

CANADA / JUDGMENT

Q.L. v. D.L.

2025 BCSC 2539

COURT

Supreme Court of British Columbia

DECIDED

23 December 2025

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2025 BCSC 2539 Q.L. v. D.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Q.L. v. D.L.,

2025 BCSC 2539

Date: 20251223

Docket: E221282

Registry: Vancouver

Between:

Q.L.

Claimant

And:

D.L.

Respondent

Further Corrected Judgment: The text of the judgment was corrected at paragraphs 55, 97, 195, 305, 306, and 361 on April 10, 2026.

Before: The Honourable Madam Justice D. MacDonald

Reasons for Judgment

The Claimant, appearing in person:

Q.L.

The Respondent, represented by counsel and appearing in person:

K. Walkinshaw

(September 16, 2024 only)

D.L.

Place and Dates of Trial:

Vancouver, B.C.

September 16-17, 19-20, 23-24,

26-27, November 6-7,

December 12-13, 2024,

January 13-16, 29-31, March 31, April 1, and May 26-27, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 23, 2025

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Overview

- [1] This is a high-conflict family case. The parties, Q.L. and D.L., were married on October 27, 1994 and separated on August 20, 2020. They have three children:
- a) C.L., born in 1998;
 - b) S.L., born in 2005; and
 - c) B.L., born in 2007.
- [2] The children are largely estranged from their mother, Ms. D.
- [3] At the time of trial Ms. D. was 54 years old and works as a Chartered Professional Accountant (CPA). Mr. Q. was 55 years old and works as a software developer.
- [4] Both parties took time out of their careers to further their education and both have professional careers. There are allegations of family violence, and the parties spent a great amount of trial time rehashing old arguments and accusing each other of abuse. Mr. Q. accused Ms. D. of abusing the children, both physically and emotionally, which she vehemently denies. Ms. D. reported physical violence by Mr. Q., directed at her, to the police. Charges were not laid as she withdrew her complaint. Nevertheless, she maintains the physical violence occurred. Both parties agreed they used corporal punishment with the children as a form of discipline, and both admit to being stressed during the relationship. It is not surprising the parties experienced stress as they were juggling raising three children while working and/or studying. They are also immigrants who faced language barriers. Mr. Q. testified he eventually left the family home with the children as a result of the family violence.

- [5] Since there are cross-allegations of family violence, as well as very different narratives regarding what happened during the parties' long marriage, I pay particular attention to the credibility of the parties.
- [6] Despite the focus on family violence, the main issues in this case are financial. This is because C.L. no longer lives at home and is no longer a child of the marriage. S.L. and B.L. continue to be children of the marriage but are almost adults. Only B.L. continues to live with Mr. Q.
- [7] There is significant property at stake and Mr. Q. has a high income. The financial matters are complicated and require a professional accountant to trace the numerous transactions that have occurred over the years since the parties separated. Nevertheless, and surprisingly, neither party was represented by counsel at trial and no expert report was tendered. This made the case extremely challenging to decide. I have done my best on the evidence before me, and without the benefit of an expert report or counsel to assist.

Issues

[8] The issues I must decide are:

- divorce (uncontested);
- date of separation;
- guardianship;
- parenting time and responsibilities;
- child support;
- section 7 special and extraordinary expenses;
- division of real property;
- division of other family property, including:
 - o Stock Options (Options);
 - o Registered Stock Units (RSUs);
 - o bank accounts;
 - o pensions;
 - o vehicles;
 - o RRSPs;
 - o RESPS;
- division of family debts;

- spousal support; and
- occupational rent.

[9] In these Reasons I set out the parties' evidence in a general way; I only provide details where it is necessary for my analysis. In reaching my conclusions I have considered the totality of the evidence and the parties' full positions.

Credibility

Legal Principles

- [10] Since this is a highly contested family law matter, credibility plays an important role in the assessment of the evidence. This task is nuanced and fact specific: *L.C. v. Y.S.*, 2023 BCSC 422 at paras. 51-57.
- [11] The assessment of a witness's credibility involves a consideration of the trustworthiness of the witness's testimony based on their sincerity and the accuracy of their evidence. Ultimately, the validity of the evidence depends on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296.
- [12] In *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, *aff'd* 2014 BCCA 414, Justice Adair articulated a number of factors that affect the assessment of reliability and credibility. These factors include:
- a) the witness's ability and opportunity to observe events;
 - b) the firmness of the witness's memory;
 - c) the witness's ability to resist the influence of interest to modify their recollection;
 - d) whether the witness's evidence harmonizes with independent evidence that has been accepted;
 - e) whether the witness changes their testimony during direct and cross-examination;
 - f) whether the witness's testimony seems unreasonable, impossible, or unlikely;
 - g) whether a witness has a motive to lie; and
 - h) the demeanour of a witness generally.
- [13] As stated in the leading case *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 4 W.W.R. 171 (B.C.C.A.), the test of the truth of a witness's testimony is its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable" in the circumstances.
- [14] I have approached the assessment of the credibility of the parties with this in mind. I also have the benefit of Justice Griffin's reasons (as she then was) from *Fu v. Zhu*, 2018 BCSC 9:

- [39] Some caution had to be exercised in assessing credibility because the witnesses were from another country and culture and did not speak English. Often cultural and linguistic differences can affect the demeanour of witnesses in ways not necessarily understood by the trier of fact. For this reason, I was hesitant to conclude that a witness was evasive, in case what appeared to be evasiveness could be due to language or cultural differences.
- [40] I have approached the evidence aware that nuances might be lost in translation, both in terms of the translation of the question to the witness and in the answer. Word choice and word order in a sentence might be an interpreter's preference and I have been careful not to form judgment based on the wording of a single answer. Rather, I have considered the whole tenor of the evidence in coming to conclusions as to the facts. In my view it would be a mistake to take a single passage from a witness's evidence as a conclusive admission against interest, given the nuances that might be lost in translation.
- [41] As well, I have kept in mind that motives and conduct that might seem improbable to a person raised in a Canadian culture might not be improbable in another cultural context. .

Analysis

- [15] Both parties testified. Ms. D. testified with the assistance of an interpreter. Each party had a very different version of what transpired between them during their marriage. As a result, credibility is important in this case. I find Justice Griffin's caution to be instructive and I keep it in mind as I assess the parties' testimony.
- [16] Both parties were emotional during their testimony. It is clear that there was a great deal of animosity during the marriage and after the parties' separation. While I found both parties to be generally credible witnesses, there were some problems with their testimony.
- [17] At the outset, I note that Mr. Q. was reluctant to acknowledge Ms. D.'s contributions during the marriage. He tended to exaggerate his own contributions and downplay Ms. D.'s. Mr. Q. also displayed little empathy for the difficulties Ms. D. faced coming to Canada with no English language skills and with no family or friends for support. I find these comments from Fu to apply to Mr. Q.'s testimony:
- [42] certain characteristics probably cross all cultures, and that includes the instinct and ability to be self-serving in one's memory so as to advance one's own interests, especially when it comes to matters of money.
- [18] I found Ms. D. was more willing to admit that she was not a perfect mother, that she could get short with the children, that she was under a lot of stress, and that Mr. Q. did contribute to the household tasks and was good with the children. However, she became frustrated and combative at times during the testimony which provided support for Mr. Q.'s evidence that she had a short fuse with him and the children. I also found that Ms. D. was highly suspicious of Mr. Q.'s handling of the parties' finances, both pre- and post-separation. She questioned numerous transactions for which he had a valid explanation. This extended the

hearing and complicated many of the financial issues. Both parties put forward a narrative of past events which supported their case. As a result, I have had to ensure there was corroborating evidence on significant points of difference between the parties.

Separation Date

- [19] The parties disagree on their date of separation. Ms. D. submits that their separation date was August 20, 2020, while Mr. Q. submits that it was July 12, 2020.

Legal Principles

- [20] Both the Family Law Act, S.B.C. 2011, c. 25 [FLA] and the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) [DA] contain provisions with respect to separation. Although their language differs, the same legal principles govern regardless of which statute applies in a particular case: *C.L.D. v. J.J.P.D.*, 2024 BCSC 1123 at paras. 12-13.
- [21] In *McGrail v. McGrail*, 2016 BCSC 104, Mr. Justice Verhoeven held that intention is key to the analysis of a date of separation. The intention need not be mutual: *Gupta v. Kumar*, 2023 BCCA 106 at para. 13, citing *Nearing v. Sauer*, 2015 BCSC 58 at para. 54.
- [22] In *S.A.H. v. I.B.L.*, 2018 BCSC 544 at paras. 48-55, Justice Shergill considered the pertinent case law and summarized the relevant considerations for determining the date of separation as follows:
1. Did at least one spouse have the intention to separate?
 2. Was the intention to separate communicated to the other spouse?
 3. Was the intention to separate acted upon? In other words, using generally accepted characteristics of marriage, did one or both spouses take action that is consistent with the separation, such as:
 - a. changing how they behaved with each other in public; and
 - b. changing how they behaved with each other in private?
- [23] A physical separation is not necessary; parties can live in the same residence and still be considered separated. To determine the date of separation, the court may look at the pre- and post-separation behaviour of the parties: *S.A.H.* at para. 49, citing *Rose v. Guiguet*, 2008 BCSC 1225; *Velisek v. Velisek*, 2000 BCSC 557; *Greaves v. Greaves* (2004), 4 R.F.L. (6th) 1, 2004 CanLII 25489 (ON SC); *Campbell v. Campbell*, 2007 ABQB 637.
- [24] In addition to these principles, the authorities emphasize that the intention to separate should be a "settled intention": *O.M. v. V.G.*, 2025 BCSC 209 at paras. 245-249.

Analysis

- [25] Mr. Q. claims that on July 12, 2020, Ms. D. tried to "kick" their oldest daughter, C.L., out of the family home and threatened to divorce Mr. Q. Mr. Q. submits that on that day, the parties entered into separation discussions. Ms. D. claims that the parties began arguing in June 2020, but that in July 2020 their relationship improved. She submits that most of the arguments in July were between her and C.L., not with Mr. Q. She points to the fact that the parties continued to go out together, including to restaurants, in July. Ms. D. argues that talk of separation did not begin until later, resulting in Mr. Q. moving out of the family home with the children on August 20, 2020.
- [26] I accept that the parties contemplated separation in July 2020. However, I do not find it was a "settled intention" from either party at this time and, if it was, it was not sufficiently communicated. The parties had a number of arguments, mainly about C.L., but the evidence does not show that the characteristics of their marriage in July 2020 were consistent with separation, particularly when considered in light of their difficult marriage history. A happy or functional relationship is not a pre-requisite for a marriage to be ongoing; *Surrett v. Butkiewicz*, 2018 BCSC 2194 at para. 72.
- [27] I find that the parties separated on August 20, 2020 (the "Date of Separation"), when Mr. Q. left the family home with the children.

Guardianship

Legal Principles

- [28] Pursuant to s. 39 of the FLA, both parents are the guardians of the children. Section 40(1) of the FLA provides that only "a guardian may have parental responsibilities and parenting time with respect to a child." Further, pursuant to s. 40(2): "Unless an agreement or order allocates parental responsibilities differently, each child's guardian may exercise all parental responsibilities with respect to the child in consultation with the child's other guardians ". In making an order under this section, the only consideration for this Court is the best interests of the children: FLA, s. 37.

Analysis

- [29] Only B.L. is currently under the age of 19 and therefore considered a child under the FLA for the purpose of guardianship: s. 1. B.L. is in high school and still lives with Mr. Q. in the parties' residence on East 61st Avenue.
- [30] Mr. Q. argues that he should be the sole guardian of B.L. He bases this on the fact that Ms. D. has had no parenting time with the children since separation and she has not paid any child support to him for the children. Mr. Q. emphasizes that he has been the sole caregiver and financial provider for the children.

- [31] Despite these facts, and the testimony I heard at trial, I am not persuaded that I should terminate Ms. D.'s guardianship of B.L. Guardianship will only be terminated in extreme or rare circumstances and provided that it is in the best interests of the child: *Li v. Zhang*, 2025 BCSC 2091 at para. 59. In my view, it is in the best interests of the child that both parties continue to be her guardian: FLA, s. 37.

Parenting Arrangements

Legal Principles

- [32] The allocation of parenting arrangements is made under s. 45(1) of the FLA. The relevant subsections in the present case are parenting responsibilities and parenting time. Section 37(1) of the FLA provides that this Court may only consider the best interests of the child when making orders for parenting time and parenting responsibilities.
- [33] In determining parenting arrangements, no particular arrangement is presumed to be in the best interests of the child. As stated in s. 40(4) of the FLA, the following must not be presumed:
- (a) that parental responsibilities should be allocated equally among guardians;
 - (b) that parenting time should be shared equally among guardians;
 - (c) that decisions among guardians should be made separately or together.
- [34] The test for considering the "best interests" of a child has evolved over time. Although s. 16(6) of the DA provides that in "allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child", it is not presumed that a child will automatically have maximum parenting time with each parent. In *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada cautioned against the continued use of the "maximum contact principle" based on Parliament's recasting the principle as "parenting time consistent with best interests of child." The Court must inquire into how much parenting time with each parent is in the best interests of the specific child: *Barendregt* at paras. 133-135. Each case must adopt a child-centric approach.
- [35] Section 37(4) of the FLA requires that, in making an order under Part 4, the Court may only consider a person's conduct if it substantially affects a factor relevant to the best interests of the child. Those factors are set out in s. 37(2), which are well known and I will not repeat here.
- [36] Allegations of family violence must be considered when determining the best interests of the child: FLA, s. 38. Specifically, s. 38 states that this Court must consider:
- (a) the nature and seriousness of the family violence;
 - (b) how recently the family violence occurred;

- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[37] Section 1 of the FLA defines "family violence", inter alia, as: physical abuse of a family member, psychological or emotional abuse of a family member, and, in the case of a child, direct or indirect exposure to family violence. In *Morgadinho v. Morgadinho*, 2014 BCSC 192, this Court held that the purpose of assessing family violence is:

[59] to recognize the danger to vulnerable family members that can arise in these often-volatile relationships and to ensure that courts have the means of ensuring the safety of those who are at risk. The broad and inclusive definition of "family violence" recognizes that the kinds of harm that can be inflicted in this situation extend beyond the infliction of physical violence.

[38] In summary, parenting responsibilities set out under s. 41 of the FLA and parenting time under s. 42 may be exercised by one parent entirely, shared equally between both parents, or specifically allocated between the parents. A crucial consideration is family violence and the safety of the children: ss. 37 and 38 of the FLA.

Analysis

[39] As the only child under the age of 19, parenting arrangements need only be made for B.L. After separation, Mr. Q. solely exercised parenting time with B.L. who continues to live with him.

[40] The views of the child are expressly listed as a factor in s. 37(2). Indeed, older children have been permitted to determine their own parenting schedules if such orders are in the best interests of the children: *D.Z. v. R.H.Z.*, 2020 BCSC 891 at para. 97. This recognizes that it is not always realistic to assume a teenager can be forced to attend parenting time with a parent against their wishes: *L.L. v. A.L.*, 2025 BCSC 551 at para. 99.

- [41] Pursuant to s. 45(1)(b) of the FLA (parenting time), the parties have agreed that B.L. will continue to live with Mr. Q. until she attends university. As such, Mr. Q. will continue to have the majority of parenting time with her. B.L. has indicated, and I believe this is in B.L.'s best interests, that she will see Ms. D. on her own initiative. She is under no obligation to see Ms. D.
- [42] I am satisfied with these agreed arrangements. B.L. is very close to adulthood and it is appropriate to give her a choice regarding her parenting time with her mother. She has spent considerable time living solely with her father and it is clear that she has a stronger relationship with her father. I also note that B.L. will turn 19 in April of next year and this parenting arrangement will be in place for less than a year.
- [43] Moreover, while there were allegations of family violence by both parties, Mr. Q.'s allegations were specifically focused on violence aimed at the children, whereas Ms. D. testified that Mr. Q. physically assaulted her. C.L. was a witness at trial. She testified that Ms. D. was unstable, sometimes emotionally abusive and, on occasion, physically abusive toward herself and her two younger siblings. C.L. testified that both parties used corporal punishment which, I note, remains legal in Canada: Criminal Code, R.S.C. 1985, c. C-46, s. 43. It is possible that Ms. D. exhibited behaviour beyond what is permitted by s. 43, but I am not asked to make such a determination here. The children do not live with their mother and have little contact with her.
- [44] To be clear, while any family violence is extremely concerning - and is a significant consideration when determining guardianship and parenting time - I do not think I need to address this matter here. The children have virtually no contact with Ms. D. and are all at a mature age. Ms. D. has agreed to only have parenting time with B.L. on B.L.'s own terms. Therefore, while I am concerned by the reports of family violence, I do not need to make any further findings on this issue.
- [45] Pursuant to the parenting responsibilities as set out in s. 45(1)(a) of the FLA, I order that:
1. Mr. Q. will have the majority of parenting time with B.L. Ms. D. will only have parenting time with B.L. at B.L.'s own request.
 2. Each guardian has the right to obtain information concerning B.L. directly from third parties including, but not limited to, teachers, counsellors, and medical professionals.
 3. B.L. will hold her own passports and other significant documentation.
 4. Mr. Q. will have the obligation to promptly advise Ms. D. of any matters of a significant nature affecting B.L.
 5. Mr. Q. has the obligation to discuss significant decisions affecting B.L. with Ms. D., including significant decisions about her physical and mental health (except with respect to emergency decisions), education, religious instruction, and her general welfare. The parties will use their best efforts to come to a consensus on these decisions.

6. In the event that the parties cannot reach agreement on a significant decision despite their best efforts, Mr. Q., as the guardian with the majority of parenting time, will be entitled to make those decisions. Ms. D. will have the right to apply for directions on any such decision she considers contrary to the best interests of B.L.

Child Support

Legal Principles

General

- [46] Parents have a joint and ongoing legal obligation to support their children in a way that is commensurate with their income, subject to the exceptions in s. 147(1)(a) and (b) of the FLA. Section 150(1) of the FLA provides that child support orders must be determined in accordance with the Federal Child Support Guidelines, SOR/97-175 [FCSG].[1] Neither party takes issue with these general principles.
- [47] It is well established that the most current information regarding a party's income must be used when calculating support: FCSG, s. 2(3). The FCSG aims to "establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation": FCSG, s. 1(a).
- [48] Deviation from the FCSG is allowed in limited circumstances: FLA, s. 150; DA, s. 15.1(8). If the court orders an amount of child support different from that required by the FCSG, reasons for doing so must be provided: FLA, s.150(5) and DA, s. 15.1(6).

