
CANADA / JUDGMENT

S.A.H. v. J.J.G.V.

2021 BCSC 2132

COURT

Supreme Court of British Columbia

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2021 BCSC 2132 S.A.H. v. J.J.G.V.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.A.H. v. J.J.G.V. ,

2021 BCSC 2132

Date: 20211101

Docket: E180475

Registry: Vancouver

Between:

S.A.H.

Claimant

And

J.J.G.V.

Respondent

Before: The Honourable Madam Justice Douglas

Reasons for Judgment

Counsel for Claimant:

Peter T. Busch

Counsel for Respondent:

Amrit Grewal

Place and Date of Trial:

Vancouver, B.C.

June 21-25, 28-30,

July 2, 5-9, 2021

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Place and Date of Judgment:

Vancouver, B.C.

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I. INTRODUCTION

[1] As children, the parties, both of whom are devout Christians, attended the same church in Vancouver (the "Church"). They reconnected through the Church as young adults and married on November 30, 1999. On July 19, 2017, after having eight children together (now ranging in age from 8 to 20), they separated. They were divorced by court order effective April 13, 2020.

[2] The claimant is currently 45; the respondent is 43. It is common ground that their two eldest sons, JV (born in 2001) and SV (born in 2002), ceased to be children of the marriage, as defined in the Family Law Act, S.B.C. 2011, c.25 [FLA], on their 18th birthdays. Accordingly, there are now six children of the marriage:

- i. MV, born in 2004 and currently 17;
- ii. AV, born in 2005 and currently 16;
- iii. CV, born in 2006 and currently 14;
- iv. BV, born in 2008 and currently 13;

v. TV, born in 2009 and currently 11; and

vi. NV, born in 2013 and currently 8

(collectively, the "Children").

- [3] AV and TV have had almost no contact with the respondent for approximately four years. While the respondent alleges that the claimant has alienated them from him, this assertion is unsupported by any expert opinion evidence.
- [4] The claimant alleges that the respondent has spiritually abused her and the Children and that his actions constitute family violence, as defined in the FLA, s. 1. She opposes his requests for equal parenting time with the Children and joint guardianship of AV and TV. She says she has been economically disadvantaged by the parties' traditional marriage and seeks child and spousal support. She argues that the respondent is intentionally underemployed and asks that an income be imputed to him based on his capacity to work.
- [5] The respondent seeks joint guardianship of the Children and equal parenting time. He admits the claimant is entitled to spousal support but submits that child support must take precedence given his modest income. He acknowledges that he may owe child support arrears. He seeks an equal division of some of the debts he incurred during the parties' marriage. He says the claimant could work full-time in a minimum wage job and seeks to impute an income to her on that basis.
- [6] The parties own no real property and have no significant assets. Their former family residence was a rented house in East Vancouver where the respondent continues to reside (the "FFR").

II. ISSUES

- [7] The following issues arise in this case:
- What are the appropriate guardianship and parenting arrangements for the Children?
 - What, if any, income is appropriately imputed to the parties?
 - What, if any, child support is payable?
 - What, if any, spousal support is payable?
 - How is family debt to be divided?

III. CREDIBILITY AND RELIABILITY OF EVIDENCE

- [8] As set out by the Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356, [1951] B.C.J. No. 152 (C.A.) the real test of the truth of a witness' story is its harmony with the preponderance of probabilities, which a practical and informed person would readily recognise as reasonable in that place and in those conditions.

- [9] The claimant was a straightforward witness who generally provided clear, responsive answers to the questions she was asked. She was occasionally somewhat vague about the chronology of certain events but I did not find that to be surprising given the passage of time and the size of her family.
- [10] While some of her answers evolved, were qualified, or became more nuanced in cross-examination, I did not find her evidence on those matters (including, for example, details concerning the respondent's purchase of a boat during the parties' marriage) to be material. It was my general impression that the parties' ongoing hostility may have coloured some of the claimant's evidence and impaired her ability to be objective about certain issues. However, I found her to be a generally credible and reliable witness who was not prone to exaggeration. Overall, her evidence was in accordance with the preponderance of probabilities.
- [11] The respondent gave many lengthy answers, both in direct and cross examination, that were not always responsive to the questions he was asked. He frequently offered excuses and explanations to downplay his own conduct. He focused heavily on matters that were only peripherally relevant, including his longstanding dispute with the Church and the role he considers the Church elders have played in the collapse of his marriage.
- [12] There was a degree of grandiosity to the respondent's evidence: he variously suggested that his parenting approach was the better one, that the claimant's relationship with the Children would improve if she picked up cues from him, that the Church elders would be better leaders if they adopted his proposed changes, and that, while hardworking and well intentioned, the Church pastor did not share his skillset.
- [13] At trial, the respondent attempted to excuse his own misconduct, maintaining that his abuse at the hands of the Church elders had opened his eyes to his own mistreatment of the claimant. Notably, he made those comments only after Master Muir concluded in her December 2018 reasons that his actions were inflicting psychological and emotional abuse on his family and constituted family violence. In my view, his statements did not mesh well with his actions and I did not find them to be persuasive. Ultimately, I conclude his contrition was more convenient than real.
- [14] In 2020, the respondent told Jennifer Procyk, a Family Justice Counsellor who prepared a report with respect to the family, that he appreciated the need to adopt a less public approach in his dispute with the Church. However, on June 19, 2021, shortly before trial, he sent a mass email to the congregation (where the claimant and most of the Children still attend) discussing this litigation and the Church elders' role in it. The pre-trial interim conduct orders governing the respondent's communications are clear and, given his obvious intelligence, I have no doubt the respondent understood them. In cross-examination, the respondent admitted that he took a job with a bakery, delivering bread in the early morning hours, only because he thought it would make him look good in court. The respondent's own conduct reinforced my general impression that his actions were often more strategic than

sincere and that he tends to say what he perceives to be in his self-interest.

- [15] On all the evidence, including his own, the respondent appears either unable or unwilling to separate his fight with the Church from the failure of his marriage. His evidence was marked by anger and indignation and he clearly views himself as a victim. Ultimately, I question his objectivity about many of the matters in issue and I have corresponding concerns about his credibility and the reliability of much of his evidence. Accordingly, I have approached his uncorroborated evidence with caution.
- [16] Ms. Procyk authored a report pursuant to s. 211 of the FLA and was cross-examined by both parties at trial. She gave clear, balanced, and considered answers and made appropriate concessions as necessary. Her evidence was not undermined in any material way in cross-examination. I found her to be a credible and reliable witness.
- [17] LD, the parties' former nanny, testified on the claimant's behalf. While she maintains an ongoing friendship with the claimant, it was my impression that she was a fair witness who attempted to answer questions candidly.
- [18] JD, the claimant's brother-in-law, testified on her behalf. He is a family physician and has been an elder of the Church for more than two decades. Despite his family relationship with the claimant, I found him to be a careful and straightforward witness. He readily acknowledged the respondent's strengths and made appropriate admissions in cross-examination. I prefer his evidence to the extent it conflicts with that of the respondent.
- [19] DB, senior pastor at the Church, testified on the claimant's behalf. He has a longstanding relationship with both parties. He readily acknowledged their positive attributes and his shared history of good times with the respondent. I found him to be a thoughtful and balanced witness. His evidence was generally more nuanced than that of the respondent, who appeared to view issues in more absolute terms. I prefer DB's evidence where it conflicts with that of the respondent.
- [20] AV Sr., the respondent's father, testified on his son's behalf. He has invested in the respondent's business ventures, loaned him money, and forgiven him debts. The respondent concedes that they are close; both share the dubious distinction of having been asked to leave the Church. AV Sr. is clearly a strong supporter of his son and their interests are obviously closely aligned. I view his evidence with caution as a result.
- [21] LW, a member of the Church congregation, testified on the respondent's behalf. She and her husband were once involved in mentoring the parties. LW did not support the Church elders' decision to ask the respondent to leave the Church. That issue is not before me and her evidence was of limited assistance to the issues set out above.

IV. GUARDIANSHIP AND PARENTAL RESPONSIBILITIES

- [22] On December 20, 2018, Master Muir made the following interim guardianship and parenting orders:

- a) The parties are joint guardians of MV whose primary residence is shared between the parties;
- b) The respondent has final decision-making authority for MV, with the claimant having liberty to apply;
- c) The parties are joint guardians and share parental responsibilities for AV, CV, BV, TV and NV who are to reside primarily with the claimant;
- d) The claimant has final decision-making authority for NV, TV, BV, CV and AV, with the respondent having liberty to apply;
- e) MV may choose with whom he wishes to reside and when he sees each parent;
- f) The respondent has parenting time with CV, BV and NV on a two-week rotation (during week one from Saturday at 5 pm until Monday before school and during week two from Sunday at 1 pm until Tuesday before school);
- g) The respondent shall have three weeks of summer holidays with CV, BV and NV; and
- h) AV and TV shall have no scheduled parenting time with the respondent and shall reintegrate with him only as recommended by their counsellors or as agreed by the claimant.

[23] These interim orders remained in place until trial.

A. Parties' Positions

[24] The claimant seeks the following orders:

- a) The parties are joint guardians of MV, CV, BV and NV; and
- b) She is the:
 - i. primary caregiver for MV, CV, BV and NV; and
 - ii. sole guardian and primary caregiver for AV and TV.

[25] The claimant proposes an increase in the respondent's current parenting time to 5.5 days every two weeks (from Thursday at 3:00pm until Tuesday at 8:30am), after school resumes in the fall of 2021.

[26] The respondent seeks an order that the parties are joint guardians of all the Children and share parenting time equally.

B. Legal Framework

[27] Pursuant to s. 37 of the FLA, all orders for guardianship, parenting arrangements, or contact with a child must consider the best interests of the child only. Counsel for the respondent argues that, because the parties are divorced, the Divorce Act, R.S.C. 1985, c.3 (2nd Supp.) [DA] is paramount and therefore governs. He concedes that both statutes confirm the only relevant consideration in determining guardianship and parenting issues is the child's best

interests. Claimant's counsel submits that the FLA governs, citing *J.E.P. v. E.C.B.*, 2019 BCSC 786 at paras. 103 - 110.

- [28] I adopt the reasoning of Justice Sewell in *B.D.M. v. A.E.M.*, 2014 BCSC 453 [B.D.M.] at paras. 113 - 118 and conclude that the doctrine of paramountcy does not preclude consideration and application of the FLA in family law proceedings in which a divorce is granted. As noted by Sewell J in *B.D.M.*, at paras. 113 - 114, an overlap in legislation does not, without more, trigger paramountcy; paramountcy only arises if a provincial law would frustrate the purpose of a federal law. The parties agree that the underlying purpose of the FLA and the DA is identical: both require the court to consider the best interests of the child in determining parental responsibility. Given recent amendments to the DA, the two statutes are now more closely aligned; in the result, I am satisfied that the factors in s. 37 of the FLA provide a helpful analytical framework, regardless of which statute the parties rely upon.
- [29] The allocation of parental responsibilities is governed by s. 40 of the FLA. Pursuant to s. 40 of the FLA, parenting responsibilities may be allocated to one parent entirely, shared equally by the parties, or variously allocated to each parent.

