an order of spousal support is the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown: *Chutter v. Chutter*, 2008 BCCA 507 at para. 49, leave to appeal to SCC ref'd, 33002 (28 May 2009).
- [310] Ms. Z claims both compensatory and non-compensatory support. From what I can discern, Mr. T's position is that Ms. Z is able to make a good earning operating the B&B, has a university degree, has the ability to be self-sufficient and is not entitled to support. Given the differing positions of the parties as to the appropriate quantum and duration of support, it is necessary to assess each ground.
- [311] The objective of compensatory support is to provide redress to the recipient spouse for his or her efforts which conferred an economic benefit or advantage on the other spouse and for his or her economic disadvantage arising from the marriage or its breakdown: *Chutter* at paras. 50--51; *T.T. v. J.M.H.*, 2014 BCSC 451 at para. 120.
- [312] Considering the factors and objectives in the DA and applying the governing legal principles, I am persuaded that Ms. Z is entitled to spousal support on a compensatory basis. She did obtain a university degree and began working as an environmental scientist, but she gave up that career in order to stay home with the family. Since 2015, she has been a stay-at-home mother devoting herself to the Children while operating the B&B. I accept that as a result of the marriage she has suffered significant economic disadvantages.
- [313] The main wage earner in the family was Mr. T. While Ms. Z has stayed home to care for the Children and the home, he has been able to develop his marketable skills and establish a successful roofing company.
- [314] Since I have found that Ms. Z is entitled to compensatory spousal support I need not consider if she is also entitled to non-compensatory spousal support, or "needs-based support" as it is sometimes described.
- [315] The authorities caution about the potential danger of double recovery that arises from the interaction between property division and spousal support. However, the courts have also recognized that the equitable sharing of the consequences of a marriage breakdown can be achieved by a combination of spousal support, child support, and division of assets: *Bell v. Bell*, 2009 BCCA 280 at para. 20.
- [316] As previously indicated, I have ordered an equalization payment in favour of Ms. Z in the amount of \$178,435. I conclude that while the order I have made will assist Ms. Z in her financial circumstances, it does not preclude a spousal support order.
- [317] In conclusion on this threshold issue, I find that Ms. Z is entitled to spousal support on a compensatory basis.

Quantum of Support

- [318] Once entitlement has been established, the quantum and duration of spousal support is to be established first by reference to the Spousal Support Advisory Guidelines [SSAG]: McEachern v. McEachern, 2006 BCCA 508; Redpath v. Redpath, 2006 BCCA 338; Tedham v. Tedham, 2005 BCCA 502; and Yemchuk v. Yemchuk, 2005 BCCA 406. However, I note that it is ultimately for the Court to determine the appropriate amount and duration of spousal support based on all the circumstances of the particular case. The SSAG is a useful tool intended to supplement decided authorities: Redpath at para. 38.
- [319] I am of the view that the midpoint of the SSAG range should be used. Ms. Z has been self-employed working at the B&B and has gained valuable experience in doing so. However, she has also been the primary caregiver for the Children and in the future, she is likely going to be their sole caregiver.
- [320] Using the imputed incomes, for the parties for 2020, 2021, and 2022 and the midpoint, the amount of retroactive spousal support owed is:

Period

of Months

Monthly obligation

Total Spousal

Support

2020

12

\$888

\$10,656

2021

12

\$397

\$4,764

2022

12

\$366

\$4,392

2023

8

\$186

\$1,488

TOTAL

\$21,300

[321] The amount awarded for retroactive spousal support is \$21,300.

Duration of Support

[322] Turning to the claim for prospective spousal support, the amount of spousal support suggested by the SSAG, assuming Mr. T is a resident of British Columbia with an imputed income of \$120,000 and Ms. Z is a resident of Ontario with an imputed income of \$45,000, is \$0 at the low range, \$146 per month at the midpoint, and \$649 per month at the high end of the range. The suggested duration of spousal support under the SSAG is between five to 17 years. I accept that a duration of 10 years is reasonable, particularly in light of the fact that Ms. Z will be shouldering all, or likely the majority, of the Children's care in the future. In addition, there will likely be a transition period for her to find another B&B and get it fully functioning or find some other job.