Retroactive child support

- [49] Courts have the discretion to make an order for retroactive child support: FLA, s. 170(b); DA, s. 15.1(4); D.B.S. v. S.R.G., 2006 SCC 37 at para. 59. The circumstances in which retroactive child support may be awarded was addressed in the leading case D.B.S. and updated in Colucci v. Colucci, 2021 SCC 24. In D.B.S., the Court held that retroactive child support awards should not be seen as exceptional because such an award may be the only way in which to ensure that a child is returned to the support they are rightly due: at para. 97. However, retroactive awards are not automatic. In D.B.S., the Court set out four factors a trial judge must consider when asked to make a retroactive child support order:
- a) Delay: whether the party seeking an award of retroactive child support provides a reasonable excuse for not seeking support sooner.
 - b) Payor conduct: whether the paying parent engaged in blameworthy conduct that would support the making of a retroactive child support order.
 - c) Circumstances of the child: whether the child's past and present needs and circumstances support the making of a retroactive child support order.

- d) Undue hardship for the payor: whether the making of a retroactive child support order imposes undue hardship on the paying parent.
- [50] No one factor is definitive. The question of whether and how much should be paid by way of retroactive child support must be assessed holistically and by reference to the unique facts revealed in individual cases: D.B.S. at para. 99.
- [51] In terms of how far the retroactive award should reach back, the Court in D.B.S. stated that the commencement date for an award of retroactive child support should not be restricted to the date upon which an application to a court or formal notice is given; rather, it should generally be the date of effective notice by the recipient parent to the payor parent: paras. 120-125. Effective notice refers to any indication by the recipient parent that child support should be paid, or if it already is, that the current amount of child support needs to be re-negotiated: D.B.S. at para. 121.
- [52] While the presumption is that the date of effective notice should be the date from which the retroactive order should start, it will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice was given to the payor parent: D.B.S. at paras. 122-123. If effective notice is not provided, child support should be retroactive to the date of formal notice: Colucci at para. 113. In limited circumstances, such as where the payor engages in blameworthy conduct, the date when support should have begun to be paid will be a more appropriate date from which the retroactive order should start: D.B.S. at para. 124.
- [53] No retroactive support can be sought for a child beneficiary who is no longer a "child of the marriage" at the time of application, if the application is for an original child support order: D.B.S. at paras. 86-90; Michel v. Graydon, 2020 SCC 24 at para. 12. However, courts may retroactively vary child support for the beneficiary who is no longer a "child of the marriage" where an original child support order exists: Michel. Of course, the retroactive variation order must relate to when they were still a child of the marriage: Colucci; Michel.
- [54] The principles of retroactive child support apply equally to retroactive s. 7 expenses: Sigalet v. Hunt, 2019 BCSC 1428 at para. 75.

Analysis

- [55] In January 2021, C.L. moved to Toronto to work. She is over the age of 19 and now works at Deloitte in Toronto as a software developer. She is therefore no longer eligible for child support under the DA or FLA. Mr. Q. does not seek retroactive child support for C.L. I agree that no child support can be claimed for C.L. as she is no longer a child of the marriage and there was no previous support order in place: Michel at para. 12.
- [56] S.L. is over the age of 19 but attends university in Ontario. Therefore, I find that she continues to be a child for the purposes of child support while she attends university: FLA, s. 146, DA, s. 2(1). However, Mr. Q. is not asking for prospective child support according to the

tables in the FCSG. Instead, he is asking that her expenses, to the extent they are not covered by the family RESP, be considered s. 7 expenses. This is reasonable and Ms. D. did not raise an objection to proceeding this way. I will therefore address S.L.'s expenses under s. 7 of the Guidelines.

- [57] As mentioned above, B.L. is under the age of 19 and currently resides with Mr. Q. She is therefore entitled to child support: FLA, s. 146, DA, s. 2(1). Ms. D. should pay child support for B.L. going forward and based on the factors from D.B.S. above, she must pay retroactive child support to Mr. Q. for when B.L. and S.L. were living with Mr. Q. post-separation.
- [58] In terms of the start date for the retroactive order, Mr. Q.'s notice of family claim was filed on May 25, 2022. I am not aware of effective notice being given to Ms. D. prior to this date. As a result, retroactive child support for S.L. and B.L. will start at the date of formal notice on May 25, 2022. This date will not cause any hardship to the children as Mr. Q. was more than capable of supporting them: D.B.S. at paras. 105–116; Michel; Colucci.
- [59] The main dispute regarding the calculation of retroactive and prospective child support is whether I should impute income to Ms. D. as urged by Mr. Q. I turn to this issue now.

Imputing Income for Child Support

Legal Principles

- [60] Section 16 of the FCSG provides the framework for determining a parent's annual income for the purposes of calculating child support. A payor's annual income is generally determined using Line 15000 of the payor's T1 General form issued by the CRA, subject to the adjustments available under Schedule III.
- [61] Income may be imputed under ss. 16 to 20 of the FCSG. Section 19 provides this Court with the discretion to determine that a payor's income for FCSG purposes is more than the reported total income on a tax return. Section 19(1)(a), in particular, allows this Court to impute income where a party is unemployed or underemployed. Under s. 19(1)(a), the court considers a party's capacity to earn income and whether the party is earning to their capacity: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37; *Koch v. Koch*, 2012 BCCA 378.
- [62] The party seeking to impute income bears the onus of demonstrating, on a balance of probabilities and a sufficient evidentiary basis, that income should be imputed: *D.M.B. v. D.W.A.L.*, 2018 BCSC 1254 at para. 140.
- [63] The principles of imputation of income were canvassed by the Court of Appeal in *Marquez*:
- [36] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.

- [37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46.
- [64] The above principles were confirmed in *Willms v. Willms*, 2020 BCCA 51 at para. 41. In British Columbia it is not necessary for a party alleging unemployment or under-employment to show that their former spouse is intentionally avoiding support obligations: *Barker v. Barker*, 2005 BCCA 177 at paras. 18-19. Imputing of income only requires a finding that they are not earning to capacity: *M.C.V. v. F.V.*, 2018 BCSC 96 at para. 153.
- [65] Where a party has a fluctuating income, s. 17(1) of the FCSG applies. That subsection provides:
- 17(1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years
- [66] While s. 17 does not dictate a particular way of calculating a fluctuating income, it must be "fair and reasonable". Beyond that consideration, the trial judge has the discretion to determine the method of calculation: *Harras v. Lhotka*, 2016 BCCA 246 at para. 24, citing *Ewing v. Ewing*, 2009 ABCA 227 at paras. 37-38.

Parties' Positions

- [67] Mr. Q. is currently on medical leave from his employment. He testified that he is not suggesting this should affect his income for support purposes and he does not anticipate that his medical issues will affect his long-term income.
- [68] Mr. Q. takes the position that I should impute income to Ms. D. because she is underemployed. In his written submissions, he states that the evidence shows that Ms. D. "is extremely underemployed and her earning capacity should be at least \$145,000 in 2021 and \$170,000 in 2023 onward." He points to the fact that Ms. D. made a significant amount of money in 2020 and is capable of making more based on average CPA salaries in B.C.
- [69] Ms. D. explained that her income is lower than Mr. Q.'s because she has language barriers but also because her CPA designation is limited due to a letter attached to her designation explaining that she was trained as a Certified General Accountant (CGA). In the past, there were two separate accounting designations: CGA and Chartered Accountant (CA). CAs were generally paid more than CGAs. The two have since been amalgamated into the CPA

designation. However, Ms. D. indicated that those with prior Chartered Accountant (CA) designations are often preferred candidates and tend to have higher salaries than those who were trained as CGAs.

- [70] Mr. Q. included a chart of salaries of all CPA designations. The chart does not distinguish between those with different backgrounds and experience. Ms. D. argues that she has done her best to find lucrative employment, but that she should not be compared to a fluent English language speaker, nor to a younger CPA, much less one who was trained as a CA.

Analysis

- [71] For reasons set out below, I am not imputing income to Ms. D. Her actual income will be used for the purpose of calculating child support, spousal support, and s. 7 expenses.
- [72] Ms. D. entered the workforce later in life, after the parties' children entered school and after she finished her English language and accounting studies. Ms. D. has worked steadily since she finished her studies and there was no persuasive evidence before me that she is underemployed.
- [73] The applicable test for imputing income is one of reasonableness, considering the spouse's capacity to earn an income: *Hsieh v. Lui*, 2017 BCCA 51. I must consider whether Ms. D.'s earnings are reasonable, having regard to her capacity to earn income in light of her age, education, health, work history, and work availability: *Hsieh* at paras. 48-49.
- [74] At this juncture I outline the parties' career trajectories as this sheds some light on Ms. D.'s circumstances.
- [75] Mr. Q. testified that he has a BA from China in engineering. He worked in various businesses in China, including as a software engineer and a data engineer.
- [76] Ms. D. studied finance and economic statistics and held two professional certificates in China. Ms. D. testified that early in the parties' relationship she worked for a national bank in China and had a lucrative compensation package. She also testified that she lost out on three properties awarded to bank employees as part of their compensation packages because she left for Canada to be with Mr. Q. and, consequently, she did not stay in her job long enough for those benefits to vest. She submits that she also lost out on options which were worth approximately \$600,000 CAD at the time of trial because, again, she left before the options vested. Ms. D. testified that in China she earned more than Mr. Q., partly because Mr. Q. had some business failures in those early years.
- [77] Both parties claimed they were supporting each other when living in China. Ms. D. testified that from 1994 to 1997 they relied upon her income, as well as assistance from her parents. Mr. Q. had a different narrative. Given how long ago this was, what the parties earned in China does not factor into my assessment of the parties' current incomes.

- [78] The parties immigrated to Canada in 2000 after the birth of C.L. in 1998. Prior to leaving for Canada, Mr. Q. studied for the Graduate Record Examination (GRE) and Test of English as a Foreign Language (TOEFL). Mr. Q. moved to Canada to pursue his education at the University of British Columbia. He ultimately completed a two-year Master's program in computer science. Ms. D. stayed behind with C.L. and says she received no support from Mr. Q. during this time. He disagrees. What is clear is that Ms. D. was the primary caretaker for C.L. during those early years. Ms. D. came to Canada from China approximately a year after Mr. Q.
- [79] After Mr. Q. completed his Master's degree, he worked at a technology company. He started working for his current employer in September 2004 as a software developer.
- [80] When Ms. D. arrived in Canada in 2001, she had no English language ability and no work prospects. Ms. D. took English as a Second Language (ESL) courses at Vancouver Community College (VCC) after she arrived in Canada. At the time, the government subsidized daycare expenses while she studied. She testified that she did most of the household chores and childcare during this time. In late 2002, Ms. D. stopped her studies to work full-time in a Chinese restaurant, cleaning and dishwashing, due to the family's financial difficulties. Ms. D. did not return to VCC until the end of 2003 or early 2004.
- [81] Mr. Q. testified that Ms. D. was always studying and therefore could not take care of the children and do household chores. As he put it in his submissions, he and the children suffered because "Ms. [D.] took an inordinate amount of time completing her studies instead of working" and was focussed on "her career build[ing] and enrichment."
- [82] The evidence establishes that Ms. D. studied ESL at VCC intermittently from April 2002 to June 2008. During this period, she gave birth to two more children, S.L. (2005) and B.L. (2007) and did some work outside the household. Ms. D. took time off to care for the babies. Ms. D. testified that she always put her family first and her education at VCC was put on hold at various times. Ms. D. testified that she continued to do most of the cooking, cleaning and other household tasks during this time and the parties relied primarily on Mr. Q.'s income. In or around 2006, Ms. D. worked part-time in a grocery store, restaurant, and as a building manager. Ms. D. said she was happier in those earlier years as VCC was not too challenging and it was very social.
- [83] Ms. D. returned to school in 2008. Ms. D. testified that it was not until 2008, when she began studying in the CGA program at the British Columbia Institute of Technology (BCIT), that she did less housework. She agreed that Mr. Q. made breakfast for the children and drove the children to school and to various extra-curricular activities. In about 2007, Mr. Q.'s mother lived with them for a year to help with the children. When his mother returned to China in 2008 the two youngest children went with her. They lived with Mr. Q.'s mother in China for approximately two years before returning to Canada in late 2010 or 2011.

- [84] After finishing her coursework in 2011, Ms. D. worked steadily and sometimes worked at more than one job in a year. She was having a difficult time finding suitable employment that matched her accounting skills, partially due to her language barriers.
- [85] Ms. D. obtained her CPA designation in May 2016. The delay in obtaining the designation was related to working at a new company. The company had to ensure she met the requirements before providing the necessary documentation. Ultimately Ms. D. received her CPA (because the various accounting designations had been combined), but she had studied in a CGA program at BCIT. The CGA designation was formerly granted to accountants who successfully worked in an accounting firm for over two years. She did not need to complete any extra work, training or exams for the CPA designation, but she needed her employer to confirm she met the requirements. This took some time.
- [86] At trial, Mr. Q. implied that Ms. D. continued to study until 2018. The evidence does not support this. Ms. D. was working while trying to obtain her CPA designation and, later, her license. Ms. D. received her CPA license in 2018. In my view, Mr. Q.'s testimony exaggerated Ms. D.'s time studying and her overall lack of contribution to the household.
- [87] After obtaining her license, Ms. D. had a number of different employers as she struggled to find a position that was suitable for her and which would provide her with accounting firm experience. In 2018, Ms. D. ultimately found employment in an accounting firm, Bing C Wong Associates, but the pay was low. In 2019, after quitting her job at Bing C Wong Associates, Ms. D. went to China for a two-month summer vacation with the children. Mr. Q. was on a business trip. Ms. D.'s total earning was low in 2019 because she was not working from June to August 2019.
- [88] In August 2019, Ms. D. looked for a senior accountant position in an organization and secured a part-time position at Glover Medical Clinic in September 2019. She then looked for another part-time position at a firm or an organization but was only able to find a full-time position at an accounting firm, which she began in 2020. Ms. D. was therefore working part-time for an organization and full-time at an accounting firm at this time.
- [89] Having two jobs proved too much to handle due to scheduling conflicts and the heavy workload. Ms. D. tried, unsuccessfully, to change the full-time position to a part-time position. Ms. D. continued to work at the two jobs until Glover Medical Clinic offered her a full-time position in March 2021. She has worked there ever since.
- [90] According to her tax documents, Ms. D.'s Line 15000 income between 2021 and 2024 was:
- 2021: \$90,292 (base salary plus a professional fee of \$12,868.47);
 - 2022: \$80,158;
 - 2023: \$85,182; and
 - 2024: \$153,886.

- [91] Mr. Q. testified that the median salary of an accountant is around \$130,000. Mr. Q. provided the 2023 Canadian CPA Profession Compensation Study Report: British Columbia as evidence of this. Even assuming that such "evidence" is admissible, it does not account for the fact that Ms. D. never qualified as a CA which may have impacted her earning capacity. Mr. Q. also did not account for Ms. D.'s age, work history, and language skills. In addition to having two more daughters, Ms. D. worked part-time in restaurants, supermarkets, and as a building manager. Ms. D. returned to school to further her education at BCIT, starting in September 2008 and finishing in June 2011, after which she received her CPA designation in 2016 and her licence in 2018.
- [92] Mr. Q. also argues it is reasonable to use Ms. D.'s 2020 income to impute past income to Ms. D., which would result in a higher amount than what she currently earns. Ms. D.'s 2020 Line 15000 income was \$266,322. However, Mr. Q. ignores the specific circumstances of 2020 where Ms. D. was working two jobs and was working more than fulltime. Ms. D. testified that her mental and physical health suffered when she was working two jobs in 2020. This caused strain on her relationship with the children which, according to Mr. Q.'s own evidence, affected their marriage. It was likely no coincidence that the parties separated in August 2020. Ms. D.'s 2020 Line 15000 income also included a substantial taxable capital gain (\$155,853.63); Ms. D. has not claimed substantial capital gains on her tax returns since. This is non-recurring income.
- [93] In terms of the professional fee of \$12,868.47 reported in Ms. D.'s 2021 tax return, she testified that she had a client who needed to finish the previous year's financial statements and tax returns for a business closure. It was a one-time request only. Since that time, Ms. D. has only worked in one full-time position for one employer.
- [94] I accept that Ms. D.'s employment prospects were limited by her delayed entry into the workforce and her lack of English language skills. This was a result of moving to Canada to be with Mr. Q. It was also a result of the parties deciding to expand their family rather than have Ms. D. focus on learning English and attending school to obtain her CPA designation.
- [95] I find Mr. Q. overstated Ms. D.'s past capacity to work as an accountant. She cannot sustain working two jobs over the long-term and she is not required to work for a large accounting firm. That said, given her 2024 income of \$153,866, I agree with Mr. Q. that going forward Ms. D.'s income should be set above \$145,000. Consequently, I use Ms. D.'s reported 2024 Line 15000 income above to determine her ongoing obligations for child support.
- [96] Child support, s. 7 expenses and spousal support for 2025 will be based on Ms. D.'s 2024 income of \$153,866. From January 1, 2025 - August 30, 2025, Ms. D. will pay child support to Mr. Q. of \$1,386 per month. The parties will exchange tax returns beginning on June 1, 2026 and in each subsequent year while s. 7 expenses are still payable for B.L and S.L.

[97] In terms of retroactive child support, I calculate child support between June 1, 2022 (following the notice of civil claim being filed) and December 31, 2024 for B.L. and June 1, 2022 to September 1, 2023 for S.L. (when she left home for university). To the extent that S.L. and B.L. remain a child of the marriage while attending university, this will be addressed under s. 7 expenses. This results in the following Guidelines amounts:

- a) June 2022 to December 2022 (2 children, income of \$80,158): $\$1,241 \times 7 \text{ months} = \$8,687$
- b) January 2023 to August 2023 (2 children, income of \$85,182): $\$1,316 \times 8 \text{ months} = \$10,528$
- c) September 2023 to December 2023 (1 child, income of \$85,182): $\$814 \times 4 \text{ months} = \$3,256$
- d) 2024 (1 child, income of \$153,866): $\$1,386 \times 12 \text{ months} = \$16,632$
- e) 2025 (1 child, income of \$153,866): $\$1,386 \times 8 \text{ months} = \$11,088$

[98] This results in a total of \$50,191 in retroactive child support that Ms. D. must pay to Mr. Q.