C. Evidence

- [30] Ms. Procyk considered guardianship of the Children, parenting time, and parental responsibilities in her s. 211 report. She observed that the parties continue to be mired in conflict, despite their divorce in March 2020.
- [31] Ms. Procyk began working with the Family Justice Institute as a mediator in 2004, and has been writing views of the child reports since 2013 and s. 211 reports since May 2018. She conceded that she is not qualified to identify mental health issues or to administer any tests.
- [32] The facts in a s. 211 report are *prima facie* evidence of their truth: *K.M.W. v. L.J.W.*, 2010 BCCA 572. However, a court has discretion to review the background information presented in the report, to carry out an independent assessment based on the evidence at trial, and to come to a different conclusion as to the best interests of the child: *K.B. v. J.B.*, 2015 BCSC 704 at para. 10.
- [33] In deciding guardianship and parenting responsibilities, I have considered the factors in s. 37 of the FLA, as set out below. I have considered the parties' conduct, only as it substantially relates to my determination of the Children's best interests: FLA, s. 37(4). In doing so, I found it unnecessary to consider the extraneous evidence of both parties about why their marriage failed. The respondent's longstanding dispute with the Church is not before me and I have not attempted to resolve it. However, my conclusion that his actions fall within the scope of family violence, as defined by the FLA, informs my assessment of his parenting abilities and what is in the Children's best interests.
1. Children's Health and Emotional Wellbeing (FLA, s. 37(2)(a))

- [34] Many of the Children have significant emotional and mental health issues. As noted by Ms. Procyk, the parties' separation has impacted all the Children, each of whom has had to process it and adapt to a changed reality.
- [35] Ms. Procyk concluded that several of the Children are struggling emotionally and would benefit from the united support of their parents. At the time of her involvement, she was of the view that AV and TV both seemed traumatised and not sufficiently stable emotionally to tolerate forced contact with the respondent; she defers to their counsellors regarding the timing and utility of reunification counselling.
- [36] In my view, the comments of Justice Arnold-Bailey in *J.S.R. v. P.K.R.*, 2017 BCSC 928 at para. 6 are apposite here: rather than being focused on the Children's needs, the parties have expended a great deal of their modest means and emotional energy on this litigation. The Children have paid a high emotional price for their parents' destructive relationship.
- (a) AV (16)
- [37] A preliminary evidentiary issue regarding the disclosure of AV's personal information arose at trial. I provided a ruling, with reasons to follow. Accordingly, I address this issue here.
- [38] AV has not seen the respondent since the fall of 2017. In cross-examination, the claimant refused to disclose what AV has told her about why AV does not wish to see the respondent because doing so required her to reveal AV's personal information.
- [39] AV did not attend trial. It is unknown whether she was aware of the respondent's request for this information from her mother at trial, or whether she would have sought her own counsel to address the issue if she had been. On the evidence before me, I conclude that, if AV had been asked to disclose this information, she would not have done so voluntarily; to date, she has refused to provide it to the respondent.
- [40] By virtue of her age, AV is a mature minor and has the ability to make her own decisions about the disclosure of her medical and other personal information. The respondent has a history of disclosing the personal information of others on his publicly-accessible website and in his mass email communications. Those actions are particularly concerning in the context of the unchallenged evidence that AV has had mental health issues of sufficient severity since the parties' separation to require two hospital visits. In my view, compelling the claimant to disclose this personal information, communicated to her by AV in confidence, would potentially violate the trust AV has placed in her mother, undermine AV's mental health, and cause AV harm. I do not require this information to decide any matter in issue before me. On the unchallenged evidence, AV's decision to have no contact with the respondent is supported by her counsellor and Ms. Procyk.
- [41] In weighing the relative benefits of compelling disclosure against the risk of potential harm to AV by doing so, I concluded the balance favoured non-disclosure. For those reasons, I sustained the claimant's objection and did not compel her to answer this question.

- [42] AV is currently undergoing counselling. No counsellor, physician, or mental health professional testified at trial. No counselling or medical records are in evidence.
- [43] According to the claimant, AV started having mental health issues in 2017 and was suffering extreme anxiety when the parties separated. She described the respondent's approach to parenting as traumatizing for AV, referencing the intense emails and letters he sent her asserting that the claimant and the Church elders were making bad choices. In her view, he lacked the ability to empathise with AV and did not respect her wishes. Ultimately, AV refused to have anything to do with him.
- [44] The respondent tells a different story. He described AV and himself as a "good team", recalling that they enjoyed skiing, volleyball, and working together on science projects before the parties separated. According to him, issues arose before the parties' separation due to AV bossing her older brothers around. The respondent conceded that he did not always deliver his message to AV about respecting the autonomy of others in as gentle or caring a manner as he could have, noting he was then under a lot of stress due to the parties' failing relationship and his ongoing conflict with the Church elders.
- [45] The respondent says that AV has visited him only three times since the parties separated. AV was then living with the claimant and the other Children at JD's house. There was conflicting evidence at trial about an incident that occurred there in 2017. I address it below.
- [46] The last time they spoke, the respondent and AV were alone in his car outside JD's house. According to the respondent, he had an "emotional reaction" (after AV's aunt came outside to ask AV if she was ok) and asked AV an unspecified, inappropriate "adult question". Thereafter, he says that AV got out of the car and went inside uneventfully. He vehemently denies that any yelling occurred or that he reached across AV to lock her door, calling that an "absolute fabrication" while noting that his vehicle has power locks. The claimant understands that the respondent refused to allow AV out of the car until she explained why she would not see him. The respondent admits he and AV have not spoken since and that AV has chosen not to spend time with him.
- [47] JD recalls being attracted by the sound of AV screaming from inside the respondent's car. He said this incident is "seared" in his memory and that the volume and physicality of the exchange between AV and the respondent concerned him.
- [48] There is no reference to this incident in the s. 211 report. AV told Ms. Procyk that she has struggled to reconcile the perception she used to have of her father with the "reality of who he is", saying she does not trust him and that he does not appreciate the impact of his actions on her. She wishes he would "back off".

- [49] AV attended the hospital twice in 2018: once the claimant drove AV against her will; on another occasion, she called 911 and AV was transported to hospital by ambulance. Ultimately, as an alternative to having AV admitted to a youth psychiatric ward, and to allow herself some respite, the claimant arranged for AV to stay with LD's family on Pender Island for a few months. She said AV returned in an improved condition, evidence LD corroborated.
- [50] The respondent sees the claimant's decision to "call the police on AV", something he stated repeatedly, as a psychologically damaging means of controlling her and a form of manipulation. On all the evidence, including his own, the parties have a fundamentally different view of the role of conventional psychiatric care in managing the Children's mental health issues; it appears that the respondent favours prayer and discipline over psychopharmacology.
- [51] AV initially underwent counselling at a youth mental health clinic; after taking a break, she restarted counselling in the spring of 2020. The claimant conceded that the counselling AV has received is not directly related to reunification with the respondent; she sought help for AV's emotional issues which were directly tied to her relationship with the respondent.
- [52] According to the claimant, AV is currently doing well.
- (b) CV (14)
- [53] CV was sexually assaulted at the age of six by a man the respondent met through the Church and was attempting to mentor. The parties view the respondent's indirect role in this event differently: in the claimant's view, he failed to heed her stated concerns (informed, in part, by her nursing background) about the perpetrator's mental instability and failed to keep CV safe; by contrast, the respondent highlights his intervention to stop the assault and his support of CV throughout the subsequent protracted criminal proceeding.
- [54] The parties agree that CV has had mental health issues since their separation. The respondent described CV as mature beyond her years, a view endorsed by Ms. Procyk. According to him, he and CV have intelligent conversations and share a special bond; the claimant is of the view the respondent has inappropriately made CV his confidant. The respondent acknowledged that CV has suffered anxiety and sleep difficulties since the parties' separation.
- [55] In February 2021, in response to information from CV and without consulting or advising the claimant, the respondent called the MCFD and took CV to the hospital. On February 22, 2021, he emailed the claimant, saying he had learned from CV that she had "had a moment of crisis", including thoughts of suicide. He admits that he was intentionally vague about this matter in his communications with the claimant, who wondered why CV was not at school when she went there to pick up the Children. He told her that he was prioritising CV's emotional safety. He wrote in his February 22, 2021 email to the claimant that he had informed the MCFD of her tendency to call the police on AV and CV if they did not follow her

direction. There are no MCFD records in evidence.

[56] CV has been receiving counselling since 2020. No hospital or counselling records for CV are in evidence. In March 2021, CV spent about 14 days with LD's family on Pender Island; both parties agree this seemed to help CV.

(c) BV (13)

[57] The claimant reported significant concerns about BV's mental health and emotional well-being. The parties disagree about whether he is depressed or simply has low iron. Neither party introduced any medical evidence to clarify this matter.

(d) TV (11)

[58] On the evidence of both parties, TV has struggled significantly since the parties' separation. The claimant admitted he had some anxiety before the parties separated but denied it was significant. The respondent admits TV had difficulties processing the parties' separation but denies TV's behaviour was directed against him, suggesting instead that TV simply found comfort in his attachment to his mother.

[59] According to the claimant, it became increasingly challenging to persuade TV to visit the respondent at the FFR and exchanges were difficult. She said that TV suffered extreme separation anxiety and was upset about the general disarray at the FFR, including the mice in his bedroom. She described TV repeatedly kicking the door of her vehicle while she drove to the FFR on one occasion before climbing over three bench seats and bolting down the street on arrival. The claimant was not prepared to use force to make him stay with the respondent.

[60] The respondent did not challenge this account, acknowledging that TV continuously yelled "no" for about 45 minutes after arriving at the FFR. He suggested the incident could have been avoided if the claimant had simply left as he had suggested rather than staying for about two hours in an effort to persuade TV to remain at the FFR. However, he also suggested that she ought to have tried harder to encourage TV to visit him at the FFR.

[61] The claimant recalled the respondent getting into her vehicle once in the summer of 2018, remaining there for two or three hours and refusing to get out until she made TV stay at the FFR. She felt trapped and thought her only options were to leave or to call the police. In her view, she broke TV's trust when she left. Thereafter, she says that TV told her he never wanted to go back to the FFR and she stopped taking him there.

[62] According to the respondent, after the exchanges occurred, TV was fine spending time with him and his siblings at the FFR. On August 9, 2018, in response to the claimant's email advising him that TV had been struggling to attend the FFR, he instructed her to "drop [TV] off with the rest of the [Children]", noting that "[TV] is 'kicking and screaming' because of [the claimant's] foolish and selfish choices."

- [63] DB, in his capacity as interim acting principal, is familiar with TV's past challenges attending school. He said the claimant was patient, kind, and persistent in her attempts to assist TV. The respondent does not dispute this evidence, suggesting only that she ought to have invested the same effort in encouraging TV to spend time with him.
- [64] Following the December 2018 order of Master Muir, the respondent was only permitted to communicate with TV through the claimant. He sent cards, letters, and gifts. He acquired trampolines, a hot tub, and an above-ground pool and invited TV to attend playdates at the FFR.
- [65] On March 13, 2020, Justice Groves ordered visits with TV and the respondent at the Dairy Queen every other week. Based on the respondent's Affidavit #9, sworn July 15, 2019, those visits were suggested by him and not (contrary to the respondent's evidence at trial) Groves J. The respondent said TV attended three of these Dairy Queen visits. Objectively, on the evidence of both parties, they did not go well.
- [66] The respondent agreed that his efforts to reach out to TV since the parties' separation have been persistent. He bought TV a pet chinchilla, despite the claimant having allergies and being unable to have pets in her home. He sent elaborately packaged treats to school for TV and his classmates, saying he was trying to build a bridge with TV and that gifts are his "love language". He admitted that, because the claimant did not facilitate this process, he gave his gifts to the other Children for delivery to TV on his behalf.
- [67] By email dated May 17, 2021, the respondent wrote the claimant, stating that, while she might not understand or agree with his "approach to win [TV] back", it was "clearly working". He asked for her assurance that she would give his gifts and cards to TV and allow TV to enjoy his pet chinchilla when she dropped off the other Children at the FFR.
- [68] TV has received counselling since the parties' separation. At the respondent's request, he switched to a new counsellor, David Lee, in order to pursue reunification counselling. When the respondent learned that Mr. Lee does not specialise in reunification counselling, he unilaterally stopped paying for TV's counselling sessions, informing the claimant of his decision by email dated August 29, 2020. The respondent now wishes TV to transition to a third counsellor for reunification counselling.
- [69] The claimant understands that, while Mr. Lee is of the opinion that reunification counselling is currently not appropriate for TV, he agrees to work with TV until it is possible. She is opposed to switching TV to another counsellor, noting it was difficult for TV to make the transition to Mr. Lee. Mr. Lee did not testify at trial; his records are not in evidence. Mr. Lee told Ms. Procyk that, when he first assessed TV, he determined that pursuing reunification with the respondent did not fit with TV's needs. In his view, continued counselling could positively impact TV's future relationship with the respondent and better equip him to move towards reconnecting with his father.

[70] TV told Ms. Procyk that he does not trust the respondent whom he recalls was "always crying and yelling" after the parties' separation. In his view, his father is trying to bribe him; like AV, he wishes the respondent would "back off".

2. Children's Views (FLA, s. 37(2)(b))

[71] Ms. Procyk interviewed all of the Children and the parties' two eldest sons, JV and SV. I have considered the views of the Children, as set out in the s. 211 report.