Lump Sum Support

[323] Ms. Z seeks to have a lump sum spousal support paid to her for the same reasons as her request for lump sum child support.

[324] Section 15.2(1) of the DA provides that the Court may order security for spousal support:

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

[325] The factors a court should consider in determining whether lump sum spousal support should be ordered were canvassed in *Davis v. Crawford*, 2011 ONCA 294 at paras. 65--76. *Davis* was cited with approval in *Robinson v. Robinson*, 2011 BCSC 1489 at para. 96, aff'd 2012 BCCA 497. The animating principles from *Davis* were helpfully summarized by the Court in *Brandl v. Rolston*, 2012 BCSC 902, aff'd 2013 BCCA 235, as follows:

[84] Ms. Brandl seeks periodic and/or lump sum spousal support. In Robinson, Madam Justice Watchuk reviewed the Ontario Court of Appeal decision of Davis v. Crawford, 2011 ONCA 294, which set out the factors that should be taken into consideration in determining whether lump sum spousal support should be ordered. These are summarized in Ms. Brandl's submissions at paragraph 129:

- a. The court's ability to award lump sum spousal support is not restricted to "very unusual circumstances".
- b. Although a lump sum award should not be made in the guise of support for the purpose of redistributing assets, a lump sum order can be made to relieve against financial hardship, if this has not been done in the division of assets.
- c. Any lump sum award that is made will have the effect of transferring assets from one spouse to the other. The real question in any particular case is the underlying purpose of the order.
- d. A court considering an award of lump sum spousal support must weigh the perceived advantages of making a lump sum award in the particular case against any perceived disadvantages of making such an order.
- e. The advantages of making a lump sum award can include the following:
 - i. Ensuring adequate support will be paid in the circumstances where there is a real risk of non-payment of periodic support
 - ii. A lack of proper financial disclosure
 - iii. Where the payor has the ability to pay lump sum but not periodic support
 - iv. Satisfying immediately an award of retroactive spousal support.

[326] The same analysis for the awarding of lump sum child support applies here but even to a greater extent. There is a real risk that Mr. T will fail to pay Ms. Z periodic spousal support considering the degree of animosity he has shown and continues to show towards her. He has no respect for Ms. Z and I am persuaded that he will not voluntarily pay any support for her. Finally, Mr. T has failed to provide proper disclosure. The less contact that Ms. Z has to have with Mr. T in respect to financial matters the better.

[327] The mid point of the SSAG for a lump sum award is \$11,303. To achieve a degree of fairness, I find that there should be a 10% reduction of this to reflect the risks that Mr. T will not be able to maintain a level of income at \$120,000 and for the risk that Ms. Z will be able to earn more money as the Children get older and her child care responsibilities ease.

[328] I award \$10,172 as lump sum prospective spousal support and that sum should be deducted from Mr. T's net proceeds of the sale of the Family Home.

Issue 8: What amounts should be paid out of the Net Proceeds of the sale of the Family Home:

[329] I find the following amounts should also be paid out of Mr. T's share of the Net Proceeds:

- the equalization payment, being \$178,435
- retroactive child support, being \$69,000;
- retroactive section 7 expenses, being \$12,338;
- retroactive spousal support, being \$21,300;
- prospective lump sum child support, after reducing for the 20% contingency, being \$185,572;
- prospective spousal support, after reducing for the 10% contingency, being \$10,172.

Total: \$476,817

[330] If Ms. Z incurs costs for the removal of Mr. T's personal property she is entitled to also claim that from Mr. T's share of the Net Proceeds of Sale.

Issue 9: Should there be Conduct Orders made addressing how the parties communicate with each Other and the Children?

[331] Conduct orders, which fall under Part 10, Division 5 of the FLA, contain provisions that give the court broad powers to regulate the conduct of parties to a family law proceeding: A.B. v. C.D., 2020 BCCA 11 at para. 182.

[332] Section 222 of the FLA provides that the purposes of conduct orders are:

- (a) to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;
- (b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;
- (c) to prevent misuse of the court process;
- (d) to facilitate arrangements pending final determination of a family law dispute.

[333] Section 227(c) allows a court to make an order requiring a party to:

- (c) do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222 [purposes for which orders respecting conduct may be made].

