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S.D. v. S.A.

2025 BCSC 835

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 835 S.D. v. S.A. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: S.D. v. S.A., 2025 BCSC 835 Date: 20250506 Docket: E66050 Registry: New Westminster Between: S.D. Claimant And S.A. Respondent Before: The Honourable Madam Justice Sukstorf Reasons for Judgment The Claimant, appearing in person: S.D. The Respondent, appearing in person: S.A. Place and Dates of Hearing: New Westminster, B.C. August 26-29 and September 3-6, 2024 Place and Date of Judgment: New Westminster, B.C. May 6, 2025 Table of Contents I) OVERVIEW.. 6 II) FACTS. 7 A. Relationship History. 7 B. Living Arrangements and Finances. 7 C. Birth of the Child and Parenting Disputes. 7 D. Separation. 8 E. Post-Separation Conflict 9 F. Post-Separation Parenting Disputes. 9 G. International Travel Concerns. 10 III) HISTORY OF THE PROCEEDINGS AND CURRENT ORDERS. 10 A. Initial Parenting and Child Support Orders (Provincial Court) 11 B. Adjustments to Parenting Schedule & Transfer to Supreme Court 11 C. Supreme Court Orders & Judicial Case Management 12 D. Expanded Parenting Time & Cultural Ceremony Orders. 12 E. Adjustments to Child Support & Income Determination. 12 IV) POSITIONS OF THE PARTIES. 13 A. Claimant 13 B. Respondent 15

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- [1] The parties were married on July 14, 2021, and separated after 11 months. They have one child, V.D., born April 26, 2022. Litigation has ensued over parenting time, decision-making authority, support, and property division.
- [2] This matter involves determinations under the Family Law Act, S.B.C. 2011, c. 25 [FLA], the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp), and the Federal Child Support Guidelines, SOR/97-175 [Guidelines].
- [3] The parties were self-represented. Despite the emotionally charged nature of their dispute, their materials and submissions were detailed and thorough.
- [4] The issues before the Court include:
- a) Parenting time and responsibilities;
 - b) International and domestic travel restrictions;
 - c) Child support and extraordinary expenses;
 - d) Spousal support entitlement, quantum and duration;
 - e) Division of family property and debt;
 - f) Change of the child's surname;
 - g) Divorce; and
 - h) Costs.
- [5] What follows is a summary of the facts, procedural history, and analysis leading to the Court's orders on each issue. II) FACTS A. Relationship History
- [6] The parties met in April 2020 through family connections. They became engaged after a period of dating and were married on July 14, 2021, in a Hindu wedding ceremony in Vancouver.
- [7] The marriage lasted approximately 11 months. The parties separated on July 2, 2022. B. Living Arrangements and Finances

- [8] Prior to the marriage, the claimant resided with his parents and brother at the family home in Coquitlam, where he held a 28% ownership interest. Following the parties' marriage on July 14, 2021, the respondent moved into the Coquitlam home. She separately owned an apartment in Richmond, which she had purchased in December 2020, shortly before the marriage.
- [9] Throughout the marriage, the parties largely maintained financial independence. Household expenses were generally shared on a 60/40 basis, with the claimant assuming the greater share. The parties tracked shared expenses using the Splitwise application. The claimant also contributed to loan payments for the respondent's Tesla vehicle during the relationship. C. Birth of the Child and Parenting Disputes
- [10] There is one child of the marriage, V.D., born on April 26, 2022, during the COVID-19 pandemic (the "Child"). Following the delivery, the respondent experienced a difficult postpartum recovery and testified that she was bedridden for several weeks. During this time, the claimant and his family assisted by caring for the Child to support her recovery. The respondent testified that their involvement caused her additional stress, while the claimant maintained that his family's support was essential to the Child's care during that period.
- [11] In the weeks following the Child's birth, tensions between the parties gradually escalated. Disagreements arose over feeding and medical decisions. The parties continued to reside at the Coquitlam home, where parenting responsibilities were initially shared. However, conflict emerged regarding the involvement of extended family and plans to host post-birth celebrations to introduce the Child to the community, which further strained the relationship.
- [12] In June 2022, following the arrival of the respondent's parents from India, who were staying at her Richmond apartment during their visit, the respondent began spending more time there with the Child. This arrangement was initially intended to be temporary during the workweek, with the respondent returning to the Coquitlam home on weekends to allow the claimant to spend quality time with the Child.
- [13] However, tensions escalated on June 17, 2022, when the parties disagreed over plans for Father's Day. The claimant wished to spend the entire day with the Child, while the respondent planned to take the Child to Richmond to celebrate with her father, inviting the claimant to join them. The claimant strongly objected, asserting that this was his first Father's Day, and in the heat of the moment, threatened to call the police if the respondent proceeded with her plan.

- [14] Following this argument, the relationship deteriorated further. On June 20, 2022, the claimant discovered that family jewelry stored in a safe was missing, which deepened his concerns regarding trust in the marriage. This event, combined with ongoing disputes over parenting, family involvement, and household dynamics, set the stage for the parties' eventual separation. D. Separation
- [15] The parties formally separated on July 2, 2022. On that date, the respondent gathered her belongings and left the Coquitlam home with the Child. The respondent later alleged that she was forced to leave, while the claimant denies this, stating that he assisted with her departure by helping her pack and securing the Child in the vehicle. Although both parties initially understood the separation as a temporary cooling-off period, that changed on July 4, 2022, when the claimant sent an email instructing the respondent not to return to the home. E. Post-Separation Conflict
- [16] On July 6, 2022, the respondent returned to the Coquitlam home to retrieve her belongings, accompanied by her brother and members of the RCMP. Following the separation, the Child remained in the respondent's care on a full-time basis. Parenting disputes escalated, and the claimant commenced court proceedings shortly thereafter, seeking parenting time and access to the Child. F. Post-Separation Parenting Disputes
- [17] As noted above, tensions between the parties escalated shortly after the Child's birth, culminating in their separation approximately two months later and the commencement of legal proceedings. Although the parties initially adopted a shared approach to parenting, disputes over custody and parenting time quickly became a significant source of conflict following their separation.
- [18] In July 2022, the claimant proposed a shared parenting schedule with a 7-day rotation. However, the respondent only agreed to limited visits, leading to court filings over custody arrangements. On July 15, 2022, after informal discussions failed, the claimant filed an application regarding custody and parenting time. In response, the respondent's legal representative asserted that she was the sole parent, further complicating negotiations. This dispute led to protracted litigation concerning parenting time, custody, and allegations surrounding the removal of family jewelry.
- [19] Initially, the claimant's parenting time was limited to supervised two-hour visits twice a week. However, through multiple court applications, his access gradually increased, culminating in the granting of overnight visits starting in April 2023.
- [20] Beyond parenting time, disagreements extended to key aspects of the child's upbringing. The respondent raised concerns about the child's separation anxiety and speech delays, advocating for a consistent routine with minimal transitions. Vaccination also became a point of contention--the respondent sought to have the child vaccinated in preparation for international travel, while the claimant initially expressed hesitation but later consented following medical consultation. The respondent explained that, since the parties' separation, she has been the child's sole caregiver and has assumed primary responsibility

for arranging and attending the child's medical appointments.

- [21] Cultural and religious traditions further exacerbated conflicts. Both parents sought decision-making authority over significant milestones, including the Mundan (first haircut) and Annprashan (first solid food ceremony), leading to further disputes over the child's upbringing. G. International Travel Concerns
- [22] The respondent has sought authorization to travel to India with the Child. Her original request was for an extended stay of three to four months, but she has since revised this request, indicating that a four-week visit would be sufficient.
- [23] The claimant vigorously opposes the proposed travel and has raised serious concerns about the risk of custody litigation in India.
- [24] In support of his position, the claimant presented evidence that the respondent previously initiated legal proceedings against her first husband in India following their divorce in Canada. He expressed concern that the respondent may pursue similar proceedings in India to obtain custody of the Child, outside the jurisdiction of this Court. III) HISTORY OF THE PROCEEDINGS AND CURRENT ORDERS
- [25] The procedural history of this case highlights its highly litigious nature. Initially, the Provincial Court managed interim parenting and support arrangements, but the matter was later transferred to this Court (BCSC), where further determinations on parenting, support, and procedural issues were made. Over time, the claimant's parenting time gradually increased, accompanied by adjustments to child and spousal support based on income assessments.
- [26] The following is a summary of the relevant court orders issued in the Provincial and Supreme Courts of British Columbia regarding parenting time, child support, spousal support, and procedural matters between the claimant and the respondent. A. Initial Parenting and Child Support Orders (Provincial Court)
- [27] On July 19, 2022, shortly after the parties' separation, the claimant filed an Application about a Family Law Matter in the Provincial Court of BC.
- [28] On September 22, 2022, after the first Family Management Conference (FMC) in the BC Provincial Court (Richmond), the Court granted interim, without prejudice parenting time to the claimant, effective September 25, 2022, as follows:
- a) Sundays: 2:00 p.m. - 6:00 p.m.;
 - b) Tuesdays: 6:00 p.m. - 8:30 p.m.; and
 - c) Thursdays: 6:00 p.m. - 8:30 p.m.
- [29] On October 1, 2022, the Court ordered child support of \$1,660 per month, based on the claimant's declared annual Guideline income of \$193,419.

- [30] On October 27, 2022, the parties attended a second FMC, appearing before Honourable Judge Vandor, who ordered by consent that the claimant pay interim spousal support of \$250 per month to the respondent, commencing November 1, 2022, until further order. B. Adjustments to Parenting Schedule & Transfer to Supreme Court
- [31] On November 17, 2022, at a third FMC before Judge Craig, the Court adjusted the claimant's parenting schedule, effective December 1, 2022:
- Sundays: 2:00 p.m. - 6:00 p.m.;
 - Tuesdays: 4:30 p.m. - 8:00 p.m.; and
 - Thursdays: 4:30 p.m. - 8:00 p.m.
- [32] The Court transferred all matters under Provincial Court File No. F7753 (Richmond) to the Supreme Court of British Columbia (New Westminster Registry, File No. NEW-S-E-66050). C. Supreme Court Orders & Judicial Case Management
- [33] On January 27, 2023, the parties appeared before Justice Ross and on March 3, 2023, at a Judicial Case Conference before Madam Justice Hardwick for miscellaneous procedural matters. D. Expanded Parenting Time & Cultural Ceremony Orders
- [34] On April 5, 2023, before Master Robertson, the Court granted expanded parenting time to the claimant, effective immediately:
- Tuesdays 6:00 p.m. - Wednesdays 6:00 p.m. (overnight); and
 - Fridays 6:00 p.m. - Saturdays 6:00 p.m. (overnight).
- [35] Effective May 1, 2023, the claimant's parenting time was increased to a 2/2 rotation (equal shared parenting).
- [36] The parties were permitted to adjust the parenting schedule by mutual agreement.
- [37] The claimant's mother was designated as a regular work-related childcare provider on his parenting days, subject to mutual consent.
- [38] The Court also ordered that the parties schedule and conduct the Child's Mundan Ceremony (Hindu first haircut ceremony) under specified terms. E. Adjustments to Child Support & Income Determination
- [39] On June 29, 2023, before Justice Branch, the Court assessed the parties' Guideline incomes as follows:
- The claimant: \$176,261; and
 - The respondent: \$71,000
- [40] Based on these calculations, the new child support payments were set as follows:
- The claimant to pay \$1,561 per month to the respondent; and

- b) The respondent to pay \$676 per month to the claimant.
- [41] Net child support obligation: The claimant to pay the respondent \$885 per month, commencing July 1, 2023.
- [42] On April 17, 2024, in a chambers application, the respondent sought increased interim spousal support. Associate Judge Nielsen adjourned the application to vary the spousal support to the trial and ordered the respondent to pay costs in the cause. IV) POSITIONS OF THE PARTIES A. Claimant
- [43] The claimant seeks the following:
- a) Divorce;
- b) Guardianship of the Child pursuant to s. 39 of the FLA;
- c) Shared and Equal parental responsibilities. The Child to continue to reside equally with each party with the parenting schedule to change in accordance with the best interests of the child, and his age, to increase lengths of parenting time to 2/2/3/3 and then 2/2/5/5 and then week on and week off. In particular:
- i. Effective immediately, for the Child to reside equally with each party on a 2/2/3/3 rotation; and ii. The length of parenting time to be discussed annually between the parties on the birthday of the Child, with the goal of increasing the length of parenting time in accordance with the best interests of the Child; iii. Order for a Parenting Coordinator to assist the parties for two years in the resolution of their parenting issues, with the cost to be shared equally by the parties; iv. Liberty to choose family members to be the regular work-related childcare provider for the Child on their respective days;
- v. The remaining terms of the order of Master Robertson to continue in effect, such that:
- (1) The pickup and drop off for the parenting time shall remain that the party becoming the on-duty parent is responsible to pick the child up for their parenting time; and
- (2) On agreement, the parties shall be at liberty to further change the parenting schedule; vi. Travel with the Child: any travel arrangements shall be made only by agreement. The terms of the Order of Justice Ross prohibiting the Child, from being removed from the Lower Mainland shall remain in effect;
- d) Parties to discuss and agree on all cultural practices and ceremonies and education decisions in respect to the child; and
- e) Medical Decisions in respect of the Child: for both parties to inform each other of any medical or health appointments regarding the Child, in advance of the medical appointments being made and to invite the other party to attend these appointments. B. Respondent

[44] The respondent seeks various orders relating to property division, financial compensation, spousal and child support, parenting arrangements, and travel permissions.

1. Child Support and Parenting Orders

[45] With respect to parenting arrangements and child support, the respondent seeks the following relief:

- a) Child Support: An order requiring the claimant to pay guideline child support commencing July 2, 2022, along with a proportionate share of special and extraordinary expenses pursuant to s. 7 of the Guidelines;
- b) Parenting Schedule: A parenting arrangement in which the Child resides with the mother on a two-day rotation and with the father for one day, in order to maintain the Child's daycare routine, support stability, and promote social development; and
- c) Parental Authority: Authorization for the respondent's parents and brother to provide work-related childcare assistance during her parenting time.