Section 7 Expenses

Legal Principles

[99] Orders for expenses such as extra-curricular activities are made under s. 7 of the FCSG. The FCSG outlines what constitutes a special or extraordinary expense.

[100] In *L.A.M. v. S.C.M.*, 2020 BCSC 67 at para. 29, Justice Weatherill laid out a two-pronged approach to assessing whether an expense ought to be considered a s. 7 expense:

- a) First, the court should determine whether the expense claimed under section 7(1)(f) of the Guidelines is an extraordinary expense or extracurricular activity by considering the following factors:
 - i. the combined income of the parties;
 - ii. the nature and amount of the individual expense;
 - iii. the nature and number of the activities;
 - iv. any special needs or talents of the children;
 - v. the overall cost of the activities; and
 - vi. any other similar factor that the court considers relevant.
- b) Once the court determines that an expense falls within section 7(1)(f) of the Guidelines, a court must then determine whether the expenses are necessary in relation to the child's best interests and reasonable in the circumstances having regard to the following factors:
 - i. the means of the spouses and those of the child; and
 - ii. the family spending pattern prior to separation.

[101] Overall, for an expense to be considered a s. 7 expense it must meet the threshold of being necessary, reasonable, and affordable. The court must consider if the recipient of child support can reasonably cover the expense out of their income, including from the child support they receive. If so, the expense will usually not be considered an extraordinary expense: L.A.M. at para. 30.

[102] Section 7 expenses are to be shared by the parties in proportion to their respective incomes after deducting from the expense the contribution, if any, from the child: FLA, s. 7(2).

Parties' Positions

[103] Mr. Q. lists the following as s. 7 expenses:

- a. tutoring and extra academic classes in English, Math, Chinese and French;
- b. art and music classes (e.g., sketching and piano);
- c. sports activity fees (e.g., boxing) for B.L.;
- d. hygienic, beauty and personal care expenses and also extra expenses for the children's clothes;
- e. after-school care and pick-up;
- f. meal delivery expenses;
- g. pet supplies fees;
- h. vacation travel expenses;
- i. the children's university-related travel expenses; and
- j. study and school supplies, computer, iPad and cell phones.

[104] Mr. Q. also argues that C.L. deserves support and significant financial help as a form of compensation for her trauma and emotional distress from the long-time abuse from Ms. D. as well as from C.L.'s sacrifice in the family since her childhood.

[105] Mr. Q. speculates that S.L. will write the MCAT and attend medical school. He argues that B.L. will study engineering at a university in the US and will continue with graduate studies. Mr. Q. hopes B.L. can have the opportunity to seek a degree at a top university and he is determined to help her achieve her goals.

[106] Mr. Q. submits the family has sufficient resources and assets to cover the children's expenses. They are entitled to share the family's financial success. He contends that all the special expenses of the children over the past four years that he has covered should be considered s. 7 expenses and Ms. D. should reimburse Mr. Q. for her share of the expenses.

- [107] Ms. D. agrees that she should pay her share of some of these expenses but questions many of Mr. Q.'s claims as not being legitimate s. 7 expenses. She argues that by the time of separation the children were older, with S.L. graduating high school in 2022 and leaving to attend university shortly thereafter. Ms. D. also argues that these expenses will likely not be present next year because B.L. will likely be attending university.
- [108] Ms. D. contends the amount of s. 7 expenses claimed are unreasonable and demonstrate a stark difference in post-separation lifestyle between the parties.

Analysis

- [109] The first issue to be decided is what expenses constitute a special expense. Under s. 7 of the FCSG, special and extraordinary expenses may include extracurricular activities and there is no dispute between the parties that these expenses should be shared. Pursuant to s. 7(1) (e) of the FCSG, university expenses are a special expense. I find any university fees and expenses (including tuition, housing and travel) not covered by the family RESP are special expenses. However, Mr. Q. claims many other expenses under s. 7.
- [110] Mr. Q. says the children's special expenses from August 2020 to June 2024 were as follows:
- a. Aug 2020 - Dec 2020: \$9,828
 - b. 2021: \$58,901
 - c. 2022: \$74,172
 - d. 2023: \$104,107[2]
 - e. 2024: \$101,382
- [111] Mr. Q. forecasts the following prospective special expenses for the children:
- 2025 - 2027: \$103,860
- 2025 - 2027: \$168,860 (assuming B.L. will be attending a US University).
- [112] Ms. D. questions the legitimacy of vacations, clothing, a family skiing pass, the purchase of a piano, nanny expenses, and so forth. Further, Ms. D. states that S.L.'s tuition and school fees should have been paid through the RESP account and B.L. need not go to a US University.
- [113] There is no dispute that Mr. Q. paid all the children's expenses including S.L.'s university tuition from September 2023. Mr. Q. explained that the tuition was not paid out of the family RESP because Ms. D. refused to sign the withdrawal forms. His request that she approve a RESP withdrawal was in evidence so I accept his explanation. This is an example of Ms. D. questioning every transaction by Mr. Q. whether there was any merit to it or not.

- [114] There was evidence before me of one withdrawal of \$20,000 from the RESP in August 2021. The bank statements indicate that this \$20,000 was deposited into the parties' joint CIBC account #...3139. Mr. Q.'s evidence was that this was for S.L.'s tuition. Ms. D., as a joint owner of the RESP, must have signed off on this withdrawal. This amount should therefore be deducted from Mr. Q.'s claimed s. 7 tuition expenses.
- [115] I accept that many of the expenses listed by Mr. Q. are legitimate s. 7 expenses and were incurred for the same or similar activities prior to separation. However, I agree with Ms. D. that a number of the expenses claimed are not legitimate s. 7 expenses.
- [116] I do not accept expenses for nannies, electronics, clothing, travel (including Uber and Lyft pickups), ski passes, food, hygienic, beauty and personal care products, and pet supplies, as these are either voluntary expenses or are considered expenses that are covered through child support.
- [117] I accept that the children's extracurricular activities and tutoring are reasonable s. 7 expenses. There is evidence that they attended these programs during the marriage. However, there were no receipts provided for golfing and badminton, and I therefore do not accept those amounts. For clarity, the only s. 7 expenses I accept are the following:
- university application fees;
 - tuition, less the \$20,000 withdrawn from the RESP;
 - textbooks;
 - living expenses while at university;
 - travel to and from university;
 - counselling;
 - extracurricular activities (e.g., art, boxing, piano classes);
 - glasses and contacts not covered by insurance; and
 - tutoring
- (the "allowed s. 7 expenses").
- [118] Mr. Q. must provide receipts for these expenses. Going forward, assuming there are receipts, golf and badminton may be added as a legitimate s. 7 expense. Lastly, like child support, the retroactive s. 7 expenses may only be claimed back to June 1, 2022.
- [119] The total amount of s. 7 expenses needs to be prorated between the parties to determine the full amount of the retroactive claim against Ms. D. The parties must calculate their respective proportion based on their income for each year as determined in these Reasons and adjusting for the spousal support awarded in each year.

- [120] Given the amount Mr. Q. has spent on s. 7 expenses, I am capping Ms. D.'s share of allowed s. 7 expenses at \$15,000 per year.
- [121] Going forward, Mr. Q. will conduct a quarterly accounting of expenses, which should mirror the ones I have accepted, to ensure that Ms. D. has notice of her share of the s. 7 expenses to which she must contribute. Ms. D. is to pay her share to Mr. Q. upon receipt of the quarterly accounting and proof of payment.

Division of Property

Legal Principles: Division of Family Property

- [122] Section 84(1)(a) of the FLA provides that family property includes all real and personal property that is owned by either spouse on the date of separation, unless the property is excluded under s. 85. Section 85(1) of the FLA sets out which property is excluded from family property and includes, notably, property brought into the relationship by one party. Although the original value of excluded property is not family property, any increase in its value from the time of the marriage to the time of the trial is family property: FLA, s. 84(2) (g).
- [123] The starting point under s. 81 of the FLA is that each spouse is entitled to a presumptive one-half undivided interest in each family property as a tenant-in-common upon separation. Under s. 81(a) of the FLA, a spouse is not required to use or contribute to family property to be presumptively entitled to an equal division. The parties' relative contributions to family assets and debts during the marriage are largely irrelevant to the division of family property: *Venables v. Venables*, 2018 BCSC 1736 at paras. 85-100.
- [124] Section 95 of the FLA limits the circumstances when a court may depart from an equal division of family property. The previous Family Relations Act, R.S.B.C. 1996, c. 128 permitted an unequal division of family property if an equal division would result in unfairness. The FLA raises that bar; this Court is only to reapportion family property if an equal division would be "significantly unfair" meaning "unjust, unreasonable, or unfair in an important or substantial sense": *Singh v. Singh*, 2020 BCCA 21. Failing that, the general rule of equal division of family property prevails: *Singh* at para. 134. As explained by the Court of Appeal in *V.J.F. v. S.K.W.*, 2016 BCCA 186:
- [10] The consequence of the categorization of property as either family property or excluded property is that on separation, each spouse is generally entitled under s. 81 to an undivided half interest in family property as a tenant in common. The court may divide it unequally only if equal division would be "significantly unfair" having regard to all the factors listed in ss. 95(2) and (3). Obviously, the phrase "significantly unfair" is intended to set a higher bar for the exercise of judicial discretion than the 'unfairness' test in the FRA .

- [125] A finding of significant unfairness under s. 95 requires more than unequal financial contributions in a relationship; a finding of significant unfairness must be compelling or meaningful having regard to the factors set out in s. 95(2): *Rudyak v. Bekturova*, 2018 BCCA 414, at para. 35; *Kumagai v. Campbell Estate*, 2018 BCCA 24.
- [126] Before dividing family property, I must undertake a "notional equal division of the family property" and consider the financial situation the parties would be placed in upon an equal division of family property. I then must consider if an equal division would be significantly unfair: *Healey v. Healey*, 2024 BCCA 68 at para. 69. The general practice of this Court has been to determine property division before making a final order for spousal support. Where an unequal division of property under s. 95(3) of the FLA is at issue, spousal support may be considered as part of the property division analysis: *Healey* at paras. 63-65.
- [127] Under s. 87(b)(ii) of the FLA, family property is valued at the date of trial absent compelling evidence to depart from that date: *Rudyak* at para. 35. Setting the valuation date at another time requires a finding of significant unfairness: *Eisele v. Eisele*, 2015 BCSC 2297; *Blair v. Johnson*, 2015 BCSC 761. The value of the family property is generally the fair market value at the date of the trial, subject to agreement or as otherwise ordered: FLA, s. 87; *D.Z. v. M.Z.*, 2022 BCSC 706 at para. 152.
- [128] Post-separation contributions to family property by one spouse are "generally not sufficient to ground an order for unequal property division": *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 61. Any post-separation increase in the value of family property as a result of market trends is to be considered family property: FLA, s. 95(2)(f). The determinative factor for non-market increases is whether equal division would be "significantly unfair": *Kumagai* at para 81.
- [129] Finally, once the court has determined the division of family property under Part 5 of the FLA, it must go on to consider the mechanism by which the division of property is to be achieved: FLA, s. 97.

Property to be divided

[130] The parties have various categories of property that are under dispute. This includes:

- a) Real property;
- b) RSUs and Options, (collectively, the "Shares");
- c) Pensions;
- d) RESPs; and
- e) Bank accounts.

[131] I will assess the division of each of these categories below. Additionally, Mr. Q. makes an in-trust claim for the children, which I also address below.

Real Property

[132] The parties own the following properties:

- a) Nigel Avenue, Vancouver ("Nigel Property"), value: \$3,325,000 with a mortgage of approximately \$1,250,000;
- b) East 61st Avenue, Vancouver ("E61 Property"), value \$1,760,000 with a mortgage of approximately \$540,000;
- c) 85A Avenue, Surrey ("Surrey Property"), value \$1,465,000 with a mortgage of approximately \$264,000; and
- a) 3-101 YLXC apartment, Shenzhen, China ("YLXC Apartment"), value 5,329,800 CNY (approximately \$1,017,459 CAD) with no mortgage.

[133] The parties agree that the real properties are to be divided equally, with the exception of the YLXC Apartment. Mr. Q. has an excluded property claim of \$55,000 which Ms. D. did not challenge. The YLXC Apartment was purchased by Mr. Q. before the relationship.

[134] All real property (except the YLXC Apartment from which the first \$55,000 must be given to Mr. Q.) is to be divided equally, based on the most current market values the parties have provided. To effect this division, any orders restricting the disposal of, transfer, conversion or exchange into another form of any real property are set aside in favour of the orders below.

[135] The parties had appraisals done in 2024. The valuation closest to the trial date is to be used, absent more up to date information: Namdarpour at paras. 56-69. Here the parties agree upon the values as indicated in the appraisals.

[136] Each party would like to keep one or more of the real properties. Ms. D. seeks an order that the Nigel Property be awarded to her. Ms. D. has lived in this residence since separation. She works in Vancouver and says she has many friends and a strong sense of community in the area. Mr. Q. does not oppose Ms. D. retaining the Nigel Property. Ms. D. will retain the Nigel property and pay Mr. Q. one-half the difference between the appraised value noted above and the outstanding mortgage balance (the "Equity") as of the date these Reasons are released.

[137] Mr. Q. proposes to retain the Surrey and the E61 Properties and Ms. D. is not opposed. Consequently, Mr. Q. will retain the Surrey Property and the E16 Property and pay Ms. D. one-half the Equity of each of these properties.

[138] Mr. Q. may retain the YLXC Apartment and pay Ms. D. 50 percent of the equity in the family property which, after deducting the \$55,000, is \$481,230. Given the animosity between the parties, if Mr. Q. chooses not to retain this property, it is to be sold solely by Mr. Q. Once sold, Mr. Q. is to retain his original purchase price of \$55,000. After accounting for the usual costs of sale and disbursements, the remaining proceeds are to be divided equally between

the parties. Mr. Q. is to provide Ms. D. with a full accounting and all the documents relating to this sale.

- [139] The payments to be made by the parties will be offset so that there will be a single compensation payment from Mr. Q. to Ms. D.
- [140] As proposed by Ms. D., the parties shall each retain the rental income they received from the homes in which they live (i.e., Mr. Q. from the E61 Property and Ms. D. from the Nigel Property). The rental income from the Surrey Property and the YLXC Apartment, if any, shall be shared equally up to the date of these Reasons.
- [141] The parties will use their best efforts to reach agreement on any disputes related to these transactions before applying to this Court for directions.

RSUs and Options

Background

- [142] Mr. Q.'s employer, Fortinet Technologies Inc., provides him with significant RSUs and Options as part of his compensation package.

RSU's

- [143] There were multiple RSU agreements. In summary, Mr. Q. was granted a set number of RSUs each year from 2017-2023. The RSUs awarded would vest periodically over the following four years from the date of the grant (historically in February, May, August, and November). An equal amount of RSU shares was deposited into Mr. Q.'s Charles Schwab account in each quarter. This employer scheme provides incentive for employees to stay with the employer because they have no entitlement to the RSU shares until they vest. As Mr. Q. testified, it is referred to as a "potential" quantity of shares because if the employee resigns or is fired, they lose all their unvested shares.

Stock options

- [144] According to Mr. Q.'s stock option award agreement, he was granted a set number of Options in 2016. They would similarly vest periodically three times a year for the four years from the date of the grant. There was no other stock option agreement in evidence.
- [145] Upon vesting, the RSUs and Options (collectively the "Shares") would be transferred into a brokerage account. Prior to March 2022, Fortinet used Charles Schwab as the brokerage to facilitate the vesting of the Shares; each employee was required to have a Charles Schwab account into which their Shares were deposited. Once the Shares vested, the employee then had full control and could sell or transfer the RSUs and exercise the Options. At the end of February 2022, Fortinet migrated the employee accounts from Charles Schwab to E-trade, a division of Morgan Stanley. The brokerages deducted the required taxes based on Mr. Q.'s marginal tax rate and the taxable value of the Shares are included as T4 income in the year

they vest.[3]

- [146] All the Shares listed in Mr. Q.'s accounts post-vesting are after tax net shares and therefore no longer have personal income taxes attributed to them. Additional capital gains tax liabilities will only arise when the Shares are sold, based on any increased value since vesting. Both Schwab and E-trade are US companies and all the Shares are valued in USD. There is a tax treaty between Canada and the US which provides that after the Shares vest, Canadian employees must transfer the Shares to a Canadian bank and convert their value to Canadian dollars.
- [147] Around June 23, 2022, the Fortinet stock split, with each share splitting 1:5. As a result, the total number of shares of Fortinet held by Mr. Q. increased fivefold, but the price per share decreased proportionately. The total value of the shares remained the same following the split but there were now five times as many shares.
- [148] Throughout 2021-2024, Mr. Q. transferred some of the vested Shares into separate investment accounts. The equity from the Shares in these accounts was used to purchase other securities as investments.
- [149] The last vesting of the pre-separation RSUs was on February 21, 2024.

Legal principles

- [150] The authorities indicate that grants such as the RSUs and Options prior to the date of separation, but which vest post-separation, are treated as family property. In *H.C.F. v. D.T.F.*, 2017 BCSC 1226, Justice Voith, as he then was, outlined why RSUs and Options are treated as family property even when some "vest" post-separation:
- [56] It is a relevant feature of these RSUs that they are granted in December of each year on account of the bonus earned by Mr. F. for the previous year ending in October. This, counsel for Mr. F. argues, is important because Mr. F. received his 2014 RSUs after the parties separated in November of that year.
- .
- [61] In *Sarro v. Sarro*, 2011 BCSC 1010, Smith J. dealt with a case where the husband's compensation was made up of various components including stock options and RSUs. With respect to these latter forms of compensation Smith J. said:
- [11] There can be no doubt that all stock options and RSUs granted before May 21, 2010, the date of the s. 57 declaration, are family assets. Some of them have not yet vested and the stock options, when vested, remain open to be exercised for 10 years. An equal division of those assets will give each party an equal opportunity to benefit from whatever income they may generate in the future. The respondent confirmed that his employer will permit the division of these assets in specie.