[72] Based on the statements attributed to them in the s. 211 report, common themes emerged from Ms. Procyk's discussions with the five oldest children (i.e., JV, SV, MV, AV and CV): all perceive the claimant to be struggling with parenting currently, describing her as rigid in her belief that she knows best. They see her as unable to separate her own feelings of hurt and anger towards the respondent from his relationships with them. They acknowledged the respondent's tendency to become fixated on issues about which he feels strongly and recognise the impact this has had on the claimant.

[73] AV and TV have made it clear they do not currently wish to spend any time with the respondent. MV and CV wish to decide their own parenting time. BV would prefer a one-week alternating parenting schedule, thereby shortening the interval between visits with each parent. CV, BV and NV would like more time with the respondent.

3. Children's Relationships (FLA, s. 37(2)(c))

[74] The claimant acknowledges that the respondent loves the Children and was involved in their lives during the marriage. However, she says that she is the one who managed the many daily tasks required to run a busy household, while shielding the Children from the reality of their frugal existence and the parties' strained relationship.

[75] The respondent submits that the status quo has changed and that (with the exception of AV and TV) he is now more involved with the Children, evidence AV Sr. corroborated.

4. History of the Children's Care (FLA, s. 37(2)(d))

[76] Both parties agree the claimant was the Children's primary caregiver during their traditional marriage. According to the claimant, the respondent's various business ventures consumed a significant amount of his time. The respondent said he mostly worked from home and was available to assist, as necessary. He periodically managed to secure government funding for nannies.

5. Children's Need for Stability (FLA, s. 37(2)(e))

[77] According to the claimant, the FFR was frequently in a state of chaos during the parties' marriage, largely due to ongoing renovations the respondent undertook in exchange for discounted rent. She introduced photographs of the FFR taken after the parties separated, depicting what she described as a massive mouse infestation that she says occurred after the respondent removed a large window, expanded the opening, and left it unsealed for several

months. Other photographs depict accumulated garbage, strewn tools and equipment, broken glass, stacked dressers in the front yard, and an upended couch tied to the front door.

- [78] While the respondent acknowledged that he struggled to attend to some matters after the parties' separation, he denied there were ever any safety concerns at the FFR. He introduced his own photographs, showing the FFR in a more pristine condition in 2018. The claimant understands the respondent's renovations at the FFR are now complete.
- [79] The respondent continues to rent the FFR. As of the date of trial, he was about \$20,000 behind on his rent. He says he has an amicable relationship with his landlords who have taken no steps to evict him. Based on the lease in evidence, it is open to his landlords to require him to vacate the FFR on three months' notice if his rent is more than 28 days late. While the respondent has a right of first refusal to purchase the FFR when the lease terms ends on February 28, 2023, he acknowledged that it is unlikely he will be in a financial position to do so.
- [80] The claimant has rented a four-bedroom basement apartment in North Burnaby since January 2018. While the respondent suggested in closing that her housing situation may be equally unstable, there is no evidence that she is behind on her rent.
6. Ability to Exercise Parental Responsibilities (FLA, s. 37(2)(f))
- [81] The parties agree they have fundamentally different parenting styles. That evidence is consistent with Ms. Procyk's observation that the claimant is stricter and more structured than the respondent. The claimant admits she likes to impose boundaries and a healthy routine for the Children but denies being rigid or controlling. Contrary to the claimant's suggestion, the respondent denies he has transitioned from being an authoritarian father to a freestyle parent who lets the Children do whatever they want.
- [82] The claimant argues that, by building a "Disneyland" in his front yard, the respondent has become the fun father and effectively transformed her into the more authoritarian parent. The respondent denied installing a pool, hot tub, trampolines, and fire pit at the FFR or buying the Children gifts (including pets) in an effort to manipulate them, instead describing those things as blessings from a loving father.
- [83] The respondent admits the claimant is a great mother. That conclusion is consistent with the evidence of all those who know her and testified at trial. The claimant expressed concerns about the respondent's ability to handle the responsibility of managing the Children's daily needs. She offered various examples; they include his response to a lice infestation and MV's poor school attendance.
- [84] According to the claimant, one of the Children became infested with lice at the FFR; ultimately the whole family was affected. She said the respondent made navigating the challenging process of eliminating the lice difficult, noting she has had concerns about the Children's personal hygiene when in his care. By contrast, the respondent said lice

infestations at the Children's school were a regular occurrence and not a big deal. According to him, MV became infected with lice after visiting his siblings at the claimant's house. He said he bought the appropriate shampoo and hair combs and that he and MV got hair cuts. However, when presented with his email to the claimant about this matter in cross-examination, he agreed it was less than constructive. He attempted to excuse it by saying he was upset.

- [85] According to the claimant, the respondent has had significant difficulties ensuring the Children attend school when in his care. Both parties acknowledge that MV, who mostly resides with the respondent, barely passed grade 11. The school attendance records in evidence confirm he missed 62 days in the 2020/2021 school year or, based on a March 3, 2021 letter from the school, about 55% of his school year. DB was aware of MV's attendance problems, describing his attendance record as dire and confirming that, despite being a brilliant student, MV was placed on academic probation as a result. While MV ultimately passed grade 11, DB said he lost several weeks of school because the respondent unnecessarily prolonged the resolution of this issue.
- [86] In his statements to Ms. Procyk, the respondent acknowledged that, while in his care, he permitted the Children to miss school, suggesting their time together was so limited, it was better spent with him. In his view, the school's decision to place MV on probation was unduly harsh. He takes credit for "going to bat" for MV, negotiating with the school, and allowing MV the space to make his own decisions. He denied allowing the Children to stay home from school whenever they wanted, saying he complied when Master Muir told him he had to stop doing so.
- [87] The claimant said the respondent's pattern of giving the Children elaborate gifts, that she cannot afford, without consulting her creates unnecessary conflict. She concedes that his intent is loving but, in her view, he does not appreciate the negative impact of his actions on the Children. That statement is consistent with those made by AV and TV to Ms. Procyk.
- [88] According to the claimant, all of the Children, to varying degrees, carry the burden of being an advocate for the respondent, who has made them privy to adult emails about the parties' marital dispute. She said the respondent has attempted to involve the Children (except AV and TV) in his mission to mediate the parties' dispute and reunite the family. She said he had MV record AV's outbursts on his phone. In cross-examination, the respondent admitted asking MV to record "intense" conversations between the claimant and AV so he would know what was going on.
- [89] LD described both parties as good parents. She said the claimant was a caring mother who was organised, calm, and controlled, even under stress, and who had a structured, well-organised home. She recalls the respondent appearing fun and happy-go-lucky, while also having a persistent side. In her view, the Children are suffering as a result of the parties' ongoing fighting.

- [90] JD described the claimant as an organised, loving parent who disciplined the Children as necessary. He acknowledged the respondent also had a positive role in the Children's lives and engaged in creative activities with them, although often doing so by making purchases they could not afford.
- [91] Based on his observations, DB agreed the respondent was a good father when the parties were parenting as partners.
- [92] In AV Sr.'s view, both parties are capable parents. He said the respondent was actively involved in the Children's lives before the parties separated and that he was a firm but loving parent.
- [93] Ms. Procyk saw no reason why the respondent could not provide a safe and nurturing environment for the Children if he were to have more parenting time. While valid, she did not consider the claimant's concerns to be persuasive enough to preclude CV, BV and NV spending more time with the respondent. She confirmed it is imperative that the respondent follow court orders and respect the boundaries established by the claimant and that he should be discouraged from using the Children as messengers and over-sharing details of the parties' ongoing conflict. In her view, the respondent's use of the Children to relay messages to TV, contrary to court orders, is detrimental.
- [94] Ms. Procyk noted that the claimant should recognise the respondent as an equal parent and keep him informed of any pertinent information regarding the Children's health and wellbeing.

7. Family Violence (FLA, s. 37(2)(g))

- [95] In assessing family violence pursuant to s. 37(2)(g) of the FLA, I have considered the factors in s. 38 of the FLA, as set out below:

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (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.
 - (a) Spiritual Abuse
- [96] There was extensive trial evidence about the respondent's longstanding conflict with the Church elders, some of whom are the Children's relatives. I have considered this evidence only as it relates to a determination of the central issue before me: namely, the best interests of the Children.
- [97] On the evidence of both parties, the respondent's dispute with the Church spans approximately two decades and was exacerbated by their separation. According to the claimant, it began when the Church denied his request to become a youth pastor. She said he was upset when the Church elders supported her decision to leave him. The respondent has expressed the view that divorce is a sin and accused the claimant and the Church elders of having been deceived by Satan.
- [98] The respondent described the Church elders as a group of arrogant men who have abused their spiritual authority and threatened to take the Children away from him. He was upset when he learned they had offered the claimant and the Children an "escape home" after she left him. Because he decided that he needed to engage with them, he created a public website to disseminate his message widely, posting correspondence, some of which referenced the claimant, his family, the Children, the parties' separation, and this litigation. The claimant expressed concern about his disregard for her and the Children's privacy.
- [99] After the parties separated, the respondent conceded that he "let his emotions out" at a Church service on one occasion; he denies his behaviour was premeditated or attention-seeking. Based on the evidence of JD, which I prefer on this point, the respondent significantly understated what actually occurred; he recalls the respondent "screaming and shrieking" on this occasion. JD testified that some of the Children were present; evidence the respondent did not challenge.
- [100] In his October 20, 2017 email to DB, the respondent described himself as the head of his home and complained that the claimant was undermining his spiritual authority. At trial, he described his message as well-intended but misguided, saying that, as the claimant's husband, he thought he was an authority figure in her life and that she ought to follow his lead. He maintained that his views have since changed.
- [101] On November 28, 2017, the respondent emailed AV (who was then 12), asking her to obey him which would, in turn, "honour [him] and please Jesus". He said he was trying to tell AV what the Bible teaches about healthy parent/child relationships. He sent AV a 19-page letter, strenuously advocating that the actions of the claimant and AV were sinful, had been influenced by Satan, and were contrary to the Bible.

- [102] The respondent conceded that some of this content was probably not suitable for a child. By referring to AV as a sinner, he said that he simply meant she had "missed the mark", maintaining that his letter is consistent with what any Christian father would teach his children.
- [103] In March 2018, after what DB and JD described as extensive efforts to address his multiple grievances, the Church elders asked the respondent to leave the Church. Because he understood that DB had subsequently delivered a slanderous message about him to the Church congregation (an assertion DB denied), the respondent decided to email the Church at large in order to defend himself and to hold the Church elders accountable. He did not honour the elders' request to stop emailing the Church, likening his emails to the Church's weekly newsletter and saying it was open to recipients to block or delete them. More than three years after being asked to stop doing so, he continues to email the Church. The respondent denies any responsibility for the fact that his three oldest sons have now left the Church, saying that doing so was their choice.
- [104] The respondent admitted that some of his emails to the Church and the claimant have been "charged" or "amped up" and that he took messages from the Bible and used them "as lobs". He attempted to excuse his conduct by saying that he occasionally allowed his emotion and frustration to emerge.
- [105] The respondent denied he has attempted to manipulate the Children in an effort to persuade them to his views. He admitted that he asked his older sons to write affidavits to support an application he brought in these proceedings, describing them as young men who had valid opinions to share. JV and SV both did so; their stated views mirror those of the respondent. The respondent admitted that he was discussing the parties' relationship and his fight with the Church with the Children. He explained that the Children are all very intelligent; he encouraged them to be independent thinkers and informed them about matters that he thought affected their daily lives.
- [106] TB, school administrative assistant, asked the respondent to remove her from his mass mailing list. He refused to honour her request. In response to her emailed letter about the status of his tuition payments for the Children, he replied with unsolicited information about matters related to the parties' marital dispute, including reintegration counselling for AV and TV and the claimant's alleged non-compliance with a court order.
- [107] In December 2018, Master Muir found that the respondent's actions constituted family violence, as contemplated by s. 1 of the FLA. This order was not appealed. There was ample evidence to support it at trial and I wholly endorse the conclusions of Master Muir, as set out in her reasons.