[334] Section 225 of the FLA gives the court specific authority to make orders restricting communication. It provides:

Orders restricting communications

225 Unless it would be more appropriate to make an order under Part 9 [Protection from Family Violence], a court may make an order setting restrictions or conditions respecting communications between parties, including respecting when or how communications may be made.

[335] The Court in A.B. also made clear that making conduct orders must be guided by the best interests of the child, including minimizing the impact of conflict on a child: at para. 187. The Court also clarified that ss. 222 and 227 are not limited to current proceedings, but allow orders regarding an issue that may become subject to a family law dispute or are issues incidental to litigation: at para. 186.

[336] As I have detailed, the parties agreed to a number of mutual interim conduct orders throughout this litigation. They were necessary for purposes outlined in s. 222 of the FLA in respect of Mr. T's conduct. Although Ms. Z's conduct has always been above reproach, she nevertheless agreed to be bound by the orders. Following them was not difficult for Ms. Z. Unfortunately, none of the orders deterred Mr. T's harmful behaviour. I am satisfied that Mr. T's animosity towards Ms. Z and inability to control his emotions, even in the presence of the Children, is so entrenched that it is necessary in the Children's best interests for these conduct and communication orders to remain in place, in a final order to govern Mr. T's conduct into the future.

[337] I also agree that taking into account the tenor of the texted messages and emails that Mr. T has sent in the past, all future communications should be by way of a co-parenting digital communication application, such as Our Family Wizard. Hopefully at some point of time in the future, Mr. T can restrain from using disparaging and degrading language. If so, the parties can agree to communicate directly if there are no further protection orders in place.

[338] The claimant seeks an order restricting Mr. T from posting publicly about Ms. Z, the Children, and this family law proceeding. I recognize that restricting a party's freedom of expression "should only be invoked in the clearest of cases on a full evidentiary record": A.B. at para. 189. Mr. T agreed that he has posted comments about Ms. Z, the Children, and this litigation on social media--although he did agree that he had not done so recently. I am not persuaded that an order is appropriate restricting Mr. T's use of social media. If in the future he posts inappropriate comments about Ms. Z or the Children, the claimant can bring such an application.

Issue 10: Who should keep the family dog?

[339] Recent proposed amendments to the FLA outline several factors for courts to consider when determining the ownership of a family dog, referenced as a companion animal. These amendments are not yet in force. These factors include:

1. The circumstances in which the companion animal was acquired.
2. The extent to which each spouse cared for the companion animal.
3. Any history of family violence.
4. The risk of family violence.
5. A spouse's cruelty, or threat of cruelty, toward an animal.
6. The relationship that a child has with the companion animal.
7. The willingness and ability of each spouse to care for the basic needs of the companion animal.
8. Any other circumstances the court considers relevant.

[340] The animal in question is a 5-year-old Golden Retriever named "Paws". Mr. T agreed that Ms. Z purchased the dog. The evidence I have is limited, but it is clear from Ms. Z's evidence that the Children turn to Paws for comfort. L is very attached to the dog. With a move to a new community, it is important that the Children have the family dog with them to assist in the transition.

[341] Since separation, Mr. T has made no efforts to see or spend time with Paws. He has not offered to take him for walks. He did testify that he would like to see the dog.

[342] Paws has continued living with Ms. Z and the Children in the Family Home since separation. It has been over three and a half years since Mr. T has seen or spent any time with Paws.

[343] In addition, Mr. T's occupation is a roofer. As he testified he sometimes has to work very long hours away from home. This is a concern for me since no animal should be left alone for many hours without companionship.

[344] In all of the circumstances, it is my view that it would be in the best interest of Paws and the Children that he remains in the care of Ms. Z. In the future, if Mr. T is living close to Ms. Z and the Children and he wishes to take Paws for a walk or hike, for example with the Children, I would expect Ms. Z to be agreeable.

Issue 11: What costs should be awarded?

[345] Ms. Z seeks costs and special costs.

[346] Rule 16-1(7) of the Rules codifies the tradition that costs follow the event. The costs of a family law case go to the successful party, absent a court order to the contrary. Ms. Z has been substantially successful throughout and is entitled to costs of the proceeding.