2. Property and Financial Compensation

[46] With respect to the division of property and debts, the respondent seeks the following orders:

- a) Displacement Costs: Reimbursement in the amount of \$4,491.17 per month for July, August, and December 2022, representing the costs incurred due to her displacement from the family home;
- b) Tesla Loan Contribution: An order requiring the claimant to pay \$220 per month toward the Tesla Model 3 loan, in addition to ongoing support obligations, commencing August 1, 2022, until the loan is paid in full or further order of the Court;
- c) Return of Jewelry: A declaration that the claimant is in possession of the respondent's Stridhan (wedding jewelry), and an order that he return said items to her;
- d) Unequal Division of Property: A disproportionate share of the claimant's family home, business interests, personal property, financial assets, and vehicles, on the basis that an equal division would result in significant unfairness to the respondent;
- e) Debt Sharing: An order that the claimant contribute \$458 per month toward the \$32,966.17 debt she became responsible for, after being required to repay income top-up benefits to her former employer. These benefits had been provided during her maternity leave, and repayment was triggered when she chose not to return to that employment, instead accepting a different position better suited to her circumstances as a single parent;
- f) Keystone Environmental Ltd. Shares: An unequal division of the increase in value of the claimant's shares in Keystone Environmental Ltd.; and

g) Wedding Expenses: Reimbursement in the amount of \$10,473, representing 50% of the total wedding-related expenses.

3. Spousal Support

[47] The respondent seeks both interim and permanent spousal support, to be paid through a combination of lump sum and periodic payments, retroactive to the date of separation. She submits that the appropriate quantum of support should fall within the Spousal Support Advisory Guidelines: The Revised User's Guide (Ottawa: Department of Justice Canada, 2016) [SSAG] range, with preference for the high end, given her current financial hardship.

4. Last Name Change of the Child

[48] Last Name Change: The respondent proposes that the child's surname be modified to reflect both parents' names, suggesting either [V. D.-A.] or [V. A.-D.].

5. Travel Permission

[49] With respect to the Child's travel, the respondent seeks the following permissions and authorizations:

- a) Annual Travel to India: Permission to travel to India with the Child for up to four weeks per year, subject to providing the claimant with full travel details and proof of medical insurance;
- b) Domestic Travel: Permission to travel within Canada, specifically to Toronto, for up to two weeks annually;
- c) Emergency Travel: In the event of a family medical emergency, authorization to travel to India with the Child for up to four weeks without prior consent;
- d) Travel Vaccinations: Authority to arrange for any necessary vaccinations required for the Child's international travel; and
- e) Notarized Travel Consent: An order requiring the claimant to provide a notarized travel consent form permitting international travel with the Child.

[50] The issues for determination in this matter are as follows:

- a) What parenting schedule and decision-making framework are in the best interests of the Child?
- b) What is the appropriate amount of child support and should retroactive support be awarded?
- c) What portion of section 7 special or extraordinary expenses is each party responsible for?
- d) Should the respondent be permitted to travel internationally with the child, and if so, under what conditions?

- e) How should the family property and debts be divided, including the treatment of wedding jewellery and business shares?
- f) Is the respondent entitled to retroactive or ongoing spousal support, and if so, in what amount?
- g) Should the child's surname be changed?
- h) Should a divorce be granted? and
- i) Should costs be awarded? VI) CREDIBILITY

[51] Both the claimant and the respondent presented as devoted parents who care deeply about the well-being of their Child. However, their testimonies reflected markedly different perspectives on the marriage and its breakdown. The claimant's evidence focused primarily on the practical and financial aspects of the relationship, whereas the respondent emphasized the emotional impact of the separation and her sense of personal loss. Their accounts underscore a fundamental mismatch in expectations: the respondent sought a lifelong partnership grounded in emotional connection and family stability, while the claimant appeared to view the relationship as a structured arrangement with defined roles and mutual responsibilities. A. Credibility of the Claimant

[52] The claimant provided detailed and structured testimony, particularly with respect to his financial contributions, parenting efforts, and the division of property. His evidence was largely consistent with documentary records, including financial statements, payment histories, and his detailed tracking of the Child's feeding and sleep routines. His testimony regarding parenting time, medical decision-making, and financial obligations was corroborated by objective evidence, reinforcing his reliability on these matters.

[53] However, I also found that the claimant's testimony lacked emotional insight into the breakdown of the marriage and its impact on the respondent. He described the relationship in largely transactional terms, focusing on his expectations regarding financial and domestic contributions. His testimony suggested that he viewed the marriage as a structured partnership, and when the respondent was unable or unwilling to conform to that structure--particularly during her pregnancy, postpartum recovery, and caregiving for the Child--his emotional investment in the relationship appeared to diminish.

[54] This perspective was particularly evident in his testimony regarding the parties' financial arrangements. He repeatedly emphasized the agreed-upon 60/40 division of expenses and expressed frustration when the respondent did not adhere to that structure. His rigid approach to financial matters, while consistent, at times overshadowed any meaningful acknowledgment of the respondent's emotional struggles during and after pregnancy. While the claimant expressed strong emotions regarding his bond with the Child, his testimony did not reflect a comparable level of empathy for the respondent's experience of the marital breakdown.

- [55] I ultimately found the claimant to be credible and reliable in matters concerning financial accuracy and parenting responsibilities. His evidence was consistent and well-supported, though it lacked emotional nuance in relation to the broader dynamics of the relationship. B. Credibility of The Respondent
- [56] The respondent's testimony provided a compelling and emotionally resonant account of her experience during the marriage and its breakdown. She described her hopes of building a family, her struggles during pregnancy and postpartum recovery, and her feelings of isolation when she was unable to meet the expectations placed upon her. Her evidence was consistent with the medical records, which documented her postpartum health concerns and the Child's separation anxiety and developmental challenges following the parties' separation. She credibly described the cultural and emotional challenges of integrating into the claimant's family, as well as her belief that the claimant prioritized financial arrangements and family expectations over their marital relationship.
- [57] However, aspects of the respondent's testimony raised credibility concerns, particularly in relation to financial matters and her handling of the family jewellery. Although she claimed financial hardship necessitating an unequal division of assets etc., the evidence established that she remained employed, financially independent, and had not suffered significant economic disadvantage as a result of the relatively short duration of the marriage.
- [58] In addition, while the respondent maintained that she had been transparent about her intention to travel to India with the Child, the claimant's concerns about potential custody proceedings in that jurisdiction were not without foundation, given the respondent's strong ties to India, the presence of her extended family there, and her familiarity with the Indian legal system.
- [59] Overall, I found the respondent's testimony to be credible with respect to her emotional experiences, particularly in relation to the breakdown of the marriage, her postpartum challenges, and her parenting efforts. However, her credibility was diminished in relation to financial matters, the jewellery dispute, and aspects of her evidence concerning international travel. VII) PARENTING ARRANGEMENTS A. Parenting Schedule and Overnights
- [60] The next issue before the Court is whether the current equal parenting schedule should be adjusted to reflect the claimant's request to maintain the existing routine with the addition of longer three-day parenting blocks, or whether the schedule should be modified in accordance with the respondent's proposal for a 2-1 rotation or alternatively a more consistent Monday-to-Friday structure. B. Legal Framework on Parenting Schedules
- [61] The parties seek parenting orders under both the Divorce Act and the FLA. Although the statutes differ in terminology, their governing principles are substantively aligned, with both requiring that parenting decisions be based on the best interests of the child.

- [62] The claimant submits that the Divorce Act should apply. While it has constitutional paramountcy, that principle is not triggered in this case, as there is no conflict between the relevant provisions of the two statutes. Both direct the Court to focus exclusively on the child's best interests: *S.E.V. v. T.M.V.*, 2018 BCSC 30 at para. 38. Moreover, paramountcy does not preclude the Court from applying the FLA in divorce proceedings: *B.D.M. v. A.E.M.*, 2014 BCSC 453 at paras. 113-115.
- [63] For clarity and consistency and given that both parties primarily relied on the FLA in their submissions, I will determine the parenting arrangements with reference to that statute.
- [64] Section 37 of the FLA provides that the best interests of the child is the sole consideration in making parenting, guardianship, or contact orders. In assessing the child's best interests, the Court must consider all relevant circumstances, including the child's views, physical and emotional needs, and each parent's ability and willingness to meet those needs. The Court must also prioritize the child's stability and well-being and may consider a party's conduct only where it substantially affects a relevant factor. C. Application of Law to the Facts
- [65] The parties currently share equal parenting time, and there is no dispute that both are devoted caregivers. The Child has developed strong attachments to each parent, and the equal parenting schedule appears to be functioning well.
1. Best Interests of the Child
 - a) Views of the Child

[66] Given the Child's young age, his views cannot be meaningfully ascertained and therefore do not form part of the best interests' assessment.
 - b) Needs of the Child

[67] The claimant proposes shifting the current 2/2 schedule to a 2/2/3/3 rotation to provide greater continuity and more meaningful weekend time with the Child, although this may reduce daily contact with the other parent.

[68] By contrast, the respondent seeks a schedule where the Child spends two consecutive days with her and one day with the claimant, arguing that this better supports the Child's daycare routine, stability, and social development given evidence of separation anxiety.

[69] In resolving the appropriate schedule, the Court will apply s. 37 of the FLA and consider all relevant factors solely in the best interests of the Child.
 - i. Child's Health and Emotional Wellbeing

- [70] The Child is still very young but appears to have adjusted well to the equal parenting arrangement in place since May 2023. While there is some indication that he experiences separation anxiety when apart from his mother, this is understandable at his age and is not disputed on the evidence. At the same time, the claimant and his family also provide the Child with significant stability and emotional support. ii. Relationships with Significant Others
- [71] The evidence indicates that the Child enjoys strong relationships with both parents and their extended families. Both parents are practising Hindus and intend to raise the Child within the Hindu cultural, religious, and spiritual tradition. The Child benefits from meaningful time with each parent and, during the claimant's parenting time, also receives care from the claimant's parents, who provide additional stability and reinforce traditional and cultural teachings. This care supports the Child's overall cultural development and does not detract from his connection with the respondent. iii. History of the Child's Care
- [72] Despite the contentious and litigious nature of their separation, the evidence demonstrates that both parents are devoted and attentive caregivers who have been actively involved in the Child's care since birth. The claimant's family, particularly his mother, provides childcare during his working hours, while the respondent arranges for the Child to attend daycare while she is at work. Her family is also engaged and willing and able to support the child. It is clear that both parents deeply love the Child and are willing to invest in his well-being and future. Their shared commitment to his development is likely to endure and, over time, outweigh the acrimony that followed their separation. iv. Need for Stability
- [73] Although the evidence indicates that the Child has adapted well to the current parenting arrangement, he remains at a developmental stage where stability is particularly important. While he appears content in both households, frequent transitions may become more disruptive as he matures. Longer, more consistent periods with each parent are likely to provide the structure and continuity necessary to support his evolving emotional and developmental needs. The central issue for the parties moving forward will be how to implement a schedule that maintains a roughly equal division of parenting time in a manner that promotes the Child's stability and best interests. Achieving this will require the parties to collaborate in a child-focused and constructive manner.
- v. Ability of Each Parent
- [74] Both parents are capable, attentive, and committed caregivers. The evidence demonstrates that they are highly engaged in all aspects of the Child's development, including his educational, emotional, and social needs. Each has shown sound judgment in identifying potential concerns and in seeking appropriate professional support when needed. Their willingness to access resources reflects a proactive and child-focused approach to parenting. Both also benefit from reliable and supportive extended family networks, which further enhance their capacity to meet the Child's needs.

c) Family Violence

[75] Family violence is not an issue in this case.

d) Ability to Cooperate

[76] The parties' ability to cooperate has evolved over time. Although they encountered challenges in the early stages of separation, those difficulties coincided with the respondent's postpartum recovery and the Child's critical infancy and bonding period. The claimant expressed concern that the respondent was, during that time, less communicative about certain aspects of the Child's medical care. The Court accepts that the emotional strain of separation, combined with the demands of new parenthood, contributed to initial tensions.

[77] Since that time, the parties have transitioned into a more structured and functional parenting arrangement. The evidence supports a finding that both are committed to the Child's well-being and capable of cooperating in his best interests. However, as the Child grows older and his needs become more complex--particularly in relation to schooling, medical decisions, and extracurricular activities--ongoing communication and coordination will be essential. To support that, the Court finds that the parties would benefit from the assistance of a Parenting Coordinator. This support will assist them in managing future transitions and resolving any disagreements in a timely and child-focused manner.

e) Conclusion on Best Interests of the Child

[78] Having considered the evidence in light of the factors set out in s. 37 of the FLA, I am satisfied that both parents are loving, capable, and committed caregivers who have played an active role in the Child's upbringing since birth. The Child has adjusted well to the existing equal parenting arrangement and enjoys strong, supportive relationships with both parents and their extended families. While the parties experienced some challenges in the early stages of separation, they have since demonstrated an improved ability to communicate and cooperate in the Child's best interests.

2. Conclusion and Parenting Order

[79] At this stage in the Child's development, maintaining stability, continuity of care, and meaningful contact with both parents remains critical. While frequent transitions may become more challenging as the Child grows older, there is currently no evidence that the existing schedule is harmful or contrary to his best interests. A structured transition to longer parenting blocks is appropriate and should be approached gradually, with the parties working together to adapt to the Child's evolving needs.

[80] To support ongoing cooperation and assist with any future disagreements about parenting logistics or decision-making, the Court finds it appropriate to order the parties to retain a Parenting Coordinator. This will help them to work together to ensure the parenting arrangements continue to reflect the Child's best interests as he matures.

a) Parenting Order

[81] The following Parenting Orders are made:

- a) Current Parenting Schedule: The current equal parenting schedule, consisting of a 2/2 rotation (two days with each parent on an alternating basis), shall continue in effect until June 30, 2025;
- b) Modified Parenting Schedule (Effective July 1, 2025): Commencing July 1, 2025, the parties shall transition to a 2/2/3/3 parenting schedule. Each parent shall have two consecutive days, followed by alternating three-day blocks;
- c) Annual Review of Parenting Schedule: The parties shall review the parenting schedule every year on or around the Child's birthday to consider whether any changes are needed, based on the Child's development or other circumstances. The Parenting Coordinator may assist with this review if necessary;
- d) Appointment of Parenting Coordinator: The parties shall jointly retain a Parenting Coordinator by no later than July 1, 2025, under s. 15 of the FLA. The Parenting Coordinator shall assist with:
 - i. Implementing the parenting schedule; ii. Helping the parties communicate about parenting matters; and iii. Assisting with resolving day-to-day parenting disputes;
- e) Costs of Parenting Coordinator: The parties shall share the cost of the Parenting Coordinator equally, unless they agree otherwise or the Court orders differently in the future.