- [108] After being ordered to do so by Master Muir, the respondent removed the website where he had posted various emails, letters, and YouTube videos. He admitted to only one "critical mistake": namely, attaching a document detailing his various grievances with the Church to one of his mass emails, saying he thought he had redacted it (to remove all references to his family). He agreed he was "walking a fine line" but maintained that his emails conformed to the spirit of Master Muir's conduct order. I disagree.
- [109] On March 13, 2020, Justice Groves ordered that the respondent's emails or text messages "must deal only with issues concerning the [C]hildren and must not reference their different religious beliefs or talk about any other issues related to the conduct of the litigation". On November 21, 2020, the respondent emailed the whole Church stating, in part, that the Church elders were intending to break up his family and coaching the claimant to take him to court. He attached his communications with the Church elders to his email.
- [110] By letter dated April 22, 2021, DB wrote to the claimant to inform her that the respondent continued to communicate with Church members and school officials about the breakup of the parties' marriage, implicating the Church leaders. He confirmed that, since the March 2020 order of Groves J., the respondent had emailed or written the Church and school community on at least 24 occasions. He testified that, in all his years as a pastor, he has never experienced such intrusive conduct from a former member of the congregation.
- [111] The respondent's June 19, 2021 email to the Church at large (referenced in para. 14 of these reasons) was a clear breach of the March 13, 2020 order of Groves J. I do not accept the respondent's attempt to justify it on the basis it related only to his fight with the Church elders. His email makes clear reference to this lawsuit, the pending trial, and the respondent's view of the Church's role in these proceedings, including the Children being "taken" away from him.
- [112] On the evidence of the claimant, DB and JD, which I accept, the respondent has repeatedly breached the conduct orders in place. His fixation on his dispute with the Church elders, his lack of compliance with court orders, and his apparent inability to appreciate the adverse impact of his actions on the Children, have influenced my decision regarding guardianship and parenting issues.
- [113] The respondent argues that he should not be precluded from engaging in religious instruction with the Children, citing *M.J.S. v. S.B.M.*, 2017 BCSC 313. In my view, that case is distinguishable on its facts; a genuine discussion of religious belief is not analogous to the use of scripture to coerce, manipulate, or harass. I find the facts of this case to be closer to those in *P.H. v. K. H.*, 2016 BCSC 56 [P.H.]. In *P.H.*, the child was told that his mother would not be permitted to enter the House of God with him when she died, thereby causing the child great concern. In his various emails and other communications, the respondent asserts that the claimant (the mother whom the Children love) and the Church elders (some of whom are their relatives) have been deceived by Satan and are following a path of evil.

Despite the respondent's apparent inability or unwillingness to appreciate the impact of his actions, I conclude they are having a detrimental effect on both the Children and the claimant.

[114] I agree that the respondent's actions, including his written communications to the claimant and some of the Children invoking scripture to advocate, manipulate, or coerce, his mass email campaign to the Church, and his posting of personal information about his family in the context of his public fight with the Church elders, constitute family violence, as contemplated by the FLA, s. 1. That conclusion is consistent with the decision of Chief Justice Hinkson in *Fyfe v. Fyfe*, 2014 BCSC 1999 at para. 47.

[115] As noted by Master Muir in her reasons, indexed as *S.A.H. v. J.J.G.V.*, 2018 BCSC 2278:

[52] The FLA has a very broad definition of family violence. It does not have to be the intentional infliction of harm. The circumstances of this case are an example of an apparently well-meaning but fixated father inflicting psychological and emotional abuse on his family.

[. . .]

[54] I think it is extremely unlikely that the respondent will willingly stop his efforts to persuade others that he is right. What he must do, however, is to stop inflicting this fight on the [C]hildren.

[116] I adopt these views which were supported by the evidence at trial.

(b) Physical Abuse

[117] The claimant described two incidents when she felt physically threatened by the respondent in the summer of 2017: once when he barged into the bedroom, breaking the doorframe in the process, and a second time when he pinned her to the bed and yelled in her face. The respondent admitted the essential details of both incidents; he offered explanations in an attempt to excuse his actions. He now claims to have a less authoritarian approach to his relationships.

[118] DB recalled one occasion when the respondent became angry after his meeting with both parties. He said the respondent raised his voice and his fist. DB thought he was going to be punched; he was sufficiently concerned about the respondent being in a rage that he called the police and the school. The respondent rejected this evidence as a "total mischaracterisation" but admitted sending a lengthy and "very charged" email after this incident.

[119] The parties no longer live together. There is no evidence the Children witnessed any of the above-noted incidents or that the respondent has ever engaged in this kind of conduct with them. I conclude that neither the claimant nor the Children are at risk due to the threat of physical violence from the respondent. However, on all the evidence, including his own, it is my general impression that the respondent has some difficulty regulating his emotions, particularly under stress, and that he lacks insight regarding the impact of his actions on

others.

(c) Sexual Abuse

[120] At trial, the respondent repeatedly asserted that the claimant had falsely accused him of molesting AV. In an apparent attempt to explain why AV refuses to see him, he expressed concern that the claimant had suggested to AV that he had been sexually inappropriate with AV. While the claimant denied ever accusing the respondent of sexual impropriety with AV, she admitted confronting him once before they separated about circumstances which had raised questions in her mind about his actions.

[121] DB similarly denied the claimant had ever accused the respondent of sexually molesting AV. He understood the claimant had once questioned the respondent about his conduct and later dismissed her own concerns. Neither DB nor the claimant notified the authorities. The claimant made no allegation of sexual impropriety in these proceedings and the respondent has had unsupervised parenting time since the parties' separation. In my view, asking legitimate questions in circumstances that raise potential concerns is materially different from levelling accusations. Notably, CV was sexually molested at the age of six, something I infer may have left the claimant with a heightened level of anxiety about ensuring her daughters' safety.

[122] In his lengthy undated letter to AV, the respondent states that "[s]o many times I've wanted to be with you, to rescue you, to pack you up and take you away to a nice hotel so we can talk, so I can understand and apologise for any hurts I've caused you. So we can be close". I find it unlikely that the respondent would have made those statements in writing if the claimant had accused him of sexually assaulting AV. I also find it unlikely that the claimant would have consented to the respondent having unrestricted parenting time if she had accused him of sexual impropriety with any of the Children. Notably, there is no mention of any such allegation in the s. 211 report.

[123] I reject the respondent's assertion that the claimant falsely accused him of sexual impropriety and prefer the evidence of the claimant and DB on this point. I conclude that the respondent either misconstrued the claimant's statements, or made this allegation in a misguided attempt to advance his position in these proceedings.

8. Parents' Ability to Work Cooperatively (FLA, s. 37(2)(i))

[124] Given their troubled history, ongoing animosity, and inability to communicate effectively, I conclude it is unlikely that the parties will be able to co-parent collaboratively in the best interests of the Children. There is ample evidence to support this view. Ms. Procyk reached the same conclusion. In her opinion, it is not realistic to expect the parties to co-parent successfully; she contemplates a parallel parenting approach with limited interaction and communication.

9. Civil or Criminal Proceedings (FLA, s. 37(2)(j))

[125] There are no parallel civil or criminal proceedings.

D. Analysis and Conclusions

1. Guardianship

[126] Pursuant to s. 39 of the FLA, each parent, while together and after separation, is a guardian of the child, unless otherwise agreed or ordered. Each guardian may exercise all parental responsibilities with respect to each child, in consultation with the child's other guardian(s), unless doing so would be inappropriate or unreasonable in the circumstances: FLA, s. 40(2). A court may allocate parental responsibilities between guardians by agreement or order based on the best interests of the child, in accordance with the factors set out in s. 37: FLA, s 40(3). No particular parenting arrangement is presumed to be in the best interests of a child: FLA, s. 40(4).

[127] As noted by Justice Ball in *S.P. v. M.W.*, 2017 BCSC 1723 at para 34, there is no provision for sole guardianship in the FLA. However, a person's guardianship of a child may be terminated pursuant to s. 51(1)(b) of the FLA. A court may only terminate a person's guardianship in the most extreme circumstances: *M.A.G. v. P.L.M.*, 2014 BCSC 126 [M.A.G.] at para 44. A court should first consider whether a reallocation of parenting responsibilities can eliminate any risk to the child's best interests arising from the parent's continued guardianship; if that can be achieved, guardianship should not be terminated as a reallocation of parenting responsibilities allows the child to retain the benefit of a meaningful and significant relationship with their parent: *G.W.M. v. W.C.M.*, 2015 BCSC 1624 at para. 133.

[128] In my view, it is not in the Children's best interests for the respondent's guardianship to be terminated, such that he loses all rights and responsibilities with respect to them, except for contact. Instead, I follow the approach of Justice Fleming in *M.A.G.* I conclude that it is preferable for both parties to remain guardians of the Children and, to address my concerns, for the s. 41 parenting responsibilities to be reallocated.

2. Parental Responsibilities

[129] The family dynamics in this case are complicated by multiple factors including the parties' polarised parenting styles and religious views, and their ongoing hostility, mutual distrust, and inability to communicate effectively. Their limited financial resources present a further challenge, as does the respondent's relentless pursuit of his longstanding grievances with the Church. The evidence persuades me that, despite the negative impact of his actions on the Children, the respondent remains convinced of the correctness of his position and is unlikely to give up this fight. His persistence causes me to question his assertion that he has prioritised the Children or has the capacity to do so.

- [130] While I accept that the respondent loves the Children and enjoys spending time with them, I have fundamental concerns about his judgment, his lack of insight, and his apparent inability or unwillingness to look beyond self-interest for their benefit.
- [131] I am also concerned about the pressure the respondent's actions place on the Children, regardless of his intentions. I agree that his use of the Children as agents to deliver messages and gifts to TV is inappropriate. While (based on his own email communications) this appears to be a conscious strategy, it is misguided and detrimental. So too is his use of the Children to deliver cash payments to the claimant, and his instructions to some of the Children to record their interactions with the claimant. I share the view of Justice Smith in *D.A.F. v. R.D.F.*, 2017 BCSC 873, at para. 30, that it is almost always inappropriate for parties to involve children, even older ones, in their dispute by obtaining affidavits from them.
- (a) MV
- [132] MV is almost 18. He has resided mostly with the respondent since the parties' separation. He is entering his final year of high school and, according to the respondent, this will likely be the last year he resides at the FFR.
- [133] The parties will share parenting responsibilities for MV. However, given his age, I anticipate that MV will likely be involved in making many of his own decisions regarding the matters set out in s. 41 of the FLA. If the parties are unable to reach agreement regarding any of those matters, after consulting MV and making a concerted effort to reach agreement, the respondent will have final decision-making authority; the claimant may apply to contest his decisions.
- (b) CV, BV and NV
- [134] The parties will share parenting responsibilities for CV, BV and NV.
- [135] Both parties will make day to day decisions affecting CV, BV and NV and will have day to day care, control and supervision of CV, BV and NV while exercising parenting time with them. Each party shall inform the other of any significant matters that arise for CV, BV or NV during their respective parenting time.
- [136] If the parties are unable to reach agreement regarding any of the matters set out in s. 41 of the FLA, after making a concerted effort to do so, the claimant will have final decision-making authority, with the respondent being able to apply to contest her decisions. In an effort to minimise unnecessary applications, which these parties can ill-afford, and to encourage the parties to be reasonable, I direct them to mediate any such disputes with a Family Justice Counsellor, before proceeding with any court applications.
- (c) AV and TV

[137] AV and TV have resided primarily with the claimant since the parties' separation. In my view, it is currently in their best interests for this to continue. While the respondent attributes his fractured relationships with AV and TV to the claimant, I do not find that to be the case. As noted by Justice Tindale in *K.M.M. v. D.R.M.*, 2017 BCSC 1464 at para. 78, when a child refuses to see one parent, it does not necessarily follow that the other parent is at fault.

[138] Instead, I adopt the approach of Fleming J. in *M.A.G.* I am satisfied that it is in the best interests of AV and TV to allocate parental responsibilities to the claimant, requiring her to consult with the respondent about some matters, while retaining final decision-making authority.

[139] Accordingly, I make the following orders:

- a) The parties are both guardians of AV and TV;
- b) Pursuant to s. 41 of the FLA, the claimant shall have primary parenting responsibility for AV and TV as follows:
 - i. Making day-to-day decisions affecting AV and TV and having day-to-day care, control and supervision of AV and TV;
 - ii. Making decisions respecting where AV and TV will reside;
 - iii. Making decisions respecting with whom AV and TV will live and associate;
 - iv. Applying for a passport, licence, permit, benefit, privilege or other thing for AV and TV;
 - v. Giving, refusing, or withdrawing consent for AV and TV, if consent is required;
 - vi. Receiving and responding to any notice that a parent or guardian is entitled or required by law to receive; and
 - vii. Subject to any applicable provincial legislation:
 - (1) Starting, defending, compromising or settling any proceeding relating to AV and TV; and
 - (2) Identifying, advancing and protecting the legal and financial rights of AV and TV.