[347] Special costs are awarded against an unsuccessful party as punishment for reprehensible litigation conduct. The test for special costs was set out in *Garcia v. Crestbrook Forest Industries Ltd.*, 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.), where Justice Lambert, writing

for the Court, determined that the threshold for awarding special costs is "reprehensible" conduct during the litigation, which includes "scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke": at para. 17. He further explained this standard at para. 23:

the fact that an action or an appeal "has little merit" is not in itself a reason for awarding special costs....Something more is required, such as improper allegations of fraud, or an improper motive for bringing the proceedings, or improper conduct of the proceedings themselves, before the conduct becomes sufficiently reprehensible to require an award of special costs.

[348] In *Tomic v. Tough*, 2013 BCCA 355 at para. 35, our Court of Appeal confirmed that the test for special costs award applies in the family law context.

[349] Justice Gropper in *Friedlander v. Claman*, 2015 BCSC 482, summarized the use of special costs in a family law case as follows:

[25] In *Westsea*, I reviewed the jurisprudence in the following thematic groups: meritless claims and improper motive (paras. 42 - 52); abuse of the court's process (paras. 53 - 57); sharp practice derogating from the rules of professional conduct and the rules of court (paras. 58 - 64); and misleading the court (paras. 65 - 72). I proceeded in this way not to impose a categorical approach upon special costs awards, but to provide a guide when faced with similar factual circumstances.

[26] I summarized my findings at para. 73 by providing principles for awarding special costs:

[73] I have undertaken a thorough review of the cases involving special costs. Having examined the authorities provided by both sides, it is apparent to me that the courts have been somewhat inconsistent in their determination of what amounts to reprehensible conduct and that those authorities must be reconciled. Based upon my review of the authorities, I have derived the following principles for awarding special costs:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
- e) special costs can be ordered against parties and non-parties alike; and

- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a "bonus" or further compensation for that success.
- [350] The reprehensible conduct can include conduct by a litigant who abuses the court's process, misleads the court, and carries out persistent breaches of the rules of court.
- [351] Although leeway should be given to self-represented litigants participating in the justice system, particularly in respect to the procedural requirements, this does not mean that they have a "licence to employ accusations of dishonesty as a feature of their rhetoric unless such accusations are firmly grounded in the evidence, are relevant to the proceedings, and are responsibly made": *The Owners, Strata Plan LMS3259 v. Sze Hang Holdings Inc.*, 2015 BCCA 424 at para. 11. There is an expectation that all participants in the justice system treat one another professionally, and that includes the self-represented litigant: *Morecorp Holdings Ltd. v. Island Tug & Barge Ltd.*, 2009 BCSC 1692 at para. 37.
- [352] Throughout the trial Mr. T made unfounded allegations against Ms. Z. He accused her of being a liar, suggested she take a "lying management" or "false misrepresentation under oath" classes, accused her of being spiteful and vindictive, asked if she had seen a doctor for dementia or Alzheimer's, swore at her in the courtroom, and continuously asked irrelevant questions even after being directed by the Court not to do so. It was clear that Mr. T, even in the courtroom, continued to cause Ms. Z emotional stress and set out to upset her.
- [353] I accept that he purposely made this family law proceeding extremely difficult in the positions he took with counsel. He deliberately refused to produce relevant financial information, using it as a strategy to try and force Ms. Z to comply with his demand for "mediation and communication." He failed to comply with the Rules for production of an F8 financial statement and for a list of documents. He deliberately, with intent, breached several pre-trial disclosure orders, including the TMC Order for the production of a Scott Schedule. His actions made the assessment of the claims difficult, since he walked out of court without making any closing submissions.
- [354] He continuously and relentlessly harassed Ms. Z's counsel using derogatory and offensive language and taking unreasonable positions in his email communications. He made a number of threats against counsel and Ms. Z.
- [355] I found his conduct has been reprehensible and deserving of rebuke.
- [356] I award Ms. Z special costs of this proceeding with those costs being paid out of Mr. T's share of the Net Sale Proceeds.