3. Guardianship

[82] The claimant seeks an order confirming that he is a guardian of the Child under s. 39 of the FLA. While it is unnecessary to make a formal guardianship order in this case, I address the issue given the claimant's request. Both parties are guardians by operation of law, as they lived with the Child after his birth and have remained actively involved in his care. There is no application before the Court to remove or restrict either party's guardianship status.

4. Parental Responsibilities and Decision-Making Authority

[83] As guardians, both parties are presumed under s. 41 of the FLA to share parental responsibilities. These include making significant decisions regarding the Child's health care, education, and cultural or religious upbringing, as well as providing day-to-day care during their respective parenting time.

[84] The parties' disagreement concerning parental responsibilities has centred primarily on medical decision-making. The respondent seeks final authority, citing her historical involvement in managing the Child's health needs. The claimant seeks equal input to ensure that both parents remain mutually engaged in significant matters.

- [85] Accordingly, both parties shall continue to share the parental responsibilities set out in s. 41 of the FLA. They must consult with one another before making significant decisions regarding the Child's health care, education, and cultural or religious practices. This consultation must be meaningful, and each party is expected to make reasonable efforts to reach agreement before acting unilaterally.
- [86] In the event of a disagreement regarding medical decisions, the respondent shall have final decision-making authority. This allocation reflects her consistent involvement in the Child's health care and promotes timely and consistent decision-making. However, she must consult with the claimant before making any non-emergency medical decisions.
- [87] In line with the claimant's request, both parties shall inform each other of any medical or health appointments regarding the Child in advance of those appointments being scheduled, and shall invite the other parent to attend, where appropriate.
- [88] The parties are also expected to discuss and make best efforts to agree on all matters relating to the Child's education, cultural practices, and ceremonies. If they are unable to reach agreement, the issue shall first be referred to the Parenting Coordinator before any court application is brought.
- [89] As previously ordered, the parties are encouraged to make full and constructive use of a retained Parenting Coordinator to assist them in resolving parenting logistics, communication challenges, and day-to-day disputes. However, the Parenting Coordinator shall not have authority over major decision-making issues unless otherwise agreed by the parties.
- [90] The following orders are made with respect to guardianship and parental responsibilities:
- a) **Guardianship:** Both the claimant and the respondent are guardians of the Child by operation of s. 39 of the FLA. No further order is required;
 - b) **Parental Responsibilities:** The parties shall continue to share the parental responsibilities set out in s. 41 of the FLA, including significant decisions regarding the Child's:
 1. Health care;
 2. Education;
 3. Cultural and religious upbringing; and
 4. Day-to-day care while the Child is in their respective care.
 - c) **Medical Decision-Making:** In the event of disagreement regarding medical decisions, the respondent shall have final decision-making authority. However, the respondent must consult with the claimant before making any non-emergency medical decisions;
 - d) **Medical Appointment Notice:** Each party shall inform the other, in advance, of any medical or health appointments for the Child, and shall invite the other to attend where appropriate;

- e) Consultation on Education and Cultural Matters: The parties shall consult and make reasonable efforts to agree on the Child's education, participation in cultural or religious practices, and ceremonies;
 - f) Parenting Coordinator Assistance: In the event the parties are unable to reach agreement on matters under this Order, they shall first refer the issue to the Parenting Coordinator for assistance before seeking relief from the Court; and
 - g) Scope of Parenting Coordinator Role: The Parenting Coordinator shall assist with day-to-day parenting disputes, scheduling issues, and communication matters. The Parenting Coordinator shall not have authority to make binding decisions on significant parenting issues unless both parties agree in writing.
5. Extended Family Members as Caregivers
- [91] Both parties have requested that members of their extended families be permitted to provide childcare for the Child during their respective parenting time. The respondent mother seeks an order allowing her to rely on her brother and her parents to provide work-related childcare during her parenting time, or at other times by mutual agreement. Similarly, the claimant father requests that both parties be at liberty to utilize family members as regular work-related childcare providers and specifically asks that his mother, father, and brother be permitted to fulfill this role during his parenting time.
- [92] Upon review of the evidence, I find no reason to restrict either party from relying on their extended family members for this purpose. The evidence supports that both families have demonstrated a consistent commitment to the Child's well-being and can provide safe and appropriate care. Moreover, this arrangement reflects a strong cultural tradition of intergenerational caregiving within both families. Accordingly, I am satisfied that it is in the Child's best interests to grant this request.
- VIII) CHILD SUPPORT AND SECTION 7 EXPENSES
- A. Legal Framework
- [93] Child support is a form of corollary relief under s. 15.1 of the Divorce Act. The Guidelines, govern the determination of support amounts and income calculations.
- [94] Following separation on July, 2, 2022, the Child resided predominantly with the respondent. On May 1, 2023, the parties transitioned into equal shared parenting time on a 2/2 rotation, pursuant to an order of Master Robertson.
- [95] Under s. 9 of the Guidelines, shared parenting arises where each parent has the child at least 40% of the time over the year. Section 9 also provides a three-part framework for assessing child support as follows:
- a) Determine the amount of child support each parent would pay to the other under the applicable Guidelines table;
 - b) Consider the increased costs associated with shared parenting; and

- c) Assess the conditions, means, needs, and other circumstances of each parent and the child.
- [96] The s.9 analysis is contextual and no single factor under is determinative; their weight varies depending on the facts (*Contino v. Leonelli-Contino*, 2005 SCC 63 at para. 82).
- [97] The set-off under s. 9(a) is a starting point. Section 9(b) accounts for duplicated expenses in shared parenting arrangements. Section 9(c) allows the court to assess the child's standard of living in each household and the parents' relative ability to sustain that standard (*Contino*, at paras. 41, 52, 68, 71-72).
- [98] Judges must also avoid the "cliff effect," where a small change in parenting time leads to a disproportionate change in support. B. Determining Guideline Income
- [99] The legislative scheme for determining Guidelines income is straightforward.
- a) First, under section 16 of the Guidelines, the court begins with the "total income" reported by the payor on Line 150 of their tax return and applies the adjustments set out in Schedule III;
- b) Next, the Court turns to sections 17 through 20 of the Guidelines to consider any further exceptions or factors and to determine their effect in the specific case; and
- c) Schedule III Adjustments: Schedule III allows for adjustments to more accurately reflect actual disposable income.
- [100] Pursuant to a notice to admit, the parties agreed to the following incomes:
1. Income Summary: (2021-2023) Year Party Line 15000 (Total Income) Line 23600 Proposed Guideline Income 2021 Claimant \$201,226.20 \$177,960.20 Respondent \$78,946.27 \$72,677.92
2022 Claimant \$203,146.78 \$179,737.85 \$176,261 Respondent \$71,121.00 \$66,898.00 \$71,121
2023 Claimant \$241,477.48 \$167,761.18 \$198,607 Respondent \$74,355.00 Not Provided \$74,355
- [101] In his submissions, the claimant argues that his Guidelines income should be adjusted pursuant to s. 19(1)(h) of the Guidelines to reflect the actual, rather than taxable, dividends he received. For the 2022 tax year, he submits that his Guidelines income, after applying the adjustments in Schedule III--specifically, the replacement of taxable dividends with actual dividends--should be \$176,261. For 2023, he submits that his adjusted Guidelines income should be \$198,607. At the time of trial, there was no agreed statement of facts between the parties confirming estimated income for 2024, so I relied upon the 2023 actual incomes filed.
- [102] Section 5 of Schedule III to the Guidelines provides: Replace the taxable amount of dividends from taxable Canadian corporations received by the spouse by the actual amount of those dividends received by the spouse.

- [103] As confirmed by the Court of Appeal in *Lightle v. Kotar*, 2014 BCCA 69 at para. 60, dividend income, for the purpose of calculating child support, is to be valued at the actual cash amount received, not the grossed-up amount reflected in a T1 tax return.
- [104] The claimant was a long-term employee of Keystone Environmental Ltd. before being offered the opportunity to acquire a minority interest. In February 2021, he purchased a 2.5% shareholding for \$304,833.34, based on a company valuation dated September 2020. To finance the acquisition, he obtained a loan from the Bank of Montreal, which was co-guaranteed by Keystone Environmental. Under the terms of the agreement, a default would permit the company to repurchase the shares at 80% of their fair market value.
- [105] I have reviewed the claimant's T1 and related tax filings to assess the actual cash dividends received, in contrast to the grossed-up amount included in his line 15000 income. In addition, the claimant seeks a further reduction in his income to account for the carrying costs associated with the loan used to acquire the shares. Section 8 of Schedule III permits the court to exercise discretion to reduce income where such carrying costs are incurred.
- [106] Based on the terms of the loan and the claimant's sole responsibility for repayment, I accept that he has little to no flexibility to avoid the associated interest expenses. Following separation, he states that financial strain required him to take on additional debt--including a TD line of credit of \$29,000 obtained on January 26, 2023--in order to retain his shares and avoid default.
- [107] After a careful review, I find that these carrying costs contribute to his ability to manage the required loans for the acquisition of his shares, which in turn produce the dividends that render second-order financial benefits that ultimately benefits the child.
- [108] Consequently, I am satisfied that the interest and carrying costs expenses for the loans associated with the claimant's acquisition and retention of shares in Keystone Environmental Ltd. are properly characterized as reasonable carrying costs under s. 8 of Schedule III.
- [109] Further, the circumstances surrounding the TD line of credit--particularly the post-separation financial strain and the risk of forfeiting his equity interest at a discount--further support the reasonableness of treating this borrowing as part of the carrying costs relevant to the income determination.
- [110] Based on my review of the parties' financial filings, I accept the following as their Guidelines Income: Year Claimant Respondent 2022 \$176,261 \$71,121 2023 \$198,607 \$74,355 2024 \$198,607 (estimated) \$74,355 (estimated) C. Prior Court Orders and Income Findings
- [111] The claimant also seeks an order for an accounting of the child support payable for the years 2022, 2023, and 2024.

- [112] For the three-month period from July to September 2022, the claimant voluntarily paid \$400 per month in child support. This amount must be recalculated based on his actual 2022 income which is now available.
- [113] On September 22, 2022, Judge Craig of the Provincial Court ordered the claimant to pay \$1,660 per month in child support, based on a reported annual income of \$193,419. I note that the claimant's income is now determined to be \$176,261. However, based on the actual 2022 Guidelines income of \$176,261, the claimant owed the respondent \$1,560.84 for the relevant months in 2022.
- [114] On June 23, 2023, based on the claimant being granted equal parenting time effective May 1, 2023, and an income offset between the parties, Justice Branch varied the previous order and directed the claimant to pay \$885 per month in child support, commencing July 1, 2023.
1. Recalculated Support and Arrears
- [115] Retroactive support is to be determined based on actual income earned in each year for which it is due. Having now received the parties' actual income information for 2022 and 2023, I have relied on those figures to determine the appropriate level of child support for the retroactive period. This approach provides the most accurate reflection of the parties' financial circumstances during the relevant timeframe and is consistent with established practice and the principles set out in the Guidelines.
- [116] With respect to 2022, as explained above, for the period between July and December 31, 2022, having accepted the claimant's adjusted income as \$176,261, he should have been paying \$1,560.84 per month.
- [117] With respect to 2023, I had to consider the transition to equal parenting. In determining child support in the shared parenting arrangement which began on May 1, 2023, I applied s. 9 of the Guidelines. I calculated the set-off amount under s. 9(a), considered the increased costs of shared parenting under s. 9(b), and assessed the parties' and child's circumstances under s. 9(c). Consistent with Contino, this holistic analysis supports the fairness of the set-off approach in the circumstances, and I see no reason to depart from it.
- [118] Based on the parties' 2023 Guidelines income, (\$198,607 for the claimant and \$74,355 for the respondent), the claimant owed the respondent \$1,735.13 per month for the first 4 months of 2023 (January until April) until they began equal parenting.
- [119] Effective, May 1, 2023, as explained above, I considered the offset by the respondent based on her income in the amount of \$709.48 per month, which resulted in an offset of \$1026 payable by the claimant to the respondent.
- [120] Given that there were no actual amounts available for 2024, I relied upon the 2023 amounts and the continued equal parenting arrangement for the period in 2024 until now.