[140] The claimant shall provide the respondent with the names and contact information for TV's teachers and medical and dental practitioners. The respondent is entitled to request and receive health, education or other information respecting TV; he is entitled to do so for AV, only with her prior written consent.

[141] In part because they will share the associated costs, the parties will share the following parenting responsibilities for AV and TV:

- a) Making decisions respecting their education and participation in extra-curricular activities; and

- b) Making decisions respecting their cultural, linguistic, religious and spiritual upbringing and heritage.
- [142] If the parties are unable to reach agreement regarding any of the matters for which they share responsibility for AV and TV, after making a concerted effort to do so, the claimant will have final decision-making authority; the respondent may apply to contest those decisions. I direct the parties to mediate any such disputes with a Family Justice Counsellor, before proceeding with court applications.
- [143] I conclude that it is appropriate for the parties to communicate in a manner that leaves a record. The parties' consultations with each other regarding important decisions for the Children will therefore be in writing. Barring emergencies, they are to restrict their communications with each other to one email or text message per week, confined to matters related to the Children only.
- [144] In my view, both parties would benefit from completing the free Justice Education Parenting after Separation course. Details about it can be found at: <http://justiceeducation.ca/programs/parenting-after-separation>. I direct them to do so within three months of the release of these reasons.

V. PARENTING TIME

A. Parties' Positions

- [145] The claimant seeks the following parenting orders:
- a) The respondent will have parenting time with AV and TV, when AV and TV initiate such parenting time, as directed by their counsellors;
 - b) The respondent will have parenting time with MV, CV, BV and NV on a two-week schedule from Thursday after school at 3 PM until Tuesday before school at 8:30 AM, following which she will have them from Tuesday at 8:30 AM until the Thursday of the following week; and
 - c) The parties will share holidays in accordance with a set schedule.
- [146] The claimant says that her proposed increase in the respondent's parenting time results in the parties sharing parenting on a 59/39 basis in her favour. While she conceded that this arrangement would result in her retaining 100% of the child tax benefits and the respondent continuing to pay child support, she denied that is why she made this proposal.
- [147] The claimant recognises that all the Children (with the exception of AV and TV) have expressed a wish to spend more time with the respondent. While she is prepared to increase his parenting time to 5.5 days over a 14-day period, she is concerned about the impact of his unpredictable business and other ventures on his ability to manage the full-time daily responsibilities of equal parenting time, including ensuring that the Children attend school when in his care. She acknowledges that MV has decided to live full-time with his father and accepts that he cannot be forced to spend more time with her given his age.

[148] The respondent seeks 50/50 parenting time with all the Children. He says that CV would like to determine her own parenting schedule, as do her three older siblings. Alternatively, he proposes equal parenting time with CV.

B. Legal Framework

[149] Pursuant to s. 42 of the FLA, only guardians may have parenting time. In making orders for parenting time or contact, the court may consider only the child's best interests: FLA, s. 37(1). In making an order under Part 4 of the FLA, a person's conduct may only be considered if it substantially affects a factor outlined in s. 37(2): FLA, s. 37(4).

[150] In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and it must not be presumed that guardians should share parenting time equally: FLA, s 40(4)(b).

C. Analysis and Conclusions

(a) MV

[151] Parenting time with MV will be shared by the parties, in accordance with MV's wishes. I decline to order any specified parenting time for MV. Both parties concede that such an order is not feasible given his age.

(b) AV

[152] Given AV's age, I conclude it is unlikely that she can be forced to spend time with the respondent against her wishes. The respondent is hopeful that AV will eventually reach out to him, absent intervention or support. He wants to be able to reach out to her when he "feels inspired", promising that he would not overwhelm AV if he were permitted to communicate with her directly.

[153] On all the evidence, I am not persuaded that the respondent currently has the necessary insight, judgment, or sensitivity to appreciate the impact of his actions on AV. That conclusion is consistent with his actions to date, AV's statements to Ms. Procyk, and Ms. Procyk's recommendation against forced interactions between AV and the respondent. In my view, it is not in AV's best interests to permit the respondent to communicate with her directly at this stage and I decline to make that order. I echo the sentiments of Justice Affleck in *K.L.S. v. K.M.S.*, 2017 BCSC 1315 [K.L.S.] at para. 16, and conclude that the most promising approach to achieving a satisfactory relationship between AV and the respondent is to allow for the passage of time. In my view, forcing such a relationship through Court order would likely be seen by AV as coercion and would be counterproductive. While it is unfortunate that AV has no relationship with her father, I conclude, as did Affleck J. in *K.L.S.*, that I cannot solve that problem.

[154] I agree with Ms. Procyk that AV's mental health and well-being needs to be prioritised over forced interactions with the respondent. Accordingly, I decline to order any specified parenting time for AV with the respondent.

(c) CV, BV and NV

[155] Based on her statements to Ms. Procyk, CV would like to choose her own parenting time. The claimant is opposed to such an order; in her view, it would place undue pressure on CV, suggesting that allowing MV to do so at about the same age had a negative impact on him.

[156] I accept that Ms. Procyk's report accurately reflects CV's stated views. However, those views are not determinative and not necessarily consistent with what is in CV's best interests. Given my concerns about the respondent's history of putting the Children in the middle of the parties' marital dispute and his fight with the Church, his lack of insight regarding the impact of his actions, and his apparent inability to appreciate the coercive nature of some of them, I decline to allow CV to determine her own parenting time. That said, I acknowledge that CV turns 15 this year and am mindful of her comments to Ms. Procyk. I am hopeful that the claimant will consider CV's views when assessing whether it is appropriate to incorporate some flexibility into the parenting schedule I have set. As noted by Ms. Procyk, it is imperative that the respondent appreciate the impact of his own actions on the claimant's approach to parenting. In my view, if he were more respectful of court orders, the claimant's boundaries, and the family's privacy, the claimant might be more willing to accommodate some flexibility in the parties' parenting schedule.

[157] It is my general impression from the respondent's actions and his email communications in evidence that his primary focus throughout this litigation has been on what he wants and feels he is entitled to by right, rather than what is best for the Children. He contacted the MCFD in an apparent attempt to gain leverage in these proceedings when he learned that CV had experienced a "moment of crisis". He threatened to do so again and to involve the police if he did not get what he wanted in an email to the claimant's lawyer. He unilaterally stopped paying for TV's counselling sessions with the person he had personally selected for that purpose when he learned that Mr. Lee had no specialty qualifications in reunification counselling. He did so with no apparent regard for the impact of this decision on TV.

[158] I accept that no parents are perfect and that courts allow imperfect parents to raise their children as best they can: *K.D.P. v. A.R.K. aka R.K.*, 2011 BCSC 1085 [K.D.P.] at para. 1. While there is no shortage of bad behaviour by the respondent in this case, I have not lost sight of the strengths that he brings to the challenges of raising the Children: *K.D.P.* at para. 2.

- [159] Ultimately, I am not persuaded that 50/50 parenting time is currently in the Children's best interests. There is substantial instability in the respondent's life. He is currently unemployed and has no income. He has significant debt. His housing situation is uncertain and he owes substantial arrears of rent. Notably, he remains consumed by his longstanding feud with the Church. In my view, this situation is not conducive to the stability and security the Children require.
- [160] I accept that BV, CV, and NV have all expressed a wish to spend more time with the respondent. I conclude that the only way to assess his ability to manage the daily responsibilities of parenting the Children during the school year is to assess it over time. I order increased parenting time with the respondent for BV, CV, and NV, commencing November 2021, on the following two-week schedule:
- i. Week 1: the respondent will have parenting time from Thursday at 3 PM until Monday at 8:30 AM; and
 - ii. Week 2: the respondent will have parenting time from Tuesday at 3 PM until Thursday at 8:30 AM.
- [161] In making this order, I have attempted to address the stated wishes of some of the Children to see their father more often and to shorten the interval between their time with him. It is roughly equal to the five and a half days over two weeks proposed by the claimant and shares week-end and week-day time. It is also consistent with Ms. Procyk's views that increasing the respondent's parenting time from Thursday after school until Monday before school on alternative weeks might be a good start and would gradually allow for new routines to be established.
- [162] Barring unforeseeable emergent circumstances, this order will be reviewable six months after the release of these reasons.
- (d) TV
- [163] I order no specified parenting time for TV with the respondent. I am troubled by the respondent's apparent inability or unwillingness to recognise the role his own actions have played in this damaged relationship. The evidence persuades me that forcing reunification counselling at this stage would be detrimental to TV. Accordingly, I decline to do so.
- [164] Based on the evidence at trial, I conclude that it is appropriate for the other interim parenting and schooling orders of Master Muir (as set out in my disposition at the end of these reasons) to remain in place. Accordingly, these orders will be final.

VI. CONDUCT ORDERS

[165] The parties' communications are strained. The claimant communicates with the respondent by email and text message only. The respondent has persisted in broadcasting his strongly held religious views, including his perception of the Church's role in this litigation, to a wide audience.

[166] The evidence persuades me that the March 2020 interim conduct orders of Justice Groves (as set out in my disposition at the end of these reasons) ought to remain in place. Accordingly, those orders will be final.

VII. IMPUTATION OF INCOME

A. Parties' Positions

[167] The claimant asserts that the respondent is under-employed; she seeks to impute an income of \$70,000 to him. The respondent argues that an income of \$30,000 ought to be imputed to the claimant on the same basis.

B. Legal Framework

[168] Section 19 of the Federal Child Support Guidelines, SOR/97-175 (the "CSG") states, in part, as follows:

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

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

[]

(f) the spouse has failed to provide income information when under a legal obligation to do so;

[]

[169] A payor spouse is required to work to full capacity, whether in the context of determining child or spousal support: P.K.C. v. J.R.R., 2014 BCSC 932 at para. 99. A parent from whom child support is sought bears an onus and responsibility to adduce evidence to justify a failure to work to capacity: Reggelsen v. Reggelsen, 2007 BCSC 219 at paras. 18-19. The courts have a broad discretion to impute income to one or both spouses for the purposes of determining child and spousal support. A party seeking to have income imputed to the other spouse bears the onus of establishing the evidentiary foundation to ground such a finding by the Court: Marquez v. Zapiola, 2013 BCCA 433 [Marquez] at para. 36.

[170] The test for imputing income for intentional under-employment or unemployment is reasonableness, having regard to the individual's education, health, work history, and work availability: *Marquez* at para. 37; *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, R.F.L. (4th) 314 at paras. 28 - 31. While the legal foundation for an award of child support is different than that for an award of spousal support, the test for imputing income for the calculation of both is one of reasonableness.

[171] In *M.A.G.* at para 52, the court held that three fundamental principles are applicable to all applications for child support:

- a) Parents have a joint legal obligation to support their children;
- b) It is the child, not the custodial parent, who has the right to child support; and
- c) Support payments are based on earning capacity and not only actual earnings and parents have an obligation to earn as much as they are reasonably capable of earning.

[172] In *Hanson v. Hanson*, [1999] B.C.J. No. 2532, [2000] B.C.W.L.D. 234 (S.C.) at para. 14, the court applied the following principles in assessing capacity to earn income:

- a) There is a duty to seek employment;
- b) If income is to be imputed on the basis of intentional under-employment, a court must consider what is reasonable in all the circumstances including the parent's age, education, experience, skill, health, and factors such as the availability of work;
- c) Limited work experience and job skills will not justify a parent's under-employment and parents cannot avoid supporting their children because they cannot find interesting or highly paid work;
- d) When a parent persists in un-remunerative employment, the court may be entitled to impute income;
- e) Parents cannot be excused from their child support obligations because they have unrealistic or unproductive career aspirations; and
- f) A parent will not, as a general rule, avoid child support obligations by a self-reduced decline in income.

[173] I have considered the parties' income-earning capacity with these principles in mind.

C. Evidence

1. Claimant's Work History and Income

[174] The claimant graduated from a registered nursing diploma program at BCIT in 1997. Thereafter, she nursed for about three and a half years in a hospital setting, earning \$20 to \$25/hour and working full-time before going on maternity leave; thereafter, she did not return to nursing. By all accounts, she was a capable nurse.