- [62] The foregoing conclusions are apposite. The RSUs that were granted in each of 2011, 2012 and 2013 as a component of Mr. F.'s compensation, and that were paid out three years later, were all granted on account of work that Mr. F. did in the calendar year ending in October of each such year. This is also true of the RSUs that Mr. F. received in 2014. The fact that the RSUs for 2014 have not yet vested and that there remains some uncertainty about what precise amount Mr. F. will receive, or at the most extreme whether he receives anything, does not change the central fact that the 2014 RSUs were granted on account of Mr. F.'s employment prior to when the parties separated.
- [63] One-half of the net value of the RSUs for each of these years is to be paid to Mrs. F. The division and payment of the 2014 RSUs can await Mr. F.'s receipt of his payment for that year. The parties agree that any RSUs Mr. F. received in December 2015 or thereafter would be Mr. F.'s property. The proceeds from those RSUs, however, once received will, as I will develop, then be a portion of Mr. F.'s income for spousal support purposes.

Parties' Positions

- [151] The parties disagree on whether there should be an equal division of the Shares, when they should be valued, and the mechanism for transferring to Ms. D. her interest in the Shares. Given that this aspect of the dispute is the most contentious, I set out the parties' positions in some detail.
- [152] Mr. Q. argues for an unequal division of the Shares. He alleges that Ms. D. engaged in family violence and that he was the primary caregiver of the children. He also argues that he took on most of the household tasks, such as cooking and grocery shopping, during the parties' relationship. He contends this justifies an unequal division of the Shares.
- [153] Mr. Q. takes the position that it would be significantly unfair to divide the Shares equally given how hard he has worked to increase their value. He also argues the Shares were contingent upon his keeping his employment to have any value. As he put it in his submissions, they are "just imagined" or only a "potential" asset.
- [154] Mr. Q. contends that the Shares which were granted prior to separation but vested post-separation are not family property. He argues in the alternative that 50 percent of the Shares that vested after the date of separation are excluded property, i.e., only 50 percent of those Shares are family property. Mr. Q. submits that, in any event, Ms. D. is only entitled to the cash value as of the date of separation of the Shares, after estimated capital gains tax on a notional disposition is subtracted. In the further alternative, Mr. Q. says the Shares should be treated as his income.
- [155] Ms. D. takes the position that all Shares that were granted before separation but which vested after separation are family property and seeks an equal division of the Shares.

- [156] Ms. D. argues that Mr. Q.'s assertions of "lopsided contributions to the parties' family assets" are irrelevant to the division of family property. She says the Shares are analogous to any other form of employment benefit obtained during the marriage, such as a pension, which are subject to equal division under the FLA.
- [157] Ms. D. submits that Mr. Q.'s proposal to give her the after-tax cash value of the Shares is highly prejudicial and restricts her use of this family property, including by tax planning and investment strategy. She notes that it will be unfair if she has to pay the estimated capital gains payable by Mr. Q. if he now disposed of the Shares as he is in a higher tax bracket than she. Instead, Ms. D. submits that under s. 73(1) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), a Canadian taxpayer is not forced to sell Shares or property upon separation or divorce. Rather, the investments, Shares or other property can be rolled over to the other spouse's account without immediate tax implications.
- [158] Ms. D. submits that any departure from the presumption that Shares are valued on the date of trial can only be done under s. 95 of the FLA and would require a finding of significant unfairness. She says there must be compelling evidence to make such a departure. Lastly, Ms. D. emphasizes that Mr. Q. has cashed out Shares and placed them into his personal bank accounts. She says he is hiding money and making the tracing of the money more complicated than necessary. Mr. Q. admits he transferred Shares into his CIBC Investors' Edge Account but denies he is hiding any money.

Analysis: Division

- [159] For a number of reasons, I conclude that an equal division of Shares is appropriate.
- [160] I reject Mr. Q.'s position that the Shares that vested after separation are only 50 percent family assets. There is no reason to depart from the presumption of equal entitlement in both the FLA and in the authorities.
- [161] I reject Mr. Q.'s argument that any Shares that vested post-separation are not family property. He provided no authority for his position, and it is inconsistent with the FLA and the authorities. The Shares were granted to Mr. Q. for work he undertook during the course of the marriage. All RSUs and Options granted prior to August 20, 2020, when the parties separated, are family property. It does not matter if they vested post-separation: H.C.F. at para. 62. The parties agree the last Shares that were granted prior to separation vested on February 21, 2024. Any RSUs or Options that vested after February 21, 2024 are Mr. Q.'s property.
- [162] The factors to be considered in determining whether it would be "significantly unfair" to equally divide family property are listed in s. 95(2) of the FLA. Mr. Q.'s arguments focus on two of these factors, which I address below.

Section 95(2)(c)

- [163] Mr. Q. argues that his career and home life were negatively affected - and significantly so - by Ms. D. attending school to advance her career to become a CPA. Mr. Q. says he is entitled to an unequal division of family property on this basis. He says that he supported Ms. D. through her education and that Ms. D. did not carry her weight (my term), during the marriage. He emphasizes that he did the majority of childcare and household duties during the relationship.
- [164] To the extent that Mr. Q.'s "contribution to the marriage" argument is relevant, it may be considered under s. 92(2)(c) of the FLA. Section 95(2)(c) is narrowly focused on a spouse's contribution to the other's career. This factor encompasses a constellation of contributions, including efforts of a spouse that negatively affected their own career but also efforts that enhanced the career of the other spouse: *Nearing v. Sauer*, 2015 BCSC 58 at para. 141.
- [165] There is no evidence that Mr. Q.'s career was so negatively affected by Ms. D. attending school or by advancing her career to become a CPA that would justify an unequal division of the Shares. Rather, Mr. Q. has performed exceedingly well in his job and his profession has proved to be very lucrative. Ms. D.'s education afforded the parties the ability to help their daughters through additional income long-term. Despite this, Mr. Q. was very insistent in his testimony that he believed Ms. D. needed to make more money given that she eventually obtained her accounting qualifications in Canada.
- [166] Mr. Q.'s arguments about Ms. D.'s lack of contribution, or relative lack of contribution, to the household duties and to the family pre-separation are, in my view, misplaced. As the Court of Appeal in *Khan v. Gilbert*, 2019 BCCA 80 explained:
- [27] As noted in *Jaszczewska*, the principle of relative contribution found in s. 65(1)(f) of the former Family Relations Act, R.S.B.C. 1996, c. 128, permitted the court to consider, in dividing property, circumstances relating to the acquisition, preservation, maintenance, improvement or use of property. In contrast, s. 95(2) of the Family Law Act "refers rather narrowly to career contributions (95(2)(c)) and to post-separation increases in value beyond market trends caused by one spouse (95(2)(f))" (*Jaszczewska* at para. 43). In *Jaszczewska*, the court found that although discretion to reapportion remained, the Legislature intended to limit and constrain the exercise of that discretion:
- [44] . in enacting s. 95(2)(i) the Legislature recognized that there may be factors other than those listed that could ground significant unfairness. Hence, while the Legislature intended to limit and constrain the exercise of judicial discretion to depart from equal division, it did not provide a closed list of factors and it did not eliminate the discretion. Accordingly, in my view, one cannot read the FLA as abolishing unequal contribution as a factor that may be relevant to reapportionment, although the circumstances in which it may be considered and relied on are intended to be much constrained.

[Emphasis added.]

- [167] In *Venables*, a spouse was not required to equally contribute to family property to be presumptively entitled to an equal division of the property: see also FLA, s. 81(a). The courts have cautioned against basing findings of significant unfairness on a "dollar for dollar comparison of contribution" as differing financial contributions will generally be insufficient to constitute significant unfairness: *Khan* at paras. 28-36; *Slavenova v. Ranguelov*, 2015 BCSC 79 at para. 60. The presumptive right to equal division applies to post-separation increases to family property regardless of contribution: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 39.
- [168] The cases which have resulted in a finding that equal division would be significantly unfair based on contributions to family burdens have involved "marked, prolonged, and intentional or unexplained disparities in contribution to family burdens": *Singh* at para. 133, citing *Khan* at para. 32.
- [169] I have no doubt that Mr. Q.'s job is strenuous and stressful. Yet most of the difficulties he experienced occurred post-separation, which was a difficult time for both parties. I do accept that it was more difficult to focus after the separation given the emotional toll on Mr. Q. and because he was solely responsible for the children. Yet these additional responsibilities did not decrease Mr. Q.'s income; rather, his remuneration (at least the RSUs vesting) increased significantly since 2020. These are not exceptional circumstances justifying an unequal division.
- [170] During the relationship, both parties made sacrifices and took on increased household duties at various points in their career trajectories. I describe this in more detail in the section considering Ms. D.'s entitlement to spousal support. I disagree that Mr. Q.'s career was so negatively affected by Ms. D.'s studies that there would be significant unfairness in dividing the Shares equally. I also disagree that Mr. Q. enhanced Ms. D.'s career to such an extent that equal division would be significantly unfair. Mr. Q. has not met the high threshold required for unequal division of property under s. 95(2)(c) of the FLA.

Section 95(2)(f)

- [171] I next address s. 95(2)(f) which addresses circumstances where a party enhances the value of a family asset post-separation. The focus of s. 95(2)(f) is on "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" (emphasis added). It is not focused on the relative contributions of the parties during their relationship: *Jaszczewska* at para. 52.
- [172] Notably, neither party argued that RSUs and Options granted to Mr. Q. post-separation were subject to equal division, nor would that be consistent with s. 84 of the FLA. Instead, Mr. Q. argues that his control of the existing Shares granted pre-separation during this time entitles him to an unequal division of their increase in value because he spent considerable time maintaining or trading the Shares resulting in value of that family property.

[173] For several reasons, I find that Mr. Q. did not establish that his post-separation efforts justify an unequal division of the Shares.

[174] First, Ms. D. argued that Canada and the US experienced a bull market post-separation. A bull market is a sustained period of upward share prices. While Mr. Q. disagreed during testimony, he said the following in his submissions:

Mr. [Q.'s] high incomes from vested stocks in recent years were dominantly due to the market continuous rally esp. in high-tech industries during the Covid years, i.e stock prices at vesting were much higher than when they were awarded every year (vested/exercised value much higher than awarded value).

[175] In addition to admitting that the Shares increased due to market forces, Mr. Q. did not articulate how he increased the value of the Shares beyond asserting that he watched the markets closely and traded Shares to increase value. He did not tender evidence of the Shares' value had he simply retained them. Without more evidence, I find an insufficient link between Mr. Q.'s actions and the increases. There is no compelling reason to depart from the FLA and the current case law.

[176] Second, Mr. Q. emphasized how hard he worked to stay employed so that the Shares would vest and increase the wealth of the family. Mr. Q. argued that the Shares were an "imagined" or a "potential" asset until such time as they vest. In support of his position, Mr. Q. testified that his job is project-oriented and he needs to continuously work on new projects involving programming. He testified that his job requires continuous learning, knowledge upgrade, and his work is both physically and mentally difficult.

[177] It is true that Mr. Q. had to keep his job to have the Shares vest and I have no doubt that his job is challenging. Nevertheless, the Shares were a component of Mr. Q.'s employment compensation package.

[178] In *V.B. v. M.B.*, 2017 BCSC 1761, Justice MacNaughton, as she then was, addressed stock options owned by a spouse (V.B.) as part of an employment compensation package analogous to that of Mr. Q. Relying on s. 95(2)(f), V.B. argued that she earned the post-separation increase in value of the stocks by remaining an employee and that it would be significantly unfair to equally divide the stocks. Justice MacNaughton found that V.B.'s contribution was indeed based on remaining employed, but nothing more, and that was an insufficient ground for reapportionment under s. 95(2)(f). She held that the windfall increase was a result of market forces over which V.B. had no control and concluded that the stocks were to be divided equally. The reasoning in *V.B.* applies to the case at bar.

[179] Third, the evidence suggests that all funds in the investment accounts stemmed from the conversion and transfer of RSUs and Options that were granted pre-separation. To the extent that Mr. Q.'s strategic choices or investment efforts increased the value of these investment accounts, it would be unfair to credit him for this effort, at the expense of Ms. D., when Ms. D. had no opportunity to invest her portion of the Shares. It is possible that

Ms. D. would have seen a similar increase in the value of her investments had she had access to the Shares during the material time. To not give her any benefit of the increase in value of the Shares would therefore be unjust.

- [180] Fourth, on separation, Ms. D. had a presumptive undivided half interest in the Shares because they were granted prior to separation. Consequently, Mr. Q. was acting in the role of a trustee regarding Ms. D.'s half of the Shares and was required to treat her Shares at least as prudently as he would his own. To the extent that Mr. Q. says he worked hard to increase the value of the shares, Mr. Q. financed the Share increases partially with Ms. D.'s assets. Put simply, Mr. Q. used Ms. D.'s equity to increase the value of these family Shares post-separation. This point was made in *Jaszczevska*:
- [53] Mr. Kostanski argues that he is entitled to all of the increase in value attributable to the construction of the new residence. I do not agree. The judge made other pertinent findings. Most importantly, she recognized that the construction of the house was financed by the equity in Kildonan. Kildonan is family property and Ms. *Jaszczevska* had an undivided half interest in it at separation. Mr. Kostanski used Ms. *Jaszczevska*'s equity to assist in financing the project. That too was a contribution to the increase in value.
- [181] In my view, Mr. Q.'s arguments about relative contribution do not meet the s. 92(2)(f) high threshold to invoke the "much constrained" discretion to consider contributions to the post-separation increases in family property.
- [182] There was insufficient evidence before me that Mr. Q. was primarily responsible for the post-separation increases in the value of the family property. I find that the increases in the value of the Shares were primarily due to market forces: *E.H.H. v. C.L.M.*, 2017 BCSC 1299 at para. 124; *S.D.M. v. B.R.M.*, 2018 BCSC 1473 at para. 82. They were also a result of investing Ms. D.'s Shares: *Jaszczevska* at para. 53. Being in control of Ms. D.'s Shares placed a duty on Mr. Q. to invest them prudently. The Shares are to be divided equally between the parties.

Date of valuation

- [183] Mr. Q. provided no authority as to why the family property should be valued at the date of separation and the law is clear that the proper valuation date is at the time of trial: *Rudyak* at para. 35; *FLA*, s. 87. To deviate from the trial date, Mr. Q. must establish significant unfairness: *Eisele*; *Blair*. As Justice Norell explained in *B.L.S. v. D.J.S.*, 2021 BCSC 1311:
- [41] A court may depart from the trial date as the date of valuation only if it finds significant unfairness under s. 95: *Blair v. Johnson*, 2015 BCSC 761 at paras. 69. This is because a "departure from the presumptive date for valuation of family property is effectively a reapportionment or unequal division of the family property, which can only be done under s. 95 of the *FLA*": *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76. To justify a reapportionment of family property or family debt requires something "objectively unjust, unreasonable, or unfair in some important or substantial sense": *Singh v. Singh*, 2020 BCCA

21 [Singh] at paras. 129-134. It is not always possible to have the most up-to-date information, and in that case, a valuation that is closest to the trial date should be used: Sanai at para. 16; Namdarpour v. Vahman, 2019 BCCA 153 at paras. 56-69.

[184] Given my findings on the issue of significant unfairness, Mr. Q.'s date of valuation argument must fail. The Shares are to be valued on the date these Reasons are released.

Analysis: Mechanism of Division

[185] There was no expert evidence and no forensic audit regarding the parties' finances despite their complicated nature. I did not have the benefit of counsel to walk me through the challenging aspects of investments and the stock market. This made it extremely challenging to sort through all the RSUs, Options, withdrawals and trades, etc. I have done the best I can given the limited evidence before me.

[186] Ms. D. argues that she should receive her share of the Shares by way of a spousal rollover, not by cash compensation. I agree. This is the most efficient and fair way of dividing the Shares considering the tax complications, market variables, and currency conversions. Sections 73(1) and 73(1.01)(b) of the Income Tax Act permit a tax-free transfer of shares ("rollover") to a former spouse. Capital gains tax will not be triggered by the rollover between the parties. The transfer of shares via a rollover allows both parties to equally share in the ups and downs of the market and to dispose of them in a tax efficient manner tailored to their personal circumstances.

[187] The inclusion of share numbers for asset division must be based on the vested numbers after the share splits, as these are the actual number of Shares which are family property to be divided equally on the date of these Reasons.

[188] I order that all Shares acquired by Mr. Q. from RSUs and Options which were granted before the date of separation which Mr. Q. continues to hold are family property and are to be divided equally with Ms. D. To be clear, these are the "Shares" to which I refer to as family property. The number of Shares to be divided (i.e., those granted to Mr. Q. pre-separation which are family property) will be the post "stock split" numbers but adjusted for any of the Shares which were subtracted at source and remitted directly to CRA for taxes.

[189] I order that Mr. Q. transfer 50 percent of the non-transferred Shares set out below, to Ms. D. by spousal rollover within 30 days of the date of these Reasons:

- a) all Shares received by him from RSUs granted before August 20, 2020; and
- b) all Options granted to him before August 20, 2020 (other than the original Options divided above).

[190] Unfortunately, this does not account for all the Shares. Mr. Q. testified that he transferred or sold some of the Shares. Mr. Q. claims that he spent significant personal funds, including the Shares, to pay for legitimate expenses related to the family properties: FLA, s. 86(b). Ms.

D. contends that to the extent that Mr. Q. used his personal funds, this was unnecessary as there were sufficient funds in the joint accounts. Mr. Q. testified that all proceeds of disposition of the Shares that were used to maintain family property or to pay s. 7 expenses were deposited into joint accounts.

[191] I find that where the Shares were transferred into joint bank accounts for family expenses, there need be no adjustment because Ms. D. is entitled to 50 percent of those accounts. For the legitimate s. 7 expenses that were paid from one of Mr. Q.'s bank accounts (other than the joint accounts), this will be addressed by Ms. D. paying her proportionate share of these expenses as explained above.

[192] I am not persuaded that all dispositions of Shares were used to maintain family property. Mr. Q. conceded that some of the Shares were invested in other securities. During the period of 2021-2024, Mr. Q. transferred some of the vested Shares to personal bank accounts and then into investment accounts. Ms. D. contends the Shares in these investment accounts were used for Mr. Q.'s personal expenses. As a result, s. 84 of the FLA is relevant. The purpose of s. 84(1)(b) is to prevent family property from being converted to a form which defeats legitimate family law claims. Section 97(2)(c) is also relevant:

(2) Without limiting subsection (1), the Supreme Court may make an order to do one or more of the following:

...