- [121] Based on the above payments, the following chart sets out what was paid by the claimant. In calculating what should be paid moving forward, I have considered the parties' incomes and applied the Guidelines accordingly.
2. Actual Support Payments Made by Claimant
- | Period | Monthly Amount | Duration | Total Paid |
|---|----------------|-----------|-----------------|
| July-September 2022 (Voluntary) | \$400 | 3 months | \$1,200 |
| September 2022-June 2023 (Craig Order) | \$1,660 | 9 months | \$14,940 |
| July 2023-August 2024 (Branch Order) | \$885 | 14 months | \$12,390 |
| Sept 2024 to April 2025 (Subj to new order but paid under Branch Order) | \$885 | 8 months | \$ 7,080 |
| Total Paid | | | \$35,610 |
3. Required Support Payments by Claimant
- | Type of Support | Period | Monthly Amount | Duration | Total |
|---|-------------------------------|----------------|-----------|-----------------|
| Total Owed Child Support (Based on 2022 Actuals) | July 2022 - December 2022 | \$1,560.84 | 6 months | \$9,365 |
| Child Support (Based on 2023 Actuals) | January 2023 - April 30, 2023 | \$1,735 | 4 months | \$6,940 |
| Child Support Adjusted for Equal Parenting (\$1,735-\$809.48) | May 1, 2023 - April 30, 2025 | \$1,026 | 24 months | \$24,624 |
| Total Required Child Support | | | | \$40,930 |
- [122] Although the claimant made significant payments already, a difference of \$5,320 remains due based on the actual income figures and parenting arrangements over the two-year period.
- [123] The claimant shall pay to the respondent the sum of \$5,320 in child support arrears. Ongoing support shall continue at the offset rate of \$1,026 per month, for so long as the parties continue to share parenting time equally, and until updated financial information is available.
- [124] Commencing May 15 of each calendar year, the parties shall exchange their most recent income tax filings, including their T1 General returns. Effective June 1, 2025, and annually thereafter, each party shall calculate their respective child support obligations based on their Guideline Incomes as reported in those returns. The resulting table amounts shall be offset, and the net amount shall be payable by the higher-income party to the lower-income party. In the absence of agreement, either party may apply to the court for a determination.
- [125] If the parties cease to share parenting time equally, they shall nonetheless continue to exchange their annual income tax returns so that child support can be recalculated in accordance with the applicable Guidelines.
- D. Section 7 Expenses
- [126] The claimant seeks an order that the parties share the costs of special and extraordinary expenses in proportion to their respective incomes. This is consistent with the principle set out in s. 7(2) of the Guidelines.
- [127] Section 7 addresses two categories of expenses: special expenses and extraordinary expenses. Special expenses are:
- a) Medical, vision, and dental expenses, including necessary orthodontic expenses not covered by insurance.

- b) Extraordinary expenses for preschool, primary and secondary school education and other education programs that meet the children's needs, including school expenses, tutoring, school trips, and other school-related events, but excluding daycare, or after school care, which shall be borne by the party incurring such expense.
- c) Any daycare or after school care expenses that the parties seek to treat as extraordinary expenses, so long as they are agreed to in writing between the parties.
- d) Any extra-curricular activities that the parties seek to treat as s. 7 expenses so long as they are agreed to in writing between the parties.

[128] Based on their most recently declared averaged income--\$198,607 for the claimant and \$93,425 for the respondent their combined annual income is \$292,032. Accordingly, effective immediately, section 7 extraordinary expenses are to be shared as follows:

- a) Claimant.: 68%
- b) Respondent: 32%

[129] For any section s. 7 expense claimed, the party who incurred the expense shall provide to the other party a copy of the receipt or invoice and proof of payment.

[130] Neither party shall incur a section s. 7 expense without the prior written consent of the other party, unless in case of an emergency, in which case the party incurring the expense shall notify the other party forthwith after having incurred the expense.

[131] The parties' proportionate share of s. 7 expenses is to be reviewed annually, with the review to occur at the same time and in the same manner as the annual child support review.

1. Daycare Costs

[132] I turn now to the issue of daycare costs, which was the sole matter raised which was of significant contention under s. 7 expenses between the parties.

[133] The respondent asks that her daycare costs be recognized as a special or extraordinary expense under s. 7 of the Guidelines, and that they be shared proportionately between the parties, both retroactively and prospectively. She states that her daycare costs are approximately \$1,000 per month.

[134] The claimant opposes this request. He states that his mother, the child's paternal grandmother, has been and remains available to provide regular childcare during his parenting time, and at other times with the parties' consent.

[135] He seeks a declaration that daycare is neither reasonable nor necessary in the circumstances, citing the parties' past agreement during the relationship that the paternal grandmother would provide childcare, as well as her continued availability and willingness to do so at no cost.

[136] Pursuant to s. 7(1)(a) of the Guidelines, the court may apportion childcare expenses that are incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time.

[137] The claimant maintains that the respondent's daycare costs are unnecessary and unreasonable, given the paternal grandmother's ongoing offer to provide free childcare.

a) Retroactive Day Care Costs

[138] Following the parties' separation, and in preparation for her return to work, I find that the respondent made reasonable and diligent efforts to secure appropriate childcare. She also presented evidence of daycare enrollment, payment, and waitlists. She ultimately found a daycare provider compatible with her work schedule and geographic location. She submitted that the current daycare arrangement supports the Child's social, emotional, and educational development. She emphasized that the Child's daycare attendance helped with the Child's routine, exposure to structured learning, and socialization.

[139] The respondent testified that the gross daycare cost was significantly reduced by a government subsidy, lowering the net cost to approximately \$1,000 per month. She provided a summary of 13 invoices of her daycare payments made, which are as follows:

Month Ending	Amount (CAD)
May 2023	\$200.00
May 2023 (second)	\$955.00
November 2023	\$1,093.55
December 2023	\$1,009.92
January 2024	\$1,024.61
February 2024	\$1,024.61
March 2024	\$1,024.61
April 2024	\$1,024.61
May 2024	\$1,135.52
June 2024	\$578.76
July 2024	\$858.45
August 2024	\$765.22
Total	\$10,694.86

[140] Total daycare payments made: \$10,694.86.

b) Prospective Day Care Costs

[141] Based on the evidence, including the testimony of the paternal grandmother, I am satisfied that she is a capable caregiver who could offer meaningful financial and cultural benefits to the Child. However, the parties do not reside in the same neighbourhood, and I accept the respondent's evidence that the logistics of her work schedule and daycare drop-off are not compatible with commuting to the claimant's residence for childcare.

[142] Having regard to the evidence, I am satisfied that it was both reasonable and necessary for the respondent to enrol the child in daycare at the time she did. This arrangement supported her return to work, contributed to her financial independence, and served the Child's best interests.

[143] However, in this case, it is important to note that for much of the time while the child was in daycare, the parties engaged in equal parenting time.

[144] I recognize that, for logistical or contractual reasons, it was necessary for the respondent to maintain daycare enrollment and pay for days when the child is not physically attending daycare. However, I find that the cost associated with maintaining daycare enrollment for days when the child was in the care of the claimant, or his mother is an unnecessary

expense that the claimant should not be expected to share. Accordingly, I find this portion of the daycare expense is not recoverable as a special or extraordinary expense under s. 7 of the Guidelines.

- [145] Based on the receipts submitted by the respondent, I find that the daycare costs borne solely by her amount to \$10,694.86. Doing the best I can with the evidence before me and considering the respondent's request for proportional contribution, I estimate the net share attributable to the claimant to be \$3,564.95 representing one-third of the total daycare costs.
- [146] Accordingly, the claimant is required to reimburse the respondent in the amount of \$3,564.95.
- [147] For the post-trial period, in light of the equal parenting arrangement, I find each party shall be responsible for arranging and paying for childcare required during their respective parenting time. IX) INTERNATIONAL TRAVEL AND RISK OF NON-RETURN A. Parties Positions
- [148] The respondent seeks authorization to travel to India with the Child to visit her parents, who live there.
- [149] The claimant opposes the request, expressing concern about the risk of non-return and the absence of enforceable mechanisms under Indian law.
- [150] The claimant sought to rely on expert evidence from an Indian lawyer. Given the procedural limitations, the Court declined to admit the report but indicated it would rely on established Canadian case law on the subject. B. Legal Framework
- [151] The Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980, Can TS 1983 No 35; 1343 UNTS 89, [Hague Convention] is a multilateral treaty that facilitates the prompt return of children wrongfully removed or retained across international borders to their habitual residence. Canada is a signatory and implements the Hague Convention through provincial and territorial legislation, coordinated federally. India is not a signatory. This distinction is significant: Canadian courts can seek return of children from fellow signatories but have no assurance of enforcement or cooperation from non-signatory states like India, increasing the risk of wrongful retention.
- [152] When international travel is requested, the legal burden is on the travelling parent to demonstrate that the proposed trip is in the child's best interests and that adequate safeguards are in place to ensure the child's return to Canada (M.D. v. A.D., 2022 ONSC 5136).

- [153] Courts apply heightened scrutiny where the destination is a non-Hague Convention country such as India (*Mahadevan v. Shankar*, 2010 ONSC 5608), due to the absence of binding legal mechanisms to compel a child's return if wrongfully retained. Indian courts conduct a *de novo* best interests' analysis without deferring to Canadian orders (*Kalra v. Bhatia*, 2024 ONSC 1443). As a result, the risk of wrongful retention and delayed or denied return is materially higher. C. Key Factors Considered in International Travel Requests
- [154] In determining whether to grant international travel requests, courts consider several key factors, including:
1. Risk of Wrongful Retention
- [155] As mentioned above, India's family law system does not automatically recognize foreign custody orders, which could result in a *de novo* review of parenting arrangements if the child is retained.
2. Ties to Canada vs. Ties to India
- a) Personal and Professional Ties to Canada
- [156] The respondent is a relatively recent immigrant to Canada. She is stably employed and actively building a professional career. She owns a residence in this jurisdiction and testified that she has invested considerable time and effort in establishing her life in Canada. Her brother resides in Canada, and she has developed meaningful and substantive ties within this community. The overall evidence supports that she is currently rooted in Canada and continues to build a stable personal and professional foundation here.
- b) Extended Family Context and Connections to India
- [157] The respondent's extended family remains primarily in India, where, according to her evidence, they enjoy a comfortable and affluent lifestyle. Her parents maintain their home there and she clearly feels welcome in their home. Although these connections are significant and relevant to the Child's cultural background, they must be weighed against the legal and practical risks associated with international travel to a non-Hague jurisdiction.
- c) Parental Compliance with Court Orders
- [158] The claimant submits that the respondent has not always demonstrated full transparency in relation to her travel plans, which has heightened his concerns about the risk of non-return. Courts have recognized that a history of non-compliance with court orders is a significant factor weighing against authorizing international travel where there is a potential for wrongful retention (M.D.).

[159] In this case, while the respondent was at times reluctant to share parenting responsibilities during the early stages of separation, that conduct must be viewed in context. The parties separated shortly after the Child's birth, during a period when the respondent was recovering from childbirth and navigating the transition to single parenting. The early stages of this litigation were also marked by considerable acrimony, which further strained communication.

[160] Despite those early challenges, the more recent evidence indicates that the respondent has begun to adjust and is showing signs of personal and professional growth. She has participated in these proceedings in good faith, and there is no evidence that she has failed to comply with any court orders. While some transparency concerns remain, they are not sufficient to establish a pattern of non-compliance. With continued cooperation and support--particularly through the use of a Parenting Coordinator--there is reason to be hopeful that the parties may, over time, develop a more trusting and constructive co-parenting relationship.

d) Proposed Safeguards

[161] The respondent has not proposed any formal safeguards to ensure the Child's return if travel to India were permitted. Courts have consistently imposed strict conditions when authorizing travel to non-Hague Convention countries, particularly where the risk of wrongful retention is elevated. These safeguards often include:

- a) Financial securities (e.g., \$10,000 bond);
- b) Pre-approved travel itineraries filed with the court;
- c) Notarized agreements confirming the child's return; and
- d) Judicial undertakings to comply with Canadian custody orders.

[162] The absence of such safeguards weighs against granting permission for travel (Mahadevan).
D. Comparative Law

[163] Courts have consistently denied travel requests to India where there is an elevated risk of wrongful retention, particularly given India's status as a non-signatory to the Hague Convention and its refusal to enforce Canadian custody orders. In *M.D.*, the court denied a mother's request to travel to India with her child based on precisely these concerns. Similar risks are present in this case and have been recognized in other decisions, including *Mahadevan*.

[164] In *M.D.*, the proposed travel was for religious purposes involving a four-year-old child. The request was denied due to a combination of:

- a) The mother's lack of strong ties to Canada (no property, unstable employment, and no active divorce proceedings);

- b) The father's concern that she might initiate custody proceedings in India;
 - c) The absence of enforceable safeguards, given India's refusal to recognize Canadian custody orders; and
 - d) Although cultural exposure to India is encouraged, international travel restrictions are necessary in this case to safeguard the claimant's parental rights and to prevent jurisdictional conflict that could arise from any wrongful retention.
- E. Analysis and Conclusion

[165] Similar concerns arise in the present case. While the respondent owns her residence and is actively building a professional career in Canada, she has not proposed any safeguards to mitigate the risk of wrongful retention. Her prior involvement in legal proceedings in India, combined with the current level of conflict between the parties over parenting arrangements, creates an unacceptable risk that travel to India at this time could lead to a jurisdictional dispute outside the reach of Canadian courts.

[166] Given these risks and the lack of enforceable safeguards, I am not satisfied that international travel to India is in the child's best interests at this time. However, this may change in the future. If the parties can work with a parenting coordinator, build more trust, and agree on safeguards, future travel may be possible.

[167] In light of the current circumstances and the lack of enforceable safeguards between Canada and India, I make the following orders:

- a) The respondent shall not travel to India with the Child without the claimant's written consent or a further order of the Court;
 - b) If such travel is requested in the future, the respondent must:
 - i. File a formal travel application with the Court, demonstrating how the travel aligns with the Child's best interests;
 - ii. Execute a notarized undertaking confirming her obligation to return the Child to Canada; and
 - iii. Be prepared to provide a financial bond or other security for the Child's return, if required by the Court.
 - c) These restrictions apply exclusively to travel to India, given that it is a non-signatory to the Hague Convention and due to the corresponding legal risks associated with wrongful retention; and
 - d) Travel within Canada, including Ontario, is permitted on a case-by-case basis as agreed to by the parties.
- X) DIVISION OF FAMILY PROPERTY AND DEBTS

[168] Division of property should be determined before considering a support claim, as it directly informs the court's assessment of each party's financial means: see *Narayan v. Narayan*, 2006 BCCA 561 at para. 33 A. Legal Framework

[169] Under the FLA, the general presumption is that upon separation, spouses are entitled to an equal, undivided one-half share of family property and debt. The principles governing property division are outlined in ss. 81, 84, 85, 87, and 95 of the FLA and can be summarized as follows:

- a) **Presumption of Family Property:** All real and personal property owned by either spouse at the time of separation is presumed to be family property, unless it qualifies as excluded property (ss. 84(1), 85);
- b) **Business Interests as Family Property:** Family property includes shares or interests in corporations, partnerships, businesses, or ventures (s. 84(2)(a));
- c) **Increase in Value of Excluded Property:** Any increase in the value of excluded property during the relationship is considered family property, even if the original asset remains excluded (s. 84(2)(g));
- d) **Excluded Property:** Certain property is excluded from division, including:
 - i. Property acquired before the relationship began; ii. Inheritances and gifts received from third parties; and iii. Property derived from excluded property, including proceeds from its sale (s. 85(1)).
- e) **Valuation at Fair Market Value:** Unless otherwise agreed or ordered, family property is valued at its fair market value as of the trial date (s. 87); and
- f) **Equal Division Unless Significantly Unfair:** While the default rule is an equal division of family property, an unequal division may be ordered if an equal split would be "significantly unfair" (ss. 81, 95).