- [175] The claimant has been out of the nursing field for about 20 years and is no longer licensed. She must complete a nursing degree (as the diploma program is no longer available) if she wishes to return to nursing. While the claimant maintains that nursing is her passion and she would like to return to it, she suggests that doing so now is not feasible. She has considered becoming a laboratory or ultrasound technician but offered no evidence about the cost or length of those training programs, whether she has any definite plans to pursue either one, or, if she did so, what she could earn working in such a job.
- [176] The claimant said she has chronic back issues, aggravated by IBS, multiple pregnancies, and two car accidents in 2014 and 2020. She suggested that she could not manage the physical demands of an RN, LPN, or care aide position but introduced no medical evidence to support this conclusion.
- [177] The claimant currently works part-time, five hours a day, two days a week, earning \$15/hour in a retail store owned by LD's husband. She took this job to supplement her income because the respondent is not currently paying child support. If she earns more than \$600/month, this amount is deducted from her social assistance payments. She currently has an annual child support guideline income of \$19,958.08, comprising:
- i. \$8,738.08 in employment income; and
 - ii. \$11,220 in social assistance (for herself).
- [178] The claimant also receives Universal Child Care Benefits for five of the Children in the amount of \$28,068.56, plus corresponding social assistance payments for them of \$5,924.64. In 2020, she received additional government assistance in the form of a BC COVID-19 grant of \$1,000, CERB payments of \$8,000, and a BC Housing rent subsidy of \$6,660. She estimates annual expenses for herself and the Children of \$70,921.

2. Respondent's Work History and Income

- [179] The respondent completed a two-year architectural technologist diploma at BCIT in 1998. In about 2000, he secured a full-time job working with a local architect, earning about \$18/hour (\$37,440/year). He held this position for about two years, saying he hit a glass ceiling because he was not a trained architect. In 2002, he left this job to help design and manage construction of the Church's new school; he started his own home-based design business and worked on this project for about three years. The respondent was not qualified to design buildings and worked in conjunction with the project architect. He said his income in these three years was consistent with what he had earned previously, working as an architectural technologist.

- [180] After the Church project ended, the respondent admitted that his family had some financial "ups and downs". He taught himself graphic and web design but has no formal education in this area. When opportunities presented, he "followed the money". Between 2005 and 2008, he explored a variety of different opportunities, suggesting that he earned an average of about \$40,000/year doing so, a figure that was not corroborated by any documentary evidence.
- [181] According to the claimant, the problems in the parties' marriage began as a result of the respondent's multiple failed business ventures and corresponding debts. She described him as an entrepreneur with big ideas; by contrast, she is more practical and better at money management. While she acknowledged that the respondent is smart, determined, and talented, she said he failed to harness his many skills in order to earn a stable income during their marriage. Those statements are consistent with the evidence of DB and JD. JD noted that many of the respondent's creative enterprises became too big too quickly, before they were supported by the necessary business infrastructure. He recalled that when the respondent became part of the creative team involved in designing the Church's school, his ideas did not relate cohesively to the actual budget.
- [182] The parties agree they were on the verge of bankruptcy after about five or six years of marriage. The claimant said it was often a struggle to find enough money to buy food; given the unpredictable nature of the respondent's income, she did not know how much money would be available to her, or when, and planning was difficult.
- [183] The respondent acknowledged his many business failures, admitting he fell behind on payments to banks and creditors. In about 2009, the parties made a consumer proposal to consolidate their debt; as a result, three-quarters of it was forgiven. The respondents' parents loaned the parties enough money to repay the one-quarter balance, enabling them to "hit the reset button".
- [184] In 2010, with his father's assistance, the respondent purchased a barter company, describing it as his greatest business failure. He brokered deals and was paid based on the volume of completed business transactions. His parents were his primary investors; they loaned him the \$87,000 he required to purchase this business. The respondent managed to raise \$120,000 to cover the cost of a software system he partially designed. Other investors contributed \$10,000 in actual money (in exchange for an RRSP eligible tax deduction) and \$15,000 in barter money. The respondent attempted to build this business over about three years; thereafter, he conceded that it was "on life support".
- [185] Ultimately, the barter business ran out of money. The respondent blamed this failure on his partner's breach of their agreement, suggesting the business would otherwise have succeeded. He estimated his salary between 2010 and 2014 to be about \$3,000/month (or \$36,000/year). This figure was not corroborated by any documentary evidence. The parties then had seven children.

- [186] The respondent tried being a handy man but found the work competitive, securing only a few jobs, mostly working for cash, on Craigslist. In early 2017, he began sourcing recalled IKEA dressers online and returning them for cash refunds. He attempted to launch a home-based business, selling diet/fitness products, before being hired by his friend to work in his retail store as a business consultant. The respondent was paid \$35/hour for 20 to 25 hours of work/week to assist in making "high level" changes to this business. He was terminated in about March 2018.
- [187] At some point thereafter, the respondent secured a sales position in a furniture store for about one month. After the claimant commenced these proceedings, he briefly had a job delivering bread. It is unclear what he earned doing this work.
- [188] According to the respondent, the "last time he checked" which was "not recently", an architectural technologist could earn about \$22/hour (\$45,760/year). He said it would take him another five years to complete the training necessary to become an architect. On his evidence, he is only qualified to be a draftsman or to do administrative architectural work, positions he suggested would attract "bottom rung" pay.
- [189] The respondent considers a regular "9 to 5" job to be too inflexible, unduly limiting, and not a good fit for him. In his view, business opportunities offer greater income-earning potential, more time with the Children, and an opportunity for him to fulfil his vision of transforming the FFR into a "community house". The respondent admits he is not currently working. He struggled financially in 2020 due to COVID-19. IKEA closed for four months before discontinuing cash refunds, effectively ending his work returning recalled dressers. He estimated his 2020 annual income to be about \$35,000, but agreed he is capable of earning more.
- [190] The respondent conceded that he is not currently investigating employment opportunities. He anticipates that he can earn about \$5,000/month (\$60,000/year) pursuing one of his latest business ventures.
- [191] The respondent disclosed gross income of \$3,500/month (\$42,000/year) in his May 26, 2021 financial statement. He received about \$1,800 in CRB payments and a BC Housing subsidy of about \$570 in 2020. He has neither paid any income tax nor filed any corporate tax returns for many years. He secured a \$40,000 COVID-19 loan last year; he has two years to repay 75% of it (in which case the balance is forgiven) and is not required to make any monthly payments before then.

D. Analysis and Conclusions

1. Claimant

- [192] In July 2017, the Children ranged in age from 4 to 16 years. The claimant left the FFR with the Children, staying for several months at JD's home. Given her child care responsibilities, I impute no income to the claimant in this six-month period.

- [193] In December 2018, the claimant's guideline income was \$15,715 for child support purposes. Given her child care responsibilities, Master Muir declined to impute an income to her in December 2018. Based on the trial evidence, there is no reason to interfere with this decision. The parties did not challenge this figure or provide any evidentiary basis to support a different income. I adopt this figure for the year 2018 for the purpose of assessing child support.
- [194] In July 2019, Justice Schultes imputed income to the claimant based on 17.5 hours/week at the prevailing minimum wage of \$13.85/hour (or \$12,603.50/year) in addition to her social assistance income (found by Master Muir to be \$15,714.72) for a total annual income of \$28,318.22. I adopt this figure for the last six months of 2019 for the purpose of assessing child support.
- [195] In March 2020, Groves J. imputed income to the claimant in the same amount. I am satisfied on the trial evidence that it is reasonable to impute an income of \$28,318 to the claimant for the purpose of assessing child support in 2020.
- [196] The claimant presented as an intelligent and articulate individual. All the Children in her care are now in school full-time. I conclude that she is not currently working to capacity. I accept that she is unable to resume nursing without retraining. However, I do not agree that she must wait 10 years (for all the Children to attain the age of majority) before she is in a position to do so.
- [197] On her own evidence, the claimant has chosen to limit her hours of work, presumably so as not to jeopardise her social assistance benefits. In my view, she is currently capable of working full-time in a minimum wage job. Accordingly, as proposed by the respondent, I impute a gross annual income of \$30,000 to her for the year 2021; this figure is approximately equal to full-time minimum wage employment. If she retrains, she has substantially greater income-earning potential.
- [198] I have assessed child support based on incomes for the claimant, as set out below.

Year

Income

2017

\$0

2018

\$15,715

2019

Jan - June

July - Dec

\$15,715

\$28,318

2020

\$28,318

2021

\$30,000

2. Respondent

[199] The respondent is obviously an intelligent, creative, and resourceful individual. He has talents in construction, home renovation, and graphic and web design. He describes himself as a skilled communicator and a self-taught designer. He has a high school diploma, some post-secondary education, and is a certified architectural technologist. On his own evidence, he is currently not maximising his income-earning potential. He suggests that income be imputed to him in the amount of \$35,000, based on the average annual income he says he earned during the parties' marriage. By his own admission, that figure underestimates his capacity to work.

[200] The claimant seeks to impute an income of \$70,000 to the respondent. The evidence to support that figure is thin. While the claimant testified that the respondent has many talents and could qualify for many jobs, she was vague on details. The claimant has the burden of proof on her claim to impute income to the respondent.

[201] Assuming full-time employment (of 40 hours/week x 52 weeks/year), the evidence before me indicates:

- a) The respondent earned \$18/hour (or \$37,440/year) from 2000 to 2002 working as an architectural technologist;
- b) In 2017, he earned \$35/hour (\$72,800/year) working part-time as a general manager/business consultant in a retail store; and
- c) The respondent predicts he could earn up to \$60,000/year pursuing one of his latest business ideas.

[202] I infer from the evidence of the respondent that the income of an architectural technologist has increased in the last 20+ years.

[203] The respondent is now in his mid-forties. He has been self-employed for most of the last 20 years. He was fired from his position at his friend's retail store and lasted only one month in his recent furniture sales position. On the evidence of JD, he has some difficulty reporting to others; the respondent clearly sees himself as an entrepreneur. Despite his

persistence, the respondent's business ventures have generated insufficient revenue to support his family. The parties have relied heavily on government benefits, subsidies, and grants and the generosity of family, friends, and the Church community.

- [204] In my view, the respondent does not have the luxury of pursuing further speculative business ventures that depend on the investment capital of others. His obligations to support his own family must take precedence over realising his vision of transforming the FFR into a community house. I am not satisfied that either of his latest business plans is viable. His first idea is to rent portable hot tubs; doing so requires him to find someone to purchase these hot tubs, failing which he acknowledges that he has no business. The demand for used hot tub rentals, particularly in the context of an ongoing pandemic, is unclear.
- [205] His second plan is to build and sell modular decks; he contemplates doing so in a Home Depot parking lot, a business plan that raises many questions including whether or not Home Depot would permit him to do so. The evidence does not support the conclusion that he has secured this permission.
- [206] The respondent is still relatively young, apparently healthy, and obviously resourceful. While not formally certified, he has acquired many practical skills in construction, residential home renovations, graphic design, and building websites. It is clear he has the capacity to work full-time. While he did not succeed with his own handyman business, I see no reason why he could not work as part of a crew doing commercial construction or home renovation work. On the respondent's own evidence, his eldest son, JV, currently works for a kitchen cabinet company and manages a crew using skills the respondent taught him.
- [207] Neither party provided any detailed or documentary evidence about the respondent's income in 2017, the year the parties separated. The respondent simply suggested that he earned about \$35,000/year throughout the parties' marriage; in my view, this figure understates his income earning capacity in 2017. Doing my best on the available evidence, I impute an income of \$40,000 to the respondent for the year 2017.
- [208] Based on the December 2018 reasons of Master Muir, the respondent's guideline income was then \$48,000; in her view, he was then capable of earning more income. In 2019, Schultes J. used the same figure for the purpose of assessing child support for that year. In 2020, Groves J. also imputed an income of \$48,000 to the respondent. Neither party directly challenged this figure or provided any credible documentary or other corroborating evidence to suggest a different income was more appropriate. Accordingly, I impute an income of \$48,000 to the respondent for the years 2018 to 2020 inclusive.

[209] Doing my best on the imperfect evidence at trial, I impute a gross annual income of \$60,000 to the respondent for the year 2021. This figure is based on the respondent's own evidence that he is capable of earning \$60,000 in 2021 and the fact he earned \$35.00/hour (i.e., more than \$70,000 if full-time) working for his friend in 2017.

[210] I have assessed the respondent's income for the purpose of calculating child support as set out below.

Year

Income

2017

\$40,000

2018

\$48,000

2019

\$48,000

2020

\$48,000

2021

\$60,000

VIII. CHILD SUPPORT

A. Parties' Positions

[211] The parties agree the respondent has paid the claimant \$17,525 in child support since the date of separation.