Conclusion

- [357] The following orders are made:

Divorce

1. Subject to s. 12 of the Divorce Act, the claimant, [insert full legal name], and the respondent, [insert full legal name], who were married at Squamish, British Columbia on March 16, 2011, are divorced from each other. The divorce to take effect on the 31st day after the date of this order.

Relocation

2. Pursuant to s. 16.91(1)(a) of the Divorce Act, the claimant is entitled to relocate the children of the marriage (the "Children") to Stratford, Ontario, effective immediately.

Allocation of Parenting Responsibilities and Guardianship

3. The parties shall continue to be both guardians of the Children pursuant to s. 39(1) of the Family Law Act.
4. The claimant will have all of the decision-making responsibility with respect to the Children under s. 16.3 of the Divorce Act, except both the claimant and the respondent are entitled to request and receive health and education information regarding either child from third parties.
5. The claimant has exclusive authority to manage the Children's RESP accounts.
6. The requirement for the respondent's consent for the claimant to apply for passports for the Children is dispensed with.
7. The requirement for the respondent to consent for the claimant to travel with the Children is dispensed with.

Parenting Arrangements

8. The claimant will have primary residence of the Children.
9. Before the respondent is entitled to exercise any parenting time with the Children, he is required to complete the following, pursuant to s. 224 of the Family Law Act:
 - i. a minimum of 20 hours of co-parenting and anger management counselling sessions with a registered psychologist, at his sole expense;
 - ii. provide documented proof to the claimant to confirm his attendance at the above counselling sessions, including dates, times, and name of counsellor, together with a letter from the counsellor confirming the same; and
 - iii. documented proof to the claimant that he has found a professional parenting supervisor and that he has completed the intake process including a letter confirming the same from the parenting supervisor.

10. Pursuant to s. 16.1(8) of the Divorce Act, the respondent will have reasonable videoconference and/or in-person supervised parenting time at dates and times agreed in writing between the claimant and a professional parenting supervisor, paid for by the respondent.
11. Any and all communications between the parties to be conducted by means of the Our Family Wizard application, or equivalent co-parenting digital communication application, and only for the purpose of sharing important information about the Children and arranging virtual and/or in-person supervised parenting time, the costs of which will be split equally by the parties, pursuant to s. 225 of the Family Law Act. The parties are at liberty to vary this requirement by consent and in writing.
12. The claimant will advise the respondent of any matters of a significant nature affecting the Children via Our Family Wizard, or equivalent co-parenting digital communication application.
13. The respondent shall not attend at the Children's school unless previously agreed to in writing by the claimant.

Conduct Orders

14. The parties shall:
 - a) put the best interests of the Children before their own interests;
 - b) encourage the Children to have a good relationship with the other parent and speak to the Children about the other parent and that parent's partner in a positive and respectful manner; and
 - c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the Children.
15. The parties shall not:
 - a) question the Children about the other party or time spent with the other parent beyond simple conversational questions;
 - b) discuss with the Children any inappropriate adult, court, or legal matters; or
 - c) blame, criticize or disparage the other parent to the Children.

Family Property and Debt

16. Paws, the family dog, will be kept by the claimant and will relocate with Ms. Z and the Children to Stratford, Ontario.
17. The parties' property located at [insert address in order] ("Family Home"), will be listed for sale forthwith.

18. The respondent is entitled to attend at the Family Home and remove any of his personal belongings, including a trailer. He is only entitled to remove his personal belongings from the outside of the Family Home and is not entitled to enter the Family Home.
19. The respondent must provide 48 hours written notice to the claimant's counsel of his intention to attend to remove his personal belongings. The removal must take place within 14 days of these reasons being pronounced.
20. If the respondent does not remove his personal belongings the claimant is entitled to have them removed and disposed of and the costs of the removal and disposal shall be paid out of the respondent's share of the Net Sale Proceeds.
21. The claimant can incur reasonable costs to clean up the Family Home to make it presentable for sale and those costs shall be paid out of the sale proceeds of the Family Home.
22. The claimant will have sole conduct of sale of the Family Home.
23. The requirement for the respondent's signature on real estate documents and title registry forms related to the sale of the Family Home is dispensed with.
24. Should the Family Home not sell before the claimant relocates with the Children to Ontario, the claimant may rent the Family Home for a period of one year with rental income being apportioned in favor of the claimant. The claimant will be responsible for the payment of all maintenance costs, property taxes, and mortgage payments.
25. The proceeds of the sale of the Family Home to be used as follows:
 - a. pay the mortgage;
 - b. funds to pay out any line of credit secured against the Family Home;
 - c. reasonable realty commission fees;
 - d. reasonable legal fees;
 - e. usual adjustments upon sale; and
 - f. any reasonable costs incurred to clean-up the property to make it presentable for sale.(the "Net Sale Proceeds")
26. The Net Sale Proceeds will be divided equally between the claimant and the respondent subject to the payments to be made out of the respondent's share of the Net Sale Proceeds to the claimant.
27. The claimant will be solely responsible for any debts in her sole name and will retain all financial accounts in her sole name.
28. The respondent will be solely responsible for any debts in his sole name and will retain all financial accounts in his sole name.