[170] This framework provides clarity, fairness, and predictability in the division of assets following the breakdown of a marriage or marriage-like relationship. B. Analysis

1. Division of Property

a) Relationship Context and Scope of Division

[171] The only potentially jointly acquired property during the marriage is a collection of wedding jewellery. The claimant seeks to classify this jewellery as family property. The respondent contends that the items were gifted solely to her and are therefore excluded property. No independent valuations or assessments were conducted to determine the value of the jewellery at the time of the gift or at the date of separation.

[172] Beyond the wedding jewellery, there is no claim that the parties acquired any other jointly held family property. They maintained largely separate financial lives and did not acquire shared assets or debts during the marriage.

[173] Each party brought significant assets into the relationship before the marriage. They agree that these assets are excluded property under s. 85(1) of the FLA. Accordingly, the Court is not required to determine ownership of the original assets.

b) Division of Excluded Family Property

[174] In this case, the parties largely agree on the classification of their excluded assets. Accordingly, the Court's focus is not on ownership, but on whether--and by how much--those assets increased in value during the marriage, and how that increase should be divided.

[175] Prior to the marriage:

- a) The respondent owned a Richmond apartment, acquired in December 2020. She continued to manage and pay for it independently throughout the relationship; and
- b) The claimant held a 28% interest in a Coquitlam home purchased by his parents in 2015. He also owned various investment and retirement accounts, some of which predated the marriage.

[176] During the relationship, the respondent moved into the Coquitlam home and retained the furnishings and her control of the Richmond apartment. After the birth of their child, she temporarily resided at the Richmond property with her parents before resuming permanent residence there following separation.

[177] The Court will first address the contested assets--the wedding jewellery and the Keystone shares--before turning to a summary of divisible gains and equalization.

2. Disputed Property Characterization and Division

a) Family Jewellery

[178] The claimant seeks to have a collection of family jewellery--including a diamond necklace, earrings, bangles, and gold, classified as family property. The respondent maintains that the jewellery was gifted to her personally and is therefore excluded property under British Columbia law.

[179] The claimant submits that, consistent with Hindu traditions, the parties received significant jewellery from friends and family as blessings and a form of financial security. He states--and the respondent does not dispute--that in Hindu culture, gold jewellery is commonly given to newlyweds as a tax-free investment and safeguard.

[180] The claimant estimates the retail value of the jewellery at \$75,000, but proposes a resale-based valuation of 50% of retail, or \$37,500, for the purposes of property division. He suggests that the respondent retain the jewellery and compensate him \$18,750, representing one-half of the resale value. The respondent agrees with the estimated retail value of \$75,000.

- [181] Both parties ask the Court to determine who currently possesses the jewellery. Each denies possessing it, and neither has provided independent or corroborating evidence. The Court is not an investigative body. In the absence of clear and credible evidence, no finding can be made as to who currently holds the items.
- [182] The claimant wanted such a determination on the jewellery based on a concern that, once this matter concludes, the respondent might initiate legal proceedings in India falsely alleging that he retained the family jewellery, thereby exposing him to possible legal jeopardy there. He testified that the respondent had pursued similar action in relation to her first marriage, despite having been granted a divorce in Ontario.
- [183] In response, the respondent explained that the Indian proceedings in her prior marriage were initiated because the marriage took place in India, and only the Indian courts had jurisdiction over her dowry-related claims in that matter.
- [184] While both parties seek a finding as to possession, the Court cannot resolve that issue on the record before it. In the case of *Sohi v. Sohi*, 2015 BCSC 1043, the Court undertook a detailed credibility assessment within a complex, multi-party dispute. In contrast, this case involves two parties, each aware of their own possession status. Neither has met the burden of proving, on a balance of probabilities, that the other is in possession. Accordingly, I decline to make a finding on possession. I will, however, proceed to address the classification and potential division of the jewellery.
- i) Legal Framework on Jewellery Gifted at Marriage
- [185] Under s. 85(1)(b) of the FLA, gifts received by one spouse from a third party are excluded property, unless there is clear evidence that the gift was intended to benefit both spouses or was used for a family purpose.
- [186] In *Sohi*, the Court held that jewellery gifted on the occasion of marriage may constitute family property where it was intended to support the couple jointly or serve as financial security. The Court considered both cultural context and practical use in determining whether the jewellery should be divided. This analysis confirms that the intention of the giver, the cultural context, and the post-gift use are central considerations.
- [187] Similarly, in *Shen v. He*, 2023 BCSC 1417, the Court found that jewellery gifted during a relationship is presumed to be family property unless there is evidence that it was intended to be excluded. However, the courts have consistently recognized that jewellery given exclusively to the bride as part of cultural or religious traditions may be excluded property (see *D.I. v. S.I.*, 2011 BCSC 1788 at para. 71; *Ghuman v. Ghuman*, 2014 BCSC 254 at para. 119).

- [188] The key factor is the intention of the giver, which may be inferred from the timing of the gift, the nature of the items, cultural expectations, and how the items were used after the gift. Where jewellery is given solely to the bride in accordance with established cultural or religious practices--such as Stridhan in Hindu tradition--it is generally treated as excluded property.
- [189] In assessing whether gifted jewellery is excluded property, the court must examine the intention of the giver(s) at the time of the gift. (Shen at para. 139). That intention may be informed by cultural traditions and expectations surrounding the marriage. Where such traditions clearly indicate that the jewellery was intended solely for the bride, the courts have generally classified those gifts as excluded property. ii) Application of the Law to the Facts
- [190] Given that the parties agreed to a retail valuation of wedding jewellery without a detailed appraisal, I accept the value of \$75,000 for reference purposes. However, I also accept the claimant's position that resale value more accurately reflects the jewellery's realizable worth for the purposes of property division. In the absence of expert valuation evidence and given the nature of the items, I find a resale value of \$37,500 to be appropriate.
- [191] If the jewellery was received before the relationship began (i.e., prior to cohabitation or marriage), and it was a gift given solely to one spouse, it qualifies as excluded property.
- [192] Even if the relationship had begun, the intention of the giver is key: Was the gift meant for the recipient exclusively, or for the couple jointly? iii) What was the Intention of the Givers?
- [193] The evidence establishes that the jewellery was gifted during the parties' Hindu wedding ceremonies. The respondent testified that the items were presented to her in accordance with Hindu customs, and the photographs support her account.
- [194] Hindu wedding traditions strongly support the conclusion that jewellery gifted to a bride is intended for her personal use, but it may also be intended to provide for her security in the event that something happened to her husband. In *Soomal v. Soomal*, 2001 BCSC 58, Ms. Soomal was gifted jewellery on her wedding day in accordance with Sikh customs. Given the cultural element, the court struggled to determine the significance the Sikh cultural expectation should play in the courts reasoning, if any. The court ultimately found that the wedding jewellery should be treated as a family asset. Consistent with these reasons, the claimant's argued that gold jewellery is often given not only as a symbolic gesture, but also as a form of financial security for the newlywed couple and not just the bride.
- [195] In this case, while much of the jewellery appears to have been gifted to the respondent personally to be adorned by her, I accept that some of the jewellery could serve multiple purposes.
- [196] I find that it could have been given to both parties to serve both as financial security, as well as to adorn the respondent who wore it.

- [197] I accept that some portion of the jewellery--particularly the raw gold and higher-value items not clearly designated for the respondent alone--was likely intended to support the couple and could be readily resold if required.
- [198] Absent testimony or evidence from the individuals who gave the jewellery, I cannot determine with certainty the intention behind each item. I simply do not have sufficient evidence. However, I find it appropriate to apportion the jewellery based on the likely mixed intention of the givers. I conclude that approximately half of the jewellery was intended as the respondent's excluded property, and the remaining half was intended for the benefit of both parties and is therefore family property.
- [199] Based on the evidence, I have found that approximately half of the wedding jewellery was intended solely for the respondent as the bride. The other half was likely meant to support the couple jointly. Therefore, the divisible portion is \$18,750, and the claimant is entitled to half of that amount. iv) Conclusion: Jewellery is Mixed Property
- [200] On the evidence before me, I am satisfied that the jewellery in dispute was a mixture of personal bridal gifts and general gold assets intended to provide financial support to the couple. While some items were clearly intended for the respondent's exclusive use--such as designed necklaces, earrings, and bangles--there was also a portion of undifferentiated gold gifted with the apparent intention of supporting the parties jointly.
- [201] Accordingly, I find that:
- a) Excluded property: All designed, ornamental, or ceremonial jewellery gifted to the respondent in accordance with Hindu wedding customs is her excluded property under s. 85(1)(b) of the FLA; and
 - b) Family property: The remaining portion--undifferentiated gold jewellery intended to provide joint financial support--is family property under s. 84 and subject to equal division.
- [202] While the parties agreed to a global retail valuation of \$75,000, I accept the claimant's position that resale value is the more appropriate basis for division. I find the resale value of the jewellery to be \$37,500. Of that, \$18,750 represents the portion that constitutes divisible family property.
- [203] The respondent is awarded legal possession of all the wedding jewellery. To account for the claimant's share of the family property portion, she must compensate the claimant in the amount of \$9,375. This amount will be credited in the final equalization calculation and is not separately payable.
- b) Employee Shares in Keystone Environmental

- [204] The claimant seeks to retain his interest in shares of Keystone Environmental Ltd. and to compensate the respondent for one-half of the increase in value as of the date of separation, rather than the date of trial. He proposes that this amount be subject to a notional capital gains tax adjustment because any future disposition of the shares would attract capital gains tax. He suggests a notional tax rate of 25% should be applied to one half of the gain in determining a fair division.
- [205] The respondent, by contrast, seeks an unequal division of the increase in value of the shares in her favour, asserting that an equal division would be unfair in the circumstances.
- [206] The claimant acquired the shares in February 2021, based on a company valuation dated September 2020, for \$304,833.34. The acquisition was financed through a loan from the Bank of Montreal, co-guaranteed by Keystone Environmental. The claimant has solely borne the responsibility for repaying this loan, including all principal and interest. Under the terms of the agreement, any default would entitle the company to repurchase the shares at 80% of fair market value.
- [207] The company conducts annual share valuations as of September 30. The valuations were as follows:
- a) 2021: \$375,000;
 - b) 2022: \$436,900; and
 - c) 2023: \$472,000.
- [208] The claimant testified that, post-separation, he incurred the following additional debts to preserve his interest in the shares and avoid triggering the 80% buyback clause:
- a) TD Line of Credit (January 26, 2023): \$29,000;
 - b) Loan from Claimant's Father (January 1, 2024): \$19,000; and
 - c) Loan from Claimant's Father (January 15-29, 2024): \$35,000.
- [209] Except for the TD line of credit, the loans are interest-free and remain outstanding. The respondent does not dispute that the claimant acquired the shares prior to the marriage and has borne all financial responsibility for their maintenance.
- i. Analysis of Keystone Environmental Shares
- [210] The presumption of equal division under s. 81 of the FLA may be rebutted if equal division would be "significantly unfair" under s. 95(1). Section 95(2) enumerates the relevant factors. This discretion must be exercised cautiously and supported by clear and reliable evidence.
- [211] As noted in *A.D.J. v. F.J.*, 2022 BCSC 600 at para. 192, the purpose of s. 95 is not to equalize wealth but to ensure fairness in light of the parties' particular circumstances.

[212] Before determining whether unequal division is appropriate, the Court must first establish the current value of the property. In *Yunusova v. Naimi*, 2023 BCCA 124, the Court confirmed that the analysis must begin with the standard trial valuation, and only then consider whether deviation is warranted. Here, the most recent valuation--\$472,000 as of September 2023--exceeds the September 2022 value by \$35,100.

(1) Respondent's Claim for Unequal Division of the Share Increase

[213] As discussed above, the respondent seeks an unequal division, despite acknowledging that she made no financial or non-financial contributions to the shares. Her position is internally inconsistent: she asserts that the claimant should bear all risks and debts associated with the shares yet also seeks to benefit from an unequal share to her benefit from the shares' appreciation. She offers no principled basis for reapportionment under s. 95 and relies only on general economic disparity. I find her position unsupported by the evidence.

(2) Claimant's Claim for Adjusted Valuation Date

[214] Section 87 allows the Court to use a valuation date other than the date of hearing where appropriate. When read with s. 95, the Court may vary both the timing and the division of family property where fairness requires. These powers must be exercised judicially and on compelling evidence.

[215] Applying the s. 95(2) factors, I find the following support the claimant's position:

- a) The relationship was of short duration--approximately 11 months;
- b) The parties had a clear oral agreement to maintain financial independence and to keep excluded property separate;
- c) Their conduct during the relationship reflected that understanding: there was no joint ownership of assets or intermingling of financial resources;
- d) The respondent made no contribution--financial or otherwise--to the acquisition, maintenance, or increase in value of the claimant's Keystone shares;
- e) The shares were purchased prior to the marriage, financed exclusively by the claimant, and are directly tied to his professional activities; and
- f) The claimant bore the entirety of the financial risk, including post-separation borrowing to preserve the asset.

[216] Although dividends from the shares were considered in support calculations, the respondent played no role in generating or preserving the asset. On the totality of the evidence, I find that equal division of the increase in value would be significantly unfair.