[212] The respondent acknowledges that he owes child support arrears; he agrees to pay this amount in monthly installments. After the parties separated, the claimant received child tax benefits for all the Children, despite the fact their three eldest sons were then living with the respondent. According to the respondent, by allowing the claimant to keep his share of those benefits, he thought he was, in effect, paying her child support. He did not appreciate that the CRA might claw back this money (as it now has).

[213] From June to December 2020, the respondent struggled to pay child support. He managed to buy groceries and pay his utilities but he is substantially behind on his rent. He said that he had been planning an application to review child support but opted not to do so just before trial. According to the claimant, the respondent has paid no child support since December 2020. She intends to involve the Family Maintenance Enforcement Program in the collection of child support to avoid having to deal with him directly.

B. Legal Framework

[214] Sections 147(1) and (2) of the FLA provide as follows:

147 (1) Each parent and guardian of a child has a duty to provide support for the child, unless the child

- (a) is a spouse, or
 - (b) is under 19 years of age and has voluntarily withdrawn from his or her parents' or guardians' charge, except if the child withdrew because of family violence or because the child's circumstances were, considered objectively, intolerable.
- (2) If a child referred to in subsection (1) (b) returns to his or her parents' or guardians' charge, their duty to provide support for the child resumes.

[215] In *M.A. V. F.H.A.*, 2013 BCSC 1077, at para. 34, Justice Bruce commented on s. 147(1) of the FLA as follows:

The term "voluntarily" in s. 147(1)(b) is intended to preclude a parent from avoiding their obligation to pay child support in circumstances where the child has left the care of the custodial parent due to the actions of the non-custodial parent which amount to undue influence or unfair pressure.

C. Analysis and Conclusions

[216] I infer from the evidence and the parties' agreement that, by 2018, JV and SV were self-sufficient and living independently. Accordingly, I have assumed that the parties' child support obligations for JV and SV ceased on their respective 18th birthdays.

[217] Based on the best available evidence, I have applied the above-noted imputed incomes and assumed the following information about the primary residence of the Children since the parties' separation:

- a) All the Children resided with the claimant from July to December 2017;
- b) AV, BV, CV, TV and NV have continued to reside primarily with the claimant since 2017; and
- c) Commencing January 2018:
 - i. JV and SV began residing primarily with the respondent and continued to do so until their respective 18th birthdays (in February 2019 and September 2020, respectively); and

ii. MV has split his time between the parties' residences.

[218] On that basis, I calculate the parties' child support obligations, as set out below.

Year

Claimant's Income

Claimant's Monthly Payment

Respondent's Income

Respondent's Monthly Payment

Net Payable by Respondent

July - Dec 2017

\$0

\$0

\$40,000

\$1,273

\$1,273 x 6

(\$7,638)

2018

\$15,715

\$224

\$48,000

\$1,492

\$1,268 x 12

(\$15,216)

2019

Jan - Feb

\$15,715

\$224

\$48,000

\$1,492

\$1,268 x 2 (\$2,536)

2019

Mar - June

\$15,715

\$207

\$48,000

\$1,492

\$1,285 x 4 (\$5,140)

2019

July - Dec

\$28,318

\$454

\$48,000

\$1,492

\$1,038 x 6

(\$6,228)

2020

Jan - Sept

\$28,318

\$454

\$48,000

\$1,492

\$1,038 x 9 (\$9,342)

2020

Oct-Dec

\$28,318

\$258

\$48,000

\$1,492

\$1,234 x 3 (\$3,702)

2021

Jan-Oct

\$28,318

\$258

\$48,000

\$1,492

\$1,234 x 10 (\$12,340)

TL: to Oct/2021 inclusive

\$62,142

[219] Subtracting the respondent's obligation to pay child support up to and including October 1, 2021 in the amount of \$62,142 from the \$17,525 he has paid to date, I calculate his arrears of child support to be \$44,617.

[220] Effective November 1, 2021, based on the incomes I have imputed to the parties for 2021, the respondent's net monthly child support payment is \$1,550. The respondent's significant past and future obligations to pay child support underscore the need for him to find secure, stable employment.

IX. SPECIAL AND EXTRAORDINARY EXPENSES

[221] TV and BV currently require expensive orthodontic treatment. Based on the documents appended to the claimant's financial statement sworn May 28, 2021, the estimated cost is \$3,300 for TV and \$3,450 for BV (\$6,750 total). The claimant has made a \$2,000 deposit to cover this cost. The respondent denies the parties discussed this expense before it was incurred; based on his investigations, he suggests there are substantially cheaper available options.

[222] By letter dated September 3, 2019, the school wrote to the parties, confirming that the respondent had not paid his share of the Children's tuition. The principal noted that, in order to allow the Children to continue attending the school, relatives had covered his unpaid portion.

[223] By email dated May 22, 2019 to the claimant from the school accounting department, school tuition fees for the Children were then current and had been paid as follows:

School Year

Amount Due

Payors

January 2018 - December 2018

\$6,750

\$2,985: Claimant

\$600: Claimant's Family

\$3,165: Donors

January 2019 - May 2019

\$3,605

\$3,005: Claimant

\$600: Claimant's Family

[224] The claimant said she borrowed money from JD to pay the respondent's share of those fees and that she plans to refund him once the respondent repays her. I am unable to conclude on the evidence before me whether JD loaned or gifted those funds. JD confirmed he does not expect to be reimbursed.

[225] The parties' limited incomes must now support two separate households. Accordingly, it is imperative that they discuss s. 7 expenses, as defined in the Federal Child Support Guidelines, before they are incurred. While the claimant expects the respondent to share the cost of these expenses, she does not always consult him before they are incurred. I can appreciate why the respondent finds that frustrating. However, as noted by Ms. Procyk, the respondent needs to appreciate the role his own actions play in contributing to this dynamic. Like JD and DB, the claimant described the respondent's incessant emails and the corresponding difficulties she has had discussing and resolving matters with him.

[226] I order the parties to share s. 7 expenses for the Children, including the above-noted orthodontic expenses for TV and BV, in amounts that are proportionate to the incomes I have imputed to them (i.e., 33% to the claimant and 67% to the respondent). The parties must communicate with each other about any other s. 7 expenses before incurring them. If the parties are unable to agree on whether or not such expenses are properly incurred, they are directed to mediate the issue with a Family Justice Counsellor, before proceeding with any court application. If either of the parties secures employment with corresponding benefits, a portion of these costs may be covered. I direct the parties to enroll the Children in any benefit plans that might become available to them through their employment.

[227] The parties must pay their share of s. 7 expenses within 14 days of the expense being incurred. If s. 7 expenses must be paid in advance, they will each promptly pay their proportionate share of such expenses directly to the service provider.

[228] I share Master Muir's view that it is obvious the parties cannot afford private school tuition for the Children. The respondent has not been paying his share of this cost and it is unclear how he will do so in the future. In the circumstances, I order the parties to share the private school fees for the Children for the 2021/2022 school year only. Thereafter, if they are unable to fund this expense, they will have to register the Children in public school.

X. SPOUSAL SUPPORT

A. Parties' Positions

[229] The claimant seeks both compensatory and non-compensatory spousal support. She argues that her role as primary caregiver for the Children during the parties' lengthy and traditional marriage, her personal sacrifices, contributions to the family, and resulting economic disadvantages ought to be recognised. She suggests that an award for spousal support will compel the respondent to work more and that such an order need not conform to the Spousal Support Advisory Guidelines.

[230] In closing, claimant's counsel suggested that spousal support of \$700/month would be appropriate; he provided no clear rationale for this amount. Notably, assuming an income of \$19,958 for the claimant (based on her May 28, 2021 financial statement, comprising \$8,738 of employment income and \$11,220 of social assistance) and an imputed income of \$70,000 for the respondent (in accordance with the claimant's submissions), the claimant's own calculations confirm no spousal support (at the low, mid, or high end) is payable after priority is given to child support.

[231] The respondent admits the claimant is entitled to spousal support but says child support must be prioritised given his limited ability to pay. On that basis, he seeks an order dismissing the claimant's spousal support claim.

B. Legal Framework

[232] Spousal support is governed by s. 15.2 of the DA , and ss. 161 and 162 of the FLA which provide as follows:

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.

[233] Entitlement to spousal support was canvassed by the Supreme Court of Canada in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 44 R.F.L. (4th) 1 [Bracklow]. Justice McLachlin, as she then was, writing for the Court, set out the three conceptual models for entitlement to spousal support as follows:

- a. Compensatory, to redress economic disadvantage as a result of the breakdown of the marriage;
- b. Contractual; and
- c. Non-compensatory, based on the needs of the recipient spouse.

[234] A trial judge must consider all models, any or all of which may factor in the ultimate order, as appropriate in the circumstances: *Bracklow* at para. 37. Spousal support is determined by examining the objectives in s. 15.2(6) of the DA and by considering the factors in s. 15.2(4) as the "conditions, means, needs and other circumstances of each spouse."

[235] A court must prioritise child support when considering making orders for child and spousal support: DA, s. 15.3; FLA, s. 173(1). The DA and FLA both provide that if, as a result of prioritising child support, a spousal support order is either not made, or is less than it would otherwise have been, any subsequent reduction in or termination of child support constitutes a change of circumstances for the purposes of applying for a spousal support order: DA, s. 15.3(3); FLA, s. 173(3)(b); *H.J. v. P.J.*, 2020 BCSC 378.

[236] In *D.Z. v. R.H.Z.*, 2020 BCSC 891, the payor husband owed child support but had limited financial resources to meet his spousal support obligations. Justice Adair ordered nominal spousal support, stating as follows:

[182] I have concluded that, given the limited financial resources available to pay support, the priority required to be given to child support, and the changes that are likely as CZ and TZ (in particular) cease to be children of the marriage, the approach taken in *Coupar* makes sense in the context of this family. Such an approach is consistent with the exception under s. 12.11 of the Spousal Support Advisory Guidelines (the "SSAG").

- [183] I therefore order that, until further order or agreement between the parties, and subject to review respecting quantum on any of the children ceasing to be a child of the marriage, commencing July 1, 2020 and on the first of each month thereafter, Mr. Z pay Ms. Z spousal support in the sum of \$1.00. Either party may apply for a review of the quantum of spousal support concurrently with any of the children ceasing to be a child of the marriage.
- [184] The law is clear that either party can apply for a variation in spousal support if there is a material change which justifies a variation. No specific order is necessary in that respect.
- [237] In *Sandy v. Sandy*, 2018 BCCA 182 at paras. 51-53, the Court of Appeal suggested that a nominal award is unnecessary to protect future entitlement to spousal support.

C. Evidence

- [238] The claimant had about \$40,000 in savings when the parties married. The respondent decided not to pursue architectural training and she was the sole provider in the early days of their marriage.
- [239] The parties agreed the claimant would be a stay-at-home mother after they married. Both wanted a large family and contemplated a traditional marriage. They had one for 18 years.
- [240] The parties agree the claimant was primarily responsible for childcare and domestic duties while the respondent worked to generate an income. She bought groceries, cooked, cleaned, assisted the Children with homework, and was involved with their school. While I accept that the respondent was also periodically involved with the Children's school work and activities, I find that the claimant was the primary caregiver during the parties' marriage.

D. Analysis and Conclusions

- [241] The evidence supports the claimant's entitlement to spousal support on both a compensatory and non-compensatory basis. While this conclusion is not controversial, the respondent's limited income, combined with the fact that all of the Children still require support, means there are insufficient resources to fund an award of spousal support. Accordingly, I make no award for spousal support.
- [242] However, it is open to the claimant to revisit the issue of spousal support in the event of a material change in circumstances. Such a change would include, but not be limited to, a reduction in, or the termination of, child support once any of the Children cease to be children of the marriage pursuant to the FLA.

XI. DIVISION OF PROPERTY AND DEBTS

- [243] The parties have no property to divide.

A. Parties' Positions

[244] The respondent quantifies family debt in the amount of \$208,800 in his May 26, 2021 financial statement, as set out below.

1.

Date

Debt

Amount

1.

2012 (Approx.)

Investors

\$78,000

2.

2016 - 2018

JV

\$13,000

3.

2019

Loan to AK

\$25,000

4.

2017 - 2020

AV Sr.

\$36,000

5.

April 2020

TD Bank Loan

\$40,000

6.