(c) require a spouse to pay compensation to the other spouse if property has been disposed of, transferred, converted, or exchanged into another form, or for the purpose of dividing the property

[193] To the extent that Mr. Q. invested the Shares in other securities, he must account for this money. To the extent the Shares were used for Mr. Q.'s personal expenses, Ms. D. should receive compensation for 50 percent of their value. The remaining Shares should be divided equally. The challenge is in tracing those Shares.

[194] The best information I have with respect to the RSUs is that on July 31, 2020, close to the date of separation, there were 4,200 Shares in the Charles Schwab account, worth approximately \$40,000 USD. In November 2021 there were 4,245 Shares worth \$40,700 USD. The increase was due to some interest that accrued in the account. On June 23, 2022, there were 21,725 Shares in the Schwab account, after accounting for the split in the Shares.

[195] Mr. Q. acknowledges that in 2024 he withdrew a number of the original 4,200 Shares (21,725 after the split in May 2022). He admits 15,918 Shares were withdrawn and deposited into his CIBC Investors' Edge Account (i.e., not a joint account). These Shares, which were worth \$1,114,505, or \$751,517 net, were transferred into Mr. Q.'s personal accounts. Ms. D. says she is entitled to 10,862.50 Shares and Mr. Q. is entitled to the remainder 5,055.50 to account for his disposal of these Shares. Mr. Q. says that Ms. D. double counted some Shares resulting in 500 fewer Shares to her and 500 more to him. This would result in Ms. D.

receiving 10,362.5 Shares and Mr. Q. receiving 5555.50 Shares. I accept Mr. Q.'s accounting. I order that Mr. Q. transfer 50 percent of the original 21,725 Shares (10,363 Shares rounded) to Ms. D. within 30 days of these Reasons by way of a spousal rollover.

- [196] I have not been able to verify where all the other transferred and/or sold Shares were deposited and for what purpose. This makes it impossible to reconcile these amounts so that an equal division of the Shares can be achieved by way of a spousal rollover. In my view, the parties need closure and they need a third party to end the impasse between them.
- [197] While I accept that some of the Shares were used for family purposes, adjustments must be made to account for the Shares that were not used to maintain family property. The withdrawals from any of the RSU accounts post-separation until February 21, 2024 that were not used to maintain family property per s. 86(b), or put into a joint account, must be added back to the balance of the account for the purposes of calculating the division of the Shares.
- [198] Pursuant to Part 18 of the Supreme Court Family Rules, B.C. Reg 188/2024, the parties are to retain a special referee ("Referee"). This option was recently endorsed in *Mills v. O'Connor*, 2025 BCCA 34, which sets out the principles of tracing. At para. 91, the Court states, "given the complexities that can be associated with tracing, a trial judge may refer the matter to a special referee for an inquiry under Rule 18-1(1) of the Supreme Court Family Rules".
- [199] Unless the parties fully settle all the accounting for the RSUs and Options in writing within 60 days of the date of these Reasons, the accounting will be done by a Referee who must be a CPA, jointly appointed and paid by the parties equally.
- [200] Mr. Q. will provide Ms. D. the names of three Referee candidates within 75 days of these Reasons and Ms. D. will select one of the candidates within 10 days of receiving the list of candidates. Unless the parties agree otherwise, none of the three candidates can be someone who has provided accounting services or advice of any kind to either of the parties before now.
- [201] In terms of the role of the Referee and the parties:
- The Referee will act independently of the parties and as an officer of the Court;
 - The Referee will answer the questions below;
 - The parties will give the Referee their full and prompt cooperation and will provide the Referee with all requested documents and information;
 - The Referee may ask this Court for further directions if they decide this is required to complete the report;
 - All findings in the report must be based on and supported by institutional financial records (i.e. bank or brokerage statements, or other records) and, in the case of payments to third parties, receipts issued by the payees.

[202] The Referee is to determine and report on the following:

- the number of RSUs and Options (the "Shares") which Mr. Q. should transfer to Ms. D. pursuant to the orders in these Reasons;
- the remaining balance of Shares held by Mr. Q. which were granted to him prior to August 20, 2024;
- an accounting of the sale proceeds of any transferred or disposed of Shares that were granted before August 20, 2024;
- an accounting of into what account(s) those Shares were deposited;
- which of those Shares Mr. Q. used to cover expenses for the maintenance of family property;
- which of those Mr. Q. used to cover mortgage payments for the family properties; and
- after accounting for Shares used for family purposes, the value of the remaining Shares as of the date of these Reasons.

[203] The Referee will provide signed copies of their report to each of the parties and file a copy with the Court.

[204] The Court may arrange a further hearing to discuss the report's conclusions. To be clear, the Referee will only address the Shares which have not already been divided between the parties as directed by this Court. Fifty percent of the Shares that do not fall within the category of Shares to be addressed by the Referee (i.e., transferred and disposed of Shares) are to be transferred to Ms. D. within 30 days of these Reasons.

[205] Until further court order, Mr. Q. is restrained from disposing of any of the RSUs and Options except for those he is transferring to Ms. D. as required by these Reasons. Judgment on further orders for division of the Shares or compensaton is reserved pending receipt of the Referee's report.

RRSPs

[206] Under s. 84(2)(e) of the FLA, family property includes a spouse's entitlement under a registered retirement savings plan (RRSP).

[207] There are four RRSPs that were created during the relationship:

- a. Mr. Q.'s CIBC InvestorsEdge RRSP Investment Account No. ****9407: \$319,880.91 as of June 2024;
- b. Mr. Q.'s Questrade RRSP Investment Account No. ****4596: \$143,121.28 as of July 2024;
- c. Mr. Q.'s Manulife Employment RRSP Account No. *9866: \$332,466.50 as of June 2024; and
- d. Ms. D.'s Questrade Spousal RRSP Account No. ****6103: \$250,219.45 as of June 2024.

- [208] The parties agree that neither of them made any deposits into the RRSPs after separation. These RRSPs are therefore entirely family property and, they too, should be divided equally through a spousal rollover. An RRSP spousal rollover does not attract tax obligations: Income Tax Act, s. 146(16)(b).
- [209] Any withdrawals from any RRSP accounts post-separation must be added back to the balance of the account for the purposes of calculating the value to be divided and transferred.
- [210] Mr. Q. is ordered to transfer half the value of his RRSPs in his name at the date of transfer to Ms. D. by way of an RRSP spousal rollover. Ms. D. is ordered to transfer half the value of her RRSP at the date of transfer to Mr. Q. by way of an RRSP spousal rollover. These transfers are to be completed within 30 days of the date of these Reasons.
- [211] Post-separation, the parties established and contributed to new RRSP accounts. The parties will each retain the RRSP accounts they opened post-separation.

Pensions

- [212] Under s. 84(2)(e) of the FLA, family property includes a spouse's entitlement under a pension plan.
- [213] Both parties have made payments to the Canada Pension Plan ("CPP") during the course of their relationship. It is standard for parties' pensionable earnings under the CPP to be equalized pursuant to the Canada Pension Plan, R.S.C. 1985, c. C-8, and divided at source under Part 6 of the FLA.
- [214] I order that parties' unadjusted pensionable earnings under the CPP will be divided and equalized in accordance with Part 5 and 6 of the FLA for the period of October 27, 1994 until August 20, 2020. Either party may apply for such division and the other party must cooperate and take all steps which are required to effect the division of the parties' CPP credits.
- [215] Ms. D. claims that Mr. Q. has an employment pension plan that he has not disclosed. Mr. Q. denies having an employment pension plan. His earning statements attached to his F8 do not disclose any pension plan contributions; it does show RRSP contributions. There is no merit to Ms. D.'s claim.

RESPs

- [216] The Registered Education Savings Plans are held in trust for the children and are not divisible as family property: *S.K.W. v. C.M.W.*, 2024 BCSC 1183 at para. 57. The party who is the trustee, remains the trustee: *R.(K.) v. D.(J.)*, 2017 BCSC 182.
- [217] There is an RESP (Questrade RESP Joint Account #****5258) in the amount of approximately \$250,419. The parties will continue to hold the RESP in trust for the children.

[218] Currently, the RESP is in the parties' joint names. The RESP account is to continue to be equally administered by the parties, however, in the event of a conflict, Mr. Q. has the right to decide how to direct the funds. Mr. Q. will provide Ms. D. with copies of all statements when received. The funds are to be used exclusively towards the children's reasonable post-secondary school expenses, including any advanced degrees.

[219] If any balances remain when the children have completed their education, they will be divided equally between the parties and Mr. Q. will be responsible for doing this promptly and providing Ms. D. with a full accounting.

Other Bank Accounts

[220] The parties had the following accounts prior to separation:

Account name

Held by

Value at separation date

CIBC #...3139

Joint

\$8,540.97 as of August 20, 2024

CIBC USD #...4334

Ms. D.

\$7,070.79 USD as of July 31, 2020

CIBC # 8038

Mr. Q.

\$9,789.98 as July 31, 2020

CIBC #...2319

Joint

No statements found

TD Chequing #...1711

Joint

\$67,934.94 as of July 31, 2020

BMO Chequing #...6798

Mr. Q.

\$12,101.27 as of July 24, 2020

[221] The parties hold the following TFSAs:

Account

Named owner

Value

Presumptively Excluded/Family

Questrade TFSA #1253

Mr. Q.

\$139,959.02 as of August 31, 2020, but has been drawn down through the payment of family mortgages.

Family

TD Direct TFSA #...WY58-J

Mr. Q.

\$299.27 as of July 31, 2024

Family

TD Direct TFSA #...WY58-K (USD)

Mr. Q.

\$8,216.86 USD as of July 31, 2024

Family

TD TFSA #...8x8-J

Ms. D.

\$11,407.51 as of August 31, 2020

Family

TD TFSA #...63X8

Ms. D.

No statements found

Family

[222] Within 30 days of these Reasons, the above accounts are to be divided equally as of the date of these Reasons.

[223] The following bank accounts were opened by the parties after separation. Ms. D. says that given Mr. Q.'s conduct and lack of evidence, I should divide these evenly. I decline to do so and agree they are excluded, subject to the possibility that Mr. Q. transferred vested Shares into some of these accounts. Subject to that caveat, which will be addressed by a settlement or the Referee, I order that the parties retain their respective bank accounts that they opened post-separation in their own names:

Account

Owner

Value

CIBC Chequing #...1180

Mr. Q.

\$5,058.52 as of December 31, 2024

CIBC USD #...0084

Mr. Q.

\$83,500.43 as of December 31, 2024

CIBC USD #...5191

Mr. Q.

\$499.29 USD as of December 31, 2024, 2024

CIBC Investor's Edge #...5002

Mr. Q.

\$442,564.31 as of September 30, 2024

CIBC Investor's Edge #...0422

Mr. Q.

\$22,110.24 as of September 30, 2024

CI Direct #...8621

Mr. Q.

\$48,804.35 as of September 30, 2024

QTrade #...5EL2

Mr. Q.

\$95,253.97 as of September 30, 2024

Interactive Brokers #...3390

Mr. Q.

\$93,201.64 as of September 30, 2024

ScotiaBank #...2033

Ms. D.

\$20,266.15 as of December 31, 2023

CIBC Investor's Edge TFSA #....5491

Mr. Q.

\$104,475.25 as of September 30, 2024

Interactive Brokers #...0629

Mr. Q.

\$62,321.02 as of September 30, 2024

[224] The following are the accounts used for Mr. Q.'s employment-related RSUs and Options, which will be accounted for when dividing the Shares equally within 30 days of these Reasons:

Account

Named owner

Value

ScotiaBank iTrade #...5381

Mr. Q.

\$244,575 as of July 31, 2024

E-Trade #...4955

Mr. Q.

\$189,721.71 unvested restricted stocks as of August 31, 2023

Canaccord #...90E-1/90F-1

Mr. Q.

\$307,052.55 as of July 31, 2024

Interactive Brokers #...0247

Mr. Q.

\$1,120,608.07 as of August 9, 2024

CIBC Investor's Edge #...8828

Mr. Q.

\$100 in cash as of June 28, 2024, the rest is Fortinet stocks. He says 75% of his stock balance from employment transferred to this account on July 31, 2020

Schwab Account

Mr. Q.

\$1,896,081.42 as of February 27, 2023

Interactive Brokers #...3004

Mr. Q.

\$0.00 as of August 9, 2024

[225] The parties also hold the following investment accounts:

Account

Named owner

Value

CIBC Investor's Edge #...9928

Joint

\$109,220.88 at time of separation

Interactive Brokerage #...3423

Joint

\$112,219.82 as of August 20, 2020

[226] Again, the accounts used for Mr. Q.'s employment-related Shares will be addressed when dividing the RSUs and Options. In terms of post-separation activity, in September 2021 both parties agreed to each take out \$100,000. In compensation for Mr. Q. keeping the family vehicle, Ms. D. took out a further USD \$51,300. Mr. Q. claims that Ms. D.'s withdrawals from the joint accounts for personal use total \$108,220 (net of her contributions) post-separation. Ms. D. agreed that 60 to 70 percent of those withdrawals were for her personal use. Ms. D. claims that Mr. Q. also made withdrawals from the joint accounts but she did not specify which specific withdrawals to which she referred. Mr. Q. suggests that the parties equally divide all joint accounts as of the date of trial. Assuming neither party withdrew more than \$2000 from these accounts post-separation, within 30 days of these Reasons, the accounts should be divided equally as of the date of these Reasons. If there were withdrawals of

more than \$2000, the withdrawing party must replace the amount prior to the division.

[227] The parties have the following Chinese accounts:

Account

Named owner

Value

PingAn Brokerage investment RMB #...8555

Ms. D.

\$20,907 (undated)

PingAn Brokerage investment USD #...1820

Ms. D.

\$15,000 (undated)

PingAn Brokerage investment HKD #...5152

Ms. D.

\$12,152 (undated)

PingAn Bank RMB #...2040

Mr. Q.

362,558.08 RMB as of June 30, 2024

[228] The parties did not provide sufficiently clear evidence for me to make an accurate determination of adjustments that should be made to the balances of these accounts before division. This would require a forensic audit. Most of the accounts have balances which are modest or insignificant in relation to the total value of the family property. In all the circumstances, I order that the bank and investments accounts (other than the accounts holding Mr. Q.'s RSU and Options which will be addressed by the Referee's report) will be divided as follows;

- a) With the exception of Mr. Q.'s PingAn Bank account #...2040, the parties will retain the accounts listed above which are in their sole names;
- b) Mr. Q.'s PingAn Bank RMB account # 2040 had 362,558 RMB as of June 30, 2025. Within 30 days of these Reasons, Mr. Q. will transfer to Ms. D. 50 percent of the balance in the PingAn Bank account #...2040 as of the date of these Reasons. As both parties have accounts in China, this can be done without a conversion of currency.

- [229] Lastly, both parties have a number of other pre-separation accounts in their own names. Subject to the equal division of the family Shares and other orders with these Reasons, the parties are entitled to the money in their own bank accounts.

Miscellaneous

- [230] Ms. D. withdrew \$114,000 from a joint account after separation. Mr. Q. alleges that Ms. D. made \$15,000 between August and December 2020, from consulting work, which she did not deposit into the joint account. I have accepted Mr. Q.'s submissions that the parties finances were comingled until January 1, 2021 so these interim transactions are irrelevant.
- [231] Ms. D. also makes a claim for \$34,000 as excluded property, which she argues is the money she brought into the relationship when the parties married. There was scant evidence of this \$34,000 and I am unable to credit Ms. D. for this alleged contribution. However, I will not require her to account for the \$15,000 consulting income in 2020 that Mr. Q. says she did not include in her income since that was also the year they separated.
- [232] Ms. D. says she missed out on several benefits from her employer in China. In particular, she argues that she missed out on three properties that were awarded to bank employees after they had worked for a certain amount of time. She also claims lost opportunity for stock options which were granted by her bank after working for a set period of time. She says they are today worth \$600,000.
- [233] There was no evidence to support Ms. D.'s claim and I am therefore unable to consider it. The FLA does not recognize lost opportunities such as these as a legitimate claim. Moreover, to the extent that Ms. D. made career sacrifices for the family, it will be considered under the framework of spousal support.

In-Trust Claim

- [234] In his testimony, Mr. Q. sought compensation for the parties' children. He pleaded that a significant portion of the parties' family property should be put into a trust for the children to access. He proposed that there be an unequal property division so that a total of \$600,000 from the family assets can be placed into a family trust account for which the three children are the beneficiaries. The funds would be used exclusively for their future living expenses, to help them become established in their careers, and other such needs after university. He argued that the children's "long-time sacrifice and forbearance" significantly contributed to the asset and wealth of the family, "before separation and after it."
- [235] Mr. Q. did not forcefully pursue this argument in his final submissions. The only mention of a trust was a reference that C.L. "deserves support and significant financial help as a form of compensation for her trauma ". I assume Mr. Q. abandoned this claim so I have not addressed it.

[236] In any event, this is a novel argument and I was provided with no authority under which I could make such an order. If he intended to pursue it, I reject his argument that \$600,000 be placed in a trust for the benefit of the children. He is free, of course, to establish a trust for them from his own income and investments.

Family Debt

Legal Principles

[237] Family debt is defined by s. 86(a) of the FLA as including all financial obligations incurred by a spouse during the period of the relationship. Debt incurred after the date of separation is only family debt if it is incurred for the purpose of maintaining family property: FLA, s. 86(b). As with other family property, family debt is presumptively divided equally between the parties.

[238] The onus is on the party claiming a debt as a family debt to demonstrate that it was incurred during the parties' relationship or that it was incurred to preserve or maintain the family property.

Analysis

[239] The parties' debts are not significant. Consequently, the joint debts will be split equally and each party shall be responsible for their own respective debts currently registered in their sole name. The mortgages will be addressed under the division of real property section of these Reasons.

[240] The parties accumulated the following debts post-separation:

Name

Held by

Amount

CIBC PLC #...1339

Joint

\$60,150 as of July 31, 2024

CIBC PLC #...3736

Joint

Borrowed on March 29, 2021, paid off on April 19, 2021.

CIBC PLC #...0237

Mr. Q.

\$49,118 as of December 19, 2024. Created after separation.

CIBC PLC #...0237

Mr. Q.