- [217] I therefore find that an unequal division with respect to a departure from the default valuation date is justified. The appropriate valuation period is from September 2021 (before the marriage) to the September 2022 (shortly after the date of separation). The increase in value during that period is \$61,900.
- [218] The respondent is entitled to one-half of that increase, or \$30,950. I accept the claimant's submission that a notional capital gains adjustment is appropriate. Applying a 25% tax rate to one-half of the gain results in a deduction of \$3,869. The net equalization payment owing from the claimant to the respondent in respect of the shares is therefore \$27,082.
- c) Summary of Divisible Gains
- [219] With respect to the uncontested excluded assets, the Court's task is therefore focused on assessing whether the value of any excluded property increased during the relationship, and if so, to divide that increase. The following charts summarize the net appreciation in the parties' assets from the date of marriage to the date of separation.
- i) Summary of the Claimant's Disclosed Assets
- [220] I have reviewed the claimant's assets in detail. The following chart summarizes those assets for which there is any consequential value requiring equalization. The parties agreed during the relationship to maintain financial independence, and there is no evidence of joint accounts or shared financial arrangements. As a result, it is difficult to determine whether any funds in their respective personal accounts were accumulated during the marriage. Upon reviewing the banking records, I find no material accrual during the relationship that would justify division.
- [221] The claimant submits that certain classes of his investment accounts--specifically Registered Retirement Savings Plans (RRSP) and Tax Free Savings Accounts (TFSA)--should be aggregated and offset against each other to calculate any gain. He holds three RRSPs and four TFSAs. However, under s. 85 of the FLA, excluded property must be identified and traced on an individual asset basis. Only the increase in value of a specific excluded asset during the relationship is divisible as family property under s. 84. A decrease in value remains the responsibility of the spouse who owns the asset.
- [222] There is no authority under the FLA to pool multiple excluded accounts to calculate a net gain or loss. Each account must be assessed individually. This approach is affirmed in *Klebe v. Klebe*, 2020 BCSC 652 at para. 75, and *Remmem v. Remmem*, 2014 BCSC 1552 at para. 29. A party cannot rely on other family property to offset the decline in value of excluded property.
- [223] Accordingly, each of the claimant's RRSP and TFSA accounts must be considered separately. Any increase in value during the relationship is family property and subject to division. Any decrease is borne solely by the claimant. The FLA protects the exclusion of the asset itself, but not its value. Account Value at Marriage Value at Trial Post-Separation Contributions Net Gain During Marriage Family Property Portion TFSAs RBC TFSA - Mutual

Funds (7519) \$9,168.00 \$10,170.00 \$0.00 \$1,002.00 \$1,002.00 RBC TFSA - Stock Portfolio (5317) \$52,233.00 \$44,922.00 \$0.00 (\$7,311.00) ↓ \$0.00 Questrade TFSA - Stock Portfolio (4744) \$3,720.00 \$1,855.00 \$0.00 (\$1,865.00) ↓ \$0.00 TFSA Subtotal \$1,002.00 RRSPs RBC RRSP - Stock Portfolio (0211) \$12,308.79 \$26,734.00 \$10,000.00 \$4,425.21 \$4,425.21 BMO RRSP - Keystone Env. (7190) \$10,522.00 \$43,463.21 \$18,656.00 \$14,285.21 \$14,285.21 RBC RRSP - Mutual Funds (7337) \$107,557.00 \$128,692.00 \$3,990.00 \$17,145.00 \$17,145.00 Questrade RRSP - Stock Portfolio (4744) \$42,720.00 \$19,047.00 \$0.00 (\$23,673.00) ↓ \$0.00 RRSP Subtotal \$35,855.42 TOTAL of RRSPs and TFSAs \$36,857.42

- i) Claimant's Total Net Increase (Positive, Divisible Gains Only) Asset Category Asset / Account Value at Marriage Value at Trial (or Separation) Post-Separation Contributions Divisible Family Property (Increase Attributable to Marriage) Registered Accounts TFSAs Combined (7519, 5317, 4744) See individual above See above \$0.00 \$1,002.00 RRSPs Combined (0211, 7190, 7337, 4744) See individual above See above \$32,646.00 (excluded) \$35,855.42 Subtotal - TFSAs & RRSPs \$36,857.42 Other Family Property Bitcoin (change during marriage) N/A \$1,874.00 N/A \$1,874.00 28% Share in Coquitlam Property \$737,295.00 \$827,070.00 \$89,775.00 Keystone Environmental Shares \$375,000.00 \$439,900 (Value at separation) \$61,900.00 Subtotal - Other Property \$153,549.00 Total Divisible Family Property \$190,406.42 ii) Summary of the Respondent's Disclosed Assets

[224] Consistent with my assessment of the claimant's financial accounts, I have considered the respondent's assets in light of the parties' decision to maintain separate financial lives throughout the marriage. Both parties retained their respective chequing and savings accounts held prior to the marriage and did not commingle their funds. As such, and in the absence of evidence indicating otherwise, I have not included the balances in the respondent's personal banking accounts for equalization. Moreover, the information available at trial regarding the respondent's banking records was limited and insufficient to support a detailed analysis. That said, I did not observe anything improper or nefarious in the parties' financial conduct that would suggest either party was attempting to conceal or hoard funds. The chart below summarizes the respondent's disclosed assets and investment holdings, based on the evidence presented at trial and her financial disclosure:

[225] Here is the respondent's property valuation and gain over time: Asset Type Description Value at Marriage Value at Separation Value at Trial Gain (Marriage to Trial) Notes Real Estate Richmond Apartment (acquired Dec 2020; BC Assessment) \$441,000.00 \$498,000.00 \$594,000.00 \$153,000.00 Market drop post-purchase; assessment accepted as proxy Wedding Jewellery Wedding jewellery and gold N/A N/A \$37,500.00 (est.) \$18,750.00 50% excluded as Stridhan; 50% treated as family property Total Gain \$171,750.00 iii) Conclusion on Excluded Assets

- [226] Based on the Court's findings and the legal framework under the FLA, the following final chart and offset summary reflects the divisible gains made by each party during the marriage and how they should be equalized. Only gains in family property or increases in excluded property are subject to division under s. 84(2)(g), and equal division is presumed unless it would be significantly unfair (s. 95).
- [227] The total divisible family property is \$362,156.42. Each party is entitled to one-half of that amount, or \$181,078.21. That amount then needs to be adjusted for the notional tax credit for the shares which leads to an adjusted divisible gain for each party. In order to ensure that each party obtains the adjusted divisible gain and based on the assets currently attributed to each of them, the claimant shall pay the respondent \$5,459.21 which raises her current attribution of \$171,750 to her adjusted divisible gain of \$177,209.21.
- v) Final Equalization Summary Chart
- | Party | Total Divisible Gain | currently attributed to each Party | ½ Share of Total Value to be divided between parties | Adjustment: Notional Tax for Shares | Adjusted Divisible Gain | Offset Required to achieve Adjusted Divisible Gain | Claimant |
|--|----------------------|------------------------------------|--|-------------------------------------|-------------------------|--|--------------|
| | \$190,406.42 | \$181,078.21 | +\$3,868.00 | \$184,947.21 | -\$5,459.21 | Respondent | \$171,750.00 |
| | \$181,078.21 | -\$3,868.00 | \$177,209.21 | +\$5,459.21 | Total: \$362,156.42 | \$362,156.42 | \$362,156.42 |
| Net Balance Owed from claimant to respondent \$5,459.21 | | | | | | | |
| Net Balance Payable by Claimant to the Respondent: \$5,459.21. | | | | | | | |
- 3 Pension
- [228] Through her employment with the BC Liquor Distribution Branch (BCLDB), the respondent participated in a provincial defined benefit pension plan. Under s. 84(2)(e) of the FLA, pension benefits accrued during a spousal relationship are family property and subject to division upon separation.
- [229] The claimant seeks division of the respondent's BCLDB pension pursuant to Part 6 of the FLA. The respondent did not oppose this request, and no evidence was provided to justify any departure from the default equal division.
- [230] I find that the portion of the respondent's pension earned during her employment with the BCLDB, from July 14, 2021, to July 2, 2022, is family property and subject to equal division.
- [231] The parties shall file the necessary application with the pension plan's administrator to give effect to the division.
- [232] As the respondent's BCLDB pension is to be divided separately under Part 6 of the FLA, it has not been included in the equalization calculation above.

4. Debt

[233] The parties dispute how to divide certain financial contributions made between themselves and towards family events mutually enjoyed during the relationship, including who should bear responsibility for some of the wedding expenses and the cost of their Child's 66-Day Celebration. The claimant relies on their informal agreement to manage finances separately. The respondent seeks compensation for wedding expenses as well as post-separation debts. To address these competing claims, I begin with the legal framework.

a) Legal Framework Related to Debt

[234] Section 81 of the FLA presumes that both spouses are equally responsible for all family debt, unless there is a court order or agreement to the contrary.

[235] Under s. 86 of the FLA, family debt includes:

- a) Debts incurred during the relationship (from the start of the spousal relationship to the date of separation); and
- b) Debts incurred after separation if used to maintain family property
- b) The Parties' Financial Practices

[236] The parties kept their finances largely separate but shared certain costs--some evenly, others on a 60/40 split. They tracked joint expenses using a mobile app (Splitwise).

c) Wedding and Celebration Costs

[237] Both parties contributed to the costs of the wedding and the "66-Day Celebration" for the birth of their Child. Each now seeks to have some of those expenses apportioned or reimbursed. However, under the FLA, the division of property does not extend to a retrospective accounting of discretionary spending that occurred during the course of the relationship.

[238] As a general rule, voluntary or discretionary expenses--such as wedding or celebration costs--will not be subject to division unless:

- a) there is clear evidence of an express agreement between the parties to share the costs; or
- b) the expense was incurred for an essential family purpose.

[239] The party seeking compensation or apportionment bears the burden of proving both the existence and the nature of the alleged debt or obligation: *Chatha v. Uppal*, 2018 BCSC 6 at para. 309. If a party cannot establish that a valid debt or joint obligation existed at the time of separation, that expense remains the responsibility of the party who incurred it: *Asselin v. Roy*, 2013 BCSC 1681 at para. 247.

[240] In this case, there are no written agreements between the parties regarding the sharing of these expenses. Each party independently organized and paid for aspects of the events--such as venue, décor, and entertainment--based on their own familial, cultural, or personal preferences. While both parties actively participated in and enjoyed the celebrations, there

is no evidence that either party expressly undertook responsibility for the other's costs, nor that these expenses were incurred for the purpose of preserving or maintaining family property.

[241] Although these were undoubtedly culturally significant events for the couple and their families, there is no evidence to suggest that the specific expenses now being claimed were necessary or incurred for an essential family purpose. In the absence of a binding agreement, a jointly assumed obligation, or proof that the expenses meet the statutory criteria for family debt under s. 86 of the FLA, I decline to make any order for reimbursement or cost-sharing in relation to the wedding or celebration costs.

d) Tesla

[242] The parties agree that each of them owns a vehicle that qualifies as excluded property: the claimant owns an Acura, and the respondent owns a Tesla. While there was some discussion regarding a potential increase in value, particularly in relation to the Tesla, the parties ultimately appeared to resile from any claim of significant change. In any event, there is insufficient evidence before me to conclude that either vehicle--both of which are depreciating assets--has substantially increased or decreased in value since the date of separation.

[243] There was, however, some dispute regarding the claimant's past contributions toward the respondent's Tesla loan. During the relationship, the claimant voluntarily contributed \$220 per month toward the Tesla's financing. He does not assert any ownership interest in the vehicle. Instead, he objects to the respondent's request that he continue making these payments post-separation and submits that, if required to do so, he should be entitled to a share in any increase in the vehicle's value, as his contributions assisted in maintaining or improving it.

[244] Although a non-owning spouse's financial contributions may be relevant in the context of property division, they do not give rise to an ongoing financial obligation post-separation unless there is a clear agreement, a court order, or a recognized spousal support basis. No such basis exists in this case.

[245] I find that the claimant's voluntary payments during the relationship do not create any continuing obligation for him to contribute after separation. There is no agreement, order, or legal rationale that would justify such an obligation.

[246] Accordingly, the Tesla remains the respondent's excluded property, and she is solely responsible for its ongoing financing. The claimant is not required to continue making the \$220 monthly payments.

e) Respondent's Post-Separation Debts

[247] The respondent claims the following debts incurred after separation:

- a) \$15,000 allegedly owed to her parents for furniture (primarily paid in cash, with no receipts provided);
- b) \$4,012 to her brother for groceries;
- c) \$744 for Wi-Fi services; and
- d) \$96 for a Netflix subscription.

[248] All of these expenses arose after the parties separated.

[249] Under the FLA, family debt is defined as financial obligations incurred by either spouse during the relationship or after separation if incurred for the purpose of maintaining family property. The expenses claimed here are personal in nature and do not relate to the preservation or maintenance of family property. As such, they do not meet the statutory definition of family debt and remain the sole responsibility of the respondent.

f) Maternity Leave Repayment

[250] The respondent seeks a contribution from the claimant toward a \$32,966.17 debt she owes to the BCLDB. This repayment obligation was triggered when she elected not to return to her former employment following maternity leave.

[251] The respondent submits that this was not a matter of personal preference, but a necessary and reasonable decision made in the best interests of the Child. She explains that her decision was shaped by:

[252] Her role as the primary caregiver post-separation:

- a) Inability to secure suitable or affordable daycare despite repeated applications; and
- b) The need to maintain stable medical and financial benefits for the Child.

[253] As a result, she accepted a slightly lower-paying position that offered continuity of benefits, but that decision triggered a requirement to repay the maternity allowance she had received under her previous employment agreement. She contends that this debt arose directly from her caregiving responsibilities and should therefore be considered a shared family obligation.

[254] The respondent argues that, although the debt arose post-separation, it reflects a continuation of her role in supporting the child and the family unit. She relies on principles of fairness and equity under the FLA, asserting that the burden of such caregiving-related debt should not fall solely on the parent who assumes the primary caregiving role after separation.

[255] She asks the Court to find that the claimant should share in this financial obligation and requests an order requiring him to contribute \$458 per month toward repayment of the BCLDB debt, beginning September 1, 2024, in addition to any ongoing support obligations.