2021

Rent Arrears

\$16,800

TOTAL

\$208,800

[245] The respondent seeks to equalise the \$78,000 of investor debts that he asserts were incurred during the parties' marriage. None of these alleged debts was corroborated by documentary evidence. The respondent agrees that all of the other post-separation debts he says he incurred are his sole responsibility. In closing, claimant's counsel submitted that the respondent had not particularised any of the family debts he seeks to equalise with the claimant. However, despite a lengthy cross-examination, the respondent was not challenged about them.

B. Legal Framework

[246] It is open to this Court to order an unequal division of family debt, if it would be significantly unfair to divide family debt equally: FLA, s. 95(1). Section 95(1) of the FLA provides as follows:

- (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
 - (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,

- (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[247] The BC Court of Appeal considered the meaning of "significantly unfair" in *Jaszczewska v. Kostanski*, 2016 BCCA 286 as follows:

[41] Clearly, the statutory intent is to constrain the exercise of judicial discretion. The test of "significant unfairness" imposes a more stringent threshold than the mere "unfairness" test of the FRA to allow unequal division by a court. As Mr. Justice Butler observed in *Remmem v. Remmem*, 2014 BCSC 1552, "significant" is defined as "extensive or important enough to merit attention" and the term refers to something that is "weighty, meaningful or compelling." He concluded that to justify an unequal distribution "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)": *Remmem* at para. 44. As the judge here noted at para. 162 of her reasons, the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result. I agree.

[248] In *McGrail v McGrail*, 2016 BCSC 104, despite cohabiting for 27 years, the parties had accumulated limited assets due to various business misfortunes. The wife had contributed significantly to the husband's career by assisting with business ventures and staying home to care for their children. Justice Verhoeven ordered an unequal division of family property; in doing so, he considered the wife's entitlement to spousal support and the husband's inability to pay it to be relevant factors.

[249] In *Bennett v Bennett*, 2021 BCSC 1631, Justice MacNaughton considered the application of s. 95(3) of the FLA, citing *Delaunier v. Massicotte*, 2018 BCSC 1857:

As discussed in *Delaunier v. Massicotte*, 2018 BCSC 1857, where an argument is made under s. 95(3) of the FLA, the court must again turn to the objectives of spousal support set out in s. 161 of the FLA. If those objectives cannot be met with regular spousal support, the court can then consider an unequal division of family property and debt. In *Delaunier*, the parties had young

children, and a very large gap in incomes (\$15,000 to \$83,000). The wife had a strong compensatory claim for support as she was out of the work force for several years caring for the children. She had also depleted her savings and gone into debt after they separated to care for the children and maintain the family property. At the time of trial, she planned on pursuing a diploma that would increase her earning potential. The spousal support calculations based on her planned earning potential, taking into account the priority accorded to child support, amounted to very little. That made spousal support ineffective, and the compensatory goal of spousal support would not be met, taking into account the husband's higher earnings, greater assets, and greater income-earning potential. The court remedied this by ordering that the wife get 60 percent of the value of the home: paras. 172-179.

C. Analysis and Conclusions

[250] In my view, the claimant has a clear entitlement to compensatory and non-compensatory spousal support. Unfortunately, due to the respondent's limited income and the need to prioritise child support, that claim cannot currently be met. I conclude that fact is relevant to considering a reapportionment of family debt pursuant to s. 95(1) of the FLA on the basis of significant unfairness: FLA, s 95(3).

[251] I am persuaded on all the evidence that the claimant has suffered adverse economic consequences as a result of her role in the parties' lengthy marriage. This finding is relevant to an analysis of the factors set out in s. 95(2) of the FLA: *Singh v. Singh*, 2020 BCCA 21 at paras.136 - 140. The claimant relinquished her nursing career in order to raise the Children and to allow the respondent an opportunity to pursue his various business ventures. As a result, she has entered middle age with no assets, savings, or recent work experience within her chosen profession. She has been largely absent from the conventional workforce for the better part of two decades. She must requalify before she can return to nursing.

[252] In an effort to address what I conclude is significant unfairness, I have reapportioned family debt 100% to the respondent. In the result, the \$78,000 of investor debts he says were incurred during the parties' marriage will be his sole obligation. The respondent accepts that the remaining \$130,800 of debts disclosed in his financial statement are his sole responsibility. The parties are responsible for any other debts incurred after the date of separation in their respective names.

XII. DISPOSITION

[253] I make the following orders:

- a) Pursuant to section 39 of the FLA, the parties are joint guardians of the Children.
- b) The parties will share parenting responsibilities for MV. If they are unable to reach agreement regarding any of the matters set out in s. 41 of the FLA, after making a concerted effort to do so, the respondent will have final decision-making authority and the claimant will have liberty to apply to contest those decisions.

- c) The parties will share parenting responsibilities for CV, BV and NV. Both parties will make day to day decisions affecting CV, BV and NV and will have day to day care, control and supervision of CV, BV and NV while exercising parenting time with them. Each party shall inform the other of any significant matters that arise for CV, BV or NV during their respective parenting time.
- d) If the parties are unable to reach agreement regarding any of the matters set out in s. 41 of the FLA, after making a concerted effort to do so, the claimant will have final decision-making authority, with the respondent have liberty to apply to contest those decisions. The parties shall mediate any parenting disputes regarding CV, BV or NV with a Family Justice Counsellor before proceeding with any court applications.
- e) Pursuant to s. 41 of the FLA, the claimant shall have primary parenting responsibility for AV and TV as follows:
 - i. Making day-to-day decisions affecting AV and TV and having day-to-day care, control and supervision of AV and TV;
 - ii. Making decisions respecting where AV and TV will reside;
 - iii. Making decisions respecting with whom AV and TV will live and associate;
 - iv. Applying for a passport, licence, permit, benefit, privilege or other thing for AV and TV;
 - v. Giving, refusing, or withdrawing consent for AV and TV, if consent is required;
 - vi. Receiving and responding to any notice that a parent or guardian is entitled or required by law to receive; and
 - vii. Subject to any applicable provincial legislation:
 - (1) Starting, defending, compromising or settling any proceeding relating to AV and TV; and
 - (2) Identifying, advancing and protecting the legal and financial rights of AV and TV.
- f) The claimant shall provide the respondent with the names and contact information for TV's teachers and medical and dental practitioners. The respondent is entitled to request and to receive health, education or other information respecting TV; he is entitled to do so for AV, only with her prior written consent.
- g) The parties will share the following parenting responsibilities for AV and TV:
 - i. Making decisions respecting their education and participation in extra-curricular activities; and
 - ii. Making decisions respecting their cultural, linguistic, religious and spiritual upbringing and heritage.

- h) If the parties are unable to reach agreement regarding any of the matters for which they share responsibility for AV and TV, after making a concerted effort to do so, the claimant will have final decision-making authority, with the respondent having liberty to apply to contest those decisions. The parties are directed to mediate any such disputes with a Family Justice Counsellor, before proceeding with any court applications.
- i) The parties' consultations with each other regarding important decisions for the Children will be in writing. Barring emergencies, they are to restrict their communications with each other to one email or text message per week, confined to matters related to the Children only.
- j) MV will reside primarily with the respondent and will determine his own parenting time.
- k) AV, CV, BV, TV and NV will reside primarily with the claimant.
- l) The parties will share parenting time of CV, BV and NV and, commencing in November 2021, the respondent shall have parenting time with BV, CV and NV on a two-week schedule as follows:
 - (1) Week 1 - Thursday at 3 PM until Monday at 8:30 AM; and
 - (2) Week 2 - Tuesday at 3 PM until Thursday at 8:30 AM.
- m) Unless the parties agree otherwise, all exchanges in parenting time will take place at the Children's school.
- n) Both parties must immediately notify the other by text or email in the event of any unanticipated and unavoidable changes in exchange times.
- o) Both parties must immediately notify the other of any medical emergency involving the Children, including any attendance at a hospital emergency department.
- p) The parties will share parenting time with BV, CV and NV during Christmas and Spring Break, alternating parenting time on Christmas Eve and Easter Sunday each year.
- q) The parties shall each have four weeks of summer holidays with BV, CV and NV. If the parties are unable to agree on a summer holiday schedule, they shall share summer holidays on a week on/week off rotation, with the claimant having the first week.
- r) AV and TV will have no specified parenting time with the respondent.
- s) The respondent shall have parenting time with AV and TV only when AV and TV initiate it, as directed by their counsellors and reunification counselling for AV and/or TV will take place only as recommended by their counsellors.
- t) The respondent must deliver any gifts or messages for AV and/or TV to the claimant directly and the Children are not to do so on his behalf.

- u) The respondent will ensure that MV, BV, CV and NV attend school when they are in his care unless MV, BV, CV or NV are ill or their absence is otherwise unavoidable, in which case he must inform the claimant at least 45 minutes before the start of school if the child needs to miss school.
- v) Effective November 1, 2021, the claimant's income for the purpose of child support is \$30,000.
- w) Effective November 1, 2021, the respondent's income for the purpose of child support is \$60,000.
- x) Pursuant to the CSG, the respondent shall pay the sum of \$1,550 per month in child support effective the first day of November 2021 and on the 1st day of each month thereafter until further agreement of the parties or court order.
- y) The parties shall:
 - i. Commencing June 1, 2022, and on June 1st of each year thereafter, the parties shall exchange tax returns and other income information relevant to the determination of child support;
 - ii. Review support; and
 - iii. Vary the amount payable effective July 1st.
- z) If the parties' actual incomes are greater than those imputed to them in these reasons, their obligations to pay child support and special and extraordinary expenses for the Children will be calculated based on their actual incomes.
- aa) The respondent shall pay to the claimant the sum of \$44,617 in retroactive child support.
- bb) No spousal support is currently payable.
- cc) It is open to the claimant to renew her claim for spousal support in the event of a material change in circumstances which shall include, but not be limited to, a reduction in, or the termination of, child support for any of the Children.
- dd) Family debt is reapportioned 100% to the respondent.
- ee) Each of the parties is responsible for any post-separation debts incurred in their respective names.
- ff) The parties must communicate with each other about any s. 7 expenses before incurring them and, if they are unable to agree on whether or not such expenses are properly incurred, they are directed to mediate the issue with a Family Justice Counsellor, before proceeding with any court application.

gg) The parties will share special and extraordinary expenses for the Children in proportion to the incomes imputed to them in these reasons, unless their actual incomes are higher, in which case they will do so based on their actual incomes.

hh) The parties must pay their share of s. 7 expenses within 14 days of the expense being incurred and, if s. 7 expenses must be paid in advance, they will each promptly pay their proportionate share of such expenses directly to the service provider.

ii) If either of the parties secures employment with corresponding benefits, they will enroll the Children in any benefit plans that might become available to them through their employment.

jj) I make the following conduct orders:

- i. The parties shall put the best interests of the Children before their own;
- ii. The parties shall encourage the Children to have a good relationship with the other parent and speak to the Children about the other parent in a positive and respectful manner;
- iii. The parties shall make a genuine effort to maintain polite, respectful communications with each other and to refrain from any negative or hostile criticism, communication or argument in front of the Children or in any public forum;
- iv. The parties shall not call, write, email, or text each other except regarding the care of the Children and the scheduling of parenting time and, barring emergencies, such communications shall be limited to one email or text message per week;
- v. The respondent shall not call, write, email, or text AV or TV other than through the claimant and as permitted by the claimant;
- vi. The parties' emails or text messages to each other and to the Children must deal only with issues concerning the Children and must not raise their different religious beliefs or any other issues related to the conduct of this litigation;
- vii. The respondent is not to include any commentary on the claimant, the Children, the parties' separation, or this litigation in any email or other publication, including on a web page or communication addressed to the Church, the Church elders, the Church congregation, or any other third party;
- viii. Beyond simple conversational inquiries, the parties will not interrogate the Children about the other parent or time spent with the other parent;
- ix. The respondent will not record or cause any of the Children to make recordings of the claimant and/or the other Children;
- x. The parties will not discuss any inappropriate adult, court, or legal matters with the Children; and

xi. The parties will encourage their respective families to refrain from making any negative comments about the other parent and his or her extended family and refrain from any discussions in front of the Children concerning family issues or litigation.

kk) Both parties shall attend the Vancouver Justice Access Centre's Parenting after Separation course within three months of the release of these reasons.

[254] The claimant has been largely successful. Absent any matters of which I am unaware that might alter this view, she is entitled to her costs on the basis of ordinary difficulty.

"Douglas J."

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