\$47,092.66 as of July 22, 2024. No evidence as to when this line of credit was opened.

[241] Mr. Q. borrowed \$50,000 on January 17, 2022 and \$10,000 on September 14, 2022 on the CIBC line of credit #...1339. The additional \$150 is the accumulated interest. Mr. Q. claims he took out this money to pay for the renovations on the E61 Property and other real estate property expenses. Mr. Q. explained that the joint PLCs were used to access funds quickly, as the funds from investment accounts needed more time to finalize transactions.

[242] Mr. Q. argues that pursuant to s. 86(b) of the FLA, this is a family debt and should also be divided equally. Ms. D. argues that there was no equivalent deposit into the parties' joint CIBC account #...3139, and this demonstrates that these funds were not used to pay for the renovations. Also, she submits that there was no need for a major renovation to the E61 Property, beyond an incident with water pipes in 2023. She points out that the timing of the borrowing does not match this incident. Ms. D. also submits that photos included in an appraisal report for the Property do not show any significant renovations. She says that Mr. Q. should have at least notified her if there were issues with the E61 Property that required the use of family assets to repair.

[243] First, based on the evidence I accept that Mr. Q. spent the money on these renovations. The fact that he did not deposit the money to the joint CIBC account # 3139 is irrelevant. I also note next that there is no requirement under the FLA that one spouse consent to the other incurring what may ultimately be determined to be a family debt: *Robert Hungerford Law Corporation v. Stenner*, 2017 BCCA 55 at para. 21. Mr. Q. had no obligation to get Ms. D.'s consent to spending the money on the repairs.

[244] However, s. 86(b) does not require that all payments made to maintain property after separation be regarded as family debt to be divided equally: *Storey v. Terry*, 2020 BCCA 30 at para. 23. Whether or not a spouse may recover costs they spent post-separation to maintain family property depends on the circumstances, the focus being on achieving justice between the parties: *A.T.H. v. W.D.G.*, 2025 BCSC 1302.

[245] The focus on the nature and purpose of determining if a debt is a family debt was addressed in *Mallen v. Mallen* (1992), 65 B.C.L.R. (2d) 241 (C.A.) at para. 6, where the Court stated:

The proper focus for the examination of a debt should be a focus on the nature and purpose of the borrowing and on the expenditure of the borrowed funds. If the funds were used to acquire a family asset, to maintain a family asset, to discharge a family burden, or to maintain the family members, then it is likely that equality and fairness will require an equal sharing of the debt or liability and its adjustment in the division of the assets in such a way to carry out the principles of equality and fairness. ...

[246] Ms. D.'s submission raises an additional question. What is the standard to be applied to determine whether a debt was incurred to "maintain family property"? Under Ms. D.'s submission, as I understand it, Mr. Q. would need to show that the expense was a strictly necessary expense.

[247] In my view, applying the modern principle of statutory interpretation, the use of the word "maintain" in s. 86(b) denotes a level of necessity. Its meaning forecloses any expenses that could be better categorized as "improving" or "altering" family property. A non-trivial degree of damage to the family property must be at risk. This is consistent with the purpose of s. 86 and Part 5 more generally; a party should not be punished for protecting family assets from financial or physical damage. In my view, Mr. Q. demonstrated through testimony that the repairs needed to be undertaken to avoid damage to the E61 Property. The parties have generally agreed that post-separation property maintenance, mortgage payments, and property fees should be paid from the family funds. Accordingly, the \$60,150 owing on the PLC #...1339 is a family debt and will be paid equally by the parties. The other PLC's in Mr. Q.'s name are his sole debt.

[248] The mortgage payments on the family properties are not at issue as the payments from both parties were made out of the parties' joint bank accounts. To the extent that Mr. Q. contends that he used some of the proceeds from the RSUs or Options to pay the mortgages post-separation, I have already determined that these were also family property so these payments were also coming from a joint fund. Aside from this, I do not understand there to be any suggestion that either party used excluded funds to pay the mortgages before trial.

Entitlement to Spousal Support

Legal Principles

[249] Spousal support orders may be made under either the FLA or the DA. Orders for spousal support under the DA are made pursuant to s. 15.2. The current Divorce Act, enacted in 1985, attempts to provide guidance for spousal support determinations by setting out, in s. 15.2(6), four objectives for spousal support:

15.2 (6) An order 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 [i.e. through child support];
- (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.

[250] In addition, s. 15.2(4) lists certain factors to be taken into account in making support orders for a spouse:

15. 2 (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[251] Finally, s. 15.2(5) is more specific, indicating one factor that may not be considered -- spousal misconduct:

15.2 (5) In making an order [for spousal support or an interim order], the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

[252] Section 161 of the FLA addressed entitlement to spousal support and s. 162 deals with determining its amount and duration:

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

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

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[253] The language in the DA and the FLA is so close that any difference between the two is immaterial and the same jurisprudence applies to both: *Hutchen v. Hutchen*, 2014 BCSC 729 at para. 38.

[254] The applicable test for imputing a spouse's income for spousal support is similar to the test for imputing income with respect to child support. The primary issue is one of reasonableness, taking into account the spouse's capacity to earn income given their age, education, health, work history, work availability, and retraining prospects: *Hsieh v. Lui*, 2017 BCCA 51 at paras. 48-49.

[255] Marriage is regarded as a "joint endeavour". The "longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, 1992 CanLII 25.

[256] Entitlement is a threshold issue when determining spousal support. There are three separate bases for entitlement: compensatory, contractual, and needs-based. Contractual support is not an issue in this case.

[257] Compensatory spousal support addresses the economic advantages enjoyed by one partner as a result of the other partner's efforts during the marriage. It also addresses the contributions of a spouse to the marriage and their losses upon its breakdown. Compensatory spousal support is based on the principle that spouses must share the economic consequences of a marital breakdown. This includes recognizing that one spouse may have foregone employment opportunities to care for the children. In such circumstances, an order for compensatory spousal support will generally be appropriate to compensate the spouse for the value they brought to the relationship, as well as the economic loss they suffered as a result of the relationship: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 1999 CanLII 715.

[258] Non-compensatory support is needs-based. It recognizes the economic hardship and loss of the marital standard of living that arises as a result of economic interdependency during the relationship. Non-compensatory support is based on the economic disadvantages generated by the dissolution of the marriage, not contributions made during the marriage: *Bracklow* at para. 41. Need alone may be sufficient to establish entitlement to spousal support: *Bracklow* at para. 43; *Chutter v. Chutter*, 2008 BCCA 507 at para. 54, leave to appeal to SCC ref'd, [2009] S.C.C.A. No. 41. The degree to which non-compensatory principles apply will depend on a close examination of the means and needs of the parties. It also depends on the nature of the marital relationship: *Bracklow* at para. 53.

- [259] The bases for entitlement should not be analyzed in silos. Many claims involve aspects of both compensatory and non-compensatory principles. I need not decide on one basis for support to the exclusion of the other. Rather, it is "a matter of applying the relevant factors and striking the balance that best achieves justice in the particular case": Bracklow at para. 32. The overarching principle that must be borne in mind is the doctrine of equitable sharing of the economic consequences of the relationship. In longer marriages, the Court will measure the need of the spouses against the marital standard of living, as well as the payor's post-separation standard of living: Chutter at para. 59.
- [260] The methodology for determining income for child support and spousal support purposes are similar. The FCSG have a comprehensive code for determining income, while the SSAG do not. The authors of the SSAG have confirmed that the FCSG rules for calculating income should be used for spousal support: SSAG, c. 6.1. Therefore, "[t]he starting point for the determination of income under the SSAG is the definition of income under the FCSG": Megson v. Megson, 2014 BCSC 2467 at para. 165.
- [261] Spousal support can be awarded on a prospective or retroactive basis. In considering an award for retroactive spousal support, similar factors to those set out with regard to child support in D.B.S. ought to be considered, although the weighing of those factors can differ in light of the different legal principles and objectives that apply to spousal support: Kerr v. Baranow, 2011 SCC 10 at paras. 207-208.
- [262] Despite the focus on self-sufficiency, after the breakdown of a long marriage, spousal support often winds up being permanent: SSAG, s. 7.5.2. Such an award recognizes the joint enterprise of raising children and that after long marriages the parties should not end up with starkly different financial positions.
- [263] Section 15.2(1) of the DA provides that a court may order a spouse to pay lump sum or periodic spousal support as the court thinks reasonable for the support of the other spouse. In Davis v. Crawford, 2011 ONCA 294, the Court stated that in determining whether to make a lump sum spousal support award, it is important to consider "whether the payor has the ability to make a lump sum payment without undermining the payor's self-sufficiency": para. 63. Most importantly, 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 disadvantages of making such an order. The Court in Davis goes on to list a variety of advantages and disadvantages: paras. 67-68. Lump sum spousal support awards are not limited to "very unusual circumstances", however, most spousal support orders will be in the form of periodic payments: Davis at para. 70. Ultimately, "it is for the presiding judge to consider the factors relevant to making a spousal support award on the facts of the particular case and to exercise his or her discretion in determining whether a lump sum award is appropriate": Davis at para. 69.
- [264] It is ultimately for the court to determine, based on all the circumstances of the particular case, the appropriate amount and duration of spousal support.

Parties' Positions

- [265] Mr. Q. takes the position that Ms. D. is not entitled to spousal support based on her limited role in the family. In the alternative, he argues that spousal support should be awarded on a non-compensatory basis, on the low end, and for a short duration. To the extent that Ms. D. is entitled to spousal support, Mr. Q. contends that Ms. D.'s income should be imputed as Ms. D. is underemployed.
- [266] Mr. Q. takes the position that he supported Ms. D. through her education and that Ms. D. was constantly focused on her career aspirations to the detriment of the family. He contends that he did the majority of childcare and household duties during the marriage. Mr. Q. testified that he took the children to school and to their appointments, organized birthday parties, made all the breakfasts and lunches, and helped the children with their homework. He testified that he was the more available and present parent overall.
- [267] Mr. Q. also justifies his position by emphasizing Ms. D.'s long-term family violence throughout the relationship which affected his ability to focus on his career and his work. He says the family violence drained his health and energy to take on the family responsibilities to support Ms. D.'s career goals. Mr. Q. argues he lost his best opportunity to advance his career. He notes that many of his peers - and even former subordinates - are now vice presidents with his employer, and some of them have chosen to retire or to start their own businesses.
- [268] In terms of prospective spousal support, Mr. Q. argues that he will not maintain his high income over the long-term because his field (information technology) demands younger workers due to the constant technological changes such as artificial intelligence. Such changes are a serious challenge to Mr. Q. given his age.
- [269] Ms. D. submits Mr. Q.'s strategy has been to present her in a negative light to achieve his intended goal of avoiding support payments. She argues that Mr. Q.'s evidence regarding his role in performing household tasks was inconsistent and changed during the trial. Ms. D. argues that much of Mr. Q.'s evidence was in direct conflict with his work schedule, especially when taking into account practical considerations such as commute times and the demands of his position.
- [270] Ms. D. admits that her schedule was busy and her studies were intense when she took the accounting program at BCIT. However, before BCIT she claims she was very involved with the children. In addition, in 2019 Ms. D. took all three children to China for the summer while Mr. Q. was on a business trip to France. Ms. D. vehemently denies that she did not pull her weight with the children and household duties during the marriage, apart from when she attended BCIT.
- [271] Ms. D. contends she is entitled to compensatory and non-compensatory spousal support, both retroactively and prospectively.

Analysis

- [272] Despite Mr. Q.'s submissions, there are strong grounds supporting compensatory spousal support for Ms. D.
- [273] First, the parties were married for 25 years, which is a long marriage. I fully accept that Mr. Q. was an engaged father who contributed to the household. However, I earlier held that Ms. D. sacrificed economic opportunities by moving to Canada and expending time and effort in the early years raising the parties' children. Ms. D. put her career aspirations on hold while Mr. Q. was able to go to school immediately upon arrival in Canada; Ms. D. had to wait until 2008 to begin training for her accounting career.
- [274] Second, there was evidence before me that Mr. Q. consistently took the children to school and made their breakfast and lunch. However, Ms. D. took time away from her career aspirations to give birth to three children and to be with them as infants. There was no suggestion by Mr. Q. that she did not care for the children in the early days. In fact, Mr. Q. left for UBC a year before Ms. D. immigrated to Canada. During that year, Ms. D. raised their daughter C.L. alone in China. In Canada, Ms. D. would often pick the children up from school and take them to their extracurricular activities. In busier times, the parties had parental and/or hired help.
- [275] When questioned, Mr. Q. admitted that Ms. D. contributed to the household chores and to the care of the children. For example, in cross-examination, Mr. Q. stated that he was not claiming that Ms. D. did no housework or did not help with the children. Rather, he was saying that she did less housework than other mothers. That is not a factor I can consider. And of course, one can always find others that appear to do more when one is looking for comparisons.
- [276] Mr. Q. has had an admirable and lucrative career which typically does not happen without working long hours and being available for work when needed. There was no evidence that Mr. Q. took any time off work to accommodate his family activities. There was no evidence that Mr. Q. adjusted his hours in a way to ensure he could pick up the children from school or take them to their extracurricular activities. While I have no doubt that he did these activities, I was provided with no evidence that it was exceptional in the context of the overall relationship.
- [277] Third, Ms. D. pursued her career over the course of the marriage and had every right to do so. The parties sought help through their parents and by hiring caregivers in busy times. This is what two-career couples do. Exceptionally, in 2008 the two youngest children were sent to live with Mr. Q.'s mother in China, with the help of their uncle (Mr. Q.'s brother), for two years to allow both parties to focus on their work and/or studies.

- [278] It appears there was considerable conflict in the house when the children were teenagers and, in particular, the children had a lot of conflict with their mother. This is not unusual but it can be worse if the parents do not address the conflict together. Here it appears that the parties pointed fingers at each other rather than presenting a united front.
- [279] The evidence established that Ms. D. had considerable difficulty adapting to a different culture and a different language after leaving China and settling in Canada. To add to the disruption, the parties both testified that they moved eight or nine times in a ten-year period. Ms. D. had more language barriers than Mr. Q. and he agreed in testimony that she spoke no English when she arrived in Canada.
- [280] Ms. D. particularly struggled when she attempted to obtain an accounting degree at BCIT. Ms. D. felt this to be a very stressful time and it was at that point that she withdrew from many of the household duties. Ms. D. testified that she was the primary caregiver for most of the parties' marriage. It was not until she was enrolled at BCIT full time that Mr. Q. began to take on the majority of parental responsibilities and household tasks. However, this was still a limited role as it was at this time the parties sent their two youngest children to China for care. As Mr. Q. states in his submissions, Ms. D. admitted that the two younger children were taken care of by Mr. Q.'s mother for two to three years when they were still toddlers in 2008-2011. This was exactly when Ms. D. was attending BCIT. I find it telling that when Ms. D. could no longer assist with the regular household tasks, the two young children were sent abroad. If Ms. D. was not assisting with the children before this time, it begs the question as to why the children would suddenly need to be sent away when she became largely unavailable.
- [281] Fourth, Ms. D. admitted in testimony that she did not do her share of housework when she attended BCIT. She found the accounting course to be difficult and stressful. As a result, she had to study in the evenings to keep up with her program. According to Ms. D., the parties' roles partially reverted after she graduated from BCIT in 2011. Ms. D. testified that she resumed her household and childcare duties. The parties' daughter C.L. testified. It is clear that she has aligned herself with her father and has a strained relationship with Ms. D. She outlined a number of difficulties she experienced with Ms. D. when she was a teenager. However, C.L. agreed in cross-examination that Ms. D. shared the household duties after Ms. D. finished school in 2011.
- [282] I accept that Mr. Q. was a very involved and devoted father and remains so today. He is to be commended for being a good family man. I also accept that Ms. D. was under a lot of stress and this affected her ability to parent. Nevertheless, Mr. Q.'s career was largely uninterrupted during the marriage and I am not persuaded that he took on household duties to the extent he claims. For example, Mr. Q.'s employment responsibilities and roles increased steadily over the course of his career, as reflected in his compensation package.

- [283] I accept that Ms. D. did her share of household duties and childcare during the marriage with the exception of her time studying at BCIT. The parties shared the benefits of marriage and are to share the economic consequences on the breakdown of a marriage, which included economic dependency: Chutter at para. 51; Bracklow at para. 34.
- [284] Ms. D. has established that she has made substantial sacrifices and contributions to the family, many of which have allowed Mr. Q. to pursue his successful career. I find that Ms. D. is entitled to spousal support on a compensatory basis based on the following:
- a) The parties were married for over 25 years, a long-term marriage;
 - b) Ms. D. left the labour force to care for the children and manage the household;
 - c) Ms. D. was the primary caregiver of the children in their early years, including being C.L.'s only caregiver for a year, which allowed Mr. Q. to further his career; and
 - d) Ms. D. was delayed from entering the workforce due to her role in the family, was temporarily less available to the family when she attended BCIT, but resumed her household duties when she completed her studies.
- [285] Moreover, the parties had a long-term marriage and there was economic interdependence between Ms. D. and Mr. Q. during their marriage. Mr. Q. earned significantly more than Ms. D. during the marriage and continues to earn more than her after separation. There is a clear gap in the parties' post-separation income and lifestyle. Ms. D. lost the marital standard of living to which she would have been entitled had the parties not separated. Ms. D. therefore also has a non-compensatory claim.
- [286] In summary, I find that Ms. D. is entitled to spousal support on both a compensatory and non-compensatory basis.