[256] The claimant opposes the request. He submits that:

- a) The debt was incurred after the parties separated;
- b) It arose from the respondent's unilateral decision not to return to work; and
- c) It is not related to family property, nor was it jointly undertaken.

[257] He argues that the debt does not fall within the definition of family debt under s. 86 of the FLA and should not be apportioned.

[258] The respondent has asked that the claimant contribute to repayment of a debt she incurred to the BCLDB following separation. While I acknowledge the respondent's financial vulnerability during the immediate aftermath of the marital breakdown, I decline to make any order requiring the claimant to contribute to this repayment.

[259] Pursuant to s. 86 of the FLA, a debt qualifies as "family debt" if it was incurred either during the relationship, or after separation but for the purpose of maintaining or preserving family property. The BCLDB debt does not meet that statutory threshold: it arose post-separation, was not incurred to preserve or maintain family property, and was not a jointly assumed obligation. As such, it does not fall within the definition of family debt for the purposes of property division.

[260] I do, however, recognize the respondent's role as the primary caregiver during that critical time and the disproportionate financial consequences she experienced following separation. These considerations are better addressed within the framework of compensatory spousal support, which I address in a subsequent section.

g) Loans from the Claimant's Father

[261] The claimant received multiple loans from his father during the relationship. However, the only loan that remains relevant for consideration as a potential family debt is a \$5,000 advance the claimant received from his father to help fund the Child's 66-Day Celebration.

[262] The claimant submits that this loan benefited the family and should be classified as a family debt subject to division.

[263] The respondent disputes this, asserting that she neither agreed to the celebration nor to the incurrence of the debt.

[264] It is well established that loans from family members are subject to heightened scrutiny and must be supported by clear evidence of a mutual or shared obligation: (Asselin at para. 247). Further, the party alleging the existence of a family debt bears the onus of proving both its existence and its nature. While the claimant has produced a written loan agreement as evidence of the debt's existence, there is no evidence that the respondent was aware of, consented to, or shared in the obligation. Nor is there any indication that the loan was clear on the date of separation.

- [265] I therefore find that the \$5,000 loan obtained by the claimant to fund the 66-Day Celebration is a personal obligation and remains his sole responsibility. XI) SPOUSAL SUPPORT A. Entitlement
- [266] I turn now to the issue of spousal support, which has been a significant point of contention between the parties. Entitlement is a threshold issue. Although the claimant initially agreed to pay spousal support pursuant to a consent order made shortly after separation, he challenges the respondent's entitlement. The respondent, on the other hand, maintains that she made sacrifices that adversely affected her financial position and that she should be appropriately compensated through spousal support. She seeks back dated spousal support from the date of separation. It is therefore necessary to first determine whether the respondent is entitled to spousal support.
- [267] The parties were married and since they are seeking a divorce in this proceeding, I find that the Divorce Act applies to any spousal support order made in this case moving forward.
- [268] The objectives of spousal support are set out in s. 15.2(6) of the Divorce Act. Objectives of spousal support order
- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [269] Consistent with these objectives, our courts have recognized three grounds for entitlement to spousal support: compensatory, non-compensatory and contractual: Bracklow v. Bracklow, [1999] 1 S.C.R. 420 at para. 15; and Chutter v. Chutter, 2008 BCCA 507 at para. 47, leave to appeal ref'd [2009] S.C.C.A. No. 41.
- [270] There is no contractual claim advanced in this case. Most cases involve compensatory or non-compensatory claims.

- [271] The primary purpose of compensatory spousal support is to ensure an equitable sharing of the economic consequences of the marriage. A spouse who has given up opportunities or incurred economic disadvantage as a result of the roles adopted during the marriage may be entitled to support, either to compensate for diminished earning capacity or to share in the increased earning capacity of the other spouse (*Zacharias v. Zacharias*, 2015 BCCA 376 at para. 26).
- [272] Non-compensatory entitlement is based on the respective needs and means of the spouses and considers whether there remains an ongoing obligation for mutual support following the breakdown of the relationship. The extent to which non-compensatory principles apply depends on the nature of the relationship (*Zacharias* at para. 27).
- [273] The court is not limited to a single basis for entitlement. Entitlement may be established on one or more grounds depending on the circumstances. Identifying all applicable grounds is important, as they may affect both the amount and duration of support (*Cassidy v. McNeil*, 2010 ONCA 218 at para. 64).
- [274] When determining whether to order spousal support, the court must consider the condition, means, needs, and other circumstances of each spouse, including the length of cohabitation, the roles assumed by the spouses during the relationship, and any relevant agreements or prior orders relating to support: *Divorce Act*, s. 15.2(4).
1. Relevant Facts and Positions of the Parties
- [275] The parties separated on July 2, 2022. Shortly afterwards, on October 27, 2022, Judge Vandor issued a consent order on an interim and without prejudice basis, requiring the claimant to pay the respondent spousal support in the amount of \$250 per month, commencing November 1, 2022.
- [276] In their Notice to Admit filed with the Court, the parties acknowledged that the claimant has paid, and the respondent has received, 22 monthly spousal support payments pursuant to the Vandor Order, covering the period from November 2022 to August 2024. Consequently, assuming the same level of compliance to these payments, from November 2022 until May 01, 2025, the claimant will have made \$250 x 30 parties for a total of \$7,500.
- [277] The respondent seeks permanent spousal support, including both a lump sum and periodic support, retroactive to the date of separation.
- [278] In response, the claimant submits that the respondent has no basis for entitlement to spousal support. He further argues that, even if entitlement were established, any amount owing under the SSAG would be minimal.
- [279] The respondent argues that:
- a) She took maternity leave and experienced financial setbacks as a result; and

- b) The short duration of the marriage should not negate support, given that she was the primary caregiver for their child.

[280] The claimant opposes spousal support, arguing that:

- a) The marriage was too short to justify ongoing support; and
- b) The respondent is financially independent and has returned to full-time employment. B. Analysis

1. Entitlement

[281] As noted, entitlement is the threshold issue in any spousal support analysis. Although the claimant agreed to pay support pursuant to a without prejudice interim consent order dated October 27, 2022, the court did not decide on whether the respondent was entitled to support. It was intended only to maintain the status quo before the matter could be properly considered at trial. The Court must now assess entitlement based on the parties' current and historical circumstances, applying the legal framework set out in the Divorce Act.

[282] It is essential for the parties to understand that the SSAG does not determine whether a person is entitled to receive spousal support. The SSAG provide a suggested range for the amount and duration of support--but only after entitlement has first been established. Entitlement is a separate legal question that must be first proven based on one or more recognized grounds: compensatory (e.g., economic disadvantage due to the roles adopted during the relationship), non-compensatory (e.g., financial need), or contractual (e.g., a valid agreement between the parties). A difference in income between spouses, even if it generates a suggested amount through SSAG calculations, does not by itself create a right to support.

[283] This means that even if a party has a lower income, they are not automatically entitled to support. They must first show that the relationship caused them financial hardship, or that they gave something up--such as work opportunities--because of the marriage or caregiving duties.

[284] Further, as explained in the SSAG, the Guidelines are not law, but are intended as an advisory tool to assist in determining support ranges once entitlement is established.

a. Compensatory Support

[285] Compensatory spousal support is intended to ensure an equitable sharing of the economic consequences of the relationship. It compensates a spouse for economic disadvantage or lost opportunities resulting from the roles assumed during the marriage or after separation, or for economic benefits conferred on the other spouse through unpaid contributions.

- [286] Such support may be awarded to address diminished earning capacity or loss of future prospects, and to ensure the recipient shares in the economic advantages made possible by their contributions or sacrifices.
- [287] Where there is a dependent child, the primary rationale for spousal support is often compensatory. As Chief Justice McLachlin observed in *Bracklow* at para. 1, spouses are to "compensate each other for foregone careers and missed opportunities during the marriage."
- [288] The central inquiry is whether the respondent suffered economic disadvantage or conferred economic advantage on the claimant by assuming caregiving or domestic responsibilities, thereby sacrificing her own career or income opportunities.
- [289] The parties separated shortly after the birth of their child. From that point, the respondent assumed the role of primary caregiver while on maternity leave. She commenced her leave on April 1, 2022, and it concluded on March 31, 2023. Prior to her leave, she earned approximately \$84,000 per year. During maternity leave, she received Employment Insurance (EI) and a top-up from her employer, amounting to approximately \$67,000 over the course of the year.
- [290] The respondent did not return to her previous position. Instead, she accepted a new role with the federal government, which provided flexible hours to better accommodate her parenting obligations. However, as discussed earlier, her decision not to return to her former employer triggered a repayment obligation for the maternity top-up she had received. Initially assessed at \$32,966.17, the amount was ultimately reduced to \$27,401.93 after application of her vacation credits and other payroll adjustments. This resulted in a direct financial loss. Courts have recognized that primary caregiving responsibilities--particularly following separation--can give rise to economic disadvantage (see *Kammerer v. Kammerer*, 2024 BCSC 1838).
- [291] This was a short marriage of 11 months. The ultimate issue underlying entitlement is whether the respondent continues to experience economic disadvantage arising from her caregiving role during the relationship or following separation.
- [292] Since the original interim spousal support order was made, the parties have transitioned to an equal parenting arrangement. The respondent is now employed full-time and no longer bears a disproportionate share of the childcare responsibilities. These changes are relevant to both the assessment of ongoing entitlement and any adjustment to the quantum or duration of spousal support.
- [293] I find that based on the fact, the respondent's compensatory claim arises solely from her temporary disadvantage as a result of primary caregiving during maternity leave and is no longer sustained.

b. Non-Compensatory Support (Needs-Based)

- [294] Non-compensatory support addresses a spouse's financial need arising from factors such as health, caregiving roles, or time out of the workforce. It is grounded in the principle that former spouses, not the state, should bear responsibility for post-separation needs.
- [295] In this case, the respondent has attained self-sufficiency. She is employed in a role comparable to her pre-marriage income, lives in her pre-marital home, and shares parenting responsibilities equally. She no longer faces disproportionate financial burdens arising from the separation.
- [296] Accordingly, I find no ongoing non-compensatory entitlement to spousal support.

2. Duration and Quantum of Spousal Support

- [297] Where entitlement is established in cases involving dependent children, the with child support formula under the SSAG provides a range for duration, based on two tests: the length of the marriage and the age of the children.
- [298] For short marriages, such as this 11-month union, the age-of-children test typically governs. It provides a duration range from the date of separation to the time the child begins full-time school, reflecting the compensatory purpose of support during early caregiving years when the primary parent would need to make significant sacrifices.
- [299] In this case, that test would suggest entitlement during the period when the respondent was on maternity leave and providing primary care, but not beyond the point when parenting became equal, and the respondent resumed full-time employment. From that point on she did not maintain the overwhelming weight of the parenting responsibilities.
- [300] As explained above, a without prejudice interim support order does not establish a finding of entitlement. It is intended to preserve the status quo temporarily, often based on practical considerations such as immediate need, without prejudice to either party's substantive position.
- [301] While the claimant argues that support should end due to the respondent's self-sufficiency, this does not automatically extinguish a compensatory claim. Self-sufficiency is relative, not absolute. It must be evaluated in context, including the recipient's contributions during the relationship and any enduring economic disadvantage.
- [302] As explained in *Fisher v. Fisher*, 2008 ONCA 11, self-sufficiency must be assessed in relation to the parties' economic partnership and the realities of life post-separation--not merely the ability to meet basic needs.
- [303] The evidence establishes that the respondent would have had a valid compensatory entitlement to spousal support during the period following separation. During that time, she was on maternity leave, caring for the parties' child as the primary caregiver, and was experiencing an income reduction. These factors support entitlement under the principles articulated in *Moge v. Moge*, [1992] 3 S.C.R. 813 and *Bracklow*.

- [304] Therefore, while I find the respondent was entitled to spousal support for the period following the separation, that entitlement ended once she resumed full-time work and shared parenting equally. She is not entitled to continuing support after July 31, 2023.
- [305] At the time of hearing, the respondent has returned to full-time employment in a position that pays comparably to her pre-leave income and offers significant future professional opportunities. The parties now share parenting equally, and the respondent no longer experiences any economic disadvantage arising from the relationship or its breakdown. Accordingly, while the respondent was entitled to support from the point of separation to the time when she transitioned back to work and the parties engaged in equal parenting, I do not find she is entitled to ongoing support at this time.
- [306] In these circumstances, I find a retroactive award is the appropriate remedy. Although the interim, without prejudice support order partially addressed the respondent's financial needs, it was not based on a determination of entitlement and therefore did not determine the period of entitlement nor the corresponding quantum.
- a. What is the Retroactive Date?
- [307] The date of retroactivity is a matter of judicial discretion. While the usual start date is the commencement of formal proceedings, the court may award support retroactively to an earlier point in time. Relevant considerations include the payor's conduct, the recipient's diligence in asserting their claim, and any resulting hardship.
- [308] Although I find that the respondent no longer has a present entitlement to ongoing support, I find that she was entitled to compensatory support for a defined period following separation. Once entitlement is established, the SSAG offer an appropriate framework for determining the amount and duration of support, even where the award is retroactive and time-limited. I have therefore applied the "with child support" formula, adjusted for the respondent's circumstances at the time, including her income while on maternity leave, the claimant's income, and the parenting arrangement in place during that period.
- [309] The respondent seeks spousal support retroactive to July 2, 2022. I now have the benefit of the parties' actual income figures for the 2022 tax year, which covers the majority of the period in question. Given that this is a retroactive award, it is both appropriate and consistent with the authorities to rely on the actual income earned during the relevant timeframe, rather than estimated or prior-year figures. This approach aligns with the principles in *Colucci v. Colucci*, 2021 SCC 24 and *Gordon v. Gordon*, 2015 BCCA 277, and reflects the SSAG's guidance to use the best available income information.