29. The claimant will retain the Children's RESP accounts.
30. The respondent shall pay to the claimant the amount of \$178,435 to equalize the division of family property from his share of the Net Share Proceeds.

Child Support and s. 7 Expenses

31. The claimant is found to be a resident of Ontario and is found to have an imputed income of \$45,000.
32. The respondent is found to be a resident of British Columbia and is found to have an imputed income of \$120,000.
33. The child support and s. 7 expense arrears owing from the respondent to the claimant up to and including August 2023 is \$81,338 (the "Child Support Arrears").
34. The respondent shall pay to the claimant the amount of \$185,572 in prospective lump sum child support (the "Prospective Lump Sum Child Support"), which will fully satisfy his obligation to pay child support for the Children until they both reach their 19th birthdays.
35. Should one or both Children remain a child of the marriage after they turn 19, either party may bring an application for continuing child support.
36. The respondent will pay to the claimant his proportional share for the Children's special or extraordinary expenses. The parties' respective proportional shares are the respondent at 70% and the claimant at 30%. The following expenses will be special or extraordinary expenses:
 - i. Tutoring,
 - ii. Child care expenses;
 - iii. Extracurricular expenses;
 - iv. Medical and dental (including orthodontic) expenses; and
 - v. Post-secondary expenses for an undergraduate degree.
37. The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement.
38. The party receiving the receipt shall pay their share within 30 days of the receipt of a request for payment.

Spousal Support

39. The spousal support arrears owing from the respondent to the claimant, as of July 2023, are \$21,300 (the "Spousal Support Arrears").
40. For the purposes of calculating support payments under the Spousal Support Advisory Guidelines, the claimant's income is set at \$45,000 and the respondent's income at \$120,000.

41. The respondent shall pay to the claimant the amount of \$10,172 in a prospective lump sum spousal support (the "Prospective Lump Sum Spousal Support") which fully satisfies the respondent's obligation to pay spousal support.

Payments

42. The claimant is entitled to special costs of this family law proceeding.
43. The respondent shall pay to the claimant out of his share of the Net Sale Proceeds the following:
- a. the Child Support Arrears of \$81,338;
 - b. the Prospective Lump Sum Child Support of \$185,572
 - c. the Spousal Support Arrears of \$21,300;
 - d. the Prospective Lump Sum Spousal Support of \$10,172;
 - e. the equalization payment of \$178,435;
 - f. any fines ordered by the court that remains unpaid by the respondent;
 - g. any amount the claimant incurs for removing and disposing of the respondent's personal property located on the Family Home property; and
 - h. the special costs awarded to the claimant.
44. The remaining share of the respondent's Net Sale Proceeds will be paid to the respondent.
45. The respondent's signature on the form of this order is dispensed with. The claimant's counsel shall email the respondent with the filed copy of this order.

"The Honourable Justice C. Forth"

APPENDIX A

Scott Schedule

P.M.Z. v. D.J.T.

Date of Cohabitation:

10/Feb/2010

Date of Marriage:

16/Mar/2011

Date of Separation:

30/Dec/2019

Nature of Asset / Debt

Value Basis

Associated Liability

Excl by P.M.Z.

Excl by D.J.T.

Net Value

Proposed Allocation

% P.M.Z.

% D.J.T.