Amount and Duration of Spousal Support

Legal Principles

- [287] Property division and spousal support orders are inter-connected. Consequently, I must consider property division when determining the amount and duration of spousal support or, in the alternative, lump sum spousal support.
- [288] Economic self-sufficiency is a primary consideration following the breakdown of a relationship. It is, as far as is practical, to be promoted post-separation: DA, s. 15.2(6)(d).
- [289] Spousal support is usually paid in monthly installments. However, there are a multitude of reasons why lump sum spousal support may be ordered. It should not be made "in the guise of support for the purpose of redistributing assets": Davis at para. 60, cited with approval in Parton v. Parton, 2018 BCCA 273 at para. 47. Despite this caution, the Court in Davis articulated the advantages of such an award:

- [67] The advantages of making such an award will be highly variable and case-specific. They can include but are not limited to: terminating ongoing contact or ties between the spouses for any number of reasons (for example, short-term marriage; domestic violence; second marriage with no children, etc.); providing capital to meet an immediate need on the part of a dependant spouse; ensuring adequate support will be paid in circumstances where there is a real risk of non-payment of periodic support, a lack of proper financial disclosure or where the payor has the ability to pay lump sum but not periodic support; and satisfying immediately an award of retroactive spousal support.
- [290] When considering whether to make an award of lump sum spousal support, the court must weigh "the perceived advantages of making a lump sum award in the particular case against any presenting disadvantages": Parton at para. 47; see also *Zilic v. Zilic*, 2021 BCCA 107 at paras. 207-209.
- [291] In *Haley v. Haley*, 2022 BCSC 1945, this Court stated that when determining income for spousal support, a trial judge must be mindful of double dipping by counting RSUs or stock options that have been divided between the parties:
- [158] It is true that vested stock entitlements existing at the date of separation may be divided as assets. In that event, they may not be treated as income for spousal support purposes to the extent necessary to avoid double dipping. However, the weight of case authority suggests that employment compensation in the form of the stock benefits should be treated as income for child support purposes in the year the entitlement to the stocks vest, and also for spousal support purposes if the stocks have not already been divided as family property: *Sarro v. Sarro*, 2011 BCSC 1010 at para. 14; *Crossley v. Vorell*, 2021 BCSC 2484 at paras. 67-73 [Crossley]; *A.E. v. A.E.*, 2021 ONSC 8189 at paras. 157-158 [A.E].
- [292] This is also set out in the Spousal Support Advisory Guidelines: The Revised User's Guide (2022) [SSAG-RUG]:

Income (SSAG Chapter 6)

(g) Can a payor have "two incomes"

Finally, there may be situations where the inter-relationship between property division and spousal support for spouses may mean a different, and lower, payor income is used for spousal support. See *Klefenz v. Klefenz*, 2015 NSSC 196 (payment on account of capital in share transaction included for child support, but not for spousal support). For example, if stock options are valued and divided as part of the property divisions, the same stock options may not be treated as income for spousal support purposes, even in cases where the stock options might be considered as income for child support purposes.

[Emphasis added.]

- [293] When determining income, the court should focus on that part of the payor's income and assets that have not been included as part of the division of property. This is because spousal support is based on a consideration of the "means, needs and other circumstances" of each spouse. The fact that a payee will be receiving half of the payor's stock options and RSUs granted before separation is relevant to both parties' means, needs, and circumstances: *Sarro v. Sarro*, 2011 BCSC 1010 at para. 30.
- [294] The principles of imputation of income for the purposes of spousal support were canvassed by the Court of Appeal in *Marquez*:
- [38] Although the legal foundation for awarding spousal support is different from that of child support (see *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 at para. 208), the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: *Myers v. Myers* (1995), 65 B.C.A.C. 226, 17 R.F.L. (4th) 298 at para. 10, *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, *Bracklow* [Bracklow, [1999] 1 S.C.R. 420] at para. 36. "Means" has been interpreted to include all capital and other sources of income (*Leskun v. Leskun*, 2006 SCC 25, [2006] 1 S.C.R. 920 at para. 29).

Analysis

- [295] In calculating the amount of spousal support, I rely on my findings of fact with respect to Ms. D.'s income in the imputation of income section for the purposes of child support.
- [296] Mr. Q.'s Line 15000 total income on his T1 tax return is:
- 2021 - \$538,849
 - 2022 - \$609,831
 - 2023 - \$1,838,735
 - 2024 - \$1,061,068
- [297] As articulated in *Haley*, the RSUs and Options that have been determined to be family property shall not count as part of Mr. Q.'s income for purposes of spousal support or s. 7 expenses[4]. The RSUs granted pre-separation and vested post separation, and equally divided between the parties, must be deducted from Mr. Q.'s income for purposes of any payments Mr. Q. makes to Ms. D. during this period. I therefore do not include Mr. Q.'s RSUs and Options he was granted during the relationship because they have been included in the division of property. However, RSUs and Options that Mr. Q. earned after the parties separated should be included in Mr. Q.'s income for the purposes of child and spousal support in the year that they vest, as those are not family property and have not been divided between himself and Ms. D.: *Sarro* at para. 30.

[298] Mr. Q.'s income from Shares for these years is as follows:

- 2021 - \$312,121
- 2022 - \$340,175
- 2023 - \$1,560,421
- 2024 - \$771,628

[299] Treating the RSUs and Options as family property, Mr. Q.'s adjusted income is as follows:

- 2021 - \$226,728
- 2022 - \$269,656
- 2023 - \$278,314
- 2024 - \$289,440

Retroactive spousal support

[300] Ms. D. seeks retroactive spousal support. Considering the factors described in D.B.S., as applied to the spousal support context in Kerr, I accept that retroactive spousal support is appropriate here. However, Ms. D. seeks retroactive support dating back to the date of separation. Given Mr. Q.'s income, I accept that she is entitled to spousal support from the outset. However, the parties' accounts continued to be co-mingled between the date of separation and December 31, 2020 and during this period and Mr. Q. was paying for most of the family expenses out of joint accounts. Therefore, I award her spousal support retroactive to January 1, 2021.

[301] Since the RSUs and Options were considered property rather than income, retroactive spousal support will be based on Mr. Q.'s adjusted income as set out in para. 301. Ms. D.'s past spousal support is to be based on these amounts until February 21, 2024.

[302] I received Mr. Q.'s tax returns for 2024 post-trial, at my request. Mr. Q.'s Line 15000 income for 2024 is lower as he began his medical leave in or around August 2024. He testified that his leave was a result of his efforts in raising the children, along with his demanding job, which have taken a toll on his health.

[303] Mr. Q. testified that he does not anticipate that his medical issues will affect his income over the next few years.

[304] As the last RSU that is family property vested in February 2024, it is appropriate to include the RSUs vesting after February 2024 as part of Mr. Q.'s income. Therefore, after February 2024, Mr. Q.'s Shares will no longer be treated as an asset. I have included the share-related amounts in his income.

- [305] According to my reasoning above, I calculate the retroactive spousal support to be paid to Ms. D. using Mr. Q.'s average income for July 1, 2022 to April 30, 2024, based on the custodial payor formula, is \$266,000. This results in \$4,160 per month at mid-level custodial payor formula. By my calculation, Mr. Q. owes \$158,080 in retroactive, periodic, spousal support from January 1, 2021 to February 21, 2024 (38 months).
- [306] Mr. Q.'s income in 2024 is \$1,061,068. From March 1, 2024 to December 31, 2025, based on my discretion (see below), I determine monthly retroactive spousal support based on an income to Mr. Q. of \$700,000. This results in spousal support of \$15,315 per month based on the mid-range. The total payment for 22 months is \$336,930.
- [307] In *Linklater v. Mardukhi*, 2025 BCSC 631, the Court confirmed that when the SSAG formulas are used to calculate a retroactive payment, the award is premised on the amounts calculated being tax-deductible to the payor and taxable to the recipient in the years to which they relate: para. 25; see also *Yip v. Siller*, 2025 BCSC 1354 at paras. 81-82. Mr. Q. should complete Form T1198 so that the retroactive monthly payments determined above will be allocated to the years during which they ought to have been paid. Ms. D. will include those amounts in her 2022 to 2025 tax returns.
- [308] As was ordered in *Linklater* and *Yip*, if the CRA refuses to accept this tax treatment of the payments, then the parties have liberty to apply for an adjustment to the amounts owing: see *Linklater* at para. 35; *Yip* at para. 82. There is also a risk, identified in *Linklater* and *Yip*, that the recipient will be assessed interest by the CRA on taxes not paid in the years during which retroactive spousal support was found owing. As was done in those cases, I order that should Ms. D. be assessed interest by the CRA, Mr. Q. will indemnify her for those amounts.

Prospective spousal support

- [309] Mr. Q. argues that his income from 2025 onward should be \$339,509. This represents his regular income of \$285,093 (actually \$289,440 in 2024) and an expected annual RSU income of \$54,416. This, however, does not take into account his stock options, which form a substantial part of his income. Unfortunately, there is an inherent uncertainty about the value of the RSUs and stock options when they vest, as their value to Mr. Q. depends on their future value.
- [310] I accept that Mr. Q. may not make as much money going forward because he is working in a dynamic industry and may not be able to stay current forever. Looking back, the average of Mr. Q.'s total income (including stock-related income) from 2022-2024 results in a prospective income of \$1,169,878. Given Mr. Q.'s high income, I am prepared to adopt the ceiling principle. This principle sets an income level for the paying spouse above which any income-sharing formula gives way to discretion, i.e., the Guidelines formulas are no longer presumptive. The authorities establish that where incomes are over \$350,000, an individualized, fact-specific determination must be engaged: *T.N. v. J.C.N.*, 2015 BCSC 439 at

para. 178. Where the payor's income is substantially more than \$350,000, a pure discretionary approach is generally used: *S.R.M. v. N.G.T.M.*, 2014 BCSC 442 at para. 148.

[311] In April 2016, the Revised User's Guide to the SSAG was published. It cites the Court of Appeal in *Hathaway v. Hathaway*, 2014 BCCA 310 and provides the following principles:

There are some clear principles enunciated in the case law, even if the actual outcomes are discretionary and sometimes conflicting. In [Hathaway], there is a careful review of the law for cases above the ceiling, where some of these principles are stated.

- The formulas for amount are no longer presumptive once the payor's income exceeds the "ceiling".
- The ceiling is not an absolute or hard "cap", as spousal support can and usually does increase for payor incomes above \$350,000.
- The formulas are not to be applied automatically above the ceiling, although the formulas may provide an appropriate method of determining spousal support in an individual case, depending on the facts.
- Above the ceiling, spousal support cases require an individualized, fact-specific analysis. It is not an error, however, to fix an amount in the SSAG range, as was done in [Hathaway] above. Evidence and argument are required.
- Where the payor's income is not too far above the ceiling, the formula ranges will often be used to determine the amount of spousal support, with outcomes falling in the low-to mid range for amount. How far is "not too far above" is still not clear. Somewhere between \$500,000 and \$700,000, it seems.
- Once the payor's income is "far" above the ceiling, then the amount of support ordered will usually be below the low end of the SSAG range, but SSAG ranges are still calculated and sometimes the outcome will fall within the SSAG range.

In light of these principles, it is critical that counsel do SSAG calculations even in high income cases. It is wise to calculate the ranges for alternative income levels: for the \$350,000 ceiling (as a minimum) and for the full income (as a maximum), as well as for a range of intermediate incomes (to assist the court in triangulating an outcome) .

[Emphasis in original.]

[312] Based on the application of the ceiling, and balancing the objectives and factors set out in the DA, Ms. D.'s compensatory claim, and the standard of living during the marriage, I impute an income to Mr. Q. of \$700,000 from January 1, 2025 going forward. This income also takes into account Mr. Q.'s uncertain income going forward. Mr. Q. testified that his demanding job as a software developer and technical manager are not sustainable over the long term. Mr. Q. testified that some of the startup projects he had worked on were terminated by his employer due to his slow progress and unsatisfactory performance. In

addition, his income from his Shares depends on the market. Markets are difficult to predict given the variety of economic and geo-political factors that can influence them. As a result, Mr. Q.'s future income is variable and uncertain.

Lump sum spousal support

- [313] Ms. D. has requested a lump sum award in lieu of regular spousal support payments. Mr. Q. is opposed to this method of support. Given that lump sum payments are rare, I must consider whether the advantages of a lump sum award outweigh the disadvantages.
- [314] In the case at bar, I believe that terminating ongoing contact between these parties is important. The parties have had an extremely acrimonious marriage and separation. There have been cross-allegations of family violence and Mr. Q.'s testimony has undermined Ms. D. in her capacity as a wife, mother, and as a professional. The parties had nothing positive to say about each other. Rather, the parties spent an enormous amount of court time rehashing old disputes despite being advised - repeatedly - that we largely have a no-fault system for divorce, child and spousal support, and division of property. Determining Mr. Q.'s income on a yearly basis will likely result in numerous court applications which can be avoided with a lump sum payment.
- [315] Ms. D. also has immediate financial needs (e.g., to pay retroactive child support and s. 7 expenses). A lump sum will help alleviate the financial hardship to Ms. D. when making these payments. Another factor that I take into consideration is that Mr. Q. says his future income is precarious given his age, his health, and the fast-paced technological developments in his industry which may leave him behind. He is not certain how long he will continue to work and even if he continues, he is unable to predict his future income. Mr. Q. also said he may retire early but I note that the courts have held that a party's intention to retire is not determinative of that spouse's support obligations: *Ernst v. Ernst*, 2023 BCSC 65 at para. 83; *Mill v. Mill*, 2014 BCSC 1754 at para. 24; *Hague v. Hague*, 2021 BCSC 771 at paras. 8 to 9, *aff'd* 2022 BCCA 325. As a result, his ultimate retirement date is not a factor I can consider.
- [316] Lastly, and importantly, Mr. Q. can make a lump sum payment without significantly undermining his financial well-being. Lump sum payments can assist where the parties' relationship has been acrimonious and the payor spouse has capital assets with which to make a lump sum payment: *Kahila v. Kahila*, 1996 CanLII 901 (BC SC).
- [317] In summary, the significant advantages of a lump sum award outweigh the disadvantages here. Despite the exceptional nature of lump sum awards, there is a need for finality in this case. I am persuaded that lump sum spousal support is appropriate.

Duration and quantum of prospective spousal support

- [318] When spousal support is indefinite and a lump sum award is made, an end date must be estimated for the spousal support: see e.g. *Venables* at para. 180, *aff'd* 2019 BCCA 281.
- [319] Here, Ms. D. falls within the "Rule of 65" set out in s. 7.5.3 of the SSAG because the length of the marriage, together with Ms. D.'s age at separation, exceeds 65. Given the length of the relationship, and the Rule of 65, Ms. D. is presumptively entitled to indefinite support: SSAG, s. 7.5.3. While the SSAG are advisory only, this presumption reflects the reality that a parent who has been out of the work force for a lengthy period of time will take longer to become self-supporting after a marriage breakdown. Here Ms. D. was out of the workforce, off and on, until 2011. Based on Ms. D.'s delayed entry into the full-time labour force, the parties' ages, and their expected work life, I consider 10 years from the date of trial to be an appropriate end date for indefinite support.
- [320] There is still the question of which formula should be used and what range of spousal support is appropriate. The SSAG formulas provide a range for lump sum spousal support awards taking into account case-specific factors. This includes the length of the marriage, the parties' ages and their respective incomes or capacities to earn going forward.
- [321] From the date of separation until B.L. leaves for university, child support is payable to Mr. Q. and spousal support is payable to Ms. D. This suggests the application of the custodial payor formula. Ms. D. disagrees, arguing that the custodial payor formula is not appropriate in cases where the custodial parent has a very high income. Instead, Ms. D. argues that her spousal support amount should be close to 50 percent of the parties' net combined income.
- [322] The custodial payor formula was explained in *T.T. v. J.M.H.*, 2014 BCSC 451:
- [148] The formula actually involves first deducting grossed up amounts of child support from each spouse's gross income and then applying the without child support formula. It does produce a lower range of spousal support than the application of the other formulas because it recognizes the obligations that fall on the custodial parent, his or her responsibility for post-separation child care, the priority given to child support, the length of the marriage, the often older age of the remaining children and the non-custodial parent's prior contributions to the children's care: *Cassidy v. McNeil*, 2010 ONCA 218 at para. 72.
- Ms. D. is entitled to with-child spousal support for January to March 2026. As of April 2026 the without-child spousal support formula will apply. Since the with child spousal support is so short, I treat the entire period as spousal support without children when doing my calculations.
- [323] I consider it fair to calculate spousal support on the low end of the formula. Going forward, Ms. D. will have the benefit of the division of the parties' family property, including a significant amount of capital from the RSUs and stock options. She can earn interest on her investments from which she may derive a future independent income stream. This will reduce the post-separation financial discrepancies between the parties and help to

equitably share the family's economic benefits that resulted from Ms. D.'s contributions to the household. All this militates towards a lower amount of spousal support.

- [324] Starting in January 2026, spousal support will be calculated at the mid-range of the 'without child support' formula. Using DivorceMate, I take Mr. Q.'s imputed future income of \$700,000 per annum and calculate the prospective lump sum spousal support between January 2026 to December 2036 (10 years) to be \$906,053 (the mid-point in DivorceMate). DivorceMate automatically adjusts lump sum spousal support payments to recognize that they are not deductible to the payor and tax free to the recipient.
- [325] In generating this lump sum amount with DivorceMate, I have applied a 1.65 percent discount rate and a 15 percent contingency discount. This represents the risk that Mr. Q.'s income may drop as he ages given the nature of his industry. He may not receive the same amount of Shares as he has in the past. It also takes into account the risk that due to his medical challenges Mr. Q. may take further medical leave or, less likely, die before age 65. It also accounts for the positive contingency that Ms. D. may increase her income beyond what I have imputed to her.

Occupational Rent

Legal Principles

- [326] Occupational rent falls under Division 4 of Part 5 of the FLA: *McFarlen v. McFarlen*, 2017 BCSC 1737 at para. 12. The relevant factors in determining whether to grant a claim of occupational rent on the possessor of the matrimonial home were set out in *Ross v. Ross*, 2013 BCSC 1716, which was decided under the former Family Relations Act. Justice Verhoeven explained the factors as follows:
- [47] I observe that in other Canadian jurisdictions, the law does not focus upon the question of ouster, or of claims for expenses by the spouse remaining in possession. The principles applicable in Saskatchewan were recently summarized in *Casey v. Casey*, 2013 SKCA 58 at para. 48:

From the jurisprudence the following principles may be drawn regarding the awarding of occupational rent on a matrimonial home:

1. Occupational rent is a remedy which may be utilized to obtain justice and equity in appropriate circumstances.
2. The remedy is exceptional and should be used cautiously.
3. The following factors, where relevant, are appropriately considered:

- The conduct of both spouses, including failure to pay support, the circumstances under which the non-occupying spouse left the home, and if and when the non-occupying spouse moved for a sale of the home (Peltier at paras. 16-17; Wilgosh at paras. 99 and 109; Good, at para.90)
 - Where the children are residing and who is supporting them (Good at para. 90; Peltier at paras. 16--17; Wilgosh at para.108).
 - If and when a demand for occupational rent was made (Wilgosh at paras. 100 and 106; Good at para.90, and Peltier at para.16)
 - Financial difficulty experienced by the non-occupying spouse caused by being deprived of the equity in the home (Peltier, at paras. 16-17; Wilgosh at para. 106)
 - Who is paying for the expenses associated with the home. This includes who is paying the mortgage and other upkeep expenses (maintenance, insurance, taxes, etc.). .
 - Whether the occupying spouse has increased or decreased the selling value of the property (Peltier at paras. 16-17)
 - Any other competing claims in the litigation that may offset an award of occupational rent (Wilgosh at para. 108; Good at para. 92).
4. The remedy is a discretionary one requiring the balancing of the relevant factors to determine whether occupational rent is reasonable in the totality of the circumstances of the case.