- [310] Based on the actual income figures previously outlined, the application of the SSAG results in the following ranges of monthly spousal support: for 2022 (with child), between \$1,018 and \$2,315; for 2023 (with child), between \$1,428 and \$2,888; and for 2023 (equal parenting), between \$1,679 and \$3,209. It is important to note that under equal parenting, the spousal support payable increases. This is because the SSAG adjusts to compensate for the reduced child support to ensure a more equitable distribution of resources.
- [311] I have considered which range is most appropriate, considering the parties' respective financial circumstances, parenting responsibilities, and overall economic stability during the relevant period. I note that although the respondent was earning a good salary with a stable professional future, she was on maternity leave for much of the time, with a reduced income and increased expenses associated with her relocation back to her apartment. Based on the evolving parenting and her employment situation from July 2022 to July 2023, I find the mid-point of the SSAG range to be a fair and appropriate measure of spousal support.
- [312] Applying the mid-point of the SSAG range to the parties' respective incomes for each relevant period, I find that the claimant owes the respondent the following amounts in retroactive spousal support:
- | Period | Support Type | Payor Income | Recipient Income | Monthly Amount (Mid Range) | Duration | Total Owed |
|-----------------------|----------------------------|--------------|------------------|----------------------------|----------|------------|
| July 2 - Dec 31, 2022 | With Child | \$176,261 | \$71,121 | \$1,669 | 6 months | \$10,014 |
| Jan 1 - Apr 30, 2023 | With Child | \$198,607 | \$74,355 | \$2,157 | 4 months | \$8,628 |
| May 1 - July 31, 2023 | Equal Parenting Adjustment | \$198,607 | \$74,355 | \$2,384 | 3 months | \$7,152 |
| Total Spousal Support | | | | | | \$25,794 |
- [313] Accordingly, based on the figures set out in the preceding chart, I find that the total amount of retroactive spousal support owed by the claimant to the respondent is \$25,794.
- [314] The claimant has been making spousal support payments pursuant to the without prejudice consent order dated October 27, 2022, in the amount of \$250 per month. Based on the parties' Notice to Admit and assuming continued payments through May 1, 2025, the claimant will have paid a total of \$7,500 over 30 months. Although the respondent's entitlement to spousal support ended as of July 31, 2023, the payments made beyond that date are not treated as overpayments. Rather, they are credited toward the underpayment of support during the retroactive entitlement period, when the claimant was paying below the applicable SSAG range. Accordingly, the sum of \$7,500 is applied to reduce the retroactive obligation of \$25,794, resulting in a net balance of \$18,294. No further spousal support is payable for any period after July 31, 2023.
- XII) NET FINANCIAL SUMMARY
- [315] The following chart summarizes the key financial obligations arising from the Court's findings on property division, support arrears, and daycare expenses. It identifies the amounts payable between the parties and the legal basis for each.
- | Category | Amount (CAD) |
|---------------------------------|---------------------------------|
| Offset by Credited To Notes | \$ 5,320 |
| Child Support Arrears | Claimant Respondent |
| From July 2022 to April 2024 | Retroactive Spousal Support |
| \$18,294 | Claimant Respondent |
| From July 2022 to July 31, 2023 | Section 7 Daycare Reimbursement |
| \$ 3, 564.95 | Claimant Respondent |

Reimbursement for one-third of \$ 10,694.86 in expenses Subtotal Payable by Claimant \$27,179 Claimant Respondent Adjustment for Equalization of Property \$5,459 Claimant Respondent Amount credited to the respondent as part of the equalization of family property; not separately payable Total Net credited to the respondent by Claimant \$32,638.16 Claimant Respondent Payable within 90 days unless otherwise agreed to by the parties.

- [316] Although each financial component has been assessed individually for the purposes of analysis and calculation, the parties are not required to make individual payments for each item. Rather, the amounts owing have been netted out and are reflected in a single, final financial obligation. Only the net amount owing from one party to the other is enforceable under this judgment.
- [317] No additional sums are owing beyond the \$32,638.16 set out above, which represents the full and final resolution of all financial obligations determined in this proceeding. XIII) DIVORCE
- [318] I am satisfied, based on the evidence and the record before me, that a divorce order should be granted pursuant to section 8(1) of the Divorce Act. The statutory criteria have been met: both parties seek a divorce, there is no reasonable prospect of reconciliation, and there is no evidence of collusion. Accordingly, a divorce order will issue, to take effect 31 days from the date of this Order, in accordance with the Divorce Act. XIV) LAST NAME CHANGE OF THE CHILD
- [319] The respondent mother seeks an order changing the Child's surname to reflect both parents' names. I understand her reasons and acknowledge her wish to recognize both parents' identities, however, I also note that the claimant does not consent to the change.
- [320] Although s. 5(2) of the Name Act permits the Court to order a change of name of a child on granting a divorce, where the consent of the other parent cannot be obtained, the Act does not authorize the Court to dispense with it.
- [321] Under British Columbia law, the Court does not have the authority to change a child's surname without either:
- i. the written consent of both parents; or
 - ii. a special application to the Registrar General under the Name Act, R.S.B.C. 1996, c. 328.
- [322] Because neither of those conditions is met here, the Court is legally prevented from making that order, even if it seems reasonable.
- [323] The respondent mother relies on an Alberta decision *J.E.B. v. J.S.*, 2020 ABQB 437, where the Alberta Court of Queen's Bench granted a change to a child's surname without the consent of the other parent. However, that decision was based on Section 14 of Alberta's Change of Name Act, R.S.A. 2000, c. C-7, which expressly empowers the court to dispense with parental consent, where it is in the best interests of the child. However, British

Columbia's legislation contains no such provision authorizing the Court to override a parent's refusal to consent to a name change.

[324] In British Columbia, the authority to change a child's name lies primarily with the Registrar General, and the applicable legal framework is set out in s. 4 of the Name Act.

[325] Accordingly, I find that the Court is without jurisdiction to grant the requested name change. XV) DISPOSITION

[326] I make the following final orders: A. Divorce

[327] I am satisfied on the evidence and record before me that a divorce order should be granted pursuant to section 8(1) of the Divorce Act. The requisite criteria for granting a divorce have been satisfied. Both parties want a divorce. There is no chance of reconciliation; and there has been no collusion. This divorce order will take effect 31 days from the date of this Order. B. Parenting

[328] The following Parenting Orders are made:

- h) Parenting Schedule (Until July 1, 2025): The current equal parenting schedule, consisting of a 2/2 rotation (two days with each parent on an alternating basis), shall continue in effect until June 30, 2025;
- i) Modified Parenting Schedule (Effective July 1, 2025): Commencing July 1, 2025, the parties shall transition to a 2/2/3/3 parenting schedule. Each parent shall have two consecutive days, followed by alternating three-day weekend blocks. The parties shall adjust overnights as necessary to implement this schedule;
- j) Annual Review of Parenting Schedule: The parties shall review the parenting schedule every year on or around the Child's birthday to consider whether any changes are needed, based on the Child's development or other circumstances. The Parenting Coordinator may assist with this review if necessary;
- k) Appointment of Parenting Coordinator: The parties shall jointly retain a Parenting Coordinator by no later than July 1, 2025, under s. 15 of the FLA. The Parenting Coordinator shall assist with:
 - 1. Implementing the parenting schedule;
 - 2. Helping the parties communicate about parenting matters; and
 - 3. Assisting with resolving day-to-day parenting disputes.
- l) Costs of Parenting Coordinator: The parties shall share the cost of the Parenting Coordinator equally, unless they agree otherwise or the Court orders differently in the future.

1. Parental Responsibilities

[329] The following orders are made with respect to guardianship and parental responsibilities:

- m) Guardianship: Both the claimant and the respondent are guardians of the Child by operation of s. 39 of the FLA. No further order is required;
 - n) Parental Responsibilities: The parties shall continue to share the parental responsibilities set out in s. 41 of the FLA, including significant decisions regarding the Child's:
 - 1. Health care;
 - 2. Education;
 - 3. Cultural and religious upbringing;
 - 4. Day-to-day care while the Child is in their respective care;
 - o) Medical Decision-Making: In the event of disagreement regarding medical decisions, the respondent shall have final decision-making authority. However, the respondent must consult with the claimant before making any non-emergency medical decisions;
 - p) Medical Appointment Notice: Each party shall inform the other, in advance, of any medical or health appointments for the Child, and shall invite the other to attend where appropriate;
 - q) Consultation on Education and Cultural Matters: The parties shall consult and make reasonable efforts to agree on the Child's education, participation in cultural or religious practices, and ceremonies;
 - r) Parenting Coordinator Assistance: In the event the parties are unable to reach agreement on matters under this Order, they shall first refer the issue to the Parenting Coordinator for assistance before seeking relief from the Court;
 - s) Scope of Parenting Coordinator Role: The Parenting Coordinator shall assist with day-to-day parenting disputes, scheduling issues, and communication matters. The Parenting Coordinator shall not have authority to make binding decisions on significant parenting issues unless both parties agree in writing; and
 - t) Costs: The parties shall share the costs of the Parenting Coordinator equally, unless otherwise agreed or ordered.
2. Extended Family Members as Caregivers
- [330] Each party may rely on members of their extended family to provide childcare during their respective parenting time.
3. International and Domestic Travel
- [331] The following orders are made with respect to travel:
- a) International Travel - General Restriction: Neither party shall travel internationally with the Child without the express written consent of the other party or a further order of the Court;

- b) Travel to India: The respondent shall not travel to India with the Child without the claimant's written consent or a further court order. If such travel is requested, the respondent must:
1. File a formal travel application with the Court;
 2. Provide a notarized undertaking confirming the obligation to return the Child to Canada; and
 3. Be prepared to provide a financial bond or other safeguards as directed by the Court.
- c) Domestic Travel within Canada: Either party may travel within Canada with the Child, provided they give the other party reasonable advance notice of the travel, including the location, duration, and contact information.
- C. Child Support
- [332] The claimant shall pay the respondent child support arrears in the amount of \$5,320, representing the period from July 2022 to April 30, 2025.
- [333] Commencing May 1, 2024, the claimant shall pay ongoing child support in the amount of \$1,026 per month, based on the current shared parenting arrangement and the claimant's 2023 income.
- [334] Child support shall be subject to annual recalculation, effective June 1 of each year, based on the updated incomes of both parties. If the shared parenting arrangement ends, child support shall be payable in accordance with the Guidelines table amount for the payor's income and the number of children.
- [335] To facilitate annual review, by May 15 of each year, both parties shall exchange the following:
- d) A copy of their most recent filed income tax return, and
 - e) Their complete T1 General income tax form.
- [336] In the event that a party fails to provide their income information by the deadline, the most recent Line 15000 income (total income) as reported by the Canada Revenue Agency may be used as the default income for the purposes of recalculating child support.
- D. Special and Extraordinary Expenses
- [337] Effective immediately, s. 7 extraordinary expenses are to be shared as follows: claimant: 68% and respondent: 32%
- [338] For any s. 7 expense claimed, the party who incurred the expense shall provide to the other party a copy of the receipt or invoice and proof of payment.
- [339] Neither party shall incur a s. 7 expense without the prior written consent of the other party, unless in case of an emergency, in which case the party incurring the expense shall notify the other party forthwith after having incurred the expense.

- [340] The parties' proportionate share of s. 7 expenses is to be reviewed annually, with the review to occur at the same time and in the same manner as the annual child support review.
- [341] The claimant shall reimburse the respondent in the amount of \$3,565 for his share of daycare expenses incurred from May 2023 to the date of trial.
- [342] Moving forward, each party shall be responsible for arranging and paying for childcare required during their parenting time.
- [343] For any s. 7 expense claimed, the party who incurred the expense shall provide to the other party a copy of the receipt or invoice and proof of payment.
- [344] Neither party shall incur a section s. 7 expense without the prior written consent of the other party, unless in case of an emergency, in which case the party incurring the expense shall notify the other party forthwith after having incurred the expense.
- [345] The parties' proportionate share of s. 7 expenses is to be reviewed annually, with the review to occur at the same time and in the same manner as the annual child support review. E. Spousal Support
- [346] The claimant shall pay the respondent retroactive spousal support in the amount of \$18,294 for the period July 1, 2022, to July 31, 2023, after crediting interim payments.
- [347] No ongoing spousal support shall be payable after July 31, 2023. F. Property Division and Equalization
- [348] For clarity, no party shall be required to make multiple payments for each component of property, support, or debt. The Court has calculated and applied all necessary offsets and credits below. Only the final net amount set out below shall be paid.
- [349] With respect to the division of property:
- a) The claimant shall credit the respondent with an equalization payment in the amount of \$5,459.00;
 - b) The respondent shall retain all wedding jewellery. The claimant is credited with \$9,375 toward the equalization calculation, representing one-half of the divisible portion of the jewellery considered to be a family asset. No separate payment is required for this amount, as it is factored into the final net obligation between the parties; and
 - c) The claimant shall retain his shares in Keystone Environmental Ltd. and credit the respondent \$27,082 as her share of the increase in value, after a notional tax adjustment.
- [350] The respondent's pension accrued during the marriage under the BC Public Service Pension Plan shall be divided equally. The claimant is entitled to 50% of the pension accrued between July 14, 2021, and July 2, 2022. The parties shall complete and submit Form P1 (Claimant's Request for Pension Division) and Form P2 (Agreement/Order to Divide Pension) to the BC Public Service Pension Plan administrator. G. Debts

- [351] The respondent's post-separation debts, including the maternity leave repayment and amounts owed to family members, are not family debts and shall remain her sole responsibility.
- [352] The claimant's \$5,000 loan from his father for the 66-Day Celebration is a personal debt and not subject to division. H. Net Financial Obligation
- [353] The total financial obligation from the claimant to the respondent is \$32,638. This includes:
- a) Child support arrears: \$5,320;
 - b) Retroactive spousal support: \$18,294;
 - c) Daycare reimbursement: \$3,565;
 - d) Equalization of property: \$5,459; and
 - e) This amount must be paid in full within 60 days of this judgment. I. Name Change Application
- [354] The respondent's request to change the Child's surname is dismissed for lack of jurisdiction. This matter may be pursued through the Name Act administrative process. J. Costs
- [355] Because both parties had some success and each represented themselves, I make no order for costs. This means neither party owes the other any legal fees related to this proceeding. Should either party wish to address costs or any other outstanding matter, they may do so by scheduling a hearing through Supreme Court Scheduling. "Sukstorf J."

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