Family Property to P.M.Z.

Family Property to D.J.T.

REAL PROPERTY

("Former Family Home")

\$1,685,000

Appraisal 05/Apr/2023

\$326,482.18

(Mortgage)

\$69,957.82

(HELOC)

TBD on Sale

Approximate net value \$1,288,560

Sale with reapportionment of proceeds in P.M.Z.'s Favour to Account for Equalization Payment /
lump sum support

50%

50%

TBD on Sale

*\$644,280 based on appraised value

TBD on Sale

*\$644,280

Mortgage (joint)

(\$326,482.18)

50%

50%

HELOC (joint)

(\$69,957.82)

50%

50%

New Hazelton property

\$30,000.00

\$9,000

\$21,000.00

D.J.T. to Retain

\$0.00

\$21,000.00

VEHICLES

2017 Chevrolet Bolt

\$25,000.00 per P.M.Z.'s estimate

\$25,000.00

P.M.Z. to Retain

100%

0%

\$25,000.00

\$0.00

2015 Nissan Leaf

\$15,000.00 per P.M.Z.'s estimate

\$15,000.00

D.J.T. to Retain

0%

100%

\$0.00

\$15,000.00

Motorcycle

\$15,000.00

per D.J.T. estimate

\$15,000.00

D.J.T. to Retain

0%

100%

0.00

\$15,000.00

RRSPs / RESPs

CIBC RESP Account No. xxx411 (L.)

\$42.53 per F8

nil

\$42.53

P.M.Z. to Retain for L.

0%

0%

\$0.00

\$0.00

CIBC RESP Account No. xxx381 (L. & N.)

\$26,867.68 per F8

\$26,867.68

P.M.Z. to Retain for the children

0%

0%

\$0.00

\$0.00

CIBC RRSP Account No. xxx186 (P.M.Z.)

\$6,284.70 per F8

\$6,284.70

P.M.Z. to Retain

100%

0%

\$6,284.70

\$0.00

RBC Investing RRSP Account No. 691-81018-1-4 39A (D.J.T.)

RBC Investing RRSP Account No. 691-81018-1-4 39A (D.J.T.)

\$2,528.22 (USD) per statement 31/Jan/2023

\$3,404.14 (CND) per statement

\$3330.87 (CAD)

\$3,404.22

D.J.T. to Retain

0%

100%

\$0.00

\$3330.87

\$3,404.14

RBC Investment Account No. 688-49344-1-2 39A (D.J.T.)

\$31,157.96

per statement 31/Jan/2023

\$31,157.96

D.J.T. to Retain

0%

100%

\$0.00

\$31,157.96

CIBC Mutual Fund RRSP Account No. xxx905 (D.J.T.)

Exhibit 26

\$9,836.66 per statement 14/Mar/2023

\$9,836.66

D.J.T. to Retain

0%

100%

\$0.00

\$9,836.66

RBC RRSP xxx5438 (D.J.T.)

Exhibit 27

\$9,424.81

As of Dec 31, 2022

\$9,424.81

D.J.T. to Retain

0%

100%

\$0.00

\$9,424.81

CIBC TFSA Investment Account No. xxx216 (D.J.T.)

\$97,752.81 per statement 31/Dec/2022

\$280,000.00per J.D.T. estimate

\$280,000.00

D.J.T. to Retain

0%

100%

\$0.00

\$280,000.00

BANK ACCOUNTS

Each party to keep their own

TOTAL ASSETS

\$419,439.14

*with family home = \$1,707,985.94

\$31,284.70

\$388,154.44

DEBTS

Each party to keep their own debts

Total Family Property

Nil

Nil

\$419,439.14

*\$1,707,985.94 if including appraised value of family home

\$31,284.70

\$388,154.44

50/50 Equalized Outcome

\$209,719.57

\$209,719.57

Family Property Retained by P.M.Z. what she has

(\$31,284.70)

Family Property Retained by D.J.T. what he has

(\$388,154.44)

Equalization Payment D.J.T. to P.M.Z.

\$178,434.87

(\$178,434.87)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/14/2023BCSC1444.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/p-m-z-v-d-j-t-2023>

Prepared on 29 October 2026 · Esheria