[50] On the approach used by other jurisdictions, as I interpret it, the overriding question is whether occupational rent, as a discretionary remedy to be used cautiously, should be utilized in order to achieve justice and equity in all of the circumstances of the case. This approach appropriately places little if any emphasis on the question of fault or blame for the decision of one spouse or the other to leave the matrimonial residence.

[327] Occupational rent was summarized in *J.D.G. v. J.J.V.*, 2016 BCSC 2389:

[226] At common law, a co-tenant is entitled to claim occupation rent when he or she has been ousted from property. Absent an ouster from the property, there is no claim. However, if the tenant in possession seeks to recover property expenses from the departed tenant, the court retains a discretion to set off occupation rent against the expense claim. There is no absolute right to such a claim or set off. Occupation rent is an equitable remedy (*L.M.R.* at paras. 27-29, 31, 32).

- [327] In *Stasiewski* the Court of Appeal held that in family proceedings occupation rent is not a stand-alone claim but should be considered in deciding whether to order an unequal division of family property. In *Shen v. Tong*, 2013 BCCA 519, Justice Smith in concurring reasons identified the objective of an award for occupation rent as doing what is "'just and equitable' between the parties, albeit within the parameters of s. 65(1) of the FRA" (at para. 94).
- [328] While J.D.G. states that occupation rent is only warranted when the claiming party had been ousted from the property, later cases indicate that ouster is not a requirement: see e.g., *McFarlen v. McFarlen*, 2017 BCSC 1737 at para. 21.

Parties' Positions

- [329] Mr. Q. claims occupational rent in the amount of \$151,059 for his and the children's post-separation living conditions. Mr. Q. calculates his claim by using the capital expenditure difference between the Nigel Property and the E61 Property in the post-separation years up to September 2024. He states the capital ratio between the properties is 1.89. He uses the E61 mortgage payment as a basis, which has a mortgage of \$1,400 per two weeks, making its total over the four years \$145,248. He then takes the capital ratio of 1.89 to calculate the comparative mortgage amount for the Nigel Property, which results in \$274,403. He states that the purpose of this was to allow for an accurate comparison between the two properties. The difference between these two values, added to the difference in property tax, is \$151,059. Mr. Q. did not give a legal basis for this methodology.
- [330] Ms. D. opposes this relief. She points out that Mr. Q. did not include a claim for occupational rent in his notice of family claim. As a result, he is barred from making this claim. In the alternative, Ms. D. argues the residence in which Mr. Q. and the children resided post-separation had been recently renovated. Prior to separation, the parties spent approximately \$100,000 to renovate the residence. In contrast, Ms. D.'s residence had issues with a leaky roof and related water damage. Ms. D. emphasizes that the insurance company only compensated the parties \$6,000 for the partial cost of repairs, as the insurance company took the position that the problem was a design flaw and not covered. As a result, Ms. D. was living in a house with serious leaking, flooding, and mold.
- [331] Mr. Q. responds that although there was a flood at the Nigel Property, it was addressed and paid for through a combination of insurance and the parties' joint account.

Analysis

- [332] Following separation, Mr. Q. lived with S.L. and B.L. in the basement of the E61 Property and subsequently upstairs after the tenants vacated the suite in the house. Mr. Q. testified that the basement was dark, crowded, and inconvenient. Moreover, the E61 Property was far from the children's school and created extra travel time for the children. In contrast, Ms. D. lived alone in the 3,000 square foot, five-bedroom, five-bathroom family home on Nigel Street.
- [333] I accept there was a disparity in living conditions between the parties' post-separation. Ms. D.'s post-separation living conditions did not significantly decline although she did have to live, for a time, in a home with water damage.
- [334] Occupational rent is an exceptional remedy and I should exercise caution in making such an order. Here I decline to do so for three reasons. First, Mr. Q. did not include a claim for occupational rent in his notice of family claim.
- [335] Second, Mr. Q. chose to leave the Nigel Property and take the children with him. Although ouster is not a strict requirement, it is a factor I may consider. Mr. Q. claims he had to leave due to family violence. However, following Ross at para. 50, when determining the appropriateness of this discretionary remedy, I should place little "emphasis on the question of fault or blame for the decision of one spouse or the other to leave the matrimonial residence."
- [336] Third, Mr. Q. did not have to pay to stay at the E61 Property, so he is really claiming for his inconvenience and his lower standard of living. This is different than a typical occupational rent claim where there is a substantial rent claim.
- [337] Fourth, Mr. Q. could have applied for exclusive occupancy of the Nigel Property at the time of separation or shortly thereafter.
- [338] In my opinion, the facts of this case do not warrant this exceptional remedy. Occupational rent is a discretionary tool to achieve fairness: *Piderman v. Piderman*, 2015 BCSC 475 at para. 53. I am not persuaded that this remedy is necessary to achieve fairness between the parties in this case. To the extent that Mr. Q. incurred expenses related to the children living with him post-separation, this is accounted for under the retroactive award for child support and s. 7 expenses. Mr. Q. has a handsome income and while I appreciate that he was trying to save money for the children, he was not forced to live in the parties' rental home if he found the accommodation unsuitable. Lastly, I was not referred to an authority where value has been placed on a different standard of living for the purposes of occupational rent.
- [339] I dismiss this claim.

Miscellaneous

[340] Ms. D. is to return to Mr. Q. his 1991 graduation book from Shanghai University, his personal diary, and his classical guitar. He left these behind in the Nigel House.

Divorce

[341] Both parties claimed a divorce. A certificate of marriage has been filed as well as the clearance certificate. In addition, the evidence establishes jurisdiction and grounds. I am satisfied that the requirements for a divorce have been met. Therefore, subject to s. 12 of the Divorce Act, the Claimant, Q.L., and the Respondent, D.L., who were married on October 27, 1995 in Leizho, Guangdong, China, are divorced from each other. The divorce will take effect on the 31st day after the date of this Judgment.

Disposition

Guardianship and Parenting Time

1. The parties will continue to be joint guardians of B.L.
2. Mr. Q. will have the majority of parenting time with B.L. Ms. D. will only have parenting time with B.L. at B.L.'s own request.
3. Each guardian has the right to obtain information concerning B.L. directly from third parties including, but not limited to, teachers, counsellors, and medical professionals until the time she is 19.
4. B.L. will hold her own passport and other significant documentation.
5. Mr. Q. will have the obligation to promptly advise Ms. D. of any matters of a significant nature affecting B.L.
6. Mr. Q. has the obligation to discuss significant decisions affecting B.L. with Ms. D., including significant decisions about her physical and mental health (except with respect to emergency decisions), education, religious instruction, and her general welfare. The parties will use their best efforts to come to a consensus on these decisions.
7. In the event that the parties cannot reach agreement on a significant decision despite their best efforts, Mr. Q., as the guardian with the majority of parenting time, will be entitled to make those decisions. Ms. D. will have the right to apply for directions on any such decision she considers contrary to the best interests of B.L.

Child Support

[342] Ms. D.'s 2022 income was \$80,158 and her 2023 income was \$85,182. Ms. D.'s Guidelines income as of January 2024 is \$153,866. These amounts will be used to calculate child support, spousal support, and s. 7 expenses.

[343] Ms. D. will pay retroactive child support to Mr. Q. for B.L. and S.L. as follows:

- a) June 2022 to December 2022 (2 children, income of \$80,158): $\$1,241 \times 7 \text{ months} = \$8,687$
- b) January 2023 to August 2023 (2 children, income of \$85,182): $\$1,316 \times 8 \text{ months} = \$10,528$
- c) September 2023 to December 2023 (1 child, income of \$85,182): $\$814 \times 4 \text{ months} = \$3,256$
- d) 2024 (1 child, income of \$153,866): $\$1,386 \times 12 \text{ months} = \$16,632$
- e) 2025 (1 child, income of \$153,866): $\$1,386 \times 8 \text{ months} = \$11,088$.

[344] After August 2025, Mr. Q. is not entitled to child support for B.L. To the extent that S.L. and B.L. remain a child of the marriage while attending university, this will be addressed under s. 7 expenses.

Section 7 Expenses

[345] Retroactive s. 7 expenses for B.L. and C.L. are limited to the following allowed expenses incurred after June 1, 2022:

- university application fees;
- tuition, less the \$20,000 withdrawn from the RESP;
- textbooks;
- living expenses while at university;
- travel to and from university;
- counselling;
- extracurricular activities (e.g., art, boxing, piano classes);
- glasses and contacts not covered by insurance; and
- tutoring

(the "allowed s. 7 expenses").

[346] Ms. D. will reimburse Mr. Q. for her proportion of the retroactive allowed s. 7 expenses for which he can produce receipts. The proportion for each past year will be based on the parties' incomes, as determined in these Reasons.

[347] Ongoing s. 7 expenses will be shared in proportion to the parties' incomes in future years and will be addressed quarterly. Mr. Q. will provide Ms. D. with an accounting of the allowed expenses and proof of payment. Ms. D.'s s. 7 expenses going forward will be capped at \$15,000 per year.

[348] The parties will exchange tax returns and notices of assessment beginning on June 1, 2026, and in each subsequent year while s. 7 expenses continue.

Bank and Other Accounts

- [349] I order that the bank and investment accounts (other than the accounts holding Mr. Q.'s RSU and Options which will be addressed by way of settlement or the Referee's report) will, within 30 days of these Reasons, be divided as follows:
- a) With the exception of Mr. Q.'s PingAn Bank account #...2040, the parties will retain the accounts listed above which are in their sole names.
 - b) Mr. Q. will transfer to Ms. D. 50 percent of the balance in the PingAn Bank account #...2040 as of the date of these Reasons. As both parties have accounts in China, this can be done without a conversion of currency.
 - c) The balances in the jointly held accounts will be divided equally, but if either party has made withdrawals since August 20, 2020, that party will pay the other party 50 percent of such withdrawals.
 - d) The parties are to retain their respective post-separation bank accounts (i.e., that were opened by the parties after separation), subject to the possibility that Mr. Q. transferred vested Shares into some of these accounts.
 - e) The investment accounts are to be divided equally as of the date of these Reasons, subject to the possibility that Mr. Q. transferred vested Shares into some of these accounts. If Mr. Q. transferred or disposed of any of the above Shares, they are subject to settlement or further orders after receipt of the Referee's report.

RRSPs

- [350] The parties will, within 30 days of these Reasons, transfer, by way of spousal rollover, 50 percent of the assets in their respective RRSP accounts to the other. The amount of any withdrawals from RRSP accounts between the date of separation and the date of these Reasons will be added back to the RRSP accounts prior to the rollovers.
- [351] The parties will each retain RRSPs in accounts which they opened post-separation.

Pensions

- [352] The parties' unadjusted pensionable earnings under the CPP will be divided and equalized in accordance with Parts 5 and 6 of the FLA for the period of October 27, 1994 until August 20, 2020. Either party may apply for such division and the other party must cooperate and take all steps which are required to effect the division of the parties' CPP credits.

RESPs

- [353] The parties will continue to equally administer the RESP, with Mr. Q. being entitled to make any disputed decisions. Mr. Q. will promptly provide to Ms. D. copies of all RESP statements when received and will only apply RESP funds towards the children's reasonable post-secondary school expenses.
- [354] Any RESP balance remaining when all the children have completed their education will be divided equally, and Mr. Q. will promptly provide Ms. D. with a full accounting.

Debts

- [355] The \$60,150 owing on PLC #...1339 is a family debt and will, within 30 days of these Reasons, be paid equally by the parties. The other PLC's in Mr. Q.'s name are his sole debt.

The Shares

- [356] Mr. Q.'s claim for unequal division of the Shares and Options is dismissed. The Shares will be divided equally by way of a spousal rollover.
- [357] The Shares are to be divided as follows:
- All Shares acquired by Mr. Q. from RSUs which were granted before the date of separation (the family RSUs) or by the exercise of stock options granted before the date of separation (the family Options) and any pre-separation unexercised Options which Mr. Q. continues to hold in any account are family property and are to be divided equally with Ms. D. Subject to No. 3 below, Mr. Q. is to transfer one half of the RSUs and Options by way of spousal rollover to Ms. D.
 - Any adjustments, and the 50 percent division, will be calculated at the first business day immediately following these Reasons being issued and are to be transferred as soon as is reasonably possible and not more than 60 days following these Reasons.
 - To the extent that Mr. Q. withdrew, transferred, or traded (i.e., disposed of) other family RSUs or family Options following the parties' separation, they are to be treated as follows:
 - I order that Mr. Q. transfer 50 percent of the original 21,725 Shares that were in the Charles Schwab account to Ms. D. within 30 days of these Reasons by way of a spousal rollover. This means Mr. Q. will transfer to Ms. D. by spousal rollover 10,362.5 of the RSU shares which were in the Schwab account as of June 23, 2022 and Mr. Q. will retain 5555.5 shares.
 - Where the Shares were transferred into joint bank accounts, there need be no adjustment as Ms. D. is entitled to 50 percent of those accounts as of the date of trial.
 - For all other Shares that were disposed of, Mr. Q. will account for and transfer to Ms. D. one half of the sale proceeds of those dispositions, including interest. If Mr. Q. used the proceeds of the disposition to purchase other shares or investments, he will account for and transfer to her one half of those shares or investments and, if in cash, with interest.

[358] It is my hope that with the assistance of these Reasons, the parties will be able to settle the issue of the disposed of Shares. If the parties are unable to settle the issue of the outstanding Shares within 60 days of these Reasons, the following applies.

Special Referee

[359] To identify which of the family RSUs and Options that were disposed of were used for family purposes and which were used for Mr. Q.'s personal benefit, the parties are to jointly retain a special referee, who is a Certified Accountant, to trace the Shares for them. If the parties cannot agree on a special referee within 75 days of these Reasons, Mr. Q. is forthwith to name three potential special referees and Ms. D. is to choose one.

[360] In terms of the role of the Referee and the parties:

- The Referee will act independently of the parties and as an officer of the Court.
- The Referee will answer the questions below.
- The parties will give the Referee their full and prompt cooperation and will provide the Referee with all requested documents and information.
- The Referee may ask this Court for further directions if they decide this is required to complete the report.
- All findings in the report must be based on and supported by institutional financial records (i.e. bank or brokerage statements, or other records) and, in the case of payments to third parties, receipts issued by the payees.

[361] The Referee is to determine where the disposed Shares went and, if cash, what is their current value. Specifically, the Referee is to determine and report on the following:

- an accounting of the sale proceeds of any transferred or disposed of Shares that were granted before August 20, 2020;
- the remaining balance of Shares, other than the Shares which have already been divided pursuant to these Reasons (see paras. 188-189), held by Mr. Q. which were granted to him prior to August 20, 2024;
- an accounting of into what account(s) those Shares were deposited and which of those Shares Mr. Q. used to cover expenses for the maintenance of family property;
- which of those Shares Mr. Q. used to cover mortgage payments for the family properties; and
- after accounting for Shares used for family purposes, the value of the remaining Shares as of the date of these Reasons.

[362] If the Referee is unclear as to whether a particular Share that was disposed of was or was not used to maintain family property or was for personal use, they have liberty to apply to me for directions.

[363] The Referee is to write recommendations that I will review and from which I will make a final decision on the remaining Shares.

[364] The parties will share the costs of the Referee equally.

[365] For those approved s. 7 expenses that were paid from one of Mr. Q.'s personal bank accounts, this will be addressed by Ms. D. paying her proportionate share of these expenses. If approved s. 7 expenses were paid out of a joint account, Ms. D. has already paid more than her proportionate share.

Spousal Support

[366] Mr. Q. is to pay \$495,010 in retroactive spousal support to Ms. D., reflecting the monthly payments between January 1, 2021 and February 21, 2024. These amounts are tax-deductible for Mr. Q. and taxable to Ms. D. in the years to which they relate.

[367] Mr. Q. will pay a one-time lump sum payment of spousal support in the amount of \$906,058 to Ms. D.

Miscellaneous

[368] Mr. Q.'s claim that \$600,000 be placed in a trust for the benefit of the children is dismissed.

[369] Mr. Q.'s occupational rent claim is dismissed.

[370] Ms. D. is to return to Mr. Q. his 1991 graduation book from Shanghai University, his personal diary, and his classical guitar.

[371] I am seized of this matter only to the extent that: i) the Referee needs further directions; ii) I may have made a mathematical error or omission; or iii) I specifically granted leave to the parties to apply for further directions. If so, the parties may seek to speak to the matter prior to entry of the final order.

[372] I reserve judgment on the further compensation or division of the disposed of Shares which will be required after a settlement between the parties or receipt of the Referee's report.

Costs

[373] I will address costs after receipt of the parties' settlement agreement or the Referee's report and any further orders I may make following receipt of the settlement or report.

"D. MacDonald J."

[1] Both the FLA (s. 150) and the Divorce Act (s. 15.1(3)) adopt the use of the FCSG to determine the appropriate amount of support.

[2] In 2023 Mr. Q. claimed the following expenses for B.L.:

- a) after-school pickup, \$1,715;
 - b) after-school pickup Uber, \$528;
 - c) after-school pickup Lyft, \$371;
 - d) home care, \$6,450 (which included cooking meals); and
 - e) meal delivery and restaurants, \$2,611.
- [3] Mr. Q. explained that the CRA confiscates a portion of the Shares as tax.
- [4] Double recovery may be permitted where the payor spouse has the ability to pay, where the payee spouse has made a reasonable effort to use the equalized assets in an income-producing way and, despite this, an economic hardship from the marriage or its breakdown persists. Double recovery may also be permitted in spousal support orders/agreements based mainly on need as opposed to compensation: *Boston v. Boston*, 2001 SCC 43 at paras. 64-65.

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